Filed on behalf of:

Patent Owner SightSound Technologies, LLC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,

Petitioner,

v.

SIGHTSOUND TECHNOLOGIES, LLC,

Patent Owner.

Case CBM2013-00020
Patent 5,191,573

PATENT OWNER SIGHTSOUND TECHNOLOGIES, LLC'S MOTION TO EXCLUDE EVIDENCE PURSUANT TO 37 C.F.R. § 42.64(c)

TABLE OF CONTENTS

Page

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(c), Patent Owner SightSound Technologies, LLC ("Patent Owner") hereby moves to exclude certain materials relied upon by Petitioner Apple Inc. ("Petitioner") in support of its Reply, as set forth herein.[1]

II. RELEVANT PROCEDURAL HISTORY

With its Reply filed on March 21, 2014, Petitioner submitted and relied upon 111 new exhibits, including five new fact and expert declarations. On March 28, 2014, Patent Owner timely served evidentiary objections to such materials. *See* Ex. 2171. Pursuant to these objections, the Federal Rules of Evidence ("F.R.E.") and 37 C.F.R. §§ 42.61, 42.62, and 42.65, Patent Owner now moves to exclude certain materials.

III. ARGUMENT

A. Exhibit 4255 (Declaration of Jeffrey Robbin)[2]

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[1] This motion focuses on materials relied on in Petitioner's Reply, as the Board disregards materials or portions thereof not expressly stated in Petitioner's papers. *See* ORDER - Conduct of the Proceedings, April 2, 2014, Paper 65, at 3 (citing 37 C.F.R. § 42.6(a)(3)).

[2] Mr. Robbin's deposition transcript was not available as of the time of filing Patent Owner's Motion to Exclude. Citations will be provided at a later date.

Petitioner asserts, through the declaration of its employee Jeffrey Robbin, that the idea to sell music and video files over computer networks was "prevalent in the industry since the mid-1980s." Ex. 4255 ¶ 9. As Mr. Robbin shows no personal knowledge in support of this conclusory statement, it is inadmissible. *See* F.R.E. 601-602. Mr. Robbin started at Apple Inc. as an intern in 1992 (*id.* ¶ 3) and provides no support for a "fact" from the mid-1980s, a time when he admitted at deposition that he was still in high school and thus had no experience in the "industry." Mr. Robbin's views of what was "prevalent" in this industry at the time are irrelevant and should be excluded.[3]

Petitioner also cites Mr. Robbin's declaration for the contention that the iTunes Music Store ("ITMS") "embodies lots of inventions, many the subject of Apple's own patents." Reply at 10 (citing Ex. 4255 ¶ 7; Exs. 4209-4250). Mr. Robbin provides no facts or data to substantiate this assertion, particularly that ITMS "embodies" dozens of patents. Mr. Robbin only lists the patents and their general subject matter, without *any* discussion of their claims, nor charts relating

[3] This is also an example of Petitioner's untimely attempt to supplement the record on obviousness, an issue Patent Owner has separately raised with the Board. *See* Ex. 2170 at 7-16; ORDER - Conduct of the Proceedings, April 2, 2014, Paper 65, at 2-3.

the claims to any technical aspects of ITMS. Mr. Robbin does not explain what knowledge or expertise—if any—he has to give opinions about whether Petitioner practices its own patents. Whether deemed lay or expert testimony, his discussion of Petitioner's patents should be excluded. *See* F.R.E. 602 (percipient testimony must reflect personal knowledge), 701-702, 703-705; 37 C.F.R. § 42.65(a) ("Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight."). Mr. Robbin's opinions concerning Petitioner's patents should be excluded for the independent reason that neither Mr. Robbin nor any other affiant demonstrates personal knowledge of the truth of the data cited in the dozens of patents Petitioner submits with its Reply. *See* 37 C.F.R. § 42.61(c) ("A specification or drawing of a United States patent application or patent is admissible as evidence only to prove what the specification or drawing describes. If there is data in the specification or a drawing upon which a party intends to rely to prove the truth of the data, an affidavit by an individual having first-hand knowledge of how the data was generated must be filed.").

B. Exhibit 4258 (Declaration of Tom Weyer)

Petitioner relies on the declaration of former Apple Inc. employee Tom Weyer to assert that it did not use information obtained in a 1999 meeting with Patent Owner. Reply at 15 (citing Ex. 4258 ¶¶ 5-9). Mr. Weyer recalls meeting with a "SightSound entity" where he saw "some documents," but does "not recall

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