

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

Before the Honorable MICHAEL P. TIERNEY, JUSTIN T. ARBES, and
GEORGIANNA W. BRADEN,
Administrative Patent Judges.

**PETITIONER APPLE INC.'S FIRST SET OF OBJECTIONS TO PATENT
OWNER SIGHTSOUND TECHNOLOGIES, LLC'S EXHIBITS**

Pursuant to 37 C.F.R. § 42.64(b)(1), the undersigned, on behalf of and acting in a representative capacity for Petitioner Apple Inc. ("Petitioner"), hereby submits the following objections to Patent Owner SightSound Technologies, LLC's ("Patent Owner") Exhibits 2110, 2121, 2123, 2127, 2128, 2130, 2132, 2141, 2142, 2144-2147, 2150, 2151, and 2153 and any reference to/reliance on the foregoing, including, without limitation, citations thereto in Patent Owner's Response Pursuant To 37 C.F.R. § 42.220 ("Response"). Petitioner's objections below apply the Federal Rules of Evidence ("F.R.E.") as required by 37 C.F.R § 42.62.

I. Objections to Portions of Exhibit 2110 and Any Reference to/Reliance Thereon, and Improper Incorporation Thereof into Response

Evidence objected to: Exhibit 2110 of the Response, titled “Declaration of Scott Sander In Support Of Patent Owner SightSound Technologies, LLC’s Response Petition.”

Grounds for objection: F.R.E. 403 (“Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons”); F.R.E. 702 (“Testimony by Expert Witnesses”); F.R.E. 703-705 (Witness Not Qualified to Provide Expert Testimony); F.R.E. 701 (“Opinion Testimony by Lay Witnesses”); F.R.E. 801, 802 (Impermissible Hearsay); F.R.E. 602 (“Need for Personal Knowledge”); 37 C.F.R. 42.61 (“Admissibility”).

To the extent that the witness, Scott Sander, providing the declaration attached as Exhibit 2110 purports to be providing expert opinions or testimony, the declaration provides no evidence that the declarant is an expert in the pertinent subject matter and is qualified to provide opinions contained in Exhibit 2110, or that he has the necessary “scientific, technical, or other specialized knowledge [to] help the trier of fact to understand the evidence or to determine a fact in issue” (F.R.E. 702). Thus, the declaration does not indicate that he is sufficiently knowledgeable in the art (F.R.E. 702) and he is thus unqualified to provide an expert opinion. Mr. Sander, in his declaration, also fails to provide sufficient underlying facts or data upon which any such statements contained therein could legitimately be based, in violation of F.R.E.

702 (*see also* F.R.E. 703-705).

Even if the witness, Mr. Sander, were not testifying as expert in rendering opinions, his testimony is not “limited to one that is: (a) rationally based on the witness’s perception, (b) helpful to clearly understanding the witness’s testimony or to determining a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702” because, *inter alia*, such opinions are not helpful to clearly understanding his testimony or to assess a fact in issue, in violation of F.R.E. 701.

For example, in paragraphs 5, 12, and 13 of Exhibit 2110, Mr. Sander purports to offer his “understanding” and beliefs regarding, *inter alia*, the attitudes of “music labels,” “record labels,” and “content holders.” However, Mr. Sander fails to provide sufficient underlying facts or data upon which his statements could be legitimately based, in violation of F.R.E. 702 (*see also* F.R.E. 602, 703-705). Moreover, his statements are not “rationally based” on his perception because there is no indication of whether Mr. Sander had any observation or first-hand knowledge of information to support such understandings or beliefs, in violation of F.R.E. 701 (*see also* F.R.E. 602).

Further, the report contains out of court statements offered for the truth of the matters asserted therein (*see, e.g.*, Ex. 2110 ¶¶ 2, 4, 5, 9, 10), and which constitute impermissible hearsay to which no exception or exclusion has been demonstrated (F.R.E. 801, 802).

Accordingly, permitting reliance on this testimony in the Response or other

submissions of Patent Owner would be misleading and unfairly prejudicial to Petitioner (F.R.E. 403).

II. Objections to Exhibit 2121 and Any Reference to/Reliance Thereon, and Improper Incorporation Thereof into Response

Evidence objected to: Exhibit 2121 of the Response, titled “Declaration of John P. Stautner Concerning CompuSonics Corp. and CompuSonics Video Corp.”

Grounds for objection: F.R.E. 402 (“General Admissibility of Relevant Evidence”); F.R.E. 403 (“Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons”); 37 C.F.R. 42.61 (“Admissibility”); F.R.E. 601 (“Competency to Testify in General”); F.R.E. 602 (“Need for Personal Knowledge”); F.R.E. 701 (“Opinion Testimony by Lay Witness”); F.R.E. 702 (“Testimony by Expert Witnesses”); F.R.E. 703-705 (Witness Not Qualified to Provide Expert Testimony); F.R.E. 801, 802 (Impermissible Hearsay).

The statements by the witness, John P. Stautner, that purport to declare what any person associated with “CompuSonics” planned, conceived, intended, anticipated, developed, or heard are unsupported by the personal knowledge of the declarant and thus improper under at least F.R.E. 601 and 602, and irrelevant under F.R.E. 402, and, to the extent it is argued they have any relevance, their admission would be improper, misleading and prejudicial under F.R.E. 403 (*see also* F.R.E. 701). Moreover, these statements and others are out of court statements offered for the truth of the matter asserted therein and constitute impermissible hearsay (F.R.E. 801, 802) (*see, e.g.,*

Ex. 2121 ¶¶ 7, 8, 12, 14-18, 20, 22-24). There has been no showing that a hearsay exception or exclusion applies to the statements (F.R.E. 801, 802).

Further, there is no showing that Mr. Stautner is qualified to provide any expert opinion or other opinion about claim construction or the application of claim terms from the '440 patent, in violation of F.R.E. 702. Further, Exhibit 2121 fails to provide sufficient underlying facts or data upon which the statements contained therein could legitimately be based, in violation of F.R.E. 702 (*see also* F.R.E. 703-705). Accordingly, Mr. Stautner's expert opinions about claim construction (*see* Ex. 2121 ¶ 21) violate F.R.E. 702-705.

Accordingly, permitting any reliance on this purported testimony in the Response or other submissions of Patent Owner would be misleading and unfairly prejudicial to Petitioner (F.R.E. 403).

III. Objections to Paragraphs 2, 5, 6, 10, 20, 24, 25, 28, and 29 of Exhibit 2123 and Any Reference to/Reliance Thereon

Evidence objected to: Paragraphs 2, 5, 6, 10, 20, 24, 25, 28, and 29 of Exhibit 2123 of the Response, titled "Declaration of David R. Marsh In Support of Patent Owner SightSound Technologies, LLC's Responses Petition." (The declarant, David R. Marsh, is an attorney in the office of Patent Owner's counsel, Arnold & Porter, LLP.)

Grounds for objection: 37 C.F.R. § 42.61 ("Admissibility"); F.R.E. 402 ("General Admissibility of Relevant Evidence"); F.R.E. 403 ("Excluding Relevant

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