Filed on behalf of:

Patent Owner SightSound Technologies, LLC

By: David R. Marsh, Ph.D.
Kristan L. Lansbery, Ph.D.
ARNOLD & PORTER LLP
555 12th Street, N.W.
Washington, DC 20004
Tel: (202) 942-5068
Fax: (202) 942-5999

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 REPLY IN SUPPORT OF MOTION TO EXCLUDE EVIDENCE PURSUANT TO 37 C.F.R. § 42.64(c)

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Patent Owner submits this reply in support of its Motion to Exclude Evidence Pursuant to 37 C.F.R. § 42.64(c) ("Mot.").

I. Exhibit 4255 (Declaration of Jeffrey Robbin)

Petitioner does not dispute that Mr. Robbin was in high school in the mid-1980s, and thus cannot opine upon what was prevalent in the *industry*. Mot. at 1-3. The rejoinder that "young people" generally have interest in "different ways of obtaining music," Opp. at 2-3, is woefully insufficient to show that *Mr. Robbin* had personal knowledge. Petitioner also says Mr. Robbin has personal knowledge of technological features of ITMS and Petitioner's patents, but never addresses that "Mr. Robbin only lists the patents . . . without *any* discussion of their claims." Mot. at 2-3. At deposition, Mr. Robbin did not recall when he last reviewed the patents, and did not know what it means to practice a patent or whether Petitioner was practicing any of the claims. Ex. 2176 (Robbin Dep.) at 41:18-42:8, 74:23-76:15.

In an effort to deflect from its lack of admissible evidence, Petitioner seeks to improperly shift the burden to Patent Owner by mischaracterizing the relevant legal standard. Patent Owner has made a prima facie case of nexus by showing that the commercially successful product is coextensive with the claims, making it *Petitioner's* burden to rebut this presumption. *See DeMaco Corp. v. F. Von*

Langsdorff Licensing Ltd., 851 F.2d 1387, 1392-93 (Fed. Cir. 1988); *see also* Paper 80 (Patent Owner's Opp. to Motion to Exclude), pp. 3-5.[1]

II. Exhibit 4258 (Declaration of Tom Weyer)

Petitioner's arguments do not refute allegations of copying, as the information obtained at Petitioner's meeting with Patent Owner was conveyed directly to Steve Jobs, the architect of ITMS. Ex. 2117 (1/15/99 Letter from S. Sander to S. Jobs); Ex. 2176 (Robbin Dep.), 54:1-6. Further, Mr. Weyer cannot admit he does not recall the discussions at issue, yet speculate about what Petitioner "would have" done. Mot. at 3-4.

III. Exhibits 4209-4210 (U.S. Patent Nos. 4,567,359 and RE32,115)

Petitioner feebly defends its improper reference to patents to shore up new arguments first made on reply by suggesting that it "simply provided the Board with copies of the two patents at issue" in a cited case. Opp. at 6. Petitioner in fact "provided" the patents to support its untimely argument that "[i]n similar

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[1] Petitioner improperly relies on decisions where the patent covered only a *component*. Opp. at 3 (citing *Kyocera Corp. v. Softview, LLC*, IPR2013-00007, Paper 51 at 32 (omitting sentence that "[w]here the patent is said to cover a *feature or component* of a product, the patent owner has the burden . . . .")).

circumstances involving electronic payment, courts have found obviousness." Reply, Paper No. 52, p. 9.

IV. Exhibit 4256 (Declaration of Lawrence Kenswil)

Petitioner concedes Mr. Kenswil is not a person of ordinary skill, but now contends Mr. Kenswil relied solely on Dr. Kelly for his opinions on how the patent claims compare with the prior art and ITMS. Opp. at 6. In fact, Mr. Kenswil repeatedly opined on what persons of ordinary skill "often discussed and recognized," Ex. 4256 ¶¶ 51-65, and what features are covered by the patent, *id.* ¶ 33.[2] Petitioner then shifts to claiming for the first time that Mr. Kenswil is an expert on "what makes an online music business a success or a failure." Opp. at 6. But Petitioner hasn't shown that Mr. Kenswil has experience with online businesses, either. Ex. 4256 ¶¶ 6-18. Thus, the witness has no basis to offer wide-ranging opinions on issues such as bandwidth constraints, storage of digital data, compression and encryption, the prevalence of personal computers and telecommunications lines, and technical problems. Mot. at 5-6.

Petitioner again deflects its lack of evidence that non-patented features drove commercial success by ignoring its burden and ignoring the fact that Mr.

[2] To the extent that Mr. Kenswil is doing nothing more than repeating Dr. Kelly's opinions, his declaration is not proper evidence.

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