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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'S SUR-REPLY

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This paper follows the Board's May 15, 2014 Order permitting Patent Owner SightSound Technologies, LLC ("PO") a sur-reply to respond to "arguments made by Petitioner in its papers and at the hearing that the challenged claims would have been obvious over the CompuSonics publications." *See* Paper 100 at 2. While PO appreciates the opportunity to respond to Petitioner Apple Inc.'s ("Petitioner") untimely obviousness arguments, the prejudice to PO stemming from Petitioner's shifting arguments and procedural violations cannot be ameliorated by this sur-reply.

Petitioner's specific obviousness arguments are difficult to discern even at this thirteenth hour. Based upon Petitioner's (now debunked) assertion that disparate CompuSonics references all related to a single "system," the Board took up *sua sponte* obviousness over a combination of CompuSonics references (Exs. 4106-4108, 4112-4119, and 4140) (the "References").[1] *See* Paper 14 at 27. Petitioner's subsequent obviousness arguments, however, were not confined to this ground and remarkably,

[1] Petitioner says Exhibits 4112 and 4117 are "printed publications" and "POSITAs had sufficient time to view and copy the slides and/or retain the information." Paper 52 at 6 n.2. Having cited no evidence of how long these slides were shown, Petitioner fails to carry its burden to show they are prior art publications. Further, Exhibit 4112 discloses at most the linkage of two "audio system" devices, both identified as a "source," with no disclosure of a hard disk, a first party, a financially distinct second party, searching, storing, or transferring money electronically. *See* Ex. 4112.

its Reply focuses on entirely different arguments, ignoring the content of the specific CompuSonics References.[2] At trial, Petitioner likewise proposed no combination of References that collectively teaches the claimed invention. Even at this late juncture, PO cannot discern on a claim-by-claim basis which References Petitioner purports to combine and in what manner. It cannot be overstated that these unclear, untimely and shifting obviousness arguments only compound the prejudice to PO.

Even if certain CompuSonics References collectively disclosed all of the claim limitations (they do not), Petitioner has never provided a reason why a person of ordinary skill would combine disclosures for disparate systems (and "futurama" speculation) ***to obtain the claimed invention***. This failure is particularly egregious given that the '573 claims issued and were confirmed after a rigorous 5 1/2-year reexamination, during which time the PTO considered hundreds of references, including eight of the twelve References asserted here. Petitioner fails to explain why a third consideration of the claims should yield a different result or why the four "new" references are different or more compelling than those PO previously overcame. Accordingly, even putting aside Petitioner's many procedural violations

[2] Given the Board's Order limiting the sur-reply to obviousness "over the CompuSonics publications," PO does not submit any additional declarations to address the new references and arguments belatedly injected by Petitioner into the proceedings (*e.g.*, Exs. 4209-4210 and Bowen interview).

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