

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.

Petitioner

v.

SIGHTSOUND TECHNOLOGIES, LLC

Patent Owner

Case CBM2013-00023

Patent 5,966,440

Before the Honorable MICHAEL P. TIERNEY, JUSTIN T. ARBES, and

GEORGIANNA W. BRADEN,

Administrative Patent Judges.

**DECLARATION OF LAWRENCE KENSWIL
CONFIDENTIAL—FILED UNDER SEAL**

I, Lawrence Kenswil, hereby declare under penalty of perjury:

1. I have been retained by Apple Inc. (“Apple”) in this action to serve as an expert witness.

2. I offer this declaration in support of Apple in connection with U.S. Patent Nos. 5,966,440 (“the ’440 Patent”), which I understand SightSound Technologies, LLC (“SightSound”)¹ asserts that it owns.

3. If asked to testify at a deposition or other proceeding, I will provide testimony on these subjects. I reserve the right to supplement or amend the opinions I have expressed or to respond to any opinions of other experts in this matter.

I. INTRODUCTION

4. I understand that the ’440 Patent generally relates to the electronic sale of digital audio and/or video through telephone or telecommunication lines.

II. QUALIFICATIONS

5. I graduated in 1972 from Cornell University with a Bachelors of Arts in Theatre Arts. In 1977, I received a Masters of Science degree in Communications from Boston University. In 1980, I graduated with a J.D. degree from Georgetown University’s Law Center.

¹ Although SightSound has done business under various names, I will use the term SightSound to refer to each of these entities in this declaration for the sake of simplicity except where noted otherwise.

A. My Career in the Music Industry

6. Following graduation from law school, I moved to Hollywood where I joined Mitchell, Silberberg & Knupp as a litigation associate, focusing my practice on entertainment law.

7. In 1983, I left Mitchell, Silberberg to join the Universal Music Group (“UMG”) (then known as MCA, which had been a client of Mitchell, Silberberg). From 1983 to 1991, I was a business and legal affairs attorney, starting as an Associate Director for MCA Records and rising to Senior Vice President for the MCA Music Entertainment Group, which centrally managed MCA’s music related businesses such as record labels, music publishing, and concert promotion. During this time, I negotiated and drafted agreements, including artists deals, label deals, publishing agreements, live venue agreements, and merchandising and sales agreements. I also drafted and negotiated agreements related to corporate acquisitions and mergers.

8. In 1991, I became Executive Vice President for Business and Legal Affairs and was the chief legal officer for UMG globally. In that position, I supervised all deal-making activities and legal matters for the various group businesses.

9. In 1998, I founded and ran UMG’s eLabs as eLabs’s President. eLabs was UMG’s internal unit dedicated to exploring, developing, and evolving global business and new technology strategies to expand the role of music in consumers’ lives. During my time at UMG, I was always following new technologies, became one

of the first executives at UMG to have a personal computer, and evangelized within the company regarding the effect of technological changes on business strategies, practices, and marketing.

10. As President of eLabs, I supervised a team of business, legal, and technical professionals devoted to developing, implementing, and operating new music products, programming and digital distribution initiatives across all emerging technology and convergence platforms, including Internet, mobile, physical, kiosk, home networking and set-top box systems. I was familiar with some of the technological issues with implementing a system for the electronic sale of digital audio/video, including bandwidth limitations and the need for robust compression technologies and standards. By 2000, eLabs had approximately 50 employees in New York, Los Angeles and London. Several engineers, with degrees in electrical engineering and/or computer science, reported to me during my time at eLabs.

11. During my tenure at eLabs, the unit commenced and oversaw a multi-million dollar project to digitize and catalog its music and associated artwork.

12. From the mid-1990s through 2008, I was a Board Member of the Recording Industry Association of America (“RIAA”) and a member of its Technology Steering Committee—a committee consisting of representatives from the major label recording companies—from the time it was founded through 2008. The Committee was involved, among other things, in developing the industry lobbying

positions with Congress regarding legislation such as the Digital Millennium Copyright Act. This committee helped develop identifiers within the metadata of a song to assist with tracking intellectual property rights. I was the lead representative for my company (by then renamed the Universal Music Group) in setting industry standards, such as DVD-Audio, Super Audio CD (“SACD”), and the Strategic Digital Music Initiative (“SDMI”).

13. In 2007, I was again promoted at UMG and became the Executive Vice President for Business Strategy. In this position, I formulated UMG’s policy for emerging products, technology and distribution methods. I negotiated major deals and supervised industry-wide negotiations, including compulsory license arbitrations for webcasting, satellite radio, and mechanical licensing. In addition, I supervised the global anti-piracy unit.

14. All told, I spent twenty-five years at UMG, focusing on emerging technologies during my last ten years there.

15. In addition to this experience at UMG and RIAA, I was a Board Member for the International Federation of Phonographic Industry (“ifpi”) from 1998-2002. And, I was a Board Member of SoundExchange from 2005-2008.

B. After Leaving UMG

16. After I left UMG in 2008, I became Of Counsel for Loeb & Loeb. I remained at Loeb & Loeb until 2011.

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