

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.*

**PETITIONER APPLE INC.'S  
MOTION TO EXCLUDE UNDER 37 C.F.R. §§ 42.62 AND 42.64**

By: Attorneys/Agents For Petitioner

J. Steven Baughman, Lead Counsel  
Registration No. 47,414  
Ching-Lee Fukuda, Back-up Counsel  
Registration No. 44,334  
James R. Batchelder, Back-up Counsel  
*Pro Hac Vice* Granted

ROPES & GRAY  
Prudential Tower  
800 Boylston Street  
Boston, Massachusetts 02199-3600  
(202) 508-4606 (Telephone)  
(617) 235-9492 (Fax)

## TABLE OF CONTENTS

I.	Legal Standard .....	3
II.	Mr. Snell is Not Qualified to Opine Under F.R.E. 702.....	4
A.	No Basis for Opinion That User Interfaces Of SightSound’s Electronic Store and iTMS Are Only Insignificantly Different .....	5
B.	No Basis for Opinion That iTMS is “Co-Extensive” With The Challenged Patent Claims .....	8
C.	No Basis for Opinions About Commercial Success/Failure.....	9
D.	No Basis for Opinions Based On Erroneous Construction of “Second Party” .....	11
E.	No Basis For Opinions Based On Disagreement With The Inventor’s Statements, In Prosecution, Regarding The Meaning Of The Challenged Claims .....	13

<b>EXHIBIT LIST</b>	
Exhibit 4301	United States Patent 5,966,440
Exhibit 4302	United States Patent 5,966,440 File History
Exhibit 4303	Application No. 90/007,407 ('440 Patent Reexamination)
Exhibit 4304	United States Patent No. 5,191,573
Exhibit 4305	United States Patent No. 5,191,573 File History
Exhibit 4306	Application No. 90/007,402 ('573 Patent Reexamination)
Exhibit 4307	Deposition Transcript of Arthur Hair, dated Dec. 11, 2012 SightSound Techs., LLC v. Apple Inc., No. 11-1292 (W.D. Pa.)
Exhibit 4308	Deposition of Scott Sander, dated Dec. 18-19, 2012 SightSound Techs., LLC v. Apple Inc., No. 11-1292 (W.D. Pa.)
Exhibit 4309	"Joint Telerecording Push: CompuSonics, AT&T Link," <i>Billboard</i> (Oct. 5, 1985)
Exhibit 4310	David Needle, "From the News Desk: Audio/digital interface for the IBM PC?," <i>InfoWorld</i> , vol. 6, no. 23, p. 9, June 4, 1984
Exhibit 4311	Larry Israelite, "Home Computing: Scenarios for Success," <i>Billboard</i> , Dec. 15, 1984
Exhibit 4312	International Patent Application WO85/02310, filed on November 14, 1984, and published on May 23, 1985 ("Softnet")
Exhibit 4313	United States Patent No. 3,718,906 filed on June 1, 1971, issued on February 27, 1973 ("Lightner")
Exhibit 4314	United States Patent No. 3,990,710 filed on March 1, 1971, issued on November 9, 1976 ("Hughes")
Exhibit 4315	Image titled, "CompuSonics Digital Audio Telecommunication System"
Exhibit 4316	7/16/84 CompuSonics Letter from David Schwartz to Shareholders
Exhibit 4317	Hyun Heinz Sohn, "A High Speed Telecommunications Interface for Digital Audio Transmission and Reception," presented at the 76th AES Convention, October 8-11, 1984

EXHIBIT LIST	
Exhibit 4318	10/10/85 CompuSonics Letter from David Schwartz to Shareholders
Exhibit 4319	CompuSonics Video Application Notes – CSX Digital Signal Processing (1986)
Exhibit 4320	Image titled, “CompuSonics Digital Audio Software Production/Distribution”
Exhibit 4321	Excerpts of Lecture at Stanford by D. Schwartz and J. Stautner, 1987 (video)
Exhibit 4322	Bryan Bell, “Synth-Bank: The Ultimate Patch Library,” <i>Electronic Musician</i> (Sept. 1986)
Exhibit 4323	United States Patent No. 4,682,248 filed on September 17, 1985, issued on July 21, 1987 (“Schwartz Patent”)
Exhibit 4324	“The Search for the Digital Recorder,” <i>Fortune</i> , Nov. 12, 1984
Exhibit 4325	2/22/1986 Agreement between Synth-Bank and Artist
Exhibit 4326	3/17/1987 United States Patent & Trademark Office Notice of Acceptance and Renewal, Serial No. 73/568543
Exhibit 4327	“SynthBank Bulletin Board,” <i>Keyboard Magazine</i> (March 1987)
Exhibit 4328	“Inside Macintosh,” Volumes I, II, and III, Addison-Wesley Publishing Company, Inc. (1985)
Exhibit 4329	Craig Partridge, “The Technical Development of Internet Email,” BBN Technologies
Exhibit 4330	United States Patent No. 4,124,773 filed on November 26, 1976, issued on November 7, 1978 (“Elkins”)
Exhibit 4331	United States Patent No. 4,667,088 filed on November 1, 1982, issued on May 19, 1987 (“Kramer et al.”)
Exhibit 4332	United States Patent No. 4,528,643 filed on January 10, 1983, issued on July 9, 1985 (“Freeny”)
Exhibit 4333	Photo of CompuSonic equipment
Exhibit 4334	Declaration of Dr. J. Kelly In Support of Petition for Covered Business Method Patent Review
Exhibit 4335	Declaration of David Schwartz In Support of Petition for Covered Business Method Patent Review

<b>EXHIBIT LIST</b>	
Exhibit 4336	11/19/12 Special Master's Report and Recommendation on Claim Construction (D.I. 142) <i>SightSound Techs., LLC v. Apple Inc.</i> No. 11-1292 (W.D. Pa)
Exhibit 4337	2/43/43 Order re Claim Construction (D.I. 175), <i>SightSound Techs., LLC v. Apple Inc.</i> , No. 11-1292 (W.D. Pa.)
Exhibit 4338	United States Patent No. 5,675,734 File History
Exhibit 4339	Excerpt from <i>Chambers Science and Technology Dictionary</i> (1988)
Exhibit 4340	Excerpt from <i>Webster's II New Riverside University Dictionary</i> (1988)
Exhibit 4341	Declaration of Dr. John P.J. Kelly, dated Sept. 7, 2012
Exhibit 4342	<i>New Telerecording Method for Audio</i> , Broadcast Management/Engineering, pp. 14-15, Oct. 1985
Exhibit 4343	Excerpt of Plaintiff SightSound Techs., LLC's Expert Report of Dr. J. Douglas Tygar Regarding Infringement, dated April 22, 2013
Exhibit 4344	Declaration of Flora D. Elias-Mique In Support of Petition for Covered Business Method Patent Review
Exhibit 4345	Declaration of Roberto J. Gonzalez In Support of Petition for Covered Business Method Patent Review
Exhibit 4346	Declaration of Megan F. Raymond In Support of Petition for Covered Business Method Patent Review
Exhibit 4347	Declaration of Ching-Lee Fukuda In Support of Petition for Covered Business Method Patent Review
Exhibit 4348	Transcription of Audio, Excerpts of CompuSonics Lecture (Lecture at Stanford by D. Schwartz and J. Stautner, 1987
Exhibit 4349	Expert Report of Dr. John P. J. Kelly Regarding Non-Infringement of United States Patent Nos. 5,191,573 and 5,966,440
Exhibit 4350	Virgin Digital Shuts Down, Sept. 24, 2007
Exhibit 4351	AOL, Now Focused on Free, Sells Its Paid Music Service, Jan.13, 2007.
Exhibit 4352	Walmart Closing Online Music Store, Aug. 10, 2011
Exhibit 4353	iTunes' Success Revolutionizes Music Business

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.