

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 CBM2013-00023

Patent 5,966,440

---

**PATENT OWNER SIGHTSOUND TECHNOLOGIES, LLC'S REPLY IN  
SUPPORT OF MOTION TO EXCLUDE EVIDENCE  
PURSUANT TO 37 C.F.R. § 42.64(c)**

## TABLE OF CONTENTS

	Page
I. Exhibit 4413 (Declaration of Jeffrey Robbin).....	1
II. Exhibit 4416 (Declaration of Tom Weyer) .....	2
III. Exhibits 4410-4411 (U.S. Patent Nos. 4,567,359 and RE32,115) .....	2
IV. Exhibit 4414 (Declaration of Lawrence Kenswil) .....	3
V. Exhibit 4420 (Second Declaration of Dr. John P.J. Kelly) .....	4
(a) Dr. Kelly's unsupported opinions concerning ITMS .....	4
(b) Dr. Kelly ignores relevant materials concerning CompuSonics .....	4
VI. Exhibit 4421-4459 (Various U.S. Patents) .....	5

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 4413 (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. 2377 (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 75 (Patent Owner’s Opp. to Motion to Exclude), pp. 3-5.<sup>1</sup>

## **II. Exhibit 4416 (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. 2317 (1/15/99 Letter from S. Sander to S. Jobs); Ex. 2377 (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 4410-4411 (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

---

<sup>1</sup> 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. 49, p. 9.

#### **IV. Exhibit 4414 (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. 4414 ¶¶ 51-65, and what features are covered by the patent, *id.* ¶ 33.<sup>2</sup> 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. 4414 ¶¶ 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.

---

<sup>2</sup> To the extent that Mr. Kenswil is doing nothing more than repeating Dr. Kelly’s opinions, his declaration is not proper evidence.

# 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.