

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

SONY CORPORATION  
Petitioner

v.

Patent of YISSUM RESEARCH DEVELOPMENT COMPANY OF THE  
HEBREW UNIVERSITY OF JERUSALEM  
Patent Owner

---

Case IPR2013-00219 (SCM)<sup>1</sup>  
Patent 7,477,284

Title: SYSTEM AND METHOD FOR CAPTURING AND VIEWING  
STEREOSCOPIC PANORAMIC IMAGES

---

Before SALLY C. MEDLEY, KARL D. EASTHOM, and  
JAMES B. ARPIN, *Administrative Patent Judges*.

---

**PATENT OWNER'S MOTION TO EXCLUDE  
UNDER 37 C.F.R. § 42.64(c)**

---

<sup>1</sup> The IPR2013-00327 proceeding has been joined with this proceeding.

**TABLE OF CONTENTS**

I. INTRODUCTION .....2

II. PATENT OWNER TIMELY OBJECTED .....2

III. ARGUMENT.....3

    A. Exhibit SONY-1042 Should be Excluded Under FRE §§ 801 and 901 .....3

    B. Exhibit SONY-1042 Should be Excluded Under 37 CFR § 42.23(b) and  
    37 CFR § 42.123 .....5

    C. Passages of exhibit SONY-1043 Should be Excluded Under 37 C.F.R. §  
    42.64(a) .....7

    D. Exhibit SONY-1044 Should be Excluded Under 37 CFR § 42.23(b) and  
    37 CFR § 42.123 .....7

IV. CONCLUSION .....11

**CERTIFICATE OF SERVICE.....14**

## **I. INTRODUCTION**

In accordance with 37 C.F.R. § 42.64(c), the Scheduling Order (Paper 17) at 4-5 of September 23, 2013, and the Order (Paper 35) of April 7, 2014, Yissum Research Development Company of the Hebrew University of Jerusalem (“Patent Owner”) respectfully moves to exclude exhibits SONY-1042 and 1044, submitted by Sony Corporation (“Petitioner”). Petitioner’s exhibit SONY-1042 was introduced during the deposition of Dr. Essa conducted on March 10, 2014, and Petitioner submitted exhibits SONY-1042 and 1044 for the first time on March 24, 2014, in connection with Petitioner’s Reply (Paper 37).

## **II. PATENT OWNER TIMELY OBJECTED**

Timely objections were made to SONY-1042 during the deposition of Dr. Essa as beyond the scope of direct testimony and unauthenticated. *See* SONY-1043 at 61:20-25. Additionally, Patent Owner timely objected to SONY-1042 as inadmissible hearsay, unauthenticated, untimely and improper, within five business days of Petitioner filing the exhibit in connection with Petitioner’s Reply, in accordance with 37 C.F.R. § 42.64(b)(1) . *See* YRD-2017 at 2-3. Patent Owner also timely objected to SONY-1044 as untimely and improper, within five business days of Petitioner filing the exhibit in connection with Petitioner’s Reply. *Id.* at 1-2. Patent Owner now seeks to exclude each of these exhibits and any arguments or testimony that relies on them.

### III. ARGUMENT

#### A. Exhibit SONY-1042 Should be Excluded Under FRE §§ 801 and 901

Petitioner first introduced SONY-1042, purporting to be an entry of the Wikipedia web-site related to stereoscopy, in connection with the deposition of Patent Owner's witness Dr. Essa, on March 10, 2014. Patent Owner, during the deposition, timely objected to the admissibility of the evidence as beyond the scope of direct testimony and as unauthenticated. SONY-1043 at 61:20-25.

Petitioner also submitted the Wikipedia entry (SONY-1042) in connection with Petitioner's Reply (Paper 37), filed on March 24, 2014. Petitioner, on pages 12 -13 of Paper 37 cited and relied on pages 12 and 13 of the Wikipedia entry (SONY-1042) and Dr. Darrell in his second declaration at ¶¶ 15-16 of SONY-1044 cited and relied on pages 11-13 of the Wikipedia entry (SONY-1042). Patent Owner again timely objected to SONY-1042 and upon its reliance in the present *inter partes* review proceeding. Specifically, Patent Owner served Objections to exhibit SONY-1044 on Petitioner's counsel by electronic mail, on March 27, 2014, within five business days of Petitioner's filing of the exhibit. 37 C.F.R. § 42.64(b)(1). Because the parties had previously agreed to accept service by electronic mail, the electronic service of the Objection was sufficient. 37 C.F.R. § 42.6(e)(1). In its Objections, Patent Owner objected to the exhibit as hearsay

under Federal Rule of Evidence (“FRE”) 801 (not subject to any hearsay exceptions) and under FRE 901 as lacking authentication. YRD-2017 at 2-4.

The Board has already found statements in Wikipedia entries to be inherently untrustworthy. *See, e.g., Ex parte Bailey*, No. 2010-010310, Application No. 11,168,650, 2013Pat. App. LEXIS 2470 (Pat. App. Apr. 25, 2013) (“Wikipedia has limited probative value in view of its dubious reliability. Among other things, Wikipedia is not peer reviewed, the authors are unknown, and apparently anyone can contribute.”). And it is well recognized that websites are not self-authenticating. *See e.g. St. Luke’s Contract and Laser Institute v. Sanderson*, No. 8:06-CV-223-T-MSS, 2006 WL 1320242, \*2 (M.D. Fla. 2006) (excluding Internet documents because “web-sites are not self-authenticating.”)

In an attempt to purportedly authenticate the Wikipedia entry (SONY-1042), Petitioner subsequently served Patent Owner with a declaration of its attorney, Michael Sander, declaring how he had created the exhibit. *See* YRD-2018. This attempt at curing the objections fails because Mr. Sander does not have the necessary personal knowledge regarding the exhibit. *See, e.g., Novak*, 2007 U.S. Dist. LEXIS 21269, \*17-18 (“As Novak proffers neither testimony nor sworn statements attesting to the authenticity of the contested web page exhibits *by any employee of the companies hosting the sites* from which plaintiff printed the pages,

# 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.