

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SONY CORPORATION
Petitioner

v.

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

Case No. IPR2013-00219 (SCM)¹

Patent No. 7,477,284
Issue Date: Jan. 13, 2009
Title: SYSTEM AND METHOD FOR CAPTURING AND VIEWING
STEREOSCOPIC PANORAMIC IMAGES

**PETITIONER'S OPPOSITION TO PATENT OWNER'S
MOTION TO EXCLUDE EVIDENCE**

¹ The IPR2013-00327 proceeding has been joined with this proceeding.

Pursuant to the Board's Scheduling Order, *see* Paper No. 17, Petitioner Sony Corporation ("Sony") submits this opposition to Patent Owner's Motion to Exclude (Paper No. 44). Patent Owner seeks exclusion of exhibit Sony-1042 (Wikipedia article), portions of exhibit Sony-1043 (Transcript of Prof. Essa's Deposition), and exhibit Sony-1044 (Second Expert Declaration of Prof. Darrell).

I. The Exhibit Sony-1042 (Wikipedia article) Should Not Be Excluded.

Patent Owner argues that Sony-1042 is inadmissible on grounds of lack of proper authentication, hearsay, and because it is new evidence that should have been included with Sony's Petition. *See* Patent Owner's Motion to Exclude ("Motion"), Paper No. 44 at 3-7.

A. Sony-1042 Is Admissible Under FRE § 901.

FED. R. EVID. 901(a) states: "To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it to be." One form of evidence that satisfies the requirement is the testimony of witness with knowledge that "an item is what it is claimed to be." FED. R. EVID. 901(b)(1).

Here, Sony claims that Sony-1042 is copy of a Wikipedia article entitled "Stereoscopy" available on the web through the URL <http://en.wikipedia.org/wiki/Stereoscopy>, and that the definition of the term "stereoscopy" on which Patent Owner relies (YRD-2003) provides a link to the Wikipedia article to "Learn more."

YRD-2003 at 3. Specifically, YRD-2003 states: "Wikipedia offers a more detailed explanation of stereoscopy." *Id.* (hyperlink in original).

Sony served Sony-1042 on Patent Owner at the deposition of Prof. Essa on March 10, 2014. Prof. Essa testified that he may have reviewed Sony-1042 before, but did not rely on it preparing his opinions set forth in his Declarations. Sony-1043 at 53:10-16, 54:15-21. However, Prof. Essa testified that he did rely on YRD-2003 (*see* Sony-1043 at 13:19 – 14:1, 48:17-25), and that YRD-2003 links to Sony-1042 for the purpose of enabling the reader to learn more about stereoscopy. Sony-1043 at 59:14-22; *see also* YRD-2003 at 3.

After Patent Owner's counsel objected to Sony-1042 at the deposition on of Prof. Essa on March 10, 2014 on grounds of lack of authentication (*see* Sony-1043 at 61:20-25), Sony served supplemental evidence on Patent Owner in the form of a Declaration of Michael E. Sander. *See* YRD-2018. Sony also served the Second Expert Declaration of Trevor Darrell. *See* Sony-1044. The Declarations were served on March 24, 2014, and, therefore, Sony complied with the requirement of 37 C.F.R. § 42.64(b)(2) that supplemental evidence be served within ten business days of service of the objection. Mr. Sander explains how he accessed the Wikipedia page entitled "Stereoscopy" available at the web page <http://en.wikipedia.org/wiki/Stereoscopy>, and using Wikipedia's history tools, accessed the same page as it appeared on the Wikipedia web site on June 10, 2013, which itself is available at <http://en.wikipedia.org/w/index.php?title=Stereoscopy&oldid=559166929&printable=yes>.

(YRD-2003, which provides the link to Sony-1042, is dated June 13, 2013). Mr.

Sander further explains that after accessing the Wikipedia web page, he created a PDF copy of it and labeled it Sony-1042. YRD-2018 ¶¶ 1-5. In his Declaration, Prof.

Darrell states that he reviewed the Wikipedia article on the Internet that is linked to YRD-2003, and found it to be substantively the same as Sony-1042. Sony-1044 ¶ 15.

Mr. Sander is a witness with knowledge under FED. R. EVID. 901(b)(1) since he actually accessed the Wikipedia web site and created the copy of the Wikipedia article that is Sony-1042. Prof. Darrell is a witness with knowledge since he likewise accessed the Wikipedia web site and compared the "Stereoscopy" article he found there with Sony-1042.

The uncontroverted testimony of these witnesses, and that of Prof. Essa, is more than sufficient to prove that Sony-1042 "is what it is claimed to be." FED. R. EVID. 901(b)(1); *Rivera v. Inc. Vill. of Farmingdale*, 2013 U.S. Dist. LEXIS 181890, *21, *22 (E.D.N.Y. Dec. 31, 2013) (finding the testimony of a witness who personally downloaded Internet postings sufficient to authenticate them: "The bar for authentication of the internet postings is not particularly high, i.e., a reasonable likelihood standard. The testimony of a witness with knowledge that a matter is what it is claimed to be is sufficient to satisfy this standard. As long as such testimony is sufficient, these postings should be admitted, notwithstanding that they were editable." (quoting *U.S. v. Gagliardi*, 506 F.3d 140, 151 (2d Cir. 2007) (internal marks omitted; citing FED. R. EVID. 901(b)(1))); *ForeWord Magazine, Inc. v. OverDrive, Inc.*,

2011 U.S. Dist. LEXIS 125373, *8-11 (W.D. Mich. Oct. 31, 2011) (finding screen shots of an Internet site authenticated by a declarant identifying the “screen shots as a true and accurate copy of the content found on the Internet sites[.] . . . [A]n affidavit of a witness, when viewed in combination with circumstantial indicia of authenticity (such as the existence of the URL, date of printing, or other identifying information) would support a reasonable juror in the belief that the documents are what the proponent says they are.” (citing *United States v. Meienberg*, 263 F.3d 1177, 1181 (10th Cir. 2001) (additional citations omitted)).

The case Patent Owner cites for the proposition that testimony is required from an employee of the web site host, *Novak v. Tucoms, Inc.*, 2007 U.S. Dist. LEXIS 21269 (E.D.N.Y. 2007), does not apply here. In *Novak*, the proponent offered copies of web pages that were not obtained directly from the hosting web sites themselves, but instead were obtained from a third party archive, the Wayback Machine. The court noted that the Wayback Machine obtained the web pages from yet other third parties, and that “the authorized owners and managers of the archived web sites play no role in ensuring that the material posted in the Wayback Machine accurately represents what was posted on their official websites.” 2007 U.S. Dist. LEXIS 21269 at *17. Here, in contrast, Mr. Sander and Prof. Darrell went directly to hosting web site to view and obtain a copy of the Wikipedia article. See *Rivera*, 2013 U.S. Dist. LEXIS 181890, *22; *ForeWord Magazine, Inc.*, 2011 U.S. Dist. LEXIS 125373, *8-11.

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