

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SONY CORPORATION  
Petitioner

v.

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

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

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

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

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

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

## **I. INTRODUCTION**

In accordance with 37 C.F.R. § 42.64(c), Yissum Research Development Company of the Hebrew University of Jerusalem ("Patent Owner") submits this Reply in support of its Motion to Exclude Evidence (Paper 44) and in response to Sony Corporation's ("Petitioner") Opposition ( Paper 51), filed on May 28, 2014.

## **II. Exhibit SONY-1042 Should be Excluded**

The Wikipedia entry (SONY-1042) is hearsay and should be excluded under FRE 801. Petitioner's argument in Paper 51 at 6 that Patent Owner did not object to the Wikipedia entry (SONY-1042) as hearsay, during the deposition of Dr. Essa, misses the point that a hearsay objection is *only* proper when the document is used for the truth of the matter asserted. During Dr. Essa's deposition, the Wikipedia entry (SONY-1042) was not used for the truth of the matter asserted. Rather, it was used to question Dr. Essa as to the statements that it contained. Therefore, Patent Owner had no reason to object to SONY-1042 on hearsay grounds at that time.

Patent Owner did timely object to the Wikipedia entry (SONY-1042) as hearsay under FRE 801, within five business days of Petitioner relying on statements of the Wikipedia entry for the truth of the matter asserted, in connection with its Reply (Paper 37) and the second declaration of Dr. Darrell (SONY-1044).<sup>2</sup> YRD-2017 at 2-3. And, Petitioner's attempt to cure the hearsay objection by

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<sup>2</sup> Contrary to Petitioner's assertion, Patent Owner broadly objected to SONY-1042.

proffering up the declaration of Leonard Barton (YRD-2019) fails since Mr.

Barton admitted on cross-examination that he did *not* write a majority of the text relied upon by Petitioner and Dr. Darrell. *See* YRD-2020 at page 22 lines 9-20.

Also, Petitioner's argument in Paper 51 at 7 that Patent Owner "waived any such objection by having offered and relied on YRD-2003...which links to the Wikipedia article" fails and is not supported by the case to which Petitioner cites. In *Capobianco*, the defendant sought to exclude reports that itself submitted, relied upon, and to which no objections were made. *See Capobianco v. City of New York*, 422 F.3d 47, 55 (2d Cir. 2005). In contrast, here, Patent Owner did *not* offer the Wikipedia entry (SONY-1042) as an exhibit, did *not* rely on any statements of SONY-1042, and *timely objected* to the evidence. Petitioner's argument is also beside the point since Wikipedia entries are generally recognized as unreliable hearsay. *See, e.g., Ex parte Bailey*, No. 2010-010310, Application No. 11,168,650, 2013 Pat. App. LEXIS 2470 (Pat. App. Apr. 25, 2013). Therefore, the Wikipedia entry (SONY-1042) should be excluded as unreliable hearsay.

The Wikipedia entry (SONY-1042) is also unauthenticated and should be excluded under FRE 901. Patent Owner objected to the Wikipedia entry (SONY-1042) as unauthenticated during the deposition of Dr. Essa. *See* SONY-1043 at 61:20-25. Once an objection is made during a deposition, "[e]vidence to cure the objection *must be provided during the deposition*, unless the parties to the

deposition stipulate otherwise.” 37 C.F.R. § 42.64(a). And, here, Petitioner failed to cure the objection during the deposition and the parties had no other agreement.

Moreover, the declarations of Mr. Sander and Dr. Darrell are insufficient since neither declarant has the requisite personal knowledge regarding the Wikipedia entry (SONY-1042), which Petitioner contends is a printout of a Wikipedia history archive. And, contrary to Petitioners contention, the law is clear that a printout of an internet archive must be authenticated by a person with knowledge – not an attorney or an expert. *See Specht v. Google Inc.*, 758 F. Supp.2d 570, 580 (N.D. Ill. 2010) (not considering Internet printouts because they were not properly authenticated by an officer or employee of the Internet company); *Audi AG v. Shokan Coachworks, Inc.*, 592 F.Supp.2d 246, 278 (N.D.N.Y. 2008) (indicating that pages from Internet archive search results can be submitted into evidence only by authentication of a "knowledgeable employee" of the Internet Archive); *St. Luke's Cataract Laser Inst., P.A. v. Sanderson*, No. 06-CV-223, 2006 WL 1320242, at \*2 (M.D. Fla. May 12, 2006) ("Plaintiff must provide the Court with a statement or affidavit from an Internet Archive representative with *personal knowledge* of the contents of the Internet Archive website.") (emphasis in original). Therefore, the Wikipedia entry (SONY-1042) should also be excluded because it is not properly authenticated.

The Wikipedia entry (SONY-1042) is also untimely and should be excluded under 37 CFR § 42.23(b) and 37 CFR § 42.123. Petitioner in its Opposition (Paper

51 at 10) argues that SONY-1042 is not untimely because it is “singularly targeted at Prof. Essa’s testimony, because Prof. Essa relied on the definition of ‘stereoscopy’ in YRD-2003, which links the reader to SONY-1042.” But, this argument has no bearing on timeliness since Dr. Essa did *not* rely on the Wikipedia entry. Thus, SONY-1042 should also be excluded as untimely.

### **III. Passages of exhibit SONY-1043 Should be Excluded**

Passages of Dr. Essa’s deposition testimony (SONY-1043 at 52:8- 72:11) should be excluded as outside the scope of direct testimony since Dr. Essa’s declaration did not provide testimony regarding the Wikipedia entry (SONY-1042). *See* 37 C.F.R. § 42.64(a) and § 42.53(d)(5)(D)(ii). And, Petitioner’s argument in its Opposition (Paper 51 at 10) that the Wikipedia entry is relevant fails since the question is not one of relevance but one of scope. To illustrate, potentially thousands of books, articles, or journals may be relevant to stereoscopic imaging, but only those documents relied upon in a declaration are within the scope of direct testimony. Thus, passages of Dr. Essa’s deposition (SONY-1043 at 52:8-72:11) should be excluded as outside the scope of direct testimony.

### **IV. Exhibit SONY-1044 Should be Excluded**

The second declaration of Dr. Trevor Darrell (SONY-1044) is untimely and should be excluded under 37 CFR § 42.23(b) and 37 CFR § 42.123. The testimony of Dr. Darrell at ¶¶ 27-28 of SONY-1044 regarding the term “stereoscopic viewing” as used in the Asahi reference (SONY-1006) directly pertains to and

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