

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

CALIFORNIA INSTITUTE OF TECHNOLOGY,
Patent Owner.

Case IPR2017-00297¹
Patent 7,916,781

PATENT OWNER'S NOTICE OF OBJECTION TO EVIDENCE

¹ Case IPR2017-00423 has been consolidated with this proceeding.

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner California Institute of Technology (“Caltech”), submits the following objections to Petitioner Apple Inc.’s (“Petitioner”) Exhibits 1027-132, 1045-1046, 1048, 1049, 1051, and 1052. As required by 37 C.F.R. § 42.62, Patent Owner’s objections below apply the Federal Rules of Evidence (“F.R.E.”).

II. OBJECTIONS

Caltech objects to Ex. 1027, “Tanner Graph for Code Described by Fig. 2 of U.S. Patent No. 7,116,710”; Ex. 1028, “Block Diagram of Accumulator”; Ex. 1029, “Tanner Graph for Code Described by Divsalar”; Ex. 1030, “Tanner Graph for Code Described by Luby98 Code 14”; Ex. 1031, “Tanner Graph for Code Described by Ping”; Ex. 1032, “Tanner Graph for Code Described by MacKay Profile 93y”; Ex. 1045, “Transcript of the Deposition of Dr. Michael Mitzenmacher”; Ex. 1048, “Block Diagram of Implementation of Code Described in Ping”; Ex. 1049, “Declaration of Dr. Brendan Frey”; Ex. 1052, “Simulation of Regular and Irregular Ping Codes”

Grounds for Objection: F.R.E. 401 (Test for Relevant Evidence); F.R.E. 402 (General Admissibility of Relevant Evidence); F.R.E. 403 (Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons)

Exhibits 1027, 1028, 1029, 1030, and 1048 are not cited in the petition that

initiated this proceeding or Petitioner's reply. As such, these exhibits are not relevant to the instituted ground of review or any other aspect of this proceeding as they have no tendency to make a fact more or less probable than it would be without the evidence. Further, to the extent any of those exhibits are deemed relevant admission of the exhibit would be unduly prejudicial, misleading, and a waste of time.

In addition, Exhibits 1027-1032, 1048, 1049, and 1052 are new evidence not disclosed to Patent Owner until after the filing of its Patent Owner response. To the extent those exhibits were cited in Patent Owner's reply they were cited in support of arguments that were not made in the petition and are therefore improper to raise for the first time in Petitioner's reply. The exhibits that were not cited in Petitioner's reply also appear to be in support of new arguments. As such, these exhibits are not relevant to the instituted ground of review. Further, to the extent any of those exhibits are deemed relevant admission of the exhibit would be unduly prejudicial, misleading, and a waste of time, as the prejudice to Patent Owner for being surprised and unable to respond to Petitioner's new evidence outweighs the relevance of this evidence.

Caltech objects to Exhibit 1045 to the extent testimony was elicited from questions outside the scope of the witness's direct testimony, as such testimony is both not relevant and prejudicial to Caltech, as well as in violation of F.R.E. 611(b)

and 37 C.F.R. § 42.53(d)(5)(ii).

Caltech further objects to Exhibit 1052 and the portions of Exhibit 1049 that rely on Exhibit 1052 for failure to comply with 37 C.F.R. § 42.65.

Caltech objects to Exhibit 1046 (“Excerpt from Transcript of the Deposition of Dr. Hui Jin (IPR2017-210, 219, 700, 701, and 728)”), because Dr. Hui Jin is not a witness in this proceeding and use of his testimony is a violation of the Board’s rules regarding additional discovery. *See, e.g.*, 37 C.F.R. § 42.51(b)(2)(i). Caltech further objects to Exhibit 1046 under F.R.E. 611(b) as the witness has no direct testimony in this proceeding.

Caltech objects to Exhibit 1051 (“*California Institute of Technology v. Hughes Communications Inc.*, No. 2:13-cv-07245-MRP-JEM, 2015 WL 11089495 (C.D. Cal. May 5, 2015)”) under F.R.E. 106 (“Remainder of or Related Writings or Recorded Statements”). If Exhibit 1051 is deemed admissible then other writings or recorded statements in fairness ought to be considered at the same time.

III. CONCLUSION

Exhibits 1027-132, 1045-1046, 1048, 1049, 1051, and 1052 were filed and served on February 9, 2018. These objections are made within five business days of service.

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Respectfully submitted,

Date: February 16, 2018

/ Michael T. Rosato /
Michael T. Rosato, Lead Counsel
Reg. No. 52,182

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