

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE INC.,  
Petitioner,

v.

CALIFORNIA INSTITUTE OF TECHNOLOGY,  
Patent Owner.

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Case IPR2017-00701  
Patent 7,421,032

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**PATENT OWNER'S THIRD NOTICE OF OBJECTION TO EVIDENCE**

## 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”) 1144-1149, 1153, 1155, 1157-1161, 1165, 1167, 1168, 1171, and 1172. 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. 1144, “Tanner Graph for Code Described by Fig. 2 of U.S. Patent No. 7,116,710”; Ex. 1145, “Block Diagram of Accumulator”; Ex. 1146, “Tanner Graph for Code Described by Divsalar”; Ex. 1147, “Tanner Graph for Code Described by Luby98 Code 14”; Ex. 1148, “Tanner Graph for Code Described by Ping”; Ex. 1149, “Tanner Graph for Code Described by MacKay Profile 93y”; Ex. 1153, “Confidential IRAsimu.cpp with metadata”; Ex. 1155, “Confidential Excerpts from the Deposition of Dr. Hui Jin (Case No. 16-cv-3714)”; Ex. 1157, “Tanner Graph for Code Described by Divsalar (q=5)”; Ex. 1158, “Tanner Graph for IRA Code”; Ex. 1159, “Systematic Version of Divsalar Figure 3”; Ex. 1160, “Divsalar Figure 3 and Frey Figure 1”; Ex. 1161, “D.Divsalar, S. Dolinar, J. Thorpe, and C. Jones, ‘Constructing LDPC Codes from Simple Loop-Free Encoding Modules,’ *IEEE International Conference on Communications*, Seoul, South Korea, pp. 658-662, August, 2005”; Ex. 1165,

“Declaration of Dr. Brendan Frey”; Ex. 1168, “Simulation of Regular and Irregular Divsalar Codes”; Ex. 1171, “Block Diagram of Implementation of Code Described in Ping”; and Ex. 1172, “Block Diagram of Implementation of Code Described in Ping”.

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 1144-1147 and 1157-1161 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 1144-1149, 1157-1161, 1165, 1168, 1171, and 1172 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 Exhibits 1153 and 1155 as lacking relevance. Although these exhibits are cited in Petitioner's reply, Petitioner only cites them "for the reasons set forth in its Reply in [IPR2017-00210]." However, the Reply in IPR2017-00210 does not cite to or rely on the corresponding versions of Exhibits 1153 and 1155. 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.

Caltech further objects to Exhibit 1168 and the portions of Exhibit 1165 that rely on Exhibit 1168 for failure to comply with 37 C.F.R. § 42.65.

Caltech further objects to Exhibit 1167 ("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 1167 is deemed admissible then

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other writings or recorded statements in fairness ought to be considered at the same time.

### III. CONCLUSION

Exhibits 1144-1149, 1153, 1155, 1157-1161, 1165, 1167, 1168, 1171, and 1172 were filed and served on February 21, 2018. These objections are made within five business days of service.

Respectfully submitted,

Date: February 28, 2018

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

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