

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

CALIFORNIA INSTITUTE OF TECHNOLOGY,
Patent Owner.

Case IPR2017-00728
Patent 7,421,032

PATENT OWNER'S FOURTH 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”) Exhibit 1274. 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. 1274, “Relevance of Deposition Questions Summary”.

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).

On February 10, 2018, the Board authorized Patent Owner to file a 10-page combined motion to strike and motion for sanctions relating to testimony from Dr. Mitzenmacher and Dr. Divsalar that was elicited from out-of-scope questions. Paper 41. Petitioner was authorized to file a 10-page response. *Id.* The Board also authorized the parties to include a tabular listing “to supplement the parties’ papers and should not be used for substantive argument.” *Id.*

Patent Owner’s tabular listing (Ex. 2037) followed these instructions, identifying the offending lines in Dr. Mitzenmacher and Dr. Divsalar’s deposition transcripts, and providing a short, neutral description of the subject matter. By

contrast, Petitioner put forth extensive substantive argument in its tabular listing. Every row in Petitioner's listing includes substantive arguments regarding why Petitioner believes the identified testimony is relevant. Exhibit 1274 itself labels the descriptive column as "Relevance to [Mitzenmacher/Divsalar] Declaration." Indeed, Petitioner admits that, "[a]s *detailed* in Exhibit 1274, Petitioner's questions were entirely directed to topics addressed and opinions given in Dr. Divsalar's and Dr. Mitzenmacher's declarations." Opp. Motion for Sanctions, Paper 47, p. 2. But *detailed* explanations of relevance are precisely what the Board forbade the parties to include in the tabular listing.

For these reasons, Exhibit 1274 should be excluded for exceeding the relevant scope of the Board's authorization regarding the tabular listing. FRE 401; 402. Exhibit 1274 should also be excluded for prejudicing Caltech because it gave Petitioner essentially nine additional pages of briefing, a significant extension of the 10-page briefs the Board authorized for each party. FRE 403.

III. CONCLUSION

Exhibit 1274 was filed and served on February 27, 2018. These objections are made within five business days of service.

Respectfully submitted,

Date: March 6, 2018

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

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CERTIFICATE OF SERVICE

I certify that the foregoing Patent Owner's Fourth Notice of Objection to Evidence was served on this 6th day of March, 2018, on the Petitioner at the electronic service addresses of the Petitioner as follows:

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Respectfully submitted,

Date: March 6, 2018

/ Michael T. Rosato /
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