

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SIRIUS XM RADIO INC.,
Petitioner,

v.

FRAUNHOFER-GESELLSCHAFT ZUR FÖRDERUNG DER
ANGEWANDTEN FORSCHUNG E.V.,
Patent Owner.

Case IPR2018-00681
Patent No. 7,061,997

DECLARATION OF PATRICK L. DONNELLY

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I, Patrick L. Donnelly, declare as follows:

1. I am Executive Vice President, General Counsel and Secretary of Sirius XM Radio Inc. (“Radio”). I am also Executive Vice President, General Counsel and Secretary of Sirius XM Holdings Inc. (“Holdings”). I make this declaration based upon my personal knowledge of the facts stated herein.

2. Radio is a corporation engaged in the business of, inter alia, transmitting music, sports, entertainment, comedy, talk, news, traffic and weather channels, as well as infotainment services, in the United States on a subscription fee basis through two proprietary satellite radio systems and via the Internet.

3. Radio is a wholly-owned subsidiary of Holdings. Holdings owns all of the issued and outstanding capital stock of Radio.

4. Holdings is a non-operational holding company.

5. Holdings has the power to appoint the officers and directors of its wholly owned subsidiary, Radio, but it does not operate the business of Radio or control the day-to-day business or operations of Radio.

6. Radio and Holdings maintain separate business records and financial accounts.

7. Liberty Media Corporation and its subsidiaries and affiliates (“Liberty Media”) beneficially owns “approximately 70% of the outstanding shares of

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Holdings' common stock." Ex. 2001-4. Liberty Media has no direct ownership of Radio.

8. Liberty Media does not control or operate the business activities and operations of Holdings or Radio.

9. Liberty Media maintains business operations, business records, and financial accounts separate from Holdings and Radio.

10. Liberty Media has the ability to (i) "determine the outcome of all matters requiring general stockholder approval, including the election of the board of directors and changes to [Holdings'] certificate of incorporation or by-laws," (ii) "cause or prevent a change of control of Holdings," and (iii) "preclude any unsolicited acquisition of [Holdings']." Ex. 2001-28. While Liberty Media has the ability to change the charter of Holdings and replace the Board of Directors of Holdings, Liberty Media does not control or direct the day-to-day operations of Holdings.

11. Fraunhofer-Gesellschaft Zur Forderung Dr Angewandten Forschung E.V. ("Fraunhofer") sued Radio for allegedly infringing U.S. Patent Nos. 6,931,084; 7,061,997; 6,993,084; and 6,314,289 (the "Asserted Patents") (the "Fraunhofer Litigation"). Ex. 2010. Fraunhofer did not sue Holdings or Liberty Media for patent infringement on the Asserted Patents and neither Holdings nor Liberty Media could be sued for allegedly infringing the Asserted Patents.

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12. Radio has been and will continue to be solely responsible for directing and controlling all matters pertaining to the IPR petition in this proceeding and the Fraunhofer Litigation. Radio has been and will continue to be the only entity paying for and funding all filing and legal fees associated with both proceedings.

13. Neither Holdings nor Liberty Media participated in or exercised any control over the decision to file or the content of the petition in this proceeding.

14. Neither Holdings nor Liberty Media has, or will, direct, control, fund, or make any decisions, exercise control over, or otherwise participate in (i) any matters or filings relating to this proceeding, including regarding any content subject to this proceeding, (ii) pay any filing or legal fees associated with this proceeding, or (iii) engage in any of the foregoing for any of the IPR petitions challenging the Asserted Patents.

15. Neither Holdings nor Liberty Media has, or will, direct, control, fund, or make any decisions or otherwise participate in the Fraunhofer Litigation, nor has either of them paid or will either of them pay any filing or legal fees associated with the Fraunhofer Litigation.

I hereby declare, under penalty of perjury, that all statements made herein are of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Dated: June 28, 2018


Patrick L. Donnelly

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