

TELEPHONIC HEARING

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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC.,	§	
	§	
Petitioner,	§	CASE: IPR2018-01133
	§	U.S. Patent 9,538,152
VS.	§	
	§	
COREPHOTONICS LTD.,	§	
	§	
Patent Owner.	§	

TELEPHONIC HEARING

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JULY 12, 2019

BE IT REMEMBERED that on the 12th day of July 2019, the following proceedings came on to be heard in the above-entitled and numbered cause before the Patent Trial and Appeal Board, Honorable Bryan F. Moore, Marc S. Hoff and Monica S. Ullagaddi presiding, via telephone conference, recorded in Austin, Travis County, Texas. Proceedings reported by machine shorthand.

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P R O C E E D I N G S

THE BOARD: Hello, this is Judge Moore on the call.

MR. RUBIN: Good afternoon.

MR. O'BRIEN: Good afternoon, Judge Moore. You have David O'Brien, Counsel for Petitioner, as well as my colleagues in the deposition room. And Neil, you want to introduce yourself as well?

MR. RUBIN: Good afternoon, Your Honor, this is Neil Rubin representing the Patent Owner, Corephotonics.

THE BOARD: Okay. We also have Judge Ullagaddi and Judge Hoff on the call. Is the witness in the room now?

MR. RUBIN: The witness has stepped out.

THE BOARD: Okay, thank you. And you were -- are you or are you not planning to have the reporter record this phone call?

MR. RUBIN: The court reporter is currently transcribing, Your Honor.

THE BOARD: Okay, thanks. So I'm actually not sure that this call should be part of the deposition transcript. It's separate from the deposition. I don't know if it's possible for her to do that, but if it is, if she could separate this section, and then file it in the case as a -- separate from the deposition.

1 MR. McDOLE: We've already started doing that,
2 Your Honor.

3 THE BOARD: Okay, great. So maybe the party
4 that is complaining, not the party that gave the
5 instruction, but the party that's complaining about the
6 instruction, maybe you could start and give me the
7 background of what's occurred.

8 MR. RUBIN: I would be happy to, Your Honor.
9 This is Neil Rubin for Corephotonics. So today we're in
10 the middle of the deposition of Apple's expert,
11 Dr. Cossairt. And we are in the middle of his recross-
12 examination.

13 After the conclusion of the redirect -- I'm
14 sorry -- of the cross-examination, my initial examination
15 of the witness earlier this afternoon, there was a recess
16 of approximately 26 minutes, during which Counsel for
17 Apple and the witness left the room, and the witness has
18 testified that the three of them were in the same room
19 for that entire 26-minute period.

20 During the recross-examination, there were a
21 number of questions that were asked of the witness.
22 During -- I'm sorry -- during the redirect examination,
23 that is, during Apple's Counsel's examination, there were
24 a number of questions asked of the witness.

25 Then during the recross-examination, my

1 continued examination of the witness, I asked questions
2 of the witness that were directed to the issue of
3 whether, essentially whether there had been coaching of
4 the witness during the 26-minute recess, whether the
5 witness had discussed the questions that he was going to
6 be asked or the answers that Apple might have wished that
7 he would give. And there were objections.

8 THE BOARD: Okay. And I want to stop you right
9 there for a moment and understand the timing, because I
10 may need to pull it up here. But my understanding, there
11 may be some thinking about the ability to talk to the
12 witness before your -- before redirect. So, so I need to
13 understand if you're talking about the, a break between
14 cross and redirect, or a break between redirect and
15 recross.

16 MR. RUBIN: Your Honor, it was a break -- the
17 26 minutes occurred between cross and redirect. And I'm
18 aware, we're all aware of the recent precedential -- the
19 recently designated precedential decision from Focal
20 Therapeutics versus SenoRx -- if I'm pronouncing that
21 correctly -- that does say that, that during such a
22 break, there can be discussions between Counsel and the
23 witness.

24 As I read that opinion, it doesn't address at
25 all the question of what degree -- whether and to what

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