

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

APPLE INC.)
Petitioner) Case No.:
Vs.) IPR2023-00242
SPACETIME3D, INC.) IPR2023-00343
Patent Owner) IPR2023-00344

Conference call regarding the
above-referenced matter was taken on Tuesday, May
23, 2023, commencing at 3:01 p.m., before MICHELE
D. LAMBIE, Notary Public.

Reported By:
Michele D. Lambie, CSR-RPR

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1 APPEARANCES CONTINUED:

2 Panel Members

3 JUDGE LORIN

4 JUDGE McKONE

5 JUDGE CHUNG

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P R O C E E D I N G S

JUDGE LORIN: Okay. So this is a conference call in IPR2023-00242, 00343 and 00344. This Petitioner is Apple Inc., and the Patent Owner is SpaceTime3D, Inc.

Let's do a roll call. Petitioner, who is on the line for Petitioner?

MR. PATRICK: Thank you, Your Honor. This is Andrew Patrick of Fish & Richardson speaking on behalf of Petitioner, Apple Inc., and I'm joined by my colleague, Usman Khan.

MR. FITZSIMMONS: And Todd Fitzsimmons on behalf of Patent Owner, SpaceTime.

JUDGE LORIN: Okay. Thank you very much. Okay. So, all right. All right. The purpose of the call is to address Petitioner's request for authorization to enter three exhibits as evidence, and among them is a stipulation.

Petitioner, you're the one who has made the request. Can you explain why you're making the request?

1 MR. PATRICK: Thank you, Your Honor.
2 Certainly. Apple submitted its request for entry
3 of these exhibits after completing the
4 meet-and-confer process with opposing counsel
5 following last Monday's publication of updated
6 official statistics on median time to trial for the
7 Western District of Texas and also Judge Albright's
8 grant last Wednesday of Apple's request for venue
9 transfer.

10 Each of these events provided additional
11 information that was not available at the time of
12 petition filing and that has bearing on the
13 potential for Fintiv-based discretionary denial.

14 And so, for example, the interim guidance
15 issued by Director Vidal states with respect to
16 application of Fintiv factor 2 that the PTAB will
17 weigh the factor against exercising discretion to
18 deny institution under Fintiv if the median time to
19 trial is around the same time or after the
20 protected statutory deadline for the PTAB's final
21 written decision.

1 Now, at the time of filing of Apple's
2 petitions, the official statistics for the Western
3 District of Texas indicated a median time to trial
4 of 28.3 months. The official December 2022
5 statistics indicated an increase of median time to
6 trial to 29.5 months, which would have firmly
7 resolved and, in fact, been in Petitioner's favor.
8 However, the March 2023 statistics just released
9 last Monday reintroduced uncertainty with respect
10 to Fintiv factor 2 by indicating a median time to
11 trial of 28.2 months.

12 So, although the parties can presently
13 only speculate as to the impact on the trial
14 schedule of the venue transfer from Waco to Austin,
15 the transfer arguably has bearing on Fintiv factor
16 2, and although Apple believes that discretionary
17 denial of institution under Fintiv would be
18 inappropriate, Apple, in view of last week's
19 events, seeks to enter a Sotera stipulation of any
20 IPR to remove all doubt and to thereby enable all
21 involved to focus on Apple's showing of at least a

1 reasonable likelihood of the challenged claims
2 being invalidated over the arguments presented in
3 Apple's petitions.

4 And more specifically, Director Vidal
5 states at page 3 of the interim guidance that,
6 Consistent with Sotera Wireless, Inc., the PTAB
7 will not discretionarily deny institution in view
8 of parallel district court litigation where a
9 petitioner presents a stipulation not to pursue in
10 a parallel proceeding the same grounds or any
11 grounds that could have reasonably been raised
12 before the PTAB.

13 If the Board so authorizes, Apple would
14 submit a Sotera stipulation in each IPR as well as
15 the updated statistics on median time to trial and
16 the evidence of the venue transfer that prompted
17 this request.

18 Additionally, and although it may not be
19 necessary in view of this call, to the extent
20 desired by the Board, Apple would offer in
21 connection with its request up to three pages of

1 related briefing to provide further context for the
2 three exhibits and would not be opposed to like
3 briefing from SpaceTime.

4 We believe that good cause for entry of
5 the exhibits exists, at least because the Sotera
6 stipulation would facilitate the Board's
7 determination on whether to institute by fully
8 resolving the potential issue of discretionary
9 denial under Fintiv, thereby allowing the Board to
10 focus its resources on the merits of Apple's
11 petitions.

12 JUDGE LORIN: That would settle matters,
13 would it not, to let us review -- it would settle
14 matters if a Sotera stipulation was filed, correct?

15 MR. PATRICK: That's right.

16 JUDGE LORIN: On the stipulation, have
17 you served this with Patent Owner? Has Patent
18 Owner had an opportunity to look at it?

19 MR. PATRICK: Not yet, Your Honor. We
20 haven't served it on Patent Owner. We wanted to go
21 through the meet-and-confer process first to

1 determine whether they would be opposed to entry of
2 the stipulation.

3 You know, frankly, we didn't want to
4 restrict options that might otherwise be available
5 if, in fact, they were opposed and if the
6 stipulation were not ultimately entered on that
7 basis. So, we were hoping to resolve that before
8 serving it on them.

9 JUDGE LORIN: All right. Let's turn to
10 Patent Owner.

11 How do you respond?

12 MR. FITZSIMMONS: Thank you, Your Honor.

13 With respect to the stipulation, first of
14 all, the Sotera case that we're referring to is a
15 2020 case, and the interim guidance that's been
16 referenced by Petitioner is 2022, both of which
17 were issued before these petitions were filed, and
18 in light of that -- and I'll refer to just
19 there's -- there's overlap between the three
20 petitions. As -- as you noted, there's three IPRs
21 that are filed.

1 The one ending in 242 or page 89 under
2 Fintiv factor 2 -- I'm sorry, under page 90 under
3 Fintiv factor 4, they provide a stipulation with
4 respect to the Sands Revolution case.

5 Our position is they had an opportunity
6 to identify any stipulations they wanted to file at
7 that time. They made those decisions back at the
8 time they filed this petition.

9 Now we're almost nine weeks later and
10 they want to revise their petition based on some
11 case law and an interim guidance that was in place
12 long before they ever filed their petition. That's
13 with respect to the stipulation.

14 With respect to the official statistics,
15 their email requesting entry of new statistics
16 noted Western District of Texas, 28.2.

17 If you go, again, back to the IPR ending
18 in 242, on page 89 under Fintiv factor 2, they
19 identify 28.3 months as the median time to trial.
20 So, it's what, .1 month's difference.

21 They had an opportunity to cite

1 statistics that were virtually identical then.
2 They didn't do so then. They waited nine weeks,
3 and now they want to cite statistics.

4 And on top of that, what's the relevancy
5 of these statistics? Because, you know, they
6 identified there's a transfer motion in place, but
7 the transfer motion was not an inter-district
8 transfer, it was an intra-district transfer, only
9 moving it from Waco to Austin Division.

10 Judge Albright, who is the Judge that
11 originally entered the original scheduling order,
12 is the same Judge. He has retained jurisdiction in
13 this case.

14 They have let -- there was a temporary
15 60-day stay that's been lifted. The case is
16 resumed. There's been no new scheduling order, so
17 presumptively the scheduling order that was
18 originally submitted is the same one, which the
19 Board has -- has exhibits to all three petitions.

20 So, there's -- there's -- the -- the
21 transfer has no bearing. If it -- if it did -- if

1 we got a new scheduling order, I guess that could
2 have a bearing, but we do not have any indication
3 that there's a new scheduling order; therefore, the
4 transfer is irrelevant.

5 The -- the statistics are identical to
6 the ones that they argued before, and -- again, so
7 we would -- we would argue that they had an
8 opportunity. And they requested a reply brief,
9 which they just filed 30 more pages, ten pages on
10 each of these three IPRs, no mention of this then,
11 and now using I believe the grounds that some new
12 statistics came out to maybe make corrections that
13 they wished they had made when they filed the
14 petition, and, you know, we think that this
15 piecemeal petition filing should not be accepted.

16 And, again, we're nine weeks out on
17 the -- on the 242. You know, however long this
18 takes to get some of these stipulations submitted
19 back and forth and submitted to the Board could
20 delay the Board in making their decision, so this
21 is why we oppose, Your Honor.

1 And then three more pages briefing on top
2 of that, times three; nine more pages of briefing,
3 you know, it's just unnecessary at this point to do
4 this. It should have been done back when they
5 filed the petition.

6 JUDGE LORIN: Well, let me ask you this:
7 Yeah, I -- I understand what you're saying. But
8 what is the difficulty with the Petitioner just
9 filing the stipulation? And assuming it's -- it's
10 consistent with Sotera, that would end the matter
11 on the discretionary denial under Fintiv, wouldn't
12 it? Wouldn't that just end the matter and we can
13 move on on the case?

14 MR. FITZSIMMONS: It would. If that's
15 what the Board feels is appropriate at this stage,
16 that -- that would be acceptable.

17 I -- you know, it would -- it would -- it
18 would definitely address the Fintiv factors. You
19 know, it -- it does not -- it does not dismiss the
20 discretionary denial under the cumulative of -- of
21 prior art that is -- that is based on statutory

1 grounds, but it -- that's based on the merits of
2 the -- of the similarity of the prior art. But
3 with respect to just the parallel litigation and
4 the effect of the Fintiv factors on that,
5 correct, --

6 JUDGE LORIN: All right.

7 MR. FITZSIMMONS: -- a stipulation would
8 address that.

9 JUDGE LORIN: Because, if I recall
10 correctly, the petition deals with the Director's
11 memo already. It already discusses the compelling
12 merits, and it already mentions that they
13 were -- they were trying to abide by the -- by the
14 memo. And the memo does say that if a stipulation
15 consistent with Sotera is filed, that would -- that
16 would end the matter. That would settle the
17 matter.

18 Do you have any -- any difficulty with
19 that?

20 MR. FITZSIMMONS: No, Your Honor. We
21 would not have difficulty with the mere filing of a

1 stipulation without any additional briefing, but we
2 do feel that additional statistics and discussion
3 of any -- you know, the -- the -- it's -- it's
4 purely speculative as to whether the transfer will
5 have any change, and as of today, there is no
6 indication that there's any change in the Court's
7 schedule. So, we would -- we would still oppose
8 that.

9 JUDGE LORIN: Your difficulty is with the
10 explanation? Because those statistics we could
11 find on our own. I don't think that that's, that
12 in and of themselves is really very material.

13 MR. FITZSIMMONS: Well, and, again, I
14 don't even know if it's material in light of the
15 fact that we have a scheduling order, and the
16 scheduling order, while it does have a
17 to-be-determined date -- and this was discussed
18 in -- this was discussed at length in -- in Patent
19 Owner's response, preliminary response as well as
20 in the petition, that while there is a
21 to-be-determined date, they're -- that's just on

1 the specific start date of the trial.

2 There are dates for pretrial motions and
3 filings, jury instructions, things of that nature,
4 so we do have an indication that in December this
5 case is supposed to get started. We have yet to
6 see any indication from Judge Albright that those
7 dates are changing.

8 So what would be the relevance of
9 statistics that identify time to trial from filing
10 a brand new case in 2023? Just arguing that, it
11 seems to be irrelevant to the issue, and also
12 it -- it could have been brought back when they
13 originally filed their -- their petition.

14 But I would agree, Your Honor, you -- you
15 could -- you could look up those numbers yourself,
16 but I don't know if they have much bearing given
17 the fact that we have a scheduling order.

18 JUDGE LORIN: All right. Let me turn to
19 Petitioner.

20 Petitioner, would you be
21 satisfied -- would you -- would you be satisfied

1 just to file the stipulation? Because that's all
2 we really need. That would settle the matter.

3 MR. PATRICK: Certainly, Your Honor.
4 We -- we wanted to offer the additional evidence to
5 give context for the request and for any opinion
6 that you may write, but we agree that the
7 stipulation alone would settle the matter, and we
8 would be satisfied with that.

9 JUDGE LORIN: Okay. Very good. Very
10 good. All right. Thank you, parties.

11 Let me -- let me put you on hold here and
12 let me confer with my colleagues. I'll be right
13 back.

14 MR. FITZSIMMONS: Thank you, Your Honor.

15 (Recess taken -- 3:14 p.m.)

16 (After recess -- 3:15 p.m.)

17 JUDGE LORIN: Okay. I'm back. All
18 right. So I've conferred with the panel, and it
19 sounds like the parties are in agreement, and I
20 think that's what we'll do.

21 We'll authorize the filing of the

1 stipulation by the Petitioner, but no additional
2 briefing, no other exhibits. And, yeah, do that
3 right away, Petitioner.

4 And, oh, yeah, by the way for the court
5 reporter, please if you could send us a transcript
6 right away, and we'll -- we'll let the transcript
7 of the call serve as an order for authorizing the
8 filing of the -- of the stipulation.

9 Okay. Are there any other comments
10 Counsel would like to make?

11 MR. PATRICK: No, Your Honor, not from
12 Apple.

13 MR. FITZSIMMONS: No.

14 JUDGE LORIN: Okay. Very good. Very
15 good. Have a good day all, and we are adjourned.

16 MR. FITZSIMMONS: Thank you, Your Honor.

17 MR. PATRICK: Thank you, Your Honor.

18 (Whereupon, the proceedings adjourned at
19 3:16 p.m.)
20
21

1 State of Maryland

2 County of Baltimore, to wit:

3 I, Michele D. Lambie, a Notary Public of
4 the State of Maryland, County of Baltimore, do
5 hereby certify that the within-named witness
6 personally appeared before me at the time and place
7 herein set out, and after having been duly sworn by
8 me, according to law, was examined by counsel.

9 I further certify that the examination
10 was recorded stenographically by me and this
11 transcript is a true record of the proceedings.

12 I further certify that I am not of
13 counsel to any of the parties, nor related to any
14 of the parties, nor in any way interested in the
15 outcome of this action.

16 As witness my hand and notarial seal this
17 23rd day of May 2023.

18
19 

20 Michele D. Lambie
21

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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