

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC. and
GOOGLE LLC,
Petitioner

v.

SPACETIME3D, INC.
Patent Owner

Case IPR2023-00344¹
Patent 9,696,868 B2

**PATENT OWNER'S OBJECTIONS UNDER 37 C.F.R. § 42.64(b)(1)
TO PETITIONER'S EVIDENCE**

¹ Google LLC, which filed a petition in IPR2023-00578, has been joined as a petitioner in this proceeding.

Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner SpaceTime3D, Inc. (“Patent Owner”) hereby serves these objections to evidence submitted by Petitioner Apple Inc. (“Petitioner”) with its Reply (Paper No. 26). This notice is being timely filed within 5 business days of service of the evidence, which occurred on January 18, 2024.

1. Exhibit 1030 Is Not Relevant

Patent Owner objects to the admissibility of Exhibit 1030 under F.R.E. 401 (“Test for Relevant Evidence”); F.R.E. 402 (“General Admissibility of Relevant Evidence”). 35 U.S.C. § 312(a)(3) requires the Petition to “identify ... each claim challenged, the grounds of which the challenge to each claim is based, and the evidence that supports the grounds.” The Petitioner cannot add new grounds challenging patentability after institution. While Exhibit 1030 could have been identified as prior art in the Petition (making them admissible under Rule 401 as being a fact that is of consequence in determining the action), Petitioner cannot identify this evidence for the first time in its Reply. *See* Rule 402 (excluding relevant evidence when prohibited by federal statute). By arguing that this exhibit discloses features recited in the challenged claims (Reply at 8, citing Exhibit 1030), Petitioner is attempting to circumvent Section 312 by adding a new ground or new evidence supporting a ground after institution. Accordingly, Exhibit 1030 is inadmissible in violation of F.R.E. 401-402.

2. Dr. Fuch's Supplemental Declaration's (Exhibit 1033) Relies on Irrelevant Document

Dr. Fuch's supplemental declaration, Exhibit 1033, relies on Exhibit 1030, which, as explained above, is not relevant. Dr. Fuch's testimony regarding this Exhibit is likewise irrelevant in violation of F.R.E. 401-402. *See* Exhibit 1033 at ¶ 16. As with the inadmissible exhibit he relies upon, Dr. Fuch's testimony regarding this exhibit, and any reference to and/or reliance on any of this paragraph or sections including the same, likewise is inadmissible under F.R.E. 401-402.

Dated: January 23, 2024

Respectfully submitted,

/s/ Todd E. Fitzsimmons

Todd E. Fitzsimmons, Reg. No. 44,683

Fitzsimmons IP Law, P.C.

P.O. Box 199

Gardena, CA 90248

Tel: (571) 210-8000

Gregory S. Cordrey, Reg. No. 44,089

Jeffer Mangels Butler & Mitchell LLP

3 Park Plaza, Suite 1100

Irvine, CA 92614

Tel: (949) 623-7236

gxc@jmbm.com

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §42.6(e)(4), the undersigned certifies that on January 23, 2024, a complete and entire copy of this PATENT OWNER'S OBJECTIONS UNDER 37 C.F.R. § 42.64(b)(1) TO PETITIONER'S EVIDENCE was provided by email to Petitioner by serving the email correspondence addresses of record as follows:

Fish & Richardson P.C.
60 South Sixth St., Suite 3200
Minneapolis, MN 55402

W. Karl Renner, Reg. No. 41,265
Andrew B. Patrick, Reg. No. 63,471
Kenneth Wayne Darby, Jr., Reg. No. 65,068
Usman A. Kahn, Reg. No. 70,439
Email: IPR50095-0110IP1@fr.com

Respectfully submitted,

/s/ Todd E. Fitzsimmons
Todd E. Fitzsimmons, Reg. No. 44,683
Fitzsimmons IP Law, P.C.
P.O. Box 199
Gardena, CA 90248
Tel: (571) 210-8000