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Transcript of Conference Call

Date: October 11, 2023

Case: Apple INC. -v- Sonrai Memory Limited (PTAB)

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1 UNITED STATES PATENT AND TRADEMARK OFFICE

2 -----
3 BEFORE THE PATENT TRIAL AND APPEAL BOARD
4 -----

5 APPLE, INC.,

6 Petitioner,

7 v.

8 SONRAI MEMORY LIMITED,

9 Patent Owner.
10 -----

11 Case No. Case IPR2023-00975

12 CONFERENCE CALL

13 BEFORE THE HONORABLE JOHN D. HAMANN,

14 THE HONORABLE STACEY WHITE, AND

15 THE HONORABLE GREGG I. ANDERSON

16 Conducted Virtually

17 Wednesday, October 11, 2023

18 1:34 p.m. CST
19

20 Job No.: 510941

21 Pages: 1 - 16

22 Recorded By: Cary Davidow

1 Conference Call, conducted virtually

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12 Pursuant to agreement, before Cary Davidow,

13 Notary Public in and for the State of Illinois.

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A P P E A R A N C E S

ON BEHALF OF THE PETITIONER:

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(Present via videoconference)

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ALSO PRESENT:

BRIAN KRIEGER (PD Court Reporter Trainer)

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(None marked)

1 P R O C E E D I N G S

2 (Whereupon, the court reporter was duly
3 sworn.)

4 MR. WOLFE: -- Apple, and with me I have
5 Jim Heintz.

6 JUDGE HAMANN: Thank you. And for Patent
7 Owner?

8 MR. COOPER: Good afternoon, your
9 Honors. My name is Brett Cooper with BC Law Group,
10 and my colleague John Petrsoric is on the line as
11 well.

12 JUDGE HAMANN: And thank you. And
13 although it's not necessary, did the parties
14 arrange for a court reporter?

15 THE REPORTER: Yes, Your Honor. My name
16 is Cary Davidow. I am acting as the court
17 reporter. I also have a trainer -- I'm a trainee
18 -- a gentleman named Brian; he's in the background.
19 So whenever you are ready, you let me know. And
20 can you hear me okay?

21 JUDGE HAMANN: I can. And, you know,
22 from my perspective, we're already on the record.

1 THE REPORTER: Okay.

2 JUDGE HAMANN: Let me ask, is it
3 Petitioner who arranged for the court reporter?

4 MR. WOLFE: Yes.

5 JUDGE HAMANN: So Mr. Wolfe, I ask if you
6 could, you know, timely file any transcript with
7 the Board.

8 MR. WOLFE: Okay. Yes, will do.

9 JUDGE HAMANN: With that, unless there's
10 any other questions, let's dive into the substance
11 of the call. Obviously what the Board understands
12 is Petitioner is seeking a preliminary reply. And
13 so, Mr. Wolfe, if you could certainly address that
14 and provide reasons, you know, supporting such
15 request and -- and necessary cause.

16 MR. WOLFE: Okay. Thank you. Yes. We
17 wanted to -- well, we would like to file a reply to
18 address the Patent Owner's arguments as it relates
19 to General Plastic and the Fintiv factors.

20 First, with respect to General Plastic,
21 Patent Owner has misconstrued the petitions as
22 being serial petitions, whereas the facts dictate

1 that we have parallel petitions that were filed.
2 The first petition was accorded the filing date of
3 May 23rd, 2023, and the second petition, the
4 present petition, was accorded a filing date of
5 June 16th, 2023; and both cases -- both cases were
6 filed before any Patent Owner preliminary response
7 were filed, and, of course, before any institution
8 decision was issued.

9 JUDGE HAMANN: Okay. Generally, I'd
10 suggest, Mr. Wolfe, the issue of preliminary
11 replies, you know, they're not as of right, and
12 good cause show is required, and, largely,
13 foreseeability is the issue that we look at when
14 looking, whether to grant a request for preliminary
15 reply, as well as whether it's sort of necessary.
16 I mean, a lot of things obviously the Board is
17 aware of. We are familiar with our rules, we're
18 familiar with our consolidated trial practice
19 guide, and so certain things just aren't necessary
20 for further argument. So if you could address,
21 sort of, those issues, that would be helpful --

22 MR. WOLFE: Of course.

1 JUDGE HAMANN: -- then I'll give Mr.
2 Cooper an opportunity to -- to respond.

3 MR. WOLFE: Of course. Do you want me
4 to bring up both issues as it relates to General
5 Plastic and Fintiv together, or would you like me
6 to take them one by one?

7 JUDGE HAMANN: I think together is fine,
8 or however you want to do it.

9 MR. WOLFE: Okay.

10 JUDGE HAMANN: I'm familiar -- I -- for
11 what it's worth, Mr. -- for the parties, I -- you
12 know, I'm familiar with the papers that have been
13 filed. I reviewed them before today's call. So,
14 you know, I'm -- you know, with that as background,
15 you know, proceed how you think's best.

16 MR. WOLFE: Okay. Understood. Thank
17 you. So as it relates to General Plastic, you
18 know, we did not foresee Patent Owner misconstruing
19 the petitions as being serial petitions instead of
20 what they are, parallel petitions. And we would
21 like the opportunity to address that in -- in
22 another filing.

1 As it relates to the Fintiv factors,
2 there were a couple factors that we identified as
3 wanting to respond to, but primarily Fintiv
4 Factor 4. We did not foresee the Patent Owner
5 missing the sand revolution stipulation that was --
6 that was recited in Factor 4, so we would like to
7 kind of address that as well.

8 And then finally, as it relates to
9 Factor 6, the compelling merits, we did not, you
10 know, foresee the possibility of an argument that
11 obviousness alone isn't a compelling merit and that
12 compelling merits could only be shown through
13 anticipation and not obviousness.

14 JUDGE HAMANN: And this is Judge Hamann
15 again. Mr. Wolfe, you said that the sand
16 revolution in Factor 4, you -- you mean Petitioner
17 put -- set forward such stipulation; is that what
18 you're suggesting?

19 MR. WOLFE: Correct. Yes. In our
20 petition in -- in Fintiv Factor 4, we set forth a
21 sand stipulation, and that was not addressed in
22 Fintiv Factor 4 by the Patent Owner. It -- it was

1 brought up in -- into Fintiv Factor 6 response, but
2 we did not, you know, foresee the Patent Owner
3 misconstruing the sand stipulation.

4 JUDGE HAMANN: Okay. Mr. Cooper?

5 MR. COOPER: Yes, Your Honor. This is
6 Brett Cooper, for the court reporter. So I need to
7 provide a little bit of background. There is an
8 ongoing litigation since 2022. All of the art in
9 both IPRs that have been filed -- one was filed on
10 April 12th; the other was filed six weeks later, on
11 May 26th -- obviously, each is up to the page
12 limits and each -- they all, both IPRs, cite all
13 the art from the December 2022 invalidity
14 contentions in the parallel District Court
15 litigation.

16 Of course, all the art was well known by
17 the Petitioner. Andm you know, what they've done
18 here is acknowledged in the second petition that
19 there was a previous petition, but they forgot
20 their own petition. They only cited the Samsung
21 petition from a couple years ago that was
22 ultimately resolved as part of a litigation and

1 dropped. And so, in -- what's happened here is
2 ignoring the trial practice guide and its
3 requirements to state whether or not you've got
4 serial petitions and whether or not you -- what
5 you're going to do about that; in other words, are
6 you going to prioritize them, are you going to say,
7 this -- this petition's better than another one,
8 and that's what's required by the trial practice
9 guides.

10 In our mind, the issue here is not so
11 much the what's been filed; the -- the issues here
12 are whether or not the procedural guidelines have
13 been followed at all. We maintain they have not
14 been. We maintain that there are serial petitions
15 here. And in any event, I guess, as the Board has
16 already stated, the factual record is what it is.
17 Whether or not you can put gloss on it and put
18 words around it's not really the issue; the issue
19 is the Board has got to determine whether or not
20 these petitions are proper the way they've been
21 filed. And so, we don't think that a reply is
22 necessary here. So I -- I just rest on that.

1 JUDGE HAMANN: And Mr. Cooper -- again,
2 this is Judge Hamann -- let me just make sure I
3 understand what you just said. Obviously, at least
4 unless I'm misunderstanding something, the
5 Petitioner also filed a notice of multiple
6 petitions in accordance with our trial practice
7 guide, ranking, I believe, the 819 case over this
8 975 case, but, you know, certainly provided that
9 notice. It sounds like you're suggesting that they
10 didn't. Am I missing something?

11 MR. COOPER: No, Your Honor. What I was
12 referring to was in the actual IPR itself.

13 JUDGE HAMANN: Okay. But the notice they
14 filed was part -- part of the 975 -- 975 papers in
15 that IPR, and that's what I believe our trial --
16 trial practice guide suggests Petitioner should do.
17 So it seems like they've complied with that aspect
18 of it, and it seems like you're suggesting they --
19 they -- that they hadn't, and that's -- that's my
20 confusion.

21 MR. COOPER: Yes. I -- I believe they
22 have -- if -- if -- yes, they have complied in that

1 respect.

2 JUDGE HAMANN: Okay. Anything, Mr. Wolf
3 -- anything further that you care to say?

4 MR. WOLFE: No, nothing further that we
5 care to say at this time, other than, you know --

6 JUDGE HAMANN: I didn't mean to cut you
7 off, Mr. Wolfe.

8 MR. WOLFE: No, no; it's all good.

9 JUDGE HAMANN: Mr. Cooper, anything
10 before I -- I ask you all to hold for a moment
11 while I confer with my colleagues?

12 MR. COOPER: Nothing further from the
13 Patent Owner, Your Honor.

14 JUDGE HAMANN: Okay. If the parties
15 would hold for a moment, please.

16 This is Judge Hamann. I -- I thank the
17 parties for holding. We deny Petitioner's request
18 for a preliminary reply. Simply put, the record is
19 sufficient without additional briefing. The Panel
20 is certainly aware of our rules and the
21 Consolidated Trial Practice Guide and do not
22 believe cause is shown or -- for such briefing, nor

1 is such additional briefing necessary. With that,
2 are there any questions about this ruling? Mr.
3 Wolfe?

4 MR. WOLFE: No, no -- no questions --
5 questions from me. Thank you.

6 JUDGE HAMANN: Mr. Cooper?

7 MR. COOPER: No questions from the
8 Patent Owner. Thank you.

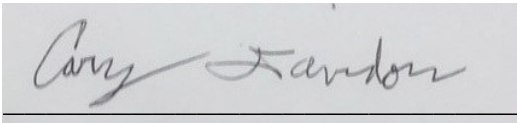
9 JUDGE HAMANN: With that, the call is
10 adjourned. Thank you.

11 MR. COOPER: Thank you.

12 (Off the record at 1:48 p.m.)
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1 CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC

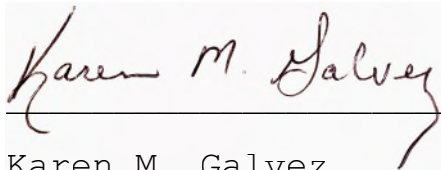
2 I, Cary Davidow, the officer before whom
3 the foregoing proceedings were taken, do hereby
4 certify that any witness(es) in the foregoing
5 proceedings were fully sworn; that the proceedings
6 were recorded by me and thereafter reduced to
7 typewriting by a qualified transcriptionist; that
8 said digital audio recording of said proceedings
9 are a true and accurate record to the best of my
10 knowledge, skills, and ability; and that I am
11 neither counsel for, related to, nor employed by
12 any of the parties to this case and have no
13 interest, financial or otherwise, in its outcome.

14
15 
16 _____

17 CARY DAVIDOW, NOTARY PUBLIC
18 FOR THE STATE OF ILLINOIS
19 October 25, 2023
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A handwritten signature in dark ink, reading "Karen M. Galvez", is written over a horizontal line.

Karen M. Galvez

PLANET DEPOS, LLC

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