

Exhibit 1033

Martin Deposition Transcript

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

GOOGLE, INC. and APPLE, INC.,)
 Petitioners,)CBM 2015-00040
 vs.)Patent 7,774,280
CONTENTGUARD HOLDINGS, INC.,)
 Patent Owner.)

DEPOSITION OF DAVID MARTIN, Ph.D.
Chicago, Illinois
December 2, 2015

REPORTED BY: Tina Alfaro, RPR, CRR, RMR, CLR
Job no. 100362

December 2, 2015
9:00 a.m.

The deposition of DAVID MARTIN Ph.D., held at the offices of Fitch, Even, Tabin & Flannery, 120 South LaSalle Street, Chicago, Illinois, pursuant to agreement before Tina M. Alfaro, a Registered Professional Reporter and Certified Realtime Reporter of the State of Illinois.

A P P E A R A N C E S:

SIDLEY AUSTIN
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JEFFREY KUSHAN, ESQ.
1501 K Street, N.W.
Washington, D.C. 20005
On behalf of Apple, Inc.;

KAYE SCHOLER
BY: ROBERT LAURENZI, ESQ.
250 West 55th Street
New York, New York 10019
On behalf of Google, Inc.;

FITCH, EVEN, TABIN & FLANNERY
BY: TIMOTHY MALONEY, ESQ.
120 South LaSalle Street
Chicago, Illinois 60603
On behalf of Contentguard Holdings.

I N D E X

EXAMINATION

WITNESS PAGE

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By Mr. Franzinger 5
By Mr. Maloney 156

EXHIBITS

PROCEEDING EXHIBITS PAGE

Exhibit 1001 '280 Patent 7
Exhibit 1002 '012 Patent 7
Exhibit 2009 Declaration 6

NOTE: Exhibits were not tendered for inclusion with transcript.

DAVID MARTIN, Ph.D.
(Witness sworn.)

WHEREUPON:

DAVID MARTIN, Ph.D.,
called as a witness herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. FRANZINGER:

Q. Good morning, Dr. Martin.

A. Good morning, Mr. Franzinger.

Q. Have you had your deposition taken in a proceeding before the Patent Trial and Appeal Board before?

A. No, sir.

Q. I'll just go through a few of the ground rules for these depositions. Your attorney is only entitled to make brief, single-word objections, no speaking objections. You must answer the question that I ask unless your attorney instructs you not to do so. If there's a dispute over something that the attorneys need to discuss, we will likely ask you to leave the room while we handle that discussion. And there is no discussion of the substance of your testimony during breaks in the deposition. Do you understand?

1 DAVID MARTIN, Ph.D.

2 A. I do.

3 Q. If you have any questions about procedure,
4 you can raise them during the deposition, but I
5 don't anticipate that there will be any such
6 questions.

7 If you do have a question, if you don't
8 understand my question, you'd like to ask me to
9 rephrase, please go ahead and do so. But if you do
10 understand the question, I'd like you to give your
11 answer to the best of your understanding. Is that
12 acceptable?

13 A. Certainly.

14 Q. Which documents have you brought with you?

15 A. This is a copy of my declaration in this
16 matter, and then I have a copy of the '280 Patent
17 and the '012 Patent.

18 (Proceeding Exhibit 2009 was
19 marked for identification as
20 requested.)

21 BY MR. FRANZINGER:

22 Q. Okay. I see your declaration has the
23 proceedings Exhibit No. 2009 on it; is that right?
24 At the bottom.

25 A. Correct. Yes, that is correct.

1 DAVID MARTIN, Ph.D.

2 Q. Okay. So we'll use that as an exhibit in
3 this deposition. I'd like to substitute for the
4 other two documents you brought with you with the
5 exhibit marked versions, and I'll do now.

6 (Proceeding Exhibit 1001 and
7 Exhibit 1002 was marked for
8 identification.)

9 BY MR. FRANZINGER:

10 Q. First I'm handing you what's been marked as
11 Exhibit 1001, the '280 Patent. Then I'm giving you
12 what's been marked Exhibit 1002, the Stefik
13 '012 Patent.

14 By the way, have you made any annotations
15 or markings on the versions of the documents that
16 you brought with you?

17 A. No, sir. They're fresh copies.

18 If I may, I'd like to point out one thing
19 about this Exhibit 2009. There is a missing figure,
20 figure 6, on page 66, which is identified in the
21 declaration as being figure 6 from Gruse, G-R-U-S-E,
22 and that's what was originally in the PDF version of
23 this declaration that I provided but appears to be
24 missing in this document.

25 Q. Which page is that in your declaration?

1 DAVID MARTIN, Ph.D.

2 A. It's my page marking 66, which is page 69
3 of Exhibit 2009.

4 Q. Okay. Our copy had the same gap in it. So
5 you're saying the gap should be figure 6 from the
6 Gruse reference?

7 A. Exactly.

8 Q. And are there any other errors or
9 corrections that you think need to be made to your
10 declaration in this matter?

11 A. This is the only such thing that I noticed.

12 Q. How much time did you spend preparing for
13 this deposition?

14 A. Basically a business day, yesterday.

15 Q. What did you do to prepare for it?

16 A. I met with Mr. Maloney and I reviewed
17 documents.

18 Q. Is there any reason that you can't give
19 your most accurate testimony today?

20 A. No, sir.

21 Q. And nothing impairing your memory or
22 anything like that?

23 A. Not that I'm aware of, sir.

24 Q. Have you recently rejoined Iowa State
25 University?

1 DAVID MARTIN, Ph.D.

2 A. I have a new affiliation at Iowa State
3 University, yes.

4 Q. What's your new affiliation?

5 A. It is called affiliated faculty with the
6 computer science department, and this is the result
7 of an application and meeting with the department
8 for which the department voted to name me as an
9 affiliated faculty member.

10 Q. What are your responsibilities in that
11 role?

12 A. They're to be determined.

13 Q. You have given one presentation or lecture
14 there recently, haven't you?

15 A. That's true.

16 Q. What was the subject matter of that
17 lecture?

18 A. Let me see if I can remember. I can't
19 remember the actual title of the presentation, but
20 the subject matter was in comparing technology to
21 stated inventions, roughly speaking.

22 Q. And stated inventions in patents?

23 A. Yes.

24 Q. How are your responsibilities in your
25 affiliated faculty position going to be determined?

1 DAVID MARTIN, Ph.D.

2 A. By mutual agreement.

3 Q. Between you and the other faculty members?

4 A. Correct.

5 Q. So you don't have anything currently in
6 your set of commitments to the Iowa State science
7 department?

8 A. I'm not sure I understand the question.

9 Q. Okay. Do you have any upcoming tasks or
10 events associated with that position?

11 A. Other than a general agreement to pursue
12 the relationship, I don't have anything specific on
13 my calendar.

14 Q. When did you apply for the affiliated
15 faculty position?

16 A. It was sometime during the fall semester.
17 I would say the process began towards the beginning
18 of the fall semester.

19 Q. Do you recall what month?

20 A. I'm thinking that would make it August, but
21 I don't really recall with clarity exactly when it
22 began.

23 Q. All right. And you don't have any
24 upcoming --

25 A. In fact --

1 DAVID MARTIN, Ph.D.

2 Q. Go ahead.

3 A. -- maybe I should correct. I'm not even
4 sure it began in the fall semester. It may have
5 been late in summer and that would make some sense
6 since things are usually quieter in an academic
7 department at that time and may have been, in fact,
8 when I first began meeting with the department
9 chair.

10 Q. Were you invited to apply for the position?

11 A. Yes, I was.

12 Q. By whom?

13 A. The department chair.

14 Q. Just to be clear, you don't have anything
15 currently in your schedule in terms of commitments
16 to Iowa State in the coming months; is that right?

17 A. I can't picture an event on my calendar
18 that I need to show up for. That's all I meant to
19 say.

20 Q. Okay.

21 In your declaration you have offered a
22 claim construction of the term "state variable"; is
23 that right?

24 A. In a manner of speaking I would say
25 actually what I did in paragraph 53 was acknowledge

1 DAVID MARTIN, Ph.D.

2 the panel's construction and describe my
3 understanding of it.

4 Q. Do you agree -- well, let's put it this
5 way. The panel's construction is "A variable having
6 a value that represents status of rights or other
7 dynamic conditions," correct?

8 A. That's my understanding.

9 Q. And do you agree or disagree with that
10 construction?

11 A. Well, as I stated here in paragraph 53,
12 this definition works for the purposes of the
13 '280 Patent claims at issue with the understanding
14 that the '280 specification describes how a state
15 variable value may represent status of rights by
16 identifying a location where a state of rights is
17 stored.

18 Q. So you say that it works, but I'm unclear
19 on whether you agree or disagree with the panel's
20 construction. Do you have an opinion on that?

21 A. I accept the panel's construction and this
22 is how I interpret it.

23 Q. Does your interpretation reflect the
24 broadest reasonable construction of state variable
25 in this patent?

1 DAVID MARTIN, Ph.D.

2 A. To the best of my knowledge as I sit here
3 today, it does.

4 Q. And is your understanding of the broadest
5 reasonable construction of state variable in the
6 '280 Patent the same as your understanding of the
7 ordinary meaning of the term in view of the
8 specification?

9 MR. MALONEY: Objection to form.

10 BY THE WITNESS:

11 A. I don't recall having expressed an opinion
12 as to the ordinary view of the term "state variable"
13 in light of the specification as a whole. So I'm
14 not sure I can answer that question.

15 Q. Let's turn to the construction you have
16 discussed for meta-right in paragraph 58, and that
17 construction that you have there is "A right that
18 when exercised creates or disposes of usage rights
19 or other meta-rights but that is not itself a usage
20 right because exercising a meta-right does not
21 result in action to content." Do I have that right?

22 A. That is the construction that I quote in
23 that paragraph.

24 Q. And you're aware that the panel in this
25 proceeding has construed meta-right as "A right that

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