IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

AL CIOFFI, et al. **Plaintiffs,** **v.** **GOOGLE INC.,** **Defendant.**	**Case No. 2:13-cv-103-JRG-RSP** **JURY TRIAL DEMANDED**

EXPERT REPORT OF PROFESSOR H. E. DUNSMORE

NOTICE:
THIS REPORT CONTAINS CONFIDENTIAL OUTSIDE COUNSEL ONLY, INFORMATION SUBJECT TO THE STIPULATED PROTECTIVE ORDER IN THIS CASE.

processors.[135] Mr. Kogan admits that a POSITA would be aware of numerous techniques to do so "e.g. operating-system-enforced permissions, operating system management of processor resources that control access to specific portions of hardware, operating system use of page tables or segment descriptors, operating system use of rings of protection, and sandboxing" but the investors taught away from such methods therefore leaving a POSITA to unduly experiment. *Id*. I disagree with Mr. Kogan's arguments and characterizations.

393. Mr. Kogan admits that a POSITA would be well aware of the numerous techniques available to protect one process from accessing the memory space of another process. For example, he states in his report that those of skill in the art were "well aware that the term 'process' refers to the instantiation of a program by an operating system for execution and consists of the resources to execute that program, typically a separate process address space, processor, and other resources."[136] Mr. Kogan further states in the same paragraph that "[t]hose of skill in the art were also aware of the concepts of constructing a program such that it uses multiple processes for different portions of the program's execution. Techniques in the art used the process-level separation of shared resources for protective and security measures found in operating systems of the day . . . ." *Id*. Mr. Kogan makes similar statements throughout this report.[137]

394. The specification teaches many of these same techniques. A POSITA reading the specification of the Asserted Patents would recognize that M1 could be protected from malware running on P2 by using software techniques such as separate logical processes, or hardware techniques of separate physical processors, or both. As discussed above, the specification discloses running first and second logical processes on a single processor.[138] M1 is protected from malware running on P2 because P2 is incapable of automatically accessing M1 without the appropriate "permission." *Id*. The specification discloses a number of ways how P2 can be limited from automatically accessing M1. For example, the specification teaches P2 can be prevented from accessing M1 by requiring the "strict permission of user 160, either through a real time interaction

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[135] Kogan ¶ 162.
[136] Kogan ¶ 314.
[137] *See, e.g.*, Kogan ¶¶ 162, 180, 197, 215.
[138] '247 patent at 10:38-63.

executing on P2 from automatically accessing M1 would be recognized by a POSITA has disclosing and teaching the use of a sandbox.[207]

457. In sum, Mr. Kogan's argument is not a proper written description/enablement argument because it does not actually analyze a specific claim or limitation in the asserted patents. Nevertheless, Mr. Kogan is wrong in his suggestion that the inventors do not disclose and teach a multi-process web browser program with a sandboxed process.

XVI. ORIGINAL PATENT REQUIREMENT AND NEW MATTER

458. Mr. Kogan's first argument regarding the original patent requirement is that specification does not disclose a single processor embodiment. This is incorrect. As discussed at length in Section XIII(A), the original specification adequately disclosed practicing the invention on a single processor. The disclosure in column 16 of the '247 patent could not be more clear. Moreover, the original claims of the '247 patent were drawn to single processor embodiments. *See* ¶¶ 389-390.

459. Mr. Kogan's next opinion is that "the original '247 Patent invention does not explicitly disclose or teach both the first and second processes being network interface programs or web browsers." Kogan ¶ 283. This is untrue. The Court construed "web browser process" to be a process capable of accessing website data. As discussed above (¶¶ 424-437), the specification teaches a first web browser process capable of accessing website data. Plaintiffs' Figure 6 embodiment and corresponding discussion explicitly discloses a first process capable of accessing website data. Mr. Kogan next argues that "to the extent" Plaintiffs contend the first and second web browser processes are within in single web browser program, the original '247 patent does not disclose a multi-process web browser program. As discussed above, Mr. Kogan is incorrect. The original patent specification disclosed multiple logical processes working together to render a common task or application including web browsing.

[207] Kogan argues that the inventors taught away from sandboxing in the specification but this is incorrect. The specification's only reference to sandboxing was with respect to Javascript which had proven to be vulnerable to malware attack, but that is not isolating a second web browser process as described in the Asserted Patents.

the that claimed embodiments of reissue patents constitute overlooked aspects of the invention not claimed in the ’247 patent.

A. The Challenged Reissue Claims are Broader in Some Respect to the Original ’247 Patent Claims.

467. The first question is whether the inventors broadened the challenged reissue claims in some respect. The answer is yes. The applicants broadened certain reissue claims relative to the original claims of the ’247 patent by dropping the requirement of executing a second logical process using the second electronic data. Compare ’247 Patent, Claim 1 with ’528 patent Claim 21.

B. The Broader Aspect of the Challenged Reissue Claims “May” Relate to Surrendered Subject Matter

468. The next question is whether the broader aspects of the challenged reissue claims “relate to surrendered subject matter.” An example of the inventors’ original claims (as filed) are set forth below:

> 1. A method of operating a computer system, comprising the steps of:
>
> executing instructions in a first logical process, wherein the first logical process is capable of accessing data contained in a first memory space and a second memory space;
>
> executing instructions in a second logical process, wherein the second logical process is capable of accessing data contained in the second memory space, the second logical process being further capable of exchanging data across a network of one or more computers;

469. Missing from the original claim is the requirement of executing a second logical process using the second electronic data processor.

470. The examiner rejected the inventors’ original claim noting U.S. Patent No. 6,192,477 (“Corthell”) disclosed each limitation of the original claims.[217]

[217] *See* March 10, 2008 Office Action, at 3.

process and un-isolated second process, but distinguish Corthell, the inventors added a second processor. The material narrowing was to give up isolation in the first process but include one and two processor embodiments. As a result, the isolation embodiment with one processor was not substantially recaptured. Instead the isolation embodiment was dropped which means there has not been substantial recapture.

D. The Reissue Claims Relate to "Overlooked Aspects" of the Original Invention.[220]

482. The inventors challenged reissue claims all relate to patentably distinct embodiments not originally claimed. The differences are not "mere incidental features of the originally-claimed invention. Indeed, Mr. Kogan states it is his opinion that the "invention disclosed in the Reissue Patents is completely different than that disclosed in the original '247 Patent."[221] I agree they are different, but I disagree (as discussed above) that they were not disclosed in the specification.

483. As discussed in ¶¶ 424-437 the inventors disclosed and enabled multiple embodiments of their invention including full isolation embodiments where the first process was isolated from website date (see '247 claims), and more flexible embodiments that allowed the first process to be capable of accessing website data (Fig. 6 and discussion of same). However, the '247 claims were only directed to the full isolation embodiments where the first process could not access website data. When the inventors amended their claims in reissue to claim web browser processes with access to website data, the inventors claimed a whole new set of embodiments that (as Mr. Kogan agrees) were materially different to the '247 Patent claims. This amendment was not just an incidental feature of the originally claimed invention.

484. Furthermore, the claims of the '500 Patent were directed towards additional overlooked aspects of the original '247 claims. All the claims of the '500 patent are directed towards "[a] portable computing and communication device" with an "intelligent cellular telephone capability with a secure web browser including a first web

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[220] I note that Kogan did not appear to have an opinion on whether the any of the challenged reissue claims were directed towards "overlooked aspects" of the original claims.

[221] Kogan ¶ 289.

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