

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

ABB, Inc., : Trial No. IRR2013-00074
Petitioner, : Patent 8,073,557 B2
vs. :
ROY-G-BIV Corporation, :
Patent Owner. :

VIDEOTAPED ORAL DEPOSITION OF
NIKOLAOS P. PAPANIKOLOPOULOS, PH.D.

WEDNESDAY, DECEMBER 4, 2013

MINNEAPOLIS, MINNESOTA

* * *

ROY-G-BIV CORPORATION
EXHIBIT 2014
ABB v ROY-G-BIV
TRIAL IPR2013-00062

* * *

Videotaped Oral Deposition of NIKOLAOS P. PAPANIKOLOPOULOS, PH.D. taken at the Radisson Plaza VII Hotel, 35 South Seventh Street, Minneapolis, Minnesota on Wednesday, December 4, 2013, commencing at 8:30 a.m. before Rebecca L. Klanderud, a Certified Shorthand Reporter.

* * *

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PAPANIKOLOPOULOS EXHIBITS: PAGE MARKED
Exhibit 2025 Microsoft Press Computer
Dictionary 138
* * *

THE VIDEO TECHNICIAN: We are on the record.
This is the videotaped deposition of Dr. Nikolaos Papanikolopoulos taken on December 4th, 2013. Time now is approximately 8:40 a.m.
The deposition is being taken in the matter of ABB, Incorporated versus Roy-G-Biv Corporation before the Patent Trial and Appeal Board, Trial Numbers IPR2013-00062 and IPR2013-00074. The deposition is taking place in Minneapolis, Minnesota.
My name is Dean Hibbin. I'm the videographer representing Magna Legal Services.
Will counsel please identify themselves for the record?
MR. CHORUSH: Russ Chorush on behalf of Roy-G-Biv Corporation.
MR. McLEOD: Richard McLeod on behalf of ABB.
MR. NUPP: Robert Nupp on behalf of ABB.
THE VIDEO TECHNICIAN: And would the court reporter please swear in the witness?
* * *
NIKOLAOS P. PAPANIKOLOPOULOS, PH.D.,

1 a witness in the above-entitled matter,
2 having been first duly sworn,
3 testified on his oath as follows:

4 * * *

5 EXAMINATION

6 * * *

7 BY MR. CHORUSH:

8 Q. Good morning.

9 MR. McLEOD: I have a couple of
10 things before we begin. It's housekeeping.
11 We're not waiving review of the
12 transcript and corrections and, second, we are
13 making Dr. Papanikolopoulos available in the 058
14 today. I understand RGB is choosing not to
15 question him on that matter.

16 MR. CHORUSH: Well, Roy-G-Biv doesn't
17 agree that this deposition is being taken in
18 that matter for the reasons that counsel has
19 identified for you.

20 THE WITNESS: Good morning.

21 BY MR. CHORUSH:

22 Q. Good morning.

23 Have you been deposed before?

24 A. I have been deposed once, but not on
25 an IP matter. It had to do with the university

1 personnel issues.

2 Q. What type of personnel issues?

3 A. So I was deposed in a case that
4 involved the Georgia Tech faculty, and I was the
5 host of interviewing here at the University of
6 Minnesota. So the State of Georgia asked me
7 several questions regarding the interview
8 process, and so on and so forth, for a personnel
9 matter that had to do with Georgia Tech.

10 Q. You understand that I'm going to be
11 asking you a series of questions today?

12 A. I do.

13 Q. And you'll be providing answers to
14 me?

15 A. Yes.

16 Q. And if you try to articulate your
17 answers, that will be helpful since the court
18 reporter won't be able to take down a nod or a
19 body motion.

20 You understand that for your
21 testimony today, that you're not to communicate
22 with anyone regarding the substance of your
23 testimony until my cross-examination is over?

24 A. I do.

25 Q. Will you agree to abide by that rule?

1 A. Yes.

2 Q. You understand that your testimony
3 today is being taken under oath, correct?

4 A. Yes, I do.

5 Q. And you understand that the oath that
6 you took today is just as solemn as the oath
7 that you would take if testifying at trial?

8 A. Yes, I do.

9 Q. You understand that your testimony
10 can be used at trial, correct?

11 A. Yes.

12 Q. Is there any reason why you cannot
13 testify fully and accurately today?

14 A. To the best of my knowledge, no.

15 Q. We can take breaks today as you need
16 them. My only request is that you let me know
17 five minutes ahead of time so that I can wrap up
18 the line of questioning that I'm on.

19 Is that acceptable to you?

20 A. Yes.

21 Q. I have --

22 A. My only -- if I have -- if I have to
23 visit the restroom.

24 Q. Okay. Well, that's fine. You can
25 certainly -- we'll take breaks for you to do

1 that. If you'll just let me know five minutes
2 ahead of time, that would be great.

3 A. Okay.

4 Q. I've placed in front of you several
5 exhibits, and I'd like to call your attention to
6 the two Papanikolopoulos declarations. You may
7 find those at the bottom.

8 A. Sure.

9 Q. Let's look first at the
10 Papanikolopoulos declaration submitted with
11 respect to the '236 patent, please.

12 A. Sure.

13 Q. Do you have that in front of you?

14 A. Yes.

15 Q. Do you recognize that exhibit?

16 A. Yes, I do.

17 Q. Is that a true and correct copy of
18 the declaration that you submitted in the
19 2013-00062 matter?

20 A. Yes.

21 Q. If you look on page 31 of the
22 declaration we've been discussing, there's a
23 signature there.

24 Do you see that?

25 A. Yes.

1 Q. Is that your signature?
 2 A. Yes, it is.
 3 Q. And a statement above your signature
 4 indicates that it was -- the declaration was
 5 submitted subject to penalty of perjury; is that
 6 correct?
 7 A. Yes.
 8 Q. And this declaration was submitted on
 9 October 27th, 2013 or signed I should say on
 10 October 27th, 2013; is that correct?
 11 A. Yes.
 12 Q. If I refer to this declaration, which
 13 is marked as Exhibit 1132 in IPR2013-00062, as
 14 the Papanikolopoulos '236 declaration, will you
 15 understand what I mean?
 16 A. Yes.
 17 Q. Let's take a look now at the other
 18 declaration.
 19 I'm referring to the '557 patent
 20 declaration submitted in IPR2013-00074 and also
 21 marked as Exhibit 1132.
 22 Do you see that?
 23 A. Yes.
 24 Q. If I refer to this exhibit as the
 25 Papanikolopoulos '557 declaration, will you

1 understand what I mean?
 2 A. Yes.
 3 Q. Turning again to page 31, is that
 4 your signature on the '557 -- strike that.
 5 Is that your signature on the
 6 Papanikolopoulos '557 declaration?
 7 A. Yes, it is.
 8 Q. And this declaration was also
 9 submitted subject to penalty of perjury,
 10 correct?
 11 A. Yes.
 12 Q. To your knowledge, is the
 13 Papanikolopoulos '557 declaration a true and
 14 correct copy of the declaration that you
 15 submitted?
 16 A. Yes, it is.
 17 Q. Let me ask: Other than the fact that
 18 the Papanikolopoulos '236 declaration relates to
 19 the '236 patent and the Papanikolopoulos '557
 20 declaration relates to the '557 patent, what
 21 substantive differences exist between these two
 22 declarations?
 23 A. I'm addressing the different claims.
 24 So in particular, claim -- the '236
 25 includes Claims 1 to 10. The other one includes

1 the -- let's make sure that they have the -- 16
 2 to 30 and 46, 59.
 3 Q. Other than that difference, that
 4 they're directed to claims in different patents,
 5 what other differences exist between those two
 6 declarations?
 7 A. Can you clarify your question?
 8 I mean with respect to what, the
 9 prior art, my analyses?
 10 Q. Well, that's exactly what I'm getting
 11 at. I'd like to, as much as possible, not
 12 duplicate my questioning for one declaration
 13 with respect to the other declaration, and so
 14 I'm just trying to establish that other than the
 15 fact that they address different patents, the
 16 substance of those two declarations is similar?
 17 A. Based on the assumption -- so that
 18 the core is quite similar. There are some
 19 additional -- the board has provided some
 20 additional guidance with respect to the
 21 obviousness analysis that I conducted and the
 22 patentability analysis.
 23 So although you're going to find my
 24 analysis of Stewart, Gertz, and Morrow to be
 25 very similar, I have to tie this to different

1 references as guided by the -- the board.
 2 Q. And so I want to make certain that I
 3 understood what you said.
 4 The substance of the declarations is
 5 very similar, except that they differ with
 6 respect to your obviousness analysis in certain
 7 respects?
 8 Is that correct?
 9 A. In certain respects. And -- and,
 10 again, I will ask you to clarify this because in
 11 my declarations, both I say what I have been
 12 asked to do, so they are -- let me give you one
 13 example.
 14 The HB86 reference doesn't exist in
 15 both of them, so my analysis in one includes the
 16 HB86, which has not been addressed by Dr.
 17 Stewart, but the other doesn't.
 18 So this is the type of differences
 19 that I see, but the overall scope and I will say
 20 the core is very similar.
 21 Q. You're here today testifying on
 22 behalf of ABB, correct?
 23 A. Yes.
 24 Q. When were you first contacted by ABB?
 25 A. September 13.

1 Q. Of 2013, is that correct?
 2 A. Yes.
 3 Q. Who contacted you?
 4 A. Mr. Robert Nupp.
 5 Q. Are you aware that ABB attempted to
 6 retain Dr. Stewart in these matters?
 7 A. Yes.
 8 Q. Do you have an understanding as to
 9 whether or not ABB was successful in retaining
 10 Dr. Stewart in these matters?
 11 A. I have no direct knowledge.
 12 Q. Do you have any relationships with
 13 ABB?
 14 A. No, except I'm vice president for
 15 conferences for IEEE. It's a volunteer
 16 organization of electrical and electronic
 17 engineers. So at one of the conferences that I
 18 organized in town, a division of ABB donated
 19 funds actually in order to have a banner, but
 20 this was conducted by the treasurer of the con-
 21 -- of the conference, so this is my only --
 22 Q. Is that your only relationship with
 23 ABB?
 24 A. To the best of my knowledge.
 25 Q. Are any of your students employed by

1 ABB?
 2 A. I have no direct knowledge of this.
 3 Q. Have you previously served as a
 4 testifying expert in any other matter?
 5 A. Yes.
 6 Q. In which matter did you serve as a
 7 testifying expert?
 8 A. It's an ongoing cases -- case, Toyota
 9 against American Vehicular Systems.
 10 Q. Is that a patent infringement case?
 11 A. Yes.
 12 Q. You've not been deposed yet in that
 13 case, correct?
 14 A. Yes.
 15 Q. You have been deposed?
 16 A. No, I haven't.
 17 Q. In preparing for your deposition
 18 today, did you review your declarations?
 19 A. Yes.
 20 Q. Did you locate any errors in those
 21 declarations?
 22 A. I located some margin issues.
 23 Q. Margin issues?
 24 A. Like, for example, the headings.
 25 Q. Oh.

1 A. Some of the headings, actually they
 2 have been a few spaces on the left.
 3 Q. You're a perfectionist, aren't you?
 4 A. To the best of my abilities.
 5 Q. Yes. Other than typographical
 6 errors, did you notice any errors in your report
 7 -- in your declarations when you reviewed them
 8 in preparation for your deposition today?
 9 A. To the best of my knowledge, no.
 10 Q. Would you please look at the other
 11 three Exhibits?
 12 You can close the two declarations
 13 now.
 14 I've placed three other Exhibits in
 15 front of you.
 16 Actually, before we -- before we get
 17 to those, let me ask you: If I refer to United
 18 States Patent Number 6,516,236 as the '236
 19 patent, will you understand what I mean?
 20 A. Yes.
 21 Q. If I refer to United States Patent
 22 Number 8,073,557 as the '557 patent, will you
 23 understand what I mean?
 24 A. Yes.
 25 Q. If you now look at those other three

1 Exhibits, first one I'd ask you to look at is a
 2 document titled a Visual Programming Environment
 3 For Real-Time Control Systems.
 4 That bears Exhibit Number 1002,
 5 correct?
 6 A. Yes.
 7 Q. And that is a Ph.D. thesis by Matthew
 8 Wayne Gertz, correct?
 9 A. Yes.
 10 Q. If I refer to that document today as
 11 the Gertz reference, will you understand what I
 12 mean?
 13 A. Yes, I do.
 14 Q. You were in Professor Khosla's lab,
 15 the same lab that Dr. Gertz obtained his Ph.D.
 16 from, correct?
 17 A. Yes.
 18 Q. When did you complete your work in
 19 Dr. Khosla's lab?
 20 A. 1992, August.
 21 Q. So you were no longer in Dr. Khosla's
 22 lab at the time that Dr. Gertz authored his
 23 Ph.D. thesis, correct?
 24 A. Can you clarify this?
 25 Q. Yes. The -- the Ph.D. thesis

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