

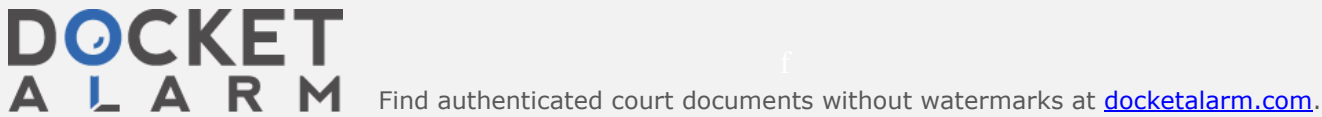
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

SkyHawke Technologies, §	
LLC, §	
	§
Petitioner §	Case IPR 2014-00437
	§ Case IPR 2014-00438
VS. §	
	§
L&H Concepts, Inc., §	Patent 5,779,566
	§
Patent Owner §	
_____ §	

DEPOSITION OF PETER S. WILENS
Austin, Texas
Wednesday, February 18, 2015

Reported by:
MICHEAL A. JOHNSON, RMR, CRR
JOB NO. 90457



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

February 18, 2015
8:59 a.m.

Deposition of PETER S. WILENS, held at the offices of Fish & Richardson, 111 Congress Avenue, Suite 810, Austin, Texas, pursuant to Agreement before Micheal A. Johnson, a Registered Merit Reporter, Certified Realtime Reporter, and Notary Public of the State of Texas.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S
OBLON McCLELLAND MAIER & NEUSTADT
Attorney for Petitioner
1940 Duke Street
Alexandria, Virginia 22314
BY: Thomas Fisher, ESQ.

FISH & RICHARDSON
Attorney for Patent Owner
111 Congress Avenue
Austin, Texas 78701
BY: David Morris, ESQ.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WILENS - 2/18/15V
P R O C E E D I N G S
PETER S. WILENS

called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION

BY MR. FISHER:

Q. Good morning.

A. Good morning.

Q. Can you please state your name for the record.

A. Peter Stephen Wilens.

Q. And give me your address, please.

A. 2331 Cheswick Drive, Troy, Michigan 48084.

Q. Are you being represented by counsel today?

A. I am.

Q. Have you retained Fish & Richardson to represent you?

A. I have.

Q. Do you have any prior deposition experience?

A. One time.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WILENS - 2/18/15V

Q. And when was that?

A. That was right around the year 2000.

Q. What were the circumstances then?

A. It was a -- between -- the company -- I worked for Firepond at that point, and it was between Firepond and General Motors. They had a contractual dispute and I was called in, you know, as part of that dispute.

Q. You were a fact witness?

A. I was.

Q. Was it a litigation?

A. It was a litigation.

Q. Did it relate to patents in any way?

A. No.

Q. What issues did you testify about?

A. The -- it was collecting background information. It was basically about whether the contract was rightfully terminated. Essentially Firepond terminated the contract with GM and so GM basically was asking questions about the circumstances of the

2 (Pages 2 to 5)

1 WILENS - 2/18/15V
 2 termination and what led up to the termination
 3 of the contract. So they were asking, you
 4 know, for factual information related to that.
 5 Q. And what was the outcome?
 6 A. The outcome --
 7 Q. Just high level.
 8 A. GM wrote a big check to Firepond.
 9 Q. All right. So you know the general
 10 framework of the deposition. I'm going to ask
 11 a series of questions. You need to give
 12 counsel time to object and then give me clear
 13 answers. The court reporter is taking
 14 everything down, so you have to make sure you
 15 verbalize everything. Nods and waves of the
 16 hands don't show up. You understand that?
 17 A. I do understand that.
 18 Q. And I would ask if you don't
 19 understand a question, ask me for
 20 clarification and I'll try to give you a
 21 better question. Okay?
 22 A. Okay.
 23 Q. But if you do answer, I will
 24 understand that to mean that you understood
 25 the question and that that was your answer.

1 WILENS - 2/18/15V
 2 Q. Vanden Heuvel?
 3 A. Yeah. Osamu and Palmer.
 4 Q. Anything else?
 5 A. The declarations.
 6 Q. Whose declarations?
 7 A. The Peter Wilens declaration.
 8 Q. Just yours?
 9 A. Yes.
 10 Q. Did you meet with anyone?
 11 A. Yes.
 12 Q. Who?
 13 A. I met with David Morris and David
 14 Hoffman.
 15 Q. When was that?
 16 A. Yesterday.
 17 Q. For how long?
 18 A. A couple of hours.
 19 Q. Any conversations on the phone
 20 beforehand?
 21 A. We had conversations, you know,
 22 beforehand, yes.
 23 Q. When would that have been?
 24 A. Primarily, you know, a few months
 25 ago. The majority a couple of months ago.

1 WILENS - 2/18/15V
 2 A. I understand.
 3 Q. We can take a break whenever you
 4 want. I just ask that we not take a break
 5 when there's a question pending.
 6 A. Okay.
 7 Q. I will try to take a break about
 8 every hour or so.
 9 (Discussion Off The Record.)
 10 MR. MORRIS: Let's go off the
 11 record for a moment.
 12 (Recess Taken From 9:02 a.m. To
 13 9:03 a.m.)
 14 BY MR. FISHER:
 15 Q. What did you do to prepare for your
 16 deposition today?
 17 A. I, you know, essentially just
 18 looked over the declarations and some of the
 19 other documents just brief -- quickly briefed
 20 over, you know, some of the items that were
 21 listed in the declaration.
 22 Q. What documents did you review?
 23 A. Some of the patents.
 24 Q. Which?
 25 A. The Vanden -- Vander --

1 WILENS - 2/18/15V
 2 Q. Before you prepared your
 3 declaration or after?
 4 A. This is before I, you know,
 5 prepared -- let's see. Before I actually put
 6 my declaration together. It was sort of in --
 7 you know, right around that time frame.
 8 Q. And nothing in between the time --
 9 A. A call here, a call there.
 10 Q. Did you speak with anyone else
 11 about your deposition?
 12 A. Did I speak with anybody else? My
 13 wife knows that I'm here for that reason, so I
 14 had to explain to my wife why I was out of
 15 town for two days. I don't think she would
 16 appreciate not knowing.
 17 Q. What about Mr. Ball?
 18 A. Mister --
 19 Q. Ball. Do you know Mr. Ball?
 20 A. I don't know Mr. Ball.
 21 Q. Other than what you've just stated,
 22 have you done anything else to prepare for
 23 your deposition?
 24 A. Not that -- materially, you know, I
 25 would say -- I had -- well, I've looked at all

1 WILENS - 2/18/15V
 2 those documents within the declaration, so if
 3 you include, you know, the other documents
 4 above and beyond the patents, I've looked at
 5 those. I've scanned through those.
 6 Q. The ones that are listed in your
 7 declaration.
 8 A. The ones that are listed in the
 9 declaration, that's correct.
 10 Q. Did you review the '566 patent
 11 prior to this deposition?
 12 A. Briefly, yes. I didn't read it
 13 word for word.
 14 Q. Can you give me a brief summary of
 15 your background after high school, educational
 16 background.
 17 A. Sure. I went to the University of
 18 Michigan and picked up a degree in computer
 19 science and, you know, completed that degree.
 20 And later picked up -- at night school, picked
 21 up an MBA in finance from Wayne State
 22 University.
 23 Q. When did you get your bachelor's
 24 degree from University of Michigan?
 25 A. Would have been 1977.

1 WILENS - 2/18/15V
 2 Q. And when did you get your MBA?
 3 A. I believe it was like '82 -- you
 4 know, '81, '82, in that time frame.
 5 Q. No other formal education?
 6 A. In terms of degrees -- a lot of
 7 seminars, you know, that were taught by the
 8 consulting firms that I worked for, you know,
 9 a number of those, but in terms of additional
 10 degrees, no.
 11 Q. No other formal coursework at a
 12 university level?
 13 A. No.
 14 Q. All right. Can you walk me through
 15 your professional career after graduating from
 16 University of Michigan.
 17 A. Sure. Do you want --
 18 Q. It doesn't have to be very
 19 detailed.
 20 A. Okay. Sort of high level?
 21 Q. High level.
 22 A. Yeah. I worked for GM for about
 23 six years in the IT department as a developer.
 24 Jumped to PricewaterhouseCoopers, you know, in
 25 their IT consulting division, was there for

1 WILENS - 2/18/15V
 2 about six years. And then, you know, from
 3 there, you know, essentially did some
 4 independent things, jumped to -- you know, I
 5 worked for a number of different companies,
 6 but after that went to FTD, you know, worked
 7 for FTD for a while as their corporate
 8 planner. They were big into IT.
 9 Jumped from there to EDS/AT
 10 Kearney, you know, once again in IT
 11 consulting. Actually did a little bit of
 12 automotive consulting. Went from there to
 13 Firepond, which was a software startup in
 14 software configuration software.
 15 After Firepond started with a
 16 number of other guys, Cellium Group, which was
 17 a consulting firm, IT consulting firm, did
 18 that for about six years. And then, you know,
 19 from there jumped to -- tell you when you
 20 think through -- I'm 59, so it's just a lot of
 21 different jumps. But I went to work for Henry
 22 Ford -- well, actually it was Computer Science
 23 Corporation for about three years, and then,
 24 you know, essentially jumped from there, you
 25 know, to sort of what I'm doing today, sort

1 WILENS - 2/18/15V
 2 of -- actually, I'm -- Compuware was the next
 3 one, and then right now I'm doing contracting
 4 work with a group called the Stowe Group.
 5 Q. I'm sorry, you -- what did you say
 6 about X one?
 7 A. X one?
 8 Q. I didn't catch -- hold on a second.
 9 I'm copy X one --
 10 A. Copy X --
 11 Q. I didn't understand what you said
 12 about what you're doing currently.
 13 A. Currently -- okay. Yeah. So
 14 basically I'm working as a contractor for the
 15 Stowe Group.
 16 Q. For the Stowe Group. Who is the
 17 Stowe Group?
 18 A. They're a healthcare consulting
 19 company out of Boston, Massachusetts.
 20 Q. And when did you begin there?
 21 A. It was -- it would've been
 22 October 22nd, I believe it was, of last year.
 23 Q. 2014?
 24 A. Yeah.
 25 Q. Have you had similar positions

1 WILENS - 2/18/15V
 2 throughout your professional career?
 3 MR. MORRIS: Objection, form.
 4 BY MR. FISHER:
 5 Q. What do you do? What is your --
 6 what have your jobs been?
 7 A. It's IT. I'm an IT guy. I mean,
 8 if you had to go through and look at my
 9 background, at a very summary level, I've been
 10 in IT virtually all of my life.
 11 Now, I've worked in two or three
 12 different industries: I've worked in the
 13 software industry, you know, I -- if you had
 14 to pick a primary industry, software would be,
 15 you know, a big one, health care would be
 16 another one and automotive would be another
 17 one. Now, I've done spatterings in other
 18 industries, but if you had to classify me, it
 19 would be an IT person who has worked in those
 20 three areas.
 21 Q. Do you do any software development?
 22 A. Most -- a lot of my projects -- at
 23 this point in my life I don't write software.
 24 I had software where we either developed
 25 software -- custom developed software or we

1 WILENS - 2/18/15V
 2 install over-the-counter packages called COTS.
 3 So, yes, I am involved in software
 4 development.
 5 Q. What type of software development?
 6 A. Well, this -- I mean, software
 7 development -- well, for the software
 8 companies, for example, we have to add new
 9 features to the current products that we have.
 10 When I was working for Compuware, for example,
 11 it's -- was -- the software did not meet the
 12 full needs of the customer, yet in the
 13 contract form it was promised and they knew
 14 that they were going to have to invest in
 15 certain new modules so I would oversee the
 16 development of certain software modules, you
 17 know, until they were properly implemented and
 18 see it -- you know, implement it at the
 19 customer sites. So that sort of -- at a
 20 manager level, but I didn't actually develop
 21 the software. But I -- you know, that's not
 22 to say I didn't look -- I look it over very
 23 carefully, make sure it's tested very
 24 carefully, you know, make sure that it meets
 25 the needs of the customer.

1 WILENS - 2/18/15V
 2 Q. Did you ever do software
 3 development yourself?
 4 A. I did.
 5 Q. What type?
 6 A. At General Motors, you know,
 7 essentially it involved a lot of basically
 8 custom design work for logistical systems,
 9 distribution systems. So it was -- you know,
 10 that's where I did a lot. At Pricewaterhouse
 11 it was warehouse systems, you know, a number
 12 of warehouse systems, some defense logistic
 13 agency systems. Just thinking beyond Price
 14 Waters -- Pricewaterhouse is probably where I
 15 stopped most of my development. But it --
 16 basically, business systems, a lot of business
 17 systems if you had to categorize it.
 18 Q. Did you develop any graphical user
 19 interfaces?
 20 A. Just by definition, you know, when
 21 you're developing those systems, you're --
 22 often you're developing screens at those
 23 times. So I would say every stage, yes, you
 24 know, you were always -- you had a batch
 25 process, but you always had screens to enter

1 WILENS - 2/18/15V
 2 data.
 3 Q. Were these like database screens?
 4 MR. MORRIS: Objection, form.
 5 A. When you say -- when you say
 6 "database screens," can you clarify?
 7 BY MR. FISHER:
 8 Q. Well, you tell me. Were these
 9 menu-based screens? Were they graphical
 10 screens? Were they Windows-based screens?
 11 A. Yeah, they weren't -- okay. These
 12 were -- yeah, these weren't what you would
 13 think of as like graphical -- GUIs, for
 14 instance. GUIs didn't exist back then, you
 15 know. It would have been nice had they
 16 existed. They were basically static field
 17 entry screens where you would have a screen
 18 and you would actually have to enter data into
 19 each of the screens.
 20 Q. Were they typically menu-driven
 21 systems?
 22 A. There were a number of menu -- you
 23 had menus that would -- you would select a
 24 choice and it would take you to a screen. So
 25 that's -- that was very common.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.