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Page 1
1
       UNITED STATES PATENT AND TRADEMARK OFFICE
        BEFORE THE PATENT TRIAL AND APPEAL BOARD
2
     SkyHawke Technologies, §
3
    LLC,
                             §
                             §
4
              Petitioner
                             § Case IPR 2014-00437
                                 Case IPR 2014-00438
                             §
5
    VS.
                             §
                             §
б
     L&H Concepts, Inc., § Patent 5,779,566
                             §
7
              Patent Owner §
                            _ §
8
9
10
11
12
13
             DEPOSITION OF PETER S. WILENS
14
                      Austin, Texas
15
              Wednesday, February 18, 2015
16
17
18
19
20
21
22
    Reported by:
23
    MICHEAL A. JOHNSON, RMR, CRR
24
     JOB NO. 90457
25
```

TSG Reporting - Worldwide 877-702-9580

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	Page 2		Page 3
1		1	A P P E A R A N C E S
2		2	OBLON McCLELLAND MAIER & NEUSTADT
3	February 18, 2015	3	Attorney for Petitioner
4	8:59 a.m.	4	1940 Duke Street
5		5	Alexandria, Virginia 22314
6		6	BY: Thomas Fisher, ESQ.
7	Deposition of PETER S. WILENS, held at the	7	211 110111011010, 20 Q.
8	offices of Fish & Richardson, 111	8	
9	Congress Avenue, Suite 810, Austin, Texas,	9	FISH & RICHARDSON
10	pursuant to Agreement before Micheal A.	10	Attorney for Patent Owner
11	Johnson, a Registered Merit Reporter,	11	111 Congress Avenue
12	Certified Realtime Reporter, and Notary Public	12	Austin, Texas 78701
13	of the State of Texas.	13	BY: David Morris, ESQ.
14		14	
15		15	
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21		21	
22		22	
23		23	
24		24	
25		25	
	Page 4		Page 5
1	WILENS - 2/18/15V	1	WILENS - 2/18/15V
2	PROCEEDINGS	2	Q. And when was that?
3	PETER S. WILENS	3	A. That was right around the
4	called as a witness, having been duly sworn by	4	year 2000.
5	a Notary Public, was examined and testified as	5	Q. What were the circumstances then?
6	follows:		Q. What were the chedilistances then:
-		6	A. It was a between the
7	EXAMINATION	6 7	
8	EXAMINATION BY MR. FISHER:		A. It was a between the
		7 8 9	A. It was a between the company I worked for Firepond at that
8 9 10	BY MR. FISHER: Q. Good morning. A. Good morning.	7 8 9 10	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
8 9 10 11	BY MR. FISHER:Q. Good morning.A. Good morning.Q. Can you please state your name for	7 8 9 10 11	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.
8 9 10 11 12	BY MR. FISHER:Q. Good morning.A. Good morning.Q. Can you please state your name for the record.	7 8 9 10 11 12	 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?
8 9 10 11 12 13	BY MR. FISHER:Q. Good morning.A. Good morning.Q. Can you please state your name for the record.A. Peter Stephen Wilens.	7 8 9 10 11 12 13	 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.
8 9 10 11 12 13 14	 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. 	7 8 9 10 11 12 13 14	 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?
8 9 10 11 12 13 14 15	 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 	7 8 9 10 11 12 13 14 15	 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.
8 9 10 11 12 13 14 15 16	 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. 	7 8 9 10 11 12 13 14 15 16	 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
8 9 10 11 12 13 14 15 16 17	 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 	7 8 9 10 11 12 13 14 15 16 17	 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?
8 9 10 11 12 13 14 15 16 17 18	 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? 	7 8 9 10 11 12 13 14 15 16 17 18	 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.
8 9 10 11 12 13 14 15 16 17 18 19	 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. 	7 8 9 10 11 12 13 14 15 16 17 18 19	 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?
8 9 10 11 12 13 14 15 16 17 18 19 20	 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 	7 8 9 10 11 12 13 14 15 16 17 18 19 20	 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
8 9 10 11 12 13 14 15 16 17 18 19 20 21	 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? 	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	 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
8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 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. 	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 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 rightfully terminated.
8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 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 	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 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
8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 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. 	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 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 rightfully terminated.

2 (Pages 2 to 5)

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1 2 3 4 5 6 7 8 9 10 11	WILENS - 2/18/15V termination and what led up to the termination of the contract. So they were asking, you know, for factual information related to that. Q. And what was the outcome? A. The outcome Q. Just high level.	1 2 3 4	WILENS - 2/18/15VA. I understand.Q. We can take a break whenever you
3 4 5 6 7 8 9 10 11	of the contract. So they were asking, you know, for factual information related to that. Q. And what was the outcome? A. The outcome Q. Just high level.	3 4	Q. We can take a break whenever you
4 5 7 8 9 10 11	of the contract. So they were asking, you know, for factual information related to that. Q. And what was the outcome? A. The outcome Q. Just high level.	4	
5 6 7 8 9 10 11	know, for factual information related to that.Q. And what was the outcome?A. The outcomeQ. Just high level.	1	
6 7 8 9 10 11	Q. And what was the outcome?A. The outcomeQ. Just high level.	1	want. I just ask that we not take a break
7 8 9 10 11	A. The outcomeQ. Just high level.	5	when there's a question pending.
8 9 10 11	Q. Just high level.	6	A. Okay.
9 10 11		7	Q. I will try to take a break about
9 10 11	A (M wrote a big check to Hirepond	8	every hour or so.
10 11	A. GM wrote a big check to Firepond.Q. All right. So you know the general	9	(Discussion Off The Record.)
11		10	
	framework of the deposition. I'm going to ask a series of questions. You need to give	11	MR. MORRIS: Let's go off the record for a moment.
12		12	
	counsel time to object and then give me clear		(Recess Taken From 9:02 a.m. To
13	answers. The court reporter is taking	13	9:03 a.m.)
14	everything down, so you have to make sure you	14	BY MR. FISHER:
15	verbalize everything. Nods and waves of the	15	Q. What did you do to prepare for yo
16	hands don't show up. You understand that?	16	deposition today?
17	A. I do understand that.	17	A. I, you know, essentially just
18	Q. And I would ask if you don't	18	looked over the declarations and some of t
19	understand a question, ask me for	19	other documents just brief quickly brief
20	clarification and I'll try to give you a	20	over, you know, some of the items that we
21	better question. Okay?	21	listed in the declaration.
22	A. Okay.	22	Q. What documents did you review?
23	Q. But if you do answer, I will	23	A. Some of the patents.
24	understand that to mean that you understood	24	Q. Which?
25	the question and that that was your answer.	25	A. The Vanden Vander
	1		
	Page 8		Page
1	WILENS - 2/18/15V	1	WILENS - 2/18/15V
2	Q. Vanden Heuvel?	2	Q. Before you prepared your
3	A. Yeah. Osamu and Palmer.	3	declaration or after?
4	Q. Anything else?	4	A. This is before I, you know,
5	A. The declarations.	5	prepared let's see. Before I actually put
6	Q. Whose declarations?	6	my declaration together. It was sort of in
7	A. The Peter Wilens declaration.	7	you know, right around that time frame.
8	Q. Just yours?	8	Q. And nothing in between the time -
9	A. Yes.	9	A. A call here, a call there.
10	Q. Did you meet with anyone?	10	Q. Did you speak with anyone else
11		11	about your deposition?
12	A. Yes. Q. Who?	12	
13	-	13	A. Did I speak with anybody else? M
	A. I met with David Morris and David		wife knows that I'm here for that reason, so
14	Hoffman.	14	had to explain to my wife why I was out o
15	Q. When was that?	15	town for two days. I don't think she would
16	A. Yesterday.	16	appreciate not knowing.
17	Q. For how long?	17	Q. What about Mr. Ball?
18	A. A couple of hours.	18	A. Mister
19	Q. Any conversations on the phone	19	Q. Ball. Do you know Mr. Ball?
20	beforehand?	20	A. I don't know Mr. Ball.
21	A. We had conversations, you know,	21	Q. Other than what you've just stated
22	beforehand, yes.	22	have you done anything else to prepare for
23	Q. When would that have been?	23	your deposition?
24	A. Primarily, you know, a few months	24	A. Not that materially, you know, l
25	ago. The majority a couple of months ago.	25	would say I had well, I've looked at a

3 (Pages 6 to 9)

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	Page 10		Page 11
1	WILENS - 2/18/15V	1	WILENS - 2/18/15V
2	those documents within the declaration, so if	2	Q. And when did you get your MBA?
3	you include, you know, the other documents	3	A. I believe it was like '82 you
4	above and beyond the patents, I've looked at	4	know, '81, '82, in that time frame.
5	those. I've scanned through those.	5	Q. No other formal education?
6	Q. The ones that are listed in your	6	A. In terms of degrees a lot of
7	declaration.	7	seminars, you know, that were taught by the
8	A. The ones that are listed in the	8	consulting firms that I worked for, you know,
9	declaration, that's correct.	9	a number of those, but in terms of additional
10	Q. Did you review the '566 patent	10	degrees, no.
11	prior to this deposition?	11	Q. No other formal coursework at a
12	A. Briefly, yes. I didn't read it	12	university level?
13	word for word.	13	A. No.
14	Q. Can you give me a brief summary of	14	Q. All right. Can you walk me through
15	your background after high school, educational	15	your professional career after graduating from
16	background.	16	University of Michigan.
17	A. Sure. I went to the University of	17	A. Sure. Do you want
18	Michigan and picked up a degree in computer	18	Q. It doesn't have to be very
19	science and, you know, completed that degree.	19	detailed.
20	And later picked up at night school, picked	20	A. Okay. Sort of high level?
21	up an MBA in finance from Wayne State	21	Q. High level.
22	University.	22	A. Yeah. I worked for GM for about
23	Q. When did you get your bachelor's	23	six years in the IT department as a developer.
24	degree from University of Michigan?	24	Jumped to PricewaterhouseCoopers, you know, in
25	A. Would have been 1977.	25	their IT consulting division, was there for
	Page 12		Page 13

	-		-
1	WILENS - 2/18/15V	1	WILENS - 2/18/15V
2	about six years. And then, you know, from	2	of actually, I'm Compuware was the next
3	there, you know, essentially did some	3	one, and then right now I'm doing contracting
4	independent things, jumped to you know, I	4	work with a group called the Stowe Group.
5	worked for a number of different companies,	5	Q. I'm sorry, you what did you say
6	but after that went to FTD, you know, worked	6	about X one?
7	for FTD for a while as their corporate	7	A. X one?
8	planner. They were big into IT.	8	Q. I didn't catch hold on a second.
9	Jumped from there to EDS/AT	9	I'm copy X one
10	Kearney, you know, once again in IT	10	А. Сору Х
11	consulting. Actually did a little bit of	11	Q. I didn't understand what you said
12	automotive consulting. Went from there to	12	about what you're doing currently.
13	Firepond, which was a software startup in	13	A. Currently okay. Yeah. So
14	software configuration software.	14	basically I'm working as a contractor for the
15	After Firepond started with a	15	Stowe Group.
16	number of other guys, Cellium Group, which was	16	Q. For the Stowe Group. Who is the
17	a consulting firm, IT consulting firm, did	17	Stowe Group?
18	that for about six years. And then, you know,	18	A. They're a healthcare consulting
19	from there jumped to tell you when you	19	company out of Boston, Massachusetts.
20	think through I'm 59, so it's just a lot of	20	Q. And when did you begin there?
21	different jumps. But I went to work for Henry	21	A. It was it would've been
22	Ford well, actually it was Computer Science	22	October 22nd, I believe it was, of last year.
23	Corporation for about three years, and then,	23	Q. 2014?
24	you know, essentially jumped from there, you	24	A. Yeah.
25	know, to sort of what I'm doing today, sort	25	Q. Have you had similar positions

4 (Pages 10 to 13)

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	Page 14		Page
1	WILENS - 2/18/15V	1	WILENS - 2/18/15V
2	throughout your professional career?	2	install over-the-counter packages called COT
3	MR. MORRIS: Objection, form.	3	So, yes, I am involved in software
4	BY MR. FISHER:	4	development.
5	Q. What do you do? What is your	5	Q. What type of software development?
6	what have your jobs been?	6	A. Well, this I mean, software
7	A. It's IT. I'm an IT guy. I mean,	7	development well, for the software
8	if you had to go through and look at my	8	companies, for example, we have to add new
9	background, at a very summary level, I've been	9	features to the current products that we have.
10	in IT virtually all of my life.	10	When I was working for Compuware, for exa
11	Now, I've worked in two or three	11	it's was the software did not meet the
12	different industries: I've worked in the	12	full needs of the customer, yet in the
13	software industry, you know, I if you had	13	contract form it was promised and they knew
14	to pick a primary industry, software would be,	14	that they were going to have to invest in
15	you know, a big one, health care would be	15	certain new modules so I would oversee the
16	another one and automotive would be another	16	development of certain software modules, you
17	one. Now, I've done spatterings in other	17	know, until they were properly implemented
18	industries, but if you had to classify me, it	18	see it you know, implement it at the
19	would be an IT person who has worked in those	19	customer sites. So that sort of at a
20	three areas.	20	manager level, but I didn't actually develop
21	Q. Do you do any software development?	21	the software. But I you know, that's not
22	A. Most a lot of my projects at	22	to say I didn't look I look it over very
23	this point in my life I don't write software.	23	carefully, make sure it's tested very
24	I had software where we either developed	24	carefully, you know, make sure that it meets
25	software custom developed software or we	25	the needs of the customer.
	Page 16		Page
1	WILENS - 2/18/15V	1	WILENS - 2/18/15V
2	Q. Did you ever do software	2	data.
3	development yourself?	3	Q. Were these like database screens?
4	A. I did.	4	MR. MORRIS: Objection, form.
5	Q. What type?	5	A. When you say when you say
6	A. At General Motors, you know,	6	"database screens," can you clarify?
7	essentially it involved a lot of basically	7	BY MR. FISHER:
8	custom design work for logistical systems,	8	Q. Well, you tell me. Were these
9	distribution systems. So it was you know,	9	menu-based screens? Were they graphica
10	that's where I did a lot. At Pricewaterhouse	10	screens? Were they Windows-based scre
11	it was warehouse systems, you know, a number	11	A. Yeah, they weren't okay. Thes
12	of warehouse systems, some defense logistic	12	were yeah, these weren't what you wou
13	agency systems. Just thinking beyond Price	13	think of as like graphical GUIs, for
14	Waters Pricewaterhouse is probably where I	14	instance. GUIs didn't exist back then, you
15	stopped most of my development. But it	15	know. It would have been nice had they
16	basically, business systems, a lot of business	16	existed. They were basically static field
17	systems if you had to categorize it.	17	entry screens where you would have a scr
18	Q. Did you develop any graphical user	18	and you would actually have to enter data
19	interfaces?	19	each of the screens.
20	A. Just by definition, you know, when	20	Q. Were they typically menu-driven
21	you're developing those systems, you're	21	systems?
22	often you're developing screens at those	22	A. There were a number of menu
	times. So I would say every stage, yes, you	23	had menus that would you would select
23			jou noura beree
23 24	know, you were always you had a batch	24	choice and it would take you to a screen.

5 (Pages 14 to 17)

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