

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

GOOGLE INC.,  
SAMSUNG ELECTRONICS AMERICA, INC. AND  
SAMSUNG ELECTRONICS CO., LTD.  
Petitioners

v.

MICROGRAFX, LLC  
Patent Owner

---

Case IPR2014-00532  
Patent 5,959,633

---

**SECOND DECLARATION OF DR. ANSELMO LASTRA**

Mail Stop "PATENT BOARD"  
Patent Trial and Appeal Board  
U.S. Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-145

I, Dr. Anselmo Lastra, of Chapel Hill, NC, declare that:

## **INTRODUCTION**

1. On March 24, 2014, I provided an initial Declaration in the IPR2014-00532 proceeding. See GOOGLE1003 for IPR2014-00532. I provide this Second Declaration in response to statements made in the November 21, 2014 Patent Owner's Response and the accompanying November 21, 2014 Declaration of Garry Kitchen ("Kitchen Declaration") submitted in this proceeding. Also, in this Second Declaration, I respond to some of the technical errors and mischaracterizations of my prior testimony that are contained in the Patent Owner Response and/or the supporting Kitchen Declaration.

2. I have reviewed the '633 patent (GOOGLE1001) and its prosecution history (GOOGLE1002) from the view point of a person of ordinary skill in the art at the time of the filing of the '633 patent based on my experience as a computer programmer, researcher, and instructor in the areas of computer graphics, graphics hardware, computer architecture, 3D computer animation, image generation, and other subjects. Additionally, I have reviewed the following patents and publications:

- U.S. Patent No. 5,883,639 to Walton et al. ("Walton," GOOGLE1004);
- U.S. Patent No. 5,564,048 to Eick et al. ("Eick," GOOGLE1005);
- *Inside Visual C++, Second Edition: Version 1.5* by David J. Kruglinski, September 1, 1994 ("Kruglinski," GOOGLE1006)

- *The C++ Programming Language, Second Edition* by Bjarne Stroustrup, June 1993 (“Stroustrup,” GOOGLE1014)
- U.S. Patent No. 5,475,817 to Waldo et al. (“Waldo,” GOOGLE1019)

3. I also have reviewed the Petition for *Inter Partes* Review in the IPR2014-00532 proceeding, and my initial Declaration signed on March 24, 2014 (GOOGLE1003). I also have reviewed the August 12, 2014 Board Decision in this proceeding, the Patent Owner’s Response submitted on November 21, 2014, the accompanying Kitchen Declaration (Ex. 2005), the other accompanying exhibits (including Exhibit 2004 (transcript of my November 6, 2014 Deposition in this proceeding), and the transcript of the February 4, 2015 deposition of Mr. Kitchen (GOOGLE1012).

### **REPLY TO PATENT OWNER’S CLAIM INTERPRETATION ARGUMENTS**

4. On pages 9-12 of the Patent Owner’s Response, Patent Owner (Micrografx LLC) argues that the term “external shape stored outside the computer program” (claims 1 and 8) means “computer code stored outside the computer program *that can be developed and provided for use by the computer program without modifying the computer program.*” See also Ex. 2005 at ¶¶ 29-32. I find this proposed definition to be erroneous for three reasons: 1) the suggested requirement that an external shape be “provided for use by the computer program without modifying the computer program” is found nowhere in the claim language but is instead (at most) improperly imported from the ‘633 patent specification; 2)

the specification of the '633 patent does not include any lexicographic definition of the term "external shape" that requires that an external shape be "provided for use by the computer program without modifying the computer program"; and 3) this proposed interpretation includes no requirement that an "external shape" can be used to produce a shape or graphical image.

5. The Patent Owner's Response cites to Mr. Kitchen's declaration (e.g., ¶ 30) for purported support that this new phrase ("*provided for use by the computer program without modifying the computer program*") should be imported from the specification, but Mr. Kitchen's analysis is flawed and contrary to the broadest reasonable interpretation standard (refer to ¶ 21 of my first declaration) for a number of reasons. First, Mr. Kitchen's asserts that the phrase "external capabilities" in claims 1 and 8 somehow requires importation of the added phrase "an external shape [is] added to a computer program without modifying the existing program." See Ex. 2005 at ¶ 30. But, as indicated by the Petitioner and recognized by the Board, the '633 patent provides an express lexicographer definition for the term "external capabilities" as "computer code stored outside a computer program, comprising action methods, symbol methods, or any other functions, that allow the generation of information required to produce a graphical image." See Petition at 9; Institution Decision at 9; GOOGLE1001 at 3:30-67. Based on my analysis of the '633 patent and my knowledge and experience in this field, I believe that a person of ordinary skill in the art would have recognized that the claim phrase "external capabilities" is already defined by this above-

quoted sentence, and that importing the added requirement in which the “external shape [is] added to a computer program without modifying the existing program” is different from the express lexicographic definition and furthermore contrary to the broadest reasonable interpretation standard. Therefore, this assertion that the claim language indicating that external shapes include external capabilities somehow means that “an external shape [is] added to a computer program without modifying the existing program” is off base. A person of ordinary skill in the art at the time would have understood that there is no indication in the plain language of the claims that an external shape must be “provided for use by the computer program without modifying the computer program,” especially under the broadest reasonable interpretation standard.

6. Second, on pages 11-12 of the Patent Owner’s Response, Patent Owner argues that statements in the ‘633 patent specification such as “[t]he invention also provides an architecture that allows for the integration of additional shapes with an existing computer program without modifying that existing program” must be imported into the claims from the specification. See *also* Ex. 2005 at ¶¶ 29-32. Based on my analysis of the ‘633 patent and my knowledge and experience in this field, I note there are numerous other statements in the ‘633 patent specification describe what the “invention provides,” yet Patent Owner and Mr. Kitchen selected only one of these “invention provides” statements for importation into the claims while ignoring all others. See, *e.g.*, *Id.* at 2:1-3 (“the invention provides for the modular production of additional shapes.”); 1:60-63 (“The invention provides *several*

# 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.