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1 UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE PATENT TRIAL AND APPEAL BOARD
3 SONY COMPUTER ENTERTAINMENT AMERICA LLC
4 Petitioner
5 v.
6 APLIX IP HOLDINGS CORPORATION
7 Patent Owner
8 Case No. IPR2015-00229
9 Patent No. 7,667,692
10 Case No. IPR2015-00230
11 Patent No. 7,463,245
12 * * * * *

11 DEPOSITION OF: GREGORY WELCH
12 DATE: December 17, 2015
13 TIME: COMMENCED: 10:08 a.m.
14 CONCLUDED: 11:16 a.m.
15 TAKEN BY: Patent Owner
16 PLACE: Hyatt Regency Orlando International
17 Airport
18 9300 Jeff Fuqua Blvd
19 Orlando, Florida 32827
20 REPORTED BY: Mae Fisher, RMR, CRR

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9 E X H I B I T S
10 PETITIONER'S EXHIBITS
11 Exhibit 1063 - Article 37

14 S T I P U L A T I O N S
15 It is hereby stipulated and agreed by and
16 between counsel present for the respective parties, and
17 the deponent, that the reading and signing of the
18 deposition are hereby RESERVED.

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1 P R O C E E D I N G S
2 THE COURT REPORTER: Do you solemnly swear or
3 affirm that the testimony you are about to give in
4 this cause will be the truth, the whole truth, and
5 nothing but the truth?
6 THE WITNESS: I do.
7 GREGORY WELCH,
8 a witness herein, having been first duly sworn, was
9 examined, and testified as follows:
10 C R O S S - E X A M I N A T I O N
11 BY MR. GILBERTSON:
12 Q. Good morning, Dr. Welch.
13 A. Good morning.
14 Q. We are here for deposition on supplemental
15 declarations that you have submitted in IPR2015-00229
16 relating to the '692 patent and IPR2015-00230 relating
17 to the '245 patent. That's your understanding, right?
18 A. That's correct.
19 Q. I have some questions for you about those
20 supplemental declarations, and I want to show them to
21 you. Let me first ask, is there anything going on for
22 you today, such that it would be hard for you to give
23 accurate testimony?
24 A. No.
25 MR. GILBERTSON: Okay. Let's go off the record

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1 for a moment.

2 (A discussion off the record was held.)

3 BY MR. GILBERTSON:

4 Q. Let me show you what has been marked as

5 Exhibit 1042 in the '692 matter. Is this your

6 supplemental declaration in the '692 matter?

7 **A. I think you said -- did you say 1042? 1042 is**

8 **for the '245, I think.**

9 Q. I did misspeak. Sorry. Thank you.

10 **A. That's okay.**

11 Q. So let's start with the '692. In the '692

12 matter, is Exhibit 1041 your supplemental declaration?

13 **A. Yes. That's correct.**

14 Q. And on the last page of that declaration, is that

15 your signature?

16 **A. Yes, it is.**

17 Q. And in the '245 matter, is Exhibit 1042 your

18 supplemental declaration?

19 **A. Yes, it is.**

20 Q. And is that your signature on the last page of

21 Exhibit 1042?

22 **A. It is, yes.**

23 Q. And I understand that you may have a

24 clarification that we can get to in a bit relating to an

25 exhibit that you referred to in your '245 declaration;

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1 is that right?

2 **A. That's correct.**

3 Q. Is that Exhibit 2023?

4 **A. That's correct.**

5 Q. Okay. We will get to that one. Are there any

6 other errors or clarifications in either your '692

7 supplemental declaration or your '245 supplemental

8 declaration that you would like to tell me about?

9 **A. Not that I'm aware of now, no, thank you.**

10 Q. If you could turn, please, in your '245

11 declaration to paragraph 7.

12 **A. Okay.**

13 Q. This relates generally to delineated active

14 areas, how they're configured or designated. Do you

15 have paragraph 7 in front of you?

16 **A. I do, yes.**

17 Q. If you could turn -- it's a long paragraph -- if

18 you could turn to the second page of it toward the end.

19 **A. Okay.**

20 Q. Just for the benefit of the record, could you

21 read in live, or out loud, the last sentence of that

22 paragraph.

23 **A. The last sentence of paragraph 7 of 1042,**

24 **Exhibit 1042, is, Thus, Dr. MacLean's requirement that**

25 **each application must redefine spatial boundaries of the**

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1 **delineated active areas is not supported by the '245**

2 **patent specification and would also be contrary to the**

3 **basic understanding of a skilled artisan at the time of**

4 **the '245 patent.**

5 Q. Thank you. Is it your understanding that Dr.

6 MacLean's opinions include a requirement that each

7 application must redefine spatial boundaries of the

8 delineated active areas?

9 **A. I don't recall her, you know, overall opinions,**

10 **but that was in response to the statements she made in**

11 **her declaration that I cited at the beginning of**

12 **paragraph 2, so it's really just in response to those**

13 **specific comments.**

14 Q. Part of your understanding of her view is that in

15 her way of looking at it, there's a requirement that

16 each application must redefine spatial boundaries of the

17 delineated active areas?

18 MR. KEAN: Objection. Form.

19 THE WITNESS: So I'm -- it's in response to,

20 for example, the statement at the top of page 3, which

21 is in the middle of paragraph 2, where Dr. MacLean had

22 said, quote, Disclosure of '245's Claim 1 clearly

23 requires these delineations to be determined by the

24 application and its specific requirements, not by the

25 hardware or the operating system, close quote.

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1 BY MR. GILBERTSON:

2 Q. In the sentence at the end of paragraph 0007 of

3 your '245 declaration, when you use the term -- or the

4 words Dr. MacLean's requirement, what are you speaking

5 of?

6 **A. So, again, I'm referring back to just the**

7 **statements that she made, for example, as I outlined in**

8 **paragraph 2 of my declaration prior to that.**

9 Q. And part of your understanding of her statements

10 is that it would require that each application must

11 redefine spatial boundaries of the delineated active

12 areas?

13 MR. KEAN: Objection. Form.

14 THE WITNESS: I don't know about redefined. I

15 mean, I'm referring back to the statements that I

16 cited exactly as in paragraph 2, for example, so just

17 to those statements and those words.

18 BY MR. GILBERTSON:

19 Q. So what did you mean when you used the word

20 redefine in your last sentence of paragraph 0007 of your

21 '245 declaration?

22 **A. I don't recall exactly what I was thinking, but**

23 **looking back at paragraph 2, it could be that I was just**

24 **collectively referring to where Dr. MacLean says that**

25 **the application is required, quote, to specify the**

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1 spatial demarcations of the delineations according to
2 the application's specific needs. And then she also
3 says -- and that's from paragraph 87 of Exhibit 2003.
4 And then in the same exhibit, paragraph 90, where she
5 says, Claim 1 requires these delineations to be
6 determined by the application.
7 So sitting here right now, what I'm reading, and
8 again, I don't remember what I was thinking, but she
9 says the application has to determine it, the
10 demarcations, and has to specify them. And so I think
11 that's probably what I was referring to when I say
12 redefine.
13 Q. Part of what you're doing in the '245 declaration
14 is responding to opinions that Dr. MacLean has
15 expressed; is that right?
16 MR. KEAN: Objection to the form.
17 THE WITNESS: Basically, the declaration is a
18 response to only what the other experts had said, so
19 MacLean and -- Dr. MacLean and Mr. Lim, also, as I
20 recall.
21 BY MR. GILBERTSON:
22 Q. And as part of responding to opinions that they
23 expressed, did you feel it was important to try to
24 understand what their opinions were?
25 A. I think it was important to understand what the

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1 statements were implying or saying, literally or
2 implying that I refer to, for example, in paragraph 2 of
3 my declaration.
4 Q. Let me ask you about paragraph 8 of your '245
5 declaration. Can you turn to that, please.
6 A. Yes.
7 Q. The second sentence of that paragraph reads,
8 quote, However, the '245 patent does not include any
9 requirement that the spatial boundaries of the
10 delineated active areas themselves must change from
11 application to application, close quote. And the word
12 must is in italics and underlined. Did I read that
13 correctly?
14 A. I believe so, yes.
15 Q. And what significance does that point have, in
16 your view?
17 A. Well, again, it's, I think, referring back to the
18 quotes, the specific statements made by Dr. MacLean
19 that, for example, in the ones that I quote -- or cite
20 in paragraph 2. And as I recall, and I believe this is
21 simply -- what I'm saying here is that applications may;
22 and I believe just from memory, the language of the
23 patent for specifications is always might or may or
24 allowing for it, but not stating that that has to
25 happen, that that must happen.

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1 Q. Would you turn, please, to paragraph 10 of your
2 '245 declaration.
3 A. Okay.
4 Q. This paragraph, you address how the '245 patent
5 specification discusses configuring delineated active
6 areas among other things; is that right?
7 A. Roughly, yes, I'd say that's correct.
8 Q. And if you could turn to your '692 declaration,
9 paragraph 10. And could you just confirm for me that
10 that's substantively the same paragraph as paragraph 10
11 in your '245 supplemental declaration?
12 A. From memory and from just looking at it briefly
13 here, I believe they are the -- substantively the same.
14 Q. In paragraph 10 of these supplemental
15 declarations in the '245 and '692 matter, you note that
16 the patent specification refers several times to
17 software and other times to application software; is
18 that right?
19 A. That's correct.
20 Q. Are you able to point to any reference in the
21 specification explicitly saying that active areas are
22 defined by system-level software?
23 A. I don't recall whether I say that in my
24 declaration or not; so just sitting here right now from
25 memory, I don't recall. My recollection of the

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1 specification is that it just uses the general term
2 software and enumerates some things in software that --
3 or some computational aspects that generally could not
4 be written by the application, among other things, as I
5 describe in paragraph 10. So my sense is that a person
6 of ordinary skill reading this would understand that
7 that's a very reasonable place for those delineations to
8 be specified or managed, either -- by anything running
9 on the system. So I think a person of ordinary skill
10 would walk away realizing there's just great flexibility
11 described there.
12 Q. And I do understand your view of what a person of
13 ordinary skill would have understood. My question for
14 the moment is whether you are able to point to anything
15 in the specification that explicitly says that the
16 active areas are defined by system-level software.
17 A. I'm sorry. As I was looking, I lost track of the
18 exact question.
19 THE WITNESS: Could you read the question back
20 to me.
21 (The record was read back as requested by the
22 court reporter.)
23 THE WITNESS: I'm not aware of a place that
24 says that they are. Again, as I stated in my
25 declaration, they could be, and I don't think I cite

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1 this passage in my declaration, but I'll -- I'm
2 looking at column 14 around -- starting at maybe
3 around 48 down through 54, where it says, Where
4 appropriate, aspects of these systems and techniques
5 can be implemented in a computer program product
6 tangibly embodied in a machine readable storage device
7 for execution by a programmable processor, and method
8 steps can be performed by programmable processor
9 executing a program of instructions to perform
10 functions by operating on input data and generating
11 output.
12 So that and the preceding statements that I cite
13 in 1445 through 48 to me leave open very generally
14 where any of the computational aspects that are
15 described in the specifications, because these
16 statements are at the very end, could; so I'm not
17 aware of a place that says, either way, must be done
18 by the application or must be done by the system. As
19 I say in my declaration, I think it could be either.
20 BY MR. GILBERTSON:
21 Q. You have your declaration -- your supplemental
22 declarations and the '245 and '692 patents in front of
23 you; is that right?
24 A. That's correct.
25 Q. And in answering my questions about this, you've

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1 had an opportunity to refer to all of those?
2 A. I have not referred to the entirety of the '245
3 or the '692 patent. I don't have them memorized. So
4 what I'm saying here is, based on my -- what I said in
5 my declaration, and then I went and looked at that same
6 area, so that's really all I've looked at here. So
7 sitting here right now, just from memory, I couldn't
8 tell you beyond that.
9 Q. And you don't see anything in your declaration
10 identifying some part of the '245 or '692 patents
11 specification that says that the active areas are
12 defined by system-level software, specifically?
13 A. I do not recall, and I do not see any place where
14 I say that the -- those operations must be done by the
15 system software. Again, I think, as I stated in here,
16 they could be done by the system or by an application or
17 by the system on behalf of the application, any variety
18 of those. There's no specification that I recall either
19 way, and I don't see anything in my declaration here in
20 front of me that makes that sort of a statement.
21 Q. And the material you quoted a little earlier from
22 column 14, starting at around line 48, you're not
23 suggesting that that passage is specific to system-level
24 software, as opposed to application-level, are you?
25 MR. KEAN: Objection. Form.

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1 THE WITNESS: I haven't given that passage
2 great consideration, so, you know, I don't -- I'm not
3 sure. But I think my intent, when I was reciting that
4 a moment ago, was simply to say -- or to provide some
5 other evidence that the patent is very nonspecific
6 about who or what exactly does anything described in
7 the patent. It's just very general. It says, you
8 know, on a -- in a computer program product tangibly
9 embodied and so forth and so on, execution by a
10 programmable processor. So that's very general. That
11 describes any software running on such a device.
12 BY MR. GILBERTSON:
13 Q. And would you agree that the '245 and '692
14 specification does, on at least one occasion,
15 specifically refer to areas being definable by an
16 application developer?
17 A. I don't recall that offhand, sitting here. If I
18 said that and you want to point me to it in my
19 declaration, I'd be happy to refresh my memory, but I
20 just don't remember.
21 Q. Could you take a look at the '245 patent in front
22 of you and turn to column 12, starting at line 26. Let
23 me know when you're there.
24 A. Okay. I'm there.
25 Q. And that last sentence, starting at line 26

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1 reads, quote, For example, a game developer could set up
2 control configurations for novice users differently than
3 for advanced users such as mapping different numbers or
4 sizes of delineated active areas in order to reduce the
5 learning time to be proficient and make game control
6 easier for first-time players, close quote.
7 Did I read that correctly?
8 A. I believe you did, yes.
9 Q. And that's a specific reference to
10 application-level configuration; would you agree?
11 MR. KEAN: Objection. Form.
12 THE WITNESS: It clearly is describing how a
13 game developer could set up control. So it doesn't
14 say, you know, the game developer must; but I think
15 that comports with everything I've said in my
16 declaration, which is that certainly applications
17 running could, if they desire -- so desired set up
18 control configurations for anything, for example,
19 novice users, it says here. So I think -- you read it
20 correctly; I read this as could, not must.
21 BY MR. GILBERTSON:
22 Q. And that passage at column 12, lines 26 through
23 30, you'd agree is specific to application-level
24 configuration, as opposed to system level configuration;
25 is that right?

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<p>1 MR. KEAN: Objection. Form.</p> <p>2 THE WITNESS: I think I would agree a game</p> <p>3 developer would be developing a game, which would be</p> <p>4 considered an application. And again, it's -- the</p> <p>5 word here is could set up; could, not must, but could.</p> <p>6 BY MR. GILBERTSON:</p> <p>7 Q. If you could turn, please, in your '245</p> <p>8 supplemental declaration to paragraph 11.</p> <p>9 A. Okay.</p> <p>10 Q. And in this paragraph in general, you address</p> <p>11 Mr. Lim's opinions or some of them relating to tablet</p> <p>12 devices; is that right?</p> <p>13 A. That's generally -- generally correct, yes.</p> <p>14 Q. I'm not going to do this too often, but I would</p> <p>15 like to show you one of your supplemental declarations</p> <p>16 from the '313 patent.</p> <p>17 MR. GILBERTSON: Off the record for a second.</p> <p>18 (A discussion off the record was held.)</p> <p>19 BY MR. GILBERTSON:</p> <p>20 Q. I'm handing you what has been marked as</p> <p>21 Exhibit 1042 in IPR2015-00533. Is this your</p> <p>22 supplemental declaration in the 00533 matter?</p> <p>23 A. It is, I believe, one of three for the '313, and</p> <p>24 yes, it would be the 00533 matter.</p> <p>25 Q. And is that your signature on the last page of</p>	<p>1 Q. Do you have those in front of you?</p> <p>2 A. I do.</p> <p>3 Q. Back to your supplemental declaration, let's use</p> <p>4 the '245 one, paragraph 11, on the -- paragraph 11 has</p> <p>5 three lines and then spills over to another page. And</p> <p>6 seven lines down from that, your supplemental</p> <p>7 declaration says, quote, Indeed, the section titled A</p> <p>8 Taxonomy of Tablets in Exhibit 2023 cited by Mr. Lim</p> <p>9 states, unquote. And then you go on and quote</p> <p>10 something, right?</p> <p>11 A. Correct.</p> <p>12 Q. The material that you're quoting is not in</p> <p>13 Exhibit 2023; is that correct?</p> <p>14 A. That's correct.</p> <p>15 Q. And it's not in Exhibit 2036 from the 00533</p> <p>16 matter?</p> <p>17 A. Right. Correct. That's one of the</p> <p>18 clarifications we meant -- that is the clarification</p> <p>19 that I wanted to make, as we discussed early on.</p> <p>20 Q. The material you're quoting relating to A</p> <p>21 Taxonomy of Tablets is from an article online that</p> <p>22 linked to the exhibit Mr. Lim referred to; is that</p> <p>23 right?</p> <p>24 A. It's from the article that -- from which the 2023</p> <p>25 comes from. It's the article that that's associated</p>
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<p>1 Exhibit 1042 of the 00533 matter?</p> <p>2 A. Yes, it is.</p> <p>3 Q. If you could turn in that declaration to</p> <p>4 paragraph 35.</p> <p>5 A. Okay.</p> <p>6 Q. Thank you. And just for the benefit of those</p> <p>7 reading the transcript, the point here is to -- well,</p> <p>8 let's start with, am I right that your paragraph 11 in</p> <p>9 your supplemental declaration in the '245 matter is</p> <p>10 substantively the same as your paragraph 35 in your</p> <p>11 supplemental declaration in the 00533 matter; do you</p> <p>12 agree with that?</p> <p>13 A. I believe that is correct, both from memory and</p> <p>14 from looking at the two documents right now in front of</p> <p>15 me.</p> <p>16 Q. And those paragraphs refer in part to an exhibit</p> <p>17 discussed by Mr. Lim, which is Exhibit 1023 -- excuse</p> <p>18 me, 2023 in the '245 matter and Exhibit 2036 in the</p> <p>19 00533 matter; is that right?</p> <p>20 A. I believe that is correct, yes.</p> <p>21 Q. And I'm handing you those two exhibits, 2023 from</p> <p>22 the '245 matter and 2036 from the 00533 matter.</p> <p>23 MR. GILBERTSON: Off the record.</p> <p>24 (A discussion off the record was held.)</p> <p>25 BY MR. GILBERTSON:</p>	<p>1 with, and it's the article that Dr. Lim refers to. In</p> <p>2 fact, I believe, from memory, he refers to it as 2023 in</p> <p>3 his declaration in two different places. I made notes</p> <p>4 here, paragraph 37 and 43 in Mr. Lim's declaration on</p> <p>5 the '245, I believe he states the name, the full name of</p> <p>6 the article, and then in parentheses after that says</p> <p>7 Exhibit 2023. So I inadvertently conflated the article</p> <p>8 with the exhibit number. So, for example, here, in the</p> <p>9 paragraph where you're pointing me to, it would more</p> <p>10 correctly read, or I would like to change it to --</p> <p>11 Q. When you say the paragraph I'm pointing you to,</p> <p>12 are you talking about paragraph 11 of your '245</p> <p>13 supplemental declaration?</p> <p>14 A. My apologies. Yes, that's correct.</p> <p>15 Q. Sorry to interrupt; I just wanted it to be clear.</p> <p>16 A. That's okay. So, yes, in my declaration for</p> <p>17 the -- supplemental declaration for the '245, which is</p> <p>18 Exhibit 1042, paragraph 11, midway on page 11, which I</p> <p>19 guess is exhibit page 12, I refer to Exhibit 23. And I</p> <p>20 would more clearly say in the article that associated</p> <p>21 with Exhibit 23, or something like that. That's --</p> <p>22 Exhibit 23 is a figure that is included in that article,</p> <p>23 and it's -- what I intended was the same article that</p> <p>24 Mr. Lim refers to in his declaration in paragraphs 37</p> <p>25 and 43.</p>

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