

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

3 \_\_\_\_\_  
4 Apple Inc.

5 Petitioner

6 v.

7 E-Watch, Inc.

8 Patent Owner

9 \_\_\_\_\_

10 Case IPR2015-00412

11 Patent 7,365,871 B2

12 \_\_\_\_\_

13  
14 DEPOSITION OF  
15 JOSE LUIS MELENDEZ, Ph.D.

16  
17  
18 Reported by  
19 Rebecca J. Callow, RMR, CRR, RPR  
20 Job No. 101402

21  
22  
23  
24  
25

Apple Inc.  
**Exh. 1013**  
Petitioner: Apple Inc. / Patent Owner: E-Watch, Inc.  
IPR2015-00412

APPLE, INC. v. E-WATCH, INC.  
Jose Luis Melendez, Ph.D on 09/28/2015

<b>Page 2</b>	<p>1 Deposition of JOSE LUIS MELENDEZ, Ph.D.,</p> <p>2 held at the offices of DiNovo Price Ellwanger &amp;</p> <p>3 Hardy LLP, 7000 North MoPac Expressway, Suite 350,</p> <p>4 Austin, Texas, pursuant to Notice before</p> <p>5 Rebecca J. Callow, Registered Merit Reporter,</p> <p>6 Certified Realtime Reporter, Registered Professional</p> <p>7 Reporter, and Notary Public in and for the State of</p> <p>8 Texas.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<b>Page 4</b>
<b>Page 3</b>	<p>1 APPEARANCES</p> <p>2 FOR PETITIONER:</p> <p>3 Gibson, Dunn &amp; Crutcher LLP</p> <p>4 1050 Connecticut Avenue, N.W.</p> <p>5 Washington, D.C. 20036</p> <p>6 By: Blair A. Silver</p> <p>7 Brian M. Buroker</p> <p>8</p> <p>9 FOR PATENT OWNER:</p> <p>10 DiNovo Price Ellwanger &amp; Hardy LLP</p> <p>11 7000 North MoPac Expressway</p> <p>12 Suite 350</p> <p>13 Austin, Texas 78731</p> <p>14 By: Gregory Donahue</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<b>Page 5</b>

http://www.yeslaw.com/step

Page 6

1 depositions?

2 A. There was an infringement deposition for a  
3 case involving Bandspeed which is Bluetooth  
4 technology, and an invalidity deposition. Both were  
5 related to litigation.

6 More recently, there was a deposition  
7 related to claim construction, also in a  
8 Bandspeed-related matter to the same patents.

9 Q. And so --

10 A. That's at least three. It seems like there  
11 might have been one more but I can't think of it.

12 Q. Do you know who the parties were involved  
13 in those depositions?

14 A. I want to say -- it's been a little while.  
15 I want to say that -- for the claim construction I  
16 know for sure it was Qualcomm and Texas Instruments.  
17 For the infringement, I believe it was -- Toshiba  
18 may have been one of the parties. It seems to me  
19 Motorola may have been involved.

20 I think they were -- that there was  
21 one party that wasn't physically present, and I  
22 think they were in the process of settling, so they  
23 were at the deposition but not actively involved in  
24 the deposition.

25 Q. And that was the Toshiba matter?

Page 7

1 A. Yes.

2 Q. Do you remember any other matters?

3 A. Well, it was in the same case. So the  
4 infringement and the validity was the same case. I  
5 just don't remember exactly which parties were  
6 involved at the particular times. I think there was  
7 a maximum of three parties, and there may have been  
8 a settlement that occurred before the validity  
9 deposition after the infringement.

10 Q. So this was the same case that you gave  
11 validity and infringement testimony?

12 A. It was the same patents and the same  
13 litigation. I don't know if technically it was the  
14 same case. I think there may have been different  
15 case numbers for the different defendants involved.

16 Q. So who did you represent in the Qualcomm  
17 case? Who were you offering testimony on behalf of?

18 A. My client was -- it was and still is  
19 Bandspeed.

20 Q. And Bandspeed was the patent owner in that?

21 A. That's correct.

22 Q. And how about in the Toshiba case? Who  
23 were you testifying on behalf of?

24 A. Well, it was the same. So Bandspeed was  
25 the patent owner, and Toshiba would have been one of

Page 8

1 the defendants.

2 Q. What percentage of your work is for patent  
3 owners versus, I guess, defendants, alleged  
4 infringers?

5 A. I have no idea how to calculate a  
6 percentage. But if you want to ask the -- maybe  
7 restate the question in some other way.

8 Q. How many matters do you have for patent  
9 owners over your career?

10 A. So as an expert witness, I've had two  
11 clients and they have been Bandspeed and E-Watch  
12 in the entirety of my career.

13 Q. To your knowledge, does Bandspeed  
14 manufacture any products?

15 A. I believe that they do, but I'm not  
16 intimately familiar with their business. I know  
17 they're an operating company.

18 Q. Have you ever offered an opinion on behalf  
19 of a defendant in a patent infringement case?

20 A. I believe Bandspeed may have been a  
21 defendant because I think there was some  
22 counterclaims or countersuit against Bandspeed by  
23 Qualcomm, but I -- I'm not really intimately  
24 familiar with the legal details beyond the areas  
25 that I'm asked to offer opinions on.

Page 9

1 Q. But your testimony in Bandspeed was not  
2 related to that counterclaim, or was it related to  
3 that counterclaim?

4 A. My testimony in Bandspeed was -- has been  
5 on three occasions: One was to offer an  
6 infringement opinion, the other was related to an  
7 invalidity opinion, and the third was to opine on  
8 certain terms that were being construed in the  
9 litigation.

10 Q. All right. So aside from deposition  
11 testimony, have you ever provided testimony in the  
12 form of a written affidavit or declaration like  
13 you've done here?

14 A. Yes. I've been involved in -- also, again,  
15 just for Bandspeed and E-Watch in other IPR  
16 proceedings. So I guess I don't -- I don't know if  
17 Bandspeed would be considered to be a defendant in  
18 that case. They're certainly not a plaintiff, so  
19 I'm not sure if the same terminology applies. But I  
20 did offer opinions on behalf of Bandspeed and  
21 E-Watch in IPR proceedings that at least weren't  
22 initiated by my client.

23 Q. And then the Bandspeed matter, when did  
24 those -- that deposition and when did that IPR  
25 affidavit occur?

http://www.yeslaw.com/step

<p style="text-align: right;"><b>Page 10</b></p> <p>1 A. It would have been within the last year. I                  2 don't have specific dates. I didn't understand that                  3 to be the subject of today's deposition.                  4 Q. So is that --                  5 A. I do believe that would be a matter of                  6 public record in terms of I think when I submit a                  7 declaration there's some record within the PTAB that                  8 you could access to get that information.                  9 Q. Is there any reason today that you think                  10 you would not be able to provide truthful testimony?                  11 A. No.                  12 Q. Are you on any medications?                  13 A. No.                  14 Q. Substances?                  15 A. Just caffeine from the cup of coffee I had                  16 at Starbucks this morning.                  17 Q. You're not feeling ill today?                  18 A. No.                  19 Q. It sounds like you've been through a                  20 deposition before, but I'm just going to run through                  21 some basics of how this usually works.                  22 Verbal answers are appreciated. No                  23 head nodding or uh-huhs. That's not good for the                  24 court reporter for a clean record.                  25 Do you understand that?</p>	<p style="text-align: right;"><b>Page 12</b></p> <p>1 the patent owner's response that was prepared, and I                  2 reviewed the subject patent. I reviewed the -- I                  3 guess I would call it the asserted -- or claimed                  4 prior art, which were the McNelley and Umezawa                  5 references, and I had skimmed somewhat the petition                  6 and the expert declaration from the other --                  7 Q. Did you meet with any other attorneys --                  8 I'm sorry.                  9 A. I was just wrapping up that question saying                  10 that I also reviewed the expert declaration from                  11 your -- the person you have working for you.                  12 Q. Did you meet with any attorneys from                  13 E-Watch in preparation for the deposition?                  14 A. Yes.                  15 Q. For how long did you meet?                  16 A. I met for approximately -- well, there was                  17 a combination of telephone and in-person. I think,                  18 in total, maybe about an hour and a half.                  19 Q. And when did those meetings occur?                  20 A. Yesterday.                  21 Q. Did you review any other documents that                  22 were not listed in your declaration in preparation                  23 for today's deposition?                  24 A. No.                  25 Well, not related to this. I do read</p>
<p style="text-align: right;"><b>Page 11</b></p> <p>1 A. Yes.                  2 Q. It's helpful also for a clean record if you                  3 wait for me to finish the question and then you                  4 respond. And just let me know if you need a break.                  5 Do you understand that?                  6 A. Yes.                  7 Q. And if I ask you a question, I'm going to                  8 assume that you're going to answer it fully. Not                  9 holding anything back and giving a full answer to                  10 the question. Does that sound correct?                  11 A. Correct. To the extent I understand the                  12 question.                  13 Q. Yes. And if you don't understand my                  14 question, you'll ask me to clarify?                  15 A. Yes.                  16 Q. And unless you're instructed not to answer,                  17 you understand you have to answer the question?                  18 A. Yes.                  19 Q. Okay. And you know you're testifying under                  20 oath today even though we're in a conference room?                  21 A. Yes. I was administered that a little                  22 while ago.                  23 Q. So what did you do to prepare for today's                  24 deposition?                  25 A. I reviewed my own declaration. I reviewed</p>	<p style="text-align: right;"><b>Page 13</b></p> <p>1 things and look at other things but not related to                  2 my testimony here.                  3 Q. Related to something else? Can you just --                  4 maybe you can elaborate on what you mean by that.                  5 A. News articles and things like that.                  6 Q. So you submitted a declaration in this                  7 case. Correct?                  8 A. Yes.                  9 Q. So I'm handing you what has been premarked                  10 Exhibit 2003.                  11 Do you recognize this document?                  12 A. It's entitling -- it appears to be my                  13 declaration.                  14 Q. And is this the report that you filed in                  15 this matter -- or declaration? Excuse me.                  16 A. It appears to be, yes.                  17 Q. Does this declaration contain your full                  18 opinion of the prior art and claim constructions in                  19 this matter?                  20 MR. DONAHUE: Object to form.                  21 A. "This matter" being this particular IPR?                  22 BY MR. SILVER:                  23 Q. This IPR, yes.                  24 A. Yes.                  25 Q. If you turn quickly to Section 5 which is</p>

http://www.pds.state.tx.us

Page 14

1 Paragraphs 27 through 31. Is this section entitled  
 2 "Claim Constructions"?

3 A. What paragraphs did you say?

4 Q. 27 through 31.

5 A. Yes.

6 Q. And does this reflect your entire testimony  
 7 regarding claim construction in this IPR?

8 MR. DONAHUE: Object to form.

9 A. Can you repeat the question?

10 BY MR. SILVER

11 Q. Does this reflect your entire claim  
 12 construction opinion in this IPR?

13 MR. DONAHUE: Same objection.

14 A. I think -- I'm not sure how to answer your  
 15 question. I think this -- this section expressly  
 16 articulates terms that I believed would benefit from  
 17 an opinion regarding construction. But all the  
 18 terms in the claims have some definition associated  
 19 with them, and so I would have -- my opinion is that  
 20 the terms in the claims are understandable by a  
 21 person of ordinary skill in the art, and so they  
 22 didn't require expressly commenting on every single  
 23 term in the -- in the claims.

24 But I have an opinion regarding my  
 25 understanding of all of the claim language that's

Page 15

1 related to the -- to what I've been asked to analyze  
 2 and opine.

3 So your question is still unclear to  
 4 me. But in terms of where I felt that there was an  
 5 express need to articulate an opinion on a term,  
 6 from an expert's perspective, I've highlighted those  
 7 here.

8 Q. So just to break that down a little bit.

9 In the claim construction section  
 10 you've identified a number of terms that you think  
 11 need some explanation. Is that correct?

12 A. I think -- not exactly.

13 I think I've identified some terms  
 14 that would benefit from some comment from me, yes.

15 Q. And are there terms that would also benefit  
 16 from the comment from you that you have not  
 17 identified in your declaration in Section 5?

18 A. To the extent that a party were to claim  
 19 that there was some other term that was somehow  
 20 incomprehensible or indefinite, you know, my opinion  
 21 is that that's not the case and so I didn't go out  
 22 of my way here and highlight every single term and  
 23 give an opinion that says that they're understood by  
 24 someone of ordinary skill in the art.

25 And so I think what I -- but I

Page 16

1 don't -- what's important to understand is, I  
 2 believe that every term of the claims is  
 3 understandable, and so that's an opinion beyond the  
 4 five that I've selected here that I believe are  
 5 useful in understanding -- or particularly useful in  
 6 understanding the arguments that -- and the  
 7 technology that's at issue here.

8 Q. All right. So beyond the terms "framed,"  
 9 "selectively displaying," "selectively  
 10 transmitting," "selective digitized frame image,"  
 11 and "alphanumeric," do you agree that you have not  
 12 identified any other terms for additional  
 13 construction?

14 MR. DONAHUE: Object to form.

15 A. I can't agree with your statement because  
 16 of the way you're making your statement.

17 BY MR. SILVER:

18 Q. What don't you understand about my  
 19 statement?

20 A. Your statement -- the way you're phrasing  
 21 your statement could be interpreted in different  
 22 ways. And so I'd like to stick to what I said,  
 23 which is I think that there's very specific terms  
 24 that would be useful for the professionals involved  
 25 in this proceeding to understand that I think are

Page 17

1 important for the arguments that are being made.  
 2 And I expressly believe that the other terms are  
 3 understandable by someone of ordinary skill in the  
 4 art.

5 Q. So let's assume the other terms are  
 6 understandable by others skilled in the art. Would  
 7 you agree with me you do not offer any testimony in  
 8 your declaration regarding terms you have not  
 9 specifically identified in this section?

10 MR. DONAHUE: Object to form.

11 A. Can you restate the question?

12 BY MR. SILVER:

13 Q. Let's assume that the other terms are  
 14 understandable by others skilled in the art. Would  
 15 you agree with me that you did not offer any  
 16 testimony in your declaration regarding terms that  
 17 you have not specifically identified in Section 5?

18 MR. DONAHUE: Same objection.

19 A. I can't agree to that. I think that my  
 20 opinions are based on interpreting all of the terms  
 21 in the claims and all of the terms in the claim  
 22 limitations.

23 BY MR. SILVER:

24 Q. Maybe you could list for me what terms you  
 25 are offering constructions on.

http://www.yeslaw.com/ethp

# 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.