

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

WHATSAPP, INC. and FACEBOOK, INC.,
Petitioner,

vs.

DEPOSITION OF:
DAVID KLAUSNER

TRIPLAY, INC.,
Patent Owner.

- - - - -

TRANSCRIPT of the telephonic deposition in
the above-entitled matter as taken by and before
RUTHANNE UNGERLEIDER, a Certified Court Reporter and
Notary Public of the State of New Jersey, held at
the office of GREENBERG TRAURIG, LLP, 200 Park
Avenue, Florham Park, New Jersey, on Wednesday,
April 13, 2016, commencing at approximately 9:16 in
the forenoon.

Job No. NJ2291226

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| <p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S: 2 3 COOLEY, LLP 4 3175 Hanover Street 5 Palo Alto, California 94304-1130 6 BY: REUBEN H. CHEN, ESQ. (Via Phone) 7 YUAN LIANG, ESQ. (Via Phone) 8 Attorneys for Petitioner 9 10 GREENBERG TRAURIG, LLP 11 500 Park Avenue 12 Florham Park, New Jersey 07932 13 BY: BARRY J. SCHINDLER, ESQ. 14 DOUGLAS R. WEIDER, ESQ. 15 Attorneys for Patent Owner 16 17 18 19 20 21 22 23 24 25</p> | <p style="text-align: right;">Page 4</p> <p>1 DAVID KLAUSNER, 318 Sylvan Way, Redwood City, 2 California 94062, sworn 3 DIRECT EXAMINATION BY MR. SCHINDLER: 4 Q So, Mr. Klausner, this is Barry 5 Schindler. And, Mr. Klausner, you're -- as I 6 understand, you're out of the country today? 7 A Yes. 8 Q Okay. 9 And you working with your counsel have 10 agreed to do this deposition over the phone so that 11 we could work with your schedule, correct? 12 A Yes. 13 Q Great. 14 So, Mr. Klausner, again let me identify 15 myself, we met before, but, again, my name is Barry 16 Schindler, I'm from the law firm of Greenberg 17 Traurig, and I represent TriPlay, the patentee in 18 this IPR. With me sitting in this conference room is 19 Doug Weidner. He's also a member of the firm. 20 And do you recall meeting us both in 21 California? 22 A Yes, vaguely. 23 Q Okay. 24 Vaguely is okay. 25 And previously when we met we discussed</p> |
| <p style="text-align: right;">Page 3</p> <p>1 I N D E X 2 3 DAVID KLAUSNER PAGE 4 By: Mr. Schindler 4 5 6 7 8 E X H I B I T S 9 NUMBER DESCRIPTION PAGE 10 11 12 REQUESTS FOR DOCUMENT PRODUCTION 13 DESCRIPTION PAGE 14 15 16 17 18 19 20 21 22 23 24 25</p> | <p style="text-align: right;">Page 5</p> <p>1 the deposition procedure and you had informed me that 2 you had -- you had been -- your deposition had been 3 taken numerous times and you were aware of the 4 procedure, correct? 5 A Yes, but if you feel necessary to remind 6 me of something, please go ahead. 7 Q So, actually, the two things I do want 8 to remind you of, given the fact that we're on the 9 telephone and we can't see each other live, so what I 10 would like you to do is wait until I finish my 11 question and then answer, and answer fully. And I 12 apologize in advance if I interrupt you in the middle 13 of an answer because I can't see you, and so please, 14 by all means, just say, "I haven't finished my 15 answer." 16 Do I have that agreement? 17 A Yes. 18 I probably should also remind you that 19 there is a timing lag because of the distance between 20 us, so please excuse me if I seem to be not 21 responsive for a moment. 22 Q Excellent. Excellent. 23 And, finally, I just want to ask you the 24 same question I asked you last time, is there any 25 reason why you cannot answer my questions truthfully</p> |

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1 today?
2 A No.
3 Q Great.
4 So we're really going to spend time on
5 two of your declarations, and the first declaration
6 was the one that you submitted on February 14 of
7 2015, and that's titled, "Declaration of David
8 Klausner."
9 Do you have a copy of that?
10 A Hold, I think I do.
11 Q Okay.
12 And while you're looking, it was
13 identified before as WhatsApp, Inc. Exhibit 1002.
14 A I have it.
15 Q Okay.
16 During the deposition I'm going to refer
17 to this exhibit and your declaration as just the
18 declaration, is that okay? That is going to be the
19 term I'm going to use when I refer to Exhibit 1002 as
20 the declaration.
21 A Yes.
22 Q Okay.
23 Then we received very recently a -- what
24 is titled "Reply Declaration of David Klausner," and
25 that is -- that is dated April 5, 2016.

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1 Do you have a copy of the reply
2 declaration?
3 A Yes.
4 Q And that is marked as WhatsApp Facebook
5 Exhibit 1013.
6 And for purposes of this -- for purposes
7 of the deposition, I'm going to refer to this as the
8 reply declaration. Is that okay for you?
9 A Yes.
10 MR. CHEN: Counsel, this is Reuben Chen
11 from Cooley, I just enter my appearance, and I can
12 also see the LiveNote or Remote Counsel now.
13 I do have one question.
14 I'd like to have a standing objection to
15 the extent there are any questions asked about Mr.
16 Klausner's original declaration that could have been
17 asked earlier. I understand you might be asking
18 questions related to Mr. Klausner's reply declaration
19 that involved statements made in his opening
20 declaration, that would be fine with me, but to the
21 extent the questions could have been asked earlier
22 without the reply declaration, I would like to have a
23 standing objection.
24 Is that okay?
25 MR. SCHINDLER: I agree to that.

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1 I may not agree with what goes on, but
2 the answer is absolutely, so that the deposition goes
3 quicker, I have no issue with you having a standing
4 objection to that.
5 MR. CHEN: Thank you.
6 MR. SCHINDLER: Mr. Chen, any other
7 housekeeping on your end?
8 MR. CHEN: I don't think so.
9 MR. SCHINDLER: Okay.
10 So you are also, as I understand, on the
11 phone -- do you want to introduce who is on the phone
12 from your firm?
13 MR. CHEN: Yes. Thank you.
14 I also have my colleague, Yuan Liang, on
15 the phone.
16 MR. SCHINDLER: Great.
17 Thank you.
18 BY MR.SCHINDLER:
19 Q All right, so, Mr. Klausner, again --
20 excuse me, did someone say something?
21 No, I'm sorry.
22 So, Mr. Klausner, what I'd like you to
23 do is go to Paragraph six of your reply declaration,
24 and tell me when you get there.
25 A I have it.

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1 Q Okay.
2 And if you could just read to yourself
3 Paragraph six, I'm going to ask you some questions
4 about that.
5 (Witness reviews document.)
6 A Yes.
7 Q Okay.
8 So in that Paragraph six you make a
9 statement that says, "First and foremost, it
10 expressly discloses an embodiment in which the
11 messaging system selects the message format and
12 layout dynamically, relying on information carried in
13 the message itself."
14 Do you see that sentence?
15 A Yes.
16 Q My question is, where in your original
17 declaration was this argument made that's made in
18 paragraph six?
19 MR. CHEN: I'm going to object to the
20 extent it would require Mr. Klausner to review the
21 entire original declaration, unless you're going to
22 give him the time to do that.
23 Q So let me ask you this question then so
24 we can short circuit this: Was this argument that's
25 in paragraph six made in your original declaration?

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1 A Please stand by.
2 I'm checking.
3 I'm still checking.
4 MR. CHEN: And, Counsel.
5 MR. SCHINDLER: Yes.
6 MR. CHEN: Counsel, we believe it's
7 responsive to Dr. Surati's argument in relation to --
8 MR. SCHINDLER: Mr. Chen, no, no, no.
9 I'm going to stop you here. I don't -- that is not
10 an objection. That is clearly -- that is clearly
11 leading the witness. I do not want that to happen.
12 This is a simple question that I've asked. I don't
13 want that to happen. Okay? That is not acceptable.
14 If that is going to happen, we're going to stop this
15 deposition immediately and we will go to the Board
16 because that is not acceptable. And if we have to,
17 we'll fly him back and we'll sit him in a room
18 together.
19 That is not a proper objection.
20 MR. CHEN: I disagree because this is a
21 legal issue, but I will allow him to answer the
22 question. I'm just wondering -- I'll allow him to
23 answer the question, but I disagree with your dispute
24 about the comment.
25 I'm just trying to move this deposition

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1 along.
2 MR. SCHINDLER: Thank you for your help.
3 A I'm still checking.
4 I'm still looking at my report.
5 Q That's fine.
6 MR. CHEN: While Mr. Klausner is
7 reviewing the report I want to enter an objection
8 that the question is vague, and also to the extent
9 the question is irrelevant, it involves a legal issue
10 between counsel.
11 A Hello.
12 Q Yes, Mr. Klausner, we're here.
13 MR. CHEN: Did we lose Mr. Klausner?
14 Q Mr. Klausner, are you there? You're
15 going in and out.
16 Mr. Klausner, can you hear us?
17 A I can hear you, yes.
18 Q Oh, good, perfect.
19 Did you just speak, because we didn't
20 hear anything.
21 Mr. Klausner, are you attempting to
22 speak?
23 A Yes, okay, I'll start again. I was on
24 headphones, but apparently they don't work well.
25 Q No, they do not.

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1 A Is this good?
2 Q Yep, we can hear you. Yes, Mr.
3 Klausner.
4 A Okay. Good.
5 In my original declaration, Exhibit
6 1002 -- you're still there, right?
7 Q Yes, we're here. We can hear every
8 word.
9 A Okay.
10 In my original declaration, 1002, I have
11 placed a discussion of Coulombe, and it's throughout
12 my declaration, but generally beginning in the
13 section on Coulombe, which is -- I'll give you the
14 paragraph number.
15 Let's go to paragraph 46.
16 Q Okay, we're there.
17 A Starting in paragraph 46, I discuss the
18 ability Coulombe has to select a layout and a format
19 based on the contents of the message, and that
20 continues onto -- well, the entire discussion of
21 Coulombe involves that capability. And so based on
22 the contents of the message means having done it
23 dynamically because the -- because Coulombe provides
24 information with the message. And so I think that is
25 responsive to your question about paragraph number

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1 six in my reply declaration.
2 Q So, Mr. Klausner, are you done?
3 A Yes, I'm finished. I'm sorry.
4 Q And, again, this is not going to be a
5 rude thing, I just want to each time ask you that so
6 I'm not interrupting you.
7 You understand?
8 A Thank you very much.
9 Q So as I understood Paragraph six, and
10 then it went into Paragraph seven, when you said,
11 "First and foremost, it expressly discloses an
12 embodiment in which the messaging system selects the
13 message format and layout dynamically, relying on
14 information carried in the message itself," and in
15 that Paragraph six you talked about the patent
16 specification, I thought you were talking about the
17 '475 patent.
18 A Yes.
19 Q But you directed us to Paragraph 46 and
20 so forth that discusses Coulombe.
21 Where in those paragraphs that you just
22 cited discuss the '475 specification that you're
23 discussing in Paragraph six about disclosing an
24 embodiment?
25 MR. CHEN: Objection, vague, and

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1 irrelevant.

2 A The sections of my declaration that I

3 pointed you to are sections that address generally

4 each of the elements of claim one at least, with

5 respect to Coulombe teaching the disclosures of the

6 '475 patent.

7 Q Is that your complete answer?

8 A Yes.

9 Q Okay, so let's go to Paragraph seven.

10 Read Paragraph seven to yourself.

11 (Witness reviews document.)

12 A I have it, yes.

13 Q Okay.

14 So you see in Paragraph seven you cite

15 to the '475 patent column 16, 51 through 63, and you

16 say, "See also Figure 6 of the '475 patent."

17 Do you see that?

18 A Yes.

19 Q And you also further down cite to the

20 '475 patent column 16, line 63, through column 17,

21 line four.

22 Do you see that?

23 A Yes, I do.

24 Q Okay.

25 Where in your declaration do you -- did

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1 you previously cite those sections?

2 MR. CHEN: Objection, lack of

3 foundation, vague and ambiguous, and also irrelevant

4 to the extent this involves a legal issue to be

5 briefed between counsel.

6 MR. SCHINDLER: I will object to those

7 speaking objections. If you continue this, I will

8 end this deposition, because these are speaking

9 objections that lead the witness. You are entitled

10 to make it, I don't even know what an irrelevant is

11 objection, but the fact of the matter is, you're

12 entitled to make it, but do not continue with these

13 long objections. It is not acceptable.

14 MR. CHEN: Mr. Schindler, please don't

15 raise your voice. It's unnecessary.

16 I disagree with this line of

17 questioning. I think it's improper. We can take a

18 break and discuss it. Perhaps we can reach some sort

19 of resolution.

20 MR. SCHINDLER: No, we will not take a

21 break and reach a resolution.

22 MR. CHEN: If you have issues with my

23 objections, then I suggest we take a break, otherwise

24 I'm going to continue to make them.

25 MR. SCHINDLER: You make those

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1 objections and then the record will speak for itself

2 and as part of our motion practice we will ask for

3 these things.

4 Q Now, Mr. Klausner, can you answer my

5 question?

6 A Yes.

7 I don't see the particular citations to

8 column 16, lines 51, through 17:4, as cited

9 literally.

10 That is the end of my answer.

11 Q And what about, do you see any citation

12 to column 16, line 51 through 63, and see also Figure

13 6?

14 MR. CHEN: Objection, form. And

15 objection, the declarations speak for themselves.

16 A I don't see a reference to Figure 6 in

17 my declaration directly.

18 Q Is that your --

19 A That is the end of my answer.

20 Q So that is your complete answer?

21 A Yes.

22 Q Further on down on Paragraph seven,

23 staying on page three, you state that "This passage

24 discloses," and "this" referring to the passage at

25 column 16, Lines 63, through column 17, line four of

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1 the '475, you say, "This passage discloses at least

2 two alternative techniques for selecting a format and

3 layout for a received message. 1, relying on

4 instructions received with a message, e.g., contained

5 in the metadata; or 2, using instructions predefined

6 in the system, such as a look-up table for matching

7 intended destination device to appropriate format and

8 layout."

9 Do you see that sentence?

10 A Yes.

11 Q Was this argument previously made in

12 your original declaration?

13 MR. CHEN: Objection, vague and

14 ambiguous, irrelevant.

15 A I heard your question, I'm checking.

16 Q Thank you.

17 A Still looking.

18 Q Thank you.

19 A A quick look through my declaration, I

20 don't see that.

21 Q Okay.

22 And that's your complete answer?

23 A That is the end of my answer.

24 Q Correct. Thank you.

25 If you would now go to Paragraph nine

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