UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE INC.,
HTC CORPORATION, HTC AMERICA, INC.,
Petitioners
v.
SUMMIT 6 LLC,
Patent Owner

Patent No. 7,765,482
Filing Date: October 8, 2004
Issue Date: July 27, 2010

Title: **WEB-BASED MEDIA SUBMISSION TOOL**

Patent No. 8,612,515
Filing Date: April 29, 2011
Issue Date: December 17, 2013

Title: **SYSTEM, METHOD, AND APPARATUS FOR MEDIA SUBMISSION**

Inter Partes Review Nos. Unassigned

Declaration of Paul Clark Under 37 C.F.R. § 1.68

I, Paul Clark, declare as follows:

I. Introduction

1. I am an independent consultant. I am over eighteen years of age, and I would otherwise be competent to testify as to the matters set forth herein if I am called upon to do so.

2. I have prepared this Declaration for consideration by the Patent Trial and Appeal Board in the *Inter Partes* Reviews of U.S. Patent Nos. 7,765,482 ("the '482 patent") and 8,612,515 ("the '515 patent").

3. I have written this Declaration at the request of and have been retained by Kilpatrick Townsend & Stockton, LLP, which represents Google Inc., HTC Corporation, HTC America, Inc., and Motorola Mobility LLC in connection with the above-captioned *Inter Partes* Reviews.

4. I am being compensated at my standard hourly rate of $590 per hour. My compensation is not dependent on the outcome of or any issue in relation to the *Inter Partes* Reviews.

5. In forming my opinions, I relied on my knowledge and experience in the field and on documents and information referenced in this Declaration.

6. I earned a B.S. in Mathematics from University of California Irvine in 1986, a M.S. in Electrical Engineering and Computer Science from University of

Southern California in 1988, and a DSc. in Computer Science with a concentration in Security, Graphics, and Intellectual Property Law from George Washington University in 1994. A copy of my current *curriculum vita* is attached following the signature line of this letter.

II. Information Considered

7. In forming my opinions, in addition to my knowledge and experience, I have considered the following documents and things that I have obtained, or that have been provided to me:

- The ’482 patent;
- The History of the Original Prosecution of the ’482 patent;
- The ’515 patent;
- The History of the Original Prosecution of the ’515 patent;
- U.S. 6,930,709 to Creamer *et al*. (“Creamer”);
- Provisional Application No. 60/085,585, filed on May 15, 1998 (“Creamer ’98”);
- Provisional Application No. 60/067,310, filed Dec. 4, 1997 (“Creamer ’97”);
- U.S. 6,223,190 to Aihara *et al*. (“Aihara”);
- U.S. 6,018,774 to Mayle *et al*. (“Mayle”);
- U.S. 6,035,323 to Narayen *et al*. (“Narayen”);

- Plaintiff's Opening Claim Construction Brief in *Summit 6 LLC v. HTC Corp., et al.*, No. 7:14-cv-00014-O (N.D. Tex. Feb. 18, 2014) ("Summit 6 Brief");
- Joint Claim Construction and Prehearing Statement in *Summit 6 LLC v. HTC Corp., et al.*, No. 7:14-cv-00014-O (N.D. Tex. Feb. 18, 2014) (ECF No. 149) ("Summit 6 JCCS");
- I further performed Internet research and document review to confirm my recollection of technology that was available in the time prior to 1998.

III. Level of Skill in the Art

8. In my opinion, a person of ordinary skill in the art is someone with either an undergraduate, graduate, or doctoral degree in computer science (or similar field, e.g., electrical engineering, etc.), or three to five years' industry experience in the general field of software engineering and web implementation. By August of 1998, I was at least one of ordinary skill in the art based on my education and experience.

IV. Obviousness

9. I understand that a claim is obvious in light of the prior art if the difference or differences between the claimed subject matter and the prior art are such that the subject matter as a whole would have been obvious, at the time the invention was made, to a person having ordinary skill in the art. I understand that in *KSR Int'l*

Co. v. Teleflex, Inc., 127 S. Ct. 1727 (2007), the Supreme Court provided an outline for analyzing obviousness. The Supreme Court rejected an earlier test in favor of an "expansive and flexible approach" using "common sense." I also understand that the Supreme Court explained that under the correct analysis, any need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed. I also understand that the Supreme Court explained that "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." I further understand that the Court pointed to other factors that may show obviousness. These factors included the following principles:

a. a combination that unites old elements with no change in their respective functions is unpatentable. As a result, the combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results,

b. a predictable variation of a work in the same or a different field of endeavor is likely obvious if a person of ordinary skill would be able to implement the variation,

c. an invention is obvious if it is the use of a known technique to improve a similar device in the same way, unless the actual application of the technique would have been beyond the skill of the person of ordinary skill in the art. In this case, a key inquiry is

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