

1
2 UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
3 -----x
4 NET2PHONE, INC.
5 Plaintiff,
6 v.
7 EBAY, INC., SKYPE TECHNOLOGIES, S.A.,
SKYPE, INC., and JOHN DOES 1-10,
8 Defendants.
9 -----x
10
11
12
13 September 10, 2007
2:11 p.m.
14 Volume 2
15
16 Videotaped deposition of SHANE MATTAWAY,
pursuant to notice, taken by Plaintiffs,
17 at 500 Brickell Key Drive, Miami, Florida,
before Kelli Ann Willis, a Registered
18 Professional Reporter, Certified Realtime
Reporter and Notary Public within and
19 for the State of Florida.
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E X H I B I T S	
DESCRIPTION	PAGE
(Mattaway Exhibit 4 for Identification, US Patent 6,108,704.)	180
(Mattaway Exhibit 5 for 23 Identification, US Patent 6,108,704 history, Bates Nos. SKYPE-N2P 00290310 through 290904.)	180
(Mattaway Exhibit 6 for Identification, US Patent 6,131,121.)	214
(Mattaway Exhibit 7 for Identification, Source Code, Bates stamped CBS 836 - 895.) - retained	259
(Mattaway Exhibit 8 for Identification, Mattaway notes on business development, Bates stamped CBS 54 - 56.) - retained	268

1
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10
11
12
13 I N D E X
14 Continued Examination by Mr. Heinrich 180
Examination by Mr. Boyle ---
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1 (This is the beginning of Volume 2.)
2 (Thereupon, the two documents were marked
3 by the court reporter for Identification as
4 Mattaway Exhibits 4 and 5.)
5 THE VIDEOGRAPHER: We are on the record.
6 C O N T I N U E D E X A M I N A T I O N
7 BY MR. HEINRICH:
8 Q. Welcome back, Mr. Mattaway.
9 A. Why thank you.
10 Q. I'm going to now show you what I have had
11 marked as Mattaway Exhibit 4, which is US Patent No.
12 6,108,704; and I'm also going to show you what I
13 have had marked as Exhibit No. 5, which is the file
14 history for US Patent No. 6,108,704, and bearing the
15 Bates numbers SKYPE-N2P 00290310 through 290904.
16 MR. BOYLE: Do you have copies?
17 THE WITNESS: I knew to work out before I
18 came here.
19 MR. HEINRICH: I do have a copy of the
20 '704 patent, but I did not bring copies.
21 MR. BOYLE: Eight point font.
22 BY MR. HEINRICH:
23 Q. So first, starting with the '704 patent,
24 is this a United States patent that you are named as
25 an inventor on?

1 A. So it says.
 2 Q. Do you recognize this as the '704 patent
 3 where you are named as the co-inventor?
 4 A. I see my name. It says "Point to point
 5 Internet Protocol."
 6 Q. And you reviewed this patent in
 7 preparation for your deposition?
 8 A. I think I did, yeah.
 9 Q. And you are familiar with the subject
 10 matter of this patent?
 11 MR. BOYLE: Objection, vague.
 12 THE WITNESS: To the extent that I'm not a
 13 patent attorney, yes.
 14 BY MR. HEINRICH:
 15 Q. I would like to call your attention to the
 16 file history now, we will go back to the '704 patent
 17 in a few minutes. But if you could turn to Page
 18 290672, which is about two-thirds of the way through
 19 that stack.
 20 In particular, I would like to turn your
 21 attention to the two-page document that starts at
 22 that page, 290672, and then goes on to the next
 23 page, 290673.
 24 Do you recognize this as a declaration
 25 that you submitted to the United States Patent

1 BY MR. HEINRICH:
 2 Q. So you signed this, the declaration, you
 3 submitted this to the United States Patent Office
 4 signing it under penalty of perjury?
 5 A. Apparently so.
 6 Q. So I would like to direct your attention
 7 to the third paragraph --
 8 A. Paragraph 3.
 9 Q. -- when you refer to the conception of the
 10 inventive subject matter. Do you see that?
 11 A. Yeah.
 12 Q. What specific inventive subject matter
 13 were you referring to there?
 14 A. I don't know. What are we talking about?
 15 You are referencing this point-to-point protocol?
 16 Q. So I will again repeat that this is from
 17 the file history of --
 18 A. This patent.
 19 Q. -- the '704 patent.
 20 MR. BOYLE: To be fair, you have given him
 21 several hundred pages, and you are asking him
 22 about one single page in the middle of that.
 23 MR. HEINRICH: I'm asking about a
 24 declaration he signed and submitted to the
 25 patent office.

1 Office?
 2 A. No.
 3 Q. Well, let's turn to Page 290673. Do you
 4 recognize your signature on that page?
 5 A. Yes. There it is.
 6 Q. Do you have any reason to doubt that you
 7 signed this document?
 8 A. No. You asked me if I recognized it. No,
 9 I didn't recognize it.
 10 Q. And by your signature, you were declaring
 11 that all of the statements in this declaration were
 12 of your own knowledge and true, and that all
 13 statements made on information and belief are
 14 believed to be true, and that further, these
 15 statements were made with the knowledge that willful
 16 false statements and the like were punishable by
 17 fine and imprisonment?
 18 MR. BOYLE: I was going to object to the
 19 form because that isn't exactly what it says.
 20 THE WITNESS: Obviously, the last
 21 paragraph here says, "I hereby declare all
 22 statements made herein are true," and I
 23 obviously signed it. So then I believed them
 24 to be true.
 25

1 MR. BOYLE: That is in the middle of a
 2 stack of papers.
 3 THE WITNESS: It seems true to me, No. 3.
 4 BY MR. HEINRICH:
 5 Q. Okay. So what was the inventive subject
 6 matter that you were referring to?
 7 MR. BOYLE: Objection, asked and answered.
 8 THE WITNESS: You mean that this is
 9 referring to?
 10 BY MR. HEINRICH:
 11 Q. Yes. That you are referring to in your
 12 declaration to the patent office.
 13 A. It says, "After a number of weeks of the
 14 conception of the inventive subject matter," and
 15 this is apparently referring to the point-to-point
 16 Internet protocol patent, which according to you, is
 17 Patent No. 6,108,704, if all of this ties together,
 18 then it has to deal with the content of this patent.
 19 Q. So could you explain to me, in your own
 20 understanding --
 21 A. Right.
 22 Q. -- what the inventive subject matter is of
 23 the '704 patent?
 24 MR. BOYLE: Objection, asked and answered.
 25 THE WITNESS: Well, the patent sort of

1 speaks for itself. I'm not a patent attorney,
 2 and asking me to give you my interpretation
 3 is -- you know, you can read it yourself and
 4 see precisely what the content and the concept
 5 and the purpose of this -- the claims of this
 6 patent are. Why are you asking me to give you
 7 my opinion of it?

8 BY MR. HEINRICH:

9 Q. Do you know what the inventive subject
 10 matter is of the '704 patent?

11 A. Yes, in an overall 10,000-foot
 12 understanding, yeah.

13 Q. Could you please explain that to me?

14 A. I will read it to you.

15 "Abstract: A point-to-point Internet
 16 protocol. Exchanges Internet protocol addresses
 17 between processed units to establish a
 18 point-to-point communication link between the
 19 processing units through the Internet.

20 "A first point-to-point Internet protocol
 21 includes Step A, storing in a database respective IP
 22 address of a set of processing units that have
 23 online status with respect to the Internet; B,
 24 transmitting a query from a first processing unit to
 25 a connection server to determine the online status

1 point-to-point connection through a connection
 2 server. That is really what it is. Step by step.
 3 No different than what I have already told you.

4 Q. Well, I didn't ask you about the '704
 5 patent this morning.

6 A. No, but this is basically a consolidation
 7 of everything we talked about so far this morning,
 8 almost everything anyway.

9 Q. Who conceived -- well, let's turn to the
 10 claims. Why don't you take a look at claim 1.

11 A. Which is?

12 Q. Which is on Page 329.

13 A. 329. Claim 1. Okay.

14 Q. And if you could just read that to
 15 yourself.

16 A. Okay.

17 Q. Are you an inventor of claim 1?

18 MR. BOYLE: Objection, calls for a legal
 19 conclusion.

20 THE WITNESS: Am I the inventor.

21 What do you mean by truly your definition
 22 of inventor? Is it the person who implements
 23 it? The person who conceives of it? What are
 24 you talking about?
 25

1 of the second processing unit, and retrieve the IP
 2 address of the second unit from the database using
 3 the connection server in response to the termination
 4 of a positive online status of the second processing
 5 unit for establishing a point-to-point
 6 communications link."

7 And I don't need to read any further, but
 8 that is the gist of this patent.

9 Q. Do you have any understanding of what the
 10 inventive subject matter is of the '704 patent
 11 without reading, say, from the abstract of the
 12 patent?

13 A. Well, yes, certainly. As, you know, its
 14 co-inventor, of course, I do.

15 Q. Could you tell me what your understanding
 16 is of the inventive subject matter of the '704
 17 patent without reading something that is on the page
 18 here?

19 A. I have explained that to you in your prior
 20 inquires and questions to me as to how the
 21 connection server worked, what implementations we
 22 used.

23 This is just basically an overview or a --
 24 the claims on the mechanisms involved or the
 25 methodologies involved in establishing that

1 BY MR. HEINRICH:

2 Q. Let's start with conception. Did you
 3 conceive of claim 1?

4 MR. BOYLE: Objection. Calls for a legal
 5 conclusion.

6 THE WITNESS: In part, yes, and in part,
 7 no. I would have to say that Glenn, when he
 8 said to me, you know -- you know, "I have an
 9 idea for establishing the point to point," way
 10 back before, you know, we started actually the
 11 company, but using the POP server is what is
 12 embodied in 1, that implementation.

13 My contribution thereafter would have
 14 been, you know, discussions with Glenn at that
 15 time and thereafter that, you know, we may --
 16 we probably ended up using another mechanism
 17 for the connection server because, you know,
 18 email is pretty darn slow, and our requirements
 19 need to be realtime.

20 So in answer to your question, am I the
 21 conceiver of 1? As far as the connection
 22 service process, no. Am I the conceiver of
 23 literally a voice over IP phone system that
 24 does point to point? I would have to say yes.

25 My contribution to 1 is, you know,

1 conversations with Glenn pertaining to
 2 alternative mechanisms to implement the
 3 connection services. And that is, you know,
 4 that is, I guess, my answer. As well as I can
 5 give you one.
 6 BY MR. HEINRICH:
 7 Q. So is there a particular element of
 8 claim 1 that you can direct me to and say, okay, I
 9 contributed to this particular element of claim 1?
 10 MR. BOYLE: Objection, calls for a legal
 11 conclusion.
 12 THE WITNESS: Well, all of claim 1 I
 13 contributed to, other than, as I said -- I
 14 would say the conception of how to get -- the
 15 conception of the connection service process in
 16 claim 1 was Glenn's because he said, "Look, I
 17 have an idea about how to get the point to
 18 point."
 19 Subsequent to that, I contributed to
 20 enhancing that connection service portion of
 21 claim 1. But all in all, claim 1 pretty much
 22 embodies how you establish a point-to-point
 23 connection via a connection server as a lookup
 24 mechanism.
 25 And again, I believe I was the co-inventor

1 network protocol address received by the first
 2 process following connection to the computer
 3 network?
 4 MR. BOYLE: Objection, vague, and calls
 5 for a legal conclusion.
 6 THE WITNESS: You know, I don't know what
 7 you are after here. I think I answered your
 8 question.
 9 I mean, claim 1 describes two processes,
 10 establishing a point-to-point connection
 11 through a connection server process where one
 12 makes an inquiry for the IP address of the
 13 other, and then once received, makes a point to
 14 point.
 15 At the outset I have told you, when I
 16 first met Glenn, he said, "I have a way of
 17 doing the point to point in my mind." Hence,
 18 the POP3 mechanism for the connection server.
 19 Subsequent to that there was no question
 20 that there was discussions between Glenn and I
 21 prior to even starting Intel that that mechanism
 22 may not suit us because of its time
 23 constraints, and we may need another mechanism.
 24 So with that said, I would tell you that
 25 the original conceiver of the connection

1 of that, as well, and its, you know, final
 2 embodiment.
 3 BY MR. HEINRICH:
 4 Q. So you stated that you contributed to
 5 enhancing the connection service portion of claim 1.
 6 And keeping the focus on claim 1, what
 7 particular elements here would you say that you
 8 contributed to in terms of enhancing?
 9 MR. BOYLE: This is exactly the same
 10 question. Asked and answered.
 11 THE WITNESS: I agree, I answered the
 12 question.
 13 BY MR. HEINRICH:
 14 Q. I guess I really don't understand your
 15 answer, then.
 16 What in particular, what elements here
 17 would you say that you contributed to?
 18 MR. BOYLE: Same objection.
 19 THE WITNESS: Why don't you point out each
 20 element and I will tell you.
 21 BY MR. HEINRICH:
 22 Q. We can do that.
 23 A. Okay.
 24 Q. So did you contribute to the conception of
 25 the program code for transmitting to the server a

1 service mechanism was Glenn via the POP server,
 2 and subsequent manifestations of the connection
 3 server implementations were co-conceived by
 4 Glenn and I.
 5 BY MR. HEINRICH:
 6 Q. Why don't you take a look at claim 10? If
 7 you could read that to yourself.
 8 A. Okay.
 9 Q. Are you an inventor of claim 10?
 10 MR. BOYLE: Objection, calls for a legal
 11 conclusion.
 12 THE WITNESS: Um, you know, I guess I
 13 would have to say, you know, in this -- it is
 14 sort of multi-part. Okay? Because the first
 15 part reiterates claim 1 in a way, establishing
 16 a point to point through a connection server,
 17 and then you are dealing with points A, B and
 18 C, which relates a point-to-point connection to
 19 a communication line embodied in the user
 20 interface. And that being the case, yes, I'm
 21 the inventor of that. Okay?
 22 BY MR. HEINRICH:
 23 Q. If you could turn to claim 32 and read
 24 that to yourself.
 25 A. Okay. Okay.

1 Q. Are you an inventor of claim 32?
 2 MR. BOYLE: Same objection.
 3 THE WITNESS: Claim 32 pertains to
 4 maintaining the map or the table that
 5 associates the identifier of a WebPhone client
 6 to its IP address, which is a connection
 7 service process.
 8 It is sort of an it-goes-without-saying
 9 kind of thing that the connection service, no
 10 matter how it is implemented, has that table.
 11 Because that is what you are doing, you are
 12 doing a lookup. I give you the identifier, you
 13 give me the IP address.
 14 So at the end of the day, I would have to
 15 say, no, this was part of Glenn's initial, you
 16 know, connection service mechanism, because,
 17 you know, there had to be -- actually, let me
 18 think about this a second. Let me retract that
 19 momentarily.
 20 Actually, I have to tell you that 32 is my
 21 invention. And it is going to be both. I will
 22 tell you why, because when we were discussing
 23 alternatives to the POP server and using a
 24 proprietary connection server, this is an
 25 obvious thing, we had to have a table that had

1 The fact that we have, you know, put it
 2 into implementation in this paradigm, in this
 3 specific application is what makes it unique, and
 4 hence, obviously, the patent clerk saw fit to issue
 5 us a patent in that regard.
 6 But the overall concept of, you know, I
 7 want your phone number, I need your name, I need an
 8 identifier to link it to your phone number or any
 9 other kind of table where here is an identifier,
 10 give me a parameter related to it, that goes back
 11 through antiquity.
 12 So this is just an implementation is
 13 what -- in this application is what is unique.
 14 Q. You were familiar with the concept of
 15 lookup tables for a long time, right, before you --
 16 A. It is standard computer science, standard
 17 anything. You know, I mean, there is a table for
 18 everything. You know.
 19 Q. So the concept of a lookup table is
 20 basically, it is the same concept, regardless of
 21 what particular data happens to be in the lookup
 22 table; right?
 23 A. A lookup table is a lookup table.
 24 Q. It doesn't matter what the particular
 25 content of the lookup table is; right?

1 the identifier and the IP address.
 2 So I would have to say that Glenn and I
 3 both in our discussions, you know, said, okay,
 4 well, let's -- this is how we are going to have
 5 to do it. So I would say co-inventor.
 6 BY MR. HEINRICH:
 7 Q. Are there any documents of any sort that
 8 would help you identify the particular date in which
 9 you co-conceived claim 32?
 10 MR. BOYLE: Objection.
 11 THE WITNESS: None that I know of. I
 12 mean, it is -- this is like -- no, none that I
 13 know of that would answer your question as
 14 to -- as to evidence as to who conceived it or
 15 at what time. I don't know any of that.
 16 BY MR. HEINRICH:
 17 Q. Did you at any point write it down and
 18 say, "I just came up with a nifty idea," write it in
 19 a journal entry or a lab notebook or something like
 20 that?
 21 A. Not to sound flippant, but -- and granted
 22 it got -- it was issued a patent, so it is unique,
 23 but this concept of maintaining a lookup table is,
 24 I'm sorry to say, obvious. I mean, it is an obvious
 25 thing.

1 A. Well, that is what makes it unique,
 2 though, and what application it is involved in.
 3 You know, the concept of a lookup table,
 4 yeah, has been around, but if you are applying it to
 5 some new technology or a new -- you know, a new
 6 program, you know, then, okay, you are unique in
 7 that regard.
 8 I mean, I would like to give you an
 9 example off the top of my head of things that are
 10 obvious around the world that need to be patented
 11 because they are specifically applied to unique
 12 applications, then, you know, I would give it to
 13 you. But I think you get what I'm saying.
 14 Q. So you think the fact that one of the
 15 parameters in the lookup table happen to be IP
 16 addresses is what made your invention unique in your
 17 opinion?
 18 MR. BOYLE: Objection, mischaracterizes
 19 his testimony.
 20 THE WITNESS: No, I'm going to tell you
 21 what made this unique, okay? And I gave you
 22 the example when we first started. The POTS
 23 environment for looking up a phone number is a
 24 lookup table. You call 411, you get
 25 information, they look it up in a lookup table,

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