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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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2    A P P E A R A N C E S :
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     Attorneys for Plaintiff.
4        725 Twelfth Street, N.W.
         Washington, DC  20005
5    BY:  NICHOLAS J. BOYLE, ESQ. and
          KEVIN HARDY, ESQ.
6    -and-
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10   BY:  ALAN HEINRICH, ESQ.
11
12
13           I N D E X
14   Continued Examination by Mr. Heinrich      180
     Examination by Mr. Boyle                    —
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1             E X H I B I T S
2    DESCRIPTION              PAGE
3    (Mattaway Exhibit 4 for          180
     Identification, US Patent
4    6,108,704.)
5
     (Mattaway Exhibit 5 for          180
6    23 Identification, US Patent
     6,108,704 history, Bates Nos.
7    SKYPE-N2P 00290310 through 290904.)
8
     (Mattaway Exhibit 6 for          214
9    Identification, US Patent
     6,131,121.)
10
11   (Mattaway Exhibit 7 for          259
     Identification, Source Code,
12   Bates stamped CBS 836 - 895.) - retained
13
     (Mattaway Exhibit 8 for          268
14   Identification, Mattaway notes on
     business development, Bates stamped
15   CBS 54 - 56.) - retained
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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?
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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

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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

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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.

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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

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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

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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

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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

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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,

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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

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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

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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 Itel 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

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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.

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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

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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.

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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?

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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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