

Page 1

1 UNITED STATES PATENT AND TRADEMARK OFFICE
 2 -----
 3 BEFORE THE PATENT TRIAL
 4 AND APPEAL BOARD
 5 -----
 6 SYMANTEC CORPORATION
 7 Petitioner,
 8 v.
 9 FINJAN, INC.,
 10 Patent Owner.
 11 -----
 12 Case IPR2015-01892
 13 Patent 8,677,494
 14 -----
 15 DEPOSITION OF
 16 SYLVIA HALL-ELLIS
 17 THURSDAY, MAY 26, 2016
 18 10:00 a.m.
 19
 20
 21
 22
 23
 24
 25 Reported by: Adrienne M. Mignano, RPR
 Job Number: J0357924

Page 3

1 A P P E A R A N C E S :
 2
 3 BRYAN CAVE LLP
 4 Attorneys for Petitioner
 5 1290 Avenue of the Americas
 6 #33
 7 New York, New York 10104
 8 BY: JOSEPH J. RICHETTI, ESQ.
 9 HASSAN ALBAKRI, ESQ.
 10
 11
 12
 13 KRAMER LEVIN NAFTALIS & FRANKEL LLP
 14 Attorneys for Patent Owner
 15 1177 Avenue of the Americas
 16 New York, New York 10036
 17 BY: SHANNON H. HEDVAT, ESQ.
 18 MICHAEL LEE, ESQ.
 19
 20
 21
 22
 23
 24
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 4
 5 May 26, 2016
 6 9:00 a.m.
 7 New York, New York
 8
 9 Deposition of SYLVIA HALL-ELLIS,
 10 held at the offices of Bryan Cave, 1290
 11 Avenue of the Americas, New York, New York,
 12 pursuant to Notice, before Adrienne M.
 13 Mignano, a Notary Public of the State of New
 14 York.
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1 Hall-Ellis
 2 S-Y-L-V-I-A H-A-L-L - E-L-L-I-S, called
 3 as a witness, having been duly sworn
 4 by a Notary Public, was examined and
 5 testified as follows:
 6 EXAMINATION BY
 7 MS. HEDVAT:
 8 Q Good morning, Dr. Hall-Ellis.
 9 A Good morning.
 10 Q May I have you state your full
 11 name and spell it for the record?
 12 A Sylvia, S-Y-L-V-I-A; middle
 13 initial D; last name Hall-Ellis,
 14 H-A-L-L - E-L-L-I-S.
 15 Q Thank you.
 16 If you can also state your
 17 address for the record.
 18 A My home address is 2301 South
 19 Holly Street, Denver, Colorado 80222.
 20 Q Do you understand why we're here
 21 today?
 22 A Yes, I do.
 23 Q Have you been deposed before?
 24 A Yes.
 25 Q And in how many contacts or how



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1 Hall-Ellis
2 many cases?
3 A In what period of time?
4 Q In total. In the span of your
5 life, let's start there.
6 MR. RICHETTI: Best guess.
7 A Three times.
8 Q Three times?
9 A Uh-huh.
10 Q How many in the last ten years?
11 A Three times.
12 Q Three times.
13 What were the nature of those
14 cases?
15 A What are you asking me?
16 Q What type of lawsuits were they?
17 For example, were they patent infringement
18 lawsuits?
19 A All of them had to do with
20 intellectual property and prior art.
21 Q So you understand today that I'm
22 going to ask you questions. I ask you in
23 return, if there is anything that I ask
24 you that you need clarification, you don't
25 understand, that you ask me; otherwise,

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1 Hall-Ellis
2 we'll proceed under the understanding that
3 you know what I'm asking.
4 A Okay.
5 Q Is there any reason why you
6 cannot provide your best and accurate
7 testimony today?
8 A No.
9 Q When were you asked to start
10 working on this matter?
11 A Late summer of last year.
12 Q And who contacted you?
13 A Mr. Albakri.
14 Q Did you work with counsel here
15 today or their firm on several matters?
16 A At that time, no.
17 Q And today?
18 A Yes, I have worked with them on
19 another matter.
20 Q And how many other matters?
21 A This firm?
22 Q Yes.
23 A One.
24 Q And what is the fee arrangement
25 you have for working in connection with

Page 7

1 Hall-Ellis
2 this matter?
3 A It is my usual rate.
4 Q What is your usual rate?
5 A I charge \$300 an hour plus
6 reasonable expenses.
7 Q And how many hours have you
8 worked in connection with this matter?
9 A I cannot tell you exactly.
10 Q Could you ballpark?
11 A 15 approximately.
12 Q When were you first notified
13 about having this scheduled deposition?
14 A Earlier this month.
15 Q Earlier this month?
16 A Yes.
17 Q Did you have any conflicts? Is
18 this the first available date that you
19 had?
20 A This is my first available date
21 this month, yes.
22 Q And when was that first -- when
23 did you first notify counsel that today
24 was the first day you were available for a
25 deposition?

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1 Hall-Ellis
2 MR. RICHETTI: Objection.
3 If you can answer.
4 A I don't remember.
5 Q Did you meet with anyone in
6 preparing for the deposition today?
7 A Yes.
8 Q And who did you meet with?
9 A I met with these gentlemen to my
10 left from this firm.
11 Q And when did that meeting occur?
12 A We met yesterday.
13 Q For about how long?
14 A Six hours.
15 Q So in the nature of the work
16 that you have performed for this action,
17 can you tell me a little bit of what
18 exactly you were asked to do from the
19 beginning?
20 A I was asked to explore and
21 investigate the date of the availability
22 of prior art.
23 Q And what do you mean by
24 "availability"?
25 A Availability to the public in



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1 Hall-Ellis
2 terms of cataloging and accessibility
3 through a library.
4 Q How do you define "the public"?
5 A The public is a person
6 interested in the content of the item in
7 question.
8 Q And how did you generally go
9 about determining this information, in
10 determining the public availability of the
11 documents that were provided to you?
12 A I have a process that I use in
13 terms of doing that because I am a
14 librarian of long standing, and have great
15 familiarity with the tools that are used
16 by professional users for this kind of
17 work. So I have a process that I use and
18 I use it every time.
19 Q Every time in what sense?
20 A Every time I want to know the
21 availability, current availability,
22 description, ownership, I have a process
23 that I follow developed over many years of
24 practice.
25 Q And what is your current

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1 Hall-Ellis
2 position today?
3 A In relation to this activity or
4 what I do?
5 Q What you do.
6 A I am the director of grant and
7 resource development for the Colorado
8 Community College system.
9 Q And what is your role in that
10 position?
11 A I coordinate efforts with our
12 member colleges to secure funding that
13 supports programs and services for our
14 155,000 students.
15 Q And what is your educational
16 background?
17 A I have a very long educational
18 background detailed in my CV. I went to
19 college initially and got a BA degree. I
20 have a Master's in library information
21 science from the University of North
22 Texas. I have graduate studies at the
23 University of Texas at San Antonio. I
24 have a Master's degree from the University
25 of Denver. And I have a Ph.D. from the

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1 Hall-Ellis
2 University of Pittsburgh in library and
3 information science.
4 MS. HEDVAT: Can you mark this
5 please.
6 (Whereupon, Declaration of
7 Sylvia Hall-Ellis, September 2015, was
8 marked as Hall-Ellis Exhibit 1 for
9 identification, as of this date.)
10 BY MS. HEDVAT:
11 Q You were just handed what has
12 been marked as Exhibit 1.
13 Do you recognize this document?
14 (Witness reviewing document)
15 A Yes, I do.
16 Q What is it?
17 A This is a declaration that I
18 prepared in September of 2015.
19 Q If I can ask you to just turn to
20 the last page of that document.
21 A Uh-huh.
22 Q Can you confirm that that is
23 your signature?
24 A Yes, it is.
25 Q And you mentioned that you

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1 Hall-Ellis
2 prepared this in September of last year?
3 A Yes.
4 Q Who assisted you in preparing
5 this declaration?
6 A I had some assistance from Mr.
7 Albakri.
8 Q Anyone else?
9 A I do not have knowledge of other
10 assistance.
11 Q Who did the primary writing for
12 this declaration?
13 A Well, me.
14 Q And so I guess I'm a little
15 confused when you say you don't have any
16 knowledge of anyone else?
17 A Well, I don't do the formatting,
18 I don't do the printing, so I don't know
19 if someone here did that. I don't know
20 who that would be.
21 Q Now, does this declaration
22 contain all of your opinions regarding
23 what you mentioned earlier, public
24 availability of documents?
25 A Yes. This was definitely based



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1 Hall-Ellis
2 on my work and my understanding at the
3 time that it was written.
4 Q And who provided you the
5 documents that you were asked to research
6 the public availability of?
7 A Mr. Albakri sent me the
8 citations and the documents.
9 Q How did you decide what to do in
10 order to determine the public availability
11 of these documents?
12 A As I mentioned before, I have
13 been doing this a very long time and I
14 have a process that I follow, and I
15 followed it in this case.
16 Q When you say you have been doing
17 this, does that mean researching; what
18 exactly does that mean?
19 A I have been cataloging and
20 describing items for the public in
21 catalogs since 1973. So I would say
22 that's a pretty long time.
23 And I have a process refined
24 over time given the advances in technology
25 that we use, and that is the process I

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1 Hall-Ellis
2 used for this work.
3 Q And is this process something
4 that you do on a daily basis in your
5 current position?
6 A I would say that I do this about
7 three days a week.
8 Q And is that in connection with
9 your position or in being retained, as you
10 have been here today?
11 A This is in connection with my
12 work that I do for San Jose State
13 University.
14 Q Thank you.
15 Now, if I can direct you to
16 paragraph 6 of your declaration.
17 A Okay.
18 Q I'm going to ask you, if you
19 look at the sentence beginning "Today MARC
20 or Machine Readable Cataloging is the
21 primary communication protocol."
22 A Uh-huh.
23 Q What do you mean by "primary
24 communication protocol"?
25 A MARC is an abbreviation for

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1 Hall-Ellis
2 Machine Readable Cataloging. It is part
3 of an internationally adopted standard,
4 Z39.2, which has been around for a number
5 of decades.
6 We refine it; we use it; it is
7 continually reaffirmed by our community in
8 practice. It is the way in which
9 computers from one library to another are
10 able to exchange bibliographic and other
11 data that are useful to their users.
12 Q And are you aware of how many
13 libraries were using this in the 1990s?
14 MR. RICETTI: Objection. Form.
15 A If you're looking for a number,
16 no.
17 What I can tell you is that at
18 that time, as many libraries as could
19 inform the investment to purchase
20 integrated library systems that use this
21 type of data were doing so. Larger ones
22 first, smaller ones later.
23 Q If I can direct your attention
24 now to paragraph 7 of your declaration,
25 the last sentence, or the last line on

Page 16

1 Hall-Ellis
2 page 3.
3 A Okay.
4 Q You say, "A cataloguer at an
5 OCLC participating member institution".
6 Can you tell me what a
7 "cataloguer" is?
8 A That is a really good question,
9 and I am so pleased you asked me that.
10 Cataloging and the competency,
11 knowledge and technical skills involved is
12 the area of my research. I am known
13 nationally and internationally for my work
14 in this area, and, in fact, the new
15 standards of this kind of work from the
16 American Library Association, which is
17 currently being developed, are based on my
18 research.
19 Cataloguer is a person who takes
20 an item in any format, in any language,
21 and prepares bibliographic descriptions
22 that are placed or transcribed into the
23 MARC standard so that they are available
24 to any library that chooses to use them
25 because they own the item in question.



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1 Hall-Ellis
2 Q Thank you.
3 And who are "OCLC participating
4 member institutions"?
5 A Another really great question.
6 OCLC is a large not-for-profit
7 corporation located outside of Columbus,
8 Ohio. It was founded in 1967. It is the
9 largest database for this type of
10 bibliographic data in the world, has 22
11 billion holdings, and has about 170,000
12 participating libraries. They call them
13 members. They are participating in terms
14 of council advisory groups, thought
15 partners and developers.
16 Q And do you know when the first
17 participating member became one?
18 A It was actually a group of
19 academic institutions in the state of Ohio
20 that came together and determined that
21 sharing these data would save them time
22 and money. So they started as a
23 consortium.
24 They incorporated. It was
25 slightly after that, in 1971, that they

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1 Hall-Ellis
2 actually began building the database. The
3 first participants were in Ohio.
4 Q And that was in what year again?
5 A 1967.
6 Q Now, if I can turn your
7 attention to the top of the next page,
8 also part of paragraph 7.
9 A Okay.
10 Q What do you mean by
11 "instantaneously available"?
12 A An interesting concept. Glad
13 you brought that up.
14 The system now is really very
15 dynamic, and when one updates a record,
16 that is to say, indicates ownership and
17 wishes to contribute the bibliographic
18 record to the local catalog where the item
19 is held, that also sends the record to the
20 permanent database in Columbus, and it is,
21 therefore, available to anyone seeking it
22 and they can see it.
23 Q And you mentioned that that is
24 the way it operates now?
25 A It always operated that way from

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1 Hall-Ellis
2 the system point of view. For the local
3 library, not so easy. We had our systems
4 not able to accept the data directly
5 earlier and that is a change that has come
6 about in the last couple of decades, but
7 the system operation has not changed.
8 Q Okay.
9 So this concept of instantaneous
10 availability really has only been in place
11 across the member institutions in more
12 recent --
13 MR. RICETTI: Objection. Form.
14 A No, let me try again.
15 The instantaneous part is the
16 loading and indexing of the bibliographic
17 record in the one or local library. The
18 participating library's contribution to
19 the larger database in Ohio has always
20 been immediate.
21 Q So to clarify then: This last
22 sentence here that we were looking at, you
23 state, "It is instantaneously available to
24 any OCLC participating member, and,
25 therefore, available to the public."

Page 20

1 Hall-Ellis
2 What I seem to be understanding
3 is that there is a distinction between
4 availability to the members and
5 availability to the public?
6 MR. RICETTI: Objection. Form.
7 You can answer.
8 A Not exactly. At this point in
9 time, they are simultaneous. Because OCLC
10 developed a front end browser called
11 WorldCat, the public can see that from the
12 local library and from their homes.
13 Anybody on the internet, you can do it
14 from this room should you choose to. You
15 can see something -- you can see something
16 updated five seconds ago, two hours ago.
17 Q And you mentioned that's as of
18 today.
19 Are you aware of what it was
20 like, for example, in the 1990s?
21 A Of course. I've been using the
22 system since the 1970s, so, yes, in the
23 1990s, depending on the library, the
24 loading of data might take a separate step
25 within the library. So there are systems



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