IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPROVAL BOARD

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APPLE, INCORPORATED,

Petitioner, :

v. : CASE No's. IPR2016-00754

PERSONALIZED MEDIA : And IPR2016-00755

COMMUNICATIONS, LLC, :

Patent owner. :

- - - - - - - - X

Videotaped Deposition of THOMAS J. SCOTT, JR.

Washington, D.C.

Friday, February 17, 2017

9:09 a.m.

Reported by: Cassandra E. Ellis, RPR

Job No.: 18148



	Page 2		Page 4
1	Deposition of THOMAS J. SCOTT, JR., held at	1	CONTENTS
2	the offices of Kirkland & Ellis LLP, 655 15th Street	2	EXAMINATION OF THOMAS J. SCOTT, JR. PAGE
3	Northwest, Suite 1200, Washington, D.C. 20005,	3	By Mr. Merkin 6
4	pursuant to agreement, before Cassandra E. Ellis,	4	,
5	Certified Court Reporter - WA, Certified Shorthand	5	
6	Reporter - HI, Registered Professional Reporter,	6	
7	Certified Livenote Reporter, Realtime Systems	7	EXHIBITS
8	Administrator and Notary Public of The District of	8	(Attached to the Transcript)
9	Columbia.	9	THOMAS J. SCOTT, JR. Deposition Exhibit PAGE
10		10	Previously Marked
11		11	Exhibit 2020 Thomas J. Scott, Jr. Declaration 13
12		12	In IPR2016-00754
13		13	Exhibit 2024 Thomas J. Scott, Jr. Declaration 13
14		14	In IPR2016-00755
15		15	
16		16	
17		17	
18		18	
19		19	
20		20	
21		21	
22		22	
	Page 3		Page :
1	Page 3	1	Page 5
1	APPEARANCES	1	PROCEEDINGS
2	APPEARANCES	2	PROCEEDINGS THE VIDEOGRAPHER: Good
2	A P P E A R A N C E S ON BEHALF OF PETITIONER APPLE:	2 3	PROCEEDINGS THE VIDEOGRAPHER: Good morning. This is the beginning of
2 3 4	A P P E A R A N C E S ON BEHALF OF PETITIONER APPLE: JOEL R. MERKIN, ESQUIRE	2 3 4	PROCEEDINGS THE VIDEOGRAPHER: Good morning. This is the beginning of disc number one in the deposition
2 3 4 5	A P P E A R A N C E S ON BEHALF OF PETITIONER APPLE: JOEL R. MERKIN, ESQUIRE KIRKLAND & ELLIS LLP	2 3 4 5	PROCEEDINGS THE VIDEOGRAPHER: Good morning. This is the beginning of disc number one in the deposition of Thomas Scott, taken in the
2 3 4	A P P E A R A N C E S ON BEHALF OF PETITIONER APPLE: JOEL R. MERKIN, ESQUIRE KIRKLAND & ELLIS LLP 601 Lexington Avenue	2 3 4 5 6	PROCEEDINGS THE VIDEOGRAPHER: Good morning. This is the beginning of disc number one in the deposition of Thomas Scott, taken in the matter of Apple, Incorporated,
2 3 4 5 6	A P P E A R A N C E S ON BEHALF OF PETITIONER APPLE: JOEL R. MERKIN, ESQUIRE KIRKLAND & ELLIS LLP 601 Lexington Avenue New York, New York 10022	2 3 4 5 6 7	PROCEEDINGS THE VIDEOGRAPHER: Good morning. This is the beginning of disc number one in the deposition of Thomas Scott, taken in the matter of Apple, Incorporated, versus Personalized Media
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2 3 4 5 6 7 8	A P P E A R A N C E S ON BEHALF OF PETITIONER APPLE: JOEL R. MERKIN, ESQUIRE KIRKLAND & ELLIS LLP 601 Lexington Avenue New York, New York 10022 (212) 446-4663	2 3 4 5 6 7 8	PROCEEDINGS THE VIDEOGRAPHER: Good morning. This is the beginning of disc number one in the deposition of Thomas Scott, taken in the matter of Apple, Incorporated, versus Personalized Media
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2 (Pages 2 to 5)



	Page 6		Page 8
1 1		1	
2	identify themselves, and whom they represent, after which the court	1 2	before, no. Q Prior to joining PMC you were
3	reporter will swear in the witness	3	an attorney at Goodwin Procter, a law
4	and you may proceed.	4	firm; correct?
5	MR. MERKIN: Joel Merkin, of	5	A Yes.
6	Kirkland and Ellis, on behalf of	6	Q How long were you an attorney
7	petitioner, Apple.	7	at Goodwin Procter, approximately?
8	MR. KLINE: Doug Kline, of	8	A I joined Goodwin Procter in
9	Goodwin, on behalf of patent	9	April well, April 23rd, 2007, and I
10	owner, PMC, and the witness.	10	left on March 31, 2014.
11	THOMAS J. SCOTT, JR.	11	Q As an attorney of Goodwin
12	having been sworn, testified as follows:	12	Procter you represented PMC?
13	EXAMINATION	13	A Yes.
14	BY MR. MERKIN:	14	Q When did you start representing
15	Q Mr. Scott, good morning.	15	PMC?
16	A Good morning.	16	A Sometime prior to September
17	Q Can you please state your full	17	11th, 1987, and after August 31st, 1985.
18	name for the record?	18	Q Have you separately represented
19	A Thomas J. Scott, Junior.	19	Mr. John Harvey?
20	Q Thank you for joining us today.	20	A Yes.
21	I understand that you've been deposed	21	Q When did you start representing
22	several times, previously; is that	22	Mr. Harvey?
	several villes, previously, is ville		2.22. 2.20. (0)
	Page 7		Page 9
1	correct?	1	A In 1979, while I was employed
2	A Yes.	2	at the law firm, in New York, of Cooper
3	Q You submitted a declaration	3	Dunham Clark Griffin and Moran, I
4	regarding secondary considerations in	4	represented Mr. Harvey in his personal
5	IPR2016-754 and 755; correct?	5	capacity.
6	A That is correct.	6	Q Were those for matters outside
	Q It's the same declaration in	-,	
7	Tractile same accidiation in	7	the scope of PMC?
7 8		8	
	both of those IPR proceedings; is that		the scope of PMC? A Well, PMC didn't exist, at the time.
8		8	A Well, PMC didn't exist, at the
8 9	both of those IPR proceedings; is that correct?	8 9 10 11	A Well, PMC didn't exist, at the time.
8 9 10	both of those IPR proceedings; is that correct? A Yes.	8 9 10 11 12	A Well, PMC didn't exist, at the time. Q Outside the scope of PMC or
8 9 10 11	both of those IPR proceedings; is that correct? A Yes. Q You are the general counsel of	8 9 10 11	A Well, PMC didn't exist, at the time. Q Outside the scope of PMC or PMC's predecessor companies?
8 9 10 11 12 13 14	both of those IPR proceedings; is that correct? A Yes. Q You are the general counsel of PMC; correct?	8 9 10 11 12 13 14	A Well, PMC didn't exist, at the time. Q Outside the scope of PMC or PMC's predecessor companies? A Well, neither of them existed, at that time. It was Mr. Harvey in a personal capacity.
8 9 10 11 12 13	both of those IPR proceedings; is that correct? A Yes. Q You are the general counsel of PMC; correct? A That is correct.	8 9 10 11 12 13 14 15	A Well, PMC didn't exist, at the time. Q Outside the scope of PMC or PMC's predecessor companies? A Well, neither of them existed, at that time. It was Mr. Harvey in a personal capacity. Q Generally speaking, what types
8 9 10 11 12 13 14 15 16	both of those IPR proceedings; is that correct? A Yes. Q You are the general counsel of PMC; correct? A That is correct. Q You've been the general counsel of PMC since April 2014; correct? A That's correct.	8 9 10 11 12 13 14 15 16	A Well, PMC didn't exist, at the time. Q Outside the scope of PMC or PMC's predecessor companies? A Well, neither of them existed, at that time. It was Mr. Harvey in a personal capacity. Q Generally speaking, what types of matters did you represent Mr. Harvey
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8 9 10 11 12 13 14 15 16 17 18 19 20	both of those IPR proceedings; is that correct? A Yes. Q You are the general counsel of PMC; correct? A That is correct. Q You've been the general counsel of PMC since April 2014; correct? A That's correct. Q When did you join PMC? A April 1, 2014. Q So you didn't hold any other positions at PMC prior to general	8 9 10 11 12 13 14 15 16 17 18 19 20	A Well, PMC didn't exist, at the time. Q Outside the scope of PMC or PMC's predecessor companies? A Well, neither of them existed, at that time. It was Mr. Harvey in a personal capacity. Q Generally speaking, what types of matters did you represent Mr. Harvey on? A Oh, I mean, I actually testified to this before, but I'll just roughly repeat, Mr. Harvey was, in 1979 a

3 (Pages 6 to 9)



closer in time is probably is the best source of what that was, of what happened. He he was going to leave Hambros Bank to take a position with a startup that was going to manufacture a patented product. And he asked me to review the patent, and answer certain questions he had about it, which I did. And then, when he was going	1 2 3 4 5 6 7 8	from PMC? A No. Q Do you receive compensation from PMC, aside from a salary? A No. Q Do you have any shares in PMC? A No.
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to review the patent, and answer certain questions he had about it, which I did.	1	
certain questions he had about it, which I did.	9	Q Any units of ownership in any
which I did.		PMC entities?
	10	A No.
	11	Q Do you receive any compensation
to take the position, the owner of the	12	from PMC, aside from your annual salary?
company decided that he did not wish	13	A No, not monetary, anyway. It's
	l	a great place to work.
	l	Q Aside from monetary
	l	compensation, is there other forms
	1	A No. I mean, I just just the
	1	enjoyment of working with the Harveys,
		who are wonderful people.
	1	Q I'm going to hand you a pair of
	1	declarations, these are what I will
	l	represent to you as identical
		1 3
Page 11		Page 13
PMC with regard to patent prosecution	1	declarations from the two IPR proceedings
matters?	2	we're discussing today, aside from the
A Yes.	3	footer, which identifies the IPR
Q Did you represent PMC outside	4	proceeding.
of patent prosecution matters?	5	MR. KLINE: Do you have
A Well, I represented them in a	6	thank you.
number of different circumstances,	7	(Previously marked Exhibit
contracts and license agreements that	8	No's. 2020 and 2024 were
they entered into, I advised them with	9	identified for the record.)
respect to that and, you know, certain	10	BY MR. MERKIN:
proceedings that they brought in the	11	Q So the first declaration I've
in the International Trade Commission and	12	handed you is PMC Exhibit 2020, in Apple
district court I advised them with	13	v. PMC, IPR2016-754, the second
respect to that.	14	declaration I've handed you is Exhibit
Q As the current general counsel	15	2024, in Apple v. PMC, IPR2016-755. Do
of PMC you're an employee of the company;	16	you have each of these declarations in
correct?	17	front of you?
A Absolutely, yes.	18	A Yes.
Q PMC currently pays you an	19	Q And these are the declarations
annual salary; is that correct?	20	that you've submitted in these two IPR
A Yes.	21	proceedings regarding secondary
Q Do you receive an annual bonus	22	considerations; correct?
_	to hire Mr. Harvey and so he he didn't take that position. He left Hambros and, thereafter, he had a number of different proposals that he was making to media companies, and I helped him with some of those. Q With regard to your representation of PMC, prior to being general counsel of PMC, did you represent PMC with regard to patent prosecution matters? A Yes. Q Did you represent PMC outside of patent prosecution matters? A Well, I represented them in a number of different circumstances, contracts and license agreements that they entered into, I advised them with respect to that and, you know, certain proceedings that they brought in the in the International Trade Commission and district court I advised them with respect to that. Q As the current general counsel of PMC you're an employee of the company; correct? A Absolutely, yes. Q PMC currently pays you an annual salary; is that correct? A Yes.	to hire Mr. Harvey and so he he didn't take that position. He left Hambros and, thereafter, he had a number of different proposals that he was making to media companies, and I helped him with some of those. Q With regard to your representation of PMC, prior to being general counsel of PMC, did you represent Page 11 PMC with regard to patent prosecution matters? A Yes. Q Did you represent PMC outside of patent prosecution matters? A Well, I represented them in a number of different circumstances, contracts and license agreements that they entered into, I advised them with respect to that and, you know, certain proceedings that they brought in the in the International Trade Commission and district court I advised them with respect to that. Q As the current general counsel of PMC you're an employee of the company; correct? A Absolutely, yes. Q PMC currently pays you an annual salary; is that correct? A Yes.

4 (Pages 10 to 13)



	Page 14		Page 16
1	A Yes, as best I can tell, from a	1	Q Is someone who is not a
2	brief review.	2	registered patent attorney, in your view,
3	Q These are the identical	3	not as qualified to be able to opine on
4	declarations that we discussed at the	4	secondary considerations?
5	beginning of your deposition	5	A Well, as a general matter, I
6	deposition that you submitted in these	6	mean, obviously, people, very different
7	IPRs; correct?	7	skills and understanding of of
8	A Well, the ones I submitted were	8	concepts, and there are many people who
9	identical, yes.	9	are not registered patent attorneys who
10	Q For purposes of today's	10	are very proficient in that subject, but
11	deposition I do want to walk through your	11	as a general matter, I would say a person
12	declaration. And so are you okay with	12	who has a deep experience in all aspects
13	walking through the PMC Exhibit 2020 from	13	of patent practice is better qualified.
14	IPR2016-754?	14	Q If I can turn your attention to
15	A Well, I'll answer any questions	15	paragraph four of your declaration,
16	you have about either one of them.	16	starting on page two?
17	Q And it's your understanding,	17	A Yes.
18	correct, that the paragraph numbers in	18	
19	each declaration are the same?	19	Q You state that PMC's patent
20		1	portfolio comprises 97 US patents;
	A Well, yes, that's what I said,	20	correct?
21	they the ones that I submitted were	21	A Yes.
22	identical.	22	Q Does PMC have any foreign
	Page 15		Page 17
1	Q Thank you. If you could please	1	patents?
2	turn to paragraph three on page two of	2	A Well, yes, it it has foreign
3	your declaration?	3	patents. But they're all expired or
4	A Yes.	4	unenforceable.
5	Q You started that paragraph by	5	Q Of the 97 US patents you refer
6	stating "as a registered patent	6	to in paragraph four, are any of those
7	attorney"; is that correct?	7	patents expired?
8	A Yes.	8	A Oh, yes, mm-hmm.
9	Q Do you believe you need to be a	9	Q How many of
10	registered patent attorney to provide a	10	A Seven.
11	declaration regarding secondary	11	Q So for the record, 7 of the 97
12	considerations?	12	PMC patents
13	A Well, I believe it helps. I	13	A Right.
14	mean, obviously many of the jurists who	14	Q are expired; correct?
15	deal with the matter are not, but I	15	A That's correct. I mean, I
16	believe that a person who has experience	16	the the first one, `490, and then the
17	in all the areas of patent law practice	17	one issued in 1999, `243, just expired
18	and deals with obviousness from many	18	recently.
19	different aspects has a better	19	Q Of the 97 PMC patents you
20	understanding of what indicia demonstrate	20	reference in paragraph four have any been
21	the non-obviousness of invention, yes, I	21	acquired by PMC?
22	do.	22	A Well, yes, they Mr. Harvey

5 (Pages 14 to 17)



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