1   UNITED STATES PATENT AND TRADEMARK OFFICE

2   BEFORE THE PATENT TRIAL AND APPEAL BOARD

3

    APPLE INC.,   Case No.: IPR1016-01381

4

                    Petitioner,   Patent No.: 8,773,356

5

        v.

6

    IMMERSION CORPORATION,

7

                    Patent Owner.

8   _____

9

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13   INTER PARTES REVIEW

14   EXAMINATION OF

15   PATRICK M. BAUDISCH, Ph.D.

16   San Diego, California

17   Monday, August 14, 2017

18   Volume 1

19

20

21   Reported by:

    LESLIE JOHNSON

22   RPR, CCRR, CSR No. 11451

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24   PAGES 1 - 92

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17   INTER PARTES REVIEW, EXAMINATION OF PATRICK M.
18 BAUDISCH, Ph.D., Volume 1, taken on behalf of Patent
19 Owner, at 401 B Street, Suite 1700, San Diego,
20 California, beginning at 9:08 a.m. And ending at
21 5:18 p.m., on Monday, August 14, 2017, before LESLIE
22 JOHNSON, Certified Shorthand Reporter No. 11451.
23
24
25
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 1   San Diego, California, Monday, August 14, 2017
 2   9:08 A.M.
 3
 4   MR. FLEMING: I'm Mike Fleming, with Irell &
 5 Manella, on behalf of the patent owner. And with me is
 6 James Milkey, also on behalf of the patent owner. This
 7 is IPR2016-01381 challenging U.S. Patent No. 8,773,356.
 8   MR. WILLIAMS: Rob Williams with DLA Piper on
 9 behalf of Petitioner Apple. Also with me today on the
10 phone is Brian Erickson, also with DLA.
11   THE WITNESS: My name is Patrick Baudisch --
12 Patrick Markus Baudisch, with a K, and I'm the expert
13 witness.
14
15   PATRICK M. BAUDISCH, Ph.D.,
16   having been first duly sworn, was examined
17   and testified as follows:
18
19   EXAMINATION
20 BY MR. FLEMING:
21   Q   Doctor, do you understand you've taken an oath
22 to tell the truth?
23   A   Yes.
24   Q   Do you understand that this oath has the same
25 force and effect as if it was given in a court of law
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2 (Pages 2 - 5)

1 before a judge and jury?
2   A   Yes.
3   Q   Is there anything preventing you from giving
4 accurate and full answers today?
5   A   No.
6   Q   Is there any reason you cannot give your best
7 testimony today?
8   A   No.
9   Q   If you do not ask me to clarify a question,
10 I'm going to assume you understood the question.
11   Is that fair?
12   A   Yes.
13   Q   Are you represented by counsel today?
14   A   Yes.
15   Q   Can you identify counsel?
16   A   Rob Williams next to me.
17   Q   Do you understand that you're under oath, even
18 when you take a break?
19   A   Yes.
20   Q   Do you understand that you're under oath, and
21 you are not to discuss the case while on break or with
22 anyone outside of this room?
23   A   Yes.
24   Q   Do you understand that when you are under
25 oath, your counsel cannot coach you, act as an

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1 intermediate, interpret questions, or help you answer
2 the questions?
3   A   Yes.
4   Q   You understand that your counsel cannot
5 instruct you on how to answer a question, unless it is
6 necessary to preserve privilege?
7   A   Yes.
8   Q   Do you understand that, unless your counsel
9 instructs you not to answer in order to preserve
10 privilege, you must answer the question?
11   A   Yes.
12   Q   Did you do anything to prepare for the
13 deposition?
14   A   Yes. I read various materials and I consulted
15 with counsel.
16   Q   What materials did you read?
17   A   I read the various declarations on both sides
18 and reply declarations. I read the involved -- reread
19 the involved patents, you know, whatever is listed as
20 exhibits in my declaration list.
21   Q   How long did that take?
22   A   You mean the preparation for today?
23   Q   Uh-huh.
24   A   Well, given there are two patents involved, I
25 think, overall, six days maybe.

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1   MR. WILLIAMS: Can we take a quick break?
2   (Pause in the proceedings from 9:14 to
3 9:16 a.m.)
4 BY MR. FLEMING:
5   Q   Did you meet with counsel?
6   A   I did.
7   Q   How long did you meet with counsel?
8   A   Including both patents, I think two and a half
9 days.
10   Q   You mentioned that you -- before the break,
11 that you had reviewed documents in preparation for this
12 deposition, correct?
13   A   Yes.
14   Q   Did any of these documents refresh your
15 memory?
16   A   Yes.
17   Q   What documents refreshed your memory?
18   A   I guess the main patents are the '356, the
19 '281, the '737. These come to mind. There might have
20 been more.
21   Q   Did you bring any documents with you?
22   A   I've got a printout of my reply declaration
23 and the original declaration, fresh off the printer.
24   Q   We would like you not to refer to those
25 documents. We will provide you the documents here.

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1   A   I think I can handle that. That's okay.
2   Q   You've been deposed before, correct?
3   A   Yes.
4   Q   Have you testified in a court case?
5   A   Yes.
6   Q   What other matters have you been an expert on?
7   A   I was an expert on Apple versus HTC. I guess
8 that must have been three years ago, maybe.
9   Q   Are your opinions complete?
10   A   So my reply declaration describes my knowledge
11 from whenever it was posted, I think two weeks ago. I'm
12 trying to think if anything new has come to light in
13 terms of material since then, but I think it should
14 actually be complete.
15   Q   Did you write the reply declaration yourself?
16   A   Yes. With support from counsel.
17   Q   So you said with support with counsel.
18   Does that mean counsel wrote some of it?
19   A   Reports went back and forth. Phone calls were
20 made, yes.
21   Q   Did they write the first draft?
22   A   I don't recall who wrote the first draft.
23 The -- it was going back and forth between both sides.
24   Q   So in all this back and forth, did you make
25 corrections toward inaccuracies?

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3 (Pages 6 - 9)

1   A   Of course.
2   Q   Do you believe that you consulted all of the
3 relevant sources of information that may be material to
4 the -- your opinion in your present reply declaration?
5   A   I think so.
6   (Exhibit 1025 introduced)
7 BY MR. FLEMING:
8   Q   I want to present Exhibit 1025. I'm
9 presenting you Exhibit 1025.
10   A   Thank you.
11   Q   Do you recognize this exhibit?
12   A   Yes. My reply declaration.
13   Q   Is it the reply declaration for the '356
14 patent?
15   A   For the '356, yes.
16   Q   Right. So it's the '356 which is the present
17 IPR?
18   A   Yes.
19   Q   Feel free to refer to this document as you
20 need during the deposition.
21   A   Thank you.
22   Q   What languages do you speak?
23   A   So my native language is German. I speak
24 English because I spent nine years in the U.S. And I
25 speak French as well. I've got a basic knowledge of

1 nouns anymore. It would be an unusual case.
2   Q   So it's an unusual case in German?
3   A   I would assume, yeah, except in those cases
4 where it just comes down to tracing back what the origin
5 of the word was in the first place. And I would assume
6 that many of those originated maybe as nouns. I don't
7 know. But as you rightfully point out, I'm an engineer.
8 So this would not be my primary expertise.
9   Q   Can a noun ever function as an adjective in
10 the English language?
11   A   As I was just saying, I would assume that in
12 some examples. In slang language, I think that might
13 have happened a couple times.
14   Q   So only in slang language can a noun ever
15 function as an adjective in English?
16   A   That's not what I said. It's just that that's
17 what comes to mind.
18   Q   You can't think of a --
19   A   I would have to spend a lot of time on really
20 being sure.
21   Q   You can't think of an example in formal
22 language?
23   A   Nothing comes to mind right now.
24   (Exhibit 1001 introduced.)
25 / / / /

1 Latin, I guess.
2   Q   So what order did you learn those languages?
3   A   The first one would be German. Then English,
4 then French, then Latin.
5   Q   So where did you grow up?
6   A   Germany.
7   Q   So you grew up speaking German?
8   A   Yes.
9   Q   Before the other languages?
10   A   That's true.
11   Q   Can a noun ever function as an adjective in
12 the German language?
13   A   I cannot really think of an example, but
14 examples in English come to mind like '50s expressions
15 like "That's swell." I would assume that -- do you
16 think "swell" was a noun at some point? Probably,
17 right.
18   Q   So you can't think of a situation of where
19 that occurs in German?
20   A   It's hard because I'm thinking in English
21 right now. So let me think harder.
22   Q   So to repeat the question, can a noun ever
23 function as an adjective in the German language?
24   A   I guess there are examples, in slang language,
25 yeah. I guess over time, you don't think of them as

1 BY MR. FLEMING:
2   Q   Doctor, I'd like to present you Exhibit 1001.
3   A   I think you just gave me the '356 patent.
4   Q   So you recognize this document?
5   A   Yes.
6   Q   Can you read the full patent number for us?
7   A   Of course. U.S. 8,773,356 B2.
8   Q   Is this the patent that's being challenged in
9 the IPR?
10   A   Yes.
11   Q   Can we turn to column 20, please.
12   Do you see claim 1 in column 20?
13   A   Yes.
14   Q   So the claim language states, quote,
15 "Generating a haptic signal based, at least in part, on
16 the interaction haptic effect data in a lookup table,"
17 correct?
18   Want me to repeat it again?
19   The claim language states "Generating an
20 actuator signal, based at least in part on the
21 interaction and haptic effect data in a lookup table."
22   A   Correct.
23   Q   In the phrase -- scratch that.
24   Is, quote, "Interaction and haptic effect
25 data" a phrase?

1   MR. WILLIAMS: Objection. Vague.
2   THE WITNESS: I'd say that's a fragment.
3 Specifically, also, the text seems to refer to the
4 interaction.
5 BY MR. FLEMING:
6   Q   Looking at "haptic effect data," is "haptic
7 effect" modifying "data"?
8   A   I'd say so.
9   Q   Is "haptic effect" an adjective?
10   A   No. It's a noun.
11   Q   Looking at the quote, "the interaction and
12 haptic effect data," end quote, is it possible that
13 "interaction" is modifying "data" as an adjective?
14   A   Could you repeat that"?
15   Q   Looking at the quote, "the interaction and
16 haptic effect data," end of quote, is it possible that
17 the, quote, "interaction" is modifying "data" as an
18 adjective?
19   A   I don't understand it that way for two
20 reasons.
21   Q   I didn't ask you how you understood it. I was
22 asking, is it possible in the English language?
23   A   As we already agreed upon, my native language
24 is German, not English. However, I've analyzed this in
25 the context of this patent, and it seems more relevant
Page 14

here. So I would like to answer that question in the
2 context of claim 1.
3   Q   I'm asking you a specific question. I'm not
4 asking about claim interpretation. I'm just asking
5 basic English sentence structure.
6   Is it possible that "interaction" could be an
7 adjective in the phrase "the interaction and haptic
8 effect"?
9   A   As I said a second ago, I think this is a
10 fragment. And it has very concrete meaning in this very
11 concrete context, and that actually limits how it can be
12 interpreted. So I have not --
13   Q   So is it your opinion that it cannot be
14 possible that it's an adjective?
15   A   I have not had a chance to think about this
16 outside the context of this claim.
17   Q   So you cannot render an opinion whether it's
18 possible or not possible?
19   A   I think in its position inside of this claim,
20 there's lots of clues that tell me what is intended.
21   Q   I'm not asking you about claim interpretation.
22 I'm simply asking sentence structure in the English
23 language. Is it possible?
24   A   It's not a sentence. It's a fragment, right?
25   I mean, if other words were in front of -- if
Page 15

1 I just consider this in isolation and I put "sausage" in
2 front of the word, then it becomes nonsensical. So
3 somehow I need to consider this in some context. And
4 that would be, for me, claim 1. And there I have an
5 opinion. If it's removed from claim 1, I'm not sure how
6 to -- how to describe my opinion there.
7   Q   So do you see the word "comprising" in
8 claim 1?
9   A   Yes.
10   Q   What do you understand comprising to mean in
11 the context of claim 1?
12   A   Maybe to fulfill, as a synonym.
13   Q   So how does the term "comprising" impact your
14 interpretation of the claim language, quote, "based at
15 least in part on the interaction and haptic effect data
16 in the table lookup," end of quote?
17   A   Given what I know about the way claims are
18 formulated, makes me understand that what's following
19 are different claim limitations and that all of these
20 have to be fulfilled. So it's logically a conjunction.
21   Q   So based on that statement, are you saying
22 that the word "comprising" means that -- that you have
23 to have -- the actuator signal has to generate based
24 upon interaction and haptic effect data?
25   MR. WILLIAMS: Objection. Vague to the extent
Page 16

1 it mischaracterizes the witness's testimony.
2   THE WITNESS: Having spent some time with
3 patents, all the word "comprising" tells me is what
4 follows are claim limitations. And each one of those
5 has to be fulfilled. And I see, I think, four of them
6 here.
7 BY MR. FLEMING:
8   Q   Is it your understanding that every embodiment
9 described in the specification practiced -- scratch
10 that.
11   Does every embodiment described in the
12 specification practice every element of claim 1?
13   A   Are you asking me if that is the intended
14 purpose of a claim 1 or of a top-level claim in the
15 patent or if that holds for the '356 patent?
16   Q   I am just simply asking, does every embodiment
17 described in the specification of the '356 patent --
18 must practice every element of claim 1.
19   A   This question has not really come up for me so
20 far because, so far, my task was to understand not
21 what's embodiment, but what's claim 1. So in claim
22 construction, the main question was how to interpret
23 claim 1. And in that sense, what is an embodiment under
24 various claim constructions can certainly be a question,
25 and I'll be happy to speak to that.
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5 (Pages 14 - 17)

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