

Amazon.com, Inc., et al. vs. Personalized Media

**Videotaped Deposition of
ANTHONY WECHSELBERGER
June 02, 2014
June 03, 2014
August 25, 2014**

		Media Included
Exhibits	Transcript	Word Index

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PMC Exhibit 2007

<p>1 UNITED STATES PATENT AND TRADEMARK OFFICE</p> <p>2</p> <p>3</p> <p>4</p> <p>5 AMAZON.COM, INC., and AMAZON WEB SERVICES, LLC,</p> <p>6 Petitioners</p> <p>7 vs.</p> <p>8 PERSONALIZED MEDIA COMMUNICATIONS, LLC.,</p> <p>9 Patent Owner</p> <p>10</p> <p>11 IPR2014-01532</p> <p>12 United States Patent No. 7,801.304</p> <p>13</p> <p>14</p> <p>15 DEPOSITION OF ANTHONY J. WECHSELBERGER</p> <p>16 IRVINE, CALIFORNIA</p> <p>17 Tuesday, JUNE 9, 2015</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22 Reported By:</p> <p>23 Kyung Lee-Green</p> <p>24 CSR No. 112655, CLR</p> <p>25 Job No.: 10016808</p>	<p>Page 1</p>	<p>1 UNITED STATES PATENT AND TRADEMARK OFFICE</p> <p>2</p> <p>3</p> <p>4</p> <p>5 AMAZON.COM, INC., and AMAZON WEB SERVICES, LLC,</p> <p>6 Petitioners</p> <p>7 vs.</p> <p>8 PERSONALIZED MEDIA COMMUNICATIONS, LLC.,</p> <p>9 Patent Owner</p> <p>10</p> <p>11 IPR2014-01532</p> <p>12 United States Patent No. 7,801.304</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18 Deposition of ANTHONY J. WECHSELBERGER, taken on</p> <p>19 behalf of Patent Owner Personalized Media</p> <p>20 Communications, LLC at 2040 Main Street, 14th Floor,</p> <p>21 Irvine, California, commencing at 9:14 a.m., and ending</p> <p>22 at 6:47 p.m., on Tuesday, June 9, 2015, before</p> <p>23 KYUNG LEE-GREEN, Certified Shorthand Reporter No. 12655</p> <p>24 for the State of California.</p> <p>25</p>	<p>Page 2</p>
<p>1 APPEARANCES:</p> <p>2 FOR THE PETITIONERS:</p> <p>3 KNOBBE MARTENS</p> <p>4 BY: COLIN HEIDEMAN, ESQ.</p> <p>5 925 Fourth Avenue</p> <p>6 Suite 2500</p> <p>7 Seattle, Washington 98104</p> <p>8 (206)405-2016</p> <p>9 colin.heideman@knobbe.com</p> <p>10 -and-</p> <p>11 BY: KENT N. SHUM, ESQ.</p> <p>12 2040 Main Street</p> <p>13 14th Floor</p> <p>14 Irvine, California 92614</p> <p>15 (949)760-0404</p> <p>16 kent.shum@knobbe.com</p> <p>17</p> <p>18 For the Patent Owner:</p> <p>19 GOODWIN PROCTER</p> <p>20 BY: STEPHEN T. SCHREINER, ESQ.</p> <p>21 901 New York Avenue, NW</p> <p>22 Washington, D.C. 20001</p> <p>23 (202)346-4000</p> <p>24 sschreiner@goodwinprocter.com</p> <p>25</p>	<p>Page 3</p>	<p>1 INDEX</p> <p>2 WITNESS: Anthony J. Wechselberger PAGE</p> <p>3 Examination by Mr. Schreiner 6, 235</p> <p>4 Examination by Mr. Heideman 234</p> <p>5</p> <p>6 EXHIBITS</p> <p>7 MARKED PAGE</p> <p>8 Exhibit 2011 Excerpt from US 7,801,304 46</p> <p>9 Exhibit 2012 UK Patent Application GB 2 132 860 47</p> <p>10 Exhibit 2013 Expert Declaration of 47</p> <p>Anthony J. Wechselberger</p> <p>11</p> <p>12 Exhibit 2013A Encryption: A Cable TV Primer, 47</p> <p>Bates-stamped PMC3654014 through</p> <p>PMC3654019</p> <p>13</p> <p>14 Exhibit 2014 Excerpt from the sworn declaration 47</p> <p>of Anthony J. Wechselberger's</p> <p>15 Exhibit 2014A Preliminary Patent Owner Response 115</p> <p>to Petition for Inter Partes</p> <p>Review</p> <p>16</p> <p>17 Exhibit 2014B Wikipedia printout 136</p> <p>18 Exhibit 2015 Claims at issue 136</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 4</p>

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1 PRIOR EXHIBITS REFERENCED

EXHIBIT	PAGE
1001	8
1004	9
1006	45
1007	135
1008	135
1009	136

2 QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER

PAGE	LINE
27	10

3 INFORMATION REQUESTED

4 (None.)

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1 Q Pretty good stretch?

2 A Yes.

3 Q Okay.

4 And where did you reside prior to that?

5 A It was also Escondido.

6 Q Okay. That's a different address in

7 Escondido?

8 A Yeah.

9 Q And I'm going to be asking you a series of

10 questions today. I ask you that you give me full and

11 complete answers. Be responsive to my questions. If I

12 give you any questions that you don't understand, just

13 let me know and I'll try to rephrase them. www.aprusCR.com

14 My goal here isn't to trick you, but it's to

15 give you questions that you can understand and elicit

16 answers based on your expert background. Does that make

17 sense?

18 A Yes.

19 Q Are you under the influence of any sickness or

20 illness that would impair your ability to testify

21 truthfully and completely today?

22 A No.

23 Q Are you under the influence of any medications

24 or substances that would impair your ability to testify

25 truthfully and completely today?

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1 IRVINE, CALIFORNIA;

2 TUESDAY, JUNE 9, 2015; 9:14 A.M.

3

4 ANTHONY J. WECHSELBERGER,

5 having been administered an oath to tell the truth, the

6 whole truth, and nothing but the truth, testified as

7 follows:

8

9 EXAMINATION

10 BY MR. SCHREINER:

11 Q Good morning.

12 A Good morning.

13 Q How are you today, Mr. Wechselberger?

14 A Fine.

15 Q Please state your full name for the record.

16 A Anthony J. Wechselberger.

17 Q And do you go by Tony; is that correct?

18 A Yes.

19 Q Okay.

20 And what is your current home address?

21 A 3447 Bernardo Lane -- B-e-r-n-a-r-d-o;

22 Escondido, E-s-c-o-n-d-i-d-o -- California 92029.

23 Q Okay. And how long have you lived at that

24 residence?

25 A Since 1988.

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1 A No.

2 Q How did you prepare for today's deposition?

3 A I reviewed the prior art -- I -- first, I

4 re -- I reviewed my declaration. I reviewed the prior

5 art references that I used in that declaration. I

6 reviewed the '304 patent, the '940 patent. I read the

7 petition on defendant's position -- petition. I read

8 the preliminary response from PMC and about -- and --

9 and -- and, at one point, I also read the -- your re --

10 PMC's request for a rehearing.

11 And then also had, I believe, three different

12 dial-in telephone conferences with Amazon's attorneys.

13 And then finally I was here for a day of depo prep

14 yesterday.

15 Q And when you refer to the -- when you refer to

16 the -- you said the '940 patent. I think you might have

17 meant the '490 patent?

18 A I'm sorry. '490 patent, yes, the original

19 November 1981 Harvey patent.

20 Q That would be -- just for the record, that

21 would be PMC's patent 4,694,490, which is Amazon

22 Exhibit 1001. We'll enter that into the record in a

23 moment.

24 And when you refer to the '304 patent, is that

25 referring to the subject of this IPR, which is PMC's

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1 patent 7,801,304?
 2 (Reporter clarification.)
 3 BY MR. SCHREINER:
 4 Q Oh, I'm sorry.
 5 PMC's patent 7,801,304, is that the
 6 '304 patent that you reviewed?
 7 A Correct.
 8 Q And that's Amazon's Exhibit 1004, which we'll
 9 enter shortly.
 10 During your dial-in calls, who -- who did you
 11 speak with?
 12 A Two gentlemen to my left.
 13 Q And those gentlemen are who?
 14 A Colin --
 15 MR. HEIDEMAN: Heideman.
 16 THE WITNESS: -- Heideman. Mr. Colin Heideman
 17 and Mr. Kent Shum.
 18 BY MR. SCHREINER:
 19 Q And Mr. Heideman and Shum were -- they were --
 20 both of them were all on three calls you mentioned?
 21 A Mr. Heideman was not on all three. He may
 22 have made appearances on one or two partially. But
 23 Mr. Shum was on all of them.
 24 Q Okay. What was the total length of the
 25 three calls that you had as part of your deposition

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1 A Yes.
 2 Q And how much time did you spend?
 3 A Yesterday?
 4 Q Yes, sir.
 5 A We started at 9:00, broke for lunch for
 6 perhaps an hour, and then quit about -- I believe about
 7 5:00 p.m.
 8 Q Okay. So on the order of seven hours?
 9 A Seems right.
 10 Q And who did you meet with during that
 11 deposition preparation?
 12 A Colin and Kent to my left.
 13 Q Mr. Heideman and Mr. Shum? www.aplusCR.com
 14 A Mr. Shum, yeah.
 15 Q Okay.
 16 Did you speak -- you're aware that there are
 17 several other IPR proceedings that are at issue
 18 involving Amazon and PMC?
 19 A I am aware, yes.
 20 Q And you're aware that there's other experts
 21 who've been engaged by Amazon to assist them in those
 22 IPRs; correct?
 23 A That's my understanding, yes.
 24 Q Okay.
 25 As part of your deposition preparation, did

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1 preparation approximately?
 2 A Approximately, I would say, on the average,
 3 they each ran about an hour and a half.
 4 Q So something on the order of four and a half,
 5 five hours of preparation via phone calls?
 6 A Yes.
 7 Q Okay.
 8 And when you mentioned the documents that you
 9 had reviewed, you -- you mention the -- your
 10 declaration, the prior art references, the '304 patent,
 11 the '490 patent, the petition, the preliminary response,
 12 and PMC's request for rehearing.
 13 Approximately how long did you spend reviewing
 14 those documents as part of your preparation for this
 15 deposition?
 16 A I would guess 10, 12 hours.
 17 Q Okay.
 18 And you did that where? At your -- at your
 19 home? At your office? At the offices here at
 20 Knobbe Marten?
 21 A At my home office.
 22 Q Okay.
 23 And you indicated that you did one day of
 24 deposition preparation at your counsel's office
 25 yesterday; is that correct?

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1 you have any contact with any of the other experts?
 2 A No.
 3 Q Prior to your deposition -- strike that.
 4 As part of your involvement in Amazon's
 5 petition regarding the '304 patent, including the
 6 preparation of your declaration, did you have contact
 7 with Amazon's other experts in the other IPRs?
 8 A No.
 9 Q Okay. So you never spoke with
 10 Charles Neuhauser?
 11 A Correct. I have not spoken to him.
 12 Q Have you ever spoken to him?
 13 A I think not.
 14 Q Michael O'Slinn -- excuse me -- Michael Slinn?
 15 A Don't know the name.
 16 Q So you didn't speak to him?
 17 A That's correct.
 18 Q Did you review the -- strike that.
 19 Mr. O'Slinn -- strike that.
 20 Giving this man some Irish background that
 21 maybe he doesn't have.
 22 Are you aware that Michael -- strike that.
 23 Are you aware that Amazon submitted a petition
 24 for IPR on another patent that involves decryption,
 25 which is 7,805,749 or the '749 patent?

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1 A My understanding is that they've submitted
 2 petitions for all of the asserted patents. And earlier
 3 in my work on this project, I had the opportunity to at
 4 least be told and read what the set of asserted claims
 5 were way -- a long time ago.
 6 Now, if -- if some of those claims have been
 7 dropped, I don't know about it because I was -- when it
 8 came back -- time to actually prepare for the petitions,
 9 I was asked to focus only on the '304. So it seemed to
 10 me one of those might have had something to do with
 11 encryption or decryption, but I don't actually recall.
 12 **Q Were you asked to look at the '749 patent?**
 13 A As I said, I was given a list of the complete
 14 set of asserted claims as those would have existed
 15 several months ago. Now, as we all know, they all share
 16 the same specification. So, you know, the name of
 17 the -- the issues are the claims, not necessarily the
 18 specific patent number itself.
 19 **Q So you -- so you looked at the claims of --**
 20 **strike that.**
 21 **You looked at the claims for all the patents**
 22 **that were asserted in the district court litigation**
 23 **between Amazon and PMC; is that correct?**
 24 MR. HEIDEMAN: Objection. Mischaracterizes
 25 the testimony.

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1 A Well, in that case, I would definitely have
 2 known. I said I don't know how I ended up working on
 3 '304. I was just asked.
 4 **Q Okay. So the answer is you worked on the**
 5 **'304 patent because you were asked to work on the**
 6 **'304 patent; is that correct?**
 7 A Yes.
 8 **Q Were you asked to work on any of the other**
 9 **patents that were at issue in the litigation?**
 10 A Not with respect to the -- any IPR activity.
 11 **Q Okay. Have you ever -- strike that.**
 12 **You're here as an expert in connection with**
 13 **this IPR proceeding on the '304 patent, is that correct?**
 14 A Yes.
 15 **Q Have you ever been an expert in an IPR**
 16 **proceeding?**
 17 A Yes.
 18 **Q And describe for me the circumstances of that.**
 19 A Can you explain a little better what you mean
 20 by "circumstances"?
 21 **Q You said you were an expert in a prior IPR**
 22 **proceeding; correct?**
 23 A Yes.
 24 **Q Okay. What did you do in the prior IPR**
 25 **proceeding?**

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1 BY MR. SCHREINER:
 2 **Q Please answer.**
 3 A Well, I'm trying to remember.
 4 **Q Yeah.**
 5 A Yeah. It was before the IPRs had -- had
 6 gotten started so I guess it was just the district court
 7 action, so -- and I was given what I -- what I believe
 8 is the complete set of asserted claims.
 9 **Q How was it decided that you would assist with**
 10 **the '304 patent as opposed to the other patents at issue**
 11 **in that suit?**
 12 MR. HEIDEMAN: Objection. Lacks foundation.
 13 Calls for speculation.
 14 BY MR. SCHREINER:
 15 **Q Let's -- let's rephrase that.**
 16 **Actually, no. Please answer the question.**
 17 **How was it decided that you would assist with**
 18 **the '304 patent as opposed to the other patents at issue**
 19 **in this -- that suit?**
 20 MR. HEIDEMAN: Same objections.
 21 THE WITNESS: I don't know.
 22 BY MR. SCHREINER:
 23 **Q Did you decide yourself that you were going to**
 24 **work on the '304 patent and -- and you went to counsel**
 25 **and said, this is the one I'm going to work on?**

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1 A I was contacted by the defendant attorneys who
 2 were going to write the petition. They had already made
 3 up their mind that -- you know, that -- that this was
 4 going to happen. They were looking for somebody with a
 5 technology background that was appropriate.
 6 I fit that background. And I was asked then
 7 to become familiar with the patents-in-suit. Patent or
 8 patents, I don't actually remember now. And the prior
 9 art associated with it. And working with the law firm,
 10 I prepared a declaration, which has been submitted.
 11 My understanding is that PTAB decision is due
 12 within the next month. ~~Page 15, 16~~ ~~Page 15, 16~~
 13 since that flurry of activity, which probably took place
 14 over a period of four to six weeks, I have not been
 15 involved with that case.
 16 **Q Okay. And who are the parties in that case?**
 17 A I actually don't remember.
 18 **Q Who -- who is -- are you working on behalf of**
 19 **the patent holder, on behalf of the petitioner**
 20 **challenging the patent?**
 21 A Petitioner.
 22 **Q Okay. Who's the petitioner?**
 23 A I don't remember who the parties are. Sorry.
 24 **Q Okay. You don't remember who the patent**
 25 **holder is or who the petitioner is?**

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