

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE PATENT TRIAL AND APPEAL BOARD

3
4 APPLE, INC.,)
5 Petitioner,)
6 vs.) Case No. IPR2016-01520:
7 PERSONALIZED MEDIA) U.S. Patent No. 8,559,635
8 COMMUNICATIONS, LLC,)
9 Patent Owner.)

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13 Videotaped Deposition of ANTHONY J.
14 WECHSELBERGER, called for examination, taken
15 pursuant to the rules of the United States Patent
16 and Trademark Office, pertaining to the taking of
17 depositions, taken before Lynn A. McCauley, CSR
18 No. 84-003268, RPR, a Certified Shorthand Reporter
19 of the State of Illinois, at 300 North LaSalle
20 Street, 7th Floor, Chicago, Illinois, on May 4, 2017,
21 at 9:18 a.m.

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24 JOB No. 2604091

25 PAGES 1 - 129

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| <p>1 APPEARANCES: 2 3 Appeared on behalf of Petitioner: 4 5 KIRKLAND & ELLIS LLP 6 BY: MR. JOEL R. MERKIN 7 300 North LaSalle Street 8 Chicago, Illinois 60654 9 312-862-2179 10 joel.merkin@kirkland.com 11 12 Appeared on behalf of Patent Owner: 13 14 GOODWIN PROCTER LLP 15 BY: MR. DOUGLAS J. KLINE 16 MR. STEVE SCHREINER 17 100 Northern Avenue 18 Boston, Massachusetts 02210 19 617-570-1209 20 dkline@goodwinlaw.com 21 sschreiner@goodwinlaw.com 22 23 ALSO PRESENT: 24 MR. ERIC CAMPBELL, Videographer 25</p> | <p>1 THE VIDEOGRAPHER: We're now on the record. 09:18 2 Please note that the microphones are 09:18 3 sensitive and may pick up whispering and private 09:18 4 conversations. 09:18 5 Please turn off all cellphones or 09:18 6 place them away from the microphones, as they can 09:18 7 interfere with the deposition audio. 09:18 8 Recording will continue until all 09:18 9 parties agree to go off the record. 09:18 10 My name is Eric Campbell 09:18 11 representing Veritext. 09:18 12 The date is today is May 4, 2017, 09:18 13 and the time is approximately 9:18 a.m. 09:18 14 This deposition is located at 09:18 15 300 North LaSalle Street in Chicago, Illinois. 09:18 16 The caption of this case is Apple 09:18 17 Incorporated versus Personalized Media 09:18 18 Communications, LLC. 09:18 19 The name of the witness is Anthony 09:18 20 Wechselberger. 09:18 21 At this time the attorneys present 09:18 22 in the room will identify themselves and the parties 09:18 23 they represent, after which our court reporter, Lynn 09:18 24 McCauley, representing Veritext, will swear in the 09:18 25 witness, and we can proceed. 09:18</p> |
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| <p>1 INDEX 2 3 WITNESS: 4 ANTHONY J. WECHSELBERGER 5 EXAMINATION BY: PAGE 6 MR. KLINE 5 7 8 9 EXHIBITS: DESCRIPTION PAGE 10 11 Exhibit 2019 Declaration of 111 12 Anthony J. 13 Wechselberger Under 14 37 C.F.R. 1.68 In 15 Support OF Petition 16 for Inter Partes 17 Review of U.S. 18 Patent No. 8,559,635 19 20 21 22 23 24 25</p> | <p>1 MR. KLINE: Doug Kline of Goodwin for 09:19 2 Personalized Media Communications, LLC; and with me 09:19 3 is my partner Steve Schreiner. 09:19 4 MR. MERKIN: Joel Merkin of Kirkland & Ellis 09:19 5 on of behalf of the petitioner, Apple. 09:19 6 (WHEREUPON, the witness was 7 duly sworn.) 8 ANTHONY J. WECHSELBERGER 9 called as a witness herein, having been first duly 10 sworn, was examined and testified as follows: 11 EXAMINATION 12 BY MR. KLINE: 13 Q. Good morning, Mr. Wechselberger. 09:19 14 A. Good morning. 09:19 15 Q. As you just heard, my name is Doug Kline, 09:19 16 and I represent Personalized Media Communications, 09:19 17 LLC, which I'll often refer to as PMC, in connection 09:19 18 with the Petition for Inter Partes review that Apple 09:19 19 filed against PMC's United States Patent 8,559,635. 09:19 20 Could you tell us your name for the 09:19 21 record, please? 09:19 22 A. Anthony Wechselberger. 09:19 23 Q. Where do you live, Mr. Wechselberger? 09:19 24 A. I live in Escondido, California. 09:19 25 Q. How long have you lived there? 09:19</p> |
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| <p>1 A. About 35 years. 09:19 2 Q. Any plans to move? 09:19 3 A. Not from there. 09:19 4 Q. Sure. 09:19 5 I understand you've been deposed 09:19 6 several times before; is that correct? 09:19 7 A. Yes. 09:20 8 Q. Right. So I'm sure anything I say to you 09:20 9 in the next moment is going to be familiar with you, 09:20 10 but I'm going to ask you a series of questions and 09:20 11 ask that you answer the questions audibly as opposed 09:20 12 to by physical gesture. Fair enough? 09:20 13 A. Yes. 09:20 14 Q. If you don't understand a question I ask 09:20 15 you, please tell me that, and I'll try and rephrase 09:20 16 it, or we can have the court reporter reread it or do 09:20 17 whatever else we can to get it into a form that you 09:20 18 understand it. 09:20 19 Fair enough? 09:20 20 A. Fair enough. 09:20 21 Q. And I will violate this as often as maybe 09:20 22 you will, but let's try to give one another an 09:20 23 opportunity to complete what each of us is saying 09:20 24 before the other begins to speak. 09:20 25 Fair enough? 09:20</p> <p style="text-align: right;">Page 6</p> | <p>1 K-h-a-n-n-a; and, from time to time, on the phone, we 09:21 2 had Mr. Alan Rabinowitz, who was dialing in I believe 09:21 3 from New York. 09:21 4 Q. Anybody else attend those meetings? 09:21 5 A. No. 09:21 6 Q. So you mentioned something that I'm 09:21 7 interested to know. 09:21 8 When's the last time you reviewed 09:21 9 your declaration that you submitted in connection 09:21 10 with this IPR? 09:21 11 A. The last time would have been last night. 09:21 12 MR. KLINE: Okay. And maybe what we should 09:21 13 do is -- I'm going to show it to you because you've 09:21 14 submitted a few declarations for Apple adverse to 09:21 15 PMC, so I want to make sure we're focused properly. 09:22 16 And, Joel, I think -- and you -- if 09:22 17 you disagree, tell me, because I want to make sure we 09:22 18 do this right. 09:22 19 We're not going to remark these. 09:22 20 We're just going to refer to these as previously 09:22 21 marked. 09:22 22 MR. MERKIN: That's perfectly acceptable by 09:22 23 me. 09:22 24 MR. KLINE: Right. All right. Thanks. 09:22 25 So I'm going to ask the court 09:22</p> <p style="text-align: right;">Page 8</p> |
| <p>1 A. Yes. 09:20 2 Q. Right. And if you'd like to take a 09:20 3 break, just let me know, and we'll like to -- if 09:20 4 there's a question pending, we'll try to hear an 09:20 5 answer to the question and take a break at the 09:20 6 soonest next convenient spot. 09:20 7 Fair enough? 09:20 8 A. Yes. Fair. 09:20 9 Q. Thank you. 09:20 10 Did you do anything to prepare for 09:20 11 your deposition here today? 09:20 12 A. Yes. 09:20 13 Q. What did you do? 09:20 14 A. When I first got notice that the 09:20 15 deposition was going to happen, since I hadn't worked 09:20 16 on these materials in a while, I started doing some 09:20 17 homework back at my home office, reviewing my 09:21 18 declaration, the prior art. 09:21 19 And then most recently I flew out on 09:21 20 Tuesday for meetings here in Chicago with the 09:21 21 Kirkland Ellis Group, so a day and a half of 09:21 22 meetings. 23 Q. Who was at those meetings? 09:21 24 A. In person was Mr. Merkin, Joel, here to 09:21 25 my right; another attorney named Rajat Khanna, 09:21</p> <p style="text-align: right;">Page 7</p> | <p>1 reporter to hand to you a document previously marked 09:22 2 as Apple Exhibit 1001. 09:22 3 BY MR. KLINE: 09:22 4 Q. Do you recognize that document, 09:22 5 Mr. Wechselberger? 09:22 6 A. I do. 09:22 7 Q. What is it? 09:22 8 A. It is the declaration that is the subject 09:22 9 of today's deposition. 09:22 10 Q. Right. Thank you. 09:22 11 So if you turn to the last page, 09:22 12 this is a little confusing, the page numbers on your 09:22 13 declaration vary just a little from the page number 09:23 14 of the exhibit, so I will try consistently to refer 09:23 15 to the exhibit page number, but we'll try also 09:23 16 consistently to refer to paragraph numbers so that 09:23 17 we're on the same page. And, again, if there's 09:23 18 confusion, just let me know. 09:23 19 But on the last page of Apple 09:23 20 Exhibit 1001, Page 96, is that your signature? 09:23 21 A. It is. 09:23 22 Q. And did you sign it on or around July 29 09:23 23 of 2016? 09:23 24 A. Yes. 09:23 25 Q. Great. 09:23</p> <p style="text-align: right;">Page 9</p> |

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| <p>1 So when -- when is the last time you 09:23 2 read the declaration start to finish? Was that last 09:23 3 night? 09:23 4 A. Yes. 09:23 5 Q. Okay. And before that when is the last 09:23 6 time you had read it start to finish? 09:23 7 A. On the airplane ride out here on Tuesday. 09:23 8 Q. Great. Thank you. 09:23 9 Who wrote the declaration? 09:23 10 A. It was a collaborative effort. It's my 09:23 11 deposition. I own all the opinions in it. I didn't 09:24 12 write every word that's in this personally. 09:24 13 Q. And you -- if I heard you right, you said 09:24 14 it was a collaborative effort. Who participated in 09:24 15 that collaborative effort? 09:24 16 A. I think primarily Mr. Khanna. 09:24 17 Q. He's the attorney at Kirkland you 09:24 18 mentioned a moment ago? 09:24 19 A. He is. 09:24 20 Q. All right. Who wrote the first draft of 09:24 21 it? Was there a first draft? 09:24 22 A. There was a draft, which is -- my typical 09:24 23 modus operandi is to modify the draft as we go 09:24 24 forward. 09:24 25 Q. So did you write the first draft, or did 09:24 Page 10</p> | <p>1 basically made them mine by tweaking them or 09:25 2 otherwise rewriting them until I was happy with them. 09:25 3 Q. How did you decide -- strike that. 09:25 4 Is it fair to say that your -- your 09:26 5 declaration includes a section concerning your 09:26 6 opinion related to the priority date the claims in 09:26 7 PMC's '635 patent are entitled to? 09:26 8 A. That took awhile to get out. Could I 09:26 9 hear it one more time. 09:26 10 Q. Is it fair to say that your declaration 09:26 11 includes a section concerning your opinion related to 09:26 12 the priority date that the claims in PMC's '635 09:26 13 patent are entitled to? 09:26 14 A. Yes. And opinion would be plural. I 09:26 15 have opinions. 09:26 16 Q. Sure. Thank you. Fair enough. 09:26 17 And you have another section of your 09:26 18 declaration that expresses your opinions concerning 09:26 19 whether the claims -- certain claims of PMC's '635 09:26 20 patent are novel and un-obvious over certain prior 09:26 21 art; right? 09:27 22 A. Opinions on invalidity, yes. 09:27 23 Q. Right. So that's great. 09:27 24 So we have a priority section of 09:27 25 your declaration; right? 09:27 Page 12</p> |
| <p>1 Mr. Khanna write the first draft? 09:24 2 A. Like I say, it was a collaborative 09:24 3 effort. I think it's fair to say that we both 09:24 4 participated in it. 09:24 5 Q. Who actually typed it out? 09:24 6 A. Portions of it I typed, portions of it he 09:24 7 typed. 09:24 8 Q. What percentage of it did you type out 09:24 9 the first draft for? 09:25 10 A. Gee, I don't -- I don't remember. 09:25 11 Q. More than half? 09:25 12 A. More than -- perhaps half. 09:25 13 Q. Okay. The parts that you didn't type 09:25 14 out, did you discuss -- what did you do to ensure 09:25 15 that they accurately reflected your own personal 09:25 16 opinions? 09:25 17 Do you need that back? I might have 09:25 18 bungled it a little. 09:25 19 A. Yes, please. 09:25 20 Q. Sure. 09:25 21 The parts of your declaration that 09:25 22 you did not type out the first draft for, what, if 09:25 23 anything, did you do to make sure those sections 09:25 24 described your personal opinions? 09:25 25 A. I would have read them. I would have 09:25 Page 11</p> | <p>1 A. Yes. 09:27 2 Q. And we have an invalidity section of your 09:27 3 declaration; right? 09:27 4 A. Yes. 09:27 5 Q. And then we also have some general 09:27 6 background information that's in a section of your 09:27 7 declaration; right? 09:27 8 A. That is correct. 09:27 9 Q. Right. 09:27 10 How did you go about forming an 09:27 11 opinion concerning the priority date that PMC's '635 09:27 12 patent claims are entitled to? 09:27 13 MR. MERKIN: Object to the form. 09:27 14 MR. KLINE: What's the objection, Joel. 09:27 15 MR. MERKIN: Vague and ambiguous. Go about. 09:27 16 MR. KLINE: Okay. Fair enough. Thanks. 09:27 17 THE WITNESS: What's the standing question? 09:27 18 BY MR. KLINE: 09:27 19 Q. How did you go about forming an opinion 09:27 20 concerning the priority date that the challenged 09:27 21 claims of PMC's '635 patent are entitled to? 09:27 22 MR. MERKIN: Same objection. 09:28 23 BY THE WITNESS: 09:28 24 A. I think I was asked to provide opinions 09:28 25 on certain characteristics of the challenged claims, 09:28 Page 13</p> |

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| <p>1 and having been asked about them, I would then study 09:28 2 the -- the two patents at issue, which is the '635 09:28 3 and comparing it to the '490, the original November 09:28 4 '81 patent, and then develop my opinions from there. 09:28 5 BY MR. KLINE: 09:28 6 Q. Did you take into consideration in your 09:28 7 priority analysis how the claims -- how any terms of 09:28 8 the challenged claims ought to be construed? 09:28 9 A. I was provided with -- when it came to 09:28 10 claim construction issues, I was provided 09:28 11 constructions to assume. Otherwise I used plain and 09:29 12 ordinary meaning. 09:29 13 Q. Plain and ordinary to whom? 09:29 14 A. To one of ordinary skill in the art. 09:29 15 Q. When? 09:29 16 A. Under the BRI principles. 09:29 17 Q. I'm sorry. 09:29 18 Plain and ordinary meaning to one of 09:29 19 ordinary skill in the art under the BRI principles 09:29 20 when? 09:29 21 A. Well, the '635, the argument was whether 09:29 22 the '635 had a -- was eligible for an '87 priority 09:29 23 date, and so I would have looked at it from that -- 09:29 24 that point in time. 09:30 25 Q. Well, in truth, the dispute is whether 09:30</p> <p style="text-align: right;">Page 14</p> | <p>1 the priority date of the challenged claims of the 09:31 2 '635 patent, you considered the perspective of a 09:31 3 person of ordinary skill in the art in 1987; correct? 09:31 4 A. Reading the '635 patent, yes, in '87. 09:31 5 Q. All right. You did not consider the 09:31 6 perspective -- strike that. 09:31 7 Your declaration does not report 09:31 8 that you considered the perspective of a person of 09:31 9 ordinary skill in the art as of 1981; isn't that 09:31 10 correct? 09:32 11 MR. MERKIN: Objection to form. 09:32 12 THE WITNESS: Question again, please. 09:32 13 BY MR. KLINE: 09:32 14 Q. Your declaration does not report that you 09:32 15 considered the perspective of a person of ordinary 09:32 16 skill in the art as of the 1981 filing date; isn't 09:32 17 that correct? 09:32 18 MR. MERKIN: Objection to form. 09:32 19 BY THE WITNESS: 09:32 20 A. Not entirely. 09:32 21 As I explain in Paragraph 80 on 09:33 22 Page 36 of my declaration where I explain that, for 09:33 23 the reasons explained below, the challenged claims of 09:33 24 the '635 patent are not supported by the written 09:33 25 description in the '490 patent; and are, therefore, 09:33</p> <p style="text-align: right;">Page 16</p> |
| <p>1 the '635 challenged claims are entitled to an '81 09:30 2 priority date. 09:30 3 You understand that; right? 09:30 4 A. Yes. 09:30 5 Q. Right. And the '81 filing date -- well, 09:30 6 strike that. 09:30 7 So you understand that -- strike 09:30 8 that. 09:30 9 So you reached the conclusion that 09:30 10 the challenged claims of the '635 patent are entitled 09:30 11 only to the benefit of the 1987 filing date; correct? 09:30 12 A. Correct. 09:30 13 Q. You concluded that the challenged claims 09:30 14 of the '635 patent are not entitled to the benefit of 09:30 15 PMC's 1981 filing date; correct? 09:30 16 A. Yes. 09:30 17 Q. And you understand that that 1981 filing 09:30 18 date is based on a specification that PMC filed that 09:30 19 issued as the '490 patent; right? 09:31 20 A. Yes. 09:31 21 Q. And in 1987 PMC filed a continuation-in- 09:31 22 part application claiming benefit of the application 09:31 23 that led to issuance of the '490 patent; correct? 09:31 24 A. That's my understanding, yes. 09:31 25 Q. All right. So for purposes of assessing 09:31</p> <p style="text-align: right;">Page 15</p> | <p>1 not entitled to a priority date earlier than 09:33 2 September 11 '87, the filing date of the 09:33 3 continuation-in-part application. 09:33 4 And so in analyzing whether the 09:33 5 claims are -- were or were not supported by the 09:33 6 written description of the '490 patent, I would have 09:33 7 also examined them in light of that earlier patent 09:33 8 and what one of ordinary skill in the art would think 09:33 9 in the earlier date. 09:34 10 Q. Could you look at Paragraph 8 of your 09:34 11 declaration, please. It's at Page 6 of the exhibit. 09:34 12 Do you have that? 09:34 13 A. Page 2, Paragraph 8, yes. 09:34 14 Q. You wrote "In forming the opinions 09:34 15 expressed in this declaration, I relied upon my 09:34 16 education, training, knowledge, and experience in the 09:34 17 relevant field of the art and have considered the 09:34 18 viewpoint of a person having ordinary skill in the 09:34 19 art" -- in the relevant art -- "as of September 11, 09:34 20 1987." 09:34 21 Did I read that correctly? 09:34 22 A. Yes. 09:34 23 Q. All right. You never said in your 09:34 24 declaration that you considered the viewpoint of a 09:34 25 person having ordinary skill in the relevant art as 09:34</p> <p style="text-align: right;">Page 17</p> |

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