

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE INC.,

Petitioner,

vs.

REALTIME DATA LLC d/b/a IXO,

Patent Owner.

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Case No. IPR2016-01738

U.S. Patent Number 8,880,862

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DEPOSITION OF CHARLES J. NEUHAUSER, Ph.D.

Washington, D.C.

Tuesday, November 21, 2017; 9:43 a.m.

Reported by:

Laurie Donovan, RPR, CRR, CSR

Job Number 20162

TransPerfect Legal Solutions

Page 2

1 Deposition of  
 2 Charles J. Neuhauser, Ph.D.  
 3  
 4 Held at the offices of:  
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 16  
 17 Taken pursuant to notice, before  
 18 Laurie Donovan, Registered Professional  
 19 Reporter, Certified Realtime Reporter and  
 20 Notary public in and for the District of  
 21 Columbia.  
 22  
 23  
 24  
 25

Page 3

1 A P P E A R A N C E S  
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 9 E X H I B I T S  
 10 (None marked)  
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Page 5

1 P R O C E E D I N G S  
 2 CHARLES J. NEUHAUSER, Ph.D.,  
 3 having been first duly sworn, testified  
 4 upon his oath as follows:  
 5 EXAMINATION BY COUNSEL FOR PATENT OWNER  
 6 BY MR. NOROOZI:  
 7 Q Dr. Neuhauser, how did you prepare for  
 8 today?  
 9 A How I prepared for today? Well, I met,  
 10 I met with the clients yesterday for about half a  
 11 day or a little more than that, and then I, in  
 12 addition to that, I read over documents. Reviewed  
 13 the, the declaration. I read over the testimony  
 14 that I had given before. Looked over the usual  
 15 suspects that I referenced in the -- Sukegawa,  
 16 Esfahani, et cetera, et cetera. They're all in  
 17 the declaration. Looked over the '862 pretty  
 18 carefully.  
 19 That's probably it.  
 20 Q When you say you met with "the clients,"  
 21 do you mean people from Apple or from Fish &  
 22 Richardson?  
 23 A No, just Fish & Richardson. They're my  
 24 clients.  
 25 Q Understood.

1 Did you review any documents yesterday  
2 that you had not previously looked at in preparing  
3 your declarations?

4 A I don't think so.

5 Q Did you review Apple's brief that was  
6 submitted in conjunction with your latest  
7 declaration?

8 A No.

9 Q Did you review that at the time that you  
10 prepared your declaration?

11 A I don't know the answer to that. The  
12 best I can tell you is that there's something  
13 called the "opposition." Is that what they refer  
14 to it as? I think I saw some preliminary version  
15 or something at some point, but I don't remember  
16 clearly.

17 Q Did you review Realtime's last brief in  
18 connection with these motions to amend?

19 A I probably have to see it to be sure,  
20 but I think so. I think I've -- I have several  
21 documents. Not necessarily -- there's two tracks  
22 in this case. Sometimes I only look at one track,  
23 because they're almost the same, but I'm pretty  
24 sure I did.

25 Q Did you review Dr. Back's last

1 declaration submitted in conjunction with  
2 Realtime's last brief in these motions to amend,  
3 which came after your last deposition?

4 A It's called something like "Declaration  
5 in Support of a Motion to Amend" or something like  
6 that?

7 Q I think this particular one is in  
8 support of the reply to the motion to amend or  
9 something like that.

10 A Probably. If you had it, I could look  
11 at it and maybe it would remind me. Probably.

12 Q Do you remember if you looked at that  
13 when you were preparing your last declaration?

14 A The declaration, the declaration we're  
15 talking about today? I'm pretty sure I did.

16 Q Okay. So let me put in front of you  
17 Apple's briefs that were submitted in conjunction  
18 with your latest declaration.

19 A Okay.

20 MR. NOROOZI: And I have one copy  
21 of each. If you guys need copies, I guess we  
22 could take a break and you could print it  
23 out.

24 MR. SCHWENTKER: Sure. Why don't  
25 we do that.

1 BY MR. NOROOZI:

2 Q The two documents I'm giving you now are  
3 both titled "Petitioner's Supplemental Brief in  
4 Opposition to Patent Owner's Motion to Amend."  
5 One was entered in IPR 2016-01737, the other one  
6 in IPR 2016-01738.

7 A Okay.

8 MR. NOROOZI: Now, I could ask the  
9 witness, but I'll just ask counsel in case  
10 you didn't make a representation. It looks  
11 to me that they are identical, the two  
12 briefs. Is that right, or do you want me to  
13 walk through that with the witness?

14 MR. SCHWENTKER: Well, since we're  
15 going to print out copies, why don't we take  
16 a break and do that.

17 MR. NOROOZI: Okay.

18 (Whereupon, a short recess was  
19 taken.)

20 BY MR. NOROOZI:

21 Q All right, Dr. Neuhauser, you have  
22 copies of the two briefs that were submitted in  
23 conjunction with your declaration in front of you,  
24 right?

25 A I do.

1 Q What are the dates on those briefs, if  
2 you could look at the last page?

3 A November 10 of 2017. They both say  
4 November 10 of 2017.

5 MR. NOROOZI: Now, Counsel, would  
6 you be able to tell us whether they're  
7 identical or not, or do you want me to go  
8 through that with the witness?

9 MR. SCHWENTKER: I'm not sure that  
10 I can represent that they're identical.  
11 They're similar, but -- they're similar, but  
12 they're not identical.

13 BY MR. NOROOZI:

14 Q Okay. Dr. Neuhauser, if you could turn  
15 to page 6 of both of the briefs and let me know  
16 when you're there.

17 A Okay, I'm there.

18 Q You see about three quarters of the way  
19 down, there's a sentence that says "Indeed, a  
20 POSITA would have found it obvious"?

21 A I see that.

22 Q Do you see the same exact sentence in  
23 both briefs at page 6?

24 A Yes, I do.

25 Q And can you read out the full sentence,

1 please?  
 2 A Sure. I'll read it from the '37.  
 3 "Indeed, a POSITA would have found it  
 4 obvious for at least some portion of the operating  
 5 system to be stored on Sukegawa's HDD 2, given  
 6 capacity/cost issues for flash memory."  
 7 Q All right. Now, is there an explanation  
 8 in this section of the brief about what capacity  
 9 and cost issues are being referred to?

10 MR. SCHWENTKER: Objection.  
 11 Foundation. Scope.

12 THE WITNESS: I have no idea  
 13 without reading it or -- you're asking me  
 14 what's in the brief?

15 BY MR. NOROOZI:

16 Q Sure. I mean the whole brief is 12  
 17 pages, and you see that, starting at page 8, it  
 18 starts talking about Settsu?

19 Do you see that?

20 A I do.

21 Q Okay, and here in this section on page 6  
 22 that I asked you about, it's talking about the  
 23 Kroeker reference, right?

24 A Probably. I see Kroeker above it. It  
 25 could be. I don't think I've really seen this

1 document, so I'm going to have to read it, and at  
 2 that point, the best I can do is -- I think the  
 3 best I'm going to be able to do is tell you  
 4 whether or not something's in there, but if it  
 5 gets really complicated, I don't think I've had  
 6 much time. I mean --

7 Q Let me clarify for you what I'm asking  
 8 you to do.

9 A Okay, and I'll tell you whether I can do  
 10 it or not or whether it's something that's going  
 11 to require consideration or whether it's just  
 12 mechanical.

13 Q Sure. You see that there's a heading on  
 14 page 1 that refers to Sukegawa, Dye -- withdrawn.

15 You see there's a heading on page 1 that  
 16 refers to Sukegawa and Dye combined with Esfahani  
 17 and Kroeker?

18 A I see that.

19 Q And then you see the discussion begins  
 20 with a general discussion and then goes  
 21 specifically into Esfahani, and then, starting at  
 22 page 5, goes into Kroeker?

23 MR. SCHWENTKER: Objection. Form.

24 THE WITNESS: Without reading it, I  
 25 wouldn't know whether I could agree or

1 disagree with that.  
 2 BY MR. NOROOZI:  
 3 Q Go ahead then. Would you read, please?  
 4 A Sure. How far did you want me to read?  
 5 You said page -- let me hear the question again.

6 (Whereupon, reporter reads  
 7 requested material.)  
 8 THE WITNESS: Okay.  
 9 (Witness peruses document.)

10 BY MR. NOROOZI:

11 Q Let me actually ask you about a  
 12 different topic.

13 A Sure.

14 Q Just going back to some preliminary  
 15 information, when did you first start working on  
 16 this declaration that you submitted?

17 A I'm not sure. I think sometime toward  
 18 the end of October, but I'm not, not 100 percent  
 19 sure.

20 Q And how long did you spend preparing the  
 21 declaration -- the declarations?

22 A The declarations? Something like 84  
 23 hours.

24 Q How long did it take you --

25 A Possibly a little less than 84. I'm

1 just taking this from my timesheet, and some of  
 2 that was correcting the previous deposition that  
 3 we had. I'm pretty sure that there were a few  
 4 hours in October, so maybe 84 minus four or  
 5 something.

6 Q How long did it take you to come up with  
 7 the combination of Sukegawa, Dye and Kroeker?

8 MR. SCHWENTKER: Objection. Form.

9 THE WITNESS: What do you mean by  
 10 "come up with"?

11 BY MR. NOROOZI:

12 Q Well, let me ask you this: Did you come  
 13 upon the idea of combining Sukegawa and Dye with  
 14 Kroeker in the way set forth in your declarations  
 15 all by yourself, or was that something that was  
 16 presented to you or suggested to you by counsel?

17 MR. SCHWENTKER: Objection, form,  
 18 and I'll caution the witness not to disclose  
 19 the contents of any communications with  
 20 counsel.

21 THE WITNESS: I'm not really sure.  
 22 I mean I've been aware of Kroeker literally  
 23 from the beginning of this case, okay, on my  
 24 own, okay, so I don't know. I suspect mostly  
 25 it was my doing to put the combination

1 together, to think that this was a good --  
2 I've always thought Kroeker was a good  
3 reference. I don't, I don't really know in  
4 detail how it came about.

5 BY MR. NOROOZI:

6 Q This declaration is the first time in  
7 these proceedings that you've relied on Kroeker,  
8 right?

9 A That's probably --

10 MR. SCHWENTKER: Objection. Form.

11 THE WITNESS: That's probably true.

12 I don't think it's mentioned in the other  
13 declarations, without looking at the front  
14 page, but I'm pretty sure it's the first  
15 time.

16 BY MR. NOROOZI:

17 Q These declarations are also the first  
18 time in these proceedings that you've relied on  
19 Esfahani, right?

20 MR. SCHWENTKER: Objection. Form.

21 THE WITNESS: I believe that's

22 correct.

23 BY MR. NOROOZI:

24 Q How long did it take you to be able to  
25 come up with the combinations of Kroeker with

1 Sukegawa and Dye and Esfahani with Sukegawa and  
2 Dye that are set forth in these latest  
3 declarations, approximately?

4 MR. SCHWENTKER: Objection. Form.

5 THE WITNESS: I'm not quite sure

6 what you mean by "come up with." Do you mean  
7 to write it or to conceive it or to --

8 BY MR. NOROOZI:

9 Q To conceive it and to be able to  
10 articulate it with the specificity that you have  
11 in your declarations.

12 MR. SCHWENTKER: Objection. Form.

13 THE WITNESS: Well, I mean it's

14 going to sound like a tautology, but the  
15 specificity that I have in my declaration is  
16 the declaration itself, so I really don't  
17 know.

18 I mean I probably put into Esfahani  
19 and Kroeker maybe 20 hours or something like  
20 that. There's a lot of writing and rewriting  
21 and considering and reconsidering that I did,  
22 and it's pretty hard to separate -- I mean  
23 there's three or four things in the  
24 declaration. Pretty hard to separate them  
25 out. Maybe 20 hours to get it down -- from

1 conceiving it to getting it down on paper.

2 BY MR. NOROOZI:

3 Q If we refer to the latest declarations  
4 you've submitted in connection with the motions to  
5 amend as your "second declarations," will you be  
6 able to follow that? Does that make sense to you?

7 A Is it the second declaration? Wasn't  
8 there -- oh, to the motion --

9 Q Or should we call it the "third  
10 declaration"?

11 A Which one are you talking about? The  
12 latest one?

13 Q Yes.

14 A The latest one must be the third one,  
15 because there was a first one that was -- and then  
16 there was one for the amendment, and then there's  
17 this whatever, this auxiliary thing, so this would  
18 be the third one, I think.

19 Q Okay. So the latest declarations, we'll  
20 call them both your "third declarations"; is that  
21 fair?

22 A Yeah. If I get confused, I'll ask you.

23 Q And the prior declarations, which were  
24 the first ones you submitted in connection with  
25 the motions to amend, we'll call your "second

1 declarations"; is that fair?

2 A Second declarations? I'm sorry.  
3 Which -- I'm confused.

4 Q You submitted a pair of declarations in  
5 connection with the petition itself, right?

6 A Correct.

7 Q Then you submitted another pair of  
8 declarations in response to the motions to amend,  
9 right?

10 A Yes, that's correct.

11 Q And those were submitted I think in  
12 August.

13 A I think.

14 Q And now you've submitted a third pair of  
15 declarations in further response to the motions to  
16 amend, right?

17 A That's correct.

18 Q So when you put together your second  
19 declarations, which were the first declarations  
20 you prepared in response to the motions to amend,  
21 you understood that you didn't face any kind of  
22 page limit constraints in what you could say in  
23 those declarations, right?

24 MR. SCHWENTKER: Objection. Form.

25 THE WITNESS: I don't know if I had

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