

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,)
)
 Petitioner,)
) Case IPR2017-00319
 v.) IPR2017-00321
) U.S. Patent No.
 VALENCELL, INC.,) 8,923,941
)
 Patent Owner.)
 _____)

VIDEOTAPE DEPOSITION OF MAJID SARRAFZADEH, PH.D.
Irvine, California
Tuesday, August 29, 2017

Reported by:
Shari Stellhorn
CSR No. 2807

Job No. 2683813
Veritext Legal Solutions
Mid-Atlantic Region
1250 Eye Street NW - Suite 350
Washington, D.C. 20005

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 7) Case IPR2017-00319
 8 v.) IPR2017-00321
 9) U.S. Patent No.
 10 VALENCELL, INC.,) 8,923,941
 11)
 12 Patent Owner.)
 13 _____)
 14
 15 Videotape Deposition of MAJID SARRAFZADEH,
 16 PH.D., taken on behalf of Patent Owner, at 5 Park
 17 Plaza, Suite 1600, Irvine, California, beginning at
 18 9:02 a.m. and ending at 3:41 p.m. on Tuesday,
 19 August 29, 2017, before Shari Stellhorn, Certified
 20 Shorthand Reporter No. 2807.
 21
 22
 23
 24
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1 APPEARANCES:
 2
 3 For Petitioner:
 4 STERNE KESSLER GOLDSTEIN FOX
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 6 MARK CONSILVIO, ESQ
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 15 BY: JUSTIN B KIMBLE, ESQ
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 19 jkimble@bcpc-law.com
 20
 21 Also Present: Ryan Schletzbaum, Esq
 22 (By telephone and remote real
 23 time)
 24
 25 Video Operator: Brent Jordan

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1 INDEX
 2 WITNESS EXAMINATION
 3 MAJID SARRAFZADEH, PH.D.
 4 (By Mr. Kimble) 6
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Page 5

1 Tuesday, August 29, 2017, Irvine, California
 2 9:02 a.m.
 3 -- o0o --
 4
 5 VIDEO OPERATOR: This is the start of DVD
 6 Label No. 1, videotape deposition of Dr. Majid
 7 Sarrafzadeh taken in the matter Apple Inc. versus
 8 Valencell, Inc., filed in the United States Patent
 9 and Trademark Office before the Patent Trial and
 10 Appeal Board, Case Nos. IPR2017-00319 and
 11 IPR2017-00321.
 12 This deposition is being held at 5 Park
 13 Plaza Irvine, California, on August 29th, 2017, at
 14 approximately 9:04 a.m. My name is Brent Jordan.
 15 I'm a legal video specialist with TSG Reporting,
 16 Inc. The court reporter is Shari Stellhorn.
 17 Would Counsel present please identify
 18 themselves for the record.
 19 MR. KIMBLE: Justin Kimble for the patent
 20 owner.
 21 MS. HOLOUBEK: Michelle Holoubek for
 22 Petitioner Apple Inc.
 23 MR. CONSILVIO: Mark Consilvio, Law Firm of
 24 Sterne Kessler Goldstein Fox for Petitioner Apple
 25 Inc.

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1 MR. SCHLETZBAUM: This is Ryan Schletzbaum
2 from Shook, Hardy & Bacon on behalf of Apple Inc.
3 VIDEO OPERATOR: Will the court reporter
4 please swear in the witness?
5 THE REPORTER: Can you raise your right
6 hand, please?
7 You do solemnly swear the testimony you are
8 about to give here today should be the truth, the
9 whole truth and nothing but the truth?
10 THE WITNESS: I do.
11
12 MAJID SARRAFZADEH, PH.D.,
13 having been administered an oath, was
14 examined and testified as follows:
15
16 CROSS EXAMINATION
17 BY MR. KIMBLE:
18 Q Would you please state your full name for
19 the record?
20 A Majid Sarrafzadeh.
21 Q And is it correct that you've been retained
22 as an expert by Apple and a couple of Inter Partes
23 reviews matters?
24 A That's correct.
25 Q And in particular today we're here for your

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1 deposition in two of those matters, IPR2017-319 and
2 IPR2017-321; do you understand that?
3 A I do understand that.
4 Q And you issued or you authored Declarations
5 in both of those matters; is that right?
6 A That's correct.
7 Q And both of those matters relate to patent
8 US 8,923,941; correct?
9 A That's correct.
10 Q And if today I just refer to that as the
11 '941 patent, you'll know what I'm talking about?
12 A I do.
13 Q Okay. And I've placed in front of you
14 copies of each of your Declarations and your CV.
15 Feel free, of course, to refer those any time you
16 want to and they'll be times when I'll direct you to
17 them; okay?
18 A Sure.
19 Q In general, just so you know how I hope to
20 proceed today, fair amount of questions are --
21 probably relate to both matters because it's
22 questions about the patent or your background, so
23 you feel free to either of them, but if I'm not
24 directing you to one or the other, my thought is
25 that it doesn't -- it isn't a question that is

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1 particular to either matter. Does that make sense
2 as far as it goes?
3 A I think it does.
4 Q And at some point we'll get into some
5 particular opinions about different combinations of
6 art, and at those times I'll try to be clear with
7 you about which Declaration we're talking about;
8 okay?
9 A That would be most helpful.
10 Q And, in general, when we get to that I'm
11 going to proceed with a '319 first and then the
12 '321; okay?
13 A Okay.
14 Q All right. What did you do to prepare for
15 the deposition today?
16 A I assume you mean after I submitted my
17 Declarations?
18 Q Yes. So all I'm asking about is just --
19 yes, after you submitted the Declarations and once
20 you knew you were going to be deposed, how did you
21 prepare to be deposed?
22 A Sure. I reviewed my Declarations in this
23 case, the '319 and '321, I reviewed the patent
24 itself, the '941 patent, I reviewed the prior arts
25 that I have cited in my Declarations, both

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1 Declaration '319 and '321, and I also met with the
2 counsel.
3 Q In terms of the documents reviewed, when
4 did you do that review, most recently for the
5 deposition time talking about?
6 A In the past three weeks I would say, give
7 or take.
8 Q Okay. And approximately how much time did
9 you devote to reviewing those documents?
10 A It was off and on, roughly two weeks, but
11 off and on; it wasn't full-time on them.
12 Q Was it more or less than half time for
13 those two weeks?
14 A I would say somewhere between 30 and 70% my
15 working time.
16 Q Okay. And you were here yesterday to be
17 deposed in a different matter for a different
18 patent; right?
19 A That's correct.
20 Q Are you able to -- and was your preparation
21 over these last couple of weeks combined effort to
22 prepare for yesterday deposition and today's
23 deposition?
24 A That's correct.
25 Q Are you able to distinguish how much time

Page 10

1 you spent reviewing documents related to the two
2 Declarations that you authored for the '941 patent?
3 A No, I can't.
4 Q Okay. Did you -- can you say whether you
5 spent more time focused on the '965 Declaration or
6 more time focused on the '941 Declarations?
7 A It's hard to distinguish it. Maybe roughly
8 the same, give or take.
9 Q And you referred to a meeting with counsel
10 to prepare for the deposition; correct?
11 A I did.
12 Q Was it just one meeting?
13 A It was one meeting.
14 Q And when did that occur?
15 A That occurred two days ago on Sunday.
16 Q Okay. And did that occur in these offices
17 that we're sitting in now?
18 A No.
19 Q Where did it occur?
20 A In Hotel Irvine about three minutes from
21 here.
22 Q And approximately how much time did that
23 meeting last?
24 A Approximately, give or take, seven hours.
25 Q And did that meeting cover both the

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1 deposition for the '965 Declaration and this
2 deposition today?
3 A Yes, it did.
4 Q And can you distinguish how much of that
5 meeting was focused just on preparing for your
6 deposition on the '941 Declarations?
7 A To the best of my knowledge, I would
8 guesstimate half and half.
9 Q And who was present in that meeting beside
10 yourself?
11 A The attorneys that are present here today.
12 Q And there is another lawyer on the phone
13 today, Ryan Schletzbaum. Did he participate in that
14 preparation meeting?
15 A I don't think he was --
16 Q Okay.
17 A -- to my knowledge.
18 Q Was there anybody from the law firm of
19 Shook Hardy on the phone during your preparation for
20 this deposition?
21 A I don't believe there was any.
22 Q And other than meeting with counsel, did
23 you have discussions with anybody else to prepare
24 for the deposition?
25 A I don't believe I have.

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1 Q Yesterday you talked about some of your
2 prior experience in being deposed you've been
3 deposed, I think you said, 15 to 20 times; is that
4 right?
5 A That would be a guess statement, correct.
6 Q Understood. Okay.
7 And you do have your CV in front of you,
8 feel free to refer to that whenever. I know that
9 you mentioned yesterday that there are some expert
10 work you've done since submitting the CV; correct?
11 A That's correct.
12 Q And two of those matters were ones in which
13 you were also retained by Apple; is that right?
14 A That's correct.
15 Q And the first was a case called Immersion
16 versus Apple; is that right?
17 A That's correct.
18 Q And then -- and in that case was it your
19 testimony that that involved an Inter Partes Review
20 proceeding as well as an ITC proceeding?
21 A That was --
22 MS. HOLOUBEK: Objection to form.
23 BY MR. KIMBLE:
24 Q What was your answer there?
25 A The case that you mentioned, Immersion

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1 versus Apple, had an IPR component and it also had
2 an ITC component.
3 Q And who -- what law firm retained you in
4 the Immersion case?
5 A I'm not very good with remembering long law
6 firm names, so escapes me.
7 Q Do you remember the attorney who you
8 primarily worked with?
9 A Yes, Mr. Patterson and Mr. Erickson.
10 Q Do you remember the first names?
11 A Todd Patterson.
12 Q And did you say somebody Mr. Erickson?
13 A Correct.
14 Q What's his first name?
15 A Brian.
16 Q And do you know what city they work in?
17 A I believe their main offices are -- or
18 their location is in Austin, Texas.
19 Q And is that case ongoing or is it over?
20 MS. HOLOUBEK: Objection, form.
21 THE WITNESS: I can't answer as I'm not
22 exactly sure on the legal matters and when
23 somebody -- something stops or it's ongoing.
24 BY MR. KIMBLE:
25 Q Fair enough.

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1 A I don't know for sure.
2 Q Okay. In the ITC part of that work, did
3 you testify at a trial?
4 A I did.
5 Q Okay. Are you continuing to do work in
6 that matter?
7 MS. HOLOUBEK: Objection. To the extent
8 that it calls for privileged information, I'll
9 caution the witness not to divulge any privileged
10 information.
11 BY MR. KIMBLE:
12 Q And that's fair enough. I'll just tell you
13 what I'm really getting at, is whether you're
14 continuing to send invoices for work on that case.
15 That's what I'm trying to get to.
16 A I have not sent any invoices since my
17 deposition.
18 Q And did you charge -- sorry. Let me take a
19 step back.
20 In this matter you're charging Apple 650 an
21 hour; correct?
22 A In which matter?
23 Q The matters in which we're -- you are being
24 deposed on today.
25 A That's correct.

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1 Q And that was also true for the '965 case
2 that you were deposed on yesterday; right?
3 A That's true.
4 Q Okay. In the Immersion case did you charge
5 Apple 650 an hour?
6 A The best I recall, it's either 650 or plus
7 or minus some percentage. I don't know the exact
8 number, but that's roughly my rate.
9 Q And when you say plus or minus, what --
10 could that be more than 700 an hour or do you think
11 it's somewhere between 6- and 700?
12 A It would -- 99% sure it's going to be
13 between 600 and 700 in all of my cases.
14 Q Okay. And in that case Apple was the
15 Petitioner like they are in the '941 matters;
16 correct?
17 MS. HOLOUBEK: Objection, form.
18 THE WITNESS: You mean in the IPR case?
19 BY MR. KIMBLE:
20 Q Yes, that's what I meant.
21 A That's correct.
22 Q Okay. Approximately how much did you bill
23 Apple or the law firm for your work on the Immersion
24 case?
25 A I don't recall.

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1 Q Can you estimate?
2 A It was I would say for the whole Immersion
3 case definitely more than 100-, less than a few
4 hundred. That's the best I recall.
5 Q All right. And then you also talked about
6 yesterday that you had done more recently some work
7 on a case called Masa versus Apple; correct?
8 A That's correct.
9 Q And Apple retained you in that case as
10 well?
11 A That's correct.
12 Q And you were deposed in that case?
13 A I was deposed in that case.
14 Q And that's an IPR matter, also?
15 A That is an IPR matter.
16 Q And I think your testimony yesterday was
17 that also involves wearable systems; is that right?
18 A That is correct.
19 Q What sort of -- and let me ask -- step back
20 a minute.
21 Your expert reports in this case are not
22 confidential; do you understand that?
23 A I do.
24 Q Okay. In the Masa case was your expert
25 Declaration confidential?

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1 A I don't know.
2 Q Okay. Do you have some reason to believe
3 that the Declaration was confidential in that
4 matter?
5 A Not being an attorney, I wouldn't know one
6 way or another.
7 Q But you know in this matter, in the '941
8 matters, your Declarations are not confidential?
9 A Just because you said so.
10 Q Fair enough. Okay.
11 What sort of wearable systems were -- was
12 the patent at issue in the Masa IPR about?
13 MS. HOLOUBEK: Objection, form.
14 THE WITNESS: I don't know how to narrow it
15 down other than saying it was a general wearable
16 system.
17 BY MR. KIMBLE:
18 Q Did it involve -- did the wearable system
19 involve PPG sensors?
20 A I'm not sure if it would have the
21 implication of having a PPG sensor or not.
22 Q Do you recall whether the patent claims in
23 the Masa matter involved determination of heart
24 rate?
25 A I'm not sure if they would have the

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