UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FLIR SYSTEMS, INC., and
FLIR MARITIME US, INC.,
(f/k/a RAYMARINE INC.),

          Petitioner,

vs.   Case No. IPR2017-00946
                             U.S. Patent No.
GARMIN SWITZERLAND GmbH,   7,268,703 B1

          Patent Owner.

Deposition of STEVEN DOUGLAS BROWNE

Overland Park, Kansas

January 19, 2018 – 9:04 a.m.

Reported by:

Naola C. Vaughn

Job no: 20500

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3   DEPOSITION OF STEVEN DOUGLAS BROWNE,
4   produced, sworn and examined on behalf of the
5   Petitioner, pursuant to Notice, on Friday, the 19th day
6   of January, 2018, between the hours of 9:04 a.m. and
7   11:30 a.m. of that day, at the law offices of Erise IP,
8   P.A., 7016 College Boulevard, Suite 700, in the City of
9   Overland Park, in the County of Johnson, and the State
10   of Kansas, before me, NAOLA C. VAUGHN, MO CCR 1052, KS
11   CCR 0895, CRR, RPR, a Certified Court Reporter, within
12   and for the States of Missouri and Kansas.
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1   I N D E X
2   WITNESS: STEVEN DOUGLAS BROWNE
3   Examination by Mr. Ferguson 5
4
5   EXHIBITS
6   NUMBER   DESCRIPTION   PAGE
7   Exhibit 1001 - U.S. Patent 7,268,703 B1   8
8   Exhibit 1005 - W.J. de Jong, Automated Route   9
                 Planning, A Network-Based Route
9   Planning Solution for Marine
                 Navigation
10
11   Exhibit 2001 - Bowditch "manual"   22
12
     Exhibit 2003 - Declaration of Steven Browne   9
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1   A P P E A R A N C E S
2   For the Petitioner:
3   WEIL GOTSHAL & MANGES, LLP
        2001 M Street, N.W.
4   Suite 600
        Washington, D.C. 20036
5   202.682.7000
        brian.ferguson@weil.com
6   BY: BRIAN E. FERGUSON
           and
7   stephen.bosco@weil.com
        BY: STEPHEN P. BOSCO
8
9   For the Patent Owner:
10   ERISE IP, P.A.
        7015 College Boulevard
11   Suite 700
        Overland park, Kansas 66211
12   913.777.5600
        jennifer.bailey@eriseip.com
13   BY: JENNIFER C. BAILEY
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1   STEVEN DOUGLAS BROWNE,
2   a witness, being first duly sworn, testified as
3   follows:
4   EXAMINATION
5   BY MR. FERGUSON:
6   Q.   Good morning.
7   A.   Good morning.
8   Q.   Please state your full name for the
9   record.
10   A.   Steven Douglas Browne.
11   Q.   And can you give us an address? It
12   can be work or residential, whatever you're
13   comfortable with.
14   A.   200 Maritime Academy Drive, Vallejo,
15   California 94590.
16   Q.   Great. Have you ever been deposed
17   before, Mr. Browne?
18   A.   I have not.
19   Q.   Let me just give you a review of the
20   ground rules, per se, to help you, and if you have
21   any questions about these, let me know, okay?
22   A.   I will.
23   Q.   Number one, the court reporter is
24   taking down everything we say. So as a result,
25   let's try to talk in order. I'll ask a question.

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 1    You give an answer.  Let's not talk over each
 2    other, okay?
 3        A.   Yes.
 4        Q.   Number two, please keep all of your
 5    answers verbal, as opposed to head nods or head
 6    shakes, okay?
 7        A.   Yes.
 8        Q.   And I think most importantly is, if
 9    you don't understand my question, just ask me to
10    clarify, and I'll be happy to try and do that,
11    okay?
12        A.   I will.
13        Q.   And then lastly, if you just need a
14    break at any time, just let me know and we'll look
15    for a place to take a break.
16        A.   I will.
17        Q.   Generally we break every hour or so.
18    Get up and stretch your legs.
19        A.   Very good.
20        Q.   Okay.  When were you first contacted
21    by either counsel or someone at Garmin regarding
22    potentially working on this matter?
23        A.   I don't recall a specific day, but it
24    was -- it was in November of 2017, I believe.  But
25    it could have been September.  I think it was
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 1        Q.   I noticed -- let me strike that.
 2             And what is your compensation for
 3    working on this matter?
 4        A.   I got paid $200 an hour for the
 5    initial document review and preparation of my
 6    declaration and $300 an hour for work related to
 7    the deposition.
 8        Q.   Okay.  Why do you charge more for the
 9    work related to the deposition?
10        A.   This is my first time doing this, and
11    I admit I know very little about the process.  I
12    asked a colleague how much I should charge and
13    took his advice.
14        Q.   Okay.  So as we sit here today, you
15    are being compensated 300 an hour as you give
16    testimony; correct?
17        A.   That's correct.
18        Q.   I've put in front of you some of the
19    exhibits that relate to this matter.  The first is
20    what we'll call Exhibit 1001.  It's a copy of the
21    patent at issue here, 7,268,703.
22             Do you see that?
23        A.   I do.
24        Q.   And you're obviously familiar with
25    this patent; correct?
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 1    November.
 2        Q.   November 2017; correct?
 3        A.   Yes.
 4        Q.   All right.  When you were contacted,
 5    who contacted you?  Was it someone from outside
 6    counsel or someone in-house at Garmin?
 7        A.   Outside counsel.  I was emailed to see
 8    if I was interested and then with a follow-up call
 9    after that.
10        Q.   Do you have a written engagement
11    letter?
12        A.   Yes, I have a contract, yes.
13        Q.   Okay.  Do you recall roughly when that
14    was signed?
15        A.   Probably the end of November.  I don't
16    recall the specific date.
17        Q.   Okay.  Prior to signing that
18    engagement letter or contract, were you provided
19    any materials that related to this matter?
20        A.   I was not.
21        Q.   So to be clear, you signed the
22    engagement letter to work on behalf of Garmin in
23    this matter without seeing the particular patent
24    that's at issue; correct?
25        A.   That's correct.
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 1        A.   Yes.
 2        Q.   Is it acceptable to you if we refer to
 3    it as the '703 patent?
 4        A.   Yes.
 5        Q.   Thank you.
 6             And then next is, I believe, a copy of
 7    your Declaration that you prepared?
 8        A.   It is.
 9        Q.   Which is labeled Exhibit 2003.  Is
10    that right?
11        A.   Yes.
12        Q.   And just for the record, is that your
13    signature on the probably third or fourth last
14    page?
15        A.   It is.
16        Q.   Okay.  Just a note.  You signed this
17    Declaration on November 15th, 2017?
18        A.   I did.
19        Q.   Does that refresh your memory about
20    when you were first contacted?
21        A.   Yes, it does. I most likely was
22    contacted in October, but it was shortly before
23    preparing the Declaration.
24             Okay.  And then lastly, in front of
25    you is a copy of Exhibit 1005, which, for the
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1 record is entitled Automated Route Planning, A
2 Network-Based Route Planning Solution for Marine
3 Navigation, and the author is Wichert J. de Jong,
4 d-e, J-o-n-g.
5   Do you see that?
6   A. I do.
7   Q. My -- I have been calling this the
8 de Jong reference.
9   Is that acceptable to you?
10   A. It is. I might occasionally call it
11 de Jong out of habit, but I don't know which one
12 is correct.
13   Q. Right.
14   But we'll go with either one, and
15 we'll both understand what we're talking about.
16 Is that okay?
17   A. It is.
18   Q. Okay. And you reviewed the de Jong
19 reference as well, as part of this proceeding;
20 correct?
21   A. I did.
22   Q. All right. The '703 patent which you
23 have in front of you, Exhibit 1001, you'd agree
24 that it discusses algorithms; correct?
25   A. It does mention an algorithm in a few

1 locations.
2   Q. Right. And just as an example, not
3 limiting the example, if you can look at Figure 5.
4 You'll see in the box that's labeled 510, there's
5 a reference to a marine route calculation
6 algorithm; correct?
7   A. Yes.
8   Q. An important question is how do you
9 pronounce r-o-u-t-e?
10   A. Typically I pronounce it route.
11   Q. Okay.
12   A. But I think there are alternate
13 correct pronunciations.
14   Q. I'm going to use route from now on.
15   A. Okay.
16   Q. Thank you.
17   So you agree then that the '703 patent
18 does have some disclosure and discussion of
19 algorithms; correct?
20   A. It does use the term "algorithm" in a
21 few places, yes.
22   Q. You have experience with algorithms
23 from your studies in college; correct?
24   A. I do, yes.
25   Q. I think you referenced that in your

1 Declaration; correct?
2   A. I did.
3   Q. And in general, do you agree with me
4 that algorithms are designed to accomplish a given
5 result?
6   A. Yes. That's the goal of an algorithm.
7   Q. Okay. And usually an algorithm is --
8 consists of one or more steps. Is that accurate?
9   A. They often do. Yes, I don't -- they
10 don't necessarily have a specific number of steps
11 involved.
12   Q. Okay. Now, in general, do you agree
13 with me that not every step in an algorithm always
14 needs to be performed?
15   MS. BAILEY: Objection. Form.
16 BY MR. FERGUSON:
17   Q. I should have clarified that.
18   Your counsel may object to the
19 questions from time to time. You are still bound
20 to answer them unless your counsel instructs you
21 not to. Okay?
22   A. Okay. Can you clarify the question,
23 please?
24   Q. Sure. Not every step in an algorithm
25 always needs to be performed; correct?

1   MS. BAILEY: Objection. Form.
2   A. Some algorithms are more tightly
3 written than others.
4   So I would suspect that there might be
5 an algorithm out there that would be true of.
6 BY MR. FERGUSON:
7   Q. Sure. For example, let's use a
8 non-technical example.
9   Have you ever eaten at a Subway
10 restaurant?
11   A. I have.
12   Q. In some ways you could describe the
13 process of going into a Subway and ordering a
14 sandwich to be an algorithm.
15   Would you agree with that?
16   A. I do. I could see that.
17   Q. Come in. One of your -- your first
18 choice is to choose the bread. Then they give you
19 meat choices, cheese choices, vegetable choices,
20 and condiment choices; correct?
21   A. Yes.
22   Q. Now, I might go through that process
23 and decide to skip the vegetable choices, but I
24 would still get a sandwich at the end; correct?
25   A. Yes.

4 (Pages 10 to 13)

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 1        Q.   So that's an example of when an
 2   algorithm may not necessarily require that every
 3   step be performed in order to achieve the result;
 4   correct?
 5        A.   That is a good illustration in the
 6   context of a Subway sandwich.
 7        Q.   Sure.  And algorithms can also be
 8   simplified, correct, in that, again, one or more
 9   of the steps may not necessarily need to be
10   performed?
11        MS. BAILEY:  Objection.  Form.
12        A.   I haven't analyzed a specific
13   question.  So I can't really speak directly to
14   that line of questioning without further, you
15   know, preparation.
16   BY MR. FERGUSON:
17        Q.   Sure.  Okay.  That's fair.
18        You'd agree that an algorithm can be
19   run multiple times until the desired result is
20   achieved; right?
21        A.   Many algorithms of various purposes
22   are designed to function in that way.
23        Q.   And, in fact, do you recall from the
24   '703 patent that it teaches that algorithms can be
25   performed multiple times to achieve the result;
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 1   algorithms.
 2        Q.   Let me ask you this then.  What is
 3   your opinion as to the definition of an algorithm
 4   as a person of ordinary skill in the art of the
 5   '703 patent would use it?
 6        MS. BAILEY:  Objection.  Scope.
 7        A.   Could you narrow the question?
 8   BY MR. FERGUSON:
 9        Q.   I don't think I can.
10        What is your opinion regarding what a
11   person of ordinary skill in the art, in the
12   subject matter of the '703 patent -- how would
13   that person define an algorithm?
14        MS. BAILEY:  Same objection.
15        A.   In general, an algorithm is a way of
16   framing the solution to a problem.
17   BY MR. FERGUSON:
18        Q.   Looking at, for example, Figure 6 of
19   the '703 patent, you would agree that Figure 6
20   identifies three steps as labeled in the three
21   rectangles; correct?
22        A.   It appears to be so, yes.
23        Q.   And then would you agree then that, in
24   general, to a person of ordinary skill in the art,
25   Figure 6 could be classified as an algorithm?
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 1   right?
 2        A.   I haven't looked at the '703 patent to
 3   address that question.
 4        Q.   Um-hum.
 5        A.   So I would need to refresh my memory
 6   as to what it says.
 7        Q.   Why don't we look then at Column 12 of
 8   the '703 patent, and specifically Lines 16 through
 9   18.
10        A.   I read it.
11        Q.   And that says, "The method sequence
12   shown in Figures 5 through 7 can be repeated as
13   many times as necessary without limitation in
14   order to achieve a desired course."
15        Do you see that?
16        A.   I do.  It does say that.
17        Q.   And do you agree that Figures 5
18   through 7 of the '703 patent described algorithms?
19        A.   Just looking at the highlighted
20   sentence that you read, it doesn't say
21   "algorithms."  And only looking at the Figures 5,
22   6, and 7, it doesn't label those as algorithms.
23   And I haven't reviewed that question thoroughly as
24   part of my Declaration to be able to say at this
25   time -- to analyze that, whether or not those are
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 1        A.   I'd like to look through the patent to
 2   see how the patent describes Figure 6, if I could
 3   have a moment.
 4        Q.   Absolutely.  Take your time.
 5        A.   Thank you.
 6        The patent describes Figure 6 as a
 7   flowchart on -- this is on page 11, line 30.
 8   "Figure 6 is a flowchart illustrating an
 9   additional method, according to an embodiment of
10   the present navigation."
11        So it does not describe it as an
12   algorithm.
13        Q.   Just to be clear, you would disagree
14   that Figure 6 of the '703 patent shows an
15   algorithm to a person of skill in the art; is that
16   your testimony?
17        MS. BAILEY:  Objection.  Form.
18        A.   I would say rather that, based on my
19   review to date, I don't have enough information to
20   label it.
21   BY MR. FERGUSON:
22        Q.   Okay.  You would agree then, based on
23   what you just reviewed from the '703 patent, that
24   Figure 6, at a minimum, shows a flowchart;
25   correct?
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