

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
3 MARSHALL DIVISION

4 -----x

5 FUNDAMENTAL INNOVATION SYSTEMS
6 INTERNATIONAL LLC,
7 Plaintiff,

8 Civil Action No.
9 vs. 2:17-cv-00145-JRG

10

11 SAMSUNG ELECTRONICS CO., LTD.,
12 SAMSUNG ELECTRONICS
13 AMERICA, INC.,
14 Defendants.

15 -----x

16 November 20, 2017
17 9:31 a.m.

18

19 Videotaped Deposition of JOHN IRVING
20 GARNEY, taken at the offices of KIRKLAND &
21 ELLIS LLP, 601 Lexington Avenue, New York,
22 New York, before Frank J. Bas, a Registered
23 Professional Reporter, Certified Realtime
24 Reporter and Notary Public within and for the
25 State of New York.

<p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S :</p> <p>2</p> <p>3 IRELL & MANELLA</p> <p>4 Attorneys for Plaintiff</p> <p>5 1800 Avenue of the Stars</p> <p>6 Los Angeles, California 90067</p> <p>7 BY: JASON SHEASBY, ESQ.</p> <p>8 jsheasby@irell.com</p> <p>9</p> <p>10 KIRKLAND & ELLIS LLP</p> <p>11 Attorneys for Defendants and the Witness</p> <p>12 601 Lexington Avenue</p> <p>13 New York, New York 10022</p> <p>14 BY: JAMES McCONNELL, ESQ.</p> <p>15 james.mcconnell@kirkland.com</p> <p>16 TODD M. FRIEDMAN, P.C.</p> <p>17 todd.friedman@kirkland.com</p> <p>18 ALEX HENRIQUES, ESQ.</p> <p>19 alexhenriques@kirkland.com</p> <p>20</p> <p>21 ALSO PRESENT:</p> <p>22 ROBERT GIBBS, Videographer, DTI Global</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 ---- EXHIBITS CONTINUED ----</p> <p>2 Garney Exhibit 5, Universal 85</p> <p>3 Serial Bus Cable & Connector</p> <p>4 Class Specification, Version 1.0</p> <p>5 (No Bates)</p> <p>6</p> <p>7 Garney Exhibit 6, Summary of 104</p> <p>8 Opinions by Mr. John Garney (No</p> <p>9 Bates)</p> <p>10</p> <p>11 Garney Exhibit 7, USB 2.0 126</p> <p>12 Specification (No Bates)</p> <p>13</p> <p>14 Garney Exhibit 8, USB Frequently 127</p> <p>15 Asked Questions (No Bates)</p> <p>16</p> <p>17 Garney Exhibit 9, Provisional 137</p> <p>18 Application for Patent, Bates</p> <p>19 FIS1-145-00055102 through 160</p> <p>20</p> <p>21 Garney Exhibit 10, PowerPoint 155</p> <p>22 presentation, Bates</p> <p>23 FIS1-145-00055514 through 546</p> <p>24</p> <p>25</p>																																																
<p style="text-align: right;">Page 3</p> <p>1 ----- I N D E X -----</p> <table border="0"> <tr> <td>2 WITNESS</td> <td>EXAMINATION BY</td> <td>PAGE</td> </tr> <tr> <td>3 J. GARNEY</td> <td>MR. SHEASBY</td> <td>8</td> </tr> </table> <p>4 ----- EXHIBITS-----</p> <table border="0"> <tr> <td>5 GARNEY</td> <td>PAGE</td> </tr> <tr> <td>6 Garney Exhibit 1, Universal</td> <td>24</td> </tr> <tr> <td>7 Serial Bus Specification,</td> <td></td> </tr> <tr> <td>8 Revision 2.0, Bates</td> <td></td> </tr> <tr> <td>9 SAMSUNG_FISI00118913 through 9433</td> <td></td> </tr> <tr> <td>10</td> <td></td> </tr> <tr> <td>11 Garney Exhibit 2, United States</td> <td>62</td> </tr> <tr> <td>12 Patent 6,936,936 (No Bates)</td> <td></td> </tr> <tr> <td>13</td> <td></td> </tr> <tr> <td>14 Garney Exhibit 3, On-The-Go</td> <td>65</td> </tr> <tr> <td>15 Supplement to the USB</td> <td></td> </tr> <tr> <td>16 Specification, Revision 1.0,</td> <td></td> </tr> <tr> <td>17 Bates FIS1-145-00056242 through</td> <td></td> </tr> <tr> <td>18 253</td> <td></td> </tr> <tr> <td>19</td> <td></td> </tr> <tr> <td>20 Garney Exhibit 4, USB 2.0</td> <td>71</td> </tr> <tr> <td>21 Specification Engineering Change</td> <td></td> </tr> <tr> <td>22 Notice #1: Mini-B connector,</td> <td></td> </tr> <tr> <td>23 dated 10/20/2000, Bates</td> <td></td> </tr> <tr> <td>24 FIS1-145-00056197 through 241</td> <td></td> </tr> <tr> <td>25</td> <td></td> </tr> </table>	2 WITNESS	EXAMINATION BY	PAGE	3 J. GARNEY	MR. SHEASBY	8	5 GARNEY	PAGE	6 Garney Exhibit 1, Universal	24	7 Serial Bus Specification,		8 Revision 2.0, Bates		9 SAMSUNG_FISI00118913 through 9433		10		11 Garney Exhibit 2, United States	62	12 Patent 6,936,936 (No Bates)		13		14 Garney Exhibit 3, On-The-Go	65	15 Supplement to the USB		16 Specification, Revision 1.0,		17 Bates FIS1-145-00056242 through		18 253		19		20 Garney Exhibit 4, USB 2.0	71	21 Specification Engineering Change		22 Notice #1: Mini-B connector,		23 dated 10/20/2000, Bates		24 FIS1-145-00056197 through 241		25		<p style="text-align: right;">Page 5</p> <p>1 ---- EXHIBITS CONTINUED ----</p> <p>2 Garney Exhibit 11, Handwritten 168</p> <p>3 drawing (No Bates)</p> <p>4</p> <p>5 Garney Exhibit 12, United States 172</p> <p>6 Patent 7,239,111 (No Bates)</p> <p>7</p> <p>8 Garney Exhibit 13, Document 207</p> <p>9 entitled "Exhibit B" (No Bates)</p> <p>10</p> <p>11 Garney Exhibit 14, Printout of 321</p> <p>12 webpage, USB-IF Developers Area</p> <p>13 (No Bates)</p> <p>14</p> <p>15 Garney Exhibit 15, Printout of 322</p> <p>16 webpage, USB 2.0 Specification</p> <p>17 (No Bates)</p> <p>18</p> <p>19 Garney Exhibit 16, Printout of 326</p> <p>20 webpage, USB 2.0 Specification</p> <p>21 (No Bates)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
2 WITNESS	EXAMINATION BY	PAGE																																															
3 J. GARNEY	MR. SHEASBY	8																																															
5 GARNEY	PAGE																																																
6 Garney Exhibit 1, Universal	24																																																
7 Serial Bus Specification,																																																	
8 Revision 2.0, Bates																																																	
9 SAMSUNG_FISI00118913 through 9433																																																	
10																																																	
11 Garney Exhibit 2, United States	62																																																
12 Patent 6,936,936 (No Bates)																																																	
13																																																	
14 Garney Exhibit 3, On-The-Go	65																																																
15 Supplement to the USB																																																	
16 Specification, Revision 1.0,																																																	
17 Bates FIS1-145-00056242 through																																																	
18 253																																																	
19																																																	
20 Garney Exhibit 4, USB 2.0	71																																																
21 Specification Engineering Change																																																	
22 Notice #1: Mini-B connector,																																																	
23 dated 10/20/2000, Bates																																																	
24 FIS1-145-00056197 through 241																																																	
25																																																	

Page 10

1 A. I would have to check my
2 records, but several months ago.

3 Q. Did you have a role in working
4 with Kirkland on preparing and proposing
5 constructions for terms in the past that you
6 considered?

7 (Instruction not to answer.)

8 MR. McCONNELL: Objection;
9 calls for privilege, and in light of
10 the discovery order in this case I
11 instruct the witness not to answer.

12 BY MR. SHEASBY:

13 Q. You could answer the question.

14 MR. McCONNELL: Counsel, I have
15 instructed the witness not to answer
16 the question.

17 BY MR. SHEASBY:

18 Q. Did you provide your own claim
19 constructions of any terms in any of the
20 patents that you considered?

21 A. What do you mean by provide?

22 Q. I mean it in its normal,
23 ordinary sense, sir.

24 A. I determined that the
25 constructions were my opinions.

Page 11

1 Q. So the constructions were
2 provided to you and you determined that you
3 agreed with them?

4 A. Well, I determined that they
5 were my opinions.

6 Q. Sir, if you could answer my
7 question --

8 A. I have answered your
9 question, sir.

10 Q. -- I would appreciate it.
11 You were provided
12 constructions, is that correct?

13 A. What I said is I reviewed the
14 opinions and determined that they reflected
15 my -- my view.

16 Q. Sir, can you answer my question
17 yes or no.

18 Were you provided constructions
19 by your attorneys?

20 A. I have to answer it the way
21 I've already answered it, sir.

22 Q. Sir, can you answer my question
23 yes or no, were you provided constructions by
24 your attorneys?

25 A. I reviewed the constructions

Page 12

1 that were here, and they reflect my opinions.

2 Q. So you reviewed a set of
3 constructions by -- provided to you by
4 counsel, correct?

5 A. I didn't say that, no.

6 Q. You didn't say that? Can you
7 answer my question? Did you review a set of
8 constructions provided by your counsel?

9 A. I reviewed the constructions
10 represented in the summary of opinions -- the
11 summary of my opinion and determined that they
12 reflected my opinions.

13 Q. Okay. And just so the record's
14 clear, because I want this for the court, were
15 you given a set of constructions by counsel to
16 review; yes or no?

17 A. I reviewed the constructions
18 that are represented in my summary disclosure.

19 Q. What is USB?

20 A. USB is a standard term that
21 it's understood to be an abbreviation of
22 universal serial bus.

23 Q. And what is universal
24 serial bus?

25 A. Universal serial bus is a set

Page 13

1 of specifications at the time of the patent
2 that would have included USB 2 and USB 1 and
3 USB 1.1.

4 Q. And so to be clear, USB is
5 defined by a set of specifications, is that
6 correct?

7 A. Well, it's having to do with --
8 depending upon how the USB is used in context,
9 it has to do with something related to the
10 specifications.

11 Q. So USB relates to
12 specifications, correct?

13 A. No. It has to do with some
14 part of the, what's defined in the
15 specifications.

16 Q. So what is USB then?

17 A. USB is an acronym for universal
18 serial bus.

19 Q. And what is universal
20 serial bus?

21 A. Universal serial bus is a --
22 within the context of the patents, used as a
23 specification that would have been available
24 to one of ordinary skill; for example, at that
25 time would have been USB 2 or USB 1.1 or

Page 14

1 USB 1.0.
2 **Q. What's universal serial bus**
3 **today?**
4 A. As I'm sitting here right now?
5 **Q. Yes.**
6 A. It would have been understood
7 to refer to something within a specification
8 of the specs that existed as of today, which
9 have now expanded to include other
10 specifications.
11 **Q. When was USB introduced?**
12 A. What do you mean by introduced?
13 **Q. When was it first introduced?**
14 **When was the first specification introduced?**
15 A. When was the first
16 specification introduced? There were release
17 candidates of the specification made available
18 for the 1.0 spec. You could look at the
19 revision history in the spec to see exactly
20 when they were.
21 **Q. But sitting here today you**
22 **don't know?**
23 A. I haven't memorized that page
24 of the spec, no.
25 **Q. When did you begin to work**

Page 15

1 **on USB?**
2 A. Approximately 1994.
3 **Q. And what specification was in**
4 **place in 1994?**
5 A. There was no specification in
6 place in 1994.
7 **Q. So how could you be working on**
8 **USB if there was no specification?**
9 A. Because I was one of the
10 creators of the specification and I was
11 involved in creating the specification.
12 **Q. So USB existed before the**
13 **specification?**
14 A. USB couldn't have existed as a
15 specified bus before the specification that
16 specifies the bus existed.
17 **Q. When you were working on USB in**
18 **1994, what did USB mean?**
19 A. I think before I started
20 working on it, it didn't probably have a
21 meaning.
22 **Q. And when you started working on**
23 **it in 1994 what meaning did it have?**
24 A. I don't know that it would have
25 had a meaning.

Page 16

1 **Q. It didn't have a meaning until**
2 **the first specification was released?**
3 A. Well, it didn't have a meaning
4 until we first started working on it and
5 releasing early versions of it.
6 **Q. And when did you release your**
7 **earliest version of it?**
8 A. Again, I don't have it
9 memorized. It would be in the frontest piece
10 of the USB 1 spec --
11 (Reporter Clarification)
12 A. It would be on the frontest
13 piece. Front material.
14 **Q. What is USB?**
15 A. USB is an acronym for universal
16 serial bus.
17 **Q. And USB is a standard for**
18 **communication, is that correct?**
19 A. I am sorry. I couldn't hear
20 you?
21 **Q. USB is a standard for**
22 **communication, is that correct?**
23 A. No.
24 **Q. USB is not a standard for**
25 **communication?**

Page 17

1 A. Not solely. It's an incomplete
2 question.
3 **Q. The defining method of USB is**
4 **the method by which the device communicates**
5 **with the host, correct?**
6 A. I'm sorry. Are you referring
7 to something? I can't --
8 **Q. If you can just answer my**
9 **question, I would appreciate it.**
10 A. There's a number of words
11 there. I would like to make sure I hear them
12 clearly. I never heard that phrase before.
13 **Q. Sure. The defining method of**
14 **USB is the method by which the device**
15 **communicates with the host, correct?**
16 A. The defining method of -- I am
17 sorry. I need to see that written down.
18 There's too many words to hold in my head at
19 once. Can you refer me to where that is?
20 **Q. Sure. It's right there**
21 **(indicating).**
22 A. I'm having a hard time
23 technically. I mean, it seems like a valid
24 English sentence, but technically it's unclear
25 what that sentence is trying to say.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.