

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>
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1 ----- EXHIBITS CONTINUED -----
 2 Garney Exhibit 17, Article 333
 3 entitled "Use the USB Connector
 4 to Connect Your Galaxy S7 to Your
 5 Previous Device" (No Bates)
 6
 7 -----
 8
 9 INSTRUCTIONS NOT TO ANSWER
 10 Page Line
 11 7 10
 12 333 10
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 14
 15
 16
 17
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1 November 20, 2017
 2 New York, New York
 3 ---
 4 THE VIDEOGRAPHER: Good
 5 morning, everyone. This is the video
 6 operator speaking, Robert Gibbs of DTI
 7 Global, 20750 Ventura Boulevard,
 8 Woodland Hills, California 90067.
 9 Today is November 20, 2017 and the
 10 time is 9:31 a.m.
 11 We are at the offices of
 12 Kirkland & Ellis LLP, 601 Lexington
 13 Avenue, New York City, New York, to
 14 take the video deposition of Mr. John
 15 Garney in the matter of Fundamental
 16 Innovations Systems International LLC
 17 versus Samsung Electronics Corp. Ltd.
 18 versus -- pardon me -- and Samsung
 19 Electronics America, Inc. in the
 20 United States District Court for the
 21 Eastern District of Texas, Marshall
 22 Division, Case Number
 23 217-cv-00145-JRG.
 24 Will counsel please introduce
 25 themselves for the record.

Page 8

1 MR. SHEASBY: Jason Sheasby for
 2 Fundamental.
 3 MR. McCONNELL: James McConnell
 4 for Samsung and the witness. With me
 5 is Todd Friedman and Alex Henriques,
 6 and we are all with Kirkland & Ellis.
 7 THE VIDEOGRAPHER: Thank you,
 8 gentlemen.
 9 Will the court reporter, Frank
 10 Bas of DTI Global, please swear the
 11 witness.
 12
 13 J O H N I R V I N G G A R N E Y,
 14 called as a witness, having been first duly
 15 sworn, was examined and testified
 16 as follows:
 17 THE VIDEOGRAPHER: You may
 18 proceed, Counsel.
 19 EXAMINATION BY
 20 MR. SHEASBY:
 21 Q. Good morning, sir. Can you
 22 state your full name for the record.
 23 A. John Irving Garney.
 24 Q. And Mr. Garney, you've been
 25 designated to opine as an expert witness for

Page 9

1 Samsung, is that correct?
 2 A. Yes.
 3 Q. And the subject matter of your
 4 testimony is the meaning of terms and context
 5 relating to USB, is that correct?
 6 A. Terms and context that were
 7 within the summary of opinions.
 8 Q. Did you prepare that summary of
 9 the opinions?
 10 A. I --
 11 MR. McCONNELL: Objection.
 12 I caution the witness not to
 13 reveal the substance of any
 14 communications or drafts with
 15 attorneys.
 16 BY MR. SHEASBY:
 17 Q. You can answer the
 18 question, sir.
 19 A. I reviewed the opinion summary
 20 to determine it reflected my opinions.
 21 Q. So you reviewed the summary of
 22 opinions?
 23 A. Yes.
 24 Q. Okay. When were you retained
 25 as an expert in this case?

<p style="text-align: right;">Page 10</p> <p>1 A. I would have to check my 2 records, but several months ago.</p> <p>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?</p> <p>7 (Instruction not to answer.)</p> <p>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.</p> <p>12 BY MR. SHEASBY:</p> <p>13 Q. You could answer the question.</p> <p>14 MR. McCONNELL: Counsel, I have 15 instructed the witness not to answer 16 the question.</p> <p>17 BY MR. SHEASBY:</p> <p>18 Q. Did you provide your own claim 19 constructions of any terms in any of the 20 patents that you considered?</p> <p>21 A. What do you mean by provide?</p> <p>22 Q. I mean it in its normal, 23 ordinary sense, sir.</p> <p>24 A. I determined that the 25 constructions were my opinions.</p>	<p style="text-align: right;">Page 12</p> <p>1 that were here, and they reflect my opinions.</p> <p>2 Q. So you reviewed a set of 3 constructions by -- provided to you by 4 counsel, correct?</p> <p>5 A. I didn't say that, no.</p> <p>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?</p> <p>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.</p> <p>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?</p> <p>17 A. I reviewed the constructions 18 that are represented in my summary disclosure.</p> <p>19 Q. What is USB?</p> <p>20 A. USB is a standard term that 21 it's understood to be an abbreviation of 22 universal serial bus.</p> <p>23 Q. And what is universal 24 serial bus?</p> <p>25 A. Universal serial bus is a set</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. So the constructions were 2 provided to you and you determined that you 3 agreed with them?</p> <p>4 A. Well, I determined that they 5 were my opinions.</p> <p>6 Q. Sir, if you could answer my 7 question --</p> <p>8 A. I have answered your 9 question, sir.</p> <p>10 Q. -- I would appreciate it. 11 You were provided 12 constructions, is that correct?</p> <p>13 A. What I said is I reviewed the 14 opinions and determined that they reflected 15 my -- my view.</p> <p>16 Q. Sir, can you answer my question 17 yes or no.</p> <p>18 Were you provided constructions 19 by your attorneys?</p> <p>20 A. I have to answer it the way 21 I've already answered it, sir.</p> <p>22 Q. Sir, can you answer my question 23 yes or no, were you provided constructions by 24 your attorneys?</p> <p>25 A. I reviewed the constructions</p>	<p style="text-align: right;">Page 13</p> <p>1 of specifications at the time of the patent 2 that would have included USB 2 and USB 1 and 3 USB 1.1.</p> <p>4 Q. And so to be clear, USB is 5 defined by a set of specifications, is that 6 correct?</p> <p>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.</p> <p>11 Q. So USB relates to 12 specifications, correct?</p> <p>13 A. No. It has to do with some 14 part of the, what's defined in the 15 specifications.</p> <p>16 Q. So what is USB then?</p> <p>17 A. USB is an acronym for universal 18 serial bus.</p> <p>19 Q. And what is universal 20 serial bus?</p> <p>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</p>

<p style="text-align: right;">Page 14</p> <p>1 USB 1.0.</p> <p>2 Q. What's universal serial bus</p> <p>3 today?</p> <p>4 A. As I'm sitting here right now?</p> <p>5 Q. Yes.</p> <p>6 A. It would have been understood</p> <p>7 to refer to something within a specification</p> <p>8 of the specs that existed as of today, which</p> <p>9 have now expanded to include other</p> <p>10 specifications.</p> <p>11 Q. When was USB introduced?</p> <p>12 A. What do you mean by introduced?</p> <p>13 Q. When was it first introduced?</p> <p>14 When was the first specification introduced?</p> <p>15 A. When was the first</p> <p>16 specification introduced? There were release</p> <p>17 candidates of the specification made available</p> <p>18 for the 1.0 spec. You could look at the</p> <p>19 revision history in the spec to see exactly</p> <p>20 when they were.</p> <p>21 Q. But sitting here today you</p> <p>22 don't know?</p> <p>23 A. I haven't memorized that page</p> <p>24 of the spec, no.</p> <p>25 Q. When did you begin to work</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. It didn't have a meaning until</p> <p>2 the first specification was released?</p> <p>3 A. Well, it didn't have a meaning</p> <p>4 until we first started working on it and</p> <p>5 releasing early versions of it.</p> <p>6 Q. And when did you release your</p> <p>7 earliest version of it?</p> <p>8 A. Again, I don't have it</p> <p>9 memorized. It would be in the frontest piece</p> <p>10 of the USB 1 spec --</p> <p>11 (Reporter Clarification)</p> <p>12 A. It would be on the frontest</p> <p>13 piece. Front material.</p> <p>14 Q. What is USB?</p> <p>15 A. USB is an acronym for universal</p> <p>16 serial bus.</p> <p>17 Q. And USB is a standard for</p> <p>18 communication, is that correct?</p> <p>19 A. I am sorry. I couldn't hear</p> <p>20 you?</p> <p>21 Q. USB is a standard for</p> <p>22 communication, is that correct?</p> <p>23 A. No.</p> <p>24 Q. USB is not a standard for</p> <p>25 communication?</p>
<p style="text-align: right;">Page 15</p> <p>1 on USB?</p> <p>2 A. Approximately 1994.</p> <p>3 Q. And what specification was in</p> <p>4 place in 1994?</p> <p>5 A. There was no specification in</p> <p>6 place in 1994.</p> <p>7 Q. So how could you be working on</p> <p>8 USB if there was no specification?</p> <p>9 A. Because I was one of the</p> <p>10 creators of the specification and I was</p> <p>11 involved in creating the specification.</p> <p>12 Q. So USB existed before the</p> <p>13 specification?</p> <p>14 A. USB couldn't have existed as a</p> <p>15 specified bus before the specification that</p> <p>16 specifies the bus existed.</p> <p>17 Q. When you were working on USB in</p> <p>18 1994, what did USB mean?</p> <p>19 A. I think before I started</p> <p>20 working on it, it didn't probably have a</p> <p>21 meaning.</p> <p>22 Q. And when you started working on</p> <p>23 it in 1994 what meaning did it have?</p> <p>24 A. I don't know that it would have</p> <p>25 had a meaning.</p>	<p style="text-align: right;">Page 17</p> <p>1 A. Not solely. It's an incomplete</p> <p>2 question.</p> <p>3 Q. The defining method of USB is</p> <p>4 the method by which the device communicates</p> <p>5 with the host, correct?</p> <p>6 A. I'm sorry. Are you referring</p> <p>7 to something? I can't --</p> <p>8 Q. If you can just answer my</p> <p>9 question, I would appreciate it.</p> <p>10 A. There's a number of words</p> <p>11 there. I would like to make sure I hear them</p> <p>12 clearly. I never heard that phrase before.</p> <p>13 Q. Sure. The defining method of</p> <p>14 USB is the method by which the device</p> <p>15 communicates with the host, correct?</p> <p>16 A. The defining method of -- I am</p> <p>17 sorry. I need to see that written down.</p> <p>18 There's too many words to hold in my head at</p> <p>19 once. Can you refer me to where that is?</p> <p>20 Q. Sure. It's right there</p> <p>21 (indicating).</p> <p>22 A. I'm having a hard time</p> <p>23 technically. I mean, it seems like a valid</p> <p>24 English sentence, but technically it's unclear</p> <p>25 what that sentence is trying to say.</p>

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