

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.

Page 2

1 A P P E A R A N C E S :

2

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20

21 ALSO PRESENT:

22 ROBERT GIBBS, Videographer, DTI Global

23

24

25

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1 ---- EXHIBITS CONTINUED ----

2 Garney Exhibit 5, Universal 85

3 Serial Bus Cable & Connector

4 Class Specification, Version 1.0

5 (No Bates)

6

7 Garney Exhibit 6, Summary of 104

8 Opinions by Mr. John Garney (No

9 Bates)

10

11 Garney Exhibit 7, USB 2.0 126

12 Specification (No Bates)

13

14 Garney Exhibit 8, USB Frequently 127

15 Asked Questions (No Bates)

16

17 Garney Exhibit 9, Provisional 137

18 Application for Patent, Bates

19 FIS1-145-00055102 through 160

20

21 Garney Exhibit 10, PowerPoint 155

22 presentation, Bates

23 FIS1-145-00055514 through 546

24

25

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1 ----- I N D E X -----

2 WITNESS	EXAMINATION BY	PAGE
3 J. GARNEY	MR. SHEASBY	8
4 ----- EXHIBITS-----		
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		

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1 ---- EXHIBITS CONTINUED ----

2 Garney Exhibit 11, Handwritten 168

3 drawing (No Bates)

4

5 Garney Exhibit 12, United States 172

6 Patent 7,239,111 (No Bates)

7

8 Garney Exhibit 13, Document 207

9 entitled "Exhibit B" (No Bates)

10

11 Garney Exhibit 14, Printout of 321

12 webpage, USB-IF Developers Area

13 (No Bates)

14

15 Garney Exhibit 15, Printout of 322

16 webpage, USB 2.0 Specification

17 (No Bates)

18

19 Garney Exhibit 16, Printout of 326

20 webpage, USB 2.0 Specification

21 (No Bates)

22

23

24

25

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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
13
14
15
16
17
18
19
20
21
22
23
24
25

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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.

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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 ---
14 J O H N I R V I N G G A R N E Y,
15 called as a witness, having been first duly
16 sworn, was examined and testified
17 as follows:
18 THE VIDEOGRAPHER: You may
19 proceed, Counsel.
20 EXAMINATION BY
21 MR. SHEASBY:
22 Q. Good morning, sir. Can you
23 state your full name for the record.
24 A. John Irving Garney.
25 Q. And Mr. Garney, you've been
designated to opine as an expert witness for

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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?

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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?**

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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.

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