

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

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NETFLIX, INC.,

Petitioner,

vs.

REALTIME ADAPTIVE STREAMING,
LLC,

Patent Owner.

Case No.: IPR2018-01630
Patent No. 9,769,477

Case No.: IPR2018-01187
Patent No. 9,769,477

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DEPOSITION OF DR. JAMES ANDREW STORER

May 7, 2019

Palo Alto, California

Reported By:

Carly C. Tillotson, CSR No. 13627

Job no: 25212

Ex. 2003
Netflix v. Realtime
IPR2018-01630

TransPerfect Legal Solutions

1 DEPOSITION OF DR. JAMES ANDREW STORER
 2 Date: May 7, 2019
 3 Time: 11:05 a.m.
 4 Location: Sheppard, Mullin, Richter & Hampton, LLP
 379 Lytton Avenue
 5 Palo Alto, California 94301
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 22 ---oOo---
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 2
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 21
 22
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1 BE IT REMEMBERED that, pursuant to Notice and on
 2 TUESDAY, MAY 7, 2019, commencing at the hour of
 3 11:05 a.m. of said day, at Sheppard Mullin, 379 Lytton
 4 Avenue, Palo Alto, California, before me,
 5 CARLY C. TILLOTSON, Certified Shorthand Reporter
 6 No. 13627, in and for the State of California, personally
 7 appeared:
 8
 9 ---oOo---
 10 DR. JAMES ANDREW STORER,
 11 being first duly sworn by me to tell the truth,
 12 was examined and testified as follows:
 13 EXAMINATION BY JOEL P.N. STONEDALE, ESQ.
 BY MR. STONEDALE:
 14 Q. Hello, Dr. Storer. Thank you for coming today.
 15 I just want to go over a few basic things before we
 16 start -- or as we start. We have started.
 17 Could you please state your name and address?
 18 A. Yes. My name is James Andrew Storer,
 19 S-T-O-R-E-R. And I live in Lincoln, Massachusetts.
 20 Q. Okay. And how did you prepare for today's
 21 deposition?
 22 A. Well, mainly, I prepared two declarations which
 23 actually are here in front of me, two fairly large
 24 declarations.
 25 Q. Did you meet with your team -- your legal team

1 here in the last several days to go over your materials
 2 for -- in preparation for this deposition?
 3 MR. BATTS: I'll just warn you not to talk about
 4 the substance of meetings, but you can certainly tell him
 5 about meetings with people and time.
 6 THE WITNESS: I don't know exactly what would be
 7 considered preparation for the deposition -- other
 8 subject matter. I did have lunch with the attorneys
 9 yesterday.
 10 BY MR. STONEDALE:
 11 Q. Have you reviewed your declaration in this case
 12 in the last two weeks?
 13 A. On the plane out here, I did look at portions of
 14 both declarations.
 15 Q. And did you do that with an eye to this coming
 16 deposition?
 17 (Reporter asked for clarification.)
 18 A. Could you repeat the question?
 19 Q. Did you review your declaration with an eye
 20 towards this coming deposition?
 21 A. Well, there are a number of depositions because
 22 there are common specifications to a number of different
 23 patents that real time has asserted, so I can't precisely
 24 say whether the review would have general value given
 25 that there may be others to come. But certainly,

1 obviously, I was on the plane coming out here for this
 2 one and certainly had this deposition in mind.
 3 Q. Okay. As far as all three depositions that
 4 you'll be participating in regarding the Realtime patent,
 5 which documents did you review in order to prepare for
 6 those depositions?
 7 A. I'm not sure I understand your question. Are
 8 you talking about depositions that occurred in the past,
 9 may occur in the future or today?
 10 Q. The -- well, for example, today's deposition.
 11 Did you review any documents in preparation for today's
 12 deposition?
 13 A. Again, we -- I think you asked this before. I
 14 am not exactly sure what you're encompassing in terms of
 15 "in preparation for," but as I mentioned, on the plane --
 16 you asked about the two expert -- the two declarations in
 17 front of me here. I did look at portions of those on the
 18 plane.
 19 Q. Okay. And did you look at any other documents
 20 while on the plane?
 21 A. I can't remember specifically now, but generally
 22 speaking, I would have probably looked at portions of
 23 some of the prior art cited in those two declarations.
 24 Q. Have you reviewed the institution decision in
 25 this case?

1 A. At some point I did, in the past, review it,
 2 yes.
 3 Q. And have you -- have you reviewed the
 4 institution decision in the second petition e-mailed on
 5 the -- or the second petition which you provided a
 6 declaration on the 477 patent?
 7 (Reporter asked for clarification.)
 8 A. Yes. I believe so. Again, I don't have a
 9 specific memory of the moment, but I recall looking at
 10 the institution decisions at some point.
 11 Q. All right. And have you discussed the substance
 12 of those documents and this deposition with your legal
 13 team in the last two weeks?
 14 MR. BATTS: I'm going to object to the extent
 15 you're requesting communications -- privileged
 16 communications with counsel. Instruct the witness not to
 17 answer.
 18 MR. STONEDALE: I am not requesting the
 19 substance of the communication. I am wondering if
 20 you-all have met and discussed in preparation for the
 21 deposition.
 22 MR. BATTS: I'm going to maintain the objection
 23 since you're asking about what the topics or substance of
 24 communications were and instruct the witness not to
 25 answer.

1 BY MR. STONEDALE:
 2 Q. Are there any opinions in either of the two
 3 declarations that pertain to the 477 patent that you now
 4 believe are not true?
 5 A. At times in the past or on the plane when I
 6 looked at the declarations, I may have noticed minor
 7 typos or things which were obvious from context, but I
 8 don't recall anything that was in error.
 9 Q. So you stand by the substance of all the
 10 statements in your declaration; is that correct?
 11 A. What do you mean by "stand by"? I just said I
 12 believe that I wrote the declarations and I stated my
 13 opinions and believe them to be correct. I'm not sure
 14 what else it is you're asking.
 15 Q. Well, specifically, I'm asking, you believe the
 16 substance of all the opinions stated in your declarations
 17 are correct; is that true?
 18 A. To the extent that -- I mean, obviously there
 19 could be other things you ask me and I have additional
 20 opinions to supplement the declaration if there are other
 21 questions you have. But so far, as I mentioned before, I
 22 have nothing that I've seen, looking back, that I
 23 would -- that I would say is incorrect other than perhaps
 24 minor typos that were obvious from context.
 25 Q. Okay. Thank you. In -- in ground 3 in the

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1 first declaration you submitted on the '477 patent, do
2 you recall that you offered an opinion that a person of
3 ordinary skill in the art would create a combined system
4 of Imai and Pauls.
5 (Reporter asked for clarification.)
6 MR. BATTS: Imai and Pauls, P-A-U-L-S. Imai is
7 I-M-A-I.
8 THE WITNESS: So maybe you can be more specific.
9 When you say "Ground 3," specifically what are you
10 referring to?
11 BY MR. STONEDALE:
12 Q. Do you have your declaration in Case
13 Number 20181187 in front of you?
14 A. I do.
15 Q. Okay. Can we call that Exhibit A?
16 A. Sure.
17 THE COURT REPORTER: Am I marking that now?
18 MR. STONEDALE: Yes, please.
19 (Exhibit A was marked for identification.)
20 Q. Do you recall in your declaration offering an
21 opinion that a POSITA, which stands for "person of
22 ordinary skill in the art," would combine the systems of
23 Imai and Pauls?
24 A. So I'm looking at the table of contents, for
25 example, of the declaration, as you indicate

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1 IPR2018-01187, and the -- I think what you refer to "the
2 grounds" are listed not as 1, 2, 3, but A, B, C. And C,
3 in looking at the table of contents, says, "Claims 1, 3-6
4 and 9-14 of the '477 patent are obvious based on Imai in
5 view of Pauls."
6 Is that what you're referring to?
7 Q. Yes, it is.
8 A. Okay.
9 Q. And so do you recall that in your declaration in
10 the second case pertaining to the '477 patent, which you
11 filed the declaration, you also offered an opinion that a
12 person of ordinary skill in the art would combine Imai
13 and Pauls?
14 A. Okay. So I've just moved over to the
15 declaration -- by the way, do you want to mark this one
16 or not? It's up to you.
17 MR. STONEDALE: Yes. We can mark it B, if you
18 would like.
19 (Exhibit B was marked for identification.)
20 THE WITNESS: Okay. So now I'm looking at
21 what's been labeled "B," IPR2018-01360.
22 And could you repeat your question?
23 BY MR. STONEDALE:
24 Q. If you look at Section 8 A -- Roman
25 numeral VIII, Section A, you offer the opinion that

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1 certain claims are obvious in view of a combination of
2 Imai and Pauls. That's on page 48 of that declaration.
3 A. Yes. I see that in the table of contents, yes.
4 Q. Now, my question is: These two combinations you
5 describe in each of the declaration that a POSITA would
6 make of Imai and Pauls, are you describing the same
7 combination?
8 (Reporter asked for clarification.)
9 A. Both declarations are referring to the same two
10 documents, Imai and Pauls.
11 Q. I'm asking you if a person of ordinary skill in
12 the art would combine them in the same way to render both
13 sets of claims obvious.
14 MR. BATTS: Objection. Form.
15 THE WITNESS: Usually, I think if you look at
16 the reports, you think of the claims, the independent
17 claims, as standing separately, and you talk about an
18 independent claim being -- being rendered obvious by the
19 art. I'm not sure about whether the phraseology in my
20 reports talks about collectively, the claims together.
21 I may summarize that in all cases, looking at
22 each of the independent claims asserted, my opinion was
23 that they were rendered obvious in light of certain prior
24 art. But I'm not quite sure about the form of your
25 question. I may misunderstand it.

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1 BY MR. STONEDALE:
2 Q. Yeah. So, do you offer the opinion that a -- a
3 POSITA would combine the teaching of that art, Imai and
4 Pauls, to create a particular system?
5 A. So my memory is -- and, of course, if we want to
6 go to each of the reports, we can look at what I said and
7 refresh my memory -- is that I'm describing how it would
8 be obvious of one of ordinary skill in the art to use the
9 teachings of both or to incorporate the teachings of both
10 or to use the teachings of one when viewing the other.
11 I'm not exactly sure how to parse your words.
12 Probably the best way would be to go to the sections in
13 each of the reports and look at what is there, describing
14 the motivation to combine the two references.
15 Q. At a higher level first, I want to ask, do you
16 express any opinion that a person of ordinary skill in
17 the art would create any system based on the teachings of
18 Imai and Pauls?
19 A. Well, let me go look at those sections of the
20 report to refresh my memory. Do you want to focus it on
21 one report or the other, or are you asking generally
22 about both reports?
23 Q. Well, we can start with the first one. We can
24 start with Exhibit A.
25 A. Okay. (Witness reviewed document.) I've had a

1 chance to look at that section of the declaration. If
 2 you could repeat your question. Thanks.
 3 MR. STONEDALE: Could the court reporter please
 4 repeat the question?
 5 (Record was read back as requested.)
 6 THE WITNESS: So this section of the report is
 7 entitled "Motivation to combine Imai and Pauls is
 8 obvious." And I talk about a number of factors in a
 9 sequence of paragraphs. I note that both Imai and Pauls
 10 employ asymmetric coding methods. I note that both Imai
 11 and Pauls take into account the type of data.
 12 They also both address -- Imai says it could be
 13 video signals and Pauls actually addresses you could
 14 argue video signals and further depth methods that could
 15 be used. They also have selection mechanisms that are
 16 similar.
 17 And I say, for example -- maybe to get
 18 specifically to your question, if you go to
 19 paragraph 211, I say, "It is my opinion that it would
 20 have been obvious to combine the teachings of Imai and
 21 Pauls, such as to use the video compression algorithms of
 22 Pauls with the compression" --
 23 THE COURT REPORTER: Hold on. Slow down a
 24 little bit.
 25 THE WITNESS: -- "selection mechanisms as taught

1 MR. BATTS: Same objection.
 2 THE WITNESS: I think in order to answer your
 3 question, it would be useful to have a copy of Imai in
 4 front of me.
 5 MR. BATTS: I have the U.S. patent version.
 6 BY MR. STONEDALE:
 7 Q. Can we instead look at Pauls? Figure 5 of
 8 Pauls, I think, would be more concise.
 9 A. I'm happy to do that in order to answer your
 10 last question. Maybe you're changing your question. I
 11 would like to have Imai in front of me as well, if that's
 12 okay.
 13 Q. Okay. Yeah. We'll call that Exhibit C.
 14 MR. BATTS: So, Joel, to be clear, the copy of
 15 Imai's that I'm handing him is the U.S. patent. I don't
 16 think I have handy right now the translation of the
 17 Japanese patent.
 18 THE WITNESS: The figures in the U.S. patent are
 19 easier to read; however, all citations in my report go to
 20 the Japanese version. But I can navigate through the
 21 U.S. patent and go over to the Japanese version because I
 22 include a cross-reference in my report.
 23 It would be nice, at some point, to have the
 24 Japanese version here as well, but we can mark this at
 25 the moment. How about I mark the --

1 by either Imai or Pauls. Imai and Pauls teachings are
 2 presented in such a manner that generic encoders can be
 3 readily swapped in and out of the configuration."
 4 THE COURT REPORTER: I'm sorry. Just slow down
 5 a little.
 6 THE WITNESS: "For example, Imai teaches using
 7 off-the-shelf encoders such as" -- and he lists three
 8 acronyms: ATRAC, A-T-R-A-C; ATRAC 2 and MPEG, M-P-E-G,
 9 all in caps, those acronyms -- "audio layers 1, 2 and 3.
 10 These encoders can be easily modified or replaced to
 11 include the compression algorithms of Pauls, and Imai's
 12 teachings are structured to support such a
 13 configuration."
 14 BY MR. STONEDALE:
 15 Q. Do you offer the opinion that a POSITA would
 16 modify or replace any of those compression algorithms you
 17 just mentioned with any of the algorithms mentioned in
 18 Pauls?
 19 MR. BATTS: Objection. Form.
 20 THE WITNESS: Could you repeat the question?
 21 BY MR. STONEDALE:
 22 Q. Do you offer the opinion that a person of
 23 ordinary skill in the art would modify or replace any of
 24 the encoders mentioned in Imai with any of the encoders
 25 mentioned in Pauls?

1 MR. STONEDALE: Maybe we can -- maybe we can
 2 take a quick break and print out the translation, which I
 3 believe would let you cite to and quote from in your
 4 report, Exhibit 1005, the translation of Imai.
 5 A. That would be fine. In the meantime, maybe we
 6 can mark these as B and C [sic].
 7 (Exhibits C and D were marked for
 8 identification.)
 9 MR. BATTS: So, Joel, for reference, Exhibit C
 10 is a copy of the Pauls reference.
 11 MR. STONEDALE: Okay.
 12 MR. BATTS: And Exhibit D is a copy of the U.S.
 13 version of Imai, and I've asked for --
 14 MR. STONEDALE: I'm sorry. When you said the
 15 U.S. version of Imai, are you talking about Exhibit 1005,
 16 which is the translation of Imai?
 17 MR. BATTS: No. It's the U.S. counterpart. So
 18 I've asked for a printout of the translation as well, but
 19 right now, he has the U.S. counterpart in front of him as
 20 Exhibit D.
 21 MR. STONEDALE: Okay. Thank you. And that's
 22 "D" as in dog?
 23 MR. BATTS: Correct. And I guess for the
 24 record, it is U.S. Patent Number 6507611.
 25 THE WITNESS: Do you want to go off the record

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