

Transcript of Patrick D. McDaniel, Ph.D.
Conducted on March 6, 2020

1	3
1 UNITED STATES PATENT AND TRADEMARK OFFICE	1 A P P E A R A N C E S
2 BEFORE THE PATENT TRIAL AND APPEAL BOARD	2 FOR THE PETITIONER:
3 ----- x	3 MR. DAVID OKANO
4 SNAP INC., : Case IPR2019-00715	4 ATTORNEY AT LAW
5 PETITIONER, : U.S. PATENT NO. 8,326,327	5 PAUL HASTINGS
6 v. : Case IPR2019-00714	6 875 15TH STREET, N.W.
7 BLACKBERRY LIMITED, : U.S. PATENT NO. 8,825,084	7 WASHINGTON, D.C. 20005
8 PATENT OWNER. :	8 davidokano@paulhastings.com
9 ----- x	9
10	10 FOR THE PATENT OWNER:
11	11 MR. NICHOLAS W. STEPHENS
12 DEPOSITION OF	12 ATTORNEY AT LAW
13 PATRICK D. MCDANIEL, PH.D.	13 FISH & RICHARDSON PC
14 MINNEAPOLIS, MINNESOTA	14 60 SOUTH 6TH STREET
15 FRIDAY, MARCH 6, 2020	15 MINNEAPOLIS, MN 55402
16 8:40 A.M.	16 nstephens@fr.com
17	17
18	18 * * * * *
19	19
20 Job No.: 289667	20
21 Pages: 1 - 202	21
22 Reported By: Myrina A. Kleinschmidt, RMR, CRR, CRC	22
2	4
1 DEPOSITION OF PATRICK D. MCDANIEL, Ph.D., HELD	1 C O N T E N T S
2 AT THE OFFICES OF FISH & RICHARDSON, P.C.	2 PAGE
3	3 EXAMINATION BY MR. OKANO 6
4 60 SOUTH 6TH STREET	4 EXAMINATION BY MR. STEPHENS 196
5 MINNEAPOLIS, MINNESOTA 55402	5
6 (612) 335-5070	6 E X H I B I T S
7	7 (Attached to transcript.)
8	8
9 PURSUANT TO NOTICE, BEFORE MYRINA A.	9 EXHIBIT/DESCRIPTION PAGE
10 KLEINSCHMIDT, RMR, CRR, CRC, NOTARY PUBLIC IN AND	10
11 FOR THE STATE OF MINNESOTA, COUNTY OF HENNEPIN	11 Exhibit 1 Petitioner's Amended Notice 9
12	12 of Deposition of Patrick
13	13 McDaniel - Case
14	14 IPR2019-00715 (3 pgs)
15	15 Exhibit 2 Petitioner's Amended Notice 9
16	16 of Deposition of Patrick
17	17 McDaniel - Case
18	18 IPR2019-0074 (3 pgs)
19	19 Exhibit 3 Deposition transcript of 147
20	20 Patrick McDaniel, Ph.D.,
21	21 held on Feb 5, 2019, in Re:
22	22 Blackberry limited v. Snap

<p style="text-align: center;">5</p> <p>1 Inc, Case No. 2 2:18-CV-02693-GW(KSx) 3 (Transcript pages 1 - 4 98/4-per-page format)</p> <p>5</p> <p>6 PREVIOUSLY MARKED EXHIBITS PAGE 7 Exhibit 1001 17 8 Exhibit 1004113 9 Exhibit 1005122 10 Exhibit 2002146 11 Exhibit 2003 13 12 Exhibit 2007 55</p> <p>13 14 15 16 * * * * * 17 18 19 20 21 22</p>	<p style="text-align: center;">7</p> <p>1 A I do. 2 Q What is your home address? 3 A 1480 Chestnut Ridge Drive, State College, 4 PA 16803. 5 Q And, Dr. McDaniel, I understand you have 6 been deposed a number of times. Are you familiar 7 with the ground rules or do you want me to go 8 over -- 9 A I'm familiar with the ground rules. 10 Q Okay. If there's a point where you ever 11 need me to clarify something, I'm happy to do so, 12 but otherwise, I'm not going to go over them at 13 this point. 14 A All right. 15 MR. OKANO: To begin, I think we can 16 stipulate on record, Counsel, that this deposition 17 will be used for both IPR 2019-0074 (sic) and -- 18 MR. STEPHENS: 00714? 19 MR. OKANO: Yeah, 714 and 00715. 20 MR. STEPHENS: Yes, we agree. 21 BY MR. OKANO: 22 Q Okay. And then just going forward so we</p>
<p style="text-align: center;">6</p> <p>1 P R O C E E D I N G S 2 WHEREUPON, the following proceedings were duly 3 had: 4 (The oath was administered by the 5 court stenographer.) 6 WITNESS RESPONSE: I do. 7 MR. OKANO: David Okano for Paul Hastings 8 and Snap Inc. 9 MR. STEPHENS: Nick Stephens from Fish & 10 Richardson for BlackBerry. 11 PATRICK D. McDANIEL, Ph.D., 12 a witness in the above-entitled proceedings, 13 after having been first duly sworn, 14 deposed under oath as follows: 15 EXAMINATION 16 BY MR. OKANO: 17 Q Dr. McDaniel, would you mind stating and 18 spelling your name for the record? 19 A Patrick McDaniel, P-a-t-r-i-c-k, 20 M-c-D-a-n-i-e-l. 21 Q And, Dr. McDaniel, you are under oath. 22 You know what that means?</p>	<p style="text-align: center;">8</p> <p>1 don't say, like, a thousand numbers during every 2 question, if I say "the '327 patent," will you 3 understand that I'm referring to U.S. Patent 4 No. 8,326,327? 5 A Yes. 6 Q And this is being challenged in 7 IPR2019-00715, and so if I say "the 715 IPR," will 8 you understand I'm referring to IPR2019-00715? 9 A I'll try to remember that. 10 Q Okay. I'm not going to try to use any 11 slipup of -- and confuse you. 12 A Yeah, yeah. 13 Q It's equally likely I will be confused, so 14 we'll just try to refer to the '327 patent. And 15 same for the '084 patent, when I refer to the '084 16 patent, will you understand I'm referring to U.S. 17 Patent No. 8,825,084, which is being challenged in 18 IPR2019-00714? 19 A Yes. 20 Q And if I say the 714 IPR, again, I'll 21 probably also say the '084 patent, but will you 22 understand I'm referring to the 2019-00714?</p>

9

1 **A Yes.**
 2 Q And I understand you are familiar with
 3 these patents and, generally, if I'm asking a
 4 question, I'm intending it to apply to both the
 5 '084 or the '327 patent, unless I specify one or
 6 the other.
 7 **A Understood.**
 8 (Deposition Exhibit Number 1 marked for
 9 identification by the court stenographer.)
 10 (Deposition Exhibit Number 2 marked for
 11 identification by the court stenographer.)
 12 BY MR. OKANO:
 13 Q So, Dr. McDaniel, the court reporter has
 14 given you what has been marked as Exhibits 1 and
 15 2. These are amended deposition notices of you
 16 for the 714 and the 715 IPRs. Have you seen these
 17 before?
 18 **A I may have.**
 19 Q And these are amended notices of
 20 deposition for today. So turning to this
 21 deposition, who did you meet with in preparing for
 22 the deposition today?

10

1 MR. STEPHENS: Caution the witness not to
 2 divulge any communications with counsel.
 3 **A I met with counsel Nick Stephens and**
 4 **Mike --**
 5 MR. STEPHENS: Michael Hawkins.
 6 **A Michael Hawkins.**
 7 **BY MR. OKANO:**
 8 Q Did you meet with any nonattorneys?
 9 **A No.**
 10 Q About how much time -- again, not seeking
 11 to elicit any privileged information, about how
 12 much time did you spend preparing for this
 13 deposition?
 14 **A Probably 15 -- well, probably more like 25**
 15 **15 hours, something like that.**
 16 Q And without -- again, without revealing
 17 any privileged information, what did you do to
 18 prepare for today's deposition?
 19 **A I met with counsel to discuss the issues,**
 20 **I read the patents and my declarations and**
 21 **reviewed the materials considered.**
 22 Q Did you review any documents -- or, I

11

1 guess, when you say "the materials considered,"
 2 did you review any materials that were not listed
 3 in the exhibit list to your declarations?
 4 **A I think I looked at some of my previous**
 5 **materials from the litigation just to kind of**
 6 **refresh my memory. And I think I misspoke. I did**
 7 **talk to some Quinn Emanuel attorneys, not**
 8 **necessarily to form any opinions here, but I just**
 9 **touched base with them for about 15 minutes a**
 10 **couple of days ago.**
 11 Q Do you remember who you spoke with at
 12 Quinn Emanuel?
 13 **A I can't get you the name. I don't know**
 14 **why I'm having trouble with names today.**
 15 Q Jeff Nardinelli?
 16 **A Yeah, Jeff, Jeff Nardinelli, yeah. I**
 17 **can't believe I forgot.**
 18 Q Anyone else?
 19 **A Patrick Schmidt, I believe, was on the**
 20 **phone as well.**
 21 Q Jim Asperger?
 22 **A No, I don't think so.**

12

1 Q And you said you spoke with them for about
 2 15 minutes?
 3 **A Yeah, 15 or 20.**
 4 Q And when you talk about the material from
 5 the district court, what in particular did you
 6 review?
 7 MR. STEPHENS: Objection. Form.
 8 Objection. Privileged to the extent it requires
 9 divulging what you talked about.
 10 THE WITNESS: Are you instructing me not
 11 to answer?
 12 MR. STEPHENS: You can discuss what you
 13 reviewed, but nothing that you talked with counsel
 14 about.
 15 THE WITNESS: Understood.
 16 **A I reviewed some of my declarations for**
 17 **that case.**
 18 **BY MR. OKANO:**
 19 Q And the conversation you had with the
 20 Quinn Emanuel attorneys a few days ago, was that
 21 the only time you've spoken to them about this,
 22 these IPRs, since you filed your --

13

1 **A Yes.**
 2 Q The second declaration in this case?
 3 **A That's correct.**
 4 Q Okay. Let's turn to your declarations,
 5 and these are Exhibit 2003 in both the 714 and the
 6 715 IPR.
 7 **A I have them.**
 8 Q They should be in front of you.
 9 **A Yeah, I have them right here.**
 10 MR. OKANO: And, Counsel, I don't think we
 11 need to mark --
 12 MR. STEPHENS: That's fine.
 13 MR. OKANO: And I can give you copies as
 14 well, once I locate them.
 15 MR. STEPHENS: I don't need copies.
 16 MR. OKANO: You don't need copies? Okay.
 17 MR. STEPHENS: No, that's fine.
 18 MR. OKANO: If you want them, I will
 19 provide them.
 20 MR. STEPHENS: Perfect.
 21 BY MR. OKANO:
 22 Q So let's turn to paragraph -- I guess page

14

1 11 of your -- let's start with the 715 IPR. This
 2 is the '327 patent, Exhibit 2003.
 3 **A I'm there.**
 4 Q And here it's a section titled "Materials
 5 Considered." Do you see that?
 6 **A Yes.**
 7 Q And this Materials Considered was made in
 8 connection with the declaration you provided to
 9 support the patent owner's response for the '327
 10 patent, correct?
 11 **A That is correct.**
 12 MR. STEPHENS: Objection. Form.
 13 BY MR. OKANO:
 14 Q So I'm looking at paragraph 16, "Some
 15 materials that I've reviewed in preparing this
 16 declaration include the following documents," and
 17 then you list a number of documents. Do you see
 18 that?
 19 **A Yes.**
 20 Q So other than the materials identified in
 21 the bullet points that follow, what other
 22 materials did you consider in forming your

15

1 opinions that are expressed in Exhibit 2003?
 2 **A The materials that are listed here on**
 3 **paragraph 16, claims specification and prosecution**
 4 **history of the '327 patent, the petition, the '715**
 5 **petition we've been discussing. I can't think of**
 6 **anything else other than these.**
 7 Q So you can't recall any other materials or
 8 documents you relied on, other than what is listed
 9 in paragraph 16 and the following bullet points,
 10 in preparing your declaration?
 11 **A Not as I sit here today.**
 12 Q And then I'm going to -- let's turn to
 13 Exhibit 2003 in the 714 IPR in which the '084
 14 patent was at issue, and I'm going to have the
 15 same question. Let's turn to page -- it's page 10
 16 this time.
 17 **A I'm there.**
 18 Q Paragraph 16 of Exhibit 2003. Other than
 19 the materials identified in paragraph 16 and the
 20 following bullet points, what other materials, if
 21 any, did you consider in forming the opinions
 22 expressed in Exhibit 2003?

16

1 **A I can't think of any beyond what's listed**
 2 **here.**
 3 MR. STEPHENS: Could we pause for a
 4 moment?
 5 MR. OKANO: Yeah.
 6 MR. STEPHENS: The realtime is not
 7 following for me.
 8 (Off the record.)
 9 BY MR. OKANO:
 10 Q Okay. Since we're looking at the '084
 11 declaration, why don't we just continue with this
 12 one for a while.
 13 **A Sure.**
 14 Q Actually, let's look at the '084 patent
 15 instead.
 16 **A Sure.**
 17 Q So I understand you provided a number of
 18 opinions on action spots, right, the term "action
 19 spots" --
 20 **A That's correct.**
 21 Q -- as that is recited by claims of the
 22 '327 and '084 patents?

17

1 **A Yes.**
 2 Q Let's turn to claim 1 of the '084 patent,
 3 and this is Exhibit 1001, and I'll provide that to
 4 you, but we don't need to attach it to the record.
 5 MR. OKANO: And, Counsel, I assume -- do
 6 you want a copy of the patents?
 7 MR. STEPHENS: I'm okay. Thank you.
 8 BY MR. OKANO:
 9 Q Okay. So let's look at claim 1 of the
 10 '084 patent, and are you there?
 11 **A I'm there.**
 12 Q Okay. And there is the second limitation
 13 of the claim, begins with or cites "determine at
 14 least one action spot within a predetermined
 15 distance from the current location of the first
 16 mobile device, the at least one action spot
 17 corresponding to a location where at least one
 18 second mobile device has engaged in at least one
 19 documenting action, the documenting action
 20 including at least one of capturing images,
 21 capturing videos and transmitting messages." Do
 22 you see that?

18

1 **A Yes.**
 2 Q And there's a similar limitation in the
 3 independent claims of the '327 patent, right?
 4 MR. STEPHENS: Objection. Form.
 5 **A The claim 1 -- well, do we want to just --**
 6 **do you want to maybe narrow that down? Do you**
 7 **want to --**
 8 **BY MR. OKANO:**
 9 Q There's a similar limitation requiring
 10 determining an action spot?
 11 **A Correct.**
 12 Q Yeah, it doesn't need to be -- not a trick
 13 question.
 14 So what does it mean to determine an
 15 action spot?
 16 MR. STEPHENS: Objection. Form.
 17 **A It's laid out in my declaration. For**
 18 **example -- well, I'm actually -- if we're talking**
 19 **about the '084 --**
 20 **BY MR. OKANO:**
 21 Q That's fine. You can use either one.
 22 **A It's laid out in the '327, starting around**

19

1 **paragraph 35 through 42.**
 2 Q So what, you know, in your own -- with
 3 your declaration in front of you, I'm just asking,
 4 what does it mean to determine an action spot?
 5 **A It's to look at -- well, so I'll just go**
 6 **to paragraph 39, specifically claims 1, 10, 13 of**
 7 **the '327 the patent recite language to determine**
 8 **at least one action spot in the context of the**
 9 **definition provided on column 2, 63 through 65.**
 10 **This requires that the determination of "a**
 11 **location or event where at least one activity is**
 12 **occurring relative to the current location of**
 13 **another mobile device," and it goes on from there.**
 14 Q Where does it -- turning to claim 1 of the
 15 '084 patent, where is the -- where are you getting
 16 the language "is occurring" from?
 17 **A Well, it's coming from the definition of**
 18 **determining the action spot from, for example,**
 19 **column 2, 63 through 65, as well as the...**
 20 Q Well, we can look at the -- we can look
 21 at -- if you're referring to 2, 63 to 65, we can
 22 look at the '327 patent.

20

1 **A Yeah, sorry. I'm just going back and**
 2 **forth on you. I'm sorry.**
 3 Q No, that's fine. I mean, these are
 4 similar.
 5 **A It's the same.**
 6 Q It's not an issue for me. We can look at
 7 the '327 patent.
 8 **A Okay. I see what you're saying.**
 9 Q And does that language talk about
 10 determining an action spot or just an action spot,
 11 at column 2, 63 through 65, of the '327 patent?
 12 **A Well, it says -- it says what's required**
 13 **when determining an action spot.**
 14 Q Where in the specification at 2, 63
 15 through 65, does it talk about what's required
 16 when determining an action spot?
 17 **A This is for something to be an action spot**
 18 **under the definition provided by the inventors.**
 19 **This says that it has to be "an event where at**
 20 **least one activity is occurring relative to**
 21 **current location of another mobile device."**
 22 Q And so your interpreting refers -- what

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