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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BLACKBERRY LIMITED, a Canadian)
corporation,)
Plaintiff)
)
v.) CASE NO.
) 2:18-CV-02693-GW(KSx)
SNAP INC., a Delaware corporation,)
Defendant.)
_____)

VIDEOTAPED Deposition of PATRICK MCDANIEL, PH.D.,
taken at the offices of PAUL HASTINGS LLP, 875 15th
Street NW, Washington, D.C., beginning at 9:06 a.m.,
on TUESDAY, FEBRUARY 5, 2019, before Nancy J. Martin,
a Registered Merit Reporter, Certified Shorthand Reporter.

JOB NO. 3215691
PAGES 1 - 98



1 A P P E A R A N C E S :
2
3 Representing Snap
4 PAUL HASTINGS LLP
5 BY: CHAD J. PETERMAN, ESQ.
6 200 Park Avenue
7 New York, New York 10166
8 (212) 318-6797
9 chadpeterman@paulhastings.com
10
11 Representing Blackberry
12 QUINN EMANUEL URQUHART & SULLIVAN
13 BY: JEFFREY W. NARDINELLI, ESQ.
14 50 California Street
15 22nd Floor
16 San Francisco, California 94111
17 (415) 875-6600
18 jeffnardinelli@quinnemanuel.com
19
20 ALSO PRESENT:
21 ORSON BREITWAY, LEGAL VIDEOGRAPHER
22

Page 2

1 WASHINGTON, D.C., TUESDAY, FEBRUARY 5, 2019; 9:06 A.M.
2 - - -
3 THE VIDEOGRAPHER: Good morning. We are
4 going on the record at 9:06 a.m. on February 05, 2019.
5 Please note that the microphones are sensitive and may
6 pick up whispering, private conversations, cellular
7 interference. Please turn off all cell phones or
8 place them away from the microphones as they can
9 interfere with the deposition audio. Audio and video
10 recording will continue to take place unless all
11 parties agree to go off the record.
12 This is Unit No. 1 of the video recorded
13 deposition of Mr. Patrick McDaniel taken by counsel
14 for plaintiff in the matter of Blackberry Limited, a
15 Canadian corporation, vs. Snap, Inc., a Delaware
16 corporation filed in the United States District Court,
17 Central District of California. Case
18 No. C18-cv-0693-GW (KSx).
19 This deposition is being held at Paul
20 Hastings, LLP, located at 875 15th Street, Northwest,
21 Washington, D.C.
22 My name is Orson Breitway from the firm

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4	BY MR. PETERMAN	5
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7	E X H I B I T S	
8	NUMBER	DESCRIPTION PAGE
9	Exhibit 1	Notice of Deposition 6
10		
11	Exhibit 2	Declaration of Patrick 8
12		McDaniel, Ph.D. Regarding
13		Claim Construction
14		
15	Exhibit 3	U.S. Patent 8,326,327 10
16		
17	Exhibit 4	U.S. Patent 8,825,084 11
18		
19	Exhibit 5	Exhibit C of Defendants' 73
20		Preliminary Proposed Claim
21		Constructions
22		

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1 Veritext Legal Solutions, and I'm the videographer.
2 The court reporter is Nancy Martin from the firm
3 Veritext Legal Solutions.
4 Counsel and all present in the room will now
5 state their appearance and affiliations for the
6 record.
7 MR. PETERMAN: Chad Peterman from Paul
8 Hastings on behalf of the defendant, Snap. And just
9 for the record, the deposition is being taken by
10 defendants.
11 MR. NARDINELLI: Jeff Nardinelli, Quinn
12 Emanuel, on behalf of Blackberry and the witness.
13 THE VIDEOGRAPHER: Will the court reporter
14 please swear in the witness.
15
16 PATRICK MCDANIEL, PH.D.,
17 having been first duly sworn,
18 was examined and testified as follows:
19
20 EXAMINATION
21 BY MR. PETERMAN:
22 Q. Good morning, Dr. McDaniel.

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2 (Pages 2 - 5)

1 A. Good morning.
2 Q. Would you please state your name for the
3 record.
4 A. Patrick McDaniel.
5 Q. And what is your home address?
6 A. 1480 Chestnut Ridge Drive, State College,
7 Pennsylvania, 16803.
8 Q. Have you been deposed before?
9 A. Yes.
10 Q. Approximately how many times?
11 A. I think this might be my 16th or 17th time.
12 Q. Okay. So it's fair to say that you're
13 familiar with the general procedures of a deposition?
14 A. Yes, I am.
15 Q. Are there any of the rules that you'd like me
16 to further educate you on?
17 A. No, I don't think so.
18 Q. Is there any reason that you can't provide
19 truthful testimony today?
20 A. No.
21 (Deposition Exhibit 1 was marked for
22 identification.)

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1 BY MR. PETERMAN:
2 Q. I've premarked as Exhibit 1 from the court
3 reporter the notice of your deposition. It's in front
4 of you.
5 A. I have it.
6 Q. Do you understand that you're here testifying
7 in connection with a patent litigation between
8 Blackberry and Snap?
9 A. Yes, I am.
10 Q. In connection with the litigation, have you
11 provided an expert report?
12 A. I've provided a declaration.
13 Q. Okay. And do you understand that today's
14 deposition is as a result of that declaration?
15 A. I do.
16 Q. Okay. You can put Exhibit 1 aside.
17 Are you planning on providing any additional
18 opinions beyond what's in your declaration?
19 MR. NARDINELLI: And I'll caution the witness
20 not to reveal the substance of any communications with
21 counsel.
22 But you can answer that question "yes" or

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1 "no" to the best of your ability.
2 THE WITNESS: Can you be a little more
3 specific?
4 (Deposition Exhibit 2 was marked for
5 identification.)
6 BY MR. PETERMAN:
7 Q. You submitted a declaration in connection
8 with this case; correct?
9 A. I have.
10 Q. Are you planning on providing any additional
11 opinions that are outside of the declaration in this
12 litigation?
13 A. I believe so, yes.
14 Q. And what are those opinions that you're
15 planning to provide in litigation?
16 A. I suspect that I provide some opinions
17 relating to validity and infringement, perhaps, down
18 the road.
19 Q. And have you formed opinions relating to
20 validity and infringement of the patents?
21 A. Not yet.
22 Q. Do you use the Snapchat application?

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1 A. No.
2 Q. Are you planning on attending any trial that
3 occurs in this litigation?
4 A. I suspect so.
5 Q. Are you planning on attending the Markman
6 hearing in this litigation?
7 A. I don't know.
8 Q. And what did you do to prepare for this
9 deposition today?
10 A. Beyond preparing the declaration?
11 Q. Correct.
12 A. I read the declaration and the patents.
13 MR. NARDINELLI: Let me just stop you. Don't
14 go into any kind of specific detail of what we did
15 during our prep. Just stick to, you know, who you met
16 with and when.
17 Go ahead.
18 THE WITNESS: I also reviewed the patent
19 histories and some of the extrinsic evidence that's
20 cited, and I met with counsel.
21 BY MR. PETERMAN:
22 Q. Did you review Snap's proposed claim

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1 constructions?
2 A. I saw them.
3 Q. And did you consider the construction that
4 Snap has proposed?
5 A. No, I haven't formed an opinion.
6 Q. Other than your lawyers, did you speak with
7 anyone to prepare for today's deposition?
8 A. No.
9 Q. In front of you already are two documents,
10 two patents that have been premarked. Exhibit 2 is
11 the U.S. Patent 8,326,327.
12 And Exhibit 3 is the U.S. Patent 8,825,084.
13 Do you see them?
14 A. I think --
15 Q. I'm sorry. Scratch that entire read-in.
16 In front of you I have Exhibit 2, which is
17 your declaration; correct?
18 A. Yes. Correct.
19 Q. Is that declaration the declaration that you
20 provided in connection with this litigation?
21 (Deposition Exhibit 3 was marked for
22 identification.)

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1 (The witness reviewed Exhibit 2.)
2 THE WITNESS: I've been battling a stomach
3 flu for a couple of days. So if I have to stop and
4 I'm choking up here, I'm not trying to stall. I'm
5 just feeling pretty rough.
6 BY MR. PETERMAN:
7 Q. Sure. I do appreciate you coming out and
8 hope you feel better, but just let me know if --
9 A. Yeah, I know. I don't think it's going to be
10 an issue.
11 It appears to be.
12 Q. And in Exhibit 2 is it fair to say that it
13 mainly concerns two patents?
14 A. It concerns claim construction issues related
15 to two patents.
16 Q. And the first patent is U.S. Patent
17 8,326,327, which is in front of you premarked as
18 Exhibit 3.
19 A. It is.
20 (Deposition Exhibit 4 was marked for
21 identification.)
22 BY MR. PETERMAN:

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1 Q. And the second patent is premarked as
2 Exhibit 4. It's U.S. Patent 8,825,084; correct?
3 A. That's correct.
4 Q. In this deposition if I say, "the '327
5 patent," will you understand that to be U.S. Patent
6 No. 8,326,327?
7 A. I will. I think I have an extra copy of the
8 '084.
9 Q. If I say, "the '084 patent," will you
10 understand that I'm referring to Exhibit 4, U.S.
11 Patent 8,825,084?
12 A. Yes, sir.
13 Q. And if I call the patents "the Action Spot
14 patents," will you understand that I'm referring to
15 both Exhibits 3 and 4?
16 A. Yes.
17 Q. Were you asked to provide opinions on all
18 terms of the Action Spot patents or only certain
19 terms?
20 MR. NARDINELLI: Well, let me -- sorry.
21 Can you read back the question.
22 (Record read.)

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1 MR. NARDINELLI: I'll object based on
2 privilege and instruct you not to answer that question
3 the way it's phrased.
4 Go ahead.
5 THE WITNESS: Can you try again?
6 BY MR. PETERMAN:
7 Q. Were you asked to provide claim construction
8 opinions on all terms of the Action Spot patent, or
9 were only certain terms identified to you?
10 MR. NARDINELLI: Same objection and same
11 instruction.
12 I'll instruct you not to answer the question
13 on privilege grounds.
14 BY MR. PETERMAN:
15 Q. Are there any claim construction opinions
16 that you intend to provide that are not included
17 within your expert declaration?
18 A. I don't believe so.
19 Q. Have you reviewed any other patents asserted
20 by Blackberry in this litigation?
21 MR. NARDINELLI: Objection. Privilege.
22 I'll instruct you not to answer that

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<p>1 question.</p> <p>2 BY MR. PETERMAN:</p> <p>3 Q. Were your opinions with respect to claim</p> <p>4 construction that you expressed in this declaration</p> <p>5 informed by any other patents that Blackberry has</p> <p>6 asserted in this litigation?</p> <p>7 A. My opinions expressed in this declaration</p> <p>8 were formed by my analysis of the claims and the</p> <p>9 specifications, the patent histories, and the</p> <p>10 extrinsic evidence, as well as my experience.</p> <p>11 Q. So let's turn to your declaration, Exhibit 2.</p> <p>12 A. Sure.</p> <p>13 Q. Specifically, I'll direct you to Page 6.</p> <p>14 A. I'm there.</p> <p>15 Q. Page 6 contains a section regarding the</p> <p>16 "Level of Ordinary Skill in the Art"; correct?</p> <p>17 A. That's correct.</p> <p>18 Q. And in Paragraph 27 you state your opinion</p> <p>19 that "a person of ordinary skill in the art relevant</p> <p>20 to the Action Spots Patents at the time of the</p> <p>21 invention would have had a bachelor of science degree</p> <p>22 in Computer Engineering/Computer Science or similar</p> <p style="text-align: right;">Page 14</p>	<p>1 A. No.</p> <p>2 Q. You go on to state in Paragraph 27 of your</p> <p>3 declaration that your "opinion of a person of ordinary</p> <p>4 skill in the art remains the same regardless of</p> <p>5 whether the time of the invention is found to be</p> <p>6 August 2010, or sometime later up until and including</p> <p>7 the October 9, 2012 patent date of the '084 patent";</p> <p>8 correct?</p> <p>9 A. That's correct.</p> <p>10 Q. What's the significance of the August 2010</p> <p>11 date?</p> <p>12 A. That's the date at which the '327 patent was</p> <p>13 filed.</p> <p>14 Q. And what's the significance of the October 9,</p> <p>15 2012 date?</p> <p>16 A. That's the date of when the '084 patent was</p> <p>17 filed.</p> <p>18 Q. Is it your opinion that the claim terms that</p> <p>19 are common between the '327 and the '084 patent should</p> <p>20 be construed the exact, same way?</p> <p>21 MR. NARDINELLI: Object to form.</p> <p>22 THE WITNESS: For the terms that I reviewed,</p> <p style="text-align: right;">Page 16</p>
<p>1 subject matter, or at least approximately two years of</p> <p>2 work or research experience in the fields of computer</p> <p>3 software, networking, and/or user experience design,</p> <p>4 or an equivalent subject matter"; correct?</p> <p>5 A. Correct.</p> <p>6 Q. How did you arrive at the level of skill in</p> <p>7 the art you expressed there in Paragraph 27 of your</p> <p>8 declaration?</p> <p>9 (The witness reviewed Exhibit 2.)</p> <p>10 THE WITNESS: This was based on my</p> <p>11 experience, as well as my understanding of what it</p> <p>12 means to be skilled in the art.</p> <p>13 BY MR. PETERMAN:</p> <p>14 Q. And what is your understanding of what it</p> <p>15 means to be skilled in the art?</p> <p>16 A. Somebody that's able to read, interpret, and</p> <p>17 practice a patent as written.</p> <p>18 Q. And in August of 2010, would you have been</p> <p>19 considered a person who was skilled in the art?</p> <p>20 A. Yes.</p> <p>21 Q. Did you consider the claims under any other</p> <p>22 level of skill in the art?</p> <p style="text-align: right;">Page 15</p>	<p>1 yes.</p> <p>2 BY MR. PETERMAN:</p> <p>3 Q. Are there any differences between the</p> <p>4 specification for the '327 patent and the '084 patent?</p> <p>5 A. The only difference, I believe, is a</p> <p>6 notification of the continuation on the '084. I think</p> <p>7 the specifications are exactly the same.</p> <p>8 Q. And for your claim construction analysis, did</p> <p>9 you rely on one specification more than the other</p> <p>10 specification?</p> <p>11 A. No.</p> <p>12 Q. Let's look at the background section of your</p> <p>13 report, which begins on Page 6.</p> <p>14 A. I'm there.</p> <p>15 Q. What do you believe is the invention that's</p> <p>16 claimed by the Action Spot patents?</p> <p>17 MR. NARDINELLI: Object to form.</p> <p>18 THE WITNESS: So I can speak broadly, as I</p> <p>19 have done here in this section, about the invention.</p> <p>20 My declaration is focused on reviewing specific terms.</p> <p>21 So I can present this as my broad understanding of the</p> <p>22 invention at large. I'm not sure how to answer that</p> <p style="text-align: right;">Page 17</p>

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