

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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GUARDIAN ALLIANCE TECHNOLOGIES, INC.  
Petitioner,

v.

TYLER MILLER  
Patent Owner.

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Case IPR2020-00031  
Patent 10,043,188 B2

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**DECLARATION OF DAVID HOWELL**

## **I. INTRODUCTION**

I, David Howell, declare under the penalty of perjury that the following facts, analysis and opinions are true:

### **A. Engagement**

1. I have been engaged as an expert by Tyler Miller/Miller Mendel, Inc. in connection with the captioned proceeding to provide my analyses and opinions on certain technical aspects of this dispute, including my opinion on validity of the claims of U.S. Patent No. 10,043,188 B2 (hereinafter “the ’188 Patent”) that have been challenged by Guardian Alliance Technologies, Inc. (GAT).
2. The statements made herein are based on my own knowledge and opinion. I can and will testify to these matters if called as a live witness at trial.

### **B. Background and Qualifications**

3. I am an expert in the fields of software engineering, mobile application design and development, software architecture and systems, and user interface design and implementation. In formulating my opinions, I have relied upon my training, knowledge, and experience in this art. A true and correct copy of my curriculum vitae, identified as Exhibit 2068 in this proceeding, provides a description of my professional experience, including my academic and employment history, publications, patents, and patent applications.

**C. Compensation and Prior Testimony**

4. I am being compensated at a rate of \$250 per hour for my study in this matter. I am also being reimbursed for reasonable and customary expenses associated with my work and testimony in this investigation. My compensation is not contingent on the outcome of this matter or the specifics of my testimony.
5. In the last four years, I have appeared as an expert witness in the matter of *Perfect Company v. Adaptics, Ltd.*, No. 3:14-cv-05976-RBL, W.D. Washington on the issues of claim construction, patent validity, and infringement.

**D. Information Considered**

6. My opinions are based on my years of education, research, and experience, as well as my investigation and study of relevant materials. In forming my opinions, I have considered the materials I identify in this report.
7. I may rely upon these materials and/or additional materials to respond to arguments raised by the Court. I may also consider additional documents and information in forming any necessary opinions—including documents that may not yet have been provided to me.
8. My analysis of the materials produced in this investigation is ongoing and

I will continue to review any new material as it is provided. This report represents only those opinions I have formed to date. I reserve the right to revise, supplement, and/or amend my opinions stated herein based on new information and on my continuing analysis of the materials already provided.

**E. Legal Standards**

9. In expressing my opinions and considering the subject matter of the claims of the '188 Patent, I am relying upon certain basic legal principles that have been explained to me, which are summarized here.
10. I understand that claims are construed in this inter partes review proceeding as they would be in litigation.
11. I understand that the obviousness standard is defined in the patent statute (pre-AIA 35 U.S.C. § 103(a)) as follows:

A patent for a claimed invention may not be obtained, notwithstanding that the claimed invention is not identically disclosed as set forth in section 102, if the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious before the effective filing date of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains. Patentability shall not be negated by the manner in which the invention was made.

12. I understand that the following standards govern the determination of whether a claim in a patent is obvious. I have applied these standards in my evaluation of whether claims of the '188 Patent would have been considered obvious prior to the effective filing date of the claims.
13. I understand that to find a claim in a patent obvious, one must make certain findings regarding the claimed invention and the prior art. Specifically, I understand that the obviousness question requires consideration of four factors (although not necessarily in the following order):
- The scope and content of the prior art;
  - The differences between the prior art and the claims at issue;
  - The knowledge of a person of ordinary skill in the pertinent art; and
  - Whatever objective factors indicating obviousness or non-obviousness may be present in any particular case.
14. In addition, I understand that the obviousness inquiry should not be done in hindsight, but must be done using the perspective of a person of ordinary skill in the relevant art as of the effective filing date of the patent claim.
15. I understand the objective factors indicating obviousness or non-obviousness may include: commercial success of products covered by the

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