

In The Matter Of:

Philips v.

Fitbit

Thomas Martin, PH.D.

June 18, 2020



Min-U-Script® with Word Index

Page 1

1 UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF MASSACHUSETTS
 3
 4
 5 PHILIPS NORTH AMERICA LLC,) Case No. 1:19-cv-11586-IT
 6 Plaintiff,)
 7 v.)
 8 FITBIT, INC.,)
 9 Defendant.)
 10 _____)
 11
 12
 13
 14 REMOTE VIDEOTAPED DEPOSITION OF
 15 THOMAS L. MARTIN, PH.D.
 16 June 18, 2020
 17 10:02 a.m. Eastern Standard Time
 18 Blacksburg, Virginia
 19
 20
 21
 22
 23 REPORTED BY:
 24 Kristi Caruthers
 25 CLR, CSR No. 10560

Page 2

1
 2
 3 Blacksburg, Virginia
 4 June 18, 2020
 5
 6
 7
 8 REMOTE VIDEOTAPED DEPOSITION OF THOMAS L.
 9 MARTIN, PH.D., located in Blacksburg, Virginia,
 10 pursuant to agreement before Kristi Caruthers, a
 11 California Shorthand Reporter of the State of
 12 California.
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 3

1 APPEARANCES:
 2
 3 For Plaintiff:
 4 FOLEY & LARDNER LLP
 5 BY: RUBEN J. RODRIGUES, ESQ.
 6 111 Huntington Avenue
 7 Suite 2500
 8 Boston, Massachusetts 02199-7610
 9 617.342.4000
 10 rrodrigues@foley.com
 11
 12 For Defendant:
 13 PAUL HASTINGS LLP
 14 BY: CHAD PETERMAN, ESQ.
 15 200 Park Avenue
 16 New York, New York 10166
 17 212.318.6797
 18 chadpeterman@paulhastings.com
 19
 20 ALSO PRESENT:
 21 Christian Ruiz, Videographer
 22
 23
 24
 25

Page 4

1 INDEX TO EXAMINATION
 2 WITNESS: THOMAS L. MARTIN, PH.D
 3
 4 EXAMINATION PAGE
 5 By Mr. Peterman 8, 165
 6 (AFTERNOON SESSION) 103
 7 By Mr. Rodrigues 161, 167
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25



Page 5

1 INDEX TO EXHIBITS

2 THOMAS L. MARTIN, PH.D.

3 Thursday, June 18, 2020

4 Kristi Caruthers, CLR, CSR 10560

5

| 6 MARKED: | DESCRIPTION: | PAGE: |
|--------------|--|-------|
| 7 Exhibit 1 | Expert Disclosure of Thomas L. Martin, Ph.D. | 17 |
| 8 Exhibit 2 | Patent No. US 6,013,007 | 65 |
| 9 Exhibit 3 | Geographical Information Systems FAQ | 81 |
| 10 Exhibit 4 | Patent No. US 7,088,233 B2 | 103 |
| 11 Exhibit 5 | Patent No. US 6,976,958 B2 | 153 |
| 12 Exhibit 6 | Patent No. US 8,277,377 | 159 |

13

14

15

16

17 QUESTIONS UNANSWERED BY DEPONENT:

| 18 PAGE: | LINE: |
|----------|-------|
| 19 17 | 18 |
| 20 138 | 6 |

21

22

23

24

25

Page 7

1 Lardner on behalf of -- on behalf of Philips and

2 Dr. Martin.

3 THE VIDEOGRAPHER: Our court reporter

4 today is Kristi Caruthers, representing Lexitas.

5 The court reporter will now swear in the witness.

6

7 THOMAS L. MARTIN, PH.D.,

8 called as a deponent and sworn in by

9 the deposition reporter, was examined

10 and testified as follows:

11

12 DEPOSITION REPORTER: Raise your right

13 hand, please.

14 Do you solemnly swear that the testimony

15 you are about to give in this matter shall be the

16 truth, the whole truth, and nothing but the truth,

17 so help you God?

18 THE WITNESS: Yes, I do.

19 DEPOSITION REPORTER: Please commence.

20 THE VIDEOGRAPHER: Thank you. Please

21 proceed.

22 ///

23 ///

24 ///

25 ///

Page 6

1 BLACKSBURG, VIRGINIA

2 THURSDAY, JUNE 18, 2020

3 10:06 A.M. EASTERN STANDARD

4 ---o0o---

5

6 THE VIDEOGRAPHER: We are now on the

7 record. Today's date is June 18, 2020, and the

8 time is 10:06 a.m. Eastern Standard time.

9 This is the video deposition of Dr. Thomas

10 L. Martin in the matter of "Philips North America

11 LLC versus Fitbit, Inc.," filed in the United States

12 District Court for the District of Massachusetts,

13 Case Number 1:19-cv-11586-IT.

14 This deposition is taking place via Web

15 video conference with all participants attending

16 remotely due to the Covid-19 pandemic.

17 My name is Christian Ruiz. I am the

18 videographer representing Lexitas.

19 Would counsel on the conference please

20 identify yourselves and state whom you represent,

21 beginning with the questioning attorney.

22 MR. PETERMAN: Good morning. Chad

23 Peterman of Paul, Hastings on behalf of Defendant

24 Fitbit.

25 MR. RODRIGUES: Ruben Rodrigues of Foley &

Page 8

1 EXAMINATION

2 BY MR. PETERMAN:

3 Q. Good morning, Dr. Martin. A pleasure to

4 meet you virtually.

5 A. Good morning.

6 Q. As you know, you're here for your

7 deposition today and we'll go through the ground

8 rules of it.

9 You know, I know that we are in a

10 different technological environment doing this

11 remotely. So, obviously, if there's any technical

12 difficulties or you can't hear something that I've

13 said or there's background noise or anything like

14 that, please speak up or flag me down, and we'll

15 certainly work -- work through that.

16 I know that dealing with exhibits is a

17 little bit more difficult in a situation like this,

18 and so, obviously, we will work through those

19 issues, and to the extent, you know, you need more

20 time for any additional documentation from me,

21 please let me know.

22 Is that fair?

23 A. That's fine.

24 Q. Would you please state your name for the

25 record.



Page 9

1 A. Thomas L. Martin.
 2 Q. And what city and state do you live in?
 3 A. I live in Blacksburg, Virginia.
 4 Q. Are you currently employed?
 5 A. Yes, I am.
 6 Q. Who are you employed by?
 7 A. Virginia Tech.
 8 Q. And what is your position at Virginia
 9 Tech?
 10 A. I'm a professor in electrical and computer
 11 engineering.
 12 Q. And do you have any field of specialty
 13 within electrical and computer engineering?
 14 A. My field of specialty is wearable
 15 computing and technologies, electronic textiles,
 16 basic computing environments and interdisciplinary
 17 design teams.
 18 Q. What does wearable computing mean?
 19 A. Wearable computing is any sort of
 20 computing technology, sensing technology, that's
 21 meant to be worn.
 22 Q. Is a Fitbit watch wearable computing
 23 technology?
 24 A. I would consider it to be, yes.
 25 Q. What other examples of wearable computing

Page 10

1 technologies are you aware of now?
 2 A. So there's a lot of work in smart garments
 3 where the electronics and technology is in the
 4 garment itself.
 5 I've been working in wearable computing
 6 since the early '90s and, you know, we built fanny
 7 pack computers and things like that. So any sort of
 8 technology that you would wear on your person.
 9 Q. You said you started with wearable
 10 computing technology in the 1990s.
 11 Can you just give me a little bit of
 12 background for what work you were doing in the 1990s
 13 in that field?
 14 A. Sure. So when I went to graduate school
 15 at Carnegie Mellon in 1992, I was brought in to work
 16 on a wearable computing project. That involved --
 17 it had a couple of applications. One was for making
 18 wiring harnesses for Boeing for the workers who did
 19 the wiring harnesses, and the other was a campus
 20 tour guide to guide people around the Carnie Mellon
 21 campus.
 22 Q. And in the 1998 time frame, what was your
 23 experience at that point with wearable computing?
 24 A. I'm sorry. Did you say 1998?
 25 Q. Yes.

Page 11

1 A. Okay. So I was still in graduate school
 2 then, still working on wearable computing, and --
 3 sorry. When I asked what year, what was my
 4 involvement? Was that the question?
 5 Q. Yes. What was your -- I guess the level
 6 of your expertise, your involvement in wearable
 7 computing by 1998.
 8 A. Yes. So --
 9 MR. RODRIGUES: Objection.
 10 You may answer.
 11 THE WITNESS: Okay. So I was still in
 12 graduate school. I was in one of the two groups in
 13 the United States working on wearable computing.
 14 I was already becoming involved with the
 15 International Symposium on Wearable Computers, which
 16 is the leading symposium on wearable computing, and
 17 I had worked on a variety of systems at Carnegie
 18 Mellon. And by systems, I mean wearable computing
 19 systems.
 20 BY MR. PETERMAN:
 21 Q. Had you worked on any wearable computing
 22 systems related to exercise back in 1998?
 23 A. Not exercise by 1998.
 24 Q. Had you been involved in wearable
 25 computing relating to health monitoring back in

Page 12

1 1998?
 2 A. No.
 3 Q. Approximately when was the first time that
 4 you had direct experience in wearable computing for
 5 exercise?
 6 A. It would have been around the time I went
 7 to Huntsville, which was '99 or 2000.
 8 Q. And at that point, what experience did you
 9 get in wearable computing for exercise?
 10 A. We were looking at heart rate monitoring.
 11 Q. When did the first heart rate monitor for
 12 wearable computing come out?
 13 MR. RODRIGUES: Objection to form.
 14 THE WITNESS: There -- off the top of my
 15 head, people were already -- I'd have to look back
 16 and see, but people were already doing like heart
 17 rate straps and things like that for exercise at the
 18 time I started working in it.
 19 BY MR. PETERMAN:
 20 Q. Prior to 1998, were there already heart
 21 rate straps for exercise?
 22 MR. RODRIGUES: Objection.
 23 THE WITNESS: I'm sorry. Heart rate --
 24 BY MR. PETERMAN:
 25 Q. Prior to 1998, was there already heart

Page 13

1 rate monitors using straps for exercises?
2 MR. RODRIGUES: Same objection.
3 THE WITNESS: (Inaudible.)
4 BY MR. PETERMAN:
5 Q. I didn't hear you, Doctor. I note
6 Mr. Rodrigues's objection, but I didn't hear your
7 answer.
8 A. I believe there were. I'd have to go back
9 to look to be sure, but I believe there were.
10 Q. Have you ever been deposed before?
11 A. No, I have not.
12 Q. So, as you've already surmised and I'm
13 sure you've been prepped, I'm just going to be
14 asking you a series of questions today. If you
15 don't understand my question, certainly ask me for
16 clarification, and I'll do my best to clarify.
17 From time to time, your counsel may raise
18 an objection, but if your counsel does not instruct
19 you not to answer, then I still expect an answer for
20 my question.
21 A. Okay.
22 Q. If you respond to my question, I will
23 assume that you have understood it, and if you need
24 to take a break at any point in time, please let me
25 know and we'll certainly go off the record.

Page 14

1 Is that fair?
2 A. That's fair.
3 Q. And I know you haven't testified at
4 deposition before.
5 Have you ever testified at a trial before?
6 A. No, I have not.
7 Q. Have you ever submitted an expert
8 declaration or report in any other litigation
9 besides the current litigation that we're in this
10 deposition for?
11 A. Yes, I have.
12 Q. And in what matter did you submit an
13 expert declaration or report?
14 A. It was -- the law firm was Baker
15 something, and it was -- I'd have to go back and
16 look. It was TomTom versus Smart Wearable
17 Technology. It's some little company that I hadn't
18 heard of.
19 Q. And that report that you submitted, was
20 that in connection with an interparty's review on a
21 patent?
22 A. Yes, it was.
23 Q. Other than that report in connection with
24 an interparty's review on a patent for TomTom, have
25 you ever submitted another expert report in a patent

Page 15

1 matter?
2 A. No, I have not.
3 Q. Do you generally call -- generally recall
4 what the subject of your expert report in the TomTom
5 matter was?
6 A. It was about whether you could calculate
7 distance from accelerometers and other sorts of
8 inertial measurements.
9 Q. And did you reach a conclusion as to
10 whether or not you could calculate distance from
11 accelerometers in that report?
12 A. I'd have to go back to look to give the
13 exact conclusion, but my conclusion was that getting
14 the exact distances as specified in that patent
15 wouldn't have been possible with accelerometers.
16 Q. And did you prepare that report and file
17 it in 2017?
18 A. I believe that's correct, yes.
19 Q. Did you sit for a deposition in connection
20 with that report?
21 A. No, I did not.
22 Q. Do you know what became of the matter
23 between TomTom and the company that you hadn't heard
24 of before?
25 A. Actually, I don't.

Page 16

1 Q. And is the -- the company that was on the
2 other side of TomTom, was that Smart Wearable
3 Technologies?
4 A. I'd have to go back and look at it. I
5 think that was the name, yes.
6 Q. And after you filed that report in
7 connection with TomTom versus Smart Wearable
8 Technologies, did you discover any errors or
9 corrections that you wanted to make in that report?
10 A. No.
11 Q. So in the documents that I sent you via
12 chat, the first document was titled
13 "Martindisclosure.pdf."
14 Do you see that?
15 A. Yes, and I've opened it.
16 THE VIDEOGRAPHER: Counsel, would you like
17 me to share it on the screen?
18 MR. PETERMAN: All right. Shortly, yeah.
19 Yeah, I guess just be prepared to do it.
20 THE VIDEOGRAPHER: Okay. I am.
21 MR. PETERMAN: Thank you. I'd like the
22 court reporter to mark the Martindisclosure.pdf as
23 Exhibit 1.
24 ///
25 ///

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.