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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

BROADBAND iTV, INC.,
Plaintiff,
vs. No. 6:19-cv-716-ADA
DISH NETWORK, L.L.C.,
Defendant.

_____ /

-- CONFIDENTIAL --

DEPOSITION OF MILTON DIAZ PEREZ
Remote Zoom Proceeding
Burlingame, California
Monday, August 9, 2021

REPORTED BY:
LESLIE ROCKWOOD ROSAS, RPR, CSR 3462
Pages 1 - 109 Job No. 4748809



CONFIDENTIAL

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF TEXAS
3 WACO DIVISION
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6 BROADBAND iTV, INC.,
7 Plaintiff,
8 vs. No. 6:19-cv-716-ADA
9 DISH NETWORK, L.L.C.,
10 Defendant.

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13 -- CONFIDENTIAL --
14
15 Deposition of MILTON DIAZ PEREZ, taken on behalf
16 of DISH Network, Remote Zoom Proceeding from Burlingame,
17 California, beginning at 9:17 a.m. Pacific Daylight Time
18 and ending at 1:27 p.m., on Monday, August 9, 2021,
19 before Leslie Rockwood Rosas, RPR, Certified Shorthand
20 Reporter No. 3462.
21
22
23
24
25

Page 2

1 APPEARANCES:
2
3 FOR THE PLAINTIFF:
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21
22 Also Present: Sean Morrissey, Concierge
23
24
25

Page 3

1 I N D E X
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4 MONDAY, AUGUST 9, 2021
5
6 WITNESS EXAMINATION
7 MILTON DIAZ PEREZ
8
9 BY MR. MELEHANI 6
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14 QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER:
15 (NONE)
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1 DEPOSITION EXHIBITS
2 MILTON DIAZ PEREZ
3 NUMBER DESCRIPTION IDENTIFIED
4 Exhibit 1 Declaration of Milton Diaz 18
5 Perez, 05/10/21
6 Exhibit 2 United States Patent No. 55
7 10,028,026 B2, 07/17/18
8 Exhibit 3 Protective Order Material 67
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1 Burlingame, California; Monday, August 9, 2021
2 9:17 a.m. Pacific Daylight Time
3 --oOo--
4 PROCEEDINGS
5
6 MILTON DIAZ PEREZ,
7 having been first duly sworn, was examined
8 and testified as follows:
9
10 THE WITNESS: I do. 09:17:23
11 THE REPORTER: Thank you, sir.
12 Will you please introduce yourselves, Counsel.
13 MR. MELEHANI: Sure. This is Will Melehani with
14 Orrick Herrington & Sutcliffe on behalf of the
15 Petitioner. 09:17:36
16 MR. TONKOVICH: This is Russell Tonkovich on
17 behalf of BBiTV from Feinberg Day.
18 THE REPORTER: Thank you.
19 You may proceed, Counsel.
20 MR. MELEHANI: All right. Thank you. 09:17:50
21
22 EXAMINATION
23 BY MR. MELEHANI:
24 Q. Okay. So Mr. Perez Diaz or Diaz Perez, that's
25 the first question is how should I refer to you? Because 09:17:58
Page 6

1 I've seen it every which way and I'm not sure.
2 A. I've given up. It's -- it's -- so formally it's
3 Milton Diaz Perez, or Diaz Perez. Informally, it's Diaz.
4 Q. Okay. So it's never just Perez, which I think
5 is what I had been using. 09:18:20
6 A. No. In terms of the Hispanic naming
7 conventions, it's never Perez.
8 Q. Okay. Well, I apologize if you've read any
9 documents --
10 A. No worries. 09:18:29
11 Q. -- that I've had a role in that refer to you as
12 Mr. Perez.
13 A. No worries.
14 Q. So you've been deposed before, at least twice;
15 is that right? I mean -- 09:18:42
16 A. Yes.
17 Q. And at least you were deposed for, I guess, a
18 partial deposition that's still to be continued in
19 connection with the litigation in the BBiTV versus DISH
20 and DirecTV matters; is that right? 09:18:59
21 A. That's correct.
22 Q. And then I know you've also been deposed in
23 connection with the litigation several years back against
24 Time Warner and Hawaiian Telecom; is that right?
25 A. Yes. 09:19:13
Page 7

1 Q. Other than those two depositions, have you ever
2 been deposed before?
3 A. No.
4 Q. Okay. Other than those two depositions, have
5 you ever submitted testimony, either in a declaration or 09:19:28
6 in actual court, in any proceeding before?
7 A. We have this declaration that we're dealing with
8 today.
9 Q. Right. Yeah, obviously that one, yes. But
10 other than that one, too, is there any other time you've 09:19:49
11 submitted a declaration in a Court before? I know you
12 have in connection with patent prosecution with the PTO,
13 but other than that, in like a litigation-type setting,
14 have you ever submitted testimony?
15 A. That I recall, no. 09:20:02
16 Q. Okay. Well, I know you probably are familiar
17 with the rules with how depositions work, given that
18 you've done it before, but just in case, I'll just go
19 over some basic ground rules. Especially because we're
20 doing this by, you know, video conference, it really 09:20:22
21 helps if people are familiar.
22 So first and foremost, it's important that we
23 don't talk over each other, both because the software
24 doesn't handle it well and because the court reporter is
25 trying to write down everything. 09:20:36
Page 8

1 Do you understand?
2 A. Yes.
3 Q. Okay. And after I ask a question, generally
4 your counsel has an opportunity to object, and then you
5 have to answer unless your counsel instructs you not to 09:20:54
6 answer.
7 Are you familiar with that process?
8 A. I was waiting for him to object. Okay. Yes.
9 Q. Okay. And if you can't understand me for any
10 reason, if I slur or mumble or if there's a technical 09:21:16
11 issue, please let me know. I can try again or fix the
12 problem, and I will assume that if you don't let me know,
13 that there is no issue and you've understood me properly;
14 is that fair?
15 A. Yes. 09:21:35
16 Q. Okay. Now is there any reason why you would not
17 be able to fully and truthfully testify here today, like,
18 for example, medications or some other issue that could
19 interfere with your ability to testify?
20 A. No. 09:21:55
21 Q. Now I want to talk with you a bit about the
22 prior deposition, or I guess it's sort of a half
23 deposition that you gave in connection with the
24 litigation between BBiTV and DISH and DIRECTV.
25 Do you remember that deposition? 09:22:11
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1 A. From June?
2 Q. Yeah, recent, yeah.
3 A. Yes.
4 Q. Okay. Now prior to that depo, you were sworn in
5 and gave an oath to testify truthfully; right? 09:22:29
6 A. Yes.
7 Q. And did you have an opportunity, prior to that
8 depo, to review the testimony that you gave? I'm sorry,
9 let me scratch that and rephrase.
10 Prior to this deposition, did you have an 09:22:50
11 opportunity to review the testimony you gave in
12 connection with the District Court deposition that you
13 gave in June?
14 MR. TONKOVICH: Objection. Scope.
15 THE WITNESS: Yes. 09:23:11
16 Q. BY MR. MELEHANI: Okay. And do you stand by the
17 testimony that you gave in June as correct and accurate
18 and truthful?
19 MR. TONKOVICH: Objection. Scope.
20 THE WITNESS: I believe it was accurate. 09:23:23
21 Q. BY MR. MELEHANI: Okay. Are you aware of the
22 fact that the parties have an agreement that your
23 testimony from that deposition can be used in connection
24 with this IPR proceeding, and that testimony from this
25 IPR proceeding can be used in connection with the 09:23:44
Page 10

1 litigation; are you aware of that agreement?
2 A. I personally am not aware of that.
3 Q. Okay. How did you -- just generally -- I don't
4 need like specific communications. I'm certainly not
5 looking for anything privileged, but how did you 09:24:07
6 communicate -- or sorry -- how did you prepare for your
7 deposition today?
8 MR. TONKOVICH: Just caution the witness not to
9 reveal any attorney-client communications.
10 THE WITNESS: I reviewed my deposition -- or my 09:24:20
11 declaration and reviewed the exhibits.
12 Q. BY MR. MELEHANI: Did you review all the
13 exhibits or a subset of the exhibits?
14 A. I reviewed the exhibits that were referenced in
15 my declaration. 09:24:41
16 Q. And was counsel part of that process?
17 MR. TONKOVICH: Caution the witness not to
18 reveal any attorney-client communications. You can
19 answer "yes" or "no."
20 THE WITNESS: They provided to me the materials. 09:25:04
21 I conducted the review. So the answer is "yes" in that
22 they provided the materials.
23 Q. BY MR. MELEHANI: The process of reviewing the
24 materials, is that something you did on your own?
25 A. Yes. 09:25:30
Page 11

1 Q. Did you have -- and I'm just looking for a "yes"
2 or "no" here. Did you have any conversations with
3 counsel in preparation for this deposition today?
4 MR. TONKOVICH: Again, just caution the witness
5 not to reveal any communications with attorneys. You can 09:25:41
6 answer "yes" or "no."
7 THE WITNESS: Yes.
8 Q. BY MR. MELEHANI: Okay. And about when did you
9 have those conversations?
10 A. Last week. 09:26:00
11 Q. Okay. And how many conversations did you have?
12 A. I think there were two.
13 Q. Approximately how long was the first
14 conversation?
15 A. Perhaps an hour and a half, two hours. 09:26:22
16 Q. How about the second conversation?
17 A. About the same.
18 Q. And did those conversations take place before
19 you reviewed the declaration and exhibits?
20 MR. TONKOVICH: I would again caution the 09:26:38
21 witness not to reveal any attorney-client communications.
22 You can answer "yes" or "no."
23 THE WITNESS: I'm not sure. I can't recall.
24 Q. BY MR. MELEHANI: Okay. So when you reviewed
25 the declaration and exhibits, that was approximately 09:26:53
Page 12

1 sometime last week?
2 A. Yes.
3 Q. When you had these conversations with counsel,
4 were they over the phone or in person?
5 A. They were over the phone. 09:27:18
6 Q. Have you read DISH's IPR petition regarding the
7 '026 patent?
8 A. Some parts. Not in its entirety.
9 Q. Did you read that petition in connection with
10 preparing for this deposition today or is it something 09:27:41
11 you just read in the past?
12 MR. TONKOVICH: Caution the witness not to
13 reveal any attorney-client communications. You can
14 answer "yes" or "no."
15 THE WITNESS: Could you repeat the question, 09:27:51
16 please.
17 Q. BY MR. MELEHANI: Well, I didn't phrase it as a
18 "yes" or "no," unfortunately, but I'll try.
19 Is the -- was your review of DISH's IPR petition
20 done in connection with your preparation for this 09:28:07
21 deposition?
22 MR. TONKOVICH: Same objection.
23 THE WITNESS: No.
24 Q. BY MR. MELEHANI: I'm sorry, did you say "no"?
25 A. No. 09:28:15
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1 (Interruption in proceedings.)
 2 Q. BY MR. MELEHANI: So approximately when did you
 3 review the '026 IPR petition?
 4 A. I think it was shortly after it was filed.
 5 Q. Did you review the declaration of Dr. Sam Russ 09:29:00
 6 that was submitted with that petition?
 7 A. Not that I recall.
 8 Q. Did you review any of the prior art that was
 9 submitted with that petition? And just to help you, we
 10 call them, Gonder, Son, and Kelts. 09:29:30
 11 A. Yes.
 12 Q. I guess I'll take it one at a time.
 13 So you read the Gonder reference; is that
 14 accurate?
 15 A. I -- yes, in part at least. 09:29:43
 16 Q. Okay. And did you read the Son reference?
 17 A. Yes, in part.
 18 Q. Is the same true for the Kelts reference?
 19 A. Yes, again, in part.
 20 Q. Okay. Now BBiTV submitted two responses, and I 09:30:05
 21 think there's technical terminology for them, and I'm
 22 just going to mess it up. So I'll just try to describe
 23 them otherwise.
 24 They submitted one response before the IPR was
 25 instituted sort of arguing against institution, and then 09:30:23
 Page 14

1 after it was instituted, they submitted a second
 2 response.
 3 Did you review either of those two responses?
 4 A. I believe I -- in part.
 5 Q. Did you review the response that -- which is the 09:30:48
 6 one I just referred to as the second response, for which
 7 your declaration was submitted?
 8 MR. TONKOVICH: Objection. Form.
 9 THE WITNESS: I'm sorry, could you repeat the
 10 question. 09:31:01
 11 Q. BY MR. MELEHANI: So I'm asking specifically
 12 about the second response, which is the one that your
 13 declaration came with.
 14 A. Uh-huh.
 15 Q. Did you review that response? 09:31:10
 16 A. At least in part.
 17 Q. Are you familiar with the arguments that BBiTV
 18 is making in connection with the IPR proceeding?
 19 A. At least some of them, yes.
 20 Q. So I know your declaration is largely concerning 09:31:30
 21 the topic of conception and reduction to practice.
 22 A. (Nods head.)
 23 Q. There are other arguments that BBiTV makes, you
 24 know, to distinguish the prior art and whatnot.
 25 Are you aware of that? 09:31:43
 Page 15

1 A. Yes.
 2 Q. Are you familiar with the arguments that BBiTV
 3 is making on issues unrelated to conception and reduction
 4 to practice, such as arguments to distinguish the prior
 5 art? 09:31:58
 6 MR. TONKOVICH: Objection. Scope.
 7 THE WITNESS: I'm more prepared on the
 8 declaration than anything else.
 9 Q. BY MR. MELEHANI: Okay. And I'm not -- I'm not,
 10 you know -- I'm not trying to quiz you. I'm just 09:32:12
 11 wondering if you're familiar with the arguments that
 12 BBiTV's making in the broader IPR, separate and apart
 13 from conception and reduction to practice?
 14 MR. TONKOVICH: Objection. Scope.
 15 THE WITNESS: Oh, sorry. 09:32:27
 16 MR. TONKOVICH: Go ahead.
 17 THE WITNESS: My apologies.
 18 In some aspects, but really -- I contributed on
 19 the declaration. That's my focus.
 20 Q. BY MR. MELEHANI: Okay. Are you aware that 09:32:45
 21 Dr. Michael Shamos has submitted a declaration alongside
 22 your declaration in BBiTV's response?
 23 A. Yes.
 24 Q. Have you read his declaration?
 25 A. I have not. 09:33:07
 Page 16

1 Q. Have you ever met with Dr. Shamos?
 2 A. I have not.
 3 Q. So let me be more specific. Have you spoken to
 4 Dr. Shamos at any point?
 5 A. I have not. 09:33:24
 6 Q. Are you aware that he's already been deposed in
 7 connection with the IPR proceedings?
 8 A. No.
 9 Q. And I guess I can assume this, but I'll ask it
 10 anyway: Have you reviewed the transcript of his 09:33:42
 11 deposition in connection with the IPR proceedings?
 12 A. No.
 13 MR. MELEHANI: So I was hoping we might get to
 14 the technical resolution before we hit this point, but it
 15 doesn't look like it. So I'll go ahead and introduce the 09:33:59
 16 first exhibit. It's just going to be your declaration.
 17 So if you guys want to pull it up, you can. But I'll go
 18 through the process of doing it formally here. So just
 19 give me one second to --
 20 THE WITNESS: If I can interrupt, I thought I 09:34:12
 21 saw an email come in.
 22 MR. MELEHANI: Okay.
 23 THE WITNESS: But would that have been related
 24 to this?
 25 MR. MELEHANI: Could be. Do you guys want to go 09:34:18
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