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CONFIDENTIAL

Transcript of David Martin, Ph.D.

Date: July 14, 2022

Case: Nintendo Co., Ltd., et al. -v- Ancora Technologies, Inc. (PTAB)

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<p style="text-align: center;">1</p> <p>1 UNITED STATES PATENT AND TRADEMARK OFFICE 2 ----- 3 BEFORE THE PATENT TRIAL AND APPEAL BOARD 4 ----- 5 NINTENDO CO., LTD., and 6 NINTENDO OF AMERICA, INC., 7 Petitioners, 8 v. 9 ANCORA TECHNOLOGIES, INC., 10 Patent Owner, 11 ----- 12 Case No. IPR2021-01338 13 U.S. Patent No. 6,411,941 B 14 15 *** CONFIDENTIAL *** 16 DEPOSITION OF DAVID MARTIN, PhD 17 Thursday, July 14, 2022 18 8:00 a.m. PST 19 20 Job No.: 455629 21 Pages: 1 - 188 22 Reported By: Cara Foster, RPR, CSR No. 11973</p>	<p style="text-align: center;">3</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>1 2 3 FOR THE PETITIONERS, NINTENDO CO., LTD., and NINTENDO OF AMERICA, INC.: 4 PERKINS COIE LLP 5 By: Kyle R. Canavera, Esq. 1201 3rd Avenue 6 Number 4900 7 Seattle, Washington 98101 (206) 359-8664 8 9 FOR THE PETITIONERS, ROKU and VIZIO: 10 STERNE KESSLER GOLDSTEIN AND FOX By: Jon Wright, Esq. 11 By: Richard Crudo, Esq. By: Dohm Chankong, Esq. 12 100 New York Avenue 13 NW Suite 600 Washington, DC 20005 (202) 371-2600 14 15 16 FOR THE PATENT OWNER, ANCORA TECHNOLOGIES, INC.: 17 FITCH, EVEN, TABIN & FLANNERY LLP By: David A. Gosse, Esq. 18 120 S La Salle Street Unit 2100 19 Chicago, Illinois 60603 (312) 577-7000 20 21 22</p>																																														
<p style="text-align: center;">2</p> <p>1 Confidential Deposition of DAVID MARTIN, 2 PhD, conducted virtually via Zoom videoconference. 3 4 5 6 7 8 Pursuant to notice, before Cara Foster, 9 Registered Professional Reporter and Stenographic 10 Certified Shorthand Reporter Number 11973, in and 11 for the State of California. 12 13 14 15 16 17 18 19 20 21 22</p>	<p style="text-align: center;">4</p> <p style="text-align: center;">I N D E X</p> <table border="0"> <tr> <td></td> <td style="text-align: right;">PAGE</td> </tr> <tr> <td>1 DAVID MARTIN, PhD</td> <td></td> </tr> <tr> <td>2</td> <td></td> </tr> <tr> <td>3</td> <td></td> </tr> <tr> <td>4 Examination by Mr. Crudo.....</td> <td style="text-align: right;">6</td> </tr> <tr> <td>5 Examination by Mr. Gosse.....</td> <td style="text-align: right;">92</td> </tr> <tr> <td>6</td> <td></td> </tr> <tr> <td>7</td> <td></td> </tr> <tr> <td>8</td> <td></td> </tr> <tr> <td>9</td> <td></td> </tr> <tr> <td>10</td> <td></td> </tr> <tr> <td>11</td> <td></td> </tr> <tr> <td>12</td> <td></td> </tr> <tr> <td>13</td> <td></td> </tr> <tr> <td>14</td> <td></td> </tr> <tr> <td>15</td> <td></td> </tr> <tr> <td>16</td> <td></td> </tr> <tr> <td>17</td> <td></td> </tr> <tr> <td>18</td> <td></td> </tr> <tr> <td>19</td> <td></td> </tr> <tr> <td>20</td> <td></td> </tr> <tr> <td>21</td> <td></td> </tr> <tr> <td>22</td> <td></td> </tr> </table> <p style="text-align: center;">E X H I B I T S</p> <p style="text-align: center;">(none marked)</p>		PAGE	1 DAVID MARTIN, PhD		2		3		4 Examination by Mr. Crudo.....	6	5 Examination by Mr. Gosse.....	92	6		7		8		9		10		11		12		13		14		15		16		17		18		19		20		21		22	
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Conducted on July 14, 2022

<p style="text-align: right;">5</p> <p>1 PROCEEDINGS</p> <p>2 ***</p> <p>3 THE STENOGRAPHER: We are on the record.</p> <p>4 The time is 8:01 a.m.</p> <p>5 I would like to first introduce myself.</p> <p>6 My name is Cara Foster. I am your California</p> <p>7 Certified Shorthand Reporter for today. My</p> <p>8 license number is 11973.</p> <p>9 Before I swear in the witness, will</p> <p>10 Counsel place your appearances on the record and</p> <p>11 whom you represent?</p> <p>12 MR. CRUDO: Richard Crudo from Sterne,</p> <p>13 Kessler, Goldstein, and Fox, PLLC, on behalf of</p> <p>14 Petitioners Roku, Inc., and VIZIO, Inc.</p> <p>15 Also on the phone are my colleagues</p> <p>16 Jon Wright and Dohm Chankong also from Sterne and</p> <p>17 Kessler.</p> <p>18 MR. CANAVERA: Kyle Canavera from</p> <p>19 Perkins Coie on behalf of the Nintendo</p> <p>20 Petitioners.</p> <p>21 MR. GOSSE: This is David Gosse on behalf</p> <p>22 of Ancora Technologies, Inc., from the Fitch,</p>	<p style="text-align: right;">7</p> <p>1 Petitioners Roku and VIZIO; does that sound right?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And the other proceeding involves</p> <p>4 Petitioner Nintendo; is that correct?</p> <p>5 A. That's correct.</p> <p>6 Q. And you were involved with both of</p> <p>7 them?</p> <p>8 A. That's correct. My recollection, I was</p> <p>9 retained on behalf of both of those sets of</p> <p>10 companies. I'm sorry, I said that very badly.</p> <p>11 I was retained by Ancora in regard to the</p> <p>12 petitions that you described.</p> <p>13 Q. Understood.</p> <p>14 You understand that your testimony today</p> <p>15 will be used in both of those IPR proceedings,</p> <p>16 right?</p> <p>17 A. Yes, I do.</p> <p>18 Q. And where are you testifying from</p> <p>19 today?</p> <p>20 A. I am in Bismarck, North Dakota.</p> <p>21 Q. In your home office?</p> <p>22 A. Yes, sir. That's correct.</p>
<p style="text-align: right;">6</p> <p>1 Even, Tabin, and Flannery Law Firm.</p> <p>2</p> <p>3 DAVID MARTIN, PhD,</p> <p>4 was called for examination, and after having been</p> <p>5 duly sworn under penalty of perjury by the</p> <p>6 stenographic certified shorthand reporter, was</p> <p>7 examined and testified as follows:</p> <p>8</p> <p>9 EXAMINATION</p> <p>10 BY MR. CRUDO:</p> <p>11 Q. Good morning, Dr. Martin.</p> <p>12 A. Good morning.</p> <p>13 Q. You understand you are being deposed</p> <p>14 today in two IPR proceedings involving one of</p> <p>15 Ancora's patents; right?</p> <p>16 A. That sounds correct to me. Yes, sir.</p> <p>17 Q. And that patent is U.S. Patent Number</p> <p>18 6,411,941; does that sound right?</p> <p>19 A. Yes, sir.</p> <p>20 Q. And I'll refer to that patent as the '941</p> <p>21 patent for simplicity today.</p> <p>22 One of the proceedings at issue involves</p>	<p style="text-align: right;">8</p> <p>1 Q. There's nobody else physically in the</p> <p>2 room with you, correct?</p> <p>3 A. That's correct.</p> <p>4 Q. And you're not communicating with anyone</p> <p>5 electronically, such as through chat, instant</p> <p>6 message, texting, or anything like that, right?</p> <p>7 A. No, I'm not.</p> <p>8 Q. You have on your screen the Zoom session</p> <p>9 by which we are conducting this deposition.</p> <p>10 You don't have any other screens open on</p> <p>11 your monitor at this time; is that right?</p> <p>12 A. That's not quite right. I have two other</p> <p>13 windows open.</p> <p>14 I can describe them if you'd like?</p> <p>15 Q. Please.</p> <p>16 A. I have one volume control application</p> <p>17 just to facilitate the remote deposition. And</p> <p>18 then I have another file browser window open that</p> <p>19 has folders in it. And these folders contain the</p> <p>20 files that I downloaded from the PTAB website</p> <p>21 corresponding to the two petitions.</p> <p>22 Q. So the browser that you've described has</p>

9

1 essentially the docket from the IPR proceedings?
 2 **A. Plus the exhibits. Yes, sir.**
 3 Q. Okay. And did you receive a box of
 4 papers and exhibits that we've sent to you?
 5 **A. Yes, I did.**
 6 Q. Do you have that box with you today?
 7 **A. Yes, I do.**
 8 Q. I'll go ahead and ask you to close the
 9 browser, and we will focus on the paper copies of
 10 the documents. If needed, I can certainly share
 11 my screen, and we can look at any electronic
 12 version of the document together; is that okay?
 13 **A. Well, it may be okay, depending on how**
 14 **this goes. I actually find it much easier to work**
 15 **with the electronic documents, since that's the**
 16 **form in which I have worked in this entire matter.**
 17 **So I actually may prefer to use these**
 18 **publicly available documents when it comes to me,**
 19 **but, certainly, we can begin with the paper**
 20 **form.**
 21 Q. Sure.
 22 And no other electronic documents or

10

1 anything open on your computer, correct?
 2 **A. That's correct.**
 3 Q. And other than the box of hard copy
 4 documents that we sent to you, you don't have any
 5 other hard copy documents, notes, anything like
 6 that in front of you?
 7 **A. I actually do have one document. It is**
 8 **Exhibit 1001 from the Nintendo petition. This is**
 9 **the '941 patent. This may not be the only copy in**
 10 **the room. We'll find out when I open the box.**
 11 Q. Understood.
 12 And based on your CV, it seems that you
 13 have been deposed before; is that correct?
 14 **A. I have. Yes, sir.**
 15 Q. How many times have you been deposed?
 16 **A. I don't have a firm number in mind. I**
 17 **would expect it to be in the dozens, depending on**
 18 **how you count.**
 19 Q. And those were all patent infringement
 20 cases, or were there other types of cases
 21 involved?
 22 **A. There were some other cases, as well.**

11

1 **They weren't all patent infringement cases.**
 2 Q. When was the last time you were
 3 deposed?
 4 **A. I believe it was about two weeks ago.**
 5 Q. And that deposition was a remote
 6 deposition, I assume?
 7 **A. Yes, sir.**
 8 Q. Okay. Was that deposition in a patent
 9 infringement case?
 10 **A. It was in a patent IPR case.**
 11 Q. Did that case involve Ancora?
 12 **A. No, sir. It didn't.**
 13 Q. So you're familiar with how these things
 14 work, but I'll just briefly go over the ground
 15 rules particularly because we're doing this
 16 remotely.
 17 You understand that you are under oath
 18 today, correct?
 19 **A. Of course. Yes, sir.**
 20 Q. You understand that it's the same oath
 21 you would take if you were appearing in a court of
 22 law to testify, right?

12

1 **A. It seems likely it would be the same**
 2 **oath, yes.**
 3 Q. I'll be asking you questions today. If I
 4 ask you a question that you don't understand,
 5 please let me know.
 6 Conversely, if I asked you a question and
 7 you provide an answer, I will assume that you
 8 understand the question.
 9 Is that fair?
 10 **A. Yes, that seems appropriate.**
 11 Q. And you understand that any
 12 communications you have during a break that we
 13 take are discoverable; meaning, that I can ask you
 14 about those communications after the break,
 15 right?
 16 **A. Yes, I do.**
 17 Q. Can we agree that while we are on the
 18 record, you'll have no off-the-record
 19 communications via texting or anything like
 20 that?
 21 **A. Yes, we can. I do.**
 22 Q. Okay. Can you please open the box that

13

1 we sent to you with the papers and exhibits?
 2 **A. Sure.**
 3 **Yes, papers and exhibits. That's what I**
 4 **see.**
 5 Q. Okay. Great. From time to time, I will
 6 ask you to pull out certain documents. But I ask
 7 that during breaks, you don't -- that you look at
 8 only the documents that we've used and that have
 9 been marked as exhibits; is that fair?
 10 **A. I can tell you, I have no plans to**
 11 **deviate from that. I understand your instruction**
 12 **and request.**
 13 Q. Okay. Is there any reason that you don't
 14 believe you can provide full-and-complete
 15 testimony today?
 16 **A. No, sir.**
 17 Q. And is there any reason that you don't
 18 believe you can provide truthful testimony
 19 today?
 20 **A. No, sir.**
 21 Q. What did you do to prepare for today's
 22 deposition?

14

1 **A. I spent some time in conversation with**
 2 **counsel for Ancora, and I reviewed the materials**
 3 **on the docket, including some of the exhibits.**
 4 **And I think that fairly characterizes the extent**
 5 **of my preparations.**
 6 Q. How many hours would you say, roughly
 7 ballpark, that you've spent preparing for today's
 8 deposition?
 9 **A. I would guess five hours, give or take.**
 10 Q. And you stated just now that you met with
 11 counsel to prepare for the deposition.
 12 When was the last time that you met with
 13 counsel?
 14 **A. That was yesterday.**
 15 Q. And who was involved in those meetings?
 16 **A. Mr. Gosse was there and myself.**
 17 Q. Anyone else present either in the room or
 18 on the phone or video?
 19 **A. I was not aware of anyone else being**
 20 **present.**
 21 Q. Did you meet with Mr. Gosse before
 22 yesterday?

15

1 **A. Yes, I did.**
 2 Q. And when was that?
 3 **A. My recollection is it was Friday of last**
 4 **week.**
 5 Q. Any other person in the room or on the
 6 phone or in video at that meeting?
 7 **A. Not that I was aware of.**
 8 Q. Any other meetings?
 9 **A. Nothing comes to mind. No, sir.**
 10 Q. And did you review your declaration
 11 before today's deposition?
 12 **A. Yes, sir. I did.**
 13 Q. Did you review the deposition transcript
 14 of Petitioner expert Dr. Wolfe?
 15 **A. I recall having -- I glanced at it very**
 16 **briefly.**
 17 Q. Did you review the deposition transcript
 18 of Mr. Miki Mullor?
 19 **A. No, sir.**
 20 Q. If you would, Dr. Martin, will you please
 21 pull out the exhibits marked Exhibit 2018 in each
 22 IPR proceeding from the box?

16

1 **A. Yes, I can find those. I recognize that**
 2 **exhibit number as my declaration, so I'll look for**
 3 **those.**
 4 Q. Sure.
 5 **A. The box is a little bit difficult to**
 6 **manage.**
 7 Q. There are quite a few documents in there.
 8 I think it's broken up into an exhibit tab, and
 9 then a Nintendo tab which will have corresponding
 10 exhibits for the case, if that helps.
 11 **A. Well, maybe I misheard you. I found one**
 12 **folder labeled "Exhibit 2018".**
 13 **Is there supposed to be more than one?**
 14 Q. So the version that you have is the
 15 version that was submitted in the Roku/VIZIO case;
 16 is that correct?
 17 **A. It does appear to be labeled that way.**
 18 **Yes, sir.**
 19 Q. Okay. There should be one more
 20 declaration in the box. I think it's under a
 21 Nintendo tab. And that is the corresponding
 22 declaration that you've submitted in the Nintendo

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