

Deposition of
Matthew Birdsell
August 11, 2022

Apple Inc.
vs.
MemoryWeb, LLC



Page 1

1 UNITED STATES PATENT AND TRADEMARK OFFICE
 2 BEFORE THE PATENT TRIAL AND APPEAL BOARD
 3
 4 APPLE INC.,
 5 Petitioner,
 6 vs.
 7 MEMORYWEB, LLC,
 8 Patent Owner.

9
 10
 11
 12 DEPOSITION OF MATTHEW BIRDSELL
 13 Reported Remotely through Videoconference
 14 August 11, 2022
 15
 16
 17
 18
 19
 20
 21
 22
 23 Reported by:
 24 Margaret A. Smith
 25 RPR, CRR, CSR No. 9733
 Job No.: 10104316

Page 2

1 UNITED STATES PATENT AND TRADEMARK OFFICE
 2 BEFORE THE PATENT TRIAL AND APPEAL BOARD
 3
 4 APPLE INC.,
 5 Petitioner,
 6 vs.
 7 MEMORYWEB, LLC,
 8 Patent Owner.

9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20 Deposition of MATTHEW BIRDSELL taken on behalf of
 21 Patent Owner, reported remotely through videoconference,
 22 beginning at 9:15 a.m. PDT, and ending at
 23 12:23 p.m. PDT, on Thursday, August 11, 2022, before
 24 Margaret A. Smith, RPR, CRR, Certified Shorthand
 25 Reporter No. 9733.

Page 3

1 APPEARANCES (via videoconference):
 2
 3 For Patent Owner:
 4 NIXON PEABODY LLP
 5 BY: JENNIFER HAYES, ESQUIRE
 6 300 S. Grand Avenue, Suite 4100
 7 Los Angeles, California 90071
 8 213.629.6170
 9 jenhayes@nixonpeabody.com
 10
 11 For Petitioner:
 12 SIDLEY AUSTIN LLP
 13 BY: KYLE SMITH, ESQUIRE
 14 BY: JEFF KUSHAN, ESQUIRE
 15 1501 K Street, N.W.
 16 Washington, D.C., 20005
 17 202.736.8327
 18 kyle.smith@sidley.com
 19 jkushan@sidley.com
 20
 21
 22
 23
 24
 25

Page 4

1 APPEARANCES (via videoconference):(continued):
 2
 3 For Petitioner:
 4 SIDLEY AUSTIN LLP
 5 BY: RIANA FREEDMAN, ESQUIRE
 6 787 Seventh Avenue
 7 New York, New York 10019
 8 212.839.5540
 9 rfreedman@sidley.com
 10
 11 Also present:
 12 Chris Landrum (Aptus Court Reporting)
 13 Aaron Huang (Apple)
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 5

I N D E X

1

2

3 WITNESS EXAMINATION

4 MATTHEW BIRDSSELL

5 BY MS. HAYES 6, 75

6 BY MR. SMITH 74

7

8 (Previously marked Exhibits 1005, 1020, 1021, 1048,

9 and 2010 were referenced and are not attached.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Page 7

1 So I'll do my best, and I hope you can do your

2 best too. I think we'll get through this just fine.

3 Is there anyone in the room with you today?

4 A Yes. Kyle -- I forget your last name.

5 MR. SMITH: Smith.

6 THE WITNESS: Kyle Smith is next to me to my

7 left.

8 BY MS. HAYES:

9 Q Thank you.

10 And where are you located for today's

11 deposition?

12 A We are in Valley Green Six, which is a

13 (inaudible) building in Cupertino.

14 THE REPORTER: May the reporter hear in the

15 answer again, which is a, blank, building in Cupertino.

16 THE WITNESS: It's the name of the building.

17 Valley Green Six. Valley Green is two words.

18 THE REPORTER: Thank you.

19 BY MS. HAYES:

20 Q And we're doing this as a remote deposition.

21 So I believe you are using a computer to connect to

22 today's deposition. Is that right?

23 A That is correct.

24 Q And other than the Zoom program and any

25 programs to view exhibits, are you running any programs

Page 6

1 Reported Remotely; August 11, 2022; 9:15 a.m. PDT;

2

3 MATTHEW BIRDSSELL,

4 having been first duly sworn, was examined and testified

5 as follows:

6

7 EXAMINATION

8 BY MS. HAYES:

9 Q Good morning. Can you please state your name

10 for the record.

11 A Yes. My name is Matthew Birdsell.

12 Q Thank you, Mr. Birdsell. My name is Jennifer

13 Hayes. I'll be asking you some questions today.

14 Have you had your deposition taken before?

15 A I have not.

16 Q Okay. If there is any reason that you need to

17 take a break, just let me know, and we'll try to take

18 a -- a break as soon as we can. The only thing I ask is

19 that if there is a question pending, you answer the

20 question before we take a break.

21 The court reporter is here -- I'll be asking

22 you a series of questions. And she will be writing down

23 both my questions and your answers. And so it's

24 important for there to be a clear record that we not

25 talk over one another.

Page 8

1 on your computer?

2 A I'm currently only running Zoom on my computer.

3 Q Okay. Is there any reason why you cannot

4 testify truthfully today?

5 A No.

6 Q And you understand that you're here today to

7 offer testimony relating to a declaration that you

8 submitted in some IPRs that -- and a PGR that were filed

9 by Apple. Is that correct?

10 A I understand that I'm here to testify according

11 to the declaration that I provided for the team. The

12 other words that you said, I'm not familiar with.

13 Q Understood.

14 So you -- can you describe the -- the

15 declaration that you understand you're here to discuss.

16 A Yes. I was asked to provide information

17 related to the mechanics of how the Aperture 3 user

18 guide was published and the dates -- the basic dates in

19 which they were published so that they accompanied the

20 release of Aperture 3 and the channels or the different

21 methods in which the documentation was published and

22 accessed by customers.

23 Q Do you have a copy of your declaration in front

24 of you now?

25 A I do.

Page 9

1 **Q Okay. And what is the date of that**
 2 **declaration?**
 3 A I signed it on October 29th, 2021.
 4 MS. HAYES: Mr. Smith, can we stipulate that
 5 the declaration that Mr. Birdsell has in front of him is
 6 the same declaration that was filed by Apple in the
 7 three IPRs and PGR?
 8 MR. SMITH: Yes.
 9 BY MS. HAYES:
 10 **Q Okay. So I'll be asking you, Mr. Birdsell,**
 11 **about the declaration that is dated October 29th, 2021.**
 12 **Did you personally prepare that declaration?**
 13 A It was a collaborative effort between outside
 14 counsel, Apple's in-house counsel, and myself.
 15 **Q And do you recall who those individuals were**
 16 **who you collaborated with?**
 17 A It was Aaron, in-house counsel, and Jeff
 18 Kushan.
 19 **Q And by Aaron, do you mean Mr. Huang?**
 20 A Mr. Huang, yes.
 21 **Q How much time did you spend preparing your**
 22 **declaration?**
 23 A It was a matter of hours. I don't remember
 24 exactly how many.
 25 **Q And when you prepared the declaration, did you**

Page 10

1 **review any documents or consult any information?**
 2 A Yes. We reviewed exhibits to verify the
 3 veracity. So yes.
 4 **Q And are all of those exhibits referenced in**
 5 **your declaration?**
 6 A I believe so, yes.
 7 **Q And so as far as you recall, you didn't**
 8 **consider any information or documents that are not**
 9 **referenced in your declaration. Is that correct?**
 10 MR. SMITH: Objection. Form.
 11 THE WITNESS: Yeah, we looked at the
 12 application. We looked at, you know, the PDFs and such.
 13 So we looked at a range of documents. But in the
 14 declaration that's specific to my testimony, that's what
 15 my declaration covers.
 16 BY MS. HAYES:
 17 **Q When you say you referred to the application,**
 18 **are you referring to the Aperture application?**
 19 A Yes.
 20 **Q So you -- you reviewed an actual -- the**
 21 **actual -- like a physical copy running on a laptop of**
 22 **the Aperture application.**
 23 **Is that what you mean?**
 24 A Yes.
 25 **Q Okay. And were you involved in locating the**

Page 11

1 **Aperture application?**
 2 A That's a hard question. I -- I mean, the
 3 application is available. So -- but I was provided
 4 copies of the Aperture application from -- from counsel.
 5 **Q Were you provided a computer that already had**
 6 **the Aperture program loaded on it, or did you load the**
 7 **Aperture program onto a computer?**
 8 A The answer is yes and yes. So I had a -- they
 9 provided a laptop with the application installed and
 10 then an academic copy and a retail copy of -- hard copy
 11 of -- I mean, the actual product itself, the product box
 12 and I went through the install procedure to refresh my
 13 memory on the process.
 14 THE REPORTER: May the reporter verify, in the
 15 answer, please, and I went through the, blank, to
 16 refresh my memory on the process.
 17 THE WITNESS: I went through the install
 18 procedure to refresh my memory on the process of
 19 installing the application onto the device.
 20 THE REPORTER: Thank you.
 21 BY MS. HAYES:
 22 **Q And do you know how counsel came across copies**
 23 **of the Aperture application?**
 24 A Could you rephrase your question because I'm --
 25 or add some more context to the question, please.

Page 12

1 **Q So let me back up.**
 2 **Did you obtain the application from Apple's**
 3 **in-house counsel, or the counsel for Apple at Sidley?**
 4 A I don't know. I was provided a copy from a --
 5 the courier sent the -- you know, because of the
 6 pandemic, a courier sent the device and the hard copies
 7 of Aperture to my house.
 8 **Q Got it.**
 9 **And so you -- you don't know where those copies**
 10 **of Aperture came from before they arrived at your house**
 11 **from the courier. Is that fair?**
 12 A I know that both in-house and out -- and --
 13 both the in-house counsel and the outside counsel and
 14 myself were all in conversation about receiving it. I
 15 don't know who the person that made the box and put the
 16 things in it and sent it to me. So that's the best I
 17 can --
 18 **Q Do you -- thank you.**
 19 **Do you know whether the information you**
 20 **received was, for example, purchased from eBay or**
 21 **whether it came from Apple's internal resources?**
 22 A I do not.
 23 **Q Are you aware of any errors or**
 24 **misrepresentations in your declaration?**
 25 A I am aware of an error in paragraph 5 where we

Page 13

1 misstated the page number, Exhibit 1021. This would
 2 have been my mistake when reviewing it because I'm not
 3 familiar with -- I'm not a paralegal or a lawyer. And
 4 I'm not familiar with the syntax of citing exhibits. So
 5 I believe it's page 7. But it's not page 2.

6 Q Understood. Thank you.

7 A We have submitted subsequent versions of this
 8 document with the corrected number, page number.

9 Q And in the version that you have in front of
10 you, does it have -- is it the corrected version?

11 A No. It lists the original.

12 Q So if you could turn to paragraph 2 of your
13 declaration.

14 A I'm there.

15 Q In paragraph 2, you state that you relied on
16 your personal knowledge for the information as it
17 relates to Apple's publication and dissemination of the
18 Aperture 3 user manual.

19 Do you see that?

20 A Yes.

21 Q What is the basis of your personal knowledge?

22 A I have worked at Apple for 20 years, both as an
 23 employee and both as a -- as a consultant. And I have
 24 been deeply involved in the publication process of not
 25 just Aperture but, you know, scores of different

Page 14

1 products at Apple. And we basically follow the same,
 2 you know, process for publication -- for publishing
 3 documents, specifically in user help documents like user
 4 guides and user manuals. And that's the knowledge that
 5 I'm relying on.

6 Q So you've mentioned that you've worked at Apple
7 as both an independent consultant and as an employee.
8 When did you become an employee of Apple?

9 A I first became an employee in -- in October of
 10 2002. And then I terminated my employment
 11 December 31st, 2007 to move back to Texas. My wife and
 12 I were nesting. And I was asked to stay on. But I had
 13 to stay on as a 1099 employee because Apple didn't --
 14 wasn't -- didn't really approve of remote work at the
 15 time.

16 And then I worked as a 1099 employee, a
 17 consultant, through until the year 2010 where I became
 18 an employee again.

19 THE REPORTER: May the reporter verify, in the
 20 answer, please, was the term my wife and I were nesting?
 21 THE WITNESS: Nesting.
 22 THE REPORTER: Thank you.
 23 BY MS. HAYES:

24 Q Can you describe what work you were doing as an
25 independent consultant in the 2002 and 2003 time frame.

Page 15

1 A In 2002 and 2003, I was an employee. So I was
 2 a W-2 employee. And at that time, I was writing -- I
 3 was a technical writer and instructional designer.
 4 They're kind of similar -- similar job roles and are
 5 used interchangeably. And I worked on Final Cut Pro.
 6 THE REPORTER: I apologize, may the reporter
 7 verify, in the answer, please, was the term structural
 8 designer or instructional?
 9 THE WITNESS: Instructional.
 10 THE REPORTER: Thank you.
 11 BY MS. HAYES:

12 Q You mentioned Final Cut Pro. What is Final Cut
13 Pro?

14 A It's a professional nonlinear editing program
 15 that's used to make movies for commercials and things of
 16 that nature.

17 Q So you were an employee in 2002/2003 time
18 frame. Right?

19 A Yes.

20 Q And then in January and June of 2010, you were
21 an independent consultant. Is that right?

22 A If memory serves, I believe I became an
 23 employee in February or March of 2010.
 24 Maybe -- maybe a couple of months later,
 25 actually. But it was around the spring of 2010 that I

Page 16

1 became an employee.

2 Q Was the work --

3 A Sorry.

4 Q Yeah, sorry.

5 Was the work you were doing in the 2010 time
6 frame different as an employee than as an independent
7 consultant?

8 A Not in any way.

9 Q In 2010, can you describe what your
10 responsibilities were at Apple.

11 A In 2010, my responsibilities at Apple was I was
 12 the head instructional designer for Aperture. And so
 13 meant that I was responsible for writing the user guide
 14 and -- also known as the user manual, and all of the
 15 supporting documents such as supporting (inaudible) --

16 THE REPORTER: I'm sorry, sometimes your speech
 17 gets fast and it glosses over the enunciation. If I
 18 could hear again.
 19 All of the supporting documents such as
 20 supporting --

21 THE WITNESS: Sure. Such as exploring Aperture
 22 and the keyboard shortcuts document, Aperture 3 keyboard
 23 shortcuts. So I was responsible for ensuring that it
 24 was localized, that it was comprehensive and covered --
 25 completely covered the product and that it was published

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.