

Deposition of
Matthew Birdsell
August 11, 2022

Apple Inc.
vs.
MemoryWeb, LLC



<p style="text-align: right;">Page 1</p> <p>1 UNITED STATES PATENT AND TRADEMARK OFFICE</p> <p>2 BEFORE THE PATENT TRIAL AND APPEAL BOARD</p> <p>3</p> <p>4 APPLE INC.,</p> <p>5 Petitioner,</p> <p>6 vs.</p> <p>7 MEMORYWEB, LLC,</p> <p>8 Patent Owner.</p> <hr/> <p>9</p> <p>10</p> <p>11</p> <p>12 DEPOSITION OF MATTHEW BIRDSSELL</p> <p>13 Reported Remotely through Videoconference</p> <p>14 August 11, 2022</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 Reported by:</p> <p>24 Margaret A. Smith</p> <p>25 RPR, CRR, CSR No. 9733</p> <p>Job No.: 10104316</p>	<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES (via videoconference):</p> <p>2</p> <p>3 For Patent Owner:</p> <p>4 NIXON PEABODY LLP</p> <p>5 BY: JENNIFER HAYES, ESQUIRE</p> <p>6 300 S. Grand Avenue, Suite 4100</p> <p>7 Los Angeles, California 90071</p> <p>8 213.629.6170</p> <p>9 jenhayes@nixonpeabody.com</p> <p>10</p> <p>11 For Petitioner:</p> <p>12 SIDLEY AUSTIN LLP</p> <p>13 BY: KYLE SMITH, ESQUIRE</p> <p>14 BY: JEFF KUSHAN, ESQUIRE</p> <p>15 1501 K Street, N.W.</p> <p>16 Washington, D.C., 20005</p> <p>17 202.736.8327</p> <p>18 kyle.smith@sidley.com</p> <p>19 jkushan@sidley.com</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 2</p> <p>1 UNITED STATES PATENT AND TRADEMARK OFFICE</p> <p>2 BEFORE THE PATENT TRIAL AND APPEAL BOARD</p> <p>3</p> <p>4 APPLE INC.,</p> <p>5 Petitioner,</p> <p>6 vs.</p> <p>7 MEMORYWEB, LLC,</p> <p>8 Patent Owner.</p> <hr/> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20 Deposition of MATTHEW BIRDSSELL taken on behalf of</p> <p>21 Patent Owner, reported remotely through videoconference,</p> <p>22 beginning at 9:15 a.m. PDT, and ending at</p> <p>23 12:23 p.m. PDT, on Thursday, August 11, 2022, before</p> <p>24 Margaret A. Smith, RPR, CRR, Certified Shorthand</p> <p>25 Reporter No. 9733.</p>	<p style="text-align: right;">Page 4</p> <p>1 APPEARANCES (via videoconference):(continued):</p> <p>2</p> <p>3 For Petitioner:</p> <p>4 SIDLEY AUSTIN LLP</p> <p>5 BY: RIANA FREEDMAN, ESQUIRE</p> <p>6 787 Seventh Avenue</p> <p>7 New York, New York 10019</p> <p>8 212.839.5540</p> <p>9 rfreedman@sidley.com</p> <p>10</p> <p>11 Also present:</p> <p>12 Chris Landrum (Aptus Court Reporting)</p> <p>13 Aaron Huang (Apple)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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I N D E X

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2

3 WITNESS EXAMINATION

4 MATTHEW BIRDSSELL

5 BY MS. HAYES 6, 75

6 BY MR. SMITH 74

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

9 and 2010 were referenced and are not attached.)

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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.**

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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**

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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.

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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**

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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**

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.

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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

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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

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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.**

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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

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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

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