

Deposition of
Matthew Birdsell
August 11, 2022

Apple Inc.
vs.
MemoryWeb, LLC



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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.

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

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 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.

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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
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Page 5

I N D E X

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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 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 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 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

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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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