

**GOOGLE INC.'S MOTION FOR SUMMARY JUDGMENT OF INVALIDITY
OF CLAIM 1 OF U.S. PATENT NO. 5,713,740**

Exhibit D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
TEXTSCAPE LLC., a New Jersey)
Corporation,)

Plaintiff,)

vs.)

ADOBE SYSTEMS INCORPORATED, a)
Delaware Corporation,)

Defendant.)

ADOBE SYSTEMS INCORPORATED, a)
Delaware Corporation,)

Counterclaimant,)

vs.)

TEXTSCAPE LLC, a New Jersey)
Corporation,)

Counterdefendant.)

VIDEOTAPED DEPOSITION OF R. DAVID MIDDLEBROOK
Palo Alto, California
Wednesday, April 7, 2010

REPORTED BY:
LINDA VACCAREZZA, RPR, CLR, CRP, CSR NO. 10201

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Videographer: Ramon Perez

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF TEXAS
3 TEXTSCAPE LLC., a New Jersey)
4 Corporation,)

Plaintiff,)

5 vs.)

6 ADOBE SYSTEMS INCORPORATED, a)
7 Delaware Corporation,)

8 Defendant.)

9 ADOBE SYSTEMS INCORPORATED, a)
10 Delaware Corporation,)

11 Counterclaimant,)

12 vs.)

13 TEXTSCAPE LLC, a New Jersey)
14 Corporation,)

15 Counterdefendant.)

16 Videotaped Deposition of R. DAVID
17 MIDDLEBROOK taken on behalf of the
18 Defendants at Townsend and Townsend and
19 Crew, 379 Lytton Avenue, Palo Alto,
20 California, beginning at 9:31 a.m. and
21 ending at 6:27 p.m., on Wednesday,
22 April 7, 2010, before Linda Vaccarezza,
23 RPR, CLR, CRP, CSR No. 10201.
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4 12 Visuospatial Text Processing and the 204
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6 13 Handwritten Notes, Bates Stamped 213
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7 14 Group Document, Bates stamped 241
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9 15 Group Document, Document entitled The 248
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19 21 Trace Sheets, Bates stamped TEXT0001998 293
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20 22 Document, Bates Stamped TEXT0000421 303
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22 23 Copy of Newspaper Article, Bates Stamped 310
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25 25 Photocopy of Handwritten Notebook, Bates 314
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1 PALO ALTO, CALIFORNIA; WEDNESDAY, APRIL 7, 2010

2 9:31 A.M.

3

4 THE VIDEOGRAPHER: Good morning. Here begins

5 the deposition of Mr. R. David Middlebrook in the

6 matter of Textscape, LLC versus Adobe Systems

7 Incorporated and related counter-claim. This

8 case is filed in the United States district court

9 for the Northern District of California and the

10 case number is CV-09-4550 BZ. Today's date is

11 April 7th, 2010, and the time is 9:32 a.m. This

12 deposition is taking place at Townsend and

13 Townsend and Crew, 379 Lytton Avenue, Palo Alto,

14 California, 94301, and is being taken on behalf

15 of the defendants and counterclaimant. The court

16 reporter is Linda Vaccarezza, appearing on behalf

17 of U.S. Legal Support. The videographer is Ramon

18 Perez, also of U.S. Legal Support. Counsel,

19 please identify yourselves for the record and

20 state whom you represent.

21 MR. HERHOLD: Ted Herhold from Townsend and

22 Townsend, representing Defendant and

23 Counter-claimant Adobe.

24 MR. VOWELL: Corby Vowell with the law firm

25 of Goldstein, Faucett and Prebeg, representing

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2 26 United States Trademark Application, 317
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3 0002020

4 27 Photocopy of Computer Screenshots 333

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1 the Plaintiffs Textscape, LLC.

2 THE VIDEOGRAPHER: The court reporter

3 may now swear in the witness.

4 R. DAVID MIDDLEBROOK,

5 having been duly sworn, by the Certified

6 Shorthand Reporter, was examined and testified as

7 follows:

8 EXAMINATION

9 BY MR. HERHOLD:

10 Q Can you state your full name and address

11 for the record?

12 A Yes. Robert David Middlebrook. 290

13 Glenn Avenue, in Lawrence, New Jersey.

14 Q Mr. Middlebrook, my name is Ted Herhold

15 and I represent Adobe.

16 A Yes.

17 Q And we are here to take the deposition

18 of Textscape here today. And we had noticed the

19 deposition of the company, of the entity, the

20 corporate entity, and that entity has designated

21 you as the witness here today.

22 A Yes.

23 Q And you understand that you're

24 testifying on behalf of Textscape, not in your

25 individual capacity?

1 of factors. You would have had different
2 perspectives to bring in on that novel. But you
3 would understand the story in a way that you
4 could all share. I didn't. My friends would
5 talk about books that we had both read that --
6 they would say you didn't read the same book.
7 And I said that's fine, I enjoyed reading the
8 book. But it's a problem when you have to share
9 that information, when you have to share
10 comprehension for business or make a living.
11 It's a real problem. When you're enjoying a book
12 it doesn't matter. What you get out of it you
13 get out of it. But this was a problem,
14 economically.

15 Q So when did you start thinking about the
16 reading comprehension problem and thinking of
17 ideas for software tools to solve it?

18 A When I was diagnosed in, I think '88,
19 that was a real jolt. It got me thinking.
20 Because I took the LSAT's. And I was in the 92nd
21 percentile. And I took the -- and I went back
22 and got my college grades and I realized I was in
23 the 11th percentile of the same group. And I
24 figured there was no way I was going to get into
25 law school. And a family friend said why don't

1 you get tested for learning disabilities? From
2 what you're describing, it's pretty major.
3 There's probably something there. And I went and
4 got tested. It just wakes you up. It gets you
5 thinking a lot when they tell you, "You have
6 these memory deficits. You have a lot of
7 auditory processing problems." And you realize
8 that -- you think back to what it was like in
9 college, what it was like in high school and
10 things start to come together. And so that
11 started me thinking about it. But the real --
12 the invention, which is probably mostly where
13 your question goes to -- and thinking about this
14 specific thing -- one of the first cases that you
15 read -- that I read in law school was Madison
16 versus Marbury. And you could read about it and
17 kind of Cliff Notes it, so to speak, but I
18 couldn't follow the argument itself. I
19 understood how the court came out. But I had
20 read about it before I started reading. I
21 learned how to kind of prepare myself for these
22 things. But I was not able to actually follow
23 the argument in the course book. And out of
24 frustration I copied the -- photocopied the pages
25 and strung them together to make a scroll.

1 Q When do you think that was?

2 A That was in -- probably -- I don't
3 know. In the first few weeks of law school in
4 1990. And I mapped that case. And at that
5 moment, just all the bells started going off and
6 I realized that this was a process, at that
7 point. And I realized that this was maybe my way
8 out. I hadn't dealt with the fact that it's
9 entirely impractical to photocopy your entire law
10 book. But to me it felt like this was an
11 important recognition. and I realized it fit my
12 learning style because I move around a lot and
13 I'm very active and I'm very visual. And that's
14 what this was.

15 Q You used the term invention?

16 A Uh-huh.

17 Q What do you mean by invention? Or how
18 did you mean it in that context?

19 A I had the idea, the recognition that a
20 scroll could help me -- relating to a document in
21 a different way, a very different way than you
22 can relate to in a book. That was an important
23 insight for me. I guess you would say that was
24 an insight. The beginning of a recognition. But
25 it -- it came together for me at Thanksgiving of

1 1990. That was when -- after I was well-fed,
2 when I was sitting around relaxing and -- at a
3 friend's -- at someone's house. And I opened up
4 an atlas of world history. Where everything was
5 on two facing pages. There was no page breaks.
6 But there was a ton of information there. And I
7 realized how much I enjoyed maps. And I just
8 connected to what I was doing. And I instantly
9 thought, you know, there's no way I can really do
10 this on paper for the rest of my life. But I
11 could do it on a computer, because a computer
12 could do all the things that I don't do well. It
13 could cover for my disability, so to speak. It
14 could do a lot of the grunt work. And so that's
15 what I wanted to do. That's when I really -- I
16 would say it's fair to say that was the
17 invention.

18 Q When you say that was the invention --
19 I'm still a little unclear. What --

20 A 19 -- Thanksgiving of 1990, when I
21 realized --

22 Q How would you describe what the
23 invention was in Thanksgiving in 1990?

24 A A map on the screen that would enable
25 you to navigate and understand the document.

1 That would enable you to get a sense of the
 2 whole. And always have the whole view in place,
 3 so that whatever was happening on the screen in
 4 front of you, in terms of the text, you didn't
 5 have page breaks to contend with, because you
 6 still had that whole view. In my mind, it was on
 7 the bottom of the screen because I was thinking
 8 of it like a left-to-right scroll. I was
 9 thinking of it like the scroll that I had.

10 Q What was the first time that you were
 11 actually able to implement this on a computer?

12 A Oh, on a computer? Ballpark 1996. I
 13 can -- I don't remember exactly when I started
 14 this but that's something I could find for you.

15 Because I do have a record of buying Macromedia
 16 Director. It's a program, software program,
 17 that's used for creating like -- I think it's the
 18 precursor of Flash. I'm pretty sure it was
 19 before Flash. And up until that time I had been
 20 hand-drawing screens and doing word counts and
 21 stuff, but doing them manually, because I didn't
 22 have the computer skills to do them any other
 23 way. And I just hit a certain point where I just
 24 knew that this was -- I had done enough so that I
 25 felt like I needed to convert it to computer and

1 I had no idea how to do that. So I asked
 2 around. People said, "How would you do that?"
 3 And some people said PowerPoint, for example.
 4 And I knew that that wasn't going to do it.
 5 There wasn't enough there. And someone suggested
 6 Macromedia Director. And I said, you know, I'm
 7 going to have to really work hard to understand
 8 that because it requires programming and you're
 9 not a programmer. But -- and I said, "Well, can
 10 it do these things?" And they said yeah. And I
 11 said okay, that's what I want to do.

12 So I went out and bought Macromedia
 13 Director and it comes with a stack of manuals,
 14 like, you know, a little bit smaller than this.
 15 But it came with a pretty good stack of manuals.
 16 I guess maybe six, seven, eight manuals. Not all
 17 of them had to be read and understood to, you
 18 know, work. And it wasn't the kind of thing that
 19 you had to read through it to understand it.
 20 It's a manual. So you could start and play with
 21 the program and learn it by doing it.

22 And there's a software scripting
 23 language called Lingo. And as I understand it, a
 24 scripting language is something that allows you
 25 to shortcut -- it gives you capabilities that you

1 can kind of string together to make things happen
 2 on the screen. And I built kind of a slideshow
 3 on this screen, frame-by-frame. And then I used
 4 Lingo to interact with that and I created a
 5 Director demo, which I believe you have a copy
 6 of. And if not, we can get it to you.

7 Q When do you think the Director demo was?

8 A I believe I finished it in '96. It took
 9 me about a year to learn how to program in
 10 Macromedia Director to the point where I could
 11 produce a demo that did what I wanted.

12 Q And you think that was throughout the
 13 course of 1996?

14 A I probably started it in '95 and ended
 15 it sometime in early '96. That was my guess
 16 but -- the date that I put it -- the copyright on
 17 was 1996. And it would be in the first half of
 18 '96, for sure, that I would have finished it.
 19 And maybe even January of '96. I'm not positive
 20 about that.

21 Q And you're talking about the demo when
 22 you say "it"?

23 A Yes. Yes. The Macromedia Director
 24 demo. The Director demo.

25 Q And where is that demo physically now?

1 Is it on a CD? Is it on a floppy?

2 A It's on a CD. It's on my hard drive.
 3 And it does run -- Macromedia Director, you can
 4 package up the entire thing to run as a
 5 standalone, kind of -- standalone application, so
 6 to speak. And then it was supposed to be running
 7 on anybody's machine or whatever. I know that it
 8 ran well up to Windows 98. At some point,
 9 Windows 98 -- it busted on me. Late in my owning
 10 of Windows 98. So if you guys have a Windows 98
 11 or 95 or if you have an emulator or something,
 12 you should be able to plug that in and play it.

13 Q Do you know -- did you give an
 14 electronic version of the demo to your lawyers?

15 A Yes.

16 Q And do you know was it produced to us?

17 A I don't know.

18 Q Don't know?

19 A Don't know. Okay. I can't look to
 20 you. I'm sorry.

21 Q So just -- the timing on this then --
 22 you think you bought the Macromedia Director
 23 software sometime in 1995?

24 A Yes. Yeah, that's a good --

25 Q Do you know when in '95, roughly?