

EXHIBIT G

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

-----x
APPLE INC., a California)
corporation,)
))
Plaintiff,)
))
vs.)
) No. 11-CV-01846LHK
SAMSUNG ELECTRONICS CO., LTD.,)
a Korean entity; SAMSUNG)
ELECTRONICS AMERICA, INC., a)
New York corporation; SAMSUNG)
TELECOMMUNICATIONS AMERICA, LLC,)
a Delaware limited liability)
Company,)
))
Defendants.)
-----x

VIDEOTAPED DEPOSITION OF TONY GIVARGIS, PH.D.
Los Angeles, California
Tuesday, December 6, 2011

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Reported by:
SUSAN A. SULLIVAN, CSR #3522, RPR, CRR
JOB NO. 44330

1 system independent, correct?

2 A That is correct, yes.

3 Q What about this passage do you believe
4 supports your opinion?

5 A This passage also refers to, includes an
6 application module including at least one applet so
7 there is this applet being included within an
8 application module property that is consistent with
9 the Java-like execution environment of applets which
10 I rely on for my definition of "applets."

11 Q Can this notion of inclusion of the applet
12 within the application that you refer to exist
13 outside Java?

14 MR. SHAH: Objection; form.

15 THE WITNESS: Yes. This notion of inclusion is
16 actually a very, very common design, sort of a
17 paradigm where one application serves as a host
18 interpreting another application or a set of
19 application on, if you will, on top. And this is
20 the Java model of execution where the Java codes or
21 Java applications are interpreted by the host
22 application. For example, a browser. It is also
23 consistent with all interpreted language like Ruby
24 or PHP or even AppleScript and JavaScript.

25 Q BY MS. MAROULIS: In the context of the

1 host application can an applet be still system
2 dependent or are you saying it is always system
3 independent?

4 A Typically.

5 The purpose of this inclusion or this
6 framework that I just described is to make the
7 applet OS-independent. I'm certain there is an
8 example or an exceptional case or a scenario where
9 one would build an applet that bypasses that notion

10 so -- it is not universally the case but commonly
11 the case.

12 Q Can you give me an example of such a
13 situation where you would have a host application
14 and still have a system-dependent applet?

15 A Well, one example could be an applet that
16 exploits certain weakness or error or shortcoming of
17 the host application to gain access to the
18 underneath operating system, so in that sense that
19 applet is certainly OS-dependent.

20 In another example, it could be that that
21 applet is designed to take advantage of certain
22 resources of Operating System A and those resources
23 may not be available on Operating System B and in
24 that case too that applet would be dependent on
25 Operating System A and not portable to Operating

1 System B.

2 Q Any other examples?

3 A I can't think of any now.

4 Q Can a Java applet be programmed to be
5 operating-system dependent?

6 A I believe Java applets by design inherently
7 are operating-system independent. The exceptions
8 would be the two I mentioned previously, a security
9 breach of some sort or a lack of resources of some
10 sort on one platform versus another.

11 Q But can someone choose to program an
12 operating dependent, operating-system dependent
13 applet in the Java context?

14 MR. SHAH: Object to form.

15 THE WITNESS: Not specifically using the Java
16 programming language and the associated, the
17 understood to be Java tools for designing and
18 developing applications.

19 Q BY MS. MAROULIS: When you say not strictly
20 using, what is the distinction that you are drawing?

21 A Well, Java is a programming language and
22 the programming language itself, setting aside the
23 environment where the code will execute and the
24 tools that would possibly compile the code, only
25 records or specifies the sequence of instructions

1 appreciate it.

2 MS. MAROULIS: I anticipated your need.

3 We're going to mark this as Exhibit 8 for
4 identification.

5 (Givargis Exhibit 8, a document, marked for
6 identification, as of this date.)

7 THE WITNESS: Thank you.

8 Q BY MS. MAROULIS: Is Exhibit 8 the excerpt
9 of the "Developer's Resource" guide that you were
10 citing to in your declaration?

11 A Yes. It appears to be pages of the
12 chapter, yes.

13 Q And I believe the explanation you are
14 referring to is on Pages 11 and 12.

15 A Yes.

16 Q Is there anything in this excerpt that says
17 that applets must be system, operating-system
18 independent?

19 MR. SHAH: Objection. The document speaks for
20 itself.

21 THE WITNESS: I believe that this document very
22 strongly suggests that Java applets are platform
23 independent.

24 Q BY MS. MAROULIS: Where in particular do
25 you see that?

1 A Well, the text has an entire paragraph that
2 talks about distributing executable programs and how
3 that is, these programs, binary programs, are
4 closely tied to a specific hardware and operating
5 system. And then it goes on -- and then gives some
6 examples.

7 And then it goes on to say how Java solves
8 the problem of platform independence by using byte
9 code. Byte codes, and it describes the rest of it.

10 Q So this particular reference is limited to
11 Java environment, right?

12 A That is correct, yes.

13 Q And so in your -- by definition it will not
14 talk about operating-system dependent applets.

15 MR. SHAH: Objection; mischaracterizes his
16 testimony.

17 THE WITNESS: Applets as commonly understood are
18 usually Java applets or Java-like applets,
19 interpreted programs, and this document gives an
20 example of how a Java achieves that mechanical
21 independence of the OS.

22 Q BY MS. MAROULIS: I'm sorry, my question
23 wasn't clear.

24 Since this particular document is limited
25 to Java, you personally would not expect to see

1 discussion of operating-system dependent applets in
2 it, correct?

3 A That is correct, because the operating-
4 system independent nature of Java is a very
5 fundamental and core aspect of the Java, and Java-
6 like interpreted nature of interpreted languages.

7 Q In arriving at your opinion did you examine
8 the accused devices in this case?

9 A I did not.

10 Q Do you know which devices Samsung is
11 accusing of infringement?

12 A I believe it involves the iPhone, possibly
13 the iPad.

14 Q Do you know which ones, whether it is
15 iPhone or iPad or both?

16 A I believe it is both but I'm not certain a
17 hundred percent, yes.

18 Q Do you know which particular versions of
19 iPhone are being accused?

20 MR. SHAH: I caution the witness not to
21 speculate.

22 If you know, you can answer.

23 THE WITNESS: Yes, I do not know the exact
24 answer.

25 Q BY MS. MAROULIS: Do you know which

1 particular versions of iPad, if any, are accused?

2 MR. SHAH: Same objection.

3 THE WITNESS: I do not know the exact version.

4 Q BY MS. MAROULIS: Do you know how any of
5 the accused devices operate in terms of which
6 programming environment they use?

7 MR. SHAH: Same caution.

8 THE WITNESS: I am familiar with the programming
9 language used by Apple Corporation in its various
10 products, yes.

11 Q BY MS. MAROULIS: What language does Apple
12 use?

13 A The bulk of the language that Apple uses is
14 Objective-C but there is also the C, pure C code in
15 a lot of Apple products.

16 Q Have you looked at any Samsung devices
17 embodying the '711 patent?

18 MR. SHAH: Objection to the extent it calls for
19 a legal conclusion.

20 THE WITNESS: I have not.

21 Q BY MS. MAROULIS: Do you know whether --
22 strike that.

23 Do you know which programming language is
24 used by the Samsung devices embodying this patent?

25 A I do not.

1 little break, I will decide if I have any questions.

2 I just want to have a look at something.

3 MS. MAROULIS: Okay.

4 Before I forget, we need to mark the
5 transcript as attorneys' eyes only because we
6 discussed inventor testimony.

7 MR. SHAH: 10 minutes? Okay.

8 THE VIDEOGRAPHER: The time is 12:07 p.m. and
9 we're off the record.

10 (Recess)

11 THE VIDEOGRAPHER: The time is 12:21 p.m. and we
12 are back on the record.

13

14 EXAMINATION

15 BY MR. SHAH:

16 Q Dr. Givargis, I just wanted to clarify a
17 couple of points.

18 You were asked about experience in
19 programming languages, certain languages. Did you
20 want to clarify experience in the Objective-C
21 language?

22 A Yes. I am familiar with Objective-C and I
23 have indeed written applications in Objective-C.

24 Q You were asked a question about whether you
25 reviewed the file history of the '711 patent in

1 preparation of your expert declaration and you said
2 you -- tell me if this is a fair characterization --
3 you said that you weren't sure if you had reviewed
4 the entire thing?

5 A Yes.

6 MS. MAROULIS: Objection; leading.

7 THE WITNESS: I certainly received that in PDF
8 format, it was not in print format, and I recall
9 going through it. Certain areas I read very
10 carefully, in particular those having to do with
11 examiner's comments and response to office action.
12 Certain parts of it were in Korean, I could only
13 skip to the translations that followed, and certain
14 parts of it appeared to just be sort of very --
15 titles or head pages and so on. But I certainly
16 went through entire document at the time on the
17 computer, PDF format.

18 Q BY MR. SHAH: That was in advance of
19 submitting your declaration that is Exhibit 1?

20 A Correct.

21 Q You were asked earlier in the deposition if
22 you had any familiarity with what sounded like Links
23 applets. To the extent that that question was meant
24 to determine if you had any familiarity with Linux
25 applets, could you answer that question?

1 A I am familiar with Linux applets,
2 particularly the Python applets that are used within
3 Linux. Links applets, no. But Linux, yes.

4 Q You also mentioned a publication by an
5 author Andre Nacul that you had reviewed in advance
6 of your submitting the declaration that is Exhibit
7 1; is that correct?

8 A That is correct.

9 Q And was that a part of your consideration
10 in preparing this document?

11 A It was not.

12 MS. MAROULIS: Objection; vague.

13 THE WITNESS: It was not. I reviewed that paper
14 very early on just to refresh my memory about that
15 work and see how it relates to the patent, but I had
16 long ago concluded that it has very little overlap
17 and I did not use it as part of my declaration.

18 Q BY MR. SHAH: Is it your opinion that the
19 Flash Plug In is an operating system?

20 A I do not belief that plugin is an operating
21 system. An operating system encompasses many parts
22 and components and it is by far distinct from a
23 plugin like Flash Plug In.

24 Q You were asked earlier in today's
25 deposition if the sources of extrinsic evidence

1 relied upon in Mr. Cole's exhibit were credible or
2 trustworthy. Do you recall being asked a similar
3 question?

4 A Yes, I recall.

5 Those sources which I reviewed, some of
6 them contained web, forum postings or message board
7 posts that I would consider less credible than, for
8 instance, the dictionary definition or a textbook.

9 Q When you originally were asked the question
10 did you go back and review the exhibits before you
11 answered the question?

12 A I did not.

13 Q And one last question.

14 On -- you were asked about Exhibit 3, the
15 Joint Claim Construction and Prehearing Statement,
16 and referring to Pages 12 and 13 you were asked a
17 question about the list of extrinsic evidence relied
18 upon in support of Apple's proposed construction in
19 support. Do you remember that?

20 A Yes.

21 Q Is it your opinion that all of these
22 extrinsic sources of support for Apple's
23 construction are related to Linux -- or strike. Are
24 related to Java?

25 MS. MAROULIS: Objection; compound.

1 THE WITNESS: Not all of them. Some of these
2 are dictionary definitions that are unbiased towards
3 one language or another. They're simply
4 definitions.

5 Q BY MR. SHAH: Did you consider -- strike.
6 Nothing further.

7

8 FURTHER EXAMINATION

9 BY MS. MAROULIS:

10 Q Mr. Givargis, when I asked you whether Mr.
11 Cole cited reliable sources of extrinsic evidence
12 you answered yes to me, correct?

13 A That is correct, yes.

14 Q And then when your counsel questioned you
15 you changed your testimony; is that correct?

16 A I believe I augmented it or corrected it to
17 the degree that, one, I did not actually
18 specifically go through all of the exhibits and read
19 all of it at this point, and that two, I do recall
20 that some of them were message board postings and
21 such and some were more technical documents; for
22 instance, from Microsoft MSDN, their developer
23 network, and that I recognized that a message board
24 posting does not carry the same weight as, say, a
25 technical posting that comes from Microsoft.