

EXHIBIT F

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

--oOo--

APPLE, INC., a California corporation

Plaintiff,

vs.

Case No. 4:11-cv-01846-LHK

SAMSUNG ELECTRONICS CO.,
LTD., et al.

Defendants.

_____ /

DEPOSITION OF

JOE TIPTON COLE

Friday, December 16, 2011

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REPORTED BY: COREY W. ANDERSON, CSR 4096

(2003-439831)

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10:32:44 1 Q. Did you know people in the community for
10:32:46 2 any of the message boards you relied on for your
10:32:49 3 applet references?

10:32:51 4 A. I did not seek out anyone that I knew. I
10:32:53 5 simply did general searches.

10:33:14 6 Q. What was your understanding of an applet
10:33:15 7 in 2005?

10:33:20 8 A. The -- I don't recall being presented with
10:33:22 9 the term. If you are asking me whether my -- my
10:33:31 10 opinion of that would have been different at the
10:33:32 11 time, the answer is no.

10:33:36 12 Q. So if you were asked to define applet in
10:33:39 13 2005, you would have answered something the same or
10:33:45 14 consistent with what's in your declaration?

10:33:48 15 A. I believe so, yes. Certainly in terms of
10:33:50 16 presented with the same, with the same patent and
10:33:55 17 the same file history, I certainly would have
10:33:58 18 construed it the same way, yes.

10:34:03 19 Q. In 2005, were you aware of Java applets?

10:34:06 20 A. Yes.

10:34:07 21 Q. Were you aware of any other types of
10:34:08 22 applets?

10:34:09 23 A. Yes.

10:34:10 24 Q. Which ones?

10:34:12 25 A. At least the Flash, JavaScript, the --

10:34:23 1 the -- I'm trying to think what -- there is a
10:34:33 2 version JScript, I think is the Microsoft version of
10:34:36 3 the JavaScript.

10:34:46 4 The 2005 for certain, I think that's all I
10:34:55 5 can refer to.

10:34:56 6 Certainly I picked up the Ruby, I think
10:34:59 7 that was probably later.

10:35:02 8 Q. In 2005, had you heard of applets in the
10:35:05 9 context of Qualcomm chipsets?

10:35:09 10 A. I don't think I was aware of applets in
10:35:11 11 the context of Qualcomm chipsets at that time, no.

10:35:22 12 Q. Did counsel provide you the excerpts of
10:35:24 13 deposition testimony that you included at Exhibit 3
10:35:28 14 of your declaration?

10:35:31 15 A. Let me see.

10:35:51 16 (Pause)

10:35:51 17 A. In the sense that they provided me with
10:35:52 18 the entire deposition, yes.

10:35:57 19 Q. Did you review the full transcript?

10:35:59 20 A. I'm sorry?

10:35:59 21 Q. Did you review the full transcript?

10:36:01 22 A. Yes.

10:36:24 23 Q. Other than you said that counsel provided
10:36:25 24 you with the definition of applet that you have at
10:36:29 25 page 3, did any assumptions provided to you by

10:36:34 1 counsel form the basis of any of your opinions?

10:36:40 2 A. I think as I said, any paragraph that you
10:36:42 3 see in here that includes the phrase "I understand"
10:36:45 4 is probably based on an assumption that's what --
10:36:54 5 that was given to me by the counsel concerning legal
10:36:58 6 matters or procedural matters that I don't qualify
10:37:01 7 to handle on my own.

10:37:06 8 Q. Did assumptions provided to you by counsel
10:37:11 9 form the basis of any of your technical opinions?

10:37:13 10 A. No. No. Not at all.

10:37:16 11 Q. Okay. Do you have an understanding of the
10:37:21 12 term "intrinsic evidence" with respect to claim
10:37:24 13 construction?

10:37:25 14 A. Yes.

10:37:26 15 Q. What's your understanding?

10:37:28 16 A. My understanding of intrinsic evidence
10:37:30 17 concerning claim construction includes all material
10:37:34 18 on the face of the patent, and includes the entire
10:37:38 19 file history associated with the patent.

10:37:41 20 It can also include items that are
10:37:48 21 included by reference in the patent. And I think
10:37:59 22 that's about it. I think there -- there may be one
10:38:02 23 or two other items, but I think that's about it.

10:38:05 24 Q. Is it your opinion that intrinsic evidence
10:38:07 25 supports Samsung's construction of the term

10:39:28 1 claim 1?

10:39:37 2 A. Okay.

10:39:37 3 Q. In your opinion, does the language of
10:39:39 4 claim 1 support your definition of applet?

10:39:42 5 (Pause)

10:39:43 6 A. Yes.

10:40:05 7 Q. How?

10:40:06 8 A. Again, the term as used is a bare term
10:40:10 9 without any qualification.

10:40:15 10 Q. So your opinion of an applet need not be
10:40:18 11 operating system independent because the claim does
10:40:22 12 not explicitly limit the applet to operating system
10:40:25 13 independent.

10:40:27 14 Correct?

10:40:32 15 A. You asked me if the claim supported, not
10:40:34 16 that the claim established. The claim supports what
10:40:37 17 I said. In and of itself it doesn't establish it.

10:40:47 18 Q. Okay. I just want to make sure I'm
10:40:49 19 understanding that in your opinion, the claim
10:40:55 20 supports that the applet need not be operating
10:40:58 21 system independent because the claim doesn't
10:41:01 22 explicitly say that the applet is operating system
10:41:04 23 independent.

10:41:05 24 Correct?

10:41:12 25 A. Just standing by itself, the answer is

10:41:14 1 yes.

10:41:21 2 Q. Claim 1 doesn't say that the applet is
10:41:23 3 small.

10:41:24 4 Correct?

10:41:25 5 A. Correct.

10:41:30 6 Q. So why do you include the term "small" in
10:41:32 7 your definition if that's not in the claim?

10:41:38 8 A. I didn't.

10:41:43 9 Q. Do you believe that "small" is properly
10:41:45 10 included in the definition of applet?

10:41:50 11 A. Hang on just a moment.

10:41:52 12 (Pause)

10:42:00 13 Q. On page 3 of your declaration you have the
10:42:02 14 definition, if that helps.

10:42:10 15 A. I'll just say that I didn't really
10:42:12 16 consider the -- the term "small" in -- in -- in
10:42:17 17 forming my opinion.

10:42:20 18 Q. So you don't have an opinion as to whether
10:42:22 19 "small" is properly included in the definition of
10:42:24 20 applet?

10:42:25 21 A. No.

10:42:28 22 Q. How would you define "small" in the
10:42:29 23 context of an applet?

10:42:31 24 A. I didn't.

10:42:36 25 Q. Do you have in mind any definition of what

10:42:39 1 "small" would mean in the context of an applet?

10:42:41 2 A. No.

10:42:54 3 Q. What do you think would be the

10:42:55 4 understanding of someone of ordinary skill in the

10:42:57 5 art in 2005 as to the term "small" in the context of

10:43:03 6 an applet?

10:43:05 7 A. I don't know.

10:43:05 8 Q. Okay. Looking back at claim 1 in the '711

10:43:15 9 patent, the claim does not use the word "program."

10:43:23 10 Correct?

10:43:26 11 A. Correct.

10:43:29 12 Q. But your definition of applet says that

10:43:33 13 the applet is designed to run within another

10:43:38 14 program.

10:43:38 15 Right?

10:43:39 16 A. Yes.

10:43:40 17 Q. So why do you refer to "program" in the

10:43:43 18 definition when the claim doesn't use that term?

10:43:48 19 A. Again, I did not choose the word, so it's

10:43:52 20 not my -- my word. I would assume that it's there

10:43:55 21 as a -- something close to a synonym.

10:43:59 22 Q. A synonym for what?

10:44:01 23 A. Application.

10:44:07 24 Q. And claim 1 says "an application module

10:44:11 25 including at least one applet."

10:52:10 1 specifically talking in the context of your
10:52:12 2 definition of applet as a small application designed
10:52:16 3 to run within another program.

10:52:18 4 A. Uh-huh.

10:52:19 5 Q. Does the answer you just gave apply to the
10:52:22 6 program in that definition?

10:52:27 7 A. Yes.

10:52:34 8 Q. Is there anything else that the program
10:52:35 9 does with respect to the applet?

10:52:39 10 MR. BRIGGS: Objection, vague.

10:52:41 11 THE WITNESS: I don't know.

10:52:42 12 BY MS. WHELAN:

10:52:54 13 Q. You agree that the '711 patent
10:52:56 14 specification does not provide a definition of
10:52:59 15 applet.

10:53:00 16 Correct?

10:53:02 17 A. Are you asking me whether the -- what
10:53:05 18 the -- the applicant -- or the -- the inventor
10:53:09 19 provided his own lexicography for the term? The
10:53:13 20 answer would be no, that he does not.

10:53:19 21 Q. In your opinion, does the specification of
10:53:21 22 the '711 patent support your definition of applet?

10:53:24 23 A. Yes.

10:53:25 24 Q. How?

10:53:26 25 A. Again, it uses it as a bare term without

10:53:29 1 qualification. And I think that supports my
10:53:34 2 position, yes.

10:53:41 3 Q. Now, the patent says that an application
10:53:47 4 module includes an applet.

10:53:49 5 Correct?

10:53:50 6 A. Yes.

10:53:51 7 Q. So do you think it would be more precise
10:53:53 8 to say that the applet runs within an application
10:53:56 9 module rather than within a program?

10:54:02 10 A. Would it be more precise to say that? It
10:54:06 11 certainly tracks the language of the patent more
10:54:10 12 closely, yes.

10:54:27 13 Q. Did you review the prosecution file
10:54:29 14 history of the '711 patent prior to drafting your
10:54:33 15 declaration?

10:54:34 16 A. I did.

10:54:35 17 Q. Did you review the entire file history?

10:54:39 18 A. I -- let's see. I -- yes. I went through
10:54:43 19 the entire file history, but I only read closely the
10:54:47 20 office action. I didn't read all of the forms and
10:54:51 21 fees and so forth in there. I just read the office
10:54:55 22 actions and the responses to the office actions.

10:55:01 23 Q. In your opinion, does the file history of
10:55:03 24 the '711 patent support your interpretation of
10:55:06 25 applet?

10:55:06 1 A. Yes.

10:55:07 2 Q. How?

10:55:08 3 A. Again, the -- the -- the use of the term
10:55:12 4 in the file history is I think, if I remember
10:55:15 5 correctly, the same as the use of the term in the --
10:55:18 6 in the claims of the patent. So there is no
10:55:21 7 difference.

10:55:26 8 Q. In your declaration you discuss a Kokubo
10:55:29 9 reference that was addressed in the file history.
10:55:32 10 Right?

10:55:33 11 A. Yes.

10:55:34 12 Q. In your opinion, does Kokubo support your
10:55:38 13 interpretation of applet?

10:55:40 14 A. I'm not sure how to -- Kokubo itself is
10:55:47 15 not so much significant as it is that the -- the
10:55:51 16 office action taken in relation to Kokubo supports
10:55:55 17 that, yes.

10:55:57 18 Q. How does the office action taken in
10:56:00 19 relation to Kokubo support your interpretation of
10:56:05 20 applet?

10:56:05 21 A. The office action taken in relation to
10:56:09 22 Kokubo was the inclusion of the term includes an
10:56:12 23 application module including at least one applet, if
10:56:14 24 I recall correctly, something very close to that, to
10:56:16 25 that language was added for purposes of

10:58:10 1 A. Okay.

10:58:11 2 Q. I just want to ask you why is what Kokubo
10:58:15 3 describes not an applet.

10:58:20 4 A. Again, I am not exactly sure. As I said,
10:58:24 5 I looked at Kokubo enough to -- to determine that
10:58:29 6 there is no mention of -- as far as I can tell that
10:58:33 7 there is no mention of Java in the patent. As I
10:58:37 8 said, I don't think that there is a mention of
10:58:40 9 applets in the patent.

10:58:42 10 But for purposes of the construction of
10:58:48 11 the term "applet," it was sufficient, I believe,
10:58:51 12 that Kokubo didn't include those terms that -- that
10:59:01 13 like I say, it's not Kokubo itself that supports my
10:59:04 14 position, it's just that the distinction was
10:59:07 15 resolved through the phrase that was recommended by
10:59:09 16 the examiner, and that phrase is, once again, it's
10:59:13 17 the bare term "applet" without any qualification
10:59:16 18 whatsoever other than it's included in another
10:59:19 19 application -- included in an application module.

10:59:23 20 So I think that's sufficient to support
10:59:25 21 the -- the operating system dependent, independent
10:59:33 22 definition.

10:59:35 23 Q. Because the file history doesn't make a
10:59:37 24 statement one way or the other as to operating
10:59:39 25 system independence?

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10:59:41 1 A. Because the file history doesn't make any
10:59:43 2 statement about it, the patent itself doesn't make
10:59:45 3 any statement about it. And yeah, there is no
10:59:52 4 qualification of the term, and I don't see any
10:59:55 5 reason to qualify it.

10:59:56 6 Q. Okay. Could we go to paragraph -- oops,
11:00:11 7 45 of your declaration? It's page 13.

11:00:27 8 A. Okay.

11:00:28 9 Q. And here you summarized some dictionary
11:00:31 10 definitions of applet that you provided in Exhibit 6
11:00:35 11 of your declaration.

11:00:36 12 Correct?

11:00:37 13 A. Yes.

11:00:40 14 Q. And in point 5 of your summary, you say
11:00:43 15 "Applets are usually portable between operating
11:00:49 16 systems."

11:00:50 17 Right?

11:00:51 18 A. That's not what I said. That's what the
11:00:53 19 definition says. Or it's a common element of
11:00:57 20 definitions, yes.

11:00:58 21 Q. And do you agree with that statement, that
11:01:02 22 applets are usually portable between operating
11:01:04 23 systems?

11:01:04 24 A. It's not so much whether I agree with it,
11:01:06 25 it's just that yeah, I think that's a reasonable

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11:01:08 1 characterization of the term, yes.

11:01:15 2 Q. So you agree that one skilled in the art
11:01:18 3 in 2005 would have understood applets are usually
11:01:21 4 portable between operating systems?

11:01:23 5 MR. BRIGGS: Objection, vague.

11:01:24 6 THE WITNESS: Again, I think I would have
11:01:25 7 used the word "commonly," but it's -- it's close
11:01:28 8 enough, yes.

11:01:29 9 BY MS. WHELAN:

11:01:46 10 Q. Do you agree that Java applets are almost
11:01:49 11 always operating system independent?

11:01:51 12 A. I think that's true, yes. At least after
11:01:56 13 they work the kinks out after the first two or three
11:01:58 14 years, yes.

11:02:04 15 Q. So could we just look in paragraph 63 and
11:02:07 16 64 of your declaration?

11:02:18 17 A. Okay.

11:02:18 18 Q. And here you describe what you believe are
11:02:20 19 certain exceptions to the rule of Java applets being
11:02:23 20 operating system independent.

11:02:26 21 Is that correct?

11:02:26 22 A. Yes.

11:02:28 23 Q. How common are these exceptions?

11:02:30 24 A. I think these are rare.

11:02:36 25 Q. So would you agree that the default is for

11:02:38 1 Java applets to be operating system independent?

11:02:42 2 A. I would say the default intent is for them
11:02:44 3 to be operating system independent. Whether that's
11:02:46 4 accomplished is another matter. I don't know.

11:02:50 5 But again, I think it's commonly that's
11:02:52 6 the intent, I would say it's almost certainly the
11:02:58 7 intent, and Java applet -- in Java applet
11:03:04 8 development, yes.

11:03:16 9 Q. Okay. Could we go back to paragraph 43 of
11:03:19 10 your declaration?

11:03:27 11 A. Okay.

11:03:27 12 Q. And here you have a definition of applet
11:03:30 13 from Wiley's Electrical and Electronics Engineering
11:03:33 14 Dictionary.

11:03:35 15 Correct?

11:03:35 16 A. Yes.

11:03:40 17 Q. And you provide the quote "A small program
11:03:44 18 typically written --" oh, wait. Sorry. Looking at
11:03:51 19 the wrong paragraph.

11:03:54 20 "A small application designed to run
11:03:57 21 within another program." That's the definition you
11:03:59 22 included within Wiley's in paragraph 43.

11:04:02 23 Correct?

11:04:03 24 A. Yes.

11:04:06 25 Q. And you provided the Wiley's dictionary at

11:04:09 1 Exhibit 5 of your declaration?

11:04:33 2 A. Yes. That's where the -- that's where the
11:04:35 3 extract that's in the report or in the declaration
11:04:37 4 comes from.

11:04:38 5 Q. But the full definition of "applet" in the
11:04:42 6 Wiley's dictionary is longer than what you included
11:04:45 7 in paragraph 3 of your report?

11:04:47 8 A. That's correct.

11:04:48 9 Q. Why didn't you include the additional
11:04:53 10 language in Wiley's that says "Frequently it is
11:04:56 11 downloaded over a network to be launched on a user's
11:05:00 12 computer on a Web page, for example, it can provide
11:05:04 13 video and/or audio effect or perform calculations"?

11:05:13 14 A. I didn't think that was as significant to
11:05:16 15 the point at issue.

11:05:17 16 Q. Why not?

11:05:17 17 A. Just because it doesn't say anything about
11:05:20 18 what we are talking about.

11:05:28 19 Q. Would you agree that this language about
11:05:29 20 "Frequently it is downloaded over a network to be
11:05:34 21 launched on a user's computer on a Web page, for
11:05:37 22 example, it can provide video and/or audio effects
11:05:41 23 or perform calculations" suggests that an applet
11:05:45 24 frequently could be used in an operating system
11:05:48 25 independent context?

11:52:21 1 A. I don't agree or disagree with it. It's
11:52:23 2 just a statement.
11:52:24 3 Q. So you have no opinion as to whether that
11:52:26 4 statement is correct or not as of 2005?
11:52:30 5 A. The statement I believe was made in 2000.
11:52:35 6 Q. Okay. So thank you for the correction.
11:52:38 7 So you have no opinion as to whether that
11:52:40 8 statement is correct or not as of 2000?
11:52:44 9 A. Depending on what they mean by "soon," I
11:52:47 10 believe that the reference 9 -- or I'm sorry, 7A is
11:52:55 11 2004, in which case they are still going. So
11:52:58 12 it's -- if "soon" is shorter than four years, then
11:53:02 13 the statement's incorrect.
11:53:12 14 Q. Microsoft control panel applets run
11:53:14 15 directly on the machine's processor.
11:53:16 16 Correct?
11:53:19 17 MR. BRIGGS: Objection, vague.
11:53:24 18 THE WITNESS: Directly on the machine's
11:53:26 19 processor? I don't know how to answer that.
11:53:31 20 Ultimately at some level, yes. I don't know that --
11:53:39 21 I don't think that the applets are written in --
11:53:42 22 even at the level of assembly code. I would have to
11:53:46 23 say that they are not written to the bare hardware.
11:53:50 24 So they run on a Windows operating system.
11:53:55 25 BY MS. WHELAN:

11:53:55 1 Q. Are they interpreted?

11:54:02 2 A. I don't know.

11:54:08 3 Q. Just looking in Exhibit 7C, at the first
11:54:23 4 line of this first entry says "Here is how to run
11:54:28 5 control panel applets at the Run command level."
11:54:32 6 Does that inform your answer?

11:54:35 7 A. I'm sorry?

11:54:36 8 Q. Does that statement about "Here is how to
11:54:39 9 run control panel applets at the Run command level,"
11:54:42 10 does that inform your answer as to whether control
11:54:48 11 panel applets run directly on the machine's
11:54:50 12 processor?

11:54:52 13 A. Well, as I said, at some level they do.
11:54:54 14 But you still have to develop the applet -- it runs
11:54:58 15 directly at the level of the operating system, if
11:55:01 16 that's what you are asking.

11:55:02 17 But again, the processor is a bit removed
11:55:06 18 from the operating system. So "directly" I think is
11:55:11 19 probably incorrect there.

11:55:17 20 Q. Does the Microsoft control panel applet
11:55:19 21 run within another program?

11:55:22 22 A. Does it run within another program? I'm
11:55:27 23 trying to remember. I think that's -- that's not a
11:55:33 24 necessary part of the definition of the control
11:55:35 25 panel applet, no.

11:55:38 1 Q. Do you know of any control panel applets
11:55:40 2 that run within another program?

11:55:43 3 A. Do -- no, not directly.

11:56:04 4 Q. So do Microsoft control panel applets meet
11:56:07 5 your definition of an applet as a small application
11:56:12 6 designed to run within another program?

11:56:18 7 A. Not necessarily directly, no. I should
11:56:29 8 add, though, that it does broaden the term "applet."

11:56:35 9 Q. Broaden the term "applet" beyond the
11:56:38 10 definition that you provided in your declaration?

11:56:41 11 A. It does broaden the term "applet" and that
11:56:43 12 they are obviously operating system dependent.

11:56:57 13 Q. Okay. But this broadening that you are
11:56:59 14 now referring to is outside the definition that's in
11:57:03 15 your declaration.

11:57:04 16 Correct?

11:57:05 17 A. Well, you have to understand that my
11:57:06 18 definition is in part a rebuttal of the -- of the
11:57:12 19 Apple's definition which is a very restrictive, very
11:57:16 20 absolute -- I'm sorry, there is no very absolute, it
11:57:19 21 is an absolute position. And anything that gets off
11:57:21 22 of that absolute position is a counter example.

11:57:23 23 This is a counter example.

11:57:24 24 Q. Okay. But it's a counter example that
11:57:27 25 falls outside of Samsung's proposed construction?

11:57:30 1 A. It can. I am insufficiently knowledgeable
11:57:34 2 about this to know whether any of these are
11:57:36 3 included. I just don't know. So I didn't say that
11:57:43 4 they are not. I said I don't know.

11:57:44 5 Q. Okay. But you don't know of any Microsoft
11:57:46 6 control panel applet that --

11:57:48 7 A. No, I don't.

11:57:49 8 Q. Okay. Okay. So putting aside the control
11:58:22 9 panel applets, looking at the other examples you
11:58:24 10 gave in paragraph 52 to 57 of your declaration, are
11:58:30 11 all of those applets designed to run within an
11:58:34 12 application?

11:58:38 13 A. I don't know that they are.

11:58:43 14 Q. Are they designed to run within other
11:58:45 15 types of programs?

11:58:47 16 A. They may be. I don't know.

11:58:59 17 Q. In your opinion, what does it mean to run
11:59:01 18 within another program?

11:59:05 19 A. Generally I think we talked about that
11:59:06 20 earlier, that the phrase -- what is it, the phrase
11:59:13 21 in the patent is application module that includes at
11:59:18 22 least one applet.

11:59:19 23 Q. Uh-huh.

11:59:20 24 A. Was what we were discussing.

11:59:24 25 The -- that -- that indicated that there

11:59:29 1 was some -- some control of the initiation and
11:59:33 2 perhaps the determination of the applet, and that
11:59:39 3 there could be other -- there could be other sharing
11:59:44 4 of environment or sharing of control as well.

11:59:49 5 But that that -- that was about all that
11:59:52 6 was required. Probably just the initiation, but I
11:59:55 7 would think that most likely there would be some
11:59:58 8 form of control of the termination as well.

12:00:01 9 I'm sorry, not necessarily control, but
12:00:03 10 some knowledge of the termination as well.

12:00:12 11 Q. What do you mean by knowledge of the
12:00:13 12 termination?

12:00:15 13 A. That it's very likely that the application
12:00:18 14 in order to terminate itself properly needs to be
12:00:22 15 sure that all the applets that were launched within
12:00:24 16 it were themselves terminated.

12:00:49 17 Actually, let me back off of that a little
12:00:50 18 bit. I think it's -- if we are going to limit this,
12:00:56 19 we probably should just talk about the initiation
12:01:02 20 rather than the rest of it.

12:01:03 21 Q. So under your definition, "A small
12:01:07 22 application designed to run within another program,"
12:01:10 23 the only requirement for running within another
12:01:13 24 program is to initiate within another program?

12:01:17 25 A. The -- really, I -- really I haven't got a

12:03:15 1 system?

12:03:16 2 A. I -- I -- the -- okay. The Windows
12:03:21 3 applets are described as "applets." They are
12:03:23 4 focused small utilities in that instance.

12:03:31 5 Other things identified as applets, most
12:03:35 6 of the things we have talked about, they tend to be
12:03:37 7 very, very focused or limited in what they attempt
12:03:41 8 to do, what their responsibilities are, as opposed
12:03:47 9 to full blown applications which may be an entire
12:03:50 10 accounting system or an entire word processor or
12:03:53 11 something like that.

12:04:00 12 The -- so that's -- that's basically the
12:04:05 13 distinction that I think is most common.

12:04:10 14 Q. And under your definition about running an
12:04:28 15 application designed to run within another program,
12:04:32 16 can the program be an operating system?

12:04:43 17 A. That is at least one use of the term. I
12:04:45 18 don't know that that's the -- that that's the
12:04:50 19 construction that I would put on it for purposes of
12:04:52 20 the patent. I just don't know. I haven't -- that's
12:04:54 21 not the part of the construction that I am concerned
12:04:58 22 with or that I have been concerned with.

12:05:04 23 Q. So you are not sure of the bounds of the
12:05:06 24 word "program" in your definition?

12:05:08 25 A. I didn't -- I did not explore those

12:05:10 1 bounds, no.

12:05:23 2 Q. And what you were just discussing about
12:05:24 3 how you would distinguish in an applet, does the
12:05:28 4 size matter in deciding whether something is an
12:05:31 5 applet?

12:05:34 6 A. The -- I think we went over this with the
12:05:42 7 term "small" earlier. Again, that's the most common
12:05:47 8 characterization, I would say.

12:05:50 9 But I don't think that that's a -- again,
12:05:55 10 that there is an easier bright line distinction
12:05:57 11 between applications and applets. The -- so I don't
12:06:03 12 have a good answer for that.

12:06:15 13 Q. So would you say "small" is not an
12:06:17 14 absolute requirement of an applet?

12:06:20 15 A. The --

12:06:22 16 MR. BRIGGS: Objection, vague.

12:06:25 17 THE WITNESS: I think I would say that
12:06:26 18 "small" is not an easily or sharply defined term for
12:06:37 19 the applet. It -- it -- like I said, it's the word
12:06:42 20 that pops into many immediate perceptions of what an
12:06:45 21 applet is.

12:06:47 22 But is it conceivable or possible that you
12:06:50 23 could have an applet that is, for instance, much
12:06:53 24 larger than the application that it runs in? I
12:06:57 25 would say that's certainly possible.

12:07:00 1 BY MS. WHELAN:

12:07:01 2 Q. So "small" is common, but not absolute?

12:07:05 3 A. I would say that's true, yes.

12:07:26 4 Q. Can someone skilled in the art tell by

12:07:28 5 examining a code that the program is running within

12:07:31 6 another program?

12:07:35 7 A. I think that if you examine the code of

12:07:38 8 both programs that you can tell, yes.

12:07:40 9 Q. How can you tell?

12:07:44 10 A. As I said, the application that includes

12:07:47 11 the applet has some responsibility for initiating

12:07:53 12 the operation of the applet.

12:08:05 13 Q. In your opinion, does the testimony of the

12:08:09 14 inventor of the '711 patent support your

12:08:12 15 construction of the term "applet"?

12:08:16 16 A. As I recall from reading it, I believe it

12:08:20 17 does, yes.

12:08:21 18 Q. How?

12:08:23 19 A. If I remember correctly, the -- the

12:08:26 20 inventor testified that the applet that he developed

12:08:33 21 that was an embodiment of the -- of the patent was

12:08:40 22 restricted to the Qualcomm chipset and was not

12:08:45 23 operating system independent.

12:08:49 24 Q. Would a person of ordinary skill in the

12:08:50 25 art in 2005 have had access to the inventor's

12:08:54 1 testimony?

12:09:02 2 A. Not his testimony, because his testimony
12:09:04 3 didn't occur until 2011.

12:09:11 4 With respect to the material that is,
12:09:22 5 respecting the material that is -- that he developed
12:09:31 6 that is an embodiment of the -- of the patent, it
12:09:36 7 would depend on whether that was published. And I
12:09:40 8 don't know whether it was published.

12:09:49 9 Q. Outside this case, have you ever heard of
12:09:51 10 applets discussed in the context of Qualcomm
12:09:53 11 chipsets?

12:09:54 12 A. Directly, not that I recall.

12:10:06 13 Q. The '711 patent doesn't say anything about
12:10:08 14 Qualcomm chipsets.

12:10:10 15 Right?

12:10:11 16 A. Again, just working off of memory, I don't
12:10:14 17 believe it does.

12:10:28 18 Q. Do you know if the inventor's
12:10:29 19 understanding about the meaning of applet was
12:10:30 20 disclosed to the patent office?

12:10:39 21 A. Whether this understanding was disclosed?
12:10:47 22 I -- hmm. I would think that the -- that the -- and
12:10:57 23 it's not -- it's not a necessary condition, but I
12:11:01 24 believe that in this instance if I remember
12:11:04 25 correctly that the inventor would qualify as one of

12:11:06 1 ordinary skill in the art. And on that basis the
12:11:15 2 generic definition of applet would be disclosed,
12:11:19 3 yes.

12:11:24 4 That's an interesting question. I don't
12:11:25 5 think I have ever faced that before.

12:11:28 6 Q. I guess what I want to know is whether in
12:11:31 7 your opinion the inventor's subjective understanding
12:11:36 8 of the term "applet" was in any way disclosed to the
12:11:40 9 patent office.

12:11:44 10 A. I think the answer is I don't know.

12:11:49 11 Q. Can you point to anywhere in the file
12:11:51 12 history that talks about Qualcomm chipsets?

12:11:57 13 A. I don't recall that it's -- that Qualcomm
12:12:00 14 chipsets are mentioned in the file history. But I'm
12:12:03 15 not sure about that. The -- the connection with
12:12:08 16 Qualcomm may have been mentioned simply as the
12:12:13 17 assignee, but I don't know that -- that there is any
12:12:16 18 mention of the Qualcomm chipsets.

12:12:23 19 Q. Okay. And in your declaration, you also
12:12:26 20 refer to the inventor's development notes.

12:12:29 21 Correct?

12:12:30 22 A. I think I referred to maybe one page of
12:12:33 23 the inventor's development notes.

12:12:38 24 Q. In that -- why don't we look at that, at
12:12:41 25 Exhibit 4 of your declaration.

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12:12:44 1 A. Okay.

12:13:05 2 Q. Would someone of ordinary skill in the art
12:13:06 3 in 2005 have had access to these notes?

12:13:08 4 A. I don't know.

12:13:11 5 Q. Were these notes shared with the patent
12:13:13 6 office?

12:13:17 7 A. I don't recall seeing the notes in the
12:13:19 8 file history. But other than that, I don't know.

12:13:23 9 Q. Can you tell from this page of notes at
12:13:26 10 Exhibit 4 of your declaration whether any applets
12:13:32 11 are operating system independent or not?

12:13:36 12 A. No, I can't tell from this whether they
12:13:38 13 are.

12:13:50 14 MS. WHELAN: Okay. I think are we on
12:13:52 15 Exhibit 4?

12:13:53 16 THE REPORTER: Yes.

12:13:54 17 MS. WHELAN: Okay. Going to mark as
12:13:55 18 Exhibit 4 the declaration of Tony Givargis in
12:14:02 19 support of Apple's claim construction.

12:14:04 20 (Whereupon, Exhibit 4 was marked
12:14:04 21 for identification)

12:14:15 22 THE WITNESS: Thank you.

12:14:20 23 THE REPORTER: You're welcome.

12:14:53 24 BY MS. WHELAN:

12:14:53 25 Q. Do you recognize Exhibit 4?

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12:15:00 1 A. Yes.

12:15:01 2 Q. And you reviewed Dr. Givargis' declaration

12:15:04 3 in preparing your own declaration?

12:15:08 4 A. Yes.

12:15:14 5 Q. Okay. Could you turn to page 4, section

12:15:17 6 6, The Technology Background? And this covers

12:15:22 7 paragraph 19 through paragraph 22.

12:15:28 8 A. Okay.

12:15:28 9 Q. Is there anything you disagree with in

12:15:30 10 this section of Dr. Givargis' declaration?

12:15:45 11 A. Give me a second.

12:15:46 12 (Pause)

12:16:23 13 A. I think the statements as far as they go

12:16:25 14 are -- yes, they seem to be accurate.

12:16:43 15 Q. Do you recall from your review of the

12:16:45 16 declaration if there is anything else on which you

12:16:49 17 agree with Dr. Givargis?

12:16:53 18 A. I -- off the top of my head, no.

12:17:04 19 Q. Okay. In paragraph 42 on page 10 and

12:17:12 20 going through paragraph 54 on page 13, Dr. Givargis

12:17:19 21 discusses a number of references.

12:17:32 22 A. Yes.

12:17:32 23 Q. I think you said earlier that you reviewed

12:17:34 24 these descriptions, but you didn't review the

12:17:37 25 complete references?

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