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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

ERICH SPECHT, )

)

Plaintiff, )

)

vs. ) No. 09-cv-2572

)

GOOGLE, INC., )

)

Defendant. )

VIDEOTAPED DEPOSITION OF KENNETH A. ROBBLEE

November 5, 2009

Tacoma, Washington

Job No: 222416

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3	<p>1 For the Witness:</p> <p>2 Thomas G. Krilich Krulich, La Porte, West &amp; Lockner 3 524 Tacoma Avenue South Tacoma, Washington 98402-5416 4 253.383.4704 253.383.8053 Fax krulich@524law.com</p> <p>6</p> <p>7 Also present: Chad Reilly Videographer, Veritext Corporate Services</p> <p>8</p> <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</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	5
2	<p>1 EXAMINATION INDEX</p> <p>2 EXAMINATION BY: PAGE NO.</p> <p>3 Mr. Harris 7</p> <p>4 Mr. Fleming 131</p> <p>5 Mr. Harris 205</p> <p>6</p> <p>7 EXHIBIT INDEX</p> <p>8 EXHIBIT NO. DESCRIPTION PAGE NO.</p> <p>9 Exhibit No. 1 16-page subpoena. 11</p> <p>10 Exhibit No. 2 5-page e-mail chain between Tom Krulich and Herbert Finn. 22</p> <p>11</p> <p>12 Exhibit No. 3 2-page e-mail chain among Tom 31 Krilich, Herbert Finn, and Ken Robblee.</p> <p>13</p> <p>14 Exhibit No. 4 7-page collection of United 54 States Patent and Trademark Office documents.</p> <p>15</p> <p>16 Exhibit No. 5 12-page document related to 57 "Android" application and registration.</p> <p>17</p> <p>18 Exhibit No. 6 4-page collection of 68 documents regarding Erich Specht.</p> <p>19</p> <p>20 Exhibit No. 7 3-page document regarding 70 contact information for Erich Specht.</p> <p>21</p> <p>22 Exhibit No. 8 1 page of handwritten notes. 76</p> <p>23</p> <p>24 Exhibit No. 9 1-page call log. 81</p> <p>25</p> <p>26 Exhibit No. 10 11-page printout of Wayback 93 Machine archives.</p>	5
3	<p>1 Exhibit No. 11 1-page placeholder Web page 95 printout.</p> <p>2</p> <p>3 Exhibit No. 12A 1-page transcription from 111 audio CD.</p> <p>4 Exhibit No. 12B 1 audio CD. 111</p> <p>5 Exhibit No. 13 1 page of handwritten notes. 114</p> <p>6 Exhibit No. 14 2-page correspondence from 116 Tom Krulich to Erich and Megan Specht dated 5/5/09.</p> <p>7</p> <p>8 Exhibit No. 15 2-page Proposed Motion to 124 Intervene as an Additional Plaintiff and Motion for Joinder.</p> <p>9</p> <p>10</p> <p>11 Exhibit No. 16 1-page e-mail from Ken 205 Robblee to Richard Harris dated 5/15/09.</p> <p>12</p> <p>13 Exhibit No. 17 2-page e-mail chain between 207 Richard Harris and Ken Robblee dated 5/20/09.</p> <p>14</p> <p>15 (All exhibits retained by 16 Mr. Harris.) 17 18 19 20 21 22 23 24 25</p>	5

2 (Pages 2 to 5)

Veritext Corporate Services

800-567-8658

973-410-4040

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1 lose his federal trademark rights to "Android Data."  
 2 MR. FLEMING: Motion to strike;  
 3 nonresponsive.  
 4 Q (By Mr. Harris) Was it your understanding, sir, that  
 5 he could lose the registration itself if he didn't file  
 6 something that was due --  
 7 A Yes.  
 8 Q -- at the trademark office?  
 9 A Yes.  
 10 MR. FLEMING: Objection; lacks  
 11 foundation, calls for legal conclusion.  
 12 Q (By Mr. Harris) And did you tell him that or not?  
 13 MR. FLEMING: Objection; lacks  
 14 foundation.  
 15 THE WITNESS: I think we're going  
 16 the wrong direction here. I'm going to need my  
 17 counsel back if this is what's going to happen.  
 18 Q (By Mr. Harris) Well, he's -- do you want to take a  
 19 short -- just two minutes while you go out and get him?  
 20 Just so you understand, opposing counsel here is  
 21 asserting objections on the record, which obviously he  
 22 can do, but I can't advise you --  
 23 A Right.  
 24 Q -- if you're not comfortable.  
 25 A But it's -- it's -- it's dragging this thing out and

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1 out, and...(Pause.)  
 2 Q If we have an answer to the last question, I can move  
 3 on and maybe you'll --  
 4 A No.  
 5 Q -- feel more comfortable.  
 6 A Repeat the last question.  
 7 Q Well, let me rephrase it. You -- it was during this  
 8 first conversation that you told him what could happen  
 9 to the trademark registration if he doesn't file  
 10 something with the patent office or trademark office  
 11 very quickly?  
 12 MR. FLEMING: Objection; lacks  
 13 foundation, leading.  
 14 THE WITNESS: Yes.  
 15 Q (By Mr. Harris) Okay. And you said he called you back  
 16 at some point in time?  
 17 A Yes.  
 18 Q All right. Looking at the log of Defendant's Exhibit  
 19 9, is that the -- is that the incoming call on April  
 20 20th of the same day, a three-minute and a four-minute  
 21 call?  
 22 A Yes.  
 23 Q Okay. The first one on April 20 says it's incoming.  
 24 Did you receive that call or was that a voice mail left  
 25 for you?

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1 A No, that was -- let's see. How do I read this? The  
 2 incoming call was of course from Mr. Specht, and it was  
 3 three minutes. I believe I called him back at -- at  
 4 4:20 -- 4:24. I don't know if he was interrupted or I  
 5 was interrupted. I don't believe I was interrupted,  
 6 but I don't know the reasoning for that.  
 7 Q Okay. What was the gist of the conversations between  
 8 the two phone calls?  
 9 A That he had thought it over and -- and decided to just  
 10 let the trademark expire, not -- not make any filing.  
 11 Q That's what he told you?  
 12 A Yes.  
 13 Q Okay. Now, after that, you have those eight phone  
 14 calls that you went through the calling card program?  
 15 A Right.  
 16 Q Those were attempts to call him back? Or at least --  
 17 A Right.  
 18 Q -- some of those were attempts?  
 19 A Right.  
 20 Q And what was the purpose of your trying to get ahold of  
 21 him after the other conversation?  
 22 A Well, to perhaps try to salvage something out of the  
 23 negotiations we had. Seemed his primary concern was  
 24 the fact that he thought it was some type of a scam.  
 25 And so I -- you know, I thought of maybe doing a wire

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1 transfer, something of that sort. And I may have  
 2 mentioned at that point in time -- that's when I --  
 3 that's when I mentioned the possibility of doing some  
 4 type of a joint venture.  
 5 Q How did he respond to that?  
 6 A He was noncommittal. Or, you know, increasing the  
 7 purchase price, you know, to a few thousand dollars,  
 8 you know. I think I mentioned maybe four or five  
 9 thousand dollars.  
 10 Q And did he still decline?  
 11 A Right.  
 12 Q Did he still say, "I'm just going to let it go  
 13 abandoned"?  
 14 MR. FLEMING: Objection; lacks  
 15 foundation, leading.  
 16 THE WITNESS: Yeah, he maintained  
 17 his -- maintained the same position he had the day  
 18 before.  
 19 Q (By Mr. Harris) Okay. Now, you had mentioned that at  
 20 some point in time, you, yourself, tried to contact  
 21 Google; is that right, sir?  
 22 A Yes.  
 23 Q Okay. When you contacted Google, were you doing it on  
 24 behalf of yourself or on behalf of you and Specht?  
 25 A Myself.

110	<p>1 Q Okay. Now, you had mentioned that you tried several</p> <p>2 times to call Google and sometimes you left messages</p> <p>3 and -- well, I'll let you testify to -- were you able</p> <p>4 to reach Google every time that you tried to contact</p> <p>5 them?</p> <p>6 A An answering machine or -- I can't quite remember, you</p> <p>7 know, whether I talked to a live person. Most -- most</p> <p>8 the time it was the answering -- answering service, I</p> <p>9 believe.</p> <p>10 Q Okay. Did you leave messages every time you were --</p> <p>11 A No. No.</p> <p>12 Q Did you leave at least one message?</p> <p>13 A I left at least one message, I believe.</p> <p>14 Q Okay. Now, Mr. Robblee, just so you know, Google did</p> <p>15 receive one -- at least one that we know of -- one</p> <p>16 voice-recorded message from you. And we -- we want to</p> <p>17 play that message for you. We have it on disc here.</p> <p>18 We want to play it for you, but before we do, we want</p> <p>19 to put before you -- we attempted to transcribe it</p> <p>20 just so --</p> <p>21 A Uh-huh.</p> <p>22 Q -- if your voice trails off and everything, you could</p> <p>23 make sure that that's what you were saying. We're</p> <p>24 going to ask you after you hear this -- after you hear</p> <p>25 this short message, I'll ask you a question -- a few</p>	112	<p>1 12A. It's a transcript that we attempted to make of a</p> <p>2 disc that we're going to be playing of the recording</p> <p>3 that you -- of the voice mail you left at Google. If</p> <p>4 you'd like to follow along, we'll have a few questions</p> <p>5 for you afterwards.</p> <p>6 Mr. Finn, if you'd go ahead and play the voice</p> <p>7 mail.</p> <p>8 (Audio recording played.)</p> <p>9</p> <p>10 Q (By Mr. Harris) Okay. Mr. Robblee, were you able to</p> <p>11 hear the tape-recording of the voice mail?</p> <p>12 A Yes.</p> <p>13 Q And were you able to follow along with the transcribed</p> <p>14 version of it?</p> <p>15 A Yes.</p> <p>16 Q Did it appear to track it pretty accurately, sir?</p> <p>17 A Yes.</p> <p>18 Q Okay. Can you confirm for the record, Mr. Robblee,</p> <p>19 that that, in fact, was your voice that we heard on</p> <p>20 that disc recording?</p> <p>21 A Yes.</p> <p>22 Q And is that the message that you left with Google on</p> <p>23 one of these calls --</p> <p>24 A Yes.</p> <p>25 Q -- that you've identified on your call log?</p>
111	<p>1 questions about it. But in the meantime, I'd like to</p> <p>2 proceed --</p> <p>3 A Uh-huh.</p> <p>4 Q -- to mark as Defendant's Exhibit No. 12 at this point?</p> <p>5 MR. MURPHY: 12.</p> <p>6 MR. HARRIS: Thanks. I'm sorry?</p> <p>7 Okay, yeah, we're going to mark this as 12A, with the</p> <p>8 court reporter's permission. And then we're going to</p> <p>9 separately mark the actual disc as 12B so that</p> <p>10 collectively they're 12.</p> <p>11 THE WITNESS: If you don't mind, I'm</p> <p>12 going to ask Tom Krilich to step in.</p> <p>13 MR. HARRIS: Sure.</p> <p>14 MR. FINN: Would you like to go off?</p> <p>15 MR. HARRIS: Yeah, let's go off the</p> <p>16 record till we get him here.</p> <p>17 THE VIDEOGRAPHER: The deposition</p> <p>18 will now go off the record. The time is 1:51 p.m.</p> <p>19 (Exhibit Nos. 12A and 12B</p> <p>20 marked for identification.)</p> <p>21</p> <p>22 THE VIDEOGRAPHER: We are now back on</p> <p>23 the record. The time is 1:55 p.m. Please proceed.</p> <p>24 MR. HARRIS: Mr. Robblee, I've placed</p> <p>25 before you what's been marked as Defendant's Exhibit</p>	113	<p>1 A Yes.</p> <p>2 Q Okay. Do you know which call it would have been?</p> <p>3 A I don't know.</p> <p>4 Q But it's one of them?</p> <p>5 A Probably one of the last ones, if not...(Pause.)</p> <p>6 Q Okay. I notice the last one of April 21st is four</p> <p>7 minutes while the others are shorter?</p> <p>8 A Yeah.</p> <p>9 Q Would that suggest to you that --</p> <p>10 A That's probably it.</p> <p>11 Q Okay. All right. In that particular recording, you</p> <p>12 said that you're working with Erich Specht with regard</p> <p>13 to the trademark for "Android." Do you see that, sir?</p> <p>14 A Uh-huh.</p> <p>15 Q And at the time, what did you mean by that?</p> <p>16 A Well, that I've been having discussions with Erich</p> <p>17 Specht, regards to the "Android" trademark and -- and</p> <p>18 what his intentions were with it and whether perhaps</p> <p>19 I could, you know, acquire the rights to it.</p> <p>20 Q Okay. Now, you had mentioned earlier in your testimony</p> <p>21 that when you ended your conversations with Mr. Specht,</p> <p>22 he told you that he was declining your offer and that</p> <p>23 he was going to go ahead and not renew it. Do you</p> <p>24 recall that testimony, sir?</p> <p>25 A Yes.</p>

114	<p>1 MR. FLEMING: Objection; lacks 2 foundation, mischaracterizes prior testimony. 3 Q (By Mr. Harris) In your voice recording, the actual 4 voice mail, you say that depending on what you and 5 Google might agree to, that will determine whether or 6 not Mr. Specht renews it or not. Do you see that, sir? 7 It's the third and fourth lines from the bottom. 8 A The reason I said that is because I didn't quite 9 believe that he was going to necessarily let it expire. 10 And if I could somehow broker a deal or a situation or 11 do something along those lines, that -- that was my 12 intent. 13 Q Okay. You base that reference to whether or not he 14 renews it or not upon what Mr. Specht told you about 15 the fact that he might not renew, but you referred to 16 the claim that he might renew it, correct? 17 A Right. 18 Q Okay. 19 MR. FLEMING: Objection; vague, 20 lacks foundation. 21 MR. HARRIS: I'd like to proceed to 22 mark this next document as Defendant's Exhibit 13. 23 (Exhibit No. 13 marked for 24 identification.) 25 ////</p>	116	<p>1 Q -- you'll see that it starts off with the words, 2 "Hello, uh, Terri." 3 A Uh-huh. 4 Q Do you see that? 5 A Yeah. 6 Q Was it your understanding that you were on Terri's 7 voice mail when you left this message? 8 A Yes. 9 Q And that would be Terri Chen, as indicated on your 10 notes of Defendant's Exhibit 13? 11 A Yes. 12 Q Okay. I'd like to mark this next document as 13 Defendant's Exhibit 14. 14 (Exhibit No. 14 marked for 15 identification.) 16 17 Q (By Mr. Harris) Do you have Defendant's Exhibit 14 in 18 front of you, Mr. Robblee? 19 A Yes, I do. 20 Q This purports -- this appears to be a letter that was 21 sent by your attorney, Thomas Grilich (phonetic) -- 22 Krilich, rather, on May 5th of 2009. Do you see that, 23 sir? 24 A Yes. 25 Q Did you request or authorize the sending of this letter</p>
115	<p>1 Q (By Mr. Harris) Do you have Exhibit 13 in front of 2 you? 3 A Yes, sir. 4 Q That appears to be a sheet of your handwritten notes, 5 is it not, sir? 6 A That's correct. 7 Q Okay. Is the entirety of that page in your 8 handwriting, or in your hand? 9 A Yes. 10 Q Okay. Do you recall what these notes are from? 11 A They were just notes taken on the 21st, just a Google 12 phone number, some Google employees in the trademark 13 department, and the "Android" serial number. 14 Q Were you trying to reach these individuals, Chen and 15 Tsao, at Google to talk to them specifically? 16 A Right. 17 Q And why were you trying to reach them, if you recall? 18 A Well, I thought they were -- and I don't -- I don't 19 recall if I was told that would be the appropriate 20 person to talk to, but I understood they were -- I 21 don't know if they're attorneys, but they worked in the 22 legal department handling trademarks. 23 Q Okay. If you go back to Defendant's Exhibit 12A, the 24 transcript of your tape, of your voice mail message -- 25 A Yes.</p>	117	<p>1 from your attorney, Mr. Krilich, to Mr. Specht? 2 A Yes. 3 Q Did you ask him to send it? 4 A Yes. 5 Q Okay. I notice the date of this particular letter is 6 May 5th, 2009. 7 A Yes. 8 Q Why are -- why were you asking Mr. Krilich to send a 9 letter to the Spechts on that particular day? 10 A Well, I didn't ask him to send it on that particular 11 day. I asked him to send it as soon as possible after 12 I had become aware that Mr. Specht filed a civil action 13 in -- in federal court regarding the "Android" 14 trademark, and I wanted to see -- to put him under 15 notice that I feel I have an interest in whatever he 16 might obtain as a result of renewing that trademark 17 and -- and I would pursue it in court, if necessary. 18 Q By the time this letter was sent on May 5th, 2009, did 19 anything come to your attention with regard to 20 Mr. Specht's filing those papers that you recommended 21 he file with regard to the -- the Section 8 or Section 22 9 filing with the U.S. trademark office? 23 A Umm. 24 Q And you could certainly refer to the letter to refresh 25 your recollection.</p>