

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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5 J.T. COLBY & COMPANY, INC.

6 d/b/a/ BRICK TOWER PRESS,

7 J. BOYLSTON & COMPANY,

8 PUBLISHERS, LLC and

9 IPICTUREBOOKS, LLC,

10 Plaintiffs

Case No.:

11 V.

11-CIV4060

12 APPLE, INC.,

13 Defendant

14 - - - - - x

15
16 Deposition of Richard S. Goldhor, Ph.D.
17

18 Tuesday, January 31, 2012

19 9:58 a.m.
20

21 Goodwin Procter, LLP

22 53 State Street

23 Boston, Massachusetts

24 Reported by: Deborah Roth, RPR/CSR

25 Job # 45894

1 and patents and stuff like that. So that's
2 the flavor of it.

3 Q. When did you start working for Family
4 Systems?

5 A. I started working for Family Systems in
6 the mid-'90s. I forget the exact date, but it
7 was after Symantec had acquired Delrina and
8 then did the typical kind of big company thing
9 and shut down various site operations of
10 Delrina that they weren't interested in.

11 So our operation in Boston was shut
12 down in '95, and at that point I started doing
13 various kinds of consulting, and it was
14 shortly after that I started working for
15 Family Systems.

16 Q. Who is Brian Reynolds?

17 A. Brian Reynolds is an English man. He's
18 a very interesting fellow, self-made. He was,
19 I believe, the founder and certainly the head
20 of a company called Micro Focus, who -- their
21 main claim to fame, as far as I understand it,
22 is that they developed a system for developing
23 and maintaining Cobalt programs that ran on
24 PCs.

25 So their customers were enterprises

1 involved in that work, but I knew of it, and I
2 would occasionally be in on conference calls
3 to Brian and so on.

4 Q. As far as you know, does Brian Reynolds
5 maintain the same residences in California,
6 Manhattan, England and Jamaica?

7 A. I don't believe so, but I'm really
8 not -- I'm really not sure. I believe that he
9 has sold some of those places. I'm under the
10 impression that he spends most of his time in
11 Jamaica these days.

12 Q. Did you work on ibook products for
13 Family Systems?

14 A. Yes, I did.

15 We're talking about now Family
16 Systems --

17 Q. Family Systems.

18 A. -- version of the --

19 Q. Ibook product.

20 A. Yes. I wrote -- one of my first
21 assignments, actually, was to work with Brian
22 to write the ibook patent, and in addition to
23 that I had some involvement in writing the
24 very earliest code for the ibook and creating
25 some ibook material, and generally managing

1 those processes. GOLDHOR

2 Q. Can you describe what Family Systems
3 ibook was?

4 A. Family Systems ibook was a system and
5 an architecture for allowing a community to
6 create material, including text, but not
7 limited to text, and to publish it using web
8 technologies, but to also make it possible for
9 multiple members of the community to edit that
10 material, comment on it, create their own
11 versions of it and so forth.

12 Q. In some way it sounds like a precursor
13 to Facebook; would that be it?

14 A. More like a precursor to Wiki.

15 Q. Wikipedia?

16 A. Yeah.

17 Q. Who came up with the name "ibook" for
18 the Family Systems ibook products?

19 A. I don't remember. The chances are
20 pretty good that it was Brian. Brian was
21 deeply involved in everything that ibook is
22 and became and so forth, but I don't
23 explicitly remember who came up with the name.

24 Q. When you started working for Family
25 Systems, was the idea for Family Systems ibook

1 effort. GOLDHOR

2 Offhand, I can't think of other
3 examples, but that was a typical idea of who
4 Brian wanted to start using this technology.

5 MS. SHEEHAN: Mark this as
6 Goldhor 3.

7 (GOLDHOR EXHIBIT NO. 3 MARKED)

8 Q. Do you recognize this document?

9 A. I don't believe I've seen it before.
10 It looks like introductory instructions for
11 people who might get interested in starting to
12 use ibooks.

13 Q. I'll draw your attention to
14 Paragraph 5.

15 A. The one that starts "Use this" --

16 Q. Paragraph 6, "ibooks."

17 A. Yeah.

18 Q. In that paragraph there's a list that
19 states, "This is great for research teams,
20 professional writers and collaborative teams
21 in businesses and organizations where the most
22 convenient place for coauthors to meet is on
23 the web."

24 A. Uh-huh.

25 Q. Is this an accurate description of who

1 Family Systems intended to use ibook?

2 MS. RAY: Objection to form.

3 A. That's certainly a great description.
4 I wouldn't say it's an exclusive description,
5 that is there are other people, but all of
6 those groups, research teams, professional
7 writers, collaborative teams and businesses
8 and organizations, yes, all of those kinds of
9 groups would have been among the targeted
10 users for ibook systems.

11 Q. Who would you add to this list?

12 MS. RAY: Objection to form.

13 A. It's more a matter of who I know Brian
14 would add to the list, which would be just
15 about everyone. Families to record family
16 journals. There was a young fellow, I believe
17 Vikram Singh, who was traveling around the
18 world, and Brian established an ibook for him
19 to use to record his travels. So there's
20 another example.

21 MS. SHEEHAN: Would you mark this as
22 Goldhor 4.

23 (GOLDHOR EXHIBIT NO. 4 MARKED)

24 A. Yeah, look at that.

25 Q. Do you recognize this document?

1 ibook concept and its typical of the way an
2 ibook book page would look.

3 Q. What is tri.ibook.com?

4 A. As I recall, it was a website that
5 Brian set up to make it easy for people who
6 wanted to try out the ibook technology to do
7 so. So it would provide a place, for
8 instance, where they could create an ibook.
9 They wouldn't have to have their own server.

10 Q. If other users downloaded ibook's
11 software, they would use their own server?

12 MS. RAY: Objection to form.

13 A. The ibook technology had a server side
14 and a client side, and Brian would certainly
15 be -- would have been happy to provide the
16 server side technology to anyone who wanted to
17 develop a web server that supported the ibook
18 technology, but most people were hesitant
19 about getting in that deep.

20 So he created a website where anyone
21 could come and basically develop their own
22 ibook, and so he was providing the server as a
23 way to make it easier for people to get
24 started.

25 Q. Did users pay to use Family Systems

1 ibook? GOLDHOR

2 MS. RAY: Objection. Form.

3 A. The reason that I'm hesitating is that
4 Brian's rules about usage were very complex.
5 He actually spent a lot of time trying to work
6 through the issues of what the rights were,
7 but a fairly close short answer is no. Under
8 most circumstances, use of the ibook
9 technology would have been free.

10 Q. What do you mean by rights issues?

11 A. Brian was very aware of intellectual
12 property rights. He wanted to assert his
13 rights to intellectual property in the form of
14 the patent, for instance, in order to make
15 that technology more widely available and to
16 prevent it from being bottled up by others.

17 And as far as the -- what I mean the
18 sort of usage rules, I'm thinking of the kind
19 of rules for open source software, for
20 instance. As a matter of fact, I remember at
21 one point he did a lot of work with an
22 attorney who had expertise in the area of -- I
23 should remember the kind of official phrase.
24 Let's say open-source groups who, like the
25 Free Software Foundation, who wanted to

1 A. Not to my knowledge.

2 Q. Did Family Systems ever offer
3 electronic versions of fiction books already
4 in print?

5 MS. RAY: Objection. Lack of
6 foundation.

7 A. I think that Brian would have been
8 delighted to have someone use the ibook
9 technology to create fiction, but if you mean
10 did -- were there instances where people
11 uploaded existing published works of fiction?

12 Q. Yes.

13 A. No. Again, these rules of use that I
14 was describing to you, I know that that was
15 one of the issues that was thrashed out at
16 great length, and from time to time various
17 rules were proposed. But in general, Brian
18 was much more focused on people using the
19 ibook technology to create new material.

20 Q. So, for example, an electronic version
21 of Moby Dick would not be available through
22 Family Systems ibook products?

23 MS. RAY: Objection. Lack of
24 foundation. Calls for speculation.

25 A. That statement per se isn't true, as

1 far as I know. Brian wasn't into setting
2 bounds. He wanted to make the ibook
3 technology very widely available. He wanted
4 people to obey the law in their use of it, so
5 if someone had the legal right to the content
6 of Moby Dick and had the legal right to use
7 ibook technology to publish it, that would
8 have been fine with Brian.

9 Q. But the purpose of Family Systems ibook
10 products was to create new material?

11 MS. RAY: Objection. Lack of
12 foundation. Misstates his testimony. Calls
13 for speculation.

14 A. Brian wanted to make the ibook
15 technology as widely available as possible and
16 would have been delighted to have all sorts of
17 people use it for different things that he
18 wasn't interested in personally. He very much
19 didn't want people to break the law, so I
20 would say he would be perfectly happy again if
21 someone had the legal right to use this
22 technology to publish what's now called, you
23 know, eBooks or something like that.

24 He wouldn't have been interested in
25 that particular use of it, but he would have

1 been pleased that there was someone who was
2 using it in a way that he wasn't interested in
3 almost.

4 MS. SHEEHAN: I want to mark the
5 next two exhibits as Goldhor 11 and Goldhor
6 12.

7 (GOLDHOR EXHIBIT NOS. 11 AND 12 MARKED)

8 Q. Do you recognize Goldhor 11?

9 A. Yes. This is another version of the
10 ibook ibook. I can't read the contributor.

11 Q. What is Goldhor 11?

12 A. It's a printout of the beginning of an
13 ibook.

14 Q. Did you work on this material?

15 A. I don't remember this particular form,
16 but I know for certain that I worked on the
17 ibook ibook.

18 I wish I could read the contributor.

19 And I recognize the -- in general,
20 the various different technologies that are
21 listed here.

22 Q. Is this an accurate list of the ibook
23 products in 2001?

24 MS. RAY: Objection. Lack of
25 foundation.

1 A. Well, the items under product, you
2 mean?

3 Q. Yes.

4 A. These were products or ideas for
5 products, except for this thing called
6 progress -- well, it does seem to be -- I
7 don't remember that, the very bottom one,
8 create and manage task lists, but these were
9 products or products to be, yes.

10 Q. Is this a list of products that would
11 be available in 2001 on ibook.com?

12 A. In some sense, yes, in some form.

13 Q. Looking at Goldhor 12, do you recognize
14 this screen shot?

15 A. I recognize it by form and stuff like
16 that. I don't think I've seen this particular
17 version before.

18 Q. Is this a list of the ibook system?

19 MS. RAY: Objection. Lack of
20 foundation. Calls for speculation.

21 A. I'd say it's a list of the family of
22 interrelated ibook services. I think of them
23 more as services than products, but either
24 way. A list of interrelated ibook
25 technologies.

1 Man. I believe it is the ibook trademark that
2 we got as part of Family Systems.

3 Q. I point your attention to the language
4 starting with 4 colon --

5 A. Uh-huh.

6 Q. -- saying "Computer hardware and
7 software used to support and create
8 interactive user modifiable electronic book."

9 A. Yes.

10 Q. Is that an accurate description of the
11 scope of trademark rights for Family Systems?

12 A. That we registered for --

13 MS. RAY: Objection. Lack of
14 foundation. Calls for a legal opinion. Calls
15 for speculation.

16 A. Yes, that is I remember that we
17 registered the trademark for use, both on
18 hardware and software, and it was specifically
19 for interactive electronic books.

20 Q. What are interactive user modifiable
21 electronic books?

22 A. It's the --

23 MS. RAY: Objection. Lack of
24 foundation. Calls for speculation.

25 A. It's the ibook technology that we've

1 described, that is a web-based technology for
2 supporting collaborative creation and
3 modification of content.

4 May I add something?

5 As far as the computer hardware
6 goes, it was always Brian's intent that there
7 would be hardware that would act as a platform
8 for the software. Today you would describe it
9 as a -- as smart phone or tablet technology
10 that would enable you to do all this neat
11 stuff, holding something that was specifically
12 designed to support the ibook technology as
13 opposed to being a general purpose computer
14 with a keyboard and so on.

15 Q. Did you work on that hardware
16 technology?

17 A. The hardware technology was never
18 implemented, so I did not work on it.

19 MS. SHEEHAN: Mark this as
20 Goldhor 19.

21 (GOLDHOR EXHIBIT NO. 19 MARKED)

22 Q. Do you recognize Goldhor 19?

23 A. No, I don't.

24 Q. I'll represent to you that this came
25 from the United States Patent and Trademark

1 agree not to contest Apple's use of ibook for
2 its notebook computer?

3 MS. RAY: Objection to form. Lack
4 of foundation.

5 A. That's my layperson's understanding of
6 what was going on. My understanding is that
7 if -- without that jointly-signed affidavit,
8 that Apple would have had trouble getting
9 their registration, getting their trademark
10 registered.

11 MS. SHEEHAN: Mark this as
12 Goldhor 20.

13 (GOLDHOR EXHIBIT NO. 20 MARKED)

14 Q. Do you recognize this document?

15 A. Without reading through it in detail,
16 but this looks like the consent agreement, the
17 agreement that Apple and Family Systems
18 signed.

19 Yeah, Lawrence Wertheimer is the
20 person whose name -- he lived in New York and
21 he was the director of Family Systems.

22 Q. Pointing your attention on Page 1 --

23 A. Uh-huh.

24 Q. -- to the description in Paragraph 2 of
25 the Family Systems use of the mark ibook --

1 A. Uh-huh. GOLDHOR

2 Q. -- is this an accurate description,
3 based on your understanding?

4 A. "Computer software used to support and
5 create interactive, user modifiable,
6 electronic books and related goods and
7 services." Yes.

8 Q. And based on your knowledge, Family
9 Systems never expanded its use of the mark
10 ibook from what is described here?

11 A. As far as I know --

12 MS. RAY: Objection. Lack of
13 foundation. Objection to form. Calls for
14 speculation.

15 A. As far as I know, during the time that
16 I was working for Family Systems, everything
17 that we did with the mark falls comfortably
18 under this description.

19 Q. Were you involved at all with Family
20 Systems' assignment of its trademark
21 registration to Apple?

22 A. The complete assignment, no involvement
23 whatsoever.

24 Q. Have you spoken to Brian Reynolds about
25 it?

1 server somewhere, and there was parts that a
2 user would download onto his or her machine.

3 Q. And the user would download that
4 software onto a machine.

5 At that time, it would have been --
6 would it have been a desktop computer?

7 A. It could have been desktop or laptop.

8 Q. And I believe you testified that Brian
9 Reynolds, who was -- I believe you said he was
10 the owner of Family Systems, correct?

11 A. I don't know the legal arrangement, but
12 he was the mover and shaker.

13 Q. And I believe you testified that
14 Mr. Reynolds envisioned at some point having
15 ibook software that could be used on a smart
16 phone or tablet device, correct?

17 MS. SHEEHAN: Objection.

18 A. Just to clarify, there weren't things
19 called smart phones and tablets, but he was
20 very interested in something that would be
21 easy to walk around with and would be
22 optimized for this use, as opposed to being a
23 general purpose computer.

24 Q. But at the time that you were working
25 with the ibook technology, things like smart

1 phones and tablet computers didn't exist yet,
2 correct?

3 A. Certainly not in their present form.

4 Q. The ibook technology, including the
5 ibook software, would allow users to read
6 books created by other people, correct?

7 A. Any kind of content.

8 Q. Any kind of --

9 A. If someone had created a novel and put
10 it up in -- using the ibook technology, then
11 people could read that.

12 Q. The content that could be accessed
13 using the ibook technology would include both
14 text and visual material, correct?

15 A. Yes, that's correct.

16 Q. And I believe you testified that
17 Mr. Reynolds did not envision any particular
18 limitations on the type of content that could
19 be accessed, correct?

20 MS. SHEEHAN: Objection.

21 A. That's correct. In general, it was
22 intended to be very open-ended enabling
23 technology that could be used for all sorts of
24 things.

25 Q. The ibook technology, including the

1 ibook software, could have been used by
2 individuals to make books they had written
3 available to others, correct?

4 A. Yes.

5 Q. The ibook technology, including the
6 ibook software, could be used by commercial
7 publishers to make their books available to
8 others, correct?

9 A. The technology certainly could be used
10 that way. As I said, Brian struggled with the
11 whole notion of commercial use, and at various
12 times there were various limitations
13 suggested. But as far as the technology goes,
14 this was technology that could be used either
15 by an individual or an organization.

16 Q. And as it was designed and made
17 available, the ibook technology, including the
18 ibook software, could really be used by
19 anybody to make content available to others;
20 is that correct?

21 A. This is anyone who agreed to the
22 licensing terms --

23 Q. Assuming --

24 A. -- and had a computer and access to the
25 Internet.

1 Q. Assuming they had downloaded the
2 software and agreed to the terms associated
3 with the software, and then had it loaded onto
4 some kind of device.

5 A. That's correct, with one caveat. I
6 don't know how important it is, but Brian
7 really strove to put in a requirement that it
8 only be used for material that would advance
9 the common good or something like that. He
10 had language that might appear very
11 idealistic, but he was quite serious about it.
12 And so that was -- that limitation on the type
13 of material would have been the only
14 limitation.

15 Q. So that in terms of the subject matter,
16 it sounds like of the content he had hopes for
17 what it would be used for?

18 A. Yes.

19 Q. And you said that the ibooks
20 technology -- excuse me, ibook technology,
21 including the ibook software, could be used to
22 support and create user-modifiable electronic
23 books, correct?

24 A. Yes.

25 Q. Is it fair to say that a user could

1 read a book or other content using that
2 technology?

3 A. You mean if someone had created -- let
4 me answer it this way. If someone had
5 created, let's say, a novel, had written a
6 novel using the ibook technology, then a user
7 could access the ibook and read the novel just
8 using that software.

9 Q. They could use the ibook software to
10 look for material, find it, decide they wanted
11 to read it and then read it using the
12 software?

13 A. That's correct, yes.

14 Q. And if a user, in reading some content
15 that they had found using the ibook software,
16 decided that they wanted to add to or modify
17 that content, for example, by adding a note,
18 they could do that as well, correct?

19 A. If they had the appropriate
20 permissions, they could, yes.

21 Q. I believe you mentioned that the ibook
22 software was available as a free download,
23 correct?

24 MS. SHEEHAN: Objection.

25 A. Well, from time to time and for various