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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

- - -

J.T. COLBY & COMPANY, : Case Number
 INC. d/b/a BRICK TOWER : 11-CV-40260
 PRESS; J. BOYLSTON & : (DLC)
 COMPANY, PUBLISHERS LLC :
 and IPICTUREBOOKS :
 LLC, :
 Plaintiffs, :
 vs. :
 APPLE, INC., :
 Defendant. :

- - -

October 2, 2012

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Videotaped deposition of APPLE,
 INC., through HAL E. BORDEN, ESQUIRE, taken
 at the offices of Veritext National Court
 Reporting Company, 1801 Market Street, Suite
 1800, Philadelphia, Pennsylvania 19103,
 beginning at 10:15 a.m., before LINDA ROSSI
 RIOS, RPR, CCR and Notary Public.

- - -

VERITEXT NATIONAL COURT REPORTING COMPANY
 MID-ATLANTIC REGION
 1801 Market Street - Suite 1800
 Philadelphia, Pennsylvania 19103

1 HAL E. BORDEN, ESQUIRE

2 marks?

3 A. I don't know whether he did or
4 not.

5 Q. And when I say "verbally," you
6 understand I mean --

7 A. Orally.

8 Q. Yes. So if I had asked it as
9 when I -- to the best of your knowledge, did
10 Glenn Gundersen ever communicate orally with
11 anyone at Apple concerning plaintiffs' marks?

12 A. I don't know. In the context
13 of that question, prior to January 27th,
14 speaking about the two applications and
15 ancillary online information that I've been
16 referring to.

17 Q. Can you describe with any
18 greater specificity the, quote/unquote,
19 ancillary online information that you
20 referred to?

21 A. The extent to which I remember
22 is that it was a description of Byron Preiss
23 who was a founder or had other significant
24 involvement in the applicant in question.

25 Q. Do you recall what it said

1 HAL E. BORDEN, ESQUIRE

2 about Byron Preiss?

3 A. I believe that it indicated
4 that Byron Preiss had died and his company in
5 question had gone into bankruptcy.

6 Q. Was this a news article?

7 A. I don't recall the context.

8 Q. Was it a bankruptcy filing?

9 A. I don't believe it was a
10 bankruptcy filing.

11 Q. When you say "online
12 information," was this information found
13 through the Internet or was it found through
14 a professional search database?

15 A. To the best of my recollection,
16 it was found through the Internet.

17 Q. At that time, did you have an
18 understanding that Byron Preiss and the
19 bankruptcy, those facts related in that
20 online source, referred to the same entity as
21 were the applicants for the two abandoned
22 registrations?

23 A. I believe so.

24 Q. That was an understanding you
25 had then, just to clarify?

1 HAL E. BORDEN, ESQUIRE

2 be added to the cover sheet. But
3 particularly if the paralegal is the
4 one that is doing the subsequent
5 searching. If Mr. Gundersen or I are
6 doing follow-up work online, in those
7 situations, in my experience, it's
8 less typical that all of that, all of
9 those strategies are reported on this
10 sheet.

11 BY MR. CHATTORAJ:

12 Q. Still in connection with the
13 iBooks trademark clearance work, as you sit
14 here today, you're not aware of any searches
15 carried out by Apple or those acting on
16 Apple's behalf other than the iBooks plural
17 form on the Google Web site that are not
18 reflected in this document. Right?

19 A. I don't recall specific
20 instances of such search strategies being run
21 with the exception that we have been talking
22 about online information relating to two
23 abandoned applications, I don't recall the
24 context in which that arose. It would have
25 been likely a follow up of some kind. I

1 HAL E. BORDEN, ESQUIRE

2 don't recall who performed that follow up.
3 So to the extent that you consider that a
4 search strategy, that's not reflected here.

5 Q. At the top of the first page,
6 there's a heading that says: "MULTINATIONAL
7 REGISTERED TRADEMARKS." Underneath it is a
8 list of countries and jurisdictions with the
9 words "PRELIMINARY SEARCH STRATEGIES" in all
10 caps. Do you see that?

11 A. I do.

12 Q. What does preliminary search
13 strategies mean in this context?

14 A. Typically it would indicate
15 that the searches that follow on this
16 template are part of a preliminary search.
17 Looking at this sheet, it's clear to me that
18 that's an inaccurate description of the
19 strategies that were run because there are
20 significant number of strategies. And having
21 a recollection of seeing a stack of results
22 that arose from those strategies, it's clear
23 to me that that's not a preliminary search
24 except to the extent with respect to foreign
25 jurisdictions. We don't consider what we at