

**Exhibit N**

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

EMG TECHNOLOGY, INC., )  
 )  
 Plaintiff, )  
 )  
 -vs- ) CASE NO. 6:08CV-447-LED  
 )  
 APPLE, INC., )  
 AMERICAN AIRLINES, INC., )  
 BLOOMBERG, L.P., )  
 CONTINENTAL AIRLINES, INC., )  
 UNITED PARCEL SERVICE, INC., )  
 )  
 Defendants. )  
----- )

**CERTIFIED COPY**

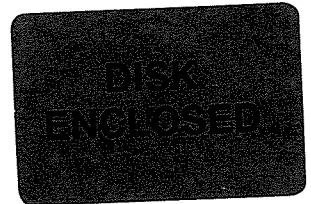
DEPOSITION OF SABIN HEAD, Ph.D.

DATE: September 9, 2009

TIME: 9:20 a.m.

LOCATION: MANATT, PHELPS & PHILLIPS, LLP  
One Embarcadero Center  
30th Floor  
San Francisco, California

REPORTED BY: Anne M. Torreano, CSR, RPR, CCRR  
Certified Shorthand Reporter  
License Number C-10520



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1 A P P E A R A N C E S:

2 For the Plaintiff:

3 MANATT, PHELPS & PHILLIPS, LLP  
4 BY: ROBERT D. BECKER  
5 BY: SHAWN G. HANSEN  
6 1001 Page Mill Road  
7 Building 2  
8 Palo Alto, California 94304  
9 (650) 812-1300  
10 rbecker@manatt.com  
11 shansen@manatt.com

12 For the Defendant, APPLE, INC.:

13 FISH & RICHARDSON, P.C.  
14 BY: GARLAND STEPHENS  
15 BY: JOHN R. LANE  
16 1 Houston Center  
17 1221 McKinney, 28th Floor  
18 Houston, Texas 77010  
19 (713) 654-5306  
20 stephens@fr.com  
21 jlane@fr.com

22 APPLE, INC.  
23 BY: JEFF RISHER  
24 1 Infinite Loop, MS 3-SU  
25 Cupertino, California 95014  
(408) 974-4237  
jrisher@apple.com

For the Defendant, AMERICAN AIRLINES, INC.:

20 NIXON PEABODY, LLP  
21 BY: CHRISTOPHER L. OGDEN  
22 200 Page Mill Road  
23 Second Floor  
24 Palo Alto, California 94306  
25 (650) 320-7751  
cogden@nixonpeabody.com

(CONTINUED ON THE NEXT PAGE)

1 A P P E A R A N C E S:

2 The Videographer:

3 McMAHON & ASSOCIATES, LLC  
4 BY: STEVE SPENCER  
5 97 East St. James Street  
6 Suite 101  
7 San Jose, California 95112  
8 (408) 298-6686  
9  
10  
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DEPOSITION OF SABIN HEAD, Ph.D.

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DEPOSITION OF SABIN HEAD, Ph.D.

09:20:31 1 THE VIDEOGRAPHER: Good morning. We're going  
09:20:42 2 on record. The time on the screen is 9:20 a.m.  
09:20:47 3 Today's date is September 9th, 2009. We're located at  
09:20:52 4 the offices of Manatt, Phelps & Phillips, LLP, One  
09:20:59 5 Embarcadero Center, 30th Floor, San Francisco,  
09:21:03 6 California.

09:21:03 7 This is the beginning of tape No. 1 of the  
09:21:05 8 videotaped deposition of Sabin Head; case name: EMG  
09:21:10 9 Technology versus Apple, Inc., et al., venued in the  
09:21:14 10 United States District Court, Eastern District of  
09:21:17 11 Texas, Tyler Division, Case No. 6:08-CV-447.

09:21:26 12 My name is Steve Spencer, a legal video  
09:21:30 13 specialist representing McMahon & Associates, San Jose,  
09:21:34 14 California.

09:21:34 15 The court reporting firm is Pulone &  
09:21:36 16 Stromberg. Today's court reporter is Anne Torreano.

09:21:38 17 Counsel, please state your name, your office,  
09:21:41 18 and whom you represent in this action.

09:21:44 19 MR. BECKER: This is Robert Becker from Manatt  
09:21:47 20 Phelps. With me is my colleague, Shawn Hansen. We  
09:21:50 21 represent the plaintiff, EMG Technology, and also the  
09:21:53 22 witness.

09:21:53 23 MR. STEPHENS: Garland Stephens of Fish &  
09:21:55 24 Richardson, representing Apple, Inc. With me today is  
09:21:58 25 John Lane of Fish & Richardson, and Jeff Risher is also

DEPOSITION OF SABIN HEAD, Ph.D.

09:22:02 1 here, who is in-house for Apple.

09:22:05 2 MR. OGDEN: I don't have a microphone, but I'm  
09:22:10 3 Chris Ogden, Nixon Peabody, here representing American  
09:22:16 4 Airlines.

09:22:17 5 THE VIDEOGRAPHER: Please swear in the  
09:22:19 6 witness.

08:45:26 7 SABIN HEAD, PH.D.,  
08:45:26 8 *called as a witness, after having been duly sworn by*  
08:45:26 9 *the Certified Shorthand Reporter to tell the truth, the*  
08:45:26 10 *whole truth, and nothing but the truth, testified as*  
08:45:26 11 *follows:*

08:45:26 12 EXAMINATION

09:22:19 13 BY MR. STEPHENS:

09:22:26 14 Q. Good morning, Dr. Head.

09:22:29 15 A. Good morning.

09:22:29 16 Q. Before we start, I wanted to ask a few things  
09:22:32 17 of your counsel on the record.

09:22:35 18 MR. STEPHENS: Mr. Becker, you mentioned  
09:22:36 19 before we started that the defendants had all agreed  
09:22:42 20 not to oppose your proposed motion to amend your 3-1  
09:22:50 21 contentions, and I'm wondering if the documents that  
09:22:54 22 Dr. Head has there are the amended ones.

09:22:58 23 MR. BECKER: Yes, they are.

09:22:58 24 MR. STEPHENS: Okay. So we're going to  
09:23:00 25 proceed today then at least primarily on EMG

DEPOSITION OF SABIN HEAD, Ph.D.

09:23:04 1 Technology's second amended Rule 3-1 disclosure; is  
09:23:08 2 that right?

09:23:10 3 MR. BECKER: Yes.

09:23:10 4 MR. STEPHENS: Okay. Thank you. Just wanted  
09:23:12 5 to clarify that.

09:23:13 6 BY MR. STEPHENS:

09:23:13 7 Q. Dr. Head, could you state and spell your name  
09:23:16 8 for the record?

09:23:17 9 A. Yes, it's Sabin Head. The name is S-a-b-i-n.  
09:23:23 10 Last name is H-e-a-d.

09:23:25 11 Q. And what's your home address?

09:23:27 12 A. 1617 Bittern Drive in Sunnyvale, California,  
09:23:31 13 94087.

09:23:32 14 Q. Thanks.

09:23:58 15 (DEPOSITION EXHIBIT 1 MARKED.)

09:23:58 16 BY MR. STEPHENS:

09:23:58 17 Q. Dr. Head, the court reporter's handed you a  
09:24:01 18 copy of Apple, Inc.'s Notice of 30(b)(6) Deposition of  
09:24:04 19 Plaintiff EMG Technology.

09:24:06 20 Do you see that?

09:24:06 21 A. Yes.

09:24:07 22 Q. My understanding is that you've been  
09:24:09 23 designated by the plaintiff EMG Technology to testify  
09:24:14 24 on its behalf on the topics shown on the last page of  
09:24:20 25 this exhibit; is that right?



DEPOSITION OF SABIN HEAD, Ph.D.

12:00:16 1 there, so how do I know who did it?

12:00:19 2 Q. Okay.

12:00:19 3 A. And as I say, you know, the guy down -- the  
12:00:21 4 ape down the street is not a good selection because he  
12:00:23 5 doesn't speak English.

12:00:24 6 Q. But my point is, you don't know whether it was  
12:00:27 7 translated or reformatted from the code in Exhibit G;  
12:00:30 8 right? It's possible that it was not; right?

12:00:33 9 MR. BECKER: Object. Form.

12:00:34 10 THE WITNESS: Anything's possible.

12:00:35 11 BY MR. STEPHENS:

12:00:35 12 Q. Including that specifically, that --

12:00:37 13 A. Anything is possible. I don't want to include  
12:00:39 14 that specifically. Anything is possible. You can  
12:00:42 15 generate any --

12:00:43 16 Q. Some things are not possible; right? Flapping  
12:00:45 17 your arms and flying across the room is not possible.

12:00:48 18 A. You haven't seen me try.

12:00:49 19 Q. I'd like to.

12:00:53 20 A. I'm sorry about that.

12:00:56 21 The answer, though, is that this duplication  
12:01:03 22 is here.

12:01:04 23 Q. Is there anything you can point to that rules  
12:01:09 24 out the possibility that the display in figure 1 and  
12:01:11 25 the XHTML -- I'm sorry, in figure 1 of Exhibit H and

12:01:16 1 the XHTML in Exhibit I were written separately and not  
12:01:22 2 reformatted from the HTML in Exhibit G?

12:01:26 3 A. I think Einstein at some point said something  
12:01:32 4 about the delicacy of fit.

12:01:33 5 Q. I'm not interested in commentary. I'm asking  
12:01:35 6 you to point to anything that rules it out.

12:01:37 7 A. Delicacy of fit rules it out. The same  
12:01:40 8 language, the same words. I'm not here to interpret  
12:01:43 9 that sort of thing.

12:01:44 10 You know, I'm saying that this is being  
12:01:46 11 presented as is. It sure looks like it's the same  
12:01:51 12 information. Bloomberg sure does want you to think  
12:01:54 13 that you're getting the information from Bloomberg  
12:01:57 14 that's on their Bloomberg site. I'm sure they think  
12:02:00 15 that. Have I asked Bloomberg if that's the case? No,  
12:02:03 16 I don't know that.

12:02:04 17 But it's a prima facie thing. Here is news:  
12:02:08 18 "Most Asian Stocks Fall on North Korea Missile  
12:02:12 19 Concern." We see that in the HTML. We see that on the  
12:02:17 20 other site. You know, the prima facie evidence is that  
12:02:25 21 this is a translation of that, and the -- how the  
12:02:32 22 translation was performed, whether it was done by  
12:02:34 23 committee, whether it was done by a tool, whether it  
12:02:36 24 was done by a programmer that was hired to do all that,  
12:02:39 25 whether it was done by something provided by Apple, I

12:02:42 1 wasn't there.

12:02:43 2 Q. And, in fact, you don't even know whether it  
12:02:44 3 was done; right? You do know -- you've expressed your  
12:02:48 4 belief that it was done, but you can't point to  
12:02:49 5 anything that rules out the possibility that they were  
12:02:52 6 done separately; right?

12:02:54 7 A. I don't think I'm here to do that. I don't  
12:02:56 8 think that that's the stage that we're in in the -- in  
12:03:00 9 the legal proceedings. No discovery has been done.

12:03:05 10 Q. Okay. So my next question --

12:03:06 11 A. So -- so I want to claim again that these are  
12:03:13 12 evidence -- sufficient evidence to think that that is  
12:03:17 13 exactly what happened, was that it was translated from  
12:03:19 14 one site to the other.

12:03:20 15 Q. Okay.

12:03:20 16 A. It's not saying that it was. It's saying that  
12:03:23 17 it's sufficient evidence to go ahead and ask how was  
12:03:26 18 this done, did it infringe the claim. So that's all  
12:03:30 19 I'm trying to say here.

12:03:32 20 We are very early in the contentions, and  
12:03:34 21 these are examples. They are not exclusive. They are  
12:03:38 22 not exhaustive. They are not further investigated.  
12:03:44 23 Then we can go outside. We don't have the keys to get  
12:03:47 24 into Bloomberg's offices, so it's -- it's where we are  
12:03:53 25 in the investigation, and I'm not trying to go any

12:03:55 1 further than that.

12:03:56 2 Q. Does EMG contend that if, in fact, it was done  
12:04:05 3 separately, that Apple would still infringe?

12:04:07 4 MR. BECKER: Object. Form.

12:04:11 5 BY MR. STEPHENS:

12:04:11 6 Q. In other words, if the XHTML in Exhibit I were  
12:04:16 7 coded separately from the XHTML in Exhibit G, is it  
12:04:23 8 EMG's contention that Apple infringes anyway?

12:04:25 9 MR. BECKER: Object. Form. And I'm going to  
12:04:27 10 say that that's a claim construction question and  
12:04:29 11 therefore is out of bounds and precluded by Rule 2.5.

12:04:35 12 MR. STEPHENS: Are you directing him not to  
12:04:36 13 answer?

12:04:36 14 MR. BECKER: I'm directing him not to answer.  
12:04:38 15 We're not -- because we're not providing a witness on  
12:04:38 16 this.

12:04:38 17 MR. STEPHENS: All I'm asking you for is your  
12:04:41 18 contentions. You're directing him not to answer?

12:04:43 19 MR. BECKER: Yeah.

12:04:43 20 MR. STEPHENS: Okay.

12:04:48 21 BY MR. STEPHENS:

12:04:48 22 Q. Now, if you could -- now, I've asked you a  
12:04:52 23 series of questions about the reformatting, and we've  
12:04:56 24 talked primarily about the Bloomberg web sites that are  
12:04:58 25 identified in Appendix B claim chart for claim 58.

13:22:23 1 not to answer under 2.5.

13:22:25 2 BY MR. STEPHENS:

13:22:25 3 Q. Okay. What leads you to conclude that it's  
13:22:33 4 two-dimensional?

13:22:34 5 A. It's two-dimensional.

13:22:36 6 Q. But what facts lead you to conclude that?

13:22:39 7 A. That's my interpretation of two-dimensional.

13:22:44 8 Q. What? It's flat?

13:22:46 9 A. Definition of two-dimensional, yes.

13:22:49 10 Q. Okay. Thanks.

13:22:50 11 Now, if you could, like you did before, label  
13:22:55 12 the navigation matrix.

13:23:01 13 MR. BECKER: Object. Form.

13:23:02 14 THE WITNESS: As different from the -- from  
13:23:08 15 the two-dimensional matrix of cells?

13:23:11 16 MR. STEPHENS: Yeah, if they're the same, you  
13:23:13 17 can just indicate that.

13:23:19 18 MR. BECKER: Object. Form.

13:23:20 19 THE WITNESS: Navigation matrix?

13:23:28 20 MR. STEPHENS: Yeah, navigation matrix.

13:23:34 21 BY MR. STEPHENS:

13:23:34 22 Q. So it's the same thing then as the  
13:23:35 23 two-dimensional layer of cells?

13:23:37 24 MR. BECKER: Object. Form. And again,  
13:23:39 25 that --

13:23:40 1 THE WITNESS: In this -- in this -- in this  
13:23:43 2 screen, yes.

13:23:44 3 BY MR. STEPHENS:

13:23:44 4 Q. Okay. That's what I was asking.

13:23:46 5 A. Yes.

13:23:47 6 Q. Now, could you indicate for me, or you can  
13:24:09 7 just tell me, what leads you to conclude that each cell  
13:24:12 8 in the navigation matrix is exclusive to a separate,  
13:24:18 9 single navigation option associated with a specific  
13:24:26 10 unique input?

13:24:26 11 MR. BECKER: Object. Form. And that sounds  
13:24:28 12 like a claims construction question, so I'm going to  
13:24:29 13 instruct him not to answer.

13:24:29 14 MR. STEPHENS: No, I'm asking him to describe  
13:24:31 15 for me the factual basis for the allegation that that  
13:24:33 16 display includes that element.

13:24:37 17 MR. BECKER: I don't understand your position.

13:24:39 18 MR. STEPHENS: I'll ask again.

13:24:40 19 THE WITNESS: I will answer that, if you would  
13:24:41 20 like.

13:24:42 21 MR. STEPHENS: I would.

13:24:43 22 THE WITNESS: It is obvious to me.

13:24:45 23 BY MR. STEPHENS:

13:24:45 24 Q. And what is it obvious from?

13:24:46 25 A. From the layout of that screen.

13:36:57 1 Q. Okay. What does EMG contend is the specific  
13:37:09 2 unique input of claim 58?

13:37:14 3 MR. BECKER: Object. Form.

13:37:19 4 THE WITNESS: Well, I --

13:37:19 5 MR. BECKER: Wait, wait. I'm going to  
13:37:21 6 instruct not to answer.

13:37:21 7 Maybe you just want to rephrase that. Under  
13:37:24 8 2.5 it sounds like you're asking him clear claim  
13:37:26 9 construction.

13:37:26 10 MR. STEPHENS: No, I'm asking him -- I'm  
13:37:27 11 sorry. I'll rephrase it. Fair enough.

13:37:29 12 BY MR. STEPHENS:

13:37:29 13 Q. What does EMG contend in the iPhone is the  
13:37:36 14 specific unique input required by claim 58 of the '196  
13:37:43 15 patent?

13:37:44 16 A. I think that has the same problem.

13:37:47 17 Q. So you can't tell me?

13:37:49 18 A. That, I think, is something to be argued out,  
13:37:54 19 but ...

13:37:54 20 Q. So you can't tell me?

13:37:56 21 A. That's correct. I would have to go to my own  
13:37:58 22 personal, you know, sense of what these things are.

13:38:03 23 Q. Okay. Now, you said that you could pick a  
13:38:14 24 different example and show me the single navigation  
13:38:18 25 option. Why don't you go ahead and do that. At least

15:57:37 1 Q. And you haven't identified any of them as  
15:57:40 2 meeting the limitations of the simplified user  
15:57:42 3 interface?

15:57:43 4 A. Well, the fact that the changes are made to  
15:57:46 5 transcode from one format to another is what, I think,  
15:57:51 6 the contention is about, and the sister site has the  
15:57:55 7 transformed code from the --

15:58:00 8 Q. So any transformation is enough then. Is that  
15:58:02 9 your testimony?

15:58:02 10 A. Well --

15:58:03 11 MR. BECKER: Object. Form.

15:58:04 12 BY MR. STEPHENS:

15:58:04 13 Q. So you don't need to make a contention about  
15:58:06 14 the specific transformation done here. All you're  
15:58:08 15 saying is -- all EMG contends is that their  
15:58:12 16 transformation is done, therefore, there's  
15:58:18 17 infringement; right?

15:58:18 18 MR. BECKER: That to me sounds like a claim  
15:58:18 19 construction question.

15:58:18 20 MR. STEPHENS: I'm asking for what the  
15:58:19 21 contention is. If there's a contention that some  
15:58:21 22 specific change in formatting is made and that  
15:58:23 23 infringes, I want to know what it is.

15:58:25 24 MR. BECKER: Well, if you phrase it like --

15:58:26 25 THE WITNESS: We've already --



15:58:26 1 MR. BECKER: Hold on. I'm making an  
15:58:28 2 objection.

15:58:28 3 If you phrase it like that, fine. If you ask  
15:58:31 4 him all that is required, which is what your original  
15:58:33 5 question said, I'm going to instruct not to answer.

15:58:33 6 MR. STEPHENS: Well, I'm asking the question  
15:58:35 7 as I just phrased it.

15:58:36 8 MR. BECKER: Well, then --

15:58:37 9 BY MR. STEPHENS:

15:58:37 10 Q. Is there a contention that a specific  
15:58:39 11 formatting change infringes? And if so, what is that  
15:58:43 12 formatting change?

15:58:45 13 A. You're going to hate me for reading the claim  
15:58:52 14 language again.

15:58:52 15 Q. Yeah, you can't -- if you're just going to  
15:58:55 16 read what is there in the chart, just say that's what  
15:58:57 17 you're going to do.

15:58:58 18 A. That's what I'm going to do.

15:58:59 19 Q. Okay. Well, then I'll accept that as what you  
15:59:02 20 intend to be your answer and move to strike it as  
15:59:06 21 nonresponsive. Let's move on.

15:59:10 22 This has been a profound waste of time, and  
15:59:13 23 I'm frankly considering moving the Court for the cost  
15:59:16 24 of this deposition, because essentially all you've done  
15:59:17 25 to me all day is read the document to me, and of

17:19:20 1 Q. Now, is that the claimed navigation matrix  
17:19:24 2 that we see on the screen there?

17:19:26 3 MR. BECKER: Object. Form.

17:19:30 4 BY MR. STEPHENS:

17:19:30 5 Q. Of claim 1 of the '196 patent? I guess I  
17:19:33 6 should be a little more specific.

17:19:34 7 MR. BECKER: Object. Form.

17:19:35 8 THE WITNESS: This is this matrix in the  
17:19:40 9 patent.

17:19:42 10 MR. STEPHENS: Did you get that?

17:19:43 11 Can you hold that up? Hold it up near the  
17:19:45 12 screen and point to it again.

17:19:47 13 THE WITNESS: Okay. The images that are shown  
17:19:49 14 are not exactly the same, and it's three-by-four  
17:19:55 15 instead of four-by-four, but it has the same --

17:19:59 16 THE VIDEOGRAPHER: Back in front of you. Just  
17:20:02 17 hold it there. I'll zoom in.

17:20:04 18 BY MR. STEPHENS:

17:20:04 19 Q. And that's the figure shown on the front page  
17:20:06 20 of the '845 patent; right?

17:20:08 21 A. Yes, and this is similar to it, but it's not  
17:20:10 22 an exact replica, but it has the same format of -- one  
17:20:19 23 of the segments of this is -- spans several of the  
17:20:26 24 segments in a vertical form of the other, and the  
17:20:29 25 screen that we're looking at has one of the segments

17:20:32 1 spanning two of the other --

17:20:35 2 Q. But otherwise, it's an implementation of the  
17:20:37 3 preferred embodiment?

17:20:38 4 A. Similar, yes. It's a mock-up of the  
17:20:41 5 implementation of the preferred embodiment.

17:20:42 6 Q. Okay.

17:20:43 7 A. An example of it.

17:20:44 8 Q. And it's a navigation matrix as claimed in  
17:20:46 9 claim 1 of the '196 patent; is that right?

17:20:49 10 MR. BECKER: Object. Form.

17:20:50 11 And that requires claim construction, so I'll  
17:20:52 12 instruct you not to answer that.

17:20:53 13 MR. STEPHENS: No, I'm asking whether EMG  
17:20:55 14 contends whether that reflects the navigation matrix of  
17:20:58 15 claim 1 of the '196 patent. That's what I'm asking  
17:21:01 16 about. He said it's a mock-up, that it reflects some  
17:21:04 17 things, maybe not everything.

17:21:06 18 MR. BECKER: I still have the same objection,  
17:21:07 19 but I'm not going to --

17:21:10 20 MR. STEPHENS: Okay.

17:21:10 21 MR. BECKER: -- require him not to answer.

17:21:11 22 BY MR. STEPHENS:

17:21:11 23 Q. Does that reflect the navigation matrix of the  
17:21:14 24 '196 patent?

17:21:14 25 A. It reflects the -- one of the instances -- one

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REPORTER'S CERTIFICATE

The undersigned Certified Shorthand Reporter licensed in the State of California does hereby certify:

I am authorized to administer oaths or affirmations pursuant to Code of Civil Procedure, Section 2093(b), and prior to being examined, the witness was duly administered an oath by me.

I am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, nor am I financially interested in the outcome of this action.

I am the deposition officer who stenographically recorded the testimony in the foregoing deposition, and the foregoing transcript is a true record of the testimony given by the witness.

Before completion of the deposition, review of the transcript [x] was [ ] was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

In witness whereof, I have subscribed my name this 27<sup>th</sup> day of September, 2009.

  
ANNE M. TORREANO, CSR No. 10520