

EXHIBIT 12

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

BEDROCK COMPUTER)
TECHNOLOGIES LLC)
-vs-) DOCKET NO. 6:09cv269
YAHOO!, INC.) Tyler, Texas
12:15 p.m.
May 9, 2011

TRANSCRIPT OF TRIAL
AFTERNOON SESSION
BEFORE THE HONORABLE LEONARD DAVIS,
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFF:
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COURT REPORTERS:
MS. JUDY WERLINGER
MS. SHEA SLOAN

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1 advantage goes up and up for candidate deletion as Dr.
2 Jones measured it?

3 A. Again, because of the way Dr. Jones set up the
4 test, this would not be realistic of what a Yahoo!
5 server would see, because as those packets would come in
6 more and more rapidly, there would be other controls
7 that would prevent those packets from getting there.

8 Q. Mr. Turner, did you ever plot your 64,000
9 anywhere on this chart in your report?

10 A. Actually after reading through Dr. Jones'
11 report I went through and tried to do that, and I was
12 unable to recreate the results because I didn't have
13 enough information.

14 Q. So you can't tell the jury today where your
15 test of 64,000 would fall on the Jones' chart, fair?

16 A. Not on this particular Jones' chart, but on
17 another one I could.

18 Q. But what we do know is, as more and more
19 traffic from different IP addresses comes in, more and
20 more records get created in that routing cache, don't
21 they?

22 A. That is correct.

23 Q. Now, sir, do you remember giving your
24 deposition in this lawsuit?

25 A. Yes, I do.

1 Q. And so that's the extra line we're typing on
2 the screen and inserting into the code?

3 A. That's right.

4 Q. We still at this point have an equivalent
5 structure or identical structure of the '120 patent?

6 A. Say again.

7 Q. With this, do we still -- does this meet the
8 requirements of the '120 patent?

9 A. No. No, it doesn't. I mean, it's moving that
10 code around. You still have an assess for scoring. You
11 still have intervening operations, and you still have
12 the access for deletion.

13 Q. And is it your understanding that this moving
14 of the code and changing the accused product is
15 permissible under patent law?

16 A. My understanding is that it's not, but what
17 we're looking for, in the accused product is the
18 identical structure to be found in the accused product
19 or equivalent structure to be found in the accused
20 product.

21 Rearranging the accused product in order to
22 make it comport with the requirements of the claims, as
23 far as I understand, is improper.

24 Q. And I think Dr. Jones testified about some of
25 their sign posts that were called locks. I think you've

1 got a demonstrative on that.

2 What did he say about the locks?

3 A. So Dr. Jones suggested that the lock and
4 unlock, which I've highlighted here in red, those lines
5 of code were somehow sign posts to him or indicators
6 that a single access had taken place. And I disagree.
7 I mean, if you want to think about -- if you want to
8 think about locks maybe this helps. Maybe the jury can
9 think about it this way: If I -- if I want to be sure
10 that a stranger can't get into my basement, one of the
11 ways of doing that is locking the front door so a
12 stranger can't enter my house and come into the
13 basement. But that doesn't preclude me, while I'm in my
14 house, from entering and leaving the basement numerous
15 times.

16 That's kind of what these locks are that
17 Dr. Jones has suggested. They identify the beginning
18 and the ending of the insertion that is being performed,
19 but in reality, there's multiple accesses that are being
20 performed within those locks.

21 So that lock and unlock pair, to me, doesn't
22 signify what Dr. Jones has suggested, I think, if I
23 understand -- if I understand it correctly, it does not
24 signify what I think Dr. Jones is suggesting.

25 Q. And so those logs don't define one access?

1 A. That's correct.

2 Q. In fact --

3 A. There are multiple accesses within those
4 locks.

5 Q. In fact, there are multiple unlocks in this
6 code, isn't there?

7 A. As a matter of fact, there's multiple lock and
8 unlock pairs. I've highlighted some of the lines here.
9 There's another unlock there. There's another unlock
10 in the -- that's right.

11 Q. So some are arbitrary to use locks to define
12 an access?

13 A. I don't see how the locks define the access.
14 The locks preclude another program for altering the
15 linked list while the owner of the lock holds the lock.
16 That's it.

17 Q. Okay. So to sum it up, again, we do not have
18 a record search means when the linked list is accessed,
19 but we're using multiple accesses again?

20 A. That's correct.

21 Q. Okay. I want to -- and so we can strike that
22 out here on the slide that you've prepared, which also
23 strikes out the last element.

24 I want to go back with respect to the
25 generation ID, that also did not have expired records;

1 A. Yes, they did.

2 Q. And did Bedrock submit additional testimony of
3 Mark Jones to the Patent Office?

4 A. Yes.

5 Q. And did they also submit three additional
6 expert reports of another expert, a Lawrence Pileggi
7 (phonetic spelling), to the Patent Office?

8 A. Yes, they did at that time.

9 Q. Is there any evidence that Yahoo! was able to
10 submit any documents or talk to the Patent Office in
11 connection with the reexamination?

12 A. No. Yahoo! wasn't involved in the
13 reexamination.

14 Q. Now, I want to talk to you about some of the
15 prior art in this case, okay?

16 Did Bedrock submit an IDS?

17 A. Yes.

18 Q. How many IDS's did they submit?

19 A. Bedrock submitted two IDS's in the
20 reexamination.

21 Q. And what are those dates?

22 A. The first one was on June 24th, 2010, and the
23 second one was on December 14th, 2010.

24 Q. And an IDS is an information disclosure
25 statement; is that right?

1 A. That's correct.

2 Q. So I'm going to call them the June IDS and the
3 December IDS, okay?

4 A. Yes.

5 MS. DOAN: The June IDS is Exhibit 147C,
6 Casey.

7 Q. (By Ms. Doan) It looks like on the June IDS
8 they listed four pages of references?

9 MS. DOAN: They begin on Page 3, I
10 believe, Casey. Right.

11 Q. (By Ms. Doan) And there's -- do you see up
12 there --

13 MS. DOAN: Sorry, go back, Casey.

14 Q. (By Ms. Doan) -- on the date on the upper
15 left-hand corner it says June 24th, 2010?

16 A. Correct, yes.

17 Q. And then on these four pages --

18 MS. DOAN: Casey, if you could scroll
19 through them.

20 Q. (By Ms. Doan) -- you see there is a list of
21 references?

22 A. Right. This is an IDS, and references were
23 submitted by Bedrock, yes.

24 Q. And would you agree with me there's about 61
25 of those on there?

1 A. We counted them; yes, there's 61.

2 Q. And then on the December IDS --

3 MS. DOAN: Casey, if you could go to
4 147E, please. And Page 2 and 3, please.

5 Q. (By Ms. Doan) In the December IDS they
6 submitted 26 additional references; is that right?

7 A. That's correct.

8 Q. And Bedrock submitted all of these to the
9 Patent Office, correct?

10 A. They submitted this list, yes.

11 Q. All right. Now I want to talk about the NRL
12 code, which is a piece of prior art that's at issue in
13 this case, okay?

14 A. Yes.

15 Q. After your review of the June IDS --

16 MS. DOAN: Casey, that's 147C.

17 Q. (By Ms. Doan) Is the NRL code listed anywhere
18 by Bedrock on the June IDS?

19 A. No, it's not.

20 Q. From your review of the patent reexamination
21 file, was the June -- was the NRL code submitted to the
22 Patent Office in June?

23 A. No, the code was not submitted in June.

24 Q. From your review of the December IDS, was the
25 NRL code listed anywhere on the December IDS?

1 A. Was not listed.

2 Q. Did Bedrock submit a copy of the -- of the NRL
3 code in the December submission?

4 A. No.

5 Q. Now we're going to go over here to the prior
6 art Linux. You understand there's three versions that
7 are at issue here, 1.3.51, 1.3.52, and 2.0.1?

8 A. Yes.

9 Q. From your review of the June IDS where there
10 were 61 references, was any of these versions of prior
11 art Linux identified in an information disclosure to the
12 Patent Office?

13 A. Not on the June IDS, no.

14 Q. Were any of the three versions of Linux
15 submitted to the Patent Office in June?

16 A. No.

17 Q. Now, from your review of the December IDS,
18 were any of the three versions of prior art Linux listed
19 on that December IDS?

20 A. Yes, they were listed on the form on the
21 December IDS.

22 Q. So they were listed on December IDS. Can you
23 tell from your review of the patent file, the
24 reexamination file, whether indeed the code was
25 submitted in December?

1 A. I can't tell from looking at the PTO website
2 because the PTO website actually blocks out
3 publications. So I couldn't tell whether it was
4 actually submitted or not.

5 Q. Now, Mr. Godici, Bedrock says they submitted
6 the NRL code in the pleadings in the invalidity
7 contentions in this case. Is that sufficient?

8 A. No, that's not sufficient.

9 Q. Why?

10 A. Well, it doesn't comply with Rule 98. Rule 98
11 requires in an IDS that there be this listing and then
12 there be a copy of the actual publication submitted.

13 Q. Now, I want to talk about the notice of intent
14 to issue a reexam.

15 MS. DOAN: Casey, can you pull up
16 Slide 6, please. That's a mouthful.

17 Q. (By Ms. Doan) A notice of intent to issue a
18 reexamination certificate, and that acronym is NIRC. Is
19 that what the Patent Office refers to it as?

20 A. The Patent Office called it a NIRC, yes.

21 Q. What is a NIRC?

22 A. A NIRC is an indication, a letter that goes
23 out from the Patent Examiner that says: I've completed
24 my second -- my review, my reexamination of the claims
25 and I'm about to render my decision and have it

1 code that we've been talking about.

2 Q. And as far as your review of the reexamination
3 file, did the Patent Office have before it either the
4 NRL code or the three prior art Linux versions when it
5 issued the NIRC or when it issued its reexamination?

6 A. No.

7 Q. Thank you.

8 MS. DOAN: Pass the witness.

9 THE COURT: Anything further?

10 MR. HEJNY: Just one, Your Honor.

11 RECROSS-EXAMINATION

12 BY MR. HEJNY:

13 Q. Mr. Godici, regardless of what prior art was
14 submitted to the Patent Office, Claims 1 and 2, as
15 reissued by the Patent Office in the reexamination
16 certificate, are presumed valid, correct?

17 A. Well, the claims are presumed valid. I just
18 wanted to make sure that the jury understands that
19 NRL --

20 Q. Mr. Godici, yes or no, they are presumed
21 valid?

22 A. They are presumed valid, yes.

23 Q. Thank you.

24 MR. HEJNY: No further questions.

25 THE COURT: Anything further?

1 A. No, not to my knowledge.

2 Q. Would the Linux prior art had been material
3 information to the Patent Office that should have been
4 considered.

5 A. Yeah, yeah, I think they should have seen
6 this.

7 Q. And there's no evidence in this case that it
8 has been considered?

9 A. No, I haven't seen any.

10 MR. HEJNY: Object, Your Honor. May we
11 approach?

12 THE COURT: Yes, you may.

13 (Bench conference.)

14 THE COURT: What was the question?

15 MR. HEJNY: Mr. Chaikovsky asked this
16 witness: And there's no evidence in the record that the
17 Examiner considered that prior art, did they? It is the
18 same thing we had before. It violates the Motion in
19 Limine. It is a collateral attack on the Patent Office.

20 He's not qualified to opine as to what
21 the Examiner did or didn't do. Mr. Godici couldn't
22 testify about it. Mr. Williams can't testify about
23 it --

24 (Attorneys talking at the same time.)

25 THE COURT: Just a minute, counsel. One

1 variables like changing traffic, you know, one condition
2 sees traffic and another condition sees other traffic,
3 well, that's not going to be a scientific comparison.

4 Q. So is what you're trying to do basically test
5 a Yahoo! server with candidate deletion under a stream
6 of simulated traffic, test that same server without
7 candidate deletion under the same simulated stream of
8 traffic, and compare performance?

9 A. Yes, sir. That way I hold exactly one thing
10 changing in a scientific way.

11 Q. And how important as a variable is the
12 traffic?

13 A. The traffic is what determines what goes into
14 the routing cache. That's what we're talking about
15 here. So if the traffic is inconsistent, well, you
16 won't have a consistent experiment on the routing cache.

17 Q. So we've seen a lot of comparisons about your
18 test versus Mr. Turner's. Did you use firewalls, did
19 you use a router, you know, versions of code, all of
20 those. How do those differences that are alleged
21 compare in importance to the traffic?

22 A. Those are all secondary considerations.

23 Things like the firewalls, those are not going
24 to remove good traffic; they are just there to remove
25 bad traffic.