

EXHIBIT 1

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

BEDROCK COMPUTER)
TECHNOLOGIES LLC)

DOCKET NO. 6:09cv269

-vs-)

Tyler, Texas
9:00 a.m.

YAHOO!, INC.)

April 27, 2011

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

A P P E A R A N C E S

FOR THE PLAINTIFF:

MR. DOUGLAS A. CAWLEY
MR. THEODORE STEVENSON, III
MR. SCOTT W. HEJNY
MR. JASON D. CASSADY
McKOOL SMITH
300 Crescent Court, Ste. 500
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MR. ROBERT M. PARKER
MR. ROBERT CHRISTOPHER BUNT
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COURT REPORTERS:

MS. JUDY WERLINGER
MS. SHEA SLOAN

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produced by a Computer.

1 We think the second reexam should come
2 in. Our client, objectively and subjectively, would
3 look at the entire record in front of the Patent Office,
4 not only the first reexam that's been issued, but the
5 second reexam, which is pending. And it's pending on
6 some of the same art which was the subject of the first
7 reexam.

8 We think that the declaration by
9 Mr. Koomey should come in. That declaration was
10 excluded in the Google trial. Their damage expert,
11 Mr. Weinstein, relies upon an article by Mr. Koomey.
12 Mr. Koomey has a declaration which he says that reliance
13 on the article is not proper.

14 Again, that would go both to the
15 objective and subjective issues raised by Seagate. We
16 think that the settlement agreements ought to come in,
17 including the most recent settlement agreements, which
18 would show what others in this -- that have been sued on
19 this patent are settling for. And we think that the
20 Google verdict and the request for damages to Google
21 should come in.

22 Bedrock asked, as you know, Your Honor,
23 for \$180 million. The jury came back at 5 million.
24 We think all these things go to the issue of
25 willfulness, both on the objective as well as the

1 about Google, which is suggested by Bedrock's counsel as
2 to the issues of validity and I think infringement, put
3 in the entire verdict; put in the verdict which shows
4 that the jury came back with an award of \$5 million, and
5 couple that with a request that their damage case is
6 \$183 million, and the jury only saw fit to award 3 cents
7 per dollar.

8 THE COURT: Okay. That's denied. And
9 your request for infringement is denied as well.

10 MR. CAWLEY: Okay, Your Honor.

11 THE COURT: All right. What else?

12 MS. DOAN: Your Honor --

13 MR. MORISSEAU: One other point, Your
14 Honor.

15 MS. DOAN: Your Honor, with respect to
16 the issue of reexam, I know that you've just --

17 THE COURT: With respect to what?

18 MS. DOAN: The issue of reexam, and I
19 know -- the second pending reexam, I know that you've
20 just denied it with respect to the willfulness issue.

21 Just for the record, I wanted to make
22 sure the Court was aware of Judge Ward's opinion in the
23 Tyco versus E-Z-EM case where he specifically allowed
24 the pending reexam to come in to rebut the evidence of
25 willfulness.

1 I understand the Court's already ruled on
2 this, but we wanted to make sure and bring that case to
3 the Court as well as the Tesco versus Weatherford case
4 where in the Southern District in Houston, the same
5 issue -- the pending reexam was allowed to rebut the
6 evidence of willfulness.

7 THE COURT: I think this has been briefed
8 and argued several times. So thank you for your
9 additional thoughts.

10 MS. DOAN: Yes, Your Honor. And just --

11 THE COURT: But it's not necessary.

12 MS. DOAN: Thank you, Your Honor.

13 And just one more point for the record.
14 And I know that Mr. Cawley said that in i4i and in this
15 other case -- I'm sorry; I can't remember the name of
16 it -- that those issues of reexam -- this is a different
17 issue here, Your Honor.

18 The pending -- the second reexam is based
19 on the same prior art as the first reexam. It is --

20 THE COURT: Counsel, you're rearguing a
21 position I've already ruled on. Thank you.

22 MS. DOAN: Thank you, Your Honor.

23 THE COURT: All right. Anything further
24 before we bring the jury in?

25 MR. STEVENSON: Your Honor, two things

1 walk through the normal operation, we can choose a
2 candidate entry or piece of data for free.

3 Compare that description of his idea to
4 Dr. Nemes's summary of his patent, a patent that he had
5 gotten back in 1999.

6 Remember, Dr. Nemes says: During the
7 normal data insertion or retrieval -- that's the same
8 thing as Mr. Miller's walk through the destination of
9 the hash chain.

10 And Dr. Nemes says in his invention that
11 the expired obsolete records are identified and removed.
12 That's exactly the same thing as Mr. Miller is saying.
13 During the walk, we can choose a candidate entry for
14 free.

15 David Miller and Alexey Kuznetsov put Dr.
16 Nemes's invention into Linux; and you'll learn, Ladies
17 and Gentlemen, that in 2004, Yahoo! adopted that version
18 of Linux and put Dr. Nemes's invention into their own
19 computers.

20 And furthermore, you will hear that when
21 they decided to do it, they took no steps to ensure that
22 they would not be infringing the patent.

23 Throughout the early 2000s, Dr. Nemes
24 began to wonder, as the internet grew, if people might
25 be using his invention. He knew what it was good for.

1 knowing about this lawsuit, their new code still
2 infringes the patent.

3 In short, you're going to hear, Ladies
4 and Gentlemen, that Yahoo! needs this patent, and they
5 haven't been able to stop infringing and do without it.

6 Well, if you don't believe Yahoo!'s
7 lawyers when they tell you that we don't infringe, then
8 I suspect they'll tell you: Well, how about this? The
9 patent is invalid.

10 Now, yes, it's true that the Patent
11 Office studied this for two years back in the late '90s,
12 but we still hope that you'll find that it's invalid.

13 First of all, Judge Davis has already
14 given you some valuable guidance about how you should
15 approach this issue of validity of the patent in this
16 case, and here is what he read to you just a few moments
17 ago.

18 He told you that the granting of a patent
19 by the United States Patent & Trademark Office carries
20 with it the presumption that the patent is valid.

21 But, you know, an extraordinary thing
22 happened in this case. It doesn't happen very often,
23 but it did in this case. You'll learn in this case that
24 anyone who wants to, can ask the Patent Office to
25 reconsider whether or not a patent is valid.

1 About a year ago, someone -- we don't
2 know who. We know some lawyers in Houston paid by a
3 mystery person or company, asked the Patent Office to
4 reconsider the validity of Dr. Nemes's '120 patent, and
5 the Patent Office agreed to do that.

6 Well, Dr. Nemes and Bedrock in response
7 said: You know what? If the Patent Office is going to
8 look at this thing again and reconsider the validity,
9 let's give them everything.

10 Let's take all of the prior art patents
11 and articles and references that Yahoo! talks about in
12 this case, and let's send it all to the Patent Office so
13 they can have the whole story.

14 Every bit of the prior art that Yahoo!
15 will ask you to consider in hoping that you will find
16 the patent invalid was before the Patent Office in that
17 second re-examination.

18 THE COURT: Mr. Cawley, you have about
19 two minutes left.

20 MR. CAWLEY: Thank you, Your Honor.

21 And, Ladies and Gentlemen, with all of
22 that information before it, two weeks ago, two weeks
23 ago, the Patent Office said Claims 1 and 2 of
24 Dr. Nemes's patent are valid.

25 Finally, if you don't buy Yahoo!'s