

EXHIBIT 2

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.)

May 10, 2011

TRANSCRIPT OF TRIAL
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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MR. THEODORE STEVENSON, III
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COURT REPORTERS:
MS. JUDY WERLINGER
MS. SHEA SLOAN

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produced by a Computer.

1 Yahoo! has proved the patent invalid, then in response
2 to Question 2, where you're asked if the patent is
3 invalid, your answer should be no.

4 The next question Judge Davis asked you
5 to consider is: Was Yahoo!'s infringement willful?

6 Here's some testimony that you heard
7 during the course of the trial. The first two things
8 were by deposition and a third was live.

9 Mr. Barnes of Yahoo! was asked: Do you
10 know if anybody at Yahoo! reviews patents to determine
11 if the programs and servers and technology it's going to
12 put out infringe those patents?

13 He says: No, I don't have that
14 knowledge.

15 Then Mr. Reed of Yahoo! was asked this
16 question: Have you ever seen anyone at Yahoo! actually
17 consider someone else's patent property rights in
18 evaluating whether or not to use an operating system on
19 Yahoo!'s servers?

20 He answers: Not that I can recall.

21 And then you will remember when Mr. Filo
22 took the stand and I asked him: So my question to you
23 is, were any patent searches done regarding the move
24 from FreeBSD to Linux by Yahoo!?

25 Answer: Not that I'm aware of, but,

1 okay, I can't say for certain that we did not.

2 And then: But you don't know of any?

3 Answer: I do not know.

4 In short, Ladies and Gentlemen, no one
5 from Yahoo!, from the Chief Yahoo! on down, has told you
6 that Yahoo! paid a bit of attention to anyone else's
7 patent rights when they decided to use this code.

8 This explains this statement from Mr.
9 Kuznetsov in this e-mail when he advises you at Yahoo!:
10 I believe you should seek for an expert in loopholes of
11 patent rules.

12 Of course, Yahoo! is going to tell you,
13 well, their infringement wasn't willful. But let's look
14 further at Mr. Kuznetsov's e-mail.

15 This is the e-mail that Yahoo! got in
16 December of 2010, while this lawsuit was going on.

17 There's no question that at that point in
18 time Yahoo! knew about the patent, they had already been
19 sued for it.

20 Mr. Kuznetsov, the man who wrote the old
21 Kuznetsov code, says: My analysis showed that code
22 written by me does not actually collide with the
23 aforementioned patent; my code uses quite different
24 techniques.

25 But then he goes on to say: But current

1 Linux kernel actually contains logic which could be
2 considered as infringing the patent. And he concludes
3 by saying: Unfortunately, I could not find any
4 references describing the idea before 1999 when the
5 patent was issued.

6 Ladies and Gentlemen, Yahoo! had this
7 statement from the man who wrote the prior Linux code
8 and was part of the team that put the infringing code
9 into Linux. They were informed by him that the patent
10 was valid and that they infringed it. But I will
11 suggest to you the evidence shows they simply didn't
12 care.

13 If you conclude the evidence shows that
14 Yahoo!'s infringement was willful, then you should
15 answer Question 3 yes.

16 Then the last question that Judge Davis
17 is going to ask you to consider is: How much is Bedrock
18 entitled to as a reasonable royalty?

19 You remember this testimony from Dr.
20 Jones. He testified about his testing, but I will talk
21 about it in a little more detail in a minute. But the
22 bottom line is, he turned the invention on and off and
23 tested what benefit it gave to a system like Yahoo!'s.
24 And he found that there was a 10 to 20 percent benefit
25 from the use of the invention.

1 64,000.

2 The only testimony you have heard about
3 realistic traffic levels is from Dr. Jones, and that
4 shows a 10 to 20 percent gain in efficiency.

5 Well, if you don't believe the test is
6 bad, maybe you believe Yahoo! never deletes any records.

7 Well, Dr. Jones talked about that
8 yesterday, too. And said in his answer: Does the
9 candidate code run?

10 Yes. We saw Mr. Turner's results where
11 he showed that it ran in deleted records.

12 Second, at the traffic levels that Yahoo!
13 runs at, my tests show a performance advantage of the
14 '120. And then the additional tests I've run, looking
15 at the record removals, indicate that records are
16 removed at those traffic levels.

17 Well, if you don't buy it's a bad test
18 and you don't buy that it deletes records, how about
19 there's other devices involved?

20 You will remember we heard testimony
21 about all the devices that Yahoo! has. Some of them are
22 on the table here -- the router, the firewall, the
23 switch, the load balancers -- all of those, Ladies and
24 Gentlemen, have one thing in common: They're designed
25 to filter out malicious traffic.

1 That's not what Dr. Jones is testing.
2 What Dr. Jones is testing is the efficiency gain from
3 valid traffic.

4 All of these devices piled up on the
5 table have nothing to do with that.

6 Well, if you don't buy that, maybe you'll
7 buy that it's only 40 lines of code. You heard the
8 testimony from everyone who talked about this. You
9 can't measure the value of the code by how long it is.

10 Finally you heard, well, about how about
11 it's worthless because we could go back to FreeBSD, the
12 software we used before.

13 This is the Yahoo! document that shows
14 that the Yahoo! software runs from one to six --
15 actually one-and-a-half to six times faster and better
16 on Linux. That's why Mr. Filo admitted that today 75
17 percent of their servers are running Linux.

18 Ladies and Gentlemen, if you believe that
19 the evidence you heard in the case shows that there's
20 substantial cost-savings to Yahoo! and that a fair
21 division of that cost-savings is to split it between the
22 holder of the patent and Yahoo!, then your answer to
23 Question No. 4 should be \$32 million.

24 Ladies and Gentlemen, I thank you for
25 your attention, and I look forward to saying a few more