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Transcript of Justin T. Kestner

Date: February 9, 2024
Case: Roofr Inc. -v- Pictometry International Corp. (PTAB)

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ROOFR INC.,

Petitioner

V.

PICTOMETRY INTERNATIONAL CORP.,

PATENT OWNER.

IPR2023-00435

U.S. Patent No. 10,648,800

Remote Deposition of JUSTIN T. KESTNER

Via Zoom

Friday, February 9, 2024

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Reported By: Anita M. Trombetta, RMR, CRR

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----------I N D E X----------

WITNESS
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MR. HAGIZ: Why don't we briefly do introductions for the record. I'm Ron Hagiz from Quinn Emmanuel. I'm on behalf of the petitioner Roofr.

MR. PAPPAS: Steve Pappas, on behalf of the patent owner, with the firm of Sterne Kessler. Also with me is my colleague Jenn Chagnon from Sterne Kessler as well.

EXAMINATION BY

MR. HAGIZ:

Q And good morning, Mr. Kestner. Could you state your full name for the record, please.

A Good morning. Justin Theodore Kestner.

Q And have you been deposed before?

A Yes, sir.

Q All right. So I'll -- you know how it works, but I'll just briefly refresh your recollection. So I -- I'll be asking you questions today; you'll be providing me with answers. We have a court reporter here today who is trying to take everything down, so I just need to make sure that you give verbal answers to my

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questions. Is that okay?
A Yes.
Q I'll try my best to ask clear questions. If you don't understand or don't hear one of my questions, can you let me know?
A Yes.
Q At times your counsel may object to some of my questions. You understand that unless they instruct you not to answer, you still need to answer my question after the objection?
A I do.
Q I'll try to take a break every hour or so. I'm not sure we'll actually reach the hour mark, but if we do, we'll try to take a break. If you need one sooner, just let me know. Okay?
A Thank you.
Q And is there any reason you can't provide complete and truthful testimony today?
A No.
Q Great. So let me -- why don't you pull up or bring up in front of you the declaration you submitted in this case. It should be

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Exhibit 2031. For the benefit of our court reporter and other people who are listening in, I'm uploading a copy of that into the chat as well.
And just let me know when you have that in front of you.
(Pictometry Exhibit 2031, Declaration, marked for identification.)
A I have it in front of me in the binder that counsel was discussing earlier with you.
Q Yep. And that's an unmarked copy of your declaration as it was submitted in this case, correct?
A Yes. No notes or tabs or anything.
Q All right. And on the front page -- got a bit of an echo there. On the front page, just to be sure, in the bottom-right corner it says -- you see Pictometry Ex 2031?
A Yes, sir.
Q Okay. Great. And this is the declaration you submitted in this case, correct?
A Yes.

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Q And on the last page, Page 41 of the exhibit, that's your signature at the bottom?
A It is.
Q So I want to ask a little bit about your background that you discussed specifically in Paragraphs 7 through 9 of your declaration. So if you could turn -- it starts on page -- that section starts on Page 2, but I want to ask you about starting with Paragraph 7 on Page 3.
So just let me know when you have that in front of you.
A I have that in front of me.
Q And in this section you discuss your professional experience with roof measurements, among other things, correct?
A Correct.
Q And for some of the work that you've done with roof measurements, you took measurements of actual physical roofs, right?
A Yes. While on the roof, yes.
Q In Paragraph 7 you describe a method that you've used for measuring the footprint of a roof

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that you refer to as the slope factor method. Do you see that?
A Yes.
Q And could you explain to me, what is the slope factor method?
A So (unintelligible).
(Reporter clarification.)
A Okay. Yes, this is something we teach in our company's certified inspector program for residential roof damage assessment. It's where you go around the perimeter of the building, whether it's a house or a commercial building, and you essentially take the dimensions of the roof, allowing for the overhangs that extend out beyond the walls, and therefore you get the plan area, or it's generally referred to in this matter as the footprint area.
And then using the pitch of the roof or the slope of the roof, such as a 4 on 12, we apply that slope factor, which, for example, is in the different tables in these documents, including in the Bailey document.

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And so we use that if there's a single pitch, such as the -- everything is a 4/12 or everything is a 6/12. We multiply that footprint area by that slope factor.

Q And in your discussion of the '538 patent, you offer some opinions on -- on the term "predominant pitch," correct?

A Yes.

Q Now, have you used a predominant pitch in your measurements in your professional work before?

A Not in the manner that is described in the -- in the '538 patent. But I have, like I said, certain roofs that it's either unsafe to lock, it's icy or it's wet and steep or it's too fragile to hold asbestos cement tiles, and if you break them, there's no more manufactured. Those are the times where we would use the slope factor method.

And that -- but that's more using a -- like I said, we only use that when it's like a single pitch, with the caveat that there may be

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smaller, very minor areas of the roof, such as a couple of small dormers, that might be a different pitch. But they're pretty insignificant, so we ignore that they have a different pitch and we would just go with the pitch that covers the majority of the roof area.

Q Have you ever used a predominant pitch as described in the '538 patent in your professional roof measurements?

A Not when I was doing the measurements myself. I mean, I have used the EagleView product myself, so -- just ordered measurements from them where they've used that method. But I haven't done that myself.

Q Now, going back to your declaration, in Paragraphs 7 to 9 you also discuss some work where you've used diagrams or images.

A Yes.

Q I keep getting a little bit of an echo or feedback on my end.

(An off-the-record discussion was held at this time.)

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Q So sorry, Mr. Kestner, for the interruption. Let me just re-ask my last question to make sure that we got it through.

In Paragraphs 7 to 9 of your declaration, you also mention work you've done where you used diagrams or images of roofs provided by third parties.

A Yes.

Q And in those roof diagrams and images, those were provided to you including the dimensions of the roofs already?

A There were different -- yes and no. Some of them had products including but not limited to EagleView, and then sometimes we would use aerial imagery and then supplement that with measurements in the field.

Q Okay. And do you have experience -- have you ever actually determined the measurements yourself from just the roof images?

A Determined them, as in scaled them from, like, a Google Earth or something like that?

Q Well, I guess more generally, have you

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ever used the images to determine the measurements without either being provided the measurements or performing field measurements?

A There's --

MR. PAPPAS: Objection to form.

A I can -- I'll answer it this way, and let me see if this clarifies it. There's certain products out there, like Pictometry has one called CONNECTExplorer, where you can look at the images, and sometimes all you need is the images, but other times you can use tools in there, like measure tools, and you can put points along the edges of the roof. And you can therefore get measure dimensions and measure calculate areas from it. So I have -- I have done that.

And way back before there were these aerial measurement providers such as EagleView and others, I've even had to get those images, take some field measurements, scan it, plop it into AutoCAD, basically, and then compute an area, a plan area of the roof, and then apply a slope factor to get the approximate area of the roof.

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Q And in the first example you were discussing just now, the tools you were talking about, those were tools provided by the Pictometry software that you were using?

A Correct.

Q So I guess maybe I can ask this a little more clearly. Have you ever -- have you ever determined the measurements of a roof just from the image itself?

A As in relied on the image, relied on the dimensions recorded from -- in the image or --

Q Yeah, I'll ask a little more clearly. Have you ever used an image -- an image of a roof without dimensions provided and without software tools to independently determine the measurements of the roof?

A I don't think so. Because I think the other times I've done it would have been like for large -- really large buildings, like maybe using Google Earth but they also have a measuring tool built in.

So other than that other instance I said,

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it's been, you know, field measurements. Or many times we've taken an aerial image of the roof off of Google Earth or something like that and then measured it in the field, so kind of combining the two.

Q Now, in -- starting on Paragraph 28 on Page 12 of your report, you have an opinion on the standard for a person of ordinary skill in the art.

Do you see that?

A I'm sorry, which paragraph?

Q It's Paragraph 28, beginning on Page 12.

A Yes, I'm there.

Q And I understand that you disagree with the level of skill that the board found in its institution decision, correct?

A I do, yes.

Q Is it -- are you offering -- or is it your opinion that -- let me take a step back.

You've reviewed the declaration of petitioners' expert Mr. Cummings, correct?

A Correct.

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Q And under the definition of the level of ordinary skill in the art that you offered in your declaration, is it your opinion that Mr. Cummings would not be a person of ordinary skill in the art?

A Let me just check here for a minute here, refresh... (document review.)

I -- actually, I don't think that he would. Because as I stated in my declaration, that a person of ordinary skill in the art in this matter would necessarily have experience using aerial imagery in -- in roofing estimation, and he testified, I believe that he hasn't used these aerial imagery services and so would not be familiar with their product --

Q Okay.

A -- at the time of the -- of the patent, excuse me.

Q Okay. Understood.

So let's turn to Paragraphs 30 to 39 in your declaration, where you're discussing the Bailey reference.

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Do you see that?

A Yes.

Q And starting on Paragraph 33, you say in your declaration that Bailey uses -- well, let me have you have turn to Paragraph 33 first before I read from it. Let me know when you're there.

A I'm there.

Q And in Paragraph 33, you say that, "Bailey uses actual slopes of each different roof section to estimate the area of individual roof sections, and then Bailey simply combines areas at the end of its process."

That's what you said here, right?

A Correct.

Q And in your opinion, that's different from using a predominant pitch to estimate the area of the roof?

A Yes, it is.

Q And that method of calculation that you're describing here in Paragraph 33, that's -- that's described on Pages 134 to 136 of the Bailey reference, correct?

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A Correct.
Q And why don't I actually have you pull up a copy of the Bailey reference if you have it handy, because I want to make sure that you have it in front of you for the next few questions.
And while we're doing that, I will upload a copy of Bailey, which was Exhibit 1010, into the chat as well.
A Yeah, I have 134 to 136 of Bailey in front of me.
Q Okay. And so Pages 134 to 136 of Bailey, those are part of Bailey's Appendix B that starts on Page 133, correct?
A Correct.
Q Now -- now, in your declaration, you also discuss Bailey's roof section identification worksheet, which is on page -- I believe Page -- begins on Page 14 of Bailey, correct?
A Yeah -- excuse me. Yes, it's a couple of different pages. There's also Appendix C. Just let me verify it's Page 14.
It starts on Page 13 of Bailey.

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Q So Page 13 has the building identification sheet, right?
A Yes.
Q And then on Page 14 through 16 is the roof section identification worksheet, correct?
A Correct.
Q And in Bailey, a roof section could comprise an entire roof, correct?
A Yes.
Q And so for the -- for the -- so for the building identification sheet, the example that's provided on Page 13 of Bailey, that's a worksheet for a roof that just has one roof section, correct?
A Correct.
Q Okay. And so in that example, the entire roof is that single roof section?
A Yes.
Q And now on Page 14 for the roof section identification worksheet, this worksheet would correspond to one roof section, correct?
A Correct. It's referring back to the same

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one on the prior page in the example.
Q Okay. So in this example, the roof section identification worksheet is a worksheet for that entire roof of the building on Page 13?
A It is.
Q And on Page 15, you see there's a -- a field number 33 labeled "Slope (Primary)."
A Yes.
Q And on Page 17, there's a paragraph that starts with the subheading "Section 33 - Slope."
Do you see that?
A I do.
Q And that's referring back to that "Slope (Primary)" field on Page 15 of the worksheet?
A Yes.
Q And on Page 17, Bailey says that that -- that that field 33 is, "the predominant slope of the roof section," correct?
A It does say that, yes.
Q And at the end of the paragraph -- in that paragraph Bailey only instructs to use the method

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in Appendix B if the information is not available for that field 33, correct?
A Bailey says to use that method in B - Appendix B, excuse me - if it's not noted on the roof plan. That is, that the slope is not noted on the roof plan.
Q Right. And if that's the case, then the method in Appendix B, that would be used for field measurement, correct?
A Correct.
Q Okay. That went more quickly and smoothly than I expected. I don't actually have any other questions for you today.
MR. PAPPAS: Great. Could you just give us, you know, five, 10 minutes and then we'll come back?
MR. HAGIZ: Not a problem.
(Recess.)
MR. PAPPAS: Mr. Kestner, we have no questions for you. Thanks for your time today.
THE WITNESS: You're welcome. Thank you, everybody. (Time Noted: 9:31 A.M.)

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ACKNOWLEDGMENT OF DEPONENT

I, JUSTIN T. KESTNER, do hereby acknowledge that I have read and examined the foregoing testimony and the same is a true, correct, and complete transcription of the testimony given by me and any corrections appear on the attached errata sheet signed by me.

_____ _____
(SIGNATURE) (DATE)

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CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

I, Anita M. Trombetta, Certified Reporter and Notary Public within and for the State of New York Do hereby certify: That JUSTIN T. KESTNER, the Witness whose deposition is hereinbefore set forth, was duly sworn by me before the commencement of such deposition and that such deposition was taken before me and is a true record of the testimony given by such Witness.

I further certify that the adverse party was represented by counsel at the Deposition.

I further certify that the deposition of JUSTIN T. KESTNER, occurred remotely via Zoom On Friday, February 9, commencing at 9:02 A.M. to 9:31 A.M..

I further certify that I am not related to Any of the parties to this action by blood or Marriage, I am not employed by or an attorney to any of the parties to this action, and that I am in no way interested, financially or otherwise, in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my Hand this 12th day of February, 2024.
My commission expires:
10.07.2025

_____
NOTARY PUBLIC IN AND FOR THE STATE OF NEW YORK

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