

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC and YOUTUBE, LLC,
Petitioners

v.

ROBOCAST, INC.,
Patent Owner

U.S. Patent No. 7,155,451 B1
Issue Date: December 26, 2006

DECLARATION OF DAVID FOX

Declaration of David Fox

I, David Fox, declare as follows:

1. Except where specifically noted, the statements below are from my own personal knowledge, and if called upon as a witness, I could testify competently thereto.

2. I am currently employed at Double Coconut, a mobile and web game development company based in San Francisco, California, which I founded in 2012. I received B.S. degrees in Computer Science and Journalism from New York University in 1994.

3. I am the lead co-author, with Troy Downing, of a publication entitled *HTML Web Programmer's Construction Kit* ("Fox & Downing"). Fox & Downing was published in 1995 by Waite Group Press ("Waite Group"). The Waite Group was a prominent publisher of high-quality computer books, including books on computer programming techniques. Books published by the Waite Group were widely available and sold in bookstores throughout at least the United States. I co-wrote Fox & Downing for people who wanted to learn about the Web, including how to access and navigate it as well as for those who were interested in starting their own web site or in understanding the intricacies how the Web worked.

4. I have personal knowledge of the writing, editing, publication, and marketing of Fox & Downing. Fox & Downing was published and available to the public by no later than August 1995. By this time, Fox & Downing could be found

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for sale at various bookstores in the United States by anyone interested in its subject matter. The back cover of Fox & Downing includes an instruction for bookstores to place the book in the “Internet” section (“SHELVING: INTERNET”). (See Ex. A (a true and correct copy of the front and back covers of Fox & Downing).) Attached hereto as **Exhibit B** is a true and correct copy of a message I posted to the Internet dated August 30, 1995, which I posted to a USENET group known as comp.infosystems.www.browsers.ms-windows. USENET refers a worldwide distributed discussion system for exchanging messages over the Internet, in which users could post topics to various groups (known as “newsgroups”) and receive responses from other users. The “comp.infosystems.www.browsers.ms-windows” group, as its name implies, refers to a USENET newsgroup relating to Web browsers for Microsoft Windows operating systems. Users typically accessed USENET through client software programs that allowed users to browse, read, and post messages to USENET newsgroups. I used USENET frequently in 1995, as it was widely used by computer programmers to exchange obtain information about technical topics.

5. The newsgroup post attached as **Exhibit B** provides a typical example of how USENET was used in 1995. A user posted a question: “Anybody know of any good books on the Web and/or HTML authoring?” The newsgroup post received a number of responses, including a response that I wrote as shown in

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Exhibit B.¹ The message contains the NYU Media Research Lab email and web site addresses that I had at the time. In my response, I stated that “The most full-featured one is HTML WEb Publisher's Contruction [sic] Kit (Waite Group Press)... it covers hooking up to the Web, navigating, authoring HTML, programming , and even setting up a server. Should be at most bookstores....”

6. My August 30, 1995 statement that Fox & Downing “[s]hould be at most bookstores” is consistent with my memory regarding the public availability of the book, as well as other statements at that time. For example, attached hereto as **Exhibit C** is a true and correct copy of the registration form for Fox & Downing submitted to the U.S. Copyright Office, which identifies August 11, 1995 as the book’s date of first publication. (Ex. C, p.1.) The form identifies Fox & Downing, lists me as the lead author, and was signed by Laura Brown as the authorized agent of The Waite Group, Inc. (Ex. C, p.2.) Laura Brown served as the Development Editor for Fox & Downing, and I personally worked with her complete the book. As such, she would have been knowledgeable about the publication of Fox & Downing, including the date of the book’s first publication. The date of publication on the copyright registration form is consistent with my own memory about its public

¹ Available at <https://groups.google.com/g/comp.infosystems.www.browsers.ms-windows/c/IL8e70FreNc/m/WbVGvYlXdaoJ> (last visited February 7, 2023). I understand that Google Groups (groups.google.com) hosts an archive of USENET posts dating back to May 1981 that is based in part on Google’s acquisition of Deja News’ searchable database of USENET posts.

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availability in August 1995, as well as the USENET response that I posted on August 30, 1995 indicating that, by that date, the book should have been available at most bookstores.

7. My beliefs are further corroborated by other documents from this time period mentioning or discussing Fox & Downing, which provides further indications as to its public availability by late August 1995. As another example, attached hereto as **Exhibit D** is a true and correct copy of a USENET message dated August 9, 1995 posted to the newsgroup comp.infosystems.www.authoring.html, an online forum for users to exchange information about writing HTML for the Web.² The message is responding to another user's question about "the best references out there" for the user "trying to learn how to do HTML right." The author lists Fox & Downing as one of the references for the user to consider, and states that the book was available through a particular reseller (WorldWide Access, wwa.com). The message identifies the title of the book, its ISBN number, and the discounted pricing for the book if purchased from that reseller. Although it is not clear from the USENET post if WWA physically had the by the August 9, 1995 date of the newsgroup post, the fact that a book reseller had listed it among its offerings (along with pricing

² Available at https://groups.google.com/g/comp.infosystems.www.authoring.html/c/6YW_KNva wJs/m/W-GMk_7PcX0J (last visited February 7, 2023).

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information) further supports my view that the book would have available by no later than late August 1995.

8. As another example, attached hereto as **Exhibit E** is a copy of an article dated September 10, 1995 from the Chattanooga Free Press (Tennessee) titled “Personal Computers” that I understand (and which is indicated on the exhibit) was retrieved from the LexisNexis service. The article identifies Fox & Downing as one of the references that the author had reviewed and found helpful for learning HTML and publishing for the Web. The September 10, 1995 date of the article is consistent with late August 1995 public accessibility reflected in my USENET post that Fox & Downing “[s]hould be at most bookstores” because, as anyone would know (and consistent with my background in journalism), the author would have needed time to review the book and write their article ahead of the newspaper’s publication deadline.

9. Similarly, as another example, attached hereto as **Exhibit F** are excerpts from a copy of an issue of MicroComputer Journal that I understand is in the collection of the Library of Congress. The excerpts bear a Library of Congress date stamp of October 4, 1995. (*See Ex. F, p.3.*) Fox & Downing is discussed in an article titled “Bits ‘n’ Pieces” in which the article’s author states that he “received this book about a month ago.” (*See Ex. F, p.109.*) The library date stamp of October 4, 1995, together with that statement, is consistent with late August 1995 public

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accessibility reflected in my USENET post because again, the author would have needed time to complete the article ahead of the journal's publication deadline, followed by additional time for printing and distribution.

10. In signing this Declaration, I recognize that the Declaration will be filed as evidence in a contested case before the Patent Trial and Appeal Board of the United States Patent and Trademark Office. I also recognize that I may be subject to cross-examination in this proceeding. If required, I will appear for cross-examination at the appropriate time.

11. I hereby declare that all statements made herein of my own knowledge are true and that all statements are made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001.

Dated: February 7, 2023

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Fox', written over a horizontal line.

David Fox
San Francisco, California