

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MASIMO CORPORATION
Petitioner,

v.

APPLE INC.
Patent Owner.

Case No. IPR2023-00664
U.S. Patent No. 11,106,352

DECLARATION OF KATE TALBOT

I. INTRODUCTION

1. I, Kate Talbot, am making this Declaration at the request of Masimo Corporation (“Petitioner”). I understand that this Declaration will be submitted as Exhibit 1031 in support of a Petition for *Inter Partes* Review of U.S. Patent No. 11,106,352 (“the ’352 patent”).

2. I have been asked to provide my expert opinion regarding the authenticity and public availability of the video *Android 4.2 lock screen widgets* available on YouTube at https://www.youtube.com/watch?v=ZpN8Wyu_z6Y. As explained below, Exhibit 1007 is a true and correct copy of the video in MP4 format.

3. The opinions set forth in this Declaration are my independent opinions, formed after conducting significant analysis.

4. I am being compensated for my time spent working on this matter at my normal hourly consulting rate, plus reimbursement for any additional reasonable expenses. My compensation is not in any way tied to the content of this Declaration, the substance of my opinions, or the outcome of this proceeding. I have no other interests in this proceeding or with any of the parties.

5. In addition to my knowledge and expertise, I considered the following materials in conducting my analysis set forth in this Declaration:

- Exhibit 1007;

- The content, including the video and metadata, located at https://www.youtube.com/watch?v=ZpN8Wyu_z6Y;
- The content, including the archived video and metadata, located at https://web.archive.org/web/20121119160047/https://www.youtube.com/watch?v=ZpN8Wyu_z6Y;
- Any other document referenced herein.

II. PROFESSIONAL BACKGROUND AND QUALIFICATIONS

6. I am an expert on various social media platforms. I currently own and maintain a consulting firm, Kate Talbot Marketing. I assist and counsel clients on using and leveraging various social media applications and other digital technologies for their businesses, including YouTube, Snapchat, LinkedIn, Twitter, Facebook, Instagram, and Pinterest. Prior to starting my consulting firm, I had significant experience with such social media and digital technologies while working for various companies, starting with my employment in 2007 with public relations agencies.

7. I have been qualified as a social media expert in a private arbitration proceeding before Judicial Arbitration and Mediation Services, Inc. I am a regular speaker on social media at conferences and webinars presented worldwide. My expertise has been featured on CNN, NBC News, BBC, NPR, Nasdaq, Huffington Post, and iHeart Radio.

8. I am also an experienced lecturer on the topic of social media applications. I have designed, created, and taught digital social media marketing workshops at corporations and educational institutions worldwide, including Sony Latin America and the Digital Marketing Institute in Dublin, Ireland. I am a former Senior Forbes Contributor covering social media and the influencer economy.

9. A detailed record of my professional qualifications is set forth in my résumé. Exhibit 1032 is a true and correct copy of my résumé.

III. APPLICABLE LEGAL PRINCIPLES

10. I am not an attorney or an expert in patent law. Therefore, the attorneys from Knobbe, Martens, Olson & Bear, LLP have provided me with guidance as to the patent law applicable to my opinions in this matter. The paragraphs below express my understanding of how I must apply current principles related to public accessibility in this matter.

11. I have been informed that a video, such as Exhibit 1007, qualifies as a prior art printed publication that was publicly accessible as of the date it was made available such that persons interested in and ordinarily skilled in the relevant subject matter could locate it through the exercise of reasonable diligence.

12. *Person of ordinary skill in the art.* I have been informed by counsel that the subject matter of the patent challenged in this proceeding relates generally to touchscreen user interfaces for navigating among smartphone screens using

directional swipe gestures. I have been informed that a person of ordinary skill in the art would have had at least a bachelor's degree in a discipline related to human-computer interaction, such as Human Factors, Computer Science, Computer Engineering, or an equivalent discipline, and at least two years of experience working with touchscreen user interfaces. More education could substitute for less work experience, and vice-versa.

IV. AUTHENTICITY AND PUBLIC ACCESSIBILITY OF THE VIDEO OF EXHIBIT 1007

13. In my opinion, persons interested in and ordinarily skilled in the relevant subject matter would have been familiar with YouTube and would have used it to research features of smartphone user interfaces.

14. I watched the video and reviewed the content and metadata located at the URL https://www.youtube.com/watch?v=ZpN8Wyu_z6Y. I also watched the archived video and reviewed the content and metadata located at the URL https://web.archive.org/web/20121119160047/https://www.youtube.com/watch?v=ZpN8Wyu_z6Y. I also watched the video in MP4 format of Exhibit 1007.

15. Based on my observation, the video of Exhibit 1007 has the same content as the videos located at both of the URLs referenced above. I have been informed that the MP4 file of Exhibit 1007 was created by converting the video located at the URL https://www.youtube.com/watch?v=ZpN8Wyu_z6Y into MP4 format, which is consistent with my observation that the video of Exhibit 1007 has

the same content as the video located at that URL. Thus, Exhibit 1007 is a true and correct copy, in MP4 format, of the video located at the URL https://www.youtube.com/watch?v=ZpN8Wyu_z6Y.

16. The https://www.youtube.com/watch?v=ZpN8Wyu_z6Y URL is the YouTube webpage where the video of Exhibit 1007 is accessible. In my experience, each video accessible via YouTube has a unique URL starting with a common prefix—“<https://www.youtube.com/watch?v=>”—followed by a unique video identifier. In the case of the video corresponding to Exhibit 1007, the unique video identifier is “ZpN8Wyu_z6Y.”

17. In my experience, the unique video identifier originally assigned to a video when it is first uploaded does not change while the video remains accessible on YouTube. That allows users to access each video using the same URL from the time the video is uploaded to YouTube to the time the video is removed from YouTube. Thus, for example, from the time the video corresponding to Exhibit 1007 was uploaded to YouTube until the present (given that the video has not been removed) the video has been accessible at the same URL https://www.youtube.com/watch?v=ZpN8Wyu_z6Y.

18. In addition to the video itself, each YouTube URL also provides content and information related to the video. The content and information include, for example, a title of the video, a description of the video, the upload date of the video,

comments that users have left about the video, number of “views” (times that users have watched the video), number of “likes” and “dislikes” of the video, the person or entity that uploaded the video, and whether the video is accessible via a YouTube channel. Based on my knowledge of and experience with YouTube going back to at least 2012, YouTube maintains such content and information as a routine business practice. Accurate maintenance of such content and information are important to YouTube and its users for various reasons: (1) facilitating searching for videos of interest, (2) sorting search results, (3) determining how new or old the content in a video is, and (4) determining the popularity of a video.

19. Based on my knowledge of and experience with YouTube going back to at least 2012, after a YouTube user uploads a video, the user cannot significantly alter the content of the video without removing the video and uploading an edited video with a different unique video identifier. In my experience, users cannot add content to a video using the same unique video identifier. I am aware of limited tools for removing portions of an uploaded video. For example, a user may remove portions of an uploaded video that are subject to a copyright claim. A user may also change some information about the video, such as the title and description, but such changes do not change the content of the video itself. Further, in my experience, the user cannot change the original upload date or information related to views, likes, dislikes, and comments. Therefore, based on my experience, at least the portions of

a video that are currently accessibility on YouTube were also accessible at the same YouTube URL on the upload date.

20. The URL https://www.youtube.com/watch?v=ZpN8Wyu_z6Y points to a webpage including information indicating that the video corresponding to Exhibit 1007 was uploaded by Android Central on November 12, 2012. In view of my knowledge of and experience with YouTube going back to at least 2012, as described above, it is my opinion that at least the portions of Exhibit 1007 currently accessible at the above-referenced URL were accessible at the same URL on November 12, 2012.

21. It is also my opinion that persons interested in and ordinarily skilled in the relevant subject matter would have easily been able at the relevant time to locate the video by exercising reasonable diligence. At all relevant times, YouTube videos were searchable by at least their title and description. Anyone interested in and ordinarily skilled in touchscreen user interfaces for smartphones would have known that Android was a common operating system for smartphones and would have followed the development of user-interface features (such as widgets) in smartphones running the Android operating system. Such interested persons could have easily located the video corresponding to Exhibit 1007 by searching typical keywords associated with Android smartphones or widgets for smartphones.

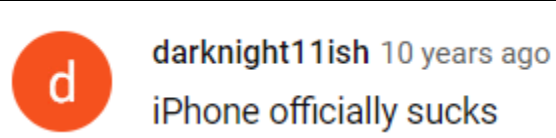
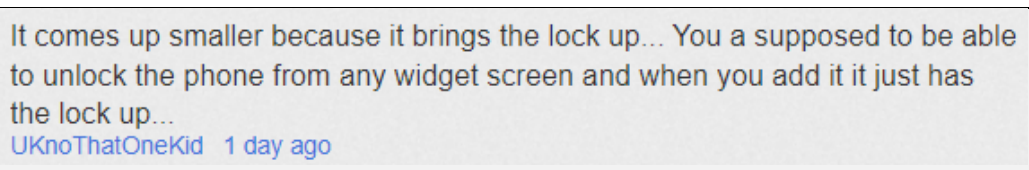
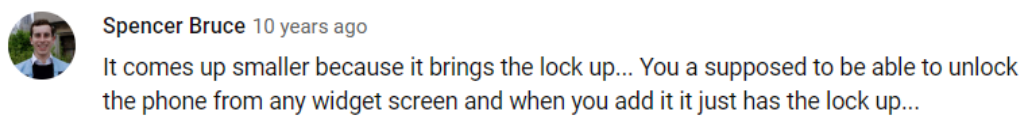
22. In addition, the video corresponding to Exhibit 1007 was uploaded to a YouTube channel operated by Android Central, a publication specifically related to Android smartphones. Subscribers to that channel, many of whom would be persons interested in and ordinarily skilled in the relevant subject matter, would have been automatically informed when the video was uploaded. Upon being informed, those subscribers could have easily located the video even without conducting any search.

23. My opinion is also supported by the video, content, and metadata at https://web.archive.org/web/20121119160047/https://www.youtube.com/watch?v=ZpN8Wyu_z6Y. That webpage is maintained by the Internet Archive, a service that, as part of its routine operations, periodically crawls various websites and stores, along with an associated archival date, archived copies of webpages as they existed as of the archival date. The webpage was specifically archived by the Internet Archive on November 19, 2012, one week after the upload date of the video corresponding to Exhibit 1007.

24. As indicated above, the archived video has (1) the same unique video identifier (ZpN8Wyu_z6Y) and content as the video currently accessible on YouTube and (2) the same content as Exhibit 1007, further supporting my opinion that the video currently accessible on YouTube is the same video uploaded on November 12, 2012. Further, the archived webpage includes information confirming that the archived video was uploaded by Android Central on November

12, 2012, just as the current YouTube webpage indicates. In addition, the archived webpage indicates that the video had been viewed 53,827 times by November 19, 2012. While I understand that actual access of the video by interested and ordinarily skilled persons is not *necessary* to establish that the video was publicly accessible, the 53,827 views within one week of the video’s upload date further supports my opinion that interested and ordinarily skilled persons could have easily located the video on or near its upload date.

25. The archived webpage also has some of the same user comments that are still shown on the current YouTube webpage a little more than 10 years later. The table below shows true and correct images of comments captured from the archived webpage and the current YouTube webpage:

Archived	
Current	
Archived	
Current	

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Archived	On the Galaxy Nexus it takes a whole second for the screen to turn back on when pressing the lock button! kvikram19 2 days ago
Current	 Vikram 10 years ago On the Galaxy Nexus it takes a whole second for the screen to turn back on when pressing the lock button!
Archived	Maybe for you but not for me Smatiro in reply to Nacho Zero (Show the comment) 2 days ago
Current	 Smatiro 10 years ago Maybe for you but not for me

The timestamps on the comments, indicating on the current webpage that the comments were posted “10 years ago” but indicating on the archived webpage that the same comments were posted between “21 hours ago” and “2 days ago” are consistent with the webpage being archived on November 19, 2012, just over 10 years ago.

V. CONCLUSION

26. In view of my knowledge of and experience with YouTube, and the foregoing evidence, it is my opinion that the video corresponding to Exhibit 1007 could have easily been located on YouTube by persons interested and ordinarily skilled in the relevant subject matter and exercising reasonable diligence on or near November 12, 2012. Therefore, it is my opinion that the video corresponding to Exhibit 1007 was publicly accessible on or near November 12, 2012.

27. I declare that all statements made herein on my own knowledge are true and that all statements 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 Section 1001 of Title 18 of the United States Code.

Dated: 3/2/23

By: Kate Talbot

Kate Talbot