UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
Petitioner

v.

DODOTS LICENSING SOLUTIONS LLC,
Patent Owner

Case IPR2023-00701

U.S. Patent No. 8,510,407 B1

DECLARATION OF GEORGE KEMBEL

I, George Kembel, declare as follows.

I. Introduction

1. I am one of the named co-inventors for United States Patent No. 8,510,407. At the time of the invention, I was the Chief Executive Officer and a co-founder of DoDots, Inc.

2. Along with my twin brother, John Kembel, we founded DoDots, Inc. with a goal of disrupting and changing the paradigm of how internet content was created by companies and how it was delivered to users.

3. As a threshold matter, given how pervasive and mainstream apps and the app ecosystems are now, it's hard to remember what it was like in the late 1990's.

4. At the time of our inventions, the technology industry was impacted by divided ecosystems struggling to adapt to the growth of the internet. One ecosystem contained rich client software capabilities and experiences on desktop computers that were slow to update to new versions due to large software sizes and stale content as it resided on client computers and devices.

5. Another ecosystem allowed for accessing web content through the browser to obtain live-up-to-date content but was stuck in a cumbersome page by page document model that made searching for and viewing content counterintuitive and difficult.

6. And, a third ecosystem was an emerging mobile market that allowed customers to take computing capabilities with them connected to mobile networks but broke the large screen model of software interaction and forced limits on data and large file sizes.

7. Against this backdrop, the ecosystem that we take for granted—blended application functionality with the flexibility and immediacy of internet data that allows one to move seamlessly across desktop and mobile platforms—was not obvious to most people then. Indeed, market players struggled to see the future because they saw the world from their own siloed points of view.

8. Our unique design practice and interest in exploring emergent behavior in new technologies gave us a way to look at the emerging internet opportunity with an entirely new lens and birth a set of inventions that were category creating and not obvious at the time.

9. In fact, we developed a collection of insights and a set of novel inventions that redistributed the technology stack (where content came from, how it was displayed, what data sat on which devices, what sat on servers and who decided what collection of capabilities were important) and also redistributed the stakeholder network (companies, developers and customers) providing more direct access between customers and providers that birthed the modern app and app ecosystem market.

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10. Our novel solutions bridged the divided worlds, offering companies, customers and developers the benefits of direct customer access and advanced application like functionality of client software, the immediacy and real time nature of internet content and allowed for the seamless and personal experience across desktop and mobile platforms.

11. We founded a venture-backed startup to pursue this vision and developed a truly unique set of technologies -- that received the backing of leading tech investors, the support of global brands and content developers, recognition from top-tier pundits, awards from leading tech conferences, and praise from both business and popular press.

12. The company grew rapidly with widespread adoption, until the dotcom bubble burst and late-stage funding dried up. While the company ultimately didn't survive the bubble, the vision and the patents did. Looking back, it's exciting to see how DoDots was the first to demonstrate key elements of what we now take for granted and refer to as the "app ecosystem".

II. Receiving Support and Praise for DoDots's Innovative Solution

13. I have been informed that Industry praise for an invention may provide evidence of nonobviousness where the industry praise is linked to the claimed invention. I have also been informed that this is relevant because "Appreciation by contemporaries skilled in the field of the invention is a useful

indicator of whether the invention would have been obvious to such persons at the time it was made." In view of this, as we grew our company, it became readily apparent that people understood the significance of our technology as we received effuse praise from various media outlets.

14. As DoDots introduced its new technology to the market, it was met with support from tech investors, interest and adoption from leading brands & web developers, awards from preeminent tech conferences, and praise from both the business and popular press.

15. For example, as we sought investors, Tom Kosnik – a professor at Stanford University and Harvard Business School that taught global entrepreneurship, marketing and more—thought our technology was groundbreaking. In assisting with the launch of our company, he noted that he was "more excited about the [Dots] concept than any I have seen since Netscape browser first gave us graphical access to the World Wide Web. In fact, MORE excited. Their concept creates enormous leverage for anyone who multitasks on computer based tasks in a real-time business, as well as anyone who channel surfs!" *See* Ex. 2031 at DODOTS0026067.

16. Indeed, the Dots technology was so groundbreaking that Softbank's west coast venture firm invested in the company. They noted that "Unlike the full-screen document model of the Web which forces users to a single page at a time,

DoDots enables online companies to engage users with a simultaneous collection of content, services, and Web applications. Not only can online companies enable users to do more at once, they can also notify the user of certain content events, such as reaching a particular stock price, sale price, or auction bid." *See* Ex. 2032. And Softbank further noted "DoDots has the potential to revolutionize the way people use the Internet. They have created a very powerful technology for both Internet content providers as well as Internet users . . .". *Id*.

17. Likewise, the press was replete with adulation as technology writers at the time of our invention praised the Dots technology. A February 21, 2000 Forbes Article noted that "the ideas of DoDots, a Palo Alto startup, [were] so interesting. The company unveiled the prototype of a platform that online companies can use to develop Internet applications that don't feel like Web pages but like handy virtual appliances." *See* Ex. 2022.

18. Moreover, multiple content providers quickly adopted the product because of its potential. Indeed, a March 13, 2000 Business Wire article noted that "DoDots enables online companies to exploit the multibillion-dollar opportunity that exists 'outside the browser' with a whole new approach for Internet content. DoDots' technology delivers the benefits of consumer packaging and distribution to the Internet, enabling online companies to fully brand and appropriately package

their content so it can be instantly distributed and shared between users." *See* Ex. 2035 at DODOTS0026259.

19. And content providers using our product included several major companies like ABC, PC World, ZD Net, and Merriam Webster.

20. ABC noted that "In our continuing effort to find new ways to connect with our audience, the ABC Dot truly stands out as a revolutionary new communication device," said Alan Cohen, executive vice president, marketing, advertising & promotion, ABC Entertainment Television Group. "The ABC Dots will allow people to experience the stars, the shows, and everything ABC has to offer in a whole new way." *See* Ex. 2034.

21. Wide spread adulation was nearly unanimous, as seen below:

- "Dots are a cool new technology that give our customers a greater user experience. Partnering with DoDots was an obvious decision for AnyDay, given the value-add that Dots provide" said Dennis Kelly, AnyDay cofounder and chief operating officer.
- "Our brand is very strong, and we work hard to keep it that way," said John Morse, Merriam-Webster president and publisher. "Being associated with DoDots ' exciting new technology definitely enhances our leadership position, both on the Web and in the conventional publishing world."
- "We understand the fear associated with making the wrong purchasing decision," said Mike Speiser. Cofounder of Epinions.com. "By leveraging DoDots 'technology, consumers will be able to quickly access high quality, unbiased product reviews directly from their desktops."
- "Our new mySimon Dot(TM) offers our shoppers instant and easy access to the online shopping features they care about most," said

Adam Taggart, product marketing manager for mySimon. " DoDots provides an attractive new means for mySimon to enhance our brand and increase distribution among online shoppers."

- "We're always looking for innovative ways to meet the informational needs of our management-level audience, and DoDots 'technology offers swift access to PCWorld.com's award-winning editorial," said Bob Ostrow, publisher of PC World. "Since the business PC-buying process is a collaboration between several individuals, the ability to share Dots is a benefit to our readers - who turn to PC World to help them buy and use technology. And Dots' continuous presence on the desktop is invaluable as PC World continues to strengthen its brand, both in print and online."

- "Our customers are looking for ready access to the many resources and information available on Work.com," said David Williams, Work.com general manager at Excite@Home. "DoDots 'technology lets us put the right information at our customer's fingertips."

- "ZD Net's innovative customer retention program has been expanded by DoDots ," said Steve Giannini, director of strategic partners. " As the Internet market-leader in keeping customers (according to media metrix), we are always looking for creative ways to enhance and lengthen our customer experience with ZDNet. Dots deliver for us.

- "We will be using Dots to package, brand and distribute our gaming content," said Joe Perze, chief executive officer of Zupit.com. "we are excited to be the first gaming site to feature content in Dots."

Ex. 2035.

22. Likewise, Excite@Home praised DoDots as it began to license the technology. *See* Ex. 2036. Notably, they noted "A comprehensive set of Work.com Dots(TM) will be available on the Work.com site (www.work.com). With a single click of the mouse, users can access Dots(TM) that will help search and navigate

the service. For example, users will be able to search for companies, news, and industries among other types of information from the Work.com dots." *Id*.

23. In doing so, they noted "This is a valuable addition to Work.com's service, said David Williams, Work.com general manager, Excite@Home. DoDots'technology will make Work.com a more flexible tool in serving the needs of our business users." *Id.*

24. As the company continued to grow, additional content providers joined, and all of them praised the product. 2Roam joined and noted "DoDots technology is a killer application for wireless devices as it supports the information needs of the on-the-go mobile professional and, like 2Roam, enables users to maintain a constant state with their wireless content or application, insuring the optimal user experience. We look forward to working closely with DoDots to help reach millions of wireless users." *See* Ex. 2037.

25. Because of this revolutionary technology, multiple leading companies quickly adopted the technology to reach their consumers. Those companies included "AnyDay.com, Inc., Bluelight.com, Broad Daylight, Inc., drDrew.com, Epinions, Inc., eHow, Inc., GreatRestaurants.com, Jumbomall.com Corporation, Kibu, Merriam-Webster, Inc., mySimon, Inc., Noomedia Solutions, Ltd., PC World.com, PhotoPoint Corp., Snapfish, StartSampling, Inc., Work.com, ZDNet

and zupit.com (formerly i2e2)." *See* Ex. 2038, BusinessWire – April 3, 2000 – "DoDots Go Live" (DODOTS0026253).

26. Aside from our growing client base, our product was praised at the DEMO conferences. DEMO Conferences were the preeminent conference for tech start-ups at the turn of the century. People attending the conference were at the pinnacle of the start-up industry.

27. Not all companies were able to present at such conferences. The Demo conference was specifically curated by industry analyst Chris Shipley, who was on the cutting edge of all new technologies emerging in the global ecosystem and would hand select a small number of companies that were bringing groundbreaking new technologies to market that the market hadn't seen before. Java and other foundational technologies were launched at DEMO. DoDots was selected to present at both the DEMO and DEMO MOBILE conferences.

28. Notably, the conference guide for one DEMO Conference noted that "[the] Internet is a vast source for information, yet most people connect only to one site at a time. DoDots is an innovative way to connect to multiple sites, allowing anyone to track fast changing information and other forms of internet content." *See* Ex. 2039, Demo 2000 – Guide – List of Attendees – Conference Schedule. (DODOTS0025943).

29. Materials from a second conference noted "DoDots extensible software architecture is a rare find in today's world. It increases the power and capabilities of handheld computers and other small form factor internet devices. And what makes DoDots more remarkable is that it uses a tool to extend web presence to new emerging form factors." *See* Ex. 2040, DemoMobile 2000 – Guide – List – Conference Schedule (DODOTS0025982).

30. Amazingly, we also received a DemoGod award at both conferences. *See* Ex. 2041, Demo Letter – March 6, 2000 – "Demo God" Award to DoDots (DODOTS0026222). This award was a major deal because only a handful of companies won the award. In fact to be selected as a Demo God meant that a majority of start-up investors, experts in the fields, and competitors thought our product was among the best of the best. In short the awards represented widespread praise from the start-up industry.

31. The Dots technology also received an award at the Investor's Choice conference. It was named most likely to succeed based on votes from an audience that included leading ecommerce companies as well as a panel of distinguished investors, and observers. *See* Ex. 2042, Press Release - "Investor's Choice" winner at Technologic Partners Internet Outlook Conf. 2000 - 9/20/2000 - EXH. 4 - COMPLAINT. Notably, Richard A. Shaffer, founder of Technologic Partners noted that "As a recipient of the Investors' Choice award, DoDots was recognized

above and beyond other presenting companies to receive one of 10 Investors' Choice awards. We believe DoDots exemplifies the key characteristics needed to succeed in this competitive market environment and are looking forward to seeing its positive growth in the coming year."

III. The Success of the DoDots Startup

32. The Dots Technology also proved to be a huge commercial success in the start-up realm.

33. Upon launch in early 1999, two separate investors were willing to provide venture capital to get the business off the group. Softbank proposed a 4.5 million dollars pre-money valuation, with an initial investment of 1.5 million dollars from Softbank and another 1.5 million dollars from another investor. See Ex. 2043 and Ex. 2044. With a competitive offer, on the other hand, Menlo Ventures proposed a 5 million dollar valuation.

34. DoDots opted to proceed with Softbank because of less restrictive terms and the strength of the Softbank network and investor experience. Using this money as well as debt financing, DoDots was able to rapidly grow over the next several months. It soon formed partnerships with 15 other companies to use the DoDots technology.

35. By the spring of 2000, DoDots needed additional capital to expand its business. The company eventually met with Chase H&Q in San Francisco. *Id.*

After the meeting, Chase indicated that they believed the company was worth a $275 million pre-money valuation. Based on this, the parties entered into a preliminary term sheet where Chase would invest $25 Million for the second round total of $60 Million dollars. *Id.*

36. The declining tech market shifted the final terms of the deal, valuing DoDots closer to $175M pre-money and raising $17M. Despite this, the company was able to still close a financing round in a declining market when many other companies were unable to.

37. Even with the downward market pressure, DoDots' growth in value from its first and second round of financing represented the largest increase in venture value in the venture firm's portfolio at the time.

38. It was celebrated as an enormous success, further validating the foundational nature of the technology and the broad market need of the solution that was not available anywhere else.

39. Through the rest of spring and summer of 2000, DoDots continued to grow its partner network of companies offering Dots to the market, it's user base of customers using Dots in their daily lives and its independent developer network offering new to the world Dots.

40. By fall of 2000, DoDots continued its financing efforts to prepare for expansion into the infrastructure and mobile markets and to prepare for a potential

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IPO. The company received a term sheet for a Series C round from late stage investors in New York. This further validated that the foundational technology was becoming more mainstream (from silicon valley validation to New York, global financial epicenter validation).

41. When the consumer internet tech market collapsed, the timing caught DoDots in an unfortunate cash flow timing gap with investors taking a pause before investing again. We acted quickly to reduce the size of the company, lowering the monthly expenses and started looking for strategic acquisition opportunities.

42. In fact, a leading mobile network operator in Europe (Hutchinson Whampoa and Orange UK) quickly realized the value of the DoDots app functionality and app ecosystem value. They were building out their higher speed mobile networks and saw the emerging mobile application market. Instead of building a mobile app ecosystem from scratch, the CEO saw the acquisition of DoDots to be a fast track way to get to market ahead of competition. The higher speed networks were being rolled out earlier in Europe. This signaled a market validation of what we now know as the trillion dollar app ecosystem globally.

43. Orange decided to acquire the foundational technology and core team of DoDots. But, 24 hours before closing of the acquisition, the CEO decided he couldn't make it happen because his engineering team preferred to build their own

technology from scratch. While he protected his team's engineering culture, he was disappointed as he knew he also lost the market lead and technology advantage DoDots represented.

IV. Despite the collapse of the consumer tech market at the time, the company's IP and vision lived on.

44. In fact, over the next two decades, the paradigm that we developed has been adopted across all platforms, from desktop, laptop, tablets, mobiles devices and other smart devices, as apps and app stores. The modern app ecosystem operates and functions exactly how we envisioned our Dots would work. And many now take for granted the concept of internet-powered apps (vs. web pages or disconnected software) , and the existence of "app stores" and developer ecosystems.

45. Our inventions were decades ahead of their time. It's exciting to see something that has touched so many people (over 6B people now use internet powered apps on a range of smart devices) , established a primary conduit for direct internet powered services and experiences (over 88% of users time on smart devices are spent on apps) and created so much market value for companies, customers and developers alike (trillions of dollars a year growing 29% year over year) .

V. Closing

46. I hereby declare that all statements made herein of 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 and that such willful false statements may jeopardize the results of these proceedings.

47. I declare under penalty of perjury that the foregoing is true and correct.

Sworn to this 20th day of February, 2024 in Lafayette CO.

George Kembel

George Kembel