

1 UNITED STATES PATENT AND TRADEMARK OFFICE

2
3 BEFORE THE PATENT TRIAL AND APPEAL BOARD

4
5 K/S HIMPP
6 Petitioner,

7 v.

8 BRAGI GmbH,
9 Patent Owner.

10 Case IPR2023-01150
11 U. S. Patent No. 9,843,853
12

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15 REMOTE DEPOSITION UNDER ORAL EXAMINATION OF

16 DARRIN YOUNG, Ph.D.

17 DATE: September 27, 2024
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24 REPORTED BY: CHARLENE FRIEDMAN, CCR, RPR, CRR
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TRANSCRIPT of the deposition of the
DARRIN YOUNG, Ph.D., called for Oral Examination in the
above-captioned matter, said deposition being taken by
and before CHARLENE FRIEDMAN, a Notary Public and
Certified Court Reporter, a Registered Professional
Reporter, and a Certified Realtime Reporter, via video
teleconference, by Zoom, on September 27, 2024,
commencing at approximately 11:00 in the morning.

1 A P P E A R A N C E S:

2

3 MCKOOL SMITH
4 300 Crescent Court
5 Suite 1500
6 Dallas, Texas 75201
7 (214) 978-4000
8 BY: BRADLEY JARRETT, ESQ.
9 Attorneys for Petitioner

10

11 WILMER HALE
12 250 Greenwich Street
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15 (212) 230-8800
16 BY: TRISHAN ESRAM, ESQ.
17 BRIAN LAMBSON, ESQ.
18 Attorneys for Patent Owner

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I N D E X

WITNESS NAME	PAGE
DARRIN YOUNG	
By Mr. Esram	7

* * * * *

E X H I B I T S

EXHIBIT NO.	DESCRIPTION	PAGE
EXHIBIT 1	Second Declaration in Support of Revised Contingent Motion to Amend	11
EXHIBIT 2	'853 Patent	19

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Deposition Support Index

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Direction to witness not to answer

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None

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Request for production of documents

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Questions marked

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1 CERTIFIED SHORTHAND REPORTER: My
2 name is Charlene Friedman, a Certified
3 Shorthand Reporter and Notary Public of the
4 State of New Jersey. This deposition is
5 being held via video teleconference
6 equipment.

7 The witness and reporter are not in
8 the same room. The witness will be sworn in
9 remotely, pursuant to agreement of all
10 parties. The parties stipulate that the
11 testimony is being given as if the witness
12 was sworn in person.

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1 D A R R I N Y O U N G,

2 called as a witness, having been first duly
3 sworn according to law, testifies as follows:

4

5 EXAMINATION BY MR. ESRAM:

6 Q Good morning.

7 A Good morning.

8 Q Please state your full name, for
9 the record.

10 A First name is Darrin, D-A-R-R-I-N.

11 Last name is Young, Y-O-U-N-G.

12 Q Dr. Young, where are you currently
13 located for today's deposition?

14 A I'm currently in Salt Lake City,
15 Utah.

16 Q And you're located at your home,
17 currently?

18 A That's correct.

19 Q Is anyone else with you?

20 A My wife is in the house, but she's
21 not in this room.

22 Q If ever your wife comes in the
23 room, would you please let us know?

24 A Of course.

25 Q Are you using any notes today?

1 A I have some clean copy of the
2 documents with me.

3 Q Would you identify which documents
4 you are mentioning?

5 A Okay. I have a clean copy of my
6 second Declaration.

7 I have a clean copy of Patent
8 Owner's Revised -- the Contingent Motion to
9 Amend.

10 I have a clean copy of the '853
11 patent.

12 I have a clean copy of Brown's
13 Reference.

14 I have a clean copy of -- I'm
15 trying to get the name.

16 I have a clean copy of Hain's
17 Reference.

18 I have a clean copy of
19 Steinbrecher's Reference.

20 I have a clean copy of Schaffer's
21 Reference.

22 I have a clean copy of my CV.

23 And I have a clean copy of the --
24 of the original application to the '853
25 patent. That's what I have.

1 Q And for the last one that you said
2 is the original application to the '853
3 patent, is this Exhibit 1008 of the present
4 IPR?

5 A Yes. At the lower-hand right
6 corner, it says, capital letter H-I-M-M --
7 I'm sorry, HIMPP 1008.

8 Q Dr. Young, will you agree not to
9 have any communications with anyone while we
10 are on the record during this deposition
11 today?

12 A Yes, I do.

13 Q And you probably heard this before,
14 but let me say it again.

15 The court reporter here is going to
16 be writing down everything we say. So please
17 give verbal answers and avoid talking over
18 me, and I will try to do the same, okay?

19 A Yes.

20 Q Do you understand that you took an
21 oath today to tell the truth?

22 A Yes, I understand that.

23 Q Is there any reason why you will
24 not be able to answer my questions truthfully
25 today?

1 A There's no such reason.

2 Q You understand that we are here
3 today to discuss IPR 2023-01150 regarding
4 U.S. Patent No. 9,843,853, correct?

5 A That's correct.

6 Q If I refer to IPR 2023-01150 as the
7 '853 IPR, you will know what I'm referring
8 to, correct?

9 A That's correct.

10 Q And if I refer to the U.S. Patent
11 No. 9,843,853 as the '853 patent, you will
12 know what I'm referring to, correct?

13 A That's correct.

14 Q When was the last time you read the
15 specifications of the '853 patent?

16 A Two days ago.

17 Q You submitted a Declaration in
18 support of BRAGI's, that is, the Patent
19 Owner's Revised Motion to Amend in the '853
20 IPR, correct?

21 A That is correct.

22 Q This is the second Declaration that
23 you submitted in the '853 IPR, correct?

24 A That is correct.

25 Q Your first Declaration was in

1 support of BRAGI's Motion to Amend, correct?

2 A I believe that's correct.

3 Q I'm going to drop an exhibit into
4 the chat.

5 MR. ESRAM: This is -- this will be
6 Exhibit No. 1 to this deposition.

7 Exhibit No. 1 to this deposition is
8 Exhibit 2005 to the I -- to the '853 IPR.

9 (Above-mentioned document marked
10 for Identification.)

11 Q Please let me know when you have
12 Exhibit No. 1 and have it open.

13 A Can I download it or just open it?

14 Q I believe you click on the icon in
15 the chat. It either downloads it or opens
16 it. Whichever way, but please open it.

17 A Okay. Yes, I have the document
18 open.

19 Q The document in front of you is
20 your Declaration in this -- in Support of
21 BRAGI's Revised Motion to Amend in the '853
22 IPR, correct?

23 A That's correct.

24 Q If I refer to Exhibit No. 1 to this
25 deposition as your second Declaration, you

1 will know what I'm referring to, correct?

2 A That's correct.

3 Q How long did you spend preparing
4 your second Declaration?

5 A I spent about somewhere between 30
6 to 40 hours.

7 Q Did you write every word in your
8 second Declaration?

9 A I worked with counsel very closely
10 on this report, you know. It reflects my
11 opinions. I provided a lot of my edits
12 pretty much every page of the report.

13 Q Do you consider everything in your
14 second Declaration accurate, correct?

15 A Yes, I do.

16 Q Let's turn to page 8 of the second
17 Declaration.

18 A Can I look at my hard copy?

19 Q That's fine, yes.

20 A Okay, thank you.

21 I am at page 8 of my second
22 Declaration.

23 Q Starting on page 8 through 14, you
24 include BRAGI's proposed substitute Claims 22
25 through 42, correct?

1 A From page 8 to page 14, can you
2 maybe repeat that statement again?

3 Q Starting on page 8 through page 14,
4 you include BRAGI's proposed substitute
5 Claims 22 through 42, correct?

6 A That's correct.

7 Q BRAGI's proposed substitute Claims
8 22 through 42 correspond respectively to
9 original Claims 1 through 21 of the '853
10 patent, correct?

11 A That's correct.

12 Q BRAGI's proposed substitute Claims
13 22, 31 and 42 are independent claims,
14 correct?

15 A Can I take a look at it?

16 Q Please do.

17 A Yeah, I think the revised Claim 22,
18 Claim 31 and Claim 42 are independent claims.

19 Q Going back to page 8 of your Second
20 Declaration --

21 A Yeah, I'm at page 8.

22 Q -- proposed substitute Claim 22
23 includes a newly added limitation that
24 recites, in part, quote, "The wireless
25 earpieces are configured to read user

1 biometrics," end quote, correct?

2 A That's correct.

3 Q Let's turn to page 10 of the second
4 Declaration.

5 A I am at page 10.

6 Q Proposed substitute Claim 31
7 recites, in part, quote, "The wireless
8 earpiece is configured to read user
9 biometrics," end quote, correct?

10 A That's correct.

11 Q Let's turn to page 13 of your
12 second Declaration.

13 A I am at page 13.

14 Q Proposed substitute Claim 42
15 recites, in part, quote, "The wireless
16 earpiece is configured to read user
17 biometrics," end quote, correct?

18 A That's correct.

19 Q Substitute Claims 22, 31 and 42
20 each recite, quote, "user biometrics," end
21 quote, correct?

22 A That's correct.

23 Q For purposes of the I — the '853
24 IPR, you stated that you qualify as a person
25 of ordinary skill in the art, correct?

1 A That's correct.

2 Q As a person of ordinary skill in
3 the art, what would you say is the meaning of
4 user biometrics in the context of the '853
5 Patent?

6 A Well, the user biometrics, you
7 know, to a person of ordinary skill in the
8 art looking at the claim term, the art of the
9 specification, that term means about
10 biological, physiological or chemical
11 characteristics with respect to the
12 individual. And that individual is a user,
13 right, and that user is the person who -- who
14 uses or wears the wireless earpieces.

15 And if you look at the -- the
16 specification, I recall the specification
17 also gives some example for the biometrics.

18 Q So in your opinion, user biometrics
19 in the context of the '853 patent means
20 biological, physiological or chemical
21 characteristics of the user, correct?

22 A I remember that's what I said.
23 I'll give you some example in terms of
24 biological, chemical and physiological, but
25 it could be some other parameters related to

1 an individual.

2 Q What would be these other
3 parameters related to the individual?

4 A I do not recall I provided that
5 opinion in my report, but I just want to give
6 you kind of a -- my understanding.

7 I'll give you some examples in
8 terms of biological, physiological, chemical
9 characteristics associated or related to an
10 individual, but I don't want to limit, you
11 know, the scope of this. It could be
12 something else.

13 Q Is a fingerprint -- strike that.
14 Is a fingerprint a type of user
15 biometrics?

16 A Yeah, I think a person of ordinary
17 skill in the art looking at a fingerprint
18 from an individual person would consider that
19 as a biometric signal or biometrics.

20 Q Is a facial feature for facial
21 recognition a type of using biometrics?

22 A I didn't offer that opinion in my
23 report, but I can maybe -- just to be fair, I
24 can tell you that for example, I can cross
25 technology where something is scanning an

1 individual's retinal eye, for example.

2 You know, that will be considered a
3 biometrics, but when you say facial, I just
4 have not thought about that yet.

5 Q Sitting here today, can you think
6 of any other user biometrics?

7 A If I go back to the specification
8 of the patent, right, I recall the patent
9 talks about heart rate, right, temperature as
10 examples. So these are the things that I
11 will consider biometrics.

12 Q Is the temperature -- strike that.
13 I'm sorry.

14 How is a wireless earpiece
15 configured to read the temperature of a user?

16 A You know, when I look at a
17 specification, my understanding through the
18 lens of an ordinary skill in the art is that
19 when you have a wireless earpiece, for
20 example, inserted in the ear, right, or worn
21 by an individual, you can have temperature
22 sensors built as a part of that device to
23 monitor body temperature.

24 Q Does the specification of the '853
25 patent describe how to have a temperature

1 sensor built into the wireless earpiece?

2 A I don't recall, but monitoring
3 temperature, right, for example, body
4 temperature or skin temperature, that is
5 something a person of ordinary skill in the
6 art would know.

7 Q So a person of ordinary skill in
8 the art reading the specification of the '853
9 patent would know how to make a wireless
10 earpiece that is configured to read the
11 temperature of a user, correct?

12 A Yeah, what I said was -- I think
13 you kind of recapped what I said. I don't
14 remember exactly what I said.

15 I said, imagine a temperature,
16 right, is something a person of ordinary
17 skill in the art would know how to do it.

18 Q And a person of ordinary skill in
19 the art would know how to include a sensor in
20 a wireless earpiece to measure the
21 temperature of a user, correct?

22 A That's correct.

23 Q Do you recall saying that a user
24 biometrics in the context of the '853 patent
25 includes heartbeat?

1 A I think the word "heartbeat" --
2 "heartbeat" shows up in the specification. I
3 can check, but I'm pretty sure the word
4 "heartbeat" is in there.

5 Q How is a wireless earpiece
6 configured to read the heartbeat of a user?

7 A I don't recall if the patent talks
8 about exactly how to do it, but a person of
9 ordinary skill in the art would know how to
10 monitor like heart rate or heartbeat and
11 incorporate that into that wireless earpiece.

12 Q Is a distant traveled by the user
13 of the wireless earpiece a type of user
14 biometrics?

15 A Can you say that again?
16 I'm sorry. I just didn't quite get
17 what you -- what you meant.

18 Q Let me drop an exhibit in the chat.

19 MR. ESRAM: And that will be
20 Exhibit No. 2 to this deposition, which is
21 also Exhibit 1001 to the '853 IPR.

22 (Above-mentioned document marked
23 for Identification.)

24 Q Please let me know when you have
25 Exhibit 2 downloaded and open.

1 A I got that open, I believe.

2 Q Exhibit 2 or Exhibit 1001 is the
3 '853 Patent, correct?

4 A That's correct.

5 Q Let's go to column 9, and take a
6 look at the line 62 to 64.

7 A You said line 62 to 64?

8 Q Yes.

9 A Yes, I am there.

10 Q Line 62 to 64 gives some example of
11 biometric information.

12 Do you see that?

13 A I guess -- you don't mind if I just
14 look at a clean copy of the patent, a hard
15 copy?

16 Q I don't mind.

17 A Okay, thank you.

18 Yeah, what was your question?

19 Q Do you see that lines 62 through 64
20 give some examples of biometric information?

21 A Yes, I do see that.

22 Q Among the examples is distance
23 traveled.

24 Do you see that?

25 A I see that.

1 Q So my question earlier was, is
2 distance traveled by the user of the wireless
3 earpiece a type of user biometrics?

4 A I mean, that's what the document
5 says. I have not -- I have not considered
6 that distance traveled, but I can tell you I
7 looked at the next ones, calories burned,
8 right, and I came across technology where you
9 can monitor the distance traveled and you can
10 use that to derive the calorie consumption of
11 an individual.

12 Q In the list of examples of
13 biometric information, there is oxygenation.
14 Do you see that?

15 A I see that.

16 Q Is oxygenation of the user of the
17 wireless earpiece a type of biometric
18 information?

19 A Yeah, I think that oxygenation is a
20 biometric signal related to an individual.

21 Q I just want to clarify one thing
22 when we were talking about whether a wireless
23 earpiece is configured to read the heartbeat
24 of a user. And your answer said a person of
25 ordinary skill in the art would know how to

1 monitor the heart rate or heartbeat and
2 incorporate that in that wireless earpiece.

3 By "incorporate that," you meant
4 incorporate a sensor to measure the
5 heartbeat, correct?

6 MR. JARRETT: Objection,
7 mischaracterizes his testimony.

8 A I think you were asking me
9 something about how to -- how to make
10 something, right, like maybe a sensor or how
11 to use a sensor to -- to measure a heartbeat.

12 And what I said was, you know, a
13 person of ordinary skill in the art would
14 know how to -- how to do that, and they will
15 know how to build a sensor or use an existing
16 sensor to monitor in an individual's
17 heartbeat and put that -- and put that into
18 the wireless earpiece as a part of the
19 overall device.

20 That's what I meant.

21 Q Thank you.

22 MR. ESRAM: I have no more
23 questions for Dr. Young.

24 MR. JARRETT: I have no redirect
25 questions.

1 MR. ESRAM: Okay. I think that
2 does it.

3 So we can go off the record.

4 MR. JARRETT: Okay.

5 (Whereupon, the deposition was
6 concluded at 11:35 a.m.)

7 (Witness was excused.)

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C E R T I F I C A T E

I, CHARLENE FRIEDMAN, a Certified Court Reporter and Notary Public, qualified in and for the State of New Jersey do hereby certify that prior to the commencement of the examination DARRIN YOUNG, PH.D. was duly sworn by me to testify to the truth the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER certify that I am neither a relative of nor employee nor attorney nor counsel for any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.



CHARLENE FRIEDMAN, RPR, CRR, CCR of the
State of New Jersey

License No: 30X100204900

Date: September 27, 2024

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DEPOSITION ERRATA SHEET

Case Caption: K/S HIMPP v. BRAGI

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury
that I have read the entire transcript of
my Deposition taken in the captioned matter
or the same has been read to me, and
the same is true and accurate, save and
except for changes and/or corrections, if
any, as indicated by me on the DEPOSITION
ERRATA SHEET hereof, with the understanding
that I offer these changes as if still under
oath.

Signed on the _____ day of
_____, 20____

DARRIN YOUNG, PH. D.

1

DEPOSITION ERRATA SHEET

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DARRIN YOUNG, PH. D.

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DARRIN YOUNG, PH. D.