

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DISNEY MEDIA & ENTERTAINMENT DISTRIBUTION LLC,
Petitioner,

v.

DIGITAL MEDIA TECHNOLOGY HOLDINGS, LLC,
Patent Owner.

Case No. IPR2024-00736
U.S. Patent No. 7,574,725

DECLARATION OF HARRIS E. TULCHIN

1. My name is Harris E. Tulchin and I make this declaration as an independent expert in support of the response of Petitioner in the above-captioned matter pending before the Patent Trial and Appeal Board of the United States Patent and Trademark Office, and dealing with United States Patent No. 7,574,725 (the “Patent”). Exhibit 1001.

2. I am being compensated at my usual and customary expert witness rate of \$750.00 per hour. No part of my compensation depends on the outcome of this proceeding, and I have no other interest in this proceeding.

3. At the time of the filings associated with the Patent in 2000 and 2001 (the “Relevant Period”), I had a clear understanding of various industry terms which I used in my daily work, which included the writing of legal documents and communications with industry executives. I have worked in the entertainment field since 1978. During the Relevant Period, I worked as an entertainment lawyer, producer, author, and producer’s representative, as detailed in my resume, and annexed as Exhibit 2130.

4. I have served as counsel to major studios, world-wide film and television sales agents, distributors, film production companies, and television business entities, and as Chairman of Tulchin Entertainment have produced or executive produced more than 20 films, and have worked and contracted with many major Hollywood

stars, writers, and directors. Accordingly, I am quite familiar with the marketing and distribution of multimedia material, such as feature films. My business experience includes the sale of multimedia feature films using electronic technology, including videocassettes, digital video discs (“DVDs”), video-on-demand (“VOD”), and the like during the Relevant Period.

The Patent and the Invention Defined in Claim 1

5. I understand that the Patent deals with technology comprising a central server of a computer for receiving multimedia feature films and other entertainment and multimedia content as well as associated advertising, such as trailers and other materials, from producers.

6. The receipt of the material enables the central computer to transfer the feature film and, for example, a related trailer, poster or other advertising material, to a storage device of a computer located at an exhibition space such as an exhibitor’s movie theater.

7. This allows the exhibitor to later screen the feature film.

8. It also allows the exhibitor to use the stored advertising material at will, for example by playing a trailer, printing a poster, sending a television advertisement to a TV station, or the like.

9. The general process is recited in Claim 1 of the Patent (Exhibit A), which I have read and which I understand from the standpoint of an industry executive and entertainment lawyer.

Meaning of Terms in the Film Industry

10. While I have no specialized computer science training, I have an understanding of the use of various business terms in the entertainment industry during the Relevant Period, and I base my understanding of Claim 1 on that understanding and my review of those portions of the Patent relating to business matters. My testimony herein relates to the Relevant Period, except where stated otherwise.

Distribution

11. During the Relevant Period, “distribution” was an industry term, still in use today, which was used to describe the process of marketing a film and supplying copies to exhibition venues and performing other marketing functions.

12. The recitation in Claim 1 of a “method of marketing and distributing multimedia” is a clear specification of “distribution” as the term was used in the industry during the Relevant Period, and would not have been understood to refer to file downloading.

“Exhibitor” and Related Terms

13. Claim 1 of the Patent at ¶ 1(g) also uses the words “exhibitor” and “exhibiting.” During the Relevant Period, “exhibitor” referred to a person who puts

on an exhibition of a film such as a theater owner. Similarly, the term “exhibiting” referred during the Relevant Period to the conducting of an exhibition.

“Exhibition,” in turn, meant a **public** showing to an audience, and in the case of the film industry during the Relevant Period, the screening of a feature film or other multimedia product. These were the meanings of those terms during the Relevant Period.

14. In the film industry during the Relevant Period, it would have been understood that the term “exhibiting” meant screening a film to the public. Similarly, “exhibition” referred to the process of showing a finished film to audiences.

15. I understand that, in this proceeding, it has been contended that the words “exhibitor” may refer to the operator of a video-on-demand (“VOD”) system or a hotel featuring the services of a VOD system. The term “exhibitor,” as it was used during the Relevant Period, cannot refer to a VOD operator or a hotel or other establishment featuring the services of a VOD system. VOD showings are, at their essence private.

"Broadcast Exhibitor"

16. The meaning of “broadcast exhibitor” in the claims is illustrated in the Patent specification at column 15, lines 57-60, which refers to “a customer that is a television station,” a clear reference to a “broadcast exhibitor”. Television stations are broadcasters. They are also exhibitors, because of the public nature of their

exhibition of, for example, a feature multimedia film or other entertainment content.

17. Because of the common understanding of the terms “broadcast” and “exhibitor” in the film industry during the Relevant Period, the phrase “broadcast exhibitor” would be clearly understood as a broadcast television station operating over the air. This is consistent with the description in the Patent at column 15, lines 57-60, noted above.

“Marketing”

18. In the film industry, the term “marketing” refers to the promotional activities taken to interest buyers in a multimedia film or other entertainment content. These actions may include various communications, telephone calls, letters, emails, advertising, and so forth.

19. Marketing efforts occur at different stages in the feature film distribution process, including between the studios/producers and the exhibitors, as well as between the exhibitors and moviegoers. Patent at column 3, lines 22-25. The provision of data respecting the collection of marketing activities, such as which trailers, television advertisements and the like were furnished to exhibitors, is of value in accordance with the invention and the Patent.

Sales

20. I understand that in this matter, there is some contention that sales and marketing are the same thing. That is absolutely not the case. In the film distribution business, "sales" (also referred to as "box office sales" or simply "box office") are executed commercial transactions that result in a consumer paying to view a film.

21. The references to "sales" in Claim 11 of the Patent refer to box office sales to customers of the movie theater. This is seen from the language of Claim 11, of "providing sales and marketing data... to exhibitors based upon information from said exhibitor." I note that in the Relevant Period, the individual exhibitors were the custodians of data relating to the actions which they took in attempting to maximize box office sales. The collection of data from exhibitors and transfer of data as recited in claim 11 acted to empower the marketing of the exhibitors.

Collection and Dissemination of Marketing Data

22. In contrast to this, and in accordance with the invention of the Patent, data on theater marketing activities, such as the particular trailers, advertising and other items used by the exhibitor movie theaters is collected by the inventive system as these materials are provided to the exhibitors. See Patent, column 15, lines 8-11 and 34-37. This collection and dissemination of data is embodied in Claim 11.

23. The collection and dissemination of marketing data recited in Claim 11 ("automatically collecting sales information from exhibitor recipients of various

items of said multimedia material and providing sales and marketing data, specific to said items of multimedia material, to exhibitors based upon information from said exhibitors”) (Patent, column 3, lines 22-25), empowers the purchasers [i.e., exhibitor-movie houses] to locally market and sell said multimedia material” recited in claim 1¶f. “In addition to providing multimedia materials to users, the server system collects data about the users and information respecting the economics and sales success of exhibitors and broadcasters.”

24. More particularly, the concern of the Patent with marketing of the film, also within the meaning of “distribution,” as that term is used in the film industry, is shown by the Patent teaching that the inventive system, “after a movie has been viewed” by the exhibitor customer, proceeds with “storage of statistics on such things as... other products [e.g. advertising] combined with the subject product [the movie].” Patent, column 15, lines 34-39.

25. As stated in the Patent, those “statistics are then stored at step 436 and sent to statistics database 438. Such information can be made available on demand... to any person [e.g. a movie theater exhibitor or broadcast exhibitor] using the automated ordering system.” See the Patent, column 15, lines 60-64. See also, Claim 1g (“wherein said purchaser is an exhibitor exhibiting said multimedia material... in a public theater”).

26. The Patent at column 15, line 66, also refers to features of the system as a “marketing tool” for pushing information to exhibitor customers. I agree with the correctness of this characterization.

At a Time or Place Different

27. An industry professional working in the film business would understand, during the Relevant Period, that a trailer for a future movie is typically shown at period of time before exhibition of the movie to the public in order to build interest in potential customers.

28. Accordingly, “trailers” would be understood to be shown at a time different from the time when the movie is being exhibited to customers. This is what the language “said advertising material...being shown to the public at a time... different from the time... at which said associated multimedia material is displayed,” in Claim 1 ¶g is referring to.

29. On the other hand, other advertising materials, such as a radio or television promotional spots might be shown while the movie is being screened, but they would be shown at a different place, for example on television or in a newspaper. This is what the language “said advertising material...being shown to the public at... a place different from the... place at which said associated multimedia material is displayed,” in Claim 1 ¶g is referring to.

30. The assertion by Petitioner's designated Expert Houh in his declaration that the running of an optical projector in a movie theater is a type of "broadcast" is completely at odds with the common, plain and ordinary meaning of the word "broadcast."

31. In the entertainment business, during the Relevant Period, the word "broadcast" refers to the transmission of a radiofrequency signal modulated to carry an entertainment product from a transmitter antenna to the antenna of a receiver, such as a television set at a remote location.

32. The above was the state of broadcast radio and television during the Relevant Period, namely at the time of the filings associated with United States Patent No. 7,574,725 of Nick Stiliadis, both provisionally on May 2, 2000 and non-provisionally on April 23, 2001. My testimony in this declaration respecting the meaning of various terms is true and correct as of both of these dates.

33. During the Relevant Period, the term "broadcast" was not used to refer to optical projection in a movie theater, which at that time was done with a light source, film and a lens.

34. While the term "broadcast" may occasionally be used in a general sense to describe other types of transmissions, I can say that after over 40 years working in the film industry, I have not seen or heard a single instance of the term "broadcast"

being used in connection with optical projection of images in a movie theater, or, for that matter, anywhere.

35. That Dr. Houh seeks to redefine the word "broadcast" to include optical projection of the movie in a movie theater, in my opinion, casts doubt on the credibility of the testimony of that witness.

The undersigned hereby declares that the above statements are true except as to statements made upon information and belief, which are believed to be true and with the knowledge that willful false statements and the like so made are punishable under the penalties for perjury under the laws of the United States.

Further declarant sayeth not.

Dated: February 24, 2025

Respectfully submitted,

/s/  _____

Harris E. Tulchin