

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of: Oh et al.
U.S. Patent No.: 11,410,355 Attorney Docket No. 57721-0002IP1
Issue Date: August 9, 2022
Appl. Serial No.: 16/925,878
Filing Date: July 10, 2020
Title: METHOD AND APPARATUS FOR CREATING DIGITAL CLOTHING

In re Patent of: Oh et al.
U.S. Patent No.: 10,733,773 Attorney Docket No. 57721-0003IP1
Issue Date: August 4, 2020
Appl. Serial No.: 14/921,269
Filing Date: October 23, 2015
Title: METHOD AND APPARATUS FOR CREATING DIGITAL CLOTHING

DECLARATION OF KATHRYN TALBOT

Attorney Docket Nos. 57721-0002IP1, 57721-0003IP1
IPR of U.S. Patent Nos. 11,410,355, 10,733,773

I. INTRODUCTION

I, Kathryn Talbot, of San Francisco, CA, declare that:

1. My name is Kathryn Talbot. I am making this Declaration at the request of Zhejiang Lingdi Digital Technology Co., Ltd. (“Lingdi” or “Petitioner”). I understand that this Declaration will be submitted as an Exhibit in support of Petitions for *Inter Partes* Review of U.S. Patent Nos. 11,410, 355 (“the ’355 patent”) and 10,733,773 (“the ’773 patent”).
2. I have been asked to provide my expert opinion regarding the authenticity and public availability of two videos hosted by the video sharing website YouTube (youtube.com). Specifically, I have been asked to provide my opinion regarding the following videos:
 - *trace pattern* (Available at <https://www.youtube.com/watch?v=dRWJZab0tLA>) (“Trace_Pattern”) (Exhibit LINGDI-1004)
 - *Manually adjust CAD Pattern Grading | CAD Pattern Making Tutorial | TUKAtip - TUKAdesign* (Available at <https://www.youtube.com/watch?v=hR3TcYDPjMU>) (“TUKAdesign”) (Exhibit LINGDI-1007)

As I explain below, Exhibit LINGDI-1004 is a true and correct copy of the Trace_Pattern video in MP4 format. Exhibit LINGDI-1007 is a true and correct copy of the TUKAdesign video in MP4 format.

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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 LINGDI-1004
- Exhibit LINGDI-1007
- The content, including the video and metadata, located at <https://www.youtube.com/watch?v=dRWJZab0tLA>
- The content, including the video and metadata, located at <https://www.youtube.com/watch?v=hR3TcYDPjMU>
- The content, including the video and metadata, located at <https://web.archive.org/web/20140426000741/https://www.youtube.com/watch?v=hR3TcYDPjMU>
- Any other document referenced herein

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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.

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9. A detailed record of my professional qualifications is set forth in my résumé. Appendix A to this declaration 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 Fish & Richardson, P.C. 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 Exhibits LINGDI-1004 and LINGDI-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 computer aided design (CAD) software. I have been informed that a person of ordinary skill in the art would have had a degree in an engineering, computer science, graphic design, or a related field plus 2-3 years of work and/or research experience in the field of computer aided

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design (CAD) software Graduate education could substitute for professional experience, or significant experience in the field could substitute for formal education.

**IV. AUTHENTICITY AND PUBLIC ACCESSIBILITY OF THE
VIDEOS OF EXHIBIT LINGDI-1004 AND EXHIBIT LINGDI-
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 design software, including the clothing design software demonstrated in Exhibits LINGDI-1004 and LINGDI-1007.

14. I watched the video and reviewed the content and metadata located at the URL <https://www.youtube.com/watch?v=dRWJZab0tLA>. I also watched the video in MP4 format of Exhibit LINGDI-1004.

15. Based on my observation, the video of Exhibit LINGDI-1004 has the same content as the video located at the

<https://www.youtube.com/watch?v=dRWJZab0tLA> URL. I have been

informed that the MP4 file of Exhibit LINGDI-1004 was created by converting the video located at the URL

<https://www.youtube.com/watch?v=dRWJZab0tLA> into MP4 format, which

is consistent with my observation that the video of Exhibit LINGDI-1004

has the same content as the video located at that URL. Thus, Exhibit

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LINGDI-1004 is a true and correct copy, in MP4 format, of the video located at the URL <https://www.youtube.com/watch?v=dRWJZab0tLA>.

16. I watched the video and reviewed the content and metadata located at the URL <https://www.youtube.com/watch?v=hR3TcYDPjMU>. I also watched the video in MP4 format of Exhibit LINGDI-1007. I also watched the archived video and reviewed the content and metadata located at the URL

<https://web.archive.org/web/20140426000741/https://www.youtube.com/watch?v=hR3TcYDPjMU>.

17. Based on my observation, the video of Exhibit LINGDI-1007 has the same content as the video located at <https://www.youtube.com/watch?v=hR3TcYDPjMU> and the video located at

<https://web.archive.org/web/20140426000741/https://www.youtube.com/watch?v=hR3TcYDPjMU>. I have been informed that the MP4 file of Exhibit LINGDI-1007 was created by converting the video located at the URL <https://www.youtube.com/watch?v=hR3TcYDPjMU> into MP4 format, which is consistent with my observation that the video of Exhibit LINGDI-1007 has the same content as the video located at that URL. Thus, Exhibit

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LINGDI-1007 is a true and correct copy, in MP4 format, of the video located at the URL <https://www.youtube.com/watch?v=hR3TcYDPjMU>.

18. The <https://www.youtube.com/watch?v=dRWJZab0tLA> URL is the YouTube webpage where the video of Exhibit LINGDI-1004 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 LINGDI-1004, the unique video identifier is “dRWJZab0tLA.”

19. The <https://www.youtube.com/watch?v=hR3TcYDPjMU> URL is the YouTube webpage where the video of Exhibit LINGDI-1007 is accessible. The unique video identifier for the video corresponding to Exhibit LINGDI-1007 is “hR3TcYDPjMU.”

20. 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 LINGDI-1004 was uploaded to YouTube until the present (given that the video has not been removed) the video has been accessible at the same URL:

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<https://www.youtube.com/watch?v=dRWJZab0tLA>. Similarly, from the time the video corresponding to Exhibit LINGDI-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=hR3TcYDPjMU>.

21. 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.

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22. 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.

23. The URL <https://www.youtube.com/watch?v=dRWJZab0tLA> points to a webpage including information indicating that the video corresponding to Exhibit LINGDI-1004 was uploaded by user EZBRUSH on May 16, 2012. A screen capture of the webpage containing the video corresponding to Exhibit LINGDI-1004 is attached as Appendix B to this declaration and shows the May 16, 2012 upload date for this video. In view of my

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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 LINGDI-1004 currently accessible at the above-referenced URL were accessible at the same URL on May 16, 2012.

24. The URL <https://www.youtube.com/watch?v=hR3TcYDPjMU> points to a webpage including information indicating that the video corresponding to Exhibit LINGDI-1007 was uploaded by TUKATECH on September 23, 2013. A screen capture of the webpage containing the video corresponding to Exhibit LINGDI-1007 is attached as Appendix C to this declaration and shows the September 23, 2013 upload date for this video. 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 LINGDI-1007 currently accessible at the above-referenced URL were accessible at the same URL on September 23, 2013.

25. 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 CAD software such as clothing design software would have been able to use keyword searching to

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search for various terms used in the descriptions of the videos corresponding to Exhibits LINGDI-1004 and LINGDI-1007, including the transcripts of the videos, to find them on YouTube.

26. Public availability of Exhibit LINGDI-1007 is also supported by the video, content, and metadata at

<https://web.archive.org/web/20140426000741/https://www.youtube.com/watch?v=hR3TcYDPjMU>. 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 April 26, 2014. The archived webpage includes information confirming that the archived video was uploaded to YouTube on September 23, 2013, just as the current YouTube webpage indicates. A screen capture of this archived webpage is attached to this declaration as Appendix D.

27. In view of my knowledge of and experience with YouTube, and the foregoing evidence, it is my opinion that the video corresponding to Exhibit LINGDI-1004 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 May 16, 2012. Therefore it is my opinion

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that the video corresponding to Exhibit LINGDI-1004 was publicly accessible on or near May 16, 2012. Additionally, in view of my knowledge of and experience with YouTube, and the foregoing evidence, it is my opinion that the video corresponding to Exhibit LINGDI-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 September 23, 2013. Therefore it is my opinion that the video corresponding to Exhibit LINGDI-1007 was publicly accessible on or near September 23, 2013.

28. I currently hold the opinions set expressed in this declaration. But my analysis may continue, and I may acquire additional information and/or attain supplemental insights that may result in added observations.

29. I hereby declare that all statements made of my own knowledge are true and that all statements made on information and belief are believed to be true. I further declare 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 the Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patents issued thereon.

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Dated: 4/24/2024

By: Kathryn Talbot
Kathryn Talbot

DocuSigned by:
Kathryn Talbot
A12EF4E9B8D74A7...

APPENDIX A

KATE TALBOT

Kate@KateTalbotMarketing.com | [Website](#) | 415-299-4208 | San Francisco, CA

I run my own consulting firm based in Silicon Valley partnering with early-stage startups and venture capital firms. My expertise includes social media strategy, executive thought leadership, content marketing, PR, and community building.

Social Media Expert

April 2018 - Present

Crafted motions and testified in depositions and trials

- Dodds (Emery Celli Brinckerhoff Abady Ward & Maazel LLP) vs. Live Nation
 - Expert in Snapchat
- Yvette Cabral Sullivan vs Fiba Technologies Inc. (O'Hagan Meyer, PLLC)
 - Expert in Snapchat
- Commonwealth of Pennsylvania v. Holly Dawn Metzler (Thomas M. Dickey Law Offices, P.C)
 - Expert in Snapchat
- (Knobbe Martins) Masimo Corporation vs. Apple
 - Expert in YouTube
- (Fish & Richardson) Zhejiang Lingdi Digital Technology Co., Ltd vs. CLO Virtual Fashion Inc.
 - Expert in YouTube

Plexo Capital | Head of Marketing & Platform

November 2019 - January 2023

- Launched and built out the Plexo Capital brand including managing social media, thought leadership, PR strategy and execution, website, email marketing, and speaking opportunities
- Executed a viral thought leadership piece by Lo Toney, "[I am VC but still a Black man in America](#)" during Summer 2020, which led to inbound capital of \$20 million from Alphabet, press in TechCrunch, CNBC, The Information, 1.1 million Twitter impressions, Lo featured on LinkedIn's "Black Voices to Amplify" and becoming a LinkedIn influencer going from 5k followers to 123k+, and receiving the National Venture Capital Association DE+I Impact award
- Built strong relationships with tech and VC press for funding announcements, partnerships, and relevant trend insights. Received features in Fortune, Forbes, Axios, 20VC, and CNBC - as Lo became a regular paid contributor
- Directed annual general meetings and in-person events allowing for strong community building, especially within the diverse founders and emerging fund manager ecosystem

GPx Emerging Fund Manager Accelerator | Head of Program

June 2021 - January 2023

- Managed the GPx education platform crafting more than 30 video pieces of educational content with industry leaders, ran the curated cohort including monthly meetings discussing forming a fund, raising a fund, and managing a fund, and provided 1:1 marketing consulting for fund managers
- Raised \$300,000 for the program from grants from The Ford Foundation and sponsorship capital from SVB
- Garnered media features in TechCrunch and Venture Capital Journal
- Produced extensive virtual summits where fund managers pitched to LPs to receive capital
- Featured alums: Serena Ventures, Rarebreed, Coyote Ventures, Collide Capital, Boom Capital, Red Bike

Salesforce Ventures | Social Media, The Cloud 100

June 2021 - September 2021

- Social media lead strategist for all pre-event, event, and post-event social media content for The Cloud 100
- Crafted over 70 pieces of content including writing the social media copy, creating the designs, and providing editorial feedback on the video content for the social media channels
- Provided data analytics and strategic advice for The Cloud 100 brand moving forward

Flybridge | Marketing Consultant

May 2020 - January 2021

- Partnered closely with general partner and Harvard Business School lecturer, Jeff Busgang, to launch his “Community Playbook eBook,” debut the Busgang Bullets LinkedIn Newsletter to now more than 11,000 subscribers, and grow his LinkedIn following to more than 25k followers with engaging LinkedIn Live videos and written content
- Key communications partner in the launch of The Community Fund with Jesse Middleton and Lolita Taub - leading to more than 450 applicants applying for the 11 partner spots in the fund
- Ran social media and press for the brand accounts of Flybridge, XFactor, The Community Fund, and Graduate Syndicate leading to features in TechCrunch, Forbes, and Strictly VC

Additional Clients

- **Venture Capital:** 500 Startups. Cuatro Capital. Fiat Ventures. L’attitude Ventures. Volvo Cars Tech Fund
- **Finance:** GreenDot Bank. SeedInvest. Girls Who Invest. Kiva
- **Education:** Digital Marketing Institute. Creative Live. AlwaysHired. MarketerHire
- **Influencer Marketing:** Soldsie. Captiv8. AspireIQ. Ziba Beauty
- **Mobile:** Dote. GIST. Didja Clippit. BTV
- **B2B:** Casetext. LiveRamp. Vidder. TCGen Consulting. SplashThat. Checkr.
- **Brand:** Virgin America

Startup Mentor

- Runway Innovation Hub, Lundbeck Foundation, Halo Incubator, Founders Embassy

Marketing Industry Expert

- [Forbes Columnist](#): Interviewed Sir Richard Branson, Maria Shriver, Ninja, Debra Messing + more
- [Author](#): “Oh Snap! You Can Use Snapchat For Business,” #1 on Amazon, IBM Book of the Month and key columnist for Social Media Examiner
- [Event Speaker](#): Sony Latin America, Social Media Marketing World, RampUp, Agora.io, PR Ragan
- [Featured](#) on CNN, NBC News, BBC, NPR, Nasdaq, HuffingtonPost, iHeart Radio, Venturebeat

EDUCATION

UNIVERSITY OF SAN FRANCISCO

San Francisco, CA | May 2012

Masters of Business Administration

UNIVERSITY OF CALIFORNIA AT SAN DIEGO

La Jolla, CA | June 2006

Bachelor of Arts in Communications, Provost Honors

APPENDIX B

APPENDIX C



Manually Adjust CAD Pattern Grading | CAD Pattern Making Tutorial | TUKAtip - TUKAdesign (2013)



TUKATECH
4.79K subscribers

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6,712 views Sep 23, 2013 [COLOMBO](#)

You may need to manually adjust a CAD pattern or applied grading if, for example, there is some kind of grading discrepancy that causes the pattern not to line up.

This video shows you how to manually adjust each size so the pattern pieces for all sizes will fit together when they are sewn. In CAD pattern making, there are a lot of options for professional pattern makers to make and adjust beautiful patterns and apply grading, both manually and automatically.

NOTE:

This lesson was recorded in a legacy version of the TUKAcad software suite for pattern making, grading, and marker making. Some aspects of the interface may be a little different, however we believe the knowledge shared here is valuable for every pattern maker.

APPENDIX D

R3TcYDPiMU

 Loading...

2:12