

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF TEXAS
3 WACO DIVISION

4 _____
5 S.M.R. INNOVATIONS LTD and Y.M.R.
6 TECH LTD,
7 Plaintiffs,
8 v. Civil Action No.:
9 APPLE INC., 6:23-cv-479-DC
10 Defendant.

11 _____
12 VIDEOTAPED DEPOSITION

13 _____
14

15 WITNESS: DR. NATHANIEL POLISH
16 DATE: Wednesday, September 18, 2024
17 START TIME: 9:33 a.m., CT
18 END TIME: 11:12 a.m., CT
19 REMOTE LOCATION: Remote Legal platform
20 PROCEEDINGS OFFICER: Gina Nilio, CER-2150
21 JOB NO.: 29139

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23
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2 (available for download)

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1 P R O C E E D I N G S

2 THE PROCEEDINGS OFFICER: Before going on
3 the record, the witness positively identified themselves
4 to me as Nathaniel Polish by driver's license issued by
5 New York State Division of Motor Vehicles, and the
6 witness is presently located in Manhattan, New York.

7 Good afternoon -- I mean, good morning.
8 I'm sorry. We are now on the record. Today's date is
9 September 18, 2024, and the time is approximately 9:34
10 a.m., Central Standard Time.

11 My name is Gina Nilio, and I am the
12 officer designated by Remote Legal, 11 Broadway, Suite
13 468, New York, New York, to take the record of this
14 proceeding.

15 This is the deposition of Dr. Nathaniel
16 Polish, taken in the matter of S.M.R. Innovations LTD
17 and Y.M.R. Tech LTD versus Apple, Inc., Case Number
18 6:23-cv-479-DC, filed in the United States District
19 Court for the Western District of Texas, Waco Division.

20 Would all counsel please identify
21 themselves for the record and state who they represent,
22 starting with the noticing attorney.

23 MR. ALEXANDER: Cortney Alexander for the
24 plaintiffs.

25 MS. HARTJES: Jenny Hartjes of Goldman

1 Ismail on behalf of Apple and the witness.

2 THE PROCEEDINGS OFFICER: This deposition
3 is being taken remotely on behalf of the plaintiff and
4 is being conducted pursuant to the procedural rules and
5 laws governing this matter.

6 As such, all parties agree to this means
7 of capturing the official record, which may include
8 recording by audio, audiovisual, and/or stenographic
9 means, and agree not to oppose admissibility of the
10 testimony in this proceeding on the basis of the
11 personnel or method by which the testimony was captured.

12 Further, all parties agree that the
13 deposition officer or person administering the oath may
14 be authorized to administer the oath under the rules
15 where they reside.

16 Do the parties so stipulate?

17 MR. ALEXANDER: Yes, for the plaintiffs.

18 MS. HARTJES: Yes, for the defendant.

19 THE PROCEEDINGS OFFICER: I will now
20 swear in the witness.

21 Will the witness please state and spell
22 your name for the record.

23 DR. POLISH: Nathaniel Polish, N-A-T-H-A-
24 N-I-E-L, last name Polish, P-O-L-I-S-H.

25 THE PROCEEDINGS OFFICER: Will you please

1 raise your right hand for me.

2 Do you swear or affirm that the testimony
3 you shall give today in this proceeding will be the
4 truth, the whole truth, and nothing but the truth?

5 DR. POLISH: I do.

6 WHEREUPON,

7 N A T H A N I E L P O L I S H,

8 having been called as a witness, being duly sworn by the
9 notary public present, testified as follows:

10 THE PROCEEDINGS OFFICER: Thank you.

11 Counsel, you may proceed.

12 EXAMINATION

13 BY MR. ALEXANDER:

14 Q All right. Good morning, Dr. Polish.

15 A Good morning.

16 Q I'm going to start by putting up your
17 declaration that you've submitted in this proceeding.
18 So if you give me one second, I will put that up on the
19 screen.

20 A Great.

21 Q All right. You see that?

22 A Yes.

23 Q Okay. And you should be able to scroll
24 through this document independently yourself. Are you
25 able to do that?

1 A Yeah, it looks like. I'm just scrolling to
2 the end.

3 MR. ALEXANDER: Okay. Let's go ahead and
4 mark this as Exhibit 1, please.

5 THE PROCEEDINGS OFFICER: Can you refresh
6 it? Because I'm not seeing it. I'm seeing a black
7 screen.

8 MR. ALEXANDER: Sure. What do you need
9 me to do exactly?

10 THE PROCEEDINGS OFFICER: I need to take
11 it down and bring it back up.

12 MR. ALEXANDER: Okay.

13 THE PROCEEDINGS OFFICER: I see the
14 title. I just don't see the document. Thank you. I
15 see it now. Do you want me to mark it Exhibit 1? Is
16 that what you said?

17 MR. ALEXANDER: Yes, please.

18 THE PROCEEDINGS OFFICER: Okay, sir.

19 (Exhibit 1 marked for identification.)

20 THE PROCEEDINGS OFFICER: Thank you.

21 BY MR. ALEXANDER:

22 Q Okay. Dr. Polish, this declaration that
23 you've submitted, it includes your CV. I believe that's
24 attached at the end as Exhibit 1. I didn't see that it
25 included a list of cases in which you've testified over

1 the last few years or any period of time. Did I miss
2 that?

3 A I don't know what was attached to what they
4 served. My expert witness experience list is something
5 I maintain on my website. So you can easily get that if
6 you want. If you -- if you want the information, I can
7 just give it to you now.

8 Q Sure.

9 A If you go to www.dtgroup.com, on that landing
10 page, there's a link for both my latest CV and my expert
11 witness experience list. And I think the -- the CV
12 that's attached here is somewhat older than the one
13 that's on that site.

14 Q I see. Okay. Thank you. That's helpful. I
15 may return to this, but that gives (indiscernible -
16 audio disruption) for now. So I appreciate that.

17 A Yep.

18 Q In your declaration, you offer your opinion on
19 the level of ordinary skill in the art with respect to
20 the patents the plaintiffs have asserted in this case,
21 correct?

22 A Yes.

23 Q And you say that I believe -- and feel free to
24 turn to your -- the declaration at that point, but you
25 say that a person of ordinary skill in the art would

1 have had a master's degree; is that right?

2 A Yeah. In my Paragraph 15, I say that a person
3 of ordinary skill in the field would have had at least a
4 master's degree in computer engineering, electrical
5 engineering, or a related field, and at least some
6 experience with wireless communication.

7 Q Okay. In my experience, it's more common to
8 say that a person of ordinary skill in the art would
9 have had a bachelor's degree. So I was curious why you
10 think a master's would have been necessary for a person
11 of ordinary skill in the art says here.

12 A Well, so, you know, I consider a number of
13 factors which I talk about in Paragraph 14. I think
14 that the problems that are talked about in the patents
15 involving streaming media over various kinds of network
16 connections is somewhat more sophisticated and complex
17 than what you typically see in a bachelor's degree. The
18 networking protocols, the dealing with large volumes of
19 data and managing those systems, in my experience, is a
20 -- is a more -- is a more complex and involved process
21 than you would get in a typical bachelor's program.

22 Q Understood. Now, I referenced kind of what
23 I've usually seen in my experience, usually it's a
24 bachelor's degree with some level of experience, say a
25 couple of years. So would a bachelor's degree with a

1 couple of years' experience suffice for level of
2 ordinary skill in the art in this field?

3 A Well, so I -- I -- there's lots of ways to
4 formulate this. Obviously, there's a lot of different
5 -- different -- different experts are going to come up
6 with different exact ways to put this.

7 I have a last sentence in there about, Further
8 additional education or experience might substitute for
9 the above requirements. So certainly you could have
10 somebody with a bachelor's degree with a lot of -- lot
11 of practical experience, and that would work, too.

12 Q How much practical experience would be
13 necessary to make the bachelor's degree sufficient
14 education?

15 A You know, I didn't -- I didn't quantify that.
16 I think generally a few years, so maybe two or three.
17 But I -- you know, my opinion is that it's -- that a --
18 it's a master's level -- it's a master's level with some
19 practical experience. So that -- you know, master's
20 degree is typically a two year program.

21 Q Okay. So you say some experience with
22 wireless communications in -- let's see -- is that
23 Paragraph 15?

24 A Yes.

25 Q Okay. What do you mean by at least some

1 experience with wireless communications?

2 A Well, as a practical matter, if the person has
3 worked, you know, one or more problems, one or more
4 projects with wireless communication, has had some
5 experience in the issues around wireless communication,
6 that would be necessary. You'd have to have at least a
7 little bit of experience in wireless communication as
8 compared to wired communication, particularly in
9 streaming media, dealing with higher error rates and
10 things of that nature.

11 Q Okay. So when you say one or more projects,
12 what sort of project do you have in mind?

13 A Well, I mean, I'm an engineer. I build -- I
14 build products. So, you know, building a product of
15 some sort. You know, not just maybe a toy problem set,
16 but actually building a product in -- in the technology
17 space that's using wireless communication would be what
18 I'd have in mind that you'd have to have.

19 Q Okay. And so you think one project that fit
20 that description would be sufficient experience if it's
21 accompanied by the master's degree?

22 A Yes, that's what I had in mind in Paragraph
23 15.

24 Q Okay. What sort of experience with wireless
25 communications did you have at the -- as of the priority

1 have in the -- in the patent.

2 Q Well, it does say that converting both live
3 and prerecorded audio and video to Windows Media Audio
4 and Video 8 for live and on-demand delivery, right?

5 A It does say that. It's not -- it's not clear
6 exactly what they mean by that. They're talking about
7 supporting two-passing coding, which would certainly not
8 be a live thing. It -- it's not clear from this
9 paragraph exactly what's being supported, and certainly
10 in the 2001 timeframe there wasn't -- there wasn't a
11 whole lot of live video being done. So I -- I'm just
12 not sure from this paragraph what this -- what this is
13 exactly talking about.

14 Q What do you mean there wasn't a whole lot of
15 live video being done in that timeframe?

16 A Well, in that timeframe, for example, people
17 weren't -- weren't watching YouTube videos of -- of live
18 sporting events. They were -- people didn't have
19 anything close to enough bandwidth to support that, to
20 support live video streaming except under certain
21 special conditions.

22 So there -- there was some of it going on for
23 certain applications, but it wasn't anything like we
24 have today. Most of the video that was -- people were
25 focusing on was preparing highly compressed video for

1 delivering certain on-demand experiences.

2 Q So you're talking about video specifically.
3 How about audio?

4 A There was some. I built applications in that
5 period of time for a variety of different customers
6 using on-demand audio where you would connect up to
7 something and it would -- it would play voicemail and
8 audio messages. But there really wasn't -- there wasn't
9 much going on in -- in real-time audio. It was usually
10 easier for people to dial in with their phones and just
11 -- and just listen to audio over the phone than it was
12 to listen to it over the computer.

13 Q But doing that sort of real-time audio -- I
14 forget the -- I'm struggling with the word that you
15 used. But the transmission of real-time audio would
16 have been something that would have been within the
17 skill of a person of ordinary skill, right?

18 MS. HARTJES: (Indiscernible - audio
19 disruption) to form.

20 THE WITNESS: Certainly for certain
21 qualities of audio, under certain conditions, you could
22 do real-time audio. I don't know whether that's what's
23 referred to in this paragraph, for example. I don't
24 know whether that's what's going on here. They're
25 talking about enabling professional quality streaming,

1 which leads me to believe that this is talking about,
2 you know, preparing high-quality video for on-demand
3 delivery.

4 BY MR. ALEXANDER:

5 Q How about sending real-time audio from a
6 mobile device to another device in 2002?

7 MS. HARTJES: Object to form.

8 THE WITNESS: Well, I don't think that's
9 what this is talking about at all.

10 BY MR. ALEXANDER:

11 Q But that would have been something that a
12 person of ordinary skill in the art would have been
13 familiar with and able to implement in that timeframe?

14 MS. HARTJES: Same objection.

15 THE WITNESS: Maybe we can take a step
16 back. What -- what are you talking about being able to
17 implement? What -- what are you asking?

18 BY MR. ALEXANDER:

19 Q When you were talking about video -- that
20 there wasn't a lot of, I believe, real-time streaming of
21 video during this period. So I was asking similar
22 questions about audio. And so I was asking -- my most
23 recent question asked about real-time streaming of audio
24 from a mobile device.

25 A So everything I was talking about before with

1 respect to the real-time streaming, I was talking about
2 from a server to a -- a client device of some sort,
3 probably, that's involving a -- a desktop computer as
4 the client. There certainly wasn't -- I'm not aware of
5 anybody doing real-time streaming from a mobile device
6 in this timeframe.

7 Q Why not?

8 A At least, lack of computing power on the
9 devices, lack of bandwidth available to the devices,
10 lack of storage on the devices. The -- this is -- this
11 is pre-smartphone. There really weren't -- there really
12 wasn't a lot on the mobile devices that could handle --
13 that could handle media.

14 Q All right. Could I direct your attention to
15 the -- page two of this Exhibit 8?

16 A Sure.

17 Q Actually, you know what? I think that's
18 enough for this document. I'm just going to close it
19 out and put something else on.

20 A Okay.

21 MR. ALEXANDER: Okay. Could we mark this
22 as Exhibit 9, Gina?

23 (Exhibit 9 marked for identification.)

24 BY MR. ALEXANDER:

25 Q Okay. So, Dr. Polish, this is a printout

1 CERTIFICATE OF PROCEEDINGS OFFICER

2

3 I, Gina Nilio, hereby certify:

4 That the foregoing proceedings were taken
5 before me at the time and place therein set forth;

6 That the proceedings were recorded by me and
7 thereafter formatted into a full, true, and correct
8 transcript of same;

9 I further certify that I am neither counsel
10 for nor related to any parties to said action, nor in
11 any way interested in the outcome thereof.

12

13 DATED, this 24th day of September 2024.

14

15



16

17 _____
Gina Nilio, CER-2150

18 Proceedings Officer

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A C K N O W L E D G M E N T

I do hereby certify that having been first
duly sworn to testify to the truth, I gave the above
testimony on the 18th day of September 2024.

I further certify that the foregoing
transcript is a true and correct transcript of the
testimony given by me at the time and place specified.



DR. NATHANIEL POLISH

Sworn to before me this ____ day of _____, 20__

Notary Public