

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF DELAWARE

INTERNATIONAL BUSINESS MACHINES)
CORPORATION,)
Plaintiff,)
v.) C.A. No.
) 22-cv-590-GBW
ZYNGA INC., and CHARTBOOST, INC.,)
)
Defendant.)

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Wilmington, Delaware
Thursday, September 12, 2024
Trial Transcript Volume 4
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BEFORE: HONORABLE GREGORY B. WILLIAMS
UNITED STATES DISTRICT COURT JUDGE

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Michele L. Rolfe, RPR, CRR

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P R O C E E D I N G S

(REPORTER'S NOTE: The following trial was held in

1 Courtroom 6-B beginning at 9:07 a.m.)

2 THE COURT: Good morning. You may be seated.

3 So we're going to start with the time. So we
4 made the adjustment for the time for the plaintiff, so -- so
5 you got 26 minutes back. So on the 10th, you used 5 hours
6 and 9 minutes as opposed to the five -- whatever I told you,
7 5, 34, I believe.

8 Yesterday, you used 1 hour and 50 minutes, so
9 you've used a total of 8 hours and 55 minutes, so you have
10 2 hours and 5 minutes remaining.

11 Defendant, yesterday, you used 4 hours and
12 26 minutes, so you've used a total of 7 hours and
13 32 minutes, so you have 3 hours and 28 minutes remaining.

14 MR. PACKIN: Your Honor, I very much appreciate
15 the correction in the discrepancy. I would like to
16 respectfully request -- during Mr. Thompson's testimony, he
17 spent, I would say -- I mean, we were over here probably
18 over 30 minutes just looking through documents, to which
19 there was actually no objection. There was no objection
20 lodged ahead of time. They objected in court, they made him
21 do it and then they withdraw their objection just to burn
22 our time.

23 And at the pretrial conference, we agreed that
24 you don't need to have foundation for experts and they never
25 raised that objection, it's just in court as a time

DIRECT EXAMINATION - JOHN BENNETT

1 applications."

2 Do you see that?

3 A. Yes.

4 Q. Can you describe what a fat-client application is as
5 it's discussed here?

6 A. So a fat-client application is an application that
7 runs mostly on the client side, and, you know, "fat" refers
8 to the size of the installed application.

9 Q. And when you say it "runs mostly on the client side,"
10 does that assume that there is some operations on a -- that
11 are occurring on a server relating to the application?

12 A. Yes.

13 Q. You did not invent fat-client applications, correct?

14 A. Correct.

15 Q. Did IBM ever commercially release any product that
16 uses the inventions described in the '719 patent?

17 A. Not that I'm aware.

18 (End of video deposition.)

19 MR. GANGULY: Your Honor, Zynga calls its next
20 witness, Dr. John Bennett.

21 JOHN BENNETT, having been called on the part and
22 behalf of the Defendant as a witness, having first affirmed
23 to tell the truth, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. MOSS:

DIRECT EXAMINATION - JOHN BENNETT

1 Q. Good morning, sir. Can you introduce yourself to the
2 jury?

3 A. Good morning. My name is John Bennett. I'm a
4 professor emeritus in computer science and electrical and
5 computer engineering at the University of Colorado. I live
6 with my family in Colorado.

7 Q. And have you prepared any demonstratives to help the
8 jury understand your testimony today?

9 A. I have.

10 MR. MOSS: And, Your Honor, we wish to publish
11 DDX-12. I understand there are no objections.

12 THE COURT: You may publish.

13 BY MR. MOSS:

14 Q. Dr. Bennett, can you tell the jury a little bit about
15 yourself, starting with your academic background?

16 A. I have a bachelor's and a master's in electrical
17 engineering from Rice University. I have a second master's
18 and a PhD in computer science from the University of
19 Washington. My doctoral dissertation involved the design,
20 implementation, and evaluation of a distributed computing
21 system. For over 35 years, I've practiced as an academic,
22 teaching, conducting research, and contributing to the
23 field. For the bulk of my academic career, the focus of my
24 research was distributed and parallel computing systems.

25 Q. Can you tell the jury a bit about your relevant work

1 experiences?

2 A. I began as a control system engineer. Subsequently,
3 I served as an engineering duty officer in the United States
4 Navy, rising to the rank of lieutenant commander in eight
5 years. When I left the Navy, I founded a company that
6 designed hardware and software products for a number of
7 companies. Over my entire career, I contributed
8 significantly to the development of commercial and academic
9 computing systems used or sold by a number of companies,
10 including those listed here on the slide.

11 Q. And, Dr. Bennett, what are you here to testify about
12 today?

13 A. Generally, the '719 patent and my opinions that
14 Empires & Puzzles does not infringe the '719 patent and that
15 the '719 patent is invalid because it is obvious in light of
16 Roy.

17 MR. MOSS: Your Honor, we offer Dr. Bennett as
18 an expert witness in computer science and distributed
19 software architecture.

20 MR. GANGULY: No objection.

21 THE COURT: All right. Dr. Bennett may testify
22 as an expert in computer science and distributed software
23 architecture.

24 MR. MOSS: Thank you, Your Honor.

25 BY MR. MOSS:

DIRECT EXAMINATION - JOHN BENNETT

1 front of you. And let me know if you recognize that
2 document?

3 A. I do.

4 Q. Did you rely on this document in forming your
5 opinions in this case?

6 A. Yes.

7 MR. MOSS: Your Honor, we move to admit DTX-943.

8 MR. GANGULY: No objection.

9 THE COURT: DTX-943 is admitted.

10 (Exhibit admitted.)

11 BY MR. MOSS:

12 Q. Dr. Bennett, what is "Roy"?

13 A. As I said, Roy is a patent, a U.S. Patent numbered
14 5,838,909. It is titled Reducing Latency when Synchronizing
15 Access to a Multiuser Database over a network. It was filed
16 in May of 1996.

17 Q. And --

18 A. It was issued in November of 1998.

19 Q. And if I refer to this patent as "Roy," will you
20 understand what I'm referring to?

21 A. I do.

22 Q. At a high level, what does Roy describe?

23 A. Roy describes a multiplayer game that allows players
24 to concurrently play.

25 Q. Let's look at the preamble for the '719 patent and

1 Roy.

2 MR. MOSS: Can you move to slide 33,

3 Mr. Watkins.

4 BY MR. MOSS:

5 Q. Does Roy teach the preamble of the '719 patent?

6 A. The preamble requires the client service system,
7 which Roy has. The system is required to reduce
8 interactions between the client server, which Roy targets.
9 And the application, the client part of the application has
10 to access the server, which Roy also does.

11 Q. So is it your opinion that Roy teaches or renders
12 obvious this limitation?

13 A. It is.

14 Q. Let's look at limitation 1A.

15 Dr. Bennett, first, can you describe what
16 figure 6 is on this slide?

17 A. Figure 6 is taken from the Roy patent, it shows three
18 computers, each of whom have a database, that is this
19 cylinder-like-shaped thing, which contains the model, the
20 fictitious world of the gaming, the small rectangle on the
21 computers represents the events server, which processes user
22 input on computers that have user input and updates the
23 database accordingly.

24 Q. How does Roy teach 1A of the '719 patent?

25 A. Limitation 1A requires the server to store a model.

1 And if we look over here, when Roy teaches, that one
2 computer on the network during game play contains the master
3 database, and that that database is the authoritative world
4 view.

5 In this case, the master database is -- puts
6 that authoritative database as the model, and the Roy -- the
7 event server can be the master event server, which is in
8 addition to updating the master database, also processes
9 user input to update the database and receives communication
10 from clients to also update the master database. The master
11 event server also sends events back to clients to update
12 their database.

13 If we keep looking here, you'll notice there's a
14 fault green arrow over here that says update display, that
15 is, Roy teaches that the master database, in fact all
16 databases, issue rendering, domains that update display on
17 computers that have a display. Roy -- that is the
18 view-generating logic, Roy teaches the server, in this case
19 the master server processes or handles input and uses that
20 input to update the master database.

21 So all of the elements of Claim 1A are practiced
22 here within Roy.

23 Q. And looking at slide 35, we see that you've labeled
24 this blown up computer as -- why in your opinion is this
25 computer a server?

DIRECT EXAMINATION - JOHN BENNETT

1 A. Because it has the last event server and master
2 server database.

3 Q. Are these servers on the highlighted computer per
4 Roy?

5 A. No, Roy teaches that the master event server and the
6 master database may integrate to the computer used by the
7 player who is the most active and, therefore, would be
8 generating the largest number of events. So by moving these
9 components to that computer, you don't have to send those
10 events over the network and the -- and the latency is
11 reduced.

12 Q. Do the event server and master database have to be on
13 the computer?

14 A. They do not but Roy teaches it's preferable.

15 Q. Why is it preferable?

16 A. Having them both there reduces latency because
17 according to Roy, those components should be on the computer
18 with the most active user.

19 Q. Does Roy require that the disclosed system have or
20 use a central server?

21 A. No. The central server here, which doesn't have a
22 display or user input, is not required in Roy, that's just
23 one embodiment taught by Roy.

24 Q. Is it your opinion that Roy teaches or renders
25 obvious this limitation?

1 A. It is.

2 MR. MOSS: Let's look at limitation 1B,
3 Mr. Watkins, 37, please.

4 BY MR. MOSS:

5 Q. And, Dr. Bennett, how does Roy teach limitation 1B of
6 the '719 patent?

7 A. Well, this is very similar to what we just talked
8 about expect in this case. The client computer does not
9 have the master database, it has the local database, and it
10 does not have the event server, it has a local event server.
11 In all other aspects, the client behaves the same as the
12 server, therefore, there's a model, there's view-generation
13 logic, and there's controller logic.

14 Q. Please continue, Dr. Bennet.

15 A. Roy teaches the local database is a subset -- sorry,
16 is -- a copy of the master database is there by meeting the
17 subset criteria, and that the event server is simply
18 designated as the local event server.

19 Q. Let's take a look at limitation 1C on slide 39. 1C
20 of the --

21 A. If we could have that slide, please.

22 Q. The claim language should be for 1C, I apologize.

23 A. No worries, Claim 1C requires that the client be able
24 to perform the one or more portion of application without
25 the client having to interact with the -- and Roy describes

1 a method by which purely local events are handled by the
2 event server and used to update the local database without
3 having to communicate over the network, therefore by
4 practicing the elements of Claim 1C.

5 Q. Is your opinion that Roy teaches or renders obvious
6 this limitation?

7 A. Yes.

8 Q. Let's look at limitation 1D. Does Roy teach this
9 limitation?

10 A. Here, I have shown the server that we just discussed
11 and the client we've just discussed. Claim element 1D
12 requires that the client and server both locally maintain at
13 least a portion of -- of the model, the master database has
14 the entire authoritative copy or authoritative version of
15 the model, the local database has a copy of that according
16 to Roy.

17 The claim element 1D requires that the client
18 and server both execute view-generating logic, as I
19 described. The master event server handles inputs and
20 updates the database, which is controller logic. And the
21 computer, the server on which is master and event server on
22 the master database are located. Both -- well, updates the
23 display because Roy teaches that the database issues
24 rendering commands, therefore, by performing view-generating
25 logic to update the display.

1 The same thing happens over here on the client,
2 except the local database is a copy of the master database
3 seasoned the event server on the client is a nonmaster event
4 server.

5 Q. How do we know in view-generating logic on Roy is the
6 same or a subset of that on the server?

7 A. Well, Roy says that -- that this is a game executing
8 on multiple computers. It says -- Roy says that there's an
9 event server on every computer that the stated status moving
10 from server and nonevent server is simply a substitutes
11 change. Simply, Roy says the master database -- sorry, the
12 local database is a copy

13 The master database base, it would be obvious
14 that a person of skill best practice or good, you would want
15 the view-generating to be the same between the client server
16 because this is a single game because imagine, you have two
17 players, they are both standing in the world, and if they
18 are each looking at the same thing, you would want them to
19 see the same view, you would want -- any person of ordinary
20 skill would want to use the same code to -- same program
21 code to perform that function.

22 The same is true of the event server. Roy
23 teaches that the event server can change simply by a change
24 in status. So it would make no sense from a software
25 engineering standpoint to a person of ordinary skill that

CROSS-EXAMINATION - KEVIN ALMEROTH

1 you would want different code when that status changed.

2 Q. Does the Roy patent -- and that was why, if I
3 understand your testimony, that the controller logic on the
4 client is the same or a subset of that on the server?

5 A. Correct. If I didn't say that, I'm sorry.

6 Q. Does Roy disclose any actual program code?

7 A. It does not.

8 Q. How does that affect your opinion?

9 A. It doesn't. Roy has a detailed specification and
10 flowcharts of what the game is supposed to do, and that's
11 sufficient to reach the opinions I've reached.

12 Q. Now, is it ultimate conclusion and opinion that the
13 '719 patent would be obvious in light of the teachings of
14 Roy?

15 A. It is.

16 MR. MOSS: Pass the witness.

17 THE COURT: Cross-examination.

18 MR. GANGULY: Yes, Your Honor, may we pass out
19 the binders?

20 THE COURT: Yes.

21 CROSS-EXAMINATION

22 BY MR. GANGULY:

23 Q. Good afternoon. My name is Tuhin Ganguly, I'm one of
24 the lawyers for IBM. We met before, Dr. Bennett, nice to
25 see you again. I have some questions for you, if that's

CROSS-EXAMINATION - KEVIN ALMEROTH

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Q. So I want to turn now to your opinions on validity regarding Roy.

Now, you're aware, Dr. Bennett, that the '719 patent was filed on February 8th, 2000, and it issued April 28th, 2010?

A. I believe that's correct.

Q. So the Patent Office studied IBM's application for ten years before it issued the '719 patent, right?

A. The file history reflects significant interaction between the VINs and the Patent Office.

Q. And you agree that U.S. Patents are presumed to be

1 **valid, right?**

2 A. **That's my understanding.**

3 Q. **It's your opinion that the Roy patent makes the '719**
4 **patent obvious?**

5 A. **That's correct.**

6 Q. **So let's take a look at one of the slides you showed.**
7 **Now, you showed this slide to the jury earlier, right?**

8 A. **Yes.**

9 Q. **And figure 6, that's from Roy, the Roy patent?**

10 A. **It is.**

11 Q. **And over here in the callout, you've labeled this**
12 **Box 62 as "server."**

13 **Do you see that?**

14 A. **Correct.**

15 Q. **Now, Roy says 62 is a computer system.**

16 **Do you see that?**

17 A. **I do.**

18 Q. **Roy doesn't say that 62 is a server, it doesn't say**
19 **that, right?**

20 A. **No, not specifically.**

21 Q. **Now, you didn't show the jury what Roy actually**
22 **labels as the server, so let's take a look at that.**

23 **If you look at Roy in the actual patent**
24 **specification, we can see that the patent calls 61, "a**
25 **central server computer system."**

1 MR. PACKIN: Okay.

2 THE COURT: We're going to start at 9:00 --

3 MR. PACKIN: Yes, Your Honor.

4 THE COURT: -- with closings and then -- I mean,
5 yeah, we'll start at 9:00 with closings, and then we'll go
6 into the final jury instructions.

7 So if there's anything when we send you this, if
8 there's anything that -- you know, typos or anything
9 inconsistent with the rulings or that you can't agree upon,
10 indicate that. And then if there are, then we'll meet at
11 8:30 to resolve those before we get -- before we get started
12 with the jury.

13 This ain't the time to make additional
14 arguments. We got the transcript. It's just whether -- if
15 we got something wrong in terms of making those changes.
16 All right.

17 MR. PACKIN: Thank you, Your Honor.

18 MR. ROBERTS: Thank you, Your Honor.

19 (Whereupon, the following proceeding concluded
20 at 5:17 p.m.)

21 I hereby certify the foregoing is a true
22 and accurate transcript from my stenographic notes in the
23 proceeding.

24 /s/ Michele L. Rolfe, RPR, CRR
25 U.S. District Court