

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

3D DIAGNOSTIX, INC.,
Petitioner,

v.

WATSON GUIDE IP LLC,
Patent Owner.

Case PGR2024-00040
U.S. Patent No. 11,806,209

DECLARATION OF KATHRYN TALBOT

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 3D Diagnostix, Inc. (“3DDX” or “Petitioner”). I understand that this Declaration will be submitted as an Exhibit in support of a Petition for Post Grant Review of U.S. Patent No. 11,806,209 (“the ’209 patent”).

2. I have been asked to provide my expert opinion regarding the authenticity and public availability of a video hosted by the video sharing website YouTube (youtube.com). YouTube is a well-known, searchable platform for publishing videos on the Internet. Specifically, I have been asked to provide my opinion regarding the following videos:

- All-on-4® nSequence® Implant Surgical Technique Using Zest Chairsides® Attachment Processing Material (October 23, 2015),
available at
<https://www.youtube.com/watch?v=VOWRdFpfnGI&rco=1> (Exhibits 1012 (part 1) and 1013 (part 2))

As I explain below, Exhibits 1012 and 1013 together form a true and correct copy of the All-on-4® nSequence® Implant Surgical Technique Using Zest Chairsides® Attachment Processing Material video in MP4 format.

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

- Exhibits 1012 and 1013
- Exhibit 1019
- Exhibit 1021
- The content, including the video and metadata, located at <https://www.youtube.com/watch?v=VOWRdFpfnGI&rco=1>

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.

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 Leydig, Voit & Mayer, Ltd. 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 reference qualifies as a printed publication if it has been disseminated or otherwise made available to the public such that persons interested and ordinarily skilled in the relevant subject matter could locate it through the exercise of reasonable diligence.

IV. AUTHENTICITY AND PUBLIC ACCESSIBILITY OF THE VIDEO OF EXHIBITS 1012 AND 1013

12. 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 dental implants and dental surgical guide systems as demonstrated in Exhibits 1012 and 1013.

13. I watched the video and reviewed the content and metadata located at the URL <https://www.youtube.com/watch?v=VOWRdFpfngI&rco=1> I also watched the video in MP4 format of Exhibits 1012 and 1013.

14. Based on my observation, the video of Exhibits 1012 and 1013 together has the same content as the video located at the URL <https://www.youtube.com/watch?v=VOWRdFpfnGI&rco=1> . I have been informed that the MP4 files of Exhibits 1012 and 1013 were created by converting the video located at the URL <https://www.youtube.com/watch?v=VOWRdFpfnGI&rco=1> into MP4 format, and then splitting the video into two roughly equal sequential parts (Exhibit 1012 is the first half, Exhibit 1013 is the second half) which is consistent with my observation that the video of Exhibits 1012 and 1013 has the same content as the video located at that URL. Thus, Exhibits 1012 and 1013 are a true and correct copy, in MP4 format, of the video located at the URL <https://www.youtube.com/watch?v=VOWRdFpfnGI&rco=1>

15. 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. From the time the video corresponding to Exhibits 1012 and 1013 was uploaded to YouTube on October 23, 2015 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=VOWRdFpfnGI&rco=1>.

16. In addition to the video itself, each YouTube page 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. 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.

17. The URL is the YouTube webpage where the video of Exhibits 1012 and 1013 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 Exhibits 1012 and 1013, the unique video identifier is VOWRdFpfnGI&rco=1

18. 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 Exhibits 1012 and 1013 was uploaded to YouTube on October 23, 2015, 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=VOWRdFpfGI&rco=1>

19. 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. 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. 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 the video corresponding to Exhibits 1012 and 1013 that are currently accessible on YouTube were also accessible at the same YouTube URL on the upload date of October 23, 2015

20. 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 of Exhibits 1012 and 1013 by exercising reasonable diligence. At all relevant times, YouTube videos were searchable by at least their title and description.

21. Additionally, I have been informed that nSequence, the company who sold the implant surgical guides featured in the video provided in Exhibits 1012 and 1013, published on its website (<http://www.nsequence.com>) a link to the embedded YouTube video corresponding to Exhibits 1012 and 1013. I have seen a copy of Exhibit 1021, which I understand to be a printout from the Internet Archive (“Wayback Machine”) webpage <https://web.archive.org/web/20160207035132/http://www.nsequence.com/>. I have been informed that the Wayback Machine automatically stores copies of Web objects (Web pages, images, videos, etc.), preserving these objects as they exist at the point and time of capture. I have also been informed that these Web objects are stored as Web captures with the capture time/date in the form of a time stamp and the URL of the original website of capture. I further have

been informed that Web objects printed from the Wayback Machine are presumed to have been publicly accessible as of the date and time provided in the time stamp. Accordingly, I understand that the nSequence website contained a link to the video corresponding to Exhibits 1012 and 1013 as of the timestamped date in Exhibit 1021, which I understand to be February 7, 2016. As such, persons interested in and ordinarily skilled in the relevant subject matter accessing the nSequence website could easily have found and accessed the YouTube video corresponding to Exhibits 1012 and 1013 by February 7, 2016.

22. With my experience with YouTube, and the foregoing evidence, it is my opinion that the video corresponding to Exhibits 1012 and 1013 could have been easily located on YouTube by persons interested and ordinarily skilled in the relevant subject matter utilizing keyword search terms and exercising reasonable diligence on or near October 23, 2015 and February 7, 2016.

23. 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.

24. 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.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____ 7/11/24 _____

Kathryn Talbot _____
Kathryn Talbot

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 Witness

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) Apple
 - Expert in YouTube
- (Fish & Richardson) Zhejiang Lingdi Digital Technology Co., Ltd vs. CLO Virtual Fashion Inc.
 - Expert in YouTube
- (Fish & Richardson) Curtis Industries, LLC
 - 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:** Fiat Ventures. L’attitude Ventures. Volvo Cars Tech Fund. Cuatro Capital
- **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

- 500 Startups, 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
Masters of Business Administration**San Francisco, CA | May 2012****UNIVERSITY OF CALIFORNIA AT SAN DIEGO**
Bachelor of Arts in Communications, Provost Honors**La Jolla, CA | June 2006**