

Highly Confidential Attorneys' Eyes Only

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

- - - - -
ORACLE AMERICA, INC.,)
Plaintiff,)
vs.)
GOOGLE, INC.,)
Defendant.)
- - - - -

-- HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY --

Videotape Deposition of DAVID I. AUGUST, Ph.D., taken
by Plaintiff, pursuant to Notice, held at 1185 Avenue of the
Americas New York, New York, commencing at 9:06 A.M., on
Friday September 16, 2011, before Jeffrey Benz, a Certified
Realtime Reporter, Registered Merit Reporter and Notary
Public within and for the State of New York.

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2 Q. Same sentence, paragraph 108. 02:18:32

3 A. Okay. 02:18:35

4 Q. What -- 02:18:39

5 A. Yes, I see that. 02:18:40

6 Q. What do you mean by third-party devices? 02:18:41

7 A. So that would be a device that's made by 02:18:43

8 a manufacturer other than these devices that are 02:18:47

9 mentioned that are branded Google. 02:18:55

10 Q. Okay. Have you examined any third-party 02:19:05

11 Android devices? 02:19:19

12 A. I've seen them. I've touched them. I 02:19:23

13 haven't examined them to the -- in connection with 02:19:29

14 this case. 02:19:32

15 Q. Okay. Do you know anything about what 02:19:33

16 portions of the Android operating system is on 02:19:39

17 third-party devices? 02:19:43

18 A. It's -- specific -- well, because the -- 02:19:48

19 the manufacturers can modify the source code, it's 02:19:55

20 unclear what -- without actually examining the 02:20:01

21 device, what is actually on the device. 02:20:05

22 Q. So you don't know what's on any 02:20:09

23 third-party devices, right? 02:20:14

24 A. Because I haven't done that analysis, I 02:20:17

25 don't know what's on the third-party devices. 02:20:18

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2 Q. That's because you haven't looked at the 02:20:20

3 code on third-party devices? 02:20:22

4 A. That's correct. 02:20:25

5 Q. Do you have any other reason to conclude 02:20:27

6 what may or may not be on the third-party devices? 02:20:35

7 MR. KAMBER: Objection. Form. 02:20:39

8 A. Not concluding what is or isn't. I'm 02:20:41

9 simply stating that the -- I haven't seen Oracle 02:20:44

10 establish what portions are on the third-party 02:20:48

11 devices. 02:20:50

12 Q. And you haven't looked at any 02:20:52

13 third-party devices yourself to make a 02:20:56

14 determination of what's on them? 02:20:58

15 MR. KAMBER: Objection. Form. 02:21:00

16 A. I wasn't asked to do that. 02:21:02

17 Q. So you didn't do it? 02:21:03

18 A. So I have not done that. 02:21:06

19 Q. You say, Device manufacturers often 02:21:09

20 modify the source code. 02:21:18

21 What device manufacturers are you 02:21:21

22 referring to? 02:21:24

23 A. Well, in this case it would be the 02:21:28

24 third-party device manufacturers. 02:21:30

25 Q. Okay. And what is your basis for saying 02:21:31

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2 the third-party device manufacturers often modify 02:21:35

3 the source code? 02:21:39

4 A. That -- that would be Exhibit X. 02:21:39

5 Q. Anything else besides Exhibit X? 02:21:46

6 A. At least Exhibit X. I'm not recalling 02:21:48

7 additional. 02:22:04

8 Q. And did you -- 02:22:07

9 A. But you -- I'm sorry, go ahead. 02:22:09

10 Q. Did you conduct any research to 02:22:11

11 determine how third-party device manufacturers 02:22:15

12 modify source code? 02:22:19

13 A. No, I did not. 02:22:20

14 Q. Did you make any investigation into how 02:22:23

15 third-party device manufacturers modify the source 02:22:29

16 code? 02:22:33

17 A. No, I didn't need to examine the devices 02:22:34

18 to understand what Oracle had or had not 02:22:37

19 established in this respect. 02:22:40

20 Q. Well, you're not in this sentence saying 02:22:46

21 what Oracle had or had not established. You're 02:22:48

22 making an affirmative statement that third-party 02:22:52

23 device manufacturers often modify the source code. 02:22:55

24 And -- do you see that? 02:22:59

25 A. Yes. 02:23:02

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2 Q. And are you standing by that affirmative 02:23:02
3 statement? 02:23:04

4 A. I am, based on the -- the deposition of 02:23:06
5 Patrick Brady. 02:23:09

6 Q. And that's that limited excerpt of the 02:23:13
7 deposition of Patrick Brady? 02:23:27

8 A. That's the part of the deposition 02:23:29
9 transcript that I examined. 02:23:33

10 Q. And are you relying on anything else for 02:23:53
11 the statement in that sentence, this is an 02:24:01
12 important issue because device manufacturers often 02:24:04
13 modify the source code? 02:24:06

14 MR. KAMBER: Objection. Form. 02:24:09

15 A. Well, I think that the -- the deposition 02:24:11
16 transcript, in my mind, is sufficient. I may have 02:24:16
17 seen things in the course of this work that 02:24:24
18 confirm what's described, or at least suggest 02:24:27
19 similar conclusions that are in that -- that 02:24:31
20 deposition transcript. 02:24:34

21 Q. Well, what other things? 02:24:36

22 A. Nothing comes to mind at the moment, but 02:24:40
23 I've looked at a number of things, and it's 02:24:46
24 possible that I've come across additional 02:24:48
25 suggestions that device manufacturers modify the 02:24:53

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C E R T I F I C A T E

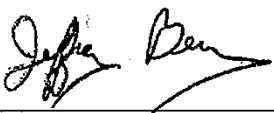
STATE OF NEW YORK)
) Ss.:
COUNTY OF NEW YORK)

I JEFFREY BENZ, a Certified Realtime Reporter, Registered Merit Reporter and Notary Public within and for the State of New York, do hereby certify:

That the witness whose examination is hereinbefore set forth was duly sworn by me and that this transcript of such examination is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th of September, 2011.



JEFFREY BENZ, CRR, RMR