

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,

Petitioner

v.

NEONODE SMARTPHONE LLC,

Patent Owner

Case IPR2021-01041

U.S. Patent No. 8,095,879

DECLARATION OF MARCUS BÄCKLUND

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1. I, Marcus Bäcklund, declare as follows:
2. I am over 18 years of age and, if I am called upon to do so, I would be competent to do testify as to the matters set forth herein.
3. In late 2003, I began meeting with Magnus Goertz and Thomas Eriksson about the prospect of investing in a business they had established to bring a new type of mobile handset to the market. The name of the company was Neonode AB. In my meetings with them, they showed me a fully-functioning model of the mobile handset that was released as the Neonode N1. And they demonstrated the touch screen user interface that they had developed to operate the N1, including the swipe to unlock, swipe to answer a call, and tap-activatable icons.
4. In our meetings, they told us how they had developed the user interface with its novel swipe and tap gestures first, but found that the resistive and capacitive touch screen technology at that time was unsatisfactory. They told me that Magnus invented a new optical touch screen technology called zForce to implement the hand-gesture-based user interface that he had previously developed.
5. At the time, in 2003, the major mobile handset manufacturers were Nokia, Motorola, Samsung, LG-Electronics, and Siemens. Their high-end handsets all had screens, but not touch screens. Instead, the user interacted with these handsets using mechanical buttons and keyboards. Apple would not



announce the first iPhone, which dispensed with most external mechanical buttons and relied on a touch-sensitive screen and gesture-based user interface, until early 2007.

6. When Magnus and Thomas demonstrated the N1 mobile handset to me in 2003, I believed that the gesture-based user interface, substantially without mechanical buttons, was revolutionary. Magnus had developed an interface with a natural swipe movement that would enable a user to navigate the device easily using a thumb to swipe up or down, right or left. The functionality of the handset was awesome, and the gesture-based user interface was far ahead of its time.

7. In around May 2004, after performing due diligence, I became an investor in Neonode and at about the same time I became Chief Executive Officer of the company and served in that capacity until around October 2005. In connection with my investment, a new entity was established named Neonode Sweden AB, which later changed its name to Neonode AB.

8. Neonode's initial business model was to offer the N1 on-line. To the best of my recollection, the handset was offered at a price, in euros and local currency, equivalent to approximately \$1000 US dollars. This was approximately five times the price of other high-end handsets offered by Nokia and other handset manufacturers. Nevertheless, the initial response from the consumer market was



spectacular; the phone had what would later be characterized as iPhone-type attention queues.

9. To the best of my recollection, Neonode had over 100,000 Internet pre-orders, over 300 N1 units per day, which required the customer to pay a substantial down payment to secure the customer's place on the handset's waiting list. These pre-orders were in addition to the over 20,000 pre-orders Neonode received following its initial brand release in December 2002.

10. In addition, Neonode was contacted by a large number of companies that expressed interest in purchasing the N1. In the commercial phase of the N1's release, Neonode received substantial pre-orders from network operators around the world.

11. In my observation as CEO of Neonode, the excitement in the market about the N1 handset was due to its revolutionary swiping gesture user interface. This was the principal user-facing differentiator of the N1 from all other mobile handsets then on the market. This gesture-based user interface was far ahead of its time in one of the largest industries.

12. Neonode's gesture-based user interface encountered skepticism from other established companies in the mobile handset industry. I personally met with representatives of Nokia, Samsung and Ericsson, and although they were impressed with the swiping-gesture user interface, they were skeptical that



consumers would want a keyboard-less mobile handset. They told us that the touch screen might get greasy from users' fingers performing gestures, thereby obscuring the user interface. And they told us they thought that users were used to buttons to navigate mobile phones and would be hesitant to accept one without them.

13. Samsung's management was extremely impressed by the Neonode N1, and in early 2005 began discussions with us about licensing the N1's gesture-based user interface and touch screen technology. Samsung's representatives expressed a great deal of interest in licensing Neonode's gesture-based user interface technology. We had many hours of meetings with Samsung, and I went at least once to Seoul, South Korea, to meet with Samsung representatives to negotiate the terms of a license agreement.

14. In July 2005, I, on behalf of Neonode, signed this license agreement with Samsung.

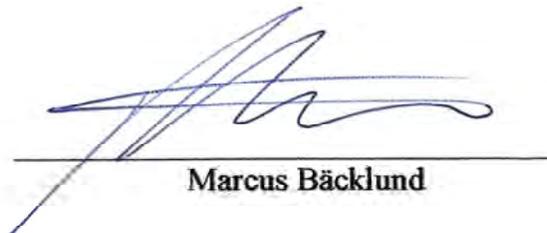
15. Although Neonode ultimately did not succeed as a company, this fact was not in any way attributable to its revolutionary user interface. Rather, we learned that there are substantial barriers to entry in the mobile handset manufacturing market. Some of Neonode's contractors had never built a mobile handset before, and they struggled to get manufacturing up to scale to meet the demand from consumers and network providers. Quality control was also an issue

initially. This led to an insufficient inventory of products to fill the growing demand for the N1 and its successor, the N2. Shifting network operator specifications, which Neonode had to meet to sell mobile handsets to operators, required engineering new features into Neonode's phones. Neonode was working successfully toward resolving these initial barriers to entry, but the financial crisis following the collapse of Lehman Brothers, and its devastating impact on capital lending and investment, led ultimately to the company's failure in 2008.

16. I am no longer an officer of or major investor in Neonode. If Neonode were to receive a substantial recovery in this case, that would have no material impact on my net worth.

17. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, that all statements made herein of my knowledge are true, and that all statements made on information and belief are believed to be true, to the best of my recollection, and 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 Title 18 of the United States Code.

Dated: Oct. 5, 2021



Marcus Bäcklund