

Ian Allport

Technology Intellectual Property Litigation Support

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Summary

Mr. Allport has a degree in Bachelors of Science degree in Computer Science and over 30 years of experience in information technology. Mr. Allport's skills were honed by over 25 years in the financial service industry in both technology and business. Since early 2000 Mr. Allport has provided litigation services for legal firms in the area of infringement of intellectual property, namely: patents, copyrights and theft of intellectual property. Cases have included subject matter related to financial services and health care services. Mr. Allport has been involved in litigation the continued for over 2 years.

Areas of Expertise

1. Patents

- Analysis of patents for the potential impact of the Supreme Court decision of October 2009, Bilski Et Al vrs Kappos.
- An understanding of the America Invents Act (Leahy-Smith) passed in 2011 and its impacts on patents.
- An understanding and use of the "Manual of Patent Examining Procedure" published by Thompson Reuters West that contains all of the process and procedures used by patent examiners.
- Using internet resources including the USPTO Website.
- An understanding of USPTO: "inter-parties reviews, post grant reviews and inter party reexamination.
- Searching for "prior art" that could be used to invalidate the use of a patent in litigation, this could include: preexisting patents and published works on the subject matter in the patent.
- Performing detailed examinations of a patent to see if it contains key attributes such as: novelty, creativity and a process that creates tangible results.
- Aiding the plaintiff in the process of extracting the claims that could be used in litigation.
- Aiding the defense in the task of examining claims used by the plaintiff to ascertain the effect on their technology.
- Creating and analyzing claim charts for the plaintiff in litigation.
- Perform the detail analysis of IT applications and associated manual processes, comparing them to the patent and reporting the results.

- Being involved with the attorney in discussions on aspects relating to a patent case.

2. Copyright

- Use of **abstraction, filtration and comparison** to compare applications and processes.
- Applying the **standards of Substantial Similarity, look and feel protection and virtually identical** to compare applications and processes.
- Creating detailed process flows, using screen shots and using the output from the two systems and to then perform a comparison process. This has the deliverable of identifying areas of commonality. Also to show there is no overlap.
- Examine: project plans, documents detailing user requirements, documentation of the design process, system architecture documentation, user testing plans and procedures.
- Performing code comparisons and reporting the results.
- Successfully helping a defendant to sue for Summary Judgment.
- Working for extended periods on one case, e.g. 2 years.

3. Theft of Intellectual Property

- Examining the systems in question to look for strong similarities in areas such as: architecture, code, form flow and function.
- Opportunity and motive on the part of the party that is accused of this breach of faith.
- Review depositions if they are available to see how the party alleged to have stolen application answered questions.
- Look at the skill sets of the party that is accused of stealing to see if they had the ability to: take or copy code, documents, sales plans or any other material that would aid in the theft.
- Examine security protocols of the owner of the material that was allegedly taken. This is used to analyze: whether the theft could have taken place and how it could have been done.
- All of this information would be collected and provided in a report to the client.

4. Other Skills Used in Cases

- Over 30 years of experience in IT development including: design, development and implementation of applications.
- Still actively designing and coding in Java, C++ , C# and Apache Camel.
- Use of extensive experience in technology and processes for cases relating to financial and health care service providers.
- Applying expertise to aid attorneys representing either the plaintiff or the defense.
- Mr. Allport has been trained if deposed and has attended depositions.
- Use of the output from depositions to analyze whether an individual is culpable in the theft of intellectual property or violation of a patent.

- Writing reports generated from a detailed analysis of aspects of a case.
- Making presentations to the court where a judge requires detail in a case, e.g. when a party to the suit refuses to supply documents etc.
- Interviewing parties on both sides of case to ascertain data needed to: look for information not written down, gain perspective as to the history surrounding a case.
- Researching background information that can have an impact on the case.
- Using documents provided by the opposing party including: emails, reports, social media, manuals etc.
- Using a proven methodology to collect data, process it and to draw conclusions and to create a final report.
- Being able to tell a client that a case cannot be pursued as there is not enough good evidence.
- Forensic analysis of databases and application code to look for information related to a case. Recreating a system architectures, processing and flows from raw code with no documentation.
- Locating and using previous related case in arguments detailed in reports,

5. **Firms of Attorneys**

Mr. Allport has been engaged by leading law firms, including:

- Skadden, Arps, Slate, Meagher & Flom: retained by Reuters in a case against Bloomberg LLC.
- Blank Rome: retained in a case of violation of copyright.
- Stoel Rives LLP: retained in a case where a client was wrongly accused of stealing intellectual property.
- Ledesma, Vargas & Villarrubia, P.S.C.

Sample Cases

▪ **Patent One**

- **Engaged by** : Plaintiff.
- **Result** : Defense settled out of court.
- **Subject Matter** : Processing Trading Orders and Executions.

Starting in 2004 for approximately 24 months Mr. Allport worked on a software patent violation case for Reuters against Bloomberg LLC. The patent related to the use of a service based architecture when processing orders and executions.

This required many skill sets, including:

- Reconstructing the functionality of the Bloomberg application with only source code. Bloomberg supplied no documentation or any other assistance.
- Detailed forensic analysis of the code to create a complete topology for the system. This was then used create a complete model of how the application operated.

- The application was developed in C++ with a proprietary “database”.
- Working with attorneys to analyze Reuter’s patents and to correlate this with the functionality in the Bloomberg application to ascertain where the patent violation had occurred.
- Creation of claim charts.
- Studying documents and emails to form a timeline of how the Bloomberg application was conceived, designed and developed.
- Creating documents and making presentations to the client and the attorneys.
- Attending court to make a presentation the judge.
- Participating in depositions.
- The case was settled out of court.

▪ **Patent Two**

- **Engaged by** : Plaintiff.
- **Result** : Not Known
- **Subject Matter** : Trading Financial Instruments

Starting in April 2010 through September 2010 Mr. Allport worked on a software patent violation case as an expert consultant. The key elements of the case were:

- The case related to a patent covering aspects of automated trading systems (ATS), ECNs, Dark Pools and algorithmic trading platforms.
- The markets covered included; OTC and Exchange Traded instruments.
- Using knowledge of all aspects of order and trades processing.
- Applying a sound knowledge of SEC, NASD, FINRA and other rules to define how each form of transaction would be processed by the trading platform.
- Using the knowledge of how firms use automated trading systems in their trading operations.
- The tasks included the creation of detailed claim charts to be used in a potential prosecution of platforms that violated the patent. The documents included detailed flow diagrams for the transactions generated at each stage.
- Detailed research and analysis of each platform that may or may not have violated the patent.
- Mr. Allport was involved in the analysis of the patent as a result of the Supreme Court ruling of October 2009. Bilski Et Al v. Kappos.

▪ **Copyright Case One**

- **Engaged by** : Plaintiff.
- **Result** : Defense settled out of court.
- **Subject Matter** : Processing Drug Prescriptions for Health Insurer

In 2009 RADICAL SOFTWARE & CONSULTING INC. was contracted by a software development firm who had a copyright on a Web application developed for processing health insurance claims. Mr. Allport’s remit was to find whether or not a system developed by an ex-client violated the copyright. The outcome of the litigation was that the defendant was found to have violated the plaintiff’s copyright and settled

out of court.

The actions taken by Mr. Allport included:

- Performing a full audit of the application which his client thought had violated their copyright.
- The audit was carried out using: interviews with the developers and staff at the “offending” party’s offices, a detailed study of the “offending” application and code reviews.
- Read many dissertations and treaties covering software copyright, including:
 - Scenes a Faire.
 - Whelan v. Jaslow.
 - John Marshall Journal of Computer and Information Law.
 - Nimmer on copyright.
 - Southco Inc v. Kanesbridge Corp.
 - Apple v. Microsoft.
 - Engineering Dynamics Inc. v. Structural Software Inc.
- Working with the attorney to make a decision as to whether to use the **Virtually Identical** or **Substantially Similar Standard** to pursue the case.
- The decision was made to use **Substantial Similar Standard** to analyze the potentially “offending” application. The required the use of the extrinsic and intrinsic tests.
- Use of **abstraction, filtration and comparison** to isolate the elements in the potentially “offending” application that would be tested against the copyright.
- Analyze the business model of the “offending” party including: transaction flow, external data used, the type of data used and how processes interacted with it. The deliverable from this process was used to define a clear **flow, form and function** of the potentially “offending” application and the associated business processes.
- Creation of a series of scenarios to examine the elements found in the abstraction and filtration. Each had; an identifiable set of tasks and a statement of the goal. This was supported by a series of steps that would be performed and a set of expected outcomes. This identified the flows of the processing, data used and the functionality needed to achieve a task.
- During the execution of the scenarios Mr. Allport documented information including; User Interfaces, data fields, IT technology used by the application (class libraries etc.), data items, how data was processed and database structures.
- Creation of a final report, of over 130 pages. This detailed comparison of Mr. Allport client’s application versus the potential offender’s solution. Also included were images of the user interfaces from both of the applications, plus a detailed analysis and conclusions on how the copyright had been violated.

▪ **Copyright Case Two**

- **Engaged by** : Defense.
- **Result** : Defense obtained Summary Judgment, Plaintiff case dismissed.
- **Subject Matter** : Software to process ATM, POS and Check Image transactions

In early 2012 through early 2014 Mr. Allport was retained by the attorney for a large U.S. regional bank to aid in the defense in a case where a plaintiff their client was accused of: copying the plaintiff's source code to create a new application and violating the plaintiff's copyright. After two years of involvement the attorney for the defendant used Mr. Allport's expert report to sue for Summary Judgment and to get the plaintiff's case dismissed. The court agreed with the defendant that they did not copy the plaintiff's code or violate their copyright and dismissed the case. In addition the plaintiff had to pay a settlement to the defendant.

The subject of the case was software that acted as a middleware in the processing of ATM and Point of Sales (POS) transactions. One party was a global provider of support for ATM and POS devices that sends and receives transactions to the cardholder's bank. This entity was called Evertec. The other party in processing a transaction was the internal systems of the bank.

The plaintiff had been engaged by the bank a vendor, who were paid an hourly rate, to help in the development of anew middleware application between Evertec and the bank's systems. All the work was done on the bank's premises and equipment and under its supervision. During the development the vendor, unknown to the bank, placed information and copyright symbols on the source code to claim it as theirs, an act that not legal. Then before the work was completed the vendor claimed ownership of the software and applied to the U.S. Copyright Office for a copyright on the code, and the copyright was granted. Later the vendor sent the bank, what the vendor claimed was a license and accused the bank of violating their copyright. When the bank decided to develop a new middleware application and discontinue the relation with the vendor the vendor entered into litigation to gain financial recompense for the alleged: copying of code, still running software for which the vendor claimed the bank had agreed to license from them and violation of the vendor's copyright.

Mr. Allport was initially engaged to perform a code comparison between the bank's software and the source the plaintiff claimed they had copied. This exercise required programming skills included: Java, Apache Camel, WebSphere, message queues, linking to remote sites over IP and Microsoft SQL Server. However, over time Mr. Allport was able to provide a more value added service and the role expanded.

Mr. Allport's engagement included the following:

- Reading depositions and using the information obtained to validate and contradict the plaintiff's claims.
- Working closely with the defense attorney on all aspects of the case.
- Providing expertise on the messaging formats of both Evertec and the bank.
- Examining the transfers of data between the two parties to a transaction using an extensive knowledge of IP.
- Examining interactions of other card processing entities to understand the standards that existing in data transmission protocols and message formats

and using this to contradict the claim of the contractor's that the interface between Evertec and the bank was unique.

- Understanding the interactions of the various parties involved in ATM and Point of Sales Transaction processing.
- Providing knowledge of "Check 21", the rule that allows images of checks to be considered as legal as the paper version. This was used to contradict the plaintiff's claims that they had production ready software that could process "Check 21" transactions.
- Performing a line by line examination of the bank's software to the many versions of code the vendor said represented their code that was still being used by the bank. Then detailing the results and using this to contradict any claim by the vendor that the bank copied their code.
- Analysis of the vendor's copyright using "Nimmer on Copyright" and other sources to see if it code be used against the bank. This showed that no aspect of the copyright was original and that all elements in the bank's software were in the public domain and hence could not be infringing and could not be infringing a copyright. As a consequence it was shown that the vendor's copyright could not be used against any middleware software.
- Required extensive use of the information from the U.S. Copyright Office sources including the "Circulars".
- Extensive use of form, flow and function.
- Creating reports on various aspects of the case that require deep knowledge of the subject matter and copyright law.
- Responding to the Expert Report delivered by the vendor.
- The final Expert Report from Mr. Allport was approximately 500 pages long.
- Mr. Allport also assisted in the deposition of the plaintiff's expert.

▪ **Theft of Intellectual Property**

- **Engaged by** : Defense.
- **Result** : Defense gained Summary Judgment.
- **Subject Matter** : Software to support large-scale prescription processing.

Mr. Allport was retained by Stole Rives to aid in a case where a client was accused of theft of intellectual property.

- The plaintiff accused several ex-employees and consultants that had worked at their facility of stealing code and other information prior to their leaving.
- The attorney for the accused parties engaged Mr. Allport to aid them in applying for summary judgment to dismiss the case.
- Mr. Allport used many tools to prove the plaintiff's claims were ill-founded: reading depositions of the parties accused, reviews of skill sets, project plan, interviews with the people and experience in the securing of source code.

- Mr. Allport produced a report stating that the theft claims were false. This was used by the attorney to get the plaintiff to withdraw their case.

Professional Experience in Financial Services

Over 25 years in the financial services industry supplying automated solutions to many problems Mr. Allport has a deep knowledge of how to: use technology, transaction flow and how the business operates. The wealth of knowledge that has been accumulated covers many areas including:

- **Financial Firms**
 - Merrill Lynch.
 - Lehman Brothers.
 - Salomon Brothers.
 - Bear Stearns.
 - Barclays Securities.
 - SG Cowan.
 - JP Morgan,
 - Standard Chartered Bank HK.
 - Citi Corp credit card division.
 - ABN Amro.
- **Banking**
 - ATM and POS (point of sale) transaction processing software.
 - Check 21 (check image) processing.
- **Financial Instruments:**
Globally traded products that are both OTC and Exchange Traded including:
 - Equities; cash and futures;
 - Index futures;
 - Debt based instruments; bonds, municipal bonds etc.
 - Debt based instruments; CMO, CDO etc.
 - Foreign exchange: cash and futures.
 - Commodities: cash and futures.
 - Options.
- **Trading Configurations:**
 - Multi-legged, multi-product swaps.
 - Repos.
 - Lending and borrowing.
 - Origination.
 - Buy and sell side.
 - Algorithmic/program trading.
 - High frequency trading.
 - Portfolio management.
 - Shorting.
 - Arbitrage.
 - Origination of debt backed instruments.

➤ **Financial Services Operational Areas:**

- Sales trading.
- Trading, back and middle office.
- Risk management and treasury.
- Accounting.
- Audit, compliance and legal.
- Regulatory reporting and investigations.
- Participating in the establishing trading desks.
- Data warehousing; creating and use.

Information Technology:

- Over 30 years in information technology as a: developer, designer and manager.
- Managing and implementing large scale global projects using large teams of people.
- Actively involved in application development.
- Requirement gathering and documentation.
- Application specification and design.
- Creating, coding and implementing object and business oriented designs and architectures.
- Using Enterprise Integration Patterns (EIP).
- Coding in: C++, C# , Java, Apache Camel, Silverlight.
- IP message queues including: Microsoft MS Queues and Websphere
- Development of Windows based User Interfaces.
- Development of Web based applications.
- Designing and developing complex service based architectures using abstraction of the UI and datasources via several tiers of services.
- Design and development of databases including: Sybase, SQL server, Oracle.
- Use of stored procedures to update and retrieve information from databases.
- Data analysis and database design.
- System load balancing and automated process recovery.
- Multi-Tiered service based applications using MS queues and TCP IP.
- All elements of system testing; developing test plans, regression testing and evaluating results of testing.
- Rolling out applications to a large number of users.
- Developing complex applications to parse text files to extract information e.g. order information in a trading environment.
- Applications to allow a user to dynamically create documents that contain various types of data.

Contact Information

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