

Crossroads Systems (Texas), Inc.
v.
Pathlight Technology, Inc., a Delaware Corporation

Crossroads Systems (Texas), Inc.
v.
Chaparral Network Storage, Inc., a Delaware Corporation

*Oral Deposition of
Anthony Peterman*

November 14, 2000

COMPRESSED TRANSCRIPT

<p style="text-align: right;">Page 1</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE WESTERN DISTRICT OF TEXAS 3 AUSTIN DIVISION</p> <p>4 CROSSROADS SYSTEMS (TEXAS), * 5 INC. * 6 v. * CIVIL ACTION NO. 7 * A-00CA-248-SS 8 PATHLIGHT TECHNOLOGY, INC., * 9 A DELAWARE CORPORATION *</p> <hr/> <p>10 CROSSROADS SYSTEMS (TEXAS), * 11 INC. * 12 v. * CIVIL ACTION NO. 13 * A-00CA-217-SS 14 CHAPARRAL NETWORK STORAGE, * 15 INC., a DELAWARE CORPORATION *</p> <p>16 * *</p> <p>17 ORAL DEPOSITION OF 18 ANTHONY PETERMAN 19 NOVEMBER 14, 2000</p> <p>20 * *</p> <p>21 ORAL DEPOSITION OF ANTHONY PETERMAN, 22 produced as a witness at the instance of the Defendants 23 and duly sworn, was taken in the above styled and 24 numbered cause on the 14th day of November, 2000, from 25 1:05 p.m. to 2:40 p.m., before Sandra S. Givens, CSR, in and for the State of Texas, reported by machine shorthand method, at Fulbright & Jaworski, 1900 One American Center, 600 Congress, Austin, Texas, pursuant to the Federal Rules of Civil Procedure.</p>	<p style="text-align: right;">Page 3</p> <p style="text-align: center;">I N D E X</p> <p>1 Appearances - - - - - 2 2 ANTHONY PETERMAN 3 Examination by Mr. Bahler - - - - - 4 4 Examination by Mr. Bernstein - - - - - 48 5 6 Changes and Signature - - - - - 51 7 8 Reporter's Certification - - - - - 53 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 2</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>1 FOR THE PLAINTIFF: 2 Matthew C. Bernstein 3 Gray, Cary, Ware & Freidenrich, LLP 4 401 B Street 5 Suite 1700 6 San Diego, California 92101-4297 7</p> <p>8 FOR THE DEFENDANTS: 9 David D. Bahler 10 Fulbright & Jaworski, LLP 11 1900 One American Center 12 600 Congress Avenue 13 Austin, Texas 78701 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p style="text-align: center;">ANTHONY PETERMAN</p> <p>1 having been first duly sworn, testified as follows: 2 3 EXAMINATION 4 BY MR. BAHLER: 5 Q. Morning, Mr. Peterman. 6 A. Morning. 7 Q. Or afternoon, rather. Will you please state 8 your full name? 9 A. My name is Anthony Ernest Peterman. 10 Q. And where do you live, sir? 11 A. 4704 Eagle Feather Drive, Austin, Texas. 12 Q. Sir, and where do you work? 13 A. Dell Computer. 14 Q. How long have you worked there? 15 A. I've worked there for almost two years. 16 Q. Mr. Peterman, have you ever had your 17 deposition taken before? 18 A. No. 19 Q. All right. Just so that we're clear about 20 what's happening here, you are under oath. You 21 understand that? 22 A. Yes. 23 Q. Required to tell the truth, correct? 24 A. Yes. 25 Q. And you've been doing a good job in giving me</p>

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1 A. Right.
 2 Q. Do you know how long before that you met
 3 with -- well, you met first -- strike that question.
 4 Do you know how long before this application was filed,
 5 December 31st, 1997, was the first time you met with
 6 Mr. Hoese?
 7 A. I do not remember the exact date. I think it
 8 would be -- well, I would have to guess. My
 9 recollection is that it would have been several months
 10 before that, but I don't remember how many.
 11 Q. Now, did you have one meeting with Mr. Hoese
 12 or more than one meeting?
 13 A. I only remember one.
 14 Q. And that was at the Crossroads facilities?
 15 A. Right.
 16 Q. Did you meet -- other than Mr. Hoese, did you
 17 meet with anyone else within Crossroads with respect to
 18 the preparation of the application which resulted in
 19 the 972 patent?
 20 A. I do not remember meeting with anyone else.
 21 Q. Did you ever meet with a Mr. Dale Quisenberry?
 22 A. No.
 23 Q. Did you ever meet with Brian Smith?
 24 A. No.
 25 Q. Do you know who Dale Quisenberry is?

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1 A. No.
 2 Q. Do you know who Brian Smith is?
 3 A. Yes. I recognize his name.
 4 Q. How do you know -- well, who's Brian Smith?
 5 A. I think -- well, at one point he was the CEO
 6 or head of Crossroads.
 7 Q. And how do you come to that understanding?
 8 A. I've seen his name in the paper. One of the
 9 more high profile IPOs in the city, so I remember his
 10 name.
 11 Q. Did you ever meet with Mr. Smith in connection
 12 with the preparation and filing of the patent
 13 application which resulted in the 972 patent?
 14 A. No.
 15 Q. After you met with Mr. Hoese, whenever it was,
 16 did you prepare a draft of the 972 patent application?
 17 A. I don't remember having done that, but I must
 18 have, because at some point I filed this one.
 19 Q. Did you provide a draft of the application to
 20 Mr. Hoese?
 21 A. Again, I don't specifically remember doing
 22 that, but my general practice would have been to
 23 interview the inventor, draft the application, provide
 24 the draft to the inventors for their review and
 25 comment.

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1 Once they were happy with it, then we
 2 would prepare the formal documents and file it. I have
 3 no reason to think that I didn't follow that general
 4 process in this case.
 5 MR. BAHLER: Okay. Mr. Bernstein, do
 6 you have Crossroads' production number 41920, which is
 7 a letter that's on the list here, the last one?
 8 MR. BERNSTEIN: Yes, I do, but before we
 9 provide that can we just briefly discuss the treatment
 10 of that document?
 11 MR. BAHLER: Sure.
 12 MR. BERNSTEIN: By providing you a copy
 13 of this document I just want your agreement that we're
 14 not in any way waiving the attorney/client privilege.
 15 MR. BAHLER: I agree.
 16 MR. BERNSTEIN: And also we prefer that
 17 the document not be a deposition exhibit as well.
 18 MR. BAHLER: That's fine.
 19 MR. BERNSTEIN: What number is it?
 20 MR. BAHLER: It's a thing called a
 21 letter, which is November 20th, 1997. It's the last
 22 one, 41920.
 23 Q. (BY MR. BAHLER) All right. Mr. Peterman,
 24 let's take a look at -- I'm not going to mark this.
 25 This is Crossroads 41920. I'm just going to hand it to

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1 you. Go ahead and take a look at that. Is that a
 2 letter that you prepared? It says July 11th, 1997,
 3 right?
 4 A. That's the date on the document.
 5 MR. BAHLER: But I notice that this
 6 list, Mr. Bernstein, says November 20th, 1997.
 7 MR. BERNSTEIN: There's the letter
 8 you're looking for.
 9 MR. BAHLER: Oh. I'm confused.
 10 MR. BERNSTEIN: It's marked incorrectly.
 11 I apologize.
 12 MR. BAHLER: What's this one? This is
 13 not on this list?
 14 MR. BERNSTEIN: I believe it is, or at
 15 least it should be. What's the number on there?
 16 MR. BAHLER: 41920.
 17 MR. BERNSTEIN: Yeah.
 18 MR. BAHLER: But that's the one with
 19 that date -- let's go off the record just for
 20 a second.
 21 (At this time the proceedings went
 22 momentarily off the record.)
 23 Q. (BY MR. BAHLER) Let's take a look at this
 24 one. This is Crossroads production number 41920. That
 25 is a letter dated July 17th, 1997, correct, sir?

5 (Pages 17 to 20)

<p style="text-align: right;">Page 21</p> <p>1 A. July 11th, 1997.</p> <p>2 Q. I'm sorry. Yeah. July 11th, 1997, correct?</p> <p>3 And is that your signature?</p> <p>4 A. That is my signature.</p> <p>5 Q. Could you just tell me what that letter is?</p> <p>6 A. This looks like the letter, sort of the</p> <p>7 standard form of letter I would use when transmitting a</p> <p>8 draft patent application to an inventor for review.</p> <p>9 Q. And is that -- put that letter aside just for</p> <p>10 a second. Take a look at tab -- or this is Hulsey</p> <p>11 Exhibit 3, which is the prosecution history. All</p> <p>12 right? And I'm in tab 1 of that, which is the covering</p> <p>13 materials, and please turn within that document to the</p> <p>14 page you have. This is the page, the second page</p> <p>15 within tab 1 of Exhibit 3, and there's a list there</p> <p>16 under "attorney docket number." Do you see that, sir?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And is that the same attorney document</p> <p>19 number that's on the letter that we're talking about?</p> <p>20 A. Yeah it's 064113.103.</p> <p>21 Q. All right. So did you forward a draft of the</p> <p>22 application which ultimately resulted in the 972 patent</p> <p>23 to Mr. Hoese on July 11th, 1997?</p> <p>24 A. You know, I don't remember that I did, but the</p> <p>25 letter says I did. I have no reason to think that I</p>	<p style="text-align: right;">Page 23</p> <p>1 A. My general practice would be at the time the</p> <p>2 application was filed to only have a copy of the</p> <p>3 application as filed in the file. Sometimes, if it</p> <p>4 made sense, I would also have a clean copy of a</p> <p>5 conception document. I don't remember what I might</p> <p>6 have had in this file.</p> <p>7 Q. Okay. But if you had kept such a -- first of</p> <p>8 all, you mentioned conception document. What's a</p> <p>9 conception document?</p> <p>10 A. Well, the easiest example is, say, the</p> <p>11 invention disclosure. Many clients we initiate, you</p> <p>12 know, what we're going to write with an invention</p> <p>13 disclosure. So the general practice with an invention</p> <p>14 disclosure would be to keep a clean copy of that as we</p> <p>15 received it in the file.</p> <p>16 Q. Do you remember one way or the other whether</p> <p>17 such a conception document existed within the files of</p> <p>18 Baker & Botts for the patent in this case?</p> <p>19 A. I don't remember.</p> <p>20 Q. Okay. If such a document had existed, would</p> <p>21 it have or have not been removed from the file for any</p> <p>22 reason that you know?</p> <p>23 MR. BERNSTEIN: Objection. Speculation.</p> <p>24 THE WITNESS: I'll just say generally,</p> <p>25 we would not generally remove a conception document</p>
<p style="text-align: right;">Page 22</p> <p>1 would -- I mean, the letter says I sent him a draft. I</p> <p>2 guess I did.</p> <p>3 Q. Okay. Do you know how long before July 11th,</p> <p>4 1997 it was that you had this meeting with Mr. Hoese at</p> <p>5 Crossroads?</p> <p>6 A. No.</p> <p>7 Q. Okay. Did Mr. Hoese provide you with</p> <p>8 materials upon which to base the patent application?</p> <p>9 A. I don't remember what Mr. Hoese did or did not</p> <p>10 give me at the meeting.</p> <p>11 Q. Okay. Whether it was a meeting or at some</p> <p>12 other time, did Mr. Hoese ever provide you with any</p> <p>13 materials upon which you based the 972 patent</p> <p>14 application?</p> <p>15 A. I just don't remember.</p> <p>16 Q. Did anybody else at Crossroads provide you any</p> <p>17 materials upon which you based the 972 patent</p> <p>18 application?</p> <p>19 A. I don't remember. I do remember having a</p> <p>20 meeting with Geoff Hoese, and I know we talked about</p> <p>21 the invention. So at least orally he gave me, and I</p> <p>22 would have taken enough notes to write it. What</p> <p>23 exactly he gave me I don't remember.</p> <p>24 Q. While at Baker & Botts was it your policy to</p> <p>25 keep those materials with the patent application file?</p>	<p style="text-align: right;">Page 24</p> <p>1 from a patent file.</p> <p>2 Q. (BY MR. BAHLER) All right.</p> <p>3 A. If we had it, it would stay there.</p> <p>4 Q. When -- well, within Baker & Botts, for</p> <p>5 example, when a patent issued was there any effort to</p> <p>6 cleanse the file or throw away things in the file which</p> <p>7 were not public documents or anything like that?</p> <p>8 A. There's -- there was no general rule or</p> <p>9 practice of cleansing files. I think each attorney was</p> <p>10 responsible for their files.</p> <p>11 Q. Okay. And, in fact, when this patent issued</p> <p>12 it wasn't a Baker & Botts file anymore anyway, right?</p> <p>13 A. I believe that's right. We transferred the</p> <p>14 physical file to Gray, Cary, is my recollection.</p> <p>15 Q. Did Baker & Botts keep a copy of the file?</p> <p>16 A. I don't know.</p> <p>17 Q. All right. After July 11th, 1997 did you</p> <p>18 receive -- after you forwarded the draft of the</p> <p>19 application to Mr. Hoese on or about July 11th, '97 did</p> <p>20 you receive comments from Mr. Hoese?</p> <p>21 A. I don't remember.</p> <p>22 Q. Did you receive comments from Mr. Russell?</p> <p>23 A. I don't remember what -- I don't remember</p> <p>24 whether I did or did not receive comments from either</p> <p>25 of them.</p>

6 (Pages 21 to 24)

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