

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)

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1 A. July 11th, 1997.
 2 Q. I'm sorry. Yeah. July 11th, 1997, correct?
 3 And is that your signature?
 4 A. That is my signature.
 5 Q. Could you just tell me what that letter is?
 6 A. This looks like the letter, sort of the
 7 standard form of letter I would use when transmitting a
 8 draft patent application to an inventor for review.
 9 Q. And is that -- put that letter aside just for
 10 a second. Take a look at tab -- or this is Hulsey
 11 Exhibit 3, which is the prosecution history. All
 12 right? And I'm in tab 1 of that, which is the covering
 13 materials, and please turn within that document to the
 14 page you have. This is the page, the second page
 15 within tab 1 of Exhibit 3, and there's a list there
 16 under "attorney docket number." Do you see that, sir?
 17 A. Yes.
 18 Q. Okay. And is that the same attorney document
 19 number that's on the letter that we're talking about?
 20 A. Yeah it's 064113.103.
 21 Q. All right. So did you forward a draft of the
 22 application which ultimately resulted in the 972 patent
 23 to Mr. Hoese on July 11th, 1997?
 24 A. You know. I don't remember that I did, but the
 25 letter says I did. I have no reason to think that I

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1 would -- I mean, the letter says I sent him a draft. I
 2 guess I did.
 3 Q. Okay. Do you know how long before July 11th,
 4 1997 it was that you had this meeting with Mr. Hoese at
 5 Crossroads?
 6 A. No.
 7 Q. Okay. Did Mr. Hoese provide you with
 8 materials upon which to base the patent application?
 9 A. I don't remember what Mr. Hoese did or did not
 10 give me at the meeting.
 11 Q. Okay. Whether it was a meeting or at some
 12 other time, did Mr. Hoese ever provide you with any
 13 materials upon which you based the 972 patent
 14 application?
 15 A. I just don't remember.
 16 Q. Did anybody else at Crossroads provide you any
 17 materials upon which you based the 972 patent
 18 application?
 19 A. I don't remember. I do remember having a
 20 meeting with Geoff Hoese, and I know we talked about
 21 the invention. So at least orally he gave me, and I
 22 would have taken enough notes to write it. What
 23 exactly he gave me I don't remember.
 24 Q. While at Baker & Botts was it your policy to
 25 keep those materials with the patent application file?

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1 A. My general practice would be at the time the
 2 application was filed to only have a copy of the
 3 application as filed in the file. Sometimes, if it
 4 made sense, I would also have a clean copy of a
 5 conception document. I don't remember what I might
 6 have had in this file.
 7 Q. Okay. But if you had kept such a -- first of
 8 all, you mentioned conception document. What's a
 9 conception document?
 10 A. Well, the easiest example is, say, the
 11 invention disclosure. Many clients we initiate, you
 12 know, what we're going to write with an invention
 13 disclosure. So the general practice with an invention
 14 disclosure would be to keep a clean copy of that as we
 15 received it in the file.
 16 Q. Do you remember one way or the other whether
 17 such a conception document existed within the files of
 18 Baker & Botts for the patent in this case?
 19 A. I don't remember.
 20 Q. Okay. If such a document had existed, would
 21 it have or have not been removed from the file for any
 22 reason that you know?
 23 MR. BERNSTEIN: Objection. Speculation.
 24 THE WITNESS: I'll just say generally,
 25 we would not generally remove a conception document

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1 from a patent file.
 2 Q. (BY MR. BAHLER) All right.
 3 A. If we had it, it would stay there.
 4 Q. When -- well, within Baker & Botts, for
 5 example, when a patent issued was there any effort to
 6 cleanse the file or throw away things in the file which
 7 were not public documents or anything like that?
 8 A. There's -- there was no general rule or
 9 practice of cleansing files. I think each attorney was
 10 responsible for their files.
 11 Q. Okay. And, in fact, when this patent issued
 12 it wasn't a Baker & Botts file anymore anyway, right?
 13 A. I believe that's right. We transferred the
 14 physical file to Gray, Cary, is my recollection.
 15 Q. Did Baker & Botts keep a copy of the file?
 16 A. I don't know.
 17 Q. All right. After July 11th, 1997 did you
 18 receive -- after you forwarded the draft of the
 19 application to Mr. Hoese on or about July 11th, '97 did
 20 you receive comments from Mr. Hoese?
 21 A. I don't remember.
 22 Q. Did you receive comments from Mr. Russell?
 23 A. I don't remember what -- I don't remember
 24 whether I did or did not receive comments from either
 25 of them.