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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

HTC CORPORATION AND)	
HTC AMERICA, INC.,)	
)	
Petitioners,)	
)	
VS.)	CASE IPR2016-01501
)	Patent 8,457,676
CELLULAR COMMUNICATIONS)	
EQUIPMENT LLC,)	
)	
Patent Owner.)	

ORAL AND VIDEOTAPED DEPOSITION OF JAY P. KESAN, Ph.D.
JULY 26, 2017

JOB NO: 127475

ORAL AND VIDEOTAPED DEPOSITION of
JAY P. KESAN, Ph.D., produced as a witness at the
instance of the Petitioners, and duly sworn, was taken
in the above-styled and -numbered cause on the 26th of
July, 2017, from 10:06 a.m. to 1:32 p.m., before
Therese J. Casterline, CSR in and for the State of
Texas, reported by machine shorthand, at the offices
of Bragalone Conroy, PC, 2200 Ross Avenue, Suite
4500-W, in the City of Dallas, County of Dallas, State
of Texas, pursuant to the Federal Rules of Civil
Procedure and the provisions stated on the record.

A P P E A R A N C E S

FOR THE PETITIONERS:

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FOR THE PATENT OWNER:

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ALSO PRESENT:

Mr. Joseph McDermott, Videographer

I N D E X

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P R O C E E D I N G S

THE VIDEOGRAPHER: Now on record at 10:06 a.m. on July 26th, 2017 for the videotaped deposition of Dr. Jay Kesan in Dallas, Texas, in the action entitled HTC Corporation and HTC America versus Cellular Communications Equipment LLC, Case Number IPR2016-01501. This is media number 1.

Counsel may identify themselves; afterwards, the court reporter will swear in the witness.

MR. SAAD: Terry Saad from Bragalone Conroy on behalf of the Patent Owner, Cellular Communications Equipment LLC.

MR. NASH: Brian Nash of Pillsbury Winthrop Shaw Pittman here on behalf of the Petitioners HTC Corporation and HTC America.

JAY P. KESAN, Ph.D.,
having been first duly sworn, testified as follows:

EXAMINATION

BY MR. NASH:

Q. Good morning, Dr. Kesan. How are you?

A. I'm good, thank you.

KESAN

Q. Now, you understand why you're here today?

A. Yes.

Q. And I think this isn't your first deposition, correct?

A. No, it's not.

Q. Okay. So you know the general rules on a deposition, right?

A. (Nods head.)

Q. You're under oath?

A. Yes.

Q. Okay. That's the same as if you were at trial in a courthouse or at the PTAB, you're giving sworn testimony?

A. Yes.

Q. I'll assume you understand the questions. If you don't, feel free to ask me for a clarification.

A. Yes.

Q. You're going to have to answer audibly, which you're already doing. It's great.

A. Thank you.

Q. You can't shake your head because it won't be picked up by our court reporter.

1 KESAN

2 You can take a break at any time, just
3 that if there's a question pending, I'd ask that
4 you answer the question, and then we'll take a
5 break. Does that sound okay?

6 A. Thank you. That's fine.

7 Q. Your attorney may object. Unless he
8 instructs you not to answer, I'm going to want
9 you to answer, okay?

10 A. Yes.

11 Q. And then if there's any reason that
12 you can't give accurate or complete testimony
13 today, would you let me know?

14 A. Sure.

15 Q. Okay. So you've been engaged as an
16 expert in IPR Case Number 2016-1501 on behalf of
17 Cellular Communications Equipment, correct?

18 A. Yeah, I assume that's the number for
19 this IPR.

20 Q. Right. Yes.

21 A. Yes.

22 Q. Okay. So the one that we read onto
23 the record this morning?

24 A. Yes. Yes.

25 Q. Yes.

1 KESAN

2 And that one relates to US Patent
3 8,457,676; does that sound right?

4 A. Yes.

5 Q. Okay. And it's okay if I call that
6 the '676 patent?

7 A. Yes.

8 Q. We would all know what that is?

9 A. (Nods head.)

10 Q. Are you being compensated by -- so I'm
11 going to call them CEC; is that okay?

12 A. That's fine.

13 Q. Are you being compensated by CEC?

14 A. Yeah. I'm being compensated for my
15 time, yes.

16 Q. How much are you being compensated?

17 A. My rate of compensation for my time is
18 550 per hour.

19 Q. Okay. And did you do anything to
20 prepare for today's deposition?

21 A. I reviewed the materials that I've
22 listed in the materials considered in my
23 declaration --

24 Q. Okay.

25 A. -- including the patent, my

1 KESAN

2 declaration, the Kwak reference and so on, other
3 things that are listed in my declaration.

4 Q. Okay. So most -- mostly the items
5 listed in your declaration, or were there any
6 other items that you reviewed?

7 A. I think there were items in my
8 declaration.

9 Q. Okay.

10 A. And then I am not exactly sure if I
11 reviewed all of them, but probably a subset of
12 them to prepare.

13 Q. Sure. Okay.

14 Did you meet with anybody to prepare
15 for today?

16 A. Yes, I met with counsel.

17 Q. Terry?

18 A. Yes.

19 Q. Okay. And when did you meet?

20 A. Yesterday.

21 Q. Yesterday? And how long?

22 A. A few hours.

23 Q. Did you speak with anyone else in
24 preparing for today's deposition?

25 A. No.

1 KESAN

2 Q. And besides yesterday and reviewing
3 documents that you mentioned, did you do anything
4 else to prepare for today's deposition?

5 A. No, just reviewing the documents and
6 reviewing the materials I mentioned and
7 discussing with counsel.

8 Q. Okay. Thank you.

9 I -- I believe you've rendered an
10 opinion in this case, correct?

11 A. Yeah, the declaration.

12 Q. And that's the declaration you were
13 discussing?

14 A. Yes.

15 Q. And I'm going to hand it to you now,
16 and it's been marked as CEC Exhibit 2005.

Do you recognize that document?

18 A. Yes, I do.

19 Q. And that's the declaration we were
20 talking about earlier; is that correct?

21 A. Yes.

22 Q. Did you prepare it?

23 A. Yes.

24 Q. And did you write the entire document
25 yourself?

1 KESAN

2 A. No. We sort of engaged in a process
3 with counsel where we discussed the references
4 and discussed the claims and talked about what we
5 thought were the key points we wanted to make,
6 went back and forth.

7 Q. And so did you do the actual drafting
8 or did counsel do the drafting?

9 A. I did some of the drafting, counsel
10 made some suggestions, and I would review them,
11 and the end result is the declaration, I guess.

12 Q. Do you recall whether there were
13 specific portions that you drafted?

14 A. I think it was basically going back
15 and forth on the document until we were happy.

16 Q. Is there any portions that you recall
17 that you did the first draft of?

18 A. Oh, there were several things that,
19 you know, were necessarily things that I would
20 put in without discussion, such as, you know, my
21 background and so on, so -- so the other things
22 we discussed, the substantive issues.

23 Q. So for the other things you discussed,
24 and then counsel took the first cut at it; would
25 that be fair?

1 KESAN

2 A. In some -- some situations, yes. Some
3 situations I did, depending on the points we had
4 to make, but I was comfortable with the end
5 result.

6 Q. Do you recall if you took the lead on
7 drafting any of the portions about the background
8 of the technology?

9 A. So the background was something that
10 we have developed, you know, because there were
11 so many patents involved, so we had gone back and
12 forth on -- on that.

13 Q. And so that background is something
14 you've seen and used in other cases related to
15 this technology?

16 A. That we developed in other cases --

17 Q. Right.

18 A. -- counsel and I worked on from other
19 power -- control power headroom patents.

20 Q. Okay. And those are other patents in
21 the CEC portfolio?

22 A. Correct.

23 Q. How many of those cases or patents
24 have you been engaged as an expert to opine on;
25 do you recall?

1 KESAN

2 A. I want to say I've encountered about,
3 you know -- I want to say four or five, something
4 around that number.

5 Q. Okay.

6 A. They're all in various stages, so I
7 may be off in my number by one or two.

8 Q. Right. I don't need an exact number.
9 I was just curious.

10 So as that background relates, that
11 may be similar or even identical to some
12 technical backgrounds that you've had in other
13 patents related to power control; is that
14 correct?

15 A. Yeah. It's -- it's -- I don't think
16 it's identical, because I remember that I
17 tailored it to some of the specifics of this
18 particular IPR.

19 Q. I see.

20 A. But -- but the -- sort of the gist of
21 the material is perhaps similar.

22 Q. Like the genesis of where it started
23 from came from somewhere else; is that right?

24 A. From one of these power -- control
25 power headroom reporting patents.

1 KESAN

2 Q. Okay. What about the section in your
3 declaration that's focused on analyzing the Kwak
4 reference?

5 MR. NASH: That's K-W-A-K.

6 A. Yeah.

7 Q. Is that something that you would have
8 taken the first cut at drafting; do you recall?

9 A. I don't recall it specifically, but
10 obviously that's what, you know, I spent most of
11 my time doing was -- was focusing on the -- the
12 specifics of the Kwak reference.

13 Q. And what about the writing of that
14 section? Is that something that you recall
15 drafting first or drafting later, or just
16 providing your input for others to draft?

17 A. Basically, we discussed all the points
18 that we wanted to make, and -- and I -- I could
19 be wrong, but I recall that some of the issues
20 were similar to the issues that we had dealt with
21 elsewhere in the same case involving similar
22 patents.

23 So we -- you know, we had some
24 materials from before so we sort of put it
25 together.

KESAN

1 Q. Can you explain what you mean by that,
2 some similar issues to other cases?

3 A. So I -- I don't recall very
4 specifically, but I -- and I could be mistaken
5 about this, but -- but I thought that we had
6 dealt with the '676 patent in the district court
7 matter or, you know -- and I think we had some
8 other materials related to validity of the
9 patent --

10 Q. I see.

11 A. -- so --

12 Q. And you were able to leverage some of
13 those previous resources?

14 A. Right, right, right. And I believe it
15 included -- may have even included the Kwak
16 reference.

17 Q. All right. Do you recall what that
18 case might have been?

19 A. Not off the top of my head, because
20 there were so many of them, but it involved, you
21 know, one of the district court matters, I
22 think.

23 Q. Okay.

24 A. Again, I'm going from the top of my
25

KESAN

1 head, but I -- I could be mistaken.

2 Q. Do you recall who the plaintiff -- or,
3 sorry, the defendant would have been in that
4 district court matter that you're thinking of?

5 A. There were so many of them that --
6 and -- but I want to say one of them, you know,
7 may have been Apple, but there were so many
8 defendants, and some of them are not in the case
9 anymore, et cetera, so I'm not -- not sure the
10 exact caption of the case.

11 Q. Are the materials that you're thinking
12 of from that district court case an expert report
13 that you may have written?

14 A. Right. I think so. Again, I'm going
15 from memory, but -- and I'm not even sure if it
16 was this patent, or it was just a reference or --
17 you know, there was some commonalities.

18 Q. Okay. Was there any commonality as it
19 related to Dr. Williams?

20 A. I don't recall.

21 Q. You recall that Dr. Williams was the
22 expert that provided a declaration on behalf of
23 the Petitioner in this case, correct?

24 A. Yes.
25

KESAN

1 Q. And a lot of your discussion in Kwak
2 is responding to Dr. Williams' opinions; is that
3 correct?

4 A. Correct.

5 Just to clarify, I thought you were
6 asking me about the prior involvement of
7 Dr. Williams.

8 Q. Right, and I am.

9 A. Okay.

10 Q. I am asking that.

11 A. That's what I don't remember.

12 Q. Okay.

13 A. Obviously, I know that Dr. Williams --

14 Q. Sure. No, no.

15 A. -- is HTC's expert.

16 Q. I certainly wasn't trying to imply
17 that you'd forgotten it. I was more just trying
18 to set the stage for, in your section discussing
19 Kwak, there's a lot of discussion about
20 Dr. Williams and his opinions, correct?

21 A. Yes, yes.

22 Q. And so I was wondering if, when we
23 were talking about being able to leverage work
24 from other cases, is that work that you're
25

KESAN

1 referring to also responding to a report or
2 testimony by Dr. Williams, or do you recall?

3 A. Yeah, I -- I'm not sure, but I did
4 focus on Dr. Williams' declaration in this
5 matter, sort of as a starting point, because I
6 thought I was responding to Dr. Williams'
7 declaration in this matter.

8 Q. Okay. Great.

9 Do you recall how much time you spent
10 on this declaration, preparing it?

11 A. Again, it's a little hard to tell,
12 because this was not the first time I was looking
13 at the patent and this was not the first time I
14 was -- so there was some prior knowledge.

15 Q. Yeah.

16 A. So it's -- it's sort of unfair, you
17 know, in the sense that there was -- you know,
18 this has been going on now for about, I guess, a
19 year or more, so --

20 Q. There's certainly some efficiencies if
21 you've already looked at this patent and this
22 reference before --

23 A. Right.

24 Q. -- is that what you're saying?
25

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