

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

ZTE (USA) INC.)
)
) Petitioner,)
)
) vs.)
) Case No. To Be Assigned
PAPST LICENSING GmbH &)
CO. KG,)
)
) Patent Owner.)
_____)

DEPOSITION OF: KEVIN ALMEROOTH

TAKEN ON: AUGUST 24, 2017

REPORTED BY:

PATRICIA L. HUBBARD, CSR #3400

1 DEPOSITION OF KEVIN ALMEROOTH,
 2 taken on behalf of the Patent
 3 Owner, at 333 South Hope Street,
 4 43rd Floor, Los Angeles,
 5 California, commencing at
 6 8:42 A.M. on August 24, 2017,
 7 before PATRICIA L. HUBBARD,
 8 CSR #3400, a Certified Shorthand
 9 Reporter in and for the State of
 10 California.
 11
 12
 13 APPEARANCES OF COUNSEL:
 14
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 25

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 11 Exhibit 1 Declaration of Kevin Almeroth 7
 12 in Support of Petition for
 13 Inter Partes Review of
 14 U.S. Patent No. 6,895,449:
 15 Claims 1, 16 and 17
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 19 U.S. Patent No. 6,470,399:
 20 Claims 1, 3, 6, 11, 14 and 15
 21 Exhibit 3 United States Patent 9
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 25 Exhibit 5 United States Patent 9
 Number 5,758,081
 Exhibit 6 American National Standard 121
 For Information Systems -
 Small Computer System
 Interface-2
 (Only cover page attached)

1 INDEX (Continued)
 2
 3 INFORMATION REQUESTED:
 4 (NONE)
 5
 6 WITNESS INSTRUCTED NOT TO ANSWER:
 7 (NONE)
 8
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1 LOS ANGELES, CALIFORNIA
2 AUGUST 24, 2017
3 * * *

4
5
6 KEVIN ALMEROOTH,
7 called as a witness, having been
8 sworn, was examined and testified
9 as follows:

10 EXAMINATION

11 BY MR. HENKELMANN:

12 Q. Good morning, Dr. Almeroth.

13 A. **Good morning.**

14 Q. Thanks for coming in today.

15 Just initially, have you been deposed
16 before?

17 A. **I have.**

18 Q. Okay. So you know the ground rules
19 generally in a deposition. You're required to
20 answer my questions. If you don't understand,
21 please let me know. I'll try to rephrase the
22 question.

23 We're talking about two of your
24 declarations in two separate IPR matters.
25

1 MR. QUIST: Briefly, the '449 is marked
2 as Exhibit 1.

3 And is there not a stamp on that one?

4 MR. HENKELMANN: Oh, is that -- I'm
5 sorry.

6 Could you mark this as Exhibit 2,
7 please.

8 MR. QUIST: So for the record the
9 Declaration of Kevin Almeroth in Support of Petition
10 For Inter Partes Review of U.S. Patent
11 Number 6,895,449 is marked as Exhibit 1.

12 And the Declaration of Kevin Almeroth in
13 Support of Petitioner For Inter Partes Review of
14 U.S. Patent number 6,895,449.

15 MR. MILLER: 399.

16 MR. QUIST: Sorry.

17 -- the '399 Patent is marked as
18 Exhibit number 2.

19 (Whereupon the document referred
20 to was marked Almeroth Exhibit 2
21 by the Certified Shorthand
22 Reporter and is attached hereto.)

23 THE REPORTER: Here you go.

24 THE WITNESS: Thank you.
25

///

1 You gave a declaration in the
2 IPR2017-00713 and IPR2017-00714. The first one has
3 to do with U.S. Patent number 6,895,449, that's the
4 713 matter, and the 714 IPR has to do with
5 U.S. Patent 6,470,399.

6 I may refer to those declarations as the
7 '449 Declaration or the '399 Declaration, if that's
8 okay.

9 A. **That is.**

10 Q. Okay. I will hand to you what's marked
11 as Exhibit 1, your declaration in support of
12 petition for inter partes review of U.S. Patent
13 Number 6,895,449.

14 (Whereupon the document referred
15 to was marked Almeroth Exhibit 1
16 by the Certified Shorthand
17 Reporter and is attached hereto.)

18 MR. QUIST: And, Counsel, can you
19 represent for the record that those are true and
20 accurate copies of the exhibits filed in these
21 proceedings?

22 MR. HENKELMANN: Yes, I can.

23 BY MR. HENKELMANN:

24 Q. I'm just going to hand you all the paper
25 now.

1 BY MR. HENKELMANN:

2 Q. We'll do our best to keep these
3 straight.

4 MR. HENKELMANN: Let's mark a few more
5 exhibits in case we need them.

6 Marking as Exhibit number 3 U.S.
7 Patent 6,895,449 to Michael Tasler.

8 (Whereupon the document referred
9 to was marked Almeroth Exhibit 3
10 by the Certified Shorthand
11 Reporter and is attached hereto.)

12 MR. HENKELMANN: And marking as
13 Exhibit 4 U.S. Patent 6,470,399 to Michael Tasler.

14 (Whereupon the document referred
15 to was marked Almeroth Exhibit 4
16 by the Certified Shorthand
17 Reporter and is attached hereto.)

18 MR. HENKELMANN: And then finally
19 marking as Exhibit number 5 U.S. Patent number
20 5,758,081 to Aytac.

21 (Whereupon the document referred
22 to was marked Almeroth Exhibit 5
23 by the Certified Shorthand
24 Reporter and is attached hereto.)

25 MR. QUIST: Is that the last exhibit

1 you're going to be marking for now?
 2 MR. HENKELMANN: For now.
 3 MR. QUIST: And again as to Exhibits 3
 4 through 5 do you represent those are true and
 5 accurate copies of the '499 Patent, the '399 Patent
 6 and the '081 Patent respectively?
 7 MR. HENKELMANN: To the best of my
 8 knowledge.
 9 BY MR. HENKELMANN:
 10 Q. Mr. Almeroth, do you -- could you take a
 11 look at the two declarations and see if you
 12 recognize those as the declarations you gave in the
 13 respective matters?
 14 **A. They appear to be.**
 15 Q. Okay. Dr. Almeroth, how long did you
 16 prepare for this deposition?
 17 **A. I would say maybe between 10 to**
 18 **15 hours.**
 19 Q. Okay. And did you prepare with anyone?
 20 **A. I did.**
 21 Q. Who did you prepare with?
 22 **A. With counsel.**
 23 Q. The counsel in this room?
 24 **A. Yes.**
 25 Q. Anyone else?

1 **A. No.**
 2 Q. Who is paying you for your testimony?
 3 **A. For testimony today I believe it would**
 4 **be ZTE.**
 5 Q. And are there other companies that might
 6 be paying you for other testimony in these matters?
 7 **A. Well, you said "these matters."**
 8 Q. In these two IPR proceedings?
 9 **A. I would have to go back and check. I**
 10 **don't recall if there were -- I know in some**
 11 **instances there have been duplicate petitions filed**
 12 **in case primary settles. And so I'm not sure for**
 13 **which petitions there have been additional petitions**
 14 **that have been filed.**
 15 Q. So you might be paid by the parties that
 16 have joined the '449 proceeding?
 17 **A. For today?**
 18 Q. For today.
 19 **A. I don't believe so.**
 20 Q. Okay. And going forward after today?
 21 **A. I don't know what's going to happen**
 22 **after today.**
 23 Q. Okay. Okay. When were you retained for
 24 this -- for these two matters?
 25 MR. QUIST: Objection. Form.

1 THE WITNESS: I don't recall exactly
 2 when it was. It would have been sometime before the
 3 declaration was filed, but I don't recall how -- how
 4 much before that.
 5 BY MR. HENKELMANN:
 6 Q. How long did you have to prepare your
 7 declarations in both of these matters?
 8 MR. QUIST: Objection. Form.
 9 THE WITNESS: I don't recall.
 10 BY MR. HENKELMANN:
 11 Q. Do you recall how long it took you to
 12 prepare your declaration in the '449 matter?
 13 **A. No.**
 14 Q. Do you recall how long it took you to
 15 prepare your declaration for the '399 matter?
 16 **A. No.**
 17 Q. So, you signed these -- both of these
 18 declarations on January 17th of 2017; is that
 19 correct?
 20 **A. Yes.**
 21 Q. So you don't recall when you were
 22 retained prior to that date in either of these?
 23 **A. I don't. I don't recall how much --**
 24 MR. QUIST: Objection. Form.
 25 THE WITNESS: Sorry. I don't recall how

1 much before this date I was retained specifically to
 2 work on these declarations.
 3 BY MR. HENKELMANN:
 4 Q. For the '449 Declaration, did you
 5 prepare this declaration yourself?
 6 MR. QUIST: Objection. Privilege.
 7 And actually, Counselor, Are you seeking
 8 a waiver by that question of the work product
 9 privilege?
 10 MR. HENKELMANN: No.
 11 MR. QUIST: Okay. Regardless, I'll
 12 lodge an objection for privilege and instruct the
 13 witness only to answer to the extent you are not
 14 conveying any information about communications
 15 between you and attorneys for the petitioner's.
 16 THE WITNESS: Understood.
 17 Could you repeat the question?
 18 BY MR. HENKELMANN:
 19 Q. Did you prepare your declaration for the
 20 '449 proceeding yourself?
 21 **A. For the most part, I did. Ultimately**
 22 **when I signed the declaration, I had ensured that it**
 23 **was reflective of all of the opinions that I had**
 24 **developed in the case at that point.**
 25 Q. So you didn't write the entire

1 declaration yourself?
 2 MR. QUIST: Objection. Privilege.
 3 Again, the expert is instructed -- we're
 4 going to instruct the expert not to answer to the
 5 extent that it is directed toward attorney
 6 communications with the expert.
 7 THE WITNESS: I don't believe so. I
 8 mean generally just looking at it, there's citations
 9 from materials. Obviously I didn't write the
 10 underlying material. So in some instances I would
 11 have cut and pasted material.
 12 And again, it represents the opinions
 13 that I had developed when I signed my name to it.
 14 BY MR. HENKELMANN:
 15 Q. Did you write the first draft of this
 16 declaration?
 17 MR. QUIST: Objection. Privilege. Same
 18 instruction.
 19 THE WITNESS: I don't recall
 20 specifically. But it's my practice to write the
 21 first draft of my reports or declarations.
 22 BY MR. HENKELMANN:
 23 Q. So you don't recall whether you wrote
 24 the first draft of this declaration in the '449
 25 matter?

1 MR. QUIST: Objection. Form.
 2 Objection. Privilege. Same instruction as to
 3 privilege.
 4 THE WITNESS: It's the same answer. I
 5 don't recall specifically other than to say what my
 6 general practice is.
 7 BY MR. HENKELMANN:
 8 Q. Did you work with counsel on drafting
 9 this declaration?
 10 MR. QUIST: Counselor, I'm -- I think
 11 that we're -- I think these questions are directed
 12 at privileged subject matter under the work product
 13 privilege afforded by Rule 26.
 14 And I don't, you know, mean to interrupt
 15 your flow. We're happy to meet and confer off the
 16 record or on the record about this. But working
 17 drafts and drafts of expert reports under Rule 26
 18 are protected under the work product doctrine.
 19 And I guess I don't know where you're
 20 going with these questions. But in general those
 21 are protected communications. And drafts of expert
 22 reports and expert declarations are also privileged.
 23 MR. HENKELMANN: I'm not trying to find
 24 out what the communications were. I'm just trying
 25 to find out, you know, who wrote the declaration.

1 MR. QUIST: Yeah. I think that that,
 2 too, is protected under the work product privilege
 3 afforded my Rule 26, certainly as to, you know, post
 4 amendments to Rule 26 and 2010.
 5 MR. HENKELMANN: Okay. So are you
 6 instructing him not to answer any further questions
 7 on this?
 8 MR. QUIST: I'm instructing him not to
 9 answer to the extent this -- to the extent any of
 10 his responses are related to attorney communications
 11 with the expert or communications concerning any
 12 drafts of the declaration or expert report in either
 13 of these matters.
 14 If you want to ask him yes or no
 15 questions as to what he recalls as to what he --
 16 what he wrote or you want to ask him questions about
 17 his compensation in the matter, those are certainly
 18 allowed. But beyond that, I'm instructing him not
 19 to answer.
 20 MR. HENKELMANN: Okay. I'm -- I'm
 21 trying to steer clear of finding out any
 22 communications between counsel and the witness.
 23 MR. QUIST: Okay.
 24 MR. HENKELMANN: Also, I believe
 25 objections should be limited to short, you know,

1 one-sentence objections under the rules here in
 2 IPR's.
 3 MR. QUIST: Understood. And that's --
 4 that whole length of conversation is not meant to be
 5 an objection.
 6 The -- I am happy to meet and confer
 7 with you. We just want to try and understand
 8 what -- the scope of your questions here so we know
 9 what -- what falls inside and outside of the
 10 privilege. And it's not clear from your -- from
 11 your questions so far.
 12 So, the objection is simply privilege.
 13 My instruction to the expert is not to respond to
 14 the extent it essentially runs afoul of Rule 26,
 15 which I'm happy to recite or -- sorry, not recite,
 16 but read if -- if necessary to clear anything up.
 17 MR. HENKELMANN: Okay.
 18 BY MR. HENKELMANN:
 19 Q. I just want to ask the same question for
 20 the '399.
 21 Dr. Almeroth, did you write the first
 22 draft of this declaration for the '399 patent?
 23 **A. To the best of my recollection. It's**
 24 **usually my standard practice to do the first draft**
 25 **of my declarations or reports.**

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