

1
2 UNITED STATES PATENT AND TRADEMARK OFFICE

3
4 BEFORE THE PATENT TRIAL AND APPEAL BOARD

5 INTEL CORP., and

6 CAVIUM, INC.,

7 Petitioner,

8 V.

9 ALACRITECH, INC.,

10 Patent Owner

11 Case IPR 2017-01391

12 U.S. Patent No. 7,237,036

13 ROBERT HORST

14 THURSDAY, JANUARY 25, 2018

15 ORAL VIDEOTAPED DEPOSITION OF ROBERT HORST, produced
16 as a witness at the instance of the Patent Owner and
17 duly sworn, was taken in the above-styled and numbered
18 cause on the 25th day of January, 2018, from 9:33 a.m.
19 to 2:38 p.m., before Melinda Barre, Certified Shorthand
20 Reporter in and for the State of Texas, reported by
21 computerized stenotype machine at the offices of Quinn
22 Emanuel Urquhart & Sullivan, LLP, 711 Louisiana Street,
23 Suite 500, Houston, Texas, pursuant to the Rules of Civil
24 Procedure and the provisions stated on the record or attached hereto.
25 Job No. 136764

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APPEARANCES

FOR THE PATENT OWNER:

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FOR THE PETITIONER:

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ALSO PRESENT: Robert Birdsall, Videographer

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ROBERT HORST

THE VIDEOGRAPHER: This is the start of the deposition of Dr. Robert Horst in the case styled Intel Corporation and Cavium, Incorporated versus Alacritech, Inc. in the United States Patent and Trademark Office, Case No. IPR 2017-01391.

The deposition today is being held at 711 Louisiana, Suite 500, Houston, Texas. Today's date is January 25th, 2018, and the time is 9:33. My name is Robert Birdsall, legal video specialist. The court reporter today is Melinda Barre. We are both with TSG Worldwide Reporting. Will counsel please identify yourselves for the record.

MR. MACK: Brian Mack of Quinn Emanuel representing the plaintiff -- or the patent owner, Alacritech, Inc.

MR. LI: Sean Li of Quinn Emanuel for Alacritech.

MR. CONSTANT: Justin Constant with Weil Gotshal Manges representing petitioner, Intel Corporation.

THE VIDEOGRAPHER: Thank you. Court Reporter, would you please swear in the witness.

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ROBERT HORST

ROBERT J. HORST,

having been first duly sworn, testified as follows:

EXAMINATION

QUESTIONS BY MR. MACK:

Q. Good morning. Could you please state your full name and address for the record.

A. Robert Whiting Horst at 1182 Glenn Avenue in San Jose, California.

Q. And you've been deposed a number of times before today, correct?

A. That's right.

Q. You understand that you are under an oath to tell the truth today?

A. Yes.

Q. It's the same oath that you would be under if you were testifying live in a court of law. Do you understand that?

A. Yes.

Q. There isn't anything that would interfere with your ability to testify truthfully today, is there?

A. No.

Q. You're not on any medications that could impede your ability to recollect or tell the truth?

A. No.

ROBERT HORST

1 Q. Dr. Horst, you're being compensated for your
2 work in this case, correct?

3 A. Yes.

4 Q. And who is compensating you?

5 A. Intel Corporation is compensating me.

6 Q. And are your invoices paid directly by Intel
7 Corporation?

8 A. They are paid by Weil representing Intel.

9 Q. Okay. So your invoices are paid by the law
10 firm Weil Gotshal, correct?

11 A. Correct.

12 Q. Who do you submit your invoices to?

13 A. I submit them to Weil.

14 Q. And is any of your compensation being paid by
15 Cavium?

16 A. For the initial preparation of my depositions,
17 everything was done by Weil. Later when the other --
18 when Cavium joined the case, I had an invoice to them
19 just for converting my declaration, primarily the title
20 page, to show Cavium.

21 Q. Okay. What is the date of that invoice to
22 Cavium, do you recall?

23 A. It would have been at the end of the month
24 after Cavium submitted their IPR.
25

ROBERT HORST

1 A. Not in connection with this case.

2 Q. How about in connection with other cases?

3 A. I don't recall any conversations with Cavium,
4 but there could have been some employees that were
5 formerly with Cavium that I don't know about.

6 Q. And how many invoices in total have you
7 submitted to Cavium?

8 A. One.

9 Q. And do you recall how much that invoice was
10 for?

11 A. No, I don't.

12 Q. And has that invoice been paid?

13 A. I believe it's been paid, but I'm not sure.

14 Q. And approximately how many hours was that
15 invoice covering?

16 A. It was just a few hours, but I don't remember
17 exactly how many.

18 Q. And what work was that invoice covering, what
19 type of work?

20 A. I did a careful read of my entire declaration
21 for that when I was retained by Cavium, and in the
22 process I found a few typos and things to fix. So it
23 involved fixing those typos and then printing out the
24 reports and signing them.
25

ROBERT HORST

1 Q. So are you an expert for both Intel and Cavium
2 in these proceedings?

3 A. At the present only Intel is directing my work.
4 But if for some reason Intel drops out, at that point
5 Cavium or one of the other defendants would direct my
6 work.

7 Q. And how were you contacted with attorneys for
8 Cavium -- or how were you connected with attorneys for
9 Cavium? Did Weil Gotshal attorneys connect you with the
10 Cavium attorneys?

11 MR. CONSTANT: Objection. You can answer
12 to the extent that it doesn't disclose any conversations
13 that you may have had with Weil attorneys or Cavium
14 attorneys.

15 A. I don't recall who made the first contact, but
16 I understood from Weil that Cavium was going to join and
17 the Cavium attorneys would contact me at some point.

18 Q. (By Mr. Mack) In connection with your initial
19 preparation of your declarations, the declarations that
20 were submitted in April, had you ever spoken to Cavium
21 attorneys prior to that point?

22 A. No, I hadn't.

23 Q. Have you ever spoken to any Cavium employees,
24 current or past, in connection with this case?
25

ROBERT HORST

1 Q. And the Cavium attorneys, did they give you any
2 guidance or direction in connection with your
3 declaration that you submitted in the Cavium petitions?

4 A. There is -- nothing having to do with the
5 substance. It was only directed to the formatting.
6 There may have been some claims that were not asserted
7 against Cavium, and those were removed from my report.

8 Q. But the substance of your two declarations, the
9 one that you submitted in the Intel petitions and the
10 ones that you submitted in the Cavium petitions, the
11 substance are identical?

12 A. Yes.

13 Q. How about Dell? Has Dell ever compensated any
14 portion of your work in this case?

15 A. It was a similar arrangement with Dell. Later
16 they contacted me, and I only worked with them to sign a
17 version of my report with Dell cited on the cover page.

18 Q. And had you spoken to any attorneys or
19 employees representing Dell prior to submission of your
20 initial declarations in April?

21 A. Not with regard to this case.

22 Q. How about Wistron? Have you ever spoken to any
23 attorneys or employees of Wistron?

24 A. It was a similar arrangement with Wistron in
25

ROBERT HORST

1 filing the IPRs for Wistron.

2 Q. Have you spoken to any attorneys or employees
3 prior to April when you filed your initial declarations?

4 A. No.

5 Q. And finally CenturyLink? Same answer with
6 respect to CenturyLink?

7 A. I am not retained by CenturyLink.

8 Q. But sitting here today, you agree that you are
9 retained by Wistron, Dell, Cavium and Intel, correct?

10 A. Yes.

11 Q. Do you have formal retention agreements with
12 each of those four parties?

13 A. Yes.

14 Q. And what is your hourly rate for your work on
15 this case?

16 A. 550.

17 Q. And is your hourly rate the same for each of
18 Intel, Cavium, Dell and Wistron?

19 A. Yes.

20 Q. Is \$550 an hour your typical consulting rate?

21 A. Yes. That's the rate for my expert witness
22 work.

23 Q. And are you being paid for your time testifying
24 here today?
25

ROBERT HORST

1 A. Yes.

2 Q. And that's also at the same \$550 an hour rate?

3 A. That's right.

4 Q. Other than your compensation that we just
5 discussed, do you have any other financial interest in
6 the outcome of these proceedings?

7 A. No.

8 Q. Do you own any stock in Intel Corporation?

9 A. No, not directly unless it's part of a mutual
10 fund.

11 Q. How about any stock in Dell, Cavium or
12 CenturyLink?

13 A. No.

14 Q. And how many declarations in total have you
15 submitted on behalf of Intel in this case, do you
16 recall?

17 A. I believe it was eight declarations plus one
18 supplemental declaration.

19 Q. And did you also submit those same eight
20 declarations on behalf of Cavium?

21 A. Cavium -- I submitted a number of declarations,
22 but I'm not sure that all of them were submitted. I
23 believe all eight were for Cavium but not all eight for
24 the other defendants.
25

ROBERT HORST

1 Q. And when were you first contacted about working
2 on this case?

3 A. I don't recall. It was over a year ago, but I
4 don't remember when.

5 Q. And do you recall who first contacted you about
6 working on this case?

7 A. I am not sure. I had previously worked --
8 known one of the attorneys at Weil, and he may have
9 contacted me.

10 Q. Which attorney at Weil did you have a prior
11 relationship?

12 A. Garland Stephens.

13 Q. And have you worked for Mr. Stephens before
14 this case?

15 A. In?

16 Q. In an expert litigation capacity. Has he
17 retained you previously?

18 A. I had spoken with him in another case, but I
19 don't -- I can't recall if he was actually on that case
20 or not.

21 Q. Okay. And how many times prior to this case
22 have you been retained by the law firm Weil Gotshal?

23 A. I am not sure. It may have been one other
24 time.
25

ROBERT HORST

1 Q. And were you contacted directly by Weil
2 attorneys or through an expert search firm?

3 A. Directly.

4 Q. Are you associated with any expert search or
5 placement firms today?

6 A. I have done -- I have had a few cases through
7 search firms, but most of my cases are now directly with
8 the law firms.

9 Q. And which search firms have you used in the
10 past?

11 A. There used to be a group called the Silicon
12 Valley Expert Witness Group, and then they were acquired
13 or sold to another company, which I don't recall the
14 name. And there have been a few others that I may have
15 been contacted, but I don't recall their names.

16 Q. Approximately how much -- how many hours have
17 you billed on this case from your initial engagement to
18 today?

19 A. I haven't counted up the hours. It's been
20 several hundred hours, but I don't know how many.

21 Q. And have you been compensated for each of those
22 several hundred hours?

23 A. Yes.

24 Q. And how much compensation have you collected to
25

1 ROBERT HORST

2 date working on the IPRs in this case?

3 A. I haven't gone back to check my records to
4 know.

5 Q. Okay. Do you know approximately how much?

6 A. I would just have to guess.

7 Q. What would be your best guess?

8 A. It's probably something over a hundred
9 thousand, but I don't know.

10 Q. Are you working on any other matters
11 simultaneously with this matter?

12 A. Yes.

13 Q. And how many other matters are you working on
14 simultaneously with this matter?

15 A. There's two other expert cases, and I'm also
16 working with a company on some engineering work.

17 Q. And are any of those cases also with the Weil
18 law firm?

19 A. No.

20 Q. What percentage of your time -- currently what
21 percentage of your time is occupied working on the IPRs
22 for this matter?

23 A. The time varies quite a lot depending on what
24 deadlines. So it's pretty hard to gauge that.

25 Q. Fair enough. Supplemented by your preparation

1 ROBERT HORST

2 for today's deposition, what did you do to prepare for
3 your deposition today?

4 A. I primarily read my declarations and the prior
5 art cited in those declarations and read some of the
6 documents connected with the case like the PTAB
7 decisions instituting the IPRs.

8 Q. And did anything you read in the PTAB decisions
9 instituting the IPRs change any of your views in this
10 case?

11 A. No.

12 Q. You mentioned you also reviewed the prior art
13 cited in your declarations, correct?

14 A. Yes.

15 Q. Did you review all of the prior art?

16 A. I reviewed the primary art that was cited. I'm
17 not sure that I read every piece.

18 Q. Okay. And how did you locate the prior art
19 that you cited in your declarations?

20 MR. CONSTANT: Objection, privileged. You
21 can answer to the extent it doesn't disclose
22 communications that we may have had.

23 A. I had copies of most of those documents on my
24 computer from when I did the initial search for prior
25 art.

1 ROBERT HORST

2 Q. (By Mr. Mack) And when did you do the initial
3 search for prior art?

4 A. It was shortly after I was retained by Weil.

5 Q. Did Dell, Wistron or Cavium send you any of the
6 prior art that you cited in your expert declarations?

7 A. No.

8 Q. Did you personally locate all of the prior art
9 cited in your declarations?

10 A. No. Weil supplied a lot of it, and I found
11 some other documents.

12 Q. And the prior art that Weil had supplied to
13 you, had you seen any of that prior art prior to the
14 time they had supplied it to you?

15 A. I may have. I don't recall exactly which ones
16 they sent and which ones I found.

17 Q. Did you meet with anyone to prepare for today's
18 deposition?

19 A. Yes. I met with Weil attorneys.

20 Q. Okay. Which Weil attorneys did you meet with?

21 A. With Mr. Constant and Mr. Stephens.

22 Q. And when did you meet with Mr. Constant and
23 Mr. Stephens?

24 A. Yesterday and part of the day before.

25 Q. And how long were each of those meetings?

1 ROBERT HORST

2 A. Yesterday's was a full day and the day before
3 was about a half a day.

4 Q. And I think you mentioned you reviewed your
5 declarations in preparation for today's deposition,
6 right?

7 A. Yes.

8 Q. Did you also review the patents-in-suit?

9 A. Yes. I read through the provisional that all
10 the patents are based on.

11 Q. Was there anything else that you reviewed other
12 than the institution decisions, the patents-in-suit,
13 your declarations and the prior art?

14 A. There were a few other documents connected with
15 the case, but I can't remember exactly which ones.

16 Q. To prepare for today's deposition, did you
17 speak with any nonlawyers?

18 A. Not in connection with the case.

19 Q. How about not in connection with today's
20 deposition but just generally in connection with this
21 engagement, did you speak with any engineers at Intel,
22 for instance?

23 A. No.

24 Q. How about engineers at Cavium?

25 A. No.

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