

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC

Investigation No. 337-TA-1076

In the matter of:

CERTAIN MAGNETIC DATA STORAGE

TAPES AND CARTRIDGES CONTAINING

THE SAME (II)

CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

DEPOSITION of THOMAS VON ALTEN

WASHINGTON, DC

May 4, 2018 - 9:03 A.M.

Reported by:

S. Arielle Santos

JOB NO. 21434

TransPerfect Legal Solutions

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1
2 DEPOSITION of THOMAS VON ALTEN, before S.
3 Arielle Santos, Certified Court Reporter,
4 Certified LiveNote Reporter and Notary Public,
5 taken at 1299 Pennsylvania Avenue, Northwest,
6 Washington, DC, on May 4, 2018.
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15 invalidity of US Patent Number
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1 At this time will counsel
 2 please introduce themselves.
 3 MS. WELSH: I'm Margaret
 4 Welsh, from Baker Botts, for
 5 Fujifilm complainants.
 6 MS. BURKE: Katharine Burke
 7 from Baker Botts for Fujifilm
 8 complainants.
 9 MR. SPEED: Nathan Speed
 10 from Wolf Greenfield & Sacks for
 11 respondents.
 12 THE VIDEOGRAPHER: Court
 13 reporter please swear in the
 14 witness and we can proceed.
 15 (Whereupon Thomas W. Von
 16 Alten is Sworn In.)
 17 THE WITNESS: I do.
 18 BY MS. WELSH:
 19 Q Good morning, Mr. Von
 20 Alten.
 21 A Good morning.
 22 Q Could you please state your

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1 THE VIDEOGRAPHER: This is
 2 Tape Number 1 of the videotaped
 3 deposition of Thomas Von Alten
 4 in the matter of In Re: Certain
 5 Magnetic Storage Tapes and
 6 Cartridges Containing The Same,
 7 United States International
 8 Trade Commission Washington, DC,
 9 Investigation Number 337-
 10 TA-1076.
 11 This deposition is being
 12 held at Baker Botts located at
 13 1299 Pennsylvania Avenue, NW,
 14 Washington, DC, 20004, on May 4,
 15 2018, at approximately 9:03 a.m.
 16 My name is Charlie Widner
 17 from the firm of TransPerfect
 18 Legal Solutions and I am the
 19 legal video specialist. The
 20 court reporter today is Arielle
 21 Santos in association with
 22 TransPerfect Legal Solutions.

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1 full name for the record?
 2 A Thomas William Von Alten.
 3 Q And where do you reside?
 4 A In Boise, Idaho.
 5 Q And do you understand that
 6 you're here today under oath to tell
 7 the truth?
 8 A I do.
 9 Q And do you understand that
 10 this is the same oath that you would
 11 take if you were testifying in court?
 12 A I do.
 13 Q And have you ever been
 14 deposed before?
 15 A Once in this case.
 16 Q In this case.
 17 And when was that?
 18 A In Boston, April.
 19 Q So you're fairly familiar
 20 with the process then, it was fairly
 21 recent?
 22 A The mechanics, yeah.

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1 Q Okay.
 2 So I'll remind you that the
 3 court reporter is taking a transcript
 4 of everything that you say, and it's
 5 important that we don't speak over each
 6 other. So I will let you finish your
 7 answers and if you would please let me
 8 finish my questions, that would be
 9 helpful.
 10 If you need a break just
 11 let me know and then we'll take a
 12 break. And please give verbal answers,
 13 okay or yes or no, just so the court
 14 reporter can take down those answers.
 15 A I will do my best.
 16 Q Okay. And if I ask you a
 17 question and you don't understand,
 18 please let me know, and I will try to
 19 rephrase. But if you don't ask me to
 20 clarify, I'll assume that you
 21 understood the question.
 22 A Okay.

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1 Q Is there any reason you
 2 can't provide your full truthful and
 3 accurate testimony today?
 4 A There is not.
 5 Q Are you on any medications
 6 that might affect your testimony?
 7 A I am not.
 8 MS. WELSH: I would like to
 9 mark this as Exhibit 1.
 10 (Exhibit 1 is Marked.)
 11 MS. WELSH: And I'll mark
 12 this as Exhibit 2.
 13 (Exhibit 2 is Marked.)
 14 MR. SPEED: Is that his
 15 report?
 16 THE WITNESS: Thank you.
 17 BY MS. WELSH:
 18 Q So I have handed you two
 19 exhibits.
 20 One is the US Patent Number
 21 6,462,905.
 22 And Exhibit 2 is the

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1 opening exhibit report of Thomas W.
 2 Von Alten regarding invalidity of US
 3 Patent Number 6,462,905.
 4 Would you please turn to
 5 Exhibit 1, the '905 patent?
 6 A (Reviewing.) I have it.
 7 Q Do you recognize it to be
 8 the '905 patent which you've offered an
 9 opinion on?
 10 A I do.
 11 Q And is it okay if I refer
 12 to this document as the '905 patent?
 13 A Yes.
 14 Q You've reviewed this patent
 15 for the case, correct?
 16 A I have.
 17 Q And have you reviewed the
 18 whole patent or just portions of it?
 19 A The whole patent.
 20 Q And when was the first time
 21 you saw the '905 patent?
 22 A I can't be certain, but I

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1 was engaged by Sony in November of last
 2 year, so no later than that.
 3 Q And at that time, you read
 4 the patent in November?
 5 A I did.
 6 Q And was there anything in
 7 the patent that you didn't understand?
 8 A I think I have a pretty
 9 good handle on it all.
 10 Q And are there any mistakes
 11 or anything that you disagree with in
 12 the patent?
 13 A That is a very broad
 14 question. My report speaks to what I
 15 found in the patent.
 16 Q And sitting here today, can
 17 you think of anything in particular,
 18 any mistake that you saw in the patent?
 19 A Again, I -- it's not a
 20 simple short answer question. My
 21 report speaks to it at great length and
 22 detail.

1 Q And anything in particular
2 that you disagreed with in the patent
3 just sitting here today?
4 A (Reviewing.) Same answer.
5 Q And you reviewed and
6 understood the claims of the '905
7 patent; is that correct?
8 A I did.
9 Q And you've prepared an
10 expert report in this case, right?
11 A I have.
12 Q And if you turn to
13 Exhibit 2, do you recognize that to be
14 your opening expert report regarding
15 the asserted claims of the '905 patent?
16 A The weight is about right,
17 cover page looks good, and I will
18 assume you have copied it accurately.
19 Q And the words in this
20 report are your own, correct?
21 A I worked together with the
22 Sony's counsel to produce this report.

1 Q So are the words in the
2 report Sony's counsel's words or your
3 own words?
4 MR. SPEED: Objection.
5 THE WITNESS: The report
6 and its conclusions are mine and
7 I worked together with Sony's
8 counsel to produce it.
9 BY MS. WELSH:
10 Q How much of the drafting
11 did Sony's counsel do on this report?
12 A Do you want a percentage?
13 Q Yeah, a percentage will be
14 fine.
15 A I don't think it makes
16 sense to divide it out that way. We
17 worked together on it in a
18 collaborative and iterative process
19 over a couple of months.
20 Q So more than half?
21 A I refer you to my previous
22 answer. We worked together on it.

1 Q Are there portions of the
2 report that you drafted yourself?
3 A Yes. We worked together on
4 drafting this report.
5 Q Were you sitting in a room
6 drafting the report together?
7 A Well, I live in Boise and
8 the attorneys are in Boston and New
9 York when they're not traveling, and so
10 we worked together remotely via
11 telephone and e-mail.
12 Q And if you turn to page
13 6 -- 263?
14 A (Reviewing.) I'm there.
15 Q And is that your signature
16 on the bottom of the page?
17 A It is.
18 Q And is there any mistakes
19 or omissions in your report that you're
20 aware of?
21 A There are none that I am
22 aware of that I can point to and say

1 this was a mistake.
2 Q And this report contains
3 all the opinions that you intend to
4 express at trial; is that right?
5 A With the reservation as
6 stated, and in light of the additional
7 documents that I have seen in regard to
8 this case.
9 Q And what additional
10 documents are those?
11 A I have seen Dr. Messner's
12 report, Dr. Slocum's report, and the
13 two gentlemen's rebuttals, and the
14 transcripts of their depositions.
15 There was also an additional document
16 that Dr. Messner referred to in his
17 rebuttal that I have looked at.
18 Q And did those documents
19 change your opinion of the -- of the
20 opinions in your report?
21 A Not materially, no.
22 Refined some of the points,

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