

40

- 8 Q. And is Cooper Exhibit 3 the list of the patents that
9 were included in your file?
- 10 A. That we wrote out, correct.
- 11 Q. Yeah. Where did those patents come from?
- 12 A. I don't recall where these patents actually came
13 from.
- 14 Q. What are the potential sources?
- 15 A. The potential sources are either from the client,
16 Mr. Tuttle, or there could be a -- a search that was
17 -- that could have been performed, either a formal
18 search, which I don't think I saw any notification,
19 or reporting out letter that one was done, so that's
20 unlikely, or an informal search, where we were having
21 a discussion, and we looked something up. Those
22 would be the -- the sources, I think, in this case.
- 23 Q. Do you have any recollection of receiving any prior
24 art from the client?
- 25 A. I don't have a specific recollection. We have some,

41

- 1 but I don't have a specific recollection.
- 2 Q. And I want to be fair to you, but I want to make sure
3 I understand. You're saying to me, I don't know
4 where these patents that are in the file came from,
5 and these are the sources that are possible; is that
6 -- is that what you're saying?
- 7 A. What I said I don't know is I don't recall, being so
8 many years later, I think is a more fair statement.
- 9 Q. And they could have come from the client, from a
10 search, or from an informal search?
- 11 A. Right.

54

- 17 Q. Okay. Now, you said you're not the billing attorney
18 for Heartland. Who is the billing attorney?
- 19 A. I think it's Scott Troeger.
- 20 Q. Who was the billing attorney when you started working
21 with Heartland?
- 22 A. Well, that's what I mean. I think it was
23 Scott Troeger.
- 24 Q. He's in the Elkhart office of Barnes & Thornburg,
25 right?

55

1 A. I believe so.
2 Q. How did Heartland come to you for work?
3 MR. LADUE: Objection, lack of personal
4 knowledge.
5 BY MR. FOUNTAIN:
6 Q. Well, let me -- let me rephrase that then.
7 How was it that you yourself started doing
8 work with Heartland?
9 A. I think I was asked by Mr. Troeger to do the work.
10 Q. Do you know why he came to you?
11 A. No, other than I draft patents. I don't think we had
12 a patent attorney in the Elkhart office at that time.

102

15 Q. Okay. Did you advise Heartland to have a formal
16 search conducted?
17 A. I don't recall specific discussions, but usually that
18 would be something that I would advise them of.
19 Q. Did Heartland have that done in this case?
20 MR. LADUE: You're asking about during the
21 time he was working on the file, correct?
22 BY MR. FOUNTAIN:
23 Q. At any time that you're aware of.
24 A. Well, there is -- apparently, there was some done by
25 another attorney, um, prior to my representation.

103

1 During the course of my representation, I don't
2 recall --
3 Q. Okay.
4 A. -- them ever asking me for a formal search.
5 Q. You say apparently there was a formal search prior to
6 your representation; is that right?
7 A. Apparently.
8 Q. Why do you think a formal search was done prior to
9 your representation?
10 A. Well, I should back up. I don't know a formal
11 search, but a search, as represented in these -- in
12 these documents.
13 Q. When a formal search is done that you request to have
14 done by these professional searchers, where do they
15 look for the prior art?
16 A. That would be up to the searcher.
17 Q. You have no idea?

18 A. I didn't say that. I said that would be up to the
19 searcher.
20 Q. I understand. But do you know where they look?
21 A. Depending on the searcher, they would look -- yeah.
22 Depending on the searcher, they would look at the
23 USPTO records, possibly PCT records, some have been
24 known to talk to an examiner or two back before
25 computer searching was so prevalent, and now a lot

104

1 more in foreign databases, in addition to U.S.
2 databases.
3 Q. Professional searchers send you a report, don't they?
4 A. Correct.
5 Q. And they indicate in that report the databases they
6 examine, don't they?
7 A. Correct.