

## EXHIBIT 42

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

ERIC M. ALBRITTON,	*
	*
Plaintiff,	*
	*
VS.	* C.A. NO. 6:08-CV-00089
	*
CISCO SYSTEMS, INC., RICK	*
FRENKEL, MALLUN YEN &	*
JOHN NOH,	*
	*
Defendants.	*

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ORAL DEPOSITION OF  
OTIS CARROLL  
NOVEMBER 5TH, 2008

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ORAL DEPOSITION OF OTIS CARROLL, produced as a witness at the instance of the CLAIMANT, and duly sworn, was taken in the above-styled and numbered cause on the 5th of November, 2008, from 9:25 a.m. to 9:36 a.m., before Tammy Staggs, CSR in and for the State of Texas, reported by machine shorthand, at the Law Offices of Ireland, Carroll and Kelley, 6101 Broadway, Suite 500, Tyler, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

1 representing Rick Frenkel.

2 THE VIDEOGRAPHER: Will the court  
3 reporter please swear the witness.

4 OTIS CARROLL,  
5 having been first duly sworn, testified as follows:

6 EXAMINATION

7 BY MR. BABCOCK:

8 Q. Would you state your name, sir.

9 A. Otis Carroll.

10 Q. Mr. Carroll, how are you employed?

11 A. I'm a lawyer.

12 Q. And are you -- do you practice with a law  
13 firm?

14 A. I do. A firm called Ireland, Carroll, and  
15 Kelley in Tyler, Texas.

16 Q. That was my next question.

17 Mr. Carroll, you have been designated or  
18 disclosed as a witness in the case that you're giving  
19 your deposition in today by the plaintiff Eric  
20 Albritton. And it says, in its entirety, (as read):  
21 Mr. Carroll has knowledge of the professional reputation  
22 and integrity of the plaintiff.

23 Do you know anything about that?

24 A. I do.

25 Q. And what do you know?

1           A.    I have my opinion about Eric Albritton's  
2 professional reputation and integrity, and I understood  
3 that's what he was disclosing me to talk to.

4           Q.    That's what -- that's what it looks like.  
5 What is your opinion of Mr. Albritton's professional  
6 reputation and -- and integrity?

7           A.    I think it's impeccable. I think he's got a  
8 reputation as being a fine -- to me and probably to Nick  
9 Patton, he's still a young trial lawyer, but...

10          Q.    You can throw me in on that one too.

11          A.    And to you Chip, I forgot. But he's a fine  
12 young lawyer. And in my -- my mind he's got a great  
13 reputation. And that's -- kind of sums it up.

14          Q.    All right. And -- and have you changed your  
15 opinion as to his reputation at any time between when  
16 you first knew him as a lawyer and today, which is  
17 November 5th, 2008, the day after the great election?

18          A.    Well, I think, you know, my opinion of him has  
19 improved. I met -- I was trying to think of this this  
20 morning. I think I met him initially when he was a law  
21 clerk to Judge Justice. And I can't remember when it  
22 was, but I'm guessing it was at least 15, maybe even 20  
23 years ago. And then I knew him when he went to work for  
24 Scrappy Holmes and then when he -- he left and I've had  
25 cases with him and I've had cases against him and my --

1 to answer your question, my opinion of his abilities and  
2 his reputation has grown. I think he's -- you know,  
3 he's somebody I'm glad to count as a colleague and a  
4 friend.

5 Q. So his reputation in your mind is --

6 MR. PATTON: Objection, leading.

7 Q. (BY MR. BABCOCK) His reputation in your mind  
8 is better today than it might have been a year ago or  
9 two years ago or five years ago?

10 A. Well, to me it is.

11 Q. Yeah, okay. Will you tell me whether  
12 you're -- and I think you've already said this, but will  
13 you tell me whether his reputation in your eyes has  
14 improved over the last five years?

15 A. I mean, it has to me. And, you know, because  
16 he and I are doing the same kind of work and we weren't  
17 before. He was doing more criminal trial practice. And  
18 he got into the commercial practice and the IP practice,  
19 which a lot of us around here do, and I got to see more  
20 of him. So, you know, I guess that's the basis for my  
21 opinion as much as anything.

22 Q. Okay. Have you ever referred him a case?

23 A. Yeah, sure have. The first -- first patent  
24 case he ever had.

25 Q. When was that?

1           That the amount of time used by each party at the  
2 deposition is as follows:

3           Mr. Nick Patton - (0:02)

4           Mr. Charles L. Babcock - (0:07)

5           Mr. George L. McWilliams - (0:02)

6  
7           That pursuant to information given to the deposition  
8 officer at the time said testimony was taken, the  
9 following includes counsel for all parties of record:

10           FOR THE PLAINTIFF:  
11           Nick Patton, Esq.

12           FOR THE DEFENDANT, CISCO SYSTEMS, INC.:  
13           Charles L. Babcock, Esq.  
14           Crystal Parker

15           FOR THE DEFENDANT, RICHARD FRENKEL:  
16           George L. McWilliams, Esq.

17  
18  
19  
20  
21  
22           That \$ \_\_\_\_\_ is the deposition officer's charges  
23 to the Defendant, Cisco Systems, for preparing the  
24 original deposition transcript and any copies of  
25 exhibits;

1 I further certify that I am neither counsel for,  
2 related to, nor employed by any of the parties or  
3 attorneys in the action in which this proceeding was  
4 taken, and further that I am not financially or  
5 otherwise interested in the outcome of the action.

6 Certified to by me this 7th of November, 2008.

7  
8  
9 *Tammy Lea Staggs*

10 Tammy Lea Staggs, CSR 7496  
11 Expiration Date: 12/31/2009  
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