ESTTA Tracking number: **ESTTA333117**

Filing date: **02/19/2010**

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

Proceeding	91184213
Party	Plaintiff Galaxy Metal Gear, Inc.
Correspondence Address	Jen-Feng Lee LT Pacific Law Group 17800 Castleton Street, #383 Industry, CA 91748 UNITED STATES jflee@ltpacificlaw.com, ktanji@ltpacificlaw.com
Submission	Testimony For Plaintiff
Filer's Name	kenneth tanji, jr.
Filer's e-mail	ktanji@ltpacificlaw.com, jflee@ltpacificlaw.com
Signature	/kenneth tanji, jr./
Date	02/19/2010
Attachments	discovery deposition momo.pdf (58 pages)(1137774 bytes)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

GALAXY METAL GEAR, INC., a California corporation, Plaintiff, vs. DIRECT ACCESS TECHNOLOGY, INC., a California corporation; Defendants. AND RELATED CROSS-ACTIONS.	)	No. BC 382375

DEPOSITION OF MOMO CHEN

Thursday, November 13, 2008

Pasadena, California

REPORTED BY: Jamie B. Snyder, CSR No. 5159

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

GALAXY METAL GEAR, INC., a California corporation, Plaintiff,	)	
vs.	)	No. BC 382375
DIRECT ACCESS TECHNOLOGY, INC., a California corporation; Defendants.	)	
AND RELATED CROSS-ACTIONS.	)	

Deposition of MOMO CHEN, a Witness, taken on behalf of the Plaintiff and Cross-Defendant GALAXY METAL GEAR, at 80 South Lake Avenue, Suite 708, Pasadena, California 91101, commencing at the hour of 10:10 a.m., Thursday, November 13, 2008, before Jamie B. Snyder, CSR No. 5159, pursuant to Notice of Taking Deposition and Subpoena.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GALAXY METAL GEAR, INC.,	)	
	)	
Opposer,	)	
	)	
vs.	)	No. 91184213
	)	
DIRECT ACCESS TECHNOLOGY, INC.,	)	
	)	
Applicant.	)	
	)	

DEPOSITION OF MOMO CHEN

Thursday, November 13, 2008

Pasadena, California

REPORTED BY: Jamie B. Snyder, CSR No. 5159

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GALAXY METAL GEAR, INC.,	)	
	)	
Opposer,	)	
	)	
vs.	)	No. 91184213
	)	
DIRECT ACCESS TECHNOLOGY, INC.,	)	
	)	
Applicant.	)	
	)	

Deposition of MOMO CHEN, a Witness, taken on behalf of the Opposer, at 80 South Lake Avenue, Suite 708, Pasadena, California 91101, commencing at the hour of 10:10 a.m., Thursday, November 13, 2008, before Jamie B. Snyder, CSR No. 5159, pursuant to Notice of Taking Deposition and Subpoena.

APPEARANCES OF COUNSEL:

For Plaintiff and Cross-Defendant GALAXY METAL GEAR, INC. (in Case No. BC 382375) and Opposer in Case No. 91184213):

WORLD ESQUIRE LAW FIRM
BY: KENNETH TANJI, JR.
Attorney at Law
80 South Lake Avenue
Suite 708
Pasadena, California 91101
(626) 795-5555
Fax: (626) 795-5533
ktanji@worldesquire.com

For Defendant and Cross-Complainant DIRECT ACCESS TECHNOLOGY, INC. (in Case No. BC 382375):

GLADYCH & ASSOCIATES, INC.
BY: RANDALL S. GURITZKY
Attorney at Law
1400 Bristol Street North
Suite 270
Newport Beach, California 92660
(949) 442-8942
Fax: (949) 442-8949
randy@gladychlaw.com

For Applicant DIRECT ACCESS TECHNOLOGY, INC. (in Case No. 91184213):

LAW OFFICE OF MICHAEL C. OLSON, PC
BY: MICHAEL C. OLSON
Attorney at Law
1400 Bristol Street North
Suite 270
Newport Beach, California 92660
(949) 442-8940
Fax: (949) 442-8935
molson@lawyer.com

Interpreter:

YINING LIU

(Continued) APPEARANCES OF COUNSEL

Also Present:

PATRICK WANG

LUCY YEE

GEOFFREY CHING

I N D E X

WITNESS	EXAMINATION	PAGE
Momo Chen	By Mr. Tanji	8
	By Mr. Olson	33

EXHIBITS FOR IDENTIFICATION

Plaintiff's 1	A copy of a document entitled "Subpoena in a Civil Case"; and a copy of a document entitled "Deposition Subpoena For Personal Appearance"; 3 pages	9
Plaintiff's 2	A copy of Ms. Chen's passport	11
Applicant's 3	A copy of an e-mail dated Friday, July 09, 2004 to Patrick from Gary Chen	50

PASADENA, CALIFORNIA, THURSDAY, NOVEMBER 13, 2008

10:10 A.M.

* * *

YINING LIU,

an interpreter of the Mandarin language, was first duly sworn to well and truly and to the best of her ability translate English into Mandarin and Mandarin into English in the matter herein set forth; and thereupon,

MOMO CHEN,

the witness herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION +

BY MR. TANJI:

Q. Please state your full name.

A. Chinese or English?

Q. Both.

A. Chinese name, Chen Li Chun. English name is Momo Chen.

Q. You're here today for a deposition in two different legal cases, one is a State of California case, and one is with the trademark appeal board. Both

cases are between Galaxy Metal Gear, Inc. and Direct Access Technology, Inc.

A. Yes.

Q. And you were served with deposition subpoenas for both cases, right?

A. Yes.

MR. TANJI: All right. I'm going to attach as Exhibit 1 the subpoenas.

(The aforementioned documents were marked by the reporter as Plaintiff's Exhibit+ 1, for identification; attached hereto.)

MR. OLSON: Are you attaching both as Exhibit 1?

MR. TANJI: Yes.

MR. OLSON: Note -- note my objections in noticing the deposition in both cases at the same time.

BY MR. TANJI:

Q. Now, for this deposition, you've been placed under oath, so even though you're here in my office, the testimony today has the same effect as it would be if you were in a court; do you understand that? Do you understand that?

A. Yes.

Q. And just for some quick ground rules, if we ask you a question and you don't understand it, it's up

to you to tell us you don't understand the question. Okay?

A. I understand.

Q. And there is a court reporter to your left that is taking down the testimony, and anything else that people say in this room, so when you respond to questions, you have to respond audibly in words, and not by things like nodding your head. Okay?

A. I understand.

Q. You're going to be asked some questions that you will not know the exact answer to, but you can give some sort of answer based on your knowledge, so we are entitled to your best answer or best estimate, but we do not want you to guess at any answer; do you understand that?

A. I understand.

Q. Are you feeling okay to answer questions from the attorneys at this time?

A. Okay (in English).

THE INTERPRETER: "Okay."

BY MR. TANJI:

Q. Of what country are you a citizen of?

A. Taiwan.

Q. Where do you live right now?

A. Taiwan.

Q. Do you have a home address?

A. Yes.

Q. What is that?

A. In Chinese?

300, No. 8 Lane, No. 15, Fourth floor, San Min Avenue, San Chung City in Taipei County.

Q. Do you have a passport?

A. Yes.

Q. Can I see it?

A. (Witness complies.)

MR. TANJI: Let the record reflect the witness handed me a passport from the Republic of China.

Q. And this is your passport?

A. Yes.

MR. TANJI: All right. Exhibit 2 will be the identification page of the passport.

(The aforementioned document was marked by the reporter as Plaintiff's Exhibit+ 2, for identification; attached hereto.)

BY MR. TANJI:

Q. Do you have any current plans to live in the U.S. in the next six months or so?

A. No.

Q. When you were served with the deposition subpoena, where was that?

A. In the United States.

Q. Okay. Where?

A. At Mr. Jeff Lee's office.

Q. When were you given the deposition subpoena?

A. This Tuesday (in English).

THE INTERPRETER: "This Tuesday."

BY MR. TANJI:

Q. Where do you work right now?

A. JEM (in English).

THE INTERPRETER: "JEM."

BY MR. TANJI:

Q. What kind of company is that?

A. Electrical products.

Q. Where are they located?

A. Taiwan.

Q. You need to wait for the translator to interpret the question.

A. Okay (in English).

THE INTERPRETER: "Okay."

BY MR. TANJI:

Q. How long have you worked for JEM?

A. One year.

Q. What do you do for work at JEM?

A. Sales.

Q. Can you give me an example of some of the

things you do for JEM?

A. My work includes general sales, for instance, sent e-mails -- sent mails and visit clients.

Q. What kind of products are you selling for JEM?

A. Cable and peripheral products of electronics.

Q. Anything else?

A. No (in English).

THE INTERPRETER: "No."

BY MR. TANJI:

Q. Before JEM, where did you work?

THE INTERPRETER: Counsel, would you repeat?

BY MR. TANJI:

Q. Before JEM, where did you work?

A. Tagan, T-a-g-a-n (in English).

THE INTERPRETER: "T-a-g-a-n, Company."

BY MR. TANJI:

Q. What kind of company is that?

A. Trading company.

Q. Where are they located?

A. City of Industry.

Q. When did you work for Tagan?

A. In the year 2007, from July till August and September -- until the middle of August, about three months.

Q. Why did you stop working for Tagan?

A. Because I wanted to go back Taiwan.

Q. What work did you do for Tagan?

A. Same, sales.

Q. What kind of products?

A. Same thing, computer peripherals.

Q. Before Tagan, where did you work?

A. Data Store.

Q. Where are they located?

A. In Taiwan.

Q. When did you start working for Data Store?

A. In March 2004.

Q. When did you stop working for Data Store?

A. Until the year 2007.

Q. All right. I'll talk to you more about Data Store in a minute.

Where did you work before Data Store?

A. I don't quite remember.

Q. All right. Do you remember what kind of company?

A. Similar companies, selling products of electronics.

Q. And where is this company located?

A. In Taiwan.

Q. Do you remember any of your other jobs before Data Store?

A. Yes.

Q. What other jobs have you had?

A. Similar jobs, sales.

Q. Do you remember any of the companies?

A. I cannot quite remember.

Q. How long had you been working sales before Data Store?

A. About seven or eight years.

Q. What's your education?

A. University (in English).

Bachelor from university.

Q. Which university?

A. Shijian University.

Q. Where are they located?

A. In Taiwan.

Q. All right. Let's go back to your work for Data Store. You said you started there in 2004?

A. (No audible response.)

Q. When you started for Data Store, what was your job?

A. Sales.

Q. Did that job ever change until the time you left Data Store in 2007?

A. No.

Q. What were your job duties for Data Store?

A. Customer development, sales and visiting clients.

Q. What kind of products were you selling for Data Store?

A. External enclosure.

Q. Anything else?

A. The major product is the external enclosures.

Q. But did you sell other products for Data Store?

A. To where or to what customers?

Q. I'm just asking in general, besides enclosures, did you sell any other types of products for Data Store?

A. Nothing else, just external enclosures.

Q. You mentioned you did customer development for Data Store, so what did you do for that?

A. Write those letters for customer development, participate in exhibitions, visiting clients and also involved in the advertisement of the company.

Q. Anything else?

A. No (in English).

THE INTERPRETER: "No."

BY MR. TANJI:

Q. When you would write letters, what kind of letters would those be?

A. Introducing our products, specific features of our products.

Q. And who would you write letters to?

A. To those that I believe are our valued clients.

Q. How did you find these companies?

A. Magazines or from the Internet.

Q. When you went to exhibitions, what did you do?

A. Prepare our catalogs, and some general introductions of our products of the company.

Q. When you would visit clients or customer -- or, actually, withdraw the question.

You said you visited customers?

A. Yes.

Q. Were these existing customers or potential customers or both?

A. Both.

Q. When you would visit a potential customer, what would you do?

A. Will show them our company information, general introduction, and show them our new products.

Q. When you would visit an existing customer, what would you do?

A. I would talk about the cases that we are handling at that moment, and also introduce them the new

products, and also the development directions.

Q. What did you do for advertising for Data Store?

A. We provide them our products information for the company to advertise for the sales.

Q. Would you create the actual advertisement?

A. No.

Q. So somebody else would do the advertisement, but you would provide that person with the information?

A. Yes.

Q. Regarding the external enclosures that you were selling for Data Store, did you have an understanding as to where those enclosures were manufactured?

A. Yes.

Q. Where?

THE INTERPRETER: Counsel, sorry.

BY MR. TANJI:

Q. Where?

THE INTERPRETER: I need to go back to the question. I think I missed the translated portion.

MR. TANJI: Okay.

THE WITNESS: To Europe and America.

BY MR. TANJI:

Q. Oh, my question was if you had an

understanding as to where the enclosures were manufactured?

A. The manufactured products for Data Store were made in Mainland China.

Q. Do you have an understanding as to whether the enclosures were manufactured because of an order by Data Store?

A. Data Store would design and manufacture the products themselves.

Q. For the external enclosures that you were selling for Data Store, was there a particular brand name for them?

A. Yes.

Q. What was that?

A. Metal Gear, not just that one, and many others.

Q. What others?

A. Galaxy.

Q. What else?

A. And some are for other customers.

Q. What do you mean by that?

A. External enclosure is one kind of product, it could be put with many names, and we would do it according to our clients' request, whatever names they like, we would put the name.

Q. Now, you mentioned this name of Metal Gear, so is that a name that a client wanted?

A. That was a name that Data Store originally had it, and the customer liked it, so used it.

MR. OLSON: Well, I'll object for speculation.

MR. GURITZKY: Join.

BY MR. TANJI:

Q. How do you know that Data Store had the name?

A. They had their existing products for this name, and those were sold to many other customers.

MR. OLSON: I'll object as hearsay.

MR. GURITZKY: Join.

BY MR. TANJI:

Q. What customers were those?

A. We sold it to DAT, Galaxy, CompUSA.

Q. Any others that you know about?

A. Others --

THE INTERPRETER: Counsel, may I clarify?

(The interpreter and the witness speak in Mandarin.)

THE WITNESS: Others, if not handled by myself, I wouldn't know.

BY MR. TANJI:

Q. So are you saying that for DAT, Galaxy and CompUSA, you worked on those accounts?

A. Yes.

Q. And when you said something about the customer liking it, what did you mean?

A. If customers liked our products, they would order -- they would purchase our products, and they will order again.

Q. But I was talking specifically about the Metal Gear enclosure, so you're saying something that the customers liked that name?

MR. OLSON: I'll object; it's leading.

MR. GURITZKY: Join.

THE WITNESS: Data Store would design their own products with their specific features, including the name, and we would show this to our customers. If the customers liked the design, then they would take it.

BY MR. TANJI:

Q. But by name, do you mean the Metal Gear name?

MR. OLSON: I'll object; it's leading and speculative.

THE WITNESS: Correct.

MR. GURITZKY: Join.

BY MR. TANJI:

Q. Well, wait. Which name are you talking about?

A. The three companies that I just mentioned, I am referring to Metal Gear.

MR. OLSON: I'll object; speculation, it calls for -- also hearsay.

MR. TANJI: All right. Well, let's talk about CompUSA.

Q. So tell me how CompUSA came to order products from Data Store.

MR. GURITZKY: That calls for a narrative.

MR. OLSON: I'll join.

THE WITNESS: May I answer?

MR. TANJI: Yes.

THE WITNESS: Those companies, CompUSA, DAT and Galaxy, those I took over the business, the accounts from a previous sales. When I started in Data Store, soon after, that person left, so I took over the work for CompUSA, including delivery of products, and, also, same thing for DAT and Galaxy.

BY MR. TANJI:

Q. Who is the person you took over the CompUSA account from?

A. I think the interpreter is not translating the same as what you said.

Q. The last question or your answer?

A. Are you asking the counter window of CompUSA?

Q. Ma'am, my last question was you said you took over the CompUSA account from somebody else. Who was

that person?

A. That's the person, the salesperson before me.

Q. Yeah. Do you remember that person's name?

A. Yes.

Q. Who was that?

A. Gary.

Q. Last name?

A. I don't remember.

Q. Was that the Gary who now works at Galaxy?

A. Of course not.

Q. What products was Data Store selling at CompUSA when you worked on that account?

A. Same thing, external enclosures.

Q. Did the enclosures have a name?

A. Yes.

Q. What was that?

A. Metal Gear.

Q. Was the words "Metal Gear" on the enclosures that were sold by Data Store to CompUSA?

A. Yes.

Q. As far as you know, did Data Store need any license to sell an enclosure to CompUSA with Metal Gear written on it?

MR. OLSON: Calls for speculation.

MR. GURITZKY: Join. Lacks foundation.

MR. OLSON: And, also, object it calls for a legal conclusion.

MR. GURITZKY: Join.

THE WITNESS: Can you repeat the question?

MR. TANJI: I'll have the court reporter read it.

(The record was read by the reporter as follows:

"Q. As far as you know, did Data Store need any license to sell an enclosure to CompUSA with Metal Gear written on it?")

MR. GURITZKY: Same objections.

THE WITNESS: No.

BY MR. TANJI:

Q. As far as you know, did Data Store have any licensing agreement with anyone regarding the sale of the enclosures of Metal Gear that was sold by Data Store to CompUSA?

A. No. As a salesperson, the more products we could sell, the better, as far as I understand.

MR. TANJI: All right. I'll have the court reporter repeat that question.

(The record was read by the reporter as follows:

"Q. As far as you know, did Data Store

have any licensing agreement with anyone regarding the sale of the enclosures of Metal Gear that was sold by Data Store to CompUSA?")

THE WITNESS: As far as I know, no.

BY MR. TANJI:

Q. As far as you know, for the enclosures with Metal Gear that Data Store sold to CompUSA, did Data Store have to share any of the revenues or profits with anyone?

MR. OLSON: I'm going to object; speculation.

MR. GURITZKY: Join.

THE WITNESS: No. No, because we're only making the sales.

BY MR. TANJI:

Q. How many units of enclosures with Metal Gear did Data Store sell to CompUSA while you worked at Data Store?

A. I cannot remember the exact figure, but about over 1,000.

Q. Do you remember who you dealt with at CompUSA?

THE INTERPRETER: Counsel, would you --

BY MR. TANJI:

Q. Do you remember which person at CompUSA you had contact with?

A. I don't quite remember.

Q. Regarding Galaxy Metal Gear, how many enclosures with Metal Gear did Data Store sell to them while you worked at Data Store?

A. I left quite some time ago, so I don't quite remember. About, I think, over 5K.

Q. Who did you have contact with at Galaxy while you worked at Data Store?

A. Tony and Gary.

Q. When Galaxy was buying enclosures from Data Store with Metal Gear on it, was that a situation in which they liked the name or is that a name that they came up with?

A. They purchased the products from Data Store. We had this name, and they liked the name.

Q. When you worked at Data Store, how many enclosures of Metal Gear did Data Store sell to Direct Access Technology?

A. As far as I know, same thing, it's quite some time ago. I remember they had quite some volume. About or at least 10K.

MR. GURITZKY: Could I have that question read back, please?

(Question read.)

MR. GURITZKY: Thank you.

BY MR. TANJI:

Q. Who had the Direct Access Technology account at Data Store before you?

A. Same thing, the salesperson before me.

Q. And that was?

A. There were several. One of them is called Benson.

Q. Do you remember anybody else?

A. Sorry, no, just this one.

Q. When you worked at Data Store, who did you deal with at -- who did you have contact with at Direct Access Technology?

A. Patrick.

Q. Okay. Do you have a last name?

A. Wang.

Q. Anybody else?

A. At that time, there should be another person that's his wife, but I didn't have much contact with the wife.

Q. When you would contact Patrick Wang, while you were at Data Store, what would you be contacting him for?

A. Same thing, the general work for a salesperson, order products, and ask about what specific style or product they want, and also including collecting the payment.

Q. Did all the products that Data Store sell to DAT while you were working on it, those were all enclosures?

A. Correct.

Q. Were those enclosures all having the name of Metal Gear?

A. Correct.

Q. Do you remember what contacts you had with Patrick's wife, what those were about?

A. I don't quite remember. I know sometimes I would check about delivery and also about payment, but I don't remember the details.

Q. Did you have an understanding, when Data Store was selling Metal Gear enclosures to Direct Access Technology, that was Direct Access Technology's name or a name that was Data Store's?

MR. OLSON: I'll object; calls for speculation.

MR. GURITZKY: Join.

THE WITNESS: Metal Gear is the name of Data Store product, so the products that I sold were all Data Store products.

BY MR. TANJI:

Q. While you worked at Data Store, did you try to sell Metal Gear enclosures to other companies besides

the ones we've talked about which is Direct Access Technology, Galaxy, CompUSA?

A. Yes. As I said, as a sales, the more sales, the better for the company. And I also need to develop potential customers, and including go through the Internet, but development is not easy, sometimes I send out e-mails, but I didn't get very good responses.

Q. What other companies specifically did you try to sell Metal "box" enclosures to?

A. For instance, from the Internet, NewEgg.

N-e-w-E-g-g (in English).

THE INTERPRETER: "N-e-w-E-g-g."

BY MR. TANJI:

Q. What did you do to try to sell Metal Gear enclosures to NewEgg?

A. We would send out the development letter with the introduction of the products and the pictures of the product.

Q. And that's the picture of the Metal Gear enclosure?

A. Yes.

Q. Did you ever get any positive response from NewEgg?

A. No.

Q. Do you remember any other companies that you

tried to sell Metal Gear enclosures to?

A. Because it has been quite some time, and also I didn't get much feedback, so I don't remember.

Q. How many other companies did you try to sell Metal Gear enclosures to?

A. I don't quite remember, but about ten, those are through Internet. It's easy to just send out e-mails, but not much feedback.

Q. Did you ever try to sell Metal Gear enclosures to Frye's?

A. Yes.

Q. Was it similar to what you did with NewEgg?

A. Yes.

Q. Were there other sales reps that worked the Data Store doing similar things that you were doing at the same time?

MR. GURITZKY: Vague and ambiguous.

THE WITNESS: May I answer?

MR. TANJI: Yes.

THE WITNESS: Of course there were, there were other, many salesperson in the company, it's impossible for a company just had one salesperson.

BY MR. TANJI:

Q. Do you have an understanding as to whether any of these other sales reps at Data Store were selling

enclosures with Metal Gear on them?

A. Yes.

Q. And how do you know that?

A. Because we would have sales meeting, and we would let everybody know about our development. It just was different areas. I didn't know the details.

Q. Now, you mentioned before that there were some customers that wanted their own names on the enclosures; is that right?

A. Yes.

Q. Can you give me an example of that?

A. For instance, the ICY Box for Raidsonic. Yes, the company name is Raidsonic, and the product name on the enclosure is ICY Box.

Q. What country is Raidsonic in?

A. Germany.

May I have some water?

MR. OLSON: Do you need a break?

THE WITNESS: It's okay (in English).

THE INTERPRETER: "No, I'm fine. It's okay."

BY MR. TANJI:

Q. So regarding your deposition testimony today, how did you get from Taiwan to Los Angeles?

A. I took a flight from Taiwan to San Francisco, and then from there to here.

Q. Who paid for the flight?

A. Galaxy paid for my ticket.

Q. And have you been staying in a hotel in the Los Angeles area this week?

A. Yes.

Q. Which hotel?

A. Best Western.

Q. And who is paying for that?

A. Galaxy.

Q. Is Galaxy paying you any other expenses or money for your deposition testimony?

A. Yes. They would pay me the five-day salary, according to my Taiwan salary, and also they would pay for the rental car.

Q. How much is your Taiwan salary?

A. 120 U.S. dollars a day.

Q. And how many days is that?

A. Five days.

Q. Have you been able to do any work on this current trip?

A. Yes. I visit some of the clients, just take this opportunity to do so.

Q. And your presence here, is that an agreement just for a deposition, not for trial?

A. Yes, just for the deposition. Correct.

MR. TANJI: All right. I don't have any further questions at this time, but I would like a couple-minute break.

MR. OLSON: Sure.

(A ten-minute recess was taken.)

MR. TANJI: I'll just finish up that you're entitled, by state law, to a witness fee, it's $35 plus .20 a mile, and so it's a check for $45.80.

THE WITNESS: Okay (in English).

MR. TANJI: I pass on the questioning.

MR. OLSON: Okay.

EXAMINATION +

BY MR. OLSON:

Q. Ms. Chen, my name is Mike Olson. I'm going to ask you a couple of questions.

A. Okay.

MR. TANJI: Excuse me. Just so we're clear, can you identify your party?

MR. OLSON: Yeah. I represent DAT in the trademark proceedings.

Q. Now, you said before you were served with a subpoena in Mr. Lee's office; is that correct?

A. Correct.

Q. And Mr. Lee, he's the attorney for Galaxy,

correct?

A. Yes.

Q. Had you agreed to come to the United States and testify in this deposition before you were served with a subpoena?

A. Yes.

Q. Had Galaxy agreed to pay your salary, five-day salary, before you came to the United States?

A. Yes.

Q. Did you discuss that you were going to be paid five-day salary with Mr. Lee?

A. The five-day salary, I discussed it with Galaxy.

Q. Did you talk with Mr. Lee in his office before you were served with a subpoena?

A. Yes.

Q. And did you talk with him after you were served with the subpoena?

A. After I received the subpoena?

Q. Yes.

A. Are you talking about the same day, when I received the subpoena, or the next day after that?

Q. Any other time after you got served, have you talked with Mr. Lee?

A. At the time when I received the subpoena, we

talked about it for a little while.

Q. Okay. At any time, did you tell Mr. Lee that you were going to receive five-days' salary from Galaxy for your testimony?

A. Yes.

Q. Okay. And how about Mr. Tanji, did you tell him?

A. Yes.

Q. Okay. When was it that you told Mr. Tanji about your getting paid five-days' salary?

A. The same day when I received the subpoena.

Q. Had you received the five-day salary before you received the subpoena?

A. No.

Q. Have you received the five-day salary as of today?

A. No.

Q. So that they promised to pay you the salary, but they haven't paid it yet; is that correct?

A. Yes.

Q. Is Galaxy still a customer of yours?

A. For my current company, yes.

Q. What kind of products are they buying from your current company?

A. HDMI cable and HDMI switch, it's different,

it's not external enclosure.

Q. Are those sold under the name of Galaxy Metal Gear?

A. No Metal Gear, just Galaxy.

Q. Is it your understanding that Galaxy was owned by Data Store?

MR. TANJI: Objection; calls for speculation.

THE WITNESS: What do you mean by "owned by"?

BY MR. OLSON:

Q. That Galaxy was the only one that had the right to use that trademark -- well, strike that.

That Data Store was the only one who had the right to use Galaxy?

MR. TANJI: Objection; calls for speculation.

THE WITNESS: For that part, I'm not sure.

BY MR. OLSON:

Q. Did you contact anyone at Data Store and ask them if it was okay to put Galaxy on HDMI cables that your new company is selling?

A. No.

Q. By the way, when you were at Data Store, did you receive extra salary if you had more sales?

A. Are you talking about Data Store?

Q. Yeah, at Data Store.

A. Not extra salary, but bonus.

Q. So if you had more sales, you get a bigger bonus while you were at Data Store?

A. Yes, they have a system for bonus.

Q. Why did you leave Data Store?

A. Because Data Store had their own problems, it was a family company. They had internal fights between brothers, so I didn't want to get involved into it.

Q. Were you asked to leave Data Store?

THE INTERPRETER: Sorry, Counsel?

BY MR. OLSON:

Q. Were you asked by Data Store to find a new job?

A. No. I did it on my own.

Q. Exhibit 2 is the front page of your passport or the face page, correct?

A. Correct.

Q. Okay. And what year were you born?

A. 1968.

Q. And what year did you graduate college?

A. It's quite some time ago. Let me count. Around the year 1989 or 1990.

Q. After you graduated, did you start working in sales?

A. No. I started from an assistant.

Q. A sales assistant?

A. Everything, just the assistant for sales, for administration, everything.

Q. Okay. And how many companies did you work for after you graduated and before you start working at Data Store?

A. I don't quite remember, but at least about five companies.

Q. Were you involved in selling electronic parts before Data Store?

A. Yes.

Q. And did you work at Data Store -- well, strike that.

When you were first hired at Data Store, were you hired as an assistant in the sales department?

A. No. I hired as a salesperson.

Q. Were you hired as a sales manager?

A. There's a difference to the outside. It is referred as sales manager, but for internal business, it is deputy manager for sales.

Q. Were you a deputy manager for sales?

A. Yes. In the company, yes.

Q. When you were hired, you were hired as deputy manager of sales?

A. Yes.

Q. And you worked at Data Store for two years?

A. I would say three years.

Q. What product were you selling when you first started at Data Store?

A. Same products, external enclosure.

Q. Were you -- when you first started at Data Store, was DAT already a customer?

A. Yes.

Q. And when you first started at Data Store, whose account was -- was DAT?

A. As far as I know, at that time, it was Gary, and also my boss would also contact him.

Q. And who was your boss?

A. Anderson.

Q. Okay.

A. Actually, Anderson had known him for a long time.

Q. By the way, you said you worked at Tagan Company in City of Industry?

A. Mm-hmm. Yes.

Q. Do you know the address?

A. I don't quite remember. I tried to remember the street number.

Q. Do you know what street it was on?

A. Aside Gale (in English).

THE INTERPRETER: "Aside Gale."

THE WITNESS: Beside Gale. The zip code is Ca 91745, but I don't quite remember the street number, 14-something.

Q. Who is the owner?

A. The boss of Tagan?

Q. Yeah. Do you recall his name?

A. I contact my supervisor, the manager above me, but who do you want to know, my direct boss or the owner?

Q. If you know the owner's name, I'd like to know that.

A. No, I don't know.

Q. Okay. Who is your immediate supervisor, what's his name?

A. Naninni, N-a-n-i-n-n-i (in English).

THE INTERPRETER: "N-a-n-i-n-n-i."

THE WITNESS: Mr.

BY MR. OLSON:

Q. Do you have a green card?

A. No.

Q. Do you have -- did you have work authorization from the United States to work in the United States?

A. At that time, I was applying for it, and I was only doing a part-time job to help them out, but later on, it didn't get approved, and I didn't want to stay

longer, so I went back.

Q. So were you here on a U.S. -- strike that.

Were you here on a visitor's visa?

A. Yes.

Q. And you were working while you had a visitor's visa?

A. I was just helping them, I wouldn't consider it as work. I stayed at my friend's house, and I was only working part time. I don't think that was work.

Q. Were you being paid for the work you did there?

A. This company, no.

Q. You didn't receive any money at all from this -- from this company?

A. This -- money from this company, no.

Q. Did you receive money from any company in the U.S. for the work you did for Tagan?

A. No, because originally I wanted to have a long-time stay in the United States, but it didn't work out, so I went back Taiwan.

Q. What's the name of the friend you're staying with?

A. Miss Lee, Mr. Lee, Mrs. Lee.

Q. When you were working for Tagan Company, you were staying with Mrs. -- Mr. and Mrs. Lee?

A. I was staying at their house, but the work with Tagan, it was just the work as an assistant. I was just assisting them.

Q. What's Mr. and Mrs. Lee -- or Mrs. Lee's first name?

A. I don't quite remember their first name because, for instance, when somebody calls me, they may not know my last name, we just go by the name.

Q. How do you spell Lee?

A. L-e-e (in English).

THE INTERPRETER: "L-e-e."

BY MR. OLSON:

Q. And where do they live?

A. At Walnut.

Q. What street name?

A. I don't know.

Q. How long did you live with them?

A. During that time.

Q. Yeah. How many months?

A. About two months. May I ask what is the relationship between them and this matter?

Q. Unfortunately, you're not allowed to ask any questions in deposition unless you don't understand a question, then let me know, I'll rephrase it.

Do you recall what street name they -- what's

the name of the street they lived on?

A. I don't remember.

Q. How long had you known Mr. and Mrs. Lee?

A. Two, three years.

Q. And how did you meet them?

A. That's my -- they're my parents' friends, that's how we got to know each other.

Q. So you've known them for only two or three years?

A. Myself, yes.

Q. And you lived in their house last year, correct?

A. Correct.

Q. And from what months?

A. I don't quite remember. Sometimes for a short while. I don't remember.

Q. Did you work for Gary Chen when you were -- worked -- first started at Data Store?

MR. TANJI: Objection -- hold it. Objection; vague as to "work for."

THE WITNESS: Who is Gary Chen?

BY MR. OLSON:

Q. Okay. Gary had the sales account for Direct Access Technology before you at Data Store, correct?

A. Yes.

Q. His last name was Chen, right?

A. I don't quite remember.

Q. Okay. Did he -- was he the one who hired you when you first were hired at Data Store?

A. Of course not. The boss was Anderson. It was Anderson.

Q. Did you work for Gary before he left?

A. Of course not.

Q. Did he give you any instruction or information regarding Direct Access Technology before you took over the account?

A. Yes, because we had e-mail exchange, and also I would have a c.c., a copy of it, and we would meet each other in the meeting, also.

Q. Could you have started in 2005 at Data Store?

A. No, the year 2004.

Q. How long was Gary working at Data Store after you started?

A. Gary?

I don't quite remember, but I would say about one year.

Q. And after you started, how long did Gary keep working before he left?

A. Also, I don't quite remember, but about one

month.

Q. So your recollection is Gary left around 2004?

A. 2004, yes.

Q. Now, at the time that you started, Data Store was already manufacturing enclosures under the name Metal Gear, correct?

A. Correct.

Q. And they were manufacturing in China, Mainland China?

A. Correct.

Q. And do they own the factory in Mainland China, or do they have a contract with someone else?

A. I would think it was based on contract, but I was not the boss, and I didn't know the details.

Q. Had you ever been to the factory in Mainland China?

A. Yes.

Q. Did they manufacture the product for other companies than Data Store at that factory?

A. Yes.

Q. And would it be fair to say that you do not know who owned that factory?

A. Correct.

Q. Now, Data Store also had a factory in Taiwan, correct?

A. No.

Q. Did they ever manufacture any product in Taiwan?

A. I don't remember.

Q. Do you know whether the Metal Gear enclosures were manufactured in Taiwan before you started?

A. As far as I know, when I was there, the product was not manufactured in Taiwan, it was in Mainland China.

Q. Did anyone tell you that at one time, the enclosures were manufactured in Taiwan?

A. I don't remember.

Q. When did you first meet Mr. Anderson?

A. In the year 2004, when I was interviewed at his company.

Q. Were you present at any meetings Mr. Anderson had in 2003 with Mr. Wang?

A. No.

Q. When did you first meet Benson?

A. Also at the first interview.

Q. Okay. And when did you first meet Mr. Wang?

A. Which Mr. Wang?

Q. Patrick Wang.

A. I don't remember how many years ago, but it was at his office.

Q. Had you ever talked with Mr. Wang before 2000 -- March 2004?

A. No.

Q. Now, you said that you sold some Metal Gear enclosures to -- to Data Store, Galaxy Metal Gear and DAT, correct?

MR. TANJI: Objection; it's misstating your testimony. I think you said she sold to Data Store.

MR. OLSON: I thought I made that mistake, but I'm glad you corrected me.

Q. While you were employed at Data Store, you sold Metal Gear enclosures to CompUSA, Direct Access Technology and Galaxy Metal Gear, correct?

A. Correct.

Q. Okay. Now, the buyer for CompUSA was Alex, right?

A. I don't quite remember.

Q. Did you sell directly to CompUSA or did you sell to Worldwide Marketing?

A. At that time, to Worldwide Marketing.

Q. And Worldwide Marketing is located in Hong Kong and Taiwan, correct?

A. At that time, yes, but now maybe they have changes.

Q. You don't know if they changed or not, right?

A. I don't know any details.

Q. Okay. Is it your understanding that Worldwide Marketing sold the Metal Gear enclosures to CompUSA?

A. No, it's not like that. As far as I know, it is not Worldwide Marketing selling to CompUSA, Worldwide Marketing is a branch office of CompUSA in Taiwan, so selling to Worldwide Marketing is the same as selling to CompUSA, so we're selling directly to CompUSA through an office in Taiwan.

Q. Were the invoices issued to Worldwide Marketing?

A. I don't quite remember (in English).

THE INTERPRETER: "I don't quite remember."

BY MR. OLSON:

Q. You've never been employed by Worldwide Marketing, have you?

A. No.

Q. Have you ever been employed by CompUSA?

A. No.

Q. Would it be fair to say the only thing you know about the relationship between CompUSA and Worldwide Marketing is what other people have told you?

A. No, I was told by the person I dealt with in Worldwide company -- Worldwide Marketing.

Q. Right. You don't have any personal knowledge

of the contract between Worldwide Marketing and CompUSA, do you?

A. Yes.

Q. You only know about the relationship between Worldwide Marketing and CompUSA based on the conversations you had with people at Worldwide Marketing, right?

A. Yes.

Q. Now, you weren't working at Data Store when a decision was made to use Metal Gear on enclosures, correct?

A. Would you say it again?

Q. Okay. You started at Data Store in 2004, correct?

A. Correct.

Q. Okay. And when you started, Data Store was already selling Metal Gear enclosures, correct?

A. Yes.

Q. Well, is it true, then, that you were not at any meeting where it was first decided to use Metal Gear on enclosures?

A. Correct, because I was not there yet.

Q. Was Gary, in your dealings with him, did he seem to you to be an honest person?

MR. TANJI: Objection; vague as to which Gary.

MR. OLSON: Okay. Let me clarify the question.

Q. At one time when you were working at Data Store, the Direct Access Technology account was handled by Gary, correct?

A. Yes.

Q. Okay. You had dealings with Gary before he left the company, right?

A. Correct.

Q. Did Gary impress you as an honest person?

A. Yes.

MR. OLSON: Let me show you what I'm going to mark -- what is it, No. 3? Let the "court reporter" read it to -- not the court reporter, the translator.

(The aforementioned document was marked by the reporter as Applicant's Exhibit+ 3, for identification; attached hereto.)

THE WITNESS: I understand it. Thank you.

BY MR. OLSON:

Q. You see at the bottom, there's a signature for Data Store Technology Company, Limited?

A. Yes.

Q. Okay. Is that -- it lists a website. Is that Data Store's website?

A. Yes, at that time, but now it's changed.

Q. Okay. And at that time -- do you see there's a phone number for Data Store?

A. Yes.

Q. And was that the phone number of Data Store back in July 19- -- or 2004?

A. Yes.

Q. And you see there's a fax number?

A. Yes.

Q. Okay. Was that the fax number for Data Store in July 2004?

A. Yes.

Q. Have you ever seen this e-mail before today?

A. No.

Q. Does this refresh your recollection that the Gary that had the Direct Access Technology account was Gary Chen?

A. Yes. They contact him.

MR. TANJI: Well, objection, that's not responsive to your question.

BY MR. OLSON:

Q. Does it -- after -- after reading the e-mail, does that refresh your recollection that Gary's last name was Chen?

A. It seems to me, yes, but I'm not sure.

Q. If you refer up to the top, it has a date of

Friday, July 9th, 2004; do you see that?

A. Yes, I see it.

Q. Does that refresh your recollection that Gary Chen was working there in -- at Data Store in July 2004?

A. Yes.

Q. Do you have any reason to believe this e-mail is not -- well, strike that.

Do you have any reason to believe that this Exhibit 3 is not an accurate copy of the e-mail sent by Gary Chen to Patrick at DAT?

MR. TANJI: Objection; calls for speculation, lack of foundation.

THE WITNESS: I cannot identify anything in this letter because I had never seen it, and I didn't involve in it.

BY MR. OLSON:

Q. By the way, Gary was not related to you, was he?

A. No.

Q. Could you take a look at the fourth paragraph that begins with, "Frankly speaking"?

A. (Witness complies.)

Q. Do you have any reason to believe that Gary was lying when he said, "Frankly speaking the order quantity from April until today is very few. We could

understand the sales season is kind of weak during this period of time in the world, but it shouldn't be that small, especially you are exclusive in the U.S. market."

A. During the time when I was working for Data Store, I didn't know his communication or correspondence between him and DAT. As far as I know, I was only told I could sell the products to anyone, no restrictions. I didn't know about any exclusive rights or if he had any communication with a third party. As a salesperson, all I know is I need to sell more.

Q. Would it be accurate that if Data Store made a promise to Direct Access Technology of exclusivity in the U.S. market before 2004, you would not be aware of that promise?

A. Yes, that is correct, because I was not with Data Store.

Q. Do you recall when you first contacted NewEgg about trying to sell them product?

A. I don't remember.

Q. Do you recall when you first contacted Frye's to try and sell them product?

A. Also, I don't remember.

Q. Would it have been after 2005 when you first contacted Frye's?

A. No. I don't remember.

MR. OLSON: Okay. Why don't we take a break. I'll just go over my notes real fast, and then we might be finished.

MR. TANJI: Okay.

MR. GURITZKY: I'm not so sure right now, not much.

MR. TANJI: I'll have a few follow-up questions, but not for very long.

(A ten-minute recess was taken.)

MR. OLSON: Okay. I don't have any further questions.

MR. TANJI: I don't have any further questions.

MR. GURITZKY: I have no questions.

MR. TANJI: All right. I'll guess I'll do one master stipulation for both cases, so stipulate to relieve the court reporter of her duties. Now, why don't we have the original transcript sent to me, and then I can arrange to send it to your Taiwan address, and you'll have a chance to read it over, and if you think you need to make any changes, let us know in writing within 30 days, and then I'll maintain custody of the original transcript; if the original is lost, a certified copy can be used in lieu of the original, and then I'll notify the other parties of any changes that

are made, and if for some reason the original transcript is lost, a certified copy can be used instead.

MR. GURITZKY: Lost or unavailable for any reason.

MR. TANJI: Yes. Yes.

MR. OLSON: Yeah. Yeah. So stipulated.

MR. GURITZKY: So stipulated.

MR. TANJI: All right. Thank you.

MR. OLSON: I'll take a copy.

MR. GURITZKY: I'll take a copy.

(Proceedings concluded at 12:26 p.m.)

* * *

DECLARATION

I hereby declare I am the deponent in the within matter; that I have read the foregoing deposition and know the contents thereof, and I declare that the same is true of my knowledge except as to the matters which are therein stated upon my information or belief, and as to those matters, I believe them to be true.

I declare under the penalties of perjury of the State of California that the foregoing is true and correct.

Executed this day of 200 , at , California.

Momo Chen

CERTIFICATE OF PERSON READING

DEPOSITION TO WITNESS

I, , whose address is ,

a person who speaks the language of the witness, namely, , did translate the within deposition from English into the language, reading same to the witness in her native tongue to the best of my ability;

That all corrections and changes requested by the witness were made and initialed by the witness;

That upon completion of said reading, the witness did confirm to me that she had understood the reading.

READER/INTERPRETER

REPORTER'S CERTIFICATE

I, Jamie B. Snyder, a Certified Shorthand Reporter, holding a valid and current license issued by the State of California, CSR No. 5159, do hereby certify:

That said proceedings were taken down by me in shorthand at the time and place therein set forth and thereafter transcribed into typewriting under my direction and supervision.

I further certify that I am neither counsel for nor related to any party to said action nor in anywise interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name on this day of , 200 .

Certified Shorthand Reporter