

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3 WESTERN DIVISION
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8 AUTOALERT, INC.,)
9)
10)

11 Plaintiff,)
12)
13)

14 vs.) Case No.:
15) 8:13-cv-00657-SJO (JPR)

16 DEALERSOCKET, INC.,)
17)
18)

19 Defendants.)
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22 DEPOSITION OF JEFFREY S. COTTON
23
24

25 Irvine, California

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Volume I

Reported by:

ROSA E. MORA

CSR No. 13016

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1 A Yes.

2 Q So when -- when you came up with -- with the idea,
3 what had to be done to implement the idea?

4 A I -- I think I'm going to ask you to -- to go a
5 little further. Implement it into what capacity? 03:14 PM

6 Q In -- into a -- a workable system.

7 A It -- it had to be a number of factors. It --
8 it -- there had to be computer equipment that was available
9 that was able to do these calculations at a reasonable
10 speed, which was one of the biggest concerns at the time, 03:14 PM
11 whether or not there was enough commercially available or
12 available to us, computer capacity to do the calculations
13 required to yield the results that I felt we were trying to
14 achieve.

15 Q Well, your idea could be performed manually, 03:15 PM
16 correct, that wouldn't require a computer to do it; right?

17 A No, sir, it couldn't be performed manually.

18 Q Why not?

19 A I -- I think the manpower that it would take to do
20 that would be astronomical. 03:15 PM

21 Q Well, is -- is -- is there -- is there anything
22 about your idea that requires a computer?

23 A Yes, sir, the calculations.

24 Q Well, are -- are the calculations not capably of
25 being done by someone with a calculator or an abacus or 03:15 PM

1 that's really good at math?

2 A I -- I -- I don't see how it would be possible.

3 Q Well -- well, could there -- could there be one
4 car at a time calculations made?

5 A That was not my invention. 03:16 PM

6 Q Okay. So how -- your -- your -- your invention
7 would -- would not include a comparison of one vehicle to
8 just another vehicle; right?

9 A I can -- can I give you some history? I think
10 that's what maybe you're looking for as -- as to how this 03:16 PM
11 came about.

12 Q Well, we may get to that, but I think I'd prefer
13 you to just tell me, are -- are -- are you suggesting that
14 your invention does not include comparing one vehicle to
15 another vehicle? 03:16 PM

16 A It does include comparing one to another.

17 Q Okay. So that -- that could be done manually;
18 right?

19 A If -- if -- if you are considering the -- the
20 result percentages, it -- it could be done on a one car 03:16 PM
21 basis manually.

22 Q So does -- does your invention say that there has
23 to be a certain number of comparisons made?

24 A It -- it -- it wouldn't be a feasible product or a
25 feasible invention if it wasn't for the multiple 03:17 PM

1 opportunities.

2 Q So how many opportunities are required for your
3 invention?

4 A To be a -- a success or are you talking about to
5 be a commercially viable product? 03:17 PM

6 Q I -- I'm simply asking what your invention
7 discloses. Is -- is there a -- is there a minimum number of
8 comparisons?

9 A To make it commercially viable, I would say yes.

10 Q What's the minimum number? 03:17 PM

11 A It would depend on the size of the dealership and
12 their expectations. A -- a small dealership that may sell
13 20 cars a month, it -- it -- it may be couple of thousand.
14 A dealership like Fletcher Jones with -- with a database of
15 over a 100,000. 03:18 PM

16 Q Is -- is any of that set forth in the 791
17 patent?

18 A I don't know.

19 Q Well, does -- does the 791 patent make any
20 claim -- any claim as to a minimum number of comparisons? 03:18 PM

21 A I -- I don't recall.

22 Q Have you ever seen any suggestion like that?

23 A I -- I -- I -- well, I -- I don't know.

24 Q So if -- if -- let's say, for example, that --
25 that a dealership were to hire a thousand really smart 03:18 PM

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1 as claimed in the patent are comparisons that car dealers
2 have been making for a long time; right?

3 A I don't know. I'm -- I'm not sure what
4 comparisons you're referring to.

5 Q Well, the -- the comparisons in Claim 1 in the 791 03:21 PM
6 patent.

7 A And the question was?

8 Q Those comparisons have been -- have been made by
9 car salesmen well before the filing of the 791 application;
10 right? 03:21 PM

11 A I -- I don't believe they were.

12 Q Be- -- before the provisional application was
13 submitted, did you, as a salesman, ever undertake to
14 determine whether a customer who was in a car could do
15 better in another car? 03:22 PM

16 A Yes.

17 Q And how did you undertake that analysis?

18 A I, when I had the time, would look through my
19 database of clients who I had previously sold, and then I
20 would call the bank or go on the computer that was available 03:22 PM
21 at that time and look to see if that customer had a payoff
22 that I could get. I would then attempt to go to the
23 pre-owned manager, who's often not cooperative, and try and
24 get an estimate as to what he felt the value of that vehicle
25 was. I'd then do the calculation to establish whether I 03:23 PM

1 thought there was a positive situation or a negative
2 situation. And then I would hypothetically think of what
3 vehicle they may choose as a replacement. I would do the
4 calculation necessary. I would then take the negative of
5 their trade, whether it's positive or a negative and apply 03:23 PM
6 it and -- and attempt to see if I could come up with a
7 payment close to what they're paying and a term that was
8 favorable, and then I would contact the client to see if
9 they would be interested in doing that.

10 Q And -- and are you the only one who'd ever done 03:23 PM
11 that?

12 A I believe so.

13 Q No one had ever taught you that or --

14 A I had never heard of another salesman that would
15 spend the time to do that. 03:23 PM

16 Q Or -- or would spend the time or would know how to
17 do that?

18 A Would spend the time.

19 Q Well, other salesman knew how to do it, they just
20 wouldn't spend the time; right? 03:24 PM

21 A I -- I don't know that they knew. I don't know
22 the answer to that.

23 Q So is your claimed invention the process you just
24 described?

25 A No. 03:24 PM

1 Q How is your claimed invention different than the
2 process you just described?

3 A My -- what I described was taking a customer who
4 had bought a vehicle from me and identifying if they could
5 get into a new vehicle keeping their payments somewhat close 03:24 PM
6 to what they're paying. Typically, I would have to go
7 through 10, 15, or 20 clients to find the one that had
8 favorable payments. The -- the invention was taking the
9 multitude of clients and identifying the ones that were in
10 this position. And -- and not taking -- identifying the 03:24 PM
11 people that couldn't do this.

12 Q So that's the claimed invention?

13 A I believe that's correct.

14 Q So -- so what you just described is the claimed
15 invention you did manually initially; right? 03:25 PM

16 MR. JANKOWSKI: Objection; mischaracterizes
17 testimony.

18 THE WITNESS: You're -- you're asking me to explain
19 both things and now you put me into one category. So I'm --
20 I'm going to say I -- I'm not answering that. 03:25 PM

21 BY MR. BRENNAN:

22 Q Why won't you answer the question?

23 A Well, you asked me to explain two ways of me doing
24 something. One was the claimed invention, it was my method
25 of doing it, and then you asked the question that suggested 03:25 PM

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1 that that was one method.

2 Q Well -- well, the claimed invention is something
3 that you performed manually; right?

4 A No.

5 Q You never did that manually? 03:26 PM

6 A I never took -- I wasn't able to take a database
7 from a dealership and go through the entire database and
8 establish which people were in a favorable position. I -- I
9 took one client at a time. And -- and was -- the majority
10 of the time it -- it was -- it -- it wasn't a favorable 03:26 PM
11 situation.

12 Q So if someone had the patience, they could of
13 performed what you claimed manually; right?

14 MR. JANKOWSKI: Objection; asked and answered.

15 You can answer. 03:26 PM

16 THE WITNESS: If somebody had the patience, they could
17 probably do about eight a day and come up with a favorable
18 position maybe every other day. I -- I -- I don't see -- I
19 guess that's the answer.

20 BY MR. BRENNAN: 03:27 PM

21 Q Let's -- let's -- let's for a minute go back to
22 customers for the AutoAlert product. So you -- you believe
23 that the -- the first customer was Fletcher Jones; right?

24 A Yes.

25 Q Did -- did you enter into some sort of agreement 03:27 PM

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