

The World of the Expert Witness



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IEEE-CNSV Meeting

Agilent Technologies, Inc.

Santa Clara, CA

March 3, 2015

Overview

What is a Technical Expert

Required Skills

Personal Qualities

Role of the Expert Witness

Working with attorneys

What an Expert does

Getting Started

Q&A Panel



- Technical / Damages / Business Practices ...
 - This talk focuses on technical experts
- Testifying / Non-Testifying
 - Non-Testifying backs up testifying expert
 - OR works isolated from testifying expert.

Note: This talk focuses on patent cases, also applies to trade secret cases.

What is an Expert

- Business Person
 - Responsible for marketing, taxes, benefits, office, IT, etc
- Purveyor expertise
 - Sells expertise in a technical area.
- Analyst
 - Analyze patents, products, documents
- Teacher
 - Explain complex technology to non-technical people

Required Skills

- Knowledge of technical area
- Good people skills
- Good communication skills
 - teaching / explaining / technical writing
- Working knowledge of patent terms and law

Helpful Personal Qualities

- Pedigree - PhD in relevant field is most desired
 - Significant work experience is adequate
- Attention to detail
- Quick study / “think on your feet”
- Do not get flustered / frustrated
- Thick Skin
- Theater skills

Role of the Expert Witness

- Expert as foot-soldier
 - Legal cases are a war - fought with words.
 - The attorneys are the warriors who wage the battle.
 - Experts are tools used by the attorney in the fight.

Role of the Expert Witness

Educate the court & give your opinion

- The expert is impartial
 - Explain the facts, form opinion based on facts.
 - Not an advocate for “your” side.

The expert can't win.

- The expert has no direct financial interest in outcome of case.
 - Gets paid for time/expenses only.
- It is the attorneys' war to win or loose.
 - If the case is won, the Attorney gets the credit.

Expert Works for Attorney

- Help them with their case
 - Point out problems, make suggestions to help their case
- Operate on their schedules - carved in sand
 - A lot of hurry-up and wait - long delays

What Expert Does

- Contribute your knowledge to case
- Analyze patents, documents, products
- Form opinions based on analysis (facts)
- Prepare reports to the court
- Defend reports in deposition
- Testify at trial

What the Expert Does Review & Contribute

- Review many many many documents
- Accused Product Analysis
 - Software code / hardware schematic review
 - Product testing
- Provide preliminary opinions.
- Point out strengths & weakness in case.
- May prepare or review "claim charts".
- May prepare a technical tutorial

What the Expert Does Really be an expert

- Know the Patent – backward & forward
- Come up to speed on all aspects of relevant technology
- Learn the accused products

What the Expert Does Prepare Expert Reports

- Major part of experts work
- Submitted to court
- Formal statement of Experts opinions
- Usually hundreds of pages

What the Expert Does

Types of reports & slinging mud

- Infringement
 - Plaintiff expert explains how product infringes (does) the patent.
 - Defendant expert issues a rebuttal report explaining why plaintiff expert is wrong.
- Invalidity
 - Defendant expert explains why patent is invalid
 - Plaintiff expert issues a rebuttal report explaining why defendant expert is wrong.

What an Expert Does

How expert prepares a report

- Do analysis – often an ongoing process
- Discuss your findings with attorneys
- Draft report
 - Review with attorneys and revise
 - Everything in report must be correct & complete
 - May require educating attorney and negotiation
 - Be prepared to defend every statement in report.

What an Expert Does Defend Reports

- Opposing expert will find every flaw or omission in experts report.
- Deposition
 - Opposing attorney “grills” expert on their report



What an Expert Does The Deposition

- Opposing attorney will depose expert
 - Experts sits at one end of a conference table
 - Attorneys from both sides around the table
 - Court stenographer – maybe video recording
 - Opposing attorney will ask questions
 - Can last from ½ day to several days.
 - Plaintiff w/ multiple defendants – multiple depositions

What an Expert Does Surviving the Deposition

- Attorney will ask any questions they want.
 - „Should“ be relevant to case
 - Experts background, knowledge of technology, patent, products
 - Experts opinion and basis for opinion
 - Experts attorney will object to improper questions
- What the attorney wants to accomplish:
 - Admit to any flaws in expert report
 - Admit to things that may help her case
 - How well expert will look to a jury ?

What an Expert Does Preparing for the Trial

- Help to prepare the “story” for the jury
- Prepare for direct testimony - tell the story
- Prepare for cross-examination – opposing attorney asks questions
 - No way to know what will be asked.
 - Will try to damage experts credibility
 - Admit to things that will help opposing attorney's case
 - Know the case, reports, depositions, etc extremely well.

What an Expert Does At the trial

- Follow case as it unfolds
- Testify
 - Direct examination
 - Cross examination



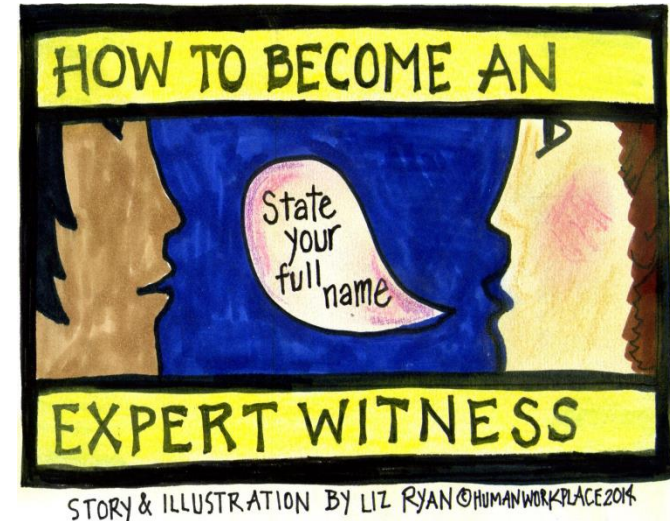
Summary

The World Of the Expert Witness

- Personal business
- Demanding technical & people skills
- Analyze accused products and patent
- Help to prepare case
- Prepare and defend reports
- Testify at trial

Join the fun - become an expert !!!

- Search your soul – is this for you?
 - Demanding intellectual challenges
 - Exacting and precise work – lots of study
 - Unpredictable work loads/schedules
 - OK with opposing side attacking your work
 - Constantly changing work colleagues
 - Self motivated – independent worker - entrepreneurial
- No skeletons in the closet
 - Arrest record, legal troubles, plagiarism accusations
 - False resumes or other damning info in circulation
- Rewards
 - \$\$\$\$\$ - off the engineers salary curve scale
 - Nice to be on winning side



How to get started

- Slow transition is best
 - Engineering consulting intermixed with EW work
- Start as non-testifying expert
 - Support testifying expert
 - Do analysis research, product testing, etc
 - Sell your tech skills while learning legal skills

Marketing your services

- Clarify your technical skills and any patent/litigation experience
 - Curriculum Vitae (CV)
- May be different than other consulting
 - Need is very narrow,
 - more geographically diverse,
 - crazy schedule
- Hooking up
 - Generic advertising does not work
 - Network with other expert witnesses
 - Careful Internet presence
 - Project a profession persona
 - Nothing that a jury should not see

Marketing your services

- Expert Witness Groups
 - CNSV EW-SIG
 - Forensic Expert Witness Association (FEWA)
- Expert Witness Brokers
 - Unless you have technology in a very hot subject area, most brokers only want experienced.
 - Try to list with them anyway.

Expert Witness Brokers

- National Expert Witness Network, Inc
newnexperts.com
- IMS ExpertServices
ims-expertservices.com
- Thompson Reuters
trexpertwitness.com

Ask The Expert – Q&A Panel

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THANK YOU

