

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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APPLE, INC., a California)	
corporation,)	
)	
Plaintiff,)	
)	
vs.)	Case No.
)	11-CV-01846-LHK
SAMSUNG ELECTRONICS CO., LTD.,)	
a Korean business entity;)	
SAMSUNG ELECTRONICS AMERICA,)	
INC., a New York corporation;)	
SAMSUNG TELECOMMUNICATIONS)	
AMERICA, LLC, a Delaware)	
limited liability company,)	
)	
Defendants.)	

VIDEOTAPED DEPOSITION OF ROGER F. FIDLER
TAKEN ON BEHALF OF THE PLAINTIFF
SEPTEMBER 23, 2011

(Starting time of the deposition: 9:32 a.m.)

Job Number: 41966

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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SAMSUNG ELECTRONICS CO., LTD.,)	
a Korean business entity;)	
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INC., a New York corporation;)	
SAMSUNG TELECOMMUNICATIONS)	
AMERICA, LLC, a Delaware)	
limited liability company,)	
)	
Defendants.)	

VIDEOTAPED DEPOSITION OF ROGER F. FIDLER,
produced, sworn and examined on September 23, 2011,
between the hours of nine o'clock in the forenoon and
eight o'clock in the evening of that day, at the
offices of Midwest Litigation Services, 401 Locust
Street, Suite 204, Columbia, Missouri 65201, before
William L. DeVries, a Certified Court Reporter (MO),
Certified Shorthand Reporter (IL), Registered
Diplomate Reporter, Certified Realtime Reporter, and a
Notary Public within and for the State of Missouri, in
a certain cause now pending in the United States
District Court, Northern District of California,
between APPLE, INC., a California corporation,
Plaintiff, vs. SAMSUNG ELECTRONICS CO., LTD., a Korean
business entity; SAMSUNG ELECTRONICS AMERICA, INC., a
New York corporation; SAMSUNG TELECOMMUNICATIONS
AMERICA, LLC, a Delaware limited liability company,
Defendants; on behalf of the Plaintiff.

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A P P E A R A N C E S

For the Plaintiff:

Ms. Jennifer Lee Taylor
Morrison & Foerster
425 Market Street
San Francisco, California 94105

For the Defendants:

Mr. Michael T. Zeller
Quinn Emanuel Urquhart & Sullivan
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Los Angeles, California 90017

Mr. Michael D. Sadowitz
Quinn Emanuel Urquhart & Sullivan
51 Madison Avenue, 22nd Floor
New York, New York 10010

Also present:

Mr. John Niehaus, Videographer

Court Reporter:
William L. DeVries, RDR/CRR
Missouri CCR #566
Illinois CSR #084-003893

1 IT IS HEREBY STIPULATED AND AGREED by and
2 between counsel for the Plaintiff and counsel for the
3 Defendants that this deposition may be taken in
4 shorthand by William L. DeVries, RDR/CRR, a Certified
5 Court Reporter, Certified Shorthand Reporter, and
6 Notary Public, and afterwards transcribed into
7 typewriting; and the signature of the witness is
8 expressly reserved.

9 * * * * *

10 (Starting time of the deposition: 9:32 a.m.)

11

12 VIDEOGRAPHER: This is the start of tape
13 labeled number one of the videotaped deposition of
14 Roger Fidler, in the matter of Apple, Inc. versus
15 Samsung Electronics Corporation, Limited, et al., in
16 the U.S. District Court, Northern District of
17 California, Case Number 11-CV-01846-LHK.

18 This deposition is being held at Midwest
19 Litigation Services in Columbia, Missouri on
20 September 23rd, 2011 at approximately 9:32 a.m. My
21 name is John Niehaus. I am the legal video specialist
22 from TSG Reporting, headquartered at 747 Third Avenue,
23 New York, New York. The court reporter is Bill
24 DeVries, in association with TSG Reporting.

25 Will counsel please introduce yourself?

1 MS. TAYLOR: Jennifer Taylor for Apple.

2 MR. ZELLER: Mike Zeller for the witness
3 and Samsung.

4 MR. SADOWITZ: Michael Sadowitz for
5 Samsung.

6 VIDEOGRAPHER: If you could please swear in
7 the witness?

8 * * * * *

9 ROGER F. FIDLER,

10 of lawful age, produced, sworn and examined on behalf
11 of the Plaintiff, deposes and says:

12 * * * * *

13 EXAMINATION

14 QUESTIONS BY MS. TAYLOR:

15 Q. Good morning.

16 A. Good morning.

17 Q. Could you state your name for the record,
18 please?

19 A. Roger Frank Fidler.

20 Q. Could you spell your last name, please?

21 A. F as in Frank, I-D-L-E-R.

22 Q. Have you ever had your deposition taken
23 before?

24 A. No.

25 Q. So what's going to -- I'm sure counsel has

1 told you this, but what's going to happen is I'll be
2 asking you questions, and I'll need you to answer
3 audibly. So shaking the head, nodding the head won't
4 work --

5 A. I understand.

6 Q. -- because it needs to be recorded. I also
7 need you to wait for me to finish my question
8 completely before you answer so that he can take down
9 what I say and then what you say.

10 If you need to take a break at any point in
11 time, let me know. We will definitely be taking
12 breaks probably every hour or so in any event, but if
13 you need a break earlier than that, let me know.

14 A. Okay.

15 Q. If there's a question pending, if you could
16 wait and answer the question before you ask for a
17 break, that will be helpful because it helps with the
18 transcript.

19 A. I understand.

20 Q. Are you on medication or anything that
21 could prevent you from answering questions today?

22 A. No.

23 Q. Okay. I notice that you brought with you
24 the three tablets I asked you to bring. Could you
25 pick up the one on top?

1 A. Okay.

2 Q. Can you tell me -- my first question is
3 what -- what is it?

4 A. Well, this is the first mock-up I made of a
5 tablet in the early eighties. Began from a article
6 that I wrote for the Associated Press Managing Editors
7 Association about the future of newspapers and
8 described the idea of a tablet that newspapers could
9 be displayed upon.

10 Q. How -- how did you create that tablet?

11 A. It's just created from plastic, pieces that
12 I found to be able to represent what a tablet might be
13 like.

14 Q. Did you have a specific idea in mind of
15 what you wanted it to look like?

16 A. I did. My -- my feeling was that it should
17 be something that's lightweight, portable, a flat
18 screen that had a ability to use touch to navigate and
19 that the newspapers displayed on it would involve
20 hyperlinks and hypermedia.

21 Q. You said it's made out of plastic; is that
22 correct?

23 A. Yes.

24 Q. Is it one layer of plastic or multiple
25 layers of plastic?

1 A. It's -- it's multiple layers.

2 Q. And why is it multiple layers of plastic?

3 A. Just it was easier for me to make it like
4 that.

5 MR. ZELLER: And I'm sorry, just to be
6 clear, we're talking about the mock-up at this
7 point --

8 THE WITNESS: Uh-huh. Uh-huh.

9 MR. ZELLER: -- rather than his concept.

10 THE WITNESS: Right.

11 MS. TAYLOR: We're talking about what's
12 right in front of him.

13 A. Right. This is the -- the mock-up that I
14 made after I created the -- or wrote the article about
15 the future of newspapers that had a drawing of what a
16 tablet might be like.

17 Q. (By Ms. Taylor) Where was that article
18 about the future of newspapers published?

19 A. It was in a special report published by the
20 Associated Press Managing Editors Association. It was
21 about the changing newspaper, what newspapers might be
22 like in the year 2000 -- or the year 2000.

23 Q. Is that an article that's attached to the
24 declaration that you signed in this case?

25 A. Yes. It includes the drawing that I

1 produced in -- in 1981.

2 Q. Okay. So I'm going to come back to the
3 mock-up you're holding in front of you, but you can
4 set that down if you want, and I'll go ahead and hand
5 to you a copy of the declaration that you submitted in
6 this case.

7 A. Uh-huh.

8 Q. It's going to be marked Exhibit 245.

9 A. Uh-huh.

10 (WHEREIN, Exhibit 245, Fidler declaration,
11 was marked for identification by the Court Reporter.)

12 MR. ZELLER: Thank you.

13 THE WITNESS: Thank you.

14 Q. (By Ms. Taylor) Sir, my first request is
15 for you to take a look at Exhibit 245 --

16 A. Uh-huh.

17 Q. -- and confirm that that is the declaration
18 that you signed.

19 A. Okay. Yes, it is a document I signed.

20 Q. Okay. Can you locate in that set of
21 exhibits attached to Exhibit 245 the article that you
22 just mentioned about the future of newspapers?

23 A. It's on page two at the top, paragraph
24 five.

25 Q. At the end of paragraph five, line

1 eighteen, it says a copy of that essay including the
2 prototype images is attached as Exhibit A.

3 A. The -- yeah, six refers to the prototype
4 design, uh-huh.

5 Q. Can you take a look at Exhibit A?

6 A. I'm sorry?

7 Q. Can you take a look at Exhibit A?

8 A. Okay. Exhibit A is -- I don't see anything
9 that indicates what Exhibit A is.

10 MR. ZELLER: Do you have one with tabs?

11 MS. TAYLOR: He does.

12 THE WITNESS: Oh, is that in the --

13 MR. ZELLER: Yeah, it's Exhibit A right
14 here to -- to your declaration.

15 THE WITNESS: Oh, okay. I see. I'm sorry.
16 Okay. Yes.

17 Q. (By Ms. Taylor) So is that the article?

18 A. Yes. That's the article as it appeared in
19 the publication.

20 Q. Okay. I believe you said you had done some
21 sketches?

22 A. Yes. The drawings that are at the top of
23 that article are the sketches that I drew of what a
24 tablet might be like. It shows a front page of a
25 newspaper displayed on a -- on a magazine-sized

1 tablet, flat screen with the ability to touch a
2 summary of a story, and then when you touch that, it
3 brought up the full story potentially with
4 advertising. So the second page is -- there is the
5 follow-up page.

6 Q. So on the first page of Exhibit A there's
7 a -- there's an image. Are you talking about the top
8 half of that image?

9 A. I'm sorry?

10 Q. Are you talking about the top half of the
11 image on the first page of Exhibit A?

12 A. I'm talking about the first image on the
13 left side of the top of the page.

14 Q. Okay.

15 A. The whole image. So that's the tablet that
16 I envisioned with a newspaper displayed on it. And it
17 was entirely a touchscreen, no -- no buttons on the
18 screen at all. It was -- everything was soft.

19 Q. And then below those depictions, is that
20 the article that you wrote?

21 A. Below it is the article, the essay I wrote
22 about it, that articulated it. At that time we were
23 in the middle of the development of Neutron, an
24 on-line service, but later on I speak about the
25 tablet.

1 Q. Okay. So is this image that's on the first
2 page of Exhibit A the article that you mentioned
3 earlier that led to the development of the mock-up?

4 A. Yes.

5 Q. Okay. And then below the image on the
6 first page of Exhibit A, is this a different article?

7 MR. ZELLER: You're referring to the text
8 after --

9 MS. TAYLOR: The text.

10 MR. ZELLER: -- January 14, 2010 where
11 it --

12 MS. TAYLOR: Yes.

13 MR. ZELLER: -- starts there?

14 MS. TAYLOR: Yes.

15 A. That's actually just a reprint of text from
16 that article.

17 Q. (By Ms. Taylor) Okay. And so on the
18 second page of Exhibit A --

19 A. Uh-huh.

20 Q. -- there's an image. What's that image?

21 A. I'm sorry, there's a what?

22 Q. Image.

23 A. That -- that image was the first page that
24 I drew of what a front page might be like on the
25 tablet. It shows a round quartered rectangle with

1 a -- with summaries of stories and headlines that
2 would be hyperlinked to the full text of stories.

3 Q. There's something below near the bottom of
4 the image within a white rectangle. Do you see that?
5 Within the image there's a black band near the bottom
6 of the image.

7 A. Oh, that says info screen?

8 Q. Is that what it says?

9 A. Yes. It was just a -- a name I gave to the
10 device, yes, uh-huh.

11 Q. Okay. And if you go to the next page of
12 Exhibit A --

13 A. Uh-huh.

14 Q. -- there's another image. It's got a
15 motorcycle in the middle of it --

16 A. Uh-huh.

17 Q. -- or near the bottom of it. Can you tell
18 me what that is?

19 A. It's the -- the same image of what I
20 considered the tablet or a flat panel at that time,
21 and it shows the text -- full text of a story that --
22 that a person would come to if they had touched the
23 summary on the first page and it includes advertising
24 on that page.

25 Q. Okay.

1 A. And it has navigational buttons on the
2 right side. Again, they're soft buttons.

3 Q. Are the navigational buttons the buttons
4 near the bottom on the right side?

5 A. Yes. There would be the -- the -- towards
6 the bottom. At the top was just giving information
7 about the location and the time --

8 (Court reporter interruption.)

9 A. On the bottom right side are the
10 navigational buttons. At the top on the right side is
11 information such as the day and time and location of
12 that page.

13 Q. (By Ms. Taylor) When you say location of
14 that page, what do you mean?

15 A. At that time was anticipating that, you
16 know, the page number and any other information about
17 where it came from would be displayed at that point.

18 Q. So if we go back to the mock-up that you
19 brought with you --

20 A. Uh-huh.

21 Q. -- in that upper right-hand corner --

22 A. Uh-huh.

23 Q. -- there's a block with information in it.

24 A. Uh-huh.

25 Q. Can you tell me what that is?

1 A. This up here?

2 Q. Yes.

3 A. It shows the -- the day and time, it shows
4 the number of pages that are loaded on the device, and
5 it shows the page number -- pages that I've saved.

6 Q. Okay. Could you turn the device or the
7 mock-up to the side?

8 A. Like this?

9 Q. No. I want to see the side.

10 A. The side?

11 Q. Yeah.

12 A. Uh-huh.

13 Q. So it looks to me like there's three layers
14 to the mock-up?

15 A. Uh-huh.

16 Q. What -- what do those three layers consist
17 of?

18 A. They're just plastic sheets that I was
19 using. I was trying to keep a weight of about one
20 pound. I felt that that's probably the appropriate
21 weight for a device that a person would carry.

22 Q. And then what's across the front of the
23 mock-up?

24 A. It's Plexiglas.

25 Q. Does the Plexiglas extend past where we

1 A. Just by popping off the -- the Plexiglas
2 and then putting another page in.

3 Q. Okay. It seems to be a little -- the frame
4 around the edge seems to be a little wider at the
5 bottom than it is at the top?

6 A. Anticipated probably a logo at that point
7 being at the bottom.

8 Q. Did you try to do it without having -- did
9 you try to make a mock-up without having the white
10 frame around the edge?

11 A. At that time -- at that time, no.

12 Q. Do you think you -- you -- new question,
13 different question.

14 The corners on the edge are square. Did
15 you give any thought to why you were choosing square
16 corners at the time you did it?

17 MR. ZELLER: Mischaracterizes the mock-up.

18 A. If you notice in the original drawing, it
19 was round corners. It was just more practical for me
20 to make it with square corners at this point. But as
21 you'll see in later mock-ups, round corners what I
22 anticipated.

23 Q. (By Ms. Taylor) You said in the drawing
24 there were round corners?

25 A. If you look at it closer on the larger

1 size, it actually has round corners, uh-huh.

2 Q. Can you show me --

3 A. Small round corners, but it's rounded.

4 Q. Is that in Exhibit A?

5 A. That was in Exhibit A, uh-huh.

6 Q. Can you show me where they are?

7 A. Do we have a larger image of that to show?

8 Q. This is what your counsel gave to us.

9 MR. ZELLER: I'm not sure that that's a
10 correct characterization. We -- we produced more than
11 that, but --

12 MS. TAYLOR: In connection with
13 Mr. Fidler's deposition we haven't gotten anything but
14 five other pages, and we didn't get --

15 MR. ZELLER: That's just incorrect.

16 MS. TAYLOR: We did not get other images.
17 Do you have other images here?

18 THE WITNESS: I think there's an example
19 that can be handed to you now.

20 VIDEOGRAPHER: One moment, please.
21 Counsel, can you slide your mics up a little bit?

22 (Off record concerning microphones.)

23 MR. ZELLER: Is this what you're referring
24 to?

25 THE WITNESS: Yes. That's the full-size

1 image.

2 MR. ZELLER: We can mark that as
3 Exhibit 246.

4 MS. TAYLOR: Actually, not yet.

5 MR. ZELLER: Huh?

6 MS. TAYLOR: Don't mark it as Exhibit 246.

7 MR. ZELLER: Well, I'm entitled to mark it.
8 It's -- if it's shown to the witness, it should be
9 marked.

10 MS. TAYLOR: I can mark it as an exhibit
11 when I want to mark it as an exhibit. I'm not saying
12 I'm not. Let me look at it.

13 MR. ZELLER: Okay. That's fine. I -- I
14 don't -- I don't care when it's done as long as it's
15 done is all I care about.

16 THE WITNESS: Basically in drawing this
17 it'd be -- it was easier to be able to show that there
18 would be a softening of the -- the corners and
19 rounding. This exhibit was done as a presentation
20 that I did in 2010 about my vision of newspaper
21 tablets and how newspapers might be presented on
22 tablets.

23 MS. TAYLOR: Do you have this in electronic
24 format?

25 MR. SADOWITZ: Yes.

1 MS. TAYLOR: Can you e-mail it to me,
2 please?

3 MR. SADOWITZ: Sure.

4 MS. TAYLOR: Is this something that was
5 produced previously? I don't think it was.

6 MR. SADOWITZ: I don't believe so.

7 MS. TAYLOR: So let's set it aside for now.
8 We'll take a look at it later. Did you send it?
9 We'll go off the record for a moment.

10 VIDEOGRAPHER: One moment, please. We're
11 going off the record at approximately 9:50 a.m.

12 (WHEREIN, a recess was taken.)

13 VIDEOGRAPHER: We're back on the record at
14 approximately 9:53 a.m.

15 Q. (By Ms. Taylor) So if we could refer to
16 the mock-up that you created again. And do you -- do
17 you -- do you call that a mock-up or a prototype? I
18 want to use whatever terminology you use.

19 MR. ZELLER: The question is vague now when
20 you say the mock-up. There's more than one.

21 A. No, this was a -- a three-dimensional
22 mock-up of what a tablet might be like with a
23 two-dimensional display of what a newspaper might be
24 like on the device.

25 Q. (By Ms. Taylor) Okay. And I -- I

1 Q. (By Ms. Taylor) So I understood that on
2 the 1981 mock-up you would take the Plexiglas off and
3 change the pages; is that correct?

4 A. That's correct.

5 Q. Why did you not do that with the black 1994
6 mock-up?

7 A. From a practical standpoint, we -- we glued
8 the Plexiglas in so that it would be firm and so that
9 we could put the pages in from the back.

10 Q. Where is the glue applied to the Plexiglas?

11 A. Not sure how I did it, but it was -- it's
12 firm in there. It can be still removed. It's not --
13 it's tight to --

14 Q. And the Plexiglas was not glued in on the
15 white mock-up?

16 A. No. The white one which I made, it was so
17 that it could be removed.

18 Q. So I'm a little confused. Is it glued to
19 the paper that's behind the Plexiglas in the black
20 mock-up, the 1994 mock-up?

21 A. No. No. The pages are all independent of
22 the Plexiglas display.

23 Q. Okay. So the Plexiglas is glued to the --
24 to the device?

25 A. It's -- yeah, it's firmly in place so that

1 clear that it's the mock-up as opposed to what he
2 envisioned as the actual device is all -- the only
3 reason I -- I want to just be clear.

4 Q. (By Ms. Taylor) So on the mock-up, I
5 believe you said you had created six?

6 A. We created six.

7 Q. Are they all identical?

8 A. All identical.

9 Q. No differences between them at all?

10 A. No.

11 Q. And there's a video that was produced in
12 this case where people were carrying around items that
13 look like this black 1994 mock-up. Is that -- is --
14 was -- was that -- I -- I think you said you created
15 six so you could use them in the video.

16 A. Uh-huh.

17 Q. Is that the video?

18 MR. ZELLER: I'm going to object. The
19 question is ambiguous. There's more than one video
20 with more than one mock-up.

21 Q. (By Ms. Taylor) You created six of them.
22 Why did you create six?

23 A. The six were created for the 1994 video,
24 the tablet newspaper vision.

25 Q. Okay. So the -- the -- what appears to be

1 devices in that 1994 video are six mock-ups?

2 A. They are all mock-ups with pages that were
3 interchanged in the display. It was a nonfunctioning
4 device.

5 Q. And every one in that video is identical to
6 the 1994 mock-up that you brought with you today
7 except that the -- the display page may have changed?

8 A. Yes.

9 Q. Was this 1994 mock-up that you brought with
10 you today in the video?

11 A. Yes.

12 Q. Okay. Did you ever produce a device based
13 upon this mock-up?

14 A. A function -- or to be clear, you're asking
15 if we produced a functioning device?

16 Q. I am.

17 A. We did not produce a functioning device.

18 Q. What was the plan at the time that you
19 created the 1994 mock-up with respect to the mock-up
20 or -- or a device you may have planned to make? What
21 were your plans?

22 A. Our attempt was --

23 MR. ZELLER: The question is vague.

24 A. Okay. Our intent was to be able to show
25 this also to technology companies and to media

1 companies to encourage the development of a tablet
2 and -- and to prepare newspapers for the digital
3 transformation that was about to take place.

4 Q. (By Ms. Taylor) You said our intent?

5 A. What?

6 Q. You said our intent?

7 A. Well, our -- within Knight-Ridder, the
8 laboratory --

9 (Court reporter interruption.)

10 A. Within Knight-Ridder. K-N-I-G-H-T, hyphen,
11 R-I-D-D-E-R. Knight-Ridder is a newspaper company,
12 media company. The purpose of our laboratory, the
13 Information Design Laboratory in Boulder, was to
14 explore the future and to prepare our company for the
15 changes that were likely to take place with the
16 introduction of digital technologies.

17 Q. (By Ms. Taylor) How long did you work at
18 the Information Design Laboratory?

19 A. From August 1992 through the end of July
20 1995 in Boulder, Colorado.

21 Q. Did Knight-Ridder ever develop a working
22 device based upon prototype?

23 A. Within Knight-Ridder there was no intent to
24 actually become a manufacturer or to have devices
25 manufactured specifically for us. So our focus was

1 entirely on the user interface and on how newspapers
2 would actually be displayed on a device like this.

3 Q. I think you -- you mentioned showing it to
4 technology and media companies?

5 A. Uh-huh.

6 Q. Can you tell me if you ever did show the
7 1994 mock-up to any technology -- technology or media
8 companies?

9 A. Yes.

10 Q. To whom did you show it?

11 A. For technology companies we showed it to
12 Toshiba, Sony, Apple. There may have been others, but
13 I don't recall the names at this point.

14 Q. For media companies?

15 A. Media companies, New York Times, Washington
16 Post, Los Angeles Times, and of course, at conferences
17 there were representatives from the majority of -- of
18 newspaper companies around the world.

19 Q. What conferences?

20 A. The list is very long. Without it in front
21 of me, I wouldn't be able to give you a complete list.

22 Q. Your list of conferences are not included
23 as an attachment to your declaration.

24 A. I did send you my CD I -- CV I believe.

25 Q. And I don't think I've seen a CV. Do you

1 have that?

2 A. That doesn't have it on that one.

3 MR. ZELLER: Not -- not this one?

4 THE WITNESS: Uh-uh.

5 MS. TAYLOR: Do you have the list of
6 conferences?

7 MR. ZELLER: Let's go off the record for a
8 second. I can check.

9 VIDEOGRAPHER: One moment, please. Do you
10 want to go off the record now?

11 MS. TAYLOR: Sure.

12 VIDEOGRAPHER: We're going off the record
13 at approximately 10:16 a.m.

14 (WHEREIN, a recess was taken.)

15 VIDEOGRAPHER: We're back on the record at
16 approximately 10:29 a.m.

17 Q. (By Ms. Taylor) All right. During the
18 break we had printed out a copy of your -- I think
19 it's your CV. We've handed that document to you. Can
20 you tell me what that document is?

21 A. Yes. I'm sorry?

22 Q. Can you tell me what the document is that's
23 been handed to you?

24 A. This is my CV that was used at the
25 university to be able to document the conferences that

1 I had spoken at, the books and chapters of -- of books
2 that I had written and articles I had written, as well
3 as my work history.

4 MS. TAYLOR: Okay. I'm going to ask the
5 court reporter to mark that as Exhibit 246. If you
6 can hand it to him, he'll put a sticker on it.

7 (WHEREIN, Exhibit 246, Fidler CV, was
8 marked for identification by the Court Reporter.)

9 Q. (By Ms. Taylor) So you were telling me
10 about conferences --

11 A. Uh-huh.

12 Q. -- where you took the 1994 black prototype
13 and said they were --

14 A. Right. If you look at --

15 Q. -- on your CV. Can you tell me --

16 A. Begins on page --

17 Q. -- where that is?

18 A. Begins on page five with speeches and then
19 it goes to page -- to page eleven.

20 Q. So is that a listing of conferences where
21 you gave speeches?

22 A. All of these conferences are where I
23 actually spoke.

24 Q. Okay.

25 A. I attended other conferences where I didn't

1 speak.

2 Q. At -- at which of these conferences did you
3 bring the black 1994 prototype?

4 A. The black prototype I didn't start showing
5 at conferences until 1994. From 1994 on and actually
6 probably beginning in -- probably beginning in June
7 of '94 is when I began showing the black one. Before
8 that I was showing the white mock-up, the 1991
9 mock-up -- or 1981 mock-up. I apologize.

10 Q. I was getting confused. Okay.

11 A. Uh-huh.

12 Q. So the 1981 mock-up, the white mock-up --

13 A. Uh-huh.

14 Q. -- would have gone to which group of
15 conferences?

16 A. I began showing that in 1987 at the very
17 first Inter American Press Association conference.

18 Q. And that's listed here on page eleven?

19 A. Yes.

20 Q. Okay. And then you -- did you take it to
21 all of the conferences?

22 A. Yes.

23 Q. And then somewhere around June of 1994 --

24 A. Uh-huh.

25 Q. -- I think you said you started to take the

1 black 1994 prototype; is that right?

2 A. That's correct.

3 Q. Did you stop taking the white prototype at
4 that point?

5 A. I'm sorry?

6 Q. Did you stop taking the white prototype?

7 A. Yes.

8 Q. And then did you take the 19 -- the black
9 1994 prototype to all of the rest of the conferences
10 after June --

11 A. I would say nearly all of them, yes.

12 Q. -- 1994?

13 A. Uh-huh.

14 Q. Okay. So are you continuing -- did you
15 take it to the conference -- like the first one listed
16 on page five?

17 A. Page five?

18 Q. The 2007 conference in Marbella, Spain.

19 A. Oh, yes. Uh-huh.

20 Q. So you were still taking the 1994 black
21 prototype to conferences as of 2007?

22 A. Yes, uh-huh.

23 Q. And are you still doing that now?

24 A. No. Now when I go to conferences I use the
25 iPad.

1 Q. Okay. When did you switch?

2 A. Well, when I got the iPad in 2010.

3 Q. So until you got an iPad in 2010, did you
4 continue taking the black 1994 prototype to
5 conferences?

6 A. Well, let me clarify one thing. Beginning
7 in around 2006 my focus was shifting to e-readers with
8 the electronic paper technology, and so conferences
9 after that were ones that were looking at -- you can
10 see in the 1997 one about all the reading devices and
11 e-paper on page five.

12 Q. Wait. There's no 1997 one on page five.

13 A. Right.

14 Q. You mean 2007 one on page five?

15 A. Yes. That one I would have brought
16 e-readers, but I always carried with me this tablet to
17 show what I thought tablets would be like.

18 Q. When you say e-readers, what do you mean?

19 A. At that time it would have been the -- the
20 Sony e-readers and the iRex e-readers that were using
21 E Ink technology for the display.

22 Q. What is -- what is iRex?

23 A. iRex was a company that was a spinoff of
24 Royal Philips Electronics based in Holland, and they
25 were among the early developers of e-reader devices.

1 Q. I think you said you -- you brought
2 e-readers starting in -- like the one in 2007?

3 A. It was definitely shown at 2007. That
4 would have been the iRex and Sony e-readers.

5 Q. Okay. And then you -- and then an earlier
6 answer says but I always carried with me this
7 tablet --

8 A. Uh-huh.

9 Q. -- to show what I thought tablets would
10 look -- would be like.

11 A. Yes.

12 Q. What's the distinction between the e-reader
13 you took with you and a tablet?

14 A. Uh-huh.

15 MR. ZELLER: The question is vague.

16 THE WITNESS: The e-readers -- you got a
17 question?

18 MR. ZELLER: I just said the -- I said the
19 question is vague. I made my objection.

20 A. Uh-huh. E-readers were intended primarily
21 for reading text. They were black and white. Well
22 suited for books. Newspapers were beginning to use
23 them. Magazines were beginning to use them to sell
24 their content on -- for reading on e-readers.

25 And so I had formed a Digital Publishing

1 Alliance in 2006 at the Reynolds Journalism Institute,
2 and our focus at that point until the iPad came out in
3 2010 was entirely on e-readers at that point.

4 Q. (By Ms. Taylor) And why the switch in
5 2010?

6 A. Because of the iPad dramatically changed
7 the -- the landscape.

8 Q. What do you mean when you say it
9 dramatically changed the landscape?

10 A. With the tablet, with color display,
11 lightweight, price point, recognized that was going to
12 be a very important medium for newspapers and
13 magazines to be able to use. It was the closest
14 device to what my original concept was.

15 Q. So also during our break we got a
16 screwdriver and we unscrewed the back of --

17 A. Uh-huh. Uh-huh.

18 Q. -- back of the 1994 mock-up --

19 A. Uh-huh.

20 Q. -- because I had asked you a question about
21 the size of the Plexiglas.

22 A. Uh-huh.

23 Q. Can you tell me what we found regarding the
24 size of the Plexiglas when we unscrewed it and opened
25 it up?

1 A. Yes. I -- I -- I do stand corrected. In
2 this model in fact, the manufacturer, the creator of
3 the device did put a lip around the edge for the
4 Plexiglas to lay against. So it did -- did actually
5 go under the display.

6 I should point out, however, in the
7 drawings that were created I was always attempting to
8 create a device that had a flat screen all the way
9 across that would be flush with the -- the outside.

10 The manufacturer indicated that there
11 wasn't any way that he could actually do that
12 practically. So many of the things that -- that were
13 adapted here with the backplate and the way the
14 display was created were for practical reasons to --
15 to make it work.

16 Q. You referred to drawings in that answer.

17 A. I'm sorry?

18 Q. You referred to drawings in your answer.

19 You said in the drawings that were created I was
20 always attempting to create a device that had a flat
21 screen. What drawings are those?

22 A. I created drawings for the manufacturer to
23 be able to create this tablet. And he created several
24 different prototypes to be able to show us.

25 Q. So when you referred to drawings, you mean

1 the drawings you gave to the manufacturer?

2 A. Yes. Uh-huh.

3 Q. Did you give those drawings to anyone else?

4 A. No. I -- I don't have those copies
5 anymore.

6 Q. Okay. I think we can go ahead and have
7 that device put -- or that prototype put back together
8 if -- if you want. I know it's fragile.

9 A. Set it to the side.

10 Q. So after the 1994 black prototype that
11 we've been discussing, did you -- were you involved in
12 the creation of any other prototypes?

13 A. No other prototypes are created after that.

14 Q. Okay. You brought with you today another
15 tablet that I asked that you bring.

16 A. Uh-huh.

17 Q. Can you tell me what that third tablet is?

18 A. Toshiba sent representatives to our
19 laboratory in Boulder, Colorado, and they were
20 interested in the concept that we were developing
21 after they had seen the video, and so they proposed to
22 create in their laboratory in Japan a working
23 prototype based on the specifications that I had given
24 to the -- the Toshiba representatives.

25 In 1997 they presented this to me while I

1 was at Kent State University as a professor, and there
2 was a picture I think we had of -- of all of us
3 together.

4 Q. So is the Toshiba --

5 A. Uh-huh.

6 Q. -- you said it's a working prototype?

7 A. It was a working prototype. Fairly crude
8 working prototype using a Sun operating system. I
9 haven't recharged it in a long time and attempted to
10 use it, but -- and it was a black and white display
11 point.

12 The decision at Toshiba was made that at
13 that point color displays were becoming cheaper than
14 black and white, and so they went back to the drawing
15 boards at that point.

16 But after the Knight-Ridder laboratory
17 closed in July of 1995, Toshiba for a number of
18 reasons decided not to pursue the tablet concept until
19 later with the -- with Bill Gates' introduction of the
20 tablet PC.

21 Q. So I believe you said that you gave Toshiba
22 some specifications?

23 A. Yes, I did. Uh-huh.

24 Q. What were those?

25 A. Well, we used the example of the model that

1 we had created, the prototype we had created and the
2 mock-up indicating what we expected the device to be
3 like. The device they created was heavier than we had
4 expected.

5 They indicated at that point the technology
6 had not evolved to the point where they could produce
7 a tablet that was closer to one pound. The -- and
8 that they at that point felt that they could only use
9 black and white because the display technology still
10 was very expensive and -- and they -- this did not go
11 into production for commercial sale. This was
12 strictly done as a laboratory creation.

13 Q. You said you used the example -- the model
14 you had created. Is that the 1994 black prototype?

15 A. Right. They basically chose -- we gave
16 them the size that we thought it should be, the
17 display size, and gave the information about the
18 weight.

19 Again, I think at that point we were also
20 talking about a -- a touchscreen that would be flush
21 with the surface, but they had indicated that they
22 would have to use a stylus for the -- the display
23 because they did not have the technology to be able to
24 do a -- a true touchscreen.

25 Q. Can you hand me the Toshiba one? The

1 display -- there -- there seems to be a lip around the
2 display. Is this --

3 A. I'm sorry?

4 Q. Is there a lip around the display on this
5 one?

6 A. Yes, there's a lip around that one.

7 Q. Do you know why?

8 A. I think just for practical reasons at that
9 point in time, uh-huh.

10 Q. Did you give them drawings to work off of?
11 And I mean, did you give Toshiba drawings to work off
12 of when you were --

13 A. We did not give them drawings.

14 Q. -- creating --

15 A. We -- they took photographs of the
16 prototype that we had, this one, the mock-up, and we
17 indicated, you know, what we thought was the
18 appropriate weight --

19 Q. Uh-huh.

20 A. -- and dimensions and had requested that it
21 be something that with a single button could turn it
22 on immediately and turn it off immediately.

23 Q. I notice the Toshiba one has two buttons on
24 it?

25 A. Yes. I think they were using -- as I

1 recall, this one was for -- for turning pages.

2 Q. When you say this one was for turning
3 pages, which button are you referring to?

4 A. The -- the blue button was for turning
5 pages, and this gray button was for turning it on and
6 off.

7 Q. I have to ask for that type of
8 clarification so --

9 A. Understand.

10 Q. -- on the printed record it's clear.

11 A. Uh-huh. My fault.

12 Q. No, you're doing a great job. Did you give
13 them one of your 1994 prototypes to work off of?

14 A. We did not.

15 Q. Did --

16 A. They only took photos.

17 Q. Did they come and visit you?

18 A. Yes.

19 Q. Where were you at the time?

20 A. Boulder, Colorado.

21 Q. So they took photos of your prototype?

22 A. Yes.

23 Q. Okay. Did you have further interactions
24 with Toshiba?

25 A. I'm sorry?

1 MR. ZELLER: Oh. That is Exhibit M.

2 THE WITNESS: Uh-huh. I joined the Kent
3 State faculty in August of -- of '96 and it was soon
4 after that that they brought the tablet.

5 Q. (By Ms. Taylor) Can you look at Exhibit M
6 to your declaration, which you have in front of you
7 there?

8 A. Yes.

9 Q. Could you identify for me the -- well, let
10 me state for the record the Exhibit M is -- M is a
11 photograph with five people in it.

12 A. Uh-huh. Uh-huh.

13 Q. Could you identify for me who they are?

14 A. The two people on the left side are from
15 Toshiba, and I don't recall their names. The person
16 in the middle was Pam Creedon, who is the director of
17 the school of journalism. The person next to her is
18 the president of the university, Carol Cartwright, and
19 on the -- on the right side is me.

20 Q. Okay. And what was the purpose of this --
21 it looks to me kind of like a -- almost a -- was it a
22 ceremony or was it --

23 A. There was no ceremony.

24 Q. -- just a visit?

25 A. It was -- it was a picture of us taken that

1 could then be published on the website of the Kent
2 State University website.

3 Q. So was this photo on the Kent State
4 University website?

5 A. It did appear there for a while.

6 Q. Okay. Was the photo taken by a Kent State
7 University photographer?

8 A. Yes, uh-huh.

9 Q. And you don't know the names of the two
10 individuals from Toshiba?

11 A. I don't recall their names.

12 MS. TAYLOR: One of the document that --
13 let me go ahead and have this one marked as
14 Exhibit 247.

15 (WHEREIN, Exhibit 247, Nondisclosure
16 agreement, was marked for identification by the Court
17 Reporter.)

18 Q. (By Ms. Taylor) So one of the documents
19 that was produced in this case is this
20 nondisclosure -- this document titled "Non-Disclosure
21 Agreement"?

22 A. Yes.

23 Q. Can you tell me if you've seen this
24 document before?

25 A. This was the nondisclosure that I signed

1 any influence on that. It was, however, the closest
2 anyone had come to a tablet at that point in time that
3 weighed two pounds. And -- and we did in fact use
4 that tablet for our presentations on what a newspaper
5 might be like on a tablet.

6 Q. And that was a working tablet?

7 A. That was a working tablet.

8 Q. Did you go out and buy that one?

9 A. Yes.

10 Q. No present?

11 A. No.

12 Q. You mentioned that Toshiba had seen your
13 video, your 1994 video.

14 A. Uh-huh.

15 Q. What was the -- the purpose of the video
16 that you created in 1994?

17 A. Purpose of the video in '94 was to help
18 people to visualize what a tablet would be -- would be
19 like, to -- I always refer to it as planting seeds of
20 ideas that technology companies and media companies
21 could use to further develop this concept.

22 Q. And what did you do with that video?

23 A. We produced about 200 copies of the video.
24 They were distributed to media companies and
25 technology companies worldwide.

1 Q. Other than Toshiba, who may have received
2 it?

3 A. The list of who we actually sent the videos
4 to is long gone. That was done at the Information
5 Design Laboratory. When the lab was closed, documents
6 that were specific to Knight-Ridder left with the
7 laboratory for Knight-Ridder.

8 Q. Can you identify anyone other than Toshiba?

9 A. I'm sorry?

10 Q. Can you identify anyone other than Toshiba
11 who received a copy of the video?

12 MR. ZELLER: You're talking about back at
13 that time when they distributed it?

14 MS. TAYLOR: Yes.

15 A. Uh-huh. You know, I can -- I can
16 speculate, but I can't --

17 Q. (By Ms. Taylor) Okay.

18 A. -- say with accuracy everyone who got a
19 copy.

20 MS. TAYLOR: That's fine. I was told we
21 have five minutes. We probably have two, so let's
22 take a break.

23 THE WITNESS: Okay.

24 VIDEOGRAPHER: We're going off the record
25 at approximately 11:04 a.m.

1 MR. ZELLER: So you are going to argue it's
2 a waiver; is that correct? Because if that's true,
3 we're -- we're going to -- I'm going to make a motion
4 and I'm going to make a motion today.

5 MS. TAYLOR: Look at how you keep
6 interrupting me and you tell me you don't. Let's move
7 along.

8 Q. (By Ms. Taylor) Mr. Fidler, please take a
9 look at Exhibit B of your declaration.

10 A. B?

11 Q. Yes. Can you tell me what Exhibit B is?

12 A. This is a photograph of the first prototype
13 that I created.

14 Q. Is that the 1981 prototype?

15 A. It was created after 1981 but in the 1990s
16 based on the article that I wrote in 1981.

17 Q. Actually, before we go through the photo,
18 let me ask you a question I had forgotten to ask
19 earlier. I think the one that was created in the
20 1980s you said fell apart, is that --

21 A. The original mock-up that I created after
22 the article was written to use as a demonstration did
23 fall apart. It was -- it was exactly like this. I
24 created a new one later, and then a third one was
25 created in 1992 after we opened the laboratory in

1 Q. (By Ms. Taylor) You said uh-huh. I need
2 a --

3 A. Oh, I'm sorry. Yes. Yes, I took the white
4 mock-ups to conferences with me.

5 Q. Thank you. Is it the white one you brought
6 with you today or the white one that you have at home
7 that you took with you to conferences?

8 MR. ZELLER: The question is compound.

9 A. Before 1992 I took this one with me.
10 After '92 they were interchangeable.

11 Q. (By Ms. Taylor) I believe you said that on
12 the 1994 mock-up that there was six of those made; is
13 that the right number?

14 A. That's correct. We produced six of the
15 1994 mock-ups.

16 Q. Where are those now?

17 A. I have two of them. The other four were
18 given to four of the members of my team at the
19 Information Design Laboratory in Boulder, Colorado.

20 Q. And who are those people?

21 A. To my recollection, Curt Stevens. Was a
22 Ph.D. in computer science. After the lab was closed
23 in 1995 he went to work for Apple Computer. Another
24 one was given to Peggy Bair, who was my immediate
25 assistant at the laboratory. She's now living in

1 Arizona.

2 Another one was given to Yukari Miyamae,
3 who was our Japanese/American interpreter working with
4 Japanese companies for us, and who when we went to
5 Japan was the interpreter for meetings.

6 Q. That's three people I think you said. A
7 fourth?

8 A. Right. I don't recall who got the fourth
9 one now.

10 Q. And then did you keep two of them?

11 A. Yes, I kept two.

12 Q. Do you still have two?

13 A. Yes.

14 Q. Where's the second one?

15 A. The other one is at home. It's exactly the
16 same as this.

17 Q. And which one would you take with you when
18 you were going to the conferences?

19 A. They were all interchangeable.

20 Q. So going back to the photograph in

21 Exhibit B.

22 A. Uh-huh.

23 Q. Who took that photograph?

24 A. I'm sorry. The question?

25 Q. Who took that photograph?

1 A. Mike Sadowitz.

2 Q. Sadowitz.

3 A. Sadowitz.

4 Q. This is a photograph that was taken when he
5 visited your office?

6 A. Right. In my office.

7 Q. Do you know how many photographs were
8 taken?

9 A. I don't.

10 MR. ZELLER: Let me instruct the witness
11 not to answer the question. It invades work product.
12 I move to strike the answer.

13 Q. (By Ms. Taylor) Please turn to Exhibit C.

14 A. C?

15 Q. Yes. Can you tell me what Exhibit C is?

16 A. Uh-huh. Yes.

17 Q. Can you tell me what Exhibit C is?

18 A. It's the edge of the mock-up that was
19 created in 1980s.

20 Q. Can you tell me who took that photograph?

21 A. Mike Sadowitz.

22 Q. And is this a photograph of the mock-up
23 that you brought with you today?

24 A. Yes.

25 Q. Can you tell me what Exhibit D is?

1 A. That's the back of the same device from the
2 1980s taken in my lab in my office.

3 Q. By Mr. Sadowitz?

4 A. Huh?

5 Q. By Mr. Sadowitz?

6 A. Yes, by Mr. Sadowitz.

7 MS. TAYLOR: Do we have the pronunciation
8 correct?

9 MR. SADOWITZ: It's correct.

10 MS. TAYLOR: Sadowitz. Didn't you say it
11 with a long A?

12 THE WITNESS: Sadowitz, Sadowitz. Sadowitz
13 or Sadowitz?

14 MR. SADOWITZ: Both -- both ways are
15 correct.

16 MS. TAYLOR: I'm going to ask Mike what he
17 prefers. Long A or short A?

18 MR. SADOWITZ: Long A.

19 MS. TAYLOR: I'm going to get it right when
20 I get to more photographs.

21 Q. (By Ms. Taylor) Can you tell me what
22 Exhibit E is?

23 A. Exhibit E is a copy of the article that ran
24 in the New York Times, and it shows me sitting in my
25 office in Boulder, Colorado with a Macintosh computer

1 on one side and I'm holding the tablet, the white
2 tablet that was created in the 1980s.

3 Or it could be the one that was created in
4 1992. I don't know which one. No, this one actually
5 would be the one I created -- the second tablet that I
6 created.

7 Q. So this is an article from 1992?

8 A. Yes. Yes. Uh-huh.

9 Q. So it's a photograph of the -- the tablet
10 you have with you today?

11 A. Yes. This was photographed -- what's --
12 what's the date on that again?

13 Q. Unfortunately, when this was filed in court
14 they put a -- the -- the court system automatically
15 puts that blue things across the top.

16 A. Let me point out that this was I think June
17 1992. That photograph was actually taken -- I'll
18 correct myself. That was taken actually while I was
19 at the media study center at Columbia University.

20 (Court reporter interruption.)

21 A. At the Columbia -- or the media study
22 center in Columbia University while I was a fellow for
23 The Freedom Forum.

24 Q. (By Ms. Taylor) And how long were you
25 there?

1 A. What?

2 Q. How long were you there?

3 A. I was there from August of 1991 until
4 August of 1992. Was there one year.

5 Q. And the tablet that's in this 1992 -- in
6 this photograph in this 1992 article is the tablet you
7 have with you today?

8 A. It's the one I created. Uh-huh. Yes.
9 That is the one you see today.

10 Q. And -- and that's the nine -- the -- the
11 one that you created in 1991?

12 A. This was created in the late eighties, I
13 believe, or '91. I'm not sure of the date I created
14 this one.

15 Q. Okay. Can you tell me what Exhibit F is?

16 A. F is an article from Presstime Magazine.
17 It was -- Presstime was a magazine produced by the
18 National Association Of Newspapers and talks about my
19 vision of the -- of the tablet, and I believe that it
20 includes a photograph of me with the tablet. I was
21 using a different page on the tablet because I would
22 interchange the pages.

23 Q. And is this photograph in Exhibit F a
24 photograph of the mock-up that you brought with you
25 today?

1 A. That was the newer tablet that was created
2 because I notice there's -- I did put a little light
3 at the bottom there. You can see there's little dots
4 there, was to show that there would be a -- a light
5 that would tell whether it was on or off.

6 Q. I was going to ask you about that. If you
7 look at Exhibit H, I think it's the same one closer
8 up. The picture is a little closer.

9 A. Of H?

10 Q. H.

11 A. Yeah, with the little mark. This was a
12 newer tablet. That was the newest of the tablets that
13 were created in 1992.

14 Q. Okay. So is the tablet shown in Exhibit H
15 the one you brought with you today?

16 A. No.

17 Q. So which one is --

18 A. That's the one I have at home.

19 Q. This is the one you have at home?

20 A. Uh-huh.

21 Q. Is this the one that was created by your
22 colleague?

23 A. What's that?

24 Q. Is this the one a colleague created in
25 1992?

1 A. That -- yes, uh-huh.

2 Q. Okay.

3 A. We worked together in producing it --

4 Q. Okay.

5 A. -- so we'd have a second one that could be
6 used by my colleagues to be able to take to
7 conferences. The list that I show you in my CV is
8 only conferences that I attended. Several of my
9 colleagues attended other conferences which they took
10 a copy of the white mock-up.

11 Q. So what's the difference between the one in
12 Exhibit H and the one that you brought with you today,
13 if any?

14 A. The only difference is the addition of just
15 that little green area that was like a green plastic
16 put in there to show that there would be something
17 that indicated that it was on or off. There was not a
18 button. It was only just a -- so you knew what --

19 (Court reporter interruption.)

20 A. It was an on and -- it -- it was to show if
21 the device was on or off, but it -- this was not a
22 working device. It was strictly a prototype, and it
23 was just put there at the suggestion of one of my
24 colleagues that this would, you know, probably be
25 something you'd want to have on the device. That's

1 the only change that was made to it.

2 Q. (By Ms. Taylor) So that is -- so is it
3 green plastic?

4 A. It's green plastic.

5 Q. So it's all -- on this mock-up it's always
6 green?

7 A. It's always green.

8 Q. Okay.

9 A. There's no electronics in this at all.

10 Q. So other than adding that --

11 A. Uh-huh.

12 Q. -- green plastic --

13 A. Uh-huh.

14 Q. -- this 1992 mock-up is identical to --

15 A. Identical.

16 Q. -- to the mock-up you brought today?

17 A. Everything was based on -- on that model.

18 Q. So the -- going back to F.

19 A. Which one?

20 Q. F.

21 A. F.

22 Q. Exhibit F.

23 A. F as in Frank?

24 Q. Yes.

25 A. Okay.

1 Q. The photograph in Exhibit F shows which
2 mock-up?

3 MR. ZELLER: I'm sorry. I'm confused. I
4 thought we were talking about F before.

5 MS. TAYLOR: We were talking about H.

6 A. The one that's shown there, again --

7 MR. ZELLER: Oh, okay.

8 A. -- has the green dot. It was -- so this
9 was the newer version of this model.

10 Q. (By Ms. Taylor) So this is the 1992
11 mock-up in Exhibit F?

12 A. Right. Right. Uh-huh. They're all
13 identical except for that one addition.

14 Q. So if we go back to the Exhibit E with the
15 1993 article from the New York Times --

16 A. Uh-huh.

17 Q. -- do you know if this is the mock-up you
18 brought with you today or if this is the 1992 mock-up?

19 A. That would be this one that you see right
20 here.

21 Q. And how can you tell?

22 A. Huh?

23 Q. Can you tell from looking at the
24 photograph?

25 A. Well, I notice that when it was -- when the

1 other one was built, that it would not have been in
2 1991 -- or nine -- early 1992 when this one was -- was
3 written.

4 MR. ZELLER: You guys need to slow down.
5 One thing is -- I -- I want to interpose. You
6 referred to the article, the New York Times article as
7 1993. It's 1992.

8 MS. TAYLOR: He's just pointed that out.

9 MR. ZELLER: Okay. But -- but --

10 MS. TAYLOR: He's just -- yeah.

11 THE WITNESS: It was June of 1992. The
12 laboratory was not open till August of '92, so --

13 Q. (By Ms. Taylor) Right. I misspoke. I
14 thought it was 1993.

15 A. Okay.

16 Q. So the article was 1992 --

17 A. Uh-huh.

18 Q. -- and when this article was printed --

19 A. Uh-huh.

20 Q. -- the 1992 mock-up had not yet been built?

21 A. That's right.

22 Q. Okay. So what's in the 1992 article, which
23 is Exhibit E --

24 A. Uh-huh.

25 Q. -- is definitely the one you brought with

1 you today?

2 A. Ask that question again.

3 Q. Exhibit E --

4 A. Exhibit?

5 Q. E.

6 A. E.

7 Q. The 1992 article.

8 A. Yes. Uh-huh.

9 Q. That's def -- you believe that's
10 definitely --

11 A. Definitely --

12 Q. -- the one you brought with you today?

13 A. -- this -- this one here, uh-huh.

14 MR. ZELLER: You need to allow her to
15 finish.

16 A. Oh, it actually is the one I brought with
17 me today.

18 Q. (By Ms. Taylor) Your answers keep coming
19 out as uh-huhs.

20 Okay. And the one you have at home is the
21 1992 mock-up with the green in the corner?

22 A. The one -- yes, it is.

23 Q. Okay. Let's look at G, which is your
24 video. So I'm going to -- I'm just going through the
25 exhibits in order, and G comes next. So I'm going to

1 turn on your video here.

2 A. Uh-huh.

3 Q. This is what we were given as Exhibit G.

4 A. G.

5 (Video playing.)

6 MR. ZELLER: You're able to see that from
7 here?

8 THE WITNESS: Uh-huh.

9 MS. TAYLOR: I can move it closer.

10 (Video playing.)

11 Q. (By Ms. Taylor) So we just played
12 Exhibit G from your declaration. Can you tell me what
13 it is?

14 A. It was a computer graphics video produced
15 by RayChem. I was sort of the director of it. We had
16 a computer graphic artist using a system -- computer
17 graphic system to produce it. He embellished it some
18 with his own thinking, but it was all based on the --
19 the white mock-up.

20 So I provided him with the pages that were
21 used within the video -- within the animation of what
22 a newspaper might look like on the display. He
23 created the device -- there was no physical device in
24 that video.

25 Q. When was the -- what do you mean there was

1 no physical device in the video?

2 A. All of that is computer animation.

3 Q. Oh.

4 A. There's no photographs of -- and no real
5 device.

6 Q. I understand. Okay. When was the video
7 created?

8 A. 1990.

9 Q. And what was the purpose of the video?

10 A. The purpose of the video was to show
11 Knight-Ridder executives the vision that I was
12 pursuing of the tablet. It was the -- was brought
13 about because RayChem, a company in California at the
14 time was developing a display technology called NCAP
15 that was encapsulated liquid crystal that they thought
16 would be suitable for tablets, and they were coming to
17 Knight-Ridder to encourage us to invest in the
18 development of the tablet device.

19 The meeting was in the Knight-Ridder
20 offices in Miami, Florida. They included all of the
21 senior executives of Knight-Ridder, president,
22 chairman, vice presidents, as well as executives from
23 RayChem, and included Alan Kay from Apple who at the
24 time was an Apple fellow, and John Mayo-Smith who I
25 brought in to work with me in -- in promoting the idea

1 of a -- of a tablet device.

2 Q. How do you spell Mayo-Smith?

3 A. Mayo-Smith, M-A-Y-O, hyphen, Smith.

4 Q. For whom were you working at that time?

5 A. What's that?

6 Q. For who were you working at that time?

7 A. I was working for Knight-Ridder. I was the
8 president of Presslink, P-R-E-S-S-L-I-N-K. Presslink
9 was a subsidiary of Knight-Ridder. It was a global
10 intranet that I had founded.

11 Q. So Knight-Ridder owned --

12 A. Owned it, yes, uh-huh.

13 Q. -- owned it? Who is John Mayo-Smith?

14 A. He was at that time a recent graduate from
15 the university who was interested in the tablet
16 concept. I invited him in to help me in introducing
17 the -- or to conducting the meeting with the idea that
18 if we proceeded with the tablet at that time, I would
19 have hired him to work with me full time, but he was
20 only brought in as a consultant at that time.

21 Q. Did anything come of the presentation at --
22 at that meeting?

23 A. No. At the -- after that meeting
24 concluded, Knight-Ridder decided not to invest in the
25 development of tablets. And shortly after that I

1 applied for my fellowship at Columbia University and
2 spent a year at Columbia University as a media studies
3 fellow.

4 Q. But you eventually went back to
5 Knight-Ridder; isn't that right?

6 A. Technically I was still with Knight-Ridder
7 on my fellowship. After the conclusion of the
8 fellowship in 1992 I encouraged Knight-Ridder to
9 establish the Information Design Laboratory in
10 Boulder, Colorado. And upon conclusion of the
11 fellowship, I was named as the corporate director of
12 new media for Knight-Ridder.

13 Q. Why Boulder?

14 A. I liked Boulder. No, my argument was that
15 to set up a laboratory in Silicon Valley would be too
16 expensive, and that Boulder, Colorado would attract
17 high quality people. We also -- at that time
18 Knight-Ridder owned The Daily Camera, and my
19 expectation was to use The Daily Camera as a
20 laboratory for testing some of our ideas.

21 Q. What's The Daily Camera?

22 A. It's a -- it's the local newspaper in
23 Boulder, Colorado.

24 Q. Who is Alan Kay?

25 A. Alan Kay is, you know, well known as an

1 inventor. He pursued the idea of a Dynabook computer
2 or portable computer back in the 1970s while he was
3 working for Xerox PARC.

4 Q. Can you spell Dynabook?

5 A. Dynabook, D-Y-N-A-B-O-O-K. That was his
6 name. And again, a lightweight, portable device that
7 essentially was a -- a tablet PC.

8 Q. Why was he at the meeting where you
9 presented the video?

10 A. We had had some conversations, and I had
11 conversations with Xerox PARC on a number of
12 occasions. It was my belief that having Alan Kay
13 present at that meeting would help to convince
14 Knight-Ridder executives that tablets were real and
15 viable, and he had been a believer in my concept.

16 Q. You said you had conversations with Xerox
17 PARC. What is Xerox PARC?

18 A. I'm sorry?

19 Q. You said you had conversations with --

20 A. It's Palo Alto Research Center. Very
21 famous. It's what actually developed the first
22 nontechnical computers that could be used by
23 nontechnical staff. It's the -- it was the basis of
24 the Macintosh and Lisa computers at Apple.

25 Q. Is it connected to Xerox?

1 A. What? It was --

2 Q. Is it connected to Xerox?

3 A. -- it was -- it was connected to Xerox.

4 Steve Jobs later bought the technology or actually
5 hired away the -- the people from Xerox PARC to work
6 for Apple to develop the Macintosh computer and the --
7 and the Lisa computer, which preceded the Apple
8 Macintosh.

9 Q. So who else attended this meeting besides
10 John Mayo-Smith and Alan Kay?

11 A. Would have been Jim Batten, who at the time
12 was president of Knight-Ridder; Tony Ridder,
13 R-I-D-D-E-R, who was the vice president at that time;
14 and several other vice presidents of Knight-Ridder.
15 It was a closed meeting.

16 Q. Anyone at --

17 A. And then two people from -- from RayChem.

18 Q. And why -- why did you seek RayChem's
19 assistance in creating the video?

20 A. They approached me and they -- they
21 demonstrated the NCAP technology they were developing.
22 They believed it would be suitable for tablets and
23 encouraged me to put together a meeting with
24 Knight-Ridder executives to see if Knight-Ridder would
25 be interested in investing and developing a tablet.

1 And so the video was proposed by RayChem
2 because they already had a computer graphics
3 capability setup at RayChem in California. And I went
4 out to California, worked with the graphic artist who
5 was using the computer graphics terminal and scripted
6 the -- the video.

7 Q. Did you give them or show them your white
8 mock-up?

9 A. Yes. And they saw -- they saw my original
10 article about the -- the tablets and they also had
11 seen me speak at conferences in the 1980s.

12 Q. But in connection with the production of
13 the video --

14 A. Uh-huh.

15 Q. -- what did you do to tell them what it
16 should look like if you did anything?

17 A. They used the -- the white 1980s mock-up as
18 a starting point in planning their animated video.

19 Q. Did you have any other input on what it
20 would look like in the video?

21 A. They asked me to produce the pages of what
22 a newspaper would be like. All the pages of
23 newspapers that you see in the video were ones that I
24 produced.

25 Q. Did you have an -- I saw when we watched

1 the video there were two buttons in the upper
2 right-hand corner. Are you aware of those?

3 A. That was an addition by the -- by the
4 artist.

5 Q. Okay. Did you have any input on where
6 those buttons would go or the color or whether they
7 would be there?

8 A. No.

9 Q. Oh, I completely blanked. Now I remember.
10 Is this a video you've kept?

11 A. Yes.

12 Q. Where do you keep it?

13 A. I kept it at home. I actually kept the
14 original videotape. Only this year did I convert it
15 to a digital for displaying on a computer.

16 Q. So was it originally shot as a VHS tape?

17 A. It was a VHS tape.

18 Q. And when did you convert it so it could be
19 seen on a computer?

20 A. Probably this spring.

21 Q. And why did you take it out this spring to
22 do that?

23 A. Planning to put it on the Reynolds
24 Journalism Institute website. We're still planning to
25 do that.

1 Q. Is it there now?

2 A. It's not there now.

3 Q. I think that was Exhibit G.

4 A. G?

5 Q. That was Exhibit G.

6 A. Uh-huh.

7 Q. We talked about Exhibit H in that -- we
8 talked about which mock-up this is.

9 A. Uh-huh. Uh-huh.

10 Q. But I didn't ask you other questions.

11 A. Uh-huh.

12 Q. So could you tell me what Exhibit H is?

13 A. This was taken from the ASP Forbes
14 Magazine. It was for a story written by George Gilder
15 about my work at the Information Design Laboratory.

16 Q. Do you know when this one was published?

17 A. It was -- the date is not showing up on
18 there. Without a copy of the magazine in front of me,
19 I wouldn't be able to know the exact date.

20 Q. Do you have a copy of that magazine?

21 A. Yes, I do, in my home.

22 Q. And did you provide a copy of that magazine
23 to counsel?

24 MR. ZELLER: I'm going to instruct the
25 witness not to answer the question. No, I'm

1 questions I've instructed on, and in fact, questions
2 of who prepared this declaration for you, Apple
3 instructed on.

4 Also, do you recall whether you made any
5 changes after you reviewed the draft that counsel gave
6 you? Apple instructed on that. And for the record,
7 this is starting on page 52 of the declaration -- of
8 the deposition.

9 So first of all, I'm confused by your
10 position on this at this point. And second, I mean,
11 getting into this seems to be invasive of the
12 privilege as well as just completely irrelevant.

13 Q. (By Ms. Taylor) So Mr. Fidler, I'm trying
14 to figure out the date on this. I only see two pages
15 here. How can we figure out what the date is?

16 A. From the magazine that I don't have in
17 front of me at this point.

18 Q. So we don't know when this was published?

19 MR. ZELLER: That misstates the witness's
20 testimony.

21 Q. (By Ms. Taylor) As you sit here today, you
22 don't know when this was published?

23 MR. ZELLER: Misstates the witness's
24 testimony.

25 A. So it's -- it's either late '92 or 1993.

1 Q. (By Ms. Taylor) And -- and how can you
2 come up with that time frame?

3 A. Because of the -- the -- the photo and
4 the -- and that -- my memory of this story being
5 written by George Gilder.

6 Q. Can you take a look at Exhibit I?

7 A. Okay.

8 Q. Can you tell me what Exhibit I is?

9 A. It's a photo of the 1994 tablet, again,
10 taken by Mike Sadowitz in my office.

11 Q. Is this the tablet you brought with you
12 today?

13 A. Yes.

14 Q. Okay. There is a bit of a -- it's not
15 quite a straight line on the right side of the photo.
16 Do you see that?

17 MR. ZELLER: The question --

18 Q. (By Ms. Taylor) On the right side of the
19 prototype in the photo.

20 MR. ZELLER: Well, first of all, it's
21 ambiguous when you say right side given how this is
22 taken, but ...

23 Q. (By Ms. Taylor) So if you'll turn your
24 photo so that you're looking at it this way.

25 A. When the -- the stylus was in place, it

1 would have been flush with the edge of the -- the
2 tablet.

3 Q. So --

4 A. The stylus is not appearing in this photo.

5 Q. So is the -- the lights are flashing. Is
6 the -- is that the indentation on the right where the
7 stylus goes?

8 A. That's the -- the notch where the stylus
9 would fit.

10 Q. Okay. And that's what -- that's what we're
11 seeing on the right side of -- in this photo?

12 A. Yes.

13 Q. All right. Can you tell me what Exhibit J
14 is?

15 A. J is a side-view of the same tablet taken
16 at the same time in my office by Mike.

17 Q. How can you tell that's a side-view?

18 A. Well, it's actually the bottom of the
19 tablet. You can see it here.

20 Q. How can you tell it's the bottom?

21 A. Because if you look at the -- I'm sorry,
22 I -- I stand corrected. It's the top of the -- of the
23 tablet because you can see on the top the navigation
24 bar that's on the side and you see it in the photo as
25 well.

1 Q. So this is a photo of the top of the
2 tablet?

3 A. Yes.

4 Q. Can you tell me what Exhibit K is?

5 A. It's the back of the tablet I'm showing
6 today.

7 Q. At the top of the photograph that is
8 Exhibit K --

9 A. Uh-huh.

10 Q. -- it looks like it's not quite straight
11 all the way across the top of the prototype.

12 A. It's the notches for the memory cards.

13 Q. But I can't -- can you see those notches in
14 Exhibit J? I thought --

15 A. They were taken out for the purpose of the
16 photo. So looks like the -- it blackened in.

17 MR. ZELLER: When you say it, you're
18 talking about the cards, not the notches?

19 A. Right. The cards are taken out.

20 Q. (By Ms. Taylor) Now, in Exhibit J on the
21 right side, it looks to me like there's something on
22 the top surface.

23 A. I'm sorry?

24 Q. Right-hand side, right corner on Exhibit J
25 it looks to me like there's --

1 A. Yes. At the top there's a -- a button that
2 we anticipated for an on and off button.

3 MS. TAYLOR: Now, Exhibit L is the longer
4 video. It will take fifteen minutes to watch, and
5 it's also 12:05 p.m., so I wonder if we should break
6 and then watch the video and then ask him questions?

7 MR. ZELLER: I mean -- well, why don't we
8 go off the record for a second?

9 MS. TAYLOR: Okay.

10 MR. ZELLER: We can ...

11 THE WITNESS: Okay. Either way is fine for
12 me.

13 MR. ZELLER: That's what I was going to
14 ask, but we can go off the record.

15 VIDEOGRAPHER: One moment, please. We're
16 going off the record at approximately 12:10 p.m.

17 (WHEREIN, a recess was taken.)

18 VIDEOGRAPHER: We're back on the record at
19 approximately 12:11 p.m.

20 Q. (By Ms. Taylor) All right. So what we
21 decided is we'll skip the Exhibit L for now because
22 that's the longer video, and we'll keep going through
23 here.

24 A. Okay.

25 Q. Exhibit M, you already told me who is in

1 that photograph.

2 A. Uh-huh. Yes.

3 Q. So we can skip that one. Exhibit N, can
4 you tell me what Exhibit N is?

5 A. It's a photograph of the front of the
6 Toshiba tablet.

7 Q. And who took the photograph?

8 A. Mike.

9 Q. And that's Mike Sadowitz?

10 A. Mike Sadowitz, right.

11 Q. There is something in the upper right-hand
12 corner, something that's blue and gray. Can you -- do
13 you see those?

14 A. The blue button was intended for turning
15 pages forward or backwards and the gray button was for
16 turning on the device or turning it off.

17 Q. And at the bottom there's a -- the -- the
18 gray frame at the bottom, it has a line that goes
19 horizontally from side to side. Do you see that?

20 A. The line that's there?

21 Q. Yes.

22 A. Yes.

23 Q. Do you know why that's there?

24 A. Probably decorative. Behind that panel is
25 the removable battery.

1 there three rows of dots?

2 A. Two rows of dots on the left right side,
3 right side.

4 Q. Okay. You said left right side, right
5 side.

6 A. Oh, I'm sorry. Left side, right side.

7 Q. Okay. And what -- in this photograph,
8 what's the PDV at the bottom of it?

9 A. Stands for Portable Document Viewer. The
10 name that --

11 Q. Is that --

12 A. -- that Toshiba came -- came up for the
13 device.

14 Q. Is that what appears below PDV?

15 A. Yes.

16 Q. Looks like there's a little fluorescent
17 light glare in the photograph. Can you tell me what
18 Exhibit O is?

19 A. There would be the --

20 MR. ZELLER: Object to the predicate.

21 THE WITNESS: Huh?

22 MR. ZELLER: I'm objecting to the
23 predicate. Appears compound now.

24 Q. (By Ms. Taylor) I think the question is
25 can you tell me what Exhibit O is?

1 A. Exhibit --

2 MR. ZELLER: That you can answer. Go
3 ahead.

4 A. Exhibit O is the top view of the Toshiba
5 tablet.

6 Q. (By Ms. Taylor) So is the -- there's a
7 darker black spot in the middle of it in the
8 photograph. Do you see that?

9 A. Uh-huh. Yes.

10 Q. Can you tell me what that is?

11 A. It's just a cover for a connection to a
12 computer.

13 Q. And to the right of that is what?

14 A. It's the same, but it's just where it's --

15 Q. Oh, in the photograph. To the right of the
16 black in --

17 A. Oh.

18 Q. -- the photograph is what?

19 A. This was I believe for a headphones. I
20 want to be clear. This was -- was not a production
21 model. This was merely a -- a functional prototype
22 produced by Toshiba. They only produced a few of
23 these for demonstrations, and they did not intend to
24 produce these as a commercial product.

25 Q. Do you know what happened to any of the

1 while you're testifying.

2 THE WITNESS: Yeah.

3 MR. ZELLER: We'll take care of it at a
4 break.

5 THE WITNESS: Figure it later.

6 MR. ZELLER: I don't want you to get
7 distracted.

8 THE WITNESS: I am distracted.

9 Q. (By Ms. Taylor) Can you tell me what --
10 can you take a look at Exhibit Q?

11 A. Which are we at?

12 Q. Q. Q.

13 A. Q. Okay.

14 Q. Can you tell me what Exhibit Q is?

15 A. It's the cover of my book Mediamorphosis:
16 Understanding New Media published in 1997.

17 Q. And can you tell me why it's attached to
18 your declaration?

19 A. Because in that book, and you will see in
20 the following pages a excerpt from the book, a copy of
21 a page where I describe a scenario of a person using
22 the tablet and anticipating that by September 21,
23 2010, that the tablet would become a more popular
24 device.

25 Q. Where -- where is that?

1 A. It follows the photo. There's the photo of
2 the cover, a -- and the -- a copy of the imprint of
3 the book with information about the publisher and --
4 and then the page after that has a scenario for 2010.

5 And there are -- actually, I think it looks
6 like may have copied the whole chapter. That's all
7 chapter nine of the -- my book. Uh-huh. And it
8 describes the -- the function of a -- of a tablet and
9 how a newspaper might be -- might appear on the
10 tablet.

11 Q. You said you wrote this in 1997?

12 A. Well, I wrote it in 1996. It was published
13 in '97.

14 Q. Published, right.

15 A. And versions of this were -- were published
16 in other magazine articles going back as far as 1991.

17 Q. Okay. On page 238.

18 A. 238. Are we looking --

19 Q. It's the one with the picture.

20 A. Oh.

21 Q. Like five pages from the end.

22 A. Okay.

23 Q. Can you tell me what -- what the
24 photograph -- is that a photograph on page 238?

25 A. Yes, it's a photograph. It's a photograph

1 of the 1994 tablet. The page that is there is we had
2 created a experiment at Kent State using the Digital
3 Kent Stater, which is the school newspaper, to show
4 how it might appear on a tablet.

5 Q. So was the name in the newspaper at Kent
6 State the Digital Kent Stater or was this one you
7 created for the possibility of having it on a tablet?

8 A. It was purely an experiment.

9 Q. So is this a photograph of the 1994 tablet
10 you brought with you?

11 A. It is a -- a photograph of the tablet but
12 with a different page in place.

13 Q. Now, if you take out the 1994 prototype
14 that you brought with you --

15 A. Uh-huh. Uh-huh.

16 Q. -- and you compare it to the one that is
17 shown on page 238 --

18 A. Uh-huh. Uh-huh.

19 Q. -- the graphic in the lower left-hand
20 corner looks a little different. The photograph --

21 A. Where it says the tablet?

22 Q. -- says the tablet and the one you have
23 just says tablet.

24 A. Yeah, the -- in all of the handling of
25 this, the -- the "the" has been rubbed off. This was

1 rubdown type --

2 Q. Uh-huh.

3 A. -- and so that's been damaged over time.

4 Q. So originally all six prototypes when they
5 were created said the tablet --

6 A. Said the tablet. Uh-huh.

7 Q. -- in the lower left corner?

8 A. Right.

9 Q. Okay. And do you know if this is a
10 photograph of the prototype you have with you or a
11 different one?

12 A. It could be this one or the one I have at
13 home. The one I have at home does have the word "the"
14 still in place. I try to keep it in as pristine of
15 condition as possible.

16 Q. Do you know when this photograph would have
17 been taken?

18 A. It probably would have been taken in 1996.

19 Q. Okay. And by that point had the
20 Information Design Laboratories closed?

21 A. Yes. I was working as a professor at Kent
22 State University at the time.

23 Q. And you had access to two of the 1994
24 prototypes?

25 A. Yes. Right. Uh-huh.

1 Q. Okay.

2 A. It would have been in the fall of '96 that
3 this would have been taken because that's when I began
4 working for stars -- or for Kent State University
5 in -- in the fall of '96.

6 THE WITNESS: If you excuse me, I need to
7 use the restroom. Do you want to call it quits for
8 right now?

9 MS. TAYLOR: Yeah, why don't we stop for
10 lunch.

11 VIDEOGRAPHER: One moment, please. We're
12 going off the record at approximately 12:29 p.m.

13 (WHEREIN, a lunch recess was taken from
14 12:29 p.m. to 2:37 p.m.)

15 VIDEOGRAPHER: We're back on the record on
16 tape three at approximately 2:37 p.m.

17 Q. (By Ms. Taylor) Good afternoon.

18 A. Good afternoon. Hope you had a good lunch.

19 Q. I did. Did you?

20 A. Yes. Very good.

21 Q. Good. I was going to keep moving along,
22 but I know you had forgotten something and you went
23 back to your house to get something.

24 A. Uh-huh.

25 Q. So why don't -- why don't you go ahead and

1 tell me what you remembered and what you went to get.

2 A. What part of that should I discuss?

3 MR. ZELLER: Well, yeah, I mean, that's
4 sort of compound, but what we -- he remembered some --
5 but I mean, first of all, you'd asked him about an
6 initial prototype that he had at home, so he got that.

7 MS. TAYLOR: Okay.

8 MR. ZELLER: Then there was some additional
9 mock-ups --

10 MS. TAYLOR: Okay.

11 MR. ZELLER: -- that he recalled --

12 MS. TAYLOR: Okay.

13 MR. ZELLER: -- now having. So I have
14 those with me.

15 MS. TAYLOR: So why don't you hand them to
16 him and then let's go through them one by one. Since
17 I don't know what's in the bag, I don't know what
18 questions to ask.

19 MR. ZELLER: Yeah. I mean, there -- there
20 are various things, so --

21 MS. TAYLOR: Yeah.

22 A. This is the other one that I kept just to
23 show you, you know, the -- the way it was done.

24 Q. (By Ms. Taylor) With the --

25 A. With the tablet on it.

1 Q. With the "the tablet," but otherwise it's
2 identical to this?

3 A. It's exactly the same. As you can see,
4 these are all identical.

5 Q. Can I see it?

6 A. The other one is showing more wear and
7 tear, but it's --

8 Q. That's all right. It's actually a little
9 bit different. This one has some dots, the one we
10 talked about this morning.

11 A. Yeah, that's actually the first time I've
12 noticed that myself.

13 Q. And this one has some lines across the top.

14 A. I don't know why that happened.

15 Q. Do you know the difference -- do you know
16 if there's any difference between --

17 A. Because they're all made at the same time,
18 which kind of strikes me as -- I -- I saw that, I
19 thought, well, that's different, but I -- I don't know
20 why.

21 Q. And do you know if the other -- there were
22 four others made, right?

23 A. Right. Uh-huh.

24 Q. Do you know if the other four had this
25 design, this design or potentially something else?

1 A. My recollection is that this first one was
2 the design that I originally approved, so I'm -- I'm
3 curious about that one myself, but I don't recall.

4 Q. Did you say originally approved?

5 A. I think this one -- the one I'm -- you're
6 holding.

7 Q. Uh-huh.

8 A. The other one may have been the proof --
9 the first one that he produced, and I may have
10 suggested a change in that before he made more copies.
11 They had a mold that they made these in, and -- and
12 so --

13 Q. So let's -- let's identify this one as the
14 one that says tablet on the front.

15 A. Uh-huh.

16 Q. And this one is the one that says the
17 tablet on the front.

18 A. Uh-huh. Okay.

19 Q. So until now we've been talking all
20 morning --

21 A. Uh-huh.

22 Q. -- about the one that just says tablet on
23 the front.

24 A. Right. Right.

25 Q. You're in agreement?

1 A. Uh-huh. Uh-huh. Yeah.

2 MR. ZELLER: And just so we have a clear
3 record on that, even the one that says tablet used to
4 say the tablet.

5 THE WITNESS: Right. It got scraped off.

6 MS. TAYLOR: That's correct. That's
7 correct.

8 MR. ZELLER: The "the" has rubbed off.

9 THE WITNESS: Uh-huh.

10 Q. (By Ms. Taylor) You had testified. But
11 for what we're looking at now just says tablet.

12 A. Uh-huh. Uh-huh.

13 Q. Okay. And this one says the tablet on it?

14 A. Right. Right.

15 Q. So you think -- did you say you thought the
16 one that says the tablet was the first? I'll hand
17 them to you so you can hold them.

18 A. I -- I -- I believe this may have been the
19 first one that came out. Some of the -- the curving
20 in here was probably because of just over the years
21 the heat and contraction of the -- of the plastic has
22 probably caused that. That was not intended.

23 Q. Uh-huh.

24 A. But this different carving up here, my
25 recollection is I think we changed it to -- to be

1 the -- the dotted approach so it wasn't quite so
2 obvious.

3 Q. Okay. So you changed it to look like the
4 one on the tablet that just says --

5 A. Right, that just says tablet.

6 Q. -- tablet?

7 A. All the other ones were -- were the simpler
8 version like this.

9 Q. Okay.

10 A. That was intended to be where a speaker
11 would be.

12 Q. Okay.

13 A. So ...

14 Q. Let me -- I know there's more that you'll
15 hand me.

16 A. Uh-huh.

17 MR. ZELLER: Uh-huh.

18 Q. (By Ms. Taylor) But let me first ask you,
19 is -- is there any other difference between the one
20 that says the tablet on the bottom and the one that
21 says tablet on the bottom?

22 A. There -- there shouldn't be any difference.
23 They're all based on the same molds and same concept.

24 Q. Okay. Now, if you turn the two of them
25 over --

1 A. Uh-huh.

2 Q. -- the -- there seems to -- the panel --

3 A. This one has a flat without this -- I
4 think -- this one was changed. This one is only held
5 in by the -- by the PCMCIA cards, and I think it was
6 the -- the -- the guy that was molding these had
7 thought we had -- had something that would have screws
8 on it. So there are -- there's -- that's another
9 difference that's there.

10 Q. Okay.

11 A. And there's also a notch on it. I don't
12 know why that is there, but that was --

13 Q. Can I see the notch?

14 A. This one comes apart easier too, I think.
15 So --

16 Q. Okay. And the notch here is on the top at
17 the back?

18 A. I have the feeling that was the first one
19 he showed us to tell us, you know, okay, is that what
20 you want, and I think we went back and made a few
21 modifications after that.

22 Q. All right. Okay.

23 A. But it's -- but it's basically all the
24 same.

25 Q. Perfect.

1 A. Uh-huh.

2 Q. And they seem to have slightly different
3 weights to them.

4 A. Yeah. And actually, that was what we --
5 what we did is actually we had different weights to
6 test. I think this one is probably a little over two
7 pounds. This one is just a little under two pounds.
8 And the idea was that we would hand these to people in
9 focus group sessions and ask them, okay, what felt
10 comfortable to them and then let them pick one without
11 telling them which ones were heavier or not.

12 Q. Uh-huh.

13 A. And from that we determined that -- that if
14 people are going to do reading on these devices, that
15 we had to have a device that was less than two pounds.
16 And that's what we had told Toshiba, which they --
17 this actually ended up being about two and a quarter
18 pounds.

19 Q. And --

20 A. And Toshiba argued -- the Toshiba device --

21 Q. The -- the one we talked about this
22 morning?

23 A. Right, was a little heavier than that, and
24 they told us -- and they couldn't make it as thin as I
25 wanted it to be because they said at that time the

1 electronics wouldn't allow that. So that was as thin
2 and lightweight as they could make it in -- whenever
3 they made this one, probably 1996.

4 Q. And during what period of time did you do
5 the focus groups on the -- yours?

6 A. These were all done in '94.

7 Q. So in conjunction with making these
8 prototypes?

9 A. After we made these, then we did the focus
10 groups and we did the -- the video.

11 Q. And that's the video we saw this morning?

12 A. That's the video you're going to see now.

13 Q. That's the next video?

14 A. Uh-huh.

15 Q. Got you.

16 MR. ZELLER: The long one.

17 Q. (By Ms. Taylor) The longer one?

18 A. Uh-huh.

19 Q. How many focus groups did you do?

20 A. Oh, I don't recall for sure. Probably
21 three or four.

22 Q. And what were you trying to find out in
23 those focus groups?

24 A. We were interested in -- in weight and
25 thickness, and just get a sense of -- of how people

1 would hold these --

2 Q. Uh-huh.

3 A. -- watching people use them, get kind --
4 the questions from them about what they thought about
5 when they saw this, what they expected would happen if
6 they touched something, and the -- the comfort they
7 would provide.

8 Q. Do you have any of the materials from those
9 focus groups?

10 A. No. We don't have any of that. That
11 probably was -- that stayed at the lab.

12 Q. All right. Now, I know you picked up other
13 things --

14 A. Uh-huh. Uh-huh.

15 Q. -- over our lunch break.

16 A. What we -- I had forgotten to mention is
17 that we had done some research when I was at Kent
18 State University -- I was at Kent State University
19 from the fall of '96 through 2004. And one of the
20 early research projects we did was --

21 Q. Wait. From the fall of '94 --

22 A. To 2004.

23 Q. -- to 2004? Oh, okay. Eight years.

24 A. Then I came here at that point.

25 Q. Okay. I missed that. Yes.

1 A. So the -- the purpose of the research that
2 we did at Kent State beginning -- if I remember
3 correctly, probably in beginning of 1997 was to get a
4 sense of people's expectations about reading on a
5 device like this or how they would use a device,
6 whether it be more likely to hold it in a portrait
7 orientation or a landscape orientation.

8 So we actually published a -- a academic
9 paper on this based on the research that we did. And
10 so the research was done a couple of different ways.
11 One was done at a -- the major shopping mall in Akron,
12 Ohio. And we had more than 200 people participate in
13 that survey.

14 And what we did is that we created these
15 Plexiglas, very simple things that had round corners
16 and a rectangle, and we put it on a stand that -- as
17 people came through that we could rotate left and
18 right so we didn't bias people on which way it might
19 appear.

20 And we would ask people questions like, you
21 know, if you were going to read a newspaper on this,
22 how would you expect to hold it, you know, this way or
23 this way.

24 Q. Uh-huh.

25 A. And if it was a book, how would you expect

1 to hold it. If it was a magazine, how would you
2 expect to hold it and so on. And so we gathered that
3 information. After they saw these, which were just
4 very simple ones that we made up --

5 Q. Uh-huh.

6 A. -- the -- then we -- we show them -- we
7 made up some other Plexiglas ones that we'll show you
8 in a little bit that actually had pages in them,
9 and -- in landscape and portrait so that we would say,
10 okay, here's what we recorded that you said you
11 preferred. And as I -- as I mentioned to both Mikes
12 is that --

13 MR. ZELLER: Well, you shouldn't --

14 THE WITNESS: Not even that.

15 MR. ZELLER: -- describe the substance of
16 our conversations.

17 THE WITNESS: Okay. Won't do that. But at
18 any rate --

19 Q. (By Ms. Taylor) You can tell me the exact
20 same thing you told them, just don't tell me that you
21 told them.

22 A. Okay.

23 Q. That's the distinction. So tell me about
24 your experiment without referring to them.

25 A. Well, the experiment was -- was designed

1 really to better understand how people would likely
2 use a tablet in the future, and that's why we created
3 this blank. We didn't want to bias people with
4 expectations.

5 Q. Uh-huh.

6 A. And people would ask us things like would
7 it be electronic. And one of the things that was
8 interesting out of that was that when we told them it
9 was electronic, people who didn't use computers very
10 much would often say, well, I guess it must be -- must
11 have to be landscape because the only thing they had
12 seen had been TVs and monitors and on the computers
13 and so they assumed that.

14 After we showed them pages that were in
15 landscape and portrait and how it would look, quite a
16 few of the people would change their opinion and say,
17 no, I actually -- if it was a newspaper, I prefer it
18 to be in landscape.

19 Books, it was kind of interesting. People
20 would say landscape probably because they were
21 thinking of two facing pages. But when they saw how
22 it looked, they would often come back to the portrait.

23 So that was -- we were keeping track of
24 that. We were also correlating that information
25 against their computer usage and reading books and

1 newspapers and so on. And from that data we -- we
2 then published an academic paper.

3 I was working with other professors at the
4 university at that time who were on that paper. We
5 have -- we -- we have a copy of that paper as well.
6 The -- so that was -- that was all done with just
7 simple rectangles and round corners.

8 Q. Do you have the ones where there was also
9 print on it?

10 A. We do.

11 Q. Is the stack in front of you, are those all
12 blank?

13 A. Oh, these are just extra ones. The same
14 thing. This --

15 Q. These are the blank ones --

16 A. We would have some of --

17 Q. -- and then these are the ones --

18 A. -- the blank ones. I -- what I did is I
19 made more of these to take out to universities where I
20 was actually doing continuing studies on that, and I
21 continued to do that while I was here at University of
22 Missouri to get feedback on how people responded.

23 We never -- I didn't do a paper for the
24 University of Missouri on this. We gathered
25 information, and that was discussed among members of

1 the Digital Publishing Alliance -- I'm probably
2 speaking too fast, aren't I?

3 The -- we formed the Digital Publishing
4 Alliance in 2006 with New York Times and Washington
5 Post and others, and so I shared information with them
6 about what we knew at that point in time.

7 And we were talking about e-readers mostly
8 at that point, but anticipating tablets at some point
9 in the future that would not be tablet PCs, but would
10 be something that would be more of an appliance rather
11 than a -- than a -- a personal computer.

12 Q. Okay. So I see Mr. Zeller has the next
13 item out of the bag.

14 A. Yeah.

15 MR. ZELLER: Do you want them together or
16 separately?

17 MS. TAYLOR: Might as well give them both
18 together.

19 MR. ZELLER: Okay.

20 A. Okay. And the reason for these, we -- we
21 had this done in a -- in a shop, and this too is one
22 of those ones where we -- we -- we told the person in
23 the shop that we really wanted a flat surface all the
24 way across. They cut them out this way --

25 Q. (By Ms. Taylor) When you say they cut them

1 out --

2 A. -- so we could put in the pages basically.
3 These -- these are actually made up of -- of two
4 layers of Plexiglas. And what we were trying to do is
5 so we could put pages in, but the assumption all along
6 is this -- this would be a flat surface, but ...

7 Q. Okay. And so what did you do --

8 A. So this is -- this shows --

9 (Court reporter interruption.)

10 Q. (By Ms. Taylor) Let me ask the question.

11 A. Okay.

12 Q. What did you do with these two that have
13 print in them?

14 A. Okay. After they had seen the blank
15 rectangles, then we would take them to another area
16 that they hadn't seen and we -- we had probably I
17 think six or -- of these with newspapers that we had
18 made up showing landscape and portrait, books in
19 landscape and portrait I think and magazine pages in
20 landscape and portrait.

21 And then we asked them the same question
22 again, you know, what would be your preference. Would
23 you prefer to read a newspaper this way or this way.
24 And then we recorded their information.

25 Q. And this way would be hori --

1 A. Portrait or landscape.

2 Q. That's the word, portrait and landscape.

3 A. Uh-huh. Uh-huh. And the -- and then we
4 found -- then after we did all that, then we gathered
5 information from them that -- about, you know, books
6 they read, newspaper subscriptions, using a computer,
7 using the Internet, how much time they spend with it
8 so we could correlate that information against the
9 information that they gave us about what they
10 preferred.

11 Q. And then did I hear you say that you
12 published a paper on that?

13 A. Yes. We published a paper on that in 1999.

14 Q. And did you bring that paper too, did I
15 hear?

16 A. We did. Now, that one did not show any of
17 the images unfortunately. It shows just a typical
18 academic paper. It -- it's -- it's run through a --

19 Q. It's a little dry maybe?

20 A. What?

21 Q. A little dry.

22 A. Yes, it would be called running through a
23 dull-a-tron.

24 Q. Okay. You'll have to spell that.

25 A. A dull-a-tron, just dull-a-tron.

1 MS. TAYLOR: All right. Let's go ahead and
2 we'll mark the paper as Exhibit 248.

3 MR. ZELLER: I have an extra one too.

4 MS. TAYLOR: Thank you.

5 (WHEREIN, Exhibit 248, Portrait vs.
6 Landscape article, was marked for identification by
7 the Court Reporter.)

8 Q. (By Ms. Taylor) All right. Okay. So if
9 you can tell me what 248 is.

10 A. So the -- this paper -- three other
11 professors participating in this research project, and
12 their names are listed on it. The -- the title of the
13 paper was "Portrait vs. Landscape: Potential users'
14 preference for screen orientation."

15 It appeared in the Newspaper Research
16 Journal, Volume 20, Number 4, the fall of two thous --
17 or of 1999. That was the results of our research that
18 was on -- in the -- in the shopping mall.

19 So we also did some focus groups, but the
20 focus groups were to help us in planning or strategy
21 for the research that we did in the shopping mall.

22 Q. Was this paper or the results of the
23 research printed anywhere other than in the
24 Newspaper --

25 A. No, only --

1 Q. -- Research Journal?

2 A. -- in an academic journal. Uh-huh.

3 Q. Only in this one journal?

4 A. Right. There were -- I -- I know that
5 there were several articles that appeared in -- in
6 newspaper-type publications about our research. It
7 was not a paper -- I didn't write the paper.

8 It was -- it was, you know, just
9 acknowledging that we had done this research and the
10 result and basically giving a summary of our results
11 that -- that we argued that portrait orientation was
12 going to be an important orientation for tablets in
13 the future and that whether we influenced it or not, I
14 don't know, but if you recall, all of the e-readers
15 that came out from 1988 -- 1998 on with the SoftBook
16 and Rocket eBook, all of those were portrait oriented.

17 And the Kindle and the -- and the Nook and
18 Sony e-readers, all of the e-readers adopted a
19 portrait orientation for their displays. And at times
20 I was contacted by people from different comp -- not
21 from Amazon -- that -- about the preference and about
22 this article. So it had gotten widely circulated.

23 Q. At the beginning of that last answer you
24 said that you knew there was several articles about
25 our research --

1 A. Uh-huh.

2 Q. -- and then you wrote -- and then you said
3 I did not write the paper. Do you mean you didn't
4 write --

5 A. Right. No, I didn't write the articles
6 that appeared in the publications.

7 Q. I want to make sure of that because --

8 A. Right.

9 Q. -- you did write the paper that's --

10 A. This was --

11 Q. -- Exhibit 248?

12 A. I was one of the authors of this paper.

13 Q. You have to wait just a minute so I can
14 finish because I can tell you Bill is having a hard
15 time.

16 A. I -- I apologize.

17 Q. All right.

18 A. One of my flaws.

19 Q. So who -- who created these -- what -- what
20 do you call these?

21 A. At the time I was calling them flat panels
22 or tablets.

23 Q. Okay. So this -- can we -- I want to
24 distinguish it from --

25 A. Uh-huh. Right.

1 with students as well.

2 Q. And what's the -- is that research also
3 related to how -- to the same topic as is published --

4 A. Same topic --

5 Q. -- in Exhibit 248?

6 A. -- portrait versus landscape.

7 Q. You have to slow down some.

8 A. I'm sorry.

9 Q. Just a little bit. But it's -- it's on the
10 same topic?

11 A. Yes.

12 Q. Okay. Is there anything else in the bag I
13 should ask about or anything else in the bag?

14 A. Rabbit. Is a rabbit in there too?

15 MR. ZELLER: No rabbit. That looks like
16 that's it.

17 Q. (By Ms. Taylor) That's it?

18 A. That's it.

19 Q. All right. So I realize I failed to ask
20 you about your educational background.

21 A. Okay.

22 Q. And I notice that you went to University of
23 Oregon.

24 A. Uh-huh. Uh-huh. Yes.

25 Q. Did you get a degree from --

1 A. No.

2 Q. No?

3 A. Actually, it's -- it's kind of interesting.
4 No, I -- I developed chronic ulcerative colitis and
5 had to drop out before I got my degree. And then I
6 ended up getting a job in Tokyo and going off to Tokyo
7 for several years and then traveling around the world
8 and working for other newspapers and --

9 But in 1997 the -- or 1996 actually, the --
10 Kent State University invited me to become a
11 professional in residence at the university, and I
12 decided at that point to see if I could get my
13 master's degree but I hadn't had my bachelor's degree
14 yet, so they contacted University of Oregon.

15 University of Oregon looked at -- and said
16 we'll -- we'll grant an honorary degree to Mr. Fidler
17 for all of his accomplishments. And so then I earned
18 my -- I actually earned my master's degree at Kent
19 State. I didn't get it given to me. And so in 1999 I
20 graduated with master's degree from Kent State
21 University.

22 I'd also attended -- Knight-Ridder had made
23 arrangements at Harvard Business School to have a
24 number of the executives go through a program there
25 that involved several months of -- of training and

1 working with professors there, so that's when I
2 enlisted there from I think 1994 I guess it was. So
3 even though I didn't graduate from the University of
4 Oregon, I was inducted into the University of Oregon
5 Hall of Achievement.

6 Q. When you were at University of Oregon, what
7 were you studying?

8 A. Started out in astronomy to be an
9 astrophysicist and then -- then I went from that to
10 science writing and then to journalism and -- and then
11 left to travel around the world, became an art
12 director, magazine editor, all sorts of other things.

13 Q. I think you said they gave you an honorary
14 degree in the end, did you say?

15 A. Yeah. Well, it was -- it was -- what
16 they -- what they did was say, okay, now we'll waive
17 that requirement and say, okay, now we'll -- we'll
18 consider that you actually graduated.

19 But it wasn't like, you know, any formal --
20 it was just -- it was for the purposes of being able
21 to get a master's degree. So they said, no, we'll --
22 we'll waive that and we'll consider that it's a --
23 that he graduated.

24 Q. And did that happen in a particular field,
25 like -- well, not astronomy.

1 A. It was journalism.

2 Q. In journalism.

3 A. It was the -- the school of journalism
4 that -- that waived it basically and said, okay, we'll
5 accept Mr. Fidler's -- as a graduate even though I
6 didn't have a degree from them, so ...

7 Q. So along -- along --

8 A. I was a college dropout in the sixties
9 basically like a lot of other people.

10 Q. I was going to say, I think you had a lot
11 of company.

12 A. Bill Gates, Steve Jobs. Same thing.

13 Q. Yeah. Yeah. There's a lot of company out
14 there. Did you take any design classes?

15 A. No, although I taught information design at
16 Kent State University.

17 Q. What is information design?

18 A. Long story. Think of information
19 architecture as building the building. Information
20 design is more like the interior designer working
21 within the structures that have been established. And
22 so it's designing the organization of elements. It's
23 understanding typography, presentation, all that.

24 Q. So is this like designing the organization,
25 the elements within -- within --

1 A. Within an information space.

2 Q. And is that like newspapers or websites or
3 whatever?

4 A. Could be any of those things, uh-huh.

5 Q. And are you being paid in connection with
6 your testimony today?

7 MR. ZELLER: I'll object to the form. You
8 can ask him about -- he's being paid for his time.
9 The way you phrased it about his testimony is kind of
10 odd and objectionable.

11 THE WITNESS: That's not objection --
12 objection?

13 MR. ZELLER: I'm sorry?

14 THE WITNESS: I can say yes or no?

15 MR. ZELLER: No. I'm saying something
16 different. I'm just objecting to the notion you're
17 being paid for your testimony as opposed to your time.

18 THE WITNESS: Uh-huh. Oh, okay.

19 MR. ZELLER: I'm just objecting to the form
20 of the question.

21 THE WITNESS: Oh, okay.

22 Q. (By Ms. Taylor) Are you being compensated
23 in connection with your deposition?

24 A. For my time.

25 Q. And how much are you being paid per hour?

1 Q. (By Ms. Taylor) All right. So what we
2 just watched was labeled Exhibit V to your
3 declaration -- I'm sorry, Exhibit L to your
4 declaration. If you want to confirm that, you can.
5 Somewhere in here, paragraph fourteen in your
6 declaration says what Exhibit L is. So if you look
7 at --

8 A. What -- what was the exhibit number?

9 Q. L.

10 A. L?

11 Q. There's nothing behind L.

12 A. Oh, okay. Uh-huh.

13 Q. L is blank.

14 A. Right.

15 Q. So what you have to do is look at paragraph
16 fourteen of the actual declaration --

17 A. Uh-huh.

18 Q. -- which is on page four of the document
19 from the front. Yeah, I'll take this one. We're done
20 with the article. Let me stick it over here. Page
21 four, paragraph fourteen.

22 A. Uh-huh.

23 Q. So can you confirm that the video that we
24 just watched is the video that's described in
25 paragraph --

1 A. Thirteen and fourteen.

2 Q. I think fourteen talks about the video.

3 A. Okay.

4 Q. And thirteen talks about --

5 A. Uh-huh.

6 Q. -- the other exhibits.

7 A. That's correct.

8 Q. Okay. So is that the video we just
9 watched?

10 A. Correct.

11 Q. All right. Could you tell me what the
12 purpose was of creating that video?

13 A. To make technology companies and media
14 companies more aware of the potential of the tablet
15 for newspapers in the future. That was our role at
16 the Information Design Lab was to look five, ten,
17 fifteen, twenty years into the future and anticipate
18 what newspapers might be like.

19 And so this video that we produced with
20 approval from Knight-Ridder executives was to help
21 people visualize what might happen in that period of
22 time.

23 Q. What was the relationship between the
24 Information Design Lab and Knight-Ridder?

25 A. And who?

1 Q. The information -- IDL, the Information
2 Design Lab.

3 A. Oh. The Information Design Lab was
4 Knight-Ridder's information design laboratory.

5 Q. So was it a subsidiary?

6 A. No. It was -- it was set up as what we
7 would call a skunk works, a place for -- it was a
8 laboratory for working on -- on new technologies. I
9 reported directly to the chairman of Knight-Ridder at
10 the time, Jim Batten.

11 And our mandate was, you know, we had a
12 budget and setup to -- we were doing early development
13 work with the web, with Netscape, and -- and we were
14 doing work with other companies as well, developing
15 knowledge bases and so on, as well as the -- as the
16 tablet.

17 Q. And who made the video that we just
18 watched?

19 A. We hired a videographer, who was
20 recommended to us in -- from Boulder, and I don't
21 recall his name.

22 Q. Who --

23 A. Unfortunately even on the -- on the tapes
24 he doesn't have his name on the tapes.

25 Q. Who decided what would go in the video?

1 A. One of my assistants in the lab and I
2 worked on the script, and she was the one who
3 interviewed the -- the actor or the actress and the
4 other -- and the couple that we had there, and -- and
5 then we coached them on what to say and how to handle
6 the tablet.

7 Then the videographer was the one who
8 actually did the splicing in of the images on the
9 pages. And we created the page -- we had created all
10 the pages in the lab, ones that actually -- most of
11 those I had created myself.

12 Q. I'm going to come back to that in a second.

13 A. Uh-huh.

14 Q. First can you tell me who the narrator was?

15 A. The narrator?

16 Q. Uh-huh.

17 A. Again, we -- we hired someone to -- because
18 of their voice to -- to do that, and I don't recall
19 who that was.

20 Q. Okay. So -- so going back to the actual
21 prototype that's shown in the video --

22 A. Uh-huh.

23 Q. -- can you tell me mechanically how you
24 made it appear as if it was --

25 A. Functioning.

1 Q. Functioning, yes.

2 A. Uh-huh. Just the tricks of videography,
3 being able to splice in the images that we had
4 produced for the videographer. So as I said, we had
5 multiple tablets.

6 We would have the pages that you saw there,
7 and he would -- I don't know all the details of how
8 they did it back then because they didn't have all the
9 tools that we have today.

10 Q. Uh-huh.

11 A. But managed to be able to -- to make it
12 look as real as possible. So the -- the videographer
13 is the expert. I was not the expert in that.

14 Q. So would there be two different tablets
15 with two different pages that were used and that was
16 spliced or did you change the pages on one tablet?

17 A. To save time, we would often just -- we
18 would have all the tablets loaded with different pages
19 and he would swap out a tablet, and then when he
20 needed more pages, we would replace pages on tablets
21 that he had.

22 Q. Okay. And how did you replace the pages in
23 the tablets?

24 A. By unscrewing the back and -- or removing
25 the back and putting new pages in place.

1 Q. Okay. In some of the screens it looked
2 like somebody was touching it with a stylus --

3 A. Uh-huh.

4 Q. -- and then slowly the page would start
5 turning.

6 A. Uh-huh. Uh-huh.

7 Q. Can you tell me how that was done?

8 A. I don't know how he did it. Didn't ask
9 him.

10 Q. But it was not -- it was nonfunctioning?

11 A. It was nonfunctioning. Everything was
12 nonfunctioning. Everything were all the tricks of
13 videography.

14 Q. Okay.

15 A. We had created the graphics that are
16 interactive. We created those interactive graphics on
17 a Macintosh computer. We had Macintosh computers in
18 our lab.

19 Q. When you say the graphics that were
20 interactive, what do you mean?

21 A. As you saw, there were some interactive
22 graphics where, you know, they were animated. Those
23 were all created by me on a Macintosh computer and he
24 was able to -- to somehow photograph those and then be
25 able to splice those into the video.

1 Q. And those were graphics that were displayed
2 in one of the tablets in the video?

3 A. On the video, uh-huh. Not on a -- on a
4 tablet. That was all done by the videographer.

5 Q. But it -- it looks as though -- though it
6 was displayed on a tablet.

7 A. Yes, uh-huh.

8 Q. So would that be one of the ones where
9 somebody was hitting it and then the screen kind of --

10 A. Right. Everything --

11 Q. -- scrolled?

12 A. -- that was functioning there functioned on
13 a Macintosh computer. And we were using portrait
14 monitors, and so he could actually photograph from the
15 monitor, but then splice that into -- or put it
16 somehow into the whole image on the -- on the device.
17 He was very talented.

18 Q. Have you ever heard of someone named Itay
19 Sherman?

20 A. Who?

21 Q. Itay Sherman.

22 A. Sherman? The name doesn't sound familiar.

23 Q. First name I-T-A-Y.

24 A. I-T-A-Y. No.

25 Q. If the name doesn't sound familiar, can I

1 assume you haven't spoken to him recently?

2 A. Sherman? Uh-uh. Somebody I've spoken to
3 recently?

4 Q. I'm asking you to confirm you have not
5 spoken to him recently.

6 A. I certainly don't recall speaking to
7 anybody by that name. You have to understand I do get
8 lots of phone calls and lots of e-mail from people who
9 contact me about lots of different things relating to
10 the future of newspapers and tablets and e-readers and
11 all of that. So you know, I get, you know, dozens of
12 e-mails every day from people.

13 Q. To clarify, has Mr. Sherman contacted you
14 about this case?

15 A. About this case?

16 Q. Yes.

17 A. No.

18 Q. Okay. Let's look at -- let's look at
19 paragraph ten of your declaration, paragraph ten,
20 Exhibit 245.

21 A. Paragraph ten?

22 Q. Yes.

23 A. Okay.

24 Q. Okay. Can you tell me where the
25 Knight-Ridder's Information Design Lab was located in

1 Boulder, Colorado?

2 A. On Walnut Street, and you see it in the
3 photo in the -- in the video. Don't remember which
4 two streets it was between. Walnut Brewery was on the
5 opposite side of the street from us.

6 Q. Across the street from the Walnut Brewery?

7 A. The Walnut Brewery.

8 Q. What -- what -- was it in a -- a office
9 park?

10 A. It was -- it was an office building,
11 probably three stories, two or three stories. It had
12 a parking garage built in it.

13 Q. When you say Information Design Lab --

14 A. Uh-huh.

15 Q. -- were you building things in the lab?

16 A. We were not building any hardware. It was
17 all software. So our focus was on developing formats
18 for newspapers that would fit to a magazine size
19 display, working on how designers would work with the
20 technology to be able to produce a digital edition of
21 a newspaper.

22 We -- and also we were working on websites
23 at the time, so we had early Mosaic and Netscape
24 software to work with. Working with a relational
25 database.

1 We actually had a working demonstration of
2 the electronic newspaper running in a -- in a database
3 environment on Macintosh computer, and that actually
4 -- I began building that while I was at Columbia
5 University and then at the laboratory continued to
6 work on that.

7 Q. I don't know what a working demonstration
8 of the electronic newspaper running in a database
9 environment means.

10 A. Okay.

11 Q. Can you tell me?

12 A. We were using database software on a
13 Macintosh computer, or I did, where I could create the
14 pages and then be able to link them. We didn't have
15 the abilities that we have today of doing hyperlinks
16 the way we can do today. But we could simulate all of
17 that and so we could actually create a -- a
18 demonstration of how a newspaper would actually appear
19 on the screen.

20 Q. So you -- could you create a simulation
21 like what we saw in the video that we just watched?

22 A. On a -- on a computer, yes, uh-huh.

23 Q. What other companies were located in that
24 building in Boulder, Colorado?

25 A. Apple had its media lab adjacent to our

1 lab. They opened the lab shortly after we opened our
2 lab. The -- Paramount opened a lab on the opposite
3 side of our office. So we had Paramount, Apple. And
4 US West had a -- a small office there where the people
5 that were working with us on communications were
6 located.

7 Q. Was this all on one floor?

8 A. All on the same floor. US West, I'm not
9 sure if they were on the same floor or not. I think
10 they were on another floor.

11 Q. What's Paramount?

12 A. Paramount Motion Pictures. They were
13 looking at how to do entertainment and videos and very
14 interested in the tablet for being able to distribute
15 videos and multimedia.

16 Q. In your -- or what was -- you said it was
17 an Apple Media Lab; is that correct?

18 A. It was the Apple Media Lab. They had a
19 couple people who had been locally hired that I've
20 mentioned, Dennis Dube.

21 Q. Could you spell that?

22 A. D-U-B-E, the last name. Dennis is first
23 name. Joe Pezzilo I think is how it was --
24 P-E-Z-Z-I-L-O I think is the spelling. Yeah, I'm not
25 sure about the spelling, but those are the two names I

1 remember.

2 There were -- there were at least two other
3 people that were in the lab on a fairly regular basis,
4 but -- and we -- at that point we were working with
5 them on the development of -- of newspaper content for
6 the Apple Newton, and it was just as the Apple Newton
7 was being developed and they were getting ready to
8 launch the Apple Newton, '92, '93.

9 Q. Is that when it launched?

10 A. '93 I think is when it -- when it launched.

11 Q. So you said a couple -- you used the phrase
12 a couple of local hires?

13 A. Well, Dennis and -- and Joe both lived in
14 Boulder and were hired by Apple.

15 Q. Uh-huh.

16 A. And they had a -- a couple other people. I
17 don't know if they were local hires or they were hired
18 from Apple. You know, we weren't really involved in
19 their staff situation. But they would come to our lab
20 and meet with us occasionally. We would go to their
21 lab and talk to them about the Apple Newton. But they
22 were right adjacent to our lab.

23 Q. Do you know if they were working on
24 anything else other than newspaper content for the
25 Apple Newton?

1 A. Well, they were working on content for the
2 Newton, but to my knowledge they were most interested
3 in getting news content for the Newton. I think that
4 was their mandate from Apple.

5 Q. Do you know why they were doing this in
6 Boulder, Colorado?

7 A. Well, they opened the lab after we opened
8 our lab, and I think it was, you know, because we were
9 there. They opened their lab to work with us. There
10 was no other reason for them to be in that location.

11 Q. Did anyone tell you that's why they opened
12 their lab?

13 A. I suspect at some point in the conversation
14 they mentioned that the -- well, in fact, I knew when
15 they -- when they opened the lab that they were
16 opening it because we were there and they wanted to
17 work with Knight-Ridder on developing content for the
18 Newton. So yes, they did -- they did tell us that it
19 was intentional.

20 Q. Can you -- do you remember any -- what
21 period of time were you working with the folks at
22 Apple Media Lab to develop the content?

23 A. It would have been probably beginning in --
24 I would suspect in 1993. We opened our lab in August,
25 September of -- of '92, and wasn't very long after

1 that that they opened their lab adjacent to us. And
2 Paramount opened its lab also in '93.

3 Q. Do you know how long the Apple Lab stayed
4 open?

5 A. I think they shut down shortly after
6 Knight-Ridder shut down our lab, that all of -- all of
7 the people who had been working with us in that
8 building shut down their laboratories soon after we
9 left.

10 Q. Other than discussing content for the
11 Newton with them --

12 A. Uh-huh.

13 Q. -- do you remember any other discussions
14 you had with them?

15 MR. ZELLER: The question --

16 A. Well, we --

17 MR. ZELLER: The question is vague at this
18 point --

19 THE WITNESS: Uh-huh.

20 MR. ZELLER: -- as to -- he's already
21 testified about some discussions he had with -- with
22 Apple -- Apple people. So I think the question is
23 vague and confusing at this point.

24 THE WITNESS: Uh-huh.

25 Q. (By Ms. Taylor) Go ahead.

1 A. So they visited our lab quite often. We
2 had lunches together. They were intrigued by my
3 vision of the tablet, and I may be mistaken, but I'm
4 fairly confident that Dennis Dube who was heading up
5 the lab was the person who actually recommended the
6 videographer that we ended up using because he was --
7 he had -- he was native to Boulder and had been there
8 for some time. As far as I know, he's still living in
9 Boulder.

10 So yes, we -- we had lots of discussions
11 about the validity of the -- my vision of the tablet
12 and when that might happen and -- and my view as that
13 the Newton was just the beginning of what was coming.

14 Q. When you say you had discussions about the
15 validity of my vision of the tablet --

16 A. Uh-huh.

17 Q. -- what do you mean when you say my vision
18 of the tablet?

19 A. Well, the idea of a magazine-sized tablet,
20 it would be lightweight, easy to carry, that
21 newspapers could use to do more visually rich
22 presentation.

23 With the Newton, all that we could do at
24 that time was just text, and it was small -- it was so
25 small that all you could really do was one column of

1 text.

2 Q. When you say just text, you mean just
3 display text; you don't mean send a text message?

4 A. No. It was just -- you know, it would
5 display the stories on the -- on the screen.

6 Q. Life has evolved. Text has another meaning
7 now.

8 A. Uh-huh. Uh-huh. No, we also had Newton
9 poetry at that time when -- it was handwriting
10 recognition if you recall on the Newton. And so the
11 joke at the time was that the handwriting recognition,
12 whatever you wrote, it would -- it would create its
13 own poetry too. That all -- it was quite humorous.

14 Q. I think you used the phrase they were
15 intrigued by your vision of the tablet. What -- what
16 made you say that or what makes you think that?

17 A. Well, because I think Dennis came from a
18 newspaper background, was equally concerned about the
19 digital transformation of newspapers, and so was eager
20 to know as much as he could about what we were doing.

21 As I said earlier, we had no interest in
22 building hardware, and if -- if I was able to
23 stimulate Apple to move more quickly to build tablets,
24 I would have been very happy.

25 Q. Do you think you did?

1 A. I don't know. No way to know for sure.
2 Obviously the -- with the videos being widely
3 circulated and -- and as many conferences as I spoke
4 at and the fact that one of our members of our team
5 went to work for Apple after we shut down the lab, I
6 have to believe that people at Apple knew about the
7 work I was doing.

8 In all fairness, that was at the time when
9 Sculley was the CEO and Steve Jobs didn't return
10 until, what, 1997 I believe it was.

11 Q. After Knight-Ridder closed, have you had
12 any communications with anyone at Apple?

13 A. No. We've tried, but...

14 Q. When did you try?

15 A. Well, when I went to Kent State we tried to
16 see if Apple would be interested in helping fund our
17 research and development work, but were unsuccessful.
18 We had -- Adobe funded our research.

19 Q. Did you have anyone else fund it while you
20 were at Kent State?

21 A. I'm sorry?

22 Q. Did anyone else fund your research at Kent
23 State?

24 A. Los Angeles Times.

25 Q. Anyone else?

1 Q. And -- and if that was happening, that's
2 separate from what you're doing?

3 A. Yeah, absolutely.

4 Q. Okay. Other than what you've described
5 that may be happening --

6 A. Uh-huh.

7 Q. -- are you aware of any other possible
8 connections between Samsung and the Reynolds?

9 A. That's all I'm aware of.

10 Q. If you'll go to Exhibit H of your
11 declaration, it is the article with the picture of
12 you.

13 A. Uh-huh. Uh-huh.

14 Q. I think this is Forbes ASAP.

15 A. Uh-huh.

16 Q. Second page --

17 A. Uh-huh.

18 Q. -- first column --

19 A. Uh-huh.

20 Q. -- halfway down --

21 A. Uh-huh.

22 Q. -- just below where it says "Telecosm." On
23 the left side it says, "Down the hall is an Apple
24 Computer media center which is developing graphical
25 forms of AppleLink, the company's on-line network."

1 Do you see that.

2 A. Uh-huh.

3 MR. ZELLER: I'm sorry. We're on
4 Exhibit 8. What paragraph is that again?

5 A. Right. They're talking -- the Apple Media
6 Lab.

7 MR. ZELLER: Thank you.

8 Q. (By Ms. Taylor) Is that the media lab you
9 were describing earlier?

10 A. Yes, that's what I'm referring to. I think
11 George Gilder didn't fully understand it. And yes, he
12 was -- we were looking at ways to deliver content to
13 the Newtons. He doesn't mention the Newton, but that
14 was the -- that was our main focus at that time.

15 AppleLink I believe by that time -- I
16 worked with AppleLink and I had close relation with
17 Apple early on because I licensed the AppleLink
18 technology in 1994 to launch what I called Presslink
19 as a global intranet for the newspaper industry to
20 deliver graphics and photos.

21 So -- but I think by the time he wrote this
22 article, I think he was mistaken that AppleLink was --
23 had already been sold, and that was the basis for AOL
24 to be able to launch a similar system.

25 So I think what he was referring to here

1 is -- is that to provide a way to deliver content
2 on-line to the -- the Newton, which he doesn't
3 mention.

4 Q. I'll have to admit I'm a little bit
5 confused. Is it -- is -- is the potential error that
6 he's -- the timing, like AppleLink --

7 A. Uh-huh.

8 Q. -- had already been sold to some third
9 party by the time this article was written?

10 A. If my memory serves me correctly, AppleLink
11 had already been sold by that time.

12 Q. At some point when this Apple Computer
13 media center was in Boulder --

14 A. Uh-huh.

15 Q. -- do you know if it was working on what
16 he's described in this article?

17 A. I don't think he accurately described it.

18 Q. Okay.

19 A. And it may be that they did not want to
20 tell him what they were working on at that point, but
21 that's my personal speculation.

22 Q. The last -- we'll go to paragraph ten of
23 your declaration. Go to the front. Paragraph ten,
24 page four. By the way, tell me if you want to take a
25 break because you've been sitting there a long time

1 since we watched a video.

2 A. Paragraph ten?

3 Q. Paragraph ten.

4 A. Uh-huh.

5 Q. The last sentence, paragraphs ten says IDL
6 worked with Apple on news content --

7 A. Uh-huh.

8 Q. -- for Apple's Newton product --

9 A. Uh-huh.

10 Q. -- until IDL shut down in 1995.

11 A. Uh-huh.

12 Q. Can you tell me what that means?

13 A. That's what I had just said, that we -- our
14 involvement with them -- with Apple was specifically
15 about delivering news content to the Apple Newton
16 during -- from about 1993 to 1995.

17 Q. But what did you really do on a day-to-day
18 basis?

19 A. We were looking about -- at how we would
20 get the feeds of -- of news from newspapers --

21 Q. Uh-huh.

22 A. -- and to be able to deliver them to the
23 device and what the content might look like when it's
24 on the Apple Newton.

25 Q. And how were you talking about getting the

1 feeds to the device?

2 A. The -- again, remembering this is before or
3 just as the -- the web was developing, trying to
4 figure out the most efficient way to get it to them.
5 And as I recall -- again, it's a while -- that nothing
6 specific came out of that -- those discussions or we
7 didn't actually end up producing something that they
8 could use because even by the time we shut down in
9 1995, it was apparent that the Apple Newton was not
10 going to be a successful product. And I think 1996 is
11 when the Apple Lab finally shut down.

12 Q. The next sentence, which is the first
13 sentence in paragraph eleven --

14 A. Uh-huh.

15 Q. -- says during the time IDL and Apple
16 collaborated --

17 A. Uh-huh.

18 Q. -- Apple personnel were exposed to my
19 tablet ideas and prototypes.

20 A. Uh-huh.

21 Q. Do you see that sentence?

22 A. Yes, uh-huh.

23 Q. What -- what is -- what was that
24 collaboration?

25 A. We had a conference room in our lab where

1 we would meet and talk about -- we certainly talked
2 about the Newton, but we were talking about at what
3 point can we expect to see a tablet, and I would show
4 the prototypes that we had.

5 Again, we were not trying to keep our
6 tablet idea secret because we wanted companies to
7 build a tablet device. So I was probably certainly
8 encouraging them to pursue a larger magazine-sized
9 device for displaying newspaper content.

10 And we showed them some of our early ideas
11 for -- or our ideas for how news could be presented on
12 a tablet. When we produced our video, they saw our
13 video that we produced, the 1994 video.

14 Q. Exhibit L.

15 A. At -- at the -- what?

16 Q. Exhibit L.

17 A. Oh.

18 Q. That's the -- that's how we identified the
19 1994 video, Exhibit L.

20 A. Right. Right. 1994 video in our lab. And
21 so in collaboration -- that may be a bit strong, but
22 we -- you know, I would pick their brains for what
23 they knew and -- and what we might learn about how
24 tablets might evolve and how news might be presented
25 on those devices.

1 So it was a very congenial, relaxed -- we
2 would go to lunch together. We would have -- so there
3 was -- it was -- it was not a formal arrangement with
4 them.

5 Q. When you were working with them on the news
6 content --

7 A. Uh-huh.

8 Q. -- as referenced in the previous
9 paragraph --

10 A. Uh-huh.

11 Q. -- did you have a contract in place with
12 them?

13 A. There was no contract.

14 Q. Did one company pay the other company?

15 A. No. We received no money from Apple.

16 Q. Was --

17 A. And we -- and -- and they received no money
18 from us.

19 Q. Was -- was there a formal relationship
20 between the companies?

21 A. No. There was no -- there was no NDA
22 between us. At least -- let me correct that. No NDA
23 that I recall that we actually signed.

24 Q. So how did it come to be that you were
25 working with them on news content for the Apple's

1 Newton product?

2 A. Because that was -- my understanding was
3 that that was their main reason for existing in
4 Boulder, Colorado was to learn about how -- you have
5 to understand, the Newton was originally set up to be
6 a personal digital assistant.

7 And so its original focus was more on
8 maintaining your calendar, maintaining your phone
9 list, all the basic information, plus being able to
10 take notes and -- and have that translated into
11 machine-readable text.

12 At the time that they opened the lab in
13 Boulder, they were beginning to think about what kinds
14 of more dynamic information we could provide that
15 would make the Newton more valuable to people.

16 And so our discussions were more general
17 and exploring what the issues would be, what
18 newspapers would have to do if they wanted to
19 contribute content, much the same that later they had
20 to learn how to do -- to provide to e-readers.

21 Very similar situation. But to my
22 knowledge, we were not able to get any newspapers to
23 deliver content to them. We could simulate content to
24 them, but we actually did not have a newspaper working
25 with them.

1 We did attempt to work with The Daily
2 Camera, which is the local newspaper in Boulder,
3 Colorado which Knight-Ridder owned, and I do recall
4 meetings with Dennis Dube, Barrie Hartman, who is the
5 editor and later the publisher of the -- of the
6 newspaper and I would sit down and we would talk about
7 the future and how perhaps we could experiment with
8 content from the daily news -- or I mean the -- The
9 Daily Camera to simulate what we could do with the
10 Apple Newton.

11 At the same time, by the way, I was also
12 working -- or looking at the -- the GO Tablet that was
13 developed by GO Corporation and meeting with people
14 from GO and from Slate, a company that was based in
15 Arizona that was developing content for the GO Tablet,
16 which was in fact a letter-sized black and white
17 display.

18 And they launched that also in -- I think
19 they began it in 1992, but it was finally launched in
20 1993. So ...

21 Q. How did you first meet the people at the
22 Apple Computer Media Lab?

23 A. I honestly don't recall of how that
24 occurred, but I -- I remember meeting with Dennis
25 Dube, who headed the lab at that time, and -- when he

1 indicated he'd like to set up the Apple Media Lab
2 adjacent to our lab and collaborate with me.

3 Q. Was Dennis Dube -- is it a V or a B?

4 A. B, Dennis Dube.

5 Q. B, okay. Was Dennis Dube an employee of
6 Apple before the Apple Media Lab was set up as far as
7 you know?

8 A. I don't know.

9 Q. But you recall meeting with him before the
10 media lab was set up?

11 A. Right.

12 Q. And did he ask if -- if you would help them
13 with what they were planning to do?

14 MR. ZELLER: I think the question is vague.

15 A. I -- I don't recall exactly what he asked
16 me at that point.

17 Q. (By Ms. Taylor) You identified two
18 people --

19 A. Uh-huh.

20 Q. -- who worked at the Apple Media Lab.

21 A. Uh-huh.

22 Q. Mr. Dube and --

23 A. Joe Pezzilo.

24 Q. Pezzilo.

25 A. Uh-huh.

1 Q. Do you recall any other names as the day
2 has gone on?

3 A. Not at this point.

4 Q. Do you know how many more people there
5 were?

6 A. Only -- if memory serves me, I think there
7 were four people at the lab, but that's just my
8 memory. I have no specific information to corroborate
9 that.

10 Q. Did the collaboration that you had, that
11 you reference in paragraph eleven, go beyond working
12 with Apple and news content for Apple's Newton
13 product?

14 A. Apple what?

15 Q. Apple's Newton product.

16 MR. ZELLER: This is -- this is asked and
17 answered. It's also vague.

18 A. At that time the Apple Newton was the only
19 thing we were focused on.

20 MS. TAYLOR: Okay. I've been told we're
21 just about out of time, so let's take a break.

22 VIDEOGRAPHER: We're going off the record
23 at approximately 4:14 p.m.

24 (WHEREIN, a recess was taken.)

25 VIDEOGRAPHER: We're back on the record on

1 tape four at approximately 4:32 p.m.

2 Q. (By Ms. Taylor) Mr. Fidler, during this
3 time when you were working with Apple and news content
4 for Apple's Newton product --

5 A. Uh-huh.

6 Q. -- did you see a Newton?

7 A. I'm sorry?

8 Q. Did you see a Newton?

9 A. Oh, yes. We -- we owned several of them.

10 Q. What's a Newton look like?

11 A. I have one at my office. I think I -- I
12 showed you, but it was a Sharp version of the Newton
13 produced by Sharp. But we had the original Newtons
14 when they first came out. A small hand-held device
15 that fit in a large pocket, you know, more like the --
16 the small e-readers.

17 Q. When you say the small e-readers, can you
18 give me an example?

19 A. Well, it's -- I think the display size on
20 it was probably -- the size was probably equivalent to
21 the current Apple iPod Touch, maybe a little larger.

22 Q. Okay. In paragraph eleven you say that
23 IDL -- I'll wait until you find it.

24 A. Okay.

25 Q. You say IDL employed Dr. Curt Stevens as

1 its lead software engineer.

2 A. Uh-huh.

3 Q. Do you see that?

4 A. Yes.

5 Q. And -- and then you describe the prototype
6 software that he was working on.

7 A. Uh-huh.

8 Q. The -- the last sentence says that -- I'm
9 sorry. The last sentence says following IDL's
10 closure, Dr. Stevens moved to Cupertino and started
11 working for Apple. Do you see that sentence?

12 A. Yes. Uh-huh.

13 Q. Do you know when Dr. Stevens started
14 working for Apple?

15 A. I don't know the date that he started
16 working for Apple, but he was soon after leaving -- or
17 after the closing of the lab at the end of July of
18 1995.

19 Q. And how do you know he went to work for
20 Apple?

21 A. Went to visit him several times in
22 Cupertino.

23 Q. And when did you go to visit him?

24 A. I'm sorry?

25 Q. When did you go to visit him?

1 A. Oh, probably the following year at some
2 point. Not sure of the date. He had a young -- he
3 had a daughter shortly after that and met with him and
4 his wife and his daughter who had just been born, and
5 went to visit the -- in Cupertino I think I went to
6 the Infinite Loop building at some point, but
7 certainly not meeting with anyone there or seeing
8 anybody other than -- than Curt.

9 Q. And do you know what Dr. Stevens was doing
10 at Apple?

11 A. No. He would not tell me what he was
12 working on.

13 Q. Do you know if Dr. Stevens is still at
14 Apple?

15 A. I don't know.

16 Q. When is the last time you communicated with
17 Dr. Stevens?

18 A. Probably -- I don't think I've talked with
19 him since 2000. I think we had some e-mail
20 communications go back and forth, but again, it was --
21 it was all related to family and -- and unrelated to
22 his work.

23 And he was always very careful not to tell
24 me what he was actually doing, although he still I
25 think was a believer in the tablet and would

1 encourage -- when we had conversations, casual
2 conversation would encourage me to believe that it
3 would happen, so ...

4 Q. Do you know if he was working on a tablet
5 at Apple?

6 A. Don't know.

7 Q. Do you know if he was working on software
8 at Apple?

9 A. Don't know. I believe he was in the R&D
10 lab, but that's as far as I know.

11 Q. Was -- as far as you know, was the Newton
12 in existence --

13 A. Uh-huh.

14 Q. -- when the Apple Computer Media Lab moved
15 into the building in Boulder, Colorado?

16 A. What is the question? I'm sorry.

17 Q. Was the Newton already in existence?

18 A. They opened their lab I think before it
19 became a commercial product or right about the time
20 that it became a commercial product. I don't know for
21 sure. But we had an Apple Newton to work with soon
22 after they -- they were there, and it was a commercial
23 version of it. It was not a prototype.

24 Q. Did you ever see a prototype of the Newton?

25 A. No.

1 Q. Do you think the Newton product is in any
2 way based upon your tablet idea?

3 A. No. It was certainly developed entirely
4 independent of my tablet idea. It was -- it was a
5 personal digital assistant, intended as a pocket
6 device.

7 Q. This morning I asked you to whom you showed
8 the 1994 video.

9 A. Uh-huh.

10 Q. And you said some technology companies and
11 some media companies.

12 A. Uh-huh.

13 Q. Do you generally remember that we talked
14 about that?

15 A. Yes.

16 Q. Okay. Among the technology companies, you
17 identified Toshiba, Sony, and Apple.

18 A. Uh-huh.

19 Q. I know I asked you if there were any other
20 Japanese technology companies, but -- --

21 A. Uh-huh.

22 Q. -- let's open that up more broadly.

23 A. Uh-huh.

24 Q. Were there any other technology companies
25 to whom the 1994 video was shown that you can

1 A. Uh-huh.

2 Q. Were they exposed to any of the particular
3 prototypes that we have now stacked up on your right
4 side?

5 A. Are you talking about --

6 MR. ZELLER: Objection, asked and answered.

7 A. -- these?

8 Q. (By Ms. Taylor) Yes.

9 A. This all came after I left the
10 Knight-Ridder lab, so these -- you're talking about
11 the Plexiglas?

12 Q. Oh, no, I mean all of them. So let's set
13 those over here.

14 A. Okay. So the Plexiglas --

15 Q. This is later.

16 A. -- ones they did not see because this was
17 done when I was at Kent State University after I left
18 Knight-Ridder --

19 Q. Okay.

20 A. -- and -- and down here as well.

21 Q. Okay. So no Plexiglas. What about the
22 rest of what's in your stack?

23 A. Everyone in our lab and everyone at the
24 Apple Lab at that time would have seen this tablet.

25 Q. Which is the black --

1 A. The black --

2 Q. -- 1994 prototype?

3 A. Oh, I'm sorry. The black 1994 tablet. And
4 they would have seen the -- the white 1980s tablet.

5 Q. Okay.

6 A. As I said, none of the things that we were
7 discussing we were keeping secret.

8 Q. So in paragraph thirteen of your
9 declaration --

10 A. Uh-huh.

11 Q. -- it looks to me like you're talking about
12 the black 1994 prototypes that you brought with you
13 today; is that correct?

14 A. Uh-huh. Uh-huh. Uh-huh.

15 Q. Okay. So the last sentence in paragraph
16 thirteen says members of the Apple Lab viewed this
17 tablet shortly after its creation.

18 A. Uh-huh.

19 Q. Do you see that sentence?

20 A. Uh-huh. That's correct.

21 Q. So they viewed the black 1994 prototype
22 that you brought with you today?

23 A. Uh-huh. That's correct.

24 Q. Who are those members of the Apple Lab who
25 viewed it?

1 A. Well, as I said, I'm sure that Dennis
2 and -- and Joe were two of the people from the Apple
3 Media Lab who saw it. We often went over to the wall
4 street -- or the Walnut Brewery across the street to
5 have a beer and we often took the tablets with us to
6 just get a feel for what it would be like to carry a
7 tablet and use a tablet.

8 Q. When you say we often went across the
9 street to have a beer, who is we?

10 A. Other members of the IDL and Apple and
11 members of the -- the Apple Media Lab and Apple's --
12 and people from Paramount as well.

13 Q. Okay. Do you specifically remember anyone
14 from Apple who saw the 1994 prototype?

15 MR. ZELLER: This was just asked and
16 answered.

17 A. Well, I -- I -- that's what I just said.
18 That's what I -- I'm sure that -- I know that Dennis
19 and Joe both saw the prototype.

20 Q. (By Ms. Taylor) You know they both saw it?

21 A. Right. And my assumption is everyone else
22 at the lab also saw it, but I don't remember their
23 names and I don't remember the specific occurrences
24 where they met.

25 Q. Who -- has anyone come by your office this

1 marked for identification by the Court Reporter.)

2 Q. (By Ms. Taylor) Can you tell me what's in
3 Exhibit 262?

4 A. Looking at the top of the Toshiba PDV
5 prototype. This is for a connection to a computer and
6 on the right side is the -- a connection for
7 headphones.

8 Q. In between those two there's a small dark
9 rectangle. Do you see that?

10 A. Uh-huh. I see it.

11 Q. Do you know what that is?

12 A. I have no idea what it is. You know, I
13 emphasize this is an engineering model, and engineers
14 put lots of things into engineering models that don't
15 result in a final product.

16 Q. I'm going to hand you Exhibit 263.

17 (WHEREIN, Exhibit 263, Photograph, was
18 marked for identification by the Court Reporter.)

19 THE WITNESS: I thought we did this before.

20 MR. ZELLER: Yes, we have.

21 THE WITNESS: Okay.

22 Q. (By Ms. Taylor) Can you tell me what's in
23 Exhibit 263?

24 A. We're looking at the -- what would be the
25 front of the Toshiba tablet, looking at it from the

1 right side, and what we're seeing are the slots for
2 the memory cards.

3 Q. I'm going to hand to you what's being
4 marked as Exhibit 264.

5 (WHEREIN, Exhibit 264, Photograph, was
6 marked for identification by the Court Reporter.)

7 Q. (By Ms. Taylor) Can you tell me what
8 Exhibit 264 is?

9 A. Okay. What we're looking at is the top
10 of -- of the Toshiba tablet, and it's the back side of
11 the tablet.

12 Q. And it's facedown in this picture?

13 A. Facedown.

14 Q. I miscounted. I'm going to hand you 265.

15 (WHEREIN, Exhibit 265, Photograph, was
16 marked for identification by the Court Reporter.)

17 Q. (By Ms. Taylor) Can you tell me what 265
18 is?

19 A. Looking at the back of the Toshiba mock-up
20 tablet.

21 Q. Which way is the top in 265?

22 A. 265.

23 Q. Which way is the top?

24 A. I'm sorry?

25 Q. Which way is the top?

1 A. Oh, which way is the top. It would be at
2 the top of the image.

3 Q. I'm going to hand to you what's been marked
4 as Exhibit 266.

5 (WHEREIN, Exhibit 266, The Tablet Newspaper
6 Vision 1981-2010 presentation, was marked for
7 identification by the Court Reporter.)

8 Q. (By Ms. Taylor) Can you tell me what
9 Exhibit 266 is?

10 A. These are copies of slides that I produced
11 for a presentation that I gave in 2010 at the Poynter
12 Institute in St. Petersburg, Florida.

13 Q. What's the Poynter Institute?

14 A. It's a journalism institute. Similar to
15 RJI.

16 Q. Were you invited to speak at the Institute?

17 A. I'm sorry?

18 Q. Were you invited to speak at the Institute?

19 A. I was invited to speak about tablets. It
20 was right after the iPad was introduced.

21 Q. What month was it?

22 A. I don't recall at the moment. Probably
23 summer of 2010. Maybe early fall.

24 Q. Would that be on your CV?

25 A. Huh?

1 Q. I asked if it would be on your CV, but I
2 don't think your CV --

3 A. No. The one I gave was -- I haven't
4 updated it since 2007, so --

5 Q. Okay.

6 A. I've done a lot of speaking since then too.

7 Q. If you go to the first page.

8 A. Okay. After the title page?

9 Q. Yes.

10 A. All right.

11 Q. Can you tell me what's on the first page?
12 Actually, let me -- this is 1981. They're not
13 numbered, so --

14 A. But the dates will be.

15 Q. A good indication. So it's the first page
16 that says 1981 in the upper left-hand corner?

17 A. Uh-huh.

18 Q. Can you tell me what that is?

19 A. This displays the mock-ups that I created
20 for the APME article that was published in 1981, and
21 these are drawings, two-dimensional drawings that
22 suggest what I thought a tablet might be like in the
23 future after 2000 with a newspaper displayed on the
24 display. The tablet that I've drawn, it has a thin
25 border with round corners.

1 their website and can be downloaded today.

2 Q. What is the Global Journalist?

3 A. Global Journalist is a magazine that RJI
4 owned and was making available. They also have a
5 website, radio program. As of this year they have
6 stopped printing the magazine and we're now in
7 discussions about doing a digital-only magazine, but
8 it was circulated worldwide.

9 Q. Is RJI the Reynolds Journalism Institute?

10 A. That's correct. RJI is the initials that
11 we go by.

12 Q. On the left side --

13 A. Uh-huh.

14 Q. -- the cover of Global Journalist it looks
15 to me like it's something I saw on your office wall?

16 A. I'm sorry.

17 Q. It looks to me like there's something I saw
18 on your office wall. Is that one of the e-readers or
19 tablets we looked at?

20 A. Yes, it's the -- it's the iRex e-reader.
21 This was used to illustrate an article I wrote about
22 e-readers and newspapers.

23 Q. The next page of Exhibit 266 has a date of
24 2007.

25 A. Uh-huh.

1 A. It's relatively thin. The -- certainly not
2 more than a half-inch.

3 Q. All right. Next page, 2007 through 2010.

4 A. Continued to pursue the vision I had of --
5 of digital Newsbooks, and at that point I had formed
6 the Digital Publishing Alliance. We convinced -- or I
7 convinced a number of the newspapers, including the
8 New York Times, Washington Post to have us produce the
9 Newsbooks at RJI for free as part of their membership
10 in the Digital Publishing Alliance.

11 We established a store working with a --
12 another vendor where we sold Newsbooks to determine
13 what appeal they might have in the marketplace, and
14 based on what we -- what we learned determined that
15 there was a market for Newsbooks, and in fact
16 newspapers today are -- a number of newspapers are
17 doing Newsbooks today with Amazon and with other --
18 with other vendors and I think even with -- and I know
19 with -- with Apple with the iPad.

20 Q. All right. Can you tell me what is on the
21 final page, has a date of 2010?

22 A. That's showing me as a very happy camper
23 having just recently received my -- I received my iPad
24 on the first day it became available from a UPS driver
25 and anxiously waiting for it, and demonstrating it at

1 that point.

2 Q. What's behind the iPad that you're
3 holding --

4 A. Those are --

5 Q. -- in the picture?

6 A. -- e-readers and iRex devices.

7 Q. Is the item immediately behind your hand a
8 prototype?

9 A. Behind my hand is the iRex magazine-size
10 e-reader that actually -- they were selling those, and
11 then a variety of other e-readers, the Kindle, Sony,
12 and iRex.

13 Q. I know you're trying to get to dinner. So
14 you say here that this was -- that the iPad is the
15 first utilitarian tablet to realize your original
16 vision?

17 A. Yes.

18 Q. Why did the ones that came before it not
19 realize your original vision?

20 MR. ZELLER: That assumes facts not in
21 evidence. Go ahead.

22 THE WITNESS: How should I answer?

23 MS. TAYLOR: Go ahead and answer.

24 MR. ZELLER: I made an objection. I think
25 the question is objectionable.

1 THE WITNESS: Uh-huh.

2 MR. ZELLER: If you understand the
3 question, you can try and answer it, but I -- I think
4 the question is objectionable is all I'm saying.

5 A. The tablet PCs that were introduced by
6 Microsoft or encouraged by Microsoft and the
7 e-readers, none of them lived up to my original vision
8 of what a tablet should be, and so I believe I
9 accurately described in that caption for that photo
10 that in my view the iPad was the first device to
11 accurately represent the vision that I had been
12 talking about since 1981.

13 Q. (By Ms. Taylor) And can you tell me what
14 that vision was?

15 A. To have an easy- --

16 MR. ZELLER: This is asked and answered.

17 A. An easy-to-use device that would be optimum
18 for reading newspapers, magazines, and books.

19 MS. TAYLOR: All right. I have no further
20 questions.

21 EXAMINATION

22 QUESTIONS BY MR. ZELLER:

23 Q. So I do have some questions for you.

24 A. Okay. Okay.

25 Q. And is this a comfortable position for you?

1 A. Sure. Fine.

2 Q. Or do I need to move?

3 A. No.

4 Q. Okay. Fine. Directing your attention to
5 Exhibit 266 --

6 A. Uh-huh.

7 Q. -- which is the presentation that you
8 created --

9 A. Uh-huh.

10 Q. -- and the slides that you created in 2010.

11 A. Uh-huh.

12 Q. First of all, are the dates that are
13 reflected in here a true and correct chronology of
14 events?

15 A. Yes.

16 Q. And you created this document, Exhibit
17 266 --

18 A. Uh-huh.

19 Q. -- prior to the time that you knew of any
20 dispute between Apple and Samsung?

21 A. Yes.

22 Q. Directing your attention to the second page
23 of this Exhibit 266.

24 A. Uh-huh.

25 Q. This is a -- a drawing, as you testified

1 about before?

2 A. Yes, it's a drawing.

3 Q. Pen-and-ink drawing that you created in
4 1981?

5 A. Right.

6 MS. TAYLOR: Objection, leading.

7 A. With paste-up of type taken from a -- a
8 page from the New York Times.

9 Q. (By Mr. Zeller) And if you could please
10 describe -- well, first of all, did the tablet that
11 you were drawing here --

12 A. Did I just say New York Times?

13 Q. Yes.

14 A. Miami Herald. Please correct me. Miami
15 Herald.

16 Q. Did the tablet that you drew back in
17 1981 --

18 A. Uh-huh.

19 Q. -- have any kind of buttons on it, any
20 physical buttons?

21 A. No.

22 Q. And was it your understanding or your
23 vision that the tablet depicted here --

24 A. Uh-huh.

25 Q. -- would be operated entirely by

1 touchscreen buttons?

2 A. Yes, only by touch.

3 Q. And was the tablet that you drew here a
4 continuous flat surface on the front?

5 A. That was my assumption.

6 Q. And that that continuous flat surface on
7 the front of the tablet ran from edge to edge?

8 A. Yes.

9 MS. TAYLOR: Objection, leading.

10 Q. (By Mr. Zeller) And this tablet as you
11 envisioned it in 1981 --

12 A. Uh-huh.

13 Q. -- did it have a thin form factor?

14 MS. TAYLOR: Objection, vague. Which
15 tablet?

16 A. Well, I didn't draw anything to indicate
17 the thickness, but certainly envisioning something was
18 lightweight, easy to hold. So I would assume thin.

19 Q. (By Mr. Zeller) With respect to the
20 various tablets that you --

21 A. Uh-huh.

22 Q. -- either drew --

23 A. Uh-huh.

24 Q. -- or that you did mock-ups of --

25 A. Uh-huh.

1 Q. -- at any time prior to 2004 did you have a
2 certain vision or expectation as to whether or not
3 those designs would be thin in profile or thick in
4 profile?

5 MS. TAYLOR: Objection, vague and compound.

6 A. So --

7 Q. (By Mr. Zeller) You can go ahead and
8 answer.

9 A. Thin.

10 Q. Was there -- was there a practical reason
11 for that?

12 A. Convenience to -- for holding.

13 Q. When you say convenience for holding, what
14 do you mean by that?

15 A. Making it easy to hold, comfortable to
16 hold.

17 Q. In the course of your work, have you done
18 any research on the thickness of the form factor for
19 tablets?

20 A. In our laboratory, Knight-Ridder
21 Information Design Lab in the 1990s we created
22 different size thicknesses of devices. Actually, no
23 complete prototypes, but just plastic blocks of
24 different thicknesses and then created the prototypes
25 that we have by adding different weights to see what

1 people felt comfortable with.

2 Q. And did that research indicate to you that
3 there was a certain thickness of the tablet form
4 factor that bore on the comfort of the users?

5 A. We found that the preference was anything
6 below a half-inch in thickness.

7 Q. And when you say preference, why was it
8 according to the research --

9 A. Uh-huh.

10 Q. -- as you --

11 A. Uh-huh.

12 Q. -- understood it and the research that you
13 did --

14 A. Uh-huh.

15 Q. -- why was it that the respondents
16 preferred a form factor that was half-inch or less in
17 profile?

18 A. By holding objects at different thickness,
19 they would tell us, you know, what felt the most
20 comfortable for them. Certainly not a totally
21 scientific analysis, but by the responses we received
22 from people we brought in for focus groups it was
23 apparent that thinner was better.

24 Q. And why was it better?

25 A. Just felt more comfortable to them.

1 Q. And you said that the basis for your --
2 your testimony on this --

3 A. Uh-huh.

4 Q. -- includes focus groups?

5 A. Yes. We brought in people to give us their
6 opinion.

7 Q. Was there other kind of research that you
8 did or are you basing it on -- on the focus groups?

9 A. Only on focus groups.

10 Q. So returning then to Exhibit 266, the
11 second page that's entitled 1981.

12 A. Uh-huh.

13 Q. Did the drawing --

14 A. Uh-huh.

15 Q. -- that -- that you created of this -- this
16 1981 tablet --

17 A. Uh-huh.

18 Q. -- and that you created back in 1981 show
19 an overall rectangular shape?

20 A. Yes.

21 MS. TAYLOR: Wait. Mischaracterizes his
22 testimony and it's vague.

23 Q. (By Mr. Zeller) And does the drawing that
24 you did of the 1981 tablet back in 1981 show four
25 evenly rounded corners?

1 A. Yes.

2 Q. Does the drawing that you created in 1981
3 that's depicted here on the second page of Exhibit 266
4 show a flat, clear surface covering the front of the
5 device?

6 MS. TAYLOR: Objection. The document
7 speaks for itself.

8 A. It could be assumed from the -- from the
9 drawing that it has a clear surface.

10 Q. (By Mr. Zeller) And the device itself
11 setting aside the text --

12 A. Uh-huh.

13 Q. -- is substantially without ornamentation?

14 A. Yes.

15 Q. Does the 1981 drawing that you did of a
16 tablet show a thin rim surrounding the front surface?

17 A. Yes.

18 Q. If we could actually then look at your 1981
19 three-dimensional mock-up.

20 A. Uh-huh. It actually came after 1981,
21 but --

22 Q. Right. What we're calling the 1981 --

23 A. Uh-huh.

24 Q. -- three-dimensional mock-up.

25 A. Uh-huh.

1 Q. And to be clear, the -- what you have in
2 front of you, the physical three-dimensional
3 mock-up --

4 A. Uh-huh.

5 Q. -- the white one that's sometimes referred
6 to is an exact copy of a mock-up that was in fact
7 created in 1981?

8 A. That's correct.

9 Q. Now, does that 1981 mock-up show a
10 substantially flat back panel?

11 A. Yes.

12 Q. Does it show a thin form factor?

13 A. Yes.

14 MS. TAYLOR: Are you asking about the one
15 in front of him or the 1981 one? I just want to be
16 sure.

17 MR. ZELLER: I'm asking about the 1981 one.

18 THE WITNESS: Uh-huh.

19 MR. ZELLER: Which is identical to the one
20 he has in front of him as was just established.

21 MS. TAYLOR: Although you asked him in the
22 present tense and he says he doesn't have it anymore,
23 so that's a little confusing. The 1981 one no longer
24 exists.

25 Q. (By Mr. Zeller) I'll rephrase it. Is it

1 the case that, and tell me if it is, that in 1981 --

2 A. Uh-huh.

3 Q. -- when you created the three-dimensional
4 mock-up --

5 A. Uh-huh.

6 Q. -- of a tablet --

7 A. Yes.

8 Q. -- that you envisioned, that it had a
9 substantially flat back?

10 A. Yes.

11 Q. Did it have a thin form factor?

12 A. Yes.

13 Q. And also, if you could hold up the -- the
14 three-dimensional mock-up, this so-called white tablet
15 or 1981 tablet --

16 A. Uh-huh.

17 Q. -- and you testified earlier about there
18 being buttons on it. Do you recall that?

19 A. That there are no buttons.

20 Q. Well, even earlier in the day --

21 A. Uh-huh.

22 Q. -- you were asked questions about the
23 buttons that appear here?

24 A. Oh, yes, okay.

25 Q. And those, to be clear, are -- are shown

1 here as touchscreen buttons, not physical buttons?

2 A. Yes. They're touchscreen buttons, soft
3 buttons.

4 Q. There's no physical buttons --

5 A. No physical buttons.

6 Q. -- on the 1981 mock-up?

7 A. Correct.

8 Q. And it was always the case --

9 A. Yes.

10 Q. -- that there was no physical buttons? And
11 can you please turn to Exhibit 266?

12 A. The article?

13 Q. It's the presentation.

14 A. Uh-huh.

15 Q. Exhibit 266.

16 A. Uh-huh.

17 Q. And then if you can turn to the page that
18 is headed up 1988 --

19 A. Uh-huh. Yes.

20 Q. -- which is the fourth page on the
21 document. I think you testified earlier, these are --
22 these are also drawings?

23 A. Yes.

24 Q. And what's depicted here are -- on the
25 right-hand side are drawings that you did in or about

1 1988?

2 A. Correct.

3 Q. And did -- are they the same drawings that
4 you did back in 1981 that's depicted here on the
5 second page of Exhibit 266 or are those different
6 drawings?

7 A. No, these are new drawings.

8 Q. Including of the tablet form factor?

9 MS. TAYLOR: Mischaracterizes.

10 A. These drawings do not include the tablet.
11 These are just the pages that were put into the
12 tablet.

13 Q. (By Mr. Zeller) You'll see here that there
14 appears to be some kind of border around them. What's
15 that depicting?

16 A. That's just the -- the border of the paper.

17 Q. So this is not actually showing a tablet?

18 A. It is not.

19 Q. Actually, let's talk about the article that
20 you did first.

21 A. Which article?

22 Q. I will give you an exhibit number in a
23 second. So if you can please turn to Exhibit 248,
24 which is the "Portrait vs. Landscape: Potential
25 users' preferences for screen orientation"?

1 A. Yes.

2 MR. ZELLER: And by the way, what's the
3 next exhibit number in order?

4 COURT REPORTER: 267.

5 MR. ZELLER: 267?

6 Q. (By Mr. Zeller) Directing your attention
7 to the second page of Exhibit 248, you'll see that the
8 article here says, Fidler suggests that the landscape
9 format is derived from nature. Stages in theaters and
10 concert hall -- halls frame performances with a
11 rectangle that is wider than it -- than it is tall.
12 Do you see that?

13 A. Uh-huh. Yes.

14 Q. And this is something that -- this is from
15 an article that you were a co-author on that was
16 published in the fall of 1999?

17 A. That's correct.

18 Q. And is that an accurate statement of your
19 views at the time?

20 A. Yes. Uh-huh.

21 Q. Is it still true?

22 A. Yes.

23 Q. Directing your attention to the next page,
24 which is the one with 52 in the upper left-hand
25 corner --

1 A. Uh-huh.

2 Q. -- of this article, Exhibit 248. You'll
3 see in the indented paragraph where it says, "For
4 whatever reasons, the portrait orientation of
5 documents ... is a standard humans seem to have
6 preferred since the beginning of written history.
7 Other shapes and orientations have been tried, but
8 documents that rely mainly on the written word and
9 page-based structures have been predominantly
10 rectangular and portrait-oriented in nearly every
11 culture." Do you see that?

12 A. Yes.

13 Q. And -- and the article attributes this
14 language to you?

15 A. Yes.

16 Q. And is this -- is it correct that this was
17 your view?

18 A. Yes.

19 Q. Is it still?

20 A. Yes.

21 Q. Directing your attention to the next page
22 of this exhibit, you'll see where it says, and this is
23 the page numbered 53 in the upper right-hand corner,
24 and it says in the middle, "Although portrait monitors
25 are available, the computer market is dominated by the

1 landscape monitor, which tends to be less expensive
2 and far more likely to be bundled in a retail computer
3 package." Do you see that?

4 A. Yes.

5 Q. And is that a -- back during the time
6 period when this was written in 1999, did you believe
7 that was true?

8 A. Yes.

9 Q. Do you still believe it's true?

10 A. Yes.

11 Q. And then further down, there's a sentence
12 that says, "Rather, it appears that the landscape
13 screen has become the standard by default." Do you
14 see that?

15 A. Yes.

16 Q. And is it true that the landscape screen
17 was the default by 1999 when this article was
18 published?

19 A. Yes.

20 Q. And is it still true?

21 A. Yes.

22 Q. Directing your attention to the next page
23 of this exhibit, 248, this is the heading of
24 "Methodology." Do you see that?

25 A. Yes.

1 Q. And this is -- this methodology section is
2 referring to the -- the survey that you did, the mall
3 intercept survey --

4 A. Uh-huh.

5 Q. -- that you just testified about earlier
6 today?

7 A. Uh-huh.

8 MS. TAYLOR: Objection, leading.

9 Q. (By Mr. Zeller) Is that true? You need to
10 answer audibly.

11 A. I'm sorry. Oh, yes.

12 Q. The -- the methodology described here
13 refers to the methodology for the mall intercept
14 survey that you testified about earlier?

15 MS. TAYLOR: Objection, leading.

16 A. Yes.

17 Q. (By Mr. Zeller) You'll see here it says in
18 your article, "Our subjects were 201 adults selected
19 at random in a mall-intercept survey conducted on a
20 Saturday in February 1997 in Akron, Ohio." Do you see
21 that?

22 A. Yes.

23 Q. And is that an accurate description of the
24 survey that was done?

25 A. Yes.

1 Q. And so it was conducted in February of
2 1997?

3 A. Correct.

4 Q. Now, earlier you had testified today about
5 the Plexiglas --

6 A. Uh-huh.

7 Q. -- mock-ups which we'll get to in a moment,
8 that those were from 1999. Do you recall that?

9 A. I was in error.

10 Q. And how was it you know you were in error?

11 A. Because the article was published in 1999
12 and I had forgotten that we had actually done it
13 in '97.

14 Q. So the -- the original Plexiglas prototypes
15 were done by -- by February of 1997?

16 A. Yes.

17 Q. And you know that because of the article
18 that we've marked here as Exhibit 248?

19 A. Uh-huh. Correct.

20 Q. And -- and the Plexiglas mock-ups --

21 A. Uh-huh.

22 Q. -- that you've testified about, those were
23 the ones that were used for this survey that's
24 referenced here in the article?

25 A. Yes.

1 MS. TAYLOR: Objection, compound.

2 Q. (By Mr. Zeller) And so the Plexiglas
3 mock-ups --

4 A. Uh-huh.

5 Q. -- were shown to these 201 adults during
6 the survey?

7 MS. TAYLOR: Compound and vague.

8 A. They were served, yes.

9 Q. (By Mr. Zeller) I'm asking a slightly
10 different question. Let's break this down. And we're
11 going to now mark this and we'll just use a tape so I
12 don't want to alter the original, but let's please
13 mark as Exhibit 267 --

14 A. Uh-huh.

15 Q. -- one of the Plexiglas mock-ups.

16 (WHEREIN, Exhibit 267, Blank mock-up, was
17 marked for identification by the Court Reporter at the
18 conclusion of the deposition.)

19 A. Uh-huh. Uh-huh.

20 Q. (By Mr. Zeller) And if you could please
21 hold that up for the camera. And Exhibit 267, this
22 Plexiglas mock-up, is an exact copy of the Plexiglas
23 tablet mock-ups that were shown to these 201 adults
24 during the survey in February of 1997?

25 MS. TAYLOR: Asked and answered.

1 A. There were -- there were two types shown to
2 the people in 1997.

3 Q. (By Mr. Zeller) Right. I understand.
4 I'll get to those in a minute.

5 A. Okay.

6 Q. I'm breaking this down.

7 A. Okay.

8 Q. Because she's obviously determined to talk
9 over you anyway.

10 A. Uh-huh.

11 Q. So focusing on Exhibit 267 --

12 A. Uh-huh.

13 Q. In fact, let's break this down further.

14 During this survey in February of 1997, you described
15 that there were two tables.

16 A. Uh-huh.

17 Q. Right?

18 A. Correct.

19 Q. And at the first table these -- these 201
20 adults were surveyed in February of 1997 --

21 A. Uh-huh.

22 Q. -- were shown the tablet mock-up that
23 looked exactly like Exhibit 267?

24 A. Right.

25 MS. TAYLOR: Mischaracterizes his testimony

1 and asked and answered.

2 A. A blank rectangle with round corners.

3 Q. (By Mr. Zeller) So Exhibit 267 is -- is an
4 exact copy of what was shown at that first table --

5 A. Yes.

6 Q. -- to the survey respondents?

7 A. Uh-huh. Correct.

8 Q. Directing your attention --

9 A. If -- I correct my statement that the
10 original may have been a bit thicker than this one.

11 Q. Why don't you go ahead and --

12 A. Basically it may have been thicker than
13 this, but not much thicker, and it was just a blank
14 rectangle with round corners.

15 Q. So then focusing on the original
16 Plexiglas --

17 A. Uh-huh.

18 Q. -- mock-up --

19 A. Uh-huh.

20 Q. -- from the February 1997 survey --

21 A. Uh-huh.

22 Q. -- that was done at that first table.

23 A. Uh-huh.

24 Q. That mock-up had an overall rectangular
25 shape?

1 A. Yes.

2 MS. TAYLOR: Leading.

3 Q. (By Mr. Zeller) It had four evenly rounded
4 corners?

5 MS. TAYLOR: Leading.

6 A. Yes.

7 MR. ZELLER: You really need to understand
8 what a leading question is. You obviously don't, so
9 you're just doing this to disrupt the deposition.

10 MS. TAYLOR: I don't --

11 MR. ZELLER: Do you want -- do you want
12 to -- should we bring out the federal rules and have
13 you read the definition of leading? Leading is one
14 that suggests the answer. If he can answer it yes or
15 no, that doesn't make it leading.

16 MS. TAYLOR: I don't --

17 MR. ZELLER: You need to understand what a
18 leading question is if you're going to interrupt the
19 deposition.

20 MS. TAYLOR: I do not need you to be
21 condescending and I do not need a speech.

22 MR. ZELLER: You need to -- you need to
23 consult the federal rules.

24 MS. TAYLOR: I am fully aware of the
25 federal rules. Move along, Counsel.

1 MR. ZELLER: Well, tell me how the question
2 suggests the answer? Let's read it back. You have it
3 there. Tell me how it suggests the answer.

4 MS. TAYLOR: Counsel, I'm not going to get
5 in an argument with you. Move along.

6 MR. ZELLER: That's because you have no
7 answer. So let's start over again so that I guess
8 she'll just continue to interrupt.

9 Q. (By Mr. Zeller) Please tell us whether or
10 not the Plexiglas mock-ups that were shown to the
11 survey respondents in February of 1997 at that first
12 table had an overall rectangular shape?

13 A. Yes.

14 Q. Please tell us whether it had four evenly
15 rounded corners?

16 A. Yes.

17 Q. Please tell us whether it had a flat clear
18 surface covering the front of the device?

19 A. Yes.

20 Q. Please tell us whether or not that flat
21 clear surface covering the front of the device was
22 without ornamentation?

23 MS. TAYLOR: Objection, vague.

24 A. It had no ornamentation.

25 Q. (By Mr. Zeller) It had no ornamentation?

1 A. It had no ornamentation.

2 Q. Did it have a -- please tell us whether it
3 had a substantially flat back panel?

4 MS. TAYLOR: Objection, vague.

5 A. Yes, it was a flat back panel.

6 Q. (By Mr. Zeller) Please tell us whether it
7 had a thin form factor?

8 MS. TAYLOR: Objection, vague.

9 A. It had a thin form factor.

10 MR. ZELLER: So let's please mark as
11 Exhibit 268 one of the other Plexiglas mock-ups that
12 you've testified about.

13 (WHEREIN, Exhibit 268, Landscape mock-up,
14 was marked for identification by the Court Reporter at
15 the conclusion of the deposition.)

16 Q. (By Mr. Zeller) And if you could please
17 hold this one up. And that is in -- in portrait or
18 landscape orientation?

19 A. This is in landscape.

20 Q. And is this one of the Plexiglas mock-ups
21 that was shown to the survey respondents at this
22 survey that was conducted in 1997?

23 A. It was shown at the second table after they
24 had seen a blank display.

25 Q. After they had seen the other --

1 A. Uh-huh.

2 Q. -- Plexiglas prototype that you just
3 testified about?

4 A. Uh-huh.

5 MS. TAYLOR: Mischaracterizes his
6 testimony.

7 A. The first one they saw was simply a
8 rectangle with round corners.

9 Q. (By Mr. Zeller) The one that you just
10 testified about and have described?

11 A. That's correct, uh-huh.

12 Q. And that Exhibit 267 is an exact copy of?

13 A. Yes. Correct. Close.

14 Q. I'm sorry. I said 268 for this, right?

15 A. 268 is actually an original from that
16 survey.

17 Q. I'll show you what we'll mark as Exhibit
18 269. So if you can hold that up for the camera,
19 please.

20 (WHEREIN, Exhibit 269, Portrait mock-up,
21 was marked for identification by the Court Reporter at
22 the conclusion of the deposition.)

23 Q. (By Mr. Zeller) And is that in landscape
24 or portrait orientation?

25 A. This is portrait.

1 Q. And is this another Plexiglas mock-up that
2 was shown to survey respondents in February of 1997 at
3 that second table?

4 A. This one was shown at the second table.

5 Q. And to be clear, both Exhibits 268 and 269
6 were shown to respondents in February 1997?

7 A. That's correct.

8 Q. Does Exhibit 268 show an overall
9 rectangular shape for a tablet?

10 A. Yes.

11 Q. Does it show a -- does it show four evenly
12 rounded corners?

13 A. Yes.

14 Q. Is it substantially without ornamentation?

15 MS. TAYLOR: Objection, vague.

16 A. Yes.

17 Q. (By Mr. Zeller) Does it have a thin rim
18 surrounding the front surface?

19 MS. TAYLOR: Objection, vague.

20 A. Relatively thin.

21 Q. (By Mr. Zeller) Does it have a
22 substantially flat back panel?

23 A. Yes.

24 Q. Does it have a thin form factor?

25 MS. TAYLOR: Objection, vague.

1 A. Relatively thin.

2 Q. (By Mr. Zeller) And if I ask you those
3 same questions with respect to the mock-up that we've
4 marked as Exhibit 269, you'd give me the same answers?

5 MS. TAYLOR: The same objections.

6 A. Yes.

7 Q. (By Mr. Zeller) I'd like to direct your
8 attention to the 1994 mock-up, and that's --
9 specifically the one with the -- the memory cards. I
10 think it's the other one that has memory cards. If
11 you can please hold that one up for the video camera.

12 A. Uh-huh.

13 Q. And so this is what was referred to earlier
14 as one of the 1994 mock-ups?

15 A. That's correct.

16 Q. And at the top there are two memory cards
17 that stick out?

18 A. Yes.

19 Q. Now, in terms of how the -- the design was
20 to appear --

21 A. Uh-huh.

22 Q. -- were the memory cards to stick out?

23 A. No. It was only for -- make it easy for us
24 to pull it out.

25 Q. Were the memory cards to be flush with

1 the --

2 A. They were intended --

3 Q. -- top?

4 A. They were intended to be flush with the
5 top.

6 Q. And I think you said earlier with that
7 notch for the stylus on the right --

8 A. Uh-huh.

9 Q. -- that also would be flush when the stylus
10 was there?

11 A. The stylus when it was there would be flush
12 with the edge.

13 Q. So in other words, as you conceived of this
14 tablet that you have a mock-up of from 1994, the
15 surface edges, even though it had rounded corners,
16 would be straight?

17 A. That's correct.

18 Q. Directing your attention to your 1994
19 mock-up, does it have an overall rectangular shape?

20 A. Yes.

21 Q. Does it have four evenly rounded corners?

22 A. Yes.

23 Q. Is it substantially without ornamentation?

24 MS. TAYLOR: Objection, vague.

25 A. Yes.

1 Q. (By Mr. Zeller) Does it have a thin rim
2 surrounding the front surface?

3 MS. TAYLOR: Objection, vague.

4 A. Relatively thin.

5 Q. (By Mr. Zeller) Does it have substantially
6 flat back panel?

7 A. Yes.

8 Q. And is it true that -- well, let me ask it
9 this way. You've described the back panel and been
10 asked questions about the back panel of the 1994
11 mock-up previously?

12 A. Uh-huh.

13 Q. Is that right?

14 A. Yes, I have.

15 Q. And particularly you were asked about
16 screws and plates and everything else. Please tell us
17 why were screws and plates and the like on the back
18 surface?

19 A. It was only to facilitate the ability to
20 change the images that we would display on the tablet.

21 Q. In your view, would -- would there be
22 anything novel or new or inventive in taking the 1994
23 mock-up design and simply making the back of it
24 completely flat?

25 MS. TAYLOR: Objection, vague and calls for

1 a legal conclusion and it's compound.

2 A. My answer would be no, I don't see anything
3 novel.

4 Q. (By Mr. Zeller) Did your 1994 mock-up have
5 a thin form factor?

6 MS. TAYLOR: Objection, vague.

7 A. Yes.

8 VIDEOGRAPHER: One moment, please. I have
9 to switch tapes. We're going off the record at
10 approximately 7:14 p.m.

11 (WHEREIN, a recess was taken.)

12 VIDEOGRAPHER: We're back on the record on
13 tape six at approximately 7:17 p.m.

14 Q. (By Mr. Zeller) I'd like to direct your
15 attention to Exhibits 249 and 250.

16 A. I don't feel that I still have it or do I?
17 Oh, I do have it. Here they are. Okay.

18 Q. Do you still have the pen?

19 A. Which numbers are you using?

20 Q. These -- this is 249 and 250. These are
21 the ones that you've already written on.

22 A. Oh, yes. Okay.

23 Q. The photographs that you've written on.

24 A. Uh-huh.

25 Q. Specifically the photocopies of the

1 photographs that you've written on.

2 A. Uh-huh.

3 Q. Do you still have a pen there?

4 A. Yes.

5 Q. Could you please take Exhibit 249?

6 A. Okay.

7 Q. And first of all, this -- this photograph,
8 Exhibit 249, it's your understanding that Apple's
9 counsel took this picture?

10 A. Yes.

11 Q. Is it a true and accurate and complete
12 depiction of what was in your office in terms of the
13 tablets and the e-readers that were actually --

14 A. Everything --

15 Q. -- displayed above your desk?

16 A. Two items are missing.

17 Q. And what are those two items?

18 A. My 1994 tablet and my 1980s tablet.

19 Q. Do you know why she omitted them?

20 A. I think those had been taken down to look
21 at.

22 Q. And you'll agree with me that Exhibit 249
23 does not accurately depict how your office normally
24 looked with the absence of those tablets?

25 A. That's correct.

1 MS. TAYLOR: Objection, leading.

2 Q. (By Mr. Zeller) So if you could please
3 mark with a pen where the 1981 tablet was displayed?

4 MS. TAYLOR: Why don't -- why don't we do
5 that on the clean copies? We marked the clean copies.

6 MR. ZELLER: Because he's written on the
7 other ones.

8 MS. TAYLOR: Well, I think it's better to
9 keep them separate.

10 MR. ZELLER: Well, I'm not going to allow
11 you to use misleading documents. He's going to write
12 them on -- on --

13 MS. TAYLOR: That's fine.

14 THE WITNESS: 251.

15 MR. ZELLER: No, Exhibit 249.

16 MS. TAYLOR: All right. Go ahead. That's
17 fine.

18 THE WITNESS: Can I -- may I borrow a pen?

19 Q. (By Mr. Zeller) And so if you could please
20 read for us what you've -- what you've written?

21 A. I wrote the 1981 Fidler tablet mock-up and
22 the 1994 Fidler tablet mock-up.

23 Q. And then did you draw boxes to indicate --

24 A. Yes.

25 Q. -- where those were?

1 A. And approximate size.

2 Q. And if I asked you the same questions about
3 Exhibit 251, which is the photograph but without your
4 handwriting on it, would you give me the same answers?

5 A. Yes.

6 Q. And directing your attention then back to
7 Exhibit 249?

8 A. Uh-huh. Yes.

9 Q. Are all the devices that are depicted in
10 this photograph tablets, tablet computers?

11 MS. TAYLOR: Asked and answered.

12 A. No.

13 Q. (By Mr. Zeller) Are most of them
14 e-readers?

15 A. About half of them are e-readers.

16 Q. Are most of the devices depicted on here
17 touchscreen?

18 A. No.

19 Q. If I ask you the same questions about
20 Exhibit 250 that I just asked you about Exhibit 249,
21 you'd give me the same answers?

22 A. In what we're seeing here now, most of
23 those are e-readers.

24 Q. And most are not touchscreens?

25 A. That's correct.

1 Q. Directing your attention to Exhibit 251, if
2 I asked you those same questions you'd give me the
3 same answers?

4 A. 251 is the same as 249?

5 Q. Right. And so if I asked you the same
6 questions, you'd give me the same answers?

7 MS. TAYLOR: Compound.

8 A. About half are e-readers and half are
9 tablets of some form.

10 Q. (By Mr. Zeller) Are most of what are
11 depicted in Exhibit 251 touchscreens?

12 A. About -- let's see here. Most are --
13 except for the Kindles are touchscreens using a stylus
14 except for one, the Panasonic with the blue screen was
15 a finger touchscreen.

16 Q. Let me be more specific then. Are most of
17 the devices depicted in Exhibit 249 finger
18 touchscreens?

19 A. Only -- only the Panasonic e-reader and
20 the -- and my assumption for the 1981 tablet were
21 intended as finger touchscreens.

22 Q. Are most of the devices depicted in Exhibit
23 250 finger touchscreens?

24 A. None of these are finger touchscreens.
25 They are -- they're all required as stylus or buttons

1 to be able to navigate.

2 Q. Are most of the devices depicted in Exhibit
3 251 touch finger screens?

4 A. Only one is a finger touchscreen. There
5 are shown in that image one, two, three, four, five,
6 six, seven, eight, nine -- nine of those devices used
7 a stylus. The rest were using buttons for navigation.

8 Q. Are any of the devices depicted in Exhibit
9 252 finger touchscreens?

10 A. None of the ones displayed in 252 are
11 finger touchscreens. They either required stylus or
12 buttons for navigation. With the exception, by the
13 way, of -- of the Nook did have a small touchscreen at
14 the bottom of -- that's the last device on the right
15 side, which was an e-reader, and it did have a small
16 finger touchscreen.

17 Q. I'm going to show you what's previously
18 marked as Exhibit 207, which is U.S. design patent
19 504,889. Had you seen Exhibit 203 at any time prior
20 to the time you became aware that there was a dispute
21 or lawsuit between Samsung and Apple?

22 A. No.

23 Q. You have re -- you have seen this before
24 today?

25 A. Yes, you showed it to me.

1 MS. TAYLOR: You have referred to it as
2 Exhibit 207 and 203.

3 MR. ZELLER: Oh, I'm sorry. Did I -- it's
4 203. My apologies.

5 A. 203?

6 Q. (By Mr. Zeller) I just -- I just can't
7 read my own writing. It was marked at a prior
8 deposition. So let me -- let me step back for a
9 moment. You have in front of you Exhibit 203?

10 A. Correct.

11 Q. And Exhibit 203 is a -- is what appears to
12 be a design patent that you had not seen prior to the
13 time that you were aware of some dispute between Apple
14 and Samsung?

15 A. That's correct.

16 Q. But you have now seen Exhibit 203 --

17 A. Yes.

18 Q. -- which is the '889 design patent?

19 A. Yes.

20 Q. And when you first saw this, what was your
21 reaction? I'm not talking about what you said, but
22 I'm just saying mentally what did you think to
23 yourself?

24 A. My first reaction was is this all there is
25 to it, that what I saw was simply a -- a rectangle

1 with round corners.

2 Q. And in your view comparing the figures
3 depicted here in Exhibit 203 --

4 A. Uh-huh. Uh-huh.

5 Q. -- with the tablet that you had conceived
6 of going back to 1981, was there anything new or novel
7 or inventive that's reflected in these figures in the
8 design patent over your 1981 design?

9 MS. TAYLOR: Objection. It's compound.
10 It's vague and it calls for a legal conclusion.

11 A. Do you want to reword?

12 Q. (By Mr. Zeller) That's her -- she just --
13 she's just objecting. It doesn't matter.

14 MS. TAYLOR: You can answer.

15 MR. ZELLER: You can go ahead and answer.

16 A. I see nothing novel in this -- in these
17 figures.

18 Q. (By Mr. Zeller) The figures of Exhibit
19 203?

20 A. That's correct.

21 Q. And when you say nothing novel, you're
22 talking about in comparison to your 1981 tablet
23 design?

24 MS. TAYLOR: Objection, mischaracterizes
25 the testimony.

1 A. Correct.

2 Q. (By Mr. Zeller) Directing your attention
3 to the Toshiba device?

4 A. Uh-huh. Yes.

5 Q. And that's the one that it has some -- it
6 says PDV at the bottom.

7 A. Yes.

8 Q. And this is the one, the same device that
9 is depicted in that photograph, Exhibit M to your
10 declaration where you're shown with three other people
11 at Kent State?

12 A. Yes.

13 Q. And you were also shown earlier a copy of a
14 NDA or nondisclosure agreement with Toshiba?

15 A. Yes.

16 Q. By the time that you were presented with
17 the actual device that you brought with you here today
18 by Toshiba, was it your understanding that the device
19 was -- was confidential?

20 A. When they presented it to me by that time
21 it was no longer confidential.

22 Q. And please remind me, who were the other
23 people depicted in the photograph other than the
24 Toshiba representatives?

25 A. We had the president of Kent State

1 University and the dean of the school of journalism.

2 Q. And they were -- they were faculty with
3 Kent State at the time?

4 A. Yes.

5 Q. Did they to your knowledge sign any NDA?

6 A. They did not.

7 Q. The Toshiba representatives were aware as
8 far as you know that they were faculty members of
9 Kent?

10 A. Yes.

11 Q. Did the Toshiba executive -- excuse me, the
12 Toshiba representatives express to you any -- any
13 indication in words or substance that this prototype
14 device was to be kept confidential?

15 A. No. They said ...

16 Q. Directing your attention to Exhibit E of
17 your declaration. This is the New York Times article.

18 A. Okay.

19 Q. You testified previously that the
20 photograph of you shows you holding the white tablet
21 three-dimensional mock-up?

22 A. Correct.

23 Q. And I think you testified that this in
24 particular was the one that was created in 1992?

25 A. This one --

1 MS. TAYLOR: Mischaracterizes his
2 testimony.

3 A. This one was created before we created the
4 Information Design Lab, so it was the second tablet
5 that I created.

6 Q. (By Mr. Zeller) And I'm not talking about
7 the design. I'm talking about that actual physical
8 tablet that you were holding. When was that created?

9 A. Well, that was created in the 1980s, and
10 I'm not sure exactly when. I produced this one
11 probably around '89.

12 Q. And referring then to the physical tablet
13 that you're -- you're shown holding here in the New
14 York Times article --

15 A. Uh-huh.

16 Q. -- which is Exhibit E to your
17 declaration --

18 A. Uh-huh.

19 Q. -- that mock-up was identical to the 1981
20 mock-up?

21 A. That's correct.

22 Q. In other words, identical to the mock-up,
23 the three-dimensional mock-up made first originally in
24 1981?

25 A. Correct.

1 Q. You testified at one point about a member
2 of your team there at the Knight-Ridder lab who went
3 to work for Apple?

4 A. Correct.

5 Q. That was Curtis Stevens?

6 A. Yes.

7 Q. You were asked questions about iPad
8 research that you had currently underway?

9 A. Correct.

10 Q. Is that research complete?

11 A. It's not complete.

12 Q. Are you in a position to draw any
13 conclusions from what research has been done on that
14 score with any degree of reliability?

15 MS. TAYLOR: Asked and answered and it's
16 vague.

17 A. The first two iPad studies that we did
18 on-line, all the results are posted on the
19 RJIONline.org website for anyone to read.

20 Q. (By Mr. Zeller) Uh-huh.

21 A. The current research that we're doing is
22 still recruiting participants and information that
23 we've gathered so far is still not in my view
24 reliable.

25 Q. Focusing on the research that is currently

1 underway, please tell us whether or not in your view
2 that is a reliable universe of data from which you as
3 a researcher can draw conclusions?

4 A. Not yet.

5 Q. Directing your attention to Exhibit 256.
6 You may want to pull those -- those various
7 photographs out separately. I'm going to ask about
8 more than one.

9 A. Okay. 256?

10 Q. Yes, 256.

11 A. Okay.

12 Q. Do you know who took this photograph?

13 A. I believe this was the one taken by Mike
14 Sadowitz.

15 Q. And it shows the -- the cards at the top
16 pulled halfway out?

17 A. Yes.

18 Q. And does that -- does having the cards
19 pulled out accurately depict how the design was to
20 appear?

21 A. They would only be at that point when
22 somebody was intending to pull it completely out of
23 the device. Normally it would be flush with the top.

24 Q. Is the same true of Exhibit 257?

25 A. They are shown as being partially out of

1 their holder, but normally they would be flush with
2 the top. They were only partially sticking out to
3 make it easy for us to pull out the cards in the
4 mock-up.

5 Q. Is the same true of Exhibit -- what's
6 depicted in Exhibit 258 with respect to the 1994
7 mock-up?

8 A. Yes.

9 Q. And is the same true with respect to
10 Exhibit 259 focusing on again the 1994 prototype?

11 A. Yes.

12 Q. Directing your attention to Exhibit 255.

13 A. 255. Okay.

14 Q. This is another view of -- on the top there
15 anyway of a side of the -- portion of the side of the
16 1994 mock-up?

17 A. Yes.

18 Q. And that groove that's depicted there I
19 think you said previously is where the stylus went?

20 A. Yes.

21 Q. And when the stylus was actually in place
22 under this design, was -- was it flush or not?

23 A. Yes, it was flush with the edge.

24 Q. So the design didn't have an open notch
25 then when the stylus was in place?

1 A. No.

2 Q. Directing your attention to Exhibit 262.

3 A. Okay.

4 Q. This is a portion of what you were calling
5 the engineering prototype?

6 A. Yes.

7 Q. Sometimes we've also called it Toshiba
8 device?

9 A. Yes.

10 Q. And you were asked questions by Apple's
11 counsel about the connector as well as that hole?

12 A. Yes.

13 Q. Now, could you please get the actual
14 device, the physical device there?

15 A. Uh-huh.

16 Q. Is there a cover for this?

17 A. There is a cover.

18 Q. In the -- in Exhibit 262 the photograph,
19 does it show that cover open or closed?

20 A. It shows the cover open.

21 Q. And when the cover is closed can --

22 A. It's flush with the top.

23 Q. And can you see the connector or that
24 rectangular hole?

25 A. No.

1 Q. Generally speaking, has -- has tablet
2 technology evolved such that there's -- there's more
3 or less of a need for physical buttons on tablets?

4 MS. TAYLOR: Calls for -- I think it calls
5 for an expert opinion. He's not testifying as an
6 expert. Calls for speculation.

7 A. Current generation of tablets such as the
8 iPad have no need for physical buttons or -- or very
9 few physical buttons.

10 Q. (By Mr. Zeller) And do you have an
11 understanding as to why that is?

12 A. Because the devices have been simplified
13 and that most of the interaction is through a
14 touchscreen.

15 Q. And do you know if that's a result of
16 advancements in technology or based on some other
17 reason?

18 A. Advancements in technology.

19 Q. And comparing tablet devices from years
20 back, say the early 1990s to today, do those devices
21 tend to have more or fewer styluses?

22 MS. TAYLOR: Objection, compound. It's
23 also vague.

24 A. All of the devices that I was aware of were
25 using a stylus in the 1990s.

1 Q. (By Mr. Zeller) And did that change over
2 time?

3 A. It's only in recent years that we now see
4 touchscreens being affordable and usable.

5 Q. And do you have an understanding as to
6 why -- well, but just to be clear, is -- is -- over
7 time when focusing on tablet computers, do tablet
8 computers have now less often styluses that go with
9 them?

10 MS. TAYLOR: Objection, asked and answered.

11 A. Tablet PCs still rely on styluses.

12 Q. (By Mr. Zeller) I'm not talking -- I'm not
13 confining it to tablet PCs.

14 A. Okay.

15 Q. I'm just asking overall in terms of tablets
16 that you know of.

17 A. Very few tablets today are purely
18 touchscreens.

19 Q. And do you have an understanding as to
20 whether or not there are any technological constraints
21 previously as to why styluses were used?

22 A. Previously the finger touchscreens were not
23 as reliable and more expensive to produce than a
24 stylus display.

25 Q. And did the technology change then in some

1 way?

2 A. The technology has become more
3 sophisticated and more reliable and more precise with
4 a finger touch and gestures.

5 Q. And does that have an effect on -- on the
6 need for a stylus?

7 A. Yes.

8 Q. How does it affect it?

9 A. That almost all actions now with a tablet
10 can be accomplished with a -- a touch or a gesture.

11 Q. And is this because of the evolution in
12 technology?

13 A. It's the evolution of technology.

14 Q. Going back to the tablet design that you
15 conceived of back in 1981 as shown in your drawings
16 and as shown in your mock-up, was there a stylus?

17 A. My first prototypes in 1981 all assumed a
18 touchscreen finger, not a stylus.

19 Q. Was a stylus part of the design?

20 A. No.

21 Q. Were any physical buttons part of the
22 design?

23 A. No. Well, let me come back. Yes, there
24 was a switch for on/off anticipated, but the
25 prototypes did not show one.

1 Q. Well, let's focus on what -- what you
2 actually --

3 A. Uh-huh.

4 Q. -- put into tangible form --

5 A. Uh-huh.

6 Q. -- and I'll break it down.

7 A. Uh-huh.

8 Q. Did the drawings that you created back in
9 1981 showing the tablet design that you conceived
10 of --

11 A. Uh-huh.

12 Q. -- have any physical buttons?

13 A. There were no physical buttons.

14 Q. Did the physical three-dimensional mock-up
15 that you created of your tablet design in 1981 have
16 any physical buttons?

17 A. No.

18 MR. ZELLER: Thank you.

19 MS. TAYLOR: Okay. I have a couple more
20 questions.

21 THE WITNESS: Okay.

22 FURTHER EXAMINATION

23 QUESTIONS BY MS. TAYLOR:

24 Q. You were shown Exhibit 203?

25 A. I'm sorry?

1 Q. You were shown Exhibit 203?

2 A. Yes.

3 Q. When did you first see Exhibit 203?

4 MR. ZELLER: You can answer that. Just
5 don't -- don't describe the substance of
6 communications.

7 THE WITNESS: I understand.

8 MR. ZELLER: She's just asking when right
9 now.

10 Q. (By Ms. Taylor) I only want to know when.

11 A. The -- just the last few days when we first
12 met.

13 Q. What day?

14 THE WITNESS: My head is finally feeling
15 how long we've been here.

16 MR. ZELLER: It does seem longer.

17 A. I guess it was -- yeah, yesterday is when I
18 saw it.

19 Q. (By Ms. Taylor) Yesterday is the first
20 time you saw Exhibit 203?

21 A. Yesterday. Uh-huh. Uh-huh.

22 Q. Have you seen a design patent before?

23 A. Have I seen design patents? Yes.

24 Q. In what field?

25 A. Going back to 1994, the attorneys for

1 Knight-Ridder showed me a number of design patents and
2 we discussed whether or not we should try to have a
3 design patent on the tablet that I was designing, and
4 their decision was that there was nothing novel about
5 a rectangular-shaped device with round corners, so
6 they opted not to invest in a patent.

7 Again, here at -- well, actually, again, at
8 Kent State I was approached about whether or not Kent
9 State should consider a patent on the tablet vision
10 that I was pursuing, and the conclusion of the
11 attorneys was that there was nothing novel enough
12 about the concept to justify a design patent, and they
13 also argued that it was too easy for a design patent
14 to be altered and -- and difficult to defend.

15 In I think about four years ago here at
16 University of Missouri I was approached again about is
17 there anything that I have created with a tablet and
18 my vision of a newspaper on a tablet that the
19 University of Missouri could patent, and we spent
20 several weeks analyzing my work, and the decision was
21 that I've already put it in the public domain and that
22 while they could probably get a patent approved, that
23 it would probably be impossible to defend. And so
24 they decided not to invest in a patent.

25 Q. My question is whether you'd ever seen any