

# EXHIBIT A

11:18:14 **1** forward.

11:18:15 **2** MR. CHU: Okay. Thank you, your Honor. I'll move

11:18:16 **3** on.

11:18:29 **4** BY MR. CHU:

11:18:29 **5** **Q.** Steve, does USA make any integrated cards where the

11:18:32 **6** adhesive -- I'm sorry. Strike that.

11:18:37 **7** Are all of USA's integrated cards designed to be

11:18:39 **8** signature compatible?

11:18:41 **9** **A. Yes.**

11:18:50 **10** **Q.** Steve, did you understand at any time prior to this

11:18:55 **11** lawsuit that John or anyone else had a patent on integrated

11:19:06 **12** cards?

11:19:06 **13** **A. Yes, I -- yes, I did.**

11:19:08 **14** **Q.** And how did you know this?

11:19:11 **15** **A. I saw this patent hanging on the wall of his building,**

11:19:15 **16** **first off.**

11:19:16 **17** **Q.** Whose building?

11:19:18 **18** **A. John McKillip's building when Tri-Graphics was being**

11:19:24 **19** **auctioned -- the assets of Tri-Graphics were being auctioned,**

11:19:29 **20** **this patent and another patent were on display at his company.**

11:19:34 **21** **I saw those.**

11:19:36 **22** **I heard the auctioneer describe this patent and offer**

11:19:41 **23** **it for sale at the --**

11:19:43 **24** **Q.** This patent being the ...

11:19:45 **25** **A. '488 patent, I'm sorry.**

11:19:47 **1** **Q.** Thank you.

11:19:48 **2** **A. '488 patent.**

11:19:49 **3** **I also was informed of this by Brian Wooley.**

11:19:55 **4** **Q.** Who's Brian Wooley?

11:19:57 **5** **A. Brian Wooley was a press operator for John McKillip and**

11:20:02 **6** **had worked for USA also.**

11:20:07 **7** **Q.** And how did you learn this from him?

11:20:09 **8** **A. He was at my company and was -- well, frankly, he was**

11:20:16 **9** **commenting how John had framed --**

11:20:18 **10** MR. SCHROER: Objection to the hearsay.

11:20:19 **11** THE COURT: Sustained.

11:20:21 **12** THE WITNESS: Don't answer?

11:20:22 **13** THE COURT: You may not answer when I've sustained

11:20:27 **14** the objection. You have to rephrase.

11:20:29 **15** BY MR. CHU:

11:20:30 **16** **Q.** Steve, what did you hear Mr. Wooley tell you?

11:20:32 **17** MR. SCHROER: Objection, hearsay.

11:20:34 **18** THE COURT: What is it being offered for?

11:20:35 **19** MR. CHU: It's being offered for -- not for the fact

11:20:39 **20** that -- well, it's for what Mr. McKillip understood, but what

11:20:44 **21** Mr. McKillip heard from Brian Wooley.

11:20:49 **22** THE COURT: Regarding what?

11:20:50 **23** MR. CHU: I'm sorry. Regarding whether someone told

11:20:55 **24** him that there was a patent.

11:20:57 **25** THE COURT: That there was a patent.

11:20:59 **1** Okay. All right. Overruled. It's being offered not

11:21:02 **2** for the truth of the matter, but rather as to its effect on

11:21:04 **3** the listener.

11:21:05 **4** MR. CHU: Absolutely. Thank you, your Honor.

11:21:12 **5** BY MR. CHU:

11:21:12 **6** **Q.** Steve, what was it that you heard Brian Wooley tell you?

11:21:16 **7** MR. SCHROER: Objection --

11:21:17 **8** THE WITNESS: Brian Wooley was telling me that John

11:21:19 **9** McKillip had framed a \$5,000 check that I had paid him from

11:21:24 **10** the first patent -- time he sued me, and then Brian was --

11:21:30 **11** well, I was saying, Well, that was for patent settlement. And

11:21:33 **12** he said -- proceeded to tell me that John had another patent

11:21:37 **13** for integrated cards, meaning referring to the '488 patent.

11:21:43 **14** BY MR. CHU:

11:21:43 **15** **Q.** How did you know he was referring to the '488 patent?

11:21:48 **16** **A. Well, he said it was for integrated cards.**

11:21:50 **17** **Q.** Do you know approximately what year this was?

11:21:54 **18** **A. That Brian Wooley heard this? I think it was -- I don't**

11:21:56 **19** **remember.**

11:21:56 **20** **Q.** No. I'm talking about when you heard it from Brian

11:22:00 **21** Wooley.

11:22:00 **22** **A. Oh. Oh, my God.**

11:22:09 **23** **I don't. I think it was in the '90s, late '90s.**

11:22:13 **24** **Q.** Thank you.

11:22:16 **25** Did you hear that from anyone else?

11:22:18 **1** **A. Yes. I heard it from Chuck Casagrande that John McKillip**

11:22:22 **2** **had a patent on integrated cards.**

11:22:27 **3** **Q.** Who is Chuck Casagrande?

11:22:31 **4** **A. He's the owner of -- I can't think of the name of the**

11:22:39 **5** **company right now, but ...**

11:22:45 **6** **Q.** Is he involved in your industry?

11:22:46 **7** **A. Yes, oh, yes, yes.**

11:22:47 **8** **Q.** Okay. And what occasion did you hear this from him?

11:22:50 **9** **A. We were just mentioning -- he had been granted a patent on**

11:22:54 **10** **a product and he mentioned to me that John McKillip had also**

11:22:59 **11** **gotten a patent on integrated cards.**

11:23:02 **12** **Q.** Do you remember what year this was that you heard this

11:23:04 **13** from him?

11:23:05 **14** **A. That was in the 1990s also.**

11:23:12 **15** **Q.** Thank you.

11:23:13 **16** Let's turn back to the auction for a second.

11:23:18 **17** You said the auction was for -- can you please

11:23:19 **18** explain again what the auction was for?

11:23:20 **19** **A. It was selling the assets of Tri-Graphics.**

11:23:28 **20** **Q.** And what was Tri-Graphics?

11:23:29 **21** **A. Tri-Graphics was a company that was owned by John**

11:23:32 **22** **McKillip, Bob VanHyfte, Stan Stack, and one other gentleman**

11:23:37 **23** **whose name I don't remember now.**

11:23:44 **24** **Q.** Do you recall when the auction was?

11:23:52 **25** **A. No. I think that was in 19- -- it was in the 1990s again.**

11:24:14 **1** MR. CHU: Your Honor, I've just handed defendant --  
 11:24:17 **2** I'm sorry -- I just handed Steve Defendant's Exhibit No. 19 in  
 11:24:20 **3** your book.  
 11:24:20 **4** THE COURT: Okay.  
 11:24:24 **5** BY MR. CHU:  
 11:24:25 **6** Q. Steve, do you recognize Exhibit 19 that I just handed you?  
 11:24:27 **7** A. Yes.  
 11:24:28 **8** Q. What does this relate to?  
 11:24:31 **9** A. This relates to the auction at Tri-Graphics and American  
 11:24:36 **10** Stencil, and that was in 1997.  
 11:24:40 **11** Q. Okay. And this was the same auction that you just  
 11:24:42 **12** described?  
 11:24:42 **13** A. Yes.  
 11:24:44 **14** Q. Can you please describe to me how the auction related to  
 11:24:48 **15** the '488 patent?  
 11:24:49 **16** A. Well, I went to the auction. The '488 patent, along with  
 11:24:53 **17** another patent, was on display there. And the auctioneer also  
 11:25:03 **18** offered it up for auction.  
 11:25:07 **19** Q. Okay. Did you see the '488 patent with your own eyes?  
 11:25:10 **20** A. Yes, I did.  
 11:25:16 **21** Q. And you said the auctioneer --  
 11:25:16 **22** A. Offered it up -- offered up the '488 patent for auction.  
 11:25:20 **23** Q. Did the auctioneer say anything about the patent?  
 11:25:22 **24** A. Yes. He described it -- he described it as -- just as  
 11:25:27 **25** it's read -- as it's described right here on the patent. And

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11:25:30 **1** he said, United States patent, gave the number, the  
 11:25:33 **2** description, and offered it for bid and with an opening bid.  
 11:25:38 **3** Q. Is your understanding it's the same patent as --  
 11:25:41 **4** A. Oh, yes.  
 11:25:42 **5** Q. -- Plaintiff's Exhibit 1?  
 11:25:43 **6** Did anyone bid for it at the auction?  
 11:25:45 **7** A. Nobody, not one person.  
 11:25:50 **8** Q. Okay. Did you speak with -- or was John at this auction?  
 11:25:54 **9** A. Yes, he was.  
 11:25:54 **10** Q. Did you speak with him at all?  
 11:25:55 **11** A. Yes, just briefly. I shook hands with him, asked him how  
 11:26:00 **12** he was doing, and he just said fine and made a comment about  
 11:26:05 **13** the suit I was wearing.  
 11:26:06 **14** Q. Okay. Did you see anyone else you knew there?  
 11:26:09 **15** A. Oh, yeah, several people.  
 11:26:12 **16** Q. You mentioned that Mr. Stack was a co-owner. Did you see  
 11:26:16 **17** him there?  
 11:26:16 **18** A. Yes, he was there. He was out in front of the building,  
 11:26:22 **19** and he was -- passed on his condolences for the passing of my  
 11:26:28 **20** mother, which was -- I was surprised with that, because my  
 11:26:33 **21** mother hadn't passed away.  
 11:26:36 **22** Q. Okay.  
 11:26:36 **23** A. And he told me that John had told him that my mother had  
 11:26:39 **24** died.  
 11:26:40 **25** Q. Okay. Did any of these people that you saw threaten to

11:26:46 **1** sue you under the '488 patent?  
 11:26:48 **2** A. Did they what?  
 11:26:48 **3** Q. Did they threaten you with a lawsuit?  
 11:26:50 **4** A. No.  
 11:26:51 **5** Q. Did anybody regarding -- thank you.  
 11:27:09 **6** Steve, did you believe that you might get sued for  
 11:27:12 **7** infringement of the '488 patent at any time that you spoke  
 11:27:14 **8** with any of these individuals over the years?  
 11:27:17 **9** A. No.  
 11:27:25 **10** Q. Why?  
 11:27:27 **11** MR. SCHROER: Objection, relevance.  
 11:27:28 **12** THE COURT: It's not relevant. Sustained.  
 11:27:29 **13** MR. CHU: Thank you, your Honor. I'll move on.  
 11:27:46 **14** BY MR. CHU:  
 11:27:46 **15** Q. Steve, based on your testimony, you said you've heard  
 11:27:49 **16** about the '488 patent at least from Brian Wooley in the '90s,  
 11:27:54 **17** at the auction in the '90s, and Chuck Casagrande in the '90s?  
 11:28:01 **18** A. Yes.  
 11:28:08 **19** Q. At any time did you understand from any of these  
 11:28:10 **20** discussions or hearing this that it was possible that -- I'm  
 11:28:15 **21** sorry -- that you might get sued for infringement for the '488  
 11:28:18 **22** patent?  
 11:28:18 **23** MR. SCHROER: Objection, relevance.  
 11:28:19 **24** THE COURT: Sustained. It's not -- whether he  
 11:28:23 **25** believed he'd be sued is really not relevant to the issue of

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11:28:26 **1** whether or not their client delayed in bringing the suit. His  
 11:28:30 **2** knowledge of whether he thought he'd be sued really isn't  
 11:28:32 **3** relevant.  
 11:28:32 **4** MR. CHU: Your Honor, with respect to estoppel,  
 11:28:35 **5** there's a reliance requirement, so I'm trying to establish  
 11:28:40 **6** that Steve had understood this and he was ...  
 11:28:45 **7** THE COURT: Well, that's a different question then,  
 11:28:47 **8** not really whether he believed he'd be sued. It's whether he  
 11:28:51 **9** relied on the fact that no one had brought that to his  
 11:28:54 **10** attention that he would be sued. All right. It's also  
 11:28:57 **11** speculation.  
 11:29:01 **12** BY MR. CHU:  
 11:29:01 **13** Q. Steve, did you rely on the fact that no one threatened you  
 11:29:09 **14** with infringement, in your understanding -- I mean, in your  
 11:29:13 **15** belief that you wouldn't get infringed [sic]?  
 11:29:15 **16** MR. SCHROER: Objection.  
 11:29:15 **17** BY MR. CHU:  
 11:29:16 **18** Q. I'm sorry. That you wouldn't be sued?  
 11:29:17 **19** MR. SCHROER: Objection to the form of that question  
 11:29:20 **20** regarding a belief, and it's irrelevant.  
 11:29:23 **21** THE COURT: Overruled.  
 11:29:24 **22** MR. SCHROER: And it would be speculative.  
 11:29:25 **23** THE COURT: You can answer that question.  
 11:29:26 **24** BY MR. CHU:  
 11:29:27 **25** Q. Do you understand my question, Steve?

12:12:10 **1** Q. Okay. Did you separate out or, you know, does your  
 12:12:17 **2** company separate out the costs for promoting integrated cards  
 12:12:19 **3** as opposed to integrated -- or as opposed to all your other  
 12:12:25 **4** products?  
 12:12:25 **5** A. No.  
 12:12:26 **6** Q. Why not?  
 12:12:28 **7** A. Well, it would be very difficult to do and, you know, when  
 12:12:33 **8** we're doing this, we don't expect to be in the position we're  
 12:12:36 **9** in, to be quite honest. I mean, I don't know any company that  
 12:12:41 **10** would do that.  
 12:12:45 **11** Q. Okay. Is there any way that you could estimate some --  
 12:12:47 **12** excuse me --  
 12:12:47 **13** A. I could estimate some. I mean, you know, when we look at  
 12:12:51 **14** the inserts that highlight integrated cards, I know that  
 12:12:54 **15** there's a substantial cost involved in that because there was  
 12:12:58 **16** production involved, there was buying the sheets, integrating  
 12:13:02 **17** it, then paying to have it inserted in a magazine. I mean,  
 12:13:06 **18** I -- I'd have to do a little homework on it.  
 12:13:10 **19** Q. Thank you.  
 12:13:11 **20** Do you think that your overall advertising budget  
 12:13:16 **21** over the years would have been different had you not  
 12:13:19 **22** promoted -- had you chosen not to promote integrated cards?  
 12:13:21 **23** MR. SCHROER: Objection, calls for speculation.  
 12:13:23 **24** THE COURT: Overruled.  
 12:13:25 **25** BY MR. CHU:

12:13:26 **1** Q. You could answer the question.  
 12:13:27 **2** A. I'm not sure if I understand the question.  
 12:13:28 **3** Q. As president of USA --  
 12:13:30 **4** A. Right.  
 12:13:30 **5** Q. -- can you tell me whether -- whatever you spend on  
 12:13:34 **6** advertising, if that amount would have changed had you not  
 12:13:40 **7** promoted integrated cards?  
 12:13:42 **8** A. It would have changed, but not -- not by much.  
 12:13:47 **9** Q. Okay. If you chose not to promote integrated card  
 12:13:57 **10** products, how would that change your advertising?  
 12:14:03 **11** A. Well, I would have had more space to advertise in. I  
 12:14:07 **12** would have promoted -- highlighted other products too.  
 12:14:13 **13** Q. If you had been sued for infringement of the '488 patent  
 12:14:18 **14** years ago --  
 12:14:20 **15** A. '488, yeah.  
 12:14:21 **16** Q. -- the '488 patent years ago, say, back -- you know, back  
 12:14:24 **17** all the way to 1995, do you think your advertising  
 12:14:29 **18** expenditures over the years would have been different?  
 12:14:31 **19** A. Yes.  
 12:14:32 **20** Q. How?  
 12:14:34 **21** A. Well, it would have been less. We wouldn't have been  
 12:14:36 **22** advertising --  
 12:14:36 **23** MR. SCHROER: Objection, calls for speculation.  
 12:14:37 **24** THE COURT: Overruled.  
 12:14:39 **25** THE WITNESS: We wouldn't have spent the money

12:14:41 **1** advertising integrated products.  
 12:14:44 **2** BY MR. CHU:  
 12:14:45 **3** Q. Okay. You would have continued to advertise your other  
 12:14:46 **4** products, though, correct?  
 12:14:48 **5** A. Yes.  
 12:14:48 **6** Q. But would the cost have been different?  
 12:14:49 **7** A. I'm not sure what you mean. The cost of our business  
 12:14:52 **8** or ...  
 12:14:52 **9** Q. Just advertising in general.  
 12:14:56 **10** A. Yeah. It would have been minorly different.  
 12:15:00 **11** Q. Okay. Had you been sued, again, many years earlier, would  
 12:15:03 **12** you have considered just stopping making integrated cards?  
 12:15:10 **13** A. Yes.  
 12:15:15 **14** Q. Steve, is specialized machinery required to make USA's  
 12:15:20 **15** integrated cards?  
 12:15:22 **16** A. You mean specific machinery?  
 12:15:24 **17** Q. Yes.  
 12:15:25 **18** A. Centralized? Yes.  
 12:15:28 **19** Q. What kind of machinery?  
 12:15:30 **20** A. We use primarily Tamaracks and FME machines, but they're  
 12:15:37 **21** much slower.  
 12:15:38 **22** Q. Okay. Just real quick, what is a Tamarack machine?  
 12:15:41 **23** A. Tamarack's a machine that's made for producing integrated  
 12:15:50 **24** cards and integrated labels.  
 12:15:53 **25** Q. Okay.

12:15:57 **1** A. That's their sole purpose. I mean, you can do -- we have  
 12:16:01 **2** several Tamaracks and we have one that has a glue unit that we  
 12:16:04 **3** could do frame stencils on, which is, you know, very, very few  
 12:16:09 **4** and far between, but the machines are made primarily for  
 12:16:14 **5** integrating labels and cards.  
 12:16:16 **6** Q. Okay. And what does an FME machine do?  
 12:16:19 **7** A. Same thing, just a little bit slower. And a Tamarack has  
 12:16:24 **8** to do -- a Tamarack machine will do certain form depths, and  
 12:16:29 **9** it's limited because they have to get a -- have to have a  
 12:16:32 **10** corresponding cylinder. An FME is more computer driven and  
 12:16:36 **11** will do odd size form depths. Like it'll do a form that's  
 12:16:42 **12** three and a third whereas a Tamarack will only do eleven, 22,  
 12:16:47 **13** depending what cylinders you have.  
 12:16:49 **14** Q. Okay.  
 12:16:49 **15** A. And a cylinder can cost \$25,000.  
 12:16:56 **16** Q. Do you use these Tamarack or FME machines to make anything  
 12:17:01 **17** other than integrated cards and integrated labels?  
 12:17:05 **18** A. Other than I said the very, very minute on one machine  
 12:17:11 **19** frame stencils, which is next to nothing, so 99.9999999  
 12:17:21 **20** percent is for integrated cards and labels.  
 12:17:23 **21** Q. Okay. Between are integrated cards and integrated labels  
 12:17:27 **22** now -- and let me back up for a second.  
 12:17:29 **23** What is an integrated label?  
 12:17:31 **24** A. An integrated label is similar to an integrated card,  
 12:17:34 **25** except that there's -- it's -- when you remove it, same with

12:17:40 **1** the -- the adhesive stays with the label like on the card, but  
 12:17:44 **2** it's still tacky and it's designed to be taken off and -- it's  
 12:17:50 **3** like these labels here. We take it off and stick it on  
 12:17:54 **4** something else.  
 12:17:54 **5** Q. Okay. So it's a sticker?  
 12:17:56 **6** A. Yeah -- well, we call them labels, but --  
 12:17:59 **7** Q. Okay. So between integrated cards and integrated labels,  
 12:18:03 **8** can you tell me what percentage of the time that the Tamarack  
 12:18:07 **9** machine runs would be used for integrated cards versus  
 12:18:10 **10** integrated labels?  
 12:18:13 **11** A. Well, it's changed of late, but I would say it's probably  
 12:18:16 **12** more integrated cards now.  
 12:18:19 **13** Q. Okay. You said now. How is it -- has that changed?  
 12:18:22 **14** A. Yes.  
 12:18:23 **15** Q. How?  
 12:18:24 **16** A. We do -- we have more -- we have some larger orders for  
 12:18:29 **17** integrated cards that we didn't have at -- when I was first  
 12:18:37 **18** sued.  
 12:18:39 **19** Q. Okay. And back in 1995 or so when you first started  
 12:18:44 **20** making integrated cards, did you use a Tamarack machine to  
 12:18:49 **21** make them?  
 12:18:49 **22** A. Yes.  
 12:18:50 **23** Q. And so you owned a Tamarack machine back at -- during the  
 12:18:57 **24** early '90s then?  
 12:19:00 **25** A. Yes.

12:19:00 **1** Q. How many Tamarack machines did you own when you started  
 12:19:03 **2** out?  
 12:19:04 **3** A. In 1986 when I started out?  
 12:19:08 **4** Q. Yes.  
 12:19:09 **5** A. We didn't own any.  
 12:19:11 **6** Q. Okay. Well, how did you make integrated cards back then?  
 12:19:15 **7** A. In 1986?  
 12:19:16 **8** Q. 1996.  
 12:19:16 **9** A. '96?  
 12:19:17 **10** Q. I'm sorry.  
 12:19:17 **11** I meant -- I'm sorry.  
 12:19:17 **12** Started out making integrated cards.  
 12:19:19 **13** A. The question, we -- we bought a Tamarack.  
 12:19:22 **14** Q. So back in 1995, when you started making integrated cards,  
 12:19:26 **15** how many Tamaracks did you own?  
 12:19:27 **16** A. By 1995 I think we probably had two or three.  
 12:19:35 **17** Q. Okay. How many do you own now?  
 12:19:37 **18** A. Four Tamaracks and three FMEs.  
 12:19:42 **19** Q. Did you own any FMEs when you first started making  
 12:19:45 **20** integrated cards in 1995?  
 12:19:46 **21** A. No.  
 12:19:47 **22** MR. CHU: No.  
 12:19:48 **23** Okay. Your Honor, I'm now going to refer to  
 12:19:53 **24** Plaintiff's Exhibits 7, 8, 9, and 10. That's in the white  
 12:19:56 **25** book that you have.

12:20:03 **1** THE COURT: I don't have anything at 7, 8, and 9.  
 12:20:25 **2** MR. SCHROER: Apologies, your Honor. May I approach?  
 12:20:29 **3** Very sorry.  
 12:20:30 **4** THE COURT: Thank you.  
 12:20:31 **5** MR. CHU: And 10. Sorry. Yes.  
 12:20:35 **6** THE COURT: Oh, I don't have 10 either.  
 12:20:37 **7** MR. SCHROER: Okay.  
 12:20:46 **8** MR. CHU: Were you able to get them, your Honor?  
 12:20:51 **9** THE COURT: Okay.  
 12:21:09 **10** BY MR. CHU:  
 12:21:10 **11** Q. Steve, I have just handed you what's been marked as  
 12:21:13 **12** Defendant's [sic] Exhibits 7, 8, 9, and 10.  
 12:21:17 **13** Do you recognize these exhibits?  
 12:21:19 **14** A. Yes, I do.  
 12:21:20 **15** Q. What are they?  
 12:21:22 **16** A. These are invoices from Tamarack for the four Tamarack  
 12:21:31 **17** machines we purchased to do integrated cards and labels.  
 12:21:38 **18** Q. Okay. Let's start with Exhibit 10, because it appears to  
 12:21:41 **19** be the earliest in date.  
 12:21:46 **20** A. Okay.  
 12:21:46 **21** Q. Okay. Does this document indicate the date that this  
 12:21:50 **22** invoice was created?  
 12:21:52 **23** A. Yes. May 12th, 1993.  
 12:21:56 **24** Q. Okay. And what are the products that are invoiced here on  
 12:22:03 **25** Exhibit 10?

12:22:04 **1** A. It's a Tamarack label applicator, which is -- basically  
 12:22:08 **2** this is an entire Tamarack machine.  
 12:22:10 **3** Q. Which is an entire Tamarack machine, the -- these various  
 12:22:14 **4** entries or each one?  
 12:22:15 **5** A. Yeah, combined.  
 12:22:16 **6** Q. Combined is a single Tamarack machine?  
 12:22:18 **7** A. Yeah.  
 12:22:19 **8** Q. Does this correspond to the first Tamarack machine that  
 12:22:24 **9** you had, that you owned?  
 12:22:28 **10** A. Yes, but I -- this would be what -- this is the invoice  
 12:22:39 **11** for the balance to us. The machine costs more than this.  
 12:22:44 **12** Q. Okay. What is the cost of the machine that you --  
 12:22:46 **13** A. I think this one was \$197,000.  
 12:22:49 **14** Q. Okay. Was this document produced from USA's records?  
 12:22:52 **15** A. Yes.  
 12:22:52 **16** Q. Do you have the rest of this invoice somewhere?  
 12:22:55 **17** A. I don't know.  
 12:23:05 **18** Q. In the upper right-hand corner there's a number written in  
 12:23:08 **19** a circle?  
 12:23:08 **20** A. Yes.  
 12:23:08 **21** Q. Do you see that number?  
 12:23:11 **22** What is that number?  
 12:23:13 **23** A. I think that's the total cost of the machine.  
 12:23:15 **24** Q. Okay. Do you know who wrote that there?  
 12:23:17 **25** A. No.

12:23:17 **1** Q. Okay. But by your estimation what is a Tamarack  
 12:23:24 **2** machine -- what did a Tamarack machine cost back in 1993?  
 12:23:27 **3** A. **\$200,000.**  
 12:23:28 **4** Q. Okay. Let's go back to --  
 12:23:30 **5** A. **You know ...**  
 12:23:33 **6** Q. Go ahead.  
 12:23:33 **7** A. **This is just for the machine. This doesn't involve**  
 12:23:36 **8 anything else.**  
 12:23:36 **9** Q. What do you mean anything else?  
 12:23:39 **10** A. **Well, I mean, you know, we might pay a quarter -- have to**  
 12:23:42 **11 pay a quarter of a million dollars for the machine, but then**  
 12:23:45 **12 we've got to pay, you know, 10-, \$20,000 for getting it**  
 12:23:50 **13 wired -- hard wired, the freight to get it to us, everything**  
 12:23:53 **14 else. This is just for the machine, not any of the peripheral**  
 12:23:57 **15 costs.**  
 12:23:57 **16** Q. Okay. Did you have to hire somebody to operate these  
 12:24:00 **17** machines?  
 12:24:00 **18** A. **Oh, sure. I mean, yes, yes.**  
 12:24:05 **19** Q. Okay. Let's look at Exhibit 9 going backwards.  
 12:24:12 **20** A. **Yes.**  
 12:24:12 **21** Q. The date on the upper right?  
 12:24:14 **22** A. **May 20th, 1996.**  
 12:24:20 **23** Q. Okay. And what is shown on this invoice?  
 12:24:22 **24** A. **These are all the costs for a -- another Tamarack with the**  
 2:24:28 **25 total cost of \$266,000.**

12:24:33 **1** Q. Okay. And is this representative of more of the total  
 12:24:40 **2** number of modules or accessories for a typical Tamarack  
 12:24:46 **3** machine that are not shown in Exhibit 10?  
 12:24:48 **4** A. **Yeah, but they're not typical. These are custom made**  
 12:24:51 **5 machines. As you can see, we gave a down payment on this in**  
 12:24:55 **6 1995 and it wasn't delivered until May of '96.**  
 12:24:59 **7** Q. Okay. Were you involved in this purchase of this Tamarack  
 12:25:04 **8** machine for Exhibit 9?  
 12:25:05 **9** A. **Yes.**  
 12:25:06 **10** Q. Okay. Why did -- why did USA purchase this second  
 12:25:10 **11** Tamarack machine?  
 12:25:11 **12** A. **To do integrated cards and labels.**  
 12:25:14 **13** Q. Why did you need to buy a second machine to do that?  
 12:25:18 **14** A. **Because we were doing integrated cards. If we were doing**  
 12:25:22 **15 just one product, we could get by with a lot less machines.**  
 12:25:25 **16** Q. Okay. So was the Tamarack of Exhibit 10 sufficient to  
 12:25:30 **17** meet your needs in 1996?  
 12:25:33 **18** A. **No.**  
 12:25:34 **19** Q. Okay. Is there anything else that you want to point out  
 12:25:40 **20** with respect to this exhibit, 9?  
 12:25:43 **21** MR. SCHROER: Objection, calls for speculation.  
 12:25:46 **22** THE WITNESS: No, just that --  
 12:25:47 **23** THE COURT: Sustained.  
 12:25:48 **24** MR. CHU: Okay. Your Honor, I apologize. Let me  
 12:25:50 **25** move to the next exhibit.

12:25:51 **1** THE WITNESS: Okay.  
 12:25:51 **2** BY MR. CHU:  
 12:25:52 **3** Q. 8.  
 12:25:53 **4** A. **Yes.**  
 12:25:56 **5** Q. And let me ask you what the date is on this?  
 12:25:58 **6** A. **This is January of 1997. This is another Tamarack**  
 12:26:04 **7 machine.**  
 12:26:05 **8** Q. Okay. And why was this Tamarack machine purchased?  
 12:26:14 **9** A. **To do integrated cards and integrated labels.**  
 12:26:20 **10** Q. And were you involved in this purchase?  
 12:26:22 **11** A. **Yes.**  
 12:26:22 **12** Q. And what was the cost of this machine?  
 12:26:26 **13** A. **2- -- the machine itself, just the machine was \$242,000.**  
 12:26:31 **14** Q. Okay. Let me go back, finally, to Plaintiff's Exhibit 7.  
 12:26:38 **15** What is the date on this invoice, Steve?  
 12:26:41 **16** A. **This is July 30th, 1997.**  
 12:26:47 **17** Q. And what is shown on this invoice?  
 12:26:50 **18** A. **This is another -- an additional Tamarack that the cost**  
 12:27:00 **19 was \$265,835, and, again, that's just the cost for the**  
 12:27:09 **20 machine.**  
 12:27:09 **21** Q. Okay. So each of these four machines now are owned by  
 12:27:14 **22** USA? You still own these machines?  
 12:27:16 **23** A. **Yes.**  
 12:27:25 **24** MR. CHU: Okay. Your Honor, I'd move to admit  
 12:27:27 **25** Exhibits 7, 8, 9, and 10 as Plaintiff's Exhibits.

12:27:30 **1** THE COURT: Okay. Any objection to the exhibits?  
 12:27:33 **2** MR. SCHROER: No objection, your Honor.  
 12:27:35 **3** THE COURT: Okay. They'll be admitted.  
 12:27:38 **4** MR. CHU: Thank you, your Honor.  
 12:27:47 **5** BY MR. CHU:  
 12:27:48 **6** Q. In addition to these -- I'm sorry, Steve.  
 12:27:51 **7** So in the years that are shown in Exhibits 7, 8, 9,  
 12:27:55 **8** and 10, in the years spanning from these exhibits -- from 1993  
 12:28:01 **9** through 1997 -- why did you purchase these machines?  
 12:28:08 **10** MR. SCHROER: Objection, asked and answered.  
 12:28:10 **11** THE COURT: Pardon? Asked and answered?  
 12:28:12 **12** MR. SCHROER: Yeah.  
 12:28:13 **13** THE COURT: Overruled.  
 12:28:15 **14** THE WITNESS: To manufacture integrated cards and  
 12:28:19 **15** labels, to produce integrated cards and labels.  
 12:28:27 **16** BY MR. CHU:  
 12:28:28 **17** Q. Steve, you also mentioned FMA machines?  
 12:28:32 **18** A. **No. FME.**  
 12:28:33 **19** Q. I'm sorry. FME machines?  
 12:28:35 **20** A. **Right.**  
 12:28:36 **21** Q. And how many FME machines has USA bought over the years?  
 12:28:39 **22** A. **Three.**  
 12:28:41 **23** Q. And do you remember approximately what these machines  
 12:28:43 **24** cost?  
 12:28:44 **25** A. **I got a -- because we bought three, we got a good price on**

12:33:53 **1** MR. SCHROER: I have no proof that they did.  
 12:33:57 **2** THE COURT: Other than Mr. Lindstrom's --  
 12:34:00 **3** MR. SCHROER: More importantly, there's no proof that  
 12:34:02 **4** these -- or for the sole purpose of integrated cards and I  
 12:34:07 **5** think the testimony is clear from what I've heard so far that  
 12:34:11 **6** they were not. So there's a relevance objection --  
 12:34:13 **7** THE COURT: That they weren't what? They weren't for  
 12:34:15 **8** integrated cards?  
 12:34:16 **9** MR. SCHROER: For that sole purpose, that's correct.  
 12:34:19 **10** THE COURT: Okay. Does it tell us what exactly the  
 12:34:22 **11** machine is in here?  
 12:34:23 **12** MR. CHU: Your Honor, Steve did not testify that they  
 12:34:26 **13** were -- their sole purpose was integrated cards.  
 12:34:28 **14** THE COURT: Right.  
 12:34:31 **15** MR. SCHROER: So there's a relevance objection as  
 12:34:32 **16** well.  
 12:34:32 **17** THE COURT: Well, he's laid the relevance that they  
 12:34:35 **18** were; that's his testimony. Now, whether or not you want to  
 12:34:38 **19** challenge that, that goes to the weight.  
 12:34:39 **20** The question is whether it's a business record. He  
 12:34:43 **21** doesn't have a business record. It's really the foundation of  
 12:34:45 **22** a no business record.  
 12:34:46 **23** MR. CHU: I would submit this is part of  
 12:34:50 **24** evidentiary ...  
 12:34:50 **25** THE COURT: All right. I will admit it

12:34:52 **1** conditionally, and you can continue to challenge it, but it  
 12:34:56 **2** seems to me that the only way they're going to prove it up is  
 12:34:59 **3** if Mr. Lindstrom comes in and verifies that. And I don't want  
 12:35:02 **4** to turn this trial into some massive fishing expedition, so if  
 12:35:08 **5** there's any other way that would be better -- excuse me for a  
 12:35:11 **6** moment.  
 12:35:29 **7** Excuse me. I have a jury deliberating, so I'll be  
 12:35:31 **8** right back in a minute.  
 12:35:33 **9** MR. CHU: Certainly, your Honor.  
 12:36:22 **10** (Recess taken.)  
 12:43:01 **11** THE COURT: Okay. Folks, I have a verdict. So when  
 12:43:03 **12** the lawyers arrive, we'll end and take a lunch break, but  
 12:43:07 **13** we'll keep going until they come, because it takes them a  
 12:43:09 **14** little while to do that. Okay.  
 12:43:11 **15** MR. CHU: Thank you, your Honor.  
 12:43:12 **16** MS. CRISWELL: What's the case about?  
 12:43:13 **17** THE COURT: It's a criminal case. It's a criminal  
 12:43:15 **18** case inside bank robbery. So it just ended yesterday, and  
 12:43:19 **19** there's a female teller supervisor on trial for the inside  
 12:43:23 **20** bank robbery.  
 12:43:24 **21** So they're out there ready to deliver their verdict  
 12:43:28 **22** and also ready to eat lunch, which has not arrived.  
 12:43:31 **23** MR. CHU: Okay.  
 12:43:31 **24** THE COURT: So that's the crisis de jour.  
 12:43:34 **25** MR. CHU: Perhaps a bit more exciting than patent

12:43:37 **1** law. I don't know.  
 12:43:38 **2** THE COURT: Okay. Let's continue, though, until we  
 12:43:40 **3** have to break.  
 12:43:40 **4** BY MR. CHU:  
 12:43:42 **5** Q. Okay. Steve, do you recall buying these three FME  
 12:43:46 **6** machines?  
 12:43:50 **7** A. Yes. The longer things go on, the better my memory is  
 12:43:54 **8** sometimes.  
 12:43:54 **9** Q. Okay. But you participated --  
 12:43:55 **10** A. -- specifically.  
 12:43:57 **11** Q. You participated in those purchases; is that correct?  
 12:43:59 **12** A. I bought them at a show in Florida. I saw them  
 12:44:05 **13** demonstrated, and they wanted \$116,000 each for them. And I  
 12:44:12 **14** said, What can we do if I were to buy three of them? They had  
 12:44:16 **15** a little bit of a conference, came back and said, We could do  
 12:44:19 **16** it for 105. I said, Well, all right. Let me think about it.  
 12:44:24 **17** And they said, What would it take? I said 100,000 each and I  
 12:44:31 **18** would order three of them today. And they did it. I remember  
 12:44:32 **19** that very well.  
 12:44:34 **20** Q. And why, again, did you buy these machines?  
 12:44:36 **21** A. To do integrated cards and labels.  
 12:44:38 **22** Q. Okay.  
 12:44:41 **23** A. You see, again, they do odd depths. I said that already,  
 12:44:44 **24** though.  
 12:44:45 **25** Q. Depths?

12:44:46 **1** A. Odd form depths.  
 12:44:49 **2** Q. Okay. And is a Tamarack capable of doing that?  
 12:44:52 **3** A. Not with -- no.  
 12:44:53 **4** Q. Okay.  
 12:44:55 **5** A. Not without buying a very expensive cylinder. And, see,  
 12:44:59 **6** you don't want to buy a very expensive cylinder because you're  
 12:45:02 **7** going to get an order for -- you might get an order for  
 12:45:05 **8** three-and-a-third-inch depth form, because that's not a normal  
 12:45:09 **9** standard form depth. So our Tamaracks 90- -- don't get me  
 12:45:15 **10** wrong, the FMEs also do standard depths. One's computer  
 12:45:20 **11** driven; one's gear driven.  
 12:45:23 **12** Q. Thank you.  
 12:45:23 **13** So since you've testified that the FME machines make  
 12:45:26 **14** both integrated labels and integrated cards, would you have  
 12:45:32 **15** bought these FME machines anyway had you decided to stop  
 12:45:38 **16** making integrated cards?  
 12:45:39 **17** A. No.  
 12:45:39 **18** Q. Why?  
 12:45:40 **19** A. I wouldn't have had a need for them.  
 12:45:46 **20** Q. But wouldn't you still need them to make integrated  
 12:45:49 **21** labels?  
 12:45:50 **22** A. No.  
 12:45:51 **23** Q. Why not?  
 12:45:52 **24** A. Because I would have had the other machines.  
 12:45:55 **25** Q. Okay. Had you been sued for infringement of the '488

02:18:02 **1** (Resumed at 2:18 p.m.)  
 02:18:02 **2** THE COURT: Okay. Mr. McKillip, you may take the  
 02:18:05 **3** stand again, please.  
 02:18:12 **4** (Witness takes the stand.)  
 02:18:12 **5** MR. SCHROER: May it please the Court?  
 02:18:13 **6** THE COURT: Yes.  
 02:18:14 **7** MR. SCHROER: Thank you.  
 02:18:14 **8** ---  
 02:18:14 **9** STEPHEN MCCLUSKEY MCKILLIP, CROSS-EXAMINATION  
 02:18:14 **10** BY MR. SCHROER:  
 02:18:16 **11** Q. Mr. McKillip, good afternoon. My name is Steve Schroer.  
 02:18:19 **12** A. Hello.  
 02:18:21 **13** Q. I represent the plaintiff in the case.  
 02:18:22 **14** A. Hi.  
 02:18:23 **15** Q. We've never met, have we?  
 02:18:25 **16** A. No.  
 02:18:25 **17** Q. Okay. I'm going to ask you primarily about things you've  
 02:18:29 **18** already discussed this morning.  
 02:18:30 **19** A. Okay.  
 02:18:30 **20** Q. And -- just to get a little bit different perspective,  
 02:18:34 **21** perhaps, on certain things.  
 02:18:35 **22** In the first instance, I would like to ask you about  
 02:18:39 **23** this document, and I think it's Exhibit 16.  
 02:18:56 **24** And you'll recognize it from ...  
 02:19:06 **25** A. I have it here somewhere, but you can go ahead. I know

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02:19:09 **1** what it is.  
 02:19:32 **2** Q. You got it.  
 02:19:34 **3** Now, you testified, as I recall, that this is an  
 02:19:38 **4** example of the kind of integrated card product that your  
 02:19:42 **5** company manufactures?  
 02:19:46 **6** A. Yes.  
 02:19:46 **7** Q. And this particular example is for a team dart tournament  
 02:19:55 **8** apparently to take place in April of next year in Las Vegas?  
 02:20:00 **9** A. Yes.  
 02:20:00 **10** Q. Correct?  
 02:20:01 **11** And in that context, I think I understood your  
 02:20:05 **12** testimony correctly that for as long as you have been making  
 02:20:09 **13** integrated card products you've been doing the same thing with  
 02:20:13 **14** the same materials and same machinery; is that correct?  
 02:20:17 **15** A. Yes.  
 02:20:17 **16** Q. So that if we want to know what your manufacturing process  
 02:20:25 **17** was and what your product looked like in the year 2004 or 2000  
 02:20:30 **18** or even back to the beginning of 1995 or 1996, we can assume  
 02:20:35 **19** it would be just like this (indicating)?  
 02:20:37 **20** A. Yes.  
 02:20:38 **21** Q. Okay. And to be more particular, if we look at a product  
 02:20:43 **22** from the year 2001, in order to explain your own understanding  
 02:20:50 **23** of the product characteristics, as those may relate to the  
 02:20:55 **24** patent in suit, it's the same now as it was then, right?  
 02:21:00 **25** A. Yes.

02:21:02 **1** Q. And it would be the same back in 1996, correct?  
 02:21:06 **2** A. Yes.  
 02:21:07 **3** Q. So that you haven't lost or, in the ordinary course,  
 02:21:15 **4** gotten rid of any business records since 1996 that would  
 02:21:17 **5** enable you to explain why your products, in your opinion,  
 02:21:21 **6** don't infringe going all the way back to 1996. Fair  
 02:21:25 **7** statement?  
 02:21:26 **8** A. No, no, it's not.  
 02:21:29 **9** Q. But there -- the same product manufactured in the same way  
 02:21:32 **10** with the same materials and the same machinery, correct?  
 02:21:35 **11** A. Yeah. Maybe I misunderstood. Yeah, I thought you were  
 02:21:37 **12** asking me about business records going back to 1996.  
 02:21:42 **13** Q. Okay. Now, you have testified about some advertising and  
 02:21:47 **14** marketing materials that you used --  
 02:21:50 **15** A. Yes.  
 02:21:50 **16** Q. -- to illustrate the kind of work you did with relating --  
 02:21:54 **17** with respect to integrated cards, correct?  
 02:21:56 **18** A. Correct.  
 02:21:56 **19** Q. And this is a sample of that, is it not?  
 02:21:59 **20** A. No, it's not.  
 02:22:01 **21** Q. So it would have -- but there were things like this in  
 02:22:04 **22** some of those catalogs?  
 02:22:06 **23** A. No.  
 02:22:07 **24** Q. Okay. I'll come back to that after a few --  
 02:22:09 **25** A. -- actual order for somebody. This isn't an

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02:22:12 **1** advertisement.  
 02:22:13 **2** Q. Understood.  
 02:22:15 **3** And I -- I didn't --  
 02:22:17 **4** A. Okay.  
 02:22:17 **5** Q. We'll get to an ad then to be specific about it.  
 02:22:20 **6** A. Okay.  
 02:22:25 **7** Q. Now, you testified also about records, and there was a  
 02:22:36 **8** question about a summary that was prepared of your sales of  
 02:22:40 **9** integrated cards --  
 02:22:41 **10** A. Yes.  
 02:22:41 **11** Q. -- that had some numbers going back to 1997, if I recall?  
 02:22:47 **12** A. I believe it was 1996, but I'm -- I can let you know if  
 02:22:53 **13** you want to know exact.  
 02:22:55 **14** Q. Okay. And that was prepared by your accountant?  
 02:22:58 **15** A. I believe so.  
 02:23:00 **16** Q. And did your accountant have access to your financial  
 02:23:03 **17** records in order to prepare that document?  
 02:23:09 **18** A. I would assume he would have to have a, you know -- but --  
 02:23:14 **19** Q. Okay. Apart from -- and I asked a bad question, and thank  
 02:23:18 **20** you for asking -- answering carefully.  
 02:23:19 **21** In terms of your own knowledge of the company's  
 02:23:23 **22** business records -- specifically the records of sales and  
 02:23:29 **23** other financial aspects, costs, profits, and all that -- do  
 02:23:34 **24** you keep your records back six years?  
 02:23:40 **25** A. We keep the financial statements, tax returns, our



02:23:45 **1** accountants keep all of that. And I'm not trying to

02:23:50 **2** be evasive, but you're asking me a question about all the

02:23:53 **3** records. We'd have to have giant storage to keep every single

02:23:57 **4** record.

02:23:58 **5** Q. Sure.

02:23:58 **6** But you keep some records in the company?

02:24:00 **7** A. Yes, some.

02:24:02 **8** Q. And then your accountants keep other records for you,

02:24:05 **9** right?

02:24:05 **10** A. For financial statements, for the Government required

02:24:08 **11** records that we keep, tax returns, all of that, payroll

02:24:12 **12** records, I'm sure the accountants have that.

02:24:14 **13** Q. Going back to, say, 2000?

02:24:17 **14** A. Oh, yeah, those type of records that a CPA firm would

02:24:23 **15** keep. I'm sure they have them -- I've had the same CPA firm

02:24:27 **16** for twenty-some years.

02:24:28 **17** Q. Okay. So in terms of your ability to explain the sales of

02:24:35 **18** integrated cards that you've made since 2000 and the profits

02:24:40 **19** or losses on those sales, you would have records going back to

02:24:44 **20** the year 2000 that would permit you to do that, you or your

02:24:48 **21** accountant?

02:24:48 **22** A. We could find that out, I think.

02:24:51 **23** Q. Okay. I want to go back to the beginning of your

02:24:58 **24** testimony, and there were some questions asked about your

02:25:00 **25** background.

02:25:05 **1** You picked up your employment, according to my notes

02:25:10 **2** at least, with USA/Docufinish, which you founded in about

02:25:19 **3** 1986; is that correct?

02:25:20 **4** A. Yes, November of 1986.

02:25:22 **5** Q. Okay. And you've been president the entire time.

02:25:27 **6** And were you in this industry, the business form

02:25:32 **7** industry, before that?

02:25:32 **8** A. Yes.

02:25:33 **9** Q. As a matter of fact, you worked for your brother, didn't

02:25:36 **10** you?

02:25:36 **11** A. Yes.

02:25:37 **12** Q. And what was the name of the company that you were with,

02:25:40 **13** when you were working for your brother?

02:25:47 **14** A. Oh, he had two. I don't know if they went bankrupt or if

02:25:50 **15** he merged them, but Illinois Stencil and American Stencil.

02:26:01 **16** Q. He had American Stencil and Illinois Stencil?

02:26:05 **17** A. Yeah.

02:26:05 **18** Q. And which one did you work for?

02:26:07 **19** A. Both, actually. They kind of morfed into each other, I

02:26:12 **20** think. I wasn't there at the end.

02:26:15 **21** Q. And when did you work at American Stencil for your

02:26:19 **22** brother?

02:26:20 **23** A. I would say that was for five years prior to starting USA.

02:26:32 **24** Q. And just to clarify, when you say prior to working for

02:26:38 **25** USA, wasn't your original name United Stencil?

02:26:43 **1** A. Yeah, I said prior to starting USA. Yes, it was United

02:26:49 **2** Stencil and Affixing.

02:26:49 **3** Q. And immediately before that you worked for your brother

02:26:51 **4** with American Stencil?

02:26:53 **5** A. Correct.

02:26:53 **6** Q. And then you changed the name of United Stencil to USA

02:27:00 **7** Stencil?

02:27:00 **8** A. No.

02:27:02 **9** Q. I'm sorry.

02:27:04 **10** To USA/Docufinish?

02:27:07 **11** A. Yes, correct, because stencils are a very old-fashioned

02:27:12 **12** product and most people don't do them, so it didn't identify

02:27:15 **13** well what the company did.

02:27:16 **14** Q. So -- and your brother had been in the business, the

02:27:21 **15** document business, that is the business form business, prior

02:27:26 **16** to your joining him in 1981, correct?

02:27:29 **17** A. Oh, yeah. He's been in it since the '60s, I believe.

02:27:34 **18** Q. And what job did you have before 1981?

02:27:38 **19** A. I was a salesman.

02:27:39 **20** Q. For?

02:27:40 **21** A. A medical salesman.

02:27:41 **22** Q. So you had no prior experience in the business form

02:27:45 **23** business before your brother took you on, right?

02:27:48 **24** A. Before 1980 or '81, yes, correct.

02:27:51 **25** Q. I'm correct.

02:27:52 **1** So you learned the business from your brother in 1981

02:27:55 **2** to '86, then you left and set up a directly competitive

02:28:00 **3** business, correct?

02:28:02 **4** A. No, I wouldn't put it that way.

02:28:04 **5** Q. Well, I thought you testified earlier that, in fact, you

02:28:09 **6** are competitive with your brother's business?

02:28:11 **7** A. Right. But you asked me that I learned the business from

02:28:14 **8** my brother then go set up a competitive business, and I don't

02:28:17 **9** think I would put it in those terms.

02:28:19 **10** Q. Well, you had no experience in the business before you

02:28:21 **11** worked with your brother, correct?

02:28:24 **12** A. Not directly in the business, no.

02:28:27 **13** Q. And he had a lot of years before you, correct?

02:28:30 **14** A. Yes. He had been selling forms for quite a while in

02:28:33 **15** other --

02:28:33 **16** Q. And then after working for his company for five years, you

02:28:36 **17** left and set up your own competitive business? That's

02:28:41 **18** correct, isn't it?

02:28:42 **19** A. No.

02:28:43 **20** Q. Were you competitive or not?

02:28:46 **21** A. Well, you're asking me I left or, you know, like I --

02:28:49 **22** Q. Well, did he fire you?

02:28:51 **23** A. Yes.

02:28:51 **24** Q. Okay. And then you set up a competitive business?

02:28:55 **25** A. With his permission.

02:34:59 **1** THE COURT: And in the future if you want to use them  
 02:35:01 **2** for cross, then don't object. It's a strategy, of course.  
 02:35:11 **3** BY MR. SCHROER:  
 02:35:16 **4** **Q.** Okay. The testimony that you gave about the sales of  
 02:35:23 **5** integrated card products, you remember that? Just in general.  
 02:35:27 **6** I'm just drawing you into that context.  
 02:35:29 **7** **A.** **That I gave today?**  
 02:35:30 **8** **Q.** Yes.  
 02:35:31 **9** **A.** **I'll try to remember.**  
 02:35:33 **10** **Q.** Okay. Well, there was that summary that you didn't  
 02:35:36 **11** prepare but your accountant did?  
 02:35:38 **12** **A.** **Yes, I have it here.**  
 02:35:40 **13** **Q.** Correct.  
 02:35:41 **14** And it's correct, isn't it, that your sales of  
 02:35:44 **15** integrated card products have not steadily increased from the  
 02:35:48 **16** beginning, isn't it?  
 02:35:51 **17** **A.** **No, that's not -- that's incorrect.**  
 02:35:54 **18** **Q.** Isn't it correct that your sales increased and decreased  
 02:36:00 **19** on a yearly basis?  
 02:36:02 **20** **A.** **No. I think where some of the confusion is is you see a**  
 02:36:06 **21** **number of -- for 1998 of 253,000 and a number for '06 of**  
 02:36:14 **22** **337,000. But the problem is that number for '06 is just for**  
 02:36:18 **23** **the first seven months only. It's not for the whole year.**  
 02:36:25 **24** **Q.** Well, do you have an independent memory of those sales?  
 02:36:29 **25** **A.** **Of each one of these? No, of course not, no. But I can**

02:36:35 **1** **read. I know that -- what they're saying here.**  
 02:36:39 **2** **Q.** Your sales went -- as a matter of fact, from the year 2002  
 02:36:46 **3** your sales never increased to that level again, did they, of  
 02:36:50 **4** integrated cards?  
 02:36:51 **5** **A.** **Yes.**  
 02:36:53 **6** **Q.** Not until after '06, though, correct?  
 02:36:58 **7** **A.** **I don't know what '06 was, but I would bet it was higher**  
 02:37:01 **8** **than that. But you also have to understand. These are**  
 02:37:04 **9** **actually billed sales and things. In our industry, there's**  
 02:37:09 **10** **what we call WIP, work in progress.**  
 02:37:17 **11** **So, I mean, the sales from 2002 that appear high, a**  
 02:37:20 **12** **hundred thousand of those may have been orders that we**  
 02:37:22 **13** **received in 2001 and didn't complete until --**  
 02:37:28 **14** **Q.** -- related question?  
 02:37:30 **15** **A.** -- easy.  
 02:37:34 **16** **Q.** Let's just take 2001 as an example.  
 02:37:38 **17** Do you have a memory of what your sales of integrated  
 02:37:41 **18** cards were?  
 02:37:42 **19** **A.** **I would -- independently, no, but I would look at here and**  
 02:37:46 **20** **I would guess what they were. I would see what they were.**  
 02:37:50 **21** **Q.** Okay. Well, this -- this -- and I'm -- this document,  
 02:37:54 **22** prepared by someone else, says they were about \$515,000 that  
 02:37:59 **23** year?  
 02:38:00 **24** **A.** **Right.**  
 02:38:00 **25** **Q.** Is that consistent with your memory or do you have any

02:38:03 **1** memory at all?  
 02:38:05 **2** **A.** **I don't remember, to be honest with you, in 201 [sic] what**  
 02:38:09 **3** **our sales were of that.**  
 02:38:10 **4** MR. CHU: You know, plaintiffs objected to this  
 02:38:12 **5** document.  
 02:38:12 **6** THE COURT: I know. The whole area of cross,  
 02:38:14 **7** everything you crossed on, everything you've objected to for  
 02:38:17 **8** not admissibility you're using now on cross-examination.  
 02:38:20 **9** MR. SCHROER: Well, the fact that I objected -- you  
 02:38:22 **10** let most of it in, your Honor, you let a lot of it in, and  
 02:38:26 **11** that's what I'm trying to follow up --  
 02:38:27 **12** THE COURT: I let in the appropriate evidence under  
 02:38:29 **13** the rules of evidence.  
 02:38:30 **14** MR. SCHROER: If you'll give me just a moment on  
 02:38:32 **15** this, I think I can tie it together.  
 02:38:34 **16** THE COURT: All right.  
 02:38:37 **17** BY MR. SCHROER:  
 02:38:37 **18** **Q.** Using 2001 as an example, what were the company's total  
 02:38:41 **19** sales in that year?  
 02:38:43 **20** **A.** **I would -- I couldn't tell you exactly. I would have to**  
 02:38:46 **21** **estimate.**  
 02:38:48 **22** **Q.** And what's your best estimate?  
 02:38:51 **23** **A.** **2001, I would say somewhere probably around \$8 million.**  
 02:39:00 **24** **Q.** And just using that as an approximation, would you agree  
 02:39:06 **25** with me that your sales of integrated cards were certainly

02:39:10 **1** less than 10 percent of the company's entire sales?  
 02:39:15 **2** MR. CHU: Objection, your Honor. I don't see any  
 02:39:17 **3** foundation for that statement.  
 02:39:18 **4** THE COURT: All right. Well, because I permitted him  
 02:39:19 **5** to testify about his knowledge of the sales, if he knows the  
 02:39:23 **6** answer, he can answer it.  
 02:39:26 **7** MR. CHU: Thank you, your Honor.  
 02:39:27 **8** THE WITNESS: In 2001, would I say it was less  
 02:39:33 **9** than -- less than 10 percent?  
 02:39:34 **10** BY MR. SCHROER:  
 02:39:35 **11** **Q.** Right.  
 02:39:36 **12** **A.** **Based on -- it's an awkward thing.**  
 02:39:40 **13** **On my memory, yeah. Based on the numbers I just gave**  
 02:39:43 **14** **you, that would make sense.**  
 02:39:46 **15** **Q.** It's correct, isn't it, that through -- in no year prior  
 02:39:52 **16** to the filing of this lawsuit, in '06, were your sales of  
 02:39:58 **17** integrated cards more than 10 percent of the company's total  
 02:40:03 **18** sales?  
 02:40:03 **19** **A.** **I don't know, because I don't know about what happened in**  
 02:40:08 **20** **'06.**  
 02:40:53 **21** **Q.** I'm going to hand you, sir, which has been marked as  
 02:40:56 **22** Defendant's Exhibit 25. Would you take a look at that?  
 02:41:08 **23** And do you recognize that one?  
 02:41:26 **24** **A.** **I know what it is, yes.**  
 02:41:27 **25** **Q.** What is it?

- 02:41:35 **1 A. It says it's a comparative statement of operations and**  
 02:41:39 **2 accumulated deficits.**  
 02:41:43 **3 Q. Is that a document that was prepared by your accountants?**  
 02:41:54 **4 A. I don't know. This -- this doesn't look like our -- what**  
 02:41:58 **5 our accountants typically do. But I -- I don't know anybody**  
 02:42:04 **6 else who would have done it.**  
 02:42:08 **7 Q. You just don't recognize it?**  
 02:42:10 **8 A. This does not look -- I don't know what you're -- I**  
 02:42:14 **9 understand what this says this is, but I do not recognize**  
 02:42:21 **10 this.**  
 02:42:23 **11 Q. Okay. Then I'm not going to ask you questions about it.**  
 02:42:26 **12 But let me ask you a couple of general follow-up questions.**  
 02:42:30 **13 You gave some information to the Court about**  
 02:42:38 **14 advertising that -- and marketing and so on that you -- that**  
 02:42:44 **15 the company had incurred. You recall that?**  
 02:42:48 **16 A. Yes.**  
 02:42:49 **17 Q. And there were those sales brochures and those catalogs**  
 02:42:53 **18 that you put ads in in the trade shows. Do you recall those,**  
 02:42:59 **19 generally?**  
 02:42:59 **20 A. Yeah. They're not catalogs. These are publications.**  
 02:43:04 **21 They're -- each one is read by 16,000 people.**  
 02:43:06 **22 Q. Well, you don't know how many people read it, do you?**  
 02:43:09 **23 A. Yes, I do.**  
 02:43:10 **24 Q. You -- you know that 16,000 people read --**  
 2:43:14 **25 A. I know that the publisher of this magazine reports to us**

- 02:43:17 **1 that 16,000 people read -- read --**  
 02:43:20 **2 Q. They report to you that 16,000 copies are distributed,**  
 02:43:23 **3 correct?**  
 02:43:24 **4 A. No. They report that 16,000 people read it. There's less**  
 02:43:29 **5 copies than that distributed. Their statistics, their**  
 02:43:37 **6 studies --**  
 02:43:37 **7 MR. SCHROER: Move to strike the narrative. It's**  
 02:43:39 **8 nonresponsive.**  
 02:43:40 **9 THE COURT: No. You asked the question.**  
 02:43:43 **10 MR. SCHROER: Well, all right.**  
 02:43:43 **11 BY MR. SCHROER:**  
 02:43:43 **12 Q. Go ahead.**  
 02:43:44 **13 You're talking about somebody's statistics?**  
 02:43:46 **14 A. I'm talking about the publisher has informed us of that.**  
 02:43:50 **15 Q. Okay. But you don't know that to your own knowledge?**  
 02:43:53 **16 A. They told us. I believe them.**  
 02:43:55 **17 Q. Okay. Now, the expenditures that you described to the**  
 02:44:01 **18 Court for advertising, for example, are not only to advertise**  
 02:44:11 **19 integrated card products; is that correct?**  
 1:44:15 **20 A. Correct.**  
 02:44:18 **21 Q. And you have many, many other products that you sell,**  
 02:44:23 **22 correct?**  
 02:44:25 **23 A. Yes. But some of the advertising that was in here that we**  
 02:44:31 **24 showed the Court was specific to that product.**  
 02:44:36 **25 Q. So, for example -- do you have Exhibit 23?**

- 02:44:42 **1 A. Yes.**  
 02:44:47 **2 Q. And could I ask you to find the portion of that that has**  
 02:44:50 **3 the green cover. It's the eighteenth annual buyers' guide?**  
 02:44:53 **4 A. I've got Exhibit 23 as this.**  
 02:45:09 **5 Q. That's the first page?**  
 02:45:10 **6 A. That's the cover.**  
 02:45:17 **7 Q. I'm sorry.**  
 02:45:18 **8 Do you have this page? What you have is what's part**  
 02:45:24 **9 of a group exhibits. There's other stuff --**  
 02:45:26 **10 A. Yeah, I have ...**  
 02:45:30 **11 Q. And I want to ask you about a part of it that's in my hand**  
 02:45:35 **12 that is the eighteenth annual buyers' guide.**  
 02:45:38 **13 A. Yes.**  
 02:45:38 **14 Q. Do you have it?**  
 02:45:38 **15 A. Yes.**  
 02:45:45 **16 Q. And we have here, according to the documents I was given**  
 02:45:54 **17 at least, the cover page. Then pages 39 --**  
 02:45:59 **18 A. Yes.**  
 02:45:59 **19 Q. -- 291 and 362, 363 of that buyers' guide; correct? Is**  
 02:46:09 **20 that what you have too?**  
 02:46:10 **21 A. Yes, yes, sir.**  
 02:46:12 **22 Q. And is what we have here just the excerpts from that that**  
 02:46:16 **23 contain reference to the products made by certain companies**  
 02:46:21 **24 and then the products that certain companies make, the**  
 02:46:27 **25 cross-reference?**

- 02:46:29 **1 A. (No response.)**  
 02:46:29 **2 Q. Are you with me?**  
 02:46:30 **3 A. Yeah. Do you want me to explain to you what it is?**  
 02:46:32 **4 Q. Well, why don't you just let me ask the questions.**  
 02:46:36 **5 A. Okay.**  
 02:46:36 **6 Q. The second page --**  
 02:46:37 **7 A. Okay.**  
 02:46:37 **8 Q. -- which has page 39 in the lower right.**  
 02:46:42 **9 A. Yes.**  
 02:46:42 **10 Q. Has a heading right in the geographical center of the**  
 02:46:45 **11 page, Cards, comma, integrated. Do you see that?**  
 02:46:48 **12 A. Yes.**  
 02:46:48 **13 Q. And listed under that are, according to my count, about 63**  
 02:46:52 **14 different companies who manufacture integrated cards?**  
 02:46:57 **15 A. Correct.**  
 02:46:58 **16 Q. Is every one of those competitors with your company?**  
 02:47:01 **17 A. Competitors?**  
 02:47:02 **18 Q. Yeah.**  
 02:47:03 **19 A. No.**  
 02:47:03 **20 Q. Why not?**  
 02:47:04 **21 A. Some of them are my customers.**  
 02:47:07 **22 Q. Okay. And there are different kinds of integrated cards,**  
 02:47:10 **23 aren't there?**  
 02:47:13 **24 A. For a layperson, no. I mean, they're -- I wouldn't**  
 02:47:16 **25 say-so.**

02:47:17 **1** Q. Well, for example, a card -- a card that just is within --  
 02:47:27 **2** within an integrated page and has perforations and can be  
 02:47:33 **3** removed, that's an integrated card, isn't it?  
 02:47:35 **4** A. No.  
 02:47:36 **5** Q. Not in your opinion?  
 02:47:37 **6** A. No, not in anybody's opinion. That product has been  
 02:47:40 **7** around --  
 02:47:41 **8** Q. I just asked for your opinion, sir.  
 02:47:43 **9** A. No, it's not.  
 02:47:46 **10** Q. And then if we turn over to page 362 -- and I'm now  
 02:47:57 **11** looking at the last two pages of this eighteenth annual  
 02:48:01 **12** buyers' guide.  
 02:48:01 **13** A. Yes, sir.  
 02:48:01 **14** Q. In the lower right-hand corner of page 362, we see your  
 02:48:05 **15** company's listing, correct?  
 02:48:07 **16** A. Yes.  
 02:48:07 **17** Q. And then in the first two columns of the next page --  
 02:48:11 **18** A. Yes.  
 02:48:13 **19** Q. -- are lists of the different product categories that you  
 02:48:19 **20** actually sell -- manufacture and sell, correct?  
 02:48:23 **21** A. Yes.  
 02:48:26 **22** Q. And were the expenses -- strike that.  
 02:48:34 **23** The advertising and marketing expenses to which you  
 02:48:35 **24** testified this morning include the costs of being listed in,  
 02:48:41 **25** for example, the eighteenth annual Print Solutions Buyers'

02:48:45 **1** Guide, correct?  
 02:48:48 **2** A. (No response.)  
 02:48:49 **3** Q. You paid to be listed in this manner, did you not?  
 02:48:52 **4** A. No.  
 02:48:54 **5** Q. Oh, how did your name get in there?  
 02:48:56 **6** A. For the same reason Integrated Cards' name is in there.  
 02:49:01 **7** We're members of the organization.  
 02:49:02 **8** Q. You paid to be in the organization, correct?  
 02:49:04 **9** A. We pay our annual dues to be in the organization. But  
 02:49:08 **10** this is just a buyers' guide that they put out every single  
 02:49:14 **11** year, and it lists everybody who makes every product. You  
 02:49:17 **12** don't pay to be listed in it.  
 02:49:19 **13** Q. And you included the expenses of joining the organization  
 02:49:22 **14** in your summary of expenses that you talked about this  
 02:49:25 **15** morning, didn't you?  
 02:49:26 **16** A. I'd have to look at the summary of the thing, but I don't  
 02:49:30 **17** know. I can look.  
 02:49:33 **18** I mean, when we -- all these ads --  
 02:49:36 **19** Q. Would you just answer my question, sir?  
 02:49:38 **20** A. Okay. I'm sorry. I'll have to look.  
 02:50:04 **21** Q. Check Exhibit No. 17.  
 02:50:16 **22** A. No, we -- it appears we did not include the expense of  
 02:50:20 **23** that, of joining that, no.  
 02:50:23 **24** Q. Okay. You did, however, include expenses for your  
 02:50:26 **25** advertisements in the annual trade association show, correct?

02:50:37 **1** A. Those aren't advertisements in the annual show. That's  
 02:50:41 **2** attending the annual show, and we --  
 02:50:44 **3** Q. Well, in Exhibit 17 you listed tens of thousands of  
 02:50:53 **4** dollars of expenses for booths and the like at various shows  
 02:51:01 **5** that you attributed to integrated cards?  
 02:51:03 **6** A. Yes, yes, but --  
 02:51:04 **7** MR. CHU: Your Honor, I object. That  
 02:51:06 **8** mischaracterizes --  
 02:51:08 **9** THE WITNESS: Don't confuse it with things like this.  
 02:51:09 **10** THE COURT: Okay. Hold on. I didn't hear the  
 02:51:10 **11** objection.  
 02:51:11 **12** MR. CHU: Mr. Schroer is mischaracterizing the  
 02:51:13 **13** testimony. That's not what Mr. McKillip testified to.  
 02:51:17 **14** THE COURT: Okay. You can ask questions. Overruled.  
 02:51:23 **15** BY MR. SCHROER:  
 02:51:24 **16** Q. Well, let's just take a look at Exhibit 17.  
 02:51:25 **17** THE COURT: Are we again looking at an exhibit that's  
 02:51:28 **18** not admitted yet because they withdrew it because it hasn't  
 02:51:31 **19** been supported?  
 02:51:33 **20** MR. CHU: 17 is admitted, your Honor.  
 02:51:34 **21** THE COURT: 17 is in?  
 02:51:36 **22** MR. CHU: Yes. Are you referring to 17?  
 02:51:38 **23** MR. SCHROER: I'm referring to 17 at this point, and  
 02:51:40 **24** I'm informed it's admitted, your Honor. At least once I  
 02:51:45 **25** haven't committed that sin. I'm trying.

02:51:47 **1** THE COURT: And it is. So you can look at it.  
 02:51:51 **2** BY MR. SCHROER:  
 02:51:52 **3** Q. Do you have it, sir?  
 02:51:53 **4** A. I have it in my hand.  
 02:51:54 **5** Q. Okay. Well, let's just look at the first page there,  
 02:51:58 **6** which appears to include a total of \$27,890 for booth fees?  
 02:52:06 **7** A. Yes.  
 02:52:07 **8** Q. And that's -- that's for what?  
 02:52:09 **9** A. That's just for the annual show only, once a year. These  
 02:52:14 **10** are the dates of the show, 1999 through 2006. But that's just  
 02:52:20 **11** the one show a year. These are all the other shows in  
 02:52:25 **12** addition to these. If I could --  
 02:52:28 **13** Q. Okay. And when you say this is the show, is this the  
 02:52:31 **14** integrated cards show?  
 02:52:32 **15** A. No, no, no.  
 02:52:33 **16** Q. No.  
 02:52:33 **17** And, in other words, when you pay the money for these  
 02:52:37 **18** shows that you summarized for the Court, you are promoting all  
 02:52:42 **19** of the products listed on page 363 of the prior exhibit,  
 02:52:48 **20** correct?  
 02:52:52 **21** A. Which exhibit is it?  
 02:52:54 **22** Q. It was the --  
 02:52:55 **23** A. Oh, yes. Yeah.  
 02:52:58 **24** Q. And you have --  
 02:52:59 **25** A. Do we exhibit all those products? Yeah, I mean, the

02:53:06 **1** products listed here say numbering MOD 7, MOD 11. It just

02:53:13 **2** shows numbering because, you know -- but, yeah --

02:53:16 **3** Q. Roughly -- I apologize. I interrupted.

02:53:22 **4** A. We show representations of all those products.

02:53:26 **5** Q. And there are, give or take, 75 or 80 different kinds of

02:53:29 **6** products? I can add them. I'm sorry. I haven't.

02:53:37 **7** A. Not really.

02:53:37 **8** Q. Probably more like 60 categories of products?

02:53:39 **9** A. Not really, because what you're looking at it says: Bar

02:53:41 **10** codes consecutive, bar codes fixed image, bar codes variable

02:53:46 **11** image. I mean, they're just -- if you were to be at our show

02:53:50 **12** and look at it, you would just say, Hey, do you guys do bar

02:53:55 **13** codes? Yeah, here's a sample. I mean ...

02:54:00 **14** Q. So back to where we were, the first page of Exhibit 19 --

02:54:04 **15** I'm sorry -- Exhibit 17.

02:54:06 **16** A. Yes.

02:54:06 **17** Q. The \$27,890 of expense there would have been gone to

02:54:15 **18** promoting the bar code sales?

02:54:17 **19** A. Promoting all of our products, yes.

02:54:19 **20** Q. Including bar codes and including --

02:54:23 **21** A. Yeah, the --

02:54:24 **22** Q. -- integrated labels, correct?

02:54:27 **23** A. Yes.

02:54:28 **24** Q. And integrated labels are not the same as integrated

02:54:32 **25** cards. I'm correct, am I not?

02:54:36 **1** A. Yes, you are. But, again --

02:54:37 **2** Q. And --

02:54:38 **3** A. This is just the annual show.

02:54:39 **4** Q. Sure.

02:54:41 **5** Now, focusing on Exhibit 17, now I just want to talk

02:54:44 **6** about the entire group of documents --

02:54:47 **7** A. Yes.

02:54:47 **8** Q. -- and ask you a general question.

02:54:49 **9** It's correct, is it not, that the expenses reflected

02:54:55 **10** there in that entire exhibit, not just the one page, all are

02:54:58 **11** for promoting all of your products, not merely integrated

02:55:03 **12** cards, correct?

02:55:04 **13** A. Yes, we promote all of our products.

02:55:07 **14** Q. And if you hadn't been selling integrated cards, you still

02:55:13 **15** would have been doing all of these same things from 1999

02:55:15 **16** forward, would you not?

02:55:18 **17** A. In all probability, yes.

02:55:27 **18** Q. Okay. Thank you.

02:55:35 **19** And you have no business records, do you, that break

02:55:40 **20** down your advertising, marketing or the like, by reference to

02:55:44 **21** any particular product line; is that correct?

02:55:51 **22** A. Could you say that -- we have the --

02:55:55 **23** Q. You haven't produced any records in this case that say, We

02:55:58 **24** spent X dollars of advertising and marketing on integrated

02:56:02 **25** cards as opposed to all of our other products?

02:56:06 **1** A. No.

02:56:06 **2** Q. You don't break down your records that way, do you?

02:56:09 **3** A. No.

02:56:18 **4** Q. Now, let's talk in the same context about some equipment.

02:56:26 **5** Do you have Exhibits 10 -- 9, 10, 8, the documents

02:56:36 **6** related to Tamarack?

02:56:42 **7** A. Yeah. Those aren't relating to Tamarack.

02:56:44 **8** Q. Oh, I'm sorry. I have the PTX number.

02:56:54 **9** Yeah, I think your counsel did use PTX.

02:56:58 **10** A. Those are the letters that he wrote to our suppliers, 9

02:57:02 **11** and 10, and where he --

02:57:04 **12** Q. You should have three documents, Exhibits 8, 9, and 10 --

02:57:09 **13** A. What are the documents of?

02:57:11 **14** Q. That reflect Tamarack purchases.

02:57:14 **15** A. The purchases?

02:57:18 **16** I know what they are. Yeah, I have them. They're

02:57:21 **17** not -- they're 20- -- no, they're not. Oh, your exhibits? I

02:57:25 **18** was looking at the other old ones.

02:57:27 **19** Q. I apologize. Your counsel used our exhibits.

02:57:30 **20** A. Okay.

02:57:30 **21** Q. And I'm doing the same. It's --

02:57:32 **22** A. Okay. I've got them.

02:57:33 **23** Q. Once in a while lawyers cooperate, not all that often,

02:57:38 **24** but ...

02:57:38 **25** A. I've got them.

02:57:39 **1** THE COURT: Once in a while.

02:57:42 **2** THE WITNESS: 7, 8, and 9, I have, and 10.

02:57:46 **3** BY MR. SCHROER:

02:57:47 **4** Q. And the first of these chronologically is Exhibit 10 going

02:57:55 **5** back to May of '93. Are you with me?

02:57:58 **6** A. Yes.

02:58:01 **7** Q. And is that device still used to the present?

02:58:06 **8** A. Yes.

02:58:08 **9** Q. Okay. And Exhibit 9, I think, is the next one

02:58:16 **10** chronologically, May 20th, 1996?

02:58:19 **11** A. Yes.

02:58:20 **12** Q. And is that one still used today?

02:58:21 **13** A. Yes.

02:58:23 **14** Q. And Exhibits 7 and 8, refer to -- 8 is January 31, '97,

02:58:36 **15** and 7 is July 30, 1997. You have those?

02:58:43 **16** A. Yes.

02:58:43 **17** Q. And my dates are correct?

02:58:45 **18** A. Yes.

02:58:45 **19** Q. And all of these Tamarack devices are still used today?

02:58:49 **20** A. Yes.

02:58:51 **21** Q. And it's correct, isn't it, that your first use of the

02:58:55 **22** first Tamarack product in May of '93 was for integrated labels

02:59:02 **23** and not integrated cards, correct?

02:59:05 **24** A. Yes.

02:59:06 **25** Q. And each and every one of these purchases -- well, let me

- 02:59:13 **1** break it down.
- 02:59:14 **2** Looking at the first line of PX 8, it indicates that
- 02:59:19 **3** you acquired a Tamarack label applicator, correct?
- 02:59:25 **4** **A. Yeah.**
- 02:59:25 **5** **Q.** And similarly with Exhibit 9, the first line indicates
- 02:59:30 **6** that you acquired a Tamarack label applicator?
- 02:59:35 **7** **A. Yes.**
- 02:59:43 **8** **Q.** And just looking at the second page of Exhibit 7, the
- 02:59:48 **9** second entry is \$25,000 for an integral label die cut unit,
- 02:59:55 **10** correct?
- 02:59:58 **11** **A. Yes.**
- 02:59:59 **12** **Q.** So it's correct, isn't it, that all of the Tamarack
- 03:00:03 **13** equipment that you bought, beginning in May of 1993, has been
- 03:00:07 **14** constantly used since that time for the purpose of
- 03:00:10 **15** manufacturing integrated labels?
- 03:00:13 **16** **A. In addition to integrated cards, yes.**
- 03:00:17 **17** **Q.** And you don't have any records that would tell us how much
- 03:00:25 **18** of the time it's used for one product, that is labels, versus
- 03:00:30 **19** the other, that is the cards, do you?
- 03:00:34 **20** **A. No.**
- 03:00:37 **21** **Q.** Okay. And --
- 03:00:38 **22** **A. I'd have to -- no, I'd be guessing.**
- 03:00:45 **23** **Q.** And it's correct, isn't it, that in terms of revenue
- 03:00:50 **24** generated for your company, the integrated label business is
- 03:00:54 **25** far larger than the integrated card business?

- 03:00:57 **1** **A. No.**
- 03:00:57 **2** **Q.** Or at least prior to 2006 it was?
- 03:01:01 **3** **A. Did we do more integrated labels prior to 2006?**
- 03:01:06 **4** **Q.** Yeah.
- 03:01:11 **5** **A. I don't know for certain. I know now that it's different.**
- 03:01:19 **6** **Q.** It's correct, isn't it, that prior to -- between -- let's
- 03:01:24 **7** take the years 2000 and 2006. If during that time you weren't
- 03:01:30 **8** making integrated cards, you still would have been making
- 03:01:34 **9** integrated labels with those same Tamarack machines?
- 03:01:39 **10** **A. From 2000 to 2006?**
- 03:01:42 **11** **Q.** Yes.
- 03:01:44 **12** **A. No, I think we were doing integrated cards then too.**
- 03:01:46 **13** **Q.** No. I'm sorry. I'm asking you a hypothetical. Let's
- 03:01:50 **14** assume --
- 03:01:50 **15** **A. Oh, a hypothetical.**
- 03:01:51 **16** **Q.** -- you weren't doing integrated cards.
- 03:01:55 **17** On that assumption, you still would have been doing
- 03:01:59 **18** integrated labels with those same Tamarack machines, wouldn't
- 03:02:04 **19** you?
- 03:02:05 **20** **A. No, I wouldn't have needed as much -- as much equipment.**
- 03:02:08 **21** **Q.** But you would have been doing integrated labels on the
- 03:02:12 **22** same machines?
- 03:02:13 **23** **A. No, I wouldn't have.**
- 03:02:14 **24** **Q.** You would have gotten rid of all four machines?
- 03:02:17 **25** **A. I wouldn't have gotten them -- had them in the first -- I**

- 03:02:20 **1** **wouldn't have had to purchase them.**
- 03:02:22 **2** **Q.** No, I'm just focusing on the years --
- 03:02:24 **3** **A. I know, but you're asking me hypotheticals that don't make**
- 03:02:28 **4** **sense. I wouldn't operate like that. I'm sorry. I don't**
- 03:02:33 **5** **mean to be argumentative, but ...**
- 03:02:34 **6** **Q.** Now, you also talked about some machines that you
- 03:02:42 **7** bargained for down in Florida?
- 03:02:44 **8** **A. Yes.**
- 03:02:45 **9** **Q.** FME.
- 03:02:46 **10** Those are also used for integrated labels, aren't
- 03:02:50 **11** they?
- 03:02:50 **12** **A. Yes.**
- 03:03:14 **13** **Q.** You never would have gotten out of the business of
- 03:03:18 **14** integrated labels, would you?
- 03:03:20 **15** **A. Integrated labels?**
- 03:03:22 **16** **Q.** Right.
- 03:03:22 **17** **A. Why would I?**
- 03:03:24 **18** **Q.** Well, that's my question.
- 03:03:25 **19** You wouldn't have done that, would you?
- 03:03:27 **20** **A. Integrated labels?**
- 03:03:28 **21** **Q.** You wouldn't have gotten out of that business, would you?
- 03:03:33 **22** **A. I'm not sure if I understand the question. Integrated**
- 03:03:36 **23** **labels? No.**
- 03:03:38 **24** **Q.** Well, since 1996, has integrated labels been a profitable
- 03:03:43 **25** category for you?

- 03:03:46 **1** **A. We've done integrated labels prior to 1996.**
- 03:03:50 **2** **Q.** I understand that.
- 03:03:51 **3** **A. Okay. All right.**
- 03:03:51 **4** **Q.** But my question was trying to narrow it down a little bit,
- 03:03:54 **5** so maybe it was a little more clear. Let's just take the
- 03:03:57 **6** years 2000 to 2006.
- 03:04:00 **7** During the years 2000 to 2006, have integrated labels
- 03:04:04 **8** been a profitable product for you?
- 03:04:08 **9** **A. I -- I really don't know. We don't do them -- I assume**
- 03:04:13 **10** **so, but I mean you're asking some questions that I can't**
- 03:04:17 **11** **answer specifically as far as the profitability of a specific**
- 03:04:22 **12** **product fifteen years ago, eighteen years ago.**
- 03:04:28 **13** **Q.** Okay. Well, I did mean to limit it to the year 2000, and
- 03:04:32 **14** if I was --
- 03:04:32 **15** **A. Okay.**
- 03:04:33 **16** **Q.** -- unclear, I'm sorry.
- 03:04:35 **17** But does that help at all --
- 03:04:36 **18** **A. I'm not sure if I understand the question.**
- 03:04:38 **19** **Q.** I wanted to know if you made a profit on integrated labels
- 03:04:43 **20** from 2000 to 2006.
- 03:04:47 **21** **A. I don't know.**
- 03:04:48 **22** **Q.** Okay. Can you think of any circumstances under which you
- 03:04:53 **23** would have discontinued that line during the time period 2000
- 03:04:58 **24** to 2006?
- 03:05:04 **25** **A. No.**

03:05:08 **1 Q.** I'd like to step back to the auction sale where your  
 03:05:19 **2** brother's company -- the assets of your brother's company --  
 03:05:23 **3 A.** Oh, yeah.  
 03:05:23 **4 Q.** -- the assets of your brother's two companies were sold.  
 03:05:29 **5** And you, I think, by reference to an exhibit put the  
 03:05:33 **6** date of that -- it's Exhibit 19 -- as October of 1997,  
 03:05:41 **7** correct?  
 03:05:42 **8 A.** That's what this exhibit said, yes.  
 03:05:45 **9 Q.** And does that comport generally with your memory?  
 03:05:49 **10 A.** I think so.  
 03:05:52 **11 Q.** And what did you know about your brother's personal  
 03:05:56 **12** status, financial status at that point in time?  
 03:05:59 **13 A.** His personal finances?  
 03:06:01 **14 Q.** Right.  
 03:06:01 **15 A.** Nothing. His personal finances, nothing -- oh, wait a  
 03:06:11 **16** minute. I had helped him a little bit and paid some bills for  
 03:06:21 **17** him.  
 03:06:25 **18 Q.** You knew, in fact, that he had been forced to file  
 03:06:30 **19** personal bankruptcy --  
 03:06:30 **20 A.** I did not know that.  
 03:06:30 **21 Q.** -- in 1996?  
 03:06:32 **22 A.** No, I did not know that.  
 03:06:36 **23 Q.** You knew in 1997, at about the time his companies were  
 03:06:44 **24** liquidated, that he had no financial capability to bring a  
 03:06:50 **25** patent infringement case, didn't you?

03:06:52 **1 A.** How would I know that?  
 03:06:54 **2 Q.** Well, you knew his companies went bankrupt -- withdrawn.  
 03:07:01 **3 A.** I didn't know that.  
 03:07:04 **4 Q.** In any event, it's correct, isn't it, that you actually  
 03:07:09 **5** saw the letters patent at issue in our case today back on  
 03:07:14 **6** October 7th of 1997?  
 03:07:16 **7 A.** Did I see the patents are you asking me?  
 03:07:19 **8 Q.** Yeah.  
 03:07:20 **9 A.** Yes.  
 03:07:22 **10 Q.** And at least two times prior to that you had been told of  
 03:07:28 **11** the existence of a patent that dealt with integrated cards,  
 03:07:34 **12** correct?  
 03:07:36 **13 A.** At least.  
 03:07:40 **14 Q.** And you never took the trouble to inquire about what the  
 03:07:45 **15** patent covered, did you?  
 03:07:48 **16 A.** I knew what it covered. I was told he had a patent on  
 03:07:52 **17** integrated cards.  
 03:07:55 **18 Q.** So you went ahead with your own --  
 03:07:59 **19 A.** I read the patent.  
 03:08:00 **20 Q.** You went ahead with your own production of integrated  
 03:08:02 **21** cards from the beginning knowing that there was a patent and  
 03:08:08 **22** not reading it; is that correct?  
 03:08:12 **23 A.** I knew that he had a patent for integrated cards, yes.  
 03:08:16 **24 Q.** And you hadn't read it, correct?  
 03:08:21 **25 A.** Had I read it in its entirety? I don't think so, no.

03:08:24 **1 Q.** Well, at your ...  
 03:08:27 **2 A.** I saw the patent --  
 03:08:29 **3 Q.** You testified --  
 03:08:30 **4 A.** I heard about the patent, but --  
 03:08:32 **5 Q.** Let me ask the question.  
 03:08:33 **6 A.** I'm sorry.  
 03:08:33 **7 Q.** You testified this morning, if I understood correctly,  
 03:08:36 **8** that you did read the patent after this lawsuit was filed,  
 03:08:39 **9** correct?  
 03:08:40 **10 A.** Yes, I have.  
 03:08:41 **11 Q.** And I believe you testified that you had never read it  
 03:08:45 **12** before that; is that correct?  
 03:08:47 **13 A.** I don't know if I testified to that or not.  
 03:08:50 **14 Q.** Well, had you or not?  
 03:08:51 **15 A.** I don't believe I had read it in its entirety.  
 03:08:54 **16 Q.** Well, had you read any part of it?  
 03:08:56 **17 A.** Yeah, and I had parts of it announced to me.  
 03:08:59 **18 Q.** When you say announced, what do you mean by that?  
 03:09:02 **19 A.** I mean at the auction, the auctioneer read the patent, the  
 03:09:06 **20** patent number, and said, Offered for sale, integrated card and  
 03:09:12 **21** business form assembly, and left it for fabricating on same on  
 03:09:18 **22** label equipment formation. I read the patent.  
 03:09:20 **23 Q.** And your testimony this moment you were reading from  
 03:09:23 **24** Exhibit 1?  
 03:09:25 **25 A.** Your Exhibit 1, yes.

03:09:26 **1 Q.** Okay. And notwithstanding that knowledge you continued  
 03:09:33 **2** your production of integrated cards, correct?  
 03:09:36 **3 A.** Yes.  
 03:09:37 **4 Q.** And then when this lawsuit was filed in 2006, you did the  
 03:09:44 **5** very same thing, did you not? You continued production and  
 03:09:48 **6** sale of your integrated cards?  
 03:09:50 **7 A.** Yes, because he was -- well, the simple thing is he was --  
 03:09:55 **8** he knew I was making integrated cards. He didn't sue me, so I  
 03:09:59 **9** assumed I'm perfectly fine. Last time he even suspected me of  
 03:10:03 **10** anything, he sued me immediately.  
 03:10:08 **11 Q.** And when did you call your brother to ask him if it was  
 03:10:10 **12** perfectly fine with him?  
 03:10:13 **13 A.** I never called him. I never called him. Why would I?  
 03:10:22 **14** I'm sorry. I shouldn't ask questions. I'm sorry.  
 03:10:35 **15 Q.** A few more odds and ends, sir.  
 03:10:37 **16 A.** Okay.  
 03:10:39 **17 Q.** And if I asked this earlier, I apologize.  
 03:10:40 **18 A.** I won't remember.  
 03:10:42 **19 Q.** The first exhibit we talked about, the dart -- the Las  
 03:10:50 **20** Vegas dart brochure.  
 03:10:51 **21 A.** Yes, yes.  
 03:10:56 **22 Q.** That does not have the name of your company USA/Docufinish  
 03:11:01 **23** on it, does it?  
 03:11:06 **24 A.** No. Our name of our company would never appear on  
 03:11:09 **25** anything we manufacture.

1 (Resumed at 9:54 a.m.)  
 09:54:56 2 THE CLERK: 06C2071, Integrated Cards versus McKillip  
 09:55:12 3 Industries.  
 09:55:12 4 MR. CHU: Good morning, your Honor.  
 09:55:13 5 THE COURT: Good morning.  
 09:55:14 6 THE CLERK: Counsel, identify yourself for the  
 09:55:16 7 record.  
 09:55:16 8 MR. CHU: Michael Chu, C-h-u, for the defendant,  
 09:55:19 9 USA/Docufinish.  
 09:55:20 10 THE COURT: Good morning.  
 09:55:20 11 MS. CRISWELL: And Jacqueline Criswell on behalf of  
 09:55:22 12 USA/Docufinish.  
 09:55:22 13 THE COURT: Good morning.  
 09:55:23 14 MR. SCHROER: Steven Schroer and Jon Birmingham for  
 09:55:26 15 the plaintiff.  
 09:55:27 16 THE COURT: Good morning.  
 09:55:28 17 Good morning.  
 09:55:28 18 MR. SCHROER: Sorry to hear your cold isn't better,  
 09:55:28 19 your Honor.  
 09:55:30 20 THE COURT: Well, difficult for April mostly.  
 09:55:32 21 MS. CRISWELL: Can I ask out of curiosity how the  
 09:55:34 22 verdict came back yesterday?  
 09:55:34 23 THE COURT: It was guilty on both counts.  
 09:55:37 24 Are you ready to proceed?  
 09:55:38 25 MS. CRISWELL: We're ready.

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09:56:08 1 USA calls to the stand Brian Wooley.  
 09:56:16 2 (Witness takes the stand.)  
 09:56:16 3 THE COURT: Sir, please raise your right hand.  
 09:56:27 4 (The witness was sworn.)  
 09:56:27 5 ---  
 09:56:27 6 BRIAN WOOLEY, DIRECT EXAMINATION  
 09:56:27 7 BY MS. CRISWELL:  
 09:56:29 8 Q. Please state your name for the record.  
 09:56:29 9 A. Brian Wooley.  
 09:56:32 10 Q. How long have you been involved in the printing industry?  
 09:56:35 11 A. I was involved in the printing industry for about twenty  
 09:56:38 12 years or a little bit more.  
 09:56:54 13 Q. What did you do?  
 09:56:54 14 A. I was a press operator.  
 09:56:56 15 Q. Were you a custom press operator?  
 09:56:56 16 A. Yeah.  
 09:56:57 17 Q. And what does that mean?  
 09:56:59 18 A. A custom press operator's a little bit more involved than  
 09:57:03 19 your regular press operator with the -- you know, a lot of  
 09:57:08 20 different conversions all at one time.  
 09:57:11 21 Q. Okay. And did you work for USA when it was called United  
 09:57:18 22 Stencil and Affixing?  
 09:57:18 23 A. Yes, I did.  
 09:57:19 24 Q. Do you recall when you started there?  
 09:57:25 25 A. I don't know the exact date. It was probably back in the

09:57:26 1 '80s, '90s, late '80s.  
 09:57:28 2 Q. Did you work there for a number of years?  
 09:57:30 3 A. Oh, yes.  
 09:57:30 4 Q. Is this the company that's owned by Steve McKillip?  
 09:57:33 5 A. Yes, it is.  
 09:57:34 6 Q. And it was at the time you worked there?  
 09:57:36 7 A. Correct.  
 09:57:38 8 Q. Was United Stencil and Affixing known in the industry as  
 09:57:41 9 USA when you worked there?  
 09:57:43 10 A. Yes, it was.  
 09:57:46 11 Q. When it later changed its name to USA/Docufinish, was it  
 09:57:50 12 known in the industry as USA?  
 09:57:52 13 A. Correct.  
 09:57:54 14 Q. Who supervised your work at USA?  
 09:57:59 15 A. Began with Chuck Casagrande, and then different  
 09:58:04 16 supervisors after that, Janet Storjohann, Rob Serblowski  
 09:58:13 17 (phonetic).  
 09:58:13 18 Q. Okay. Now, during the period you worked for USA, did it  
 09:58:16 19 make what witnesses have referred to as easy release or clean  
 09:58:21 20 release cards?  
 09:58:22 21 A. Yes.  
 09:58:24 22 Q. Did it also make integrated cards?  
 09:58:26 23 A. Yes.  
 09:58:32 24 Q. I'm showing you what's been previously marked as  
 09:58:34 25 Defendant's Exhibit 15 and Defendant's Exhibit 16.

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09:58:42 1 What type of card is on Defendant's Exhibit 15?  
 09:58:48 2 A. That's an easy release card.  
 09:58:50 3 Q. Okay. And what type of card is on Defendant's Exhibit 16?  
 09:58:59 4 A. That is an integrated card.  
 09:59:00 5 Q. And can you explain the difference between the two?  
 09:59:03 6 A. Yes. An integrated card is a form and it has a die cut  
 09:59:10 7 patch on the back to a specific size, and it is die cut in the  
 09:59:15 8 front.  
 09:59:17 9 And a clean release card is a card that is  
 09:59:21 10 manufactured then applied to the form.  
 09:59:24 11 Q. And is the clean release card raised as opposed to flush  
 09:59:28 12 with the document?  
 09:59:29 13 A. Yes.  
 09:59:30 14 Q. Did you call an integrated card -- and do you call an  
 09:59:34 15 integrated card a generic card?  
 09:59:35 16 A. Yeah.  
 09:59:36 17 Q. Why do you do that?  
 09:59:38 18 A. I nicknamed them, oh, years and years back. What it was  
 09:59:43 19 is I converted to easy release cards, and there's a complex  
 09:59:47 20 conversion for that. And with an integrated card, it's just a  
 09:59:51 21 printed form with a patch and die cut, so there is no basic  
 09:59:57 22 converting, no integrated -- no complex converting, no  
 10:00:02 23 printing going on, so I nicknamed them generic cards.  
 10:00:05 24 Q. Okay. So it's kind of a disparaging term, generic cards,  
 10:00:08 25 because you don't think they're that complex to make; is that



10:15:32 **1** BY MR. SCHROER:  
 10:15:36 **2** Q. Good morning, sir.  
 10:15:36 **3** A. **Good morning.**  
 10:15:37 **4** Q. There's more than one type of integrated card, is there  
 10:15:40 **5** not?  
 10:15:43 **6** A. **The only integrated card that I am familiar with is the**  
 10:15:46 **7 one basically converted like the sample here (indicating).**  
 10:15:51 **8** Q. And you never told Mr. McKillip how USA made integrated  
 10:16:01 **9** cards, did you?  
 10:16:03 **10** A. **No.**  
 10:16:08 **11** Q. The only thing you told him was that Docufinish did make  
 10:16:14 **12** them?  
 10:16:14 **13** A. **Correct.**  
 10:16:14 **14** MR. SCHROER: Thank you. That's all.  
 10:16:14 **15** ---  
 10:16:14 **16** BRIAN WOOLEY, REDIRECT EXAMINATION  
 10:16:14 **17** BY MS. CRISWELL:  
 10:16:23 **18** Q. You testified, didn't you, that when John asked you  
 10:16:29 **19** whether USA made integrated cards, you told him, Yes, but that  
 10:16:32 **20** you called them generic cards, correct?  
 10:16:35 **21** A. **Correct.**  
 10:16:35 **22** Q. And did you explain to John what you meant by generic  
 10:16:40 **23** cards?  
 10:16:42 **24** A. **Yes.**  
 10:16:42 **25** Q. And for the record, again, what did you tell John?

10:16:45 **1** A. **I told John that it's a form that goes through a machine.**  
 10:16:51 **2** **It gets a patch on the back. It gets die cut, and then off**  
 10:16:56 **3** **the machine it goes.**  
 10:16:57 **4** MS. CRISWELL: Okay. Thank you, Mr. Wooley.  
 10:16:59 **5** THE WITNESS: You're welcome.  
 10:17:03 **6** MR. SCHROER: Recross?  
 10:17:06 **7** ---  
 10:17:06 **8** BRIAN WOOLEY, RECROSS-EXAMINATION  
 10:17:06 **9** BY MR. SCHROER:  
 10:17:08 **10** Q. Do I now understand that you told John that they made  
 10:17:11 **11** generic cards?  
 10:17:12 **12** A. **A generic card is what I call --**  
 10:17:14 **13** Q. Please, just ...  
 10:17:16 **14** Is that -- was that the discussion with him, they  
 10:17:18 **15** made something that you called generic cards?  
 10:17:21 **16** A. **Yes.**  
 10:17:23 **17** MR. SCHROER: Thank you. That's all.  
 10:17:25 **18** THE COURT: Okay. You may step down, sir.  
 10:17:28 **19** THE WITNESS: Okay.  
 10:17:28 **20** (Witness leaves the stand.)  
 10:17:30 **21** THE COURT: And you can call your next witness.  
 10:17:30 **22** (Witness takes the stand.)  
 10:18:15 **23** THE COURT: Ms. Criswell, there's exhibits up here on  
 10:18:19 **24** the stand. Excuse my voice, sir.  
 10:18:24 **25** Please raise your right hand.

10:18:30 **1** (The witness was sworn.)  
 10:18:30 **2** THE COURT: Thank you.  
 10:18:30 **3** ---  
 10:18:30 **4** CHUCK CASAGRANDE, DIRECT EXAMINATION  
 10:18:30 **5** BY MS. CRISWELL:  
 10:18:37 **6** Q. Can you state your name for the record?  
 10:18:39 **7** A. **Chuck Casagrande.**  
 10:18:43 **8** Q. What business are you in?  
 10:18:46 **9** A. **I work for a company called Stratatek.**  
 10:18:49 **10** Q. What's your position?  
 10:18:51 **11** A. **President.**  
 10:18:52 **12** Q. What does Stratatek do?  
 10:18:55 **13** A. **We sell laminates, pressure sensitive laminates in the**  
 10:19:00 **14** **forms industry.**  
 10:19:01 **15** Q. Is that -- laminates is like an adhesive?  
 10:19:02 **16** A. **It's an adhesive, typically a film or a paper with**  
 10:19:06 **17** **adhesive.**  
 10:19:06 **18** Q. How long have you been involved in the printing industry?  
 10:19:08 **19** A. **For 25 years.**  
 10:19:13 **20** Q. In the industry, to what company does USA refer?  
 10:19:16 **21** A. **United Stencil and Affixing, USA/Docufinish.**  
 10:19:23 **22** Q. Did you work for any of John McKillip's companies, John J.  
 10:19:28 **23** McKillip?  
 10:19:29 **24** A. **Yes, in high school and some in college.**  
 10:19:31 **25** Q. What companies?

10:19:33 **1** A. **Illinois Stencil and American Stencil.**  
 10:19:38 **2** Q. Did you work for any of Steve McKillip's companies?  
 10:19:40 **3** A. **Yes. I worked at USA.**  
 10:19:46 **4** Q. When?  
 10:19:46 **5** A. **From '87 to June of '95.**  
 10:19:48 **6** Q. What was your position there?  
 10:19:50 **7** A. **Plant manager.**  
 10:19:55 **8** Q. How would you describe what an integrated card is?  
 10:19:59 **9** A. **I'd describe it by saying maybe what it's not.**  
 10:20:03 **10** **Typically cards are produced separately and they're**  
 10:20:06 **11** **attached to the top of a form. An integrated card utilizes**  
 10:20:09 **12** **the form to make the card, so laminates are applied to the**  
 10:20:14 **13** **form and you die cut through the form into the laminate and**  
 10:20:18 **14** **you peel off the card.**  
 10:20:19 **15** Q. And I'm showing you what's been marked Defendant's  
 10:20:22 **16** Exhibit 16.  
 10:20:22 **17** Is this the type of integrated card that you just  
 10:20:25 **18** defined?  
 10:20:32 **19** A. **Yes, it is.**  
 10:20:36 **20** Q. When did you leave USA?  
 10:20:39 **21** A. **June of '95.**  
 10:20:41 **22** Q. And then what did you do?  
 10:20:44 **23** A. **Went to a company called Stratatek -- well, at the time**  
 10:20:48 **24** **was Precision Coated Products.**  
 10:20:53 **25** Q. And Precision Coated Products is in the same business as

10:26:35 **1** Q. Now, looking at Exhibits 28 and 29, does this confirm your  
 10:26:40 **2** recollection that your sales call on John was in 1996?  
 10:26:44 **3** A. Yes, it does.  
 10:26:48 **4** Q. Where did you meet with John during your sales call at  
 10:26:51 **5** Tri-Graphics?  
 10:26:53 **6** A. In the front office. I can -- I have a distinct image. I  
 10:26:58 **7** remember still. It's in the front. As you walk in to the  
 10:27:02 **8** left, there were several desks and we stood over some desks  
 10:27:04 **9** there.  
 10:27:05 **10** Q. Did you show him any samples?  
 10:27:09 **11** A. Yes.  
 10:27:09 **12** Q. What did you show him?  
 10:27:12 **13** A. Our -- all types of different samples and examples of  
 10:27:19 **14** integrated cards.  
 10:27:20 **15** Q. Did you have a sample book that you used?  
 10:27:26 **16** A. I did.  
 10:27:26 **17** Q. And tell me how you reviewed it with John?  
 10:27:29 **18** A. We stood there at the desk. We opened it and we went  
 10:27:31 **19** through it page by page and took samples out and peeled them  
 10:27:35 **20** out and talked about them.  
 10:27:37 **21** Q. Did John seem familiar with these types of products?  
 10:27:40 **22** A. Yes, he was familiar with integrated cards.  
 10:27:44 **23** Q. Did your sample book contain USA integrated cards?  
 10:27:51 **24** A. Yes. All our sample books did in the early years.  
 10:27:55 **25** Q. Do you specifically recall showing John samples of USA

integrated cards in your sample book?  
 10:28:02 **2** A. I don't specifically recall any sample specifically now,  
 10:28:05 **3** but they would have been there and we would have shown USA  
 10:28:08 **4** cards.  
 10:28:09 **5** MR. SCHROER: Objection, move to strike.  
 10:28:11 **6** THE COURT: Sustained as speculative.  
 10:28:16 **7** BY MS. CRISWELL:  
 10:28:18 **8** Q. Showing you what's been marked as Defendant's Exhibit 31.  
 10:28:27 **9** MR. SCHROER: May I examine that, please? The  
 10:28:31 **10** original exhibit that the witness has.  
 10:28:34 **11** MS. CRISWELL: The original exhibit --  
 10:28:35 **12** MR. SCHROER: Oh, I apologize. Did he receive a  
 10:28:37 **13** binder or just one piece of paper?  
 10:28:39 **14** MS. CRISWELL: Just this.  
 10:28:41 **15** MR. SCHROER: May I approach?  
 10:28:42 **16** THE COURT: You may.  
 10:28:43 **17** MR. SCHROER: Thank you, your Honor.  
 10:29:16 **18** MS. CRISWELL: Your Honor, forgive me. Just one  
 10:29:18 **19** moment.  
 10:30:12 **20** BY MS. CRISWELL:  
 10:30:12 **21** Q. Can you identify these USA samples?  
 10:30:16 **22** A. Yes. They're integrated USA samples that were in our  
 10:30:21 **23** binders.  
 10:30:21 **24** Q. Were these USA samples --  
 10:30:23 **25** MR. SCHROER: Objection, your Honor, best evidence.

10:30:24 **1** The witness has just testified these came from binders, and we  
 10:30:28 **2** know from the record there are binders.  
 10:30:31 **3** THE COURT: Do you have --  
 10:30:32 **4** MR. SCHROER: I object that the entire binder is  
 10:30:36 **5** relevant.  
 10:30:36 **6** THE COURT: Okay. Do you have the original?  
 10:30:37 **7** MS. CRISWELL: Your Honor, the sample book that  
 10:30:39 **8** Mr. Casagrande used at his deposition, we also brought to the  
 10:30:46 **9** summary judgment hearing. And it's our recollection that we  
 10:30:49 **10** submitted that -- those to the Court with our demonstrative  
 10:30:53 **11** exhibits, and your clerk was not able to find them.  
 10:30:55 **12** Mr. Casagrande has another binder that is similar,  
 10:31:00 **13** but the best evidence we have is that other binder, because we  
 10:31:03 **14** believe it was --  
 10:31:04 **15** THE COURT: The binder went to me and I don't have  
 10:31:06 **16** it?  
 10:31:06 **17** MS. CRISWELL: Yeah.  
 10:31:26 **18** THE COURT: Well, my staff is saying that they don't  
 10:31:28 **19** recall them being submitted to the Court, so -- that it was  
 10:31:31 **20** used in the hearing but not submitted to the Court. I don't  
 10:31:35 **21** know.  
 10:31:35 **22** MS. CRISWELL: Well, we have a -- he has another --  
 10:31:38 **23** he can testify to this. But in his deposition he said that he  
 10:31:42 **24** couldn't be sure if that sample book was identical to the  
 10:31:45 **25** one -- was the same one he showed John, but it would have had

10:31:48 **1** the same promotional materials. And he has another binder  
 10:31:56 **2** that's not quite the same, but it's the best evidence we have  
 10:31:58 **3** now, because that sample book is no longer here.  
 10:32:01 **4** THE COURT: All right. I'll admit it, but it'll go  
 10:32:03 **5** to the weight. You'll have to cross him on it.  
 10:32:06 **6** MR. SCHROER: Can we lodge another objection under  
 10:32:08 **7** Rule 106?  
 10:32:09 **8** THE COURT: Okay.  
 10:32:09 **9** MR. SCHROER: Based upon the statements just made in  
 10:32:11 **10** the testimony, the remainder of what's in these binders is  
 10:32:14 **11** highly relevant, and the failure to produce means that this  
 10:32:16 **12** writing shouldn't be admitted under Rule 106.  
 10:32:21 **13** THE COURT: Did you have it at the deposition? You  
 10:32:24 **14** all saw it at the deposition?  
 10:32:27 **15** MR. SCHROER: The -- well, that's part of the issue.  
 10:32:30 **16** The witness testified --  
 10:32:31 **17** THE COURT: You're not answering my question.  
 10:32:33 **18** Was it available --  
 10:32:35 **19** MR. SCHROER: -- binder, we had a binder that had  
 10:32:38 **20** contents, yes.  
 10:32:41 **21** The context of this individual document within that  
 10:32:45 **22** is at issue, and I'm not concerned about what was at the  
 10:32:49 **23** deposition. I'm concerned about what's going into evidence at  
 10:32:51 **24** this trial.  
 10:32:51 **25** THE COURT: Well, I'm concerned about whether it ever

11:25:59 **1** THE COURT: I can't make it any clearer. Overruled.  
 11:26:02 **2** MS. CRISWELL: And for the record, I'm not submitting  
 11:26:04 **3** the rest of any -- or asking to submit the rest of any other  
 11:26:07 **4** sample books into evidence.  
 11:26:10 **5** If I can approach the witness?  
 11:26:11 **6** THE COURT: You don't have to ask.  
 11:26:39 **7** This is a photocopy of the exhibit that was used at  
 11:26:43 **8** the hearing that Mr. Birmingham objected to that I observed  
 11:26:46 **9** and is attached to the summary judgment. This exhibit that  
 11:26:50 **10** I'm holding, there's a photocopy attached -- and, no, there's  
 11:26:54 **11** actually an original --  
 11:26:55 **12** MS. CRISWELL: No, this is an original.  
 11:26:56 **13** THE COURT: -- attached to the summary judgment.  
 11:27:01 **14** MS. CRISWELL: I'm sorry, Mr. Casagrande.  
 11:27:07 **15** THE COURT: Don't you want to become a lawyer?  
 11:27:09 **16** (Laughter.)  
 11:27:14 **17** BY MS. CRISWELL:  
 11:27:14 **18** Q. You have what's been marked as Defendant's Exhibit 31,  
 11:27:20 **19** correct?  
 11:27:21 **20** A. Yes.  
 11:27:22 **21** Q. Go to the second page of that exhibit.  
 11:27:26 **22** What I just handed you, is that the original of the  
 11:27:31 **23** second page of Defendant's Exhibit 31?  
 11:27:37 **24** A. Ask it again. I'm sorry?  
 11:27:40 **25** Q. Is the document I just handed you an original of the

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11:27:44 **1** second page of Exhibit 31?  
 11:27:46 **2** A. Yes. Okay. Now I see that. Okay. Sorry.  
 11:27:49 **3** Q. And you should have that also. Do you have that?  
 11:27:51 **4** A. Oh, yeah. Now, I understand. Yes, it is.  
 11:27:58 **5** Q. And what is the second page of Exhibit 31 and the original  
 11:28:01 **6** I handed you?  
 11:28:02 **7** A. It's an integrated card with our Lite Lift Dry material on  
 11:28:07 **8** the back.  
 11:28:08 **9** Q. Made by who?  
 11:28:10 **10** A. Precision Coated Products or Stratatek.  
 11:28:15 **11** Q. And --  
 11:28:16 **12** A. Oh, yeah, the material was.  
 11:28:17 **13** Q. Yeah.  
 11:28:18 **14** Okay. The integrated card is a sample of what  
 11:28:20 **15** company's card?  
 11:28:21 **16** A. Oh, yeah, USA/Docufinish, United Stencil and Affixing.  
 11:28:25 **17** Q. And was this card in the sample books that you routinely  
 11:28:30 **18** used with customers in 1996?  
 11:28:33 **19** A. Yes.  
 11:28:38 **20** Q. Looking at the first page of Defendant's Exhibit 31, is  
 11:28:46 **21** this -- can you identify what that is?  
 11:28:48 **22** A. It's also a promotional integrated card.  
 11:28:56 **23** Q. Was this promotional integrated card routinely used by you  
 11:28:59 **24** in the sample books you used with customers in 1996?  
 11:29:02 **25** A. Yes, it was.

11:29:03 **1** Q. Okay. And the sample books that you used with customers  
 11:29:11 **2** that you've just testified about, were they -- was that the --  
 11:29:13 **3** one of those books shown to John McKillip during your visit?  
 11:29:17 **4** A. A book like that, yes.  
 11:29:19 **5** Q. Okay. And did that --  
 11:29:20 **6** MR. SCHROER: Objection, move to strike,  
 11:29:22 **7** nonresponsive.  
 11:29:23 **8** THE COURT: Overruled.  
 11:29:24 **9** BY MS. CRISWELL:  
 11:29:25 **10** Q. Did that sample book that you showed John McKillip have  
 11:29:28 **11** these two USA sample integrated cards in it?  
 11:29:34 **12** A. They would have been in there, yes.  
 11:29:38 **13** Q. And since --  
 11:29:39 **14** MR. SCHROER: Objection, move to strike,  
 11:29:40 **15** nonresponsive.  
 11:29:41 **16** THE COURT: Overruled.  
 11:29:45 **17** BY MS. CRISWELL:  
 11:29:45 **18** Q. And to just go back to your earlier testimony.  
 11:29:47 **19** And you testified that you went through the book with  
 11:29:52 **20** John page by page, correct?  
 11:29:54 **21** A. Yes.  
 11:29:55 **22** Q. And you pulled out integrated card samples, correct?  
 11:29:59 **23** A. Yes, we did, peeled them apart, yeah.  
 11:30:01 **24** Q. And you and John peeled them apart?  
 11:30:05 **25** A. Mm-hmm (nodding).

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11:30:13 **1** MS. CRISWELL: I move to admit Defendant's  
 11:30:16 **2** Exhibit 31.  
 11:30:18 **3** MR. SCHROER: For the multiple reasons stated, we  
 11:30:21 **4** object. Do you wish me to reiterate or ...  
 11:30:24 **5** THE COURT: No, they're all on the record.  
 11:30:26 **6** It will be admitted.  
 11:30:29 **7** MS. CRISWELL: And shall we -- why don't we also make  
 11:30:31 **8** the original card Defendant's Exhibit 31-A?  
 11:30:37 **9** THE COURT: All right. You can move for the  
 11:30:39 **10** admission.  
 11:30:39 **11** MS. CRISWELL: And we'd move to admit it.  
 11:30:41 **12** THE COURT: Okay. Same objections?  
 11:30:42 **13** MR. SCHROER: Yes. Thank you.  
 11:30:43 **14** THE COURT: Okay. And it will be admitted.  
 11:31:10 **15** BY MS. CRISWELL:  
 11:31:10 **16** Q. During your sales call at Tri-Graphics that we've been  
 11:31:12 **17** discussing, did you talk to anyone else at Tri-Graphics aside  
 11:31:16 **18** from John J. McKillip?  
 11:31:18 **19** A. Yes, Brian Wooley and Mike McKillip.  
 11:31:23 **20** Q. Where did you talk to Brian Wooley?  
 11:31:26 **21** A. At the press, at the flexible press they had there.  
 11:31:28 **22** Q. And you knew Brian Wooley because?  
 11:31:30 **23** A. He used to work at USA when I did.  
 11:31:42 **24** Q. When you were talking to Brian at the press, did you  
 11:31:53 **25** see -- let me strike that. Let me rephrase.

11:44:54 **1** produced in '96 or '97. That's an expiration date of '98, so  
 11:44:59 **2** it would have been produced much before that.  
 11:45:01 **3** Q. Thank you for that careful answer.  
 11:45:03 **4** You don't know, however, when it was produced, do  
 11:45:08 **5** you?  
 11:45:08 **6** A. I'd have to look at the specific samples and try to  
 11:45:11 **7** remember, but it was a long time ago.  
 11:45:13 **8** Q. And that would be true for all of the samples in this  
 11:45:17 **9** book, correct?  
 11:45:17 **10** A. What would be true?  
 11:45:18 **11** Q. That you'd have to -- that you wouldn't know exactly when  
 11:45:24 **12** specific documents were created, unless they bore a date?  
 11:45:26 **13** A. A specific date, no. But a time period, I might have.  
 11:45:39 **14** Q. You have sample books that evolve over years; isn't that  
 11:45:48 **15** correct?  
 11:45:48 **16** A. I don't understand by evolve.  
 11:45:50 **17** Q. You don't have the same samples in 1997 that you had in  
 11:45:56 **18** 1996, necessarily, do you?  
 11:46:00 **19** A. Might. I don't remember now when one would stop at an  
 11:46:05 **20** exact date, no.  
 11:46:06 **21** Q. But they did change over time, the content?  
 11:46:08 **22** A. Over the period of ten years, sure.  
 11:46:11 **23** Q. So new products would be added, and then you might add  
 11:46:15 **24** something new to the sample book, correct?  
 11:46:17 **25** A. Might add something new, yeah.

11:46:19 **1** Q. And other products might be discontinued so you'd pull  
 11:46:23 **2** that out, correct?  
 11:46:24 **3** A. Might, not discontinued, might use them up and they might  
 11:46:28 **4** not be there anymore.  
 11:46:29 **5** Q. All right. It's correct that at the meeting you described  
 11:46:43 **6** with John McKillip at his office you don't recall whether you  
 11:46:53 **7** showed him any integrated card products that were made by  
 11:46:58 **8** Docufinish or its predecessor, United Stencil and Affixing?  
 11:47:02 **9** MS. CRISWELL: Objection, mischaracterization of his  
 11:47:04 **10** testimony.  
 11:47:04 **11** THE COURT: Okay. Overruled. You can answer.  
 11:47:09 **12** THE WITNESS: I don't have a specific sample, but I  
 11:47:11 **13** know I showed him documents with USA in it.  
 11:47:15 **14** BY MR. SCHROER:  
 11:47:16 **15** Q. You don't recall specifically that you showed him  
 11:47:21 **16** documents that were made by Docufinish or its predecessor,  
 11:47:25 **17** United Stencil, correct?  
 11:47:27 **18** A. Can you say that one more time? Sorry.  
 11:47:29 **19** Q. You do not know whether you showed John McKillip any  
 11:47:33 **20** integrated card products that were made by Docufinish or its  
 11:47:36 **21** predecessor, United Stencil --  
 11:47:38 **22** MS. CRISWELL: Same objection.  
 11:47:39 **23** BY MR. SCHROER:  
 11:47:40 **24** Q. -- correct?  
 11:47:40 **25** THE COURT: Overruled.

11:47:41 **1** THE WITNESS: No, I did show samples. There were  
 11:47:44 **2** samples in there from USA. All our books had USA samples in  
 11:47:48 **3** them that year.  
 11:47:51 **4** BY MR. SCHROER:  
 11:47:53 **5** Q. Could I direct your attention to page 17 of your  
 11:47:55 **6** deposition, when you're asked the following question:  
 11:47:58 **7** Do you know if you showed John J. McKillip any  
 11:48:01 **8** integrated card products that were made by Docufinish or its  
 11:48:04 **9** predecessor, United Stencil and Affixing?  
 11:48:07 **10** Answer: I don't recall specifically now.  
 11:48:11 **11** And then you go on to say: But I'm sure I did  
 11:48:15 **12** because the sample books contained them, and so on.  
 11:48:19 **13** Do you see that?  
 11:48:20 **14** A. Yes.  
 11:48:20 **15** Q. So you have no specific memory of showing John McKillip  
 11:48:24 **16** any specific integrated card products; is that correct?  
 11:48:28 **17** A. The actual card, no, but the promotional sample I remember  
 11:48:34 **18** having USA on it and showing him that.  
 11:48:37 **19** Q. Oh, let me --  
 11:48:38 **20** A. But not specific.  
 11:48:40 **21** Q. USA is a shorthand for the United States of America,  
 11:48:46 **22** correct?  
 11:48:47 **23** A. Yes.  
 11:48:48 **24** Q. And someone looking at a document that had USA on it  
 11:48:52 **25** wouldn't necessarily conclude that that's a product coming

11:48:55 **1** from any individual company, would it?  
 11:48:57 **2** A. It depends on the individual.  
 11:49:00 **3** Q. Thank you.  
 11:49:15 **4** And you, in fact, don't know whether Exhibits 31 and  
 11:49:20 **5** 31-A come from Docufinish just because they have that USA on  
 11:49:26 **6** there; isn't that correct?  
 11:49:31 **7** A. I do know these came from USA.  
 11:49:39 **8** Q. So your view on that has changed since your deposition?  
 11:49:43 **9** A. I'm sorry?  
 11:49:45 **10** Q. You recall at page 17, line 24 of your deposition being  
 11:49:50 **11** asked the following question:  
 11:49:51 **12** Could I ask you to take a look through this book?  
 11:49:55 **13** And do you know if any of the products in here were made by  
 11:49:59 **14** USA/Docufinish or United Stencil and Affixing?  
 11:50:03 **15** Answer: I'm quite sure a few are, but a lot of them  
 11:50:08 **16** aren't marked now. I mean --  
 11:50:10 **17** A. Correct.  
 11:50:11 **18** Q. -- these could be them, ones that are actually the  
 11:50:14 **19** customer samples. I don't recall now who made that specific  
 11:50:17 **20** sample. So I'm sure many of these are United Stencil, but  
 11:50:22 **21** specifically there are always samples of their promotional  
 11:50:24 **22** samples that were in these books.  
 11:50:27 **23** Question: Do you know if this -- pointing to --  
 11:50:33 **24** Answer: I would have shown this.  
 11:50:35 **25** Question: And just for the record, we're referring

11:50:38 **1** to a sheet of paper that has line holes punched in the side.  
 11:50:41 **2** It says USA and it has some red and blue printing on it.  
 11:50:46 **3** Well, you don't specifically recall whether this document I  
 11:50:49 **4** just described was shown to John McKillip in 1996?  
 11:50:53 **5** Answer: I don't recall any specific document from  
 11:50:58 **6** 1996, because that's a long time ago.  
 11:51:00 **7** Question: Do you recall whether you discussed or  
 11:51:04 **8** said the name -- or said the name US [sic] Docufinish or USA  
 11:51:10 **9** Stencil and Affixing when you met with John in 1996?  
 11:51:12 **10** Answer: I do not recall.  
 11:51:17 **11** **A. Correct.**  
 11:51:18 **12** **Q.** That was your testimony?  
 11:51:18 **13** **A. That's the testimony here, yes.**  
 11:51:23 **14** **Q.** And in that same meeting with Mr. McKillip you remember  
 11:51:29 **15** that there was another person present, Michael McKillip?  
 11:51:33 **16** **A. Yes, he was in the room, yes.**  
 11:51:36 **17** **Q.** When these things happened?  
 11:51:39 **18** **A. Showing the sample book, I think he was in the room.**  
 11:51:42 **19** **I'm -- I think I remember that, yes. It was mostly with John,**  
 11:51:49 **20** **because John was the one I was meeting with.**  
 11:51:51 **21** **Q.** But it is your memory that McKillip -- Michael McKillip  
 11:51:54 **22** was also present?  
 11:51:55 **23** **A. Yes.**  
 11:52:12 **24** **Q.** And in terms of the document -- the sales books that you  
 11:52:17 **25** used, including the one that you say you used with -- in the

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11:52:21 **1** meeting with Mr. McKillip, other people used the same sales  
 11:52:25 **2** books, right?  
 11:52:26 **3** **A. No, these were my sales books. Other people had sample**  
 11:52:35 **4** **books, but these are from my sample books.**  
 11:52:38 **5** **Q.** Directing your attention to page 25 of your deposition,  
 11:52:44 **6** line 19, you're asked the question:  
 11:52:47 **7** Did anyone else use the book of PX 62 -- and that's  
 11:52:51 **8** now DX 31, 31-A -- to make sales calls?  
 11:52:57 **9** Answer: I don't know. I don't recall.  
 11:52:59 **10** Was that your testimony?  
 11:53:00 **11** **A. Yes.**  
 11:53:04 **12** **Q.** Now, you gave some testimony earlier about the products of  
 11:53:11 **13** your present company. And you don't sell integrated cards, do  
 11:53:16 **14** you?  
 11:53:16 **15** **A. No.**  
 11:53:20 **16** **Q.** And you said you had a patent --  
 11:53:21 **17** **A. Yes.**  
 11:53:21 **18** **Q.** -- I think?  
 11:53:22 **19** **A. Yes.**  
 11:53:22 **20** **Q.** And that's not a patent for integrated cards per se, is  
 11:53:28 **21** it?  
 11:53:28 **22** **A. It is a patent for an integrated card, yes.**  
 11:53:31 **23** **Q.** It's for a part of a process that can be used relative to  
 11:53:37 **24** integrated cards, correct?  
 11:53:38 **25** **A. I think it's a product patent actually, not a process.**

11:53:44 **1** **Q.** And the -- the product that you claim in there is  
 11:53:52 **2** different from the types of integrated cards that had gone  
 11:53:57 **3** before?  
 11:54:00 **4** **A. Yes.**  
 11:54:01 **5** **Q.** So not all integrated cards are the same, correct?  
 11:54:05 **6** **A. Correct.**  
 11:54:06 **7** **Q.** And you can make integrated cards that use -- that conform  
 11:54:12 **8** to your patent, correct?  
 11:54:14 **9** **A. Yes.**  
 11:54:15 **10** **Q.** Well, you can also make integrated cards that don't,  
 11:54:18 **11** correct?  
 11:54:19 **12** MS. CRISWELL: Your Honor, I object. This is beyond  
 11:54:20 **13** the scope of the cross -- of the direct.  
 11:54:23 **14** THE COURT: Overruled.  
 11:54:25 **15** THE WITNESS: Yes.  
 11:54:26 **16** BY MR. SCHROER:  
 11:54:27 **17** **Q.** Okay. And you don't know whether a product falls under  
 11:54:36 **18** your patent without examining it and testing it, right?  
 11:54:41 **19** **A. Yes.**  
 11:54:52 **20** **Q.** And so merely by showing someone a sample in a sample  
 11:54:59 **21** book, you couldn't immediately tell whether the product  
 11:55:03 **22** specifically fell under your patent or not, correct?  
 11:55:06 **23** MS. CRISWELL: The same objection. This is beyond  
 11:55:08 **24** the scope.  
 11:55:08 **25** THE WITNESS: I don't know --

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11:55:08 **1** THE COURT: Hold on. It's overruled. It's not  
 11:55:12 **2** beyond the scope.  
 11:55:18 **3** MS. CRISWELL: I just want to make clear that he's  
 11:55:21 **4** asking him questions about his patent for adhesive not the  
 11:55:23 **5** patent at issue.  
 11:55:24 **6** THE COURT: I understand.  
 11:55:26 **7** BY MR. SCHROER:  
 11:55:26 **8** **Q.** And you know there's a patent involved in this case,  
 11:55:29 **9** right, where you're testifying?  
 11:55:30 **10** **A. Yes.**  
 11:55:32 **11** **Q.** And have you seen integrated cards that you believe fall  
 11:55:39 **12** within the scope of that patent?  
 11:55:42 **13** MS. CRISWELL: (Indicating.)  
 11:55:42 **14** THE COURT: Are you objecting?  
 11:55:43 **15** MS. CRISWELL: Yes, I'm objecting.  
 11:55:44 **16** THE COURT: Sustained.  
 11:55:45 **17** THE WITNESS: Probably. I just --  
 11:55:46 **18** THE COURT: You don't answer the question if I  
 11:55:49 **19** sustain the objection.  
 11:55:49 **20** THE WITNESS: Oh, sorry.  
 11:55:53 **21** BY MR. SCHROER:  
 11:55:54 **22** **Q.** Well, let me ask you a question from your own point of  
 11:55:56 **23** view.  
 11:56:02 **24** Taking, for example, one of your sample binders, you  
 11:56:06 **25** wouldn't expect someone looking at samples out of your sample

12:18:33 **1 Q.** Did John McKillip approach you about making this type of  
 12:18:37 **2** thumb notch card?  
 12:18:38 **3 A.** Yes, he did.  
 12:18:41 **4 Q.** Did he show you how to make this card?  
 12:18:44 **5 A.** He showed me some of his ideas. They didn't exactly work.  
 12:18:48 **6** We had to do a lot of modifications on getting it to  
 12:18:52 **7** physically work, but the basic idea of the thumb notch was  
 12:18:56 **8** his.  
 12:18:57 **9 Q.** Is this a rather special, unique card?  
 12:19:00 **10 A.** At that time it was, yes.  
 12:19:02 **11 Q.** Did John tell you he had a patent application for that  
 12:19:05 **12** thumb notch card?  
 12:19:06 **13 A.** He said he was going to get one.  
 12:19:09 **14 Q.** Did Specialty agree to pay John a royalty for the use of  
 12:19:16 **15** the thumb notch cards?  
 12:19:18 **16 A.** When we were -- when we weren't making it for one of  
 12:19:22 **17** John's customers, yes.  
 12:19:25 **18 Q.** Okay. And you believe that you started making the thumb  
 12:19:29 **19** notch cards late 1990s or --  
 12:19:32 **20 A.** You know, '99, 2000, 2001. I think our first customer was  
 12:19:39 **21** Express Scripts.  
 12:19:41 **22 Q.** Did Specialty make this thumb notch card with the  
 12:19:45 **23** designation -- sorry.  
 12:19:46 **24** Did Specialty mark this thumb notch card with the  
 12:19:52 **25** designation patent pending or a patent number?

12:19:53 **1 A.** Boy, on the thumb notch, I don't remember if we -- if we  
 12:19:56 **2** did. It didn't last long. Not for the thumb notch card. I  
 12:20:02 **3** don't remember back then for the very first ones if we did or  
 12:20:07 **4** not.  
 12:20:07 **5 Q.** Do you recall if John told you at some point that you  
 12:20:09 **6** should mark it with patent pending?  
 12:20:10 **7 A.** Not the thumb notch cards. I remember him telling me he  
 12:20:14 **8** had a patent pending on it, but I don't remember because I --  
 12:20:17 **9** if I remember right, our first customer was Express Scripts  
 12:20:23 **10** and the way their layout of the card was -- they wanted the  
 12:20:27 **11** union -- and it didn't look right to have a patent pending on  
 12:20:32 **12** it. But I can't remember -- if we did, like I said, it wasn't  
 12:20:37 **13** for more than one order.  
 12:20:39 **14 Q.** Did Specialty start making another type of integrated  
 12:20:43 **15** card, even before this thumb notch card?  
 12:20:48 **16 A.** No.  
 12:20:50 **17 Q.** Let me ask it this way.  
 12:20:52 **18** Did Specialty Tape start making what you refer to as  
 12:20:56 **19** a clean release card before this thumb notch card?  
 12:20:59 **20 A.** Yes.  
 12:20:59 **21 Q.** Okay. I'm showing you what's been marked Defendant's  
 12:21:25 **22** Exhibit 3.  
 12:21:32 **23** Is this what you called a clean release card?  
 12:21:38 **24 A.** Yes.  
 12:21:38 **25 Q.** And is this the card that Specialty Tape started making

12:21:41 **1** prior to the thumb notch card?  
 12:21:43 **2 A.** Yes, because as you can see, even from this, we had on  
 12:21:46 **3** there, Clean release cards. Even in the '01 and that we had  
 12:21:50 **4** on there -- we -- we considered this the clean release card.  
 12:21:57 **5 Q.** Do you know when you started making that card?  
 12:22:00 **6 A.** Late '90s.  
 12:22:02 **7 Q.** In the '90s.  
 12:22:03 **8** I'm showing you what's been marked Defendant's  
 12:22:06 **9** Exhibit 16.  
 12:22:10 **10** Is that card on the bottom of the same type as what  
 12:22:15 **11** is on Defendant's Exhibit 1?  
 12:22:17 **12 A.** I would call this a clean release card.  
 12:22:21 **13 Q.** Okay.  
 12:22:21 **14 A.** Yeah, the only difference it's got -- where we run it all  
 12:22:24 **15** the way across, which we do with all our stuff. We don't use  
 12:22:27 **16** patches. We just use the webs, but, yeah, I would call this a  
 12:22:31 **17** clean release card.  
 12:22:32 **18 Q.** Okay. Now, are you aware that the cards in Defendant's  
 12:22:38 **19** Exhibit 1 and Defendant's Exhibit 16 are called -- are also  
 12:22:41 **20** called integrated cards by others in the industry?  
 12:22:43 **21 A.** Well, I've heard that, you know, since then, recently --  
 12:22:47 **22** you know, since we got involved in this. But I always called  
 12:22:49 **23** it -- my idea -- the integrated card was the thumb notch, and  
 12:22:54 **24** the other one was our clean release card. That's always the  
 12:22:58 **25** nomenclature that I used.

12:23:00 **1 Q.** Okay. It's just confusing because you're using different  
 12:23:04 **2** terminology than others in the industry, and I want to make  
 12:23:07 **3** sure that we all understand today --  
 12:23:09 **4** MR. SCHROER: Objection to counsel's testimony.  
 12:23:11 **5** BY MS. CRISWELL:  
 12:23:12 **6 Q.** Then what you're --  
 12:23:12 **7** THE COURT: You need to stop when there's an  
 12:23:14 **8** objection. It's overruled.  
 12:23:16 **9** MS. CRISWELL: Okay.  
 12:23:17 **10** BY MS. CRISWELL:  
 12:23:18 **11 Q.** I want to make sure that when you use the term clean  
 12:23:20 **12** release card today you're referring to the type of card in  
 12:23:24 **13** Defendant's Exhibit 1 and Defendant's Exhibit 16 --  
 12:23:27 **14 A.** Yes.  
 12:23:28 **15 Q.** -- is that correct?  
 12:23:28 **16 A.** Yes.  
 12:23:29 **17 Q.** That is flush with the paper?  
 12:23:31 **18 A.** Yes.  
 12:23:31 **19 Q.** And I'm showing you Defendant's Exhibit 15, are you  
 12:23:40 **20** familiar with that type of card?  
 12:23:41 **21 A.** Yeah.  
 12:23:44 **22 Q.** And that has a raised surface?  
 12:23:46 **23 A.** Yeah, this gets affixed.  
 12:23:49 **24 Q.** Okay. And are you aware --  
 12:23:50 **25 A.** We've also made a lot of these things for customers that

02:10:19 **1** always called the integrated card.

02:10:21 **2** MR. SCHROER: Okay. Thank you very much. That's

02:10:23 **3** all.

02:10:23 **4** ---

02:10:23 **5** ALBERT PAVEZA, REDIRECT EXAMINATION

02:10:23 **6** BY MS. CRISWELL:

02:10:25 **7** Q. I just have one question.

02:10:27 **8** You have Defendant's Exhibit 3?

02:10:33 **9** A. Yes.

02:10:33 **10** Q. Okay. Defendant's Exhibit 3, that type of card is the

02:10:39 **11** same as Defendant's Exhibit 16, correct?

02:10:42 **12** A. I would consider it the same thing.

02:10:45 **13** MS. CRISWELL: Thank you.

02:10:47 **14** I have nothing further.

02:10:49 **15** THE COURT: Anything else?

02:10:50 **16** MR. SCHROER: No recross on that.

02:10:51 **17** THE COURT: Okay. You can be dismissed.

02:11:19 **18** (Witness leaves the stand.)

02:11:26 **19** (Witness takes the stand.)

02:11:26 **20** THE COURT: Please raise your right hand.

02:11:34 **21** (The witness was sworn.)

02:11:34 **22** THE COURT: Okay.

02:11:52 **23** ---

02:11:52 **24** JOHN WALTER MCKILLIP, DIRECT EXAMINATION

02:11:52 **25** BY MS. CRISWELL:

02:11:54 **1** Q. Would you please state your name for the record?

02:11:54 **2** A. John Walter McKillip.

02:11:58 **3** Q. And are you presently employed?

02:12:00 **4** A. I am.

02:12:01 **5** Q. What's your job?

02:12:03 **6** A. Vice president of sales for USA/Docufinish.

02:12:07 **7** Q. Are you Steve McKillip's son?

02:12:10 **8** A. Yes.

02:12:11 **9** Q. How long have you held this position as vice president of

02:12:15 **10** sales for USA?

02:12:16 **11** A. Since graduating from college in 1997.

02:12:20 **12** Q. Is John J. McKillip your uncle?

02:12:23 **13** A. He is.

02:12:24 **14** Q. When did you -- when did you start working full time for

02:12:30 **15** USA?

02:12:30 **16** A. Full time in 1997.

02:12:34 **17** Q. When it was United Stencil and Affixing?

02:12:36 **18** A. That's correct.

02:12:36 **19** Q. Was it known in the industry as USA at that time?

02:12:40 **20** A. It was always known in the industry as USA.

02:12:42 **21** Q. Did you attend a DMIA trade show in Baltimore in October

02:12:47 **22** 1998?

02:12:48 **23** A. Yes, I did.

02:12:49 **24** Q. Why?

02:12:52 **25** A. To exhibit at the trade show and to promote our products,

02:12:55 **1** speak with customers and prospects and participate in the

02:12:58 **2** trade show.

02:13:00 **3** Q. Did anyone else work the USA booth with you at that show?

02:13:03 **4** A. Yes.

02:13:04 **5** Q. Who?

02:13:05 **6** A. Janet Storjohann, Bruce Anderson, Steve Noel (phonetic).

02:13:10 **7** They were all there working the booth as well.

02:13:13 **8** Q. Can you describe what the USA booth looked like at that

02:13:16 **9** 1998 Baltimore show?

02:13:18 **10** A. We had, that year, a double booth, so actually two booths,

02:13:23 **11** so it would be a 10 by 20. We had several signs up at the

02:13:28 **12** booth displaying all of our products. They said integrated

02:13:33 **13** cards, piggyback labels, stencils. We had sample packets and

02:13:38 **14** samples available.

02:13:46 **15** Q. What products were included in the sample packs?

02:13:49 **16** A. The sample packets included integrated cards, integrated

02:13:54 **17** labels, piggyback labels, as well as samplings of all of our

02:13:59 **18** other products.

02:14:00 **19** Q. Okay. And how would you define an integrated card?

02:14:02 **20** A. I would define an integrated card with a base document, a

02:14:06 **21** back patch, and a die cut on the face of the document to

02:14:10 **22** enable the card to be removed.

02:14:13 **23** Q. And are those integrated cards made on a Tamarack machine?

02:14:17 **24** A. Yes, they are.

02:14:19 **25** Q. I'm showing you what's been marked Defendant's Exhibit 16.

02:14:27 **1** Does that contain the type of integrated card that you just

02:14:30 **2** described?

02:14:30 **3** A. Yes, it does.

02:14:31 **4** Q. Is that the type of integrated card that USA displayed at

02:14:34 **5** its booth at the Baltimore trade show in 1998?

02:14:37 **6** A. Yes, it is.

02:14:42 **7** Q. Is that the type of card that was contained in USA sample

02:14:46 **8** packs at that trade show?

02:14:47 **9** A. Yes, it was.

02:14:49 **10** Q. Did you see your uncle, John J. McKillip, at that trade

02:14:53 **11** show?

02:14:53 **12** A. Yes, I absolutely did.

02:14:55 **13** Q. Tell us about that.

02:14:56 **14** A. I was working the booth. John came up to the booth and

02:15:01 **15** started speaking to me. He introduced himself as my uncle,

02:15:05 **16** but I knew who he was. He said that he hadn't seen me for

02:15:08 **17** many years, since I was a small child.

02:15:11 **18** He asked how my mother was doing. He asked how

02:15:14 **19** business was. We chatted a little bit more. He asked for a

02:15:21 **20** sample packet. I gave him one, and he left.

02:15:24 **21** Q. So this was at the USA booth?

02:15:28 **22** A. This was directly at the USA booth at the Baltimore show,

02:15:33 **23** yes.

02:15:34 **24** Q. And he took a sample pack of products, of USA products,

02:15:37 **25** with him when he left?

02:10:19 **1** always called the integrated card.

02:10:21 **2** MR. SCHROER: Okay. Thank you very much. That's

02:10:23 **3** all.

02:10:23 **4** ---

02:10:23 **5** ALBERT PAVEZA, REDIRECT EXAMINATION

02:10:23 **6** BY MS. CRISWELL:

02:10:25 **7** Q. I just have one question.

02:10:27 **8** You have Defendant's Exhibit 3?

02:10:33 **9** A. Yes.

02:10:33 **10** Q. Okay. Defendant's Exhibit 3, that type of card is the

02:10:39 **11** same as Defendant's Exhibit 16, correct?

02:10:42 **12** A. I would consider it the same thing.

02:10:45 **13** MS. CRISWELL: Thank you.

02:10:47 **14** I have nothing further.

02:10:49 **15** THE COURT: Anything else?

02:10:50 **16** MR. SCHROER: No recross on that.

02:10:51 **17** THE COURT: Okay. You can be dismissed.

02:11:19 **18** (Witness leaves the stand.)

02:11:26 **19** (Witness takes the stand.)

02:11:26 **20** THE COURT: Please raise your right hand.

02:11:34 **21** (The witness was sworn.)

02:11:34 **22** THE COURT: Okay.

02:11:52 **23** ---

02:11:52 **24** JOHN WALTER MCKILLIP, DIRECT EXAMINATION

02:11:52 **25** BY MS. CRISWELL:

02:11:54 **1** Q. Would you please state your name for the record?

02:11:54 **2** A. John Walter McKillip.

02:11:58 **3** Q. And are you presently employed?

02:12:00 **4** A. I am.

02:12:01 **5** Q. What's your job?

02:12:03 **6** A. Vice president of sales for USA/Docufinish.

02:12:07 **7** Q. Are you Steve McKillip's son?

02:12:10 **8** A. Yes.

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02:12:16 **11** A. Since graduating from college in 1997.

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02:12:23 **13** A. He is.

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02:12:30 **16** A. Full time in 1997.

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02:12:52 **25** A. To exhibit at the trade show and to promote our products,

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02:13:00 **3** Q. Did anyone else work the USA booth with you at that show?

02:13:03 **4** A. Yes.

02:13:04 **5** Q. Who?

02:13:05 **6** A. Janet Storjohann, Bruce Anderson, Steve Noel (phonetic).

02:13:10 **7** They were all there working the booth as well.

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02:13:23 **11** so it would be a 10 by 20. We had several signs up at the

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02:14:19 **25** Q. I'm showing you what's been marked Defendant's Exhibit 16.

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02:14:47 **9** A. Yes, it was.

02:14:49 **10** Q. Did you see your uncle, John J. McKillip, at that trade

02:14:53 **11** show?

02:14:53 **12** A. Yes, I absolutely did.

02:14:55 **13** Q. Tell us about that.

02:14:56 **14** A. I was working the booth. John came up to the booth and

02:15:01 **15** started speaking to me. He introduced himself as my uncle,

02:15:05 **16** but I knew who he was. He said that he hadn't seen me for

02:15:08 **17** many years, since I was a small child.

02:15:11 **18** He asked how my mother was doing. He asked how

02:15:14 **19** business was. We chatted a little bit more. He asked for a

02:15:21 **20** sample packet. I gave him one, and he left.

02:15:24 **21** Q. So this was at the USA booth?

02:15:28 **22** A. This was directly at the USA booth at the Baltimore show,

02:15:33 **23** yes.

02:15:34 **24** Q. And he took a sample pack of products, of USA products,

02:15:37 **25** with him when he left?



02:46:46 **1** (Witness takes the stand.)  
 02:46:46 **2** THE COURT: Please raise your right hand.  
 02:47:01 **3** (The witness was sworn.)  
 02:47:01 **4** ---  
 02:47:01 **5** JANET STORJOHANN, DIRECT EXAMINATION  
 02:47:01 **6** BY MS. CRISWELL:  
 02:47:03 **7** Q. Could you state your name for the record?  
 02:47:03 **8** A. **Janet Storjohann.**  
 02:47:05 **9** Q. Where are you presently employed?  
 02:47:07 **10** A. **West Suburban Veterinary Associates.**  
 02:47:09 **11** Q. Were you employed by United Stencil and Affixing, which  
 02:47:12 **12** then became USA/Docufinish?  
 02:47:15 **13** A. **Yes, I was.**  
 02:47:15 **14** Q. When?  
 02:47:16 **15** A. **From about 1990 to about 2000.**  
 02:47:20 **16** Q. And was your -- was United Stencil and Affixing known as  
 02:47:23 **17** USA in the industry?  
 02:47:24 **18** A. **Yes, it was.**  
 02:47:25 **19** Q. And when it changed its name to USA/Docufinish, was it  
 02:47:28 **20** also known in the industry as USA?  
 02:47:30 **21** A. **USA, yes.**  
 02:47:31 **22** Q. What did you do there?  
 02:47:32 **23** A. **I started in reception, customer service. And then I**  
 02:47:36 **24** **managed the affixing department and moved on to production,**  
 02:47:40 **25** **client services, quoting, putting sample packets together.**

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02:47:44 **1** Q. Everything?  
 02:47:44 **2** A. **Attending trade shows, everything there, yes.**  
 02:47:48 **3** Q. Are you related to Steve McKillip?  
 02:47:50 **4** A. **Yes, I am.**  
 02:47:51 **5** Q. How?  
 02:47:51 **6** A. **He's my uncle.**  
 02:47:53 **7** Q. And are you related to John J. McKillip?  
 02:47:55 **8** A. **Yes, I am. He's also my uncle.**  
 02:48:00 **9** Q. Did you attend trade shows on behalf of United Stencil and  
 02:48:06 **10** USA?  
 02:48:06 **11** A. **Yes, I did.**  
 02:48:07 **12** Q. When did you start attending trade shows?  
 02:48:09 **13** A. **Pretty much after I first started working there.**  
 02:48:12 **14** Q. And you started working around 1990?  
 02:48:14 **15** A. **Yes.**  
 02:48:15 **16** Q. What did you do at the trade shows?  
 02:48:19 **17** A. **I would work at the booth, talk to potential customers,**  
 02:48:22 **18** **hand out sample packets, explain our products, also just walk**  
 02:48:27 **19** **around the show and greet people and clients and such.**  
 02:48:31 **20** Q. Did you walk around and see what other companies were  
 02:48:33 **21** doing?  
 02:48:34 **22** A. **Oh, yes.**  
 02:48:35 **23** Q. Prior to 1998 do you recall seeing John J. McKillip at any  
 02:48:39 **24** trade shows?  
 02:48:39 **25** A. **Yes, I do.**

02:48:41 **1** Q. Do you recall the circumstances?  
 02:48:42 **2** A. **I don't know the exact year, I know that one was at a**  
 02:48:46 **3** **tabletop show, which are the smaller of the trade shows. And**  
 02:48:49 **4** **then one was at the large trade show, the NBFA show, in**  
 02:48:55 **5** **Chicago.**  
 02:48:56 **6** Q. And the tabletop show --  
 02:48:58 **7** A. **Excuse me.**  
 02:48:59 **8** Q. -- do you recall where that was --  
 02:48:59 **9** MR. SCHROER: I'm sorry. The last answer, the  
 02:49:03 **10** tabletop show in?  
 02:49:05 **11** MS. CRISWELL: Chicago.  
 02:49:06 **12** THE WITNESS: Chicago.  
 02:49:07 **13** MR. SCHROER: Chicago. Thank you. Sorry.  
 02:49:08 **14** BY MS. CRISWELL:  
 02:49:09 **15** Q. And the smaller tabletop show where you saw him prior to  
 02:49:12 **16** 1998, do you recall where that was?  
 02:49:14 **17** A. **Minnesota.**  
 02:49:14 **18** Q. Minnesota.  
 02:49:16 **19** Did you talk to him at these two shows?  
 02:49:18 **20** A. **I believe we said hello. It was very brief.**  
 02:49:21 **21** Q. Did you attend a trade show on behalf of USA in 1998?  
 02:49:24 **22** A. **Yes, I did.**  
 02:49:26 **23** Q. Do you recall what month?  
 02:49:28 **24** A. **October.**  
 02:49:29 **25** Q. Where?

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02:49:30 **1** A. **Baltimore.**  
 02:49:32 **2** Q. Did anyone else from USA attend with you?  
 02:49:35 **3** A. **Yes.**  
 02:49:35 **4** Q. Who?  
 02:49:37 **5** A. **John Walter McKillip was there. I believe Bruce Anderson**  
 02:49:42 **6** **was there. Tom Yeager from USA/Docufinish St. Louis was**  
 02:49:49 **7** **there, I believe.**  
 02:49:51 **8** Q. Did you see John J. McKillip at this 1998 Baltimore trade  
 02:49:56 **9** show?  
 02:49:56 **10** A. **I did not.**  
 02:49:57 **11** Q. Did anyone else?  
 02:49:58 **12** A. **John?**  
 02:49:59 **13** MR. SCHROER: Objection, that calls for speculation.  
 02:50:00 **14** THE COURT: Sustained.  
 02:50:01 **15** MS. CRISWELL: Your Honor, this is an exception to  
 02:50:03 **16** hearsay under the present sense impression, Rule 803.1. As  
 02:50:14 **17** soon as Mr. John McKillip talked to his uncle --  
 02:50:15 **18** MR. SCHROER: Objection, your Honor. This --  
 02:50:17 **19** THE COURT: No. You can't have her testify if anyone  
 02:50:22 **20** else saw him at the trade show. That was your question, did  
 02:50:27 **21** anyone else --  
 02:50:27 **22** MS. CRISWELL: Yes. Let me ask another question  
 02:50:28 **23** then.  
 02:50:29 **24** THE COURT: Okay. Sustained.  
 02:50:30 **25** BY MS. CRISWELL: