

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
3 TYLER DIVISION

3 MIRROR WORLDS, LLC * Civil Docket No.
4 *
4 VS. * 6:08-CV-88
5 * Tyler, Texas
5 *
6 APPLE, INC., ET AL * September 27, 2010
6 * 1:00 P.M.

7
8 TRANSCRIPT OF JURY TRIAL
9 AFTERNOON SESSION
10 BEFORE THE HONORABLE LEONARD DAVIS
11 UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G S

COURT SECURITY OFFICER: All rise.

(Jury in.)

THE COURT: Please be seated.

All right. Mr. Carroll, you may proceed.

MR. CARROLL: If the Court please.

Your Honor, before the break, I had wondered if Dr. Gelernter could join me down here to go over a chart or two.

THE COURT: All right. Certainly.

MR. CARROLL: Thank you, Your Honor.

If the Court please, Your Honor.

DAVID GELERNTER, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION (CONTINUED)

BY MR. CARROLL:

Q Okay. Dr. Gelernter, can you come over here where the jury can see -- excuse me -- and I want you to look at this chart that we've prepared called: The problem: Where's my stuff?

A (Complies.)

Q Okay. Tell the jury what we hope to explain or you hope to explain, using this chart, about your ideas that showed up at -- or that became the invention using the where's-my-stuff problem.

A Well, this is a problem that -- that faced us

1 on personal computers in the early 1990s, when more and
2 more information was accumulating and computers were
3 used more and more regularly for more than one purpose.
4 When we talk about files and folders, we wanted to
5 replace the file-and-folder system. And what the
6 file-and-folder system means, in the context of a
7 computer, uses an analogy. It's not quite like it in
8 the ordinary paper world.

9 It means a collection of containers and other
10 containers within those containers and still more
11 containers inside those. And this is a very, very
12 simple example, because these examples quickly get
13 completely out of hand.

14 But even in this simple example, it's clear
15 what the problem is.

16 So I buy a computer at the local computer
17 store, and my first job is to set up a filing system, is
18 to be a file clerk, and decide where I'm going to store
19 various pieces of information. It would be great if a
20 librarian showed up and offered to do it for me, but
21 that's not going to happen.

22 It's my computer, so I'm going to say, well,
23 photos are an important category, the stuff I deal with;
24 medical information is important; appointments
25 obviously, upcoming appointments are important.

1 Dan and Joshua, my two boys, and maybe Jane's
2 things are in here. Because the computer is so much of
3 a nuisance that Jane doesn't want to deal with it, so I
4 deal with her things.

5 And maybe inside Jane's things, she deals with
6 Audrey, who's our pet parrot, and she deals with --
7 well, she deals with bills, some bills.

8 So when I -- when I set this up, I do my best.
9 Now in real life, it would have many more containers
10 than this; I mean, based upon my thinking about it and
11 the categories of information that I store in my
12 computer.

13 But even -- and so when we talk about files
14 and folders, the folders of these containers, sort of
15 like information Tupperware, each folder has to have a
16 name. So I have to explicitly say this one is called
17 photos. Not photographs; it's called photos. This is
18 called medical stuff, two words. I've got to spell all
19 this out. This is called Jane's things.

20 And then when I get down to the level of
21 particular pieces of information, each one of those
22 documents must have an explicit name, too.

23 Q All right. Let me stop you right there, if
24 you don't mind.

25 Using this chart, if -- if I had a picture of

1 your pet parrot, Audrey, okay, how would I know whether
2 to put that picture under Audrey's info or under photo?

3 A Well, that's exactly the problem. However
4 carefully I lay this out, I -- and even in a very simple
5 case like this, I'm going to run into problems filing
6 stuff and retrieving stuff.

7 So, again, even in this very simple case, I
8 have a photo of Audrey, and it ought to go in photos
9 clearly, because it's a photo. On the other hand, it
10 ought to go in Audrey's info, because it's clearly about
11 Audrey. And there might be ten other boxes that it also
12 fits in.

13 It might be a photo of Audrey that Josh took.
14 So, you know, maybe it has to do with the stuff that
15 Josh has done with his camera.

16 Q Let me interrupt you again.

17 Let's assume I make the choice to put the
18 picture of the parrot under Audrey -- Audrey's info.

19 How am I supposed to remember that?

20 A Exactly. You have the problem on two
21 occasions. First, when you have something and you have
22 to file it somewhere, and second, where's my stuff, when
23 you want that picture of Audrey?

24 And there -- there are two places, three
25 places. On a real computer, maybe 50 places, that --

1 that make sense to look.

2 So -- so what happens, computers store a large
3 amount of photos and documents, and I know that's why
4 people use them. But using this system, it's -- the
5 burden is on the user to remember where the stuff is.
6 The burden is on the user first to be the librarian and
7 arrange all these things. And then the burden is on the
8 user to remember, just like where -- what he's done with
9 each one of these objects, each one of these documents.
10 So the user becomes a file clerk. Not an ordinary file
11 clerk but one dealing with all the enormous complexity,
12 the huge amount of information that even a small
13 computer can store.

14 Q Okay. And this is kind of a stupid question,
15 but does the human being have the capacity to file stuff
16 as fast as a computer has to store it?

17 A A human being, of all the things to which
18 humans are suited, file-clerking is one of the ones that
19 they do worst. I mean, some people are better at it
20 than others. Computers are much, much better at it.
21 Computers are machines that can do this very well.
22 Ideally, we should take this burden and put it on the
23 computer, tell it I don't want to worry about how this
24 information is organized. I don't want to worry about
25 selecting the right container and sub-container and

1 sub-subcontainer for each one of my documents. I don't
2 want to worry about figuring out where I put it.
3 You worry about it, because that's what computers are
4 capable of doing.

5 Q You, the machine?

6 A You, the machine, right.

7 Q All right. Now, let me ask you a couple of
8 questions before we go to the next board.

9 Excuse me.

10 When you and your colleague, Dr. Freeman,
11 started work on the patents, give me a year on it.

12 A The -- the research that led to the patents
13 began in the vicinity of -- of '94, although the first
14 ideas go back more to like '91.

15 Q Okay. Well, let's talk about '91, '92, '93,
16 '94.

17 Was this file-and-folder notion a part of
18 some, most, or all computing systems?

19 A All computer systems would deal with it.

20 Q And you heard Mr. Randall tell the jury --
21 excuse me -- a little while ago about the Microsoft
22 system, about the Apple system, and a third one --

23 A UNIX.

24 Q -- UNIX.

25 Did all three of them use some variation of

1 what you've just shown on this where's-my-stuff --

2 A Yes.

3 Q -- board?

4 A Yes, they did.

5 Q And the problem you just described to the
6 jury, was that the same problem that Steve Jobs spoke to
7 in 2004 up here on the screen, when he said we have,
8 quote, a zillion file folders, but we can't find
9 anything?

10 A Exactly. Exactly.

11 Q All right. So this is the problem. You're a
12 scientist. You're supposed to figure stuff like that
13 out, right?

14 A Right. My job.

15 Q All right. Let's see what you do.

16 Let me commend your attention to the second
17 board -- excuse me -- called the invention. Explain to
18 the jury what this board is telling us.

19 A What we wanted to do was take all the
20 information that you dealt with in your life, in your
21 daily life, in your work life, whatever information you
22 had on hand, and make it all flow into a single
23 integrated stream.

24 The first issue being that the question of
25 where's my stuff always had one answer. It's not a

1 matter of being in this box or that box or in this
2 sub-box. The answer to where's my stuff is always in
3 the stream. It's in the stream. That's where it is.
4 That's where everything is.

5 So you need to do -- now, having -- having put
6 all the stuff there, we need a convenient way to get it
7 back out again.

8 One underlying way to do this is if the stream
9 is time-oriented. So it's like a diary or a journal.
10 So it's like a diary of your life in terms of documents,
11 in terms of a medical bill and a dentist appointment and
12 your son's report card and your son's something else and
13 a photo, something else, a diary of your life.

14 Because people naturally remember things in
15 terms of time. That's the way experience is organized.

16 So how to get information out of there,
17 first -- first, I'm going to be able to use my time
18 sense to say, I'm looking for something yesterday or a
19 week ago or I have an appointment tomorrow afternoon,
20 what is it?

21 But that's not enough. So -- so we also -- we
22 also need to be able to search this information by
23 describing -- what we want to do is be able to describe
24 a document to the computer and have the computer come
25 back with a document, not on the basis of the name and

1 the containers and the sub-container and all that.

2 I want to be able to say I'm looking for a
3 document -- I'm looking for a note that Jane wrote
4 about -- about Audrey having to do with vitamins that
5 Audrey has. I knew it was a conversation recently.
6 So that calls up and Jane writes down a note, and it's
7 about Audrey, the parrot, and it's about some drops,
8 vitamin drops, that Audrey is supposed to take. And I
9 don't want to -- I don't want to know what the name of
10 it is. I don't want to know where I put it. All I want
11 to do is describe it to the system, finding -- finding
12 the note Jane wrote about the Audrey and the vitamin
13 drops.

14 Now, maybe there's several such things. You
15 know, maybe every year she has this conversation with
16 the vet or maybe every month. I hope not, but there may
17 be a lot of such things.

18 But what will happen is that the system will
19 come back; the system will focus. So this stream will
20 look the same, but it will be focused only on documents
21 of the sort that I wanted. The only thing in it will
22 be -- will be documents by Jane that talk about Audrey
23 and talk about vitamins.

24 And so instead of a million different
25 documents, this -- this stream can go on forever. It

1 can, in principle, start when you're born and continue
2 tracking your life.

3 But instead of having loads and loads of
4 documents, every single document in the stream, once
5 you've searched, once you've focused will be an answer
6 to your description. Will match your description.

7 Or I say I want a photo of Audrey. Give me a
8 photo of Audrey. Or I say I want all of my appointments
9 for next Tuesday. I describe what I want rather than
10 naming it and saying what container it's in.

11 Q All right. Let me interrupt you right there.
12 These four goals, you've told us about the first one,
13 shifting the burden from the user to the computer.

14 You've told us about the second one, rescues
15 the users from having to remember names and locations of
16 files and folders.

17 What about the third?

18 A The computer -- we want to use -- we want to
19 make the computer subsidiary to your own world. We --
20 we don't want it to impose itself on you. We want it to
21 mirror you. We want it to take its cue from you. We
22 want the information in there to be arranged the way
23 your life is. We want it to mirror your world.

24 And so -- so this is kind of an electronic
25 diary, as I said, and it's flowing forward the way time

1 flows forward. So the latest things are here. Maybe
2 there's a message that just arrived, and these three are
3 photos of the picnic last night that my next door
4 neighbor just sent me. And the one over here is
5 something about Josh, and the one here is something
6 about Dan and so forth.

7 So day by day, I accumulate information either
8 because I make up the information myself, I take a
9 picture, or I write a document or -- or the information
10 arrives, because somebody sends me electronic mail or
11 some other kind of electronic communication, or I get
12 something from the web or whatever.

13 Day by day, I get information, and this
14 information mirrors my life. If I look in the stream,
15 it's like looking at a diary, and I can -- and I can
16 find my way around the stream the way I would find my
17 way around a diary.

18 Q All right. I want to ask you about that.
19 There is -- on the right-hand side, of this chart, there
20 is a computer screen with the title, Jane's Info, and
21 under it, it says past, present, and future.

22 What's the significance of this computer
23 screen representation with the documents that look like
24 a flock of geese flying down?

25 A Well, I'm left with a question. So here's a

1 stream and it's a diary, and that's good in theory. But
2 really how would it actually look like on the screen of
3 a computer? How should -- when I look at the computer,
4 what do I see?

5 One -- there isn't only one way to do it, but
6 one convenient way to do it. I'll just ignore Jane's
7 Info temporarily. Just imagine this is the whole
8 stream. One convenient way to do it is to say: This
9 part is the future, and here's the present right here at
10 the point, and here's the past.

11 So it flows like a stream. If this is an
12 appointment that's for next Wednesday, it gets closer
13 and closer to the present. Eventually, it is the
14 present. And then it flows into the past as part of the
15 diary. Now, that's my whole stream.

16 If I want to focus just on stuff having to do
17 with Jane, I tell the system. I describe what I want.
18 Jane's stuff or Jane's info or whatever. And then
19 everything but Jane-related material disappears, and
20 I've got a stream of Jane's stuff.

21 Q Now you've told the jury that this is one way
22 to do that, correct?

23 A Right.

24 Q Does your patent cover other ways?

25 A Well, the patent deals with several ideas. It

1 deals -- several inventions. It deals with the stream
2 itself in the abstract no matter how you display it.
3 Then it -- then separately, it deals with a particular
4 form of display.

5 Q Are we ready to look at that one?

6 A Yeah.

7 Q Okay. So I'm going to take this one down, and
8 I'm going to put up one called: What do you see?

9 So just to kind of catch up with where we are,
10 this ribbon, the stream, is that one of the ideas that
11 is captured in your patent?

12 A That's one -- that's one of the three basic
13 ideas, separate ideas.

14 Q Okay. And then you told -- you started to
15 tell the jury about a second idea, which is what?

16 A The second idea is a particular kind of
17 display.

18 Now, just as the stream could be displayed in
19 a hundred different ways or a million, some being good
20 and some lousy, but -- but it's independent of the way
21 you display it.

22 We also came up with a display that's a very
23 good way of showing the stream, we think -- I mean,
24 based on our experience, but which also can be used to
25 display any collection of information on a screen.

1 So -- so the way this works, again, this is a
2 picture of what you see on the screen. It's kind of
3 fuzzy, because it comes out of an old paper or
4 something. I don't know exactly where we came up with
5 it.

6 But anyway, what you see on the screen is a
7 piece of a document collection that can go on forever.

8 So this might be exactly the stream I was
9 talking about. This is my stream on my computer, let's
10 say. It's got pictures of Audrey. It has notes that
11 Jane wrote. It has report cards from Josh. It has
12 bills from Dan. It has -- it has appointments for me
13 next week. It's got everything in my life.

14 And this is a range, just like the simple
15 picture here so that this is the future. It moves
16 slowly towards the present. Here is the present. The
17 present moves towards the past.

18 Now, I want to mention how -- how this display
19 works, and emphasize that it doesn't only work with the
20 stream. But in order to make this useful -- okay, so I
21 have one arm here, which can go off this way, and one
22 arm here that can go off that way.

23 In order to make this useful, I want to be
24 able to -- there's a lot of stuff on the screen. This
25 represents a document; this represents a document; this

1 represents a document (indicates). I want to be able to
2 flip through those documents as if they were pages of a
3 magazine. It's a very efficient way to get information.
4 If you take a magazine and just flip through it quickly,
5 you can almost immediately get an idea, you know, I want
6 to see this; I want to see that; or I don't want to see
7 anything.

8 So -- so the way this works, it can work in
9 either of two ways. You -- you touch one of these guys
10 with the cursor, with a pointer. Or if it's a
11 touchscreen, you just touch it.

12 And there's a so-called glance view, and it's
13 hard to see this, because it's fuzzy. But this is --
14 this is a larger version of this. So I want to know
15 what's in here. I touch it. This pops up right away.
16 It's got to be instantly, because just like I flip
17 through the pages of a magazine, I want to wait zero
18 seconds.

19 As soon as I touch this, I get a glance of it
20 right away. So I can sort of flip my finger or my
21 cursor down here and get a view of each one of these
22 things.

23 Q Let me stop you right there.

24 A Okay.

25 Q Before we had our lunch break, during Apple's

1 opening, Mr. Randall, Apple's lawyer, showed us the clip
2 on the screen from Steve Jobs, the boss of Apple.

3 Do you remember that?

4 A (Nods head.)

5 Q Sir?

6 A Yes, I do. Sorry. Sorry.

7 Q And you remember -- and this is the same clip
8 where he made the quote that you agreed with, that there
9 were zillions of file folders, and we can't find
10 anything.

11 A Right.

12 Q He made a second quote, and that is: I can
13 find a song on my iTunes in a second.

14 You heard him say that?

15 A Right.

16 Q Is that what you're describing here?

17 A That's the Lifestreams part of it. Even
18 before I get to the display, here's a search bar.
19 Here's a search bar (indicates).

20 And what the search bar does is I type a
21 description and everything irrelevant goes away. If
22 these are tools, if these are record albums, I describe
23 the record album. If they're photographs, I describe
24 the photographs. If they're everything in my life, I
25 describe the note from Jane about Audrey. The

1 description goes here. Everything irrelevant disappears
2 instantly.

3 A So that's exactly -- that's exactly it.

4 Q Okay. So if I wanted to hear That's Amore by
5 Dean Martin, that's what I typed in.

6 A Right.

7 Q And, boom, there it is?

8 A Right. Or if you just type in Dean Martin,
9 you get your entire Dean Martin collection. Everything
10 non-Dean Martin will disappear.

11 Q Okay. And if I heard Mr. Randall right, that
12 was in 2004 that Mr. Jobs was bragging about that,
13 correct?

14 A Yes.

15 Q When did you invent that?

16 A The patent -- the first patent was filed in
17 June of 1996.

18 Q Eight years earlier?

19 A (Nods head.)

20 Should I return to the description, though?

21 Q That's correct.

22 No, that's fine.

23 A I shouldn't?

24 Q Yes.

25 A I'm sorry. I'm sorry.

1 Q That's okay. I'm not making myself very
2 plain.

3 Okay. Let's do this. Let's catch up with
4 where we were, because I sidetracked you a little bit.

5 Why don't you finish telling the jury what
6 this -- what do you see is telling them, do you think
7 they ought to understand about your patents and -- and
8 explain, with the Court's permission, any of these
9 points that you think are significant, and then we'll go
10 back to the chair.

11 A Okay. So the important things about this
12 display are that it's unbounded, as I mentioned. These
13 things can go off forever. That it's a display that
14 gives you the impression of depth.

15 Q Excuse me. What do you mean by that?

16 A The impression of depth, the idea of receding
17 off into the distance towards the horizon, towards the
18 left, towards the right, receding.

19 Q And you say the impression?

20 A The impression.

21 Q What does that mean?

22 A Well, this is not -- the com -- the computer
23 screen is flat, so we can give you the impression of
24 perspective, the impression of three dimensions without
25 giving you a literally three-dimensional picture.

1 Q Let me ask you --

2 A We want it to look three-dimensional so we can
3 use the -- the human eye to get information out of that
4 picture efficiently and quickly.

5 Q Okay. Let me ask you this question: Last
6 week -- let's see. As a matter of fact, it was maybe a
7 week ago tomorrow, we had a harvest moon.

8 You know what that is?

9 A I think so.

10 Q What is a harvest moon?

11 A A really good moon.

12 Q Well, better than that. It's the first
13 full -- I looked it up. That's the only reason I know.

14 A Okay.

15 Q It's the first full moon after the equinox.

16 A All right. I was way off.

17 Q No, you were close, but it's a full moon. So
18 here's my question.

19 In New Haven, Connecticut, when you have a big
20 ol' full moon that's setting on the horizon -- look at
21 me.

22 A Right.

23 Q It looks about this big, right (indicates).

24 A Sure.

25 Q Okay. And when that same moon travels up in

1 the sky, it looks about this big (indicates), doesn't
2 it?

3 A Right. Right.

4 Q Is it the same moon?

5 A Absolutely.

6 Q Same distance?

7 A Depends.

8 Q Generally?

9 A Yeah.

10 Q This is not a test.

11 A I'm sorry. I'm sorry.

12 Q Same moon, generally the same distance?

13 A Yeah.

14 Q Is that an impression that the moon is closer
15 when it's on the horizon than when it's up in the sky?

16 A It's an impression given by context, right.
17 The things you see around it, the things you can compare
18 it with directly.

19 Q Okay.

20 A The trees and the people in the houses --

21 Q Okay.

22 A -- and so forth.

23 Q Okay.

24 A And that's exactly -- an optical effect rather
25 than optical reality. The moon doesn't change sizes.

1 It doesn't change distance, but we perceive it in
2 different ways.

3 Q Okay.

4 A So this -- this gives the impression of depth.
5 It gives the impression of depth. The display is
6 unbounded.

7 And the final thing is, you need to be able
8 to -- to flip through it the way you flip through the
9 pages of a magazine. And you can flip through that
10 either by touching each one of these guys or you can see
11 there are little buttons here. They are sort of like
12 fastforward and rewind.

13 So if you want, you can just push this button
14 and the whole thing moves this way. So rather than
15 sliding, if you push the button, it moves this way; you
16 push this button, it moves that way.

17 Now, one final important thing about this
18 display. It's unbounded; it gives you the impression of
19 depth; and you can flip through it; you can browse
20 through it; you can glance through it.

21 The final important thing about this is that
22 it works well for Lifestreams, but we knew right away it
23 worked beautifully for other things, all sorts of
24 collections of information.

25 So in a Lifestream, this is a diary. Here's

1 the future and here's the present and here's the past.
2 But our patent gives a completely different example that
3 has nothing to do with a diary.

4 Our patent says suppose you are a mail-order
5 catalog. So you're selling roses, and you've got a
6 thousand varieties of roses. And you have information
7 on line, and you want to be able to display all those
8 thousands of varieties.

9 Now, you can't fit -- crowd them all onto the
10 screen, but you can line them up this way. You can have
11 all your roses, all your roses some starting way back
12 off here, continuing way up here.

13 And you can easily browse through that whole
14 collection, the collection of roses, the collection of
15 songs, the collection of music, the collection of
16 photographs and parrots, absolutely anything.

17 So it works well with Lifestreams. It also
18 works well with lots of other collections of data.

19 Q All right. Let me interrupt you just for a
20 second.

21 So when Mr. Randall got up here before lunch
22 and told the jury that he wins, because they don't do
23 anything on a time-ordered basis, is this idea, in your
24 patent, restricted to a time-ordered basis?

25 A Absolutely not. The display is explicitly not

1 restricted to a time-ordered basis.

2 Q Just like your rosebush catalog, that doesn't
3 have anything to do with time, does it?

4 A Right. Nothing.

5 Q All right. Now, before you sit down, let me
6 make sure I understand one important thing.

7 You said this is one important piece of your
8 inventions, plural. And this, the Lifestream, is
9 another, and there's a third, is there not?

10 A Right. And -- and the three work together
11 well, but they stand on their own.

12 So the Lifestream, the electronic diary, the
13 electronic diary that is comprehensive, that includes
14 the past, present, and future that you can search,
15 that's one.

16 The display, which creates the impression of
17 depth, which is also unbounded in these directions and
18 allows browsing with these glance cards. You saw the
19 way I was browsing. That's two.

20 And three is something we call the automatic
21 archiving. If you have a computer system, it's very
22 easy -- it's very easy to get lost, to lose stuff, for
23 the -- for the hardware itself to fail.

24 Q Let me interrupt you right there.

25 Do we need any of the boards anymore for the

1 automatic archiving?

2 A No.

3 MR. CARROLL: Your Honor, may he return
4 to his chair?

5 THE COURT: Yes, he can.

6 MR. CARROLL: Thank you.

7 Q (By Mr. Carroll) Okay. I interrupted you.
8 You were explaining to the jury about the automatic
9 archiving feature of the patents.

10 A Right. So the -- the final -- the final
11 issue -- the final invention was that we wanted the
12 computer system to take snapshots of where it was
13 essentially; to take -- take -- take snapshots of its
14 state without disturbing the user; doing it
15 automatically; automatically taking snapshots; and
16 allowing me to search for those snapshots the same way I
17 search stuff that's right in front of me on the
18 computer.

19 So I take the snapshots. I store them
20 somewhere else. I may put them somewhere else for
21 safekeeping, but even -- you know, they may be stored a
22 thousand miles away. They may be stored on the opposite
23 side of the world using the world wide web, but I still
24 want to be able to search them just the same way I
25 searched for photos of Audrey and so forth.

1 So there's automatic archiving, number one;
2 the display, the 3-D receding foreshortened stack that's
3 unbounded, that's browsable, number two; and finally,
4 the Lifestream, which is also an unbounded electronic
5 diary with absolutely everything in your life in a past,
6 present, and future and responds to descriptions of
7 documents.

8 So you describe what you want and get what you
9 want rather than naming it and telling where it is.

10 Q And are you telling the jury that these three
11 ideas: Automatic archiving -- excuse me -- the
12 Lifestream, and the visual display work together or
13 independently of one another?

14 A Right. They -- they work together well, but
15 each stands on its own.

16 Q Okay. Is that the same way of saying they
17 work independently?

18 A Exactly. Fair enough.

19 Q I get -- I get a B?

20 A B-plus.

21 Q B-plus? Okay. That's better than I did.

22 Who was Eric Freeman or is Eric Freeman?

23 A Eric Freeman was one of my graduate students
24 in the 1990s. He is the one who worked on Lifestreams
25 who made this system, the sort of complex of ideas we've

1 been discussing, the topic of his own dissertation
2 research.

3 Q Is he a co-inventor on these three patents
4 we're suing Apple over?

5 A He co -- he is a co-inventor on the three
6 patents, yes.

7 Q You told the jury a second ago that he was
8 your student in the early '90s?

9 A Early and mid '90s.

10 Q What is -- he got his doctorate, correct?

11 A Yes.

12 Q So it would be appropriate to call him
13 Dr. Freeman? I mean, for me?

14 A Yes. He's Chief Technical Officer at Disney
15 Interactive.

16 Q That's what I wanted to ask you. Is that the
17 Disney, Walt Disney Disney?

18 A D Disney.

19 Q The D Disney?

20 A Right.

21 Q What does he do for Disney?

22 A He -- he runs a large part of their online
23 electronic information systems, which run a huge gamut
24 of things, from video games to movie industry stuff and
25 things -- theme parks, lots and lots of stuff.

1 Q Okay.

2 MR. CARROLL: Can we have PX69?

3 Q (By Mr. Carroll) Can you see that?

4 A Yep.

5 Q And I don't know if the jury can see it.

6 MR. CARROLL: Can we make that any

7 sharper?

8 There we go.

9 Q (By Mr. Carroll) What's the jury looking at?

10 A This is Eric Freeman's Ph.D. dissertation,

11 doctoral dissertation.

12 Q And what year are we talking about?

13 A He began in '96. I think it's 1997, is the

14 date on it.

15 Q And up at the top, is that the seal of Yale

16 University?

17 A That's it.

18 Q Life is a light and truth, is that what that

19 means in Latin?

20 A That's the Latin, not the Hebrew.

21 Q Yeah, but the Latin part, does that mean light

22 and truth?

23 A Right.

24 Q What does the Hebrew say?

25 A It's complicated. It was believed to me -- it

1 was believed to mean light and truth. In fact, it
2 doesn't.

3 Q Okay. So --

4 A But it's close.

5 Q So both -- I trust you, okay? I do.

6 So both of those languages say light and truth?

7 A (Nods head.)

8 Q Okay. So tell us a little bit --

9 MR. CARROLL: You can take that down,
10 James. Thank you.

11 Q (By Mr. Carroll) Tell us a little bit about
12 your involvement in Dr. Freeman's efforts to write this
13 paper and get it approved by the what? The doctoral
14 committee?

15 A There -- there's a small committee, three or
16 four people, that supervises the dissertation, and then
17 it has to be defended in front of the Department of
18 Computer Science, which is 20-some-odd people.

19 Q Okay. And what was your involvement in that?

20 A As his advisor, I collaborated very closely
21 with him. At first, he was working on a different
22 project of mine having to do with Linda. He became
23 interested in Lifestreams, and I thought it would be a
24 good match to what he was capable of doing.

25 And during the period of -- of doctoral

1 research, which would be roughly '94, '95, into '96 --
2 well, throughout '96, we -- we collaborated closely.
3 My job was to point him -- point him in the right
4 direction. As a young researcher, show -- show him my
5 way of doing things.

6 Q Okay. And you told the jury -- excuse me --
7 before lunch about your own doctoral dissertation on the
8 Linda research.

9 Did you have back then at Stony Brook College
10 of New York some teacher who was guiding you the way you
11 guided Freeman during his doctoral dissertation?

12 A Yes. Absolutely.

13 Q So that's -- that's the way that thing works?

14 A That's standard. Routine.

15 Q Okay. Okay. So just to kind of give the jury
16 a good sense of how much work went into that, how long
17 was Freeman's paper when he got it published
18 approximately?

19 A His dissertation would have been 200-odd
20 pages, something like that.

21 Q And did -- did he start out with some
22 objective, some problem to be solved?

23 A The problem he started out with was exactly
24 the problem we have mentioned, and Steve Jobs has
25 evidently been interested in, also. Where is my stuff?

1 How do I find stuff in the chaos of the modern
2 file-and-folder computer?

3 Q Okay. Let me stop you right there.

4 I assume at Yale University where light and
5 truth are important, you and Dr. Freeman had better
6 things to do than to work on a project that already had
7 a solution -- or a problem that already had a solution
8 for it, correct?

9 A Naturally, we were interested in --

10 Q And you -- you -- are you familiar with what's
11 called the literature of computer science?

12 A It's my job to be familiar with the
13 literature.

14 Q Okay. Just like it's supposed to be my job as
15 a lawyer to kind of try to keep up with what's going on
16 in the law, right?

17 A Right. Try to stay abreast of developments is
18 one's obligation.

19 Q Now, when -- when you and Eric Freeman kicked
20 this project off, did you know of any solution at that
21 point to where's my stuff, that problem that was caused
22 by these files and folders that Steve Jobs was
23 complaining about ten years later?

24 A There was no solution. If there had been, we
25 would have worked on another problem.

1 Q Okay. So you heard Mr. Randall, Apple's
2 lawyer, accuse -- and that's my word -- you of being a
3 Johnny-come-lately to the patents that issued in this
4 lawsuit.

5 You heard that, did you not?

6 A Yes, I did.

7 Q Can you tell the jury the truth about that?

8 A The truth is that neither Eric nor I knew
9 anything about patents. This was the first such
10 experience for either of us. We did what our lawyers
11 suggested.

12 That first patent was filed by Eric based on
13 his dissertation, and it seemed both -- it seemed
14 reasonable to both of us that insofar as he was the
15 author of the dissertation, he would be the inventor on
16 the patent.

17 Neither of us knew anything about the legal
18 definition of inventorship. The Patent Office came back
19 and told us, you know, Gelernter should be on the
20 patent, too, so I put my name on it.

21 Q Was it any big deal?

22 A No.

23 Q So it was the Patent Office that said that you
24 should be a co-inventor?

25 A My recollection is the Patent Office said so.

1 Q And today, are you shown as an inventor on all
2 these three patents that we're suing Apple over?

3 A Yes.

4 Q Mr. Randall also told the jury that there was
5 some important internal document created at Yale that
6 for some reason puts the validity of your patent, yours
7 and Freeman's patent, into question.

8 Do you remember that?

9 A Yes, I do.

10 Q And he -- he referred to something called
11 TR-1070.

12 MR. CARROLL: Can we find that, TR-1070?

13 Q (By Mr. Carroll) Okay. Is this the TR-1070?

14 A Yes, it is.

15 Q Okay. Wait a minute. Is that the paper we
16 just saw?

17 A No. This is a different one.

18 Q Okay. And it says April of 1995.

19 Tell the jury what this is.

20 A Well, a technical report is a term defined at
21 Yale for each research group. So we were a research
22 group, generally known as the Linda Group. And there
23 were other groups, faculty and graduate students working
24 on other problems.

25 A technical report was what the group wanted

1 it to be. In our group, a technical report was a
2 private working status document. It was useful for us
3 to put our ideas down on paper so we could discuss them.
4 Often -- often, I find they usually become clear when
5 you write them down. So this was an internal report for
6 the use of a group for a work-in-progress months out
7 from being finished, or a year.

8 Q Let me ask you this: Was it publicly
9 available?

10 A No.

11 Q Are you certain of that?

12 A It was absolutely our policy that such reports
13 not be publicly available.

14 Q Okay. Do you -- do you remember an instance,
15 after this lawsuit got filed and before we came to the
16 courthouse, when the Apple folks were snooping around
17 your research lab trying to find this document?

18 A Yes, I do.

19 Q Tell the jury about that.

20 A I wasn't on the scene to watch it. I got a
21 frantic call from my secretary telling me that the
22 police had just ejected some lawyers. I guess there
23 were two, two lawyers who identified themselves as
24 working for Apple, who were trespassing in the building
25 and were evidently just rifling cabinets.

1 I can't speak for what they were doing,
2 because I didn't see it myself. But I know they were
3 there, and I know the police were summoned, and I know
4 the police threw them out.

5 Q One of the things that we've all learned about
6 patents is that they are supposed to teach, correct?

7 A Right.

8 Q And they're supposed to teach people who, for
9 lack of a better description, are smart enough to learn
10 in that particular area the patent is teaching in,
11 correct?

12 A Right.

13 Q Was this TR-1070 intended to teach everybody
14 and anybody in the world of computer science about
15 whatever later became your invention and Freeman's
16 invention?

17 A Not designed for teaching the public nor for
18 any kind of public view.

19 Q Okay. So it was different from a patent
20 disclosure?

21 A Absolutely.

22 Q Different from a -- what's a white paper?

23 A Also a term with many definitions, like a
24 technical report, maybe a memo for internal use. So you
25 can remember where you stood on something at some

1 particular time.

2 Q Are white papers for public consumption?

3 A Well, it's not a standard -- it's not a
4 standard term in scientific departments on the whole.

5 My definition would say no. They're memos to mark -- to
6 mark for a group's own purposes where it stands.

7 Q All right. Let me ask this question, and then
8 we'll leave this be and go on to something else.

9 Was it the intention of you and Eric Freeman
10 and Nicholas -- it Carriero?

11 A Carriero.

12 Q Carriero and Scott Fertig to tell the world
13 what was in that document in April of 1995?

14 A No. This was work in progress. It was not
15 ready for -- not -- not ready for prime time.

16 Q Not ready for prime time. Okay.

17 MR. CARROLL: Can we have PX383, Tab 3?
18 Can you find -- there we go. Can you find the line that
19 starts out: Computers are a pain to use?

20 THE WITNESS: Right at the top.

21 MR. CARROLL: Now, can you lift that out,
22 James?

23 Q (By Mr. Carroll) Okay. Now, the jury can read
24 this as well as I can. It starts out: Computers are a
25 pain to use. How is information stored, arranged, and

1 retrieved, question mark. How are programs executed,
2 question mark.

3 What was the purpose of this description?

4 A To introduce the fact of a -- of a serious and
5 significant problem in the world of computers that
6 needed solving.

7 Q Is that the same problems you've been telling
8 the jury about the last 30 minutes?

9 A Where is my stuff? Yes.

10 Q All right. Thank you.

11 MR. CARROLL: You can take that down,
12 James.

13 Q (By Mr. Carroll) Tell the jury in kind of
14 summary fashion how you and Dr. Freeman went about
15 filing this patent application.

16 You told me you had a lawyer.

17 A It was -- in June of 1996, as the work was --
18 had gelled and was finished. His dissertation was in
19 the process of being written. It was Eric's initiative
20 to file a patent. Eric was aware of the fact that there
21 was changing possibilities of filing patents on software
22 and so forth.

23 Eric had a friend in New Haven who was a
24 businessman/investor and had had some -- some experience
25 with technology and technology companies, I believe,

1 named Chris Jones. And together Eric and Chris found a
2 lawyer or a law firm. I don't know that it was one
3 lawyer. I guess it must have been a firm.

4 And they filed the patent. I was -- as
5 part -- part of the -- part of the process of the
6 substance of the patent, but I didn't have anything to
7 do with the procedure of filing. I didn't know anything
8 about filing it, or for that matter, Eric didn't either.
9 We were both new to this.

10 Q Now, Mr. Randall over here played a snippet
11 from some patent called Piles and Manders (sic) during
12 his opening statement.

13 You saw that, did you not?

14 A Yes.

15 Q Do you know anything about the background
16 information that was given to the Patent Office while
17 they were considering your patents -- your patent
18 applications?

19 A Yes, in a general way, I do.

20 Q In a general way, do you know whether that
21 very same disclosure of the so-called Manders
22 (sic)/Piles invention was something that was given to
23 the Patent Office to look at before they agreed to issue
24 your patents?

25 A I believe that we did provide it. Yes, we

1 did. We did provide it to the Patent Office, certainly
2 for one of the patents.

3 MR. CARROLL: Do we have the cover page
4 to the first patent? Which one would that be on?

5 MR. STEIN: 313.

6 THE WITNESS: I think it's the '427
7 patent.

8 MR. CARROLL: Look at the '427.

9 Can you find that, James?

10 Flip over to the guts of the patent.

11 Where would that be; on the first page?

12 MR. STEIN: Yes.

13 MR. CARROLL: Look on the first page of
14 the patent.

15 There we go.

16 All right. Now, can you find under the
17 U.S. -- I can't even read that -- but the lower
18 left-hand corner?

19 Lift that out, James.

20 There we go.

21 Q (By Mr. Carroll) Now, are these the patent
22 documents that we know for sure the Examiner looked at?

23 A Well, the first part of them. They --

24 MR. STEIN: There's more at the top.

25 MR. CARROLL: Yeah, that's right. My

1 colleague reminded me there's more on the top.

2 Q (By Mr. Carroll) Okay. And is the Piles
3 patent -- there it is right there.

4 A Right, yes.

5 Q The very bottom one, Mander, et al.

6 Is that what Apple's claiming somehow wasn't
7 considered by the Patent Office?

8 A That's it. We provided it, and the patent was
9 issued over it explicitly.

10 Q There it sets, huh?

11 A Yes.

12 Q Did you and Mr. Freeman and the businessman,
13 Mr. Jones, set up a company in connection with these
14 patented inventions?

15 A A company was set up in June of '96.

16 Q And that's about the time you filed the patent
17 applications?

18 A Right.

19 Q What was the point of setting the company up?

20 A Initially, the company -- the company -- our
21 hope was that we could turn the company into a vehicle
22 for demonstrating the real-world usefulness of our
23 ideas.

24 Q Did the company have a name?

25 A It was first called Lifestreams only briefly.

1 Then it was called Mirror Worlds Technologies?

2 Q Like your book?

3 A Right.

4 Q What was your role in the company?

5 A I was a technical advisor. I had the title of
6 Chief Scientist. My role was -- my role was to make
7 sure that the ideas in the patents were -- were in the
8 product that the company built, but also to help write
9 about them, publicize, being a writer, among other
10 things.

11 I might add my job was to let people know
12 about these ideas and what we were doing about them.

13 Q How many folks worked for the Lifestreams
14 company?

15 A Lifestreams was only very briefly. Mirror
16 Worlds Tech --

17 Q I'm sorry. The Mirror Worlds company.

18 A 30-some-odd, -4 or -5 at the most.

19 Q Did the company, Mirror Worlds, have a
20 website?

21 A It did. The website was our main -- our main
22 way of reaching potential customers, partners,
23 journalists, the world at large.

24 Q Did you have anything to do with building that
25 website?

1 A I certainly was involved in -- in -- in
2 designing it and writing it, writing parts of it and
3 overseeing it.

4 Q And we know for sure, because we're here in
5 the court over them, that the patents eventually issued,
6 did they not?

7 A Yes, they did.

8 Q Did -- did the company, Mirror Worlds, notify
9 the world on this website that these patents had issued
10 and that they had valid patents covering this
11 technology?

12 A Yes. When the first patent issued, which was
13 at the end of 1999, the company issued a press release
14 about the fact that the patent had been issued. And
15 then that press release was -- was posted on the -- on
16 the website, so it was a public document.

17 Q You were -- I know you can't probably see this
18 too well, but you were in court during the opening when
19 I showed this to the jury about Apple monitoring the
20 website of Mirror Worlds?

21 A Right.

22 Q Would that be the same website that made it
23 plain to the world that you-all had patents on this
24 technology?

25 A Yes. That website changed and evolved over

1 the years and, in fact, I believe, references to the
2 fact that this was patented technology multiplied
3 employed over the years or at least over the lifetime of
4 the website.

5 Q When the patents issued, did you and
6 Dr. Freeman give them back to Yale University?

7 A Let me see. When you --

8 Q Well, let me just ask it this way: Tell the
9 jury what happened after you and Dr. Freeman had the
10 patents issued by the Patent Office and what involvement
11 you had with assigning them or giving them or deeding
12 them over to Yale.

13 A Let me see. In -- in -- in June of '96, the
14 patent application was filed with Eric as inventor and
15 assigned to this new company, the Lifestreams Company.
16 Soon after that, I guess in '97, we discovered that --
17 we didn't know -- this was the first patent we had ever
18 filed, and I would say, in the Computer Science
19 Department in general, there's very little knowledge
20 about patents.

21 Soon after filing the patent, we discovered
22 that by rights, it should have been assigned, not to the
23 Lifestreams Company, but to Yale University, insofar as
24 it was based on doctoral research there and so forth.

25 So we -- or Lifestreams reassigned it to Yale

1 University. That would have been 1997, which
2 immediately issued a license to either Lifestreams or
3 Mirror Worlds, whatever the company's name was at the
4 time.

5 Q Now, did -- did the company have any goals
6 with regard to this patented technology?

7 A The company's goals with regard to the
8 patented technology were, first of all, to show that it
9 worked in reality, that -- that not just the students
10 prototype software, but real commercial quality software
11 could be built around these ideas, that it -- that it
12 really worked, and it could be built and was useful.

13 Number two, to let people know about it, to
14 publicize the ideas in the patents, to publicize what
15 Mirror Worlds' technology was doing, the ideas in the
16 patent and -- and our -- and our technology.

17 And our final goal was, we had software for
18 sale. We would have loved to make a lot of money.
19 Realistically speaking, we didn't expect to.

20 What we expected, what we hoped, realistically
21 speaking, was that we could find a large company to
22 partner with, because we were talking about a
23 potentially revolutionary technology. We were a tiny
24 little company.

25 And the way these things are done, practically

1 speaking, is little companies find larger ones to help
2 them -- to help them make a commercial success of new
3 stuff.

4 Q What was the short list of the companies that
5 you thought might be a good fit for partnering with?

6 A At the beginning, it was Apple and Microsoft,
7 and soon after, Google joined the list.

8 Q So you had three goals.

9 The first was to prove to the world that you
10 could build a -- what did you say? A commercially
11 workable product?

12 A Yeah, a real-world version of the -- a
13 real-world version of the software.

14 Q Did the company achieve that goal?

15 A Absolutely. In fact, it did it twice. It
16 built two commercial versions, one for networks and one
17 for personal computers.

18 Q All right. Let's talk about the name of that
19 product. And again, product -- are we talking about the
20 software?

21 A We're talking about the -- the company's
22 product was its software.

23 Q Okay.

24 A Yes.

25 Q And is software -- and again -- and I know

1 this is super simplistic, but I'm holding up the box
2 with the computer and the box with the -- with the disk.

3 Which is the software?

4 A Well, basically, the software is in that box,
5 right, in the small box.

6 Q What's in here (indicates)?

7 A And the hardware is in that box.

8 Q Okay. What's the relationship between the
9 disk and the machine -- and this device?

10 A Well, the software are the instructions that
11 cause the computer to do what you want it to do.

12 Q So I plug it in, and that's -- it tells the
13 machine what to do?

14 A Right. The computer is a completely passive
15 machine without software, but the software causes it to
16 do what you want it to do.

17 Q Okay. And this Apple software is called Mac
18 OS X Leopard is what it says on the side.

19 A Right.

20 Q What was yours called?

21 A Scopeware Server, and the second was called
22 Scopeware Vision.

23 Q Okay. Now, is -- tell the jury a little
24 bit -- and I'm going to write this down. Is it scope,
25 just like I scope something out?

1 A That's the word. That's the word.

2 Q Where did you-all come up with this name?

3 A It was not -- it was not my -- it was not our
4 idea. After we got some funding, management of the
5 company hired a marketing consultant or some sort of
6 business consultant, and they came up with this name as
7 being desirable for some reason.

8 Q Okay. So that's some ad person's --

9 A Yeah.

10 Q -- creation?

11 A Exactly.

12 Q And did Scopeware work?

13 A There were two versions, and they both worked
14 beautifully.

15 Q You heard Mr. Randall kind of poo-poo
16 Scopeware in his opening saying it failed and you only
17 sold \$50,000 worth of it. Is that true?

18 A I have no idea. I didn't see the books. But
19 we certainly didn't sell very much in terms of dollars.
20 And, of course, revenues are always nice. They were not
21 realistically part of our goal. We didn't expect to
22 make money selling the software. We expected to prove a
23 point and we hoped make plenty of money down the road
24 after we found a partner.

25 Q Do you remember when Apple requested a meeting

1 with Mirror Worlds about its technology?

2 A Yes, I do.

3 Q Tell the jury what you remember about that.

4 A I -- I know the meeting itself was in the fall
5 of -- the fall of 2001. I think it was in the end of
6 September of 2001.

7 We heard from Apple. Apple contacted us
8 wanting a meeting. I believe that was in the summer --
9 late summer of '01. And a WebEx meeting was held
10 towards late September of '01.

11 Q All right. Let me stop you right there.

12 MR. CARROLL: James, put that Jobs e-mail
13 up that says: The Future Beyond Folders. And put the
14 title line deal up where it says: Subject: The Future
15 Beyond Folders.

16 Q (By Mr. Carroll) Do you see that reference
17 from Steve Jobs: The Future Beyond Folders?

18 A I sure do.

19 Q What's that reference from?

20 A The reference is to a -- an article written by
21 John Schwartz of the New York Times. Schwartz heard a
22 talk that I gave at a trade show called PC Expo in the
23 spring -- late spring of 2001.

24 Q Is that the title of your talk: The Future
25 Beyond Folders?

1 A I -- I think it may have been the title of
2 Schwartz's piece.

3 Q Okay.

4 A I'm not sure. It could have been the title of
5 my talk.

6 Q And we know the date for the Jobs e-mail is
7 July the 2nd of 2001. Would that have been about the
8 time that your company, Mirror Worlds, got the call from
9 Apple that they wanted to meet with you?

10 A Yeah. It was sometime during -- we -- we got
11 the call during the summer.

12 Q Did -- and again -- and I may have this
13 confused -- this article that was in the New York Times
14 newspaper, was that the article you were telling the
15 jury about that came out after Mirror Worlds, or was
16 this yet another article?

17 A No. The two are completely different, the
18 first by John Markoff back in '93; this one by John
19 Schwartz, another guy at the New York Times, in 2001.

20 Q All right. Now, I want to ask you something
21 about a comment that -- when Mr. Randall made to that
22 jury -- this jury during his opening.

23 And what he said the evidence would show is
24 that the meeting had nothing to do with licensing your
25 technology.

1 You heard him say that?

2 A Yes, I did.

3 Q Do you see the word license in the e-mail from
4 Steve Jobs?

5 A We may want to secure a license as soon as
6 possible, yes.

7 Q Now, you also heard Mr. Randall tell the jury
8 that they were going to prove to the jury that they were
9 just shocked to learn that we had patents.

10 Does the term license apply to patents?

11 A Absolutely, to intellectual property patents.

12 Q And you also heard Mr. Randall tell the jury
13 that why, yeah, they went to a meeting, but they showed
14 up wondering if they could buy some of your Scopeware.

15 You heard him say that?

16 A Yes, I did.

17 Q Is that -- is that true?

18 A False.

19 Q Tell the jury why it's false.

20 A For one thing, we didn't build any software
21 for Apple computers. Our software was for Microsoft
22 platforms. There was nothing for sale they could have
23 bought by way of software.

24 Beyond which our point, our goal, our aim was
25 to license the software, and we talked to companies with

1 that goal in view. That's what I heard about the
2 meeting beforehand; that's what I heard about the
3 meeting afterward.

4 Q All right. Now, Dr. Gelernter, I want you to
5 make this point clear to the jury, so there's no
6 confusion.

7 You just told them that your Scopeware, your
8 software that you built from your patents -- correct?

9 A Correct.

10 Q Wouldn't run on Apple's system, true?

11 A True.

12 Q Well, if that's true, why would Apple be
13 interested in licensing that same patent or those
14 patents?

15 A There's a very important distinction between
16 software and the ideas behind the software. Software is
17 for a particular platform, more or less narrowly
18 defined. But it's Apple software, it's Mac software, or
19 it's Microsoft software, or it's some other kind of
20 software.

21 But the ideas behind the software could apply
22 to software for any -- any machine that's ever existed
23 in principle and any machine that could exist.

24 So while the software that we had built could
25 not run on Apple computers, the ideas in our patents,

1 the ideas, one embodiment of which was represented by
2 our software, those ideas absolutely could work on Apple
3 computers. And not only Apple computers, other Apple
4 devices.

5 Q Okay.

6 MR. CARROLL: Put up that first Farmer
7 Brown cartoon.

8 Q (By Mr. Carroll) So going back to our Farmer
9 Brown here, if his whole place is outlined in black, and
10 Scopeware is what is the barn, would your patents be
11 bigger than what that barn is sitting on?

12 A Sure.

13 Q Is that what prompted Apple's interest in the
14 meeting, the fact that you owned the whole place?

15 A Sure.

16 Q Okay.

17 MR. CARROLL: You can take it down,
18 James.

19 Q (By Mr. Carroll) Now, the jury is going to
20 hear just in a minute from one of the two participants
21 in the meeting, a gentleman named Michael Satow. Can
22 you tell the jury who Michael Satow is?

23 A Michael Satow was the head of -- the CEO, the
24 chief of the company, head of the company.

25 Q Did you help brief Mr. Satow on the meeting or

1 on the technology before the meeting?

2 A Yes, I did. We discussed it in some detail.

3 Q And did you know that the meeting, in fact,
4 happened?

5 A Absolutely.

6 Q And did you know that at some point after the
7 meeting, Apple said they weren't interested?

8 A Yes, we -- we certainly did.

9 Q Do you know what reason, at least on the face
10 of it, that the Apple man gave Mr. Satow as to why they
11 weren't interested?

12 A I think it was something to the effect of
13 we're going to continue to use our old stuff.

14 Q The old way they had been doing things?

15 A The old -- we're going to continue to do
16 things the way we have been doing them.

17 Q Did that make any sense to you?

18 A I can't believe that Apple had that -- my --
19 my judgment, looking at the field -- I'm not privy to
20 what Apple was thinking -- it's hard for me to believe
21 that that would actually have been Apple's intention at
22 this point when the field was changing in such important
23 and dramatic ways.

24 Q Now, did you and the company have any luck
25 partnering with Apple or Microsoft or Google?

1 A We had luck in the sense of having meetings,
2 significant -- significant meetings, meetings with
3 highly placed people; no luck in the sense of getting a
4 licensing agreement.

5 Q So you solved problem number one; you built
6 the Scopeware to show the world that it would work; you
7 solved problem number two that you got the word out
8 about your patents; but you didn't get number three, did
9 you?

10 A Right.

11 Q What happened to the company?

12 A Well, it ran out of money in 2004, the
13 March/April period, the spring, the late spring of 2004.
14 It traded its patents to a new organization called
15 Recognition Interface in return for Recognition
16 Interface settling Mirror Worlds' debts.

17 So Mirror Worlds owed a certain 200,000-odd
18 dollars. It shut down on the basis of the money
19 exchanged for the patent. At that point, this new
20 company, Recognition -- Recognition Interface took over
21 ownership of the patents.

22 It wasn't a software company; it didn't have
23 resources to do anything with them; but it was the owner
24 of the patents.

25 Q All right. Let me stop you right there.

1 Mr. Randall also told the jury that your
2 patents couldn't be worth much more than 2 or \$300,000,
3 because that's what was involved in this transaction you
4 just told the jury about.

5 Were the owners of the old company and the new
6 company different people?

7 A No. And Frank Weil was the main principal in
8 both of them.

9 Q You told the jury the purpose was to raise
10 enough cash to pay off the debt?

11 A Right. And the amount of debt was exactly the
12 sum offered to the patents, whatever figure that was,
13 200 something.

14 Q Do you believe that that number has anything
15 to do with the value of your ideas that you got patents
16 on?

17 A Nope.

18 Q When you dealt with Yale University, you gave
19 them the patents when they said, they're supposed to
20 belong to us, and then the little company bought them
21 back; is that right?

22 A Right. Mirror Worlds bought the patents back
23 from Yale.

24 Q Did Yale do any investigation at that point
25 about Mirror Worlds and your technology?

1 A It did. Because the deal was going to be
2 based mainly on equity, on stock in this new company,
3 because Mirror Worlds was going to give Yale a bunch of
4 stock and some cash, but mainly stock, and in return
5 would get ownership of the patents from Yale.

6 So in order to value the stock, Yale had to
7 value the company.

8 Q What did Yale think Mirror Worlds was worth
9 when it took stock and gave the patents back?

10 A The figure was 50 million.

11 Q And that was before this lawsuit, was it not?

12 A That was long before. That was 1999 -- '8 --
13 '99, I would guess.

14 Q When did you first become aware that Apple was
15 marketing a product called Coverflow?

16 A It was after -- it was after Spotlight. I
17 guess Coverflow probably saw it first 2007, that range
18 of '6, '7.

19 Q When did you first become aware that Apple was
20 marketing a product called Time Machine.

21 A Same time as Coverflow. They were part of the
22 same system. There was a new operating -- Apple
23 operating system that had Spotlight in it, and that was
24 around 2005.

25 And one or two years later, there was a new

1 version that had not only Spotlight but also Coverflow
2 and also Time Machine.

3 Q Now, I know you're not here to give the jury
4 an infringement opinion. Dr. Levy is going to do that.
5 But of those three Apple products, Coverflow, Time
6 Machine, and Spotlight, which looks, sounds, and smells
7 like your ideas?

8 A All three. There were -- there were three
9 ideas in our patents.

10 There was an idea of a comprehensive
11 time-ordered stream with everything in it that you
12 could -- to which you could describe your files, get
13 them back instantly. That's exactly what Spotlight does
14 in my experience as a user.

15 There was a three-dimensional display that
16 could show you an unbounded amount of information and
17 made it easy to browse through it as if you were
18 flipping pages in a magazine and had the impression of
19 depth. And that's what Coverflow was.

20 And -- and our -- and our third idea was
21 automatic archiving or snapshotting that was
22 transparently remembering the state of the system,
23 storing it somewhere, but letting you make inquiries
24 about it, query it, search it as if it were still right
25 where it always had been. And that was Time Machine, in

1 my experience, as I -- as I saw it.

2 As I saw it there on the computer screen,
3 those were my ideas.

4 Q How did that make you feel?

5 A Sick. It was frustrating, infuriating, but
6 above all, sad. It was sad, because our ideas were
7 there in Apple's stuff.

8 We would have been happy to work with Apple.
9 But from what I could see, Apple had taken them. And
10 from what I knew, we had no recourse.

11 Q But you're here today with recourse, correct?

12 A Yes.

13 Q Did you have to find somebody to partner with
14 who had the money to take on a big company like Apple?

15 A What happened was that this little entity
16 Recognition Interface, which owned the patents after the
17 demise of Mirror Worlds' technologies, suddenly got
18 offers for the patents, offers to buy the patents.
19 This was in the 2007-ish timeframe. I don't remember
20 exactly, but I think 2007. There were several offers.
21 One of them was an offer from a company that believed
22 sufficiently in the patents to be willing to enforce
23 them and possibly to -- to proceed to commercialize
24 them.

25 MR. RANDALL: Your Honor, I'm going to

1 object. There's no foundation for this, and I don't
2 know if he's testifying from firsthand knowledge or not.
3 I don't believe he was an employee of Recognition
4 Interface at the time.

5 THE COURT: Okay. Restate your question.

6 Q (By Mr. Carroll) Dr. Gelernter, how did it
7 come to pass that Recognition Interface got the
8 wherewithal to go after Apple to redress what you saw as
9 Apple using your ideas?

10 MR. RANDALL: Same objection, Your Honor,
11 lack of foundation. I don't think he was employed with
12 that company. I don't think he had anything to do with
13 that company.

14 Q (By Mr. Carroll) Well, do you know?

15 A Sure I know.

16 Q How do you know?

17 A Frank Weil told me.

18 Q And Frank Weil was with Inter -- Inter --
19 Recognition Interface?

20 A He was the principal owner of Recognition
21 Interface as he had been the lead investor and the
22 Chairman of the Board of Mirror Worlds Technologies.

23 MR. CARROLL: Your Honor, that's the
24 foundation.

25 THE COURT: Okay. Proceed.

1 MR. CARROLL: Thank you, Your Honor.

2 Q (By Mr. Carroll) So what did -- what did you
3 learn about any opportunity to partner with somebody who
4 could help you complain about this trespass in court?

5 MR. RANDALL: Your Honor, objection,
6 hearsay. Mr. Weil was deposed in this case, and we have
7 his videotape deposition.

8 If -- if he wants to testify or they want
9 to put him on, I don't have an objection to that, but I
10 don't think he was in a position to do that, and I think
11 that if he's just going to relay what Frank Weil told
12 him, that's hearsay, and we should hear from Mr. Weil.

13 THE COURT: Response?

14 MR. CARROLL: They can play Mr. Weil's
15 deposition, Your Honor.

16 THE COURT: Okay. Is this consistent
17 with what he testified to?

18 MR. CARROLL: Dead on.

19 THE COURT: All right. Proceed.

20 Q (By Mr. Carroll) What did -- what happened?
21 What happened after you learned that, from everything
22 you could see, Apple was stepping on your property?

23 A Nothing immediately, but -- but before long,
24 an offer was made to Recognition Interface by
25 Plainfield, Plainfield Invest -- Plainfield to buy the

1 patents in from Recognition Interface with the purpose,
2 as I understood it, of enforcing the patents and
3 potentially commercializing them further.

4 Q And you told the jury a minute ago that it was
5 your understanding that that wasn't the -- that there
6 had been other offers or discussions of offers for the
7 patents before you-all filed this lawsuit?

8 A That was my understanding.

9 Q Did you hear about a company called
10 Investment -- or Intellectual Ventures?

11 A Yep.

12 MR. RANDALL: Same objection. Lack of
13 foundation.

14 THE COURT: Sustained.

15 Q (By Mr. Carroll) Dr. Gelernter, we're here in
16 court today and -- over your patents. Do you and Jane
17 and your family have an interest in the outcome of this
18 lawsuit?

19 A We do.

20 MR. CARROLL: Pass the witness, Your
21 Honor.

22 THE COURT: All right.

23 Cross-examination.

24 MR. RANDALL: Your Honor, may we briefly
25 approach the bench just for clarification on one issue?

1 THE COURT: Yes, you may.

2 (Bench conference.)

3 MR. RANDALL: Your Honor, the witness
4 said that he disclosed the Piles patent in the '427
5 patent, and the patent issued over Piles. And I renew
6 my request to bring in the reexamination of the '427,
7 which shows that all of those claims are now rejected
8 over the Piles patent.

9 THE COURT: Objection is overruled.

10 (Bench conference concluded.)

11 CROSS-EXAMINATION

12 BY MR. RANDALL:

13 Q Professor Gelernter, my name is Jeff Randall.
14 I don't think we've ever met.

15 Did -- when did you first come up with this
16 idea that ultimately resulted in your patents?

17 A It's hard to say. It wasn't -- it wasn't one
18 moment. The idea was discussed in a very general way in
19 the book called Mirror Worlds that was published in '91.
20 As I mentioned, it was during a year-long period of
21 enforced pondering that it started to gel in practical
22 terms that I made up this term Lifestreams, and I
23 started to think about it as a possible dissertation
24 project.

25 When Eric and I began working on it together

1 and collaborating, which would have been in '94 at some
2 point, the idea continued to gel.

3 I mean, I -- when I have an idea in mind,
4 without knowing how it should work, our understanding
5 of -- our understanding of the substance of the idea
6 grew month by month until -- until we thought we had it
7 right, until we thought Eric had the dissertation.
8 And that was in June '96. That was when we filed the
9 patent. I think -- I believe that's about when Eric
10 began drafting his dissertation.

11 So roughly, it was a period from early in '91
12 or even before then, through, say, mid '96.

13 Q Well, when did you first believe that you had
14 conceived of a new invention to solve this problem,
15 which I think you referred to as: Where's my stuff?

16 A I can't answer with a specific moment. Don't
17 know it.

18 MR. RANDALL: Put up DX30 at Page 5.

19 Now, blow up Interrogatory No. 3, please.

20 Q (By Mr. Randall) Now, Dr. Gelernter, this is
21 an interrogatory that we asked Mirror Worlds, and we
22 asked them: Separately, for each claim in suit,
23 identify the dates on which Mirror Worlds contends the
24 claimed inventions were conceived and reduced to
25 practice.

1 That was in January -- January 28th, 2009.

2 The last response that we got --

3 MR. RANDALL: And if you can go down to
4 the response.

5 Q (By Mr. Randall) This is from Mirror Worlds,
6 and this is in this case, and this is something that the
7 company is bound by.

8 And the company said: To the best of Mirror
9 Worlds' current understanding -- and this is as of June
10 28th, 2010, just a few months back -- Mirror Worlds
11 says: The current understanding, the inventions claimed
12 in the United States patents were conceived within the
13 year prior to June 28, '96, and constructively reduced
14 to practice on the date of the filing of the patent on
15 June 28, '96.

16 Do you see that?

17 A Sure.

18 Q Now, that's what your company said in this
19 litigation, and the company is bound by that answer,
20 that the conception, the conception of these inventions,
21 occurred within a year of the filing of the lawsuit.

22 Do you see that?

23 A Yep.

24 Q All right. You don't -- you don't dispute
25 that, do you?

1 A It seems to me consistent with what I told
2 you. No, I don't dispute it.

3 Q All right. Do you understand that if you
4 published and made publicly available your inventions
5 more than a year before you filed your suit, that they
6 may be invalid because of that?

7 Do you know that?

8 A Yes.

9 Q All right. And so does this refresh your
10 recollection that the conception of these inventions in
11 this case took place within a year of the filing of your
12 patent, so sometime between June of '95 and June of '96?

13 A If you're asking me in a legal, as opposed to
14 a psychological sense, yes. The idea, it was in place;
15 it was gelled; it was -- it was there; it was doable; it
16 struck us as a doable thing, something we could see,
17 something we could imagine, and we could picture how it
18 worked. Yeah, that was in the '96 period, absolutely.

19 If you say, when did the question start
20 being -- when did the question first become of interest
21 to you, it was much earlier. And as soon as the
22 question was -- as soon as anybody, I think, finds an
23 interesting, his mind starts to work on it, and he makes
24 progress, and at some point, he says, yeah, there's a
25 solution.

1 Q You testified, in response to questions from
2 Mr. Carroll, that you believed you had three inventions.
3 They worked together, but they also stood alone. And
4 one of them was this time-ordered sequence of a stream,
5 one of them was a visual display, and one of them was an
6 automatic archive.

7 Do you recall that?

8 A Yes.

9 Q Did you describe any of those inventions in
10 any document that was publicly available prior to June
11 28th, 1995?

12 A In a -- in a general and preliminary way, yes,
13 I did.

14 Q How many documents?

15 A No idea.

16 Q Do you recall any one of the titles of those
17 documents where you describe those inventions prior to a
18 year before filing your patent application?

19 A Well, I -- I wouldn't say that we described
20 the invention in any documents prior to a year before,
21 because the invention wasn't there in our minds prior to
22 a year.

23 I mean, the -- however, we certainly referred
24 to the problem, and we referred to the general -- and we
25 referred to the direction in which we were moving. We

1 said: Here's what we want you to know. This is an
2 important problem: Where is my stuff? And we think the
3 solution lies in this direction.

4 And we are working on it. That was the
5 subject of a technical report, 1070, that Mr. Carroll
6 mentioned. And were there other such technical reports
7 or -- I really don't know. There could be.

8 Q What information, if any, was technical report
9 1070 missing in terms of its description of your
10 inventions?

11 A It -- it had a -- it had only a vague
12 reference to archiving, automatic archiving, and only a
13 vague reference to the 3-D display.

14 Q When you say only a vague reference to the 3-D
15 display, what do you mean by that?

16 A I don't remember exactly, but there was
17 something in the report that said -- I don't even -- I
18 don't remember exactly what it -- what it said. I
19 remember that at the time we wrote that report, the
20 interface that we were using was not a 3-D display. It
21 was a linear list of stuff.

22 I think in that -- I think in 1070, we said
23 something like: We're moving in the direction of or we
24 think there ought to be a 3-D display, and that's what
25 we're going to work on, but it didn't say how it should

1 work, because we didn't know.

2 Q When was the last time that you reviewed
3 TR-1070?

4 A Maybe a month ago.

5 Q And that document was also referred to as
6 research report, RR-1070, correct?

7 A Correct.

8 Q This technical report 1070 attached
9 screenshots showing the visual display, didn't it?

10 A I believe the screenshots attached were of a
11 linear display. I don't -- I don't remember the
12 screenshots.

13 Q The screenshots were never -- that were
14 referenced in the article itself and attached to the
15 article, correct?

16 A As I say, I don't recall.

17 Q Do you know why the screenshots were left off
18 of the article that was submitted to the Patent Office,
19 along with the statement by your lawyer claiming that it
20 was not public?

21 A I don't know that they were. And if they
22 were, I have no idea why they were. Certainly, it's
23 true that it was not published.

24 Q You said on direct that Lifestreams was not
25 publicly funded -- or funded by the government. Is that

1 what you said?

2 A Yes.

3 Q So the work that was performed in developing
4 the Lifestreams project was not paid for by -- at least
5 in part, by the government?

6 A The government funds that we had were not for
7 the purpose of developing Lifestreams.

8 Q Well, that wasn't my question. Did you use
9 government funds to pay for the development of
10 Lifestreams?

11 A No.

12 Q So none of the government funds that Yale
13 received were ever used to pay for any of the costs, any
14 of the services, any -- any of the expenses associated
15 with the development of Lifestreams?

16 A If you mean by any of the expenses,
17 depreciation of office furniture, I don't know. There's
18 overhead charged on government grounds. That overhead
19 goes to the university. The university uses it to pay
20 for the general wear and tear on the facilities caused
21 by research.

22 So, yeah, in that sense, everything that
23 happens in the building, everything that happens in the
24 department is subsidized by any government grants for
25 any -- for purposes received by anybody in the

1 department.

2 Q Well, were any government funds ever used,
3 during the development Lifestreams, for the development
4 of Lifestreams?

5 A No.

6 Q Did you, or to your knowledge, anyone at Yale
7 ever attribute the Lifestreams articles or work to the
8 government funding either from the Navy or the Air
9 Force?

10 A Did we attribute it? We -- we mentioned -- we
11 mentioned Lifestreams as a possible test application for
12 a completely different project called Piranha, which was
13 funded by the Air Force. We mentioned it as a possible
14 justification for the development of Piranha. We never
15 did that, though.

16 Q The question was: Did you, or to your
17 knowledge, anyone else ever at Yale, attribute any of
18 the work performed on Lifestreams to government funding?

19 A Did we attribute work performed in any --
20 in -- not that I recall.

21 MR. RANDALL: Can you pull up 794?

22 Q (By Mr. Randall) All right. You mentioned
23 that you didn't have a librarian, but you have a
24 secretary at Yale, who's been working for you for some
25 time, who has an office right next door to you named

1 Chris Hatchell, correct?

2 A Correct.

3 Q And Mr. Hatchell was deposed in this case,
4 wasn't he?

5 A Yes.

6 Q Did you talk to him about his deposition?

7 A Nope.

8 Q Not at all?

9 A (No response.)

10 Q Sir?

11 A Not about the content of his deposition. I
12 knew it took place.

13 Q And you didn't speak to him, either before or
14 after, about the content of the deposition?

15 A As a matter of fact, no.

16 Q Now, with respect to technical reports at Yale
17 from your group, your students or you provide the
18 reports to Mr. Hatchell; Mr. Hatchell goes and takes
19 that report and logs the information -- the
20 bibliographic information from that report in a binder
21 in his handwriting, correct?

22 A I guess so, yeah.

23 Q That's how it's done, right?

24 A Well, there's no how it's done. I mean,
25 Chris may have -- this is the procedure that Chris used.

1 Nobody -- there's nothing, you know, official about it.

2 Chris did whatever he thought was convenient.

3 Q No. I'm not asking you if it was official;

4 I'm just asking you if the practice within your group

5 regarding indexing technical reports was to provide the

6 report, when it was completed, to your secretary, Chris

7 Hatchell, who would then in turn take that report and

8 pull the binder off the shelf in the Yale office and

9 handwrite into the index the information regarding that

10 report, and that document is before you right now.

11 A It's certainly true that when we had a tech

12 report, we handed to it Chris. Chris logged it.

13 Q So with respect to the reports listed here,

14 the report numbers are sequentially numbered, correct?

15 A Yeah.

16 Q And turning to the second page, the second

17 item there --

18 MR. RANDALL: If you can just...

19 Q (By Mr. Randall) Here, Chris wrote down this

20 document, which is research report 1054, written by

21 Carriero, Freeman, and yourself, and it's called

22 Lifestreams Software Architecture.

23 Do you see that?

24 A Yes, I do.

25 Q And that says: The support. See that?

1 That's down at the bottom right-hand side. That's
2 not -- that support right there, that's a government
3 grant, isn't it?

4 A I see Chris' note. I mean, you know, what he
5 based it on and whether it's true -- it is not true in
6 my experience, in my -- in my knowledge.

7 Q That reference to support is referencing a
8 government grant number, correct?

9 A Sure. If you say -- I assume it's a
10 government grant.

11 Q All right. And do you understand that your
12 secretary, Chris Hatchell's, common practice was to not
13 only write the report number in sequence, the authors,
14 the title, but also reference any government grant that
15 that document was offered pursuant to?

16 Do you understand that to be his practice and
17 procedure?

18 A I did not understand this per se to be his
19 practice and procedure. His practice and procedure in
20 writing this log was just not my concern. I -- I'm not
21 disputing what you say. It's not that...

22 Q And you don't dispute that that's a government
23 grant listed under the Lifestreams article, correct?

24 A I don't dispute that, but I certainly have no
25 reason to accept the note as being correct.

1 Q I direct your attention to the sixth page of
2 this document, which ends in Bates stamp YALE1080.

3 And by the way, you recognize these documents
4 as coming from Yale, right, in this litigation, being
5 produced from Yale?

6 A The technical reports?

7 Q Yes.

8 A Yeah.

9 Q Well, this document, this handwritten index of
10 Mr. Hatchell.

11 A Yeah. I mean, I -- I couldn't swear to it,
12 but it looks familiar, yes.

13 Q Okay. And on Page 1080, which is Page 6 of
14 this document, the first entry above that, this says:
15 Yale research report 1070, which is this technical
16 report 1070 we've been talking about, correct?

17 A Yeah. Uh-huh.

18 Q Okay. And that's written by Mr. Carriero,
19 Fertig, Freeman, and yourself, right?

20 A Yep.

21 Q And the title is: Re: Lifestreams Approach
22 to reorganizing the Information World.

23 Do you see that?

24 A Yep.

25 Q It's dated April of '95, right?

1 A Right.

2 Q And that's more than a year before you filed
3 for your patent application, right?

4 A Right.

5 Q And you understand that if this describes your
6 invention, that your patents are invalid.

7 You do understand that, right?

8 A Yes.

9 Q Okay. And this -- again, support here is also
10 a government grant, right?

11 A Yes.

12 Q Okay. And do you -- do you -- does this
13 refresh your recollection that Lifestreams really was
14 funded by the government in some part?

15 A No. As I say, I was not funded by the
16 government.

17 Q Does it refresh your recollection that part of
18 the government money provided through any grant was used
19 for the purpose of -- was used in connection with
20 developing Lifestreams?

21 A As I say, insofar as a portion of every grant
22 made to the university and made to the Department of
23 Computer Science goes towards supporting common
24 facilities, yes, in that sense, it was supported by
25 grants in the same way everything else in the department

1 was.

2 Q Well, okay. This has a specific grant number
3 attached to it, as does the other, 1054. They're the
4 same grant number.

5 Do you see that?

6 A Yes.

7 Q Okay. So I'm asking you, was any of that
8 grant money used in connection with the development of
9 Lifestreams?

10 A Not to my knowledge.

11 Q Let me direct your attention --

12 MR. RANDALL: Can you pull up 777?

13 Q (By Mr. Randall) Now, this is: Lifestreams
14 Organizing Your Electronic Life, written by Mr. Freeman
15 and Mr. Fertig, and it's dated August of '95.

16 Do you see that?

17 A Yep.

18 Q And if we flip a page and go to the footnote,
19 down in the bottom left-hand column, this document says:
20 This work was partially supported by ASSERT grant, and
21 then it gives a grant number.

22 Do you see that?

23 A Yeah. I think this was a grant to Scott
24 Fertig for his AI work, and insofar as Scott was
25 partially supported -- Scott was partially supported by

1 this ASSERT grant. Actually, I don't remember what it
2 was for. Yes.

3 Q So government funding did support, at least in
4 part, some of the development of Lifestreams, correct?

5 A It -- it -- Scott says -- Scott acknowledges
6 this grant, and Scott was paid by the grant. If you're
7 saying, how do you account for Scott's time, I mean,
8 was -- was -- were -- were -- did a grant cover eight
9 hours a day, and then he was free to spend two hours a
10 day on Lifestreams?

11 I really have no idea what the grant was for.
12 All I can tell you is that we -- we -- we neither
13 applied for nor received government support for
14 Lifestreams.

15 Q And that wasn't my question. Does this
16 refresh your recollection that some government grant
17 money was used, at least in part, to fund the
18 development of Lifestreams?

19 A In the sense that Scott was partially
20 supported by this ASSERT grant, whatever it was, yes.

21 Q All right. Let me direct your attention to --
22 under the introduction in the first paragraph, the
23 second paragraph, the second full paragraph starts with
24 Lifestreams, this says: Lifestreams is such a system,
25 it uses a simple organizational metaphor, a time-ordered

1 stream of documents to replace conventional files and
2 directories.

3 Do you see that?

4 A Yes.

5 Q And then under Heading No. 2, it says: What
6 are Lifestreams? That's in the second column.

7 This article says: Think of your lifestream
8 as a diary of your electronic life. Every document you
9 create is stored in your lifestream, as are all the
10 documents other people send you. Technically, a
11 lifestream is a time-ordered stream of documents.

12 Do you see that?

13 A Right.

14 Q Does this paper disclose any one of those
15 three inventions that you told the jury about that stand
16 alone?

17 A It is -- doesn't -- what you showed me doesn't
18 disclose Lifestreams. I'm not -- I don't know -- I'm
19 not saying it isn't disclosed in this document. I don't
20 know whether it is or not. But our conception of
21 Lifestreams includes the idea of that persistent
22 substream, which is a way of searching the stream and
23 creating a selection from the stream that persists.

24 Q Well, all --

25 A That's not mentioned here.

1 Q I'm sorry. All of your claims don't require a
2 persistent substream, right?

3 A Correct. Not all the claims -- I'm not sure
4 what do you mean, do all the claims require.

5 Q Does this --

6 A -- the substreams.

7 Q Does this document disclose in part any of the
8 inventions that you described to the jury?

9 A It discloses parts of them, yes, it does.

10 Q Was there any prior art reference that you
11 disclosed, or to your knowledge, your attorneys
12 disclosed to the Patent Office that you believe was
13 closer in content than this document to your inventions?

14 A Was there any prior art -- you mean dating
15 from before June '96? How -- what does prior art mean
16 exactly in this context?

17 Q Let's just leave with this: Anything before
18 your filing of your patent.

19 A Now, was there anything before our filing of
20 our patent that was a closer description of the project
21 than this document?

22 Q Correct.

23 A Is that what you're asking?

24 Q Yes.

25 A I have no idea.

1 Q So you don't have a view one way or the other
2 whether this document is closer, in terms of describing
3 your invention, than anything that was before the Patent
4 Office and considered by the Patent Office before
5 granting your patent?

6 A Correct.

7 Q Now, does that go for TR report 1070 as well?

8 A I don't understand the question you're asking
9 me about --

10 Q Okay. The question is --

11 A -- about 1070.

12 Q The question is: Do you -- are you aware of
13 any prior art that was considered by the Patent Office,
14 before issuing your patents, that was closer to your
15 inventions than that described in TR-1070, the document
16 that was dated April of '95 that we've gone through?

17 A Well, not accepting the implication that 1070
18 is any particular distance from the disclosed work --
19 maybe it's close; maybe it's far away -- it may be the
20 closest thing. Again, I don't know.

21 Q You don't know one way or the other?

22 A Again, you're -- you're -- you're asking, was
23 there anything disclosed to the Patent Office that said
24 more about the actual Lifestreams idea than TR-1070?

25 Q Correct.

1 A Well, this document might have. I don't know.

2 MR. RANDALL: Now let's go to 931.

3 Q (By Mr. Randall) Now, I've put before you, Dr.
4 Gelernter, a document. The report date on Box No. 2,
5 which is in the center top of this document -- there's a
6 report date that says October 31, '95. Box No. 3, it
7 says, Final Report, showing the dates covered by this
8 final report was June 1st, '92, through May 31, 1995.

9 Do you see that?

10 A Right. I'm familiar with this document.

11 Q All right. And the title is: Final Report on
12 AFOSR grant. This is an Air Force grant, right?

13 A Right.

14 Q And it lists the funding numbers, right?

15 A Right.

16 Q The funding numbers end in 240. That's the
17 same funding number we just looked at that you said that
18 was funding Dr. Freeman, right?

19 A If you say so, certainly. I don't remember
20 the number.

21 Q All right. And you were the author of this
22 final report, correct?

23 A Yes.

24 Q And the subject down near the bottom of
25 Box 14, the subject terms says: Adaptive Parallelism,

1 Piranha, Network Piranha, Multi-Processor Piranha.

2 And this says Lifestreams, right?

3 A Yes. Lifestreams was a possible application
4 of this technology. It wasn't the subject of this work.

5 Q No. But it was -- the money from this grant
6 was used in part to pay for some of the development work
7 for Lifestreams, correct?

8 A No. For investigating the possibility that
9 Piranha could be useful in supporting Lifestreams. That
10 assumes Lifestreams is an extent system.

11 Q You said that -- that TR-1040 (sic) was for
12 internal purposes, and it was not disclosed, and it was
13 not publicly available.

14 Isn't that what you said on direct?

15 A What is 1040? Do you --

16 Q I'm sorry. 1070. 1070. Did you say those
17 things?

18 A It is indeed the case that it was not for
19 public purposes. It was not disclosed.

20 Q Your secretary, Chris Hatchell, do you know
21 that he testified that he made copies of all of these TR
22 reports and -- multiple copies to send them out to
23 whoever would ask for them?

24 Are you aware of that?

25 MR. CARROLL: Excuse me, Your Honor. I'm

1 going to object on the foundation. He's already
2 testified he doesn't know what the secretary testified
3 to. He's just reading the deposition of some other
4 witness into the record in the ruse of a question, and I
5 object as to form. He said he didn't know what the man
6 said on his deposition.

7 THE COURT: Response?

8 MR. RANDALL: I'll withdraw the question,
9 Your Honor.

10 THE COURT: All right.

11 Q (By Mr. Randall) Did you ever -- did you ever
12 explain in writing or otherwise to Mr. Hatchell that
13 none of these technical -- that these technical reports
14 were trade secrets to Yale?

15 A They weren't trade secrets. They were not for
16 public distribution.

17 Q All right. So the answer is no, right? You
18 didn't do that?

19 A I -- that would have been out of the question.
20 We communicated -- we talked every day. We didn't
21 communicate in written...

22 Q Did you ever explain to Mr. Chris Hatchell,
23 who you've worked with for some time as your secretary,
24 that he is prohibited from sending out any of these
25 technical reports to the public?

1 A I never prohibited him from doing anything.
2 That was not our relationship. But he was aware of our
3 understanding that these tech reports were not for
4 broadcast distribution to some fixed list --

5 Q Did you ever make --

6 A -- and not for public distribution.

7 Q And I'm sorry. I missed it. But did you say
8 that you made that clear to him?

9 A Yes.

10 Q How did you make that clear to him?

11 A In many conversations.

12 Q There's no way he misunderstood you in some
13 way and said: Well, I don't know; Dr. Gelernter must
14 not really mean they're confidential; I could probably
15 send them out to the public?

16 A When you work very closely with somebody, when
17 he's in the next office from you, when he assists you on
18 everything you do, I can't -- I don't prohibit him from
19 doing things. He wouldn't have misunderstood my
20 intentions. He certainly would have interpreted my
21 intentions. That's what made him such a good secretary.

22 Q Are you ever aware of your secretary, Chris
23 Hatchell, ever submitting a copy request to the Yale
24 Copy Center collecting 10 or 15 copies of a technical
25 report, receiving requests, and then sending those out

1 by regular mail when they're requested, and then if he
2 goes through the 10 or 15, going back to the Copy
3 Center, making another request, and having another 10
4 copies printed out for dissemination to the public?

5 Are you ever aware of any of that?

6 A This is not dissemination to the public.
7 Sending the technical report to somebody who asks for it
8 with our agreement that it be sent is not a public
9 distribution any more than my writing letters to my 10
10 best friends would be a public distribution.

11 Q Okay. So if a member of the public, let's say
12 a student at another university, submits a -- calls up
13 Yale and says: I'd like to have a copy of TR-1070;
14 would you please send me a copy of the report, and
15 Mr. Hatchell dutifully does that, sends a copy of the
16 report to this individual, are you saying that that's
17 not available to the public, that TR-1070?

18 A He wouldn't dutifully do it. He would ask me
19 about it, if he didn't recognize the requester, and I
20 would probably say no.

21 If he knew that the requester was somebody who
22 was a colleague with whom we worked closely, he might
23 have sent it out, and that's certainly not public
24 distribution.

25 Q So what about 10 copies being sent out? Would

1 you consider that to be public distribution?

2 Ten people asked for a copy of TR-1070, and
3 all 10 reports are sent out via regular mail to these
4 individuals without any nondisclosure agreement
5 attached, without any confidential stamp affixed to the
6 document. In your mind, is that public distribution?

7 A In my mind, public distribution has nothing to
8 do with the number of copies I send to friends or
9 colleagues. It has to do with whether a member of the
10 public, that is, somebody who is unknown to me, a member
11 of the public can grab a copy of the report.

12 The number of colleagues I have are people in
13 the group --

14 THE COURT: Just lean up and speak into
15 the microphone, please.

16 THE WITNESS: I'm sorry. I'm sorry.

17 A It seems to me that public distribution is a
18 matter not of number but of identity, to whom.

19 Q (By Mr. Randall) Well, the reason I'm asking
20 you these questions is just, in all fairness --

21 THE COURT: Counsel, could you speak up a
22 little bit, too? I'm having a little trouble hearing
23 you.

24 MR. RANDALL: I'm sorry.

25 Q (By Mr. Randall) The reason I'm asking you

1 these questions, in all fairness, is because you
2 understand that your lawyer told the Patent Office that
3 TR-1070 was not publicly available and that it was
4 essentially under lock and key at Yale.

5 You understand that, right?

6 A My understanding is that the technical report
7 was not for public distribution. I don't know exactly
8 what the lawyer said, but he said correctly if he said
9 we do not distribute this type report publically. It's
10 not for public distribution. It's not a public
11 document. It's not to be distributed to the public.
12 Absolutely.

13 Q All right. Now, I just want to make sure
14 we're perfectly clear on this. Are you saying that TR
15 report 1070 was not available to the public? And when I
16 say available to the public, I mean anyone who asked for
17 a copy of it, for instance, another student at another
18 university said, can I have a copy of that, that it
19 wouldn't be sent to them?

20 A It was not available without my letting it or
21 Chris recognizing it.

22 Q Did you ever tell Chris Hatchell, your
23 secretary, that he needed to clear with you any public
24 dissemination of any of these TR reports?

25 A He understood that this is what we all meant.

1 And I should say it wasn't just my intention. I wasn't
2 the big boss. I worked closely with other people in the
3 group. It was our general -- it was the intention of
4 all of us that these documents not be for public
5 distribution. And Chris clearly understood that.

6 Q Is there any reason why Chris Hatchell would
7 have made 10 copies of TR-1070 immediately after it was
8 provided to him and after he logged it in the -- with
9 his own handwriting in a book, he made 10 copies of it,
10 and then three weeks later, made another 10 copies?

11 Is there any reason for that?

12 A I can think of loads and loads of reasons. I
13 may have 10 -- I may have 10 colleagues, one at NYU,
14 three at CMU, one at MIT.

15 Scientific work is done not in the -- not in
16 the public view, but in collaboration, cooperation,
17 discussion with trusted colleagues, and sending copies
18 to trusted colleagues is not public distribution.

19 Q I'm talking about the one document, one of a
20 few that we claim described your inventions more than a
21 year before you filed your patent. And if that is
22 public, then it invalidates your patents.

23 And so I'm asking you about that one document.
24 How many copies of that document were sent out before
25 June '95 to members of the public? And that would

1 include students or professors at other universities.

2 A I can't accept your definition of members of
3 the public. I mean, is -- are my students members of
4 the public? Of course not.

5 Is my thesis advisor at Stony Brook a member
6 of the public? No.

7 A member of the public is somebody who's
8 unknown to me, a computer scientist at University X who
9 says: I just want this. Never heard of him. We don't
10 work together with him. That would be a public
11 disclosure.

12 But if I send -- but if somebody who we work
13 with routinely, regularly, a colleague, a collaborator,
14 wants a copy of what we -- what we're doing, that is in
15 no sense public distribution and is in no sense a
16 violation, is my understanding -- all of our
17 understandings that these reports describe work in
18 progress and were not for public distribution.

19 Q Do you have any explanation why Mr. Hatchell
20 made 20 copies of TR-1070 within three weeks of
21 receiving it?

22 MR. CARROLL: Your Honor, I have to
23 object. Asked and answered about eight times now.

24 THE COURT: All right. Sustained.
25 Counsel, how much more cross do you have? We're

1 getting -- if you have very much more, we're going to go
2 ahead and take our afternoon break. If you don't have
3 much more, I'll allow you to go ahead and finish
4 whatever --

5 MR. RANDALL: I have -- I have a bit more
6 to go, Your Honor.

7 THE COURT: All right. Why don't we take
8 our afternoon break.

9 At this time, Ladies and Gentlemen of the
10 Jury, we'll be in recess until 3:20. Please remember my
11 instructions, and don't discuss this case among
12 yourselves or with anyone else.

13 Be in recess. Enjoy your break.

14 COURT SECURITY OFFICER: All rise.

15 (Jury out.)

16 (Recess.)

17 COURT SECURITY OFFICER: All rise.

18 (Jury in.)

19 THE COURT: Please be seated.

20 All right. Mr. Randall, you may proceed.

21 MR. RANDALL: Thank you, Your Honor.

22 Q (By Mr. Randall) Dr. Gelernter, we were just
23 talking about Exhibit 931, which is this final report
24 that you wrote regarding Air Force funding, correct?

25 A Correct.

1 Q And if you look at the last -- if you look at
2 Page 6 of this document -- I'm sorry -- Page 2, which is
3 Bates-stamped No. -- it's very confusing -- but
4 Bates-stamped No. 5.

5 In the middle of the page there, it says:
6 Research results for the grant.

7 Do you see that?

8 A Right.

9 Q And there's two items listed on that page,
10 right?

11 A Yep.

12 Q And the third item under research results, on
13 the next page, and it says: Lifestreams: A Piranha
14 application being developed from research under this Air
15 Force grant.

16 Do you see that?

17 A An application, right. An application of
18 Piranha.

19 Q Right. And it describes Lifestreams as:
20 Today, just managing one's own electronic world can be a
21 frustrating task for most computer users, requiring too
22 many separate applications, too many file transfers, and
23 format translations.

24 Do you see that?

25 A Yep.

1 Q The next paragraph goes on to state:
2 Lifestreams is such a system. It uses a simple
3 organizational metaphor, a time-ordered stream of
4 documents, to replace conventional files and
5 directories. Stream filters and software agents are
6 used to organize, locate, summarize, and monitor
7 incoming information.

8 Do you see that?

9 A Yep.

10 Q And then the last line of that paragraph
11 states: Currently, we are running a research prototype
12 of the system in-house.

13 Do you see that?

14 A Yep.

15 Q Now, that's describing, in part at least, the
16 inventions that you describe here to the jury, isn't it?

17 A It's describing it in order to explain the
18 proposed use of Piranha, which was an adaptive parallel
19 system with an extension of Linda. It had nothing to do
20 with Lifestreams per se.

21 So we want to say Piranha is useful. For
22 example, we can use Piranha to build this and build this
23 and build that. And that happens to be Lifestream and
24 we describe the application.

25 But this has nothing to do with Lifestream's

1 development. It has to do with Piranha.

2 Q Okay. Just so we're clear, this has nothing
3 to do with the inventions that you described to the jury
4 today; is that right?

5 A No. This describes the invention in order to
6 be clear what sort of use we were proposing to make, an
7 adaptive parallel system that allow programs to
8 essentially sneak on to idle nodes and remove themselves
9 after cleaning up.

10 Q All right. Well, whatever you want to call
11 this Item 3, the Lifestreams item here --

12 A Yeah.

13 Q -- government funding from the Air Force,
14 pursuant to this grant, listed in your final report was
15 used, in part, for that work, correct?

16 A In the context of a Piranha experiment, it was
17 an experiment with Piranha. It was of interest in the
18 context of the Piranha work. It was in no sense
19 research on Lifestreams. It was research on Piranha.

20 As, for example, research on a programming
21 line, they have a brand new programming line, and we're
22 going to use it. We're going to try it in a lot of
23 ways. For example, we'll try it on Lifestreams. That's
24 research on the programming language, which in this
25 case, is Piranha, not research on Lifestreams.

1 Q So the answer is no?

2 A I am unable to answer the question as you
3 stated it.

4 Q You go on to list in your report -- you did
5 write this report, correct?

6 A Yes.

7 THE COURT: Please lean up a little
8 closer to the microphone so we can hear you.

9 THE WITNESS: Sorry.

10 Q (By Mr. Randall) In the report here that you
11 wrote, you list the publications right below that
12 sentence I just read into the record, right?

13 MR. RANDALL: If you can go down just a
14 little bit further, Diane.

15 Q (By Mr. Randall) There's a series of
16 publications you list, right?

17 A Right.

18 Q And then the last one on this list is
19 Lifestreams. Lifestreams, organizing your electronic
20 life, Yale DCS. It says Research Report 1083.

21 We talked about that a few minutes ago, didn't
22 we?

23 A Yes. Right.

24 Q Okay. And that's dated in November of '95.
25 And so you list this Lifestream's research report, which

1 you said was the same as a technical report.

2 That's a publication, right?

3 A No. It's the AAAI presentation, which makes
4 it a publication. I mean, not that listing -- well,
5 it's listed here insofar as it is presented at the
6 AAAI's fall symposium.

7 Q Let's be really clear about this.

8 Is this a publication, in your view, or not?

9 And I raise that, because you've said that 1070 is not a
10 publication; it wasn't available to the public.

11 And I want to get to the meaning of what you
12 say is publicly available. You list this, this Research
13 Report 1083, regarding Lifestreams in the report that
14 you submitted to the Air Force under publications.

15 And I'm asking you, is that a publication, in
16 your view?

17 A In my view, there is a radical difference
18 between a publication that is presented at a public
19 symposium -- between a research report that is presented
20 at a public symposium and a research report that is
21 never presented at any symposium, public or private.

22 Q A few minutes ago, you said that your
23 technical reports, research reports at Yale in your
24 group were not -- I think was intended for internal
25 uses, were not public, and were not available to the

1 public, correct?

2 A As research reports, as technical reports,
3 that's absolutely right.

4 Q So what's -- why -- but you would agree, would
5 you not, that this document listed under publications,
6 this research report from your group, 1083, regarding
7 Lifestreams was publicly available and was presented at
8 a public conference, right?

9 A Publicly available insofar as it was presented
10 at the conference. If we -- if we -- there's a
11 difference between a conference publication, a
12 conference presentation and a technical report, which is
13 not publicly distributed.

14 This is a reference to the AAAI fall
15 symposium, to a talk that's given there. We gave the
16 talk there. That's a public revealing of whatever is in
17 there.

18 That's very different from a technical report
19 that is not presented at a symposium. This is a talk, a
20 talk at a large conference, an auditorium full of
21 people. You get up and you present the talk, and it's
22 the talk that constitutes the publication.

23 Q What is the reason, if any, that you testify
24 that the content of the TR-1070 report was not publicly
25 available, but the content of this report here a few

1 months later was presented publicly at a conference?

2 A Well, I don't remember, but it was certainly
3 our privilege to look at a tech report and say we're
4 starting to get this. This is becoming clearer. This
5 may not be good enough for a journal publication. We
6 may not want this actually to appear in print, but it's
7 closer to what we want than the last one. So this is
8 good enough for a conference publication.

9 In science, we expect these kinds of
10 gradations. They start with notes, essentially lab
11 notes, and the notes jell, and eventually you find
12 solutions.

13 And when you've got the solutions, you might
14 apply for a patent or get a journal publication. When
15 you don't have the solutions, you might write an
16 internal report strictly for your own group and for your
17 colleagues, however many there are.

18 At an intermediate stage, you might say we'll
19 take this to a conference and we'll give a talk. There
20 may not be -- I don't believe there was a proceeding. I
21 don't know if there was or not.

22 But certainly a paper appearing in proceedings
23 is very different from -- is much more informal than
24 appearing in a patent application or in a journal. This
25 is a spectrum.

1 Q Did you intend, when you wrote this report to
2 the United States Air Force, to identify these items
3 below publications as publications to the Air Force?

4 A Insofar as this was a talk, given at the AAAI
5 fall symposium, we did indeed treat it and regard it as
6 a publication.

7 Q All right.

8 MR. RANDALL: Now, let's go to the next
9 page.

10 Q (By Mr. Randall) The last two items -- let's
11 just look at the last item. The last item that you
12 listed under publications is the Lifestream's approach
13 to reorganizing the information world, Yale.

14 Do you see that's Research Report 1070, April
15 '95, submitted to Technology Review? Do you see that?

16 A Yep.

17 Q Now, you've listed 1070 here as a publication,
18 haven't you, to the United States Air Force?

19 A For whatever it means in this context, yes.
20 Insofar as we submitted something to Technology Review
21 it didn't appear in Technology Review, did it?

22 No.

23 Q I'm sorry. That wasn't my question.

24 You listed in your final report that -- you
25 wrote to the United States Government in October of '95,

1 you listed the TR Report 1070 that we've been
2 discussing, that you said was not public; it wasn't a
3 publication; it was for internal use; it wasn't ever
4 publicly available.

5 You listed it here in this report to the
6 United States Air Force as a publication, did you not?

7 A Yes, I did.

8 Q Okay. And you also reference that this
9 document was submitted to Technology Review, and that is
10 a premier technology journal by MIT, correct?

11 A Submitting something for publication is not
12 making it public either. I mean, obviously Technology
13 Review, having a submission, keeps it private and
14 confidential. No question about that.

15 By sending something to a journal, you don't
16 allow the journal to give copies away until you've
17 agreed on a version that will be published. Until
18 Technology Review says, yes, we're going to publish
19 this, this is the form in which we would like the
20 publish it, and we get back to -- we get back to them.

21 And until the editorial process is done, no
22 journal in any field of any sort is licensed to
23 distribute something publicly that is merely a
24 submission.

25 Q So submitting it for publication -- by

1 submitting it for publication to the MIT technical
2 journal, you did not intend to make it public.

3 Is that what you're saying?

4 A We certainly did not intend to make it public
5 by submitting it to Technology Review.

6 Q For publication? I'm using your words.

7 A You know, it's -- what does a publication
8 mean?

9 We're not talking about a school newspaper.
10 Publication is a process. Publication in a journal is a
11 process. Publication in a journal is a process whereby
12 they look at the piece, and they say we like this part;
13 we don't like this part. You know, add this, subtract
14 this.

15 We update the piece. Given -- given the work
16 we've done, it's a long review process. These may just
17 sound like details, but this is the way science works.

18 And I would never -- I would never submit
19 something to a journal, if I thought the journal editors
20 were going to take this submission and give out free
21 copies. I mean, that's not the way the world works.

22 Q Do you know when this report that you wrote to
23 the United States Air Force was put on the internet for
24 public dissemination?

25 A No.

1 Q You realize it is public, right?

2 A Sure.

3 Q Okay. Nancy Silver was a student -- she was
4 at Toronto, the University of Toronto, and she was
5 writing her thesis under the direction of her
6 supervisor, Dr. Ron Baecker.

7 And she obtained a copy of TR-1070 to utilize
8 in her thesis before June of '95, and I'm wondering if
9 you authorized that.

10 A I have no recollection, and I would say if it
11 is the only unauthorized distribution, it's a good proof
12 that it really was not for public distribution.

13 I have no idea. I have no idea how that
14 person came to have a tech report.

15 Q Why did you say it was unauthorized?

16 A Excuse me?

17 Q You used the word unauthorized. Why would it
18 be unauthorized?

19 A Oh, unauthorized. I don't recollect. I don't
20 know this person. I don't recollect authorizing it as
21 far as I know.

22 Excuse me. Let me make this clear. As far as
23 I know, I didn't authorize it.

24 Q Did you author -- okay. Did you authorize the
25 submission of 1070 to Technology Review for publication

1 in or around April of '95?

2 A I doubt very much that it would have been
3 submitted in April '95. The date on the tech report is
4 not the date at which it is submitted to Technology
5 Review.

6 I have no idea when it was submitted to
7 Technology Review.

8 Q All right. The document was written and was
9 indexed sometime in April of '95, and so I'm going to
10 ask you, do you recall authorizing the submission of
11 Yale's TR Report 1070 to the Technology Review for
12 publication at MIT sometime between the time it was
13 written in April '95 and the time you wrote this report
14 in October of '95?

15 A In a general way, sometime in that interim,
16 yes.

17 Q So you did authorize it?

18 A I believe that I authorized it, yes.

19 Q Did you tell that to the Patent Office?

20 A Excuse me?

21 Q Did you tell the Patent Office that you
22 authorized the submission of TR-1070 for publication to
23 Technology Review sometime between April of '95 and
24 October of '95?

25 A What we told the Patent Office is what our

1 lawyers advised us to tell. It's a legal question, and
2 I have no idea what we told the Patent Office with
3 respect to this particular report for Technology Review
4 or whatever.

5 I doubt -- as I say, the date is April '95 on
6 the tech report. I doubt very much whether we would
7 have submitted it much before the summer. I have no
8 idea. I certainly have no reason to believe that it was
9 submitted in April or in May or in June.

10 It was submitted sometime during that
11 interval. My guess would be towards the end insofar as
12 the research was becoming more mature every day and
13 every month.

14 Q I don't want you to guess. The question was
15 simply that you did -- you recall authorizing the
16 submission of this TR-1070 to MIT for publication
17 sometime between April of '95 and October of '95, right?

18 A Yes.

19 Q And do you believe that is inconsistent in any
20 way with the statement made by your attorneys on your
21 behalf to the Patent Office that TR-1070 was not for --
22 not available to the public; it was not published; and
23 it was under lock and key at Yale?

24 A Not inconsistent in any way whatsoever.

25 Q You mentioned earlier in response to questions

1 from Mr. Carroll about Spotlight.

2 Do you recall that?

3 A Yes.

4 Q Do you understand that Apple's use of
5 Spotlight in the iPhone and iPod, those two products in
6 particular, iPhone and iPod and their use of Spotlight
7 are not being accused of infringement in this case?

8 You realize that, right?

9 A Infringement is not my department.

10 Q Okay. So you don't know one way or the other?

11 A No.

12 MR. RANDALL: Would you pull up OS13,
13 please?

14 Q (By Mr. Randall) Now, in response to
15 Mr. Carroll's questions, you have answered a number of
16 questions about your inventions and the scope of your
17 inventions.

18 Do you recognize these claim terms down on the
19 left-hand side of this chart as claim terms that are
20 required by one or more of the claims that are at issue
21 in the case?

22 A What do you mean by claim term?

23 Q I mean elements of a claim that constitute one
24 of your inventions.

25 So, for instance, this stream, past, present,

1 future time-ordered diary, is required by the claims
2 listed on the right-hand side.

3 Do you recognize this?

4 A Are you asking me whether I recognize that
5 these inventions, or whatever you want to call them, are
6 required by these claims on the right?

7 I didn't understand the question.

8 Q Okay. Let's just start with the left-hand
9 side, these claim terms.

10 A Yes.

11 Q Do you recognize these claim terms as being
12 required by one or more of your inventions in the
13 patents that you've talked to Mr. Carroll about earlier
14 today?

15 A Again, you're saying are these terms required
16 by certain claims?

17 Yes, I believe -- I believe each of these
18 claim terms are required by certain claims.

19 Q All right. Let's start with the first one.

20 MR. RANDALL: Diane, can you pull up 15,
21 please?

22 Q (By Mr. Randall) Okay. So Mr. Carroll asked
23 you a number of times what your stream concept was and
24 what you thought it meant and what it included.

25 You do understand that it's -- Judge Davis has

1 looked at this and has determined as a matter of law
2 what that means, and his definition of what this means
3 is right there at the top.

4 And it says: Stream means a time-ordered
5 sequence of documents that functions as a diary of a
6 person's or entity's electronic life that is designed to
7 have three main portions: Past, present, and future.

8 Do you see that?

9 A Yes.

10 Q You're aware of that, right?

11 A Aware?

12 Q Okay. Let me put it this way: You're aware
13 that the Judge's construction, the definition of this
14 term, that his instruction to the jury will govern their
15 decision. And if there's any inconsistency whatsoever
16 between what Judge Davis says this means and what you
17 explained to Mr. Carroll what it means, that the jury
18 should follow Judge Davis.

19 You know that, right?

20 A I'm -- I'm not passing on matters of law.
21 Certainly, if you -- yes, but I don't say that as a
22 lawyer. I'm not in a position to -- I'm not in the
23 position to pass on legal questions.

24 Q All right. Your patent -- in the patent, you
25 state: A stream, according to the present invention, is

1 a time-ordered sequence of documents that functions as a
2 diary of a person's or entity's electronic life.

3 Do you see that?

4 MR. CARROLL: Your Honor, I'm going to
5 object to the form of this question. Dr. Gelernter is
6 not here to apply the Court's claims construction to the
7 accused product. That will be Dr. Levy.

8 All he's doing is just telling the
9 Court -- the jury what the -- what you've ruled and
10 asking this witness to confirm that that's so.

11 I object as being to the form and being a
12 waste of time.

13 MR. RANDALL: Your Honor, we have a
14 limited amount of time. I'm not wasting it. I'm
15 getting to a specific issue here.

16 THE COURT: All right. Let's get to your
17 point.

18 Q (By Mr. Randall) The next part of your patent
19 indicates -- and this is at Column 5, Lines 52 through
20 60 of your '227 patent.

21 Your patent states: A stream has three main
22 portions: Past, present, and future. The present
23 portion of a stream holds working documents, which also
24 includes the timepoint in the stream where new documents
25 are created and where incoming documents are placed.

1 Do you see that?

2 A Yes.

3 Q So according to your invention, are new
4 documents that are received by the computer, are they
5 placed at the head of the stream? The front of it?

6 A Excuse me. I just want to understand.

7 Is this language from the specifications or
8 the claims of '227?

9 Q Specification, the written description --

10 A Right.

11 Q -- how to practice your invention.

12 A So my understanding is this specification is
13 a -- is an explanation or a commentary.

14 Is -- now, you're asking me, are new documents
15 placed at the head of the stream?

16 Q Yeah. For instance, your lawyer, Mr. Carroll,
17 put up a diagram, showed all this information flowing
18 into the computer from different baskets and so forth.
19 And it was merged together, and it went into the
20 computer, and it formed a stream.

21 And I'm asking you, when the computer receives
22 the information, according to your invention, are the
23 documents placed at the front of the stream?

24 A They're placed in the present of a stream.
25 They're placed at the now of a stream.

1 Q What if -- what if, for instance, your
2 invention -- you did say that Scopeware was a product
3 that you and your colleagues developed that embodied the
4 inventions, right?

5 A Yes.

6 Q Okay. So --

7 A Not every aspect of the invention, but it did
8 embody the inventions.

9 Q Not every aspect?

10 A Correct. It did not do anything with
11 automatic archiving. There are other aspects that it
12 did not embody, and we never claimed it was a complete
13 embodiment. And, indeed, it was not.

14 Q In -- when a computer receives the documents,
15 for instance, an e-mail with an attachment of
16 photographs, into a computer practicing your invention,
17 are those photographs placed at the front or the head of
18 a stream?

19 A Software or a computer practicing my invention
20 would put new documents in the present portion of the
21 stream.

22 Q Even if, for instance, like my grandmother
23 just turned a hundred about a week ago and I've got some
24 photos of her, and so these photos were taken a week
25 ago. If -- and I got them by e-mail.

1 10:00 a.m. Wednesday morning, and that's where they go.

2 The -- the -- whenever -- whenever -- wherever a

3 document comes from, at the moment the computer receives

4 it, that is the timestamp associated with it.

5 Q All right. Now, according to your invention,

6 is this diary a diary of the electronic life of the

7 computer? Is that what it is?

8 A It is -- that's not a well-defined question.

9 It's a diary -- we use the term diary not literally as

10 it applies to pencil and paper. Metaphorically as a

11 record of the user's life or a record of whoever -- a

12 record of the institution's life, if it is an

13 institutional stream.

14 So, yes, it is an electronic record, an

15 electronic version of a diary, understanding that we

16 don't mean literally a diary that you keep on paper. It

17 doesn't follow the same rules. We're borrowing a term

18 from another domain.

19 Q And I'm trying to figure out how your

20 invention is streamed, this time-ordered stream that

21 acts as a diary. I'm trying to figure out how that

22 works.

23 So, for instance, if I bought a computer on

24 January 1, 2010, back in January, I turn it on. I've

25 got your invention running on it, and I have some

1 photographs on a disk that were taken back in 2005, and
2 I put them in. Let's say there's a thousand photos
3 taken in 2005.

4 I put them in the computer. Are all those
5 documents going to be timestamped in January of 2010 and
6 put in the present portion of the stream?

7 A I think I've already answered that. Yes.
8 It's like a scrapbook, if you send me ten photos in the
9 mail, what the computer does is take the ten photos and
10 paste them on the currently open page.

11 The computer has no reason to think that it
12 can determine when the photos were taken. So, yeah, as
13 I said, they appear on the stream at the point marking
14 their arrival at the computer.

15 Q All right. So this electronic diary, the life
16 of the electronic diary, it starts -- the starting point
17 is when you turn on your computer and start receiving or
18 generating data, right? That's the start point of this
19 diary?

20 A On -- I'm not saying that you may not in some
21 cases. This -- there were actually several versions of
22 this.

23 But, yes, in simple terms, without -- yes.
24 The stream begins at the moment at which you turn on the
25 computer. It's an interesting question whether we

1 should be able to go back and change history.

2 If I wanted to rewrite a document that
3 happened three weeks ago, should I -- should the
4 software allow me to do that, or should the software
5 prevent me from doing that?

6 That's an argument that -- that we had not
7 only among ourselves but among users of Lifestreams, and
8 there could be arguments both ways.

9 Generally speaking, we don't want to rewrite
10 history.

11 Q All right. I have a limited amount of time; I
12 certainly do. And I don't want to get in a
13 philosophical discussion about this, but I just wanted
14 to know.

15 Those thousand -- those thousand photographs
16 on a CD put into the computer that I bought in January
17 of 2010 and turned on in January of 2010, would be dated
18 January 2010, right?

19 A I've answered this question many -- yes.

20 Q Okay. And how would the computer timestamp --
21 according to your invention, the computer would have to
22 provide a timestamp that uniquely identifies each of
23 those thousand photographs that were input into the
24 computer at one time, right? Because it needs to know
25 where to put it in the stream?

1 A In -- in the way that every computer scientist
2 understands a uniquely identifying timestamp.

3 Obviously, if two things occur simultaneously,
4 pick an arbitrary order and make up different timestamps
5 for them.

6 Q Well, your invention, sir, does require a
7 timestamp to uniquely identify each of the data units
8 received by the computer, correct?

9 A Are you saying that -- that -- that the
10 invention assumes that there is no simultaneity in the
11 universe?

12 Q That's not my question.

13 A Sometimes things happen at exactly the same
14 time. Now, I could argue that there's one processor
15 that does one thing at a time, so we can only get hold
16 of one document at any microsecond.

17 MR. RANDALL: Let's pull up Slide 8.

18 Q (By Mr. Randall) Here, you've said in your
19 patent that -- that the inventor's definition -- oh,
20 this is the Patent Office. I'm sorry.

21 And this is in Exhibit 4. This is in the file
22 history when you discuss things back and forth with the
23 Patent Examiner.

24 You told the Patent Office: Inventor's
25 definition -- to the Patent Office -- a timestamp is a

1 date/time used to uniquely identify each data unit.

2 And then you cite to your patent. See
3 Page 12, Lines 6 through 7, Lines 14 through 20 of the
4 patent specification.

5 Do you see that?

6 A Yes.

7 Q All right. And the Court's definition is
8 consistent. Timestamped to identify means a date and
9 time value that uniquely identifies each document.

10 Do you see that?

11 A Yes.

12 Q Okay. So according to your invention, to
13 practice your invention, the computer that receives
14 these thousand photographs at one time on a disk has to
15 apply a timestamp to uniquely identify each document,
16 right?

17 A There is no conceivable way the basis of --

18 MR. CARROLL: Excuse me. Dr. Gelernter,
19 excuse me.

20 Your Honor, I'm going to object to the
21 form of this question, this whole line of questioning,
22 because he's asking Dr. Gelernter to choose between your
23 construction, what's said in the patent, and what's said
24 to the Patent Office. And none of this is why he is
25 here.

1 He is not the infringement expert, and I
2 object to the form. It's confusing and it -- and it's
3 outside the scope of his designation as a fact witness.

4 THE COURT: All right. Counsel approach.
5 (Bench conference.)

6 THE COURT: Now, where are you trying to
7 go with this witness?

8 MR. RANDALL: I'm trying -- I'm trying to
9 determine the boundaries of the invention, because he
10 says he gave a full description to Mr. Carroll about
11 what his invention meant, how it operates. He even gave
12 an infringement opinion.

13 He said, well, it's not a detailed one,
14 but I'll tell you what, that they practice it and so
15 forth. He said that. He elicited an infringement
16 opinion from this witness.

17 And all I'm doing is figuring out, does
18 the invention require this and how does this operate,
19 because we don't do these things. And I want to make
20 sure that I understand how these things operate.

21 We don't have a diary, Your Honor. We
22 don't have -- in fact, when I was asking him about those
23 dates, we don't have a system that accepts all those
24 photographs on a disk and labels them all according to
25 the date they're received. And that's one of the

1 elements of this case.

2 And so I'm getting him to explain what he
3 means by stream, because it is a little confusing.

4 MR. CARROLL: But, Your Honor, what he's
5 doing is he's asking him a part of what an expert would
6 be asked. All that expert would be asked is, did you
7 apply the Court's construction in analyzing the accused
8 product?

9 He's not -- he's throwing three things up
10 there. It's terribly prejudicial, because he's
11 suggesting to the jury somehow that you have changed the
12 scope of the invention in your claim construction. And
13 he's saying, so you say this and the Judge says this,
14 and you told the Patent Office this. I think it's just
15 way outside the scope.

16 THE COURT: All right. The objection is
17 sustained.

18 MR. CARROLL: Thank you, Your Honor.

19 MR. RANDALL: Your Honor, may I --

20 (Bench conference concluded.)

21 MR. RANDALL: Would you pull up, Diane,
22 Slide 16, please?

23 Q (By Mr. Randall) Sir, you mentioned that you
24 had looked at some of the -- Apple's products, correct?

25 A Yes.

1 Q And you recognize on the right-hand side of
2 this diagram this Figure 1 from your patents, right?

3 A Correct.

4 Q All right. And that is the visual display
5 that you talked about. That's one of those three
6 inventions that you told the jury about, right?

7 A Right.

8 Q Now, that -- that other photograph or visual
9 display that you put up in front of the jury that looked
10 more like a U-shaped or a V-shaped visual, that wasn't
11 in your patent, was it?

12 A I -- it was in -- it was in papers published,
13 I think, before the patents issued. I don't remember.
14 I don't know.

15 Q Well, I just want to -- so you don't know
16 whether that V-shaped visual display that you testified
17 when you were standing next to the jury --

18 A The one that was on that chart was not in
19 the -- was not in the patent.

20 Q All right. This is the visual display, Figure
21 1, that comes from the patent, right?

22 A It's one of them, yes.

23 Q Okay. And on the left-hand side, if you can
24 see, the third item down is dated today, 1:39 p.m.
25 That's dated 1:39 p.m. And then down by the bottom,

1 three out of the last four items are also timestamped

2 today, 1:39 p.m.

3 Do you see that?

4 A Yeah.

5 Q Now, let me back up for a moment.

6 This is a representation of documents and
7 files being stored in a file system by Apple, right?

8 A It's one possible representation, yes.

9 Q Okay. And they've got filenames, and they've
10 got file folders, and they've got subfolders, correct?

11 A Right.

12 Q All right. And this isn't practicing your
13 invention, is it? This file folder system when the --
14 when the documents are not in date order either, are
15 they?

16 A Of course, insofar as it's a file folder
17 system, it's not practicing the invention. That goes
18 without saying.

19 Q That's right.

20 And also insofar as these documents aren't
21 even stored in time-order, are they?

22 A I have no idea how they're stored.

23 Q Well, they're not organized here in
24 time-order, are they?

25 A This particular window does not show them in

1 time-order. It doesn't tell me anything about how
2 they're stored.

3 Q Well, in this -- the organization of these
4 files and this data is not practicing your invention,
5 correct?

6 A Correct.

7 Q All right. And the duplicate timestamps,
8 those don't uniquely identify each document, do they?

9 A Uniquely identify -- they -- those duplicate
10 timestamps are in -- in -- in no way inconsistent with a
11 stream. We would simply choose an arbitrary order. It
12 wouldn't matter.

13 Q That's not what I asked you.

14 Those duplicate timestamps that are applied
15 here in the Apple system do not uniquely identify the
16 documents, correct? Because there are four of them with
17 the same timestamp.

18 A I can't accept the premise here. This is not
19 the Apple system. It's a particular display.

20 I agree that in this particular display there
21 are duplicates or triplicates of a timestamp. True.

22 Q Let me show you --

23 MR. RANDALL: Would you put up 20,
24 please?

25 Q (By Mr. Randall) Now, earlier today during

1 your direct, you put up this visual display that looked
2 like a V, and that's when you were answering questions
3 up by the jury for Mr. Carroll.

4 Do you remember that?

5 A Yes, I do.

6 Q And you said that that wasn't in your patent,
7 but you said your patents cover that, right?

8 A Yes, I do.

9 Q All right. Now, is it true that your patents
10 don't cover this -- this visual display on the left? I
11 mean, the one on the right clearly is your patent. The
12 one on the left is from prior art. That was before your
13 patent.

14 And the question is: Is this prior art
15 reference on the left, that's not practicing your
16 invention, because the windows do not get smaller toward
17 the bottom of the stack; is that right?

18 A This does not appear to be a receding stack.

19 Q Well, it's receding, right? It's going
20 back -- it's going back into space; it's 3-D; and it's
21 got that depth perception that you were telling the jury
22 about, right?

23 A Well, it would appear that the -- that each
24 object is larger than the one behind it, which I don't
25 know how to interpret visually.

1 Ordinarily, if I look at something in
2 perspective, I have some -- some clue that -- some clue
3 that things are receding, either things get smaller or
4 they get fuzzier or they in some -- in some of the more
5 distance seeming.

6 These rectangles do not get smaller. They
7 don't get darker. They don't get fuzzier. It's a
8 confusing image as far as I'm concerned.

9 Q All right. Well, let's just first talk about
10 this.

11 Is -- this document representation on the
12 left, is it receding back into space to give that 3-D
13 perspective that you were telling the jury about
14 earlier?

15 A Well, as I just said, I don't -- I would say
16 no. I don't -- I don't think it is receding, because of
17 the contradictory cues I get from this picture.

18 Q All right. And do you agree that with the
19 statement on the right here --

20 MR. RANDALL: Go down to the bottom of
21 this.

22 Q (By Mr. Randall) -- that says: This important
23 distinction highlights a key aspect of the streams of
24 the present invention; that is, as data units become
25 older, the user considers the data less immediately

1 important.

2 Do you see that?

3 A As data units become older, the user considers
4 the data less immediately important, yes.

5 Q And is that an important and key aspect of
6 your invention, that these data units have to get
7 smaller as they recede back into space, i.e.,
8 foreshortened?

9 A No. They don't have to get smaller. They
10 just have to appear to recede.

11 Q So what does foreshorten mean then?

12 A Foreshorten means the impression of depth.

13 Q And this doesn't have the impression of depth,
14 in your view?

15 A Well, this being my view, I would say, no, it
16 doesn't.

17 Q Okay.

18 MR. RANDALL: Could you pull up 26,
19 please?

20 Q (By Mr. Randall) Now, you testified earlier on
21 questions by Mr. Carroll, that V-shaped visual fell
22 within the scope of your patents; it was the right
23 visual display.

24 And let me ask you -- let's look at this Lucas
25 patent reference right here in the middle of the screen

1 from 1993. That looks like a U-shaped visual display
2 with a set of documents across the front and then two
3 legs receding back into space, getting smaller.

4 Do you see that?

5 MR. CARROLL: Your Honor, again, I
6 object. He's asking Dr. Gelernter opinions about his
7 invalidity case, which Dr. Levy is going to address. I
8 think this is an improper line of questioning, and I
9 object to the form.

10 MR. RANDALL: And, Your Honor, he
11 testified about a visual display that was not in the
12 patent and said that is covered by his invention; that's
13 his invention. And it looks strikingly similar to this,
14 and I just want to know what the difference is.

15 THE COURT: All right. Proceed.

16 Q (By Mr. Randall) Okay. Do you see this visual
17 display of the document representation from the Lucas
18 patent from 1993?

19 A It doesn't -- it doesn't appear to me to
20 resemble ours in important ways.

21 Q Well, does it show documents receding and
22 getting smaller as they go back into space, giving that
23 3-D and perspective effect that you were telling the
24 jury about?

25 A Well, for one thing, why would I think they're

1 documents? They're just rectangles. There's no
2 descriptive information. There's no glance views in our
3 system. I can't tell from this what is being
4 represented. I certainly can't tell whether this is an
5 unbounded collection.

6 Q I'm just asking you, does this representation,
7 Figure 3 from the Lucas patent, show the 3-D perspective
8 effect of a visual representation of data back into time
9 and getting smaller shown from that perspective?

10 MR. CARROLL: Objection.

11 MR. RANDALL: I'll withdraw the question.

12 Q (By Mr. Randall) What's the difference between
13 this visual display, as it shows a few documents in the
14 front, and then they get smaller, and they recede back
15 into space in that visual display that you were
16 answering questions by Mr. Carroll? What's the
17 difference?

18 MR. CARROLL: Same objection. Asked and
19 answered.

20 THE COURT: Sustained.

21 MR. RANDALL: Okay.

22 THE COURT: Move on, Counsel.

23 MR. RANDALL: Sure.

24 Q (By Mr. Randall) Dr. Gelernter, you said, in
25 answering questions from Mr. Carroll, that it was your

1 job to stay abreast of the technology and to understand
2 technology that was out there, right?

3 A Yes.

4 Q Okay. At any time before your patents issued
5 in this case, were you ever aware of MIT's work
6 regarding spacial data management systems from the 1979
7 and forward timeframe?

8 And there's a -- there's -- there's a picture
9 of it up there in the left-hand side of the screen that
10 you're looking at.

11 A At the time, I had no awareness of it.

12 Q I'm not asking about 1979. I'm asking,
13 anytime prior to the issuance of your patents, were you
14 ever aware of any aspect of the work at MIT regarding
15 spacial data management systems?

16 A No. At the time, I was not; that is, at the
17 time that you're referring to.

18 Q Okay. Prior to the issuance of any of your
19 patents, were you aware of Apple's Piles work? And when
20 I call it work, I'm talking about any articles, any
21 videos, or the patent itself.

22 A I was familiar with it in a -- in a general
23 way, a broad way.

24 Q Can you explain what you mean by that?

25 A I was sufficiently familiar with it to see

1 that it had nothing to offer us by way of solution to a
2 problem, and that was the limit of my interest.

3 Q Did you ever read any article about the Piles
4 patents before your patent -- before your '227 patent
5 issued in 1999?

6 A I don't recall whether I read an article,
7 discussed it with a colleague. I was broadly aware of
8 the work.

9 Q Were you aware that the Apple's -- Apple's
10 Piles work allowed for the user to take the cursor and
11 move it over the stack to create a glance view of the
12 document without clicking on the document?

13 A You're asking about a detail in the system
14 that was so clearly irrelevant to us that I never looked
15 at the details and didn't -- I don't -- whether I --
16 whether I was aware of this detail, I don't know. I
17 certainly was aware of the system in general, as I say,
18 as being a non-solution.

19 Q Had you read any articles prior to the
20 issuance of your '227 patent regarding the Piles system?

21 A As I said, I was aware of it in a general way.
22 Whether I looked at an article myself or learned of it
23 from a colleague, I don't know.

24 Q The work by Dr. Lucas at MAYA on Workscape --
25 and it's shown here in 1994, and the patent that issued

1 from it is the Lucas patent. Were you aware of the --
2 of his work on Workscape at any time prior to the issue
3 was of your '227 patent?

4 A I believe, no.

5 Q And the O'Neil patent referenced here, were
6 you aware of that patent or any work regarding that
7 patent prior to the issuance of your '227 patent?

8 A No.

9 Q Did you ever see a video of Apple's Piles
10 system before the issuance of your '227 patent?

11 A As I say, I was generally aware of the work,
12 and as I say, I don't recall in what form I became aware
13 of it. I -- I don't recall seeing a video. I guess I
14 could have.

15 Q Let me direct your attention to 21.

16 Now, you said that you had looked at the Apple
17 products, and I think you said that you were sick.
18 Remember that?

19 A I did indeed.

20 Q Okay. So let me ask you, did you ever analyze
21 the source code or the visual display of Coverflow at
22 any time prior to you becoming sick, to determine if
23 the -- all of the document images were -- remained the
24 same size, meaning they didn't get smaller?

25 MR. CARROLL: And, Your Honor, excuse me.

1 I'm going to have to object. That clearly calls for an
2 expert infringement opinion. He knows that this witness
3 didn't look at the source code. He wasn't covered by
4 the confidentiality --

5 THE COURT: All right. Objection
6 sustained.

7 Q (By Mr. Randall) Okay. Did you ever look at
8 the visual display of any Apple product, and
9 specifically, the Coverflow visual display that's shown
10 here?

11 MR. CARROLL: Same objection, Your Honor.

12 THE COURT: Objection sustained.

13 MR. RANDALL: Would you put up 32,
14 please?

15 Q (By Mr. Randall) Now, Dr. Gelernter, you
16 testified a little earlier about some transfers that
17 took place regarding the patents and the various
18 ownership interests in the patent, and I want to ask you
19 a couple of questions.

20 First of all, you know Frank Weil, correct?

21 A Yes, I do.

22 Q All right. And he was the Chairman of the
23 Board of Mirror Worlds Technology, correct?

24 A Yes.

25 Q And --

1 A At least part of the time, yes.

2 Q All right. And he was the person that was in
3 charge of winding down Mirror Worlds and selling its
4 assets, right?

5 A Yeah -- yes.

6 Q Okay. And you understand that not just Frank
7 Weil invested some of his family money in Mirror Worlds,
8 but there were other investors that had invested in
9 Mirror Worlds, too, correct?

10 A That's true.

11 Q All right. And it's fair to say that Mirror
12 Worlds received approximately \$18 million in investments
13 to build the Scopeware products, correct?

14 A Sounds about right, yes.

15 Q Okay. And -- and approximately half of that
16 came from Mr. Weil and his family fund, and the other
17 half came from other investors, right?

18 A Yes -- well, I don't know. I don't -- I don't
19 know the degree of Frank's investment. I know that he
20 put in a substantial amount.

21 Q Well, when Mirror Worlds Technology was wound
22 down and the assets were sold, did you own any stock in
23 Mirror Worlds Technology?

24 A I think so, or options, yeah. Yes.

25 Q Okay. And did you object to Mr. Weil selling

1 the assets of Mirror Worlds Technology, including all of
2 the patents, on June 18th '04 for \$210,000?

3 A I was in no position to object.

4 Q I just asked you if you did or not.

5 A No.

6 Q Do you know any -- if any of the shareholders
7 in -- at any time prior to June 18, 2004, did any of the
8 shareholders or inventors in Mirror Worlds Technology
9 object and tell Mr. Weil: Please don't sell those
10 assets and those patents for \$210,000; they're worth a
11 lot more?

12 Did anybody ever make that objection?

13 A As I recollect, people wanted to see Mirror
14 Worlds' debts paid. That was the issue. I don't -- I
15 just don't remember whether there was any discussion or
16 objection to the -- to the fact that the patents were
17 exchanged for cash to cover the debt. I don't remember.

18 Q All right. And do you remember Mr. Weil
19 sending the notice to shareholders and investors, such
20 as yourself, in May -- May of 2004 saying:

21 After six years and close to \$20 million in
22 funding, the ideas advanced by Mirror Worlds have failed
23 to gain any significant traction in the marketplace.

24 Enclosed is a ballot for resolution
25 authorizing the company to sell all or substantially all

1 of its assets to a third party and subsequently dissolve
2 the company?

3 A What's the question?

4 Q The question is: Do you recall receiving that
5 notice on or about that time from Mr. Weil stating that?

6 A I've seen the notice, yes.

7 Q Okay. And he also put in the notice that he
8 was selling them for \$210,000, right?

9 A Yes.

10 Q Did you receive the notice, the letter from
11 Mr. Weil in or around February of 2006 saying: The
12 purchase of Mirror Worlds' assets was completed at a
13 price that significantly exceeded the value of these
14 assets; at the time of Mirror Worlds' dissolution, it
15 appeared there was no value to the IP?

16 Did you get that notice as well?

17 A I believe I got it and dismissed it as Frank's
18 temper tantrum. Yeah, I think I did. I think I recall
19 seeing it, yeah.

20 Q Okay. So you were aware, as of February of
21 2006, that Mr. Weil had sold all of the assets of Mirror
22 Worlds Technology, including the patents, for
23 approximately \$210,000; and it was his view that that
24 far exceeded the value of the IP, right? And that --
25 when I say IP, the patents, right?

1 A I don't accept that it was his view. He wrote
2 it here. I think if you -- I think if you asked him
3 what his view really was, as opposed to what -- shooting
4 off his -- you know, I -- I don't -- I don't believe it
5 was his view, but it's certainly the case that -- that
6 that transaction took place. I -- yes.
7 I -- I -- again, I'm not clear what the question is.

8 Q Did you at any time ever have -- strike that.
9 Were you aware that Mr. Weil, on behalf of
10 Recognition Interface, filed its 2005 tax return for
11 that entity claiming the value of the patents of
12 218,000?

13 A I don't have the vaguest idea what kind of tax
14 returns Frank filed.

15 Q Have you ever been employed by Recognition
16 Interface or held an interest in that company?

17 A I -- I do not -- I -- I honestly can't say.
18 I -- I -- I may have had some sort of small stake in
19 Recognition Interface, but I -- I sort of think I don't
20 or didn't.

21 Q You have no idea.

22 A I'm not sure. I really don't know.

23 Q So then I take it you don't know when your
24 interest in these patents terminated?

25 A Well, my assumption was that when Mirror

1 Worlds traded the patents to Recognition Interface for
2 cash to cover the debt, you know, as part of Mirror
3 Worlds, I wanted to see the debt honorably discharged;
4 and my assumption has been that that was the end of my
5 equity in the patents. I may have been wrong, but that
6 was my...

7 Q Is that what you believed to have happened?

8 A That was my assumption, yeah.

9 Q Okay. And so to the best of your
10 understanding, you've never had any interest in
11 Recognition Interface; is that right?

12 A I'd rather say that I'm not sure. I really am
13 not sure.

14 Q Okay. Is it fair to say that you don't know
15 whether you've ever had any interest in these patents
16 after the dissolution of Mirror Worlds in June of 2004?

17 A I -- I acquired an -- I reacquired an interest
18 in the patents when Plainfield created a new version of
19 Mirror Worlds, Mirror Worlds, LLC, and I had a stake in
20 Mirror Worlds, LLC. So there was a time at which I
21 reacquired a stake in the patents.

22 Q All right. And approximately December 24th,
23 2007, Recognition Interface sold approximately 81
24 percent of the patents to Plainfield for \$5 million and
25 retained 19 percent of the ownership; is that right?

1 A That sounds right.

2 Q Okay.

3 MR. RANDALL: Can you put up 33, please?

4 Q (By Mr. Randall) So the current ownership, if
5 you will, of the patents and the interest in this
6 lawsuit is that Plainfield -- and that's a hedge fund,
7 right?

8 A I have no -- it's some sort of -- it's an
9 investment outfit.

10 Q If Ed Stone said it was a hedge fund, would
11 you have any reason to dispute that?

12 A I've never -- no. I have never --

13 Q Okay. So is it your understanding that the
14 Plainfield entities -- we'll just call them that. The
15 Plainfield entities owns 74 percent of this -- the
16 patents in this lawsuit and that Recognition Interface
17 owned by Frank Weil and Bob Raich and Lou Nemeth has 19
18 percent, this law firm that has 5 percent and that you
19 have 2 percent?

20 Is that your understanding?

21 A Not exactly. The information I received
22 simply as a -- as a notification was that I had -- I --
23 I was a 2-percent owner or whatever, had a 2-percent
24 stake. I never got any information about how the rest
25 of the pie was cut.

1 Q Okay. Did you pay anything for your 2
2 percent?

3 A No.

4 Q Did you promise any services for your 2
5 percent?

6 A Did I promise any services? I didn't promise
7 any services, no.

8 Q All right. So then it was just given to you
9 for no consideration; is that fair to say?

10 A Yes.

11 Q And are you being paid for any time that you
12 spend on this case in helping the lawyers?

13 A I'm being paid as a consultant to Mirror
14 Worlds, LLC, yes. I have been paid --

15 Q And how much --

16 A To be a consultant.

17 Q How long have you been a consultant to --
18 to -- and let me just -- let me back up for a minute.

19 Mirror Worlds, LLC, is the Plaintiff in this
20 case, right?

21 A Yes.

22 Q And Mirror Worlds, LLC, was formed just a few
23 days before this lawsuit was filed, right?

24 A I don't know when it was formed.

25 Q Well, you --

1 A Obviously, at some point before the lawsuit
2 was filed.

3 Q And when did you receive your 2 percent that
4 was gifted to you?

5 A I never received it in the sense that a
6 contract or any kind of written thing was given to me.
7 I got a phone call from Frank at some point, and,
8 obviously, at around the time these negotiations were
9 completed.

10 Q When did that happen?

11 A It was at the point -- I guess it was at the
12 point at which Recognition Interface sold its interest
13 or a substantial part of its interest in the IP to
14 Plainfield. I guess it was at the point of that
15 transaction, as far as I understand it.

16 Q How long have you been a paid consultant to
17 either the Plaintiff, Mirror Worlds, LLC, or the
18 lawyers?

19 A To judge from when I submitted a bill, I think
20 I've submitted two, three -- maybe three -- what do you
21 call them -- invoices, and the first one -- I guess the
22 first one was the summer -- I guess the first one was in
23 the summer before last summer, I think. I'm a little
24 hazy on this.

25 Q A couple of years?

1 A Well, less than that, a year and a half. I
2 have not been a very good recordkeeper on a very -- or
3 very regular about submitting these bills, I'm afraid.
4 I've let some of the details slip away from me. I
5 should have submitted stuff more regularly and
6 remembered more.

7 Q Do you know what you're charging now per hour,
8 per day? What's your -- what's your rate?

9 A They told me a consulting fee, and I believe
10 it is \$250 an hour.

11 Q When -- strike that.

12 When did you first become aware that Yale had
13 a patent policy that required the assignment of
14 inventions by professors to Yale?

15 A When I first became aware of that, I guess it
16 would have been a few months after Eric, as the
17 inventor, assigned the patent to Lifestreams, the new
18 company. I think it would have been in '97 at some
19 point. I guess early in '97.

20 MR. RANDALL: Can you pull up
21 Exhibit 793?

22 Can you highlight the top paragraph?

23 Q (By Mr. Randall) You have read Yale's patent
24 policy, haven't you?

25 A I had not read Yale's patent policy at the

1 time Eric submitted it -- filed the patent. I am
2 embarrassed to say I had not read it.

3 And as soon as I found out what it was, I
4 immediately -- well, we immediately assigned the patent
5 to Yale, as we should have done originally, and Yale
6 responded by immediately issuing a license to the
7 company.

8 Q All right. And this patent policy indicates
9 at Paragraph 3 that there is a committee on cooperative
10 research patents and licensing appointed from among the
11 members of the faculty and administration, right?

12 A Yeah. I don't know whether this was the --
13 their patent policy has changed often, and I don't know
14 whether this was the one operative one at the time. But
15 at some point, there was clearly a committee.

16 Q All right. At Paragraph 3A, it states: All
17 inventions of the -- it says: Patent applications. All
18 inventions of the kind referred to in Paragraph 1 shall
19 be reported promptly in writing to the Director of
20 Office Cooperation and Research.

21 Do you see that?

22 A Yes, I do.

23 Q Did you promptly report your invention as soon
24 as you believed that you had an invention to Yale
25 pursuant to the policy?

1 A As I said, this was the first patent that I
2 had ever been associated with. It wasn't my patent.
3 Eric was the one who filed it.

4 As I have said, I did not know Yale's policy.
5 I should have known it. As soon as I found out what it
6 was, I immediately put myself in compliance with it.
7 And the university and I carried on in the same -- with
8 the same close relations we have always had.

9 Q Now, you just said that it wasn't your patent;
10 it was Eric's patent.

11 A Well, I mean -- excuse me. I mean, the --
12 Eric was the inventor. Eric was listed as the inventor.
13 It was our patent in the sense that our group was behind
14 it.

15 Q Right. But it was clear to you --

16 A The responsibility was mine.

17 Q Right. But when Eric Freeman applied for this
18 patent on June 28, 1996, you did not consider this to be
19 your invention; is that right?

20 A I had no opinion on the legal question of
21 inventorship for purposes of the patent. I had no idea
22 what inventorship of the patent implied. I had no
23 opinion. We went with the opinion of our legal counsel
24 at the time.

25 Q Were you involved with -- in the process of

1 preparing the patent application for submission to the
2 Patent Office on June 28, 1996?

3 A In a general way, yes.

4 Q So you were aware that it was going on, right?

5 A I was definitely aware of it.

6 Q You were aware that Eric Freeman was the sole
7 listed inventor of the patent, right?

8 A Yes.

9 Q And did you write any of the specification or
10 any of the inventions at the back of the patent? Did
11 you write any of those?

12 A Some of my language is in there, yes.

13 Q Oh, I understand that some of your language
14 from articles or whatever source may be in there, but
15 did you write any of that language for the application
16 specifically, as opposed to just providing previous
17 Lifestreams articles to the patent attorneys?

18 A I -- I don't remember the process by which the
19 patent was actually written. There were discussions in
20 which I was not -- of which I was not -- in which I was
21 not terribly interested.

22 I knew nothing about patents. It wasn't my
23 area. My area was research, not patents. And I learned
24 to pay more attention to this area; but at the time, I
25 have to admit, I didn't.

1 Q What -- what Lifestreams articles, if any, did
2 you provide or were you aware that Mr. Freeman provided
3 to the patent attorneys to prepare the patent
4 application?

5 A What -- what do you mean by license or
6 articles?

7 Q Or dissertations. Any articles about
8 Lifestreams. What -- what information, if any, did you
9 provide to the patent attorneys so that they could write
10 the patent application?

11 A I -- I have no idea. I don't know for -- I
12 don't know for a fact that we provided them with
13 documents, as opposed to mailing them paragraphs or --
14 or -- or developing things in e-mail. I just don't
15 remember what the process was. And, again, I was not
16 paying terribly much attention to it.

17 Q Okay.

18 MR. RANDALL: Can you pull up
19 Exhibit 760, please?

20 Q (By Mr. Randall) This is the assignment of the
21 patent that was filed June 28, 1996. And if you turn
22 the page, I'm going to ask you, sir, if that's your
23 signature whereby you transferred your patent and patent
24 application on February 23, 1998, to Yale.

25 A That's my signature.

1 Q Okay. And do you recall transferring your
2 interest in the patent to Yale on approximately that
3 date, February 23, 1998?

4 A Yes.

5 Q Okay. And let me direct your attention to
6 Exhibit 792. And this is the same date, February 23,
7 1998, and that's your signature right there, correct?

8 A Yep.

9 Q All right. And this document was submitted to
10 the Patent & Trademark Office in connection with
11 Mr. Freeman's patent.

12 Now, his patent application was filed on June
13 28, 1996, and you signed this document which states: I,
14 David Gelernter, citizen of the United States of
15 America, residing in Connecticut, declare that the
16 amendment to the inventorship is necessitated by
17 amendment of the claims and that the inventorship error
18 occurred without deceptive intention on my part.

19 Do you see that?

20 A Yes.

21 Q Okay. I want to ask you a question about --
22 you said it was necessitated by an amendment. There was
23 no amendment that was made at this time or thereafter,
24 correct?

25 A I really have no idea. This is a legal

1 document that I -- I signed insofar as I was able to
2 trust my attorney, not insofar as I was a lawyer capable
3 of judging it. It's certainly correct that there was no
4 deceptive intention on my part.

5 Q I'm not even asking you about that, sir. I'm
6 just asking you: You state under oath that this
7 inventorship -- the correction of the inventorship,
8 adding you as an inventor, was necessitated by an
9 amendment of the claims.

10 Do you see that?

11 A Yes.

12 Q There wasn't an amendment of the claims made
13 at this time or thereafter, right?

14 MR. CARROLL: Excuse me. Asked and
15 answered, Your Honor.

16 THE COURT: Overruled.

17 A I do not -- I don't know.

18 Q (By Mr. Randall) Did you know at the time?

19 MR. CARROLL: Same objection, Your Honor.
20 Asked and answered. He says for the third time he does
21 not know.

22 THE COURT: Overruled.

23 A I -- I don't know.

24 Q (By Mr. Randall) At the time that you signed
25 this declaration, did you understand that the patent

1 application and all the inventions as written were the
2 inventions of Mr. Freeman and not of your own?

3 A At what time? Excuse me.

4 Q At the time you signed this.

5 A At the time I signed this, my understanding
6 was that we had incorrectly represented the inventorship
7 of the patent; that, therefore, it was our
8 responsibility to change that inventorship; and that
9 this was the legal instrument to do that. And that's --
10 that was my understanding.

11 Q But this document that you signed states that
12 it was necessitated by this amendment that never
13 occurred.

14 Now, why did you say that?

15 A Well, I -- I -- I said it because my lawyer
16 advised me that this was proper and that insofar as
17 this -- it seemed to me the important part of this
18 statement that I had to know to be true was that there
19 was an error and that it was committed without deceptive
20 intention and that we wanted to do whatever was
21 necessary to correct the error.

22 Q I'm not asking you about deceptive intention.
23 I'm not asking you about that. What was this error,
24 what was this inventorship error that was -- that they
25 needed to add you as an inventor because of this

1 inventorship error that was necessitated by amendment.

2 What was the error?

3 MR. CARROLL: Again, Your Honor, I'm
4 going to have to object. He's answered this question at
5 least three times that he was told that he needed to be
6 listed as an inventor, and that's what happened.

7 THE COURT: Overruled.

8 MR. CARROLL: Asking him --

9 A Our -- our original -- I think our --
10 referring to Eric and mine -- our original understanding
11 of inventorship of the patent was that insofar as the
12 patent was based on Eric's dissertation -- now, of
13 course, the dissertation represented joint work between
14 the student and the advisor; but the name on it is the
15 name of the student.

16 Insofar as the -- the dissertation was in
17 Eric's name, it would have seemed natural for the patent
18 to be in Eric's name.

19 Now, when we learned that we were
20 misinterpreting the meaning of inventorship in the
21 context of a patent, that it was not like a Ph.D.
22 dissertation, we acted to correct the error.

23 Q (By Mr. Randall) And Yale doesn't have, to
24 your knowledge, a policy that requires its students to
25 assign their patents to the university, right?

1 A I don't remember if the policy covered faculty
2 members, graduate students. I do remember that we
3 learned that the patent, properly speaking, belonged to
4 the university, and as soon as we learned, we gave it to
5 the university.

6 Q That wasn't my question. Let me ask this
7 clearly. At the time that you signed this declaration,
8 February 23, 1998, were you aware of any Yale policy
9 that required a student, like Mr. Freeman, to assign his
10 invention to Yale?

11 A I don't have the vaguest recollection of what
12 I was aware of with respect to Yale's policy with
13 respect to graduate students assigning patents in '90 --
14 you know, February 23rd, '98. I just don't remember.

15 Q Well, are you aware now that Yale has no such
16 policy, and never did, requiring its students to
17 transfer and assign their patents to Yale?

18 A To be honest, the whole topic is not my
19 department. It's not of terribly much interest to me.
20 All I want to do is what the university considers right
21 and what the law requires. And the details of the
22 policy are really just of no interest to me.

23 I do not know what the current policy is in
24 any detail at all. I would assume if we were to file a
25 new patent, it would also belong to the university.

1 Q Okay. Have you ever been aware of a Yale
2 policy requiring its students to assign their patents to
3 the university?

4 A I thought you just said that there was no such
5 policy.

6 Q Have you ever been aware of any such policy?

7 A I have never been aware one way or the other
8 of Yale's policy with respect to patent applications
9 filed by graduate students at the university.

10 Q And did you and Mr. Freeman discuss the fact
11 that you would assign this declaration necessitated by
12 this amendment, apparently, be added as an inventor and
13 that you, on the same day, would assign the entire
14 patent to Yale?

15 Did you discuss that with him?

16 A Did we discuss the fact that on the same day I
17 was added as an inventor, the patent was assigned to
18 Yale? Is that the question?

19 Q Yeah. Did you -- did you discuss with
20 Mr. Freeman that: Look it I'm going to sign this
21 declaration making me an inventor, and on the same day,
22 I'm going to assign the rights of this -- of this patent
23 to -- to Yale?

24 A We certainly discussed in general the fact
25 that insofar as we had made errors respecting the Patent

1 Office policy or the Yale University policy, his
2 intention and my intention was to put them right
3 immediately. That's what we discussed, and that's what
4 we did.

5 Q Did you ever -- and I'm just looking --
6 focusing on these dates. The patent application was
7 filed June 28, 1996. You know, approximately a year and
8 a half later, February of '98, you're added as an
9 inventor.

10 Did you ever consider or discuss with
11 Mr. Freeman, prior to that date, that you should be an
12 inventor?

13 A As far as I can recall, it never came up. As
14 a matter of fact, no, I did not discuss it.

15 Q Okay.

16 MR. RANDALL: No further questions, Your
17 Honor.

18 THE COURT: All right. Redirect?

19 MR. CARROLL: No, Your Honor.

20 THE COURT: All right. You may step
21 down.

22 All right, Ladies and Gentlemen of the
23 Jury, I think that will wrap it up for the day. We'll
24 quit a little bit early rather than start another
25 witness today.

1 I would like for you to consider, when
2 you come in in the morning, before you come in the
3 courtroom, for y'all to discuss briefly if you have a
4 preference as to how we get some more time in during the
5 day.

6 The -- we're going to have a bit of
7 trouble, I think, getting through this week unless we
8 add some time to the day, and we can do that either by
9 starting at 8:30 some mornings, taking a shorter lunch
10 hour, or staying over a little bit later in the
11 afternoon.

12 So don't discuss the merits of the case,
13 but when you come in in the morning, discuss what y'all
14 would collectively like to do, as far as if we need to
15 capture some more testimony time, whether you'd rather
16 do it in the morning, whether you'd rather do it at
17 lunch -- and by the way, you don't -- it's not an option
18 to say you don't want more time, because we've got to
19 give these parties their full time for the case -- but
20 to discuss that; and then to the extent that the Court
21 can accommodate your schedules and your wishes, we will
22 try to do so.

23 You've paid very good attention today. I
24 know it's been a long, tedious day, but you've been
25 paying attention, and I appreciate that, and I know both

1 parties do.

2 Please remember my instructions this
3 evening. Don't discuss this case among yourselves or
4 with anyone else. Don't make any independent
5 investigations.

6 We will see you -- have a nice relaxing
7 evening. We'll see you back -- we will start back in
8 the morning at 9:00 o'clock. So we will see you back
9 here at 9:00 o'clock in the morning, and we will get
10 started and put in another day.

11 Thank you for your attention and your
12 attendance. So you are excused for the evening.

13 COURT SECURITY OFFICER: All rise for the
14 jury.

15 (Jury out.)

16 THE COURT: Please be seated.

17 All right. A couple of housekeeping
18 matters, y'all meet and confer, and let's get the --
19 does everybody understand what I want done with the
20 exhibits?

21 MR. CARROLL: We do, Your Honor.

22 THE COURT: Okay.

23 MR. RANDALL: Yes, Your Honor.

24 THE COURT: All right. So let's -- let's
25 have that in good shape in the morning.

1 Mr. Carroll, who will be your next
2 witness tomorrow morning?

3 MR. CARROLL: Michael Satow, Your Honor.

4 THE COURT: All right.

5 MR. CARROLL: He's a fact witness.

6 THE COURT: Okay. All right. I would
7 encourage -- let me give y'all your times. Plaintiff
8 has used 1 hour and 56 minutes. Defendant has used 2
9 hours and 7 minutes.

10 We spent an awful lot of time with this
11 one witness today, and y'all have got 12 hours, and
12 there's not going to be any extension of that.

13 So use your time however you want to, but
14 I would encourage you to try to shorten up, snap up, and
15 hone down your direct and cross-examinations, and let's
16 get these witnesses on and off and moved so that you
17 have time to get all of your witnesses on.

18 All right. Is there anything further the
19 Court can help you with this evening?

20 MR. CARROLL: Not from the Plaintiff,
21 Your Honor.

22 THE COURT: From the Defendant?

23 MR. RANDALL: Just for timing purposes
24 for our witnesses, I don't know if they're going to have
25 any other live witnesses tomorrow or not; if they expect

1 to go the entire day or not. I don't know.

2 THE COURT: Aren't y'all exchanging lists
3 in the evening?

4 MR. RANDALL: We will.

5 THE COURT: Okay.

6 MR. RANDALL: Okay. We'll find out.

7 THE COURT: All right. Y'all meet and
8 discuss that. If you need me to do anything, let me
9 know, but, hopefully, y'all can get that worked out.
10 Anything further?

11 MR. RANDALL: No, Your Honor.

12 THE COURT: All right. We'll be in
13 recess until tomorrow morning.

14 COURT SECURITY OFFICER: All rise.

15 (Court adjourned.)

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CERTIFICATION

