

Mirror Worlds, LLC v. Apple, Inc.

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 29, 2010  
6 \* 9:00 A.M.

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

10 APPEARANCES:

11 FOR THE PLAINTIFF

12 MR. JOSEPH DIAMANTE  
MR. KENNETH STEIN  
13 MR. IAN G. DIBERNARDO  
MR. ALEXANDER SOLO  
14 MR. CHARLES E. CANTINE  
STROOCK & STROOCK & LAVAN  
15 180 Maiden Ln.  
New York, NY 10038  
16  
17 MR. OTIS CARROLL  
MR. PATRICK KELLEY  
IRELAND, CARROLL & KELLEY  
18 6101 S. Broadway, Ste. 500  
Tyler, TX 75703  
19

20 COURT REPORTERS:  
MS. SHEA SLOAN, CSR  
21 MS. JUDY WERLINGER, CSR  
Official Court Reporters  
22 211 West Ferguson, Third Floor  
Tyler, TX 75702  
23 903/590-1171

24 (Proceedings recorded by mechanical stenography,  
transcript produced on CAT system.)  
25

1 FOR THE DEFENDANTS

2

3 MR. JEFFREY G. RANDALL  
MR. RAYMOND YU  
4 MS. ERICKA J. SCHULZ  
PAUL HASTINGS  
5 1117 S. California Ave.  
Palo Alto, CA 94304-1106

6

7 MR. ALLAN M. SOOBERT  
8 MR. BROCK WEBER  
MS. KIM MOORE  
9 PAUL HASTINGS  
875 15th St. NW  
10 Washington, DC 20005

11

12 MR. S. CHRISTIAN PLATT  
MR. JEFFREY COMEAU  
13 PAUL HASTINGS  
4747 Executive Dr.  
14 12th Floor  
San Diego, CA 92121

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1                   P R O C E E D I N G S

2                   COURT SECURITY OFFICER: All rise.

3                   (Jury in.)

4                   THE COURT: Please be seated.

5                   All right. Do Plaintiffs have any  
6 exhibits they wish to offer this morning?

7                   MR. CARROLL: We do, Your Honor.

8                   And I'm happy to say we have them in the  
9 proper form, and that our friends across the way have no  
10 objection.

11                  THE COURT: All right. And what is the  
12 title of that document?

13                  MR. CARROLL: The title is Plaintiff's  
14 List of Exhibits to be Admitted on September 29th, 2010.

15                  THE COURT: To be admitted. Now, is that  
16 cumulative of Monday -- of Monday and Tuesday's list or  
17 not?

18                  MR. CARROLL: Is that cumulative? Is  
19 this it?

20                  Together, this is it?

21                  It is not, Your Honor, but together it  
22 will catch us up.

23                  THE COURT: Okay. All right. So you've  
24 introduced two exhibit lists then, and combined, they  
25 constitute all the exhibits that have been admitted.

1 MR. CARROLL: That's what I'm told.

2 THE COURT: Okay. So --

3 MR. CARROLL: Excuse me for interrupting,  
4 Judge, but we have one for the 28th and one for the  
5 29th.

6 THE COURT: Okay. All right. So the one  
7 for the 28th will be marked as Plaintiff's Exhibit List  
8 No. 2, and the one for the 29th will be Plaintiff's  
9 Exhibit List No. --

10 COURTROOM DEPUTY: 3.

11 THE COURT: -- 3.

12 COURTROOM DEPUTY: But, Your Honor, the  
13 one from the 28th, it's already been admitted yesterday,  
14 so...

15 THE COURT: Yes.

16 COURTROOM DEPUTY: They're admitting it  
17 again.

18 THE COURT: Is that -- the first one is  
19 from the 28th?

20 MR. CARROLL: That's what it says.

21 THE COURT: Okay. Well, that was  
22 admitted yesterday.

23 MR. CARROLL: That's correct. So this  
24 ought to be the --

25 THE COURT: Or is that a different one?

1                   MR. DIBERNARDO: It's cumulative. I  
2 believe one additional exhibit was added during the  
3 course of yesterday.

4                   THE COURT: Okay. Well, what y'all need  
5 to do is, if you'll just give us a cumulative one, then  
6 we'll have a nice, clean record. But we'll admit the  
7 28th as Exhibit 2, the 29th as Exhibit 3.

8                   And any objection to those exhibits?

9                   MR. RANDALL: Your Honor, no. They have  
10 exchanged that list with us. We didn't have any  
11 objections. We exchanged lists with them yesterday, so  
12 we still have our list, and we're waiting to hear a  
13 response.

14                  I just want to let you know we have our  
15 list as well. Apparently, it's in the works.

16                  THE COURT: So you have no objections to  
17 their offer?

18                  MR. RANDALL: No, Your Honor.

19                  THE COURT: All right. Be admitted.

20                  MR. CARROLL: Thank you, Your Honor.

21                  THE COURT: All right. You've given  
22 those to Ms. Ferguson?

23                  Okay. She'll mark them. We'll keep it  
24 straight.

25                  And, Defendants, you've not heard back

1 from Plaintiffs yet regarding your list, right?

2 MR. RANDALL: That's right, Your Honor.

3 THE COURT: All right. Very well.

4 Mr. Randall, would you like to proceed?

5 MR. RANDALL: I would, Your Honor. Thank  
6 you very much.

7 JOHN LEVY, Ph.D., PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

8 CROSS-EXAMINATION

9 BY MR. RANDALL:

10 Q Dr. Levy, how are you?

11 My name is Jeff Randall. I don't think we've  
12 met before.

13 A Good morning, Mr. Randall.

14 Q Mr. Levy, you recognize that someone hired to  
15 testify in patent cases, that the law requires the scope  
16 of the claims to be determined without reference to the  
17 accused device -- infringement devices, correct?

18 A Yes.

19 Q All right. So, for instance, the scope of the  
20 boundaries of the claim really have to be determined,  
21 largely by the Court, but they have to be determined  
22 without reference to what you're accusing of infringing,  
23 right?

24 A Yes.

25 Q And that's in order to avoid a situation where

1 a Plaintiff or expert may want to stretch the boundaries  
2 of something just to encompass some device, right?

3 A I'll take your word for that.

4 Q Okay. You also realize, do you not, sir, that  
5 it's Mirror Worlds' burden to show each and every claim  
6 limitation of all of the patent claims that you're  
7 asserting against Apple, you have to show -- not you --  
8 Mirror Worlds has to show each and every element is  
9 satisfied, right?

10 A That is my understanding.

11 Q All right. So, for instance, if a claim at  
12 the end of these patents has a whole host of  
13 requirements, and any one of those is missing, that  
14 means there's no infringement, right?

15 A My understanding is if any claim limitation is  
16 missing, then it does not infringe.

17 Q Right. And the burden falls with Mirror  
18 Worlds to show that every single element is satisfied in  
19 every claim that they're asserting, right?

20 A I believe you said that before, and I  
21 understand that.

22 Q And Apple doesn't have to show anything,  
23 right?

24 A I don't quite understand what you mean by  
25 that, but --

1 Q We don't have the burden to prove

2 non-infringement, right?

3 A I guess if that's the way you say it in legal  
4 in terms, that's right.

5 Q Well, I don't want you to guess. Isn't that  
6 what you -- isn't that what you understand?

7 A I think I've agreed to that, yes, sir.

8 Q Now, let me focus for a moment -- and so, for  
9 instance, we're not going to address each and every  
10 element of every claim.

11 If it is sufficient to show non-infringement,  
12 if it's shown and the jury believes that just one  
13 element is missing from a claim, right?

14 A I believe that's the same thing you've been  
15 telling me, yes.

16 Q Okay. Let me focus on Apple's iPhones, iPads,  
17 and iPods.

18 MR. RANDALL: Can you put up LX1, please?

19 Q (By Mr. Randall) Okay. Now, you've said in  
20 your testimony that Mirror Worlds is accusing Apple  
21 iPhones, iPads, and iPods, those devices that you showed  
22 on the screen, of infringement, right?

23 A Yes.

24 Q All right. And the infringement claim that  
25 Mirror Worlds is making is just two claims, right? It's

1 just the '427 patent, which is up there at the top,

2 '427, Claims 16 and 18, right?

3 A That's right.

4 Q All right. Now, let's look at this chart for  
5 a minute.

6 Up at the top, the top row, it says '227  
7 claims, '427 claims, '313 claims. Do you see that?

8 A I see that.

9 Q All right. So out of all the claims in the  
10 patents, those are the ones -- the only ones that Mirror  
11 Worlds is asserting in this case, right?

12 A That is my understanding, yes.

13 Q Okay. And with respect to all those claims --  
14 there's twelve of them. With respect to those twelve  
15 claims, only two are being asserted by Mirror Worlds  
16 against Apple's iPhones, iPads, and iPods, right?

17 A Yes.

18 Q Okay.

19 MR. RANDALL: Can you slide that thing  
20 over just a little bit?

21 There we go.

22 Q (By Mr. Randall) Now, I want to focus on this  
23 last element here, displaying glance view in response to  
24 sliding cursor over stack without clicking.

25 Do you see that?

1 A I see what you've written there, yes.

2 Q Okay. Now that's a summarized or a  
3 paraphrases view of that element -- claim element.

4 You understand that, right?

5 A I do.

6 Q Okay. So that paraphrased claim element is  
7 required by both Claims 16 and 18 as referenced by this  
8 checked box.

9 Do you see that?

10 A Yes.

11 Q Okay. And you agree with it, right? The --  
12 the displaying glance view in response to sliding a  
13 cursor over a stack is required by both Claims 16 and  
14 18, right?

15 A Yes.

16 Q And so, for instance, if Mirror Worlds does  
17 not show that element, if Mirror Worlds does not  
18 convince the jury that Apple's iPhones, iPods, and iPads  
19 satisfy that one element, there's no infringement of  
20 those devices in this case at all, right?

21 A I believe you've made that perfectly clear --

22 Q Well, I want to make it clear.

23 A -- three or four times.

24 Q Right?

25 A Yes, sir.

1 Q So if that element -- if you don't satisfy  
2 that element, don't satisfy your burden of proof, then  
3 those products, Apple's iPhones, iPods, and iPads, are  
4 out of this case, and they don't infringe any claim,  
5 right?

6 A I believe that's the same question and the  
7 answer is still yes.

8 MR. RANDALL: Now, let's go to LX11,  
9 please.

10 Q (By Mr. Randall) All right. So this is the  
11 element down below here.

12 MR. RANDALL: If we can remove the purple  
13 stuff. I don't know what that is.

14 Oh, Lord. Okay. I don't know where that  
15 came from.

16 Q (By Mr. Randall) All right. This is the  
17 element that we're talking about, and it's down below.

18 It says: Displaying a cursor or pointer and  
19 responding to a user sliding, without clicking, the  
20 cursor or pointer over a portion of a displayed document  
21 representation to display the glance view of the  
22 document whose document representation is touched by the  
23 cursor or pointer.

24 Do you see that?

25 A I see that.

1 Q Now, each portion, every aspect of that  
2 element Mirror Worlds has to show is being practiced by  
3 Apple's iPhones, iPods, and iPads, right?

4 A Well, actually, I've shown this by Doctrine of  
5 Equivalents, so it's -- functionally, everything has to  
6 be there.

7 Q Can you just answer my question?

8 Mirror Worlds has the burden to prove each and  
9 every aspect of that claim element, right?

10 A Each aspect has to be met.

11 Q All right. So did you just say -- when you  
12 said Doctrine of Equivalents, do you admit that Apple's  
13 iPhones, iPads, and iPods do not literally infringe any  
14 claim in this case? Yes or no?

15 A I -- I would say I don't know the legal  
16 niceties of Doctrine of Equivalents, but Doctrine of  
17 Equivalents is still literal infringement, correct?

18 Q Do they literally infringe?

19 A I'm sorry. I don't know the answer to that  
20 legally --

21 Q You don't know?

22 A -- if they literally infringe.

23 Q You don't know?

24 A But I don't know what that means within the  
25 Doctrine of Equivalents. Perhaps you could clarify that

1 for me.

2 Q Well, the Judge will clarify it. You have no  
3 idea whether they literally infringe or infringe -- your  
4 opinion is they infringe under the Doctrine of  
5 Equivalents, right?

6 A That's correct.

7 Q You have no opinion whether these products  
8 literally infringe; is that right?

9 A As opposed to what, sir?

10 Q As opposed to Doctrine of Equivalents.

11 A I'm sorry. I don't -- I don't know that I  
12 understand --

13 Q Okay.

14 A -- whether Doctrine of Equivalents is within  
15 the literal infringement or not.

16 Q Do you know if there's any difference between  
17 literal infringement and infringement under the Doctrine  
18 of Equivalents?

19 A I am not sure.

20 Q Well, what standard did you apply in  
21 determining whether, in rendering your opinion, that  
22 these products infringed?

23 You didn't apply -- let me just get this  
24 clear. You did not apply, in reaching your conclusion,  
25 that these Apple products, iPhones, iPads, and iPods --

1 you did not apply a literal infringement standard to  
2 your opinion, did you?

3 A I didn't say that.

4 Q Well, tell me what the literal infringement  
5 standard is that you applied, if you applied any.

6 A That each claim element -- each claim  
7 limitation must be met by the product.

8 Q Literally?

9 A Yes.

10 Q Okay. And is that your conclusion, that each  
11 claim aspect -- each claim element, including each  
12 aspect of this claim element that's listed here, is met  
13 literally? Is that your opinion?

14 A Yes.

15 Q Okay. Let's look at the first aspect of this.

16 It says: Displaying a cursor or pointer.

17 Do you see that?

18 A Yes.

19 Q Okay. Apple's iPhones, iPads, and iPods do  
20 not have a cursor or pointer, correct?

21 A I disagree.

22 Q Is there a display -- is there a cursor or  
23 pointer that is displayed on the screen of a iPhone,  
24 iPad, and iPod?

25 A Yes.

1 Q Displayed on the screen?

2 A Yes, sir.

3 Q Where?

4 A That square area in the center functions as

5 the cursor.

6 Q Well, the cursor is the entire screen; is that

7 what you're saying?

8 A No, sir. The area in which the glance view

9 pops up in the center of the screen functions as the

10 cursor.

11 Q Okay. Well, you're looking there at the

12 screen. Just tell me where the cursor or pointer is.

13 A Right where that big square thing in the

14 center is, that area.

15 Q Well, the cursor or the pointer, is it over in

16 that corner over there?

17 A The cursor or pointer functions to designate

18 some portion of the stack within this claim limitation.

19 Q You're suggesting --

20 A And that is a function that is met by the

21 square area in the center. If we could see it sliding,

22 you will see how, in fact, they get selected by moving

23 in underneath that area.

24 Q I'm just focusing -- I'm just focusing on a

25 cursor or pointer.

1           Do you understand that a cursor or pointer is  
2 typically an arrow or a small device on the screen --

3           MR. RANDALL: Can you move the --

4       Q     (By Mr. Randall) See that little pointer up  
5 there that's moving around? Is that a cursor or a  
6 pointer?

7       A     That is one kind of cursor or pointer.

8       Q     Right. And does -- does the Apple iPhone,  
9 iPad, and iPod have that?

10      A     They don't have a little arrow like that.

11      Q     And they don't have a little cursor or pointer  
12 that moves around the display, correct?

13      A     I'm not -- no, they don't move around the  
14 display.

15      Q     They don't have -- Apple's iPhones, iPads, and  
16 iPods do not have a visual cursor or pointer that you  
17 can manipulate around that screen, right? Correct?

18      A     There is not that form of a cursor or pointer  
19 on these screens.

20      Q     All right. And so, for instance, displaying a  
21 cursor or pointer -- see this -- see this laser beam  
22 that's on there right now?

23           I'm sorry. You probably can't.

24           MR. RANDALL: Put the cursor or pointer  
25 back up.

1 Q (By Mr. Randall) So you see that? That's a  
2 cursor or pointer, right?

3 A That is one form of a cursor or pointer.

4 Q And there is no other small, visual object  
5 that is utilized on Apple's iPhones, iPads, and iPods to  
6 maneuver around that screen such that you can see it  
7 moving around, right?

8 A You're suggesting that a small, visual object  
9 is what the cursor or pointer must be?

10 Q I'm asking you, if you can just answer my  
11 question.

12 A Well -- sorry -- so you're referring to this  
13 little arrow?

14 There is no little arrow on that screen.

15 Q Right. There's no arrow; there's no other  
16 visual object that is utilized by the user to move  
17 around that screen, correct?

18 A No. I disagree. There is a visual object,  
19 namely the square in the center, which, when the stack  
20 moves, selects the thing that is under it.

21 Q Can you see -- when you're looking at that  
22 right now, can you see where this visual pointer or  
23 cursor is on the screen?

24 A Well, I happen to know it's in the center, and  
25 that's the way it functions.

1 Q You know it's in the center?

2 A Yes.

3 Q Does it ever move around?

4 A No. The stack moves under it.

5 Q I'm asking you for literally. Literally, does

6 this -- I'm not asking you -- your view is that

7 functionally it's the same, right?

8 That's your view, right?

9 A Well, we should talk about what it is here, to

10 be careful.

11 Q The cursor or pointer.

12 A Cursor or pointer is the area in the center of

13 that square which selects what comes under it.

14 Q Does -- does this -- does the Apple products,

15 iPhones, iPads, and iPods, have a cursor or pointer

16 literally that moves around the screen?

17 A That moves around the screen?

18 Q Yes.

19 A No, sir.

20 Q All right. So it says here: Displaying a

21 cursor or pointer and responding to a user sliding,

22 without clicking, the cursor or pointer over a portion

23 of a displayed document representation.

24 Do you see that?

25 A I do.

1 Q So these Apple products do not have a cursor  
2 or pointer that slides over a portion of this Coverflow,  
3 right?

4 A I disagree.

5 Q Slides over it literally?

6 A Slides over it as the stack moves.

7 Q No. Your view is that what is underlying  
8 that, the Coverflow slides underneath it, right?

9 A Yes.

10 Q Okay. I'm asking you if there's a visual  
11 object, a cursor or pointer, that you can see that is  
12 displayed that slides over this document representation.

13 It doesn't have that, does it?

14 A As the stack slides, since they slide under  
15 it, this cursor is sliding over it.

16 Q No. I'm not suggesting the stack is sliding,  
17 all right?

18 A Okay.

19 Q The stack is staying the same.

20 A Uh-huh.

21 Q Does -- do the Apple products, the Apple  
22 iPhones, iPads, and iPods, have a visual object that is  
23 displayed on the screen that slides over this stack when  
24 the stack is not moving? Yes or no?

25 A You're -- you're saying sliding when nothing's

1 moving?

2 Q Correct.

3 A Well, it's not sliding when nothing's moving,

4 so...

5 Q I'm talking about the visual display, the

6 cursor or pointer.

7 A I understand that.

8 Q What's that?

9 A I understand that you're talking about the

10 cursor or pointer.

11 Q Yes.

12 A So when the stack is moving, it's sliding over

13 the document --

14 Q I'm not suggesting the stack is moving. The

15 stack is staying the same.

16 Let's just put it this way: Is this -- is

17 the -- where exactly is the cursor or pointer? You said

18 it's in the center?

19 A Yes.

20 Q Does it extend all the way out to the edge of

21 the screen?

22 A No.

23 Q Really? Where does it stop?

24 A It stops at the edges of the stacks on the

25 sides.

1 Q And if the stack is smaller, the cursor or  
2 pointer gets smaller; is that your suggestion?

3 A No. The stacks don't change in that extent in  
4 the inner edge -- the edge of the stacks on the inside  
5 are -- is always the same.

6 Q Let me ask you something. Is there, on these  
7 Apple products, a --

8 MR. RANDALL: Can we put the pointer up?

9 Q (By Mr. Randall) You can see that arrow,  
10 right?

11 A I see the arrow.

12 Q All right. So does Apple have an object like  
13 that -- see that little arrow -- that can maneuver  
14 around that screen and slide on that screen? Yes or no?

15 A Well, I've already answered that. It does not  
16 have a little arrow that slides around on this screen.

17 Q And so if the jury --

18 A Yes. Sorry.

19 Q And so if the jury determines that these Apple  
20 products do not have that pointer or cursor that's  
21 moving around the screen right there, then you would  
22 agree that the Apple iPod, iPhone, and iPad do not  
23 infringe, right?

24 A No. I don't believe the cursor has to look  
25 like that little arrow.

1 Q If the jury decides that Apple's iPods,  
2 iPhones, and iPads do not have a cursor or pointer, you  
3 would agree there's no infringement, right?

4 A I would agree as long as it says the cursor or  
5 pointer sliding, as it describes here, is not found,  
6 then that limitation is not met.

7 Q I'm going to make this really simple.

8 A Uh-huh.

9 Q The first aspect of this claim element says  
10 displaying a cursor or pointer.

11 Do you see that?

12 A Yes.

13 Q All right. So you'd agree, if the jury  
14 concludes that Apple on its iPhones, iPads, and iPods do  
15 not have a cursor or pointer, that there's no  
16 infringement, right?

17 A All right.

18 Q Would you agree with that?

19 A I believe so.

20 Q Okay. Would you agree that if the jury finds  
21 that Apple does not have a cursor or pointer on these  
22 products that a user can slide, without clicking, over a  
23 portion of the displayed document representation, that  
24 there's no infringement?

25 A I guess so. Uh-huh.

1 Q What?

2 A I guess so.

3 Q I don't want you to guess.

4 A Okay.

5 Q Be clear. There's no infringement then,

6 right?

7 A As long as -- yes. All right.

8 Q You agree with me, don't you?

9 A Were you reading the language from this claim?

10 Q Absolutely.

11 A Okay. Yes.

12 Q Now, you would also agree, it says here, the

13 last thing: To display the glance view of the document

14 whose document representation is touched by the cursor

15 or pointer.

16 Do you see that?

17 A Yes.

18 Q Okay. So the document representation is

19 something different than that cursor or pointer.

20 You agree with that, right?

21 A Yes.

22 Q All right. So if the jury believes that Apple

23 does not have a cursor or pointer that touches this

24 document stream (sic), then there's no infringement of

25 these products, right?

1 A I'm sorry. You did say document stream, so

2 it's document representation. You meant to say --

3 Q All right. Document representation.

4 A That's right.

5 Q Then there's no infringement, right?

6 A Right.

7 Q All right.

8 MR. RANDALL: Can we pull up --

9 Q (By Mr. Randall) Oh, by the way, you mentioned  
10 yesterday -- you talked about that it was impossible for  
11 Apple ever to avoid infringement, didn't you?

12 A I don't think I said that.

13 Q You said that there was no way Apple could  
14 avoid infringement of any of these claims, didn't you?

15 A I didn't say that literally, I don't believe.  
16 I believe I said -- you're talking about what I said to  
17 Mr. Bratic?

18 Q Yes.

19 A I said I didn't think they could achieve the  
20 functions that they chose to put in without infringing  
21 these patents.

22 Q You don't think -- so you drew the conclusion  
23 in telling your colleague, who's going to talk about  
24 damages -- you drew the conclusion that Apple couldn't  
25 possibly make an iPhone, iPad, or iPad (sic) without a

1 display or point -- without displaying a cursor or  
2 pointer.

3 Is that part of your analysis?

4 A I -- I don't believe I said that quite that  
5 way.

6 Q Well, that's what I'm asking you. If -- if  
7 Apple does not use a cursor or pointer in these  
8 products, then it doesn't infringe, right?

9 A You've already asked me that and I agreed.

10 Q All right. Did you tell that to your damages  
11 expert when you told him that there was no way Apple  
12 could avoid infringement?

13 A I did not specifically point that out.

14 MR. RANDALL: Can you pull up LX1?

15 Actually, pull up LX16.

16 This is '313, Claim 29. Let me see.

17 No? This is DX 5, Claim 9.

18 Q (By Mr. Randall) Okay. So this is the element  
19 that appears in the '313 patent, Claim 9.

20 Do you recognize this, sir?

21 A Yes.

22 Q Okay. Now, this element also has various  
23 aspects to it, correct?

24 A This is the same element, right?

25 Q Okay. You believe this is --

1           A     I'm sorry. It adds on what the glance view  
2 is.

3           Q       Okay. But the question is simply this: This  
4 element has various aspects, correct?

5 A Yes.

6           Q       Okay. And so, for instance, does the  
7 Overflow display change if a user merely runs the  
8 cursor over the album covers?

9 A Yes.

10 Q Okay. And that's the basis of your  
11 infringement opinion with respect to this element,  
12 correct?

13 A Yes.

14 Q Okay.

15 MR. RANDALL: Can you put up Clip 6,  
16 please?

17 Q (By Mr. Randall) Now, that's a cursor moving  
18 over those album covers, right? And nothing's  
19 happening, right?

20 A I'm sorry. What cursor is that?

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21           You're talking about the cursor on this  
22 screen?
```

23 Q I'm going to play this animation again.

24 That black cursor is going over the album covers, and  
25 nothing's happening, right?

1 A Could you tell me what that was from? Is that  
2 from the operating system or device like a --  
3 Q I'm just asking you a question. That --  
4 that -- nothing's happening when that cursor is passing  
5 over the album covers, right?

6 A This little arrow moving back and forth is --

7 Q See the black cursor?

8 A -- not -- doesn't seem to be correlated with  
9 any action on this scene behind it. That's correct.

10 Q Well, that little black thing, that's a  
11 cursor, isn't it?

12 A That is one form of a cursor.

13 Q And it's passing over the album covers, right?

14 A Yes. This white one is there, too, sir.

15 Q And nothing is --

16 THE COURT: I'm sorry. I can't -- I'm  
17 not being able to hear you, and y'all are talking over  
18 each other and --

19 THE WITNESS: Can you turn this one up a  
20 little bit?

21 THE COURT: No, you're going to have to  
22 turn your voice up a little bit.

23 THE WITNESS: All right. I'll do that.

24 THE COURT: The -- and, Counsel, you need  
25 to identify where that's from. I mean, what is that?

1 Is that from a -- from an iPod or what?

2 MR. RANDALL: That's Apple's operating  
3 system.

4 THE COURT: From what device?

5 MR. RANDALL: The accused operating  
6 system in this case.

7 Q (By Mr. Randall) So were you aware that  
8 Apple's operating system operated to allow the cursor to  
9 slide over these album covers without any action being  
10 taken?

11 A I'm aware that one can move this little arrow  
12 pointer around in the operating system.

13 Q Okay. And would you agree that there is no  
14 infringement of the claim element that we just looked at  
15 with respect to the cursor being moved over the album  
16 covers without any glance view being displayed?

17 A No, I don't agree with regard to the arrow.

18 Q Okay. The element that we just looked at  
19 said: Displaying further, including displaying the  
20 cursor or pointer, and responding to a user sliding the  
21 cursor or pointer over said displayed stack to display  
22 glance view of the document in the stack that's  
23 currently touched by the cursor or pointer.

24 Do you see that?

25 A I do.

1 Q Okay. And so here, the black cursor is being  
2 passed over the albums, and no glance view is being  
3 displayed when it's touching those document images,  
4 correct?

5 A That's correct.

6 Q Okay. And that -- in this instance, there  
7 will be no infringement of that element, correct?

8 A I disagree.

9 Q Where's the glance view being displayed when  
10 that slide -- when that cursor is being passed over the  
11 stack?

12 A Well, there's another cursor on that screen.

13 Q I'm talking about that black cursor that's  
14 going across --

15 A I know you are, sir, and --

16 Q Is that --

17 A -- I'm responding to that question as best as  
18 I can.

19 Q Does that demonstrate infringement right  
20 there, that black cursor passing over the stack?

21 A The black cursor does not.

22 Q Okay. Thank you.

23 MR. RANDALL: Can you pull up LX4,  
24 please?

25 Q (By Mr. Randall) So I want to talk to you

1 about the receding foreshortened stack.

2 That's required by numerous claims, correct?

3 A Yes.

4 Q All right. And here in the Patent Office,  
5 during the prosecution of the patent, the inventors and  
6 applicants told the Patent Office with respect to this  
7 visual display on the left that says prior art, with  
8 respect to that item, the applicants told the Patent  
9 Office -- and that's called the Cowart reference.

10 You're familiar with that, right?

11 A Yes, sir.

12 Q You've read this file history, right?

13 A Yes, I have.

14 Q You've seen this before, right?

15 A I have.

16 Q Okay. So the applicants say: Cowart shows an  
17 orthogonal view of windows; that is, the windows do not  
18 get smaller toward the bottom of the stack, okay?

19 Now, on the right-hand side of this figure

20 is -- is the representation from the patent, correct?

21 A From the patent history -- the file history,  
22 yes.

23 Q Well, it's from the patent, right? It's  
24 Figure 1 from the patent, isn't it?

25 A I'm sorry. Oh, the figure, yes.

1           Q     Okay. So it's Figure 1 from the patent, and  
2 in the patent, this document representation, the windows  
3 get smaller toward the bottom of the stack, correct?

4           A     Yes.

5           Q     Okay. And in trying to distinguish the prior  
6 art Cowart system, the applicants here, Mirror Worlds'  
7 applicants, they told the Patent Office that their  
8 invention is different than Cowart, and this visual  
9 display is different than Cowart, and their invention is  
10 different than Cowart, because this (sic) windows in  
11 Cowart do not get smaller towards the bottom of the  
12 stack.

13                 And the applicants went on to say: This  
14 important distinction highlights a key aspect of the  
15 streams of the present invention, right?

16           A     Yes.

17           Q     That's what they told the Patent Office,  
18 right?

19           A     (No response.)

20           Q     And so that is a key aspect of the streams of  
21 the present invention that the windows do get smaller  
22 towards the bottom of the stack, right? Yes or no?

23           A     I agree with this phrasing, what this said,  
24 yes.

25           Q     Okay.

1 A Since you're looking something else up, I'd

2 like to --

3 Q No question is pending, sir.

4 A I'd like to --

5 Q I'm under a time pressure.

6 A Okay.

7 Q Your lawyer will ask you anything that you

8 want to talk about, okay?

9 A All right.

10 MR. RANDALL: Can you pull up LX5,

11 please?

12 Q (By Mr. Randall) Now, this is Coverflow in the  
13 Apple operating system, correct?

14 A It appears to be.

15 Q All right. And that shows that these document  
16 images across the screen are all the same height, right?

17 A Not the one in the center.

18 Q Are you sure about that?

19 A Well, I've looked at many of them on my system  
20 and on other systems, so...

21 Q Are you suggesting that that -- those lines  
22 are not parallel, the red lines?

23 A No, sir.

24 Q You're not suggesting that, right?

25 A No.

1 Q Okay. So you agree that right there at the  
2 corners of those document representations, that they are  
3 all the same height, right?

4 A We're talking about just the document  
5 representations, the things on the side, correct?

6 Q That's right.

7 A Yeah, those are -- in the front, they are the  
8 same height.

9 Q All right. So they don't get smaller right  
10 there in the front, do they?

11 A That's correct.

12 Q Okay. And you also -- did you confirm that in  
13 the source code?

14 A Yes, I did.

15 Q Okay.

16 A At least from Mr. Goossens' deposition.

17 Q And these document representations, they also  
18 are across the same plane, right, so to speak? So they  
19 could just be right against the back of the wall, right?  
20 They're flat, aren't they?

21 A No. Actually, they're rotated 60 degrees.

22 Q The front edge is just flat across, right?

23 A The line representing the front edge is in the  
24 same plane across there, yes.

25 Q Okay. All right. And where's the front of

1 the stack and where's the end of the stack on this one?

2 A Well, there's a stack on the left, and so

3 there's a front there, and something back here is the

4 back.

5 Q I just want to know where the back and front

6 of the stack is.

7 A I believe I just pointed at them.

8 Q So you say there's two stacks there?

9 A Yeah. Actually, in this one, since the glance  
10 view is overlapping the first one in the stack, I  
11 believe it's part of that stack as well. This one  
12 (indicates).

13 Q So it's one stack now?

14 A There's a stack to the left; there's a stack  
15 to the right; and there's a whole stack.

16 Q So it's three -- is it three stacks, or is it  
17 two stacks?

18 A It's two.

19 Q Is it one stack?

20 A When it starts moving, it moves as a single  
21 stack.

22 Q Let's look --

23 A When it's displayed, it's two stacks.

24 Q So is it one stack right now?

25 A It's two.

1 Q But it becomes one?

2 A It moves as one.

3 Q You have the same -- you said in your report

4 that there were two stacks in Overflow, right?

5 A I had said that, and it does appear that way

6 sometimes.

7 MR. RANDALL: Can you play Clip 4,

8 please?

9 (Video clip playing.)

10 QUESTION: We've got the iPod --

11 (Video clip stopped.)

12 MR. RANDALL: I'm sorry. That's not it.

13 Yes.

14 (Video clip playing.)

15 QUESTION: There is a receding

16 foreshortened stack to the left and right of the center

17 item.

18 So in that sentence, are you telling us

19 that there are two stacks in the image on Figure 10?

20 ANSWER: I think, taken together, it is a

21 receding foreshortened stack, and it could also be

22 regarded as a receding foreshortened stack in each half

23 as well.

24 (End of video clip.)

25 Q (By Mr. Randall) So you're saying it's both

1 there?

2 A It depends on the positioning of the glance  
3 view in the center.

4 MR. RANDALL: All right. Can you  
5 play --

6 Q (By Mr. Randall) Then you revised that  
7 opinion, though, didn't you? Right in the middle of the  
8 deposition, didn't you?

9 A I was --

10 Q Yes or no?

11 A -- that afternoon, yes, sir.

12 MR. RANDALL: Play Clip 5.

13 (Video clip playing.)

14 QUESTION: And the -- let's look at  
15 the -- on either side. So let's look at the recede --  
16 this stack on the left-hand side on the image on  
17 Page 43.

18 What is the -- what is the first in the  
19 stack, according to the claim language, for that stack?

20 ANSWER: And the claim language you're  
21 referring to is --

22 QUESTION: The claim language on Page 43,  
23 Subheading (d).

24 ANSWER: Well, I think I'm going to have  
25 to revise what I said about the first in the stack. I

1 believe the first in the stack is the center image.  
2 (End of video clip.)  
3 Q (By Mr. Randall) Then you changed that  
4 opinion, didn't you, in the same day under oath, didn't  
5 you?

6 A Yes, sir.

7 MR. RANDALL: Let's play Clip 8.

8 (Video clip playing.)

9 QUESTION: So you mean to say that the  
10 reason -- so you mean to say that that image to the  
11 left -- the image directly left of the center item in  
12 Figure 43, is too small to read, and so, therefore,  
13 that's the reason why it's -- only a part of it is  
14 visible to the user?

15 ANSWER: I think I have to revise that  
16 again. I will say that the first item in the front of  
17 each stack -- the left side is the one that is the first  
18 in the stack, and, therefore, it's the ones behind it  
19 that are obscured.

20 (End of video clip.)

21 Q (By Mr. Randall) Now, at the time of this  
22 deposition, you had worked as an expert on this case for  
23 over a year and a half, hadn't you?

24 A Yes, sir.

25 Q All right. And you opined earlier that you

1 had worked on numerous patent cases, right?

2 A Yes; that's true.

3 Q All right. And the element that you were just  
4 opining on in that deposition, the three different ways,  
5 is an element that is required of Mirror Worlds to prove  
6 infringement, isn't it?

7 A Yes.

8 Q You have also mentioned in your direct  
9 testimony that lighting has an effect on whether or not  
10 something is a foreshortened receding stack, didn't you?

11 A Yes.

12 Q All right. Lighting isn't discussed anywhere  
13 in the patent, is it?

14 A I don't believe so.

15 Q What?

16 A No.

17 Q You also testified that there's this  
18 perspective effect, right?

19 A Yes.

20 Q Okay. And you testified that -- and that's  
21 not discussed in the patent, is it?

22 A It's discussed in the file history.

23 Q Not in the patent, right?

24 A I don't believe so.

25 Q All right. You discussed this item rotation

1 also in your direct. When you're trying to prove that  
2 Apple has a foreshortened receding stack, you're  
3 discussing item rotation, right?

4 A Yes.

5 Q That's not discussed in the patent, is it?

6 A That's right.

7 Q And you discussed angling of items in order to  
8 show that Apple had a foreshortened receding stack, and  
9 that's not mentioned in the patent either, is it?

10 A Correct.

11 Q And you discussed text visibility in trying to  
12 show that Apple had a foreshortened receding stack, and  
13 that's not mentioned in the patent anywhere, is it?

14 A Actually, it is.

15 Q Reflections? You mentioned reflections in  
16 your testimony.

17 That's not mentioned in the patent, is it?

18 A No.

19 MR. RANDALL: Will you show LX14A,  
20 please?

21 Your Honor, one moment, if I may.

22 Q (By Mr. Randall) All right. You are aware,  
23 Dr. Levy, that the Court has construed this mainstream  
24 to mean that a stream that is inclusive of every data  
25 unit or document received by or generated by the

1 computer system, right?

2 A Yes.

3 Q Okay. And that as part of that mainstream,  
4 the Court defined what stream means as a time-ordered  
5 sequence of documents that functions as a diary of a  
6 person's or entity's electronic life; and that it is  
7 designed to have three main portions: Past, present,  
8 and future, correct?

9 A Yes.

10 Q Okay. And so the mainstream includes that  
11 stream definition that I just mentioned, right?

12 A As you just said it, yes.

13 Q Right. All right.

14 Now, for instance, if any data units or  
15 documents in the computer are not maintained in this  
16 mainstream, as the Court has defined it, then the system  
17 does not infringe, right?

18 A We have to be sure we understand what a data  
19 unit is; but if you're looking at the definition of the  
20 Court's data unit, that's correct.

21 Q Well, the -- the definition is every data unit  
22 or document received by or generated by the computer,  
23 right?

24 A No. The definition of a data unit is the item  
25 of information of interest to the user.

1 Q Okay. That's fine.

2 Applying that definition, if any data units or  
3 documents in the computer are not maintained in the  
4 mainstream, then the system does not infringe, right?

5 A Yes.

6 Q Okay.

7 MR. RANDALL: Can you show LX23, please?

8 Go to -- there you go.

9 In contrast to, see that right there.

10 Yeah, but go down now. Yeah, go down all the way to  
11 invention -- storage backbone of the present invention.

12 Q (By Mr. Randall) All right. So this is part  
13 of Exhibit 4 at Page 770. Exhibit 4, 770.

14 It is the inventors, Mirror Worlds, amended  
15 the claims in response to an office action. So the  
16 office, PTO, Patent Office, said, no, we're not going to  
17 allow these claims. And there was a amendment to the  
18 claims, and this is the amendment, discussing the  
19 amendment, right?

20 A Okay. Yes.

21 Q Yeah. And so here, the applicant said: The  
22 present invention -- in contrast, the present invention,  
23 as recited in the amended claims, does not permit data  
24 units to be removed from the mainstream and still remain  
25 in the computer system, because, as recited in the

1 amended claims, a data unit of the computer system must  
2 be included in the mainstream.

3                 The requirement that a data unit be in the  
4 mainstream, as recited in the amended claims, results  
5 from the inherent structure of the mainstream as the  
6 storage backbone of the present invention, right?

7                 A      I see that.

8                 Q      Okay. And so if there are data units in the  
9 computer that are not included in the mainstream as  
10 defined by the Court, then the system does not infringe,  
11 correct?

12                A      Right.

13                Q      Then applying that to Apple's operating  
14 system, if the -- any data units or documents are not  
15 included in the mainstream, as the Court has defined it,  
16 then Apple's operating systems do not infringe, right?

17                A      Right.

18                Q      Okay. And have you investigated whether or  
19 not Apple permits the documents to fall out of what you  
20 consider to be the mainstream?

21                A      No.

22                Q      You haven't?

23                A      I haven't.

24                Q      Okay. Tell me exactly what the mainstream is,  
25 in your opinion.

1 A I'm sorry?

2 Q In Apple's operating system, what is the  
3 mainstream?

4 A It is the contents of the Spotlight Store,  
5 together with the files underlying the documents.

6 Q I'm sorry. Did you say including the files?

7 A Including the underlying documents themselves,  
8 which I said are referred to by pointers.

9 Q Well, when you say Spotlight Store, what does  
10 consist of?

11 A Consists of a large complex of data structures  
12 which contain metadata and content index and pointers to  
13 the underlying data units.

14 Q So you said there's Metadata Store and the  
15 content index, right?

16 A (No response.)

17 Q Yes?

18 A Yes.

19 Q You said that's -- that's -- that's part of  
20 the mainstream --

21 A That's right.

22 Q -- in your view?

23 A And the data structures associated with  
24 responding to queries.

25 Q Anything else?

1 A The underlying files.

2 Q And the underlying files?

3 A Yes, sir. As I've explained in my report.

4 MR. RANDALL: Can you pull up LX3 for a  
5 minute? LX3.

6 Q (By Mr. Randall) All right. So this is a  
7 visual of Apple's system, this hierarchical file system  
8 of filenames and directories. Do you see that on the  
9 left-hand side?

10 A I see a hierarchical window on the left, yes.

11 Q All right. So are you including that  
12 information, that file directory, and the documents  
13 stored in those files in your mainstream?

14 A I'm sorry. I'm not quite sure what you're  
15 referring to.

16 Q I'm referring to the file system in the Apple  
17 operating system. Are you including that in your  
18 mainstream? Yes or no.

19 A The contents of the file system are included  
20 by reference from the Spotlight Store, yes.

21 Q All right. So the file system is included in  
22 your mainstream, right?

23 A The files in the file system are included.

24 Q Okay. So what -- what in the Apple operating  
25 system, including their -- so the filenames and the

1 directories required, those are included, too, in  
2 your -- in your mainstream?

3 A To the extent that a directory is a data unit,  
4 then it would also be one of those items.

5 Q So you just include in your mainstream  
6 everything in the Apple operating system that is  
7 utilized to store documents, even the folders in the  
8 file system, right?

9 A No. Actually, as far as I -- I didn't  
10 investigate this, but as far as I know, the folders are  
11 not included in the Spotlight Store.

12 Q Everything, as it's organized in the folders,  
13 is included in your mainstream; is that right?

14 A All the files or data units that are referred  
15 to from the Spotlight Store would be included, and those  
16 are in the file system.

17 Q So you're saying all these documents in these  
18 files and folders, you're going to say are included in  
19 your mainstream; is that right?

20 A To the extent that they are in -- that they  
21 are printed to from the Spotlight Store, yes.

22 Q What's excluded from your mainstream in the  
23 Apple operating system?

24 A Well, the Spotlight Store, I believe, does or  
25 can exclude system files and hidden files and other

1 things that are not of interest to the user.

2 Q Who makes that determination whether the files  
3 are excluded from the mainstream and to the user or not?

4 A There's a default determination by the  
5 operating system, and then the user can further  
6 designate files or types of files they wish to exclude.

7 Q So a user can designate certain files that  
8 they are interested in and certain documents that they  
9 are interested in the Apple operating system and exclude  
10 them from what you consider to be this mainstream,  
11 right?

12 A Actually, just the opposite. They would  
13 designate the ones they are not interested in in that  
14 case, and then they would be excluded from the Spotlight  
15 Store.

16 Q No. Is there any ability within the Apple  
17 operating system to exclude documents from Spotlight?

18 A Yes.

19 Q And those documents would not be in the  
20 mainstream, correct?

21 A That's right.

22 Q All right. And, therefore, if those documents  
23 were of interest to the user, for instance, for whatever  
24 reason, if a parent or adult wanted to take certain  
25 documents and remove them from the mainstream because

1 they wanted to make sure their children didn't have  
2 access to them for whatever reason, then those documents  
3 would not be in the mainstream, right?

4 A Well, that's an interesting hypothetical. I  
5 believe any document that the user designates that he  
6 doesn't wish in the Spotlight Store would fall into the  
7 category of not of interest to the user.

8 Q So you think that if a user --

9 MR. RANDALL: Strike that.

10 Q (By Mr. Randall) The Apple operating system  
11 does permit users to determine what documents they want  
12 in the Spotlight and what documents they do not want in  
13 the Spotlight, correct?

14 A Not exactly.

15 Q Well, do they -- does the Apple operating  
16 system allow users to specify certain types of documents  
17 that will not be stored in what you consider to be the  
18 mainstream?

19 A Yes.

20 Q All right. And if those documents are of  
21 interest to the user, then you would agree that the  
22 Apple operating system does not infringe those claims,  
23 right?

24 A No. I believe that the definition of interest  
25 to the user is determined by how the user designates

1 what doesn't go in the main store.  
2 Q All right. Let me just make this clear. The  
3 Apple operating system allows for the user to make the  
4 determination that certain documents will not be  
5 included within what you consider to be the mainstream,  
6 right?

7 A Yes.

8 Q Okay. And you would agree that in order to  
9 infringe those claims that a -- all documents and data  
10 units have to be included in the mainstream, right?

11 A No, that's not quite what it says.

12 Q So you don't believe that all documents and  
13 data units have to be included in the mainstream in  
14 order to satisfy the claim elements?

15 A All data units, yes.

16 MR. RANDALL: Pull up LX14, please.

17 Q (By Mr. Randall) The Court has defined  
18 mainstream to mean a stream that is inclusive of every  
19 data unit or document received by or generated by the  
20 computer system.

21 Do you see that?

22 A Yes.

23 Q And so the mainstream has to include every  
24 data unit or document received by or generated by the  
25 computer, correct?

1 A Yes.

2 Q And if it does not, it does not infringe,  
3 right?

4 A Correct.

5 Q All right. And Apple's operating system  
6 allows a user to define certain documents and data units  
7 that the computer receives or is generated by the  
8 computer to reside and be maintained outside of what you  
9 consider to be the mainstream, right?

10 A Not exactly. The operating system allows the  
11 user to designate certain documents to not be data units  
12 within the meaning of the Court's construction.

13 Q All right. And therefore, the system wouldn't  
14 infringe, right?

15 A I'm sorry?

16 Q Never mind.

17 MR. RANDALL: Can you pull up LX8,  
18 please?

19 Q (By Mr. Randall) Now, this is the Court's  
20 construction of a timestamp to uniquely identify. And  
21 the Court has construed that claim term to mean: A  
22 timestamp to identify means a date and time value that  
23 uniquely identifies each document, right?

24 A I think what -- be careful. You first said  
25 timestamp to uniquely identify. This is the Court's

1 construction of timestamp to identify.

2 Q Right. So timestamp to identify means a date  
3 and time value that uniquely identifies each document,  
4 right?

5 A That is what it says.

6 Q All right. And the Apple operating system  
7 does not have a date and time value that uniquely  
8 identifies each document, correct?

9 A I -- I believe it does.

10 Q And when it says uniquely identifies each  
11 document --

12 MR. RANDALL: Strike that.

13 Q (By Mr. Randall) What is the date and time  
14 value that you're referring to?

15 A It's any one of the time-based metadata items,  
16 together with the tiebreaker number, because it's  
17 identifying the -- the document within the stream, where  
18 it goes in the time sequence.

19 Q So you're saying there's a date and time  
20 value. Could be a range of date and time values. Is  
21 that your opinion?

22 A No.

23 Q Is it date and time value, along with other  
24 information?

25 A The timestamp, as I've explained it in my

1 report, is the date and time value of at least one of  
2 the metadatas, together with a tiebreaker number.

3 MR. RANDALL: Would you pull up LX9,  
4 please?

5 Q (By Mr. Randall) All right. So this is  
6 Apple's -- a representation of Apple's operating system,  
7 correct?

8 A (No response.)

9 Q Yes?

10 A I'm sorry. Are you referring to this whole  
11 window here?

12 Q Yes, this window here. Do you see it?

13 A This looks like a Finder window, yes.

14 Q All right. And you see these dates and times  
15 associated with these documents and files. They are all  
16 the same, right?

17 A The display does show a time and date value in  
18 the display that is the same, yes.

19 Q All right. And so which -- which time value  
20 uniquely identifies each of those documents?

21 A It would be the underlying date and time  
22 value, together with the tiebreaker number.

23 Q So, for instance, to draw an analogy, we all  
24 have -- if -- if Social Security numbers are assigned to  
25 everybody here, that would uniquely identify each person

1 here in the courtroom, right?

2 A That is one way to do that.

3 Q All right. Right.

4 But if we all -- if a number of us have the  
5 same birthday, that wouldn't uniquely identify each  
6 individual, would it?

7 A That's correct.

8 Q All right. And so in that analogy, the birth  
9 date would not uniquely identify each individual, right?

10 A That's right.

11 Q You'd have to add the Social Security number,  
12 right?

13 A Right.

14 Q All right.

15 A Just like the students on the list.

16 Q And so Apple doesn't -- in its operating  
17 system, does not have a date and time value that  
18 uniquely identifies each document, right? You have to  
19 add something else, like the Social Security number,  
20 right?

21 A For the most part, it does uniquely place it  
22 in the time stream, but the tiebreaker value is needed  
23 to uniquely identify it in the time sequence.

24 Q I'm not talking for the most part. It --  
25 Apple's operating system does not have a date and time

1 value, like a birthday, that uniquely identifies each  
2 document in the system, right? You and your opinion  
3 relies on adding something else, like a Social Security  
4 number, right?

5 A My -- in my opinion, I add the tiebreaker  
6 number, because I know it's -- a person of ordinary  
7 skill in the art would understand that a timestamp  
8 always has this tiebreaker available.

9 Q Well, the tiebreaker number is the number that  
10 is distinguishing these documents, not the date and time  
11 value, right?

12 A Not at all. They're in the sequence of the  
13 time value; and then when they're equal, there is a  
14 tiebreaker to place uniquely in that sequence.

15 Q Does -- I'm asking you just exclusively, a  
16 date and timestamp -- does Apple's operating system have  
17 a date and timestamp, without adding the Social Security  
18 number or whatever this other number is, to uniquely  
19 identify each document in the system?

20 A Yes, it has a timestamp that uniquely  
21 identifies it in this time sequence.

22 Q Each document in the system from each other?

23 A Yes.

24 Q Okay. Well, here, none of these timestamps  
25 uniquely identify -- would you agree that none of these

1 timestamps alone uniquely identify these documents from  
2 the other documents?

3 A These are not the timestamps.

4 Q Do any of these timestamps uniquely identify  
5 the document from the others?

6 A These are not the timestamps. What's shown  
7 here is not the timestamps.

8 Q Your opinion -- in rendering your infringement  
9 opinion, you have to rely on this other number to add to  
10 the time, correct?

11 A I rely on my understanding of what a timestamp  
12 is, and that's what it is.

13 Q No. You're adding this other number to it,  
14 right?

15 A No. I'm including that other number as is  
16 normally the case in the computer science usage of  
17 timestamps.

18 Q I'm not talking about the normal computer  
19 science; I'm asking about the claim language. You  
20 realize that, right?

21 A Yes.

22 Q So the claim language and -- as the Court has  
23 defined it, requires that a date and timestamp uniquely  
24 identify each document, the date and timestamp.

25 You realize that, right?

1       A     I think you've misspoken, but you mean the  
2 date and time value, right?

3       Q     Date and time value, right.

4       A     The timestamp I have looked at in the Apple  
5 system, it does uniquely identify this in the time  
6 sequence.

7       Q     That's not what I'm asking.

8       A     And they always come out in the same order.

9       Q     That's not what I'm asking you. I'm asking  
10 you, if the date -- I'm saying -- just apply the claim  
11 language and just apply the Court's instruction, all  
12 right?

13           A date and time value that uniquely identifies  
14 each document in the system, you have to include this  
15 other number in order to uniquely identify each  
16 document, right?

17       A     To compose a timestamp that uniquely  
18 identifies, that's correct.

19       Q     All right.

20           MR. RANDALL: No further questions.

21           MR. DIBERNARDO: Your Honor, we have no  
22 questions for Dr. Levy.

23           THE COURT: Thank you. You may step  
24 down.

25           All right. Who will be your next

1 witness?

2 MR. CARROLL: Dr. Bud Tribble under the  
3 adverse party rule, Your Honor.

4 THE COURT: All right. Dr. Tribble.

5 MR. RANDALL: Your Honor, may we approach  
6 the bench?

7 THE COURT: Yes, you may.

8 (Bench conference.)

9 MR. RANDALL: Judge, this witness is not  
10 on their witness list. He never was on their witness  
11 list. He was never on their witness list ever. In  
12 fact, when we disclosed him during discovery and offered  
13 him for deposition, they passed and said: No, we don't  
14 want to take his deposition.

15 When we added him to our witness list in  
16 this case, they said: We want to exclude him from the  
17 trial all together.

18 And then we said: We're going to call  
19 him in our case-in-chief.

20 And they said: Well, we want that  
21 deposition now, and the Court was courteous enough to  
22 give them that deposition.

23 But now we want to put him on in our  
24 case, and they -- there's no reason why they should be  
25 able to put him in their case, because he's never been

1 on their witness list. And they're just disrupting our  
2 case.

3 It's the same -- tantamount to us  
4 bringing a corporate representative, wanting to  
5 introduce our company, and they say: Oh, great. At the  
6 last minute, we'll put him on our witness list and cross  
7 him before you put him on.

8 And we think it's unfair.

9 THE COURT: Okay. You're going to put  
10 him on as a witness, right?

11 MR. RANDALL: Yeah, we are.

12 THE COURT: And they want to call him as  
13 an adverse witness. So what's the -- it's just a timing  
14 issue, as far as you're concerned?

15 MR. RANDALL: Well, it is. But also they  
16 would -- it's a notice issue, too. They notified us  
17 late last night that they wanted to add him to the  
18 witness list late last night. They've had two years.

19 MR. CARROLL: Your Honor, that's not  
20 true. We put on the pretrial order that we were going  
21 to call their -- whoever they designated as their  
22 corporate representative as an adverse witness. That's  
23 who they chose.

24 And we asked you if we could depose him,  
25 and sure enough, when we deposed him, he had an e-mail

1 about Dr. Gelernter, and we talked to him about that.

2 THE COURT: Okay. That's fine.

3 Objection is overruled.

4 MR. RANDALL: Okay.

5 (Bench conference concluded.)

6 MR. CARROLL: Call Dr. Tribble, Your  
7 Honor, under the adverse party rule.

8 THE COURT: Yes.

9 Have you been sworn?

10 THE WITNESS: As part of this --

11 THE COURT: Were you sworn the first day?

12 THE WITNESS: Yeah.

13 THE COURT: Okay. That's fine. Take  
14 your seat. They last more than 24 hours.

15 MR. CARROLL: If the Court please, Your  
16 Honor.

17 May I, Your Honor?

18 THE COURT: Yes, you may.

19 MR. CARROLL: Thank you, Your Honor.

20 GUY LESLIE "BUD" TRIBBLE, M.D., Ph.D., PLAINTIFF'S  
21 WITNESS, PREVIOUSLY SWORN

22 DIRECT EXAMINATION

23 BY MR. CARROLL:

24 Q Dr. Tribble, good morning.

25 A Good morning.

1 Q You and I met a couple of days ago; and if I  
2 got it right, your name is Bud Tribble, correct?

3 A Bud is my nickname. My legal name is Guy  
4 Leslie Tribble.

5 Q All right. And if I got it right, you are  
6 both a medical doctor and a Ph.D., correct?

7 A That's correct.

8 Q And if I got it right, you have been an  
9 employee of Apple on and off since 1980, correct?

10 A That's correct.

11 Q And you've been with them continually -- or  
12 continuously, whichever is right -- since 2001?

13 A That's correct. The most recent, yeah.

14 Q I beg your pardon?

15 A Yes. That's the most recent time I joined  
16 Apple.

17 Q And if I got it right, you are a computer  
18 scientist.

19 A Well, I'm not formally -- my degree is not in  
20 computer science. My degree is in physics and  
21 neurophysiology, but I practice computer science as part  
22 of my job at Apple.

23 Q That's certainly what they pay you to do.

24 A It sure is.

25 Q And if I got it right, you are two levels down

1 from Steve Jobs.

2 A That's correct. The person that I report to  
3 reports to Steve Jobs.

4 Q And that person is the fellow we've heard  
5 about with -- from one of the depositions, Mr. Serlet.

6 A That's correct, Bertrand Serlet.

7 Q Bertrand Serlet.

8 And if I got it right, you, in Apple speak,  
9 are considered an executive, correct?

10 A Yes. I'm a vice president of Apple.

11 Q And Mr. Serlet is considered a senior  
12 executive, correct?

13 A That's correct.

14 Q Okay. And, of course, at the top of the  
15 pyramid would be Mr. Jobs.

16 A That's true. He's the Chief Executive Officer  
17 of Apple.

18 Q And he is a personal friend of yours,  
19 Mr. Jobs, is he not?

20 A Yes. I've known him since around 1979 or  
21 1980.

22 Q And you -- you speak with him occasionally  
23 about work, do you not?

24 A I do.

25 Q And you, for the purpose of this trial, are

1 Apple, correct?

2 A I am representing Apple.

3 Q Dr. Tribble, we've heard a lot about e-mails  
4 that were generated by Steve Jobs and by others in  
5 connection with the ultimate issue that the jury has to  
6 decide; and that is, did Apple or did not Apple take  
7 Dr. G's intellectual property? You've been through the  
8 opening statements and the trial on that, correct?

9 A That's correct.

10 Q And one of the jobs that you have in this case  
11 is to come to the -- to the courtroom and talk to the  
12 jury about those e-mails, if you're asked, correct?

13 A Correct.

14 Q And one of the things that we know happened is  
15 that you actually spoke to Mr. Jobs, your friend, about  
16 these e-mails before you came to Tyler, Texas; isn't  
17 that true?

18 A That's correct.

19 MR. CARROLL: And let's put the July 2nd  
20 Jobs e-mail up there, please.

21 Q (By Mr. Carroll) And if I got it right,  
22 Dr. Tribble, you talked to your friend, Mr. Jobs, about  
23 this, and he told you that he couldn't remember a thing  
24 about this, correct?

25 A Yes. He has no recollection of this e-mail.

1 Q And he knew you were coming to Tyler, Texas,  
2 did he not?

3 A I believe he knew I was going to be  
4 representing Apple.

5 Q And for whatever reason, he's not coming, is  
6 he?

7 A No, he's not present here.

8 Q Well, I mean, he's not coming, is he?

9 A Not that I know of.

10 Q Okay. I mean, you didn't see him out there in  
11 the hall, did you?

12 A No, I didn't.

13 Q Because I didn't.

14 So for whatever reason, this case isn't  
15 important enough for Steve Jobs to come to Tyler; isn't  
16 that true?

17 A Well, we believe this case is very important.

18 Q But not important enough for Steve Jobs to  
19 come.

20 A He's not here, but we have several top  
21 executives and managers here.

22 Q I understand that, but wouldn't you agree with  
23 me that this one e-mail is a significant piece of  
24 evidence for the jury to consider?

25 A I think it's one of a lot of pieces of

1 evidence for them to consider.

2 Q Okay. But my -- my question -- and if you  
3 disagree, just tell me, because we disagree, apparently,  
4 about a lot of things. And when I say we, the company  
5 and Mirror Worlds.

6 But my question is: Wouldn't you agree that  
7 this e-mail from the top guy at Apple regarding our  
8 company is a very significant piece of evidence for the  
9 jury to consider?

10 A It's a piece of evidence. What -- one thing  
11 he told me is that he sends e-mails like this all the  
12 time, asking people to look into things and to follow up  
13 on things.

14 Q Okay. You were in court yesterday when I did  
15 a very poor job of reading questions to my law partner  
16 from the deposition of Mr. Lindsay.

17 You remember when I was coughing all the time?

18 A I do.

19 Q And I'm sorry about that. I hope that -- I'm  
20 armed with -- my daughter bought me cough drops today,  
21 so I'm hoping I won't have that again today.

22 Did you -- there I go again.

23 But did you hear when Mr. Lindsay said that  
24 this was the first and the only time that Steve Jobs had  
25 ever made the request that he made of Mr. Lindsay in

1 that e-mail?

2 Did you hear that?

3 A I did.

4 Q You did not?

5 A I did.

6 Q Oh, you did.

7 So that, at least for Mr. Lindsay, who does  
8 give testimony in this case under oath, is different  
9 from what Mr. Jobs told you about his practice, correct?

10 A Well, Mr. Lindsay is one of 30,000 people at  
11 Apple, and I'm not -- I'm not sure Steve sends e-mails  
12 like this to all 30,000 of them.

13 Q Right. But the one person that we know of  
14 from the company, Apple, who responded to this  
15 direction, this please check out this software ASAP, was  
16 Mr. Lindsay. You heard that testimony.

17 A Yes, I did.

18 Q Because nobody else on that e-mail string,  
19 Mr. Serlet or Mr. Ording or Mr. Forstall, nobody else on  
20 that e-mail string did what the boss said to do; isn't  
21 that true?

22 A That's true. Maybe that's because they get  
23 e-mails like that quite often from Steve.

24 Q Well, I don't know whether that's so or not;  
25 but the truth, the facts that are in front of this jury

1 are that the only Apple person to follow the boss's  
2 orders was this man, Lindsay, correct?

3 A Correct.

4 Q That's all the jury's heard, correct?

5 A Correct.

6 Q Okay. And the only thing the jury knows from  
7 this man, Lindsay, who followed the boss's orders, was  
8 that this was the first and the only time he had gotten  
9 an instruction from the boss just like that; isn't that  
10 true?

11 A In his case, this seems to be the only time  
12 Steve sent an e-mail like -- like this.

13 Q That's what Mr. Lindsay said.

14 A That's what he said.

15 Q Okay. Now, you understand that there has  
16 been -- you've been here through the jury pick -- well,  
17 you weren't here for the jury pick.

18 A I was not here for the jury selection.

19 Q But you've been here since the case opened on  
20 Monday.

21 A Yes.

22 Q And you understand that your company, through  
23 your lawyer, takes the position that it's an open  
24 question with the jury as to whether Mr. Jobs knew and  
25 Mr. Lindsay knew, when he met with our people a month

1 after this, that we had patents.

2 A Well, can you -- can you --

3 Q Yeah. Here's my point.

4 A -- say the question --

5 Q Is Apple taking the position that as of the  
6 date that Steve Jobs sent that e-mail, which Mr. Lindsay  
7 acted on -- is it Apple's position that Apple didn't  
8 know that Micro -- I mean, that Mirror Worlds had  
9 patents?

10 A Well, as this case came up, one of the things  
11 I did is talk to several of the managers, Bertrand  
12 Serlet and then others that have been mentioned, and I  
13 asked them if -- if they were aware of any patents or  
14 had seen any patents or read any patents, and their  
15 answer to me was, no, they had not.

16 Q Okay. And again, are any of those folks out  
17 in the hall where we can question them about those  
18 answers they gave to you out in California?

19 A I believe some of them are -- are here and  
20 will be testifying.

21 Q Let's look at your boss's e-mail. He says:  
22 Please check out this software ASAP. It may be  
23 something for our future, and we may want to secure a  
24 what?

25 A A license.

1 Q You're not telling the jury, are you,  
2 Dr. Tribble, that the word license in that e-mail means  
3 anything other than a license for patented technology,  
4 are you?

5 A Well, it -- it may. I can't tell from the  
6 e-mail whether it means a license for the patent or a  
7 license for the software. But, yeah, it refers to  
8 license, and it's not unusual for us to look into  
9 licensing software that we -- or patents, either one.

10 Q It certainly doesn't mean that he wanted to  
11 check out if he needed a hunting license, right?

12 A No. I think it says license for software or  
13 for patents. I agree, you know, it could have -- it  
14 could have been either one.

15 Q Okay. So what the boss told his people,  
16 including Mr. Lindsay, was to find out if we -- if we  
17 may want to secure a license.

18 Now, logically, logically -- you're a  
19 scientist, correct?

20 A Sure.

21 Q And logically, as a scientist, if you were  
22 looking at that e-mail, wouldn't you conclude that the  
23 first thing that any of those men would do is to find  
24 out if there's anything to license?

25 That makes sense, doesn't it?

1       A     Sure. And there could be lots of things to  
2 license.

3       Q     And they would want to know if there were lots  
4 of things to license, if they were going to do what the  
5 boss said to do, correct?

6       A     Well, I think, logically, the first thing you  
7 would do is -- is see if there was anything that was of  
8 value there to Apple to take the time to investigate.

9       Q     Okay. But one thing that we know for sure --  
10 actually two things that we know for sure from this  
11 e-mail from the boss, is that he is in a rush for an  
12 answer, correct? Because he uses the initials ASAP not  
13 once but twice, correct?

14      A     Well, I would say Steve is always in a rush  
15 for an answer.

16      Q     Well, and it's borne out in this e-mail, is it  
17 not?

18      A     Sure.

19      Q     He wanted action, and he wanted action so much  
20 that in a two-line e-mail, he used ASAP in both lines,  
21 didn't he?

22      A     I would say that's pretty typical for Steve.

23      Q     Okay. And people know that if it's typical  
24 for Steve, they better do what Steve wants, correct?

25      A     Yes.

1       Q     And one of the things that Steve wants is a  
2 report if we -- whether we may want to secure a license.

3              So isn't it logical, from the evidence that  
4 the jury has in front of it, that somebody in your  
5 organization would figure out what there was there to  
6 license and then decide if you wanted to license?

7              That makes sense, doesn't it?

8       A     Well, I mean, yeah. Following in order, the  
9 first thing you'd do is check out the software.

10          The second thing you'd do is see if it may be  
11 something for our future.

12          And then the third thing you'd do is see if we  
13 may want to secure a license.

14       Q     Okay. And one of the answers -- questions and  
15 answers that I read to the jury from Mr. Lindsay's  
16 deposition -- on Page 72, here was his answer: My  
17 recommendation was to not pursue licensing of Mirror  
18 Worlds' technology.

19          Did you hear that yesterday?

20       A     Yes, I did.

21       Q     So wouldn't you agree as a scientist that,  
22 logically, the only evidence that the jury has in front  
23 of it is that Mr. Lindsay, who's following the boss's  
24 orders, figured out that Mirror Worlds had patents to  
25 license and said: In my recommendation, we don't want

1 to pursue the licensing of this technology?  
2 A Well, no. I mean, it's -- if Steve -- you  
3 know, when Steve sends me e-mails like this, the first  
4 thing I do is look at the technology and see if it is of  
5 interest to Apple or of value to Apple before I even  
6 look into whether there are licensing terms or software  
7 licensing or patent licensing or technology licensing  
8 terms.

9 Sometimes it is of interest, and we do license  
10 it, and we pay money for it; sometimes it's not of  
11 interest, and we walk away.

12 Q Okay. Let me try it again.

13 Here's my question: On Line 24 of Page 72,  
14 the deposition that -- of Mr. Lindsay, who went to the  
15 meeting, was instructed to do this from the boss, here's  
16 what he told the jury: My recommendation was to not  
17 pursue licensing of Mirror Worlds' technology.

18 And are you telling the jury that that does  
19 not mean, logically, that Mr. Lindsay figured out that  
20 we had patents?

21 A I can't tell from that statement whether he  
22 knew we had -- they had patents or not. It could have  
23 been the software.

24 Q Okay.

25 A But I agree, it could -- it could have been

1 the patent.

2 Q Okay. So if I get it right, Dr. Tribble, you  
3 checked out with a number of folks at Apple, whose names  
4 the jury have heard about, who were included on these  
5 e-mails, who looked at -- at Mirror Worlds' website, and  
6 nobody remembers a thing; is that true?

7 A They didn't -- what I asked them about  
8 specifically is if they knew about any patents or had  
9 seen any patents or read any patents to deal with Mirror  
10 Worlds, and the answer was no.

11 Q So the answer to my question is: Nobody  
12 remembers a thing, correct?

13 A Nobody remembered a thing in my discussions  
14 with them with respect to patents.

15 Q Okay. So taking that as true, the only  
16 evidence the jury has in front of it is the evidence  
17 that you heard yesterday from Mr. Satow, and you heard  
18 the day before from Dr. G, that the issue -- that the  
19 issue of patents was all over that meeting, right?

20 MR. RANDALL: Object, Your Honor. That  
21 misstates the testimony. I don't think Mr. Gelernter  
22 testified that he was at the meeting.

23 THE COURT: Overruled. The jury will  
24 recall the testimony.

25 Q (By Mr. Carroll) You want me to repeat the

1 question, or do you remember it?

2 A Can you -- can you please repeat the question?

3 Yeah.

4 Q Sure. Sure.

5 MR. CARROLL: Where -- where is the pen?

6 Q (By Mr. Carroll) You ever play dominoes?

7 A Sure.

8 Q Do you?

9 A I have played, yeah. I have kids, and they  
10 like to play.

11 Q You know how you keep score? I don't know how  
12 y'all do it in California, but this is how we do it  
13 here. We have us and them. Have you ever put it that  
14 way? It really is easy to keep up with.

15 Can you see that?

16 MR. CARROLL: May I come over here?

17 Q (By Mr. Carroll) So on the -- on the them  
18 side, and that's going to be you or your company --

19 MR. CARROLL: I was trying to figure out  
20 who you were.

21 [Laughter]

22 MR. CARROLL: I thought I was being  
23 attacked. Thank you, though.

24 Okay. Here we go.

25 Q (By Mr. Carroll) And so the question is: The

1 evidence of whether your company knew about our patents  
2 when you went into this meeting, and we have Satow, who  
3 said yes; we have Dr. G, who says yes; we have the  
4 e-mail from your boss, Mr. Jobs, who refers to  
5 licensing; we have the testimony from Mr. Lindsay, who  
6 went to the meeting and did what the boss said to do,  
7 saying that my recommendation is no to pursuing  
8 licensing; and we have testimony that Mr. Lindsay looked  
9 on our website -- you heard that, did you not?

10 A Yes.

11 Q And we have testimony from Dr. G and Mr. Satow  
12 that on our website, it mentioned our patents.

13 Remember that?

14 A Yes.

15 Q And on your side, we have people who don't  
16 remember, correct?

17 A Correct.

18 Q So that's at least the scorecard as of now for  
19 the jury, is it not, on that issue?

20 A This is the first trial I've been in, and, you  
21 know, it seems to me that our side hasn't had a chance  
22 to go yet.

23 Q Well, I'm asking you. You are your side, and  
24 you, in fact, have a chance, and you told the jury, if I  
25 got it right -- and if I don't -- if I don't, tell me,

1 but if I get it right, one of the things you did over  
2 the last couple of months is try to get to the bottom of  
3 this question, and that is, did we or didn't we know  
4 what these e-mails suggest?

5 And if I got it right, your answer was, nobody  
6 remembers; is that true?

7 A That's -- that's pretty close to true. It --  
8 that -- that's what people told me, that they had no  
9 recollection of any patents or discussion of patents.

10 Q So one of the things the Judge has told the  
11 jury -- and they've heard this before -- and that is,  
12 that -- under the rules of the law is that we have to  
13 tip the scales to carry the burden of infringement, and  
14 that is proof that more likely than not, what we say is  
15 so.

16 You've heard him tell the jury that, correct?

17 A Yes.

18 Q And so right now, on your side, we've got  
19 everybody who doesn't remember, and on our side, we've  
20 got all this stuff, so would you agree with me that  
21 we've at least tipped the scales?

22 MR. RANDALL: Your Honor, I'm going to  
23 object. That's argumentative. It has nothing to do  
24 with infringement. There's no claims elements, nothing.

25 THE COURT: Restate your question,

1 Counsel.

2 MR. CARROLL: I'll move on, Your Honor.

3 Q (By Mr. Carroll) One of the things that came  
4 up in Mr. Satow's testimony yesterday --

5 MR. CARROLL: Would you put up

6 Exhibit 1183, James? (Coughing.) Excuse me.

7 And lift out the -- the reference -- lift  
8 out that reference to the noted scientist, David  
9 Gelernter.

10 Q (By Mr. Carroll) You were in the courtroom  
11 yesterday when Mr. Satow testified about this e-mail  
12 that he sent to Frank Weil, who used to be the chairman  
13 of Mirror Worlds.

14 Remember that?

15 A Yes.

16 Q Okay. And you'll remember, along with the  
17 jury, that the reason Satow sent this e-mail is that in  
18 2007, he became aware of this article from this magazine  
19 or paper called Information Week.

20 Do you remember that?

21 A Yes.

22 Q Do you know of that paper?

23 A Yeah. I've seen that -- that. It's sort of  
24 like a weekly magazine.

25 Q I mean, is it -- is it a rag, or do they know

1 what they're talking about?

2 A I think it would be known as a trade rag.

3 Q A trade rag?

4 A A trade rag.

5 Q Okay. And when you say trade rag, is it  
6 something, you know, like you see at the grocery store  
7 when it talks about, you know, a bodiless head living  
8 for six days, or is it better than that?

9 A It's sort of the equivalent for our industry.

10 It's sometimes got the computer equivalent of a bodiless  
11 head, but it's also got interesting, you know, news  
12 wires and things like that.

13 Q Okay. Well, let's pick up the second page  
14 from this report. I mean, do you read the thing?

15 A Occasionally.

16 Q Okay.

17 MR. CARROLL: See if you can lift that  
18 out.

19 Q (By Mr. Carroll) Here's what it said: The  
20 upcoming Leopard version of Apple's Mac OS X operating  
21 system includes some 300 new features, according to the  
22 company. Among them are a few notable omissions, minor  
23 disappointments, and hidden gems.

24 Then it says: Back in 2001, noted computer  
25 scientist, David Gelernter, started a company called

1 Scopeware that proposed a similar scheme to view files  
2 in a timeline.

3 The market wasn't ready to rethink the desktop  
4 back then. Jobs and his team have refined Gelernter's  
5 vision, and this time it looks more promising.

6 You see that, do you not?

7 A I do.

8 Q Do you -- is that true, what they -- what the  
9 magazine is saying?

10 A Well, I think it's that particular  
11 journalist's opinion, and he's --

12 Q Well, I'm asking for your opinion. Is it true  
13 that what happened was that: Back in 2001, noted  
14 computer scientist, David Gelernter, started a company  
15 called Scopeware that proposed a similar scheme to view  
16 files in a timeline; that the market wasn't ready to  
17 rethink desktop back then; and that Jobs and his team  
18 had refined Gelernter's vision.

19 Is that true?

20 A No, I don't think that's true.

21 Q What part of it is not true?

22 Back in 2001, we know Dr. G started a company,  
23 it says, called Scopeware.

24 A That part of it is true.

25 Q That part's true.

1           And that it proposed -- and forget the word  
2 similar. I understand you disagree with that, but he  
3 proposed a scheme to view files in a timeline, did he  
4 not?

5       A    Yeah. I was disagreeing with the word  
6 similar.

7       Q    Sure. Because if you agreed with that, we  
8 could quit right now, couldn't we, right?

9       A    Maybe.

10      Q    Okay. And the next comment is: The market  
11 wasn't ready to rethink the desktop.

12           Is that true or false?

13      A    Well, I -- you know, the market's a broad  
14 thing, and it's hard to say what they were and weren't  
15 ready to do. There could be a lot of reasons why  
16 Scopeware wasn't successful. I don't know if it was  
17 because the market wasn't ready or not.

18      Q    I'm not even -- I'm not even asking you to go  
19 that far. I'm just asking you to accept, reject, or say  
20 you don't have an opinion about the assertion that the  
21 market wasn't ready to rethink the desktop in 2001.

22      A    I don't have an opinion about that, I guess.

23      Q    So -- so you just -- you don't know about that  
24 point.

25      A    Well, in my -- in my experience, the market's

1 always ready for something new, as long as it's good.

2 Q So you do have an opinion.

3 A Okay. I do have that opinion, yeah.

4 Q Okay. And that's fine, whatever it is.

5 And then I know you disagree with the comment  
6 that Jobs and his team have refined Gelernter's vision,  
7 correct?

8 A Correct.

9 Q You disagree.

10 A I disagree with that.

11 Q Okay. Now, what we know about this e-mail and  
12 this reference to this magazine is that this came out in  
13 the deposition that your lawyers took of Mike Satow -- I  
14 think it was last spring.

15 Did you know that?

16 A I didn't know that until -- until now.

17 Q Do you know whether Apple has taken issue with  
18 the magazine and told them that they better retract that  
19 story; that it's not true; that it accuses them of  
20 something they didn't do?

21 A I don't know that -- you know, magazines  
22 publish all sorts of stuff about Apple. If we tried to  
23 get them to retract everything we didn't think was true,  
24 it would be a -- more than a full-time job.

25 Q Okay. But would you agree with me that a fair

1 reading of that magazine article is just that: That you  
2 guys, by refining something that Gelernter had in 2001,  
3 are building on what he did?

4 And I understand you disagree with that.

5 A Yeah. That's -- that's what the article is  
6 saying.

7 Q Right. And one of the things that we know --  
8 I say we know. There's no mention in there in that  
9 article, obviously, as to whether there was, for  
10 instance, a license between Gelernter and Apple, is  
11 there?

12 A No.

13 Q No mention.

14 And if, in fact, that technology of Dr. G's  
15 had been licensed, then it would be absolutely okay for  
16 Apple to refine it, if that's what they wanted to do;  
17 isn't that true?

18 A Can -- can you state that --

19 Q Yes, sir.

20 A -- question again?

21 Q If, in fact, Apple had a license from Mirror  
22 Worlds, then it, in fact, would have the legal right to  
23 refine that idea and do anything it wanted with it,  
24 correct?

25 A A license to Gelernter's vision?

1 Q To patents.

2 A To patents.

3 Q Yeah. If you had a patent license, you could  
4 refine it and -- and use it, could you not?

5 A Well, we -- we license patents; and depending  
6 on the terms that we license them under, we're allowed  
7 to do things and not do other things.

8 So it depends -- it would depend on the terms  
9 of how we license those -- any particular patent.

10 Q Okay.

11 THE COURT: Mr. Carroll, whenever you get  
12 to a stopping point --

13 MR. CARROLL: Well, this is great, Your  
14 Honor.

15 THE COURT: All right. We're going to  
16 take our morning recess at this time.

17 Ladies and Gentlemen of the Jury, I have  
18 some criminal matters I need to take up. I anticipate  
19 this will probably take anywhere from 15 to 30 minutes.

20 So enjoy your morning recess, and we'll  
21 be in recess until probably 11:00 or 11:15, somewhere in  
22 there. We'll let you know.

23 I'll -- we'll take a very short recess so  
24 that the attorneys in the patent case can just kind of  
25 stack their stuff up. It will be fine on the tables but

1 make way for the lawyers in the criminal cases.

2 And as soon as everybody's ready on that,

3 Ms. Ferguson, let me know, and we'll start.

4 COURTROOM DEPUTY: Yes, Your Honor.

5 THE COURT: Be in recess.

6 COURT SECURITY OFFICER: All rise.

7 (Jury out.)

8 (Recess.)

9 COURT SECURITY OFFICER: All rise. All  
10 rise for the jury.

11 (Jury in.)

12 THE COURT: Please be seated.

13 All right. Mr. Carroll, were you through  
14 with this witness?

15 MR. CARROLL: Nope, not yet, Your Honor.

16 THE COURT: All right.

17 MR. CARROLL: If the Court please.

18 Q (By Mr. Carroll) Dr. Tribble, first things  
19 first. All my minders told me I've got the domino cards  
20 reversed.

21 So this is actually you-all with the don't  
22 remember, correct?

23 I want to be accurate.

24 A That's up to you, yeah.

25 Q I mean, that's your testimony. Y'all are

1 the -- you remember we went through this?

2 A Yes.

3 Q I don't want to plow old ground, but here's  
4 the stuff that we brought, and thus far, you-all don't  
5 remember?

6 A Well, yeah, but I'm not sure how Lindsay not  
7 remembering is on your side of the board versus art.

8 I'm not sure that --

9 Q Well, what Lindsay said -- you remember we  
10 talked about this before the break -- what Lindsay said  
11 was he used the term: I didn't think we should pursue  
12 licensing.

13 A Correct, yes.

14 Q But I didn't mean to suggest to you that  
15 Lindsay remembered.

16 A Okay.

17 Q But what Lindsay said was he -- his  
18 recommendation was not to pursue licensing.

19 A Correct.

20 Q That's what he said?

21 A That's right.

22 Q Okay. Thank you for pointing that out.

23 Let me ask you this: You know that the trial  
24 is over three features of Apple products, correct?

25 A Correct.

1 Q And that's Scopeware -- I'm -- excuse me --

2 MR. CARROLL: Give me -- where's my list?

3 Q (By Mr. Carroll) Time Machine, right?

4 A Correct.

5 Q Spotlight?

6 A Correct.

7 Q And Coverflow?

8 A Yes.

9 Q Okay. Now, I understand that you weren't  
10 involved hands-on in developing any of those products,  
11 correct?

12 A That's correct. I didn't write the code for  
13 those products.

14 Q Okay. And again, going back to generally what  
15 time period we're talking about, you know from the  
16 testimony that the jury heard yesterday that there was a  
17 meeting between Mr. Lindsay -- a telephone WebEx meeting  
18 the jury heard about yesterday with Mr. Lindsay and  
19 maybe other folks on behalf of Apple and some of our  
20 folks from Mirror Worlds.

21 And according to the testimony, that meeting  
22 was September the 27th of 2001.

23 A Yes.

24 Q You heard all of that just like the jury heard  
25 it?

1 A Yes.

2 Q And so -- and we learned yesterday that at  
3 least one of the features that Apple had in its  
4 machinery at that time was a feature called Sherlock?

5 A Yes.

6 Q Like Sherlock Holmes?

7 A That's right.

8 Q Now, am I right in understanding that  
9 Spotlight, the feature that we've heard Mr. Jobs talk  
10 about on the spots, replaced Sherlock?

11 A Well, ultimately, Sherlock was removed from  
12 the product. I'm not sure the exact timing of whether  
13 it was removed exactly when Spotlight came in or a  
14 little bit off that.

15 Q Okay. But is it accurate for the jury to  
16 understand that after this September 27th, 2001 meeting,  
17 Apple introduced Spotlight, Time Machine, and Coverflow?

18 A I think all three of those were introduced at  
19 various times after that point --

20 Q Right.

21 A -- in time, yes.

22 Q And again, I don't mean to beat a dead horse,  
23 but all of those three products that we accuse of  
24 infringing our patents, sure enough were developed after  
25 this meeting?

1 A Well, I'm not sure all the development. I

2 think some of the development of --

3 Q That's fair criticism.

4 A -- those may have been going on prior to that.

5 Q Fair criticism.

6 Let me -- let me say it -- ask it this way:

7 All three were introduced after the meeting?

8 A I think that's correct.

9 Q Okay. So here's my question: Were those  
10 three products new, from Apple's standpoint?

11 A Well, they were features that were part of --

12 Q Features, I accept that.

13 Were those three features new from Apple's  
14 standpoint?

15 A They were three new features, correct.

16 Q Okay. You've heard testimony or you've seen  
17 references to e-mails from various of your colleagues at  
18 Apple talking about Dr. G.'s ideas.

19 Do you agree that Dr. G.'s ideas that you've  
20 heard discussed here in the courtroom were new?

21 A I don't think all of them were new. Some of  
22 them may have been new.

23 Q You -- you were here on opening statements on  
24 Monday morning, right?

25 A Yes.

1 Q Okay. And you heard me tell the jury that  
2 Apple had produced not one piece of paper to us which  
3 was in existence before we sued your company, which  
4 suggested that anything that Dr. G. had done was old  
5 news.

6 You heard me say that?

7 A Well, I'm not sure I remember that, but I'll  
8 take your word for it. Yeah.

9 Q So my point is, isn't it a fact that  
10 everything that we have seen in this courtroom produced  
11 by Apple, before they got sued, are comments reflective  
12 of Dr. G.'s ideas being new?

13 MR. RANDALL: Your Honor, I object. It's  
14 unclear -- if he means in the production process before  
15 we were sued, there's no obligation to produce documents  
16 to them if they -- if they just filed a complaint  
17 without notice.

18 So I'm not sure I understand what -- what  
19 the question is.

20 MR. CARROLL: The question is whether the  
21 witness understands it, Your Honor.

22 Q (By Mr. Carroll) Do you understand the  
23 question?

24 A I'm not sure. Are you -- are you asking me  
25 whether I think Dr. Gelernter's ideas were new?

1 Q I've asked you that, and you said some of them  
2 were.

3 A Yes.

4 Q Okay. My second question is, isn't it a fact  
5 that there's nothing in the files of Apple, which have  
6 been given to us before the lawsuit, where Apple says  
7 that Dr. G.'s ideas were not new?

8 Have you seen anything?

9 A I haven't seen --

10 Q Okay. Let -- let me ask you to do --

11 MR. CARROLL: Your Honor, may I get over  
12 here by the witness so I can show him this poster?

13 THE COURT: Yes, you may.

14 MR. CARROLL: Thank you.

15 Q (By Mr. Carroll) This is -- Dr. Tribble, this  
16 is a poster that the jury saw on opening statement, and  
17 I want to put it up so you can see. And it -- it's  
18 little excerpts from some of the e-mails that the jury  
19 has heard about and likely will see. I think it's up on  
20 the chart.

21 And we know who Don Lindsay was. We talked  
22 about that. He testified by deposition yesterday,  
23 right?

24 A Yes.

25 Q Now, he's not with Apple anymore, correct?

1 A That's correct.

2 Q And he has this comment: Scopeware was  
3 clearly new -- Scopeware, of course, was a Mirror  
4 Worlds' product, correct?

5 A Yes.

6 Q I believe it to be a new solution.

7 You heard that testimony?

8 A Yes.

9 Q Who is Mike Morton?

10 A I'm not sure who Mike Morton is.

11 Q Okay. I will represent to you that there's an  
12 e-mail from Mike Morton as an Apple employee who makes a  
13 comment: I've often wanted this and --

14 MR. RANDALL: Your Honor, I'm going to  
15 object. Unless there's evidence of this or a witness  
16 has testified to this, having Mr. Carroll just testify  
17 about -- making representations about this, it's not  
18 evidence yet. It's improper.

19 MR. CARROLL: Your Honor, all these  
20 e-mails are in evidence. They're business records of  
21 Apple's.

22 THE COURT: They have been admitted?

23 MR. CARROLL: They have.

24 THE COURT: All right. Objection's  
25 overruled.

1 MR. RANDALL: Okay.

2 Q (By Mr. Carroll) And, of course, we know the  
3 first e-mail that we heard about yesterday -- or this  
4 morning from Mr. Jobs, your boss. It says: Check out  
5 the software; it may be something for our future.

6 We talked about that one.

7 A Yeah, I don't think that says whether it's new  
8 or not.

9 Q I understand.

10 Do you know who Blaine Garst is?

11 A He's an engineer at Apple.

12 Q Do you know him personally?

13 A I do, yes.

14 Q Have you seen the e-mail --

15 MR. CARROLL: Let's find the Garst  
16 e-mail. Can we pull up the entire e-mail?

17 Let me go get it. Can we find the Garst  
18 e-mail?

19 Here, I'll find it.

20 Give me one second. Let's look at  
21 Exhibit 220 -- I'm sorry -- 387, and blow that up, if  
22 you would, please.

23 There we go.

24 Q (By Mr. Carroll) And the subject here is  
25 Mirror Worlds, right?

1 A Yes.  
2 Q See that?  
3 A I see that.  
4 Q Okay. And the date is 15 August, 2000,  
5 correct?

6 A Correct.

7 Q Now, that's one year before the meeting  
8 between your company and our company, correct?

9 A Correct.

10 Q And it's from Blaine Garst to Toby Paterson.

11 Who is Toby Paterson?

12 A I think he was an Apple employee at one point.

13 I'm not positive about that. I don't know him.

14 Q All right. And the very first line says:

15 Just got back from a week's vacation.

16 And then under it, it says: This is  
17 interesting, depressing to read about, quote, patents,  
18 unquote, on this stuff.

19 That's what it says, correct?

20 A That's correct.

21 MR. CARROLL: And go down to the -- under  
22 the signature line, Blaine, if you will, James.

23 Q (By Mr. Carroll) And Blaine is where Mr. Garst  
24 is signing off, and it's in reply to an e-mail that  
25 Mr. Paterson had written.

1           And it says: This is the company I was  
2 telling you about at dinner the other day. The short  
3 gist is they let you organize your information when you  
4 need to look for something rather than when you receive  
5 the information.

6           And under -- understanding that e-mails are  
7 read from bottom to top, that was what prompted the  
8 reply from Mr. Garst that it was depressing to read  
9 about patents on this stuff, correct?

10          A     It looks like that, uh-huh.

11          Q     So, again, isn't a fair reading of this by the  
12 jury that in 2000 these Apple employees were discussing  
13 Mirror Worlds, and one of them commented that it was  
14 depressing to read about the fact that Mirror Worlds had  
15 a patent on this stuff?

16          That's a fair reading of that e-mail string,  
17 is it not?

18          A     Well, actually, I'm -- my understanding is  
19 that this was a personal conversation. I'm not sure  
20 that Toby was even an employee of Apple at the time, and  
21 that makes sense, because Blaine Garst works in an area  
22 that has nothing to do with our consumer products,  
23 nothing to do with Time Machine, nothing to do with  
24 Spotlight, nothing to do with any of the features under  
25 discussion.

1           He works in the Development Tools Group. So I  
2 think this was a personal conversation between these two  
3 guys, you know, like you say, about a year before the  
4 meeting happened between Apple and Mirror Worlds.

5           Q     You understand we got this from your company?

6           A     Yes, sure. Yes. That doesn't mean it's not a  
7 personal e-mail.

8           Q     Okay. Do you know or are you in a position to  
9 dispute the fact that Toby Paterson worked on the  
10 accused features?

11          A     Yeah. I -- actually, I don't know. I'm  
12 not -- I don't dispute that.

13          Q     Okay. So if the evidence for the jury is, is  
14 that this fellow, Toby Paterson, in fact, was involved  
15 in inventing or -- or making the accused features, if  
16 that's true, then as early as 2000, he knew about Mirror  
17 Worlds and he knew basically that they had patents,  
18 based on what the e-mail string says, correct?

19          A     It's not clear to me -- excuse me. It's not  
20 clear to me from the e-mail whether Toby Paterson knew  
21 about the patents, although Blaine mentions patents in  
22 his reply.

23          Q     Okay. You -- if I got it right, Dr. Tribble,  
24 you talked to Bertrand Serlet, Scott Forstall, Kevin --  
25 is it Tiene or Tiene (pronouncing)?

1 A Kevin Tiene.

2 Q Tiene, Dominic Giampaolo, Yan Arrouye, and  
3 Pavel Cister (sic) about e-mails which they had either  
4 sent or received about Mirror Worlds, correct?

5 A Pablo Cisler, yes.

6 Q Pablo --

7 A Pablo Cisler.

8 Q Pablo Cisler. I'm sorry.

9 A He's Czechoslovakian.

10 Q I got you.

11 And you talked to all those folks about  
12 e-mails which the jury can see, and they're among the  
13 ones who couldn't remember anything, correct?

14 A That's correct.

15 Q Okay. And we learned that you generated or  
16 you were involved in an e-mail exchange concerning, or  
17 at least referencing, Dr. G., correct?

18 A I didn't generate an e-mail. I think in 2004,  
19 I received an e-mail from the -- one of the professors  
20 at the Naval post -- U.S. Naval post-graduate school  
21 that mentioned Dr. Gelernter.

22 MR. CARROLL: Okay. Let's put up 1995,  
23 James.

24 Q (By Mr. Carroll) And this is the e-mail you're  
25 referring to, the one entitled Bud, correct?

1 A That's correct.  
2 Q And this is August of 2004, correct?  
3 A Correct.  
4 Q That would have been three years after the  
5 meeting that we're talking about, correct?

6 A Right.  
7 Q And it's from a fellow named Peter Denning,  
8 and I believe you identified him as maybe the head  
9 person at the Navy's computer school in San Diego?

10 A In Monterrey.

11 Q In Monterrey.

12 A Yeah.

13 Q Which is up north, I guess.

14 A That's correct.

15 Q Okay. But that -- that's what he does, right?

16 A Yes.

17 Q And I believe you've characterized this Navy  
18 computer school as being a fairly important place in  
19 terms of the -- of what they do?

20 A Well, sure. They train graduate students who  
21 are typically naval officers.

22 Q Right. And the point of this e-mail, and the  
23 jury can sure read it, is that Peter Denning is glad to  
24 welcome you to a group of speakers who are looking at  
25 the next 50 years of DoD.

1                   Is that Department of Defense?  
2       A    That is, yes.  
3       Q    Computing in a symposium, right?  
4       A    Right.  
5       Q    So -- and he tells you a little bit about what  
6   is expected of you; that you have 20 minutes in the  
7   schedule, including his introduction, your presentation,  
8   and a Q and A. And he wants you to talk for 10 to 12  
9   minutes, right?  
10      A    Yes.  
11      Q    And then down in the -- in the next sentence,  
12   he said --  
13                    MR. CARROLL: And, James, if you would  
14   highlight beginning will.  
15                   The second paragraph, please.  
16      Q    (By Mr. Carroll) And is Denning a naval  
17   officer, by the way?  
18      A    I don't know. I don't believe he is.  
19      Q    Okay. But he's a computer scientist, right?  
20      A    He is a computer scientist certainly.  
21      Q    Okay. And Mr. Denning says: Will you have  
22   anything to say about the, quote, desktop metaphor  
23   debate, which is looking for the, quote, next HCI --  
24   what does that mean?  
25      A    Human computer interface.

1 Q Beyond the current office desktop?

2 David Gelernter argues it's dead and proposes  
3 Lifestreams instead.

4 Is this a good proposal?

5 Are there others -- are -- it says: Are the  
6 others. I guess it means are there others, right?

7 A Probably, yes.

8 Q That's what you understood?

9 A That's right, yeah.

10 Q Better? In what ways does this matter to DoD  
11 and Homeland Security people?

12 That's what he asked you to consider?

13 A Correct.

14 Q But if I got it right in your deposition, you  
15 don't remember whether you talked about any of that  
16 stuff at all, correct?

17 A No. In fact, I didn't -- I didn't remember  
18 this e-mail that was sent to me until it was pointed out  
19 to me -- I think it was this -- this last Monday  
20 evening.

21 Q Okay.

22 A But not -- you know, now that I see it,  
23 obviously, I received this e-mail from Dr. Denning  
24 suggesting a topic for my -- for my talk that he  
25 thought -- or, you know, that he thought would be

1 provocative. He was looking for controversial things.

2 Q And he talks about the, quote, desktop  
3 metaphor debate. That was the same reference that was  
4 used in that New York Times article back in July of 2001  
5 which Mr. Jobs attached to the e-mail that said: Check  
6 this out ASAP, correct?

7 A I don't recall exactly, but, you know, it  
8 was -- if it was in the article from the New York Times,  
9 then it was.

10 Q But that was the debate, right?

11 A Well, the debate -- I mean, in an e-mail,  
12 there's always lots of debates about whether something  
13 is good.

14 I think that Dr. Denning is pointing out, hey,  
15 this is a controversial topic whether this stuff is any  
16 good or not; why don't you bring it up for the talk.

17 Q Okay. But the desk -- just so the jury will  
18 understand it -- and by the way, you tell me if I'm  
19 wrong, because I am not a computer scientist.

20 But it's my understanding that the -- that the  
21 desktop metaphor debate was this business about files in  
22 folders on the one hand or another idea, such as the  
23 stream, on the other hand.

24 Is that true?

25 A Well, I mean, really since the -- the desktop

1 metaphor refers to, either on Mac or Windows, you know,  
2 you've got this thing that represents a desktop and  
3 files and folders that you move around with the mouse.

4 Ever since that was introduced in 1984,  
5 there's been a debate about it, as to whether that's the  
6 best metaphor or whether something else, other than a  
7 desktop, would be the best metaphor.

8 Q And the something else includes the suggestion  
9 by Dr. G that's in his computers, correct?

10 A Correct, yes.

11 Q So that we -- the one thing we can agree on is  
12 that Gelernter is not about files and folders, correct?

13 A Correct.

14 Q Okay. I saw you raise your eyebrows.

15 A Well --

16 Q Okay. No, I'm not fussing at you. But I'm  
17 glad we agree on that.

18 Okay. So here's my question: I understand  
19 from what Apple's lawyer has been telling the jury since  
20 opening, is that you still use files and folders.

21 A Yes, we do.

22 Q Okay. So a natural response, if that's so,  
23 would have been for you to say: Peter, I will be glad  
24 to show you why we still use the old desktop metaphor.  
25 That would have been a logical answer by you, correct?

1 We here at Apple.

2 A Well, not necessarily. I mean, Apple  
3 actually, probably since 1984, has been looking into  
4 alternative metaphors. We're -- we sort of invented the  
5 desktop metaphor more or less, but we're not opposed to  
6 doing something new, and we eventually did with the  
7 iPhone and the iPad.

8 Q So I want to ask you two more questions about  
9 this, and then we'll move on, and I'll be pretty close  
10 to being done.

11 The first question is this: Dr. Denning says:  
12 Is this a good proposal, or are there others better? In  
13 what way does this matter?

14 And my question to you is: You don't remember  
15 how you answered or if you answered any of those  
16 questions, correct?

17 A Yeah, I don't -- I do not recall.

18 Q Okay. Because in 2004, Apple had Spotlight,  
19 correct?

20 A I -- I'm -- don't recall the exact timing of  
21 that, but --

22 Q Time Machine, Coverflow?

23 A Like I say, I don't recall the exact timing,  
24 but, yeah, in that timeframe.

25 Q You -- Second question is: You just told the

1 jury that -- I think I heard you say this -- that what  
2 you do now is not the desktop metaphor, not files and  
3 folders. Did I hear that right?

4 A No. I said that we introduced -- or I meant  
5 to say we introduced an additional metaphor that's  
6 different than the desktop with the iPhone and the iPad  
7 and the iPod Touch. There's no desktop metaphor in  
8 those devices. There's a new metaphor.

9 Q Okay. But would -- would you agree with me --

10 A But we still -- we still ship, you know, the  
11 Mac OS 10, which contains the desktop metaphor.

12 Q Okay.

13 MR. CARROLL: Again, Your Honor, may I  
14 walk over here by the witness?

15 THE COURT: Yes, you may.

16 MR. CARROLL: Thank you.

17 Q (By Mr. Carroll) And this is going to be for  
18 you, because I think the jury can see it up here,  
19 Dr. Tribble. And you probably saw this poster board on  
20 our opening --

21 A Yes --

22 Q -- right?

23 A -- I did.

24 Q And the point is pretty obvious, and that is,  
25 that there were a number of instances where we can

1 document that Apple was continuing to pay attention to  
2 Dr. G and his patents after Mr. Lindsay said your  
3 company was not interested. You understand that's our  
4 argument.

5 A I understand that's your argument. I'm not  
6 sure the evidence shows we were paying attention to any  
7 patents.

8 Q Okay. But you would agree with me that there  
9 were a number of instances, every time we have something  
10 marked up there, where there was either an e-mail that  
11 referred to Scopeware or Mirror Worlds or Gelernter or a  
12 visit to the website. You understand that's what all  
13 that means.

14 A Yes.

15 Q Okay. And your -- I guess your comment to the  
16 jury is that there's no proof there that we were  
17 checking out the patents in particular.

18 Is that what you're saying?

19 A That's -- yeah, that's one thing I'm saying.

20 Q Okay. And we've been through the discussion  
21 as to whether you did or didn't already know about the  
22 patents, and you've got your position, and we've got  
23 ours, right?

24 A Yes.

25 Q And the jury's got the scorecard, and maybe

1 you can add to it when it comes your turn, okay.

2 A Okay.

3 Q All right. Now, one thing we know is that --

4 MR. CARROLL: And if you could lift out  
5 that last piece, James, that -- there we go -- that  
6 offsite meeting.

7 Q (By Mr. Carroll) We heard that there were code  
8 names in Apple about some of your products, like code  
9 names for when you were developing a product; is that  
10 true?

11 A Yes.

12 Q Okay. And you had offsite meetings, just like  
13 this has suggested, correct?

14 A Correct.

15 Q And that means that you weren't on the campus  
16 of Apple, but you were somewhere off.

17 A Right.

18 Q And these were confidential meetings, were  
19 they not?

20 A Yeah, like most Apple -- internal meetings,  
21 they're confidential.

22 Q Okay. And the meeting that I want to talk to  
23 you about was a meeting that this refers to, and that's  
24 December the 5th of 2003. And the code name for this  
25 project was called Merlot, M-E-R-L-O-T.

1            You know what that is.

2        A    Yes.

3        Q    And what was Merlot? What -- what was it for?

4        A    It -- I believe it was the code name for one  
5 of the versions of Mac OS 10 that was being worked on at  
6 that time.

7        Q    And Mac OS 10 includes some, if not all, of  
8 the features that we're accusing, correct?

9        A    Yes.

10      Q    And now, when the jury looks at it, if they  
11 want to call for Exhibit -- Plaintiff's Exhibit 110 when  
12 they get back there in the jury room and start  
13 deliberating, they will be able to see the notes from  
14 that meeting, will they not?

15      A    Yes.

16            MR. CARROLL: And let's call that up,  
17 James, at 110. And I want to -- yeah, I want to look  
18 at -- first of all, lift that title out just -- if you  
19 could.

20            There we go.

21            Okay. Is that as close as we can get it?

22            All right. There we go.

23      Q    (By Mr. Carroll) Merlot offsite, and then it  
24 that has the themes critical, medium, low, and then it's  
25 got a whole bunch of folks, including Yan Arrouye,

1 right?

2 A Correct.

3 Q And he's one of the fellows you talked before  
4 you came to Tyler, right?

5 A Yes.

6 Q Who couldn't remember anything about the  
7 e-mails.

8 A Correct.

9 Q Okay. And then we know that one of the -- in  
10 this document, it says: Suggested at the offsite. That  
11 means somebody made a proposal at the offsite about Yale  
12 Professor David Gelernter's new ways of finding info.

13 That's what that says, correct?

14 A Correct.

15 Q And when it says: Suggested at the offsite,  
16 that means that somebody from the Apple group, who was  
17 participating in this meeting, planning the development  
18 of the product that includes the features we're suing  
19 over, suggested that Dr. Gelernter's new ways of finding  
20 info be considered; isn't that true?

21 A Yeah. Either that or -- or maybe the  
22 suggestion was that we should go talk to Dr. Gelernter  
23 about it.

24 Q But -- but the plain takeaway from this is  
25 that two years after Mr. Lindsay told us, thanks, but no

1 thanks, while your think-tank was deciding exactly how  
2 to go to the products we're suing over, Gelernter's name  
3 comes up as a possible solution.

4 That's the takeaway, is it not?

5 A Well, it's -- I mean, you know, David  
6 Gelernter was in the press and pretty visible in the  
7 technical community, so I'm not surprised it came up in  
8 the meeting.

9 Q Okay. So in the takeaway that your group was  
10 trying to figure out the absolute best way to put into  
11 the software the package that now is -- and the hardware  
12 that is now what we've sued over, and one of the  
13 considerations was how Dr. G suggested that you find  
14 information in a new way.

15 That's what that means, correct?

16 A It probably means someone -- someone brought  
17 that up in the meeting.

18 Q Now, there's nothing in that document that the  
19 jury's going to be able to see, or at least there's  
20 nothing that I saw, where there is a comment that  
21 repudiates that statement, that says: Don't worry about  
22 Gelernter. We've looked at his stuff. It's old news.  
23 It's not new. It won't work for us.

24 There's nothing in that document that says any  
25 of those four things that I saw; is that correct?

1 A Not in this document, no.

2 Q Okay. And what we know that happened after

3 that document is that that -- what do you call it? OS X

4 10?

5 A OS 10.

6 Q -- was released to the world sometime in '04.

7 A Yes.

8 Q Okay. And that's all of the -- and this is my

9 word; I don't mean anything bad by it, but this is all

10 of the after hullabaloo that we saw on the screen

11 yesterday with Mr. Jobs describing Spotlight and these

12 other features?

13 A Yes. I mean --

14 Q That's what he was talking about.

15 A That's -- he was talking about --

16 Q Yeah.

17 A -- the release of Mac OS.

18 Q And that --

19 A That version of Mac OS 10, yeah.

20 Q And how revolutionary it was.

21 A Yes.

22 Q And you -- and again, I saw your eyebrows go

23 up, because you told us on your deposition that he

24 claims a lot of things are revolutionary.

25 A Well, that's -- that's a fact, yeah.

1 Q I mean, that's what you said, right?  
2 A Yeah. Yes.  
3 Q So is this puff talk, or is this the truth?  
4 A If -- if Steve thinks something is  
5 revolutionary, he'll say -- he'll call it revolutionary.  
6 Q I mean, is he a scientist or a salesman?  
7 A He's hard to categorize, I would say.  
8 Q Well, he's successful whatever he is, right?  
9 A He is, yeah.  
10 Q Okay. Well, I'm tipping my hat to him.  
11 Do you think it's revolutionary, Spotlight?  
12 A I think that there are some things about it  
13 that are -- are new and some things about it that have  
14 been around for a long time.  
15 Q As a matter of fact, you told us Monday night,  
16 if I got it right, that you believe that the real  
17 selling point of Spotlight is that it looks an awful  
18 like -- a lot like the search mechanism that Google  
19 uses, correct?  
20 A What I said is that, you know, people were  
21 used to searching -- being able to search for things on  
22 the web with the Google search field and that the fact  
23 that Spotlight has a search field where you can type  
24 things into it, people might feel familiar with that  
25 because of their -- the high use of Google that people

1 have.

2 Q Yeah. What you said was: People got used to  
3 using search fields with Google, and so if something  
4 looks like a search field in Google, they're likely to  
5 try it out.

6 That's what you said.

7 A That's correct.

8 Q So -- and again, is the takeaway from that  
9 that Spotlight was designed to look a lot like Google?

10 A Well, the -- the search field was designed to  
11 be familiar to people who had used Google and to operate  
12 in a similar way to Google, but to find stuff on your  
13 desktop rather than finding files on the web.

14 Q Okay. A couple more.

15 Do you agree or disagree with the  
16 characterization that the jury's heard that Dr. G is an  
17 important figure in the world of computer science?

18 A I -- I agree he's one of many important  
19 figures in computer science.

20 Q Right. I mean, I'm sure everybody's list is  
21 different, depending on whose mamma you talk to, right?

22 A That's true.

23 Q Okay. But, I mean, you -- you respect him as  
24 a scientist, do you not?

25 A Yes. I was mostly familiar with him from his

1 work in Linda and --

2 Q In fact, when you were at Sun.

3 A I was at Sun Microsystems, and it was on the  
4 subject of Linda, and Dr. Gelernter's work on Linda had  
5 come up.

6 Q And your boss at Sun was a big fan of Linda  
7 and Dr. G, wasn't he?

8 A Well, not my boss.

9 Q The owner of Sun.

10 A One of the owners, Bill Joy, in particular,  
11 seemed to be a fan of Linda.

12 Q Okay. Let me ask you a couple more, and then  
13 I'll be done.

14 The jury is going to hear and has heard the  
15 reference to a company called Intellectual Ventures.

16 You know what that is, do you not?

17 A I believe it's a company that deals in  
18 intellectual property.

19 Q Buys and sells patents.

20 A (Nods head.)

21 Q And Dr. Ugone, who's out here in the back, you  
22 know he's your damage expert in this case, do you not?

23 A I -- I assume so.

24 Q You just recognize him.

25 He's testified and will testify in the

1 courthouse here later that Apple is a co-owner --

2 MR. RANDALL: Your Honor, objection. May  
3 we approach the bench?

4 THE COURT: Yes, you may.

5 (Bench conference.)

6 MR. RANDALL: This is the subject of a  
7 motion in limine, and he's about to blurt out that Apple  
8 is a co-owner of Intellectual Ventures, and it's simply  
9 not true. And there's no evidence --

10 MR. CARROLL: I want to know what his  
11 expert says.

12 MR. RANDALL: There's no evidence of  
13 that.

14 MR. CARROLL: May I show you the  
15 Intellectual Ventures --

16 (Bench conference concluded.)

17 THE COURT: Ladies and Gentlemen of the  
18 Jury, I think we'll go ahead and take our lunch break at  
19 this time. We're going to be in recess until 12:30.  
20 Please enjoy your lunch.

21 COURT SECURITY OFFICER: All rise for the  
22 jury.

23 (Jury out.)

24 THE COURT: Mr. Carroll, approach.

25 (Bench conference.)

1 MR. CARROLL: This is the colloquy here,  
2 Your Honor. This was Dr. Ugone, their damage expert.  
3 And there's one written offer by Intellectual Ventures  
4 for these patents that they don't dispute, and then  
5 there's an argument as to whether there was an oral  
6 offer after the lawsuit.

7 THE COURT: Well, he -- he says: I think  
8 so. So why don't you just go into it with him.

9 MR. CARROLL: I will. I will.

10 THE COURT: And then, Mr. Carroll, I  
11 mean, you're down to under four hours --

12 MR. CARROLL: I know.

13 THE COURT: -- now.

14 MR. CARROLL: I'm about done.

15 THE COURT: Okay.

16 MR. CARROLL: Thank you, Your Honor.

17 (Bench conference concluded.)

18 THE COURT: All right. Be in recess.

19 COURT SECURITY OFFICER: All rise.

20 (Lunch recess.)

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1 CERTIFICATION  
2

3 I HEREBY CERTIFY that the foregoing is a  
4 true and correct transcript from the stenographic notes  
5 of the proceedings in the above-entitled matter to the  
6 best of our abilities.

7

8

9 /s/ \_\_\_\_\_ Date  
10 SHEA SLOAN, CSR  
Official Court Reporter  
State of Texas No.: 3081  
11 Expiration Date: 12/31/10

12

13

/s/ \_\_\_\_\_ Date  
14 JUDITH WERLINGER, CSR  
Deputy Official Court Reporter  
15 State of Texas No.: 731  
Expiration Date 12/31/10  
16

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