

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 30, 2010
6 * 4:30 - 6:30 P.M.

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8 TRANSCRIPT OF JURY TRIAL
9 AFTERNOON SESSION PART 2
10 BEFORE THE HONORABLE LEONARD DAVIS
11 UNITED STATES DISTRICT JUDGE

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

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P R O C E E D I N G S

COURT SECURITY OFFICER: All rise.

(Jury in.)

THE COURT: Please be seated.

All right, Counsel. You may proceed.

CROSS-EXAMINATION

BY MR. STEIN:

Q Good morning -- or good afternoon --

A Good afternoon.

Q -- Dr. Feiner. Been a fast day for me.

Are you sure that you have told the jury everything that is relevant and important about the prior art that you've been discussing today?

A I certainly tried to. You mean in my report or in my testimony today?

Q In your testimony today.

A Obviously, the reports, as you know, were fairly long, and the amount of time we've had in the testimony is not as long, so there are, obviously, details in the reports that are not in the testimony.

Q Do you recall not long ago putting up a figure of the SDMS system, Spacial Data Management System, and displaying to the jury that it --

MR. STEIN: I'm sorry. May I approach the jury?

1 Q (By Mr. Stein) Displaying this to the jury and
2 explaining to the jury that it was available in 1979?

3 A I recall saying that, yes.

4 Q And in your explanation, you talked about
5 pointing at a figure on the screen and having a picture
6 pop up, right?

7 A Running your finger along the screen with a
8 touchscreen, yes.

9 Q Right.

10 MR. STEIN: James, could you put up
11 Exhibit 440? That's the page we discussed.

12 Q (By Mr. Stein) That's the SDMS system, isn't
13 it?

14 A That is a picture of the SDMS system, yes.

15 Q Right. And it had two monitors, one on each
16 side of the chair and some fancy controls on the handles
17 and then this huge back compress -- back projection --

18 A The GE Light Valve lit projection, two
19 Tektronix CRTs, and joypads in the arms of the chair,
20 yes.

21 Q Do you think that Apple would be successful
22 selling that product to its customers?

23 A I think that if Apple could make that product
24 cost a very small amount of money and it could updated
25 to current standards, that it may well be successful.

1 Q You produced an expert report in this case on
2 validity, correct?

3 A That's correct.

4 Q And in your report, you cited over 160
5 references in connection with your invalidity opinion,
6 right?

7 A That's right.

8 Q In your work on this case, have you seen any
9 e-mails from Steve Jobs directing any of his employees
10 to look into licensing or using any of that prior art?

11 A I saw one e-mail, if I recall correctly, which
12 was also shown during testimony in the case this week.

13 Q Well, I don't know which one you're referring
14 to, but that's one out of the 160?

15 A Could you repeat that?

16 Q That's just one out of the 160, assuming that
17 was shown?

18 Actually, which -- which prior art reference
19 are you referring to?

20 A I thought you were talking about a Steve Jobs
21 e-mail.

22 Q Yes.

23 A So I saw -- I've seen the Steve Jobs e-mail
24 that I believe you showed -- I think it was the first
25 day of the trial.

1 Q Right. That was talking about looking into
2 Dr. Gelernter's invention. That wasn't talking about
3 looking into any of this prior art that you cite, right?

4 A That's correct.

5 Q And you haven't seen one e-mail from Steve
6 Jobs asking his engineers to look into any of the prior
7 art that you're citing here, correct?

8 A No, I have not, although I should point out
9 that some of the prior art that I'm citing is -- aren't
10 done by Apple employees, so I would think that Steve
11 Jobs would need to send an e-mail about that.

12 Q Have you seen any e-mails from Steve Jobs
13 asking any of his engineers to use any of the prior art
14 that was created by Apple?

15 A I haven't seen any e-mails. I'm trying to
16 remember, however, whether Apple is one of the sponsors
17 of the Architectural Machine Group related to the media
18 that grew out of it and, therefore, would have been
19 apprised about some of that work. And I -- I don't
20 know, but I believe that there for a while, they were.

21 Q Now, in connection with your discussion of the
22 prior art today, you've been using -- I wish I had a
23 clean picture of this, but this example of some five --
24 five, I guess, elements or five --

25 A I agree to the descriptions of the elements,

1 yes.

2 Q There is no claim in any of the
3 patents-in-suit that only require these five elements;
4 isn't that correct?

5 A The patents-in-suit have claims that are
6 written in much longer language with relationships
7 between things that are included in one of those
8 elements.

9 So there's no claim that literally is just a
10 streamed set of words that are in those little colored
11 boxes together, that's true.

12 Q There's a -- there's a lot of claim language,
13 though, that's not captured in these five elements at
14 all; isn't that true?

15 A That is true. And we have a limited amount of
16 time, and rather than trying to put up all of the claim
17 language and go through every single word, we tried to
18 digest it into the shorter little anagrammatic headings
19 that you're seeing here.

20 Q And much of the prior art that you put up
21 doesn't even have these five elements; isn't that
22 correct?

23 A I didn't say that all the prior art that I
24 put -- that I put up practiced every single one of the
25 elements listed there, no.

1 Q So you haven't actually today gone through a
2 single claim and looked at every single limitation and
3 compared it to a single piece of prior art; is that
4 true?

5 A I did not walk through each one of the claims
6 doing that, no.

7 Q You've been in the room now for the past few
8 days, correct?

9 A Most of the time; not all of the time, yes.

10 Q You've seen a lot of internal e-mails from
11 people at Apple mentioning Dr. Gelernter and his
12 software product, right?

13 A I've seen some internal e-mails. I'm not sure
14 if the word a lot is appropriate.

15 Q Did you talk to any one of those people -- any
16 one of the people on those e-mails in reaching your
17 opinion of invalidity that Dr. -- let me restate that.

18 Did you talk to any one of those people on any
19 one of those e-mails in reaching your opinion that Dr.
20 Gelernter's patents are invalid?

21 A I'm trying to remember whether I've actually
22 spoken with any of the recipients of those e-mails. I
23 believe I may have spoken with some of them recently,
24 but I didn't talk with them about those e-mails.

25 Q That was after you formed your opinions on --

1 A That's true, yes.

2 Q Now, in your invalidity analysis, you compare
3 the claims to various prior art articles and patents,
4 correct?

5 A That's correct.

6 Q And the first step in that analysis is to
7 determine the terms -- to determine what the terms in
8 the claims mean, correct?

9 A That's correct.

10 Q And if you interpret those terms in a broad
11 way, they would cover more things, correct?

12 A That's correct.

13 Q And as a result, it's easier to find prior art
14 that includes all the limitations of a claim, correct?

15 A If one is being broader than less broad, that
16 is correct.

17 Q Now, when you reached your opinion that
18 Dr. Gelernter's patents were invalid, you interpreted
19 the claims in a manner that you considered to be overly
20 broad; isn't that correct?

21 A I was using the same interpretations that I
22 understood Dr. Levy to be using.

23 Q That's not the same interpretations you used
24 when you were assessing infringement, right?

25 A When I was assessing infringement and when I

1 was assessing validity, I was using the Court's claim
2 construction, but I was using a -- I was being -- I was
3 trying to use Dr. Levy's interpretations.

4 Q For invalidity, right?

5 A Yes. On invalidity, yes.

6 Q But you didn't use that same interpretation
7 when you were assessing infringement, right?

8 A I was using the same claim constructions, but
9 I was using Dr. Levy's broader interpretation in the
10 case of --

11 Q I'm asking you about infringement. You
12 weren't using the broader interpretations when you were
13 assessing infringement, right?

14 A Right.

15 Q What was that?

16 A Yes.

17 Q You were using a narrower interpretation,
18 correct?

19 A I was using a stricter interpretation of the
20 same constructions.

21 Q And that may be easier for you to reach your
22 conclusion that there was no infringement, right?

23 A I believe I was using correct interpretations
24 in reaching my conclusions.

25 Q Of -- of infringement or invalidity?

1 A In making conclusions about infringement, I
2 believe I was using the correct interpretations of the
3 Court's claim construction.

4 Q But you weren't using the correct
5 interpretations, in your view, of the Court's claim
6 construction when you were assessing validity?

7 A My sense was that if I used the overly broad
8 interpretations of Dr. Levy, then one would reach the
9 overly broad conclusions that he reached in the case of
10 infringement, and therefore, that I would use those
11 overly broad interpretations in assessing invalidity.

12 Q So you were afraid that if you used that same
13 interpretation in assessing infringement, you would have
14 concluded that there was infringement, right?

15 A If I used the same interpretation that
16 Dr. Levy was using, then I think, by definition, I would
17 have concluded what Dr. Levy concluded.

18 Q Were you here at opening, at the opening
19 statements?

20 A I was here for most of the opening statements.
21 I missed a little bit of the first one.

22 Q Have you heard Apple's counsel argue that Dr.
23 Gelernter may have come up with an interesting new
24 invention but that Apple uses a conventional operating
25 system, not Dr. Gelernter's?

1 A I don't remember the exact language that was
2 being used, and I would to want to actually read a quote
3 to be able to know whether I heard it or not.

4 Q You believe that Apple's -- the accused
5 products here use a conventional operating system,
6 correct?

7 A I'm not sure what you mean by conventional.
8 They use a hierarchical file system, and that certainly,
9 at least generically, has been the kind of file system
10 that's been around for quite a long time.

11 Q Doesn't Dr. Gelernter's patents, in fact,
12 describe adding a stream-based operating system on top
13 of a conventional operating system?

14 A There were claims that discussed the use of
15 multiple operating systems and the idea of a stream
16 being -- or a stream-based operating system using what
17 could be a conventional operating system.

18 Q Right. So the patent describes adding the
19 document-stream operating system as additional
20 functionality to a conventional hierarchical operating
21 system, doesn't it?

22 A It describes the use of two discreet operating
23 systems being used in conjunction with each other, one
24 of which is a stream-based operating system, yes.

25 Q So a -- the company infringes Mirrors'

1 patents, even if it also uses a conventional operating
2 system, in terms of having hierarchical folders and
3 files, right?

4 A It -- it could.

5 Q Now, Spotlight was new software that was added
6 to Apple's operating system in Tiger, right?

7 A That is correct.

8 Q And Mirror Worlds didn't accuse Apple of
9 patent infringement before it sold Spotlight, correct?

10 A That's my understanding.

11 Q So Mirror Worlds isn't claiming that a
12 conventional hierarchical operating system infringes its
13 claims, right?

14 A It certainly was not accusing operating
15 systems before the addition -- or rather, before Tiger,
16 that's correct.

17 Q It was the addition of that feature on top of
18 a conventional operating system, which, you know,
19 brought us here today, right?

20 A I'm -- I'm not sure. There are other things
21 being accused.

22 Q Now, you discuss -- or you gave one of the
23 reasons why there is not a mainstream in Apple's
24 products -- Apple's operating system was that you could
25 use the Privacy feature on -- in Spotlight to take

1 those -- to take certain items out of the Spotlight

2 Store, correct?

3 A That's correct. And the very fact that there
4 is a Privacy feature, which clearly indicates that the
5 person using the system is encouraged to think of the
6 idea of being able to take things out of the Spotlight
7 Store without removing them from their computer.

8 Q There was no language in the Court's
9 construction of mainstream that precluded that
10 functionality, was there?

11 A My understanding of mainstream being defined
12 in terms of a stream is that it needed to include all of
13 the data units generated by or received by the system,
14 and the data units are described as -- or rather,
15 construed as things that are of importance to the user.

16 And that, in conjunction with my understanding
17 of the patent history, the prosecution history, I think
18 made it very clear to me that a mainstream needed to
19 include all of those things that were of importance to
20 the user on the computer in a time-based sequence,
21 time-ordered sequence.

22 Q There wasn't any mention of the Privacy
23 feature in your expert report on infringement, was
24 there?

25 A My expert report on infringement included

1 descriptions of the idea that not all of the files that
2 were on the system were represented in the Spotlight
3 Store.

4 Q But you didn't say anything about -- about the
5 Privacy feature in that report, did you?

6 A I'm trying to remember. I would need to look
7 at the report to refresh my memory.

8 Q Well, I looked, and I couldn't find it.

9 Now, your expert report on infringement is 142
10 pages long, right?

11 A Yes.

12 Q And you're saying -- and you can't recall
13 that -- you know, whether or not there was any mention
14 of this Privacy feature in there, right?

15 A It's a 142-page report, followed by another --
16 I mean, it was another 240-or-so-page report. And
17 I'm -- I'm trying to be very careful in the answers that
18 I give right now, and so I don't want to say yes or no
19 without consulting the report.

20 Q But the Privacy feature is a feature you just
21 highlighted here before the jury, right?

22 A That's correct.

23 Q And you can't even recall seeing it in your
24 expert report?

25 A I know that my expert report said that the

1 Spotlight Store did not include all of the files that
2 were on the system, and I'm trying to remember what
3 examples, if any, I gave, and I don't remember whether
4 or not I mentioned the -- the facility where I named it
5 of being able to intentionally specify directories or
6 disks that would not be included.

7 Q Isn't this Privacy feature argument something
8 you just came up with?

9 A As I said, I don't remember whether or not I
10 specifically mentioned the Privacy feature by name in my
11 report.

12 Q So in the two years you've been working on
13 this case, you -- you've been working on the case for
14 two years; you highlight the Privacy features here;
15 and -- and you can't recall if it's in your expert
16 report.

17 Doesn't that indicate to -- it indicates to me
18 that you just came up with that feature, and you didn't
19 previously consider that feature to be part of the
20 non -- your non-infringement argument? Isn't that the
21 case?

22 A I recall the report stating that not all of
23 the functionality -- excuse me -- not all of the files
24 in the file system were necessarily included in the
25 Spotlight Store. And I don't recall whether I went into

1 detail about ways of having those files not be included.

2 Q Now, in connection with the Coverflow display,
3 you admitted that -- at your deposition, that the change
4 in the angle of the document representations as they
5 move out towards the edges was a -- an indication of
6 foreshortening, right?

7 A Okay. So foreshortening is a technical term.
8 It's one that ended up not being construed by the Court.
9 I'm a computer graphics researcher. I've written books
10 and articles that used that term.

11 And yet if you look in the prosecution
12 history, you see definitions about how words like
13 prospective are used, for example. That would be an
14 example of prospective foreshortening. And I thought it
15 was very clear that what the --

16 Q I'm sorry. I'm running out of time.

17 I asked you a question that during your
18 deposition, you admitted that the change in the top
19 angle was a foreshortening effect, correct?

20 A Not -- not actually. The fact that a line is
21 not the same length that it is in 3-D in the projection
22 is what foreshortening is. That's a technical
23 definition of foreshortening.

24 Q So when I asked you during your deposition
25 that: I just want to make sure I have this one point

1 clear. I think you said that looking at this figure on
2 the bottom left-hand corner, that the change in the
3 angle from the item on the left closest to the center to
4 the third item, which is furthest to the left is an
5 aspect of foreshortening, and you answered: It's a
6 consequence of foreshortening.

7 That wasn't correct?

8 A My position is changing in length, right, yes.

9 Q And you saw -- were you here when the video
10 was played that showed the top edge --

11 A Yes, I was.

12 Q -- and you could see -- you could see the
13 document image rotating back?

14 A You could not see anything rotating. Those
15 things were not changing in orientation. They were all
16 staying at 60 degrees.

17 Q So when you looked at that figure, you didn't
18 see any rotation in that document?

19 A I can tell you that, based on the code, based
20 on what I know about graphics, you would -- you might
21 have interpreted yourself as rotation. It is not
22 rotation.

23 It is the change in -- as you go -- always
24 staying the same distance from the screen, you're
25 basically seeing the left and right edges stay the same

1 size but move a bit apart. And you might see that as
2 looking like rotation, but it is not rotation.

3 Q Wouldn't anybody who doesn't have your
4 background and knowledge of the code look at that
5 figure, look at that image and look at it and see that
6 it's rotating back?

7 A I can imagine that someone might incorrectly
8 interpret that, but it's not rotating back. I mean,
9 it -- (A) it's not rotating; and (B) as it gets towards
10 what you would call, I think, the bottom of the stack --
11 and I'm not -- I don't believe it's a stack. If
12 anything, the area is getting bigger, which is teaching
13 completely away from the idea of a foreshortened
14 receding stack as defined by the inventors and claimed
15 by the inventors and discussed by the inventors in their
16 patent and its prosecution history.

17 Q I'd like to turn to the term timestamp to
18 identify. That's another phrase in the claims of the --
19 or term in the claims of the patent, correct?

20 A That is correct, yes.

21 Q And the Court interpreted that to mean a date
22 and time value that uniquely identifies each data unit,
23 right?

24 A That is correct.

25 Q Didn't you say in your expert report that if

1 two data units have the same date and time value, then
2 the timestamp, as used in the patent, could include
3 additional information to differentiate those two data
4 units?

5 A I'm trying to think if that was the report or
6 a declaration.

7 Q Well, you said it, right?

8 A Yes, I did, but that doesn't say timestamp to
9 identify. Differentiating isn't identifying.

10 MR. STEIN: I have no further questions.

11 THE COURT: All right. Redirect?

12 MR. RANDALL: No questions, Your Honor.

13 THE COURT: All right. You may step
14 down.

15 Who will be your next witness?

16 MR. RANDALL: Keith Ugone, Your Honor.

17 THE COURT: Who?

18 MR. RANDALL: Keith Ugone.

19 THE COURT: Have you been sworn?

20 THE WITNESS: Yes.

21 KEITH UGONE, Ph.D., DEFENDANTS' WITNESS,

22 PREVIOUSLY SWORN

23 DIRECT EXAMINATION

24 BY MR. PLATT:

25 Q Good afternoon, Dr. Ugone.

1 A Good afternoon.

2 Q Could you introduce yourself to the jury and
3 tell them a little bit about yourself, where you live,
4 where you work?

5 A Sure. My name is Keith Raymond Ugone. Last
6 name is spelled U-G-O-N-E. And I live in Grand Saline.

7 So if you've ever gone to -- excuse me --
8 Trade Days, it's the next exit east from there is where
9 I live.

10 And I work at a company called Analysis Group,
11 which is in Dallas. And I've got two boys. Son No. 1,
12 Kyle, is a captain in the United States Marine Corps;
13 and Son No. 2, Casey, goes to Tyler Junior College and
14 lives with me in Grand Saline.

15 Q Can you tell us a bit about your educational
16 background and your work experience?

17 A Yes. I received a bachelor's degree in
18 economics from the University of Notre Dame in 1977; and
19 this is a little bit of a contradiction, if you follow
20 football, but I went to the University of Southern
21 California and got my master's degree in economics in
22 1979; and I have a Ph.D. in economics from Arizona State
23 University which I received in 1983.

24 Q And can you tell us about your work experience
25 as well?

1 A Yes. When I first received my Ph.D. in
2 economics, I was teaching college economics out in
3 California at California State University-Northridge,
4 and I taught there for a couple of years and continued
5 to teach part-time for a while.

6 But I joined PricewaterhouseCoopers. People
7 have probably heard of that, because they count the
8 Academy Award ballots, but they do other things as well.

9 So I worked there for about 18 years, and then
10 joined Analysis Group at the very end of 2003, beginning
11 of 2004, and have been with them ever since.

12 Q And what do you do in your position at
13 Analysis Group?

14 A As you can tell from my background, I'm an
15 economist. Sometimes I'm referred to as a forensic
16 economist, but what I do is I do economic work in
17 something called -- it's a fancy word in jargon, but a
18 damage -- I'm a damage quantifier.

19 So economics and damage quantification in a
20 dispute setting, so it's much like a dispute we have in
21 this courtroom here.

22 Q And have you been involved in analyzing
23 damages in patent cases before?

24 A Yes. So I've been doing this type of work
25 since 1985, and I've worked on many, many patent cases

1 over the years.

2 Q And you've testified in court a number of
3 times as well?

4 A Yes, I have.

5 Q How many times?

6 A A lot of times in this court.

7 Q You've testified here as well, right?

8 A Yes.

9 Q Okay. Can you tell us about what you did in
10 this case?

11 A Sure. The -- obviously, the way it starts off
12 is there are a lot of documents to review, so you look
13 at the legal documents. You look at the patents.
14 There's depositions to read. There's financial
15 documents to review.

16 And ultimately, you know, there was some
17 testimony earlier in the week about the damage claim
18 that Mirror Worlds is making. And so I reviewed the
19 damages report by Mr. Bratic. You heard Mr. Bratic
20 testify.

21 And I ultimately issued my own report, and I
22 attend the trial, so those are just some of the things I
23 did in preparation for today.

24 Q And how -- how long was the report that you
25 put together?

1 A This is it here, so the narrative is 164
2 pages. There's another 170-some pages of exhibits. So
3 it's over 300 pages.

4 Q Now, you understand that Apple disagrees with
5 Mirror Worlds that the patents are valid and infringed;
6 is that right?

7 A Yes. My understanding is that Apple disagrees
8 with Mirror Worlds' contentions on that.

9 Q So what would the appropriate damages be if
10 the patents are found to be non-infringed or invalid?

11 A Well, my understanding is, if there's no
12 alleged -- or if there's no wrongful conduct, if there's
13 no infringement, or if the patents are found to be
14 invalid -- this is going to sound weird -- but in a
15 sense, you don't have to listen to either of the damage
16 quantifiers, Mr. Bratic or myself, because then there's
17 no wrongful conduct.

18 So in that case, the number would be zero.

19 Q Why are you here?

20 A Well, if there is a finding that there was
21 wrongful conduct, if there is a finding of infringement,
22 then that's when my testimony becomes relevant.

23 MR. PLATT: Let's take a look at KU0012.

24 Q (By Mr. Platt) And can you tell us what your
25 opinion is regarding the appropriate damages in the

1 case, if the patent are infringed and are valid?

2 A Well, based on the analysis I have done, I've
3 reached the conclusion that the proper damages to find,
4 if infringement is found and if the patents are found to
5 be valid -- so it's under those two conditions -- my
6 opinion is that at the -- at the negotiation, the
7 hypothetical negotiation -- you've heard that term --
8 between Mirror Worlds and Apple, that they would have
9 come to an agreement for a lump-sum payment, and that
10 lump-sum payment would have ranged between \$210,000 and
11 \$4 million.

12 That would have been the range that they would
13 have negotiated, and the outcome would have been in that
14 range.

15 Q You mentioned a lump-sum payment. Yesterday
16 we heard about a formula that Mr. Bratic used.

17 Can you explain the difference a lump-sum
18 payment and a -- and a formula?

19 A Right. There was -- there was some discussion
20 yesterday that there was a formula that was put up on
21 the -- on the screen, and I think they were even using
22 my name, saying I didn't use the formula.

23 Well, I'd like to kind of complete that
24 explanation a little bit, because obviously I wasn't
25 doing the talking yesterday.

1 But I think what's important to know is that
2 when there's a license agreement, the payments can take
3 many different forms. There could be a running royalty
4 rate. I think that was the formula used on the board
5 yesterday, and he said Dr. Ugone didn't use that.

6 But what I would like to tell you and inform
7 you is that there's other types of payments that can be
8 made in a license agreement. And sometimes those
9 payments can be what's called a lump-sum payment.

10 So instead of paying an ongoing payment, a lot
11 of times what happens is that the license -- licensee
12 will make a one-time payment. It's called a lump-sum
13 payment.

14 And so you make this one payment. You get the
15 rights to use the teachings of the patent, and then you
16 make no further payments. And that's called a lump-sum
17 payment structure.

18 Now, actually in the real world, you've got
19 running royalty rates. You've got lump-sum payments,
20 and then you have what I call hybrids of those where
21 sometimes it's a combination. But you see all of those
22 in the real world.

23 Q And you also see all of those in a
24 hypothetical negotiation; is that right?

25 A Yes. Yes.

1 MR. PLATT: Now, let's take a look at

2 BX006.

3 Q (By Mr. Platt) Did you agree with Mr. Bratic's
4 damages analysis?

5 A We have some disagreements.

6 Q Could you walk through some of those
7 disagreements that you have with him?

8 A Well, what I'm trying to do here is just in
9 one chart is maybe highlight some of the disagreements
10 and why our numbers are so different and why I believe
11 my number is correct.

12 But the easiest way to think about this is
13 that Mr. Bratic used -- as part of his basis, there was
14 a software upgrade price of \$129. And then what he did
15 was he looked and said, well, let me see if I can
16 allocate some of that software upgrade price to one of
17 the features: Spotlight.

18 And then he -- he did all of his analysis from
19 there. There were a number of different manipulations
20 that he did in terms of his math. He showed some
21 calculations.

22 Now, the main thing I want to show or talk
23 about is the way he got his allocation factor. 23
24 percent of the \$129 was based on a survey. And the
25 survey didn't ask the question, how much would you spend

1 for Spotlight in the Tiger upgrade price?

2 So that was the first problem, because the
3 survey question asked something entirely different.

4 That's Point No. 1.

5 Point No. 2 is that Spotlight has many, many
6 different features, as was demonstrated by one of the
7 Apple employees when we were showing on the computer the
8 different things that Spotlight can do. So that's
9 another thing that goes just beyond and it goes beyond
10 what the accused elements are.

11 I think the biggest thing that I want to point
12 out is that he's relying upon the software upgrade
13 price, and his contention is to people -- why people
14 would buy the software upgrade. But then he applied
15 that to the hardware.

16 And as you can see here, the hardware is the
17 vast majority, in his calculations, of what was called
18 the royalty base.

19 So he took some results from the software
20 upgrade price and applied that to hardware, assuming
21 that the reasons why people would buy the hardware are
22 the same as why people bought the software upgrade.

23 And as we heard from the Apple testimony
24 yesterday, there are many, many other reasons why people
25 were buying the Apple hardware. So that's probably one

1 of the primary disagreements we have.

2 And that disagreement leads to why Mr. Bratic
3 had some of those huge numbers and why I believe that
4 that is not a proper way to do the analysis.

5 Q Now, could you walk through the process that
6 you went through in terms of looking at the
7 Georgia-Pacific Factors to come up with your -- your
8 conclusion?

9 A Well, I mean, the jury has heard this term
10 called a hypothetical negotiation. And really, what's
11 involved there is that if the parties -- if we go back
12 in time to the moment when a license would have been
13 required to use the teachings of the patents that are in
14 dispute here, if you go back to that moment in time and
15 say, okay, let's assume that there was a negotiation.
16 Now, there wasn't one. That's why it's called a
17 hypothetical negotiation. But let's go back in time,
18 and let's figure out everything that prudent negotiators
19 would have talked about at that negotiation.

20 So that's why we have the Georgia-Pacific
21 Factors, because they give us guidance; but they're not
22 to only things you can look at. You look at everything
23 that prudent negotiators would look at.

24 And that's what I tried to do in my analysis.

25 Q You did a detailed analysis in your report of

1 the Georgia-Pacific Factors as well?

2 A Yes.

3 MR. PLATT: Now, if we could turn to
4 Slide KU0004.

5 Q (By Mr. Platt) What's the hypothetical
6 negotiation date that you used in your analysis?

7 A And this is where it gets a little
8 complicated, depending on various findings that the jury
9 could make.

10 But if the jury were to find that the '227
11 patent were infringed, then the hypothetical negotiation
12 would have been in the spring of 2004, and the parties
13 would have been -- Apple and Mirror Worlds Technologies
14 would have been negotiating.

15 Q Sorry to interrupt you. Why do you say the
16 spring of 2004?

17 A Well, the -- I think there was a video that
18 the jury saw of Mr. Jobs introducing Spotlight at a
19 developer's conference. And so the hypothetical
20 negotiation would have been in advance of that, and
21 that's why I'm saying spring of 2004.

22 Q And you've also heard the summer of 2006?

23 A But that's in the alternative.

24 So if the '227 is found to be invalid or if
25 the '227 patent were found to be not infringed, then you

1 put that off to the side, and what we're left with is
2 the '313 and the '427.

3 And for very similar reasons in that state of
4 the world, the hypothetical negotiation would have been
5 in the summer of 2006, and it would have been between
6 Apple and Recognition Interface.

7 Q And you understand that Mr. Bratic uses an
8 April of 2005 hypothetical negotiation date?

9 A Yes.

10 Q And does your analysis change between those
11 different dates -- those different -- the three groups
12 of dates there?

13 A Sure.

14 Q What I'm showing in the slide here, I believe
15 that these are the hypothetical negotiation dates.

16 Now, Mr. Bratic was using April 2005. My
17 numbers wouldn't change, if the jury decided that would
18 be April of 2005 instead of spring of 2004.

19 MR. PLATT: If we could turn to KU0010?

20 Q (By Mr. Platt) And could you explain what this
21 slide shows?

22 A Yes. And there's a number of things to point
23 out here, and I'll try to guide the -- guide the jury
24 through what's happening here.

25 But think about it this way: Mr. Bratic

1 talked about this formula, a royalty rate times a
2 royalty base gets royalty damages. And he talked about
3 his methodology for determining the royalty rate.
4 What this is showing here is that a), that not all
5 license agreements have running royalty rates. And, in
6 fact, all of these had lump-sum payments, and that's
7 what I was talking about.

8 Apple entered into licenses, and these are
9 what have been called probative agreements, and I'll
10 explain that in a second. But in each of these, there
11 were lump-sum payment amounts or a cap on them that made
12 them effectively a lump sum, once you reached a certain
13 amount.

14 So what I'm trying to show the jury here,
15 frankly, is that not every license agreement is a
16 running rate. You will not always have that formula
17 that Mr. Bratic was showing. So that's sort of Point
18 No. 1.

19 Q Dr. Ugone, can I ask you one question?

20 Did you look at Apple's license agreements in
21 this case?

22 A Yes. So there were over 60 agreements that
23 Apple provided that both Mr. Bratic and myself could
24 review.

25 And so the question is: How do you get from

1 60 to the ones I'm showing here? And this is where I
2 have to admit that I'm an economist. I look at dollars
3 and cents. I'm not a computer engineer. I'm not a
4 computer engineer; I'm not a computer scientist.

5 So I had to rely on Dr. Feiner to tell me, of
6 all those agreements, which were the most probative or
7 most comparable to the patents-in-suit here. So once he
8 told me that, then I was able to look at the economics
9 of this narrowed list based on Dr. Feiner's input that
10 he gave me.

11 Q Can you explain why you would look at
12 comparable agreements?

13 A Here's the easiest way to think about it, and
14 this is a generally accepted approach. And the analogy
15 I want to give is, let's say you want to sell your
16 house, and you're trying to figure out what should I
17 price my house at?

18 Well, you get comps. You try to find
19 similarly situated houses. You say, well, what is the
20 value of those similarly situated houses? And those
21 give you guidances to what your house is worth.

22 Well, that's exactly what I did here. So once
23 I had Dr. Feiner's input as to comparable technologies,
24 I saw what the license amounts were paid for -- for
25 licenses to those technologies or patents. And I used

1 those as guidance to come up with my valuation of what a
2 license would be for the patents-in-suit in this case.

3 Q Can you tell us what the range is for the
4 payment amounts here?

5 A If you look at the payment amounts here --
6 now, the second from the bottom is 70,000; the third
7 from the bottom is 4 million. So let's ignore the 18
8 million for a second. I'll explain that.

9 So the range really goes from 70,000 to 4
10 million. Now, I also put another one there that was a
11 technology that Dr. Feiner talked to me about that had
12 18 million. But what I'll point out to -- if you look
13 over to the right, that particular license had
14 approximately 80 patents and 80 more patent
15 applications. So there was a lot more involved in that
16 particular technology.

17 So what I'll point out is that in that list
18 that was on the screen a little bit ago, it ranged from
19 70,000 to about 4 million.

20 Q Now, if the jury wanted to look at a summary
21 of these agreements, what exhibit number would they want
22 to write down?

23 A That would be DX1085, so it's at the top there
24 under the main title.

25 Q Okay. Just the agreements themselves are

1 DX392, 393, 394, 398, 419 and 420, and 636 and 400; is
2 that right?

3 A Yes.

4 MR. PLATT: Why don't we go to the next
5 slide, which is KU0016.

6 Q (By Mr. Platt) Could you explain what this
7 shows here?

8 A What we're -- what we're doing here is putting
9 things in a -- almost in a timeline. Whereas before --
10 excuse me -- whereas before we saw those license
11 agreements, now they're according to a timeline. But
12 we've also inserted the hypothetical negotiation dates.

13 There's the 2004 Worldwide Developer's
14 Conference. There's 2006 Worldwide Developer's
15 Conference. So you can just get a perspective of when
16 these agreements were entered into and how they relate
17 to the dates of the hypothetical negotiation.

18 I might add one more thing. It's almost
19 like -- we've heard this analogy that the parties have
20 these cards up. What you're starting to see are the
21 cards up on the Apple side of the negotiating table.

22 MR. PLATT: Well, if we could take a look
23 at Slide KU17.

24 Q (By Mr. Platt) Can you explain what this
25 shows?

1 A Yes. So in that card game analogy, these are
2 starting to be the cards up on the Mirror Worlds
3 Technologies' side.

4 Well, you can see that there were various
5 transactions dealing with the patents-in-suit.

6 We heard about the Yale transaction for
7 \$598,000. We heard about the -- in the middle there in
8 June of 2004, the transaction with Recognition Interface
9 for \$210,000.

10 We've heard about the Plainfield transaction
11 for 5 million.

12 But in between that, there was a number of
13 things happening. You had Mirror Worlds Technologies
14 that was trying to commercialize a product embodying the
15 teachings of the patents-in-suit, and they were having
16 difficulties with that. They weren't able to come out
17 with a commercially successful product.

18 At the same time, it's called monetizing the
19 patents-in-suit. They were trying to license their
20 patents. And while there were a very few small
21 licenses, they did not have any real ongoing licenses
22 that they were able to get money from, related to their
23 patents-in-suit.

24 And so they were having financial
25 difficulties, but they were not able to really

1 commercialize their patents-in-suit. And there were
2 indicators that there was a lack of market demand for
3 their technology because of all these things that were
4 happening.

5 So what I'm trying to do is say, okay, if you
6 look at that, now we're looking at the cards up for
7 Mirror Worlds Technologies and some of the difficulties
8 they were having trying to get a product out or trying
9 to license their technology.

10 Q Okay.

11 MR. PLATT: Now, if we could turn to
12 KU0018.

13 Q (By Mr. Platt) And can you explain how these
14 slides -- how all this fits together now?

15 A Yeah. It's almost better not to look at that,
16 because there was a lot going on.

17 But now we're just putting all the cards
18 together. But the point is, what's happening at this
19 negotiation; what's on the Apple side of the table?

20 Apple brings a lot to the table in terms of
21 their R&D, their brand name, the quality of their
22 products, the enthusiasm they generate from their
23 products, and just their ability to have commercial
24 success, their installed base of customers.

25 Then we've got -- and since these houses that

1 we're able to do a comp analysis of what their thinking
2 would be for how much they should pay for these patents,
3 and we talked about that before.

4 And on the upper side, we've got the Mirror
5 Worlds Technologies side where they're having
6 difficulties. They've gone through all their funding.
7 They're not able to commercial -- successfully
8 commercialize a product, and they're not able to get
9 ongoing licensing fees.

10 That's what would be happening at the
11 hypothetical negotiation, and I think the bottom line
12 is, if these patents-in-suit were going to be used and
13 embedded into a product, it would take the wherewithal
14 of Apple and all their capabilities to do that, and
15 Mirror Worlds Technologies would know from some of their
16 own difficulties that they couldn't do that themselves,
17 and somebody else would, in a sense, have to carry the
18 ball to do that.

19 And that's what would be happening at the
20 hypothetical negotiation.

21 Q And all those agreements on the bottom, those
22 are lump-sum payment agreements; is that right?

23 A Yes.

24 Q Well, can you tell us how your damages opinion
25 fits within this slide here?

1 A Well, I use this -- and this is ultimately why
2 I presented a range to the jury, because I'm bracketing
3 the number. I don't believe it's in the hundreds of
4 millions of dollars that Mr. Bratic presented to the
5 jury.

6 If you look at all the information that I've
7 tried to communicate and you bracket it by the \$210,000
8 on the lower side and you look at it at the higher end
9 of the 4 million that I discussed, that's how I ended up
10 bracketing the damages range that I've presented to the
11 jury.

12 Q Thank you.

13 MR. PLATT: Pass the witness.

14 THE COURT: All right.

15 Cross-examination.

16 CROSS-EXAMINATION

17 BY MR. DIAMANTE:

18 Q Hi, Dr. Ugone. How are you?

19 A All right. I don't mean to take your time,
20 but I need to get one drink here.

21 Q Sure. Literally give new meaning to the
22 phrase, a New York minute.

23 Dr. Ugone, you once told me you are a forensic
24 economist, right?

25 A Yes.

1 Q And that means you do investigative work; you
2 do digging; you dig into a problem, correct?

3 A Yes. That's one way to describe it, sure.

4 Q You probably will agree with us here that you
5 try to keep an open mind, correct?

6 A Yes.

7 Q And you're looking for the truth behind
8 things, aren't you?

9 A Absolutely.

10 Q Isn't it true, sir, in this case, you never
11 spoke to one senior person at Apple?

12 A I'm sorry. Just ask the question again.

13 Q Did you ever speak to anybody at Apple at the
14 senior level?

15 A I think I -- I think you know, and I described
16 in my deposition --

17 Q Tell them, too. Yes or no, right?

18 A I'm sorry. I spoke to a survey person, a
19 marketing person, but I haven't spoken to any of the
20 senior executives at Apple.

21 Q Okay. And you know that Steve Jobs mentioned
22 licensing in his e-mails, correct? Steve Jobs?

23 A Yes.

24 Q And he is the figurehead of Apple; you heard
25 about that?

1 A Yeah. We've seen him in some videos, sure.

2 Q He mentioned licensing, which is the same
3 issue you're supposed to tell us about, correct?

4 A He posed a question about licensing in one of
5 his e-mails, yes.

6 Q And you never even considered talking to him,
7 did you, sir?

8 A I -- I did not -- I did not talk to him. I
9 thought I had enough information to reach my opinions.

10 Q And he wrote another e-mail in November of
11 2002 -- sort of memorized these things -- about looking
12 at Scopeware.

13 And you never spoke to him about that e-mail,
14 did you, sir?

15 A That's correct.

16 Q And going back to the person that you did
17 speak to at Apple, can you tell us how long your
18 investigation took with this gentleman?

19 A It was about an hour, I think.

20 Q What was it?

21 A I believe it was about an hour.

22 Q One hour, right? And this gentleman is
23 Mr. Rangel, correct?

24 A Yes.

25 Q He's not here today, is he?

1 A No.

2 Q As a matter of fact, he's a marketing person,
3 correct, at Apple?

4 A Yes.

5 Q And isn't it true, sir, that you understand
6 that Apple doesn't rely upon him to interpret market
7 surveys?

8 A I think they have a survey group; that's
9 correct, yes.

10 Q You understand -- no. My question was, sir,
11 do you understand Mr. Rangel is not used by Apple to
12 interpret marketing surveys?

13 A I believe that's correct, yes.

14 Q But you used him, didn't you, sir?

15 A I didn't use him to -- in the same sense that
16 you're asking the question. What I used him for was to
17 understand the survey; and then the survey that we're
18 talking about, I did sort of an economic interpretation
19 of what was in that survey.

20 Q Those are the same surveys you criticized Walt
21 Bratic for using, correct?

22 A That I remarked that I believed that those
23 surveys did not provide the information as he was using
24 it.

25 Q Do you know what Walt Bratic did to analyze

1 those surveys?

2 A I believe he talked to a survey person who
3 isn't here either.

4 Q Yeah. A professor at NYU, correct?

5 A I believe that's correct, yes.

6 Q And haven't you used survey experts in the
7 past to help you with your analysis?

8 A At times, yes.

9 Q In fact, wasn't it in this very courthouse
10 that you did for the i4i case?

11 A In the -- actually, I think it was in a
12 different case.

13 Q Oh.

14 A But I won't disagree with you. I've used
15 survey experts in the past.

16 Q Okay. I'll move on.

17 Now, let's go back to this hypothetical
18 negotiation you talked about, right?

19 Have you ever played pretend?

20 A I'm sorry. I'm having trouble hearing you.

21 Q Have you ever played pretend as a kid?

22 Pretend?

23 A Sure.

24 Q Let's pretend you're the CFO of Mirror Worlds
25 this time. You don't work for Apple anymore, right?

1 You're the CFO of Mirror Worlds, okay?

2 A Okay.

3 Q And let's say, in 2004, you believe that
4 Microsoft and Google are using your technology, okay?

5 A Okay.

6 Q Your patented technologies, and in 2004, is
7 Microsoft a dominant player in the operating systems?

8 A I think Microsoft is known to have a very
9 large market share, sure.

10 Q And so let's assume -- I think we heard
11 testimony about that Dr. Gelernter felt that these two
12 companies were using his technology.

13 Did you hear that? I don't know if you were
14 in court.

15 A I was here.

16 Q Okay. Now, also, back -- let's go back to
17 reality a second.

18 There was a -- in reality, there wasn't a
19 teleconference between two parties, right, in 2001?

20 Correct?

21 A You're jumping around on me a little bit. If
22 you're saying between Apple and Mirror Worlds
23 Technologies, yes.

24 Q Yeah. There was -- there was. So let's
25 assume now you're the CFO.

1 A Of?

2 Q Mirror Worlds Technologies.

3 A Okay.

4 Q In 2004. And you think that two major
5 companies are using your patented technology and
6 flooding the market with billions of dollars of
7 products, okay?

8 And you also know that Apple, three years
9 before, was knocking on your door for a license -- for a
10 some -- we'll say a license, okay?

11 Accept that?

12 A I -- I'm understanding your assumptions, yes.

13 Q So would you, as the CFO, recommend to your
14 board that they give Apple a license for \$200,000 for
15 worldwide use of the patents?

16 A Actually, that wasn't quite what I said. I
17 think I clearly said the outcome of the negotiation
18 would be \$210,000 to 4 million, so that would be the
19 range where they would negotiate and ultimately settle.

20 Q So you would recommend \$200,000 to \$4 million
21 to your board?

22 A Would be the range, yes.

23 Q And isn't it true, sir, that in this case, you
24 did not look at any of Apple's sales?

25 A That's -- actually --

1 Q Excuse me?

2 A -- I noticed that yesterday that was said, and
3 that's a false statement.

4 Q Okay. How does -- how does -- well, explain
5 the math. 200,000 -- \$200,000 is the low side of your
6 analysis, right? Correct?

7 A Correct, yes.

8 Q How do you factor in Apple sales to arrive at
9 \$200,000?

10 A Here is exactly how I factored in Apple's
11 sales. In all of those license agreements that I showed
12 the jury that ranged from 70,000 to 4 million, those
13 license agreements covered all of Apple's products. It
14 wasn't like it was a small amount.

15 It wasn't like it was just a subset. Those --
16 the people that were negotiating with Apple and agreed
17 to those amounts knew that Apple would have the right to
18 put those -- that technology into all of their products.
19 And those were actual agreements that were made.

20 Q I'm glad -- I'm sorry.

21 A I wasn't quite done, but go ahead.

22 Q I glad you brought the licenses. That's the
23 high side. Those licenses give you some guidance for
24 the higher side of your lump sum, \$4 million, correct?

25 A I'm sorry. I'm missing your question.

1 Q You looked at two licenses, Gobelly and
2 Advanced Digital?

3 A If you're saying there was a
4 3.8-million-dollar license and a 4-million-dollar
5 license, yes, I agree with you.

6 Q You looked at it for the higher side of your
7 analysis, correct?

8 A That's the upper end, yes.

9 Q And you were not involved in those two cases,
10 were you, sir?

11 A No.

12 Q Those -- those were actually settlements from
13 litigations, correct?

14 A I would have to check for sure, but I believe
15 that to be correct.

16 Q I think that's correct. But you were not
17 involved and you weren't the economic analysis (sic) for
18 those cases, correct?

19 A No. No, I was not involved in those.

20 Q And you don't have -- you don't know -- you
21 don't get the reports as to how they figured out those
22 numbers, do you, for those cases?

23 A I did not have access to those reports. I did
24 have knowledge as to the numbers. I did have knowledge,
25 through Dr. Feiner as to the technology that was

1 covered, and whether they were comparable or more
2 important. Then I took the dollars and cents and
3 reached my opinions.

4 Q Let's just stick with the numbers for a
5 second.

6 You didn't know how many -- how much of
7 infringing sales were involved in those two licenses you
8 looked at, correct?

9 A Well, see this is what I was trying to say
10 before when I -- when I wasn't able to quite finish.
11 Those agreements cover all of Apple's sales. They have
12 the right to put that technology into all of their
13 products.

14 So it's actually -- it gives Apple quite a bit
15 of rights, and it has all the base that we're talking
16 about here.

17 Q Did Dr. Feiner opine about the strength of the
18 infringement case in those two matters you looked at?

19 A No. He didn't talk about the strength of the
20 infringement case, but I do know in this case that I had
21 discussions with him about non-infringing alternatives,
22 and so that went into the total mix.

23 Q Those patents in those two cases, in those two
24 licenses, Gobelly and Advanced Audio -- Advanced Audio
25 or Advanced Digital?

1 A It was Advanced Audio Devices, yes.

2 Q Was that -- do you recall anyone calling the
3 technology in those licenses revolutionary?

4 A I may be missing your question.

5 Q I'm referring to the technology in both of
6 those licenses. You recall anybody commenting that the
7 technology was revolutionary and paradigm-shifting?

8 A Well, if I remember correctly on the Advanced
9 Audio Devices -- just give me a second here -- I think
10 that technology has to do with -- if I'm not
11 incorrect -- has to do with like burning CDs and DVDs.

12 And if Apple didn't have those capabilities in
13 their computers, it would be very difficult for them to
14 sell a computer today. So it was very important to
15 Apple.

16 Q Let me ask you a question about your damage
17 analysis.

18 Would it make a difference -- if Apple sold 10
19 dollars' worth of sales or a hundred million -- hundred
20 billion dollars' worth of sales, your damage analysis
21 would be the same, wouldn't it, sir?

22 A That is correct, based on the comparable
23 licenses and the fact that Apple and many software
24 companies enter into lump-sum agreements.

25 And the reason is, they're always developing

1 new products. They don't know what's going to happen in
2 the future necessarily, so they need to have what's
3 called the freedom to operate. That's the economics of
4 why we see a lump-sum payment.

5 Q You mentioned a negotiation between
6 Recognition Interface and Mirror Worlds Technologies,
7 correct?

8 A I talked about a transaction between the two
9 of them, yes.

10 Q And you realize, sir, that the management of
11 Recognition Interface was the same as Mirror Worlds
12 Technologies, correct?

13 A I believe that's approximately correct, yes.

14 Q And you also know, sir, that the \$210,000 was
15 based on the cost to basically pay off debt, correct?

16 A I understand that, but I took more into
17 account in my analysis. I don't disagree with what you
18 just said, but I took more into account in my analysis.

19 Q That's correct, right?

20 And, sir, all this Georgia-Pacific Factors we
21 talked about, this is something you applied, correct, to
22 your analysis?

23 A Yes.

24 Q And that's widely accepted by the courts in
25 determining the value of a patent, correct, or a

1 license?

2 A Yes. I would say the courts look to see if
3 the Georgia-Pacific Analysis has been undertaken.

4 Q When Mirror Worlds Technologies and
5 Recognition Interface were transferring the patents to
6 Recognition Interface, was there a Georgia-Pacific
7 Analysis on the patents then?

8 A At the --

9 Q Did anybody do Pacific -- a Georgia-Pacific
10 Analysis at that time?

11 A I'm sorry. I was going to say I don't want
12 you to take my answer the wrong way, but the question
13 sort of doesn't make sense, because what the
14 Georgia-Pacific Analysis does, it says let's use that to
15 simulate what would have happened. Let's use that for
16 guidelines for the type of discussions.

17 So you don't necessarily have this
18 Georgia-Pacific Analysis necessarily in the real world.
19 They could. But the whole idea of the Georgia-Pacific
20 is --

21 Q I'm sorry to cut you off, because I have
22 little time. I think we got your point.

23 How about trying this one: When they
24 transferred the patents from Mirror Worlds Technologies
25 to Recognition Interface, was there a forensic economist

1 like you analyzing the infringement of the patents?

2 A Well, I would hope that, for example, the
3 people at Mirror Worlds Technologies themselves would
4 know the indicators of demand and the value of the
5 patents.

6 Q I just --

7 A I can't speak as to whether they had an
8 economist, but they did have Mr. Weil, for example, and
9 they had all of their experiences with the technology.

10 Q Sir, do you remember your testimony that you
11 gave me not too long ago, when I asked you the same
12 question, you said no? Do you recall that?

13 A And I'm more than happy to say no again, but I
14 just want to make sure that it's understood that they
15 did have someone knowledgeable there.

16 Q By the way, do you have any doubt in your mind
17 that Spotlight is a revolutionary product?

18 A Mr. Jobs said it was revolutionary, and I
19 think it's accepted in the marketplace.

20 Q You agree with that, don't you, sir?

21 A I don't disagree, sure.

22 Q Did you check into the number of times the
23 Gelernter patents were cited by other patents in your
24 analysis?

25 A I didn't check into it, but I've seen some

1 data on it, and it was presented in various reports.

2 Q And you realize it's over a hundred times,

3 correct?

4 A That's my understanding, yes.

5 Q Now, have you ever heard of a small company

6 being taken advantage of by a larger company?

7 A I think everybody's heard of --

8 Q Haven't -- have you ever been an expert in a

9 situation where a small company believed that a larger

10 company took advantage of it and used its patents?

11 A The answer is, yes, I've been involved in

12 cases where there's small companies against large

13 companies. I don't know if I would quite use those

14 words of taking advantage of, but there were disputes.

15 Q Do you remember a case called Biax?

16 A Absolutely, yes.

17 Q You were involved as the expert for Biax,

18 right?

19 A That's correct.

20 Q And that was a small company, correct?

21 A That was a small company.

22 Q And they stopped making products, correct?

23 A That's correct.

24 Q And it was suing a much bigger company, wasn't

25 it?

1 A Yes.

2 Q And the big company was Intel, wasn't it?

3 A Actually, it was suing two companies; one was
4 Intel and the other company --

5 Q And in that case --

6 MR. PLATT: Objection, Your Honor. I'm
7 not sure what the relevance is here.

8 THE COURT: Overruled.

9 Q (By Mr. Diamante) And in that case, sir,
10 didn't you apply a running royalty against Intel's
11 sales?

12 A Absolutely, because it fit in that case.

13 Q And --

14 A It wasn't -- it wasn't a software case. The
15 product didn't have thousands of features like we have
16 here. We're talking about a computer chip in Biax
17 Technology called hyper-threading. It was the major
18 portion of that chip. It was a very, very different set
19 of circumstances.

20 Q You applied a running royalty there, even
21 though that company was going out of business, correct?

22 A Going out of business has nothing to do with
23 it. The question is, is there an indicator or demand
24 for the technology.

25 Q And also, I saw that little chart get up

1 there. Everybody likes charts, and I noticed there was
2 a couple of things missing, but I don't know if we can
3 get into it all.

4 A You're going to have to tell me which chart
5 you're talking about.

6 Q Yeah. Well, you had a chart where all these
7 things were happening -- well, there was a company
8 called Intellectual Ventures.

9 Do you know who they are?

10 A Yes.

11 Q All right. And they are a company that's
12 partly owned by Apple, correct?

13 A Well, let's be a little careful. My
14 understanding is -- but I've never seen any agreements.
15 I can only say what my understanding is -- is that
16 there's a number of companies: Sony, Intel,
17 Microsoft -- are investors in Intellectual Ventures.

18 That's the best I can say. I've never seen
19 any agreements, but I think I've just heard of allusions
20 to that.

21 Q Sir, do you remember when we did your
22 deposition testimony, when I asked you, did you know if
23 Intellectual Ventures was an investor -- excuse me --
24 Apple was an investor -- if you knew that Apple was an
25 investor in Intellectual Ventures and you said yes?

1 A And I said yes, and I also said those other
2 names that I just said to you.

3 Q You also know it's a sophisticated company,
4 isn't it?

5 A I'm sorry? Say --

6 Q Isn't Intellectual Ventures a sophisticated
7 company?

8 A I would call them sophisticated, yes.

9 Q Do you know, sir, they made two offers for the
10 patents owned by -- for the Gelernter patents?

11 A I am aware of one negotiation that was going
12 on concurrently with the Plainfield negotiations, and
13 it's less clear about any evidence related to a second
14 claimed offer that you're talking about.

15 Q And you read the depositions of Ed Stone and
16 Rob Raich; that's in your report, right?

17 A Yes.

18 Q And it refers to an attempted sell between 30
19 and \$50 million with 10 percent back end.

20 Do you recall that?

21 A I recall that there was attempts to remember,
22 but there was no documentation that there might have
23 been an offer in vague terms with those figures.

24 Q You know when you wrote about that in your
25 report? It was in a footnote. Do you recall that?

1 A It was -- I think I had a reference to it,
2 yes.

3 Q And let's -- you've talked about marketing
4 surveys before, correct? You've talked about marketing
5 surveys?

6 A Here today?

7 Q Yeah, yeah. And do you know how much Apple
8 spends per year on its marketing surveys?

9 A I think that Apple is a sophisticated company,
10 and they want to know about their customers, so I think
11 they -- they invest in surveys, sure.

12 Q You read Mr. Rangel's deposition, didn't you,
13 sir?

14 A Yes. Yes.

15 Q Do you recall him saying that Apple spends
16 about \$20 million a year just for surveys?

17 A Yes.

18 Q You know? So basically, you're telling us
19 that Mirror Worlds should get about three months -- what
20 Apple spends in three months for their surveys, correct?

21 A Well --

22 MR. DIAMANTE: I have no further
23 questions.

24 THE COURT: All right. Redirect?

25 MR. PLATT: No, Your Honor.

1 THE COURT: Okay. Thank you. You may
2 step down.

3 All right. Who will be your next
4 witness?

5 MR. RANDALL: Your Honor, subject to
6 admitting our list of exhibits, we rest.

7 THE COURT: Okay. What exhibits do
8 you -- let's get the exhibits wrapped up. What exhibits
9 do you have to offer?

10 MR. RANDALL: I have a list here, Your
11 Honor. May I hand it up?

12 THE COURT: Yes, you may hand it up.
13 What is the title of it?

14 MR. RANDALL: It's entitled Defendants'
15 List of Exhibits to be Admitted, Thursday, September 30,
16 2010.

17 Now, I understand that they may have some
18 objections about this. I don't know if they do or not.

19 THE COURT: Hand those to Ms. Ferguson.
20 She'll mark it.

21 Are there any objections?

22 MR. STEIN: I'm not sure I've seen it.

23 MR. RANDALL: It was provided to them
24 yesterday.

25 THE COURT: Are there any objections to

1 Defendants' List of Exhibits No. 3?

2 MR. STEIN: No.

3 THE COURT: All right. It will be
4 admitted.

5 Plaintiff have -- excuse me -- does
6 Defendant rests?

7 MR. RANDALL: Yes, Your Honor.

8 THE COURT: Plaintiff, do you have any
9 evidence you wish to offer?

10 MR. CARROLL: Yes, Your Honor, we do.

11 THE COURT: Okay.

12 MR. CARROLL: With the Court's
13 permission.

14 THE COURT: All right.

15 MR. CARROLL: Your Honor, would you tell
16 us how much time we have left?

17 THE COURT: Yes. You have 23 minutes.

18 MR. DIBERNARDO: Mirror Worlds calls
19 Dr. John Levy.

20 MR. RANDALL: Your Honor, may I ask how
21 much time we have left?

22 THE COURT: You have 10 minutes.

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

24 DIRECT EXAMINATION

25 BY MR. DIBERNARDO:

1 Q Dr. Levy, you've been in court all week

2 listening to the testimony?

3 A Yes, I have.

4 Q Is it still your opinion that the Gelernter

5 patents are infringed by Apple?

6 A Yes, it is.

7 Q Is it still your opinion that the Gelernter

8 patents are valid?

9 A Yes.

10 Q Okay. Let's turn to your opinion of validity.

11 Can you tell me what you considered in

12 reaching that opinion?

13 A I've considered the prior art that was cited

14 and Dr. Feiner's reports, and I've considered the other

15 literature I'm aware of and the patents themselves and

16 all the testimony.

17 Q When you say the patents, you mean the patents

18 relied on by Dr. Feiner and patents and other articles

19 that were talked about in court?

20 A Yes, among -- yes.

21 Q And before we get into the individual prior

22 art references, can you summarize your opinion that the

23 Gelernter patents are valid?

24 A Yes. I believe that they are novel and a

25 contribution and innovative, and that they have not been

1 anticipated by other writings, including patents, and
2 are not obvious.

3 Q Is it your opinion that none of the prior art
4 references relied upon by Apple disclose streams as
5 included in the Gelernter patents?

6 A Yes, it is.

7 Q Now, just because a prior art system can sort
8 items -- search results by date and time, that doesn't
9 mean those prior references include a stream, does it?

10 A That's right. It's very important to
11 distinguish that kind of activity. We've had file
12 systems and storage and we've had a way to sort things,
13 but that does not -- and to display them in a list, but
14 that does not constitute what the Gelernter patents
15 describe as a stream.

16 Q Were any of the prior art references relied
17 upon by Apple disclose streams?

18 A No, they do not.

19 Q Is it your opinion that none of the references
20 relied upon by Apple describe the intuitive 3-D user
21 interface of the Gelernter patents?

22 A I believe they do not describe that 3-D user
23 interface.

24 Q Are any of those 3-D user interfaces in the
25 prior art references able to display unbounded views?

1 A No, I don't believe they do in the form that
2 the patents describe.

3 Q Do any of the prior art references or systems
4 relied upon by Apple disclose automatic archiving as
5 included in the Gelernter patents?

6 A In the way in which it's described in the
7 Gelernter patents, I believe they do not.

8 Q Let's turn first to the Piles reference.
9 Could you describe what Piles is?

10 A Well, the Piles, as we've seen, is used in the
11 desktop metaphor; and it's basically a substitute for a
12 folder and for subfolders. And we've seen how you can
13 split a pile into two and the things that were in one
14 pile become part of two others.

15 But when you do that, what you take out
16 doesn't stay in the one you started with. So there's
17 really no mainstream there.

18 Q Do you know if Apple ever used the technology
19 that they're relying upon, the Piles technology?

20 A To the best of my knowledge and based also on
21 Ms. Salomon's testimony, that was never implemented by
22 Apple in a commercial product.

23 Q You also talked earlier in the week about
24 substreams that are disclosed and claimed in the
25 Gelernter patents.

1 Does Piles disclose substreams?

2 A No, it does not.

3 Q Can you explain that just a little bit?

4 A Well, as I was just saying, even if you could
5 imagine that there was a main pile and you could make a
6 subpile, if you take it out of the main pile and it's no
7 longer in the main pile, then that doesn't amount to a
8 mainstream.

9 So as a result, that's not a substream in the
10 sense of the patents. That's one example.

11 Q Thank you.

12 You also talked a little bit about the notion
13 of streams being unbounded. Does Piles teach or
14 disclose anything that's unbounded in nature?

15 A No. The nature of it being a graphical object
16 that's on the screen, then if you start stacking them up
17 and add tens of thousands of things in there -- in fact,
18 I heard Steve Jobs say that he had more than a quarter
19 of a million files on his system.

20 One cannot imagine creating that kind of
21 unbounded thing on -- in a pile.

22 Q Was that a case of a lot of piles?

23 A That wouldn't fit anywhere on the screen.

24 Q Let's turn then to Mr. Lucas' Workscape prior
25 art references.

1 Can you describe what that is generally?

2 A Yes. So Workscape is about displaying things.

3 And remember, it talks about things called strands,

4 which are a way of graphically representing things. And

5 it's really not about a particular working system.

6 We saw a bunch of little squares on the

7 screen, but they didn't -- I mean, the strands are

8 really all about graphical presentation and not about

9 how to organize them inside the system.

10 Q We heard a lot this week about looking under

11 the hood.

12 Does that image of Workscape that shows these

13 strands of files tell you how it works under the hood?

14 A That particular one does not.

15 Q Can you explain that for a minute?

16 A Well, even in the patent itself, it's -- the

17 related patent here, '330, it describes the graphical

18 thing, but it doesn't actually claim anything related to

19 the organization of a document-organizing facility or

20 anything like that.

21 Q And so the manipulation of those strands on

22 the screen is happening not inside but just on the

23 screen?

24 A Yes. Those are all about how to present

25 something that's been already selected or organized

1 somehow, which is not disclosed.

2 Q So that organization is not happening in the
3 core, as we heard Steve Jobs describe Spotlight in that
4 video?

5 A Yeah, in the core or in the data structures,
6 that particular aspect is not described.

7 Q Let's turn, then, to the spatial data
8 management system, or SDMS.

9 Can you describe generally what that is?

10 A We got a quick view of that picture a little
11 while ago of the man sitting in the chair and the huge
12 screen in front and two other screens and a bunch of
13 control devices for navigating in those.

14 So that was some kind of way of navigating in
15 some kind of space, multiple control interfaces and so
16 on.

17 Q Does the SDMS have a stream?

18 A No.

19 Q Is it unbounded like a diary?

20 A No. It does not have -- it did not disclose
21 that sort of thing.

22 Q Can you explain why SDMS is not intended to
23 handle an unbounded number of items?

24 A Well, again, it's -- what is shown here
25 doesn't represent anything, except a calendar. But,

1 again, it's a graphical system. It's got some kind of a
2 representation on the screen, and that always has some
3 limited area.

4 And in particular, it doesn't really show a
5 method of how you can display some part of a very large
6 collection of data that's been organized in an
7 organizing facility, and then navigate through it the
8 way the streams do.

9 Q Does the SDMS have an underlying time-ordered
10 collection in documents?

11 A No, it does not.

12 Q I'm not sure if you can see it. You might
13 recall the image that Apple showed that was in the upper
14 left, the blue image with the documents.

15 A Yes.

16 Q Does that -- does that show a stream?

17 A No.

18 Q Can you explain why?

19 A Well, there are several reasons. That -- even
20 in the picture they showed that described where those
21 squares came from, say they were static images from a
22 video disk, and they represented them as slides; in
23 other words, little photographs.

24 And that was hardly the kind of time-sequenced
25 stream of documents we're dealing with here. They were

1 like frames or pictures that -- the reason they were in
2 time sequence, according to the people citing this, is
3 that they're a movie or some sequence of slides.

4 I think any modern system would regard that
5 whole thing as one data unit.

6 Q Are you saying that all those items shown in
7 that picture are the same type of document?

8 A Well, that was the case in that example, yes.

9 Q Even though the Gelernter patents in some of
10 the claims require documents of different formats and
11 from different applications?

12 A Yes.

13 Q Is that another basis why you believe SDMS
14 doesn't invalidate the Gelernter patents?

15 A Yes, it is.

16 Q Let's turn to Mr. Lansdale's MEMOIRS.

17 Can you describe generally what that is?

18 A Well, first of all, Mr. Lansdale is a
19 psychologist, whose original papers that were cited,
20 really talks about how people remember things, which is
21 not particularly relevant to this implementation.

22 The system that is described has one way of
23 entering documents into it. No matter what they are,
24 they had to be scanned by a scanner and put into a
25 digital format that was really all the same.

1 And they were timestamped, as you put it, at
2 the time they were scanned. But there was no other
3 metadata that came in with them automatically. The user
4 had to enter metadata by hand or index terms, whatever
5 they wanted, one by one for each document.

6 Q So there was no way to automatically include
7 metadata the way you describe for the Spotlight Store in
8 Apple's products, right?

9 A That's right.

10 And the display, of course, was like a
11 calendar with one square for each day. Each one of
12 those squares would be either white or black, and if it
13 was black, it meant there was one or more documents with
14 that date on it, but it didn't keep them in time
15 sequence as he's admitted here.

16 MR. DIBERNARDO: James, actually can you
17 pull up PX441, please?

18 Page 8, please, if you can get it close
19 in.

20 Q (By Mr. DiBernardo) While we are waiting for
21 that, Dr. Levy, you heard Mr. Lansdale reference an
22 electronic diary.

23 That's not the same kind of electronic diary
24 in connection -- that's used in connection with the
25 Gelernter patents, is it?

1 A That's right. It is not. It just happens to
2 be the same word. In fact, being British in origin,
3 that term in Britain, as I understand it, normally means
4 just a date book that you keep your appointments in.

5 And in this thing -- in this system, the
6 event-related information and the documents were
7 actually displayed in separate places.

8 Q Are there any stream shown in this figure?

9 A I'm sorry?

10 Q Is there any stream reflected in this?

11 A No.

12 Q Let's move on into Mr. Belove's Magellan and
13 his related patent, the '361 patent.

14 Can you describe generally what that is?

15 A Well, this one is -- Magellan was a
16 word-indexing system as was described here. This
17 activity was well-known. A user says, here are a bunch
18 of documents that I would like to have indexed, and then
19 it would extract the words from those and build that
20 index database.

21 Anyway, that was the essence of the Magellan
22 system that if you told it to index something, it would
23 do that, and then you could retrieve them.

24 Q Could you summarize what aspects of the
25 Gelernter patent claims are not taught by this

1 reference -- these references, actually?

2 A Well, it doesn't teach a stream in a
3 time-ordered organization in the underlying structure.
4 These are from repositories, so these are not
5 necessarily time-ordered and doesn't teach a mainstream
6 or a substream.

7 Q Thank you.

8 Is it also your opinion that these references,
9 one or more of these references, be combined to render
10 the Gelernter patent claims obvious?

11 A No. In my opinion, one of ordinary skill in
12 the art would not have combined these to come up with
13 the Gelernter invention.

14 Q Can you describe that generally for us?

15 A You mean how that would not happen?

16 Q So, for example -- and actually, before we
17 move on to that, how about the Retrospect, the prior
18 reference? Can you tell us what that is?

19 A Yes. Retrospect was an archiving utility, if
20 you like. I've used it myself. It was particularly
21 difficult to use, in my opinion, but that's not the main
22 point.

23 It was a utility that you -- if you wanted to
24 archive something, you had to tell it: Take this and
25 this and this and make that collection of documents, and

1 then either right now or sometime in the future that

2 I'll tell you about, make a copy of those.

3 So it was very much not an automatic archiving
4 system until someone programmed it to do that archiving.

5 Q So it wasn't automatic like the Gelernter
6 patents, and it wasn't automatic archiving as provided
7 by Apple's Time Machine, was it?

8 A That's right. And it didn't provide the
9 searching.

10 Q And going back to this notice of obviousness,
11 another reason why any combination of these references
12 don't render the patent claims obvious, it's because
13 none of them disclosed streams, right?

14 A That's right.

15 Q Do any of them disclose substreams?

16 A No.

17 Q And how about a mainstream?

18 A No, they don't do that either.

19 Q Just one -- one question, I suppose, on
20 infringement. We've heard a lot about this notion that
21 Apple uses files and folders.

22 MR. RANDALL: Objection, Your Honor. Is
23 this rebuttal, or is this -- it's improper rebuttal,
24 talking about infringement.

25 THE COURT: Overruled.

1 Q (By Mr. DiBernardo) Now -- and I think this is
2 important, an important aspect. Is it your opinion that
3 Apple's products can still infringe, even if they use
4 both files and folders and streams?

5 A Yes, it is.

6 Q So it's not an issue of black or white or
7 heads or tails; a computer system could use both files
8 and folders and streams and still infringe the Gelernter
9 patents?

10 A Yes, they can. In fact, in Column 4 and
11 around Line 45, there's a description of the fact that
12 the stream system can be built on another system that
13 has files and folders.

14 Q And is that -- is that because the files that
15 are in these folders still have all their data in the
16 Spotlight Store in Apple's product?

17 A That's right.

18 Q Including the time-based metadata?

19 A Yes.

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

22 THE COURT: All right. Cross-exam.

23 CROSS-EXAMINATION

24 BY MR. RANDALL:

25 Q Dr. Levy, let me first start with -- I think

1 you mentioned that --

2 MR. RANDALL: Can you pull up Slide 25?

3 I'm sorry. I will go with SF25.

4 Q (By Mr. Randall) So MEMOIRS is on the left.

5 You said that MEMOIRS doesn't have streams,

6 right?

7 A Yes.

8 Q MEMOIRS doesn't have a time -- do you -- were

9 you in the courtroom when we played the tape from

10 Professor Lansdale?

11 A Yes.

12 Q Okay. And you recall from that video that he

13 said that MEMOIRS stores different types of data. He

14 said it stores voice, and it stores other types of data,

15 right?

16 You agree with that, right?

17 A That was not disclosed in the documents

18 describing this -- the patents.

19 Q Sir, that wasn't my question. Did you hear

20 him --

21 A I heard his testimony, yes.

22 Q And he said that, one, MEMOIRS stored

23 different types of data, correct?

24 A Yes.

25 Q All right. And he also said that MEMOIRS

1 stored that data in chronological order, correct, like a
2 diary?

3 A I don't recall that, but I'll take your word
4 for it.

5 Q Oh, it's -- you don't recall that?

6 A I don't recall him saying that in those terms.

7 Q Okay. Do you recall him saying that it acts
8 like an electronic diary?

9 A I don't.

10 Q Okay. Do you recall him -- Professor Lansdale
11 saying that all of the documents that were entered into
12 the system were timestamped?

13 A Yes.

14 Q All right. Did you hear him say that all of
15 the different types of documents that were included in
16 the MEMOIRS time-based diary had a past portion, a
17 present portion, and a future portion?

18 A Does the document say that?

19 Q No. That the system, the MEMOIRS time-based
20 diary, had a past portion for the various types of
21 documents, a present portion, and a future portion.

22 Do you remember his testimony in that?

23 A I remember his testimony, but I don't remember
24 him saying that the documents could be in that future
25 portion.

1 Q So did you consider that testimony at all in
2 rendering your opinion that there was no stream in that
3 prior art testimony?

4 A Well, I heard his testimony here today, but I
5 relied on the written descriptions of the system for my
6 opinion.

7 Q Yeah. And I understand. But did you -- so
8 you didn't consider his testimony at all in rendering
9 your opinions in this case?

10 A You mean today's testimony?

11 Q Well, that testimony was -- was actually a
12 deposition, a videotape, that you had access to,
13 correct?

14 A I don't recall that I had access to that.

15 Q All right. Well, let me back up then.

16 A Okay.

17 Q Did you ever see and consider Professor
18 Lansdales' videotape deposition testimony, a portion of
19 which was played here today?

20 A I had not seen the videotaped deposition.

21 Q All right. And so in forming your opinion
22 that the reference -- the Lansdale MEMOIRS time-based
23 diary was not a stream, you did not consider his
24 videotaped deposition testimony, correct?

25 A Correct.

1 Q All right. I think I could have saved myself
2 about four minutes there.

3 You also said that -- you talked about 3-D
4 user interfaces.

5 MR. RANDALL: Can we pull up Slide 24?

6 Q (By Mr. Randall) The claims don't require a
7 3-D user interface, right?

8 A They do not use that term.

9 Q Right. But it does use the term receding
10 foreshortened stack, right?

11 A Yes.

12 Q Okay. So let me show you Workscape right here
13 that we heard from Mr. Lucas on, would you agree that --
14 pick one of those representations of documents. Do
15 they -- do they recede?

16 A I'm sorry. Pick one of --

17 Q How about the middle one? Pick the middle --
18 pick one of those middle ones. Do they recede back into
19 space?

20 A Yes.

21 Q Okay. Do they get smaller as they go back?

22 A Yes.

23 Q Okay. Do those then -- are they receding and
24 foreshortened?

25 A I think so.

1 Q Okay. And they contain documents, right?

2 A I think they -- as we heard the testimony,
3 they are the documents for the sake of this
4 presentation.

5 Q Right. And you also mentioned -- when you
6 were distinguishing this prior art, you said unbounded,
7 right? I heard it about five times, right?

8 A Yes.

9 Q That's not in the claims, is it?

10 A It is implicitly in the meaning of a diary.

11 Q It's -- it's not in -- excuse me?

12 A I believe that in the description of a
13 diary -- so we're saying this functions as a diary of a
14 person's electronic life -- that the unboundedness is a
15 characteristic of a diary.

16 Q Doesn't something -- doesn't a diary always
17 have a start?

18 A A start?

19 Q I know when I was born, I knew my -- I don't
20 remember it, that's for sure, but I certainly know that
21 I have a birth date. I know that diaries start with
22 Page 1 or start with a certain year.

23 Isn't there a start to every diary?

24 A Sure.

25 Q Okay. But nowhere in the Court's construction

1 and nowhere expressly in the claims is there some
2 limitation that says that things have to be unbounded,
3 right?

4 A Right.

5 Q Okay. But you applied that limitation. When
6 you were trying to distinguish the prior art, you
7 applied that unbounded limitation, didn't you?

8 A I considered that, yes.

9 Q And you relied on it, didn't you?

10 A Not entirely.

11 Q You did rely on it in part in distinguishing
12 prior art, didn't you?

13 A Yes, sir.

14 Q Where's the back boundary of this Workscape?
15 These Workscape receding foreshortened stacks, where
16 does it end when it goes back into space?

17 Can you see it there?

18 A Well, I think that -- I can see the last one
19 that's in the stack, if that's what you meant.

20 Q Okay. But does it end?

21 A Does it end?

22 Q Yeah.

23 A Yes.

24 Q Somewhere back there?

25 A Yeah.

1 Q Okay. All right. You mentioned Retrospect as

2 the archiving prior art reference, right?

3 A That was the one that --

4 Q You reviewed it, right?

5 A -- we viewed as archiving, yes.

6 Q But that is an automatic archiving piece of

7 prior art, right?

8 A Not within -- well --

9 Q No. It is, correct?

10 A It's archiving.

11 Q It discloses automatic archiving, doesn't it?

12 A I don't think it meets the limitations of the
13 patents for automatic archiving.

14 Q Your -- your distinction here is, you say --
15 well, it's not quite the type that's in the patent, but
16 it is automatic archiving of documents, right?

17 A I did not say it's not quite. It is not at
18 all the automatic archiving disclosed in the Gelernter
19 patents.

20 Q Does the Apple's Piles system -- does that
21 disclose a -- showing sliding a cursor along the stack
22 to show a glance view?

23 A Only when it's in a certain mode.

24 Q But it does do that, right?

25 A At certain times.

1 Q You said that that's SDMS only -- did you say
2 that SDMS, the work that Chris Schmandt did and others
3 at MIT, only had one kind of document in it?

4 You didn't say that, did you?

5 A No, I didn't.

6 Q All right. Because it had different types of
7 documents. It had movies; it had documents; it had a
8 whole host of different applications, correct?

9 A That's what I understand. Applications
10 meaning documents.

11 Q Excuse me?

12 A Yeah.

13 Q It does, right?

14 A Yes.

15 Q Okay. You said that this Workscape system --
16 1994 Workscape system, you said it was not about a
17 working system and how to organize documents.

18 Did you see the animation where it all started
19 all together, and then they started splitting them up by
20 categories? I think they said e-mails in one and other
21 types of documents in another, and they started
22 splitting them up.

23 Isn't that assisting one in organizing
24 documents on a computer?

25 A I believe that was its intention.

1 Q Okay. And lastly, you mentioned -- when you
2 were talking about Professor Lansdale, you said that he
3 was a psychologist, right?

4 A I believe he's identified himself that way.

5 Q Okay. Yeah.

6 Didn't -- didn't Gitta Salomon, with respect
7 to the Piles reference, didn't she say that she studied
8 how people -- she studied how people remembered things,
9 how they stacked things on a desk, and Professor
10 Lansdale said he was trying to study about how people
11 organized things; and that's the same thing with SDMS
12 that Chris Schmandt said he was trying to figure out how
13 people thought and remembered things physically in
14 locations. Right?

15 A Yes.

16 Q And that's the generation, and that's what
17 caused a lot of these folks to come up with the same
18 idea that Gelernter came up with but years before,
19 right?

20 A I don't agree.

21 Q Okay.

22 MR. RANDALL: No further questions, Your
23 Honor.

24 THE COURT: All right. Thank you.

25 Redirect?

1 MR. DIBERNARDO: None, Your Honor.
2 THE COURT: All right. Thank you. You
3 may step down.
4 Who will be the Plaintiff's next witness?
5 MR. CARROLL: Re-call Mr. Bratic, Your
6 Honor.
7 THE COURT: All right. Mr. Bratic.
8 MR. CARROLL: I show I've got about two
9 minutes; is that right?
10 THE COURT: Something like that.
11 MR. CARROLL: Well, the last shall be
12 first.
13 If the Court please, Your Honor.
14 THE COURT: Thank you, Mr. Carroll. You
15 may sit down.
16 WALTER BRATIC, Ph.D., PLAINTIFF'S WITNESS,
17 PREVIOUSLY SWORN
18 DIRECT EXAMINATION
19 BY MR. CARROLL:
20 Q Mr. Bratic, first --
21 THE COURT: Mr. Carroll, you may sit
22 down. Your time has expired.
23 [Laughter]
24 THE COURT: No. Go ahead. You've --
25 MR. CARROLL: I beg for mercy.

1 Q (By Mr. Carroll) Mr. Bratic, let me ask you
2 this first: If you take out iPhone, iPad, and iTunes,
3 is -- does it reduce the amount of money you think we're
4 owed by about 50 percent?

5 A Yes.

6 Q Okay. The second question I have is: You sat
7 through this whole day hearing all this criticism by a
8 lot of these guys, who are still out here, about
9 Dr. Gelernter's ideas.

10 Did you see anything that sounded like that
11 kind of criticism, as opposed to the kind of words that
12 the Apple people were putting in their e-mails to one
13 another when they were talking about what an amazing
14 invention he had?

15 A No.

16 Q The other question I have is: You also sat
17 out here with the rest of us -- and I think they're all
18 gone now -- but when these Apple guys all sat up here
19 and ho-hummed about how ordinary and mundane and matter
20 of fact their products were, that's not the same kind of
21 message that we heard on the screen from Steve Jobs when
22 he was saying how revolutionary this stuff was.

23 A That's correct.

24 MR. CARROLL: Pass the witness.

25 THE COURT: Cross-exam?

1 MR. RANDALL: Well, Your Honor, I do know
2 that we're going to have some argument tomorrow, and
3 I'll hold off till tomorrow, and I'll argue tomorrow.

4 THE COURT: All right. Thank you very
5 much. You may step down.

6 Do you have any further witnesses?

7 MR. CARROLL: No, Your Honor. We close.

8 THE COURT: Do you have any exhibits that
9 you need to offer?

10 MR. CARROLL: Oh, we do.

11 Where's our exhibit list?

12 THE COURT: Let me clarify.

13 Mr. Randall, you had handed up an exhibit
14 list. I referred to it as Exhibit List No. 3, but Ms.
15 Ferguson advises me that it's actually Exhibit List No.
16 2; is that correct?

17 MR. RANDALL: I'm looking to the brains
18 of the operation, and she said yes, so I'll agree with
19 her.

20 THE COURT: Okay. Then it would be
21 Defendants' Exhibit List No. 2 that was admitted into
22 evidence. That was a mistake perhaps on yours and my
23 part. Neither one of us consulted our brain, so...

24 MR. RANDALL: All right.

25 THE COURT: All right, Mr. Carroll. What

1 exhibits do you have?

2 MR. CARROLL: If the Court please, Your
3 Honor, we have documents, cumulative, of September 27th
4 through September 30th, and it's a four-page document,
5 and it begins with No. 1 and ends with No. 158.

6 THE COURT: Does it have a title?

7 MR. CARROLL: It's called Plaintiff's
8 List of Exhibits admitted on September 27th through
9 30th, 2010.

10 THE COURT: And this is your cumulative
11 list?

12 MR. CARROLL: That's correct, Your Honor.

13 THE COURT: And so this includes all of
14 the exhibits that you have offered into evidence?

15 MR. CARROLL: And you earlier accepted.

16 THE COURT: All right.

17 MR. CARROLL: I believe that's correct,
18 Your Honor.

19 THE COURT: And so that will be marked as
20 Plaintiffs' Exhibit List No. 4.

21 Are there any objections to that exhibit
22 list and the exhibits contained therein?

23 MR. RANDALL: No, Your Honor.

24 MR. CARROLL: Don't look over your
25 glasses at me.

1 [Laughter]

2 THE COURT: All right. They're admitted.

3 All right. Did you get yours

4 straightened out? Do we have everybody straight now?

5 Do you need to --

6 MR. RANDALL: I think we do, Your Honor.

7 THE COURT: Okay. All right. That --

8 Ladies and Gentlemen, that concludes the

9 evidence in the case, so give yourselves a hand.

10 [Applause]

11 THE COURT: You've heard all of the

12 evidence. Y'all have worked very, very hard today; and

13 on my behalf and I know on the parties' behalf, it is

14 very, very much appreciated.

15 Go home. Have a relaxing evening. Have

16 a drink or two, whichever you might -- however you might

17 be so inclined.

18 We're going to start back at 9:00 o'clock

19 in the morning. We do want you sober when you come

20 back.

21 [Laughter]

22 THE COURT: So don't go too far. But

23 we're going to start back at 9:00 o'clock in the

24 morning. I'll have a Court's charge delivered to you.

25 It will probably take 30 to 45 minutes.

1 Then we'll hear closing arguments, which
2 will be 45 minutes per side. You should have the case
3 before noon tomorrow to begin your deliberations. We'll
4 have lunch brought in for you again tomorrow so that you
5 can have a working lunch.

6 All right. Any questions from the jury?

7 Very well. Again, thank you for your
8 attention. Please remember my instructions. No
9 discussion, even among yourselves, until after we get
10 you back to your deliberations about noon tomorrow.

11 You are excused.

12 COURT SECURITY OFFICER: All rise for the
13 jury.

14 (Jury out.)

15 THE COURT: Please be seated.

16 All right. Does Plaintiff have any
17 objections to the Court's charge?

18 MR. CARROLL: Your Honor, we don't have
19 any objections. I think our only comment is that on
20 verdict -- the verdict form on the invalidity question,
21 it has: Otherwise skip to Question 4, and there's not a
22 Question 4.

23 THE COURT: Oh, okay. We'll fix that.

24 MR. CARROLL: Other than that, we don't
25 have any objections.

1 Right?

2 Okay. No objections.

3 THE COURT: We'll strike: Otherwise skip
4 to Question 4.

5 Do Defendants have any objections to the
6 Court's charge?

7 MR. RANDALL: We do, Your Honor.

8 THE COURT: All right.

9 MR. RANDALL: With respect to the verdict
10 form, under 1(a), we request that it be broken down by
11 claim and by product, because there are two operating
12 systems accused; and they are accused of different
13 claims of being infringed by.

14 With respect to Question No. 2 --

15 THE COURT: Just a minute. Let me hear
16 Plaintiff's response to that one.

17 MR. STEIN: We think the form is good the
18 way it is. You don't need to break it up. It's clear,
19 and it's simple, and we don't --

20 THE COURT: Well, he said it's different
21 devices and different operating systems. What's your
22 response to that?

23 MR. STEIN: Well, you know, at this
24 point, there's two operating systems, and they overlap,
25 to some extent, that leads to infringement.

1 THE COURT: I'm sorry?

2 THE REPORTER: Go to the podium, please.

3 MR. STEIN: What?

4 THE REPORTER: Go to the podium, please.

5 THE COURT: Yeah, go to the podium,
6 please.

7 MR. DIBERNARDO: There are different
8 operating systems; however, the proof was the same for
9 all of those. That's why you heard so much about the
10 Spotlight Store, which is --

11 THE COURT: All right. That objection is
12 overruled.

13 What's next?

14 MR. RANDALL: All right. Your Honor,
15 with respect to Question No. 2. We would request that
16 it be broken down by claim.

17 And also the second -- the paragraph
18 below the question, yes or no, appears to, as written,
19 allow the jury to award damages for an invalid but
20 infringed --

21 THE COURT: All right. Have you moved on
22 to Question 3?

23 MR. RANDALL: No. I'm sorry. It was --
24 I moved on to the text under the question associated --
25 starting with: If you found in Question 1...

1 THE COURT: All right. How do you
2 propose that it be worded?

3 MR. RANDALL: Well, let me see here.
4 Instead of the -- Line 3, the word
5 asserted should be replaced with infringed.

6 THE COURT: All right. We'll do that.

7 MR. RANDALL: And then there's one other
8 notation there on that one, Your Honor, and that is that
9 it says: Skip -- otherwise skip to Question 4, and
10 there is not one.

11 THE COURT: Right.

12 MR. RANDALL: Yeah.

13 THE COURT: I've already taken that out.

14 MR. RANDALL: Okay. Okay.

15 THE COURT: Okay. Anything further?

16 MR. RANDALL: Yes. The date in Question
17 No. 3, we would propose to include the date that the
18 damages should begin.

19 THE COURT: All right. That's overruled.

20 What's next?

21 MR. RANDALL: That's it, Your Honor.

22 THE COURT: Okay.

23 MR. RANDALL: Your Honor, may I just
24 raise one issue with respect to that first -- my first
25 point?

1 THE COURT: Yes.

2 MR. RANDALL: And that was that the Mac
3 OS Tiger -- now, the Mac OS 10 Leopard and Snow
4 Leopard --

5 THE COURT: Uh-huh.

6 MR. RANDALL: -- they are accused of
7 infringing all the claims, but the Mac OS 10 Tiger is
8 only accused of infringing the '227 patent, Claims 13
9 and 22. That's it. And that's why I asked for a
10 breakdown.

11 THE COURT: And you're wanting a break --
12 how detailed of a breakdown? Are you wanting just the
13 claims or the claims and devices?

14 MR. RANDALL: Claims and devices.

15 MR. STEIN: I don't think it makes a
16 difference, because we've never -- we've never argued
17 Tiger of the '427 patent and '313. So I don't see why
18 the breakout would be helpful at all.

19 THE COURT: Does that help you any?

20 MR. RANDALL: No.

21 THE COURT: All right. I'll take that
22 one under advisement.

23 Anything further from Defendant?

24 MR. RANDALL: On the charge -- well,
25 other than on the charge itself?

1 THE COURT: Oh, you have something on the
2 charge?

3 MR. RANDALL: Yes.

4 THE COURT: Okay.

5 MR. RANDALL: Under Contentions of the
6 Parties --

7 THE COURT: What -- give me the page and
8 line, please.

9 MR. RANDALL: Okay. Page 4, and it is
10 right underneath the heading on No. 2, Contentions of
11 the Parties.

12 THE COURT: All right.

13 MR. RANDALL: The second line says:
14 Sell, sell, or import products -- right there that word
15 products, there could be confusion among the jury
16 because they've presented a whole host of evidence
17 regarding our iPods, iPads, and Nanos and so forth.

18 And I'd like an instruction that the
19 iPod, iPhone, and iPad are no longer at issue, and the
20 jury cannot consider the evidence that was presented on
21 those issues -- on those products.

22 THE COURT: What is Plaintiff's position
23 as to how we ought to handle that? I -- I've had the
24 same question, whether we need to -- or whether it's
25 better to say something in the charge about it or not

1 say something about it, and likewise with Apple
2 abandoning their patent infringement of their patents.

3 MR. RANDALL: May I make a suggestion?
4 I mean, from our point of view, I don't mind at all if
5 the Court says that the parties -- that the issues that
6 will be presented, Apple is not going to present -- we
7 are not going to present evidence on infringement of the
8 Piles patent, and the parties are not going to present
9 argument on the -- those other products, iPods, iPhones,
10 and iPads.

11 MR. CARROLL: Your Honor, the problem
12 with that is the evidence is closed. He said we're not
13 going to -- you're going to instruct them that they're
14 not going to present evidence.

15 MR. RANDALL: No argument.

16 MR. CARROLL: Testimony is closed.

17 MR. RANDALL: We're not going to present
18 argument on those issues, and they shouldn't consider
19 evidence regarding those issues.

20 THE COURT: What I was considering doing
21 would be giving them an instruction something like:

22 Ladies and Gentlemen of the Jury,
23 sometimes during the course of the trial, the issues and
24 the disputes get narrowed. That has happened in this
25 case.

1 Apple -- the issue of Apple's
2 infringement of its patents is no longer in the case, as
3 well as the issue of infringement by the iPhone, iPad,
4 and iPod is no longer in the case.

5 MR. CARROLL: Would you give that in the
6 written charge or just add that in there?

7 THE COURT: I'd give it in the written
8 charge somewhere.

9 Any objection from Plaintiff?

10 MR. CARROLL: I don't think so, Your
11 Honor. Well, I mean, I know we're going to have some
12 objection.

13 Can we -- can we just think about one
14 minute, Judge, about this? I know we're about to run
15 out of time.

16 THE COURT: All right.

17 MR. RANDALL: Can I address another issue
18 while they're thinking about it? I don't have an
19 objection to that, Your Honor.

20 THE COURT: You have no objection to
21 that?

22 MR. RANDALL: No.

23 THE COURT: All right.

24 MR. RANDALL: But I do -- would -- if
25 you -- can I raise an issue with respect to the next

1 line, with respect to the method claims in this case?

2 THE COURT: The next line on Page 4?

3 MR. RANDALL: Yes, Your Honor.

4 THE COURT: All right.

5 MR. RANDALL: And it's specifically
6 addressed to the methods, which is at Line 2, the
7 methods that infringe at least one of the claims and so
8 forth.

9 THE COURT: Uh-huh.

10 MR. RANDALL: Your Honor, we would move
11 to have those claims, the method claims specifically, be
12 dismissed from this case. That would be '227, Claims 13
13 and 22; and '313, Claims 1, 2, 3, 9, and 11.

14 All of those claims are -- Apple does not
15 directly infringe those claims because they require
16 participation by another user or entity, not Apple.

17 And because the Court has already
18 dismissed the indirect infringement claims, under the
19 Joy Techs case at 6 F.3d 770 at 774-775, Federal Circuit
20 1993 case: A method claim is not directly infringed by
21 the sale of an apparatus.

22 Even though it is capable of performing
23 only the patented method, the sale of the apparatus is
24 not a sale of the method. A method claim is directly
25 infringed only by one practicing the patented method.

1 Apple, by selling -- making and selling
2 these computers, given that -- cannot infringe those
3 method claims. A user or someone else has to provide
4 the information or manipulate the data or move the
5 cursor, do something, but not Apple.

6 And so those claims shouldn't go to the
7 jury.

8 THE COURT: Response?

9 MR. STEIN: Two.

10 One is that I don't agree that those
11 claims need participation by the user. They're
12 certainly -- the claims are infringed by the product
13 that Apple sells.

14 THE COURT: Well, I don't think he's
15 objecting to the product portion, are you?

16 MR. STEIN: Well, that --

17 THE COURT: He's just objecting to the
18 method portion.

19 MR. RANDALL: I'm not objecting to the
20 system claims of '427 going to the jury. I am objecting
21 and moving to dismiss the method claims in this case,
22 which are the 2 -- I've mentioned them. Those method --
23 it's basically all the claims except for the '427
24 claims.

25 And they knew how to design and draft

1 system claims, and these are methodclaims that require
2 some other action by some other user or entity, not
3 Apple. And Apple cannot -- and Apple does not
4 indirectly infringe those without that other entity or
5 action taking place, and therefore, they shouldn't go to
6 the jury.

7 MR. STEIN: I disagree. The computers
8 perform the steps of this claim on their own; and
9 therefore, you know, despite turning the thing on, that
10 they're going to infringe the claims.

11 And we have evidence of infringement
12 by -- in any event, Apple has given numerous -- itself
13 has given numerous demonstrations and -- of the accused
14 functionality and held some of the conferences that
15 we've seen. We've seen -- we've seen all of these
16 claims infringed by Steve Jobs himself here. So there's
17 clearly infringement.

18 And the -- and in addition, there's
19 also -- so it's clearly -- there's clearly infringement,
20 and the issue then comes -- you know, maybe there's an
21 issue -- another issue; but the main point is that the
22 claims themselves are infringed by the operation of the
23 computer -- the computer alone, and therefore, we don't
24 think that those claims should be dismissed.

25 And do you want to ask something?

1 THE COURT: All right. The Court's going
2 to take a closer look at that one.

3 Excuse me. Go ahead.

4 MR. DIBERNARDO: An additional point,
5 Your Honor, I believe there are cases that go to this
6 issue cited in Mirror Worlds' Opposition to Apple's
7 Motion in Limine No. 16 that go to the proposition that
8 the mere capability is enough -- the capability to
9 perform the claimed method is enough for infringement.

10 And of course, the software sold and the
11 computers sold by Apple have that capability.

12 THE COURT: All right. The Court's going
13 to take a closer look at it; but for now and for the
14 record, I'm denying it. But I may revisit it by in the
15 morning.

16 Okay. Did Plaintiff reach a decision on
17 my proposed instructions?

18 MR. CARROLL: We're fine with that, Your
19 Honor.

20 THE COURT: All right. I'll -- we'll
21 work an instruction in like that wherever it seems to
22 fit.

23 MR. RANDALL: Your Honor --

24 THE COURT: Okay. Any other objections?

25 MR. RANDALL: Yes, Your Honor.

1 I would like to preserve my objection
2 that I raised with the Court earlier; that is, that the
3 clear and -- the clear and convincing evidence standard
4 should not apply to the art that was not before and
5 considered by the PTO, particularly that art which has
6 been relied on by the PTO to invalidate all the claims
7 or at least reject all the claims on re-exam.

8 We also object to the --

9 THE COURT: Well, let me deal with them
10 one at a time.

11 MR. RANDALL: Yes.

12 THE COURT: Your objection is noted for
13 the record and is overruled.

14 MR. RANDALL: Okay. We also object to
15 the presumption of validity attaching to -- particularly
16 to the claim -- the prior art that has not been
17 presented --

18 THE COURT: All right.

19 MR. RANDALL: -- and given that these
20 claims are -- stand rejected in re-exam.

21 THE COURT: All right. The objections
22 are noted for the record and overruled.

23 MR. RANDALL: Just one more moment.

24 We object to the willfulness instruction
25 to the extent it does not allow the jury to consider

1 evidence regarding the re-exam proceedings.

2 THE COURT: Objection noted for the
3 record and overruled.

4 Anything further?

5 MR. RANDALL: Give me one second, Your
6 Honor.

7 The reasonable -- reasonable royalty
8 definition, we ask that the royalty that can be
9 applied --

10 THE COURT: What page are -- what page
11 are you on?

12 MR. RANDALL: Okay. I'm on 24, Your
13 Honor.

14 THE COURT: Okay.

15 MR. RANDALL: We'd ask that you include
16 in the instruction the fact that the royalty that may be
17 due, if they determine one, can be a lump-sum payment,
18 and particularly in this case, it ought to apply because
19 we have -- the facts and circumstances of this case are
20 very unique in that there was a sale -- not just a
21 license but a sale of all the patents occurred right
22 around the time that we say the hypothetical negotiation
23 took place.

24 Their hypothetical negotiation took place
25 a few months later, but, nonetheless, both hypothetical

1 negotiations are bracketed by complete sales of the
2 patents.

3 MR. CARROLL: Your Honor, that's so
4 unique it happens in every case in this court where
5 there's a patent holding company involved. We think
6 it's a comment by the Court on the evidence, and the
7 jury's heard arguments from Mr. Bratic and Mr. Ugone.
8 They can decide.

9 THE COURT: All right. The Court's going
10 to insert on the fourth line of reasonable royalty,
11 after the clause the infringement first began, that
12 simply says, it may be a running royalty -- it may be a
13 running or lump-sum royalty.

14 MR. CARROLL: I think if you're going to
15 do that, you just ought to do exactly what Ugone said
16 and say or a combination of the two.

17 THE COURT: All right. I'll do that.

18 MR. RANDALL: Your Honor, my last comment
19 is just that the --

20 THE COURT: Do you have any problem with
21 adding or a combination of the two?

22 MR. RANDALL: No, Your Honor.

23 THE COURT: Okay. All right. Anything
24 further?

25 MR. RANDALL: Yes. At the last few

1 pages, 28 through 31, there are some unasserted or
2 dismissed claims that are mentioned in your claim
3 construction back there.

4 THE COURT: All right.

5 MR. RANDALL: And I think they should be
6 deleted.

7 THE COURT: Do you have those identified?

8 MR. RANDALL: I hope so. I hope they're
9 accurately identified. I can go through what I've got,
10 Your Honor.

11 MR. STEIN: I think this is what was in
12 the jurors' notebooks, and I think changing it might
13 raise an issue, so...

14 THE COURT: I'm sorry. What?

15 MR. STEIN: I think changing it may, you
16 know, raise issues with the jury. If we start changing
17 stuff they've been looking at for a while and how -- it
18 may be prejudicial to us.

19 MR. RANDALL: I'd prefer to fix the
20 mistake than continue making it. The -- under the term
21 or phrase left-hand -- the first box on the upper
22 left-hand side, it shows --

23 THE COURT: What page -- what page are
24 you on?

25 MR. RANDALL: I'm sorry. 28, Your Honor.

1 THE COURT: All right.

2 MR. RANDALL: It says: Claims 20-25.

3 First of all --

4 THE COURT: I'm sorry. Which -- which

5 term are you on?

6 MR. RANDALL: Yeah. I'm on stream, Your

7 Honor.

8 THE COURT: Stream?

9 MR. RANDALL: Yeah.

10 THE COURT: All right.

11 MR. RANDALL: Upper left-hand box.

12 THE COURT: Right.

13 MR. RANDALL: That shows '427 Claims --

14 it says 20 through 25. There's 20 and the dash should

15 come out, that last row there.

16 THE COURT: It should just say 25?

17 MR. RANDALL: Yes.

18 THE COURT: 1, 25, and 37 through 39?

19 MR. RANDALL: The 37 through 39 should

20 come out, too.

21 THE COURT: So it should just be Claim 1

22 and 25?

23 MR. RANDALL: Yes, Your Honor.

24 THE COURT: Does Plaintiff disagree with

25 that?

1 MR. STEIN: I think that's -- I think
2 that was fine.

3 THE REPORTER: Please go to the podium.

4 MR. STEIN: I'm sorry.
5 I think that's fine. I haven't
6 cross-checked it, but it looks fine, I think.

7 THE COURT: All right 1 and 25.
8 What's next?

9 MR. RANDALL: If you go straight down
10 that row, down to glance views --

11 THE COURT: All right.

12 MR. RANDALL: -- under the '427 patent,
13 Claim 16 should be removed.

14 THE COURT: So 4 through 7 should 1, 8,
15 25, and 32?

16 MR. RANDALL: 32 should be removed as
17 well.

18 THE COURT: Plaintiff agree?

19 MR. STEIN: I'll agree. No? What
20 happened?

21 MR. DIBERNARDO: No.

22 MR. STEIN: No?

23 MR. DIBERNARDO: Glance view was used in
24 Claim 16.

25 MR. RANDALL: It's not asserted.

1 MR. STEIN: '427, Claim 16?
2 MR. RANDALL: Oh, I'm sorry. I -- my
3 mistake.
4 THE COURT: So 16 should be in?
5 MR. RANDALL: Yeah. 32 should come out.
6 THE COURT: All right. So it should be
7 1, 8, 16, and 25 under glance view, '427, right?
8 MR. RANDALL: Yes.
9 THE COURT: All right. What's next?
10 MR. RANDALL: Receding foreshortened
11 stack under the '427 patent, 10 should come out.
12 THE COURT: Are there a lot of these?
13 MR. RANDALL: No. I think
14 there's just -- well, let me look at the next page.
15 Yeah, there are. The next page is laden
16 with them.
17 THE COURT: All right. I'm going to
18 instruct y'all to meet and confer immediately after we
19 recess and don't leave here until you've given an
20 edited, agreed Appendix A to my staff, okay?
21 Any other objections?
22 MR. RANDALL: No, Your Honor.
23 THE COURT: All right. Any other
24 objections from the Plaintiff?
25 MR. STEIN: No.

1 THE COURT: We'll be in recess until 9:00
2 o'clock in the morning.

3 COURT SECURITY OFFICER: All rise.

4 (Court adjourned.)

5

6 CERTIFICATION

7

8 I HEREBY CERTIFY that the foregoing is a
9 true and correct transcript from the stenographic notes
10 of the proceedings in the above-entitled matter to the
11 best of our abilities.

12

13

14 /s/ _____ Date
15 SHEA SLOAN, CSR
16 Official Court Reporter
17 State of Texas No.: 3081
18 Expiration Date: 12/31/10

17

18

19 /s/ _____ Date
20 JUDITH WERLINGER, CSR
21 Deputy Official Court Reporter
22 State of Texas No.: 731
23 Expiration Date 12/31/10

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