119.   There was no limitation, restriction or obligation of secrecy on anyone attending

the talk that Pei Wei gave at Stanford University in September 1994.

120.   The plotting demo described in the talk at Stanford University in September 1994

is the same plotting demo described in the August 1994 Viola paper. *See supra* ¶ 48.

121.   Pei Wei had told Doyle on August 31, 1994, *see supra* ¶ 51, and again on August

21, 1995, *see supra* ¶ 76, that the plotting demo described in August 1994 Viola paper was the

"very one" demonstrated "to visitors from a certain computer manufacturer" by May 8, 1993.

122.   On information and belief, when Pei Wei referred to a demonstration "by May 8,

1993," he was referring to the demonstration of the plotting demo to two Sun Microsystems

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employees that the Federal Circuit has held "was a public use under [35 U.S.C. § 102(b)]." 399 F.3d 1325, 1335 (Fed. Cir. 2005).

123.   Thus, during prosecution of the '906 patent, Doyle was repeatedly confronted with evidence that the ViolaWWW browser was material prior art under 35 U.S.C. § 102(b), yet Doyle never disclosed the ViolaWWW browser to the Patent Office during prosecution of application number 08/324,443, which matured into the '906 patent.

124.   On information and belief, the ViolaWWW browser, including the August 1994 Viola paper, was disclosed to Krueger in August of 1998, after the Notice of Allowance for the '906 patent issued but before the '906 patent issued, when he received a fax containing a number of references regarding the ViolaWWW browser.

125.   On information and belief, the fax sent to Krueger in August of 1998 was to allow him to analyze whether the ViolaWWW browser, including the August 1994 Viola paper, should be submitted to the Patent Office.

126.   On information and belief, Kruger was aware of Pei Wei's May 1993 demonstration of the ViolaWWW browser to Sun Microsystems employees without a confidentiality agreements.

127.   On information and belief, Krueger considered Pei Wei's statements regarding the May 1993 demonstration of the ViolaWWW browser to Sun Microsystems employees when he analyzed whether to disclose the ViolaWWW browser to the Patent Office.

128.   On information and belief, Krueger had no reason to disbelieve Pei Wei's statements regarding the May 1993 demonstration of the ViolaWWW browser to Sun Microsystems employees.

129.   On information and belief, Krueger made the determination, prior to the issuance

of the '906 patent, to not disclose to the PTO the information he received regarding the

ViolaWWW browser.

D.   **The ViolaWWW browser was material to the patentability of the '906 patent**

130.   The ViolaWWW browser was material to the patentability of the claimed

inventions in the '906 patent.

131.   There is a remarkable similarity between the ViolaWWW browser and the

preferred embodiment of the '906 patent:
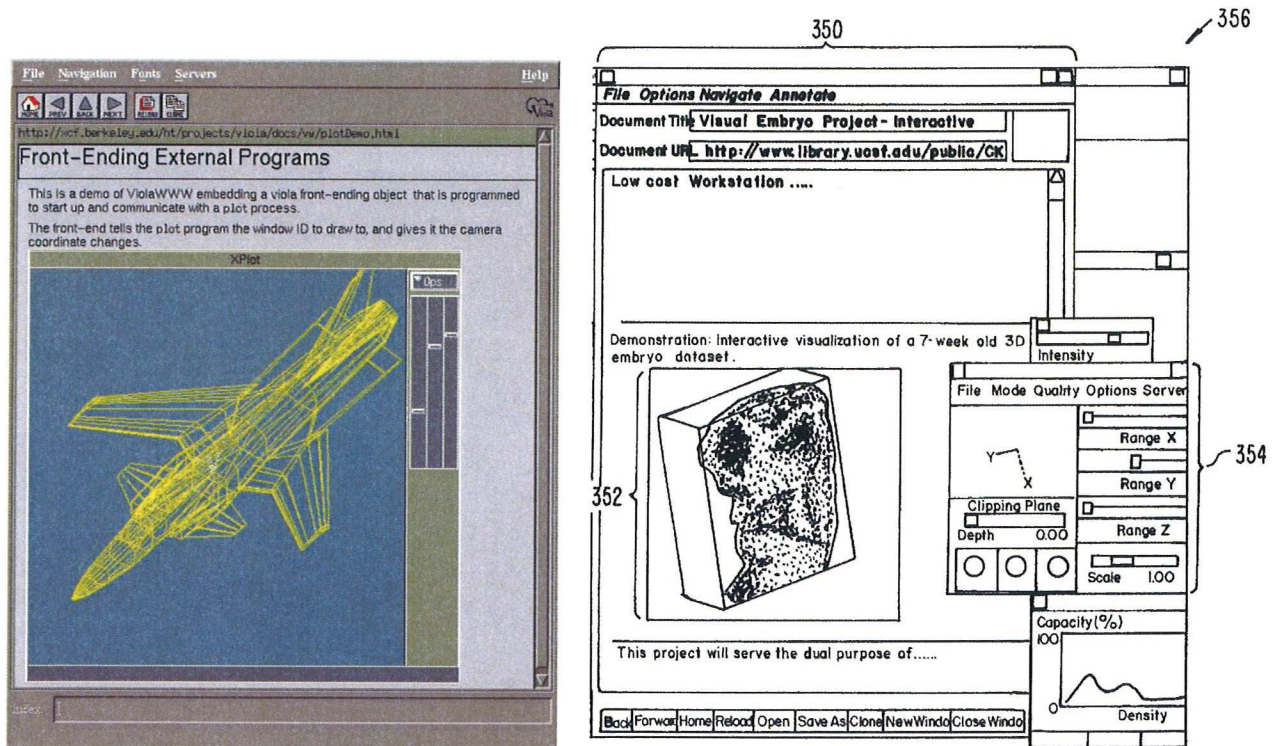
ViolaWWW   Fig. 9 of U.S. Patent No. 5,838,906

Both the ViolaWWW browser (on the left) and the preferred embodiment of the '906 patent (on

the right) enabled a user to interact with a 3-dimensional image embedded in the middle of a

webpage. In the ViolaWWW screenshot above, there are three slide controls to the right of the

embedded image that move up and down; these rotate the embedded image on the X, Y, and Z axes. Similarly, in the preferred embodiment of the '906 patent shown above, box 354 has three slide controls to the right of the embedded image that rotate the image on the X, Y, and Z axes. Thus, ViolaWWW, like the '906 patent, teaches a browser capable of displaying embedded interactive objects.

132. The Manual of Patent Examining Procedure in force at the time the application for the '906 patent was filed included the following statements:

> Materiality is defined in 37 CFR 1.56(b) and discussed herein at MPEP § 2001.05. In addition to prior art such as patents and publications, 37 CFR 1.56 includes, for example, information on **possible prior public uses**, sales, offers to sell, derived knowledge, **prior invention by another**, inventorship conflicts, and the like, [emphasis in bold added]

133. The Manual of Patent Examining Procedure in force today contains similar language:

> Materiality is defined in 37 CFR 1.56(b) and discussed herein at MPEP § 2001.05. In addition to prior art such as patents and publications, 37 CFR 1.56 includes, for example, information on >enablement,< **possible prior public uses**, sales, offers to sell, derived knowledge, **prior invention by another**, inventorship conflicts, and the like. >"Materiality is not limited to prior art but embraces *any* information that a reasonable examiner would be substantially likely to consider important in deciding whether to allow an application to issue as a patent." *Bristol-Myers Squibb Co. v. Rhone-Poulenc Rorer, Inc.*, 326 F.3d 1226, 1234, 66 USPQ2d 1481, 1486 (Fed. Cir. 2003) (emphasis in original) (finding article which was not prior art to be material to enablement issue).< [emphasis in bold added]

134.   The Federal Circuit has confirmed that the ViolaWWW browser was material to the patentability of the claimed inventions in the '906 patent.

135.   The Federal Circuit held that a reasonable jury could find at least claims 1 and 6 of the '906 patent anticipated by the ViolaWWW browser under 35 U.S.C. § 102(a), (b), and/or (g). *See* 399 F.3d 1325, 1329, 1332–35 (Fed. Cir. 2005).

136.   The Federal Circuit held that "Wei's May 7, 1993 demonstration to two Sun Microsystems employees without confidentiality agreements was a public use under [35 U.S.C. § 102(b)]." 399 F.3d 1325, 1335 (Fed. Cir. 2005).

137.   The Federal Circuit held that a reasonable jury could find at least claims 1 and 6 of the '906 patent obvious in light of the ViolaWWW browser. *See* 399 F.3d 1325, 1335 (Fed. Cir. 2005).

138.   The Federal Circuit held that a district court could find that Doyle had committed inequitable conduct by failing to disclose the ViolaWWW browser to the Patent Office. *See* 399 F.3d 1325, 1336 (Fed. Cir. 2005).

139.   On information and belief, Krueger was aware that the Federal Circuit confirmed that the ViolaWWW browser was material to the patentability of the claimed invention in the '906 patent, but he still did not discuss the ViolaWWW browser further with Doyle.

140.   On information and belief, even after Krueger was aware that the Federal Circuit confirmed that the ViolaWWW browser was material to the patentability of the claimed invention in the '906 patent he did not disclose any additional information to help the Patent Office consider ViolaWWW browser.

141.   The Patent Office has also confirmed that the ViolaWWW browser was material to the patentability of the claimed inventions in the '906 patent.

142.   On or about July 30, 2007, during the 2005 reexamination of the '906 patent, the

Patent Office rejected all claims of the '906 patent as being anticipated by DX95, which includes

a copy of the text found in Pei Wei's August 1994 Viola paper, *see supra* ¶ 48.

143.   Pei Wei had told Doyle on August 31, 1994, about the August 1994 Viola paper,

see supra ¶¶ 44-48, and Doyle had downloaded and read that paper the same day, *see supra* ¶¶

49, 55-57, yet Doyle never disclosed the Viola paper to the Patent Office during the original

examination of the '906 patent.

144.   The fact that Doyle may have conceived of the inventions claimed in the '906

patent before August 16, 1994, does not render the August 1994 Viola paper immaterial, because

the Viola paper describes features of the ViolaWWW browser that existed before the invention

date for the '906 patent and/or over one year before the application for the '906 patent was filed.

145.   For example, the plotting demo described in the August 1994 Viola paper was

part of the ViolaWWW browser software that was demonstrated to Sun Microsystems on May 7,

1993 — over one year before the application for the '906 patent was filed. *See supra* ¶¶ 51-54.

146.   None of the claimed inventions in the '906 patent was conceived before August

1993.

147.   Thus, the ViolaWWW browser software that was described in the August 1994

Viola paper and demonstrated to Sun Microsystems on May 7, 1993, also corroborates

anticipation of the claimed inventions in the '906 patent under 35 U.S.C. § 102(g).

148.   Neither reexamination of the '906 patent considered whether the claimed

inventions were anticipated by "Wei's May 7, 1993 demonstration to two Sun Microsystems

employees without confidentiality agreements" which the Federal Circuit has held was a "public

use under [35 U.S.C. § 102(b)]." 399 F.3d 1325, 1335 (Fed. Cir. 2005).

149. In an *ex parte* reexamination, "[r]ejections will not be based on matters other than patents or printed publications, such as public use." *See* Manual of Patent Examining Procedure (MPEP) § 2258(I).

150. On information and belief, Krueger knew that the Patent Office could not consider public use art during an *ex parte* reexamination.

151. The Patent Office had the authority during the original examination of the '906 patent to issue a rejection based on the "public use" provision of 35 U.S.C. § 102(b), but Doyle and Krueger never disclosed to the Patent Office during that examination the evidence they had in their possession that the ViolaWWW browser was in "public use" more than one year before the application for the '906 patent was filed.

152. On information and belief, the Patent Office would not have allowed the claims of the '906 patent if Doyle or Krueger had not engaged in inequitable conduct and instead had fulfilled their duty of candor and good faith in dealing with the Patent Office.

E. **Doyle and Krueger intended to deceive the Patent Office during prosecution of the '906 patent**

153. During prosecution of application number 08/324,443, which matured into the '906 patent, Doyle and Krueger withheld extensive evidence about the ViolaWWW browser.

154. For example, Doyle failed to disclose the following material information: the message from Raggett about the ViolaWWW browser and embedded objects, *see supra* ¶¶ 37-40; the communications with Pei Wei in 1994 about the ViolaWWW browser and the embedded interactive plotting demo that was in public use in May 1993, *see supra* ¶¶ 43-61; the August 1994 Viola paper describing the ViolaWWW browser and the embedded interactive plotting demo that was in public use in May 1993, *see supra* ¶¶ 44-48; the communications with Pei Wei in 1995 about the ViolaWWW browser and the embedded interactive plotting demo that was in

public use in May 1993 and again at the Wizards conference in July 1993, *see supra* ¶¶ 73-91; the contents of the "Viola stuff" folder that Doyle maintained, which included information about the Wizards conference in July 1993 and links to the ViolaWWW browser software, including source code for the embedded interactive plotting demo that was in public use in May 1993, *see supra* ¶¶ 95-116; and Pei Wei's talk at Stanford in September 1994 about the embedded interactive plotting demo that was in public use in May 1993, *see supra* ¶¶ 117-123.

155.   On information and belief, Krueger failed to disclose a number of material references regarding the ViolaWWW browser including at least the August 1994 Viola paper, Doyle's communications with Pei Wei in 1994 about the ViolaWWW browser and the embedded interactive plotting demo that was in public use in May 1993; the Viola paper describing the ViolaWWW browser and the embedded interactive plotting demo that was in public use in May 1993; and the contents of the "Viola stuff" folder that Doyle maintained and was faxed to Krueger in August of 1998, which included information about the Wizards conference in July 1993 and links to the ViolaWWW browser software, including source code for the embedded interactive plotting demo that was in public use in May 1993.

156.   Doyle and Krueger withheld information about the ViolaWWW browser with the specific intent to deceive the Patent Office.

157.   Doyle had a financial interest in the patentability of the claimed inventions in the '906 patent. *See supra* ¶¶ 22-30.

158.   The ViolaWWW browser threatened the patentability of the claimed inventions in the '906 patent, and thus threatened Doyle's financial interests.

159.   On information and belief, Doyle was personally involved in the prosecution of application number 08/324,443, which matured into the '906 patent.

160. For example, Doyle signed a declaration on or about November 22, 1994, stating that he was an inventor and acknowledging his duty of candor and good faith in dealing with the Patent Office. *See supra* ¶ 70.

161. On or about January 2, 1997, Doyle signed a declaration that was submitted to the Patent Office in an effort to establish an earlier date of invention for the claims of the '906 patent application.

162. On or about February 24, 1997, Doyle and Krueger participated in an examiner interview in an effort to secure allowance of the claims of the '906 patent application.

163. On or about May 27, 1997, Doyle signed a 28-page declaration (including an appendix) that was submitted to the Patent Office in an effort to establish himself as an "expert" in the subject matter of the claimed invention and to overcome various obviousness rejections to the claims of the '906 patent application.

164. On or about October 29, 1997, Doyle signed another declaration that was submitted to the Patent Office in an effort to establish an earlier date of invention for the claims of the '906 patent application.

165. On or about November 6, 1997, Doyle and Krueger participated in another examiner interview in an effort to secure allowance of the claims of the '906 patent application.

166. Krueger lacked a technical degree in computer science or electrical engineering, and thus he relied on Doyle to understand and describe the subject matter of the claimed invention and the prior art.

167. Doyle personally reviewed and approved papers submitted to the Patent Office during prosecution of the '906 patent.

168.   Despite Doyle and Krueger's extensive personal involvement in the prosecution

of application number 08/324,443, which matured into the '906 patent, Doyle and Krueger never

disclosed the ViolaWWW browser to the Patent Office during that prosecution.

169.   On information and belief, the circumstances of Doyle and Krueger's actions

demonstrate an intent to deceive the Patent Office.

170.   For example, during prosecution of the '906 patent, Doyle and Krueger made

arguments for patentability that could not have been made if he had disclosed the ViolaWWW

browser to the Patent Office.

171.   On or about May 6, 1996, the Patent Office rejected several claims as being

anticipated by the University of Southern California's "Mercury Project."

172.   On or about August 6, 1996, a response to this rejection was submitted to the

Patent Office.

173.   Doyle personally reviewed and approved the response submitted to the Patent

Office on or about August 6, 1996.

174.   The response submitted on or about August 6, 1996, included the following

statements:

> The claimed combination is fundamentally different from the
> Mercury Project. In the claimed combination, the external object
> and executable object are embedded by reference in the HTML
> document and the object is displayed and processed within the
> same window where a portion of the original document is
> displayed. In the Mercury Project information is passed back to
> the server and a new document is generated and displayed. There
> is no display and processing the external object within the window
> in which a portion of the original document is displayed.

175.   If Doyle or Krueger had disclosed the ViolaWWW prior art to the Patent Office,

on information and belief, it would not have been possible to distinguish the claims of the '906

patent over the prior art on the basis that the prior art failed to disclose "display[ing] and

processing the external object within the window in which a portion of the original document is displayed."

176.   On or about March 26, 1997, the Patent Office rejected several claims as being obvious in light of "Khoyi et al. US Patent 5,206,951" in combination with other prior art.

177.   On or about June 2, 1997, a response to this rejection was submitted to the Patent Office.

178.   Doyle and Krueger personally reviewed and approved the response submitted to the Patent Office on or about June 2, 1997.

179.   The response submitted on or about June 2, 1997, included the following statements:

> [T]here is no suggestion in Khoyi of modifying Mosaic so that an external application . . . is invoked to display and interactively process the object within the document window while the document is displayed by Mosaic in the same window.

180.   If Doyle or Krueger had disclosed the ViolaWWW prior art to the Patent Office, on information and belief, it would not have been possible to distinguish the claims of the '906 patent over the prior art on the basis that the prior art failed to disclose "an external application [that] is invoked to display and interactively process the object within the document window while the document is displayed by [the browser] in the same window."

181.   On or about August 25, 1997, the Patent Office rejected several claims as being obvious in light of "Koppolu et al. US Patent 5,581,686" in combination with other prior art.

182.   On or about December 23, 1997, a response to this rejection was submitted to the Patent Office.

183.   On information and belief, Doyle and Krueger personally reviewed and approved the response submitted to the Patent Office on or about December 23, 1997.

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184.	The response submitted on or about December 23, 1997, included the following

statements:

> [T]here is no disclosure or suggestion in Mosaic or Koppolu of
> automatically invoking an external application when an embed text
> format is parsed. Each of those references require user input,
> specifically clicking with a mouse pointer, to activate external
> applications to allow display and interaction with an external
> object.

185.	If Doyle or Krueger had disclosed the ViolaWWW prior art to the Patent Office,

on information and belief, it would not have been possible to distinguish the claims of the '906

patent on the basis that the prior art failed to disclose "automatically invoking an external

application when an embed text format is parsed."

186.	On information and belief, Doyle and Krueger's repeated use of arguments that

could not have been made if Doyle or Krueger had disclosed the ViolaWWW prior art

demonstrates an intent to deceive the Patent Office.

187.	Doyle's intent to deceive the Patent Office is also demonstrated by comparing

what he told an audience of web developers on or about March 27, 1995, to what he told the

Patent Office on or about May 27, 1997.

188.	On or about March 27, 1995, Doyle responded to a post on the publicly-accessible

WWW-talk e-mail distribution list in which another author had written, under the heading

"HotJava is here! And it *rocks*," "It's the most exciting thing to happen to the Web since

viola." Doyle's response included the following statements:

> If you take a close look at Java, you'll realize that it bears a close
> similarity to Viola, since the "applets" must be coded from a
> predefined language, downloaded and locally interpreted.

189.	On or about May 27, 1997, Doyle signed a declaration that was submitted to the

Patent Office. Doyle's declaration included the following statements:

The three exemplary products which incorporate the features of the claimed invention include Netscape Navigator 2.0 (or newer versions), Java, from Sun Microsystems, and ActiveX, from Microsoft. . . . [T]he success of these products is directly attributable to the claimed features of the invention.

. . . .

A good indicator that Sun Microsystems felt that enabling interactivity in Web pages was the key feature of Java is given in the first chapter of "Hooked on Java," which was written by members of the original Java development team. They say, "With applets written in the Java programming language, Web users can design Web pages that include animation, graphics, games, and other special effects   **Most important, Java applets can make Web pages highly interactive.**"

This statement shows that the developers of Java felt that the most important feature of the Java technology was the ability of Java to allow an embed text format (the applet tag) within a Web document to be parsed by a Web browser to automatically invoke an external executable application to execute on the client workstation in order to display an external object and enable interactive processing of that object within a display window created at the applet tag's location within the hypermedia document being displayed in the browser-controlled window. The book's authors further emphasize the novelty and nonobviousness of this technology when they say, "Quite simply, Java-powered pages are Web pages that have Java applets embedded in them. They are also the Web pages with the coolest special effects around .... Remember, **you need a Java-compatible Web browser such as HotJava to view and hear these pages and to interact with them; otherwise, all you'll access is static Web pages** minus the special effects."

. . . .

The above citations, as well as the additional details given in Appendix A, provide ample evidence of the commercial success of products incorporating features of the claimed invention, as well as evidence of the widespread acclaim that these products have garnered for the technical innovations which the features of the claimed invention allowed them to provide. They further show that the successes of these products was a direct result of the features of the claimed invention, which they incorporated *through implementation of an embed text format that is parsed by a Web browser to automatically invoke an external executable*

application to execute on the client workstation in order to display
an external object and enable interactive processing of that object
within a display window created at the embed text format's
location within the hypermedia document being displayed in the
browser-controlled window.

190.   The declaration Doyle signed on or about May 27, 1997, made no mention of

Viola or the ViolaWWW browser.

191.   Doyle and Krueger's disclosure of Java for purposes of commercial success, but

not the ViolaWWW browser which Doyle knew was prior art that existed over one year before

the application for the '906 patent was filed, demonstrates, on information and belief, an intent to

deceive the Patent Office, especially given Doyle's belief that Viola was similar to Java and that

Java embodied the claimed invention.

> F.   **Between 1999 and 2003, Doyle learned about additional Viola prior art, and learned that an expert in the field believed that the plotting demo for the ViolaWWW browser anticipated the asserted claims of the '906 patent**

192.   Between 1999 and 2003, a third party disputed the validity of the '906 patent.

193.   On information and belief, Doyle personally guided Eolas through the litigation

concerning the validity of the '906 patent.

194.   Throughout the litigation, the third party asserted that the plotting demo involving

the ViolaWWW browser anticipated the asserted claims of the '906 patent.

195.   The plotting demo relied on by the third party to prove anticipation of the asserted

claims of the '906 patent was the same plotting demo that Pei Wei had repeatedly described to

Doyle, *see supra* ¶¶ 44–54, 74–78, and which the Federal Circuit has held was a "public use" on

May 7, 1993, 399 F.3d 1325, 1335 (Fed. Cir. 2005), and which Doyle himself came across from

his own research into Viola, *see supra* ¶¶ 108–123.

196.   In its contentions that the plotting demo involving the ViolaWWW browser anticipated the asserted claims of the '906 patent, the third party specifically identified the VOBJF tag, the plot.v file, and the vplot executable application.

197.   For example, on or about December 14, 2001, the third party served an expert report by Dr. John P.J. Kelly, that included the following statements:

> When ViolaWWW encountered the tag <VOBJF>/usr/work/viola/apps/plot.v</VOBJF>, an embed text format specifying the location of an object, it looked in the specified path for at least part of the object, parsed the path, and automatically loaded the object into the program. The file (plot.v) also contained type information associated with the object, such as the name and location of an external executable application, vplot, that also was automatically invoked to enable display of and user interaction with the object at a location within a display area within the document being displayed in the browser-controlled window corresponding to the location of the embed text format in the document. Subsequently, when the user interacted with the object, ViolaWWW sent messages to vplot based on the user input and received output from vplot, thus updating the display of the object.

198.   Similarly, at a trial in 2003 concerning the validity of the '906 patent, Dr. Kelly testified that the plotting demo involving the ViolaWWW browser anticipated the asserted claims of the '906 patent, and he specifically identified the VOBJF tag, the plot.v file, and the vplot executable application for purposes of his anticipation analysis.

199.   Pei Wei also testified at the trial in 2003 about the ViolaWWW browser and the plotting demo.

200.   At the trial, exhibit DX34 included source code for the ViolaWWW browser dated May 12, 1993.

201.   At the trial, exhibit DX37 included source code for the ViolaWWW browser dated May 27, 1993.