

EXHIBIT G

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

4 EOLAS TECHNOLOGIES INCORPORATED,

5 Plaintiff,

No. 6:09-CV-446

6 vs.

7 ADOBE SYSTEMS, INC., AMAZON.COM,
ET AL.,

8
9 Defendants.
10
11
12
13

14 VIDEOTAPED DEPOSITION OF DALE P. DOUGHERTY
15 REDWOOD SHORES, CALIFORNIA
16 FRIDAY, DECEMBER 16, 2011
17
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19
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21
22

23 REPORTED BY:

24 CYNTHIA MANNING, CSR NO. 7645, CLR, CCRR

25 JOB NO. 44688

December 16, 2011
9:11 a.m.

Deposition of DALE P. DOUGHERTY, taken on behalf of Plaintiff, at 201 Redwood Shores Parkway, Redwood Shores, California, before Cynthia Manning, Certified Shorthand Reporter No. 7645, Certified LiveNote Reporter, California Certified Realtime Reporter.

APPEARANCES:

For Plaintiff:
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For Defendants Yahoo! Inc , Amazon com, Inc , and Third-party Witness Dale P Dougherty:

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For Defendants Google Inc and YouTube:

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APPEARANCES (Continued):

Also present:
Aric Kerhoulis, Videographer

REDWOOD SHORES, CALIFORNIA;
FRIDAY, DECEMBER 16, 2011; 9:11 A.M.

THE VIDEOGRAPHER: Good morning.

This marks the beginning of Disk 1 of the 09:11 videotaped deposition of Dale Dougherty in the matter Eolas Technologies, Incorporated, versus Adobe Systems, Incorporated, et al., in the United States District Court for the Eastern District of Texas, Tyler Division. Number 6:09-CV-446. 09:11

This deposition is being held at the office of Weil, Gotshal & Manges at 201 Redwood Shores, Parkway, in Redwood Shores, California. The date today is December 16, 2011, and the time is approximately 9:12 a.m. 09:12

My name is Aric Kerhoulis from TSG Reporting.

Our court reporter today is Cynthia Manning in association with TSG.

Will counsel please introduce yourselves 09:12 for the record.

MR. BUDWIN: Josh Budwin of McKool Smith on behalf of Eolas and the university.

MS. DOAN: Jennifer Doan, Haltom & Doan, for Yahoo!, Amazon, and we also represent Dale 09:12

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1 Dougherty. 09:12
 2 MR. LATCHFORD: Shawn Latchford, Haltom &
 3 Doan, for Yahoo!, Amazon, and Dale Dougherty.
 4 MR. RAO: Sasha Rao with Ropes & Gray for
 5 Google and YouTube. 09:12
 6 MR. STROY: And Brandon Stroy, Ropes &
 7 Gray, also for Google and YouTube.
 8 THE VIDEOGRAPHER: If the court reporter
 9 will please swear in the witness, we can proceed.
 10 09:12
 11 DALE P. DOUGHERTY,
 12 having first been duly sworn, testified as
 13 follows:
 14
 15 THE VIDEOGRAPHER: Proceed. 09:12
 16
 17 EXAMINATION
 18 BY MR. BUDWIN:
 19 Q. Good morning, Mr. Dougherty.
 20 Can you state your name for the record, 09:12
 21 please.
 22 A. Dale Dougherty.
 23 Q. Do you have a middle name?
 24 A. Patrick.
 25 Q. And, Mr. Dougherty, what's your address? 09:12

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1 A. Yes, it was. 09:13
 2 Q. And have you ever testified at trial
 3 before?
 4 A. Once.
 5 Q. Was that also in the prior Eolas versus 09:13
 6 Microsoft case?
 7 A. Yes, it was.
 8 Q. So other than the testimony in the prior
 9 Eolas versus Microsoft case, you've never given a
 10 deposition or testified in court? 09:14
 11 A. No.
 12 Q. And we have a court reporter here today.
 13 She is going to take down your testimony. So it's
 14 important that you and I don't speak over each
 15 other. 09:14
 16 Is that understood?
 17 A. Yes.
 18 Q. It's also important that you give verbal
 19 answers to my questions; no nods or head shakes,
 20 things of that nature. 09:14
 21 A. Yes.
 22 Q. And you are represented by counsel today;
 23 is that right?
 24 A. I am.
 25 Q. Okay. And that's counsel, Ms. Doan and Mr. 09:14

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1 A. 8155 Pillow Road in Sebastopol, California. 09:12
 2 Q. And, Mr. Dougherty, you understand that
 3 you've been placed under oath?
 4 A. Yes.
 5 Q. And that the testimony you're about to give 09:13
 6 has the same legal effect as if you're appearing
 7 live in a court of law?
 8 A. Yes.
 9 Q. And you understand that penalties of
 10 perjury apply equally to a deposition as they do if 09:13
 11 you were appearing live in court?
 12 A. Yes.
 13 Q. Are you under the influence of drugs or
 14 alcohol, or is there any other reason why you can't
 15 testify truthfully and accurately today? 09:13
 16 A. No.
 17 Q. And do you have any medical conditions that
 18 impact your ability to recall past events?
 19 A. No.
 20 Q. Have you had your deposition taken before? 09:13
 21 A. Yes.
 22 Q. How many times?
 23 A. Once.
 24 Q. And was that in the prior Eolas versus
 25 Microsoft case? 09:13

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1 Latchford? 09:14
 2 A. That's correct.
 3 Q. Anybody else?
 4 A. No.
 5 Q. There may be times, although I'm sure it 09:14
 6 will be very rare, because my questions will be
 7 perfectly formed, that your attorney may object.
 8 She may say things like "objection; form," things of
 9 that nature. Unless you're specifically instructed
 10 not to answer, do you understand that you have to 09:14
 11 answer my questions?
 12 A. Yes.
 13 MR. BUDWIN: Hand you a document that will
 14 be marked as Exhibit 1.
 15 (Deposition Exhibit 1 was marked for 09:15
 16 identification)
 17 MR. BUDWIN: I didn't know you guys were
 18 coming, Sasha, otherwise I would have brought extra
 19 copies.
 20 Q. Exhibit 1 is a copy of a document entitled 09:15
 21 "Plaintiff's Notice of Subpoena to Dale Dougherty."
 22 Have you seen this document before?
 23 A. No, I have not.
 24 Q. You've never seen it?
 25 A. No. 09:15

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1 Q. And you were asked to produce documents in 09:15
 2 this case by Eolas.
 3 Do you understand that?
 4 MS. DOAN: Objection.
 5 THE WITNESS: I never received any notice. 09:16
 6 BY MR. BUDWIN:
 7 Q. You never received any request to produce
 8 documents?
 9 A. Not from Eolas.
 10 MS. DOAN: Counsel, the subpoena that you 09:16
 11 just produced, Exhibit No. 1, together with what you
 12 served on us did not have a document request on it.
 13 MR. BUDWIN: Okay.
 14 MS. DOAN: We have already asserted an
 15 objection on that. We have produced relevant 09:16
 16 documents to you.
 17 MR. BUDWIN: That's fine.
 18 Q. But you have never seen the document in
 19 Exhibit 1 before?
 20 A. No. 09:16
 21 Q. All right. Did you meet with your
 22 attorneys to prepare for today's deposition?
 23 A. Yes, I did.
 24 Q. When did you meet with them?
 25 A. Yesterday and in August. 09:16

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1 did you know that there had been a new lawsuit filed 09:17
 2 by Eolas?
 3 A. No, I did not.
 4 Q. So your first indication of the new lawsuit
 5 filed by Eolas was when you were contacted by Mr. 09:17
 6 Latchford?
 7 A. That's right.
 8 Q. And then to prepare for today's deposition,
 9 you said you met with your attorneys yesterday; is
 10 that right? 09:18
 11 A. That's right.
 12 Q. And also once in August?
 13 A. That's right.
 14 Q. Other than those two meetings, did you have
 15 any other face-to-face meetings with any of the 09:18
 16 attorneys for any of the defendants in this case?
 17 A. I have only met with Jennifer face-to-face.
 18 Q. Okay. And only on those two occasions?
 19 A. That's what I recall. There could have
 20 been a third, but I'm -- I'm thinking you came up to 09:18
 21 Sebastopol once and we tried to set up another
 22 meeting, but it didn't happen because of my travel.
 23 Q. Who was present at the meeting yesterday?
 24 A. Shawn Latchford and Jennifer Doan.
 25 Q. Anybody else? 09:18

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1 Q. Prior to receiving this subpoena in Exhibit 09:16
 2 1, had you had any conversations or discussions -- I
 3 don't want to know the substance, but had you had
 4 any conversations or discussions with any of the
 5 defendants in this case or their attorneys? 09:16
 6 MS. DOAN: Objection; form. He didn't
 7 receive a subpoena.
 8 THE WITNESS: Right. I did not receive a
 9 subpoena.
 10 BY MR. BUDWIN: 09:16
 11 Q. Prior to the date on the subpoena in
 12 Exhibit 1, did you have any discussions with any of
 13 the attorneys or defendants in this case?
 14 A. Yes.
 15 Q. Who first contacted you? 09:17
 16 A. Shawn Latchford.
 17 Q. And when did Mr. Latchford contact you?
 18 A. Mid summer.
 19 Q. Of what year?
 20 A. This year, 2011. 09:17
 21 Q. And what was your reaction on being
 22 contacted by Mr. Latchford?
 23 A. I was simply informed that the Eolas case
 24 was going another round.
 25 Q. Now, before Mr. Latchford contacted you, 09:17

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1 A. No. 09:18
 2 Q. Now, since you became aware of this new
 3 Eolas case, have you had any communications with Pei
 4 Wei, Scott Silvey, or Tim Berners-Lee?
 5 A. No, I have not. 09:19
 6 Q. When was the last time you talked with Mr.
 7 Wei?
 8 A. It's not within the last year or two. It's
 9 been a while.
 10 Q. Is the last time you talked with Mr. Wei 09:19
 11 during the pendency of Eolas' prior case against
 12 Microsoft?
 13 MS. DOAN: Objection; form.
 14 THE WITNESS: Give me the date on that.
 15 BY MR. BUDWIN: 09:19
 16 Q. Sure.
 17 Why don't you tell me. When do you recall
 18 last speaking with Mr. Wei?
 19 A. I don't recall speaking with him other than
 20 exchanging an e-mail sometime after the Eolas case. 09:19
 21 Q. The first case against Microsoft?
 22 A. Right.
 23 Q. When was the last time you spoke to Scott
 24 Silvey?
 25 A. I have not spoken to Scott Silvey since he 09:19

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1 was in my employment. 09:20
 2 Q. So it's fair to say that you haven't spoken
 3 with Mr. Silvey in more than ten years?
 4 A. Yes.
 5 Q. When was the last time you spoke with Tim 09:20
 6 Berners-Lee?
 7 A. In Madrid at the World Wide Web Conference,
 8 which was probably 2009 or '8.
 9 Q. And at the time you last spoke with
 10 Mr. Berners-Lee, did you speak about Eolas at all? 09:20
 11 A. No.
 12 Q. Now, we mentioned that you gave a
 13 deposition in the prior Eolas versus Microsoft case;
 14 right?
 15 A. Right. 09:20
 16 Q. When was the last time you reviewed that
 17 testimony?
 18 A. I reviewed it yesterday.
 19 Q. And at the time you gave your deposition in
 20 the prior Eolas versus Microsoft case, you 09:20
 21 understood that you were under oath and were
 22 testifying truthfully and accurately?
 23 A. Yes.
 24 Q. Based upon your review yesterday, did you
 25 notice any inconsistencies or errors in your prior 09:21

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1 A. That's correct. 09:21
 2 Q. Other than the deposition transcript and
 3 the trial transcript, what other documents do you
 4 recall reviewing yesterday?
 5 A. A record of e-mails that I had produced for 09:22
 6 the first trial.
 7 Q. Anything else?
 8 A. Just -- you know, just some other documents
 9 that were largely e-mails from -- and, you know,
 10 things from the first trial, some evidence. 09:22
 11 Q. So you remember reviewing some e-mails that
 12 were admitted into evidence as part of the last
 13 trial?
 14 A. Right.
 15 MS. DOAN: Objection; form. 09:22
 16 BY MR. BUDWIN:
 17 Q. Is that right?
 18 A. Right.
 19 Q. Do you recall reviewing any other documents
 20 other than e-mails that were admitted into evidence 09:22
 21 in the last trial?
 22 A. I reviewed the -- a patent examiner's -- he
 23 was an expert witness in the case.
 24 Q. That was a report?
 25 A. Yes. 09:22

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1 testimony? 09:21
 2 A. No.
 3 Q. So you stand by today the prior testimony
 4 that you gave in your deposition in the previous
 5 Eolas versus Microsoft case? 09:21
 6 A. Yes, I do, mm-hmm.
 7 Q. And we also mentioned that you testified at
 8 trial in the Eolas versus Microsoft case; is that
 9 right?
 10 A. Yes. 09:21
 11 Q. And when was the last time you reviewed
 12 that testimony?
 13 A. I reviewed it yesterday.
 14 Q. And you understood that when you testified
 15 at trial in the Eolas versus Microsoft case, you 09:21
 16 were testifying under oath and had the obligation to
 17 testify truthfully and accurately?
 18 A. Yes.
 19 Q. And based upon your review of your trial
 20 testimony from the Eolas versus Microsoft case 09:21
 21 yesterday, did you see any errors or omissions or
 22 anything that you'd like to correct today?
 23 A. No.
 24 Q. So you stand by the testimony that you gave
 25 at trial in the Eolas versus Microsoft case? 09:21

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1 Q. Was that the Godici report? Godici report? 09:22
 2 A. I don't recognize that name.
 3 Q. Do you recall the name of the author of the
 4 report that you looked at?
 5 A. Actually, I don't. 09:23
 6 Q. Do you recall if that was a report that was
 7 prepared by the defendants or was prepared by Eolas?
 8 A. Prepared by the defendants.
 9 Q. And you said it was a patent examiner's
 10 report? 09:23
 11 MS. DOAN: Objection; form.
 12 THE WITNESS: My understanding, it was
 13 someone with expertise in patents.
 14 BY MR. BUDWIN:
 15 Q. Okay. Do you recall if the report was 09:23
 16 written by Richard Phillips?
 17 A. I don't recall.
 18 Q. You just --
 19 A. I just -- I just reviewed it quickly and
 20 didn't really get very far in it. 09:23
 21 Q. So you didn't study it --
 22 A. No.
 23 Q. -- and review it in detail?
 24 A. No, there wasn't time.
 25 Q. Without putting it into evidence just yet, 09:24

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1 let me just show you. Did the report look like this 09:24
 2 (indicating)?
 3 A. It did not look like that.
 4 Q. It did not --
 5 A. Judging from the first page, it did not 09:24
 6 look like that.
 7 Q. Now, you mentioned a little bit earlier
 8 that the first you became aware of Eolas' new case
 9 was when Mr. Latchford called you; is that right?
 10 A. Right, mm-hmm. 09:24
 11 Q. Yes?
 12 A. Yes.
 13 Q. And that was in the summer of 2011?
 14 A. Yes.
 15 Q. And what was your reaction upon hearing 09:24
 16 that Eolas had filed a new lawsuit?
 17 A. My reaction was simply that, you know, it's
 18 an involved process to get -- to testify in a case
 19 and this was going to take up some time if I agreed
 20 to do that. 09:25
 21 Q. Why were you willing to get involved?
 22 A. Because I believe that the patent is
 23 invalid and I believe that a lot of the early
 24 history of the Web was ignored.
 25 Q. And that's a belief that you've held for 09:25

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1 reimbursed to you? 09:26
 2 A. I may submit some expenses. I have not
 3 done so.
 4 Q. And you're currently employed at O'Reilly &
 5 Associates? 09:26
 6 A. O'Reilly Media.
 7 Q. O'Reilly Media.
 8 O'Reilly Media was formally known as
 9 O'Reilly & Associates?
 10 A. That's correct. 09:27
 11 Q. And it's true, isn't it, that you have been
 12 employed by O'Reilly since 1984?
 13 A. That's true.
 14 Q. Mr. Dougherty, do you presently plan to
 15 testify at trial in this action in February of next 09:27
 16 year?
 17 A. I -- I plan to, schedule permitting and
 18 other conflicts.
 19 Q. And are you still employed -- or is Mr.
 20 O'Reilly still at O'Reilly Media? 09:27
 21 A. Yes.
 22 Q. That's Tim O'Reilly?
 23 A. Tim O'Reilly.
 24 Q. And is Mr. O'Reilly aware of your
 25 involvement in this case? 09:27

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1 sometime; isn't that right? 09:25
 2 A. Since I've reviewed the patent and reviewed
 3 the claims.
 4 Q. So you were willing to get involved in this
 5 case, Eolas versus the defendants in this case, 09:25
 6 because it's your belief that the patent is invalid;
 7 is that right?
 8 A. That's correct.
 9 Q. And it's your belief that in allowing the
 10 patent, the Eolas patent at issue in this case, that 09:26
 11 a lot of the early history of the Web, particularly
 12 of Viola, was ignored?
 13 A. That's correct.
 14 Q. And that's a belief that you've held for
 15 longer than ten years; correct? 09:26
 16 A. That's correct.
 17 Q. Is there any other reason separate and
 18 apart from your belief about the validity of the
 19 patent as to why you were willing to be involved in
 20 this case? 09:26
 21 A. No.
 22 Q. Are you being compensated in any way for
 23 your time?
 24 A. No.
 25 Q. Are you having any expenses or incidentals 09:26

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1 A. Yes, he is. 09:27
 2 Q. And he has no objection or problem with
 3 that?
 4 A. No.
 5 Q. Now, you yourself are not paying any of the 09:28
 6 fees for the attorneys representing you here today;
 7 is that right?
 8 A. No, I'm not.
 9 Q. And O'Reilly Media is not paying any of the
 10 fees for any of the attorneys that are representing 09:28
 11 you; right?
 12 A. That's correct.
 13 MR. BUDWIN: Hand you a document which will
 14 be marked as Exhibit 2.
 15 (Deposition Exhibit 2 was marked for 09:28
 16 identification)
 17 BY MR. BUDWIN:
 18 Q. Exhibit 2 is a copy of a letter from Haltom
 19 Doan to you, dated August 16th, 2011. It's got
 20 production number Dougherty-EolasTexas, whole bunch 09:28
 21 of zeros and a 1.
 22 Do you see that?
 23 A. Mm-hmm.
 24 Q. And this is your representation agreement?
 25 A. It is. 09:28

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1 Q. You understand, don't you, that Yahoo! and Amazon
2 Amazon are paying the fees for the attorneys that
3 are representing you here today; right? 09:28

4 A. I do.

5 Q. And you understand that Yahoo! and Amazon
6 are challenging the validity of the Eolas patent? 09:28

7 A. I do.

8 Q. Mr. Dougherty, do you understand that Eolas
9 is asserting two patents in this case: U.S. Patent
10 5,838,906 and 7,599,985? 09:29

11 A. Yes, I do.

12 Q. Have you read those patents?

13 A. I have.

14 Q. When did you read them?

15 A. As recently as yesterday. 09:29

16 Q. You didn't mention the patents in your list
17 of documents reviewed yesterday. Did you just
18 forget about that?

19 A. Yes, I guess I did.

20 Q. So just to make sure that I understand
21 everything that you looked at yesterday, you had the
22 deposition and trial transcript; right? 09:29

23 A. Right.

24 Q. Okay. You had some e-mails that were
25 produced by you as part of the last case? 09:29

Page 24

1 THE WITNESS: -- I'll answer that I
2 reviewed those documents that you listed. 09:30

3 BY MR. BUDWIN:

4 Q. Okay. Any other documents?

5 MS. DOAN: Same objection, Counsel. 09:30

6 THE WITNESS: I reviewed those documents.

7 BY MR. BUDWIN:

8 Q. Okay. Did you review other documents other
9 than the four that I listed?

10 MS. DOAN: Same objection. 09:30

11 THE WITNESS: I have answered the question.

12 BY MR. BUDWIN:

13 Q. Did you review other documents in addition
14 to the four that I listed?

15 MS. DOAN: Same objection. 09:30

16 Mr. Dougherty, I'm going to instruct you
17 not to answer that based on the attorney-client
18 privilege.

19 I've asked you to rephrase it, Josh. If
20 you don't want to rephrase it, it's totally fine. 09:30

21 MR. BUDWIN: All right. Well, I just
22 wanted to make sure that I understood your
23 objection --

24 MS. DOAN: Absolutely.

25 MR. BUDWIN: -- and we'll use that going 09:31

Page 23

1 A. Right. 09:29

2 Q. There was an expert report of some type
3 prepared by the defendants?

4 A. True.

5 Q. And there were the patents? 09:29

6 A. Yes.

7 Q. Anything else?

8 MS. DOAN: Objection; form.

9 Counsel, I think you're entitled to ask if
10 it refreshed his recollection. You're entitled to
11 those documents, but you're not entitled to ask all
12 the questions he reviewed with his counsel. 09:30

13 MR. BUDWIN: Okay.

14 MS. DOAN: That's an improper question.

15 MR. BUDWIN: I disagree. So -- 09:30

16 MS. DOAN: Fine. You can ask him if it
17 refreshed his recollection, but just asking every
18 single thing he reviewed with his counsel I think is
19 getting into our discussions and I think it's an
20 improper question. 09:30

21 BY MR. BUDWIN:

22 Q. Other than those documents, do you
23 recall reviewing any other documents yesterday?

24 A. Well --

25 MS. DOAN: Same objection. 09:30

Page 25

1 forward. Because I think the defendants have had a
2 different view in the depositions of our people. So
3 that's -- that's fine. 09:31

4 Q. Other than the four documents I listed, did
5 you review any other documents that refreshed your
6 recollection about any events related to the Viola,
7 the patents-in-suit, or any prior art? 09:31

8 A. I mentioned the patent and we talked about
9 it here. You know, I'm not prepared to list
10 everything that I might have reviewed. 09:31

11 Q. But do you recall reviewing any documents
12 yesterday that refreshed your recollection about any
13 past events?

14 A. I have enumerated the documents that we
15 agreed on. 09:31

16 Q. So no documents other than the ones we
17 talked about refreshed your recollection about any
18 past events?

19 MS. DOAN: Objection; form.

20 You can answer. 09:31

21 THE WITNESS: I didn't say that.

22 BY MR. BUDWIN:

23 Q. Okay. So --

24 A. I said that the specific documents that you
25 mentioned were reviewed. 09:31

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1 Q. Okay. And my question to you, sir, is: 09:32
 2 Other than the specific documents that have been
 3 listed, did you review any documents that refreshed
 4 your recollection about any past events?
 5 MS. DOAN: Objection -- 09:32
 6 THE WITNESS: As to what? What kinds of
 7 documents are you asking about --
 8 BY MR. BUDWIN:
 9 Q. Sure. As to Viola --
 10 A. -- specifically? 09:32
 11 Q. Sure. As to Viola.
 12 A. Well, I said I reviewed collections of
 13 documents, which we have enumerated here, which, you
 14 know, how do you group them and what they are. You
 15 know, if you want to say did I review a specific 09:32
 16 document, I'll address that.
 17 Q. Okay.
 18 A. But I can't enumerate everything.
 19 Q. So I asked you about the two patents in
 20 this case: the '906 and the '985 patent. 09:32
 21 A. Mm-hmm.
 22 Q. And you said you looked at those yesterday?
 23 A. Mm-hmm.
 24 Q. Yes?
 25 A. Yes. 09:32

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1 Q. Yes. 09:34
 2 A. Yes, I have heard of that.
 3 Q. Have you ever heard of something called
 4 "anticipation" with respect to patent law?
 5 A. No. 09:34
 6 Q. Do you have a legal understanding of what
 7 it means for something to anticipate a patent?
 8 MS. DOAN: Objection; form.
 9 You can answer.
 10 THE WITNESS: I don't have a specific legal 09:34
 11 understanding of that.
 12 BY MR. BUDWIN:
 13 Q. Were you -- or have you reviewed a copy of
 14 Judge Davis' claim construction order in this case?
 15 A. I don't recall seeing that. 09:34
 16 Q. In your own words, can you tell me what you
 17 understand the invention of the '906 patent to be?
 18 A. An embedded interactive object in a
 19 hypermedia browser that can be controlled within the
 20 browser, and those controls cause interactions from 09:35
 21 a remote program to update that browser, the
 22 embedded object's viewer, within the browser.
 23 Q. Do you have an understanding of what the
 24 invention of the '985 patent is?
 25 A. I'm less clear on the distinction between 09:35

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1 Q. Other than yesterday, have you looked at 09:32
 2 those patents?
 3 A. Yes, in the past.
 4 Q. When?
 5 A. Certainly in regard to the first trial, and 09:32
 6 after that as well.
 7 Q. You aren't a patent attorney, are you?
 8 A. No, I am not.
 9 Q. And you're not a patent expert?
 10 A. No, I am not. 09:33
 11 Q. Do you have any of your own patents?
 12 A. No, I do not.
 13 Q. Do you have an understanding of patent law
 14 in broad sense?
 15 A. I have an understanding. 09:33
 16 Q. But you aren't an expert in the details of
 17 patent law?
 18 A. No.
 19 Q. Have you ever heard of something called
 20 "invalidity"? 09:33
 21 A. Explain.
 22 Q. Have you ever heard of something called
 23 "invalidity" in the context of a patent?
 24 A. Well, the idea of an invalid patent. Is
 25 that what you're asking me? 09:33

Page 29

1 the two. It seems to simply restate a lot of what 09:35
 2 was in the earlier patent and address it a little
 3 bit closer to the Web.
 4 Q. Can you enumerate what you understand the
 5 differences between the inventions claimed in the 09:35
 6 '906 patent and the '985 patent to be?
 7 A. No, I cannot.
 8 Q. Mr. Dougherty, have you ever been involved
 9 with the W3C?
 10 A. Yes, I have. 09:36
 11 Q. What is the W3C?
 12 A. World Wide Web Consortium.
 13 Q. And is the W3C the group that's run by
 14 Mr. Berners-Lee?
 15 A. Yes, it is. 09:37
 16 Q. And you understand that one of the purposes
 17 of the W3C is to set standards for -- that are used
 18 on the Web; for example, the HTML standards?
 19 A. Yes.
 20 Q. Can you describe your involvement with the 09:37
 21 W3C?
 22 A. Well, as even prior to the formation of the
 23 W3C, I've been involved in standards discussions
 24 and -- or early discussions about the needs for some
 25 body like the W3C. We were -- O'Reilly was a 09:37

Page 30	Page 31
<p>1 founding member of the W3C and I was the 09:37 2 representative for some period of time. I don't 3 recollect the exact dates. 4 Q. So O'Reilly, your employer, was one of the 5 founding members of the W3C? 09:37 6 A. That's right. 7 Q. And that would have been back in the 8 earlier or mid 1990s? 9 A. That's right. 10 Q. And you were O'Reilly's participant in the 09:37 11 WC3 for some number of years? 12 A. That's right. 13 Q. Do you remember how many years? 14 A. Three to four. 15 Q. When did you cease being O'Reilly's 09:38 16 representative to the W3C? 17 A. You know, I'd have to look it up, but a 18 guess or an estimate is, say, 1998 or '9. 19 Q. Does O'Reilly currently have a 20 representative on the W3C? 09:38 21 A. No. 22 Q. When did O'Reilly cease being involved in 23 the W3C? 24 A. Probably about the time that I stopped 25 being involved. 09:38</p>	<p>1 Q. Why did you stop being involved in the W3C? 09:38 2 A. It was -- it was a larger, well-established 3 organization at that point and it had the other 4 players. And our interests really -- other than the 5 existence of standards, we didn't really care to be 09:38 6 involved in the development of those standards. 7 Q. Do you recall the W3C forming a Patent 8 Action Group, or PAG, with respect to Eolas? 9 A. I do recall it, yes. 10 Q. Were you involved in that Patent Action 09:39 11 Group? 12 A. You know, I don't recall being -- I recall 13 knowing about it. I recall my name being on a list 14 of people that were engaged in it, but I don't 15 recall specific activities of that group or, you 09:39 16 know, being present in meetings. 17 MR. BUDWIN: I'll hand you a document which 18 will be marked as Exhibit 3. 19 (Deposition Exhibit 3 was marked for 20 identification) 09:39 21 BY MR. BUDWIN: 22 Q. Exhibit 3 is a copy of the document 23 entitled "Results of Questionnaire Call for 24 Participation in HTML PAG," and it has production 25 No. 00324 to 325. 09:40</p>
Page 32	Page 33
<p>1 A. (Witness reviewing document.) 09:40 2 Q. Mr. Dougherty, is the document in Exhibit 3 3, which you're referring to, a list that includes 4 your name with respect to the Eolas -- 5 A. Yes, it -- 09:40 6 Q. -- patent? 7 A. Yes, it does. 8 Q. And do you see this document is dated -- 9 A. 2003. 10 Q. -- in 2003? 09:40 11 A. Yes. 12 Q. Do you recall how your name came to be 13 listed on the document in Exhibit 3 as being a 14 member of the Eolas Patent Action Group -- Patent 15 Advisory Group? 09:40 16 A. No, I really don't. That's... 17 Q. All right. Mr. Dougherty, you were aware 18 of after conclusion of Eolas' first case against 19 Microsoft that the W3C formed this PAG or Patent 20 Action Group? 09:41 21 A. Yes. 22 Q. And you were aware that the Patent Action 23 Group formed by the W3C was specific to Eolas and 24 its patent? 25 A. Yes. 09:41</p>	<p>1 Q. And you see your name listed in the 09:41 2 document in Exhibit 3 as being a selected 3 representative for O'Reilly & Associates' 4 participation in the Eolas Patent Action Group? 5 A. I see it on this list. I'm not sure what 09:41 6 "nominees" mean here. 7 Q. Sitting here today, you don't recall one 8 way or the other whether you actively participated 9 in the Patent Action Group? 10 A. I don't. 09:41 11 Q. And do you know that the W3C filed a 12 request for the Patent Office to reexamine Eolas' 13 '906 patent? 14 A. Yes, I do. 15 Q. And do you know that part of that request 09:42 16 for the W3C to reexamine Eolas' patent came out of 17 the work of the Patent Action Group referenced in 18 Exhibit 3? 19 A. Yes. 20 Q. Now, did you tell the W3C or the Patent 09:42 21 Action Group at any time during the reexamination of 22 Eolas' '906 patent they should look at the Viola 23 prior art and submit the Viola prior art to the 24 Patent Office? 25 A. I don't know in the context of any 09:42</p>

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1 committee. I think there was certainly e-mail and 09:42
 2 other discussions about the Eolas patent and the
 3 Viola archive and other things were pretty well
 4 known. I don't know that they needed my specific
 5 direction. 09:42
 6 Q. Okay. So you don't recall one way or the
 7 other whether you told the W3C or the Patent Action
 8 Group referred to in Exhibit 3 about Viola and
 9 whether they should consider submitting that to the
 10 Patent Office? 09:43
 11 MS. DOAN: Objection; form.
 12 You can answer.
 13 THE WITNESS: I don't recall giving them
 14 any specific instructions about Viola.
 15 BY MR. BUDWIN: 09:43
 16 Q. But it was your understanding during the
 17 time frame of Exhibit 3, 2003, after the conclusion
 18 of Eolas' first case against Microsoft, that
 19 everyone in the W3C generally knew about Viola and
 20 the claims that it was prior art? 09:43
 21 A. Yes.
 22 MS. DOAN: Objection; form.
 23 BY MR. BUDWIN:
 24 Q. Do you have an understanding as to why the
 25 W3C and the Patent Action Group referred to in 09:43

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1 was to confirm the validity of Eolas' '906 patent? 09:45
 2 MS. DOAN: Objection; form.
 3 You can answer.
 4 THE WITNESS: I understand that it went
 5 through that process. 09:45
 6 BY MR. BUDWIN:
 7 Q. And do you understand what the result of
 8 the reexamination of Eolas' '906 patent was?
 9 A. Yes.
 10 Q. Okay. And what was that result? 09:45
 11 A. You know, they continued with the patent.
 12 Q. And do you understand that there was
 13 actually a second reexamination request of Eolas'
 14 '906 patent?
 15 A. Yes. 09:45
 16 Q. Okay. And you understand, don't you, that
 17 the result of the second reexamination of Eolas'
 18 '906 patent was to confirm the validity of the
 19 patent?
 20 A. Yes. 09:46
 21 Q. And, Mr. Dougherty, you understand, don't
 22 you, that Eolas' '985 patent, the second patent at
 23 issue in this case, was also examined by the Patent
 24 Office?
 25 A. I presume. It was a patent. 09:46

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1 Exhibit 3 didn't submit Viola to the Patent Office 09:43
 2 when it asked the Patent Office to reexamine the
 3 Eolas' '906 patent?
 4 A. No, I don't understand that.
 5 Q. Well, as we talked about a little bit 09:44
 6 earlier, Tim Berners-Lee is the director of the W3C?
 7 A. Yes.
 8 Q. And you know from the time -- your time
 9 working at O'Reilly with respect to Viola that
 10 Mr. Berners-Lee was aware of Viola and Pei's work? 09:44
 11 THE WITNESS: Absolutely.
 12 MS. DOAN: Object to the form.
 13 BY MR. BUDWIN:
 14 Q. And despite being one of the founding
 15 members of the W3C, you have no understanding as to 09:44
 16 why the W3C and Mr. Berners-Lee didn't submit Viola
 17 to the Patent Office when it requested the
 18 reexamination of Eolas' '906 patent?
 19 A. That's correct.
 20 Q. Now, Mr. Dougherty you understand that the 09:45
 21 Patent Office completed reexamination of Eolas' '906
 22 patent?
 23 A. Yes.
 24 Q. And you understand, don't you, that the
 25 result of that reexamination by the Patent Office 09:45

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1 MS. DOAN: Object to form. "Examined." 09:46
 2 Objection; form.
 3 BY MR. BUDWIN:
 4 Q. And you understand, don't you, that the
 5 Patent Office allowed Eolas' '985 patent to issue? 09:46
 6 A. Yes.
 7 Q. So even though the Patent Office has looked
 8 at Eolas' '906 patent in a first reexamination and a
 9 second reexamination and allowed Eolas' '985 patent
 10 to issue, it's your belief that those patents are 09:46
 11 invalid in light of Viola?
 12 A. It is.
 13 Q. Was the Patent Office wrong?
 14 A. I'm -- I'm -- just say what I said about
 15 the patent, for whatever reason is -- in light of 09:46
 16 the Viola prior art, I believe it to be invalid.
 17 Q. Did the Patent Office get it wrong in
 18 allowing Eolas' '906 patent to issue after the
 19 reexaminations?
 20 A. I don't think they had the right 09:47
 21 information.
 22 Q. And how do you know what information the
 23 Patent Office did and didn't have?
 24 A. The patent holder provided them with
 25 limited information. 09:47

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1 Q. How do you have that understanding? Did 09:47
 2 you review --
 3 A. From the patent.
 4 Q. Did you review the file histories?
 5 A. Of -- file histories? 09:47
 6 Q. Sure. Did you review the file histories of
 7 either of the examinations of Eolas' '906 patent?
 8 A. I looked at something that -- I looked at
 9 something that might have been that.
 10 Q. And what did you look at? 09:47
 11 A. It was part of that -- the patent
 12 examiner -- or the patent documents I looked at
 13 yesterday.
 14 Q. So you looked at a report that was prepared
 15 by the defendants in this case? 09:47
 16 A. That's correct.
 17 MS. DOAN: Objection; form.
 18 BY MR. BUDWIN:
 19 Q. Did you ever personally yourself look at
 20 the file histories for any of Eolas' patents? 09:48
 21 A. No.
 22 Q. Do you believe that the Patent Office in
 23 allowing Eolas' patents to issue after a first
 24 reexamination, a second reexamination, and the
 25 prosecution of the '985 patent got it wrong? 09:48

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1 Q. Have you ever provided testimony where you 09:49
 2 said that patents were silly?
 3 A. It was a question that was asked me in the
 4 trial. I believe that some patents are wrong, if
 5 not harmful, but -- and I may have informally used a 09:49
 6 word like "silly," but I'm not here to characterize
 7 patents in the general sense.
 8 MR. BUDWIN: Hand you a document which will
 9 be marked as Exhibit 4.
 10 (Deposition Exhibit 4 was marked for 09:50
 11 identification)
 12 BY MR. BUDWIN:
 13 Q. Mr. Dougherty, Exhibit 4 is a copy of a
 14 document entitled "Viola Is a Repository of Prior
 15 Art For The Web." 09:50
 16 Do you see that?
 17 A. Yes, I do.
 18 Q. And it was posted by you on March 30th of
 19 the year 2000?
 20 A. Yes. 09:50
 21 Q. And the document in Exhibit 4 was in fact
 22 authored by you?
 23 A. Yes, it was.
 24 Q. And you were questioned about the document
 25 in Exhibit 4 in your prior deposition and at in the 09:50

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1 A. Yes, I do. 09:48
 2 Q. You understand, don't you, that patent
 3 examiners are trained to examine patents?
 4 MS. DOAN: Objection; form.
 5 You can answer. 09:48
 6 THE WITNESS: I don't have that
 7 understanding.
 8 BY MR. BUDWIN:
 9 Q. Do you understand that patent examiners are
 10 trained in the law with respect to patents? 09:48
 11 A. Yes.
 12 Q. And you yourself aren't trained to examine
 13 patents, are you, sir?
 14 A. No, I'm not.
 15 Q. You're not trained in the law with respect 09:48
 16 to the validity of a patent?
 17 A. No, I'm not.
 18 Q. So even though you yourself aren't trained
 19 with the respect to patents or the standard of
 20 validity, you still think that the Patent Office and 09:49
 21 the patent examiners got it wrong?
 22 A. That's right.
 23 Q. Now, Mr. Dougherty, it's true, isn't it
 24 that you think patents are silly?
 25 A. No. 09:49

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1 Microsoft case? 09:50
 2 A. That's correct.
 3 Q. Will you look to the third page of the
 4 document.
 5 A. Okay. 09:50
 6 Q. And I'm going to read a paragraph to you.
 7 "Pei and I agreed to provide information to
 8 Microsoft to help fight this software
 9 patent."
 10 Do you see that? 09:51
 11 A. I do.
 12 Q. Is that a reference to Eolas' '906 patent?
 13 A. Yes, it is.
 14 Q. And you wrote those words?
 15 A. I did. 09:51
 16 Q. And that was accurate when you wrote them?
 17 A. Yes, it is.
 18 Q. And you continued, the last sentence says:
 19 "This just points out how silly the whole
 20 business of patents really is." 09:51
 21 Do you see that?
 22 A. Mm-hmm. Mm-hmm.
 23 MS. DOAN: Objection; form.
 24 BY MR. BUDWIN:
 25 Q. You wrote those words? 09:51

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<p>1 A. I did. 09:51</p> <p>2 Q. And you believed those words when you wrote</p> <p>3 them?</p> <p>4 A. I did. It's a general statement. It's</p> <p>5 talking about the business of patents being silly. 09:51</p> <p>6 It doesn't say that patents are silly.</p> <p>7 Q. Do you still have the belief today that the</p> <p>8 business of patents is silly?</p> <p>9 MS. DOAN: Objection; form.</p> <p>10 THE WITNESS: I think it's a complicated 09:51</p> <p>11 issue. I would not prefer to characterize it as</p> <p>12 simply using the word "silly."</p> <p>13 BY MR. BUDWIN:</p> <p>14 Q. All right. You wrote the document in</p> <p>15 Exhibit 4? 09:52</p> <p>16 A. Yes.</p> <p>17 Q. And you posted it to your webpage or</p> <p>18 O'Reilly's webpage?</p> <p>19 A. I did.</p> <p>20 Q. And before you posted it, you reviewed it 09:52</p> <p>21 for accuracy?</p> <p>22 A. It is a blog post.</p> <p>23 Q. Written by you?</p> <p>24 A. Written by me.</p> <p>25 Q. You frequently post blogs about patents and 09:52</p>	<p>1 silly patents and absurd patents, do you not? 09:52</p> <p>2 MS. DOAN: Objection; form.</p> <p>3 THE WITNESS: I don't know that I would</p> <p>4 characterize that. I have published a list of</p> <p>5 controversial patents and I have pointed out some 09:52</p> <p>6 patents that I think are absurd, but it is -- it's a</p> <p>7 rhetorical frame of -- rhetorical device.</p> <p>8 MR. BUDWIN: Hand you a document which will</p> <p>9 be Exhibit 5.</p> <p>10 (Deposition Exhibit 5 was marked for 09:53</p> <p>11 identification)</p> <p>12 BY MR. BUDWIN:</p> <p>13 Q. Exhibit 5 is a copy of a document entitled</p> <p>14 "Controversial Patents," and it's from</p> <p>15 www.oreilly net. 09:53</p> <p>16 A. That's correct.</p> <p>17 Q. Have you seen this document before?</p> <p>18 A. Yes.</p> <p>19 Q. Is this a list of controversial patents</p> <p>20 that's maintained by you, Mr. Dougherty? 09:53</p> <p>21 A. It was created by me.</p> <p>22 Q. And it has your name listed at the bottom;</p> <p>23 right?</p> <p>24 A. Yes.</p> <p>25 Q. So the document in Exhibit 5 is a list of 09:53</p>
Page 44	Page 45
<p>1 controversial patents that you prepared? 09:53</p> <p>2 A. Yes.</p> <p>3 Q. And you see the first one listed is</p> <p>4 "One-Click Ordering" and the holder is Amazon?</p> <p>5 A. Yes. 09:53</p> <p>6 Q. So you think that Amazon's One-Click</p> <p>7 Ordering patent is controversial?</p> <p>8 A. It is controversial.</p> <p>9 Q. And yet you agreed to have Amazon pay your</p> <p>10 legal fees for this case? 09:54</p> <p>11 A. Absolutely.</p> <p>12 Q. You don't think that there is a conflict</p> <p>13 there?</p> <p>14 MS. DOAN: Objection; form.</p> <p>15 THE WITNESS: I see no conflict. 09:54</p> <p>16 BY MR. BUDWIN:</p> <p>17 Q. Do you see the third patent, "Affiliate</p> <p>18 Program," and it lists Amazon?</p> <p>19 A. Mm-hmm.</p> <p>20 Q. Do you think Amazon's patent on affiliate 09:54</p> <p>21 programs is controversial?</p> <p>22 A. Yes.</p> <p>23 Q. And, again, you let Amazon pay your legal</p> <p>24 fees in this case and you have no issues with that?</p> <p>25 A. I don't. 09:54</p>	<p>1 Q. You see about midway down there is a patent 09:54</p> <p>2 listed "Style Sheets." It says Microsoft?</p> <p>3 A. Mm-hmm.</p> <p>4 Q. Do you see that?</p> <p>5 A. I do. 09:54</p> <p>6 Q. You think Microsoft's patents on Style</p> <p>7 Sheets is controversial?</p> <p>8 A. I do.</p> <p>9 Q. And in the prior case you worked for</p> <p>10 Microsoft, didn't you? 09:54</p> <p>11 A. I did not work for them, but I supported</p> <p>12 their dispute of this patent.</p> <p>13 Q. And in the prior case Microsoft paid the</p> <p>14 fees for your counsel?</p> <p>15 A. No, they did not. 09:54</p> <p>16 Q. Who paid the fees for your counsel?</p> <p>17 A. I did not have counsel.</p> <p>18 Q. Were you paid a consulting fee in the prior</p> <p>19 case?</p> <p>20 A. No, I was not. 09:55</p> <p>21 Q. And another one of the controversial</p> <p>22 patents you list here in Exhibit 5 is "Embedded</p> <p>23 Hypermedia," the '906 patent?</p> <p>24 A. Mm-hmm.</p> <p>25 Q. And that's one of the patents at issue in 09:55</p>

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1	this case? 09:55	1	Do you see that? 09:56
2	A. It is.	2	A. Mm-hmm.
3	MR. BUDWIN: Hand you another document	3	Q. Do you recall how you indirectly obtained a
4	which will be Exhibit 6.	4	copy of the reexamination materials from the PTO
5	(Deposition Exhibit 6 was marked for 09:56	5	files? 09:57
6	identification)	6	A. I really don't.
7	BY MR. BUDWIN:	7	Q. Were they provided to you by someone?
8	Q. Exhibit 6 is a copy of a document titled	8	A. Yeah, someone sent it to me, but I don't
9	"Butting Heads Over the '906 Rebuttal," and it's	9	recall.
10	EolasTexas-0000296265. 09:56	10	MR. BUDWIN: Hand you a document which will 09:58
11	A. Mm-hmm.	11	be marked as 6.
12	Q. And do you recognize this as a posting --	12	MS. DOAN: 7.
13	A. Yes.	13	MR. BUDWIN: 7, sorry.
14	Q. -- that you made to the oreilly.net	14	(Deposition Exhibit 7 was marked for
15	webpage? 09:56	15	identification) 09:58
16	A. Yes.	16	BY MR. BUDWIN:
17	Q. And I just had a couple questions for you	17	Q. Exhibit 7 is a copy of trial testimony,
18	about this. Do you see the first page --	18	dated July 29th, 2003, from the afternoon session of
19	A. Mm-hmm.	19	the prior Eolas versus Microsoft case.
20	Q. -- and there is a third paragraph that 09:56	20	A. Okay. 09:58
21	starts with the word "not"?	21	Q. Is this one of the documents that you
22	A. Mm-hmm.	22	reviewed yesterday?
23	Q. And there is a sentence towards the bottom	23	A. I only reviewed my testimony. This is
24	there that says, "I have obtained a copy indirectly	24	broader than that.
25	from the official PTO files." 09:56	25	Q. So if you turn -- do you see there is page 09:59
Page 48		Page 49	
1	numbers at the top -- 09:59	1	BY MR. BUDWIN: 09:59
2	A. Yeah.	2	Q. (Reading):
3	Q. -- to page 2479.	3	"Question: And you in fact think this
4	A. Okay.	4	whole business of patents is silly;
5	Q. Do you see it says, "Dale Dougherty, 09:59	5	correct, sir?" 09:59
6	Defendant's Witness, Duly Sworn, Direct	6	And what --
7	Examination"?	7	MS. DOAN: Object --
8	A. Mm-hmm.	8	BY MR. BUDWIN:
9	Q. Yes?	9	Q. And what did you answer?
10	A. Yes. 09:59	10	MS. DOAN: Objection; form. 09:59
11	Q. And that's referring to you?	11	You can answer.
12	A. Yes.	12	THE WITNESS: I answered:
13	Q. And you reviewed this testimony yesterday?	13	"If that's relevant. I believe that some
14	A. Yes.	14	software patents can be injurious to the
15	Q. And you found it accurate? 09:59	15	software and sort of the web as it is 09:59
16	A. Yes.	16	developed."
17	Q. Can you turn to page 2486.	17	It doesn't seem to reflect what
18	A. Mm-hmm.	18	accurately -- a very coherent idea, but I can
19	Q. Do you see line 21?	19	explain that, if you wish.
20	A. Mm-hmm. 09:59	20	BY MR. BUDWIN: 10:00
21	Q. I'll read the question and you read the	21	Q. Sure.
22	answer.	22	So I want to just read the questions and
23	Okay?	23	the answers and then your counsel, if she wants you
24	MS. DOAN: Objection; form, improper	24	to explain, will have a chance to ask you questions
25	questioning. 09:59	25	later. 10:00

<p style="text-align: right;">Page 50</p> <p>1 Okay? 10:00</p> <p>2 A. Sure.</p> <p>3 Q. All right.</p> <p>4 MS. DOAN: And for the record, we think</p> <p>5 this entire line of questioning of asking him to 10:00</p> <p>6 read in answers from prior testimony is</p> <p>7 objectionable and should not be allowed in federal</p> <p>8 court.</p> <p>9 If you want to ask him the question to get</p> <p>10 the answer, Counsel, you're entitled to do that. 10:00</p> <p>11 MR. BUDWIN: Okay.</p> <p>12 MS. DOAN: But we will raise this objection</p> <p>13 with Judge Davis and the objections to form. So you</p> <p>14 can fix it now.</p> <p>15 MR. BUDWIN: Okay. Thank you. 10:00</p> <p>16 "Objection form" going forward. Okay,</p> <p>17 Counsel?</p> <p>18 Q. Are you on page 2486 of Exhibit 7?</p> <p>19 A. Yes.</p> <p>20 Q. And line 21? 10:00</p> <p>21 A. Yes.</p> <p>22 Q. Have you read lines 21 of page 2486 to line</p> <p>23 2 of page 2487 to yourself?</p> <p>24 A. Yes, I have.</p> <p>25 Q. Was that testimony you gave in the prior 10:00</p>	<p style="text-align: right;">Page 51</p> <p>1 case? 10:00</p> <p>2 A. It is.</p> <p>3 Q. And was it accurate when you gave it?</p> <p>4 A. It's accurate. It's not -- it's not --</p> <p>5 there is -- as I said, this is a rhetorical comment. 10:01</p> <p>6 It is not a matter of accuracy.</p> <p>7 Q. Do you stand by the testimony that you gave</p> <p>8 on page 2486 and page 2487 today?</p> <p>9 A. Well, if we understand the -- you know, the</p> <p>10 phrase is the "whole business of patents is silly," 10:01</p> <p>11 referring to the business of this, the way these are</p> <p>12 framed. And he asked me if some patents are silly.</p> <p>13 Some are. Some are absolutely silly and wonderful</p> <p>14 and funny and lots of other adjectives.</p> <p>15 Q. So you believe that some patents are silly? 10:01</p> <p>16 A. I believe that the -- again, in a general</p> <p>17 sense. I would rather not have the word "silly"</p> <p>18 used to define my views on patents.</p> <p>19 Q. You've used the word "silly" yourself?</p> <p>20 MS. DOAN: Objection; form. 10:02</p> <p>21 THE WITNESS: I've used lots of words. I'm</p> <p>22 a writer.</p> <p>23 BY MR. BUDWIN:</p> <p>24 Q. And one of the words that you use to</p> <p>25 describe patents is "silly"? 10:02</p>
<p style="text-align: right;">Page 52</p> <p>1 A. Right. 10:02</p> <p>2 MS. DOAN: Objection; form.</p> <p>3 BY MR. BUDWIN:</p> <p>4 Q. Now, are you on page --</p> <p>5 A. But it's not a legal framing of anything 10:02</p> <p>6 I've said.</p> <p>7 Q. Are you on page 2486 of Exhibit 7, sir?</p> <p>8 A. 24 what?</p> <p>9 Q. 86 of Exhibit 7.</p> <p>10 A. Yeah. 10:02</p> <p>11 Q. Line 21?</p> <p>12 A. Yeah.</p> <p>13 Q. I'll read you the question and you read me</p> <p>14 the answer.</p> <p>15 A. We already did this. 10:02</p> <p>16 Q. Okay. (Reading):</p> <p>17 "Question: And you in fact think the whole</p> <p>18 business of patents is silly; correct,</p> <p>19 sir?"</p> <p>20 And what did you answer? 10:02</p> <p>21 A. I already did this.</p> <p>22 MS. DOAN: Objection; form.</p> <p>23 Counsel, if you're going to continue this</p> <p>24 line of questioning, I'm going to call the hotline</p> <p>25 because this is improper questioning. 10:02</p>	<p style="text-align: right;">Page 53</p> <p>1 MR. BUDWIN: Ms. Doan, you can do whatever 10:02</p> <p>2 you please.</p> <p>3 MS. DOAN: Absolutely. Then let's break</p> <p>4 and call the hotline.</p> <p>5 MR. BUDWIN: Okay. 10:02</p> <p>6 MS. DOAN: I'm not going to put up with an</p> <p>7 entire deposition where you're reading in the</p> <p>8 questions and answers. If you want to ask him the</p> <p>9 question, that's fine.</p> <p>10 MR. BUDWIN: Ms. Doan, if you want to call 10:02</p> <p>11 the hotline, you can call the hotline.</p> <p>12 MS. DOAN: Sure.</p> <p>13 MR. BUDWIN: I believe my questioning is</p> <p>14 proper.</p> <p>15 MS. DOAN: It's not. 10:02</p> <p>16 MR. BUDWIN: Okay. So you can object to</p> <p>17 form.</p> <p>18 MS. DOAN: I'm objecting to form. And if</p> <p>19 you want to ask this question for him to read in</p> <p>20 answers for the entire testimony he has given 10:02</p> <p>21 before, which he has already talked about, then I'm</p> <p>22 happy to call the hotline.</p> <p>23 MR. BUDWIN: Okay.</p> <p>24 MS. DOAN: Is that what you want to do?</p> <p>25 MR. BUDWIN: Okay. It's your decision if 10:03</p>

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1 you want to call the hotline. I'm going to ask my 10:03
 2 questions and I'm going to get answers to those
 3 questions.
 4 MS. DOAN: If they're sustained by the
 5 court, Counsel. 10:03
 6 MR. BUDWIN: Okay.
 7 MS. DOAN: If you want to ask him the
 8 questions, just tell me this is what I want to do,
 9 I'm going to call.
 10 MR. BUDWIN: I'm going to ask him -- 10:03
 11 MS. DOAN: I don't want you to get on the
 12 line with the judge and then you say, "You know
 13 what? That's not what I intended to do."
 14 MR. BUDWIN: I intend to ask him the
 15 question and have him read the answer he gave in the 10:03
 16 prior trial.
 17 MS. DOAN: Absolutely. I want to call the
 18 hotline.
 19 MR. BUDWIN: Okay. Let's go off the
 20 record. 10:03
 21 THE VIDEOGRAPHER: Go off the record. The
 22 time is 10:03 a m.
 23 (Pause in the proceedings while counsel
 24 call Judge Giblin)
 25 THE VIDEOGRAPHER: We're on the record. 10:37

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1 Q. In the prior case -- this is line 21 of 10:38
 2 page 2486 -- you were asked the question:
 3 "And you in fact think this whole business
 4 of patents is silly; correct, sir?"
 5 You were asked that question? 10:38
 6 A. Yes.
 7 Q. And you answered --
 8 MS. DOAN: Counsel, I think this is
 9 improper. That's what she was going to say. The
 10 court -- when we just called on the hotline, Judge 10:38
 11 Giblin's secretary specifically told you that you
 12 were entitled to get an answer, not to read in the
 13 question and answer and say is it true or not true.
 14 MR. BUDWIN: I'm going to read -- why can't
 15 I read the answer? 10:38
 16 MS. DOAN: I don't think this is a proper
 17 way to make your record.
 18 MR. BUDWIN: Well --
 19 MS. DOAN: You can ask him a question and
 20 then he can give the answer, and then if it's 10:38
 21 materially --
 22 MR. BUDWIN: Okay.
 23 MS. DOAN: -- different under the rules --
 24 MR. BUDWIN: All right. We'll try it your
 25 way, Jennifer. 10:39

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1 The time is 10:37 a.m. 10:37
 2 BY MR. BUDWIN:
 3 Q. Mr. Dougherty, do you have Exhibit 7 in
 4 front of you?
 5 A. Yes. 10:37
 6 Before you begin, I'd just like to say, you
 7 asked me a question about claim constructions, and I
 8 had seen a document, but it didn't know it was
 9 labeled that.
 10 Q. Okay. So let me ask you about that. You 10:37
 11 saw Judge Davis' claim construction order in this
 12 case?
 13 A. I saw it.
 14 Q. Did you study it?
 15 A. Not closely, no. 10:38
 16 Q. Did you understand -- did you read the
 17 whole thing?
 18 A. I -- I spent a minute with it.
 19 Q. But no more than a minute?
 20 A. Right. 10:38
 21 Q. All right. Do you have Exhibit 7 in front
 22 of you?
 23 A. Yes, I do.
 24 Q. Can you go to page 2486.
 25 A. Yes. 10:38

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1 MS. DOAN: I think that's the way it's 10:39
 2 proper.
 3 BY MR. BUDWIN:
 4 Q. Mr. Dougherty, you think the whole business
 5 of patents is silly, correct, sir? 10:39
 6 A. I have written that.
 7 Q. And you believe that today, do you not?
 8 MS. DOAN: Objection; form.
 9 THE WITNESS: I think I have a more nuanced
 10 view of it. 10:39
 11 BY MR. BUDWIN:
 12 Q. And you've described patents as "silly,"
 13 correct, sir?
 14 A. No, I have not.
 15 Q. Do you recall being asked that question in 10:39
 16 the prior case?
 17 A. The phrase is the "whole business of
 18 patents is silly." The "whole business" is what I
 19 referred to.
 20 Q. All right. Do you have Exhibit 7 in front 10:39
 21 of you, sir?
 22 A. I do.
 23 Q. Can you turn to page 2487?
 24 A. 87, okay.
 25 Q. And do you see the question? 10:39

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1 "And you've described patents as silly; 10:39
 2 correct, sir?"
 3 Do you see that question?
 4 A. I see that question.
 5 Q. Let me ask you -- 10:39
 6 A. I did not affirm that question.
 7 Q. Okay. Let me ask you a question: And
 8 you've described patents as "silly," correct, sir?
 9 MS. DOAN: Objection; form, asked and
 10 answered. 10:40
 11 You can answer this question.
 12 THE WITNESS: I have answered that some
 13 patents are silly.
 14 BY MR. BUDWIN:
 15 Q. And you believe that the Eolas patent is 10:40
 16 one of those silly patents?
 17 MS. DOAN: Objection; form.
 18 THE WITNESS: I did not say that.
 19 BY MR. BUDWIN:
 20 Q. You believe that Eolas' '906 patent is 10:40
 21 silly?
 22 A. I believe it's invalid.
 23 Q. Do you believe it's silly?
 24 A. I believe it's invalid.
 25 Q. Do you believe it's silly? 10:40

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1 A. These are -- are patents that mostly affect 10:42
 2 the World Wide Web and transactions and interactions
 3 across the Web.
 4 Q. And you're opposed to any patent that has
 5 the potential to encumber or limit the openness of 10:42
 6 the World Wide Web?
 7 MS. DOAN: Objection; form.
 8 THE WITNESS: I am opposed to the -- to the
 9 manner in which patents could encumber the open Web.
 10 BY MR. BUDWIN: 10:42
 11 Q. What do you mean by that, "the manner"?
 12 A. One could get a patent and not sue for it.
 13 Companies get lots of patents and they don't always
 14 act to defend the rights of patents. So it's not
 15 the act of patenting that is at issue; it is often 10:42
 16 what you do with it.
 17 Q. So you have a problem with companies
 18 enforcing patents that could encumber the openness
 19 of the Web?
 20 MS. DOAN: Objection; form. 10:43
 21 THE WITNESS: I am concerned about it.
 22 BY MR. BUDWIN:
 23 Q. Have you ever seen any company enforce a
 24 web-related patent that you thought was a good
 25 patent? 10:43

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1 A. No. 10:40
 2 Q. Now, I want to refer back to the
 3 controversial patent list that you maintain. Do you
 4 have that document?
 5 A. Yes. 10:40
 6 Q. Why do you maintain a list of controversial
 7 patents?
 8 A. I'm interested in an open Web that is not
 9 encumbered later on by patents which are granted
 10 when work that already exists was in the public 10:41
 11 domain.
 12 Q. And just for the record, you're referring
 13 to the list in Exhibit 5?
 14 A. I am.
 15 Q. What makes a patent controversial, in your 10:41
 16 words?
 17 A. I think whether it -- one is whether there
 18 is prior art that was not engaged in -- or
 19 represented by the patent holder. One is whether
 20 it's not obvious. And the context if -- for that is 10:41
 21 a -- I'm coming at it from a technical point of
 22 view, not a legal point of view.
 23 Q. And that's what qualifies a patent to be
 24 controversial with respect to your list in Exhibit
 25 5? 10:42

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1 MS. DOAN: Objection; form. 10:43
 2 THE WITNESS: No.
 3 MR. BUDWIN: I'm going to hand you a
 4 document which will be -- what am I up to?
 5 THE REPORTER: 8. 10:43
 6 MR. BUDWIN: -- 8.
 7 (Deposition Exhibit 8 was marked for
 8 identification)
 9 BY MR. BUDWIN:
 10 Q. Exhibit 8 is a copy of a document entitled 10:43
 11 "O'Reilly Opposes W3C Patent Policy."
 12 Do you see that, sir?
 13 A. Mm-hmm.
 14 Q. Yes?
 15 A. Yes. 10:43
 16 Q. It was posted by you on October 11th of
 17 2001; is that right?
 18 A. Yes.
 19 Q. Were you still involved in the W3C as of
 20 October 11th, 2001? 10:43
 21 A. I don't know. Previously I said I was not
 22 involved. I -- I -- I would have to check. You
 23 know, I don't really recall. It was sort of not a
 24 specific -- I could still contribute and speak about
 25 the W3C whether I was a member or not. 10:44

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1 Q. So you can't recall today whether you were 10:44
 2 still a member as of October 11th of 2001?
 3 A. Not specifically.
 4 Q. But you'll agree with me that at least as
 5 of October 11th, 2001, you were still following some 10:44
 6 developments at the W3C?
 7 A. Yes.
 8 Q. Now, do you see at the bottom of Exhibit 8
 9 there is a paragraph that begins "in fact"?
 10 A. Mm-hmm. 10:44
 11 Q. Yes?
 12 A. Yes.
 13 Q. And it reads:
 14 "In fact, we'd like to see the W3C lead the
 15 Web community in fighting the imposition of 10:44
 16 patent rights on the Web."
 17 Do you see that?
 18 A. I do.
 19 Q. Is that a belief that you held in October
 20 of 2001? 10:44
 21 A. It is.
 22 Q. Is that a belief that you hold today?
 23 A. In large part I agree with it.
 24 Q. The second sentence there reads:
 25 "As an international organization, the W3C 10:45

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1 obligations. 10:46
 2 Q. So you opposed the W3C adopting any
 3 standards that could read upon patents or other
 4 intellectual property obligations?
 5 A. No. I opposed the RAND licensing option in 10:46
 6 relation to standards.
 7 Q. When you refer to "RAND," that's R-A-N-D?
 8 A. Yes. It's in the second paragraph there.
 9 Q. And do you know what "RAND" stands for?
 10 A. Not at the moment. It is a research and 10:47
 11 development organization.
 12 Q. Mr. Dougherty, do you understand that the
 13 patents in this case are owned by the University of
 14 California?
 15 A. In a -- on a small sense. I've not -- I 10:47
 16 don't understand what their rights are to the
 17 patent.
 18 Q. Did you ever attend any schools that are
 19 run by the University of California?
 20 A. I taught at University of California 10:47
 21 Berkeley, but I did not attend there.
 22 Q. What classes did you teach at Berkeley?
 23 A. I taught an electronic publishing class.
 24 Q. Were you an adjunct --
 25 A. Yes. 10:48

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1 should take a global view of the public 10:45
 2 good and oppose the narrow, US-centric view
 3 that rationalizes software and
 4 business-method patents."
 5 Do you see that? 10:45
 6 A. That's true.
 7 Q. And you wrote those words?
 8 A. Yes.
 9 Q. And did you believe them when you wrote
 10 them? 10:45
 11 A. I do.
 12 Q. And do you hold that belief today, sir?
 13 A. I do.
 14 Q. Why did O'Reilly and you yourself oppose
 15 the W3C's patent policy? 10:45
 16 A. Let me refresh this. It had to do with
 17 this RAND licensing. So, you know, I think in
 18 this -- in this case, you know, what I write under
 19 the proposed framework, the W3C commits to keeping
 20 core standards royalty free, which is what I 10:46
 21 supported; but it sets up the opportunity to -- for
 22 higher layer standards to be chartered and to
 23 basically make agreements about whether or not
 24 something could be used by the -- and supported by
 25 the W3C if it was -- it had intellectual property 10:46

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1 Q. -- professor. 10:48
 2 What's your view on the University of
 3 California?
 4 A. Can you be more specific?
 5 Q. Do you think it's a good institution? 10:48
 6 A. It's a public university. It's a fine --
 7 fine private university.
 8 Q. I think you might have misspoke. It's a
 9 fine public university?
 10 A. I'm sorry. Public. Sorry, public 10:48
 11 university.
 12 Q. So it's your belief that the University of
 13 California is a fine public university?
 14 A. That's correct.
 15 Q. Do you understand that the University of 10:48
 16 California is the largest public research
 17 institution in the country?
 18 MS. DOAN: Objection; form.
 19 THE WITNESS: No, I don't understand that.
 20 BY MR. BUDWIN: 10:48
 21 Q. Do you understand the University of
 22 California holds the most patents of any public
 23 research institution in the country?
 24 MS. DOAN: Objection; form.
 25 THE WITNESS: No, I don't understand it. 10:48

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<p>1 BY MR. BUDWIN: 10:48</p> <p>2 Q. Do you have a problem with the University</p> <p>3 of California enforcing its patent rights?</p> <p>4 A. No, I don't.</p> <p>5 Q. Does it change your opinion in one way or 10:49</p> <p>6 the other that the '906 and the '85 patent, the</p> <p>7 Eolas patents, are actually owned by the University</p> <p>8 of California?</p> <p>9 A. No.</p> <p>10 Q. Do you have an understanding of the 10:49</p> <p>11 research that led to the filing of the '906 and the</p> <p>12 '85 patents by the University of California?</p> <p>13 A. No.</p> <p>14 Q. You've never studied any of Dr. Doyle's</p> <p>15 journal papers, his IEEE article, anything like 10:49</p> <p>16 that?</p> <p>17 A. No.</p> <p>18 Q. Do you understand that the University of</p> <p>19 California has a Patent Office or a patent group</p> <p>20 inside that reviews patents before they're filed? 10:49</p> <p>21 A. No.</p> <p>22 MS. DOAN: Objection; form.</p> <p>23 BY MR. BUDWIN:</p> <p>24 Q. And did you understand before today it was</p> <p>25 actually the University of California and not Eolas 10:49</p>	<p>1 that filed the '906 and '85 patents? 10:50</p> <p>2 MS. DOAN: Objection; form.</p> <p>3 THE WITNESS: No.</p> <p>4 BY MR. BUDWIN:</p> <p>5 Q. You've heard of a man named Pei Wei? 10:50</p> <p>6 A. I have.</p> <p>7 Q. When did you first meet Mr. Wei?</p> <p>8 A. I believe it was in 1991. I had --</p> <p>9 Q. Okay. How did you come to meet Mr. Wei in</p> <p>10 1991? 10:50</p> <p>11 A. I saw on a news group some information</p> <p>12 about what he was doing with Viola and I sought him</p> <p>13 out, e-mailed him, and we met for lunch.</p> <p>14 Q. So you arranged a meeting with Mr. Wei in</p> <p>15 1991? 10:50</p> <p>16 A. That's correct.</p> <p>17 Q. And you ultimately hired Mr. Wei to work at</p> <p>18 O'Reilly & Associates?</p> <p>19 A. That's correct.</p> <p>20 Q. When did you hire Mr. Wei? 10:51</p> <p>21 A. I believe it was the spring of 1992.</p> <p>22 Q. Why did you decide to hire Mr. Wei?</p> <p>23 A. I wanted to support the work he was doing</p> <p>24 and to -- I thought that support would help</p> <p>25 accelerate development on Viola. I thought it was 10:51</p>
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<p>1 important. 10:51</p> <p>2 Q. Why did O'Reilly have an interest in</p> <p>3 supporting Mr. Wei's work on Viola?</p> <p>4 A. Because specifically around electronic</p> <p>5 publishing, and as a publisher we were interested in 10:51</p> <p>6 looking at ways that that information could be</p> <p>7 distributed online.</p> <p>8 Q. So O'Reilly is primarily a technical book</p> <p>9 publisher?</p> <p>10 A. That's correct. 10:51</p> <p>11 Q. And so you publish books on computers and</p> <p>12 computer programming and things of that nature?</p> <p>13 A. Yes.</p> <p>14 Q. And one of the things that O'Reilly became</p> <p>15 interested in Viola was you thought it might be a 10:52</p> <p>16 way to distribute your books online?</p> <p>17 A. That's correct.</p> <p>18 Q. You never actually released any products</p> <p>19 where you distributed books online using Viola, did</p> <p>20 you? 10:52</p> <p>21 A. Well, we set up kiosk, and we had a book</p> <p>22 called "The Whole Internet Catalog," which we took a</p> <p>23 section of that book and set it up as a -- as a</p> <p>24 public kiosk. So it was functioning in public in</p> <p>25 several locations over the 1992 time frame. 10:52</p>	<p>1 Q. Did O'Reilly ever release any commercial 10:52</p> <p>2 products based on Viola?</p> <p>3 MS. DOAN: Objection; form.</p> <p>4 THE WITNESS: This was a -- I would regard</p> <p>5 the kiosk as a commercial product. 10:52</p> <p>6 BY MR. BUDWIN:</p> <p>7 Q. And the kiosk had part of a book called</p> <p>8 "The Whole Internet Catalog" on it?</p> <p>9 A. Yes, it did.</p> <p>10 Q. Other than the kiosk with part of "The 10:53</p> <p>11 Whole Internet Catalog" on it, did O'Reilly have any</p> <p>12 other products that used Viola to distribute books?</p> <p>13 A. Not to distribute books. We did use Viola</p> <p>14 with GNN in its early development.</p> <p>15 Q. How did O'Reilly use Viola with GNN? 10:53</p> <p>16 A. It was -- it was the first graphical web</p> <p>17 browser and we used it to develop the content and it</p> <p>18 was -- it was more -- it was built off of what we</p> <p>19 did for the kiosk, and it was, you know, webpages</p> <p>20 that -- that formed an interface to what other kinds 10:53</p> <p>21 of content was on the Web.</p> <p>22 Q. Is that something that you were doing</p> <p>23 internally at O'Reilly?</p> <p>24 A. Yes. Yes, internally in the sense it was a</p> <p>25 product we were developing. 10:54</p>

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<p>1 Q. Did O'Reilly ever use Viola to earn any 10:54 2 money?</p> <p>3 MS. DOAN: Objection; form.</p> <p>4 THE WITNESS: Interesting. We never sold 5 it. We never -- we never tried to seek money for 10:54 6 Viola.</p> <p>7 BY MR. BUDWIN:</p> <p>8 Q. So to your knowledge, O'Reilly never sold 9 Viola?</p> <p>10 A. That's true. 10:54</p> <p>11 Q. And to your knowledge, O'Reilly never filed 12 any patents related to Viola?</p> <p>13 A. That's true.</p> <p>14 Q. Now, I think we mentioned earlier that 15 O'Reilly was -- was and is primarily in the business 10:54 16 of publishing technical books; is that right?</p> <p>17 A. Yes.</p> <p>18 Q. And you talked to Mr. Wei about writing a 19 technical book on Viola; isn't that right?</p> <p>20 A. That's correct. 10:55</p> <p>21 Q. And you talked to Mr. Wei about writing a 22 technical book about Viola as early as 1991?</p> <p>23 A. That's correct.</p> <p>24 Q. And to your knowledge, O'Reilly never 25 published any books on Viola? 10:55</p>	<p>1 MS. DOAN: Objection; form. 10:55</p> <p>2 THE WITNESS: We included a chapter on 3 Viola in the August -- in the fall 1992 edition the 4 "Whole Internet Guide and Catalog."</p> <p>5 BY MR. BUDWIN: 10:55</p> <p>6 Q. O'Reilly never published any books solely 7 and specifically about Viola?</p> <p>8 A. That's true.</p> <p>9 Q. And the only publication that O'Reilly made 10 that mentions Viola, to your knowledge, is a chapter 10:55 11 in "The Whole Internet Catalog"?</p> <p>12 A. That's not true.</p> <p>13 Q. Okay. What publications beyond "The Whole 14 Internet Catalog" are you aware of that talk about 15 Viola? 10:55</p> <p>16 A. We published a -- in the -- in 1993 in the 17 spring, we published a catalog of our books and -- 18 which also contained articles. It was a catazine, 19 contained sort of a magazine, plus books, and it 20 contained an article about Viola. 10:56</p> <p>21 Q. Do you still have that today?</p> <p>22 A. I have not been able to find it.</p> <p>23 Q. You recall there is a chapter on Viola in 24 "The Whole Internet Catalog"?</p> <p>25 A. That's right. 10:56</p>
Page 72	Page 73
<p>1 Q. And that's in 1992? 10:56</p> <p>2 A. That's true.</p> <p>3 Q. And do you still have that today?</p> <p>4 A. Yes.</p> <p>5 Q. And that was one of the things that was 10:56 6 included in your production?</p> <p>7 MS. DOAN: That's publicly available.</p> <p>8 THE WITNESS: It's publicly available, 9 so...</p> <p>10 BY MR. BUDWIN: 10:56</p> <p>11 Q. And then you're aware of a magazine in 1993 12 that mentions Viola?</p> <p>13 A. That's correct.</p> <p>14 Q. And you haven't been able to find that 15 magazine? 10:56</p> <p>16 A. No. But I've been able to find through our 17 e-mail thread of the time some of what was written.</p> <p>18 Q. And that was included in your document 19 production, those e-mails?</p> <p>20 A. Yes. 10:57</p> <p>21 Q. But, to your knowledge, O'Reilly has never 22 released a standalone book on Viola?</p> <p>23 A. That's true.</p> <p>24 Q. Now, you talked to Mr. Wei as early as 1991 25 about writing a book on Viola; isn't that right? 10:57</p>	<p>1 A. Mm-hmm. 10:57</p> <p>2 Q. Yes?</p> <p>3 A. Yes.</p> <p>4 Q. Why is it that Mr. Wei or O'Reilly never 5 got around to finishing a book on Viola? 10:57</p> <p>6 A. Largely because I think the demands of 7 development on Viola, software development, became 8 his highest priority, and the -- the idea of the 9 book fell -- fell to the sort of side.</p> <p>10 Q. When did Mr. Wei leave O'Reilly? 10:58</p> <p>11 A. When GNN was sold to AOL, he went to work 12 with AOL.</p> <p>13 Q. And do you recall when that was?</p> <p>14 A. '95.</p> <p>15 Q. Did you consider Viola to be finished when 10:58 16 Mr. Wei left O'Reilly in 1995?</p> <p>17 MS. DOAN: Objection; form as "finished."</p> <p>18 THE WITNESS: I really don't know. I 19 wasn't focused on Viola in '95.</p> <p>20 BY MR. BUDWIN: 10:58</p> <p>21 Q. When were you focused on Viola?</p> <p>22 A. '91 through the early 1994.</p> <p>23 Q. Why did your focus shift away from Viola 24 after early 1994?</p> <p>25 A. Because of -- our overall goal was to help 10:58</p>

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1 launch a Web, World Wide Web, and there were lots of 10:59
 2 other browsers emerging in late '93.
 3 Q. What other browsers were there that were
 4 emerging in late '93?
 5 A. Well, in March of '93 we saw the first 10:59
 6 Mosaic browser, and in August of '93 we see Windows
 7 and Mac versions of it in development, and by late
 8 fall the Mosaic suite of programs begins to be
 9 pretty -- you know, cross-platform web browser.
 10 Q. So by the end of 1993 and into early 1994 10:59
 11 the Mosaic web browsers had basically become
 12 commonplace across the different platforms?
 13 A. I can't -- they were available.
 14 Q. And is it your belief that the
 15 proliferation of the Mosaic browsers is one of the 10:59
 16 things that led to Viola being used less?
 17 A. Yes.
 18 Q. When was the last time you used Viola?
 19 A. I don't have specific documentation on
 20 that. 11:00
 21 Q. Would it have been more than ten years?
 22 A. Yes.
 23 Q. And Viola is not still in use at O'Reilly
 24 today, is it?
 25 A. No. 11:00

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1 Mr. Wei realize you wouldn't be able to compete with 11:01
 2 the browsers like Mosaic that were coming out?
 3 A. Yes.
 4 Q. And why was it that you wouldn't be able to
 5 compete -- Viola wouldn't be able to compete with 11:02
 6 Mosaic and the browsers, those browsers, that were
 7 coming out in late '93 or early '94?
 8 A. Well, I think two things. One is teams
 9 like NCSA were getting more -- they had more
 10 resources to apply to it. The web was beginning to 11:02
 11 get more people's attention. But, you know, it was
 12 also -- you know, from O'Reilly's point of view, we
 13 were interested primarily in the development,
 14 distribution of the content and the browser was a
 15 means to be able to do that. So we wanted -- we 11:02
 16 wanted it to be -- we helped to accelerate and --
 17 that development early on and that was good.
 18 Q. So one of the reasons why you think that
 19 Viola lost competitiveness with the emergence of
 20 Mosaic and other browsers in late '93 and early '94 11:03
 21 were those teams, the Mosaic team, the NCSA team,
 22 had more resources than you did at O'Reilly?
 23 MS. DOAN: Objection; form.
 24 THE WITNESS: I think that is one of the
 25 reasons. 11:03

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1 Q. When was the last time anybody at O'Reilly 11:00
 2 used Viola, to your knowledge?
 3 A. I don't have that knowledge.
 4 Q. More than ten years?
 5 A. Yes. 11:00
 6 Q. Why did O'Reilly and Mr. Wei stop
 7 developing the Viola browser?
 8 A. Well, we had put resources into it and our
 9 goal was to make it available, and as other browsers
 10 became widely available, there were other people 11:01
 11 putting even more resources into web browser
 12 development and it wasn't necessarily something we
 13 regarded as being competitive about.
 14 Q. So one of the reasons that O'Reilly and Mr.
 15 Wei stopped pursuing the development of Viola dealt 11:01
 16 with the proliferation of other browsers, like
 17 Mosaic in the fall of '93?
 18 MS. DOAN: Objection; form.
 19 THE WITNESS: Well, we kept -- we kept
 20 our -- I think we kept supporting the development 11:01
 21 of -- of Viola during that period that you
 22 mentioned, and at the same time we see the rise of
 23 Mosaic coming as well.
 24 BY MR. BUDWIN:
 25 Q. And at some point did you or O'Reilly or 11:01

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1 BY MR. BUDWIN: 11:03
 2 Q. And another one of the reasons is O'Reilly,
 3 as a book publisher, was focusing more on the
 4 content as opposed to the manner of delivering that
 5 content? 11:03
 6 A. Well, I would say that we were focusing on
 7 the web as an open platform, which was the manner
 8 for delivering that content, and we wanted to do
 9 everything we could to support the development of
 10 the web. It didn't necessarily have to be us doing 11:03
 11 that development, though.
 12 Q. Basically, O'Reilly came to the realization
 13 that it could use other browsers, like Mosaic, that
 14 had bigger teams supporting them to better deliver
 15 the content that was part of its primary business? 11:04
 16 A. That's true.
 17 Q. Now, in 1993 you never personally
 18 distributed copies of Viola source code or Viola
 19 executables to anyone, did you?
 20 MS. DOAN: Objection; form. 11:04
 21 THE WITNESS: So probably this is a
 22 conversation. So what do we mean by "personally"?
 23 How limited is that?
 24 BY MR. BUDWIN:
 25 Q. Sure. 11:04

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1 Did you yourself ever give a copy of Viola 11:04
 2 source code or Viola executables to anyone at any
 3 point in 1993?
 4 A. I made it available. Made sure it was
 5 available publicly for people to download. None of 11:04
 6 us would have delivered a copy of source code to
 7 someone else directly.
 8 Q. So you said you made it available publicly
 9 to download?
 10 A. Right. 11:05
 11 Q. How did you make Viola available publicly
 12 to download?
 13 A. Pei was instructed to do that.
 14 Q. Okay.
 15 A. He was already doing it when I first found 11:05
 16 him. It was -- it was down through FTP and other
 17 places.
 18 Q. Did you ever personally put a copy of any
 19 Viola source or executable on an FTP site in 1993?
 20 A. No. 11:05
 21 Q. Did you ever personally e-mail any copies
 22 of any Viola source or executables to any person in
 23 1993?
 24 A. No, I did not.
 25 Q. Did you ever put any copies of any Viola 11:05

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1 A. I believe we recovered some code that was 11:07
 2 made available to them in that time frame.
 3 MS. DOAN: And, Counsel, we've reproduced
 4 all the code from the first trial and we've produced
 5 new code, or all the backup tapes, that he has 11:07
 6 during this time period as well, so just for
 7 clarification purposes.
 8 BY MR. BUDWIN:
 9 Q. Do you have the exact code that was given
 10 to the Sun engineers on the FTP site in May of '93, 11:07
 11 to your knowledge?
 12 A. I believe we have -- I think, yes.
 13 Q. You think that you have the exact code?
 14 A. Of that time frame, I think the dates match
 15 up really well. 11:08
 16 Q. Okay. Now, you've seen some e-mails, have
 17 you not, when there is a reference from Sun
 18 engineers to there being an 11-megabyte-core file in
 19 the code that they received from the FTP site?
 20 A. Yes. 11:08
 21 Q. Do you have any copies of any Viola
 22 distributions from May of 1993 that contain an
 23 11-megabyte-core file, to your knowledge?
 24 A. I don't. I don't know if I do. I don't --
 25 I didn't look through the listings. 11:08

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1 source or executable on any type of 11:05
 2 computer-readable media, like a disk or a CD, and
 3 deliver that to anyone in 1993?
 4 A. I certainly instructed others to do that
 5 for me. 11:06
 6 Q. Did you personally do it yourself?
 7 A. No.
 8 Q. Now, you are aware of the demonstration
 9 that Mr. Wei gave of his Viola browser to some Sun
 10 engineers in May of 1993? 11:06
 11 A. I am.
 12 Q. Do you still have a copy of the code that
 13 Mr. Wei demonstrated to Sun in May of 1993?
 14 A. As part of the first trial, we went back
 15 and looked at what was in the O'Reilly archives and 11:06
 16 we found something in that time frame.
 17 Q. Do you have the exact code as it existed on
 18 the date of the demonstration to the Sun engineers?
 19 A. I don't know if it was the exact code.
 20 Q. Now, you're also aware, are you not, that 11:07
 21 Mr. Wei sent some Viola code to those same two Sun
 22 engineers over an FTP site?
 23 A. Yes.
 24 Q. Do you still have a copy of the code that
 25 was given to the Sun engineers over the FTP site? 11:07

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1 Q. Now, you're aware, are you not, that the 11:08
 2 date the code was allegedly made available on the
 3 FTP site was May 31st of 1993?
 4 A. Yes.
 5 Q. Do you have any Viola code that's dated May 11:08
 6 31st of 1993?
 7 MS. DOAN: Objection; form.
 8 THE WITNESS: Again, we produced what code
 9 we had.
 10 BY MR. BUDWIN: 11:08
 11 Q. Are you aware of any Viola code that's
 12 dated May 31st of 1993?
 13 A. I believe there's a date there, but I don't
 14 have the documentation in front of me.
 15 Q. To your knowledge, do you have any Viola 11:09
 16 code in your possession that's dated May 31st of
 17 1993?
 18 MS. DOAN: Objection; form.
 19 Counsel, we produced all code from May
 20 1993. 11:09
 21 MR. BUDWIN: Okay.
 22 THE WITNESS: Right now in my possession,
 23 no, I don't have anything here.
 24 BY MR. BUDWIN:
 25 Q. Are you aware of the existence of any Viola 11:09

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1 code from May 31st of 1993 sitting here today? 11:09
 2 A. I'm aware of that code.
 3 Q. You're aware of Viola code that has a date
 4 of May 31st, 1993?
 5 A. I would have to check. 11:09
 6 MS. DOAN: Objection; form.
 7 THE WITNESS: I would have to check. I'm
 8 saying that we produced code. Go look at the dates,
 9 tell me what dates you see there, and ask me if
 10 that's there. 11:09
 11 MR. BUDWIN: This will be Exhibit 9.
 12 (Deposition Exhibit 9 was marked for
 13 identification)
 14 MS. DOAN: Thank you.
 15 BY MR. BUDWIN: 11:11
 16 Q. Exhibit 9 is a copy of a document that I
 17 believe came from Mr. Wei's electronic production,
 18 or could have been Mr. Dougherty's electronic
 19 production.
 20 You see Exhibit 9 is an e-mail to Dale 11:11
 21 Dougherty at ora.com?
 22 A. Yes, I do.
 23 Q. And that's you?
 24 A. Mm-hmm.
 25 Q. And it's from Michael Loukides. 11:11

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1 identification) 11:12
 2 MS. DOAN: Thank you.
 3 BY MR. BUDWIN:
 4 Q. Exhibit 10 is a copy of an e-mail dated
 5 July 27, 1994, and it's from you, and the production 11:13
 6 number is Dougherty-EolasTX, a bunch of zeros, 356.
 7 A. Mm-hmm.
 8 Q. This is a document that you sent?
 9 A. Yes.
 10 Q. And do you see it's sent to Katherine 11:13
 11 Webster at corp.sun.com?
 12 A. Mm-hmm.
 13 Q. Yes?
 14 A. Yes.
 15 Q. Who's Katherine Webster? 11:13
 16 A. I don't recall. She is a Sun employee that
 17 I contacted.
 18 Q. And you see it says, "Katherine, I'd be
 19 happy to set up a meeting in our Berkeley office for
 20 you to see a Viola demo." 11:13
 21 Do you see that?
 22 A. Mm-hmm.
 23 Q. Yes?
 24 A. Yes.
 25 Q. Do you recall Ms. Webster from Sun coming 11:13

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1 L-O-U-K-I-D-E-S. 11:11
 2 A. Loukides.
 3 Q. Loukides.
 4 Who is Michael Loukides?
 5 A. Michael is an editor at O'Reilly. 11:11
 6 Q. And were you pursuing options to be
 7 commercialize Viola in 1993 and 1994?
 8 A. No. This refers to the Free Software
 9 Foundation was interested in changing the license on
 10 Viola to make it compatible with their free 11:12
 11 software.
 12 Q. Did you have any intention or did O'Reilly
 13 have any intention of commercializing Viola in 1993
 14 or 1994?
 15 A. We had no specific intention, no. 11:12
 16 Q. And to your knowledge, did O'Reilly ever
 17 release a commercial version of O'Reilly -- I'm
 18 sorry, of Viola?
 19 A. I'm sorry, no, we did not. "Commercial,"
 20 if you define as a paid product. "Commercial" could 11:12
 21 also mean simply distributing it, which we did
 22 intend to do.
 23 MR. BUDWIN: Hand you a document which will
 24 be marked as Exhibit 10.
 25 (Deposition Exhibit 10 was marked for 11:12

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1 to see a Viola demo in the summer of 1994? 11:13
 2 A. I don't have specific recollection of a
 3 visit.
 4 Q. Do you recall Ms. Webster's visit one way
 5 or the other? 11:14
 6 A. No.
 7 Q. You do have a specific recollection of a
 8 visit with two Sun engineers in May of 1993; is that
 9 right?
 10 A. That's correct. 11:14
 11 Q. But you don't recall any follow-up visits
 12 with Ms. Webster from Sun in the summer of 1994?
 13 A. Right. This is for a different purpose.
 14 Q. But you don't recall any visits from Ms.
 15 Webster of Sun in the summer of 1994, do you? 11:14
 16 A. No, I don't. She was ... oh.
 17 MR. BUDWIN: I'm going to hand you a
 18 document which will be marked as Exhibit 11.
 19 (Deposition Exhibit 11 was marked for
 20 identification) 11:14
 21 BY MR. BUDWIN:
 22 Q. Exhibit 11 is a copy of an e-mail dated
 23 July 25th, 1994. And do you see it's from you?
 24 Yes?
 25 A. Yes. 11:15

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1 Q. Production is Dougherty-EolasTX, a bunch of 11:15
 2 zeros, 360.
 3 And this is an e-mail sent to Tim O'Reilly?
 4 A. That's correct.
 5 Q. And is Mr. O'Reilly your boss? 11:15
 6 A. Yes.
 7 Q. He is the founder of O'Reilly?
 8 A. Yes.
 9 Q. Do you see in the top of the e-mail, the
 10 e-mail from Mr. O'Reilly to you, it says, "I would 11:15
 11 make clear though, that this kind of software we are
 12 interested in doing as part of ORA. It's the
 13 information interface business."
 14 A. Mm-hmm.
 15 Q. Do you know what he is referring to? 11:15
 16 A. We saw -- Viola -- we saw the web as an
 17 information interface, and -- and so this -- this
 18 kind of software, we're referring to someone -- Dan
 19 Heller approaches Pei about commercializing Viola.
 20 And so the question here is about whether Dan wants 11:16
 21 to spin off Viola to create another company. And so
 22 the question when I say "as part of ORA," I think
 23 this kind of software is part of what we're doing
 24 and it's important to us and not something we would
 25 want to just see sort of go off in a different 11:16

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1 see that? 11:17
 2 A. Right.
 3 Q. Do you know what that's referring to?
 4 A. Spyglass had obtained a commercial license
 5 to Mosaic. 11:17
 6 Q. And so are you saying that another option
 7 for displaying O'Reilly's content is Spyglass?
 8 A. No. I think Spyglass is -- you know, they
 9 took the Mosaic software, they were commercializing
 10 it. We had worked with them a bit around the 11:17
 11 Internet on a box product, and, you know, meaning
 12 they're another option other than Dan if we wanted
 13 to commercialize it.
 14 Q. Okay. And you never followed up with
 15 Spyglass in an attempt to commercialize Viola? 11:18
 16 A. I can't say that I didn't follow-up with
 17 him. I know that nothing came of it, if I did.
 18 MR. BUDWIN: You can set that aside.
 19 Hand you what will be marked as Exhibit 12.
 20 (Deposition Exhibit 12 was marked for 11:18
 21 identification)
 22 BY MR. BUDWIN:
 23 Q. Exhibit 12 is a copy of an e-mail that came
 24 from Mr. Wei's production, dated August 22, 1995.
 25 And do you see it's from Eric Schmidt? 11:18

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1 direction. 11:16
 2 Q. So when there is a reference to "this kind
 3 of software," that means web browsers and things
 4 like that?
 5 A. Yes. 11:16
 6 Q. Okay. And then who is Dan Heller?
 7 A. Dan Heller is one of our book authors;
 8 someone I had worked with. He had created some
 9 e-mail programs and he was -- he was a developer.
 10 Q. So Mr. Heller was not an ORA employee? 11:16
 11 A. No, he was an O'Reilly author.
 12 Q. And it's your recollection that Mr. Heller
 13 had proposed forming some kind of separate venture
 14 that would look to commercialize Viola?
 15 A. Yes. He was -- he was investigating and 11:17
 16 talking about it.
 17 Q. But you and Mr. O'Reilly decided that you
 18 weren't interested in spinning out Viola to another
 19 company for commercial purposes?
 20 A. I would say we had not made the decision. 11:17
 21 We were -- this is -- we were discussing what our
 22 options were.
 23 Q. And do you see a little further down in the
 24 e-mail, right in the middle, it says, "Another
 25 option is Spyglass who is interested in"? Do you 11:17

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1 A. I do. 11:18
 2 Q. Did you see this document in preparing
 3 yesterday?
 4 A. I did.
 5 Q. In August of 1995, what was your 11:19
 6 understanding of Mr. Schmidt's position at Sun?
 7 A. He -- let's see. He was a vice president
 8 at Sun, I believe.
 9 Q. And do you see you're listed as one of the
 10 recipients on the e-mail, dale@ora.com? 11:19
 11 A. Yes.
 12 Q. And do you see in this e-mail from
 13 Mr. Schmidt it says, "We are searching for lots of
 14 prior art. A few months ago Eolas called me to
 15 discuss this." 11:19
 16 Do you see that?
 17 A. Yes, I do.
 18 Q. Do you recall receiving this e-mail from
 19 Mr. Schmidt in 1995?
 20 A. Not particularly. I recall it because of 11:19
 21 the evidence here.
 22 Q. Do you recall having discussions between
 23 people at O'Reilly and people at Sun, or elsewhere,
 24 in 1995 about Eolas and its patent?
 25 A. Not beyond this e-mail, no. 11:20

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1 Q. You don't recall any follow-up discussions 11:20
2 that you had with Mr. Schmidt?

3 A. No, I don't. I did not have any, as far as
4 I recall.

5 Q. How did you become aware of -- how did you 11:20
6 become aware of Eolas and its patents in 1995?

7 Strike that. Let me ask you a better
8 question.

9 Was the e-mail on Exhibit 12 your first
10 awareness of Eolas and its patents or had you heard 11:20
11 of Eolas before you got the e-mail in Exhibit 12?

12 A. I had heard about it before.

13 Q. And how did you first come to hear about
14 Eolas and its patents?

15 A. I believe Pei had let me know, but I don't 11:20
16 have a specific recollection.

17 Q. And do you recall you or Mr. Wei beginning
18 to search for potential prior art to Eolas' patents
19 as far back as 1995?

20 A. In this context we discussed the importance 11:21
21 of Viola as prior art, yes. Not just for Eolas,
22 though.

23 Q. So you became aware of Eolas in 1995; is
24 that right?

25 A. Yes, I believe so. 11:21

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1 A. Yes. 11:22

2 Q. And then after you testified at trial in
3 the Microsoft case, you became aware that the W3C
4 and others requested a reexamination of Eolas'
5 patent? 11:22

6 A. Yes.

7 Q. And as we saw in Exhibit 3, you were aware
8 of the Eolas-specific Patent Action Group that was
9 formed in 2003?

10 A. Yes. 11:22

11 Q. And you followed at least some of the
12 developments with respect to the reexamination
13 proceedings after it was instituted; isn't that
14 right?

15 A. Yes. 11:23

16 Q. And what we see here in Exhibit 6 is a
17 document from you dated June of 2004 related to the
18 reexamination proceedings?

19 A. Mm-hmm.

20 MS. DOAN: Objection; form. 11:23

21 THE WITNESS: Yes.

22 BY MR. BUDWIN:

23 Q. And you in fact continued to monitor the
24 progress of Eolas' reexamination and its case
25 against Microsoft until 2007, didn't you? 11:23

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1 Q. And at that time you began having 11:21
2 discussions with Mr. Wei and others about finding
3 potential prior art to Eolas' patents or other
4 web-related patents; is that right?

5 A. That's -- that's right. 11:21

6 Q. And you're aware that Eolas filed suit
7 against Microsoft in 1999?

8 A. I became aware of that.

9 Q. And you testified at trial and in a
10 deposition in the Microsoft case? 11:21

11 A. Mm-hmm.

12 Q. Is that right?

13 A. Yes.

14 Q. And that was in the early 2000s?

15 A. Right. 11:21

16 Q. And at the time that you gave the testimony
17 in the Microsoft case, it was about your awareness
18 of Eolas and its potential as prior art?

19 A. Yes.

20 Q. And then if you have Exhibit 4 in front of 11:22
21 you, in March of 2000, you published to your website
22 a document entitled "Viola Is a Repository For Prior
23 Art For the Web"?

24 A. Mm-hmm.

25 Q. Is that right? 11:22

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1 MS. DOAN: Objection; form. 11:23

2 THE WITNESS: Do you have specific
3 questions there? I don't know what that means.

4 MR. BUDWIN: Exhibit 15.

5 THE REPORTER: 13. 11:23
6 (Deposition Exhibit 13 was marked for
7 identification)

8 BY MR. BUDWIN:

9 Q. Exhibit 13 is a document entitled
10 "Microsoft Reaches Settlement on Eolas Patent." And 11:23
11 it's published by you on July 31st, 2007; is that
12 right?

13 A. That's true.

14 Q. And so you followed the progression of
15 Eolas and its case and its reexamination proceedings 11:24
16 at least up through July of 2007, didn't you, sir?

17 A. I happened on this date to see a news
18 report.

19 Q. And do you see in there it says, "I learned
20 yesterday that Microsoft had reached an agreement to 11:24
21 settle the case with Eolas so I would not be called
22 to testify this week."

23 Do you see that?

24 A. That's true.

25 Q. And you had planned to testify on the 11:24

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1 retrial in 2007, did you not? 11:24
 2 A. Yes.
 3 Q. And prior to the time that you posted the
 4 document in Exhibit 13, you had had some meetings
 5 with some of the attorneys representing Microsoft to 11:24
 6 discuss your trial testimony?
 7 MS. DOAN: Objection; form.
 8 THE WITNESS: I can't recall. I don't know
 9 whether we met.
 10 BY MR. BUDWIN: 11:24
 11 Q. Okay. It's fair to say, isn't it, Mr.
 12 Dougherty, that you became aware of Eolas and its
 13 patents at least as early as 1995; right?
 14 MS. DOAN: Objection; form. There were no
 15 patents in 1995, Counsel. 11:25
 16 THE WITNESS: I -- I was aware of the
 17 general idea of patents, you know, becoming an issue
 18 in 1995.
 19 BY MR. BUDWIN:
 20 Q. You first became aware of Eolas in 1995, 11:25
 21 did you not?
 22 A. I don't know that that word "Eolas" would
 23 have had any meaning to me in 1995.
 24 Q. Do you have Exhibit 12 in front of you?
 25 A. Yes. 11:25

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1 Microsoft, patent infringement case against 11:26
 2 Microsoft, didn't you?
 3 MS. DOAN: Say it again.
 4 THE WITNESS: When?
 5 BY MR. BUDWIN: 11:26
 6 Q. You became aware -- I'm not asking about a
 7 time, just in general.
 8 You became aware --
 9 A. Eventually, yes, I became aware of it.
 10 Q. And you gave a deposition in that case, did 11:26
 11 you not?
 12 MS. DOAN: Objection; form.
 13 THE WITNESS: I did.
 14 BY MR. BUDWIN:
 15 Q. And do you recall that the date of your 11:26
 16 deposition in that case was October of 2001?
 17 MS. DOAN: Objection; form. Counsel, you
 18 have it to put it in front of him.
 19 MR. BUDWIN: Ms. Doan, "objection; form,"
 20 okay? 11:27
 21 MS. DOAN: I know how to object.
 22 MR. BUDWIN: You constantly --
 23 MS. DOAN: Objection; form. He is a third
 24 party, Counsel.
 25 MR. BUDWIN: Okay. 11:27

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1 Q. Okay. Exhibit 12 is an August 22, 1995 11:25
 2 e-mail from Eric Schmidt to you; right?
 3 A. True.
 4 Q. And it says, "We are searching for lots of
 5 prior art. A few months ago Eolas called me to 11:25
 6 discuss this."
 7 Do you see that?
 8 A. I do.
 9 Q. And you received the e-mail in Exhibit 12
 10 in 1995? 11:25
 11 A. I did.
 12 Q. And you don't dispute, do you, sir, that
 13 you began talking with Mr. Wei and others about
 14 Eolas and finding potential prior art as early as
 15 1995? 11:25
 16 A. I don't agree with that. I agree that we
 17 talked about patents and prior art, and I don't know
 18 that I know who "Eolas" is even in this e-mail.
 19 Q. And you did that as early as 1995?
 20 A. Pei had -- I believe there is an e-mail 11:26
 21 correspondence between Pei and me about patents as
 22 an issue in prior art.
 23 Q. In 1995?
 24 A. Yes.
 25 Q. And you became aware of Eolas' case against 11:26

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1 MS. DOAN: He is not a party to this case. 11:27
 2 He deserves better respect than you're giving him.
 3 MR. BUDWIN: Okay.
 4 MS. DOAN: And you're a better lawyer to be
 5 able to question -- 11:27
 6 MR. BUDWIN: Thank you.
 7 MS. DOAN: -- him so rudely.
 8 MR. BUDWIN: Thank you, Ms. Doan.
 9 Q. Mr. Dougherty, I apologize, but I want to
 10 step back just a little bit to make sure that we 11:27
 11 have my questions in mind.
 12 Do you have Exhibit 12 in front of you?
 13 A. Yes.
 14 Q. Exhibit 12 is a copy of an e-mail that you
 15 received from Eric Schmidt in August of 1995; right? 11:27
 16 A. Yes.
 17 Q. And that document says, "We are searching
 18 for lots of prior art. A few months ago Eolas
 19 called me to discuss this." Right? That's what it
 20 says? 11:27
 21 A. Yes.
 22 Q. And you don't dispute that you received the
 23 e-mail in Exhibit 12 --
 24 A. No, I do not.
 25 Q. -- in August of 1995? 11:27

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1 MS. DOAN: Let him answer -- let him ask 11:27
 2 his question fully.
 3 THE WITNESS: Sorry.
 4 MS. DOAN: That's okay.
 5 BY MR. BUDWIN: 11:27
 6 Q. In August of 1995?
 7 A. I do not dispute that.
 8 Q. And you recall having some discussions with
 9 Mr. Wei and others as early as 1995 related to
 10 potential prior art for patents related to the Web? 11:28
 11 A. Yes.
 12 Q. And if you have Exhibit 4 in front of you,
 13 exhibit 4 is a copy of a document that you posted to
 14 the O'Reilly website in March of 2000 entitled
 15 "Viola Is a Repository of Prior Art To the Web"? 11:28
 16 A. Yes.
 17 MS. DOAN: Objection; form.
 18 BY MR. BUDWIN:
 19 Q. And you recall, do you not, that Eolas
 20 filed a patent infringement case against Microsoft? 11:28
 21 A. Yes.
 22 Q. And you testified in that prior case in
 23 deposition and at trial?
 24 MS. DOAN: Asked and answered; form.
 25 THE WITNESS: Yes. 11:28

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1 2004, "Butting Heads Over The '906 Rebuttal"? 11:30
 2 A. Yes.
 3 MS. DOAN: Objection; form.
 4 BY MR. BUDWIN:
 5 Q. And you followed the pendency of Eolas' 11:30
 6 reexaminations?
 7 MS. DOAN: Objection; form.
 8 THE WITNESS: All I say is I wrote about
 9 it.
 10 BY MR. BUDWIN: 11:30
 11 Q. And then as we see Exhibit 13, it's a copy
 12 of a blog post that you wrote, dated July 31st of
 13 2007; is that right?
 14 A. Yes.
 15 Q. Titled "Microsoft Reaches Settlement on 11:30
 16 Eolas Patent."
 17 Do you see that?
 18 A. Yes.
 19 Q. So it's fair to say, is it not, Mr.
 20 Dougherty, that you first became aware of Eolas in 11:30
 21 1995?
 22 MS. DOAN: Objection; form.
 23 THE WITNESS: You've already asked that
 24 question, and I said I became aware that patents
 25 were an issue; that Viola may be useful in disputing 11:30

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1 BY MR. BUDWIN: 11:28
 2 Q. And if you have Exhibit 7 in front of you.
 3 A. Okay.
 4 Q. That's your trial testimony from July 29th
 5 of 2003, is it not? 11:29
 6 A. Yes.
 7 Q. And after you testified at the Microsoft
 8 trial, you're aware, are you not, that the W3C and
 9 others requested a reexamination of Eolas' '906
 10 patent? 11:29
 11 A. Yes.
 12 Q. And as we see in Exhibit 3 there is a
 13 reference to an HTML Patent Action Group formed by
 14 the W3C.
 15 Do you see that? 11:29
 16 A. I'm sorry, say that again.
 17 Q. And as we see in Exhibit 3, there is a
 18 reference to an HTML Patent Action Group formed by
 19 the W3C in --
 20 A. Yes. We've -- 11:30
 21 Q. -- in 2003?
 22 A. -- we've gone over this.
 23 Q. Okay. And we see -- do you have Exhibit 6
 24 in front of you?
 25 It's a blog post from you, dated June 2nd, 11:30

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1 some of those. 11:31
 2 BY MR. BUDWIN:
 3 Q. And you participated in the prior trial
 4 with respect to Microsoft, did you not?
 5 MS. DOAN: Objection; form, Counsel. 11:31
 6 THE WITNESS: True.
 7 BY MR. BUDWIN:
 8 Q. You appeared at trial and testified in
 9 2003?
 10 MS. DOAN: Asked and answered. Objection; 11:31
 11 form.
 12 THE WITNESS: True.
 13 BY MR. BUDWIN:
 14 Q. And after trial you became aware of the
 15 reexamination proceedings and followed those 11:31
 16 reexamination proceedings from 2003 until they
 17 finished?
 18 MS. DOAN: Objection; form.
 19 Counsel, if you want to ask some new
 20 questions, because I'm getting ready to call the 11:31
 21 judge again. You've asked this about seven times in
 22 the same order and I'm not going to go with this all
 23 seven hours today.
 24 MR. BUDWIN: Ms. Doan --
 25 MS. DOAN: I've got a flight to go back 11:31

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1 home. I'm just putting you on notice. 11:31
 2 MR. BUDWIN: Objection; form.
 3 MS. DOAN: Objection; form. And you keep
 4 going down this again, the same line of questions
 5 that he has already answered affirmatively six 11:31
 6 times.
 7 MR. BUDWIN: Please limit your objections.
 8 Okay?
 9 MS. DOAN: Absolutely. I'm not going to
 10 limit them. I'm putting you on notice I'm getting 11:31
 11 ready to call the hotline again.
 12 BY MR. BUDWIN:
 13 Q. Okay. After trial in the Microsoft case in
 14 2003, you followed the reexamination proceedings
 15 with respect to Eolas' patents? 11:32
 16 MS. DOAN: Objection; form. Don't answer
 17 that question. We're going to call the hotline
 18 again, Josh, if this is what you want me to put up
 19 with.
 20 MR. BUDWIN: Okay. 11:32
 21 MS. DOAN: All right. Fine.
 22 Do you have the record, Ms. Cynthia, so we
 23 can tell the court exactly how many times it has
 24 been read back in?
 25 THE REPORTER: Yes. 11:32

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1 BY MR. BUDWIN: 11:51
 2 Q. And at the time of the settlement in July
 3 of 2007, you were preparing to testify at trial
 4 again on behalf of Microsoft?
 5 MS. DOAN: Objection; form. 11:51
 6 THE WITNESS: I wasn't necessarily
 7 preparing. I was -- I was prepared to testify if it
 8 went to trial.
 9 BY MR. BUDWIN:
 10 Q. And here we are today in 2011 and you're 11:52
 11 still providing testimony with respect to Viola and
 12 your understanding of Eolas and its patents?
 13 A. Yes.
 14 Q. It's fair to say, is it not, that you've
 15 held the belief that Eolas and its '906 patent are 11:52
 16 invalid for more than ten years; isn't that right?
 17 MS. DOAN: Objection; form.
 18 THE WITNESS: I have worked over a period
 19 of time to dispute this patent.
 20 BY MR. BUDWIN: 11:52
 21 Q. And you testified at trial in the last case
 22 about that, did you not?
 23 A. I did. We've established that.
 24 Q. And you're testifying again in this case
 25 about the same subject matter? 11:53

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1 THE VIDEOGRAPHER: This marks the end of 11:32
 2 Disk 1. We'll go off the record. The time is 11:32
 3 a m.
 4 (Recess taken)
 5 THE VIDEOGRAPHER: This marks the beginning 11:50
 6 of Disk 2, Volume I, in the deposition of Dale
 7 Dougherty. We're on the record. The time is 11:51
 8 a m.
 9 BY MR. BUDWIN:
 10 Q. Mr. Dougherty, and after trial in the 11:51
 11 Microsoft case, you became aware of the
 12 reexamination proceedings with respect to Eolas'
 13 '906 patent, and you followed those reexaminations
 14 proceedings from 2003 until they finished?
 15 MS. DOAN: Objection; form. 11:51
 16 THE WITNESS: I wrote about them when news
 17 was breaking.
 18 BY MR. BUDWIN:
 19 Q. And do you have Exhibit 13 in front of you?
 20 A. Yes. 11:51
 21 Q. And you became aware of Microsoft's
 22 settlement with Eolas in July of 2007, did you not?
 23 MS. DOAN: Objection; form.
 24 I can answer.
 25 THE WITNESS: I did become aware. 11:51

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1 A. Yes. Yes. 11:53
 2 MS. DOAN: Let him ask the question.
 3 THE WITNESS: Sure.
 4 BY MR. BUDWIN:
 5 Q. And you're aware, are you not, that the 11:53
 6 judge and the jury in the last case disagreed with
 7 you --
 8 MS. DOAN: Objection; form.
 9 BY MR. BUDWIN:
 10 Q. -- and found Eolas's patent valid? 11:53
 11 A. Yes.
 12 Q. And you're also aware that the Patent
 13 Office in the first reexamination of Eolas' '906
 14 patent and the second reexamination of Eolas '906
 15 patent found that patent valid? 11:53
 16 MS. DOAN: Objection; form.
 17 You can answer.
 18 THE WITNESS: Yes.
 19 BY MR. BUDWIN:
 20 Q. And you're also aware that the Patent 11:53
 21 Office allowed Eolas' '985 patent to issue?
 22 A. Yes.
 23 Q. You have no training in the patent law, do
 24 you?
 25 A. You asked me that already. I said no, I do 11:53

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1 not. 11:53

2 Q. So despite the prior determinations,

3 despite the prior action in the Patent Office,

4 despite your lack of training in patent law, you

5 still hold your belief that Eolas' patent is 11:54

6 invalid?

7 A. I do.

8 Q. And it's your belief, is it not, sir, that

9 the Patent Office just got it wrong?

10 A. It's true. Government does those things 11:54

11 sometimes.

12 MR. BUDWIN: All right. Why don't we take

13 a break. Maybe get a little bit of lunch and then

14 we can figure out how much I've got left.

15 MS. DOAN: I thought you told me you had an 11:54

16 hour left and we agreed not to call the court on the

17 hotline based upon your last line of questioning

18 based upon representation you had a couple more

19 questions and then about an hour left.

20 MR. BUDWIN: Yeah, I think I do have about 11:54

21 an hour left. I'd like -- we don't have to break

22 for lunch, but if you give me ten minutes to consult

23 my notes --

24 MS. DOAN: Sure.

25 MR. BUDWIN: -- I'll come back -- 11:54

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1 Q. And is this a document that you prepared in 12:14

2 the early-to-mid 1990s?

3 A. I prepared it for the trial for Microsoft

4 and Eolas when I generated documents for them.

5 Q. Do you recall when you prepared the 12:15

6 document in Exhibit 14?

7 A. You know, it would have been in the trial

8 time.

9 Q. Okay.

10 A. Once I knew that Microsoft and Eolas had a 12:15

11 patent case.

12 Q. So it's -- at some point after Eolas filed

13 its first case against Microsoft, you were contacted

14 and asked to look for documents?

15 A. That's correct. 12:15

16 Q. And at the time that you were looking for

17 documents is when you prepared Exhibit 14?

18 A. That's correct.

19 Q. And do you see it says, "Viola Timeline.

20 Compiled from e-mail correspondence of 1991-1993. 12:15

21 Viola e-mail file"?

22 Do you see that?

23 A. That's correct.

24 Q. What's the "Viola e-mail file"?

25 A. It is a folder of e-mails that -- you know, 12:16

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1 THE WITNESS: That's fine. 11:55

2 MR. BUDWIN: -- and it may be less than an

3 hour.

4 MS. DOAN: That's great.

5 THE WITNESS: Great. Let's do that. 11:55

6 MS. DOAN: We just don't want to break for

7 lunch.

8 THE VIDEOGRAPHER: We'll go off the record.

9 The time is 11:55 a m.

10 (Recess taken) 11:55

11 THE VIDEOGRAPHER: We're on the record.

12 The time is 12:14 p.m.

13 MR. BUDWIN: All right. I'm going to hand

14 you a document that will be marked as Exhibit 14.

15 (Deposition Exhibit 14 was marked for 12:14

16 identification)

17 BY MR. BUDWIN:

18 Q. Exhibit 14 is a copy of the document titled

19 "Viola Timeline," Bates No. PA-00203841.

20 Do you recognize the document? 12:14

21 A. I do.

22 Q. Did you see this document yesterday?

23 A. Yes.

24 Q. Is this a document that you prepared?

25 A. It is. 12:14

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1 through that period I was storing e-mail. When I 12:16

2 saw there was about something on Viola, I would put

3 the -- a message that I had received into that

4 folder.

5 Q. And do you still have the entirety of the 12:16

6 Viola e-mail file today?

7 A. It's been produced.

8 Q. Okay. And do you see there is a series of

9 dates here: 1991, 1992?

10 A. That's right. 12:16

11 Q. And so you put the document in Exhibit 14

12 together based upon what you could see in your

13 e-mail file; is that right?

14 A. That's correct.

15 Q. So for the things where there are dates and 12:16

16 descriptions of things that happened on various

17 dates, are those accurate to your present

18 understanding and belief?

19 A. Generally so.

20 Q. Okay. 12:16

21 A. I have not validated that, but generally

22 it's been out there for ten years or so practically.

23 Q. Having looked at the document in Exhibit 14

24 yesterday in preparing for your deposition, did you

25 notice anything -- any of the descriptions for any 12:17

Page 110	<p>1 of the dates that you believe to be inaccurate? 12:17</p> <p>2 A. No.</p> <p>3 Q. And sitting here today, are you aware of</p> <p>4 any of the descriptions for any of the dates for the</p> <p>5 document in Exhibit 14 that you believe to be 12:17</p> <p>6 inaccurate?</p> <p>7 A. No.</p> <p>8 Q. You see toward the bottom of the document</p> <p>9 it says, "I'm not sure why there is a gap from this</p> <p>10 point up until 1994. I stopped filing e-mail under 12:17</p> <p>11 Viola and under the work we were doing to build GNN,</p> <p>12 which started in late fall of 1992"?</p> <p>13 A. Yes.</p> <p>14 Q. Do you have an understanding as to why</p> <p>15 there is a gap in the timeline? 12:17</p> <p>16 A. There are a couple of reasons. One is a</p> <p>17 change in e-mail practice of copying e-mails into a</p> <p>18 folder versus leaving them in a general inbox.</p> <p>19 Second, I believe around a certain time I</p> <p>20 got my own machine and the e-mail correspondence 12:18</p> <p>21 that is in this file was reflected on a backup or an</p> <p>22 archive that was made at O'Reilly.</p> <p>23 Q. Now, at the time that you were putting</p> <p>24 together the document in Exhibit 14 for the last</p> <p>25 case, did you have a recollection of the 12:18</p>	Page 111	<p>1 demonstrations to the Sun engineers or others of 12:18</p> <p>2 Viola?</p> <p>3 A. Yes.</p> <p>4 Q. Is there a reason why you didn't list those</p> <p>5 in Exhibit 14, the Viola Timeline, if you had a 12:19</p> <p>6 recollection of those events at the time you were</p> <p>7 preparing this document?</p> <p>8 MS. DOAN: Objection; form.</p> <p>9 THE WITNESS: No particular reason. I was</p> <p>10 really composing this, you know, as to what the 12:19</p> <p>11 correspondence was. I didn't really necessarily</p> <p>12 point out everything that was in the e-mails.</p> <p>13 BY MR. BUDWIN:</p> <p>14 Q. At the time that you were preparing the</p> <p>15 document in Exhibit 14, did you believe that the 12:19</p> <p>16 demonstrations of Viola to the Sun engineers were</p> <p>17 important?</p> <p>18 A. I'm -- I don't recall when I understood</p> <p>19 that to be important. And this e-mail does not --</p> <p>20 this list does not really cover 1993. 12:19</p> <p>21 Q. But when you were preparing the list in</p> <p>22 Exhibit 14, you had a recollection of the</p> <p>23 demonstrations that you say were provided to the Sun</p> <p>24 engineers of Viola in May of 1993?</p> <p>25 A. That's correct. 12:20</p>
Page 112	<p>1 Q. And is the reason that you chose not to 12:20</p> <p>2 list those 1993 demonstrations in Exhibit 14 because</p> <p>3 at the time you were making Exhibit 14 you didn't</p> <p>4 have copies of the e-mails referring to those</p> <p>5 demonstrations? 12:20</p> <p>6 A. This -- Exhibit 14 is an index of the</p> <p>7 e-mails I had at the time.</p> <p>8 Q. And at the time you were preparing Exhibit</p> <p>9 14, did you not have access to any e-mails referring</p> <p>10 to the Sun demonstration? 12:20</p> <p>11 A. As pointed out here, it was largely from</p> <p>12 1991 through September of '92.</p> <p>13 Q. Are you -- strike that.</p> <p>14 Do you know what SIG-Web was?</p> <p>15 A. I do. 12:21</p> <p>16 Q. What was SIGWEB?</p> <p>17 A. "SIG" stands for Special Interest Group,</p> <p>18 and it was just a meeting that was formed in the Bay</p> <p>19 Area I believe in the fall of 1993, and a person</p> <p>20 named Chris McRae had organized it just as a way to 12:21</p> <p>21 bring together people who were interested in the</p> <p>22 Web.</p> <p>23 Q. Did you ever attend any SIGWEB meetings?</p> <p>24 A. Yes, I did.</p> <p>25 Q. What SIGWEB meetings do you recall in, 12:21</p>	Page 113	<p>1 let's start with, the fall of '93? 12:21</p> <p>2 A. I believe it was the first meeting they</p> <p>3 held and I recall participating in the meeting.</p> <p>4 Q. So you recall participating in the October</p> <p>5 1993 SIGWEB meeting? 12:22</p> <p>6 A. I believe that's the right date.</p> <p>7 Q. Do you recall Dr. Doyle attending the</p> <p>8 October 1993 SIGWEB meeting?</p> <p>9 A. No, I do not.</p> <p>10 Q. Do you recall a discussion of Dr. Doyle and 12:22</p> <p>11 his Visible Embryo Project at the October</p> <p>12 1993 SIGWEB meeting?</p> <p>13 A. No.</p> <p>14 Q. Do you have any recollection of Dr. Doyle</p> <p>15 presenting a slide show describing the Visible 12:22</p> <p>16 Embryo Project at the October 1993 SIGWEB meeting?</p> <p>17 A. I don't, no.</p> <p>18 MR. BUDWIN: What am I up to?</p> <p>19 THE REPORTER: 15.</p> <p>20 (Deposition Exhibit 15 was marked for 12:22</p> <p>21 identification)</p> <p>22 BY MR. BUDWIN:</p> <p>23 Q. Exhibit 15 is a copy of a document dated</p> <p>24 October 3rd, 1993 titled "Notes for Initial SIGWEB</p> <p>25 Meeting," and at the bottom it's production No. 12:23</p>

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1 CM000950. 12:23
 2 Have you seen the document in Exhibit 15
 3 before?
 4 A. No, I haven't. Not that I recall.
 5 Q. Can you turn to the -- 12:23
 6 MS. DOAN: Counsel, he has not seen this
 7 document. He can't authenticate it. I don't think
 8 it's proper to ask questions about it.
 9 MR. BUDWIN: Okay. Well, I think it is.
 10 Q. Why don't you take a minute, Mr. Dougherty, 12:23
 11 and review the contents of the document, and tell me
 12 when you're done looking at it.
 13 Okay?
 14 A. (Witness reviewing document.)
 15 Okay, I've reviewed it quickly. 12:26
 16 Q. Okay. Do you recall speaking at the SIGWEB
 17 conference in October of 1993?
 18 A. I don't have a personal recollection of it.
 19 Obviously this document says I said something and we
 20 were there and supported it. 12:27
 21 Q. You know for a fact, though, you attended
 22 the initial SIGWEB meeting in October of 1993?
 23 A. That's correct.
 24 Q. And do you see there is a reference in the
 25 document, Exhibit 15, to "representatives." It's on 12:27

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1 A. Yes, I do. 12:28
 2 Q. Do you recall anyone from the Center for
 3 Knowledge Management or the University of San
 4 Francisco speaking at the SIGWEB conference in
 5 October of 1993? 12:28
 6 MS. DOAN: Objection; form.
 7 THE WITNESS: I don't have a recollection.
 8 BY MR. BUDWIN:
 9 Q. Do you recall Chris McRae speaking at the
 10 SIGWEB conference in October of 1993? 12:28
 11 A. Yes, I do.
 12 Q. Do you have a recollection of where Mr.
 13 McRae was employed in October of 1993?
 14 A. I didn't -- I didn't really know. I might
 15 have known that he worked at the Center for 12:28
 16 Knowledge Management, but I wouldn't have known
 17 really what that was.
 18 Q. Do you have an understanding today that in
 19 October of 1993 Mr. McRae was employed at the
 20 University of California San Francisco? 12:29
 21 A. I do understand that now.
 22 Q. And do you understand that in October of
 23 1993 Mr. McRae was actually working for Dr. Doyle --
 24 MS. DOAN: Objection --
 25 //

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1 the -- sorry, the first page, fifth paragraph, the 12:27
 2 one that starts "and."
 3 A. Mm-hmm.
 4 Q. And in the middle it starts, "There are
 5 representatives here from eight University of 12:27
 6 California institutions."
 7 Do you see that?
 8 A. Mm-hmm.
 9 Q. And do you recall there being
 10 representatives from the University of California in 12:27
 11 the SIGWEB meeting in October of 1993?
 12 MS. DOAN: Objection; form.
 13 THE WITNESS: I don't have any particular
 14 recollection.
 15 BY MR. BUDWIN: 12:27
 16 Q. And can you look to the third page of this
 17 document, 952.
 18 A. Yes.
 19 Q. And it says in the second paragraph up from
 20 the bottom of the page, refers to, quote, "The 12:28
 21 Center for Knowledge Management, or CKM, is a branch
 22 of the UCSF Medical Library."
 23 Do you see that?
 24 A. Mm-hmm.
 25 Q. Yes? 12:28

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1 BY MR. BUDWIN: 12:29
 2 Q. -- the inventor of the '906 patent?
 3 A. I understand it now.
 4 Q. You didn't at the time?
 5 A. No. 12:29
 6 Q. Now, do you see at the bottom of the third
 7 page, page 952 of Exhibit 15, the bottom paragraph
 8 says, "Michael Doyle is the Director of the CKM.
 9 David Martin is Assistant Director of CKM in charge
 10 of ISSG"? 12:29
 11 Do you see that?
 12 A. Yes.
 13 Q. Do you recall meeting Dr. Doyle or Mr.
 14 Martin at the SIGWEB meeting?
 15 A. I do not. 12:29
 16 Q. Do you see there is also a reference in the
 17 next sentence to Cheong Ang?
 18 Do you see that?
 19 A. I do.
 20 Q. Do you recall Mr. Ang at the SIGWEB meeting 12:29
 21 in October of 1993?
 22 A. No, I don't.
 23 Q. You understand now, don't you, that Michael
 24 Doyle, David Martin and Cheong Ang are the three
 25 inventors of Eolas' '906 and '985 patents? 12:30

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1 A. I understand that. 12:30

2 Q. You have no recollection of meeting or

3 speaking with any of them or any other person with

4 the University of California at the SIGWEB meeting

5 in October of '93? 12:30

6 A. No.

7 Q. In reviewing the document in Exhibit 15,

8 did it refresh your recollection that Mr. Doyle, Mr.

9 Martin and Mr. Ang may have been present at the

10 SIGWEB meeting? 12:30

11 A. No, it doesn't. I mean, there is

12 obviously -- Chris is saying they were. There were

13 a lot of people there. I wasn't there to

14 particularly meet them and I don't have any

15 recollection of meeting them. 12:30

16 Q. Will you turn to the next page, the one

17 that ends 953.

18 A. Mm-hmm.

19 Q. Do you see there is a reference to the

20 "Visible Embryo Project"? 12:31

21 A. Mm-hmm.

22 Q. And you see the last sentence of that

23 paragraph says -- or second-to-the-last sentence

24 says:

25 "Michael Doyle or Cheong Ang are the best 12:31

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1 recollection of either Dr. Doyle or Mr. Ang or Mr. 12:32

2 Martin, the inventors of the patents, the '906 and

3 '985 patent, being at the SIGWEB meeting in October

4 of 1993?

5 MS. DOAN: Objection; form. 12:32

6 THE WITNESS: No.

7 BY MR. BUDWIN:

8 Q. And you have no recollection of seeing a

9 slide slow presentation by Dr. Doyle or Mr. Ang of

10 their Visible Embryo Project at the SIGWEB meeting? 12:32

11 A. No.

12 MS. DOAN: Same objection.

13 BY MR. BUDWIN:

14 Q. Is there any reason in particular why

15 sitting here today you don't recall the specifics of 12:32

16 who was present at the SIGWEB meeting and what

17 demonstrations were shown?

18 A. I recall it as a busy meeting with lots of

19 people there. And Chris is obviously writing this

20 from his perspective, and, as an employee, he is 12:32

21 writing a lot about their work; but I didn't know

22 that much about it.

23 Q. Did you know anything about Dr. Doyle or

24 the work on the Visible Embryo Project in 1993?

25 A. No. 12:33

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1 people to talk to for additional 12:31

2 information. I believe Mike's got a slide

3 show presentation running on his PowerBook

4 over on the back table which describes both

5 the RedSage and Visible Embryo Projects." 12:31

6 Do you see that?

7 A. I do.

8 Q. Do you recall seeing the slide shows

9 describing RedSage or the Visible Embryo Project at

10 the SIGWEB meeting in October of '93? 12:31

11 A. No.

12 Q. So -- all right.

13 So just to summarize, you don't dispute, do

14 you, sir, that you attended the SIGWEB meeting in

15 October of 1993, do you? 12:31

16 MS. DOAN: Objection; form.

17 THE WITNESS: No, I don't dispute that.

18 BY MR. BUDWIN:

19 Q. You also recall Mr. McRae, Chris McRae,

20 being present at the SIGWEB meeting in October of 12:31

21 1993?

22 A. He was organizing it.

23 Q. And you recall him being there?

24 A. Yes.

25 Q. Sitting here today, you have no 12:32

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1 Q. So the reason -- the reason you think you 12:33

2 can't remember the specifics of what was shown at

3 the SIGWEB meeting or whether even Dr. Doyle or Mr.

4 Ang or any of the inventors were there is because it

5 was a busy meeting? 12:33

6 A. I think the bulk of the meeting was about

7 the web; it wasn't about Doyle. It wasn't about any

8 of those folks.

9 So as Chris talks about in the first part,

10 people were interested in understanding Gopher and 12:33

11 the World Wide Web, and that's why I was there and I

12 was there to talk about that.

13 Q. Do you have any notes or e-mails where you

14 describe the SIGWEB meeting from October of '93 of

15 which you're aware? 12:33

16 A. Not that I have seen.

17 Q. Having reviewed the document in Exhibit 15

18 and based upon what you recall of the SIGWEB meeting

19 in October of '93, do you see anything inaccurate

20 that Mr. McRae said, anything that you can dispute 12:34

21 from your personal knowledge?

22 MS. DOAN: Objection; form.

23 THE WITNESS: Do you have anything

24 specifically that you think is inaccurate? I mean,

25 I'm not going to attest to what he has written. 12:34

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1 BY MR. BUDWIN: 12:34
 2 Q. Okay. I'm asking you: Having read what's
 3 written in Exhibit 15, and since you attended the
 4 meeting, the October 1993 meeting referred to in
 5 Exhibit 15, do you see anything that jumps out to 12:34
 6 you as being inaccurate based on what you recall of
 7 the meeting?
 8 MS. DOAN: Objection; form.
 9 You can answer.
 10 THE WITNESS: I -- I have read this in a -- 12:34
 11 in the limited time I have here. Nothing jumped out
 12 at me. That doesn't mean it's completely inaccurate
 13 or that I would agree with it in all cases.
 14 BY MR. BUDWIN:
 15 Q. Sitting here today and having reviewed the 12:34
 16 document, read the document in Exhibit 15, can you
 17 point out any inaccuracies to me that you see based
 18 upon your recollection?
 19 MS. DOAN: Objection; form.
 20 THE WITNESS: Nothing specific. 12:35
 21 BY MR. BUDWIN:
 22 Q. Okay. All right. You can set that
 23 document aside.
 24 Now, prior to your involvement in this
 25 case, and I mean by "this case," I mean the case 12:35

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1 A. No. 12:36
 2 Q. Why not?
 3 A. It doesn't implement the Web protocols for
 4 retrieving information across a network. It is a
 5 hypermedia browser. 12:36
 6 Q. In the 1993 to 1994 time frame, what would
 7 your definition of a web browser be?
 8 A. In what time frame?
 9 Q. 1993 to 1994.
 10 A. I think in the simplest case would be the 12:37
 11 ability to retrieve a document from a web server and
 12 support the formatting of that document. A web
 13 browser would also be able to access other
 14 protocols, such as WAIS or Gopher, FTP.
 15 (Reporter clarification) 12:37
 16 BY MR. BUDWIN:
 17 Q. You said I believe one of the
 18 characteristics of a web browser from 1993 to 1994
 19 would be that it would retrieve a document from a
 20 server and support the formatting of the document; 12:37
 21 is that right?
 22 A. That's correct.
 23 Q. When you say support the formatting of the
 24 document, do you mean text formats like HTML?
 25 A. Yes. 12:37

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1 with Ms. Doan representing you, had you heard of 12:35
 2 something called MediaView?
 3 A. I don't think so. It's possible, but I
 4 hadn't heard about it until recently.
 5 Q. Now, in the 1993 and 1994 time frame you 12:35
 6 were actively involved in the Web community, were
 7 you not?
 8 A. Yes.
 9 Q. And you were actively -- or you were aware
 10 of all of the web browsers or most of the commonly 12:35
 11 used web browsers at the time?
 12 A. I was aware of most of them.
 13 Q. And despite your involvement in the Web
 14 community in 1993 or 1994, to your recollection you
 15 had never heard of MediaView prior to your 12:36
 16 involvement in this case?
 17 MS. DOAN: Objection; form.
 18 THE WITNESS: Yes.
 19 BY MR. BUDWIN:
 20 Q. Prior to your involvement in this case, had 12:36
 21 you heard of something called HyperCard?
 22 A. Yes.
 23 Q. Have you used HyperCard?
 24 A. Yes.
 25 Q. Is HyperCard a web browser? 12:36

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1 Q. And when you say retrieve from a server, do 12:37
 2 you mean using protocols like HTTP?
 3 A. That's true.
 4 MS. DOAN: Objection; form.
 5 BY MR. BUDWIN: 12:37
 6 Q. So in 1993 to 1994, would you agree with me
 7 that one of the salient characteristics of a web
 8 browser is that it would be able to retrieve
 9 documents from a server using protocols like HTTP
 10 and it would support the formatting of those 12:38
 11 documents; for example, in HTML?
 12 MS. DOAN: Objection; form.
 13 THE WITNESS: Yes.
 14 MS. DOAN: You can answer.
 15 THE WITNESS: Yes. 12:38
 16 MR. BUDWIN: I'll pass the witness.
 17 MS. DOAN: All right. Let's go off the
 18 record for just a little bit.
 19 THE VIDEOGRAPHER: We'll go off the record.
 20 The time is 12:38 p m. 12:38
 21 (Recess taken)
 22 THE VIDEOGRAPHER: We're on the record.
 23 The time is 12:59 p m.
 24 MS. DOAN: We reserve our questions to the
 25 time of trial, Amazon and Yahoo! do. 12:59

1 MR. STROY: As do Google and YouTube. 12:59
 2 MR. BUDWIN: Thank you.
 3 THE VIDEOGRAPHER: This marks the end of
 4 Disk 2 and will conclude the deposition for today.
 5 All disks will be held by TSG. We're off the 12:59
 6 record. The time is 12:59.
 7 (Time noted: 12:59 p m.)
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 25

1 J U R A T
 2
 3 I, Dale Dougherty, do hereby certify under
 4 penalty of perjury that I have read the foregoing
 5 transcript of my deposition taken on December 16, 2011;
 6 that I have made such corrections as appear noted
 7 herein in ink, initialed by me; that my testimony as
 8 contained herein, as corrected, is true and correct.
 9
 10 DATED this ____ day of _____, 2011,
 11 at _____.
 12
 13
 14
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 16
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 24
 25

 SIGNATURE OF WITNESS

1 IN THE MATTER OF: Eolas v Adobe Systems, et al.
 2 DATE: December 16, 2011
 3 WITNESS: Dale Dougherty
 4 Reason codes:
 5 1. To clarify the record.
 6 2. To conform to the facts.
 7 3. To correct transcription errors.
 8
 9
 10 Page Line Reason
 11 From to
 12
 13 Page Line Reason
 14 From to
 15 Page Line Reason
 16 From to
 17
 18 Page Line Reason
 19 From to
 20 Page Line Reason
 21 From to
 22
 23
 24 DALE P. DOUGHERTY
 25

1 STATE OF CALIFORNIA)
 2 :ss
 3 COUNTY OF SAN MATEO)
 4 I, CYNTHIA MANNING, a Certified Shorthand
 5 Reporter of the State of California, do hereby
 6 certify:
 7 That the foregoing proceedings were taken
 8 before me at the time and place herein set forth;
 9 that any witnesses in the foregoing proceedings,
 10 prior to testifying, were placed under oath; that a
 11 verbatim record of the proceedings was made by me
 12 using machine shorthand which was thereafter
 13 transcribed under my direction; further, that the
 14 foregoing is an accurate transcription thereof.
 15 I further certify that I am neither
 16 financially interested in the action, nor a relative
 17 or employee of any attorney of any of the parties.
 18
 19 IN WITNESS WHEREOF, I have subscribed my
 20 name this 21st day of December, 2011.
 21
 22
 23
 24 CYNTHIA MANNING, CSR No. 7645, CCRR, CLR
 25

1	I N D E X	
2	FRIDAY, DECEMBER 16, 2011	
3	DEPOSITION OF DALE P. DOUGHERTY	
4		
5	EXAMINATION	PAGE
6	BY MR. BUDWIN	6
7		
8	PORTIONS MARKED BY COUNSEL	
9	NONE	
10	* * *	
11	QUESTIONS WITNESS	
12	INSTRUCTED NOT TO ANSWER	
13	Page 24, line 13	
14	Page 102, line 13	
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5	Exhibit 1	Plaintiff Notice of Subpoena 9
6		Of Dale Dougherty
7		
8	Exhibit 2	Letter dated 8/16/11; Bates 21
9		Nos. Dougherty-EolasTX
10		0000000001 - Dougherty-EolasTX
11		0000000002
12		
13	Exhibit 3	WC3 Results of Questionnaire; 31
14		Bates Nos. MIT Response to
15		EOLAS Subp. 0324 - MIT Response
16		to EOLAS Subp. 0325
17		
18	Exhibit 4	Article entitled "Viola Is a 40
19		Repository of Prior Art for
20		The Web," dated 3/3/00
21		(No production numbers)
22		
23	Exhibit 5	O'Reilly Network's list of 43
24		Controversial Patents
25		(No production numbers)

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6		Heads over the '906 Rebuttal,"
7		dated 6/2/04; Bates Nos.
8		EOLASTX-0000296265 -
9		EOLASTX-0000296269
10		
11	Exhibit 7	Pages 2457 to 2515 of the Eolas 47
12		v. Microsoft trial transcript
13		(No production numbers)
14		
15	Exhibit 8	Article entitled "O'Reilly 61
16		Opposes W3C Patent Policy,"
17		dated 10/11/01
18		(No production numbers)
19		
20	Exhibit 9	E-mail to Mr. Dougherty from 82
21		Mr. Loukides; undated
22		(No production numbers)
23		
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7		0000000356
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14		Mr. Schmidt, dated 8/22/95
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