## EXHIBIT G

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Page 1
1
             IN THE UNITED STATES DISTRICT COURT
2
              FOR THE EASTERN DISTRICT OF TEXAS
3
                        TYLER DIVISION
    EOLAS TECHNOLOGIES INCORPORATED,
                                   No. 6:09-CV-446
                  Plaintiff,
         vs.
    ADOBE SYSTEMS, INC., AMAZON.COM,
    ET AL.,
9
                  Defendants.
10
11
12
13
14
         VIDEOTAPED DEPOSITION OF DALE P. DOUGHERTY
15
                  REDWOOD SHORES, CALIFORNIA
16
                  FRIDAY, DECEMBER 16, 2011
17
18
19
20
21
22
23
    REPORTED BY:
24
    CYNTHIA MANNING, CSR NO. 7645, CLR, CCRR
25
    JOB NO. 44688
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	Page 2		Page 3
1	December 16, 2011	1	APPEARANCES:
2	9:11 a.m.	2 3	For Plaintiff:
3	,	4	McKOOL SMITH
4		5	BY: JOSHUA W BUDWIN, ESQ 300 W 6th Street
5		6	Suite 1700
6			Austin, Texas 78701 512 692 8700
7	Deposition of DALE P. DOUGHERTY, taken on	7 8	jbudwin@mckoolsmith com
8	behalf of Plaintiff, at 201 Redwood Shores Parkway,	9	
9	Redwood Shores, California, before Cynthia Manning,	10	For Defendants Yahoo! Inc , Amazon com, Inc , and Third-party Witness Dale P Dougherty:
10	Certified Shorthand Reporter No. 7645, Certified	11 12	HALTOM & DOAN
11	LiveNote Reporter, California Certified Realtime		BY: JENNIFER HALTOM DOAN, ESQ
12	Reporter.	13	SHAWN LATCHFORD, ESQ Crown Executive Plaza
13	•	14	6500 N Summerhill Road Suite 100
14		15	Texarkana, Texas 75503
15		16	903 255 1000 jdoan@haltomdoan com
16			slatchford@haltomdoan com
17		17 18	
18		19	For Defendants Google Inc and YouTube:
19		20	
20		21	ROPES & GRAY LLP BY: BRANDON H STROY, ESQ
21			SASHA G RAO, ESQ
22		22	1900 University Avenue 6th Floor
23		23	East Palo Alto, California 94303 650 617 4000
24		24	brandon stroy@ropesgray com
25		25	sasha rao@ropesgray com
	Page 4		Page 5
1	APPEARANCES (Continued):	1	REDWOOD SHORES, CALIFORNIA;
2	THE ELECTION (COMMISSION).	2	FRIDAY, DECEMBER 16, 2011; 9:11 A.M.
3	Also present:	3	
4	Aric Kerhoulis, Videographer	4	THE VIDEOGRAPHER: Good morning.
5	,8 <sub>F</sub>	5	This marks the beginning of Disk 1 of the 09:11
6		6	videotaped deposition of Dale Dougherty in the
7		7	matter Eolas Technologies, Incorporated, versus
8		8	Adobe Systems, Incorporated, et al., in the United
9		9	States District Court for the Eastern District of
10		10	Texas, Tyler Division. Number 6:09-CV-446. 09:11
11		11	This deposition is being held at the office
12		12	of Weil, Gotshal & Manges at 201 Redwood Shores,
13		13	Parkway, in Redwood Shores, California. The date
14		14	today is December 16, 2011, and the time is
15		15	approximately 9:12 a m. 09:12
16		16	My name is Aric Kerhoulis from TSG
17		17	Reporting.
18		18	Our court reporter today is Cynthia Manning
19		19	in association with TSG.
20		20	Will counsel please introduce yourselves 09:12
21		21	for the record.
22		22	MR. BUDWIN: Josh Budwin of McKool Smith on
23		23	behalf of Eolas and the university.
24		24	MS. DOAN: Jennifer Doan, Haltom & Doan,
25		25	for Yahoo!, Amazon, and we also represent Dale 09:12

	Page 6		Page 7
1	Dougherty. 09:12	1	A. 8155 Pillow Road in Sebastopol, California. 09:12
2	MR. LATCHFORD: Shawn Latchford, Haltom &	2	Q. And, Mr. Dougherty, you understand that
3	Doan, for Yahoo!, Amazon, and Dale Dougherty.	3	you've been placed under oath?
4	MR. RAO: Sasha Rao with Ropes & Gray for	4	A. Yes.
5	Google and YouTube. 09:12	5	Q. And that the testimony you're about to give 09:13
6	MR. STROY: And Brandon Stroy, Ropes &	6	has the same legal effect as if you're appearing
7	Gray, also for Google and YouTube.	7	live in a court of law?
8	THE VIDEOGRAPHER: If the court reporter	8	A. Yes.
9	will please swear in the witness, we can proceed.	9	Q. And you understand that penalties of
10	09:12	10	perjury apply equally to a deposition as they do if 09:13
11	DALE P. DOUGHERTY,	11	you were appearing live in court?
		12	A. Yes.
12	having first been duly sworn, testified as		
13	follows:	13	Q. Are you under the influence of drugs or
14	THE MINE OCD A DIMED. D	14	alcohol, or is there any other reason why you can't
15	THE VIDEOGRAPHER: Proceed. 09:12	15	testify truthfully and accurately today? 09:13
16		16	A. No.
17	EXAMINATION	17	Q. And do you have any medical conditions that
18	BY MR. BUDWIN:	18	impact your ability to recall past events?
19	Q. Good morning, Mr. Dougherty.	19	A. No.
20	Can you state your name for the record, 09:12	20	Q. Have you had your deposition taken before? 09:13
21	please.	21	A. Yes.
22	A. Dale Dougherty.	22	Q. How many times?
23	Q. Do you have a middle name?	23	A. Once.
24	A. Patrick.	24	Q. And was that in the prior Eolas versus
25	Q. And, Mr. Dougherty, what's your address? 09:12	25	Microsoft case? 09:13
	Page 8		Page 9
1	A. Yes, it was. 09:13	1	Latchford? 09:14
2	Q. And have you ever testified at trial	2	A. That's correct.
3	before?	3	Q. Anybody else?
4	A. Once.	4	A. No.
5	Q. Was that also in the prior Eolas versus 09:13	5	Q. There may be times, although I'm sure it 09:14
6	Microsoft case?	6	will be very rare, because my questions will be
7	A. Yes, it was.	7	perfectly formed, that your attorney may object.
8	Q. So other than the testimony in the prior	8	She may say things like "objection; form," things of
9	Eolas versus Microsoft case, you've never given a	9	that nature. Unless you're specifically instructed
10	deposition or testified in court? 09:14	10	not to answer, do you understand that you have to 09:14
11	A. No.	11	answer my questions?
12	Q. And we have a court reporter here today.	12	A. Yes.
13	She is going to take down your testimony. So it's	13	MR. BUDWIN: Hand you a document that will
14	important that you and I don't speak over each	14	be marked as Exhibit 1.
15	other. 09:14	15	(Deposition Exhibit 1 was marked for 09:15
16	Is that understood?	16	identification)
17	A. Yes.	17	MR. BUDWIN: I didn't know you guys were
18	Q. It's also important that you give verbal	18	coming, Sasha, otherwise I would have brought extra
19	answers to my questions; no nods or head shakes,	19	copies.
20	things of that nature. 09:14	20	Q. Exhibit 1 is a copy of a document entitled 09:15
21	A. Yes.	21	"Plaintiff's Notice of Subpoena to Dale Dougherty."
22	Q. And you are represented by counsel today;	22	Have you seen this document before?
23	is that right?	23	A. No, I have not.
24	A. I am.	24	Q. You've never seen it?
25	Q. Okay. And that's counsel, Ms. Doan and Mr. 09:14	25	A. No. 09:15
20	Q. Okay. And mans counsel, Wis. Doan and Wil. 09:14	دی	A. 110. U2.13

	Page 10		Page 11
1	Q. And you were asked to produce documents in 09:15	1	Q. Prior to receiving this subpoena in Exhibit 09:16
2	this case by Eolas.	2	1, had you had any conversations or discussions I
3	Do you understand that?	3	don't want to know the substance, but had you had
4	MS. DOAN: Objection.	4	any conversations or discussions with any of the
5	THE WITNESS: I never received any notice. 09:16	5	defendants in this case or their attorneys? 09:16
6	BY MR. BUDWIN:	6	MS. DOAN: Objection; form. He didn't
7	Q. You never received any request to produce	7	receive a subpoena.
8	documents?	8	THE WITNESS: Right. I did not receive a
9	A. Not from Eolas.	9	subpoena.
10	MS. DOAN: Counsel, the subpoena that you 09:16	10	BY MR. BUDWIN: 09:16
11	just produced, Exhibit No. 1, together with what you	11	Q. Prior to the date on the subpoena in
12	served on us did not have a document request on it.	12	Exhibit 1, did you have any discussions with any of
13	MR. BUDWIN: Okay.	13	the attorneys or defendants in this case?
14	MS. DOAN: We have already asserted an	14	A. Yes.
15	objection on that. We have produced relevant 09:16	15	Q. Who first contacted you? 09:17
16	documents to you.	16	A. Shawn Latchford.
17	MR. BUDWIN: That's fine.	17	Q. And when did Mr. Latchford contact you?
18	Q. But you have never seen the document in	18	A. Mid summer.
19	Exhibit 1 before?	19	Q. Of what year?
20	A. No. 09:16	20	A. This year, 2011. 09:17
21	Q. All right. Did you meet with your	21	Q. And what was your reaction on being
22	attorneys to prepare for today's deposition?	22	contacted by Mr. Latchford?
23	•	23	A. I was simply informed that the Eolas case
24	•	24	was going another round.
25	A. Yesterday and in August. 09:16	25	Q. Now, before Mr. Latchford contacted you, 09:17
	Page 12		_ 10
	1436 11		Page 13
1	did you know that there had been a new lawsuit filed 09:17	1	A. No. 09:18
1 2		1 2	A. No. 09:18  Q. Now, since you became aware of this new
	did you know that there had been a new lawsuit filed 09:17		A. No. 09:18
2	did you know that there had been a new lawsuit filed 09:17 by Eolas?	2	A. No. 09:18  Q. Now, since you became aware of this new
2	did you know that there had been a new lawsuit filed 09:17 by Eolas?  A. No, I did not.	2	A. No. 09:18  Q. Now, since you became aware of this new Eolas case, have you had any communications with Pei
2 3 4	did you know that there had been a new lawsuit filed 09:17 by Eolas?  A. No, I did not.  Q. So your first indication of the new lawsuit	2 3 4	A. No. 09:18  Q. Now, since you became aware of this new Eolas case, have you had any communications with Pei Wei, Scott Silvey, or Tim Berners-Lee?
2 3 4 5	did you know that there had been a new lawsuit filed 09:17 by Eolas?  A. No, I did not. Q. So your first indication of the new lawsuit filed by Eolas was when you were contacted by Mr. 09:17 Latchford? A. That's right.	2 3 4 5	A. No. 09:18  Q. Now, since you became aware of this new Eolas case, have you had any communications with Pei Wei, Scott Silvey, or Tim Berners-Lee?  A. No, I have not. 09:19  Q. When was the last time you talked with Mr. Wei?
2 3 4 5 6	did you know that there had been a new lawsuit filed 09:17 by Eolas?  A. No, I did not.  Q. So your first indication of the new lawsuit filed by Eolas was when you were contacted by Mr. 09:17 Latchford?  A. That's right.  Q. And then to prepare for today's deposition,	2 3 4 5 6	A. No. 09:18  Q. Now, since you became aware of this new Eolas case, have you had any communications with Pei Wei, Scott Silvey, or Tim Berners-Lee?  A. No, I have not. 09:19  Q. When was the last time you talked with Mr. Wei?  A. It's not within the last year or two. It's
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2 3 4 5 6 7 8 9 10	did you know that there had been a new lawsuit filed 09:17 by Eolas?  A. No, I did not.  Q. So your first indication of the new lawsuit filed by Eolas was when you were contacted by Mr. 09:17 Latchford?  A. That's right.  Q. And then to prepare for today's deposition, you said you met with your attorneys yesterday; is that right? 09:18  A. That's right.	2 3 4 5 6 7 8 9 10	A. No. 09:18 Q. Now, since you became aware of this new Eolas case, have you had any communications with Pei Wei, Scott Silvey, or Tim Berners-Lee? A. No, I have not. 09:19 Q. When was the last time you talked with Mr. Wei? A. It's not within the last year or two. It's been a while. Q. Is the last time you talked with Mr. Wei 09:19 during the pendency of Eolas' prior case against
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	did you know that there had been a new lawsuit filed 09:17 by Eolas?  A. No, I did not.  Q. So your first indication of the new lawsuit filed by Eolas was when you were contacted by Mr. 09:17 Latchford?  A. That's right.  Q. And then to prepare for today's deposition, you said you met with your attorneys yesterday; is that right? 09:18  A. That's right.  Q. And also once in August?  A. That's right.  Q. Other than those two meetings, did you have any other face-to-face meetings with any of the 09:18 attorneys for any of the defendants in this case?  A. I have only met with Jennifer face-to-face.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	A. No. 09:18 Q. Now, since you became aware of this new Eolas case, have you had any communications with Pei Wei, Scott Silvey, or Tim Berners-Lee? A. No, I have not. 09:19 Q. When was the last time you talked with Mr. Wei? A. It's not within the last year or two. It's been a while. Q. Is the last time you talked with Mr. Wei 09:19 during the pendency of Eolas' prior case against Microsoft? MS. DOAN: Objection; form. THE WITNESS: Give me the date on that. BY MR. BUDWIN: 09:19 Q. Sure. Why don't you tell me. When do you recall
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	Page 14		Page 15
1	was in my employment. 09:20	1	testimony? 09:21
2	Q. So it's fair to say that you haven't spoken	2	A. No.
3	with Mr. Silvey in more than ten years?	3	Q. So you stand by today the prior testimony
4	A. Yes.	4	that you gave in your deposition in the previous
5	Q. When was the last time you spoke with Tim 09:20	5	Eolas versus Microsoft case? 09:21
6	Berners-Lee?	6	A. Yes, I do, mm-hmm.
7	A. In Madrid at the World Wide Web Conference,	7	Q. And we also mentioned that you testified at
8	which was probably 2009 or '8.	8	trial in the Eolas versus Microsoft case; is that
9	Q. And at the time you last spoke with	9	right?
10	Mr. Berners-Lee, did you speak about Eolas at all? 09:20	10	A. Yes. 09:21
11	A. No.	11	Q. And when was the last time you reviewed
12	Q. Now, we mentioned that you gave a	12	that testimony?
13	deposition in the prior Eolas versus Microsoft case;	13	A. I reviewed it yesterday.
14	right?	14	Q. And you understood that when you testified
15	A. Right. 09:20	15	at trial in the Eolas versus Microsoft case, you 09:21
16	Q. When was the last time you reviewed that	16	were testifying under oath and had the obligation to
17	testimony?	17	testify truthfully and accurately?
18	A. I reviewed it yesterday.	18	A. Yes.
19	Q. And at the time you gave your deposition in	19	Q. And based upon your review of your trial
20	the prior Eolas versus Microsoft case, you 09:20	20	testimony from the Eolas versus Microsoft case 09:21
21	understood that you were under oath and were	21	yesterday, did you see any errors or omissions or
22	testifying truthfully and accurately?	22	anything that you'd like to correct today?
23	A. Yes.	23	A. No.
24	Q. Based upon your review yesterday, did you	24	Q. So you stand by the testimony that you gave
25	notice any inconsistencies or errors in your prior 09:21	25	at trial in the Eolas versus Microsoft case? 09:21
	Page 16		Page 17
1	A. That's correct. 09:21	1	Q. Was that the Godici report? Godici report? 09:22
2	Q. Other than the deposition transcript and	2	A. I don't recognize that name.
3	the trial transcript, what other documents do you	3	Q. Do you recall the name of the author of the
4	recall reviewing yesterday?	4	report that you looked at?
5	A. A record of e-mails that I had produced for 09:22	5	A. Actually, I don't. 09:23
6	the first trial.	6	Q. Do you recall if that was a report that was
7	Q. Anything else?	7	prepared by the defendants or was prepared by Eolas?
8	A. Just you know, just some other documents	8	A. Prepared by the defendants.
9	that were largely e-mails from and, you know,	9	Q. And you said it was a patent examiner's
10	things from the first trial, some evidence. 09:22	10	report? 09:23
11	Q. So you remember reviewing some e-mails that	11	MS. DOAN: Objection; form.
12	were admitted into evidence as part of the last	12	THE WITNESS: My understanding, it was
13	trial?	13	someone with expertise in patents.
14	A. Right.	14	BY MR. BUDWIN:
15	MS. DOAN: Objection; form. 09:22	15	Q. Okay. Do you recall if the report was 09:23
16	BY MR. BUDWIN:	16	written by Richard Phillips?
17	Q. Is that right?	17	A. I don't recall.
18	A. Right.	18	Q. You just
19	Q. Do you recall reviewing any other documents	19	A. I just I just reviewed it quickly and
20	other than e-mails that were admitted into evidence 09:22	20	didn't really get very far in it. 09:23
21	in the last trial?	21	Q. So you didn't study it
22	A. I reviewed the a patent examiner's he	22	A. No.
23	was an expert witness in the case.	23	Q and review it in detail?
24	Q. That was a report?	24	A. No, there wasn't time.
25	A. Yes. 09:22	25	Q. Without putting it into evidence just yet, 09:24

	Page 18		Page 19
1	let me just show you. Did the report look like this 09:24	1	sometime; isn't that right? 09:25
2	(indicating)?	2	A. Since I've reviewed the patent and reviewed
3	A. It did not look like that.	3	the claims.
4	Q. It did not	4	Q. So you were willing to get involved in this
5	A. Judging from the first page, it did not 09:24	5	case, Eolas versus the defendants in this case, 09:25
6	look like that.	6	because it's your belief that the patent is invalid;
7	Q. Now, you mentioned a little bit earlier	7	is that right?
8	that the first you became aware of Eolas' new case	8	A. That's correct.
9	was when Mr. Latchford called you; is that right?	9	Q. And it's your belief that in allowing the
10	A. Right, mm-hmm. 09:24	10	patent, the Eolas patent at issue in this case, that 09:26
11	Q. Yes?	11	a lot of the early history of the Web, particularly
12	A. Yes.	12	of Viola, was ignored?
13	Q. And that was in the summer of 2011?	13	A. That's correct.
14	A. Yes.	14	Q. And that's a belief that you've held for
15	Q. And what was your reaction upon hearing 09:24	15	longer than ten years; correct? 09:26
16	that Eolas had filed a new lawsuit?	16	A. That's correct.
17	A. My reaction was simply that, you know, it's	17	Q. Is there any other reason separate and
18	an involved process to get to testify in a case	18	apart from your belief about the validity of the
19	and this was going to take up some time if I agreed	19	patent as to why you were willing to be involved in
20	to do that. 09:25	20	this case? 09:26
21	Q. Why were you willing to get involved?	21	A. No.
22	A. Because I believe that the patent is	22	Q. Are you being compensated in any way for
23	invalid and I believe that a lot of the early	23	your time?
24	history of the Web was ignored.	24	A. No.
25	Q. And that's a belief that you've held for 09:25	25	Q. Are you having any expenses or incidentals 09:26
	Page 20		Page 21
1	reimbursed to you? 09:26	1	A. Yes, he is. 09:27
2	A. I may submit some expenses. I have not	2	Q. And he has no objection or problem with
3	done so.	3	that?
4	Q. And you're currently employed at O'Reilly &	4	A. No.
5	Associates? 09:26	5	Q. Now, you yourself are not paying any of the 09:28
6	A. O'Reilly Media.	6	fees for the attorneys representing you here today;
7	Q. O'Reilly Media.	7	is that right?
8	- · · · · · · · · · · · · · · · · · · ·	1	
9	O'Reilly Media was formally known as	8	A. No, I'm not.
10	O'Reilly Media was formally known as O'Reilly & Associates?	8	A. No, I'm not.  Q. And O'Reilly Media is not paying any of the
	O'Reilly & Associates?		Q. And O'Reilly Media is not paying any of the
11	O'Reilly & Associates? A. That's correct. 09:27	9	Q. And O'Reilly Media is not paying any of the fees for any of the attorneys that are representing 09:28
11 12	O'Reilly & Associates?  A. That's correct. 09:27  Q. And it's true, isn't it, that you have been	9 10	Q. And O'Reilly Media is not paying any of the
12	O'Reilly & Associates?  A. That's correct. 09:27  Q. And it's true, isn't it, that you have been employed by O'Reilly since 1984?	9 10 11	Q. And O'Reilly Media is not paying any of the fees for any of the attorneys that are representing 09:28 you; right?
12 13	O'Reilly & Associates?  A. That's correct.  Q. And it's true, isn't it, that you have been employed by O'Reilly since 1984?  A. That's true.	9 10 11 12	Q. And O'Reilly Media is not paying any of the fees for any of the attorneys that are representing 09:28 you; right?  A. That's correct.
12 13 14	O'Reilly & Associates?  A. That's correct.  Q. And it's true, isn't it, that you have been employed by O'Reilly since 1984?  A. That's true.  Q. Mr. Dougherty, do you presently plan to	9 10 11 12 13	Q. And O'Reilly Media is not paying any of the fees for any of the attorneys that are representing 09:28 you; right?  A. That's correct.  MR. BUDWIN: Hand you a document which will
12 13 14 15	O'Reilly & Associates?  A. That's correct.  Q. And it's true, isn't it, that you have been employed by O'Reilly since 1984?  A. That's true.  Q. Mr. Dougherty, do you presently plan to testify at trial in this action in February of next 09:27	9 10 11 12 13 14	Q. And O'Reilly Media is not paying any of the fees for any of the attorneys that are representing 09:28 you; right?  A. That's correct.  MR. BUDWIN: Hand you a document which will be marked as Exhibit 2.
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	Page 22		Page 23
1	Q. You understand, don't you, that Yahoo! and 09:28	1	A. Right. 09:29
2	Amazon are paying the fees for the attorneys that	2	Q. There was an expert report of some type
3	are representing you here today; right?	3	prepared by the defendants?
4	A. I do.	4	A. True.
5	Q. And you understand that Yahoo! and Amazon 09:28	5	Q. And there were the patents? 09:29
6	are challenging the validity of the Eolas patent?	6	A. Yes.
7	A. I do.	7	Q. Anything else?
8	Q. Mr. Dougherty, do you understand that Eolas	8	MS. DOAN: Objection; form.
9	is asserting two patents in this case: U.S. Patent	9	Counsel, I think you're entitled to ask if
10	5,838,906 and 7,599,985? 09:29	10	it refreshed his recollection. You're entitled to 09:30
11	A. Yes, I do.	11	those documents, but you're not entitled to ask all
12	Q. Have you read those patents?	12	the questions he reviewed with his counsel.
13	A. I have.	13	MR. BUDWIN: Okay.
14	Q. When did you read them?	14	MS. DOAN: That's an improper question.
15	A. As recently as yesterday. 09:29	15	MR. BUDWIN: I disagree. So 09:30
16	Q. You didn't mention the patents in your list	16	MS. DOAN: Fine. You can ask him if it
17	of documents reviewed yesterday. Did you just	17	refreshed his recollection, but just asking every
18	forget about that?	18	single thing he reviewed with his counsel I think is
19	A. Yes, I guess I did.	19	getting into our discussions and I think it's an
20	Q. So just to make sure that I understand 09:29	20	improper question. 09:30
21	everything that you looked at yesterday, you had the	21	BY MR. BUDWIN:
22	deposition and trial transcript; right?	22	Q. Other than those documents, do you
23	A. Right.	23	recall reviewing any other documents yesterday?
24	Q. Okay. You had some e-mails that were	24	A. Well
25	produced by you as part of the last case? 09:29	25	MS. DOAN: Same objection. 09:30
	Page 24		Page 25
1	THE WITNESS: I'll answer that I 09:30	1	forward. Because I think the defendants have had a 09:31
2	reviewed those documents that you listed.	2	different view in the depositions of our people. So
3	BY MR. BUDWIN:	3	that's that's fine.
4	Q. Okay. Any other documents?	4	Q. Other than the four documents I listed, did
5	MS. DOAN: Same objection, Counsel. 09:30	5	you review any other documents that refreshed your 09:31
6	THE WITNESS: I reviewed those documents.	6	recollection about any events related to the Viola,
7	BY MR. BUDWIN:	7	the patents-in-suit, or any prior art?
8	Q. Okay. Did you review other documents other	8	A. I mentioned the patent and we talked about
9	than the four that I listed?	9	it here. You know, I'm not prepared to list
10	MS. DOAN: Same objection. 09:30	10	everything that I might have reviewed. 09:31
11	THE WITNESS: I have answered the question.	11	Q. But do you recall reviewing any documents
12	BY MR. BUDWIN:	12	yesterday that refreshed your recollection about any
13	Q. Did you review other documents in addition	13	past events?
14	to the four that I listed?	14	A. I have enumerated the documents that we
15	MS. DOAN: Same objection. 09:30	15	agreed on. 09:31
16	Mr. Dougherty, I'm going to instruct you	16	Q. So no documents other than the ones we
17	not to answer that based on the attorney-client	17	talked about refreshed your recollection about any
18	privilege.	18	past events?
19	I've asked you to rephrase it, Josh. If	19	MS. DOAN: Objection; form.
20	you don't want to rephrase it, it's totally fine. 09:30	20	You can answer. 09:31
21	MR. BUDWIN: All right. Well, I just	21	THE WITNESS: I didn't say that.
22	wanted to make sure that I understood your	22	BY MR. BUDWIN:
23	objection	23	Q. Okay. So
24	MS. DOAN: Absolutely.	24	A. I said that the specific documents that you
25	MR. BUDWIN: and we'll use that going 09:31	25	mentioned were reviewed. 09:31

	Page 26		Page 27
1	Q. Okay. And my question to you, sir, is: 09:32	1	Q. Other than yesterday, have you looked at 09:32
2	Other than the specific documents that have been	2	those patents?
3	listed, did you review any documents that refreshed	3	A. Yes, in the past.
4	your recollection about any past events?	4	Q. When?
5	MS. DOAN: Objection 09:32	5	A. Certainly in regard to the first trial, and 09:32
6	THE WITNESS: As to what? What kinds of	6	after that as well.
7	documents are you asking about	7	Q. You aren't a patent attorney, are you?
8	BY MR. BUDWIN:	8	A. No, I am not.
9	Q. Sure. As to Viola	9	Q. And you're not a patent expert?
10	A specifically? 09:32	10	A. No, I am not. 09:33
11	Q. Sure. As to Viola.	11	Q. Do you have any of your own patents?
12	A. Well, I said I reviewed collections of	12	A. No, I do not.
13	documents, which we have enumerated here, which, you	13	Q. Do you have an understanding of patent law
14	know, how do you group them and what they are. You	14	in broad sense?
15	know, if you want to say did I review a specific 09:32	15	A. I have an understanding. 09:33
16	document, I'll address that.	16	Q. But you aren't an expert in the details of
17	Q. Okay.	17	patent law?
18	A. But I can't enumerate everything.	18	A. No.
19	Q. So I asked you about the two patents in	19	Q. Have you ever heard of something called
20	this case: the '906 and the '985 patent. 09:32	20	"invalidity"? 09:33
21	A. Mm-hmm.	21	A. Explain.
22	Q. And you said you looked at those yesterday?	22	Q. Have you ever heard of something called
23	A. Mm-hmm.	23	"invalidity" in the context of a patent?
24	Q. Yes?	24	A. Well, the idea of an invalid patent. Is
25	A. Yes. 09:32	25	that what you're asking me? 09:33
		1	
	Page 28		Page 29
1	Q. Yes. 09:34	1	the two. It seems to simply restate a lot of what 09:35
1 2		1 2	
	Q. Yes. 09:34		the two. It seems to simply restate a lot of what 09:35
2	Q. Yes. 09:34 A. Yes, I have heard of that.	2	the two. It seems to simply restate a lot of what 09:35 was in the earlier patent and address it a little
2	<ul><li>Q. Yes. 09:34</li><li>A. Yes, I have heard of that.</li><li>Q. Have you ever heard of something called</li></ul>	2 3	the two. It seems to simply restate a lot of what 09:35 was in the earlier patent and address it a little bit closer to the Web.
2 3 4	<ul><li>Q. Yes. 09:34</li><li>A. Yes, I have heard of that.</li><li>Q. Have you ever heard of something called "anticipation" with respect to patent law?</li></ul>	2 3 4	the two. It seems to simply restate a lot of what 09:35 was in the earlier patent and address it a little bit closer to the Web.  Q. Can you enumerate what you understand the
2 3 4 5	Q. Yes. 09:34 A. Yes, I have heard of that. Q. Have you ever heard of something called "anticipation" with respect to patent law? A. No. 09:34	2 3 4 5	the two. It seems to simply restate a lot of what 09:35 was in the earlier patent and address it a little bit closer to the Web.  Q. Can you enumerate what you understand the differences between the inventions claimed in the 09:35
2 3 4 5 6	Q. Yes. 09:34 A. Yes, I have heard of that. Q. Have you ever heard of something called "anticipation" with respect to patent law? A. No. 09:34 Q. Do you have a legal understanding of what	2 3 4 5 6	the two. It seems to simply restate a lot of what 09:35 was in the earlier patent and address it a little bit closer to the Web.  Q. Can you enumerate what you understand the differences between the inventions claimed in the 09:35 '906 patent and the '985 patent to be?
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q. Yes. A. Yes, I have heard of that. Q. Have you ever heard of something called "anticipation" with respect to patent law? A. No. 99:34 Q. Do you have a legal understanding of what it means for something to anticipate a patent? MS. DOAN: Objection; form. You can answer. THE WITNESS: I don't have a specific legal 09:34 understanding of that. BY MR. BUDWIN: Q. Were you or have you reviewed a copy of Judge Davis' claim construction order in this case? A. I don't recall seeing that. 99:34 Q. In your own words, can you tell me what you understand the invention of the '906 patent to be? A. An embedded interactive object in a hypermedia browser that can be controlled within the browser, and those controls cause interactions from 09:35 a remote program to update that browser, the embedded object's viewer, within the browser.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	the two. It seems to simply restate a lot of what 09:35 was in the earlier patent and address it a little bit closer to the Web.  Q. Can you enumerate what you understand the differences between the inventions claimed in the 09:35 '906 patent and the '985 patent to be?  A. No, I cannot.  Q. Mr. Dougherty, have you ever been involved with the W3C?  A. Yes, I have. 09:36  Q. What is the W3C?  A. World Wide Web Consortium.  Q. And is the W3C the group that's run by Mr. Berners-Lee?  A. Yes, it is. 09:37  Q. And you understand that one of the purposes of the W3C is to set standards for that are used on the Web; for example, the HTML standards?  A. Yes.  Q. Can you describe your involvement with the 09:37 W3C?  A. Well, as even prior to the formation of the

	Page 30		Page 31
1	founding member of the W3C and I was the 09:37	1	Q. Why did you stop being involved in the W3C? 09:38
2	representative for some period of time. I don't	2	A. It was it was a larger, well-established
3	recollect the exact dates.	3	organization at that point and it had the other
4	Q. So O'Reilly, your employer, was one of the	4	players. And our interests really other than the
5	founding members of the W3C? 09:37	5	existence of standards, we didn't really care to be 09:38
6	A. That's right.	6	involved in the development of those standards.
7	Q. And that would have been back in the	7	Q. Do you recall the W3C forming a Patent
8	earlier or mid 1990s?	8	Action Group, or PAG, with respect to Eolas?
9	A. That's right.	9	A. I do recall it, yes.
10	Q. And you were O'Reilly's participant in the 09:37	10	Q. Were you involved in that Patent Action 09:39
11	WC3 for some number of years?	11	Group?
12	A. That's right.	12	A. You know, I don't recall being I recall
13	Q. Do you remember how many years?	13	knowing about it. I recall my name being on a list
14	A. Three to four.	14	of people that were engaged in it, but I don't
15	Q. When did you cease being O'Reilly's 09:38	15	recall specific activities of that group or, you 09:39
16	representative to the W3C?	16	know, being present in meetings.
17	A. You know, I'd have to look it up, but a	17	MR. BUDWIN: I'll hand you a document which
18	guess or an estimate is, say, 1998 or '9.	18	will be marked as Exhibit 3.
19	Q. Does O'Reilly currently have a	19	(Deposition Exhibit 3 was marked for
20	representative on the W3C? 09:38	20	identification) 09:39
21	A. No.	21	BY MR. BUDWIN:
22	Q. When did O'Reilly cease being involved in	22	Q. Exhibit 3 is a copy of the document
23	the W3C?	23	entitled "Results of Questionnaire Call for
24	A. Probably about the time that I stopped	24	Participation in HTML PAG," and it has production
25	being involved. 09:38	25	No. 00324 to 325. 09:40
		1	
	Page 32		Page 33
1	A. (Witness reviewing document.) Page 32  O9:40	1	Q. And you see your name listed in the 09:41
1 2		1 2	
	A. (Witness reviewing document.) 09:40	l	Q. And you see your name listed in the 09:41
2	A. (Witness reviewing document.) 09:40 Q. Mr. Dougherty, is the document in Exhibit	2	Q. And you see your name listed in the document in Exhibit 3 as being a selected
2	A. (Witness reviewing document.) 09:40 Q. Mr. Dougherty, is the document in Exhibit 3, which you're referring to, a list that includes	2 3	Q. And you see your name listed in the document in Exhibit 3 as being a selected representative for O'Reilly & Associates'
2 3 4	A. (Witness reviewing document.) 09:40 Q. Mr. Dougherty, is the document in Exhibit 3, which you're referring to, a list that includes your name with respect to the Eolas	2 3 4	Q. And you see your name listed in the document in Exhibit 3 as being a selected representative for O'Reilly & Associates' participation in the Eolas Patent Action Group?
2 3 4 5	A. (Witness reviewing document.) 09:40 Q. Mr. Dougherty, is the document in Exhibit 3, which you're referring to, a list that includes your name with respect to the Eolas A. Yes, it 09:40	2 3 4 5	Q. And you see your name listed in the 09:41 document in Exhibit 3 as being a selected representative for O'Reilly & Associates' participation in the Eolas Patent Action Group?  A. I see it on this list. I'm not sure what 09:41
2 3 4 5 6	A. (Witness reviewing document.) 09:40 Q. Mr. Dougherty, is the document in Exhibit 3, which you're referring to, a list that includes your name with respect to the Eolas A. Yes, it Q patent?	2 3 4 5 6	Q. And you see your name listed in the document in Exhibit 3 as being a selected representative for O'Reilly & Associates' participation in the Eolas Patent Action Group?  A. I see it on this list. I'm not sure what 09:41 "nominees" mean here.
2 3 4 5 6 7	A. (Witness reviewing document.)  Q. Mr. Dougherty, is the document in Exhibit  3, which you're referring to, a list that includes your name with respect to the Eolas  A. Yes, it  Q patent?  A. Yes, it does.  Q. And do you see this document is dated  A. 2003.	2 3 4 5 6 7	Q. And you see your name listed in the document in Exhibit 3 as being a selected representative for O'Reilly & Associates' participation in the Eolas Patent Action Group?  A. I see it on this list. I'm not sure what 09:41 "nominees" mean here.  Q. Sitting here today, you don't recall one
2 3 4 5 6 7 8	A. (Witness reviewing document.)  Q. Mr. Dougherty, is the document in Exhibit  3, which you're referring to, a list that includes your name with respect to the Eolas  A. Yes, it  Q patent?  A. Yes, it does.  Q. And do you see this document is dated  A. 2003.  Q in 2003?  09:40	2 3 4 5 6 7 8	Q. And you see your name listed in the document in Exhibit 3 as being a selected representative for O'Reilly & Associates' participation in the Eolas Patent Action Group?  A. I see it on this list. I'm not sure what 09:41 "nominees" mean here.  Q. Sitting here today, you don't recall one way or the other whether you actively participated in the Patent Action Group?  A. I don't. 09:41
2 3 4 5 6 7 8 9 10	A. (Witness reviewing document.)  Q. Mr. Dougherty, is the document in Exhibit  3, which you're referring to, a list that includes your name with respect to the Eolas  A. Yes, it  Q patent?  A. Yes, it does.  Q. And do you see this document is dated  A. 2003.	2 3 4 5 6 7 8	Q. And you see your name listed in the document in Exhibit 3 as being a selected representative for O'Reilly & Associates' participation in the Eolas Patent Action Group?  A. I see it on this list. I'm not sure what 09:41 "nominees" mean here.  Q. Sitting here today, you don't recall one way or the other whether you actively participated in the Patent Action Group?  A. I don't. 09:41  Q. And do you know that the W3C filed a
2 3 4 5 6 7 8 9 10 11	A. (Witness reviewing document.)  Q. Mr. Dougherty, is the document in Exhibit  3, which you're referring to, a list that includes your name with respect to the Eolas  A. Yes, it  Q patent?  A. Yes, it does.  Q. And do you see this document is dated  A. 2003.  Q in 2003?  Q in 2003?  Q. Do you recall how your name came to be	2 3 4 5 6 7 8 9	Q. And you see your name listed in the document in Exhibit 3 as being a selected representative for O'Reilly & Associates' participation in the Eolas Patent Action Group?  A. I see it on this list. I'm not sure what 09:41 "nominees" mean here.  Q. Sitting here today, you don't recall one way or the other whether you actively participated in the Patent Action Group?  A. I don't. 09:41  Q. And do you know that the W3C filed a request for the Patent Office to reexamine Eolas'
2 3 4 5 6 7 8 9 10 11 12	A. (Witness reviewing document.)  Q. Mr. Dougherty, is the document in Exhibit  3, which you're referring to, a list that includes your name with respect to the Eolas  A. Yes, it  Q patent?  A. Yes, it does.  Q. And do you see this document is dated  A. 2003.  Q in 2003?  Q in 2003?  Q. Do you recall how your name came to be listed on the document in Exhibit 3 as being a	2 3 4 5 6 7 8 9 10	Q. And you see your name listed in the document in Exhibit 3 as being a selected representative for O'Reilly & Associates' participation in the Eolas Patent Action Group?  A. I see it on this list. I'm not sure what 09:41 "nominees" mean here.  Q. Sitting here today, you don't recall one way or the other whether you actively participated in the Patent Action Group?  A. I don't. 09:41  Q. And do you know that the W3C filed a request for the Patent Office to reexamine Eolas' '906 patent?
2 3 4 5 6 7 8 9 10 11 12 13	A. (Witness reviewing document.)  Q. Mr. Dougherty, is the document in Exhibit  3, which you're referring to, a list that includes your name with respect to the Eolas  A. Yes, it  Q patent?  A. Yes, it does.  Q. And do you see this document is dated  A. 2003.  Q in 2003?  Q in 2003?  Q. Do you recall how your name came to be listed on the document in Exhibit 3 as being a member of the Eolas Patent Action Group Patent	2 3 4 5 6 7 8 9 10 11 12 13	Q. And you see your name listed in the document in Exhibit 3 as being a selected representative for O'Reilly & Associates' participation in the Eolas Patent Action Group?  A. I see it on this list. I'm not sure what 09:41 "nominees" mean here.  Q. Sitting here today, you don't recall one way or the other whether you actively participated in the Patent Action Group?  A. I don't. 09:41  Q. And do you know that the W3C filed a request for the Patent Office to reexamine Eolas' '906 patent?  A. Yes, I do.
2 3 4 5 6 7 8 9 10 11 12 13 14 15	A. (Witness reviewing document.)  Q. Mr. Dougherty, is the document in Exhibit  3, which you're referring to, a list that includes your name with respect to the Eolas  A. Yes, it  Q patent?  A. Yes, it does.  Q. And do you see this document is dated  A. 2003.  Q in 2003?  A. Yes.  Q. Do you recall how your name came to be listed on the document in Exhibit 3 as being a member of the Eolas Patent Action Group Patent Advisory Group?  09:40	2 3 4 5 6 7 8 9 10 11 12 13 14	Q. And you see your name listed in the document in Exhibit 3 as being a selected representative for O'Reilly & Associates' participation in the Eolas Patent Action Group?  A. I see it on this list. I'm not sure what 09:41 "nominees" mean here.  Q. Sitting here today, you don't recall one way or the other whether you actively participated in the Patent Action Group?  A. I don't. 09:41  Q. And do you know that the W3C filed a request for the Patent Office to reexamine Eolas' '906 patent?  A. Yes, I do.  Q. And do you know that part of that request 09:42
2 3 4 5 6 7 8 9 10 11 12 13 14 15	A. (Witness reviewing document.)  Q. Mr. Dougherty, is the document in Exhibit  3, which you're referring to, a list that includes your name with respect to the Eolas  A. Yes, it  Q patent?  A. Yes, it does.  Q. And do you see this document is dated  A. 2003.  Q in 2003?  A. Yes.  Q. Do you recall how your name came to be listed on the document in Exhibit 3 as being a member of the Eolas Patent Action Group Patent Advisory Group?  O9:40  A. No, I really don't. That's	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Q. And you see your name listed in the document in Exhibit 3 as being a selected representative for O'Reilly & Associates' participation in the Eolas Patent Action Group?  A. I see it on this list. I'm not sure what 09:41 "nominees" mean here.  Q. Sitting here today, you don't recall one way or the other whether you actively participated in the Patent Action Group?  A. I don't. 09:41  Q. And do you know that the W3C filed a request for the Patent Office to reexamine Eolas' '906 patent?  A. Yes, I do.  Q. And do you know that part of that request 09:42 for the W3C to reexamine Eolas' patent came out of
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	A. (Witness reviewing document.) Q. Mr. Dougherty, is the document in Exhibit 3, which you're referring to, a list that includes your name with respect to the Eolas A. Yes, it Q patent? A. Yes, it does. Q. And do you see this document is dated A. 2003. Q in 2003? Q in 2003? Q. Do you recall how your name came to be listed on the document in Exhibit 3 as being a member of the Eolas Patent Action Group Patent Advisory Group? Q. All right. Mr. Dougherty, you were aware	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Q. And you see your name listed in the document in Exhibit 3 as being a selected representative for O'Reilly & Associates' participation in the Eolas Patent Action Group?  A. I see it on this list. I'm not sure what 09:41 "nominees" mean here.  Q. Sitting here today, you don't recall one way or the other whether you actively participated in the Patent Action Group?  A. I don't. 09:41  Q. And do you know that the W3C filed a request for the Patent Office to reexamine Eolas' '906 patent?  A. Yes, I do.  Q. And do you know that part of that request 09:42 for the W3C to reexamine Eolas' patent came out of the work of the Patent Action Group referenced in
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	A. (Witness reviewing document.) Q. Mr. Dougherty, is the document in Exhibit 3, which you're referring to, a list that includes your name with respect to the Eolas A. Yes, it Q patent? A. Yes, it does. Q. And do you see this document is dated A. 2003. Q in 2003? Q in 2003? Q. Do you recall how your name came to be listed on the document in Exhibit 3 as being a member of the Eolas Patent Action Group Patent Advisory Group? Q. All right. Mr. Dougherty, you were aware of after conclusion of Eolas' first case against	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q. And you see your name listed in the document in Exhibit 3 as being a selected representative for O'Reilly & Associates' participation in the Eolas Patent Action Group?  A. I see it on this list. I'm not sure what 09:41 "nominees" mean here.  Q. Sitting here today, you don't recall one way or the other whether you actively participated in the Patent Action Group?  A. I don't. 09:41  Q. And do you know that the W3C filed a request for the Patent Office to reexamine Eolas' '906 patent?  A. Yes, I do.  Q. And do you know that part of that request 09:42 for the W3C to reexamine Eolas' patent came out of the work of the Patent Action Group referenced in Exhibit 3?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	A. (Witness reviewing document.) Q. Mr. Dougherty, is the document in Exhibit 3, which you're referring to, a list that includes your name with respect to the Eolas A. Yes, it Q patent? A. Yes, it does. Q. And do you see this document is dated A. 2003. Q in 2003? Q in 2003? Q. Do you recall how your name came to be listed on the document in Exhibit 3 as being a member of the Eolas Patent Action Group Patent Advisory Group? Q. All right. Mr. Dougherty, you were aware of after conclusion of Eolas' first case against Microsoft that the W3C formed this PAG or Patent	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q. And you see your name listed in the document in Exhibit 3 as being a selected representative for O'Reilly & Associates' participation in the Eolas Patent Action Group?  A. I see it on this list. I'm not sure what 09:41 "nominees" mean here.  Q. Sitting here today, you don't recall one way or the other whether you actively participated in the Patent Action Group?  A. I don't. 09:41  Q. And do you know that the W3C filed a request for the Patent Office to reexamine Eolas' '906 patent?  A. Yes, I do.  Q. And do you know that part of that request 09:42 for the W3C to reexamine Eolas' patent came out of the work of the Patent Action Group referenced in Exhibit 3?  A. Yes.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	A. (Witness reviewing document.) Q. Mr. Dougherty, is the document in Exhibit 3, which you're referring to, a list that includes your name with respect to the Eolas A. Yes, it Q patent? A. Yes, it does. Q. And do you see this document is dated A. 2003. Q in 2003? Q in 2003? Q. Do you recall how your name came to be listed on the document in Exhibit 3 as being a member of the Eolas Patent Action Group Patent Advisory Group? Q. All right. Mr. Dougherty, you were aware of after conclusion of Eolas' first case against Microsoft that the W3C formed this PAG or Patent Action Group? 09:41	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Q. And you see your name listed in the document in Exhibit 3 as being a selected representative for O'Reilly & Associates' participation in the Eolas Patent Action Group?  A. I see it on this list. I'm not sure what 09:41 "nominees" mean here.  Q. Sitting here today, you don't recall one way or the other whether you actively participated in the Patent Action Group?  A. I don't. 09:41  Q. And do you know that the W3C filed a request for the Patent Office to reexamine Eolas' '906 patent?  A. Yes, I do.  Q. And do you know that part of that request 09:42 for the W3C to reexamine Eolas' patent came out of the work of the Patent Action Group referenced in Exhibit 3?  A. Yes.  Q. Now, did you tell the W3C or the Patent 09:42
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	A. (Witness reviewing document.) Q. Mr. Dougherty, is the document in Exhibit 3, which you're referring to, a list that includes your name with respect to the Eolas A. Yes, it Q patent? A. Yes, it does. Q. And do you see this document is dated A. 2003. Q in 2003? Q in 2003? Q. Do you recall how your name came to be listed on the document in Exhibit 3 as being a member of the Eolas Patent Action Group Patent Advisory Group? Q. All right. Mr. Dougherty, you were aware of after conclusion of Eolas' first case against Microsoft that the W3C formed this PAG or Patent Action Group? Q9:41 A. Yes.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Q. And you see your name listed in the document in Exhibit 3 as being a selected representative for O'Reilly & Associates' participation in the Eolas Patent Action Group?  A. I see it on this list. I'm not sure what 09:41 "nominees" mean here.  Q. Sitting here today, you don't recall one way or the other whether you actively participated in the Patent Action Group?  A. I don't. 09:41  Q. And do you know that the W3C filed a request for the Patent Office to reexamine Eolas' '906 patent?  A. Yes, I do.  Q. And do you know that part of that request 09:42 for the W3C to reexamine Eolas' patent came out of the work of the Patent Action Group referenced in Exhibit 3?  A. Yes.  Q. Now, did you tell the W3C or the Patent 09:42 Action Group at any time during the reexamination of
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. (Witness reviewing document.) Q. Mr. Dougherty, is the document in Exhibit 3, which you're referring to, a list that includes your name with respect to the Eolas A. Yes, it Q patent? A. Yes, it does. Q. And do you see this document is dated A. 2003. Q in 2003? Q in 2003? Q. Do you recall how your name came to be listed on the document in Exhibit 3 as being a member of the Eolas Patent Action Group Patent Advisory Group? Q. All right. Mr. Dougherty, you were aware of after conclusion of Eolas' first case against Microsoft that the W3C formed this PAG or Patent Action Group? Q9:41 A. Yes. Q. And you were aware that the Patent Action	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q. And you see your name listed in the document in Exhibit 3 as being a selected representative for O'Reilly & Associates' participation in the Eolas Patent Action Group?  A. I see it on this list. I'm not sure what 09:41 "nominees" mean here.  Q. Sitting here today, you don't recall one way or the other whether you actively participated in the Patent Action Group?  A. I don't. 09:41  Q. And do you know that the W3C filed a request for the Patent Office to reexamine Eolas' '906 patent?  A. Yes, I do.  Q. And do you know that part of that request 09:42 for the W3C to reexamine Eolas' patent came out of the work of the Patent Action Group referenced in Exhibit 3?  A. Yes.  Q. Now, did you tell the W3C or the Patent 09:42 Action Group at any time during the reexamination of Eolas' '906 patent they should look at the Viola
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. (Witness reviewing document.) Q. Mr. Dougherty, is the document in Exhibit 3, which you're referring to, a list that includes your name with respect to the Eolas A. Yes, it Q patent? A. Yes, it does. Q. And do you see this document is dated A. 2003. Q in 2003? Q in 2003? Q. by our recall how your name came to be listed on the document in Exhibit 3 as being a member of the Eolas Patent Action Group Patent Advisory Group? Q. All right. Mr. Dougherty, you were aware of after conclusion of Eolas' first case against Microsoft that the W3C formed this PAG or Patent Action Group? Q. And you were aware that the Patent Action Group formed by the W3C was specific to Eolas and	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q. And you see your name listed in the document in Exhibit 3 as being a selected representative for O'Reilly & Associates' participation in the Eolas Patent Action Group?  A. I see it on this list. I'm not sure what 09:41 "nominees" mean here.  Q. Sitting here today, you don't recall one way or the other whether you actively participated in the Patent Action Group?  A. I don't. 09:41  Q. And do you know that the W3C filed a request for the Patent Office to reexamine Eolas' '906 patent?  A. Yes, I do.  Q. And do you know that part of that request 09:42 for the W3C to reexamine Eolas' patent came out of the work of the Patent Action Group referenced in Exhibit 3?  A. Yes.  Q. Now, did you tell the W3C or the Patent 09:42 Action Group at any time during the reexamination of Eolas' '906 patent they should look at the Viola prior art and submit the Viola prior art to the
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. (Witness reviewing document.) Q. Mr. Dougherty, is the document in Exhibit 3, which you're referring to, a list that includes your name with respect to the Eolas A. Yes, it Q patent? A. Yes, it does. Q. And do you see this document is dated A. 2003. Q in 2003? Q in 2003? Q. Do you recall how your name came to be listed on the document in Exhibit 3 as being a member of the Eolas Patent Action Group Patent Advisory Group? Q. All right. Mr. Dougherty, you were aware of after conclusion of Eolas' first case against Microsoft that the W3C formed this PAG or Patent Action Group? Q9:41 A. Yes. Q. And you were aware that the Patent Action	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q. And you see your name listed in the document in Exhibit 3 as being a selected representative for O'Reilly & Associates' participation in the Eolas Patent Action Group?  A. I see it on this list. I'm not sure what 09:41 "nominees" mean here.  Q. Sitting here today, you don't recall one way or the other whether you actively participated in the Patent Action Group?  A. I don't. 09:41  Q. And do you know that the W3C filed a request for the Patent Office to reexamine Eolas' '906 patent?  A. Yes, I do.  Q. And do you know that part of that request 09:42 for the W3C to reexamine Eolas' patent came out of the work of the Patent Action Group referenced in Exhibit 3?  A. Yes.  Q. Now, did you tell the W3C or the Patent 09:42 Action Group at any time during the reexamination of Eolas' '906 patent they should look at the Viola

	Page 34		Page 35
1	committee. I think there was certainly e-mail and 09:42	1	Exhibit 3 didn't submit Viola to the Patent Office 09:43
2	other discussions about the Eolas patent and the	2	when it asked the Patent Office to reexamine the
3	Viola archive and other things were pretty well	3	Eolas' '906 patent?
4	known. I don't know that they needed my specific	4	A. No, I don't understand that.
5	direction. 09:42	5	Q. Well, as we talked about a little bit 09:44
6	Q. Okay. So you don't recall one way or the	6	earlier, Tim Berners-Lee is the director of the W3C?
7	other whether you told the W3C or the Patent Action	7	A. Yes.
8	Group referred to in Exhibit 3 about Viola and	8	Q. And you know from the time your time
9	whether they should consider submitting that to the	9	working at O'Reilly with respect to Viola that
10	Patent Office? 09:43	10	Mr. Berners-Lee was aware of Viola and Pei's work? 09:44
11	MS. DOAN: Objection; form.	11	THE WITNESS: Absolutely.
12	You can answer.	12	MS. DOAN: Object to the form.
13	THE WITNESS: I don't recall giving them	13	BY MR. BUDWIN:
14	any specific instructions about Viola.	14	Q. And despite being one of the founding
15	BY MR. BUDWIN: 09:43	15	members of the W3C, you have no understanding as to 09:44
16	Q. But it was your understanding during the	16	why the W3C and Mr. Berners-Lee didn't submit Viola
17	time frame of Exhibit 3, 2003, after the conclusion	17	to the Patent Office when it requested the
18	of Eolas' first case against Microsoft, that	18	reexamination of Eolas' '906 patent?
19	everyone in the W3C generally knew about Viola and	19	A. That's correct.
20	the claims that it was prior art? 09:43	20	Q. Now, Mr. Dougherty you understand that the 09:45
21	A. Yes.	21	Patent Office completed reexamination of Eolas' '906
22	MS. DOAN: Objection; form.	22	patent?
23	BY MR. BUDWIN:	23	A. Yes.
24	Q. Do you have an understanding as to why the	24	Q. And you understand, don't you, that the
25	W3C and the Patent Action Group referred to in 09:43	25	result of that reexamination by the Patent Office 09:45
	Page 36		Page 37
1	was to confirm the validity of Eolas' '906 patent? 09:45	1	MS. DOAN: Object to form. "Examined." 09:46
2	MS. DOAN: Objection; form.	2	Objection; form.
3	You can answer.	3	BY MR. BUDWIN:
4	THE WITNESS: I understand that it went	4	Q. And you understand, don't you, that the
5	through that process. 09:45	5	Patent Office allowed Eolas' '985 patent to issue? 09:46
6	BY MR. BUDWIN:	6	A. Yes.
7	Q. And do you understand what the result of	7	Q. So even though the Patent Office has looked
8	the reexamination of Eolas' '906 patent was?	8	at Eolas' '906 patent in a first reexamination and a
9	A. Yes.	9	second reexamination and allowed Eolas' '985 patent
10	Q. Okay. And what was that result? 09:45	10	to issue, it's your belief that those patents are 09:46
11	A. You know, they continued with the patent.	11	invalid in light of Viola?
12	Q. And do you understand that there was	12	A. It is.
13	actually a second reexamination request of Eolas'	13	Q. Was the Patent Office wrong?
14	'906 patent?	14	A. I'm I'm just say what I said about
15	A. Yes. 09:45	15	the patent, for whatever reason is in light of 09:46
16		16	the Viola prior art, I believe it to be invalid.
17	the result of the second reexamination of Eolas'	17	Q. Did the Patent Office get it wrong in
18			allowing Eolas' '906 patent to issue after the
	'906 patent was to confirm the validity of the	18	allowing Eolas 300 patent to issue after the
19	patent?	18 19	reexaminations?
19 20	patent? A. Yes. 09:46	19 20	reexaminations?  A. I don't think they had the right 09:47
20 21	patent? A. Yes. 09:46 Q. And, Mr. Dougherty, you understand, don't	19 20 21	reexaminations?  A. I don't think they had the right 09:47 information.
20 21 22	patent? A. Yes. 09:46 Q. And, Mr. Dougherty, you understand, don't you, that Eolas' '985 patent, the second patent at	19 20 21 22	reexaminations?  A. I don't think they had the right 09:47 information.  Q. And how do you know what information the
20 21 22 23	patent? A. Yes. 09:46 Q. And, Mr. Dougherty, you understand, don't you, that Eolas' '985 patent, the second patent at issue in this case, was also examined by the Patent	19 20 21 22 23	reexaminations?  A. I don't think they had the right 09:47 information.  Q. And how do you know what information the Patent Office did and didn't have?
20 21 22	patent? A. Yes. 09:46 Q. And, Mr. Dougherty, you understand, don't you, that Eolas' '985 patent, the second patent at issue in this case, was also examined by the Patent Office?	19 20 21 22	reexaminations?  A. I don't think they had the right 09:47 information.  Q. And how do you know what information the

	Page 38		Page 39
1	Q. How do you have that understanding? Did 09:47	1	A. Yes, I do. 09:48
2	you review	2	Q. You understand, don't you, that patent
3	A. From the patent.	3	examiners are trained to examine patents?
4	Q. Did you review the file histories?	4	MS. DOAN: Objection; form.
5	A. Of file histories? 09:47	5	You can answer. 09:48
6	Q. Sure. Did you review the file histories of	6	THE WITNESS: I don't have that
7	either of the examinations of Eolas' '906 patent?	7	understanding.
8	A. I looked at something that I looked at	8	BY MR. BUDWIN:
9	something that might have been that.	9	Q. Do you understand that patent examiners are
10	Q. And what did you look at? 09:47	10	trained in the law with respect to patents? 09:48
11	A. It was part of that the patent	11	A. Yes.
12	examiner or the patent documents I looked at	12	
13	yesterday.	13	Q. And you yourself aren't trained to examine
14	•	$\frac{13}{14}$	patents, are you, sir?
	Q. So you looked at a report that was prepared		A. No, I'm not.
15 16	by the defendants in this case? 09:47	15	Q. You're not trained in the law with respect 09:48
	A. That's correct.	16	to the validity of a patent?
17	MS. DOAN: Objection; form.	17	A. No, I'm not.
18	BY MR. BUDWIN:	18	Q. So even though you yourself aren't trained
19	Q. Did you ever personally yourself look at	19	with the respect to patents or the standard of
20	the file histories for any of Eolas' patents? 09:48	20	validity, you still think that the Patent Office and 09:49
21	A. No.	21	the patent examiners got it wrong?
22	Q. Do you believe that the Patent Office in	22	A. That's right.
23	allowing Eolas' patents to issue after a first	23	Q. Now, Mr. Dougherty, it's true, isn't it
24	reexamination, a second reexamination, and the	24	that you think patents are silly?
25	prosecution of the '985 patent got it wrong? 09:48	25	A. No. 09:49
	Page 40		Page 41
1	Q. Have you ever provided testimony where you 09:49	1	Microsoft case? 09:50
2	said that patents were silly?	2	A. That's correct.
3	A. It was a question that was asked me in the	3	Q. Will you look to the third page of the
4	trial. I believe that some patents are wrong, if	4	document.
5	not harmful, but and I may have informally used a 09:49	5	A. Okay. 09:50
6	word like "silly," but I'm not here to characterize	6	Q. And I'm going to read a paragraph to you.
7	patents in the general sense.	7	"Pei and I agreed to provide information to
8	MR. BUDWIN: Hand you a document which will	8	Microsoft to help fight this software
9	be marked as Exhibit 4.	9	patent."
10	(Deposition Exhibit 4 was marked for 09:50	10	Do you see that? 09:51
11	identification)	11	A. I do.
12	BY MR. BUDWIN:	12	Q. Is that a reference to Eolas' '906 patent?
13	Q. Mr. Dougherty, Exhibit 4 is a copy of a	13	A. Yes, it is.
14	document entitled "Viola Is a Repository of Prior	14	Q. And you wrote those words?
15	Art For The Web." 09:50	15	A. I did. 09:51
16	Do you see that?	16	Q. And that was accurate when you wrote them?
17	A. Yes, I do.	17	A. Yes, it is.
18	Q. And it was posted by you on March 30th of	18	Q. And you continued, the last sentence says:
19	the year 2000?	19	"This just points out how silly the whole
20	A. Yes. 09:50	20	business of patents really is." 09:51
21	Q. And the document in Exhibit 4 was in fact	21	Do you see that?
	•		
22	authored by you?	22	A. Mm-hmm. Mm-hmm.
22 23		22 23	A. Mm-hmm. Mm-hmm.  MS. DOAN: Objection; form.
	authored by you?		

	Page 42		Page 43
1	A. I did. 09:51	1	silly patents and absurd patents, do you not? 09:52
2	Q. And you believed those words when you wrote	2	MS. DOAN: Objection; form.
3	them?	3	THE WITNESS: I don't know that I would
4	A. I did. It's a general statement. It's	4	characterize that. I have published a list of
5	talking about the business of patents being silly. 09:51	5	controversial patents and I have pointed out some 09:52
6	It doesn't say that patents are silly.	6	patents that I think are absurd, but it is it's a
7	Q. Do you still have the belief today that the	7	rhetorical frame of rhetorical device.
8	business of patents is silly?	8	MR. BUDWIN: Hand you a document which will
9	MS. DOAN: Objection; form.	9	be Exhibit 5.
10	THE WITNESS: I think it's a complicated 09:51	10	(Deposition Exhibit 5 was marked for 09:53
11	issue. I would not prefer to characterize it as	11	identification)
12	simply using the word "silly."	12	BY MR. BUDWIN:
13	BY MR. BUDWIN:	13	Q. Exhibit 5 is a copy of a document entitled
14	Q. All right. You wrote the document in	14	"Controversial Patents," and it's from
15	Exhibit 4? 09:52	15	www.oreilly net. 09:53
16	A. Yes.	16	A. That's correct.
17	Q. And you posted it to your webpage or	17	Q. Have you seen this document before?
18	O'Reilly's webpage?	18	A. Yes.
19	A. I did.	19	Q. Is this a list of controversial patents
20	Q. And before you posted it, you reviewed it 09:52	20	that's maintained by you, Mr. Dougherty? 09:53
21	for accuracy?	21	A. It was created by me.
22	A. It is a blog post.	22	Q. And it has your name listed at the bottom;
23	Q. Written by you?	23	right?
24	A. Written by me.	24	A. Yes.
25	Q. You frequently post blogs about patents and 09:52	25	Q. So the document in Exhibit 5 is a list of 09:53
	Page 44		Page 45
1	controversial patents that you prepared? 09:53	1	Q. You see about midway down there is a patent 09:54
2	A. Yes.	2	listed "Style Sheets." It says Microsoft?
3	Q. And you see the first one listed is	3	A. Mm-hmm.
4	"One-Click Ordering" and the holder is Amazon?	4	Q. Do you see that?
5	A. Yes. 09:53	5	A. I do. 09:54
6	Q. So you think that Amazon's One-Click	6	Q. You think Microsoft's patents on Style
7	Ordering patent is controversial?	7	Sheets is controversial?
8	A. It is controversial.	8	A. I do.
9	Q. And yet you agreed to have Amazon pay your	9	Q. And in the prior case you worked for
10	legal fees for this case? 09:54	10	Microsoft, didn't you? 09:54
11	A. Absolutely.	11	A. I did not work for them, but I supported
12	Q. You don't think that there is a conflict	12	their dispute of this patent.
13	there?	13	Q. And in the prior case Microsoft paid the
14	MS. DOAN: Objection; form.	14	fees for your counsel?
15	THE WITNESS: I see no conflict. 09:54	15	A. No, they did not. 09:54
16	BY MR. BUDWIN:	16	Q. Who paid the fees for your counsel?
17	Q. Do you see the third patent, "Affiliate	17	A. I did not have counsel.
18	Program," and it lists Amazon?	18	Q. Were you paid a consulting fee in the prior
19	A. Mm-hmm.	19	case?
20	Q. Do you think Amazon's patent on affiliate 09:54	20	A. No, I was not. 09:55
21	programs is controversial?	21	Q. And another one of the controversial
22	A. Yes.	22	patents you list here in Exhibit 5 is "Embedded
23	Q. And, again, you let Amazon pay your legal	23	Hypermedia," the '906 patent?
		1	
24 25	fees in this case and you have no issues with that?  A. I don't. 09:54	24 25	A. Mm-hmm. Q. And that's one of the patents at issue in 09:55

this case?  A. It is.  MR. BUDWIN: Hand you another document which will be Exhibit 6.  (Deposition Exhibit 6 was marked for 09:56 identification)  BY MR. BUDWIN:  Q. Exhibit 6 is a copy of a document titled 9 "Butting Heads Over the '906 Rebuttal," and it's 10 Ebola*Texa-60000/296.25 identification)  A. Mm-hmm.  A. Yes.  Q. — dad do you recognize this as a posting — 1.  A. Yes.  A. Yes.  A. Yes.  A. Yes.  A. And I just had a couple questions for you about this. Do you see the first page — 1.  A. Mm-hmm.  Q. — and there is a third paragraph that 09:56 the free final was a with the word 'note'?  A. Yesh.  A. And ther's is a sentence towards the bottom the official PTO files."  Page 48  A. Ayes.  A. Yesh.  Q. — to page 2479.  A. Ayes.  Q. — to page 2479.  A. Ayes.  Q. Do you see that? 4. A. Mm-hmm.  Q. And there is a sentence towards the bottom the official PTO files."  Page 48  A. Ayes.  D. Do you see that? 4. A. Mm-hmm.  Q. And there is a sentence towards the bottom the official PTO files."  Page 48  A. Ayesh.  Q. Do you see it says. "Dale Dougherty, 09:59 Defendant's Witness, Duly Sworn, Direct  Examination."  A. Yes.  Q. And you recall how you indirectly obtained a copy indirectly obtained a copy in directly opportunity to the page 49  Page 48  BY MR. BUDWIN: Hand you a document which will 09:58 benacled as 6.  MR. BUDWIN: Rund you is document which will 09:58 benacled as 6.  Defendance of the first page — 1.  A. Mm-hmm.  Q. And there is a sentence towards the bottom the recommendance of the first page — 1.  A. Mm-hmm.  A. Yesh.  D. On you see the first page — 1.  By MR. BUDWIN: Rund you a document which will 09:58 benacled as 6.  MR. BUDWIN: Rund you is document which will 09:58 benacled as 6.  MR. BUDWIN: Rund you benacle for identification on 09:58 benacle as 6.  MR. BUDWIN: Rund you benacle for identification on 09:58  I would be marked as 6.  MR. BUDWIN: Rund you for the verification on 09:58  I would be marked as 6.  MR. BUDWIN: Rund you for the first page — 1.  MR. BUDWIN: Page 48  By MR. BUDWIN: Page 4		Page 46		Page 47
A. It is.  MR. BUDWIN: Hand you another document which will be Exhibit 6.  (Deposition Exhibit 6 was marked for op.56 in the different properties of the provided by the provided by our by someone?  NY MR. BUDWIN:  NY MR. BUDWIN: Hand you a document titled great provided by our by someone?  A. Yes, op.56 in the provided by our by someone?  A. Yes, op.56 in the provided by our by someone?  A. Yes, op.56 in the provided by our by someone?  MR. BUDWIN: Hand you a document which will 09:58 in the marked as 6.  MS. DOAN: 7.  MR. BUDWIN: Hand you a document which will 09:58 in the marked as 6.  MS. DOAN: 7.  MR. BUDWIN: Hand you a document which will 09:58 in the marked as 6.  MS. DOAN: 7.  MR. BUDWIN: Hand you a document which will 09:58 in the marked as 6.  MS. DOAN: 7.  MR. BUDWIN: Hand you a document which will 09:58 in the marked as 6.  MS. DOAN: 7.  MR. BUDWIN: Hand you a document which will 09:58 in the marked as 6.  MS. DOAN: 7.  MR. BUDWIN: Hand you a document which will 09:58 in the marked as 6.  MS. DOAN: 7.  MR. BUDWIN: Hand you a document which will 09:58 in the marked as 6.  MS. DOAN: 7.  MR. BUDWIN: Hand you a document which will 09:58 in the marked as 6.  MS. DOAN: 7.  MR. BUDWIN: Hand you a document which will 09:58 in the marked as 6.  MS. DOAN: 7.  MR. BUDWIN: Hand you a document which will 09:58 in the marked as 6.  MS. DOAN: 7.  MR. BUDWIN: Hand you a document which will 09:58 in the marked as 6.  MS. DOAN: 7.  MR. BUDWIN: Hand you a document which will 09:58 in the marked as 6.  MS. DOAN: 7.  MR. BUDWIN: Hand you a document which will 09:58 in the marked as 6.  MS. DOAN: 7.  MR. BUDWIN: Hand you a document which will 09:58 in the marked as 6.  MS. DOAN: 7.  MR. BUDWIN: Hand you a document which will 09:58 in the marked as 6.  MS. DOAN: 7.  MR. BUDWIN: Hand you a document which will 09:58 in the marked as 6.  MS. DOAN: Notice the web as it is to me, but I don't marked as 6.  MS. DOAN: Only on the recumination of the web as it is to me	1	this case? 09:55	1	Do you see that? 09:56
3			2	•
4 which will be Exhibit 6. 5 (Deposition Exhibit 6 was marked for 09:56 identification) 7 BY MR. BUDWIN: 9 Q. Exhibit 6 is a copy of a document titled 9 "Butting Heads Over the '906 Rebuttal," and it's 10 EolasTexas-0000296265. 09:56 10 11 A. Mm-hmm. 12 Q. And do you recognize this as a posting - 13 A. Yes. 14 Q that you made to the oreilly.net 14 to be marked as 6. 15 webpage? 09:56 15 identification) 16 A. Yes. 17 Q. And I just had a couple questions for you 19 about this. Do you see the first page - 19 A. Mm-hmm. 19 A. A. Mm-hmm. 21 there that says. Thave obtained a copy indirectly 19 from the official PTO files." 19:59 10 A. Yesh. 20 Q. Do you see it says. "Dale Dougherry, 09:59 11 Q. And M-hmm. 19 Q. Yes? 10 Q. Yes? 10 Q. And you reviewed this testimony yesterday? 11 Q. And hards referring to you? 12 Q. And you reviewed this testimony yesterday? 12 Q. And you found it accurate? 09:59 15 Q. And you reviewed this testimony yesterday? 13 Q. And you reviewed this testimony yesterday? 14 Q. And you reviewed this testimony yesterday? 15 Q. And hards referring to you? 15 Q. And hards referring to you? 16 Q. Can you turn to page 2486. 17 Q. Do you see line 21? 19 Q. And harm. 19 Q. Do you see line 21? 19 Q. And harm. 19 Q. Do you see line 21? 19 Q. And harm. 19 Q. Do you see line 21? 19 Q. And harm. 19 Q. Do you see line 21? 19 Q. And harm. 19 Q. Do you see line 21? 19 Q. And harm. 10 Q. Do you see line 21? 19 Q. And harm. 10 Q. So I want to just read the questions and the accurate of the web as it is 09:59 developed." 11 docant seem to reflect what accurate the your counsel, if she wants you the marked and the provided to you by one see it and the provided to you special the provided to you by thick the provided to you by thick the provided to you by this had the developed and the newwers and then your counsel, if she wants you the next which will 09:58 A. Provided to you by the first page of your precision and the measurement that from the but I don't recall. 10 don't recall. 10 don't recall the provided to y			3	Q. Do you recall how you indirectly obtained a
5		•	4	
dentification)  7 BY MR. BUDWIN:  9 Q. Exhibit of is a copy of a document titled  9 "Butting Heads Over the '906 Rebuttal," and it's  10 EolasTexas-0000296265. 09:56  11 A. Mm-hmm.  12 Q. And do you recognize this as a posting  13 A. Yes.  14 Q that you made to the oreilly.net  15 webpage? 99:56  16 A. Yes.  17 Q. And I just had a couple questions for you  18 about this. Do you see the first page  19 A. Mm-hmm.  20 Q and there is a third paragraph that 09:56  19 A. Mm-hmm.  21 Starts with the word "noit"?  22 A. Mm-hmm.  23 Q. And there is a sentence towards the bottom there that says, "I have obtained a copy indirectly from the official PTO files."  Page 48  1 numbers at the top  20 A. Yesh.  3 Q to page 2479.  4 A. Okay,  5 Q. Do you see it says, "Dale Dougherty, 09:59  6 Defendant's Witness, Duly Sworn, Direct  Examination"?  8 A. Mm-hmm.  9 Q. Yes?  10 A. Yes.  11 Q. And hore is a sentence towards the bottom of Examination of Example 1.  1 Respectively and the complete of the prior Eolas versus Microsoft case.  2 A. Yesh.  3 Q to page 2479.  4 A. Okay,  5 Q. Do you see it says, "Dale Dougherty, 09:59  6 Defendant's Witness, Duly Sworn, Direct  Examination"?  8 A. Mm-hmm.  9 Q. Yes?  10 A. Yes.  11 Q. And hore is a centence towards the other of the prior Eolas versus Microsoft case.  12 Title WITNESS; I answered:  13 MR. BUDWIN:  Q. Cand wou found it accurate?  14 Q. Can you turn to page 2486.  15 Q. And you found it accurate?  16 Q. And you found it accurate?  17 MR. BUDWIN:  Q. Eshibit 7 is a copy of trail estimony, determination of the prior Eolas versus Microsoft case.  A. Okay,  BY MR. BUDWIN:  Q. Surfemente of the documents that you reviewed westerday?  A. I really don.  MR. BUDWIN: Mr. Bud you a document which will 09:58  MR. BUDWIN: 7, sorry.  (Deposition Eshibit 7 was marked for identification)  Pop:58  La MB. BUDWIN: 7, sorry.  (Deposition Eshibit 7 was marked for identification)  Pop:58  La MB. BUDWIN: 7, sorry.  Q. Eshibit 7 is a copy of trail estimony, attentification of the			5	
Page 48   Page 48   Page 48   Page 49   Page		_		
8 Q. Exhibit 6 is a copy of a document titled 9 "Butting Heads Over the 906 Rebuttal," and it's 10 FeolasTexas-0000296265. 09:56 11 A. Mm-hmm. 12 Q. And do you recognize this as a posting 13 A. Yes. 14 Q that you made to the oreilly net 15 webpage? 09:56 16 A. Yes. 17 Q. And I just had a couple questions for you 18 about this. Do you see the first page 19 A. Mm-hmm. 19 Q and there is a third paragraph that 19 there that says, "I have obtained a copy indirectly 10 from the official PTO files." 19 A. Yeah. 20 Q to page 2479. 4 A. Okay. 5 Q. Do you see it says, "Dale Dougherty, 5 Q. Do you see it says, "Dale Dougherty, 6 Defendant's Witness, Duly Sworm, Direct 7 Examination"? 8 A. Mm-hmm. 8 B. W. Wash. 9 Q. Yes? 10 Q. And that's referring to you? 11 A. Yes. 12 Q. And that's referring to you? 13 Q. And wou reviewed this testimony yesterday? 14 A. Yes. 15 Q. And you found it accurate? 16 Q. And you found it accurate? 17 Q. Can you turn to page 2486. 18 A. Mm-hmm. 19 Q. Do you see line 21? 29 A. Mm-hmm. 19 Q. Do you see line 21? 20 Q. And hmmm. 21 Day on the official PTO files. 21 Search and there is a sentence towards the bottom of the prior Eolas versus Microsoft case. 22 Day on the afternoon session of the prior Eolas versus Microsoft case. 23 Q. And there is a sentence towards the bottom of the prior Eolas versus Microsoft case. 24 Day on the afternoon session of the prior Eolas versus Microsoft case. 25 Day on see it as sentence towards the bottom of the prior Eolas versus Microsoft case. 26 Day on see it says, "Dale Dougherty, 09:59 27 Day on see it says, "Dale Dougherty, 09:59 28 Day on see it says, "Dale Dougherty, 09:59 39 Q. Yes? 30 Q. And what day ou make the top 30 Q. And what a courate? 30 Q. And what a courate? 31 Q. And what a courate? 42 Day of the decuments that you reviewed westerning to you? 43 Day of the decuments that you reviewed westerning to you? 50 Day on see it says, "Dale Dougherty, 09:59 51 Day of the prior Eolas versus Microsoft case. 52 Day of the decuments that you rev		•	7	•
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12   Q. And do you recognize this as a posting				
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Q that you made to the oreilly.net   L4   (Deposition Exhibit 7 was marked for webpage?   O9:56   L5   Method a couple questions for you about this. Do you see the first page   L8   Method a couple questions for you about this. Do you see the first page   L8   Method a couple questions for you about this. Do you see the first page   L8   Method a couple questions for you about this. Do you see the first page   L8   Method a couple questions for you about this. Do you see the first page   L8   Method a couple questions for you about this. Do you see the first page   L8   Method a couple questions for you about this. Do you see the first page   L8   Method a couple questions for you about this. Do you see the first page   L8   Method a couple questions for you about this. Do you see there is a third paragraph that   O9:56   L8   Method a couple questions for you attent with the word "not"   L8   Method a couple questions for you attent with the word "not"   L8   Method a couple questions for you attent with the word "not"   L8   Method a couple questions for you attent with the word "not"   L8   Method a couple a couple yes   L8   Method a couple and the prior Edus versus Microsoft case.   A. Okay. O9:58   L8   Method a couple and the prior Edus versus Microsoft case.   A. Okay. O9:58   L8   Method a couple and the prior Edus versus Microsoft case.   A. Okay. O9:58   L8   Method a couple and that you reviewed my testimony. This is broader than that.   L8   Method a couple and the prior Edus versus Microsoft case.   A. Okay. O9:59   L9   L8   Method a couple and that.   L8   Method a couple and that.   L8   Method a couple and the prior date and the prior Edus versus Microsoft case.   A. Okay. O9:58   L8   Method a couple and the prior Edus versus Microsoft case.   A. Okay. O9:59   L8   Method a couple and that.   L8   Method a couple and the prior Edus versus Microsoft case.   A. Okay.				
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16 A. Yes. 17 Q. And I just had a couple questions for you about this. Do you see the first page 18 about this. Do you see the first page 19 A. Mm-hmm. 20 Q and there is a third paragraph that 09:56 21 starts with the word "not"? 21 A. Mm-hmm. 22 A. Mm-hmm. 23 Q. And there is a sentence towards the bottom 24 there that says, "I have obtained a copy indirectly 25 from the official PTO files." 24 O9:59 25 A. Yeah. 26 Q. To page 2479. 27 A. Yeah. 28 Q. To page 2479. 29 A. Witness, Duly Sworn, Direct 27 Examination"? 29 Defendant's Witness, Duly Sworn, Direct 27 Examination"? 20 Q. Yes? 21 A. Yes. 22 A. Mm-hmm. 23 Q. And you reviewed this testimony yesterday? 24 The word of the documents that you reviewed yesterday? 25 G. Is this one of the documents that you reviewed yesterday? 26 A. I only reviewed my testimony. This is broader than that. 27 Q. So if you turn do you see there is page 09:59 28 A. Yeah. 29 Q. (Reading): 20 Q. (Reading): 21 WR. BUDWIN: 21 Q. (Reading): 22 And what 23 MR. BUDWIN: 24 Whole business of patents is silly; correct, sir?" 25 Q. And what 26 MS. DOAN: Object 27 BY MR. BUDWIN: 28 Q. And what did you answer? 29 MS. DOAN: Object 29 BY MR. BUDWIN: 29 Q. Yes? 20 A. And hath's referring to you? 20 A. Yes. 21 THE WITNESS: I answered: 21 THE WITNESS: I answered: 22 A. Mm-hmm. 23 Py Oc Can you turn to page 2486. 24 A. Yes. 25 G. Wan-hmm. 26 De you see line 21? 28 A. Mm-hmm. 29 Q. Do you see line 21? 29 A. Mm-hmm. 20 Do you see line 21? 20 A. Mm-hmm. 21 De you see line 21? 21 De you see line 21? 22 A. Mm-hmm. 23 De you see line 21? 24 A. Mm-hmm. 25 De you see line 21? 26 De you see line 21? 27 De you see line 21? 28 De you see line 21? 29 De you see line 21? 20 A. Mm-hmm. 21 De you see line 21? 21 De you see line 21? 22 De you see line 21? 23 De you see line 21? 24 De you see line 21? 25 De you see line 21? 26 De you see line 21? 27 De you see line 21? 28 De you see line 21? 29 De you see line 21? 20 De you see line 21? 20 De you see line 21? 21 De you see line 21? 22 De you s				· -
17    Q. And I just had a couple questions for you about this. Do you see the first page   19				·
about this. Do you see the first page —  A. Mm-hmm.  Q. — and there is a third paragraph that 09:56  12 starts with the word "not"?  A. Mm-hmm.  Q. And there is a sentence towards the bottom  the that says. "I have obtained a copy indirectly  from the official PTO files."  Page 48  1 numbers at the top — 09:59  A. Yeah.  Q. Do you see it says, "Dale Dougherty, 09:59  Defendant's Witness, Duly Sworn, Direct  Examination"?  A. Mm-hmm.  Q. Yes?  Q. And what did you answer?  A. Yes.  Q. And you found it accurate?  Q. Can you turn to page 2486.  A. Mm-hmm.  Q. Do you see line 21?  A. Mm-hmm.  Q. So if you turn — do you see there is page 09:59  BY MR. BUDWIN:  Q. And what —  MS. DOAN: Object —  BY MR. BUDWIN:  Q. And what did you answer?  MS. DOAN: Object —  BY MR. BUDWIN:  Q. And what did you answer?  MS. DOAN: Object —  BY MR. BUDWIN:  Q. And what did you answer?  MS. DOAN: Object —  BY MR. BUDWIN:  Q. And what did you answer?  MS. DOAN: Object —  BY MR. BUDWIN:  If that's relevant. I believe that some software and sort of the web as it is o9:59  Less oftware and sort of the web as it is o9:59  Less oftware and sort of the web as it is o9:59  A. Yes.  Q. Can you turn to page 2486.  Reading it prior with prior bolds with a sort ware patents can be injurious to the software and sort of the web as it is o9:59  A. Mm-hmm.  Q. Do you see line 21?  A. Mm-hmm.  Q. Do you see line 21?  A. Mm-hmm.  Q. Do you see line 21?  A. Mm-hmm.  Q. So if you turn — do you see there is page 09:59  BY MR. BUDWIN:  10 developed."  It doesn't seem to reflect what accurately — a very coherent idea, but I can explain that, if you wish.  BY MR. BUDWIN:  Q. So if you turn — do you see there is page 09:59  Less oftware and sort of the web as it is o9:59  A. Wes.  Less oftware and sort of the web as it is o9:59  A. Mm-hmm.  Q. Do you see line 21?  A. Mm-hmm.  Q. Do you see line 21?  A. Mm-hmm.  Q. Do you see dine 21?  A. Mm-hmm.  Q. So if you turn — do y				
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				ž -
MS. DOAN: Objection; form, improper 24 to explain, will have a chance to ask you questions		•		
25 questioning. 09:59 25 later. 10:00		v · · ·		•

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

	Page 54		Page 55
1	you want to call the hotline. I'm going to ask my 10:03	1	The time is 10:37 a.m. 10:37
2	questions and I'm going to get answers to those	2	BY MR. BUDWIN:
3	questions.	3	Q. Mr. Dougherty, do you have Exhibit 7 in
4	MS. DOAN: If they're sustained by the	4	front of you?
5	court, Counsel. 10:03	5	A. Yes. 10:37
6	MR. BUDWIN: Okay.	6	Before you begin, I'd just like to say, you
7	MS. DOAN: If you want to ask him the	7	asked me a question about claim constructions, and I
8	questions, just tell me this is what I want to do,	8	had seen a document, but it didn't know it was
9	I'm going to call.	9	labeled that.
10	MR. BUDWIN: I'm going to ask him 10:03	10	Q. Okay. So let me ask you about that. You 10:37
11	MS. DOAN: I don't want you to get on the	11	saw Judge Davis' claim construction order in this
12	line with the judge and then you say, "You know	12	case?
13	what? That's not what I intended to do."	13	A. I saw it.
14	MR. BUDWIN: I intend to ask him the	14	Q. Did you study it?
15	question and have him read the answer he gave in the 10:03	15	A. Not closely, no. 10:38
16	prior trial.	16	Q. Did you understand did you read the
17	MS. DOAN: Absolutely. I want to call the	17	whole thing?
18	hotline.	18	A. I I spent a minute with it.
19	MR. BUDWIN: Okay. Let's go off the	19	Q. But no more than a minute?
20	record. 10:03	20	A. Right. 10:38
21	THE VIDEOGRAPHER: Go off the record. The	21	Q. All right. Do you have Exhibit 7 in front
22	time is 10:03 a m.	22	of you?
23	(Pause in the proceedings while counsel	23	A. Yes, I do.
24	call Judge Giblin)	24	Q. Can you go to page 2486.
25	THE VIDEOGRAPHER: We're on the record. 10:37	25	A. Yes. 10:38
	Page 56		Page 57
1	Q. In the prior case this is line 21 of 10:38	1	MS. DOAN: I think that's the way it's 10:39
2	page 2486 you were asked the question:	2	proper.
3	"And you in fact think this whole business	3	BY MR. BUDWIN:
4	of patents is silly; correct, sir?"	4	Q. Mr. Dougherty, you think the whole business
5	You were asked that question? 10:38	5	of patents is silly, correct, sir? 10:39
6	A. Yes.	6	A. I have written that.
7	Q. And you answered	7	Q. And you believe that today, do you not?
8	MS. DOAN: Counsel, I think this is	8	MS. DOAN: Objection; form.
9	improper. That's what she was going to say. The	9	THE WITNESS: I think I have a more nuanced
10	court when we just called on the hotline, Judge 10:38	10	view of it. 10:39
11	Giblin's secretary specifically told you that you	11	BY MR. BUDWIN:
12	were entitled to get an answer, not to read in the	12	Q. And you've described patents as "silly,"
13	question and answer and say is it true or not true.	13	correct, sir?
14	MR. BUDWIN: I'm going to read why can't	14	A. No, I have not.
15	I read the answer? 10:38	15	Q. Do you recall being asked that question in 10:39
16	MS. DOAN: I don't think this is a proper	16	the prior case?
17	way to make your record.	17	A. The phrase is the "whole business of
18	MR. BUDWIN: Well	18	patents is silly." The "whole business" is what I
19	MS. DOAN: You can ask him a question and	19	referred to.
20	then he can give the answer, and then if it's 10:38	20	Q. All right. Do you have Exhibit 7 in front 10:39
21	materially	21	of you, sir?
22	MR. BUDWIN: Okay.	22	A. I do.
23	MS. DOAN: different under the rules	23	Q. Can you turn to page 2487?
24	MR. BUDWIN: All right. We'll try it your	24	A. 87, okay.
25	way, Jennifer. 10:39	25	Q. And do you see the question? 10:39

	Page 58		Page 59
1	"And you've described patents as silly; 10:39	1	A. No. 10:40
2	correct, sir?"	2	Q. Now, I want to refer back to the
3	Do you see that question?	3	controversial patent list that you maintain. Do you
4	A. I see that question.	4	have that document?
5	Q. Let me ask you 10:39	5	A. Yes. 10:40
6	A. I did not affirm that question.	6	Q. Why do you maintain a list of controversial
7	Q. Okay. Let me ask you a question: And	7	patents?
8	you've described patents as "silly," correct, sir?	8	A. I'm interested in an open Web that is not
9	MS. DOAN: Objection; form, asked and	9	encumbered later on by patents which are granted
10		10	when work that already exists was in the public 10:41
11	You can answer this question.	11	domain.
12		12	Q. And just for the record, you're referring
13	patents are silly.	13	to the list in Exhibit 5?
14	BY MR. BUDWIN:	14	A. I am.
15	Q. And you believe that the Eolas patent is 10:40	15	Q. What makes a patent controversial, in your 10:41
16	one of those silly patents?	16	words?
17	MS. DOAN: Objection; form.	17	A. I think whether it one is whether there
18	THE WITNESS: I did not say that.	18	is prior art that was not engaged in or
19	BY MR. BUDWIN:	19	represented by the patent holder. One is whether
20	Q. You believe that Eolas' '906 patent is 10:40	20	it's not obvious. And the context if for that is 10:41
21	silly?	21	a I'm coming at it from a technical point of
22	A. I believe it's invalid.	22	view, not a legal point of view.
23	Q. Do you believe it's silly?	23	Q. And that's what qualifies a patent to be
24	A. I believe it's invalid.	24	controversial with respect to your list in Exhibit
25	Q. Do you believe it's silly? 10:40	25	5? 10:42
	Page 60		Page 61
1	A. These are are patents that mostly affect 10:42	1	MS. DOAN: Objection; form. 10:43
2	the World Wide Web and transactions and interactions	2	THE WITNESS: No.
3	across the Web.	3	MR. BUDWIN: I'm going to hand you a
4	Q. And you're opposed to any patent that has	4	document which will be what am I up to?
5	the potential to encumber or limit the openness of 10:42	5	THE REPORTER: 8. 10:43
6	the World Wide Web?	6	MR. BUDWIN: 8.
7	MS. DOAN: Objection; form.	7	(Deposition Exhibit 8 was marked for
8	THE WITNESS: I am opposed to the to the	8	identification)
9	manner in which patents could encumber the open Web.	9	BY MR. BUDWIN:
10	BY MR. BUDWIN: 10:42	10	Q. Exhibit 8 is a copy of a document entitled 10:43
11	Q. What do you mean by that, "the manner"?	11	"O'Reilly Opposes W3C Patent Policy."
12	A. One could get a patent and not sue for it.	12	Do you see that, sir?
13	Companies get lots of patents and they don't always	13	A. Mm-hmm.
14	act to defend the rights of patents. So it's not	14	Q. Yes?
15	the act of patenting that is at issue; it is often 10:42	15	A. Yes. 10:43
16	what you do with it.	16	Q. It was posted by you on October 11th of
17	Q. So you have a problem with companies	17	2001; is that right?
18	enforcing patents that could encumber the openness	18	A. Yes.
19	of the Web?	19	Q. Were you still involved in the W3C as of
20	MS. DOAN: Objection; form. 10:43	20	October 11th, 2001? 10:43
21	THE WITNESS: I am concerned about it.	21	A. I don't know. Previously I said I was not
22	BY MR. BUDWIN:	22	involved. I I I would have to check. You
23	Q. Have you ever seen any company enforce a	23	know, I don't really recall. It was sort of not a
24	web-related patent that you thought was a good	24	specific I could still contribute and speak about
25	patent? 10:43	25	the W3C whether I was a member or not. 10:44

	Page 62		Page 63
1	Q. So you can't recall today whether you were 10:44	1	should take a global view of the public 10:45
2	still a member as of October 11th of 2001?	2	good and oppose the narrow, US-centric view
3	A. Not specifically.	3	that rationalizes software and
4	Q. But you'll agree with me that at least as	4	business-method patents."
5	of October 11th, 2001, you were still following some 10:44	5	Do you see that? 10:45
6	developments at the W3C?	6	A. That's true.
7	A. Yes.	7	Q. And you wrote those words?
8	Q. Now, do you see at the bottom of Exhibit 8	8	A. Yes.
9	there is a paragraph that begins "in fact"?	9	Q. And did you believe them when you wrote
10	A. Mm-hmm. 10:44	10	them? 10:45
11	Q. Yes?	11	A. I do.
12	A. Yes.	12	
13			Q. And do you hold that belief today, sir? A. I do.
14	Q. And it reads: "In fact, we'd like to see the W3C lead the	13	
15	Web community in fighting the imposition of 10:44	14 15	Q. Why did O'Reilly and you yourself oppose the W3C's patent policy? 10:45
16		16	
	patent rights on the Web."	1	A. Let me refresh this. It had to do with
17	Do you see that?	17	this RAND licensing. So, you know, I think in
18	A. I do.	18	this in this case, you know, what I write under
19	Q. Is that a belief that you held in October	19	the proposed framework, the W3C commits to keeping
20	of 2001? 10:44	20	core standards royalty free, which is what I 10:46
21	A. It is.	21	supported; but it sets up the opportunity to for
22	Q. Is that a belief that you hold today?	22	higher layer standards to be chartered and to
23	A. In large part I agree with it.	23	basically make agreements about whether or not
24	Q. The second sentence there reads:	24	something could be used by the and supported by
25	"As an international organization, the W3C 10:45	25	the W3C if it was it had intellectual property 10:46
	Page 64		Page 65
1	obligations. 10:46	1	Q professor. 10:48
2	Q. So you opposed the W3C adopting any	2	What's your view on the University of
3	standards that could read upon patents or other	3	California?
4	intellectual property obligations?	4	A. Can you be more specific?
5	A. No. I opposed the RAND licensing option in 10:46	5	Q. Do you think it's a good institution? 10:48
6	relation to standards.	6	A. It's a public university. It's a fine
7	Q. When you refer to "RAND," that's R-A-N-D?	7	fine private university.
8	A. Yes. It's in the second paragraph there.	8	Q. I think you might have misspoke. It's a
9	Q. And do you know what "RAND" stands for?	9	fine public university?
10	A. Not at the moment. It is a research and 10:47	10	A. I'm sorry. Public. Sorry, public 10:48
11	development organization.	11	university.
12	Q. Mr. Dougherty, do you understand that the	12	Q. So it's your belief that the University of
13	patents in this case are owned by the University of	13	California is a fine public university?
14	California?	14	A. That's correct.
15	A. In a on a small sense. I've not I 10:47	15	Q. Do you understand that the University of 10:48
16	don't understand what their rights are to the	16	California is the largest public research
17	patent.	17	institution in the country?
18	Q. Did you ever attend any schools that are	18	MS. DOAN: Objection; form.
19	run by the University of California?	19	THE WITNESS: No, I don't understand that.
20	A. I taught at University of California 10:47	20	BY MR. BUDWIN: 10:48
21	Berkeley, but I did not attend there.	21	Q. Do you understand the University of
22	Q. What classes did you teach at Berkeley?	22	California holds the most patents of any public
23	A. I taught an electronic publishing class.	23	research institution in the country?
24	Q. Were you an adjunct	24	MS. DOAN: Objection; form.
25	A. Yes. 10:48	25	THE WITNESS: No, I don't understand it. 10:48

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1	BY MR. BUDWIN: 10:48	1	that filed the '906 and '985 patents? 10:50
2	Q. Do you have a problem with the University	2	MS. DOAN: Objection; form.
3	of California enforcing its patent rights?	3	THE WITNESS: No.
4	A. No, I don't.	4	BY MR. BUDWIN:
5	Q. Does it change your opinion in one way or 10:49	5	Q. You've heard of a man named Pei Wei? 10:50
6	the other that the '906 and the '985 patent, the	6	A. I have.
7	Eolas patents, are actually owned by the University	7	Q. When did you first meet Mr. Wei?
8	of California?	8	A. I believe it was in 1991. I had
9	A. No.	9	Q. Okay. How did you come to meet Mr. Wei in
10	Q. Do you have an understanding of the 10:49	10	1991? 10:50
11	research that led to the filing of the '906 and the	11	A. I saw on a news group some information
12	_	12	
13	'985 patents by the University of California?  A. No.	13	about what he was doing with Viola and I sought him
			out, e-mailed him, and we met for lunch.
14	Q. You've never studied any of Dr. Doyle's	14	Q. So you arranged a meeting with Mr. Wei in
15	journal papers, his IEEE article, anything like 10:49	15	1991? 10:50
16	that?	16	A. That's correct.
17	A. No.	17	Q. And you ultimately hired Mr. Wei to work at
18	Q. Do you understand that the University of	18	O'Reilly & Associates?
19	California has a Patent Office or a patent group	19	A. That's correct.
20	inside that reviews patents before they're filed? 10:49	20	Q. When did you hire Mr. Wei? 10:51
21	A. No.	21	A. I believe it was the spring of 1992.
22	MS. DOAN: Objection; form.	22	Q. Why did you decide to hire Mr. Wei?
23	BY MR. BUDWIN:	23	A. I wanted to support the work he was doing
24	Q. And did you understand before today it was	24	and to I thought that support would help
25	actually the University of California and not Eolas 10:49	25	accelerate development on Viola. I thought it was 10:51
	Page 68		Page 69
1	important. 10:51	1	Q. Did O'Reilly ever release any commercial 10:52
2	Q. Why did O'Reilly have an interest in	2	products based on Viola?
3	supporting Mr. Wei's work on Viola?	3	MS. DOAN: Objection; form.
4	A. Because specifically around electronic	4	THE WITNESS: This was a I would regard
5	publishing, and as a publisher we were interested in 10:51	5	the kiosk as a commercial product. 10:52
6	looking at ways that that information could be	6	BY MR. BUDWIN:
7	distributed online.	7	Q. And the kiosk had part of a book called
8	Q. So O'Reilly is primarily a technical book	8	"The Whole Internet Catalog" on it?
9	publisher?	9	A. Yes, it did.
10	A. That's correct. 10:51	10	Q. Other than the kiosk with part of "The 10:53
11	Q. And so you publish books on computers and	11	Whole Internet Catalog" on it, did O'Reilly have any
12	computer programming and things of that nature?	12	other products that used Viola to distribute books?
13	A. Yes.	13	A. Not to distribute books. We did use Viola
14	Q. And one of the things that O'Reilly became	14	with GNN in its early development.
15	interested in Viola was you thought it might be a 10:52	15	Q. How did O'Reilly use Viola with GNN? 10:53
16	way to distribute your books online?	16	A. It was it was the first graphical web
17	A. That's correct.	17	browser and we used it to develop the content and it
18	Q. You never actually released any products	18	was it was more it was built off of what we
19	where you distributed books online using Viola, did	19	did for the kiosk, and it was, you know, webpages
20	you? 10:52	20	that that formed an interface to what other kinds 10:53
21	A. Well, we set up kiosk, and we had a book	21	of content was on the Web.
22	called "The Whole Internet Catalog," which we took a	22	Q. Is that something that you were doing
23	section of that book and set it up as a as a	23	internally at O'Reilly?
24	public kiosk. So it was functioning in public in	24	A. Yes. Yes, internally in the sense it was a
1	several locations over the 1992 time frame. 10:52	25	product we were developing. 10:54
25	several locations over the 1997 time trame 10007	14:0	

	Page 70		Page 71
1	Q. Did O'Reilly ever use Viola to earn any 10:54	1	MS. DOAN: Objection; form. 10:55
2	money?	2	THE WITNESS: We included a chapter on
3	MS. DOAN: Objection; form.	3	Viola in the August in the fall 1992 edition the
4	THE WITNESS: Interesting. We never sold	4	"Whole Internet Guide and Catalog."
5	it. We never we never tried to seek money for 10:54	5	BY MR. BUDWIN: 10:55
6	Viola.	6	Q. O'Reilly never published any books solely
7	BY MR. BUDWIN:	7	and specifically about Viola?
8	Q. So to your knowledge, O'Reilly never sold	8	A. That's true.
9	Viola?	9	Q. And the only publication that O'Reilly made
10	A. That's true. 10:54	10	that mentions Viola, to your knowledge, is a chapter 10:55
11	Q. And to your knowledge, O'Reilly never filed	11	in "The Whole Internet Catalog"?
12	any patents related to Viola?	12	A. That's not true.
13	A. That's true.	13	Q. Okay. What publications beyond "The Whole
14	Q. Now, I think we mentioned earlier that	14	Internet Catalog" are you aware of that talk about
15	O'Reilly was was and is primarily in the business 10:54	15	Viola? 10:55
16	of publishing technical books; is that right?	16	A. We published a in the in 1993 in the
17	A. Yes.	17	spring, we published a catalog of our books and
18	Q. And you talked to Mr. Wei about writing a	18	which also contained articles. It was a catazine,
19	technical book on Viola; isn't that right?	19	contained sort of a magazine, plus books, and it
20	A. That's correct. 10:55	20	contained an article about Viola. 10:56
21	Q. And you talked to Mr. Wei about writing a	21	Q. Do you still have that today?
22	technical book about Viola as early as 1991?	22	A. I have not been able to find it.
23	A. That's correct.	23	Q. You recall there is a chapter on Viola in
24	Q. And to your knowledge, O'Reilly never	24	"The Whole Internet Catalog"?
25	published any books on Viola? 10:55	25	A. That's right. 10:56
	Page 72		Page 73
1	Q. And that's in 1992? 10:56	1	A. Mm-hmm. 10:57
2	A. That's true.	2	Q. Yes?
3	Q. And do you still have that today?	3	A. Yes.
4	A. Yes.	4	Q. Why is it that Mr. Wei or O'Reilly never
5	Q. And that was one of the things that was 10:56	5	got around to finishing a book on Viola? 10:57
6	included in your production?	6	A. Largely because I think the demands of
7	MS. DOAN: That's publicly available.	7	development on Viola, software development, became
8	THE WITNESS: It's publicly available,	8	his highest priority, and the the idea of the
9	so	9	book fell fell to the sort of side.
10	BY MR. BUDWIN: 10:56	10	Q. When did Mr. Wei leave O'Reilly? 10:58
11	Q. And then you're aware of a magazine in 1993	11	A. When GNN was sold to AOL, he went to work
12	that mentions Viola?	12	with AOL.
13	A. That's correct.	13	Q. And do you recall when that was?
14	Q. And you haven't been able to find that	14	A. '95.
15	magazine? 10:56	15	Q. Did you consider Viola to be finished when 10:58
16	A. No. But I've been able to find through our	16	Mr. Wei left O'Reilly in 1995?
17	e-mail thread of the time some of what was written.	17	MS. DOAN: Objection; form as "finished."
18	Q. And that was included in your document	18	THE WITNESS: I really don't know. I
19	production, those e-mails?	19	wasn't focused on Viola in '95.
20	A. Yes. 10:57	20	BY MR. BUDWIN: 10:58
21	Q. But, to your knowledge, O'Reilly has never	21	Q. When were you focused on Viola?
$\sim$			1 101 1 1 1 1 1004
22	released a standalone book on Viola?	22	A. '91 through the early 1994.
23	A. That's true.	23	Q. Why did your focus shift away from Viola

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1	launch a Web, World Wide Web, and there were lots of 10:59	1	Q. When was the last time anybody at O'Reilly 11:00
2	other browsers emerging in late '93.	2	used Viola, to your knowledge?
3	Q. What other browsers were there that were	3	A. I don't have that knowledge.
4	emerging in late '93?	4	Q. More than ten years?
5	A. Well, in March of '93 we saw the first 10:59	5	A. Yes. 11:00
6	Mosaic browser, and in August of '93 we see Windows	6	Q. Why did O'Reilly and Mr. Wei stop
7	and Mac versions of it in development, and by late	7	developing the Viola browser?
8	fall the Mosaic suite of programs begins to be	8	A. Well, we had put resources into it and our
9	pretty you know, cross-platform web browser.	9	goal was to make it available, and as other browsers
10	Q. So by the end of 1993 and into early 1994 10:59	10	became widely available, there were other people 11:01
11	the Mosaic web browsers had basically become	11	putting even more resources into web browser
12	commonplace across the different platforms?	12	development and it wasn't necessarily something we
13	A. I can't they were available.	13	regarded as being competitive about.
14	Q. And is it your belief that the	14	Q. So one of the reasons that O'Reilly and Mr.
15	proliferation of the Mosaic browsers is one of the 10:59	15	Wei stopped pursuing the development of Viola dealt 11:01
16	things that led to Viola being used less?	16	with the proliferation of other browsers, like
17	A. Yes.	17	Mosaic in the fall of '93?
18	Q. When was the last time you used Viola?	18	MS. DOAN: Objection; form.
19	A. I don't have specific documentation on	19	THE WITNESS: Well, we kept we kept
20	that. 11:00	20	our I think we kept supporting the development 11:01
21	Q. Would it have been more than ten years?	21	of of Viola during that period that you
22	A. Yes.	22	mentioned, and at the same time we see the rise of
23	Q. And Viola is not still in use at O'Reilly	23	Mosaic coming as well.
24	today, is it?	24	BY MR. BUDWIN:
25	A. No. 11:00	25	Q. And at some point did you or O'Reilly or 11:01
	Page 76		Page 77
1	Page 76  Mr. Wei realize you wouldn't be able to compete with 11:01	1	Page 77 BY MR. BUDWIN: 11:03
1 2		1 2	
	Mr. Wei realize you wouldn't be able to compete with 11:01	l	BY MR. BUDWIN: 11:03
2	Mr. Wei realize you wouldn't be able to compete with 11:01 the browsers like Mosaic that were coming out?	2	BY MR. BUDWIN: 11:03 Q. And another one of the reasons is O'Reilly,
2	Mr. Wei realize you wouldn't be able to compete with 11:01 the browsers like Mosaic that were coming out?  A. Yes.	2 3	BY MR. BUDWIN: 11:03  Q. And another one of the reasons is O'Reilly, as a book publisher, was focusing more on the
2 3 4	Mr. Wei realize you wouldn't be able to compete with 11:01 the browsers like Mosaic that were coming out?  A. Yes.  Q. And why was it that you wouldn't be able to	2 3 4	BY MR. BUDWIN: 11:03  Q. And another one of the reasons is O'Reilly, as a book publisher, was focusing more on the content as opposed to the manner of delivering that
2 3 4 5	Mr. Wei realize you wouldn't be able to compete with 11:01 the browsers like Mosaic that were coming out?  A. Yes.  Q. And why was it that you wouldn't be able to compete Viola wouldn't be able to compete with 11:02 Mosaic and the browsers, those browsers, that were coming out in late '93 or early '94?	2 3 4 5	BY MR. BUDWIN:  Q. And another one of the reasons is O'Reilly, as a book publisher, was focusing more on the content as opposed to the manner of delivering that content?  11:03  A. Well, I would say that we were focusing on the web as an open platform, which was the manner
2 3 4 5	Mr. Wei realize you wouldn't be able to compete with 11:01 the browsers like Mosaic that were coming out?  A. Yes.  Q. And why was it that you wouldn't be able to compete Viola wouldn't be able to compete with 11:02 Mosaic and the browsers, those browsers, that were coming out in late '93 or early '94?  A. Well, I think two things. One is teams	2 3 4 5 6	BY MR. BUDWIN: 11:03  Q. And another one of the reasons is O'Reilly, as a book publisher, was focusing more on the content as opposed to the manner of delivering that content? 11:03  A. Well, I would say that we were focusing on
2 3 4 5 6 7	Mr. Wei realize you wouldn't be able to compete with 11:01 the browsers like Mosaic that were coming out?  A. Yes.  Q. And why was it that you wouldn't be able to compete Viola wouldn't be able to compete with 11:02 Mosaic and the browsers, those browsers, that were coming out in late '93 or early '94?  A. Well, I think two things. One is teams like NCSA were getting more they had more	2 3 4 5 6 7	BY MR. BUDWIN:  Q. And another one of the reasons is O'Reilly, as a book publisher, was focusing more on the content as opposed to the manner of delivering that content?  11:03  A. Well, I would say that we were focusing on the web as an open platform, which was the manner for delivering that content, and we wanted to do everything we could to support the development of
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	Page 78		Page 79
1	Did you yourself ever give a copy of Viola 11:04	1	source or executable on any type of 11:05
2	source code or Viola executables to anyone at any	2	computer-readable media, like a disk or a CD, and
3	point in 1993?	3	deliver that to anyone in 1993?
4	A. I made it available. Made sure it was	4	A. I certainly instructed others to do that
5	available publicly for people to download. None of 11:04	5	for me. 11:06
6	us would have delivered a copy of source code to	6	Q. Did you personally do it yourself?
7	someone else directly.	7	A. No.
8	Q. So you said you made it available publicly	8	Q. Now, you are aware of the demonstration
9	to download?	9	that Mr. Wei gave of his Viola browser to some Sun
10	A. Right. 11:05	10	engineers in May of 1993? 11:06
11	Q. How did you make Viola available publicly	11	A. I am.
12	to download?	12	Q. Do you still have a copy of the code that
13	A. Pei was instructed to do that.	13	Mr. Wei demonstrated to Sun in May of 1993?
14	Q. Okay.	14	A. As part of the first trial, we went back
15	A. He was already doing it when I first found 11:05	15	and looked at what was in the O'Reilly archives and 11:06
16	him. It was it was down through FTP and other	16	we found something in that time frame.
17	places.	17	Q. Do you have the exact code as it existed on
18	Q. Did you ever personally put a copy of any	18	the date of the demonstration to the Sun engineers?
19	Viola source or executable on an FTP site in 1993?	19	A. I don't know if it was the exact code.
20	A. No. 11:05	20	Q. Now, you're also aware, are you not, that 11:07
21	Q. Did you ever personally e-mail any copies	21	Mr. Wei sent some Viola code to those same two Sun
22	of any Viola source or executables to any person in	22	engineers over an FTP site?
23	1993?	23	A. Yes.
24	A. No, I did not.	24	Q. Do you still have a copy of the code that
25	Q. Did you ever put any copies of any Viola 11:05	25	was given to the Sun engineers over the FTP site? 11:07
	Page 80		Page 81
1			
1	A. I believe we recovered some code that was 11:07	1	Q. Now, you're aware, are you not, that the 11:08
2	A. I believe we recovered some code that was 11:07 made available to them in that time frame.	1 2	Q. Now, you're aware, are you not, that the 11:08 date the code was allegedly made available on the
2	made available to them in that time frame.	2	date the code was allegedly made available on the
2	made available to them in that time frame.  MS. DOAN: And, Counsel, we've reproduced	2 3	date the code was allegedly made available on the FTP site was May 31st of 1993?
2 3 4	made available to them in that time frame.  MS. DOAN: And, Counsel, we've reproduced all the code from the first trial and we've produced	2 3 4	date the code was allegedly made available on the FTP site was May 31st of 1993?  A. Yes.
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	Page 82		Page 83
1	code from May 31st of 1993 sitting here today? 11:09	1	L-O-U-K-I-D-E-S. 11:11
2	A. I'm aware of that code.	2	A. Loukides.
3	Q. You're aware of Viola code that has a date	3	Q. Loukides.
4	of May 31st, 1993?	4	Who is Michael Loukides?
5	A. I would have to check. 11:09	5	A. Michael is an editor at O'Reilly. 11:11
6	MS. DOAN: Objection; form.	6	Q. And were you pursuing options to be
7	THE WITNESS: I would have to check. I'm	7	commercialize Viola in 1993 and 1994?
8	saying that we produced code. Go look at the dates,	8	A. No. This refers to the Free Software
9	tell me what dates you see there, and ask me if	9	Foundation was interested in changing the license on
10	that's there. 11:09	10	Viola to make it compatible with their free 11:12
11	MR. BUDWIN: This will be Exhibit 9.	11	software.
12	(Deposition Exhibit 9 was marked for	12	Q. Did you have any intention or did O'Reilly
13	identification)	13	have any intention of commercializing Viola in 1993
14	MS. DOAN: Thank you.	14	or 1994?
15	BY MR. BUDWIN: 11:11	15	A. We had no specific intention, no. 11:12
16	Q. Exhibit 9 is a copy of a document that I	16	Q. And to your knowledge, did O'Reilly ever
17	believe came from Mr. Wei's electronic production,	17	release a commercial version of O'Reilly I'm
18	or could have been Mr. Dougherty's electronic	18	sorry, of Viola?
19	production.	19	A. I'm sorry, no, we did not. "Commercial,"
20	You see Exhibit 9 is an e-mail to Dale 11:11	20	if you define as a paid product. "Commercial" could 11:12
21	Dougherty at ora.com?	21	also mean simply distributing it, which we did
22	A. Yes, I do.	22	intend to do.
23	Q. And that's you?	23	MR. BUDWIN: Hand you a document which will
24	A. Mm-hmm.	24	be marked as Exhibit 10.
25	Q. And it's from Michael Loukides. 11:11	25	(Deposition Exhibit 10 was marked for 11:12
	Page 84		Page 85
1	identification) 11:12	1	to see a Viola demo in the summer of 1994? 11:13
2	MS. DOAN: Thank you.	2	A. I don't have specific recollection of a
3	BY MR. BUDWIN:	3	visit.
4	Q. Exhibit 10 is a copy of an e-mail dated	4	Q. Do you recall Ms. Webster's visit one way
5	July 27, 1994, and it's from you, and the production 11:13	5	or the other?
6	number is Dougherty-EolasTX, a bunch of zeros, 356.	6	A. No.
7	A. Mm-hmm.	7	Q. You do have a specific recollection of a
8	Q. This is a document that you sent?	8	visit with two Sun engineers in May of 1993; is that
9	A. Yes.	9	right?
10	Q. And do you see it's sent to Katherine 11:13	10	A. That's correct. 11:14
11	Webster at corp.sun.com?	11	Q. But you don't recall any follow-up visits
12	A. Mm-hmm.	12	with Ms. Webster from Sun in the summer of 1994?
13	Q. Yes?	13	A. Right. This is for a different purpose.
14	A. Yes.	14	Q. But you don't recall any visits from Ms.
15	Q. Who's Katherine Webster? 11:13	15	Webster of Sun in the summer of 1994, do you? 11:14
16	A. I don't recall. She is a Sun employee that	16	A. No, I don't. She was oh.
17	I contacted.	17	MR. BUDWIN: I'm going to hand you a
18	Q. And you see it says, "Katherine, I'd be	18	document which will be marked as Exhibit 11.
19	happy to set up a meeting in our Berkeley office for	19	(Deposition Exhibit 11 was marked for
20	you to see a Viola demo." 11:13	20	identification) 11:14
21	Do you see that?	21	BY MR. BUDWIN:
	•		
22	A. Mm-hmm.	22	Q. Exhibit 11 is a copy of an e-mail dated
23	A. Mm-hmm. Q. Yes?	23	July 25th, 1994. And do you see it's from you?
	A. Mm-hmm. Q. Yes? A. Yes.		

	Page 86		Page 87
1	Q. Production is Dougherty-EolasTX, a bunch of 11:15	1	direction. 11:16
2	zeros, 360.	2	Q. So when there is a reference to "this kind
3	And this is an e-mail sent to Tim O'Reilly?	3	of software," that means web browsers and things
4	A. That's correct.	4	like that?
5	Q. And is Mr. O'Reilly your boss? 11:15	5	A. Yes. 11:16
6	A. Yes.	6	Q. Okay. And then who is Dan Heller?
7	Q. He is the founder of O'Reilly?	7	A. Dan Heller is one of our book authors;
8	A. Yes.	8	someone I had worked with. He had created some
9	Q. Do you see in the top of the e-mail, the	9	e-mail programs and he was he was a developer.
10	e-mail from Mr. O'Reilly to you, it says, "I would 11:15	10	Q. So Mr. Heller was not an ORA employee? 11:16
11	make clear though, that this kind of software we are	11	A. No, he was an O'Reilly author.
12	interested in doing as part of ORA. It's the	12	Q. And it's your recollection that Mr. Heller
13	information interface business."	13	had proposed forming some kind of separate venture
14	A. Mm-hmm.	14	that would look to commercialize Viola?
15	Q. Do you know what he is referring to? 11:15	15	A. Yes. He was he was investigating and 11:17
16	A. We saw Viola we saw the web as an	16	talking about it.
17	information interface, and and so this this	17	Q. But you and Mr. O'Reilly decided that you
18	kind of software, we're referring to someone Dan	18	weren't interested in spinning out Viola to another
19	Heller approaches Pei about commercializing Viola.	19	company for commercial purposes?
20	And so the question here is about whether Dan wants 11:16	20	A. I would say we had not made the decision. 11:17
21	to spin off Viola to create another company. And so	21	We were this is we were discussing what our
22	the question when I say "as part of ORA," I think	22	options were.
23	this kind of software is part of what we're doing	23	Q. And do you see a little further down in the
24	and it's important to us and not something we would	24	e-mail, right in the middle, it says, "Another
25	want to just see sort of go off in a different 11:16	25	option is Spyglass who is interested in"? Do you 11:17
	Page 88		Page 89
1	see that? 11:17	1	A. I do. 11:18
2	A. Right.	2	Q. Did you see this document in preparing
3	Q. Do you know what that's referring to?	3	yesterday?
4	A. Spyglass had obtained a commercial license	4	A. I did.
5	to Mosaic. 11:17	5	Q. In August of 1995, what was your 11:19
6	Q. And so are you saying that another option	6	understanding of Mr. Schmidt's position at Sun?
7	for displaying O'Reilly's content is Spyglass?	7	A. He let's see. He was a vice president
8	A. No. I think Spyglass is you know, they	8	at Sun, I believe.
9	took the Mosaic software, they were commercializing	9	Q. And do you see you're listed as one of the
10	it. We had worked with them a bit around the 11:17	10	recipients on the e-mail, dale@ora.com? 11:19
11	Internet on a box product, and, you know, meaning	11	A. Yes.
12	they're another option other than Dan if we wanted	12	Q. And do you see in this e-mail from
13	to commercialize it.	13	Mr. Schmidt it says, "We are searching for lots of
14	Q. Okay. And you never followed up with	14	prior art. A few months ago Eolas called me to
15	Spyglass in an attempt to commercialize Viola? 11:18	15	discuss this." 11:19
16	A. I can't say that I didn't follow-up with	16	Do you see that?
17	him. I know that nothing came of it, if I did.	17	A. Yes, I do.
18	man I may want nothing came of 10, 11 I are.	1	0.5 11 11 116
10	MR. BUDWIN: You can set that aside.	18	Q. Do you recall receiving this e-mail from
19		18 19	Mr. Schmidt in 1995?
	MR. BUDWIN: You can set that aside. Hand you what will be marked as Exhibit 12. (Deposition Exhibit 12 was marked for 11:18	1	
19 20 21	MR. BUDWIN: You can set that aside. Hand you what will be marked as Exhibit 12. (Deposition Exhibit 12 was marked for 11:18 identification)	19 20 21	Mr. Schmidt in 1995?  A. Not particularly. I recall it because of 11:19 the evidence here.
19 20 21 22	MR. BUDWIN: You can set that aside.  Hand you what will be marked as Exhibit 12.  (Deposition Exhibit 12 was marked for 11:18 identification)  BY MR. BUDWIN:	19 20 21 22	Mr. Schmidt in 1995?  A. Not particularly. I recall it because of 11:19 the evidence here.  Q. Do you recall having discussions between
19 20 21 22 23	MR. BUDWIN: You can set that aside.  Hand you what will be marked as Exhibit 12.  (Deposition Exhibit 12 was marked for 11:18 identification)  BY MR. BUDWIN:  Q. Exhibit 12 is a copy of an e-mail that came	19 20 21 22 23	Mr. Schmidt in 1995?  A. Not particularly. I recall it because of 11:19 the evidence here.  Q. Do you recall having discussions between people at O'Reilly and people at Sun, or elsewhere,
19 20 21 22	MR. BUDWIN: You can set that aside.  Hand you what will be marked as Exhibit 12.  (Deposition Exhibit 12 was marked for 11:18 identification)  BY MR. BUDWIN:	19 20 21 22	<ul><li>Mr. Schmidt in 1995?</li><li>A. Not particularly. I recall it because of 11:19</li><li>the evidence here.</li><li>Q. Do you recall having discussions between</li></ul>

	Page 90		Page 91
1	Q. You don't recall any follow-up discussions 11:20	1	Q. And at that time you began having 11:21
2	that you had with Mr. Schmidt?	2	discussions with Mr. Wei and others about finding
3	A. No, I don't. I did not have any, as far as	3	potential prior art to Eolas' patents or other
4	I recall.	4	web-related patents; is that right?
5	Q. How did you become aware of how did you 11:20	5	A. That's that's right. 11:21
6	become aware of Eolas and its patents in 1995?	6	Q. And you're aware that Eolas filed suit
7	Strike that. Let me ask you a better	7	against Microsoft in 1999?
8	question.	8	A. I became aware of that.
9	Was the e-mail on Exhibit 12 your first	9	Q. And you testified at trial and in a
10	awareness of Eolas and its patents or had you heard 11:20	10	deposition in the Microsoft case? 11:21
11	of Eolas before you got the e-mail in Exhibit 12?	11	A. Mm-hmm.
12	A. I had heard about it before.	12	Q. Is that right?
13	Q. And how did you first come to hear about	13	A. Yes.
14	Eolas and its patents?	14	Q. And that was in the early 2000s?
15	A. I believe Pei had let me know, but I don't 11:20	15	A. Right. 11:21
16	have a specific recollection.	16	Q. And at the time that you gave the testimony
17	Q. And do you recall you or Mr. Wei beginning	17	in the Microsoft case, it was about your awareness
18	to search for potential prior art to Eolas' patents	18	of Eolas and its potential as prior art?
19	as far back as 1995?	19	A. Yes.
20	A. In this context we discussed the importance 11:21	20	Q. And then if you have Exhibit 4 in front of 11:22
21	of Viola as prior art, yes. Not just for Eolas,	21	you, in March of 2000, you published to your website
22	though.	22	a document entitled "Viola Is a Repository For Prior
23	Q. So you became aware of Eolas in 1995; is	23	Art For the Web"?
24	that right?	24	A. Mm-hmm.
25	A. Yes, I believe so. 11:21	25	Q. Is that right? 11:22
	Page 92		Page 93
1	A. Yes. 11:22	1	MS. DOAN: Objection; form. 11:23
2	Q. And then after you testified at trial in	2	THE WITNESS: Do you have specific
3	the Microsoft case, you became aware that the W3C	3	questions there? I don't know what that means.
4	and others requested a reexamination of Eolas'	4	MR. BUDWIN: Exhibit 15.
5	patent? 11:22	5	THE REPORTER: 13. 11:23
6	A. Yes.	6	(Deposition Exhibit 13 was marked for
7	Q. And as we saw in Exhibit 3, you were aware	7	identification)
8	of the Eolas-specific Patent Action Group that was	8	BY MR. BUDWIN:
9	formed in 2003?	9	Q. Exhibit 13 is a document entitled
10	A. Yes. 11:22	10	"Microsoft Reaches Settlement on Eolas Patent." And 11:23
11	Q. And you followed at least some of the	11	it's published by you on July 31st, 2007; is that
12	developments with respect to the reexamination	12	right?
13	proceedings after it was instituted; isn't that	13	A. That's true.
14	right?	14	Q. And so you followed the progression of
15	A. Yes. 11:23	15	Eolas and its case and its reexamination proceedings 11:24
16	Q. And what we see here in Exhibit 6 is a	16	at least up through July of 2007, didn't you, sir?
17	document from you dated June of 2004 related to the	17	A. I happened on this date to see a news
18	reexamination proceedings?	18	report.
19	A. Mm-hmm.	19	Q. And do you see in there it says, "I learned
20	MS. DOAN: Objection; form. 11:23	20	yesterday that Microsoft had reached an agreement to 11:24
21			and the first and a suith the language to see the seed of the seed
	THE WITNESS: Yes.	21	settle the case with Eolas so I would not be called
22	THE WITNESS: Yes. BY MR. BUDWIN:	22	to testify this week."
22 23	THE WITNESS: Yes. BY MR. BUDWIN: Q. And you in fact continued to monitor the	22 23	to testify this week."  Do you see that?
22	THE WITNESS: Yes. BY MR. BUDWIN:	22	to testify this week."

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1	retrial in 2007, did you not? 11:24	1	Q. Okay. Exhibit 12 is an August 22, 1995 11:25
2	A. Yes.	2	e-mail from Eric Schmidt to you; right?
3	Q. And prior to the time that you posted the	3	A. True.
4	document in Exhibit 13, you had had some meetings	4	Q. And it says, "We are searching for lots of
5	with some of the attorneys representing Microsoft to 11:24	5	prior art. A few months ago Eolas called me to 11:25
6	discuss your trial testimony?	6	discuss this."
7	MS. DOAN: Objection; form.	7	Do you see that?
8	THE WITNESS: I can't recall. I don't know	8	A. I do.
9	whether we met.	9	Q. And you received the e-mail in Exhibit 12
10	BY MR. BUDWIN: 11:24	10	in 1995? 11:25
11	Q. Okay. It's fair to say, isn't it, Mr.	11	A. I did.
12	Dougherty, that you became aware of Eolas and its	12	Q. And you don't dispute, do you, sir, that
13	patents at least as early as 1995; right?	13	you began talking with Mr. Wei and others about
14	MS. DOAN: Objection; form. There were no	14	Eolas and finding potential prior art as early as
15	patents in 1995, Counsel. 11:25	15	1995? 11:25
16	THE WITNESS: I I was aware of the	16	A. I don't agree with that. I agree that we
17	general idea of patents, you know, becoming an issue	17	talked about patents and prior art, and I don't know
18	in 1995.	18	that I know who "Eolas" is even in this e-mail.
19	BY MR. BUDWIN:	19	Q. And you did that as early as 1995?
20	Q. You first became aware of Eolas in 1995, 11:25	20	A. Pei had I believe there is an e-mail 11:26
21	did you not?	21	correspondence between Pei and me about patents as
22	A. I don't know that that word "Eolas" would	22	an issue in prior art.
23	have had any meaning to me in 1995.	23	Q. In 1995?
24	Q. Do you have Exhibit 12 in front of you?	24	A. Yes.
25	A. Yes. 11:25	25	Q. And you became aware of Eolas' case against 11:26
	Page 96		Page 97
1	Microsoft, patent infringement case against 11:26	1	MS. DOAN: He is not a party to this case. 11:27
2	Microsoft, didn't you?	2	He deserves better respect than you're giving him.
3	MS. DOAN: Say it again.	3	MR. BUDWIN: Okay.
4	THE WITNESS: When?	4	MS. DOAN: And you're a better lawyer to be
5	BY MR. BUDWIN: 11:26	5	able to question 11:27
6	Q. You became aware I'm not asking about a	6	MR. BUDWIN: Thank you.
7	time, just in general.	7	MS. DOAN: him so rudely.
8	You became aware	8	MR. BUDWIN: Thank you, Ms. Doan.
9	A. Eventually, yes, I became aware of it.	9	Q. Mr. Dougherty, I apologize, but I want to
10	Q. And you gave a deposition in that case, did 11:26	10	step back just a little bit to make sure that we 11:27
11	you not?	11	have my questions in mind.
12	MS. DOAN: Objection; form.	12	Do you have Exhibit 12 in front of you?
13	THE WITNESS: I did.	13	A. Yes.
14	BY MR. BUDWIN:	14	Q. Exhibit 12 is a copy of an e-mail that you
15	Q. And do you recall that the date of your 11:26	15	received from Eric Schmidt in August of 1995; right? 11:27
16	deposition in that case was October of 2001?	16	A. Yes.
17	MS. DOAN: Objection; form. Counsel, you	17	Q. And that document says, "We are searching
18	have it to put it in front of him.	18	for lots of prior art. A few months ago Eolas
19	MR. BUDWIN: Ms. Doan, "objection; form,"	19	called me to discuss this." Right? That's what it
20	okay? 11:27	20	says? 11:27
21	MS. DOAN: I know how to object.	21	A. Yes.
22	MR. BUDWIN: You constantly	22	Q. And you don't dispute that you received the
23	MS. DOAN: Objection; form. He is a third	23	e-mail in Exhibit 12
24	party, Counsel.	24	A. No, I do not.
25	MR. BUDWIN: Okay. 11:27	25	Q in August of 1995? 11:27

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1	MS. DOAN: Let him answer let him ask 11:27	1	BY MR. BUDWIN: 11:28
2	his question fully.	2	Q. And if you have Exhibit 7 in front of you.
3	THE WITNESS: Sorry.	3	A. Okay.
4	MS. DOAN: That's okay.	4	Q. That's your trial testimony from July 29th
5	BY MR. BUDWIN: 11:27	5	of 2003, is it not? 11:29
6	Q. In August of 1995?	6	A. Yes.
7	A. I do not dispute that.	7	Q. And after you testified at the Microsoft
8	Q. And you recall having some discussions with	8	trial, you're aware, are you not, that the W3C and
9	Mr. Wei and others as early as 1995 related to	9	
10	potential prior art for patents related to the Web? 11:28	10	others requested a reexamination of Eolas' '906 patent? 11:29
11	A. Yes.	11	A. Yes.
12		12	
13	Q. And if you have Exhibit 4 in front of you,	1	Q. And as we see in Exhibit 3 there is a
	exhibit 4 is a copy of a document that you posted to	13	reference to an HTML Patent Action Group formed by
14	the O'Reilly website in March of 2000 entitled	14	the W3C.
15 16	"Viola Is a Repository of Prior Art To the Web"? 11:28	15	Do you see that? 11:29
16 17	A. Yes.	16	A. I'm sorry, say that again.
17	MS. DOAN: Objection; form.	17	Q. And as we see in Exhibit 3, there is a
18	BY MR. BUDWIN:	18	reference to an HTML Patent Action Group formed by
19	Q. And you recall, do you not, that Eolas	19	the W3C in
20	filed a patent infringement case against Microsoft? 11:28	20	A. Yes. We've 11:30
21	A. Yes.	21	Q in 2003?
22	Q. And you testified in that prior case in	22	A we've gone over this.
23	deposition and at trial?	23	Q. Okay. And we see do you have Exhibit 6
24	MS. DOAN: Asked and answered; form.	24	in front of you?
25	THE WITNESS: Yes. 11:28	25	It's a blog post from you, dated June 2nd, 11:30
	Page 100		Page 101
1	2004, "Butting Heads Over The '906 Rebuttal"? 11:30	1	some of those. 11:31
2	A. Yes.	2	BY MR. BUDWIN:
3	MS. DOAN: Objection; form.	3	Q. And you participated in the prior trial
4	BY MR. BUDWIN:	4	with respect to Microsoft, did you not?
5	Q. And you followed the pendency of Eolas' 11:30	5	MS. DOAN: Objection; form, Counsel. 11:31
6	reexaminations?	6	THE WITNESS: True.
7	MS. DOAN: Objection; form.	7	BY MR. BUDWIN:
8	THE WITNESS: All I say is I wrote about	8	Q. You appeared at trial and testified in
9	it.	9	2003?
10	BY MR. BUDWIN: 11:30	10	MS. DOAN: Asked and answered. Objection; 11:31
11	Q. And then as we see Exhibit 13, it's a copy	11	form.
12	of a blog post that you wrote, dated July 31st of	12	THE WITNESS: True.
13	2007; is that right?	13	BY MR. BUDWIN:
14	A. Yes.	14	Q. And after trial you became aware of the
15	Q. Titled "Microsoft Reaches Settlement on 11:30	15	reexamination proceedings and followed those 11:31
16	Eolas Patent."	16	reexamination proceedings from 2003 until they
17	Do you see that?	17	finished?
18	A. Yes.	18	MS. DOAN: Objection; form.
19	Q. So it's fair to say, is it not, Mr.	19	Counsel, if you want to ask some new
20	Dougherty, that you first became aware of Eolas in 11:30	20	questions, because I'm getting ready to call the 11:31
21	1995?	21	judge again. You've asked this about seven times in
22	MS. DOAN: Objection; form.	22	the same order and I'm not going to go with this all
23	THE WITNESS: You've already asked that	23	seven hours today.
			· · · · · · · · · · · · · · · · · · ·
24 25	question, and I said I became aware that patents were an issue; that Viola may be useful in disputing 11:30	24 25	MR. BUDWIN: Ms. Doan 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	1	THE VIDEOGRAPHER: This marks the end of 11:32
2	MR. BUDWIN: Objection; form.	2	Disk 1. We'll go off the record. The time is 11:32
3	MS. DOAN: Objection; form. And you keep	3	a m.
4	going down this again, the same line of questions	4	(Recess taken)
5	that he has already answered affirmatively six 11:31	5	THE VIDEOGRAPHER: This marks the beginning 11:50
6	times.	6	of Disk 2, Volume I, in the deposition of Dale
7	MR. BUDWIN: Please limit your objections.	7	Dougherty. We're on the record. The time is 11:51
8	Okay?	8	a m.
9	MS. DOAN: Absolutely. I'm not going to	9	BY MR. BUDWIN:
10	limit them. I'm putting you on notice I'm getting 11:31	10	Q. Mr. Dougherty, and after trial in the 11:51
11	ready to call the hotline again.	11	Microsoft case, you became aware of the
12	BY MR. BUDWIN:	12	reexamination proceedings with respect to Eolas'
13	Q. Okay. After trial in the Microsoft case in	13	'906 patent, and you followed those reexaminations
14	2003, you followed the reexamination proceedings	14	proceedings from 2003 until they finished?
15	with respect to Eolas' patents? 11:32	15	MS. DOAN: Objection; form. 11:51
16	MS. DOAN: Objection; form. Don't answer	16	THE WITNESS: I wrote about them when news
17	that question. We're going to call the hotline	17	was breaking.
18	again, Josh, if this is what you want me to put up	18	BY MR. BUDWIN:
19	with.	19	Q. And do you have Exhibit 13 in front of you?
20	MR. BUDWIN: Okay. 11:32	20	A. Yes. 11:51
21	MS. DOAN: All right. Fine.	21	Q. And you became aware of Microsoft's
22	Do you have the record, Ms. Cynthia, so we	22	settlement with Eolas in July of 2007, did you not?
23	can tell the court exactly how many times it has	23	MS. DOAN: Objection; form.
24	been read back in?	24	I can answer.
25	THE REPORTER: Yes. 11:32	25	THE WITNESS: I did become aware. 11:51
	Page 104		Page 105
1	BY MR. BUDWIN: 11:51	1	A. Yes. Yes. 11:53
2	Q. And at the time of the settlement in July	2	MS. DOAN: Let him ask the question.
3	of 2007, you were preparing to testify at trial	3	THE WITNESS: Sure.
4	again on behalf of Microsoft?	4	BY MR. BUDWIN:
5	MS. DOAN: Objection; form. 11:51	5	Q. And you're aware, are you not, that the 11:53
6	THE WITNESS: I wasn't necessarily	6	judge and the jury in the last case disagreed with
7	preparing. I was I was prepared to testify if it	7	you
8	went to trial.	8	MS. DOAN: Objection; form.
9	BY MR. BUDWIN:	9	BY MR. BUDWIN:
10	Q. And here we are today in 2011 and you're 11:52	10	Q and found Eolas's patent valid? 11:53
11	still providing testimony with respect to Viola and	11	A. Yes.
12	your understanding of Eolas and its patents?	12	Q. And you're also aware that the Patent
13	A. Yes.	13	Office in the first reexamination of Eolas' '906
14	Q. It's fair to say, is it not, that you've	14	patent and the second reexamination of Eolas '906
15	held the belief that Eolas and its '906 patent are 11:52	15	patent found that patent valid? 11:53
16	invalid for more than ten years; isn't that right?	16	MS. DOAN: Objection; form.
17	MS. DOAN: Objection; form.	17	You can answer.
18	THE WITNESS: I have worked over a period	18	THE WITNESS: Yes.
19	of time to dispute this patent.	19	BY MR. BUDWIN:
20	BY MR. BUDWIN: 11:52	20	Q. And you're also aware that the Patent 11:53
21	Q. And you testified at trial in the last case	21	Office allowed Eolas' '985 patent to issue?
		ام ما	
22	about that, did you not?	22	A. Yes.
22 23	about that, did you not?  A. I did. We've established that.	23	<ul><li>A. Yes.</li><li>Q. You have no training in the patent law, do</li></ul>
	· · · · · · · · · · · · · · · · · · ·	1	

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1	not. 11:53	1	THE WITNESS: That's fine. 11:55
2	Q. So despite the prior determinations,	2	MR. BUDWIN: and it may be less than an
3	despite the prior action in the Patent Office,	3	hour.
4	despite your lack of training in patent law, you	4	
5	still hold your belief that Eolas' patent is 11:54	5	MS. DOAN: That's great. THE WITNESS: Great. Let's do that. 11:55
6	invalid?	6	MS. DOAN: We just don't want to break for
7	A. I do.	7	lunch.
8	Q. And it's your belief, is it not, sir, that	8	THE VIDEOGRAPHER: We'll go off the record.
9	the Patent Office just got it wrong?	9	The time is 11:55 a m.
10	A. It's true. Government does those things 11:54	10	(Recess taken) 11:55
11	sometimes.	11	THE VIDEOGRAPHER: We're on the record.
12	MR. BUDWIN: All right. Why don't we take	12	
13	a break. Maybe get a little bit of lunch and then	13	The time is 12:14 p.m.  MR. BUDWIN: All right. I'm going to hand
14	we can figure out how much I've got left.	14	you a document that will be marked as Exhibit 14.
15		15	•
16	hour left and we agreed not to call the court on the	16	(Deposition Exhibit 14 was marked for 12:14 identification)
17	hotline based upon your last line of questioning	17	BY MR. BUDWIN:
18	based upon representation you had a couple more	18	
19	questions and then about an hour left.	19	Q. Exhibit 14 is a copy of the document titled "Viola Timeline," Bates No. PA-00203841.
20	MR. BUDWIN: Yeah, I think I do have about 11:54	20	Do you recognize the document? 12:14
21	an hour left. I'd like we don't have to break	21	A. I do.
22	for lunch, but if you give me ten minutes to consult	22	Q. Did you see this document yesterday?
23	my notes	23	A. Yes.
24	MS. DOAN: Sure.	24	Q. Is this a document that you prepared?
25	MR. BUDWIN: I'll come back 11:54	25	A. It is. 12:14
	Page 108		Page 109
1	Q. And is this a document that you prepared in 12:14	1	
2	the early-to-mid 1990s?	1 2	through that period I was storing e-mail. When I 12:16
3	A. I prepared it for the trial for Microsoft	3	saw there was about something on Viola, I would put
4	and Eolas when I generated documents for them.	4	the a message that I had received into that folder.
5	Q. Do you recall when you prepared the 12:15	5	
6	document in Exhibit 14?	6	Q. And do you still have the entirety of the 12:16  Viola e-mail file today?
7	A. You know, it would have been in the trial	7	A. It's been produced.
8	time.	8	Q. Okay. And do you see there is a series of
9	Q. Okay.	9	dates here: 1991, 1992?
10	A. Once I knew that Microsoft and Eolas had a 12:15	10	A. That's right. 12:16
11	patent case.	11	Q. And so you put the document in Exhibit 14
12	Q. So it's at some point after Eolas filed	12	together based upon what you could see in your
13	Q. 50 it s at some point after Lotas med	1	
	its first case against Microsoft, you were contacted		
114	its first case against Microsoft, you were contacted and asked to look for documents?	13	e-mail file; is that right?
14 15	and asked to look for documents?	14	A. That's correct.
15	and asked to look for documents?  A. That's correct. 12:15	14 15	<ul><li>A. That's correct.</li><li>Q. So for the things where there are dates and 12:16</li></ul>
15 16	and asked to look for documents?  A. That's correct. 12:15  Q. And at the time that you were looking for	14 15 16	A. That's correct.  Q. So for the things where there are dates and 12:16 descriptions of things that happened on various
15 16 17	and asked to look for documents?  A. That's correct.  Q. And at the time that you were looking for documents is when you prepared Exhibit 14?	14 15 16 17	A. That's correct.  Q. So for the things where there are dates and 12:16 descriptions of things that happened on various dates, are those accurate to your present
15 16 17 18	and asked to look for documents?  A. That's correct.  Q. And at the time that you were looking for documents is when you prepared Exhibit 14?  A. That's correct.	14 15 16 17 18	A. That's correct.  Q. So for the things where there are dates and 12:16 descriptions of things that happened on various dates, are those accurate to your present understanding and belief?
15 16 17 18 19	and asked to look for documents?  A. That's correct.  Q. And at the time that you were looking for documents is when you prepared Exhibit 14?  A. That's correct.  Q. And do you see it says, "Viola Timeline.	14 15 16 17 18	A. That's correct.  Q. So for the things where there are dates and 12:16 descriptions of things that happened on various dates, are those accurate to your present understanding and belief?  A. Generally so.
15 16 17 18	and asked to look for documents?  A. That's correct.  Q. And at the time that you were looking for documents is when you prepared Exhibit 14?  A. That's correct.  Q. And do you see it says, "Viola Timeline.  Compiled from e-mail correspondence of 1991-1993.  12:15	14 15 16 17 18 19 20	A. That's correct.  Q. So for the things where there are dates and 12:16 descriptions of things that happened on various dates, are those accurate to your present understanding and belief?  A. Generally so.  Q. Okay.  12:16
15 16 17 18 19 20	and asked to look for documents?  A. That's correct.  Q. And at the time that you were looking for documents is when you prepared Exhibit 14?  A. That's correct.  Q. And do you see it says, "Viola Timeline.  Compiled from e-mail correspondence of 1991-1993. 12:15  Viola e-mail file"?	14 15 16 17 18 19 20 21	A. That's correct.  Q. So for the things where there are dates and 12:16 descriptions of things that happened on various dates, are those accurate to your present understanding and belief?  A. Generally so.  Q. Okay.  12:16  A. I have not validated that, but generally
15 16 17 18 19 20 21	and asked to look for documents?  A. That's correct.  Q. And at the time that you were looking for documents is when you prepared Exhibit 14?  A. That's correct.  Q. And do you see it says, "Viola Timeline.  Compiled from e-mail correspondence of 1991-1993.  12:15	14 15 16 17 18 19 20	A. That's correct.  Q. So for the things where there are dates and 12:16 descriptions of things that happened on various dates, are those accurate to your present understanding and belief?  A. Generally so.  Q. Okay.  12:16  A. I have not validated that, but generally it's been out there for ten years or so practically.
15 16 17 18 19 20 21 22	and asked to look for documents?  A. That's correct.  Q. And at the time that you were looking for documents is when you prepared Exhibit 14?  A. That's correct.  Q. And do you see it says, "Viola Timeline.  Compiled from e-mail correspondence of 1991-1993.  12:15  Viola e-mail file"?  Do you see that?	14 15 16 17 18 19 20 21 22	A. That's correct.  Q. So for the things where there are dates and 12:16 descriptions of things that happened on various dates, are those accurate to your present understanding and belief?  A. Generally so.  Q. Okay.  12:16  A. I have not validated that, but generally

	Page 110		Page 111
1	of the dates that you believe to be inaccurate? 12:17	1	demonstrations to the Sun engineers or others of 12:18
2	A. No.	2	Viola?
3	Q. And sitting here today, are you aware of	3	A. Yes.
4	any of the descriptions for any of the dates for the	4	Q. Is there a reason why you didn't list those
5	document in Exhibit 14 that you believe to be 12:17	5	in Exhibit 14, the Viola Timeline, if you had a 12:19
6	inaccurate?	6	recollection of those events at the time you were
7	A. No.	7	preparing this document?
8	Q. You see toward the bottom of the document	8	MS. DOAN: Objection; form.
9	it says, "I'm not sure why there is a gap from this	9	THE WITNESS: No particular reason. I was
10	point up until 1994. I stopped filing e-mail under 12:17	10	really composing this, you know, as to what the 12:19
11	Viola and under the work we were doing to build GNN,	11	correspondence was. I didn't really necessarily
12	which started in late fall of 1992"?	12	point out everything that was in the e-mails.
13	A. Yes.	13	BY MR. BUDWIN:
14	Q. Do you have an understanding as to why	14	Q. At the time that you were preparing the
15	there is a gap in the timeline? 12:17	15	document in Exhibit 14, did you believe that the 12:19
16	A. There are a couple of reasons. One is a	16	demonstrations of Viola to the Sun engineers were
17	change in e-mail practice of copying e-mails into a	17	important?
18	folder versus leaving them in a general inbox.	18	A. I'm I don't recall when I understood
19	Second, I believe around a certain time I	19	that to be important. And this e-mail does not
20	got my own machine and the e-mail correspondence 12:18	20	this list does not really cover 1993. 12:19
21	that is in this file was reflected on a backup or an	21	Q. But when you were preparing the list in
22	archive that was made at O'Reilly.	22	Exhibit 14, you had a recollection of the
23	Q. Now, at the time that you were putting	23	demonstrations that you say were provided to the Sun
24	together the document in Exhibit 14 for the last	24	engineers of Viola in May of 1993?
25	case, did you have a recollection of the 12:18	25	A. That's correct. 12:20
	Page 112		Page 113
1	Q. And is the reason that you chose not to 12:20	1	let's start with, the fall of '93?
2	list those 1993 demonstrations in Exhibit 14 because	2	A. I believe it was the first meeting they
3	at the time you were making Exhibit 14 you didn't	3	held and I recall participating in the meeting.
4	have copies of the e-mails referring to those	4	Q. So you recall participating in the October
5	demonstrations? 12:20	5	1993 SIGWEB meeting? 12:22
6	A. This Exhibit 14 is an index of the	6	A. I believe that's the right date.
7	e-mails I had at the time.	7	Q. Do you recall Dr. Doyle attending the
8	Q. And at the time you were preparing Exhibit	8	October 1993 SIGWEB meeting?
9	14, did you not have access to any e-mails referring	9	A. No, I do not.
10	to the Sun demonstration? 12:20	10	Q. Do you recall a discussion of Dr. Doyle and 12:22
11	A. As pointed out here, it was largely from	11	his Visible Embryo Project at the October
12	1991 through September of '92.	12	1993 SIGWEB meeting?
13	Q. Are you strike that.	13	A. No.
14	Do you know what SIG-Web was?	14	Q. Do you have any recollection of Dr. Doyle
15	A. I do. 12:21	15	presenting a slide show describing the Visible 12:22
16	Q. What was SIGWEB?	16	Embryo Project at the October 1993 SIGWEB meeting?
17	A. "SIG" stands for Special Interest Group,	17	A. I don't, no.
18	and it was just a meeting that was formed in the Bay	18	MR. BUDWIN: What am I up to?
19	Area I believe in the fall of 1993, and a person	19	THE REPORTER: 15.
20	named Chris McRae had organized it just as a way to 12:21	20	(Deposition Exhibit 15 was marked for 12:22
21	bring together people who were interested in the	21	identification)
22	Web.	22	BY MR. BUDWIN:
23	Q. Did you ever attend any SIGWEB meetings?	23	Q. Exhibit 15 is a copy of a document dated
0.4			
24 25	<ul><li>A. Yes, I did.</li><li>Q. What SIGWEB meetings do you recall in, 12:21</li></ul>	24 25	October 3rd, 1993 titled "Notes for Initial SIGWEB Meeting," and at the bottom it's production No. 12:23

	Page 114		Page 115
1	CM000950. 12:23	1	the sorry, the first page, fifth paragraph, the 12:27
2	Have you seen the document in Exhibit 15	2	one that starts "and."
3	before?	3	A. Mm-hmm.
4	A. No, I haven't. Not that I recall.	4	Q. And in the middle it starts, "There are
5	Q. Can you turn to the 12:23	5	representatives here from eight University of 12:27
6	MS. DOAN: Counsel, he has not seen this	6	California institutions."
7	document. He can't authenticate it. I don't think	7	Do you see that?
8	it's proper to ask questions about it.	8	A. Mm-hmm.
9	MR. BUDWIN: Okay. Well, I think it is.	9	Q. And do you recall there being
10	Q. Why don't you take a minute, Mr. Dougherty, 12:23	10	representatives from the University of California in 12:27
11	and review the contents of the document, and tell me	11	the SIGWEB meeting in October of 1993?
12	when you're done looking at it.	12	MS. DOAN: Objection; form.
13	Okay?	13	THE WITNESS: I don't have any particular
14	A. (Witness reviewing document.)	14	recollection.
15	Okay, I've reviewed it quickly. 12:26	15	BY MR. BUDWIN: 12:27
16	Q. Okay. Do you recall speaking at the SIGWEB	16	Q. And can you look to the third page of this
17	conference in October of 1993?	17	document, 952.
18	A. I don't have a personal recollection of it.	18	A. Yes.
19	Obviously this document says I said something and we	19	Q. And it says in the second paragraph up from
20	were there and supported it. 12:27	20	the bottom of the page, refers to, quote, "The 12:28
21	Q. You know for a fact, though, you attended	21	Center for Knowledge Management, or CKM, is a branch
22	the initial SIGWEB meeting in October of 1993?	22	of the UCSF Medical Library."
23	A. That's correct.	23	Do you see that?
24	Q. And do you see there is a reference in the	24	A. Mm-hmm.
25	document, Exhibit 15, to "representatives." It's on 12:27	25	Q. Yes? 12:28
	Page 116		Page 117
1	A. Yes, I do. 12:28	1	BY MR. BUDWIN: 12:29
2	Q. Do you recall anyone from the Center for	2	Q the inventor of the '906 patent?
3	Knowledge Management or the University of San	3	A. I understand it now.
4	Francisco speaking at the SIGWEB conference in	4	Q. You didn't at the time?
5	October of 1993? 12:28	5	A. No. 12:29
6	MS. DOAN: Objection; form.	6	Q. Now, do you see at the bottom of the third
7	THE WITNESS: I don't have a recollection.	7	page, page 952 of Exhibit 15, the bottom paragraph
8	BY MR. BUDWIN:	8	says, "Michael Doyle is the Director of the CKM.
9	Q. Do you recall Chris McRae speaking at the	9	David Martin is Assistant Directer of CKM in charge
10	SIGWEB conference in October of 1993? 12:28	10	of ISSG"? 12:29
11	A. Yes, I do.	11	Do you see that?
12	Q. Do you have a recollection of where Mr.	12	A. Yes.
13	McRae was employed in October of 1993?	13	Q. Do you recall meeting Dr. Doyle or Mr.
14	A. I didn't I didn't really know. I might	14	Martin at the SIGWEB meeting?
15	have known that he worked at the Center for 12:28	15	A. I do not. 12:29
16	Knowledge Management, but I wouldn't have known	16	Q. Do you see there is also a reference in the
17	really what that was.	17	next sentence to Cheong Ang?
18	Q. Do you have an understanding today that in	18	Do you see that?
19	October of 1993 Mr. McRae was employed at the	19	A. I do.
20	University of California San Francisco? 12:29	20	Q. Do you recall Mr. Ang at the SIGWEB meeting 12:29
21	A. I do understand that now.	21	in October of 1993?
22	Q. And do you understand that in October of	22	A. No, I don't.
23	1993 Mr. McRae was actually working for Dr. Doyle	23	Q. You understand now, don't you, that Michael
		for a	
24 25	MS. DOAN: Objection	24 25	Doyle, David Martin and Cheong Ang are the three inventors of Eolas' '906 and '985 patents? 12:30

	Page 118		Page 119
1	A. I understand that. 12:30	1	people to talk to for additional 12:31
2	Q. You have no recollection of meeting or	2	information. I believe Mike's got a slide
3	speaking with any of them or any other person with	3	show presentation running on his PowerBook
4	the University of California at the SIGWEB meeting	4	over on the back table which describes both
5	in October of '93? 12:30	5	the RedSage and Visible Embryo Projects." 12:31
6	A. No.	6	Do you see that?
7	Q. In reviewing the document in Exhibit 15,	7	A. I do.
8	did it refresh your recollection that Mr. Doyle, Mr.	8	Q. Do you recall seeing the slide shows
9	Martin and Mr. Ang may have been present at the	9	describing RedSage or the Visible Embryo Project at
10	SIGWEB meeting? 12:30	10	the SIGWEB meeting in October of '93? 12:31
11	A. No, it doesn't. I mean, there is	11	A. No.
			Q. So all right.
12	obviously Chris is saying they were. There were	12 13	-
13	a lot of people there. I wasn't there to		So just to summarize, you don't dispute, do
14	particularly meet them and I don't have any	14	you, sir, that you attended the SIGWEB meeting in
15	recollection of meeting them. 12:30	15	October of 1993, do you? 12:31
16	Q. Will you turn to the next page, the one	16	MS. DOAN: Objection; form.
17	that ends 953.	17	THE WITNESS: No, I don't dispute that.
18	A. Mm-hmm.	18	BY MR. BUDWIN:
19	Q. Do you see there is a reference to the	19	Q. You also recall Mr. McRae, Chris McRae,
20	"Visible Embryo Project"? 12:31	20	being present at the SIGWEB meeting in October of 12:31
21	A. Mm-hmm.	21	1993?
22	Q. And you see the last sentence of that	22	A. He was organizing it.
23	paragraph says or second-to-the-last sentence	23	Q. And you recall him being there?
24	says:	24	A. Yes.
25	"Michael Doyle or Cheong Ang are the best 12:31	25	Q. Sitting here today, you have no 12:32
	Page 120		Page 121
1	recollection of either Dr. Doyle or Mr. Ang or Mr. 12:32	1	Q. So the reason the reason you think you 12:33
2	Martin, the inventors of the patents, the '906 and	2	can't remember the specifics of what was shown at
3	'985 patent, being at the SIGWEB meeting in October	3	the SIGWEB meeting or whether even Dr. Doyle or Mr.
4	of 1993?	4	Ang or any of the inventors were there is because it
5	MS. DOAN: Objection; form. 12:32	5	was a busy meeting? 12:33
6	THE WITNESS: No.	6	A. I think the bulk of the meeting was about
7	BY MR. BUDWIN:	7	the web; it wasn't about Doyle. It wasn't about any
8	Q. And you have no recollection of seeing a	8	of those folks.
9	slide slow presentation by Dr. Doyle or Mr. Ang of	9	So as Chris talks about in the first part,
10	their Visible Embryo Project at the SIGWEB meeting? 12:32	10	people were interested in understanding Gopher and 12:33
11	A. No.	11	the World Wide Web, and that's why I was there and I
12	MS. DOAN: Same objection.	12	was there to talk about that.
13	BY MR. BUDWIN:	13	Q. Do you have any notes or e-mails where you
14	Q. Is there any reason in particular why	14	describe the SIGWEB meeting from October of '93 of
15	sitting here today you don't recall the specifics of 12:32	15	which you're aware? 12:33
16	who was present at the SIGWEB meeting and what	16	A. Not that I have seen.
17	demonstrations were shown?	17	Q. Having reviewed the document in Exhibit 15
18	A. I recall it as a busy meeting with lots of	18	and based upon what you recall of the SIGWEB meeting
19	people there. And Chris is obviously writing this	19	in October of '93, do you see anything inaccurate
20	from his perspective, and, as an employee, he is 12:32	20	that Mr. McRae said, anything that you can dispute 12:34
21	writing a lot about their work; but I didn't know	21	from your personal knowledge?
22	that much about it.	22	MS. DOAN: Objection; form.
23	Q. Did you know anything about Dr. Doyle or	23	THE WITNESS: Do you have anything
24	the work on the Visible Embryo Project in 1993?	24	specifically that you think is inaccurate? I mean,
	A. No. 12:33	25	I'm not going to attest to what he has written. 12:34

BY MR. BUDWIN:  O, Okay. I'm asking you: Having read what's written in Fathishi 15, and since you attended the meeting, the October 1993 meeting referred to in Exhibit 15, do you see anything that jumps out to 12:34 you as being inaccurate based on what you recall of the meeting?  MS. DOAN: Objection; form.  THE WITNESS: T-i have read this in a - 12:34 to the limited time I have bere. Nothing jumped out at arise. That doesn't mean it's completely inaccurate or or that I would agree with it in all cases.  A I was aware of most of them.  O, And despite your involvement in the Web commonly 12:35 to the web browsers or most of the commonly 12:35 to the web browsers or most of the commonly 12:35 to work and the web commonly 12:35 to work and the web provesers and the time?  MS. DOAN: Objection; form.  THE WITNESS: Nothing specific.  O, Chay, All right. You can set that document, and the case 12:35 to work and a web an		Page 122		Page 123
2 Q. Okay. Tm asking you: Having read what's     written in Exhibit 15, and since you attended the     meeting; the Octoher 1993 meeting referred to in     Exhibit 15, do you see anything that jumps out to 12:34     you as being inaccurate based on what you recall of     the meeting?     MS. DOAN: Objection; form.     THE WITNESS: I — I have read this in a — 12:34     in the limited time I have here. Nothing jumped out     at me. That doesn't mean it's completely inaccurate     or that I would agree with it all classes.     A 1 doesn't mean it's completely inaccurate     or that I would agree with it all classes.     Q. And you were actively — or you were aware     Q. And does were actively — or you were aware     Q. And does between the time?     A. I was aware of most of the commonly 12:35     used web browsers or most of the commonly 12:35     document, read the document in Exhibit 15, can you     point out any inaccuracies to me that you see based     upon your recollection?     MS. DOAN: Objection; form.     MS. DOAN: Objection; form	1		1	
symbol written in Exhibit 15, and since you attended the meeting, the October 1993 meeting referred to in Fixhibit 15, do you see anything that jumps out to 12:34 for the meeting?  MS, DOAN: Objection; form.  THE WITNESS: 1—I have read this in a — 12:34 in the limited time I have here. Nothing jumped out at me. That doesn't mean its completely inaccurate at a me. That doesn't mean its completely inaccurate at a me. That doesn't mean its completely inaccurate at me. That doesn't mean its completely inaccurate at me. That doesn't mean its completely inaccurate at me. That a doesn't mean its completely inaccurate at me. That a doesn't mean its completely inaccurate at me. That a doesn't mean its completely inaccurate at me. That a doesn't mean its completely inaccurate at me. That a doesn't mean its completely inaccurate at me. That a doesn't mean its completely inaccurate at me. That a doesn't mean its completely inaccurate at me. That a doesn't mean its completely inaccurate at me. That a doesn't mean its completely inaccurate at me. That a doesn't mean its completely inaccurate at me. That a doesn't mean its completely inaccurate at me. That a doesn't mean its me. That a doesn't mean its me. That a doesn't mean it in the limited time it have been were actively involved in the Web community, were you add here a community, were you and have were actively involved in the Web community. Were a ctively involved in the Web community. Were actively involved in the Web community were actively involved in the Web community were actively involved in the Web community. Were actively involved in the Web community was a dual to the web browser in				
the Meeting the October 1993 meeting referred to in Exhibit 15, do you see anything that jumps out to 12,34 by on as being inaccurate based on what you recall of the meeting?  M. DOAN: Objection; form.  THE WITNESS: 1 – I have read this in a – 12,34 in the limited time I have here. Nothing jumped out at are. That doesn't mean it's completely inaccurate or that I would agree with it all classes.  M. S. DOAN: Objection; form.  M. DOAN: Objection; form.  M. S. DOAN: Objection; form.			1	
5 Exhibit 15, do you see anything that jumps out to 12:34 by as being inaccurate based on what you recall of the meeting?  8 MS, DOAN: Objection; form.  9 You can answer.  10 THB WTINESS: 1—I have read this in a — 12:34 in the limited time I have here. Nothing jumped out at me. That doesn't mean it's completely inaccurate at me. That doesn't men't in that a me. That doesn't me				_
5 you as being inaccurate based on what you recall of the meeting?  8 MS. DOAN: Objection; form. 9 You can answer. 10 THE WITNESS: I — I have read this in a — 12:34 in the limited time I have here. Nothing jumped out at the limited time I have here. Nothing jumped out or that I would agree with it in all cases. 13 or that I would agree with it in all cases. 15 Q. String here today and having reviewed the 12:34 document, read the document in Exhibit 15, can you 17 point out any inaccuracies to me that you see based upon your recollection; form. 16 BY MR. BUDWIN: 17 Doint out any inaccuracies to me that you see based upon your recollection; form. 18 THE WITNESS: No. 12:35 and 1 mean by "this case," I mean the case 12:35 case, and I mean by "this case," I mean the case 12:35 case, and I mean by "this case," I mean the case 12:35 and I mean by "this case," I mean the case 12:37 and I mean by "this case, what would your definition of a web browser be? 19 Q. 1993 to 1994. 20 And you were actively — or you were aware of of the web browsers or most of the commonly 12:35 and of the web browsers at the time? 20 And despite your involvement in the Web community, mere you not? 21 MR. BUDWIN: 22 Double of the web browsers or most of the commonly 12:35 and of the web browsers at the time? 23 Q. And despite your involvement in the Web community in 1993 or 1994, to your recollection you 12:36 involvement in this case? 24 MS. DOAN: Objection; form. 25 Double of the web rowsers at the time? 26 Double of the web from the web to make of the web from series in the Web community in 1993 or 1994, your despite to your involvement in the Web community in 1993 or 1994, to your recollection you involvement in this case? 26 MS. DOAN: Blection; form. 27 Double of the web from the Web community in 1993 or 1994, to your recollection your involvement in the Web community in 1993 or 1994, to your recollection your involvement in this case. 28 DY MR. BUDWIN: 29 Q. Have you used HyperCard? 20 Q. Have you used HyperCard? 21 A. No. 22 Q. Have you		•	1	•
the meeting?  MS. DOAN: Objection; form.  You can answer.  THE WITNESS: I - I have read this in a - 12:34 in the limited time I have here. Nothing jumped out at me. That doesn't mean it's completely inaccurate at me. That doesn't in that it me. That with it in all cases.  13 or that I would agree with it in all cases.  14				- ·
MS_DOAN: Objection; form. You can answer. You can answer. The WITNESS: I - I have read this in a - 12:34 in the limited time I have here. Nothing jumped out at the web browsers at the time?  at me. That doesn't mean it's completely inaccurate or that I would agree with it in all cases.  by MR_BUDWIN: Community in 1993 or 1994, to your recollection you beared of wound any inaccuracies to me that you see based upon your recollection?  MS_DOAN: Objection; form.  THE WITNESS: Nothing specific.  BY MR_BUDWIN:  Community in 1993 or 1994, to your recollection you have read of the web browsers or most of the commonly 12:35 to document, read the document in Exhibit 15, can you bear of most of them.  THE WITNESS: Nothing specific.  BY MR_BUDWIN: Community in 1993 or 1994, to your recollection you have read of lot the web browsers or most of the commonly 12:35  MS_DOAN: Objection; form.  THE WITNESS: Nothing specific.  THE WITNESS: Nothing specific.  Page 124  Now, prior to your involvement in this case, had 12:36  Why not?  A. I what lime frame by "this case," I mean the case 12:35  Page 124  A. No.  20 Why not?  A. I doesn't implement the Web protocols for retrieving information across a network. It is a hypermedia browser.  A. I what time frame?  Q. Pad when you say retrieve from a server, do 12:37  A. That's true.  Page 125  Q. And when you say retrieve from a server, do 12:38  MS_DOAN: Objection; form.  12:36  Q. And when you say retrieve from a server, do 12:37  A. That's true.  Page 124  A. That's true.  Page 125  A. That's true.  MS_DOAN: Objection; form.  12:36  A. That's true.  A. This web browser form by the frame, what would you dere with it in the limited time where added the provided in the web browser is many the frame, what would you dere with it in the limited time where and or most of the commoning 12:35  DA I doesn't implement the Web protocols for retrieving information across a network. It is a hypermedia browser.  A. I what time frame?  Q. Pad when you say retrieve from a server, do 12:38  MS_DOAN: W				
You can answer.  THE WITNESS: I.— I have read this in a — 12:34  in the limited time I have here. Nothing jumped out at me. That doesn't mean it's completely inaccurate of all of the web browsers or most of the commonly 12:35  at me. That doesn't mean it's completely inaccurate of all of the web browsers or most of the commonly 12:35  at me. That doesn't mean it's completely inaccurate of all of the web browsers or most of the commonly 12:35  BY MR. BUDWIN:  Q. Sitting here today and having reviewed the 12:34  document, read the document in Exhibit 15. can you point out any inaccuracies to me that you see based upon you recollection?  MS. DOAN: Objection; form.  THE WITNESS: Nothing specific. 12:35  BY MR. BUDWIN:  Q. Okay. All right. You can set that document aside.  A. No. 12:36  A. No. 12:36  Q. Why not?  A. It doesn't implement the Web protocols for retrieving information across a network. It is a hypermedia browser. 12:36  Q. Umby not?  A. In what time frame?  Q. 1993 to 1994.  A. In what time frame?  Q. 1993 to 1994.  A. In what time frame?  Q. 1993 to 1994.  A. In what time frame?  Q. 1993 to 1994.  A. In what time frame?  Q. 1993 to 1994.  A. In what time frame?  Q. 1993 to 1994.  A. In what time frame?  Q. 1993 to 1994.  A. In what time frame?  Q. 1993 to 1994.  A. In which in the simplist case would be the 12:37  ability to retrieve a document from a web server and support the formatting of that document. A web browser would also be able to access other protocols, such as WAIS or Gopher, FTP.  Reporter clarification 192:37  BY MR. BUDWIN:  C. Prior to your involvement in this case, had 12:36  Q. A. Yes.  Q. A. Yes.  Q. And when you say retrieve from a server, do 12:37  A. That's true.  MS. DOAN: Objection; form.  THE WITNESS: Yes.  A. That's true.  MS. DOAN: Objection; form.  THE WITNESS: Yes.  12:36  Q. So in 1993 to 1994, would you agree with me that one of the salient characteristics of a web browser form a server using protocols like HTTP.  MS. DOAN: Objection; form.  THE WITNESS: Yes.  MS. DOAN:		6		· •
THE WITNESS: 1 – I have read this in a – 12:34  in the limited time have here. Nothing jumped out at me. That doesn't mean it's completely inaccurate the time of that of them. That doesn't mean it's completely inaccurate to the I would agree with it in all cases.  7 Or that I would agree with it in all cases.  8 W. R. BUDWIN:  9 Or Sitting here today and having reviewed the 12:34 document, read the document in Exhibit 15, can you point out any inaccuracies to me that you see based upon your recollection?  10 M.S. DOAN: Objection; form.  11 Defended the With I seed to the Web THE WITNESS: Nothing specific.  12 BY MR. BUDWIN:  12 Or HE WITNESS: Nothing specific.  13 Or HE WITNESS: Nothing specific.  14 BY MR. BUDWIN:  15 Or HE WITNESS: Nothing specific.  16 Or Why nor:  17 Or With With With With With With With With			1	
12 at me. That doesn't mean it's completely inaccurate 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 document, read the document in Exhibit 15, can you point out any inaccuracies to me that you see based upon your recollection? 17 point out any inaccuracies to me that you see based upon your recollection? 18 upon your recollection? 19 MS. DOAN: Objection; form. 19 WS. DOAN: Objection; form. 20 THE WITNESS: Nothing specific. 12:35 22			'	• • •
at me. That doesn't mean it's completely inaccurate or that I would agree with it in all cases.  13 or that I would agree with it in all cases.  14 BYMR, BUDWIN:  15 Q. Sitting here today and having reviewed the 12:34 document, read the document in Exhibit 15 can you point out any inaccuracies to me that you see based upon your recollection?  18 upon your recollection?  19 MS, DOAN: Objection; form.  20 THE WITNESS: Nothing specific. 12:35 document aside.  21 BYMR, BUDWIN:  22 Q. Okay, All right. You can set that document aside.  23 A. No. 12:36 and I mean by "this case," I mean the case 12:35 case, and I mean by "this case," I mean the case 12:35 and I mean by "this case," I mean the case 12:35 and I mean by "this case," I mean the would be that it me frame.  24 A. No. 12:36 and I mean by "this case," I mean the case 12:35 and I mean by "this case," I mean			1	· · · · · · · · · · · · · · · · · · ·
or that I would agree with it in all cases.  13			1	
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. 19 BY MR. BUDWIN: 20 THE WITNESS: Nothing specific. 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 26 Q. Why not? 27 Q. Why not? 28 A. It doesn't implement the Web protocols for 29 retrieving information across a network. It is a 29 hypermedia browser. 20 Q. In the 1993 to 1994 time frame, what would 21 support the formatting of that document. A web 22 a browser would also be able to access other 29 Q. 1993 to 1994. 20 A. It hink in the simplist case would be tha It would retrieve a document from a web server and ability to retrieve a document from a server to surge protocols, such as WAIS or Gopher, FTP. 20 G. When you say support the formatting of the document; 12:37 21 is that right? 22 A. That's correct. 23 G. When you say support the formatting of the document; 12:37 31 G. THE WITNESS: Yes. 32 A. Yes. 33 A. No. 34 Q. Have you used HyperCard? 35 A. Yes. 36 Q. Is HyperCard a web browser? 37 J. Q. And when you say retrieve from a server, do 12:37 38 J. Q. And when you say retrieve from a server, do 12:37 39 John the 1993 to 1994 time frame, what would support the formatting of the document. A web browser is that it would you agree with me that one of the salient characteristics of a web browser from 1993 to 1994 39 John the 1994 time frame. 30 John the 1994 time frame? 31 John the 1994 time frame? 32 John the 1994 time frame? 33 John the 1994 time frame? 44 La Hubert A. No. 45 John the 1995 or 1994, would you agree with me that one of the salient characteristics of a web browser is that it would retrieve a document from a web server and a support the formatting of the document; 12:37 46 John the 1993 to 1994 time frame. 47 John the 1993 to 1994 ti		- · ·	1	
15 Q. Sitting here today and having reviewed the 12:34 document, read the document in Exhibit 15, can you point of any inaccuracies to me that you see based upon your recollection?  18 upon your recollection?  19 MS. DOAN: Objection; form.  19 MS. DOAN: Objection; form.  10 MS. DOAN: Objection; form.  11 WINNES: Yes.  11 MS. DOAN: Objection; form.  12:35 DY MR. BUDWIN:  22 Q. Way. All right. You can set that case and I mean by "this case," I mean the case are, and I mean by "this case," I mean the case are, and I mean by "this case," I mean the case are, and I mean by "this case," I mean the case are are trieving information across a network. It is a hypermedia browser. 12:36 Dy our definition of a web browser be?  24 A. In think in the simplist case would be the 12:37 ability to retrieve a document from a web server and subport the formatting of the characteristics of a web browser from 1993 to 1994 are trieving in support the formatting of the characteristics of a web browser in 193 to 1994 to 1994. Would be that it would be		<del>-</del>	1	
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18 Upon your recollection? 19 MS. DOAN: Objection; form. 19 THE WITNESS: Yes. 19 BY MR. BUDWIN: 20 THE WITNESS: Nothing specific. 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 26 Page 124 27 A. Yes. 28 Q. Have you used HyperCard? 29 A. Yes. 20 Q. Is HyperCard a web browser? 21 L2:36 29 Q. Is HyperCard a web browser? 20 Q. In the properties of the protocols for retrieving information across a network. It is a hypermedia browser. 29 Q. In the 1993 to 1994 time frame, what would your definition of a web browser be? 30 A. It what time frame? 31 A. I what time frame? 41 Q. In the 1993 to 1994 time frame, what would your definition of a web browser be? 42 A. I think in the simplist case would be the 12:37 43 A. I think in the simplist case would be the 12:37 44 ability to retrieve a document from a web server and support the formatting of that document. A web browser would also be able to access other shower from 193 to 1994 time of the document; 12:37 4 Developed the formatting of the document; 12:37 5 Developed the formatting of the document; 12:37 5 Developed the formatting of the formatting of the formatting of the formatting of the document; 12:37 5 Developed the formatting of the document; 12:37 5 Developed the formatting of the formatting of the formatting of the formatting o		•	1	
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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  26 Page 124  1 A. No. 12:36  2 Q. Why not? 3 A. It doesn't implement the Web protocols for retrieving information across a network. It is a hypermedia browser. 4 retrieving information across a network. It is a hypermedia browser. 4 page 12:36  6 Q. In the 1993 to 1994 time frame, what would your definition of a web browser be? 8 A. In what time frame? 9 Q. 1993 to 1994. 1 ability to retrieve a document from a web server and 12 support the formatting of that document. A web 12 support the formatting of that document. A web 15 browser would also be able to access other 15 few forces of a web browser would also be able to access other 16 few forces of the characteristics of a web browser from 1993 to 1994 would be that it would retrieve a document from a server and support the formatting of the document; 12:37 to server and support the formatting of the document; 12:37 to server and support the formatting of the document; 12:37 to server and support the formatting of the document; 12:37 to server and support the formatting of the document; 12:37 to server and support the formatting of the document; 12:37 to server and support the formatting of the document; 12:37 to server and support the formatting of the document; 12:37 to server and support the formatting of the document; 12:37 to server and support the formatting of the document; 12:37 to server and support the formatting of the document; 12:37 to server and support the formatting of the document; 12:37 to server and support the formatting of the document; 12:37 to server and support the formatting of the document; 12:37 to server and support the formatting of the document; 12:37 to server and support the formatting of the document; 12:37 to server and support the formatting of the document; 12:38 to shall be a server and support the formatting of the document; 12:37 to shall be a ser			1	
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24 document, do you mean text formats like HTML?  24 MS. DOAN: We reserve our questions to the				
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	25	A. Yes. 12:37	25	time of trial, Amazon and Yahoo! do. 12:59

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1	MR. STROY: As do Google and YouTube. 12:59	1	JURAT
2	MR. BUDWIN: Thank you.	2	
3	THE VIDEOGRAPHER: This marks the end of	3	I, Dale Dougherty, do hereby certify under
4	Disk 2 and will conclude the deposition for today.	4	penalty of perjury that I have read the foregoing
5	All disks will be held by TSG. We're off the 12:59	5	transcript of my deposition taken on December 16, 2011;
6	record. The time is 12:59.	6	that I have made such corrections as appear noted
7	(Time noted: 12:59 p m.)	7	herein in ink, initialed by me; that my testimony as
8		8	contained herein, as corrected, is true and correct.
9		9	
10		10	DATED this day of, 2011,
11		11	at
12		12	
13		13	
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18		18	SIGNATURE OF WITNESS
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1	IN THE MATTER OF: Eolas v Adobe Systems, et al.	1	STATE OF CALIFORNIA )
2 3	DATE: December 16, 2011 WITNESS: Dale Dougherty	2	:SS
4	Reason codes:	3	COUNTY OF SAN MATEO )
5	1. To clarify the record.	4	I, CYNTHIA MANNING, a Certified Shorthand
6	2. To conform to the facts.  3. To correct transcription errors	5	Reporter of the State of California, do hereby
7	3. To correct transcription errors.	6	certify:
	Page Line Reason	7	That the foregoing proceedings were taken
8	Evam	8	before me at the time and place herein set forth;
9	From to	9	that any witnesses in the foregoing proceedings,
10	Page Line Reason	10	prior to testifying, were placed under oath; that a
11	From to	11	verbatim record of the proceedings was made by me
12	Page Line Reason	12	using machine shorthand which was thereafter
13	rugo Line neuson	13	transcribed under my direction; further, that the
ļ.,	From to	14	foregoing is an accurate transcription thereof.
14 15	Page Line Reason	15	I further certify that I am neither
16	From to	16	financially interested in the action, nor a relative
17		17	or employee of any attorney of any of the parties.
18	Page Line Reason	18	IN WITNESS WITEDEAL II II II II
10	From to	19	IN WITNESS WHEREOF, I have subscribed my
19		20	name this 21st day of December, 2011.
20 21	Page Line Reason	21	
21	From to	22	CVNTHA MANNING COD N. 7645 CCDD CLD
23		23 24	CYNTHIA MANNING, CSR No. 7645, CCRR, CLR
24	DALE P. DOUGHERTY	1	
25		25	

1	21 ΓΧ re; 31
2	21 ΓΧ re; 31
3   DEPOSITION OF DALE P. DOUGHERTY   4   4   5   EXAMINATION   PAGE   5   Exhibit 1   Plaintiff Notice of Subpoend   6   BY MR. BUDWIN   6   6   Of Dale Dougherty   7   7   8   PORTIONS MARKED BY COUNSEL   8   Exhibit 2   Letter dated 8/16/11; Bates   9   Nos. Dougherty-EolasTX   10   0000000001 - Dougherty-EolasTX   11   00000000001 - Dougherty-Eolas   12   00000000002   12   INSTRUCTED NOT TO ANSWER   12   13   Exhibit 3   WC3 Results of Questionna   14   Page 102, line 13   14   Bates Nos. MIT Response to   15   EOLAS Subp. 0324 - MIT Response to   16   EOLAS Subp. 0325   17   17   17   17   17   17   17   1	21 ΓΧ re; 31
4	21 ΓΧ re; 31
6 BY MR. BUDWIN 6 6 6 Of Dale Dougherty 7 8 PORTIONS MARKED BY COUNSEL 9 NONE 9 Nos. Dougherty-EolasTX 10 0000000001 - Dougherty-Eolas 11 QUESTIONS WITNESS 11 00000000002 12 INSTRUCTED NOT TO ANSWER 12 Page 24, line 13 14 Page 102, line 13 15 Exhibit 3 WC3 Results of Questionna 16 Bates Nos. MIT Response to 17 EOLAS Subp. 0324 - MIT Response to 18 EOLAS Subp. 0325 19 Dougherty 19 Nos. Dougherty-Eolas 10 0000000001 - Dougherty-Eolas 11 00000000002 12 Exhibit 3 WC3 Results of Questionna 14 Bates Nos. MIT Response to 15 EOLAS Subp. 0324 - MIT Response to 16 To EOLAS Subp. 0325	21 TX re; 31
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9         NONE         9         Nos. Dougherty-EolasTX           10         ***         10         0000000001 - Dougherty-Eolas           11         QUESTIONS WITNESS         11         0000000002           12         INSTRUCTED NOT TO ANSWER         12           13         Page 24, line 13         13         Exhibit 3         WC3 Results of Questionna           14         Page 102, line 13         14         Bates Nos. MIT Response to           15         EOLAS Subp. 0324 - MIT Response to         16         to EOLAS Subp. 0325           17         17         17	ГХ re; 31
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16 to EOLAS Subp. 0325 17	oonse
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19 Repository of Prior Art for	40
19 Repository of Prior Art for 20 The Web," dated 3/3/00	
21 (No production numbers)	
22 (No production numbers)	
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