UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

ANASCAPE, LTD.	DOCKET 9:06CV158
VS.	MAY 5, 2008
MICROSOFT CORP., ET AL	10:36 A.M.
	LUFKIN, TEXAS

VOLUME 1 OF __, PAGES 1 THROUGH 198

REPORTER'S TRANSCRIPT OF JURY TRIAL

BEFORE THE HON. RON CLARK
UNITED STATES DISTRICT JUDGE, AND A JURY

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PROCEEDINGS REPORTED USING COMPUTERIZED STENOTYPE;
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(OPEN COURT, ALL PARTIES PRESENT, PROSPECTIVE JURORS NOT PRESENT)

THE COURT: Good morning, ladies and gentlemen. I'm Ron Clark, United States District Judge. Welcome to your courthouse in Lufkin.

This morning we're starting the voir dire in a case to be tried this week and going into next week. It's a patent case. And this part of the trial, the voir dire, is an opportunity for me to ask you some questions and then for the lawyers to ask you some questions to determine who will sit on the jury.

Now, we're not trying to pry into your private life; but we need you to give very honest answers. If you're wondering whether a question applies to you, if you'll just raise your hand, we'll find out. If there is some question you really don't want to answer in front of the entire panel, if you'll raise your hand and let me know, then at the end of the questioning, I'll call you up and we'll question you separately here just in front of the lawyers.

To start off with the case, we're going to ask each of you to give some answers to some basic

information. It's these questions up here on the screen. They're also on that board there. So, I would ask that you one at a time -- the court security officer will hand Juror Number 1 a microphone, and if you'll just go ahead and read off the answers. You don't have to read out the question, but if you'll just go ahead and read off the answers to the questions. We'll start with -- go ahead, sir.

PROSPECTIVE JUROR: My name is Shawn Lucena. I live in Nacogdoches, Texas. I'm a middle school teacher for the Nacogdoches ISD. This is my first year to teach. My spouse's name is Robin. She's an LPC at the Rusk State hospital. She works for UTMB. She's worked there for three years, and I have never served on a jury before.

THE COURT: Thank you.

PROSPECTIVE JUROR: Linda Woods, Livingston, Texas, teacher, Cleveland Independent School District, 29 years of service there.

THE COURT: What grade, ma'am?

PROSPECTIVE JUROR: Kindergartners.

My husband is Bennie Woods. He works for Wal-Mart, mid management. He's been there 17 years. My prior jury service was criminal court in Livingston.

THE COURT: Did they reach a verdict, ma'am?

PROSPECTIVE JUROR: Yes.

THE COURT: Thank you. Will you just hand it down to the next person?

PROSPECTIVE JUROR: Rachel Copes, Lufkin. Art student at Angelina College. I don't know who the headmaster is there. I'm currently unemployed and unmarried, and this is my first time.

PROSPECTIVE JUROR: Brett Luna, Lufkin. I'm an office manager for Lawn Appeal, LLC. I've worked there a little bit over a year now. No spouse. And I have never served on a jury before.

THE COURT: Thank you.

PROSPECTIVE JUROR: Lois Berry from Nacogdoches, Texas. I'm a house mother. And my husband is deceased. No, I haven't served on a jury before.

THE COURT: Thank you, ma'am.

PROSPECTIVE JUROR: My name is Terry Harshbarger. I'm self-employed, Terry's Marine. I've owned the business for 12 years. My wife's name is Paula Harshbarger. She's a schoolteacher with Nacogdoches ISD. She's worked there 18 years. And I have served on traffic court.

THE COURT: Thank you, sir.

PROSPECTIVE JUROR: My name is James Woods. I work with the City of Lufkin, Regional Recycling

Center, floor supervisor. I've worked there six years. My spouse's name is Mary Woods. Her occupation is a beautician. She's been there four years. And served on a jury one time, criminal.

THE COURT: Did they reach a verdict, sir?

PROSPECTIVE JUROR: Yes.

THE COURT: Thank you.

PROSPECTIVE JUROR: My name is Kevin Williams. I'm self-employed. I drive a log truck. My spouse works at Southland Health Care, been there about 20 years. I've never been on a jury.

THE COURT: Thank you, sir.

PROSPECTIVE JUROR: My name is Susan Luce. I live in Lufkin. My occupation is I am a designer for Lufkin Industries. I've worked there three years. My husband's name is Stacy Luce. He's a resident assistant at the Lufkin State school, and he's worked there 12 years. I've never been on a jury.

THE COURT: Thank you.

PROSPECTIVE JUROR: I'm Bruce Reynolds, Huntington, Texas. I'm retired from Chevron after about 29 years. My wife, Janet Reynolds, housewife. I've been called many times for jury selection but have never had the honor.

THE COURT: Thank you.

PROSPECTIVE JUROR: My name is Robert Fiscus. I'm from Hemphill, Texas. I'm self-employed, Moose's Marine, just like the animal. I've been there for 20 years. My wife's name is Pam. Her occupation is a secretary at the business. She's been there for 20 years. And, no, I've never served on a jury.

THE COURT: Thank you.

PROSPECTIVE JUROR: My name is Beatrice Clack. I'm a professor at Stephen F. Austin State University. I've been there for 11 years. My husband is Johnny Clack. He's self-employed, builds street rods and -- for the last 11 years. And I've had one jury service prior, criminal; and there was a verdict.

THE COURT: What do you teach, ma'am?

PROSPECTIVE JUROR: I'm an associate professor in biotechnology.

THE COURT: Thank you.

PROSPECTIVE JUROR: I'm Selina Luman from Nacogdoches, Texas. I'm a distribution supervisor for Coca-Cola enterprises. I'm not married. I have worked for Coca-Cola for 26 years. I've had, I think, three prior jury services, two civil and one criminal.

THE COURT: Did they reach verdicts, ma'am?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: I'm sorry, ma'am. You need to

speak up so the court reporter can hear you.

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Okay. Ladies and gentlemen, throughout this and later on when you're being asked questions, each time you get ready to speak, I'm going to ask that you stand and state your name and speak into the microphone because the court reporter is trying to take down everything and I don't want a record that says "Unknown person mumbled something." We need it to say something that we can look at later on.

Yes, sir. Next.

PROSPECTIVE JUROR: Michael Albritton, San Augustine. My occupation, truck driver. Employer is PennEnergy. I've worked there about nearly four years now, and my spouse is Sandra Albritton. She works at Brookshire Brothers in San Augustine.

THE COURT: All right, sir. Have you ever been on a jury?

PROSPECTIVE JUROR: No, sir.

THE COURT: Thank you, sir.

PROSPECTIVE JUROR: I'm Clementine Lathan. Occupation is Wal-Mart -- occupation is salesclerk. Employer is Wal-Mart. I've been there 19 years. My husband is retired. I've never served on a jury before.

THE COURT: Thank you, ma'am.

PROSPECTIVE JUROR: My name is Mary Anna Burton. I live in Nacogdoches, Texas. I've worked at SFA for 34 years. I'm manager of information technology. I'm single, and I have served on three criminal cases in which we did find a verdict.

THE COURT: Thank you, ma'am.

PROSPECTIVE JUROR: My name is David Gaston from Livingston. I'm a contractor for Lowe's. I've worked there for three years. My wife's name is Maria Gaston. She's a beautician. I've had one prior jury service. It was a criminal trial in Livingston, and they did reach a verdict.

THE COURT: Thank you, sir.

PROSPECTIVE JUROR: My name is Sarah Perkins. I'm from Livingston. I'm court clerk in Polk County. My husband's name is Clifton Perkins. He works for BJ's Services. I've never been on a jury before.

THE COURT: Thank you, ma'am.

PROSPECTIVE JUROR: I'm Betty Flannery, and I work at -- I'm from Livingston, Texas; and I work for the UTMB prison system staff. I'm a med tech. I've been there seven years. My spouse is retired. His name is Wayne Flannery. And I have served on jury duties, both criminal and civil; and both of them --

THE COURT: They did reach a verdict, ma'am?

PROSPECTIVE JUROR: Yes, they did.

THE COURT: Thank you.

PROSPECTIVE JUROR: My name is Jo Ann McGough. I work at the Valero station in Huntington, Texas. I've been there five years. My husband is semiretired and works as a night watchman for Fleetwood Transportation. He's been there 12 years. And I've never served on a jury.

THE COURT: Thank you, ma'am.

PROSPECTIVE JUROR: I'm Paul Hughes from Nacogdoches, Texas. I'm a laboratory director for Eastex Environmental. I've been there 18 years. My wife is deceased. And I've been on one jury, but it was settled before we reconvened.

THE COURT: Thank you, sir.

PROSPECTIVE JUROR: My name is Kay Smith. I'm from Trinity, Texas. I'm an elementary librarian for Trinity ISD. I've been there 22 years. My spouse's name is Neal Smith. He works for TDCJ. He's a field sergeant at the Eastham Unit. He's been there 28 years. And I have served on two civil cases before, and we did reach a verdict.

THE COURT: Thank you, ma'am.

PROSPECTIVE JUROR: My name is Charlotte Morris. I live in Diboll, Texas, work for Diboll school

district, been there 20 years as administrator of the family literacy program. I have no spouse. I have served on jury duties, both criminal and civil; and we did reach verdicts.

THE COURT: Thank you, ma'am.

PROSPECTIVE JUROR: My name is Tim Latimer. I live in Joaquin, Texas. I'm self-employed. I work on a farm, worked there about eight years. I'm not married, and I've never served on a jury.

THE COURT: Thank you, sir.

PROSPECTIVE JUROR: My name is Paula Scroggins. I'm from Chireno, Texas. I work at the city -- Chireno Natural Gas. I've been there for about two years. My husband is self-employed as a truck driver, and he's worked there about two years. And I've never served on a jury.

THE COURT: Thank you, ma'am.

PROSPECTIVE JUROR: James Jones, Livingston, self-employed, Harrison Body Shop, about 18 years. Wife's name is Gina. She's a diagnostician for Shepherd ISD, about five years. And I was on a Grand Jury.

THE COURT: Thank you, sir.

PROSPECTIVE JUROR: My name is Doris Lee. I live at Apple Springs. I work for the Big Tin Barn here in Lufkin. My husband is disabled. I've never served

on a jury.

THE COURT: Thank you, ma'am.

PROSPECTIVE JUROR: Mike Cross. I work at Hexion Specialty Chemicals, chemical operator, 23 years. Single. And never done a jury.

THE COURT: Thank you, sir.

PROSPECTIVE JUROR: Rick Shatwell. I live in Nacogdoches, Texas. I work at the Burke Center as a social worker here in Lufkin. I've been there 14 years. My wife, her name is Rebecca Shatwell. Her occupation is a schoolteacher in math; however, right now she -- is a stay-at-home mother. And I've served on a criminal jury before, and we did reach a verdict.

THE COURT: Thank you, sir.

PROSPECTIVE JUROR: James Williams, Livingston, Texas. I'm currently retired. My wife's retired. She was a teacher. I worked in the oil industry. I have served on juries before, one of each. One of them was a hung jury, and the other one reached a decision.

THE COURT: Thank you, sir.

PROSPECTIVE JUROR: My name is Terry Richardson. I'm retired now, but I worked for Halliburton International for 24 years. And my wife, Linda Richardson, was a fourth grade teacher at Christ

Episcopal School. And I've been on both civil and criminal juries, and they reached a verdict in both of them.

THE COURT: What did you do for Halliburton, sir?

PROSPECTIVE JUROR: I was a multiservice operator, tester.

THE COURT: Thank you, sir.

What happened to Mr. Baker? Oh, there we go.

PROSPECTIVE JUROR: My name is Richard Baker. I've worked for the Texas Forest Service 20 years almost. I'm not married. I've been on civil and criminal cases, and they reached a verdict.

THE COURT: Thank you, sir.

PROSPECTIVE JUROR: My name is John Rhodes. I'm retired from Owens Illinois after 24 years of service as accounting supervisor, financial analyst. Spouse name is Carmelita. She is retired from the Central Independent School District. She worked there -- that was her last employment. She worked there for about five years. I served on a civil jury some 45 years ago. And that's all.

THE COURT: Thank you, sir.

PROSPECTIVE JUROR: Queen Preston, and I'm a retired educator for the Houston Independent School

District of 37 years. My spouse is Ray. He's retired, and he worked at Robinson Iron & Metal for about 30 years. And I have served on both criminal and civil juries, and verdicts were reached for both.

THE COURT: Thank you.

All right. Ladies and gentlemen, this is a patent case; and we have a company that is bringing -- called "Anascape" -- bringing a suit against a company called "Nintendo." Many of you probably have not heard of Anascape. You probably have heard of Nintendo. And it involves the game controllers that are used in video games.

At this time I'm going to ask counsel for Anascape to stand, introduce himself and the other attorneys and representatives at the table.

MR. CAWLEY: Thank you, your Honor. Ladies and gentlemen, my name is Douglas Cawley; and I am here today, as you just heard, for Brad Armstrong, the man at the end of the table here (indicating), who is the major owner of the company. The name of the company, which is located in Tyler, Texas, is "Anascape."

THE COURT: All right. Let me start off first. Does anybody know of the Anascape company or own stock in it or ever worked for it -- you or a close family member? For example, you know, when I say "close

family member," that's your spouse, your child, your stepchild, your parent, your stepparent, in other words, some relative that you regard as close. And I'll use that phrase many times, "a family member." Anybody here know of yourself or a family member that has worked for this company, been involved with this company, maybe does contracting work for this company? Maybe you do the landscaping for their building or you provided any kind of services. In other words, any relationship with this company or with Mr. Armstrong. Anybody on the jury panel recognize that?

Or, for that matter, does anybody here recognize -- well, first of all, why don't you go ahead and introduce your firm, sir; and then I'll ask that question.

MR. CAWLEY: Thank you, your Honor.

Ladies and gentlemen, I'm with a firm from Dallas; and the name of it is "McKool Smith." This is Mr. Anthony Garza. He works with me at that firm, McKool Smith in Dallas.

THE COURT: And is anybody else from McKool here?

MR. CAWLEY: No, your Honor.

THE COURT: Okay. Anybody recognize that firm? For example, either you or you know a close

family member has used that firm as your attorney or been involved or recognize either of these two gentlemen, either of these two attorneys?

All right. Go ahead, sir.

MR. CAWLEY: Thank you.

Then the two other gentlemen at the table, this is Mr. Robert Parker. He is with a law firm in Tyler; and the name of that firm is "Parker, Bunt & Ainsworth."

THE COURT: Anybody recognize Mr. Parker or, for that matter, the law firm or you know that you or a close family member has used that firm?

All right. Go ahead. Anybody else?

MR. CAWLEY: And, finally, we have Mr. Claude Welch. Mr. Welch is a lawyer here in Lufkin.

THE COURT: And anybody recognize Mr. Welch, here in Lufkin?

All right. Years ago I believe he served as a county judge. Anybody recognize him or you know that yourself or a close family member -- all right.

Any of your corporate representatives here? Well, just Mr. Armstrong. Okay.

MR. CAWLEY: Yes. Mr. Armstrong is the corporate representative in this case.

THE COURT: All right. Very good. Thank

you.

MR. CAWLEY: Thank you.

THE COURT: All right. Then the defendant in this case is the Nintendo company; and, counsel, if someone will go ahead and introduce -- go ahead. Mr. Germer.

MR. GERMER: Thank you, your Honor.

My name is Larry Germer. I'm with the firm of Germer and Gertz in Beaumont. Others on the team are Bob Gunther. He's an attorney from New York, with the firm of Wilmer Hale. He's represented Nintendo for many years.

Joe Presta, who is an attorney from Virginia with Wilmer [sic] Vanderhye.

THE COURT: Okay. Hold up just one second. Anybody recognize Mr. Germer or you know or remember that you or a close family member has ever used the Germer Gertz firm in Beaumont as counsel? Anybody recognize that? It's unlikely that anybody here or your family members have been using law firms from either New York or Virginia, but anybody recognize either of those gentlemen or recognize their firms?

Go ahead, Mr. Germer.

MR. GERMER: I do want to introduce, also, Kam Henderson, who is one of the most important people

on our team because she's going to make, we hope, all of this technology work.

THE COURT: Anybody recognize Ms. Henderson?

All right. Go ahead, Mr. Germer.

MR. GERMER: She grew up in Houston, but is actually in California now.

We also have with us Jacqualee Story, who is a representative of Nintendo. She is an executive vice-president of Nintendo of America.

THE COURT: Anybody recognize Ms. Story?

Go ahead.

MR. GERMER: And Rich Medway, who is an attorney with...

THE COURT: Anybody recognize him?

MR. GERMER: Thank you.

THE COURT: Anybody here have any -- I'll ask the same questions -- any business relationships, that you know that you or a close family member has been employed now or in the past by Nintendo, owns stock in Nintendo, have any kind of ownership interest, financial interest, contracting interest, your company does work with them or for them, anything like that?

Has anybody here ever been involved in the designing of computer games, video games, or the controllers for those games? Anybody here or a close

family member, for that matter, been involved in the design of video games or design of controllers for video games or the equipment that is used with video games? Or anybody here been involved in the sale? For example, maybe you worked at, say, a Best Buy or a Circuit City or something like that where you sold these games or were involved in that way.

Or you or a close family member or one of your children has been going to national championships in these games; so, you've gotten real familiar with these kinds of devices and games in that way.

In other words, anybody here have some out-of-the-ordinary familiarity with video games, video game technology, controllers, anything like that?

Is there anybody here who is involved in an -- or a close family member that you know of is involved in an organization the purpose of which or one of the goals of which is to limit lawsuits or cut back on lawsuits, for example, an organization called "Texans for Lawsuit Reform" or, I believe, the "Texas Civil Justice League." Both of them are involved in trying to make sure there is legislation to try to limit lawsuits of various kinds. Anybody here involved in anything like that -- or a close family member?

And on the other hand, is there anybody here,

or a close family member, who is involved in an organization that part of their business is bringing lawsuits? For example, you are an officer or a high-ranking member of a union and sometimes you have to bring lawsuits to protect your members or the NAACP or the American Civil Liberties Union. There are various organizations that that's just part of what they do. Anybody involved in something like that?

Anybody here on the jury panel -- have any of you ever been a plaintiff in a lawsuit, you or a close family member brought a lawsuit against somebody? For example, you were involved in a car accident and you had to bring a lawsuit against somebody or you were a defendant; someone sued you in a case?

All right. Starting over here on the first row. And I believe Ms. Copes?

PROSPECTIVE JUROR: Yes. My name is Rachel, and my mother slipped and fell in Brookshire Brothers.

THE COURT: Okay. How long ago was that, ma'am?

PROSPECTIVE JUROR: A really long time ago, like 12 years at least.

THE COURT: Was it finally resolved?

PROSPECTIVE JUROR: It was resolved.

THE COURT: All right. Anything about that

that would make it difficult for you to be a fair juror in this kind of case? It's not involving a slip and fall. It's involving patent law. But anything about that, for example, that -- I mean, you decided you didn't like plaintiff lawyers, didn't like defense attorneys, didn't like courts at all? Anything like that that would make it difficult for you to be a fair juror?

PROSPECTIVE JUROR: No, sir.

THE COURT: Thank you, ma'am.

Anybody else here on the right side either been a defendant in a lawsuit or your company, if you own a company, has been sued or you have a plaintiff, you or a close family member has brought a suit or your company has brought a suit against somebody for something you were involved in?

All right. Over here on the right.

PROSPECTIVE JUROR: Yes, your Honor. It's Bruce Reynolds, and I've got -- my son-in-law has brought suit against somebody for terroristic threat, civil court in Dallas.

THE COURT: Okay. And is that pending now?

PROSPECTIVE JUROR: It is pending now, yes.

THE COURT: Anything about that -- again, that's got nothing to do with patent law, obviously.

But is there anything about that that has colored your perception about people who bring suits, people who defend suits? Anything that might make it unfair for you to sit as a juror in this kind of a case?

PROSPECTIVE JUROR: No, sir, I don't think it is.

THE COURT: All right. Thank you, sir.

PROSPECTIVE JUROR: Also, I would mention, though, that my daughter is a lawyer; and my son-in-law is soon to be a lawyer. My daughter does defense product liability.

THE COURT: Okay. Anything about that that you've talked to her about that might make it difficult for you to be fair? In this case it's not a products liability where someone is suing because they were injured over a product. It's two companies disputing who has the right to make, use, or sell a product. So, anything about that that you've heard from either of your children that -- or --

PROSPECTIVE JUROR: No, your Honor, there's not.

THE COURT: Okay. And when I say -- I mentioned if you're involved in an organization or a group that is involved in bringing lawsuits. Obviously -- and I should have said that -- you or a

close family member ever worked for a law firm or been an investigator for a law firm or a paralegal for a law firm or something like that. So, add that in there, also.

Go ahead. And I think there's -- I'm sorry -- another one. Okay. Right behind you, I think somebody raised their hand.

PROSPECTIVE JUROR: Like I said before --

THE COURT: State your name first, please.

PROSPECTIVE JUROR: Sarah Perkins.

THE COURT: Okay, ma'am.

PROSPECTIVE JUROR: And I'm a court clerk; so, I oversee a lot of what goes on --

THE COURT: You see a lot of suits.

PROSPECTIVE JUROR: Yes.

THE COURT: Anything about that one way or the other, you can't stand one more lawsuit or --

PROSPECTIVE JUROR: I'm good.

THE COURT: -- you can't be in a room with a judge and attorneys and things like that?

PROSPECTIVE JUROR: I'm good.

THE COURT: All right. Thank you, ma'am.

Anyone else there on the right side have a response to any of those questions?

Okay. Then we have over here on the left

side, I know.

PROSPECTIVE JUROR: My name is John Rhodes. About 46 years ago my wife was involved in a multicar pileup in Houston. The case was resolved.

I have a daughter who works for a local attorney.

THE COURT: Who is that, sir?

PROSPECTIVE JUROR: Clayton Dark.

THE COURT: Okay. What does she do there?

PROSPECTIVE JUROR: She trained as a paralegal.

THE COURT: Anything about either of those situations, either with your wife or your daughter, that would cause you a problem, you think, being fair in this kind of case with the people involved here?

PROSPECTIVE JUROR: No.

THE COURT: All right. Thank you.

Is there somebody else over there?

Okay. And if somebody has raised their hand and was wondering why I haven't called them, it's because I didn't see your hand. You need to stick it up higher.

Go ahead, sir.

PROSPECTIVE JUROR: James Jones. About four years ago, my aunt sued our family. We finally got all

that reserved [sic]. And, then, my sister is also a district -- assistant D.A. for Polk County.

THE COURT: All right. Anything about either of those -- for example, the fact that you got sued would make it more likely that you would feel more sympathetic to someone being sued or the fact that your sister is a district attorney, you think that anybody in court has to be a criminal or something like that?

PROSPECTIVE JUROR: I don't think so.

THE COURT: All right. You think you can listen to the evidence in this case fairly, put aside any comments you might have heard, and make your decision here?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: All right. Thank you, sir.

Anyone else?

Okay. We now have another one. Yes, please.

PROSPECTIVE JUROR: Yes. Rick Shatwell. I was involved in a snowmobile accident about 20 years ago, and the case was resolved.

THE COURT: All right. Anything about that that would make it difficult for you to serve fairly as a juror? Maybe you have a bias against defendants, for plaintiffs, against judges, anything like that that would make it difficult for you?

PROSPECTIVE JUROR: No.

THE COURT: All right. Thank you, sir.

Anyone else?

All right. Is there anybody here who has ever -- or a close family member who has ever applied for a patent? Okay.

PROSPECTIVE JUROR: Yes. It was on --

THE COURT: If you would first state your name, please.

PROSPECTIVE JUROR: Beatrice Clack.

THE COURT: Okay.

PROSPECTIVE JUROR: It's a technology through the university for overexpression of a vitamin using a bacterium.

THE COURT: All right. And was the patent issued?

PROSPECTIVE JUROR: It's patent pending. The application is in process.

THE COURT: All right. Have you been closely involved with the patent application process itself, or is it the university handling that?

PROSPECTIVE JUROR: Yes, I have -- I'm the inventor and have been working with the drafts and with the law firm through -- on behalf of the university.

THE COURT: All right. Thank you.

Anyone else?

All right. Now, this particular case -- and those of you on the jury will find out. I set some pretty strict time limits, and we actually have a clock running when the lawyers are talking. But it's still going to take some time. And I anticipate that the evidence in this case will probably wrap up on next Wednesday, not this coming Wednesday but a week from Wednesday. I can also tell you that this coming Friday we will not be in court because there is a ceremony for a deceased Federal judge up in Tyler that I have to attend. So, the schedule on this case is going to -- will start today, will go through Thursday. We'll resume on Monday, and I believe the evidence will probably be over on Wednesday. There will be final arguments, and then the jury can take as long as it wants. I mean, the jury might take a day. However long the jury takes, they can take. This is a case with a good deal of evidence; so, you can expect to take some time.

Now, jury service is not convenient; and it's not easy. But the choice we have in this country is either have a system where important decisions are made by juries or we have a system where every important jury [sic] is made by one or two people like myself, judges,

or people up in Congress.

I grew up overseas, and there we had a few Mullahs and Ayatollahs and the Secret Police making decisions. We didn't have juries. And every once in a while, one of the local people would get snatched off the street and disappear. Sometimes they'd come back, and sometimes they didn't. But they didn't get a jury. So, it's important. We could go to a system where I get to make all the decisions in this area, and some other judge makes them somewhere else. I don't think that's the best decision. So, we need the commitment of people, a broad range of people.

Understanding how important this is -- and this is an important case -- and understanding what the schedule is -- I've just laid it out for you -- is there anybody here who feels they simply cannot serve as a juror in this particular case because of some very important scheduling problem?

If you'll raise your hands, I'll go ahead and get your name; and I'll discuss it with you -- go ahead, if you'll hand her the microphone, please.

PROSPECTIVE JUROR: Clem Lathan.

THE COURT: Okay. Thank you, ma'am.

Anybody else? Anyone else have a problem along that line?

Okay. I am now going to allow the attorneys a few minutes to ask you some questions. Since the plaintiff generally has the burden of proof on most of the issues, the plaintiff gets to go first.

Mr. Cawley?

MR. CAWLEY: Thank you, your Honor.

Ladies and gentlemen, again, my name is Douglas Cawley. I don't mean to repeat myself already; but since we started this process, I thought I might tell you that, again, I'm with the firm of McKool Smith in Dallas. I grew up in Arlington, Texas. I'm here today representing Anascape, a company in Tyler. There are no employees of Anascape. It has a handful of owners, but the majority owner is Mr. Brad Armstrong (indicating) who you've already met.

As Judge Clark said, this is the opportunity when I have about ten minutes to ask all of you a few questions. What I'd like to do is to ask all of you together some questions to see if any of you have any responses to them, and then I may go through and ask each of you or a few of you -- I won't have time to ask each of you -- but a few of you individually some questions.

And let me ask in advance that if I pick you out to ask you a question, I hope you won't be offended.

I'm certainly not intending to invade your privacy, but I'm sure you understand that it's very important for Mr. Armstrong and for Anascape to take this opportunity to understand as much about you as possible.

And in the same sense, I hope that if I don't ask you any questions, you won't be offended by that, either; but the time is very short.

So, let me ask all of you, as a group first, if I might. Judge Clark asked you a couple of questions about video games, and you indicated that none of you are involved in designing or making video games. But let me ask by a show of hands: How many of you or your close family members play video games?

Let me ask you a question that may mean something to you if you are one; and if you're not one, you may not know what I'm talking about. Does anyone on this group consider yourself a gamer?

Yes, ma'am.

All right. Let me talk to the gamers in the group.

First of all, Ms. Copes, what system of video games do you use?

PROSPECTIVE JUROR: The Xbox 360 and the Nintendo Wii.

MR. CAWLEY: Okay. Now, what kind of

Nintendo games are you a fan of playing?

PROSPECTIVE JUROR: Link, Prince of Persia --

MR. CAWLEY: Okay.

PROSPECTIVE JUROR: -- any role-playing game.

MR. CAWLEY: Thank you, ma'am. Now, how many of you think what she just said was Greek and you have no idea what she was talking about?

But I want to make sure that I talk to the other gamers just a minute. Can I see the hands again of people who would identify yourself as a gamer?

And that's you, Ms. Burton, back in the corner, way back there. What kind of game systems do you play on?

PROSPECTIVE JUROR: I have an Xbox 360. I play games like Harry Potter, Halo, Mass Effect. I'm also a computer gamer. I play games like --

THE REPORTER: I'm sorry. What was the game you just said, the computer game?

PROSPECTIVE JUROR: Gears of War, Halo 3, Mass Effect, computer games like Descent, Harry Potter, role-playing games.

MR. CAWLEY: Okay. Thank you, ma'am.

Any other gamers that I missed?

Yes. Ms. Luna?

PROSPECTIVE JUROR: We have a PlayStation --

THE COURT: Wait. Could you state your name, please?

PROSPECTIVE JUROR: Brett Luna. Sorry.

We play PlayStation 2, PlayStation 3, Xbox 360. They play the -- I'm not sure what it's called -- Tiger Woods something; of course, Guitar Hero, the MBA games. That's basically it.

MR. CAWLEY: Thank you. Did I miss any gamers?

Now let me ask you this question because there was a number of people who raised your hand that you played video games or someone in your family does but you don't consider yourself a gamer. Would you raise your hand, please, if you have a Nintendo video game system. If you'll just keep your hands raised for just a second. Because we've got some very capable helpers here who are going to note who you are.

Okay. Thank you very much.

You know, this video game business, you may be surprised to learn, if you have an opportunity to sit on this jury, is a very big business. There is more money in video games today than there is in the entire motion picture business. But the thing about video games is that some people love them and some people hate them. We've just seen a few of our fellows who love

them, because they describe themselves as gamers, and a lot of others who have game systems. But I'm sure they won't be offended if I ask some of the rest of you this question: Is there anyone on the jury panel who really feels differently? Is there any one of you who feels that video games are a bad thing and you don't like them?

Okay. Let's turn to something that's sort of related to video games, computers. Computers are everywhere now, it seems like. They're in stores. They're in the courtroom. Some people have them. But computers are kind of one of those things that some people love them, some people hate them, some people have never made up their mind. Could I see the hands of those of you who basically use a computer every day?

Just keep your hand up just for another second or two.

All right. Thank you very much.

Now let me ask about the people on the other end. Is there anyone here who just has never seen a reason to use a computer and you never use computers?

Okay. All right. Thank you very much.

Do any of you know someone -- and I know that Professor Clack has already given some information about this. But do any of the rest of you know someone who

has invented something or maybe you, yourself, has invented something?

Yes, Ms. Perkins.

PROSPECTIVE JUROR: My great uncle was an inventor in the military. He invented the alarm clock, the digital watch, Fido, a heat seeking missile, several things.

MR. CAWLEY: Okay. How long ago was this?

PROSPECTIVE JUROR: He actually passed away over ten years ago.

MR. CAWLEY: I see.

PROSPECTIVE JUROR: And this was in his youth; so, it's been --

MR. CAWLEY: Were you close to him?

PROSPECTIVE JUROR: I was a child. So...

MR. CAWLEY: Okay. Did you talk to him from time to time about the things that he invented?

PROSPECTIVE JUROR: Mostly through my parents and grandparents.

MR. CAWLEY: Were your parents and grandparents proud of that?

PROSPECTIVE JUROR: Yes.

MR. CAWLEY: Okay. Thank you, Ms. Perkins. One of us here says that Professor Clack has not only invented something but applied for a patent. Professor

Clack, why did you do that?

PROSPECTIVE JUROR: Why? It was on behalf of a company that contracted us for the research, and it was intellectual property. It's so that I can publish.

MR. CAWLEY: Did your school hire a patent attorney to get a patent?

PROSPECTIVE JUROR: No. The company that contracted us had their own.

MR. CAWLEY: And are you the only inventor on the patent?

PROSPECTIVE JUROR: I'm a co-inventor.

MR. CAWLEY: Okay. And this is a patent on the overexpression of vitamins using a bacterium?

PROSPECTIVE JUROR: Yeah. The name of the patent is "Methods of Producing Biotin."

MR. CAWLEY: Okay. Very good. How long has that patent been pending?

PROSPECTIVE JUROR: It's about a year in the application, and it was a year prior to that in the black box.

MR. CAWLEY: Did you actually work on the application yourself?

PROSPECTIVE JUROR: Yes.

MR. CAWLEY: I see. So, Professor Clack, do you think that patents are important?

PROSPECTIVE JUROR: Yes.

MR. CAWLEY: Why is that?

PROSPECTIVE JUROR: It provides ownership and the right to be able to use it exclusively or to sell it or do what you want as the inventor.

MR. CAWLEY: Do you think that it's important to -- for our country to reward inventors who have come up with useful inventions like --

PROSPECTIVE JUROR: Yes. It's part of the American dream.

MR. CAWLEY: American dream, yes, ma'am.

Professor Clack has just expressed an opinion about patents. Let me now ask --

THE COURT: Is it all right if Professor Clack sits down?

MR. CAWLEY: Yes, your Honor.

Sorry, professor.

Does anyone disagree with Professor Clack? She's just told us that patents are important, that they're a good thing, that they're part of the American dream. Is there anyone here who believes that patents are not a good thing or we shouldn't have patents, that there are too many of them?

How many of you have worked for companies that have patents or patented products?

That's Mr. Reynolds, who was with Chevron; Mr. Lucena. Are you a teacher, sir?

PROSPECTIVE JUROR: I am now, yes, sir.

MR. CAWLEY: Oh, I see. What company did you work for --

DEPUTY CLERK: Mr. Cawley, your time is up.

PROSPECTIVE JUROR: Shawn Lucena. Back in the mid Nineties, I worked for a jigsaw puzzle company in Hope, Arkansas. We had patents on their products and their machinery.

MR. CAWLEY: Ladies and gentlemen, my time is up. I thank you very much for your attention, and we look forward to the rest of the case.

THE COURT: Mr. Germer.

MR. GERMER: If it please the court.

Ladies and gentlemen, I'm Larry Germer with Germer Gertz in Beaumont. I've practiced law in Beaumont and East Texas since 1966. It's starting to feel like a long time, but I'm sure happy to be here and appreciate y'all being here.

It's my pleasure to represent Nintendo of America in this case. Nintendo is headquartered in Redmond, Washington. As obviously everybody knows, they're a leader in the video game area. This case is going to be about video games and about controllers.

It's going to be about -- so, you're going to find it more interesting than you would a normal patent case, I think. Even those of you who don't do games, like me, you're going to learn some things that will probably surprise you. Particularly the Wii, which is going to be central to this case, is a very unique, interesting, probably the most dramatic development made in the game system; and that's what we're going to be talking about. You're going to get to learn how it works, how they developed it, what it does.

Anascape, as you have heard, is suing Nintendo, claiming that they have a patent on the Wii. It won't surprise you to know that we say that their patent -- and they do have a patent -- doesn't cover what we're doing. We are not infringing, and that will be our position. We also say that the patent that Anascape has is not a valid patent, and we will prove that to you.

Mr. Armstrong, in his patent, came up with an idea that you could have one input member, as it's called, one thing that controls everything. As the gamers out there know and the rest of you, that's not the way the industry went. You have lots of different joysticks and cross-switches and lots of different things. So, despite the fact that that's what he said

he invented, he's now trying to say that he invented something where he had multiple inputs, as we say.

He's doing that. We say he's stretching to try to cover the Wii, and that's what this case will be about.

I've got some questions for you. A lot of this has already been covered. Most of you know something about Nintendo. Are there any of you that for any reason -- now, it could be a good reason or a bad reason. It doesn't make a difference -- but for any reason don't like Nintendo or have had trouble with Nintendo from a game or have some reason to sort of start off this case against Nintendo?

Obviously that's an important question because it wouldn't be fair to the parties to start off if somebody were sitting there, as sometimes happens, saying, you know, they really got to me on that game and I've been waiting for my opportunity to get them back. I assume there's nobody out there that's thinking that.

We sort of covered who the gamers are, and I think we covered who has played Nintendo games. Those of you that have played Nintendo games, have any of you had any problem with them or any reason, again, to be unhappy with Nintendo?

There's another group that I don't know that

we've quite identified. Maybe there weren't many of you. But are there some of you that are not gamers, you don't play Nintendo games, but you play other games? Is there anybody in that category? Would you raise your hand? That you haven't played -- you don't call yourself a gamer. You haven't played Nintendo games, but you have played other video games.

Yes, sir, Mr. Woods. What games have you played, please, sir?

PROSPECTIVE JUROR: PlayStation --

THE COURT: Okay, wait. Could you state your name first, sir?

PROSPECTIVE JUROR: James Woods. PlayStation 3.

MR. GERMER: All right. Thank you very much.

Anybody else like Mr. Woods? I see a hand way back in the back. Mr. Gaston?

PROSPECTIVE JUROR: Yes, David Gaston. I play video games with my grandson, Sponge Bob Square Pants, stuff like that.

MR. GERMER: Okay. That's the level I'm at. That's exactly where I am.

Let me ask you: Who else has the opportunity to play video games with their grandchildren? Could you hold your hands up, please? Keep them up just one more

minute, please. Thank you.

And I assume you're like me; you get beat every time.

What about children? Some of you might have played games with your children.

I see some more hands. Would you hold them up, please?

All right. Thank you very much.

We talked about the patents. I assume no one other than the professor knows anything about Patent Office procedures or the Patent Office itself or how that all works. Am I right in that?

Yes, sir?

PROSPECTIVE JUROR: Bruce Reynolds. I have some familiarity. One of my roles at Chevron late in my career was intellectual property coordinator for drilling and production technology, and I worked closely with our patent lawyers in the company.

MR. GERMER: All right. Mr. Reynolds, would there be anything about that experience or knowledge that would affect you in this case one way or the other? In this case, obviously, we have a person claiming a patent. He says that Nintendo is infringing the patent. We say we're not infringing the patent. We're going to be talking about that a lot and talking about the

procedures and whether or not his patent is valid and whether you agree that he's entitled to have a patent.

Now, is there anything about that where you would come into this sort of biased one way or the other?

PROSPECTIVE JUROR: Well, I don't think I have a bias. There have been cases that we've worked on where we've had small inventors come in and challenge our patents.

MR. GERMER: Okay. Thank you very much. And what is your background, educational background?

PROSPECTIVE JUROR: Petroleum engineering, Texas A&M, 1977.

MR. GERMER: Okay. But then you also got into this --

PROSPECTIVE JUROR: Drilling and production management for 20 years, and the last 8 was drilling and production technology.

MR. GERMER: We've covered it probably, but nobody's been in a lawsuit that involves patents.

I take it no one's been on a Federal court jury. I don't think I heard anyone say they had been.

Anascape, as you've already heard, is going to have the burden to prove to you what they said; that is, that we infringe the patent. That's the way the law

works. Does anyone have any problem with that, any problem with putting the burden on them to prove that, in fact, we, Nintendo, are infringing their patent?

Okay. Now, in this case -- it's unlike normal cases because you've sort of got some different burdens -- we are saying the patent is invalid even though it's been issued by the Patent Office. Okay? Are there any of you that would feel like, "Well, gosh, if the Patent Office issued a patent, well, then it can't be invalid; it has to be okay. So, Nintendo you're just barking up the wrong tree"?

All right. I will tell you that the court will tell you and you'll hear a video that will also tell you that -- and it may surprise you -- that when you're sued in a case like this, you're entitled to go back and say that the patent never should have issued. And that's what we're going to do. Now, we have the burden on that. We have to prove that to you by clear and convincing evidence. We will do that. Now, this is a very important question; and I hope you'll think about it.

Does anyone feel like because the Patent Office issued the patent, that it has to be taken as valid and you just cannot accept evidence showing that it's not valid? In other words, that you really -- and

it's okay if you have that feeling. There's nothing wrong with it; but we need to know, obviously, because the court is going to tell you that that is your job to figure out whether it's valid or not.

DEPUTY CLERK: Mr. Germer, you have one minute.

MR. GERMER: Thank you.

I don't see any hands. If you're like me, you're sitting there kind of nervous thinking, "How in the world could I say whether a patent is invalid or not?" But there will be people testifying about it, and the court will give you instructions about it. So, I take it, then, that each of you will take up the responsibility of looking at this patent carefully based upon the evidence and then will decide not only whether or not Nintendo infringed the patent but whether or not the patent was valid in the first place.

All right. Thank you.

There will also be evidence about damages and they are claiming, we say, an excessive amount of damages and they have the burden of proof on that.

I'll tell you I look forward to trying the case before the eight of you that are selected. These cases are complicated. We appreciate your time in coming in and doing this; and I will tell you, based on

all these years, it's fun to watch people come in, not know anything about it, and end up getting together as a group, the jury, and almost always getting it right. So, we look forward to this. Thank you.

THE COURT: All right. Let me see counsel sidebar for just a minute.

(Bench conference off the record, all parties represented.)

All right. Ladies and gentlemen, I'm going to excuse you for a few minutes now so that we can go ahead and make our strikes.

I also want to talk to some of the jurors; and, so, as you're excused, I'm going to ask the following three jurors -- the first one just to stay right here and the other two remain just outside the door so we can ask you some questions separately. This will probably take until 12:00. After we have the jury seated, everyone is going to be dismissed and then we'll take a lunch break, in case you're worrying about when you're going to eat. I always worry when I'm going to eat; so, I'm letting you know in advance.

Please don't discuss the case among yourselves. When you go out there, this may be the only point of reference you have with each other. Talk about the weather or something else. You've heard no evidence

at all in this case yet. So, don't discuss the case, the lawyers, the judge, anything about this case at this time.

I'm going to ask Ms. Berry -- I'll be speaking with you first and then Professor Clack and then Ms. Lathan. So, if Professor Clack and Ms. Lathan -- if you'll wait just outside the door. And, Ms. Berry, as the people leave, if you'll just come on up here.

And the rest of you are excused at this time.

(Prospective Jurors exit the courtroom, 11:32 a.m.)

(Prospective Juror Berry approaches the bench.)

THE COURT: All right. Ms. Berry, I had noticed when we were going through the questioning -- did you have some problem reading what was up on the screen there? Is it a little bit far away? Because a lot of evidence -- and some of it's going to be pretty small print -- will be going up there on the screen. Were you having any problems reading it or understanding what that was?

PROSPECTIVE JUROR: I don't think so.

THE COURT: Okay.

PROSPECTIVE JUROR: Just a little nervous.

THE COURT: Well, I can understand that. This is a big crowd. So, you weren't having --

PROSPECTIVE JUROR: Did I skip some questions?

THE COURT: No, ma'am. It just appeared to me and it's something I wanted to be careful about because, if necessary, we could get an additional screen or something like that. But you weren't having any problems reading the print on the screen --

PROSPECTIVE JUROR: No.

THE COURT: -- or understanding the questions or anything like that?

PROSPECTIVE JUROR: Just nervous.

THE COURT: Okay. Any questions, then, from the plaintiff?

MR. CAWLEY: No, your Honor.

THE COURT: From defendant?

MR. GERMER: No, your Honor.

THE COURT: Okay. Thank you, ma'am. I just wanted to be sure because we do have an additional little screen that we can use if people are having some problems. But thank you, ma'am.

PROSPECTIVE JUROR: Thank you.

(Prospective Juror exits the courtroom.)

THE COURT: Let's go ahead and bring in

Professor Clack, please.

(Prospective Juror Clack enters the courtroom.)

THE COURT: Yes, ma'am. Now, you are involved right now in a patent application. Of course, it's in the biotech field as opposed to the -- I guess the hard, whatever, engineering kind of -- which is what this patent is involved. Do you think anything about that would make it difficult for you to be fair; in other words, you'd be leaning towards, "Well, here is the patent holder and I'm an inventor and we all need to stick together to protect our patents"? Any concerns along that line?

PROSPECTIVE JUROR: No.

THE COURT: Okay. Mr. Germer, do you have any questions?

MR. GERMER: Yes, sir.

You are working with the attorneys now?

PROSPECTIVE JUROR: Actually --

MR. GERMER: Or have worked.

PROSPECTIVE JUROR: I have worked, yeah.

MR. GERMER: And, so, you've learned a fair amount about the process, going through the applications and prior art.

PROSPECTIVE JUROR: Yes.

MR. GERMER: You've heard about prior art.

PROSPECTIVE JUROR: Yes, prior art. I've learned some of the lingo.

MR. GERMER: And y'all don't have continuation patents, I don't imagine. You haven't heard that one yet?

PROSPECTIVE JUROR: Huh-uh (Moving head side to side.)

THE COURT: Okay. Wait. See, she's taking this down, and I need either a "yes" or a "no."

PROSPECTIVE JUROR: Okay. Instead of a nod.

THE COURT: Right.

PROSPECTIVE JUROR: No, sir.

MR. GERMER: So, as you sit in this case, you obviously are going to be able to bring to the case your knowledge about this as you've picked up from your experience.

PROSPECTIVE JUROR: Yes. It's limited.

MR. GERMER: And you have gone through the process that Mr. Armstrong is going through.

PROSPECTIVE JUROR: Yes, as far as the writing and submitting.

MR. GERMER: And once you get your patent -- have you got your patent yet?

PROSPECTIVE JUROR: No. It's patent pending.

It's in the application.

MR. GERMER: And you've got to go through a lot of work to get a patent, don't you?

PROSPECTIVE JUROR: Yes, but fortunately the lawyers get to do that.

MR. GERMER: But once you get the patent, then you figure you've got a good patent and you've got something very valuable.

PROSPECTIVE JUROR: Yes.

MR. GERMER: Thank you. That's all I have.

THE COURT: Mr. Cawley, any questions?

MR. CAWLEY: I don't think so, your Honor.

THE COURT: All right. Thank you, ma'am.

(Prospective Juror Clack exits the courtroom.)

THE COURT: And then Ms. Lathan.

(Prospective Juror Lathan enters the courtroom.)

THE COURT: All right, ma'am. I think when I asked about the schedule, you had raised your hand.

PROSPECTIVE JUROR: Yes.

THE COURT: All right. What's the schedule problem, ma'am?

PROSPECTIVE JUROR: I have an 11:00 appointment tomorrow in Shreveport.

THE COURT: In where?

PROSPECTIVE JUROR: Shreveport, Louisiana.

THE COURT: Okay. And for what is that, ma'am? What kind of appointment?

PROSPECTIVE JUROR: I actually carry my sister back and forth to the doctor because she's disabled and, so, it's --

THE COURT: She doesn't have any way to get back and forth there?

PROSPECTIVE JUROR: No. No.

THE COURT: Okay.

PROSPECTIVE JUROR: That's something I do on a daily -- you know, basically.

THE COURT: And this is to get her to the doctor or therapist?

PROSPECTIVE JUROR: Yes. She has heart problems, and she's diabetic and all that.

THE COURT: All right. Any questions from plaintiff?

MR. CAWLEY: I don't think so, your Honor.

THE COURT: From defendant?

MR. GERMER: No, sir.

THE COURT: All right. Thank you, ma'am.

PROSPECTIVE JUROR: Thank you. So, I'm dismissed?

THE COURT: No, ma'am. If you'll step outside. I'll make that decision, but I need to discuss that with the lawyers.

PROSPECTIVE JUROR: Oh, okay. All right.

(Prospective Juror Lathan exits the courtroom.)

THE COURT: All right. Any objection to me excusing Ms. Lathan because of extreme inconvenience, since she has to carry, I believe she said, her sister back and forth? And that does -- she says there's no one else, and that is in the area of medical necessity. Any objection from plaintiff?

MR. CAWLEY: No, your Honor.

THE COURT: From defendant?

MR. GERMER: No, sir.

THE COURT: All right. Ms. Lathan is excused. She was Number 15.

Any challenges as to anybody else from plaintiff?

MR. CAWLEY: No, your Honor.

THE COURT: From defendant?

MR. GERMER: Your Honor, we have two. On Ms. Berry, I -- I share the court's concern. I don't know if it's a visual problem or a hearing problem. And I don't know; she may be my greatest juror. I'm just --

I'm not convinced that she's understanding the communications back and forth. It may just be age like me. But we have plenty of jurors. I would think almost by agreement we should let her off.

THE COURT: Mr. Cawley?

MR. CAWLEY: May I confer with my imminently learned counsel, your Honor?

Your Honor, we appreciate the court's sensitivity in identifying what appeared to be Ms. Berry's -- the difficulty in reading the questions; and, yet, under the court's explicit questioning, she said that she could read the questions. She said that she was nervous. But I don't think that there is any evidence or suggestion from which we can conclude that she's not fit to be a juror.

THE COURT: Well, there were no more questions asked than the ones I asked. And if that's all we have is a feeling, I mean, I'll say that I had that feeling when I listened to her. But when she came up here, she said no, it wasn't a problem. She said it was nervousness. And, so, I'll deny that request.

Your other one, Mr. Germer?

MR. GERMER: On the professor, your Honor, she -- a couple of problems, obviously. First of all, she has a lot of knowledge about -- she has more

knowledge about patents than I do, and there's no way that she can disregard that. And, so, she's going to be sitting there remembering what she was told and what she understood. And as you know, in this case we're going to be talking a lot about the procedures and the applications and so forth. So, I really think that would be terribly unfair to have that situation; and we would be inviting it.

And then, secondly, of course, she obviously is going to have a bias -- strong bias a certain way.

And, thirdly, and perhaps most -- I hope most persuasively, she believes -- and I understand her position -- that once she gets her patent, she's got it; she's got it made. That's the important thing. And, of course, we're saying no, you don't. We get to say it's invalid. So, she's going to come with a predisposition, a prejudice there that we couldn't possibly overcome.

THE COURT: Well, the problem -- and, I mean, I asked her some questions and the problem with eliminating everybody who might know something about the patent field is actually going exactly contra to the grain of what I'm looking for and that is people who understand what's going on in here. And I guess that's why we have peremptory strikes. I mean, I'll state for the record -- and all the counsel in this room may get

used to the idea. I'm seriously considering asking for jury panels of everybody that has at least a year of college. I mean, I'm concerned about people who can't understand. If I start striking for cause anybody who might understand, then I think we're going to run into some real problems. So, I will deny that motion for cause.

Okay. We do not have the normal sheet that gives you all the little codes. So, if you will just indicate whether it's your strike -- we know that one person has been excused. Go ahead and get the other strikes --

MR. CAWLEY: How many jurors are you going to select?

THE COURT: Okay. We're going to use nine jurors. There are going to be three strikes per side. The first nine that are left are the ones that we will use. With a three-day weekend, I'm going to take nine because it's too easy to lose one of them during that period.

We'll be in recess, then. I would hope to be able to get that done in about 15 minutes.

(Recess, 11:43 a.m. to 12:04 p.m.)

THE COURT: All right. Counsel, I'm going to read off the list to make sure there are no objections.

Starting off with Juror Number 1, the jury is going to be Shawn Lucena, Linda Woods, Brett Luna, Emma Berry, Terence Harshbarger, Susan Luce, Robert Fiscus, Selina Luman, Michael Albritton.

Any objections from plaintiff?

MR. CAWLEY: No, your Honor.

THE COURT: From defendant?

MR. GERMER: No, your Honor.

THE COURT: All right. Let's bring in the jury, please.

(The jury is seated in the jury box; and all remaining jurors enter the courtroom, 12:02 p.m.)

THE COURT: All right. Ladies and gentlemen, if you're not in the jury box, then you're not on the jury. And since this is the only jury we're selecting, the only trial we're trying, you're going to be excused. However, I do appreciate your being here. And I'm often asked, well, why do we need so many people to pick nine jurors? The reason for that is sometimes we'll have half a dozen or more people say, well, they know this attorney or that attorney or they worked for the company or they've been involved in lawsuits with one side or the other and then another -- you know, there's all kinds of reasons; so, we have to have additional people.

And like I said before, if people are not

willing to show up and serve on juries, then we wind up in a system with a few people in robes having to make all the decisions. I think this is a better system that we have now.

Please make sure that the District Clerk has your proper mailing address so that you can get your check for today. And if you need a form to tell an employer or somebody where you've been, that will also be there at the District Clerk's Office.

So, at this time those of you who are not in the jury box are, in fact, excused. And if you'll go by the clerk's office, go ahead and turn in your juror badge; and you can get those forms. Thank you for being here.

(Remaining prospective jurors exit the courtroom, 12:06 p.m.)

THE COURT: All right. Ladies and gentlemen in the jury box, if you'll please stand and be sworn.

(The oath is administered to the jury.)

THE COURT: All right. Ladies and gentlemen, you're now the jury in this case. In a couple minutes I'm going to go ahead and excuse you for lunch. And even if you go to lunch with each other or with anybody else, do not discuss the case with each other. You haven't heard a single piece of evidence yet, and I've

not instructed you on the law yet.

It's also very important that you don't let anybody else talk to you about the case. It is a violation of Federal law for anyone to try to approach you, talk to you, influence you about this case. And, so, should someone -- now, I'm not talking about someone coming up saying, "Hey, what are you doing today?" But if someone tries to start talking to you about the case or in any way influencing you, don't talk to them. Get their name, and then report their name to the court security officer when you get back.

For your planning purposes, what I generally try to do is we'll take a break about every hour. We'll have about an hour of testimony, and then we'll have a break. We break for lunch usually for about an hour and 15 minutes or so. We normally start in the morning, probably about quarter of 9:00. And then I try to end each day at 5:00. If there is a witness on the stand that we can wrap up at the end of the day so they don't have to come back the next day, I may go a few minutes after 5:00; but I don't think I've ever gone more than quarter past 5:00. If they're going to be that long, we'll just bring them back the next day.

This particular week, as I said before, because of this ceremony for Judge Steger up in Tyler,

who is a deceased Federal judge and I have to be there, we will not be holding court on Friday. We will be back again on Monday. And as I said before, I believe the evidence in the case will wrap up on a week from Wednesday. At this time -- and I'll have some more instructions when you get back. I'm going to excuse you until 1:30 and when we come back, you'll hear my instructions, the opening arguments of counsel, and then we'll start with the evidence. So, at this time you are excused until 1:30.

(The jury exits the courtroom, 12:12 p.m.)

THE COURT: All right. We need to cover a couple of things from the final pretrial. Part of this goes into what I keep telling people. When there are 50 or 60 or 80 decisions to make, sometimes it's easy for the court to miss maybe one of the important ones. But one of the questions that came up during the pretrial was this sample controller that Mr. Cheng had. And I had in my mind that the date of that was well before the first priority date in this case of '96 because there were so many other things that everyone was bringing to my attention. When I went back, I realized that that happened, as I understand it, in '97 supposedly, that he was given that sample controller; is that right?

MR. CAWLEY: I think that's right, your

Honor.

THE COURT: Okay. Well, if that's the case, if that's when the evidence is that you had brought it in '97 -- and that is after the priority date. I thought before that that was a completely irrelevant and misleading piece of evidence. So, I'm going to change on that. Plaintiff can bring that up.

Along that same line, after receiving some fairly extensive citations to cases from both sides -- and this deals with the issue as to whether or not Mr. Armstrong had the GameCube or some other device when he was writing the patent claims. Taking a look at the District Court opinion in a case called Rambus, Inc., versus Infineon Technologies AG -- that's 330 F.Supp.2d 679 -- it appears that Judge Payne pretty well summarized the Fed Circuit cases along that line. And, of course, a lot of the discussion deals with the Gentry Gallery, Inc., versus Berkline case, 134 F.3d 1473. And then there's also the Multiform Desiccants, Inc., versus Medzam Limited, 133 F.3d 1473, Fed Circuit 1998.

And then more recently the Liebel-Flarsheim Company versus Medrad, Inc., 358 F.3d 898, Fed Circuit 2004.

And, basically, taking a look at those cases, it does seem that the evidence as to what Mr. Armstrong

had in front of him is something that is admissible. But keep in mind that the jury is going to get an instruction, and it may be something similar to the instruction that Judge Payne outlined in his case. But the courts pretty universally hold that it is, in fact, lawful and it's neither illegal nor bad faith for an applicant to amend the claims in view of a competitor's product; and, so, the jury will get that instruction. So, if there is any -- I'd be very careful about discussions of illegality or cheating or things like that because I'm going to instruct the jury at that point that, no, this is a circumstance you can take into consideration but obviously it is legal and each of those Fed Circuit cases I cited, plus some of the others that Judge Payne mentioned, also cover that.

And, then, finally, along that same line, I had some question about the various Nintendo patents that were in that line. It does seem to me a problem trying to -- and there were a large number of them. Some of them were withdrawn. It would seem to me that there ought to be a way of either summarizing them or using them as demonstratives or showing a cover sheet or something -- I think Anascape's counsel maybe mentioned that -- rather than having dozens and dozens -- well, somewhere between a dozen and 20 full patents in there,

when the point is to show a history. I'm not sure we need all of them. So, when we get to that, if there's any question, I think you do get to try to show that you had your independent line of development and research; but I would ask -- before we get to that, I'll make a final decision if necessary. There needs to be a way of doing that without inundating the jury with 15 or 20 full patents.

Okay. Then --

Let me see those demonstratives, please.

First of all, any question about those two rulings?

MR. CAWLEY: I do, your Honor; and it relates both to the first and last thing that your Honor mentioned.

In the letter that we sent your Honor that precipitated the court's reconsideration of the motion in limine on that Cheng controller --

THE COURT: Actually, to be honest, I thought of that -- I was looking through this stuff, and I suddenly realized I hadn't -- if it was an important issue, it should have been focused on. It was just buried in there and I was looking at the dates and all of a sudden I realized I got the dates wrong in my mind.

MR. CAWLEY: I understand, your Honor.

THE COURT: The letter came later but --

MR. CAWLEY: But that, in turn, relates in a way to the last thing that your Honor discussed, which was the exhibits which are Nintendo's own patents. The court will recall that Nintendo initially put a bunch of its own patents on the exhibit list, then it withdrew them, and then it put them back on. And we had some dialogue at the pretrial on our objections to that on the grounds that it was intended to mislead the jury, that Nintendo couldn't be selling infringing products if it had its own patents on those products which, of course, we know is nonsensical but it is a risk that the jury will misunderstand.

The court at the pretrial said, on several occasions, that since the plaintiff was alleging copying and if the plaintiff persisted in pursuing a copying case, that those patents were relevant. Well, the intent of our letter -- although it did mention the ruling on Cheng -- was to inform the court, as we have informed Nintendo, that we are not going to be alleging copying in this case.

THE COURT: Okay. I guess the way the letter was written, I gathered that that was your response to a ruling and --

MR. CAWLEY: And that's a fair reading of the

letter.

THE COURT: Okay.

MR. CAWLEY: But the fact of the matter is, your Honor, we're not going to assert copying regardless of the court's change of heart on that motion in limine. So, we believe that our decision not to allege copying undercuts any relevance that those Nintendo patents may have; and we re-urge our objection to those patents.

THE COURT: All right. So -- let's keep the judge awake, why don't we.

All right. So, I take it, then, that your withdrawal of the copying claim or allegation is not based upon or later going to be a predicate for some claim of error on my part dealing with Cheng. Is that correct?

MR. CAWLEY: That's correct.

THE COURT: All right.

MR. CAWLEY: And, in fact, I have represented to Nintendo's counsel that our only testimony about that interaction between Mr. Armstrong and Mr. Cheng will be that they met and that Mr. Armstrong encouraged Mr. Cheng and Nintendo, through him, to take a license; and that's it.

THE COURT: All right. I'm going to go back, then, and take a look at that long list of patents and

so forth. And let me consider those under 402 and 403 in light of that.

MR. GUNTHER: Can I make one point on that, your Honor?

THE COURT: Sure.

MR. GUNTHER: The point is this, that Mr. Cawley is saying that while they're withdrawing -- it's a little bit of we'll withdraw the copying claim but they still want to put on evidence that Mr. Armstrong met with Nintendo's Mr. Cheng and urged him to take a license and, your Honor, they're going to ask the jury to draw an inference that as a result of that meeting, Nintendo learned information that caused them to do something.

So, there's still going to be, your Honor -- as long as that meeting comes in, there is going to be a tinge of some type of copying or bad conduct. Why is it relevant that they met with us and we refused a license other than to create the impression that we went ahead and took it?

THE COURT: Well, like I said, let me take a look at -- now that I understand the new position of plaintiff, I now have to reweigh and rebalance under 402 and, more importantly, under 403 the -- I mean, I've told you before I'm concerned about this large number of

patents you listed; and it starts to -- it becomes a problem. I've stated it several times in different ways. And, so, if you have a circumscribed list you want me to look at in deciding this, let me see it. And, obviously, as I've mentioned before, if at some point during a trial something comes up that in good -- I'm not inviting a rehash of every one of my rulings but you're all good lawyers and if something in good faith comes up, I'm not going to get mad at you for protecting your client. But let me take a look at that list.

MR. GUNTHER: That's fair, your Honor. We'll give you a pared down list. I understand your concern about a big stack of patents going into the jury room. I appreciate that. We'll get you a list.

THE COURT: All right. The next thing that comes up is this memo from Mr. Garza dealing with this demonstrative -- I guess it's three demonstratives to be used evidently by Nintendo. And just to start right off with, this question about why isn't the '525 patent part of this trial, that's out. I mean, that's -- I think I've already said that. We're not bringing up patents that I've pushed out or whatever. I don't think that's fair at all. For one thing, that's based on some rulings that very well may wind up being overruled later on and then that would play into this, too. So, I don't

think that's appropriate.

Now, why did Armstrong have to write new claims? If you want to get into that, that's fine. But we're not talking about the '525 patent.

MR. GUNTHER: Your Honor, could I just ask a question on that?

THE COURT: Sure.

MR. GUNTHER: As a matter of factual history, a patent issued from that 1996 application. And, so, your Honor, I want to respectfully push back a little bit on this. Yes, the patent has been ruled out of the case but as a result of the claim construction ruling, et cetera. But the fact of the matter is, your Honor, in terms of the jury understanding what's going on here --

THE COURT: Well, obviously, they're going to hear about the '525 patent because of the prior application. But for someone to say, "Why isn't it part of this trial" and be asking questions like that, I'm not going to be explaining to them my claim construction rulings and give them all those rulings. That's not fair. So, to infer that somehow because the '525 patent is not part of the trial or it wasn't alleged or whatever, for all they know I separated them. I mean, there's all kinds of different reasons. Every single

claim in a patent is a different invention. Maybe it's only these three inventions that we're dealing with. We're not talking about my prior rulings in front of the jury to try to infer that I've already ruled against them on a bunch of stuff; and, therefore, I must -- you know, I mean, I think that's entirely unfair.

Now, the idea of -- I'm not sure how the case is going to get tried without at least some mention of '525 or the predecessor application. But I don't think there should be any hint or inference that '525 ought to be alleged to be infringing or something like that. In fact, it could be just these three claims are the only ones that are infringed by these products; and it wouldn't really matter what the '525 was. So, I don't see any reason why you need a slide saying, "Why isn't it part of this trial?" I mean, that, I think, is improper.

MR. GUNTHER: Your Honor, we'll remove it.

THE COURT: Okay. And then the final thing is -- again, if you're going to make remarks like, "Is it fair to write claims," the jury is going to be instructed -- and they may wind up getting instructed earlier rather than later -- about the -- it is legal to, in fact, write. The issue they are going to have to look at is whether it's covered in the -- properly

covered in a previous specification or application. And I'll -- like I said, will be using language from those cases.

So, again, you may want to look at it in terms of if you're going to make those statements, then I'm not going to let the jury think that there is -- you know, go along with a misapprehension as to what the law is. I think -- and I think this is what Judge Payne was looking at. It's something they can consider in the broad scheme of things, but the law is that actually that is not illegal or in bad faith to do that.

MR. GUNTHER: And, your Honor, on that point -- forget about illegality or, you know, sort of black hat. The point is, your Honor, that in terms of fairness and in terms of what the rules are, that it's okay to do that. And, your Honor, this is the key because this is really the crux of the case. It's okay to do that if what you put in your claims later is the same invention as what he filed in 1996. And your Honor knows that, obviously.

But there's two parts to this. Yes, you can do it. Yes, you can write claims on competitors' products. But only if you haven't changed your invention. And what our fundamental point in this case, your Honor, is that he changed his invention in spades

when he went from single input --

THE COURT: Like I said, I'm not telling you to strike that. I'm just telling you that you need to be careful what is said because if I think I have to give an interim instruction to the jury on the law if I think that there's some overstepping, then I'll do it.

MR. GUNTHER: I understand, your Honor.

THE COURT: Okay. The next thing is this focus on the Nintendo 64 which I don't recall being listed in any of the invalidity contentions as prior art. Why are we -- and their indication is so far as a demonstrative it's somewhat misleading. Surely there's other pieces of prior art, I mean, things that were actually listed as prior art that could be on these demonstratives. Why pick that one?

MR. GUNTHER: Your Honor, here's why we're doing it. And this is, again, very important. The reason we're picking the Nintendo 64 -- and you will not hear me or anyone at this table stand up and say that the patent is invalid because of the Nintendo 64. We're not relying on it as invalidating prior art. What we are saying -- and, your Honor, the best slide on this is the slide with the three pictures on it.

THE COURT: I've got it.

MR. GUNTHER: Okay. It says "prior" on the

left, and look at the two that we've got. We've got our own product that has multiple input members -- a joystick, a cross-switch, and all of those buttons -- and we've got the Chang reference on the bottom which he specifically told the Patent Office was a multiple input member and it was, therefore, no good and was different than his single input member.

And, so, our point, your Honor, is this, not that Nintendo 64 invalidates but Nintendo 64 shows that people before him, before this invention, were making single input member -- multiple input member controllers and that bears, your Honor, on the state of the art and what was going on at the time he made his invention.

THE COURT: Yeah, but --

MR. GUNTHER: Let me --

THE COURT: I don't see why if suddenly the 64 has become so important that it's got to be part of your opening statement which has a limited time limit, it wouldn't have been listed in invalidity references earlier on. And you've got the word "prior" and they're going to be told about prior art and priority date and you go ahead and pick something that is, I guess, peripheral in this theory that you have of state-of-the-art, which is supposed to be something different than prior art as a way we can get all this

extra stuff in even though the Fed Circuit says, "No, look at prior art and here are some definitions of it." I mean, it's inventive. I'm not holding that against you but --

MR. GUNTHER: Your Honor, could I just -- I'm sorry. But, look, one of the things that's important is that if you look at this Nintendo 64 controller, there is going to be testimony in this case that the Nintendo GameCube controller was developed out of making improvements to that.

So, here's the point. Before -- not prior art before, not invalidity before -- before he makes his invention and files his application in 1996, what's Nintendo doing? Nintendo's doing multiple input member controllers after Nintendo develops a controller based on that same line.

And now the question is: Is that the same invention as what he came up with in 1996? Your Honor, we're not saying -- I will not stand up and say it's invalid --

THE COURT: All right. Why don't you put the date, Nintendo 64, parentheses, nineteen whatever and then you have Mr. Armstrong's invention which is 1996, I guess --

MR. GUNTHER: Yes.

THE COURT: -- as the application date and then that solves this confusion of "prior."

MR. GUNTHER: I'll take "prior" off.

THE COURT: But --

MR. CAWLEY: Your Honor, does it? I mean, I guess I'm missing something. But what I'm hearing is that Nintendo's counsel is saying that this is compellingly important because it shows that they were doing what Mr. Armstrong invented before he did, and that sure sounds like prior art to me. The fact of the matter is they didn't list this as prior art on a timely basis, and now they're trying to come up with a way to get it before the jury clearly as an invalidity proposition without having listed it.

MR. GUNTHER: We're not saying -- your Honor, we're not saying it's prior art that invalidates. We're saying it's different. It's different than what he came up with. Chang is different than what he came up with. We're not saying it invalidates the patent. We're saying that it shows that Nintendo had a line of development, independent development, that started with the GameCube and went through to the -- started with the Nintendo 64 and went through to the GameCube. It's the opposite of using it for invalidating prior art, your Honor. We're not reading it on the claim. And we can

cure it by taking "prior" off or putting the date on, but this is an important part of our case.

MR. CAWLEY: If that's true, then there doesn't need to be a date associated with it at all, if all they are offering it for is to show that it's different.

THE COURT: All right. Then leave the date off, leave the "prior" off, if that's what you're saying. That's fine.

If what you're talking about is an infringement argument, then that's a little bit -- that is a little different. If you're showing history of infringement, fine. Leave -- take out "prior." Take out dates.

You need to be very careful about this because we've been through this before; and, I mean, there was a deadline for putting in your invalidity contentions, the various items of prior art.

There is an obvious concern on my part in that the clear focus you're trying to make on this in your opening statement is not just some little, you know, we had this other line. It's the exhibits are obviously -- or appear to be intended to get into invalidity as opposed to we have a different line of devices that we don't infringe.

MR. GERMER: Your Honor, could I -- at the risk of having two lawyers -- there's a whole nother part to this that I've been more focused on. It's always difficult in these cases, every one of them -- the real issue comes down to what did the inventor really invent. You know, at the end of the day, what did he invent? One of the best ways to help the jury understand what he really invented is to show what was there. It helps us focus the case on his invention. In other words, we --

THE COURT: Well, like I'm saying, as long as it's talking in terms of noninfringement and we had a different line of noninfringement, that's fine. But as soon as it tries to get into or there's hints of we were earlier or we were -- you know, there's a problem there; and that's why we have the rules. So, I'll take Mr. Cawley's suggestion. Take out "prior." Leave off dates. And be sure that your argument goes into different as opposed to invalidating or something like that.

MR. GUNTHER: Different, yes, sir. That's going to be the focus, different.

THE COURT: All right. Anything else that needs to be taken up outside the presence of the jury?

MR. PRESTA: Just one thing, your Honor. We

had received a demonstrative but we're not sure what witness they're going to use it with and we objected to it this morning, but your Honor hasn't heard about it yet because we needed to talk about what exactly it was.

Apparently there's some type of demonstration planned with some motors and some --

THE COURT: Do I get to see this, or do I have to --

MR. CAWLEY: You do, your Honor.

MR. PRESTA: Yes. We have a --

MR. CAWLEY: If I could approach, your Honor.

THE COURT: All right.

MR. CAWLEY: This is four different devices that have been put together to demonstrate what's known as the rumble feature. It's -- as the court can see, it's an electric motor with an offset weight. This is something that Mr. Armstrong put together, a plastic box with a battery in it to energize the motor. When you push the button (demonstrating), the motor spins the weight.

Two of these devices are Nintendo devices -- this one and this one (demonstrating). But in both of the Nintendo devices, the way that they are structured, the weight, the offset weight that actually causes this vibration, is contained within a housing so you can't

actually see it.

These are devices where you can actually see the offset weight. One of these is from a Sony controller. One of them is from a Microsoft controller. It's not our intention to tell the jury where these came from. It's our intention for Mr. Armstrong simply to say, "Well, let me show you how rumble works. Here's an electric motor and an offset weight; and when I push the button (demonstrating), you can see that it vibrates." He's not going to say even that it's out of a game controller; he's just going to say it's a motor and an offset weight. And the only ones that he'll say as identified as actually out of game controllers are these two that are actually out of the Nintendo controllers.

MR. PRESTA: Your Honor, a basic demonstration of those things is not really the concern. The concern is that their expert has had no opinions about what goes on inside these motors. There's no expert reports. There's no information about what --

THE COURT: I thought Mr. Armstrong was going to testify about that.

MR. PRESTA: Yes, Mr. Armstrong is going to. And we're just concerned that because they don't have any experts that are explaining -- these are means-plus-function claim limitations that they relate

to so that the structure in the specification and whether one motor is equivalent to the other -- this is actually the structure they disclosed in the specification (indicating) in one of the motors.

So, it's our belief what they're trying to do is establish through a demonstration with Mr. Armstrong an equivalency issue. And, your Honor, if you'll take a look at claim 19, you'll see that it's "tactile feedback means." And they have no expert who has put in any information on how you analyze a means-plus-function. Our concern is that the one motor corresponds to the patented structure that they said they are not even going to tell the jury where it came from.

The other motor is our motor. And it's clearly designed to try to have Mr. Armstrong testify about equivalency under means-plus-function analysis, which is our concern. Certainly just to tell the jury that there's vibration and how a motor works is not a concern for us. What is a concern for us is the use of these things to bootstrap expert opinions that just aren't there by using Mr. Armstrong to give expert opinions that we have had no notice about.

MR. CAWLEY: Mr. Armstrong is not going to offer expert opinion. He's not going to express an opinion that it's an equivalent or not. He is going to

say that he's taken apart these little Nintendo motors and that he's found a motor and an offset weight in them. But that's a matter of fact. And if Nintendo disputes that fact, then, of course, they can dispute it.

MR. PRESTA: Your Honor, if you look to Figure 21 of the patent, you will actually see that this motor (indicating) is designed to replicate Figure 21 because that's the only structure that they have disclosed in the specification as corresponding to that means-plus-function. So, the idea is to show the structure in the specification and then compare it with our motor structure and then, of course, allow the jury to infer that they are equivalent without any real testimony.

MR. CAWLEY: The jury can infer that they're equivalent without testimony.

THE COURT: When you're talking about something you can look at like that, why does there have to be an expert opinion?

MR. PRESTA: Well, it's actually something you can't look at. It's inside. On our products you can't actually see it. So, the question is: What's in there and how does it work?

It is opinion to say whether in the

specification the structure that's disclosed for a means-plus-function -- whether the accused structure is equivalent to that structure, that is an opinion that is the goal of this experiment, is our view and our concern. We certainly don't have a concern with people seeing motors and, in fact, that there is a motor in our product. But it's comparing it to structures that are in the specification and saying that they are the same, which raises our concern. And this is clearly what the experiment is designed to do. These two motors don't have anything to do with this case (indicating). What they do is they match the type of motor that's in the specification, in the figure. And the whole idea is to show that our motor is equivalent to the one he has in the specification because we're talking about means-plus-function --

THE COURT: All right. You've said that you don't mind them showing the motors from the Nintendo devices, and then you said that the other two are the same as what are in the patent and just to show the jurors how they work. Well, obviously a 3-D working example, demonstrative of what is in the patent might be helpful to let a jury understand it; so, I can't see why those would come out.

MR. PRESTA: Yes.

THE COURT: And you've got no objection to the other; and if what you're talking about is the possibility that the jury is going to draw some improper inference from that, I'm going to overrule that objection.

MR. PRESTA: Well, one last comment, your Honor. I didn't mean to -- these are motors from other accused products. They're not from the patent. This is not the exact structure that's in the patent; so, I'm sorry if I misled you on that. Our concern is that these are from Sony's and/or Microsoft's. They're not from the patent. It's not something that somebody could say that this is the same structure that's in the patent because if we compare it to Figure 21, it doesn't -- it's not the same structure. These are from other accused -- in fact, this is from the Sony licensed product. Our concern is also that the argument is going to be because Sony took a license with this motor, that somehow we should be taking a license because we have a motor that may operate similar. So, that's my only final point on that.

THE COURT: All right. Overruled.

Anything else to be taken up outside the presence of the jury?

MR. CAWLEY: Not from the plaintiff, your

Honor.

MR. GUNTHER: Not from Nintendo, your Honor.

THE COURT: All right. Then we will start again at 1:30.

Yes, Mr. Welch?

MR. WELCH: Your Honor, may I be excused from the trial? I was retained for a specific purpose which is now accomplished. And may I be further excused?

THE COURT: Yes, you may.

MR. WELCH: Thank you.

THE COURT: Does anyone else want to be excused, also? I saw somebody jumping up behind you. We'll clear this courtroom right out.

All right. We'll be in recess, then, until 1:30.

(Recess, 12:42 p.m. to 1:32 p.m.)

(Open court, all parties present, jury not present.)

MR. GUNTHER: Your Honor, Nintendo would invoke the rule, please.

THE COURT: All right. The rule is invoked. Any persons who are going to be witnesses other than corporate representatives need to go ahead and wait outside.

MR. CAWLEY: I'm sorry, your Honor. Is the

rule appropriate for the opening statements?

THE COURT: It is but not -- have you come to any agreement on experts, by the way?

MR. GUNTHER: Your Honor, we haven't; but what we would propose is that experts be in -- are allowed to be in.

MR. CAWLEY: We agree.

THE COURT: Okay. Experts can be in. Fact witnesses need to go ahead and step on outside, please, including the opening statement, please.

(The jury enters the courtroom, 1:33 p.m.)

THE COURT: All right. Ladies and gentlemen of the jury, you've been sworn as the jury to try the case and as the jury you are going to decide the disputed questions of fact. Now, as judge, I am going to decide all of the questions of law and procedure. And from time to time during the trial and at the end of the trial, I'll give you instructions on the rules of law that you must follow in making your decision.

Now, this is a patent case. The patent involved in this case is United States Patent Number 6,906,700. It may be referred to by the parties as the "'700 patent." The '700 patent relates to video game controllers.

Now, generally video game controllers are

used to input controls for video games used on a television or a computer screen. During the trial the parties are going to offer testimony to familiarize you with the technology, and for your convenience we're going to distribute a glossary of some of the technical terms to which the parties may refer during the trial. Patents are issued by the United States Patent and Trademark Office which is part of our government. The government is authorized by the United States Constitution to enact patent laws and issue patents to protect inventions. Inventions that are protected by patents may be of products, compositions, or the methods for doing something or for using or making a product or composition.

Now, the owner of the patent has a right, for the life of the patent, to prevent others from using, offering for sale, or selling the invention covered by the patent.

Now, a patent is granted for a set period of time. During the term of the patent, if another person makes, uses, offers to sell, or sells something that is covered by the patent without the patent owner's consent, that person is said to infringe the patent.

Now, the patent owner enforces a patent against persons believed to be infringers in a lawsuit

in a Federal court such as this case. Now, to be entitled to a patent protection, an invention must be new and nonobvious. A patent cannot legally take away from people their right to use that which was known or that which was obvious from what was known before the invention was made. That which was already known at the time of the invention is called the prior art. You're going to hear about prior art relating to the patent-in-suit during the trial, and I'll give you more instruction about what constitutes prior art at the end of the case.

Now, we're now going to watch a short video prepared by the Federal Judicial Center entitled "An Introduction to the Patent System." This is a 17-minute video; and it is designed to be shown to jurors in patent jury trials and contains important background information intended to help jurors understand what patents are, why they are needed, how inventors get them, the role of the Patent and Trademark Office, and why disputes over a patent arise.

So, at this time we'll go ahead and start with the video, please.

Also, you're going to be given a copy of a sample patent. It's not a real patent but it gives you an idea of what the parts of a patent are and they'll

refer to it during the video.

(A sample patent is distributed to the jurors, and the video entitled "An Introduction to the Patent System" is played for the jury.)

THE COURT: All right. Ladies and gentlemen, the plaintiff, Anascape Limited, contends the defendant, Nintendo of America, Inc., makes, uses, offers to sell, or sells products that infringe claims 14, 16, 19, 22, and 23 of the '700 patent.

Now, although each of these claims is in the same patent, each is to be considered separately as a separate invention.

Now, Anascape has the burden of proving that Nintendo infringes one or more claims of the '700 patent by a preponderance of the evidence. When a party has a burden of proof on any claim by a preponderance of the evidence, it means you must be persuaded by the evidence that the claim is more likely true than not true.

Now, you should base your decision on all the evidence, regardless of which party presented it.

There are two ways in which a patent claim can be directly infringed. First, a claim can be literally infringed; and, second, a claim can be infringed under what is called the "doctrine of equivalents." To determine literal infringement you

must compare the accused products with each claim that Anascape asserts is infringed. It will be my job to define the technical words in each claim, and you must follow my definitions as to the meaning of these terms.

A patent is literally infringed only if Nintendo's products contain each and every element of that particular claim. Because each claim describes a separate invention, you must determine literal infringement with respect to each patent claim individually.

Now, you may find that Nintendo's products infringe a claim of the '700 patent even if every structure of that claim or element of that claim is not present in Nintendo's products. However, to do so, you must find that there is an equivalent element in Nintendo's products for each element of the patent claim that is not literally present in the product. And this is called "infringement under the doctrine of equivalents."

Anascape has the burden of proving by a preponderance of the evidence that Nintendo's products contain the equivalent of each element of the claimed invention that is not literally present.

Now, Nintendo denies that it is infringing the '700 patent in any way. Nintendo contends that the

'700 patent is invalid because, one, the inventions in the '700 patent are described in one or more prior art references and, two, that the application of the '700 patent does not comply with the statutory requirement to describe the claims as issued in the '700 patent.

Now, in connection with these theories, you'll hear about prior art. That is knowledge that is available to the public either prior to the invention by the applicant or more than one year prior to the priority date of the claim. The priority date of a claim is a date an application is filed or the date on which an earlier patent application was filed if that earlier application discloses the invention as claimed in the later patent.

Now, invalidity is a defense to infringement; therefore, even though the PTO has allowed the claims of the '700 patent, you, the jury, have the ultimate responsibility for deciding whether the claims of the '700 patent are described in one or more prior art references.

Nintendo bears the burden of proving validity by clear and convincing evidence. Proof by clear and convincing evidence is a higher burden than by preponderance of the evidence, but it does not require proof beyond a reasonable doubt. Clear and convincing

evidence is evidence that shows it is highly probable that the claims are invalid.

Now, again, you should base your decision on all the evidence, regardless of which party presented it.

We're about to commence the opening statements in the case. Opening statements are intended to assist you in understanding the evidence. What the lawyers say is not evidence.

Now, after the opening statements the parties will present their evidence. And after all the evidence is completed, I'll instruct you on the applicable law. Then the lawyers will again address you to make final arguments, and then you'll retire to deliberate on a verdict.

Now, after opening statements, Anascape goes first in calling witnesses and presenting exhibits. These witnesses will be questioned by Nintendo's counsel in what is called -- I'm sorry -- these witnesses will be questioned by Anascape's counsel in what is called "direct examination." After the direct examination of a witness is completed, the opposing side has an opportunity to cross-examine the witness. After Anascape has presented its witnesses, Nintendo will call its witnesses who will also be examined and

cross-examined.

Now, the parties may present the testimony of a witness by reading from their deposition transcript or playing a videotape of the witness' prior deposition testimony. Deposition is sworn testimony of a witness taken before trial. It's entitled to the same consideration as if the witness had testified at trial.

Now, the following things are not evidence; and you must not consider them as evidence in deciding the facts in this case: One, statements and arguments of the attorney.

Two, questions and objections of the attorneys.

Three, any testimony that I instruct you to disregard -- and that's not easy. That's like telling you "Don't think about pink elephants." Immediately you think about it. But if I tell you to disregard something, put it out of your mind. Don't talk about it again.

And, four, anything you may see or hear when the court is not in session even if what you see or hear is done or said by one of the parties or one of the witnesses.

Now, the evidence you will consider in deciding what the facts are consist of the sworn

testimony of any witness, the exhibits which are received into evidence, and any facts to which the lawyers stipulate.

Now, evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw, heard, or did. Circumstantial evidence is proof of one or more facts from which you can find another fact. You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence, and it's up to you to decide how much weight to give to any evidence.

Now, the evidence often is introduced somewhat piecemeal. So, you as jurors need to keep an open mind as the evidence comes in. Wait until all the evidence is before you before you make any decision. In other words, keep an open mind throughout the entire trial. It's going to be up to you to decide which witness to believe, which witness not to believe, and how much of any witness' testimony to accept or reject.

In making these decisions, I suggest you ask yourself a few questions: One, does the person impress you as honest? Two, does the witness have any particular reason not to tell the truth? Three, does

the witness have a personal interest in the outcome of the case? Four, does the witness have any relationship with either the plaintiff or the defendant? Does the witness seem to have a good memory? Did the witness clearly see or hear the things about which he or she is testifying? Does the witness have the opportunity and the ability to understand the questions clearly and answer them directly? And does the witness' testimony differ from the testimony of other witnesses?

These are a few of the considerations that will help you determine the accuracy of what each witness said.

Now, at times during the trial a lawyer may make an objection to a question asked by another lawyer or to an answer by a witness. This simply means that the lawyer is asking that I make a decision on a particular rule of law. Don't draw any conclusion from such objections or from my rulings. These relate only to the legal questions I must determine and should not influence your thinking. If I sustain an objection to a question, the witness can't answer it. Don't try to guess what the answer might have been if I had allowed the question to be answered.

Similarly, as I said, if I tell you not to consider a particular statement, put it out of your

mind. Don't refer to it in your later deliberations. Now, if an objection is overruled, treat the answer like any other.

During the course of the trial, I may ask a question of a witness. That's different than if you've been in state court. As a Federal judge, I can ask questions. If I do, it doesn't mean that I have any opinion about the facts of the case. Usually I'm just trying to make sure the record comes out clearly. You may hear me ask a lawyer or witness, "What exhibit number was that" or something like that. Nothing I say or do should lead you to believe that I have any opinion about the facts nor to be taken as what your verdict should be.

During the trial I may have to interrupt the proceedings to confer with the attorneys about the rules of law which should apply here. Sometimes we'll talk up here at the bench. If the conference is going to take some time, I may excuse you to the jury room. I'll try to avoid these interruptions as much as possible and try to keep them short. Please be patient, however, even if the trial seems to be moving slowly.

Now I'll say a few words about your conduct as jurors. During the course of the trial, do not talk with any witness or with any of the lawyers in the case.

Don't talk to them about any subject at all. You may be unaware of the identity of everyone connected with the case; so, to avoid even the appearance of impropriety, do not engage in conversation with anyone in or about the courtroom or courthouse. We had a case about a year ago where someone saw a juror talking to somebody. Turned out to be a key witness. You can imagine if it were your case on trial and you saw a juror talking to a witness, you would not be happy. It could have been about the weather, but you would never know. So, don't talk to people around here. And, likewise, you'll understand that the lawyers are not being rude when they won't talk to you and they try to turn away from you as you're going by in the trial. They're not allowed to talk to you, either. It's best that you remain in the jury room during breaks in the trial and not linger in the halls.

In addition, during the course of the trial, do not talk about the trial with anyone else -- not your family, not your friends, not the people with whom you work. Don't go do research on the Net about video games or call up your friend the gamer that we heard so much about and ask about it or your friend the engineer and learn about these things. You're going to get your evidence from that witness stand and the exhibits that

come in here. Don't even discuss the case among yourselves until I've instructed you on the law at the end of the case and you've had final arguments and you go make your decision. Otherwise, without realizing it, you may start forming opinions before the trial is over. It's important that you wait until all the evidence is received and you've heard my instructions before you deliberate.

Now, let me add, as I said, you're going to receive all the evidence you may properly consider.

Now that trial has begun, you must not read about it in the newspapers or watch or listen to TV or radio reports of what is happening here. Now, the reason for these rules, as I'm certain you'll understand, is your decision in this case must be based solely on the evidence presented at trial. As we go through the trial, remember four basic rules: You are the judges of the facts. Now, I will explain to you the rules of law that apply to this case; and I'll give you definitions of terms in the patent claims. You must follow my explanation of the law and the definitions I give whether you agree with me or not.

Two, the only evidence you may consider will be testimony, exhibits, and stipulations admitted in this courtroom. Do not do any outside reading or

research.

Three, do not talk about this case even among yourselves until after my final instructions.

And, four, do not let anybody else talk to you or question you about the case.

At this time we're going to hand out to each of you a juror notebook to help you during the trial. And the notebooks are numbered according to your juror number so when you have them back there you know which one is yours, in case you've made notes in it.

(Juror notebooks distributed to the jury.)

THE COURT: All right. At the front of the notebook, there's a copy of the '700 patent that we're dealing with here. And then behind that -- it should be marked with a yellow Post-it Note -- are some pages from the patent application, or what's called the "parent application" in this case, the United States patent Number 6,222,525.

Next, there is an area for instructions which you'll get at the end of the trial; and that's why it's left blank.

Now, the following section says "Claims." And you'll find a copy of the claims from the patent that are in issue in the case. It contains the same language from the patents, but I put it in large print

so it's easier for you to read because the writing in the patent is printed in very small font. It also makes it easier to make notes if you want.

Now, the claims that you have there in the "Claims" section are the claims that counsel and the witnesses will be talking about during the trial.

The next section after that is "Definitions." And these are the definitions for some of the claim phrases that are in those various claims. You have to follow those definitions.

Now, the next section after that is just a glossary of the patent terms in general. Some of those you heard on the video, and some of them you've not heard yet. But this provides you with a way to look up certain terms if you've forgotten what it was.

Now, the last section has pictures and corresponding names of witnesses and pictures of accused products. And, again, that's to help you, through the trial, to remember who the various witnesses were and what the products are.

And you can also take notes. There's a notebook there for each of you, and there should be a pen or pencil. Now, I would encourage you not to get so taken up with note taking that you miss some of what a witness is saying because a lot of times you can tell

whether a person is telling the truth by watching how they talk. We all know that. If you're buried in your notes, you may miss some clue or que that tells you whether you should believe the person or not.

All right. It's a little bit early, ladies and gentlemen. What we're going to do is take a short break, and then we'll start with the opening argument. So, I will ask you to be back at 25 past. You can take a look at the notebooks; but as I said, please don't discuss the case among yourselves. I'll ask you to be back at 25 past.

(The jury exits the courtroom, 2:09 p.m.)

THE COURT: Okay. That should give you a few minutes to get set up, any things you need; and then we'll start with plaintiff at 25 past.

(Recess, 2:10 p.m. to 2:23 p.m.)

(Open court, all parties present, jury present.)

THE COURT: All right. Ladies and gentlemen, we're now going to have the opening arguments. Of course, remember my instruction. What the lawyers say is not evidence. Since Anascape generally has the burden of proof, Anascape gets to go first.

Mr. Cawley.

MR. CAWLEY: Thank you, Judge Clark.

Every lawsuit is basically a story, and this one is no different. This is a story about a man with a vision. He didn't follow the easy predictable path through his life. Instead, he decided to become an inventor. And one of the things that he's invented over many years of hard work is a better controller used to play video games.

Now, when you first heard that this was a lawsuit about video games, you may have been surprised and wondered if all of these people are gathered in a Federal court to talk about games. But as I mentioned earlier this morning, video games are a huge business. To give you an idea of how huge, last year, in 2007, the motion picture business in the United States earned about 9 and a half billion dollars. The video game business in the same year earned almost $18 billion.

This is a huge industry, and it's dominated by a few huge companies. Two of the dominant companies in the video game business are Sony and Nintendo. You'll hear through the evidence in this case that Sony has agreed to pay for the right to use the invention involved in this lawsuit, but you'll hear that Nintendo has refused to pay fair value for its use of that invention.

Ladies and gentlemen, I'd like to introduce

you again to Mr. Brad Armstrong.

Brad, if you'd stand up.

Brad lives in Tyler, Texas. He's 53 years -- is that right? Sorry, 54 years old. Thank you, Brad. Have a seat.

Brad was born in Liberal, Kansas. He grew up there. It was his hometown. His mother worked in an oil company. His father was an optometrist. And as a boy, he was very curious about how things worked. He loved to take things apart. He took apart his mother's kitchen appliances, and sometimes he could even get them back together again.

But even as a boy when he was doing that, he was asking himself, "How can things be better? Why aren't things better than they are?"

As he got older, he did many of the things that we would think would predict success in life. He was an Eagle Scout. He was the president of his senior class in high school. But when he graduated from high school, his life took a little bit of a different turn. Remember, this is the 1960s that he was growing up in. He graduated high school in the early 1970s. And like a lot of people, Brad questioned whether the things he wanted to learn in life were really available to him inside the four walls of a college classroom.

So, instead of going to college, he took odd jobs there in his hometown in Liberal; and when he got a little money together, he began traveling around the country. He began meeting people. He began reading. He began talking to people about how they made a living and the things that they wanted in their lives.

As time went on, these trips became longer and longer and instead of going back to Liberal to raise a little money; he'd stop, find a place to live, someplace that he liked for a while; get a job there; and stay as long as he wanted.

As time went by, he spent more and more of his time in libraries and began to read voraciously about electronics, about computers, and about other things that interested him.

By the time he was in his late 20s, he decided, you know, maybe he could learn something from college; but he never enrolled in college. You'll hear that he never got a degree. Instead, he'd go to a college that was near where he happened to be, like in Berkley or somewhere else, and he'd ask the professors of courses that he was interested in if he could just sit in and learn things and he did that. And he learned more and more about electronics, about computers, about all kinds of things.

By the time Brad was 30, he'd finally settled down in a small town in California. He had all kinds of ideas in his head by that time in his life, but he had a problem. He knew that to make his living as an inventor, he would have to be able to get patents on the things that he invented. And he knew that cost a lot of money because you had to hire a patent lawyer to help you do it.

But then there in that small town where he lived, one day he was in a bookstore and he found a book that was a major turning point in his life. It was called "Patent It Yourself." He bought that book, and Brad Armstrong learned from it that he could apply for his own patents. He could teach himself to apply for patents on his own inventions. So, that's what he did. He began inventing things; he began applying for his own patents.

In 2005 Brad moved to Texas, where today he lives, in a little place on Lake Tyler; and he continues to invent things. Today he's working on things like taking the salt out of seawater to make freshwater. He's working on things like medical diagnostic inventions and new energy sources for the future. Today Brad Armstrong, as a result of his decades of effort, has 32 United States patents in his name. Not all of

them have to do with video games; but some of them do, including the patent that's involved in this lawsuit.

I'd like now to go back in time to tell you a little more about how Brad Armstrong became interested in and became an inventor in this field of video game controllers. In 1979, Brad was living for a while in Austin, Texas. There was a new bookstore right there on Guadalupe Street on the drag, across from the campus in Austin, that had just opened; and Brad got a job there because they were selling early computers.

In 1979 very few people had computers; but a few people did, mostly hobbyists. And Brad, as a result of his independent studies on his own, knew about computers; and that's why they hired him in the bookstore.

One of the main things they sold in their computer department in the bookstore was video games. So, Brad saw those games; and, in particular, he saw the kinds of controllers that were used to control early video games. You'll hear from him -- and this is an example of one that's like what was available back in 1979. It was made by a company called "Atari," and it basically is just a stick and a button. That's all it is.

As time went by, by the late 1980s, Brad had

settled down in that little town in California; but he still had his eye on the computer field and, in particular, computer games. And what he saw in 1989 was that the graphics, which is just a fancy way of saying the pictures that computers could draw on computer screens, were exploding; but the controllers were staying the same, just like they had been the decade before.

Let me give you an example. In the early days of computer games, this is the kind of thing you saw. This is the famous game. It's called "Pac-Man." I can see that some of you recognize it. And basically it's just a flat surface, and you use something like this controller to move the characters around.

But in the late Eighties, Brad Armstrong, because of his familiarity with computers and his vision for the future, knew that one day computer graphics would look more like this, that they would be lifelike, that they would be three-dimensional and have depth. And he knew that this kind of controller (indicating) wouldn't be sufficient for the future. He saw a need for something better; so, he started to work.

You'll hear Brad explain on the stand, when he takes the stand this afternoon -- he'll be our first witness -- that when he's inventing something, he gets

obsessed with it. He thinks about it. He dreams about it at night.

This is one of the first prototypes of a video game controller that Brad Armstrong built in the 1980s. As you can see, it's made from a video box, popsicle sticks, and soft drink cans. But it was the beginning of a better idea.

This is another prototype he made in the 1990s, and I'm not even going to attempt to try and explain to you how this works. I'm going to let Brad do that when he takes the stand.

As he came up with these ideas, he began, from what he learned in the book, Patent It Yourself, to file inventions on his idea, his many ideas. And in 1996 he filed an application with the Patent Office that will be very important in this case, and you'll hear a lot about. It was a massive patent application, so thick (indicating). And it was like a warehouse of all of the many, many ideas that Brad had about how to make a better video game controller.

Like I said, that '96 application was like a warehouse; and as time went on, he was able to take things out of that warehouse and put them into prototype controllers and put them into additional patent applications that I'll tell you about in a minute.

But first, let me discuss with you for a few minutes four of the ideas that Brad Armstrong had in that warehouse 1996 patent application. And first I'm going to tell you briefly what they are; but because they use some specialized language, they may not mean much to you. And I'd like to spend a couple minutes going back and talking about each one separately because you'll be hearing about them over the next few days.

They are: First, rumble; second, proportional buttons; third, sheet-connected sensors; and, finally, a better way to control three-dimensional motion on the screen. So, let's talk about each one briefly.

Rumble means the idea of using a small motor with a lopsided or offset weight on the end of it inside the controller so that when certain things happen in the game, the controller will actually vibrate in the user's hand. You'll hear that this rumble feature is very important and very valuable to game designers and controller users to engage or involve the player in the game, when they can actually feel something happening as well as seeing it. That idea was in the '96 disclosure in this application.

The second idea from that application was proportional buttons. That means a button that makes

something happen more and more or faster and faster the harder you push the buttons. Most of us are used to buttons on an appliance or in a car, where typically you push the button and it's on and you push it again or some other button and it's off. Proportional means that the harder you push the button, the more something happens. For example, the accelerator of a car, it's not just on or off. So, if you're playing a video game of a car, the idea in the '96 application, is that you have a button on the controller, that when you push it a little bit gives the car on the screen a little bit of gas and when you push it a little bit more, it gets more.

The next idea disclosed in this '96 application is sheet-connected sensors. In some of Brad's early work, this is the way things were connected on the inside, with wires. You'll hear these are expensive, slow, and hard to put together, easy to make mistakes.

The next idea he disclosed in this '96 application is instead of using wires, to use a sheet, a small circuit board, so that the wires could be preprinted on the board and you didn't have to deal with literal wires like that are hanging out of that device.

The fourth big idea from this '96 warehouse

application is a better way to control three-dimensional screen movement. And let me explain to you just a little bit because there's some special terminology around this that you're going to be hearing. You're going to be hearing words like an "axis of movement," a degree of freedom, or 6 degrees of freedom. Let me give you a little explanation what those things mean.

If this checker is on the board, it can move -- typically the board is like this -- backwards and forwards. That is called, by engineers who work in this field, an "axis" of movement, that line backwards and forwards.

It's also called a "degree of freedom" of motion or just a degree of freedom, backwards and forwards. Of course, we know that the checker could also move side to side. That's a second axis of movement or a second degree of freedom and in this two-dimensional world of the checkerboard, if the checker has those two degrees of freedom, it can move to any spot on the board by combining the two degrees of freedom or it can even move diagonally like this if you use both of the degrees of freedom at once. This is the old days, though. Brad Armstrong knew that this was like the Pac-Man game in two dimensions; and he thought to himself what if -- instead of a checker, what if

we're talking about a spaceship.

Now, if the spaceship was confined to and had to live on the checkerboard, it, too, would have two degrees of freedom, forward and back, side to side. But as we know, the spaceship isn't confined to the checkerboard; it's in space. So, in addition to the first degree of freedom back and forth and the second degree of freedom like this (demonstrating), it has a third degree of freedom up and down. But that's not all.

Those of you who are familiar with nautical terms have probably heard phrases like roll, a motion like this (demonstrating); pitch, which is a motion like this (demonstrating); and yaw, which is a motion like this. That's three more degrees of freedom -- roll, pitch, and yaw. And you can see that by combining 6 degrees of freedom, you basically can make that spaceship move realistically on the screen in any way you want. But even that's not all.

While the 6 degrees of freedom that Brad described in his controller in 1996 can be used to move an object in those ways, some of the degrees of freedom can be used in other ways. For example, if any of you are football fans, you've probably seen, for the last three or four years in football games, that there is a

camera over the field that's mounted on cables and that that camera can be moved up and down the field from goalpost to goalpost and side to side, from sideline to sideline. It can go up; it can go down.

Video games often have the same kind of feature where the user, using a controller with 6 degrees of freedom, for example, can use some of those degrees of freedom to control the point of view on the screen. So, instead of moving the spaceship, they can move the point of view from here to here (indicating) or above the spaceship or in front of it looking back to see what's behind the spaceship.

So, what Brad Armstrong disclosed in 1996 was a controller with 6 degrees of freedom -- up to 6 degrees -- that could be used various ways to achieve better control of three-dimensional screen motion.

Now, once he had these ideas and disclosed them to the Patent Office in '96, Brad tried to license his invention. He formed a company with his good friend, a man named "Kelly Tyler" who you'll also meet during this trial; and they called that company "Anascape."

Anascape contacted one of the giants in the industry, Sony. They negotiated with Sony for four years. And you'll hear that at the end of four years,

Sony agreed to pay Anascape $10 million to use Brad Armstrong's game controller inventions. The way the deal was put together is that Sony got an exclusive right to one patent for $10 million; got the rights to all of Brad Armstrong's other video game controller patents, including what would eventually become the patent in this lawsuit; and that Sony gave Anascape the right to use some Sony patents.

Now, $10 million is a lot of money. It's a lot of money to everybody who's normal. But in the video game industry, as you've just seen, the numbers are huge. You will hear testimony that $10 million really was not nearly enough to fairly compensate Brad and Anascape for the use of his inventions compared to what Sony was making from the use of his inventions but that Anascape agreed to do that deal because they wanted to get some momentum built up in the hopes that they could license others.

One of the others that they hoped to be able to license was Nintendo. They talked to Nintendo, but Nintendo refused and to this day refuses to pay fair value for the use of Brad Armstrong's invention.

So, he went about with more patent applications. In the year 2000 you'll hear that he filed what's called a "continuation patent application."

You'll probably hear that phrase several times in the trial. What that means is that he continued in 2000 with some of the ideas that he had already told the Patent Office about in 1996, but he did it in this separate continuation application.

In 2001 Nintendo came out with a new game controller. Brad Armstrong got one of those controllers, he took it apart, and he learned that Nintendo was using his invention disclosed to the Patent Office in 1996.

So, he amended the claims of his patent, as you'll hear that he's entitled to do, so that he could precisely describe to the Patent Office how Nintendo was using his invention. The Patent Office considered this 2000 application for five years. Five years of examination by a patent examiner up in Washington, DC; five years of communication back and forth between Brad Armstrong, still acting to get his own patents for Anascape and the Patent Office.

At the end of that five years of examination, the Patent Office issued this (indicating), the '700 patent that's involved in this lawsuit. And you'll hear that in this granted patent, the United States Patent and Trademark Office recognized that Brad Armstrong had a good and a new invention for a better way to make

video game controllers.

So, that brings us, in the story, basically to today. Today you will hear that Nintendo is infringing the '700 patent by using Brad Armstrong's invention. You'll hear first that Nintendo controllers, called the "GameCube controllers," infringe the '700 patent and, second, that Nintendo controllers, called the "Wii controllers," infringe Brad Armstrong and Anascape's '700 patent.

But I won't ask you to take my word for that, of course. We're not even going to ask you to take Brad Armstrong's word for it. There is a professor at Harvard University. His name is Robert Howe, Professor Robert Howe. And his field of study, his specialty in which he's spent his professional life, is robotics and the connection between people and machines, the connection exactly like the connection between a hand and a video game controller. This is what Professor Howe studies. This is what he teaches at Harvard.

Professor Howe has made a study of these Nintendo patents. He's also made a study of Brad Armstrong and Anascape's '700 patent, and he has concluded that these Nintendo controllers infringe the '700 patent. But he won't stop there. He'll be here live on the stand, and he will explain to you in detail

and show you how these controllers infringe certain claims of Brad Armstrong's patent.

And at the end of the trial -- or before I get to that, let me say that you'll also learn something very important. You'll learn that just in the time this lawsuit has been on file before Judge Clark, Nintendo has sold, in the United States, over $1 billion worth of controllers that use Brad Armstrong's invention.

DEPUTY CLERK: You've got five minutes.

MR. CAWLEY: I won't take five minutes, ladies and gentlemen; and I won't do it because I want to promise you we're not going to waste your time in this case. We're going to be speedy. We're going to put on Anascape's evidence quickly, and we're confident and know that we can do that because the case is simple. There's a patent said to be valid by the United States Patent and Trademark Office, and you will see with your own eyes how these Nintendo products infringe that patent. And at the end, it will be up to you to write the last chapter of Brad Armstrong's story, at least so far as the story goes so far.

Sony has paid for the right to use his invention. Nintendo refuses to pay fair value. At the end of this trial, we will ask you to award Brad Armstrong and Anascape a reasonable royalty from

Nintendo for Nintendo's use of his patented invention. Thank you.

THE COURT: Nintendo.

MR. GUNTHER: Thank you, your Honor.

Ladies and gentlemen, my name is Bob Gunther; and I'm proud to be before you today representing Nintendo of America. I've actually represented Nintendo for -- I'm going to date myself a little bit here -- since I got out of law school in 1984. So, I've represented the company for over 24 years; and, again, I'm very proud to be representing them today.

Now, one of the things that Mr. Cawley said -- and you'll learn during the course of this trial that we won't agree on very much. But one of the things that Mr. Cawley said that I agreed with is that every trial is like a story. And what do we know about a story? That there are two sides to it. There are two sides to every story. And what we are going to do in this trial and what I'm going to do starting right now is to tell you the other side of the story because if everything were the way that Mr. Cawley said it, why are we here? We're going to tell you the other side of the story.

I want to introduce to you again -- you've met her once, but I'm going to ask her to stand up --

Jacqualee Story from Nintendo of America. Jacqualee is executive vice-president of business affairs at Nintendo, and Jacqualee and I have known each other for many years. She's going to be here throughout the trial as Nintendo's representative, and she's going to testify. She's going to tell you a little bit about the history of Nintendo and the innovation that Nintendo has brought to video games in the United States.

Now, if you have children or if you have grandchildren, you know these guys: Donkey Kong, Mario. These are really interesting characters that Nintendo has developed over the years, and Nintendo has developed characters like that through its own creativity, through its own hard work.

Now, one of the things that you might not know -- most people know those guys. But one of the things you may not know but you're going to learn in this trial is that Nintendo has over 500 United States patents, patents on its video game products, its innovations. It's been granted over 500 United States patents by the Patent Office and hundreds more outside the United States. Nintendo is an innovative video game company.

And I will tell you one more thing that you're going to hear -- this is an aside. But you're

going to hear and learn how Donkey Kong got its name. It's kind of a cute story. I won't tell you now, but you're going to learn it during the course of this trial.

Now, I want to thank you for giving us, Nintendo, its day in court. I know that jury service is not easy. People's lives are busy and it imposes a lot of additional burden on you and I thank you for being here on behalf of Nintendo because this case is important to Nintendo of America and its 1,000 employees in the United States. And it's important because Mr. Armstrong is asking you to award him tens of millions of dollars for what he claims to be the use of his invention in the '700 patent. And it's important because he is trying to take credit for the technology in the Wii. The Wii is the most revolutionary video game -- and, again, this is Nintendo's belief; but the market is speaking to this, as well. It is the most revolutionary video game that's ever come along.

And as you look at the pictures -- we've put a couple of pictures up there. What makes the Wii so special? What makes it new and different? Well, you can see people aren't just pressing buttons or working joysticks. They're moving the controller around. You can see a couple of kids boxing over there in the

left-hand corner and I think they're boxing up in the upper one, but I'm not sure. But the one that's my favorite is the picture on the right. Who ever thought that your mother or grandmother would be playing video games? If you look at what she's doing, she's swinging a baseball bat. Now, how could she do that?

Here it is. Here is that remarkable piece of technology, the Wii remote. And what it can do, it has an incredible technology built into it, something called an "acceleration sensor" that you're going to hear about during the course of this trial. And what it can do is as you move this remote around, it can sense where it is and how it's moving. That's why the woman over in the right-hand corner can swing it like a baseball bat. That's why the kids can use it to box.

Nintendo invented the Wii. Nintendo invented the Wii remote through its own hard work, creativity, and imagination. It didn't take anything from Mr. Armstrong; and it didn't take anything from his patent, his '700 patent. We will prove that to you during this trial.

Now I want to show you a commercial. It's going to go by fast. You may have actually seen it. It was a national advertisement for the Nintendo Wii. It's going to be -- and I think you will enjoy it, if you

haven't seen it. If you have, take a look.

(Video presentation to the jury.)

MR. GUNTHER: Mr. Armstrong is trying to take credit for the Wii, for what you just saw in that commercial. That's what this case is about. He's trying to take credit for that Wii remote. But he's going to -- I told you that one of the reasons why this is such an extraordinary piece of technology is that it has that acceleration sensor in it, called an "accelerometer," that can actually sense movement.

Mr. Armstrong, when he's sitting over there in that witness chair, is going to admit to you that he did not invent the accelerometer, that he never designed a controller which contained an accelerometer, and that his patent, that warehouse, the big warehouse that he talked about, that big warehouse, 38 columns of text, 50 figures -- you have it in your juror notebook. You'll be able to look at it. It's Defendant's Exhibit 1 -- there is not one mention in that patent in the warehouse -- there is not one mention in the warehouse of an accelerometer. He's trying to take credit for the Wii remote; and, ladies and gentlemen, that's our invention. That's not his invention.

So, what are we going to prove in this trial to you? We're going to prove that Nintendo

independently developed its own products. It took nothing from Mr. Armstrong or his '700 patent. We're going to prove to you that Nintendo does not infringe the patent, and we're going to prove to you that the patent is invalid.

Now let me talk for a moment about that last issue, the invalidity issue. Because you might say to yourself, "Well, what's that all about? How can Nintendo say that the patent is invalid?"

Well, he talked -- Mr. Cawley talked to you about the -- and I've got a very small timeline that I'm going to put up on the screen. Mr. Cawley talked to you about the 1996 warehouse. That's what he called it, the "warehouse application." And that's what we show right here. It was filed in 1996. Okay?

And that invention -- if you listened to the patent video, the man in the patent video, he said that that invention must -- that application must show the invention that the inventor is trying to protect. So, that is his invention in 1996.

Now let's look. There is another important date in this case, and that is 2002. Now, why is 2002 important? That is important because that's when he wrote the claims that he is suing on in this case. So, he files his warehouse in 1996 -- he's got to save his

invention in there -- and then six years later he files his claims. Six years later.

Now, what had happened in the interim? Mr. Cawley kind of brushed by this fast, but I think it's worth stopping and talking about it a little bit more. In the interim, in November of 2001, Nintendo introduced one of the products that Mr. Armstrong is accusing of infringement in this case, the GameCube product. So, that was introduced in 2001 and Mr. Armstrong got a copy of that -- got one of those controllers, disassembled it, and sat there and wrote claims to cover our product.

Now, you might say to yourself, "Wait a minute. How could he do that? How could he do that?" I mean, it's the ultimate sort of time machine. Think about it. You go to the big football game and you listen -- you watch the game and you see who wins. Wouldn't it be neat if you could get into a time machine and go back in time and place a bet on that game? It would be pretty easy money. But here's the thing. There are very, very specific rules with respect to writing claims in this situation.

Mr. Cawley said it's a continuation application. That's what was filed by Mr. Armstrong in order to write the claims in 2002 that he now says cover

the Nintendo GameCube product, that he actually wrote claims to cover. Let's face it. What he did is he copied our controller. And as a matter of fact, to do that, to write those claims later and then say that they are part of the 1996 invention, a continuation patent requires something very specific. You can't change the invention. That means what's described in 1996 has to be the same invention as what was filed in -- as the claims that were filed in 2002. They must be the same.

And, ladies and gentlemen, what that means is those claims that he wrote in 2002 will live or die based on whether they are the same invention as what he described in 1996. That is a key, core issue in this case that you will have to decide. Just because Mr. Cawley says it's so, just because Mr. Armstrong says it's so doesn't make it so. You will make the decision in this case as to whether or not what he claimed in 2002 to cover the Nintendo GameCube with multiple input members is the same invention as what he filed in 1996.

Now, to understand what Mr. Armstrong invented, I want to start with a product that Nintendo had. This is not one of the accused products in this case. This is the Nintendo 64 controller, and it was available -- it was out at the time that Mr. Armstrong filed his 1996 application. The Nintendo 64 controller,

as you can see, it's very different than that little Atari controller over there. Remember, at the time he filed his invention, Nintendo had a 3-D video game system out there then. It was the Nintendo 64. It was a very successful system. In fact, the graphics on that system were designed by the same company that designed the supercomputers that made -- that were used to make the dinosaurs in Jurassic Park.

So, Nintendo had a 3-D game system at the time and it had a controller that had multiple inputs, all different types of inputs, a joystick here, a cross-switch and buttons. And there was a lot of discussion about vibration or rumble. This had an optional rumble -- you can't see it -- but a rumble pack that could be plugged in.

Mr. Armstrong will admit to you from that witness chair that he invented nothing that's described there. He didn't invent the individual elements, the joystick, the cross-switch, the buttons, the vibration, or those elements altogether. That's what was out at the time that Mr. Armstrong made his invention. So, what was his invention? What was he talking about?

Here is a figure from the '700 patent and there were, remember, 50 figures in the warehouse. All of the embodiments, all of the figures that show a

completed joystick, were a controller having a single handle or what is called in the patent a "single input member." His idea was that, in contrast --

Kam, could you go back one slide?

-- instead of having lots of different input members like, for example, the Nintendo 64 controller, his idea was to have one handle, resolve all of those circuits and sensors into one handle that you could move up and down, forward and back, side to side, and also rotate around in what engineers call "6 degrees of freedom." And it was kind of an interesting idea if you think about it. If you think about maybe flying an airplane, what would be better? Having one handle that you can move around to move the direction of the plane up, down, side to side? Or if any of you have used farm equipment or heavy equipment, if you look inside -- years ago if you looked inside a payloader, you'd see handles all over the place to move all different pieces of the machinery. And what happened over the years is engineers realized that it was easier for the operator of a payloader or a tractor to actually have all that different control in a single handle. That's what Mr. Armstrong came up with. That was his idea.

Let's look at what else he told the Patent Office. That's the figures, and you'll have them.

They're in the patent, and they're in your juror notebook.

This is the abstract of the disclosure. This is the 1996 application. This is what Mr. Armstrong said his invention was then, back in 1996. And if you look at it -- remember, the abstract of the disclosure -- the man in the patent video said that's right at the beginning and it's a brief Summary of the Invention. So, in the first sentence of the invention, he talks about controllers comprised of a single input member operable in 6 degrees of freedom.

So, he shows figures that have a single input member controller and then he also mentions -- he's -- right in the very first sentence of the abstract he says that's his invention.

That's not all. Seventeen different times in the 1996 application, where he told the Patent Office what his invention was, 17 different times he explains that that invention is a single input member, 6-degree-of-freedom controller.

Again, that's what he said his invention was. That's what he's got to live by to get back to 1996. Because if he can't get back to that 1996 application with his 2002 claims, he's going to admit to you from that witness chair that his patent is invalid. And the

reason is that other people had already come up with controllers that did what his -- what he said his claims did in 2002. So, it's a critical, critical issue in the case.

Now, Mr. Armstrong told the Patent Office what his invention was; but he also talked about what the invention was not.

I want to go to the next slide.

I have a patent -- the first page of a patent up here to a man named "Chang." Now, why did I put that up on the screen? And you can look, and you can see there is a controller on the bottom. It's a patent from 1996. It's two years before Mr. Armstrong filed his 1996 application and he recognizes it's something that came before and he talks about it to the Patent Office in his application.

Now let's get a little bit of a close-up on that controller. It's sort of a mouse kind of thing.

And if you look at it, that controller has multiple inputs. It has three of them. It's got -- we've marked these. This is Figure 2 from the Chang patent. It's got a first input member, a ball, up on the top. It's got a thumb wheel on the side. That's the second input. And then it has a ball on the bottom. That's the third input.

The Chang controller, as described by Mr. Armstrong in his patent, was a 6-degree-of-freedom controller for controlling 3-D graphics; but instead of having a single input member, which is what he said his invention was, it had more than one. It had three.

Now let's see what Mr. Armstrong told the Patent Office about the Chang patent. He criticized them. He said it was bad. He said, "The Chang controller does not have a single input member" -- like my invention -- "such as one ball or one handle which can be operated...in 6 degrees of freedom." "Thus, the Chang device is functionally and structurally deficient."

Translation: It's bad. And why is it bad? It's bad because it has multiple input members. And what is Mr. Armstrong telling the Patent Office his invention is about? It's about a single input member.

DEPUTY CLERK: Ten-minute warning.

MR. GUNTHER: Thank you.

It's there in black and white. In 1996 that's what he told the Patent Office his invention was and what it was at the time when there was no potential products on the market, there was no lawsuit, and there was no money at stake. This is what he said when he had no motive than to do anything else than tell the Patent

Office what his invention was.

Now I want you to roll forward. Let's roll forward, if we can, to today. Remember, Nintendo 64, out at the time of the invention, multiple input members, bad.

Chang, the Chang controller, out -- prior art, two years before the 1996 invention. Bad.

Then let's look at what his invention is, single input member. He says that's good. That's what he did.

And now let's look at what he's trying to do here today. Here today he's trying to cover the GameCube controller and the Wii remote when it is connected to the Nunchuk. And look at all those input members, two joysticks, a cross-switch, buttons. Again, looking like the Nintendo 64. And when the Wii remote is hooked to the Nunchuk and you've got joystick and you've a cross-switch and lots of different buttons, multiple input members.

Now, how can you do that? How can you say in 1996 "My invention is about a single input member" and in 2002, when he writes his claims, say, "I can write the claims" -- and he writes it to cover the GameCube, specifically copies our product. How can he do it?

Well, he can't. And the reason that he can't

is because at the end of the day, he can only do that, he can only copy our invention and write new claims if what he wrote in 2002 is the same as what he disclosed in 1996.

And, ladies and gentlemen, they're directly opposite. 1996, single input member is me. It's my invention. That's what Mr. Armstrong says. And multiple input members are bad. Now today he's trying to take our technology in 2002.

And, ladies and gentlemen, let me tell you something. I'm second of 11 children. My dad had a bicycle shop in Valley Stream on Long Island, a suburb of New York where I grew up. I was the oldest boy. I don't remember much about first grade. In fact, I don't think I remember almost anything about first grade. But I remember one thing like it was yesterday, and that's this: One Saturday my dad, when I was in first grade, took me down to the bicycle shop; and I spent the whole day with him. And at the end of the day, before we went home, he paid me. I'm going to date myself again. He gave me a dollar, and I thought it was pretty neat. But that's really almost not the important part. What he said to me when he gave me that dollar is something that's remained with me for the rest of my life, and that's this. He said, "Son, you worked hard today; and

you earned your pay. Here's your dollar. But I want you to remember something, and I want you to remember it for the rest of your life. No one is going to give you something for nothing." And, ladies and gentlemen, I think that is what's going on here today.

When Mr. Armstrong filed his 1996 application for a single input member -- we've got no beef with that. We're not trying to take that away from him. That was his invention. That's fine. But when he tried -- in 2002 when he got our product and when he wrote these claims on the product, the multiple input member product, GameCube, and when he says that's the same as his invention, his single input member invention, ladies and gentlemen, that's where I think Mr. Armstrong is trying to get something for nothing. And that's not right. My dad will tell you that's not right.

Now, I want to talk very quickly about the Sony license. Mr. Cawley made a big deal out of that. He said that Sony paid for the use of this invention. Well, ladies and gentlemen, that's just not right. Sony did pay Mr. Armstrong and Anascape $10 million; but that was for a different patent, the '606 patent that is not involved in this case. And Mr. Armstrong will admit to you from that witness chair that he did -- that Nintendo

does not infringe that patent. The $10 million, '606 patent, it's got nothing to do with this case. The rest of Mr. Armstrong's patents -- and at the time what's now the '700 patent was just an application and that was thrown in for free in an exchange of additional rights.

So, you want to talk about Sony? I'll sort of take Sony in one sense. If you look at that -- and you'll have the Sony license in front of you -- Sony paid zero, nothing, for the '700 patent application. So, the Sony license, that's about all I've got to say about that; but you'll hear more about it during the trial.

Now, finally, I want to come back to the Wii; and I want to tell you this. It's a matter of fact. This case is all about the Wii. Now, why is that? It's all about the Wii because of the tens of millions of dollars -- let's put a number on it. It's about $15 million they're going to ask to award -- you to award them at the conclusion of this case. Over 90 percent of it is on the Wii remote plus the Wii Nunchuk. This case is all about the Wii. Follow the money. It's all about the Wii.

The GameCube, we don't even sell it anymore. It's off the market. The new generation has come along, and it's really an exciting new generation.

One claim -- there's only one claim that's asserted against 90 percent of the damages, of that money, claim 19. That's going to be a key claim in this case. And they say claim 19 is infringed. But claim 19 is a claim that he wrote to cover the GameCube, to cover that earlier product. And now what he's trying to do -- he didn't have the Wii when he wrote those claims in 2002 to cover the GameCube. The Wii wasn't introduced until 2006. It wasn't -- at 2002 when he wrote those claims, the Wii wasn't even a twinkle in Nintendo's eyes, much less Mr. Armstrong's.

And, so, where we are at this point is he's taking a claim that he wrote to cover a product that's out of the market as to which the money they want is insignificant and he's trying to stretch that claim to cover the Wii. And as I said to you, what makes the Wii so incredibly innovative -- let's take off the cover, look at the circuit board. It's that accelerometer. And you'll see this during the trial. Look at that. It's that little chip up in the corner there. That's the thing that allows the Wii to sense body motion. It's what makes the Wii revolutionary because, as a matter of fact, if -- the Wii is at the end of the day, much more than a game. It's gotten people up off the couch. I talked about grandmothers and mothers playing

video games for the first time.

And if you think video games are a waste of time sometimes, think about this. Because it responds to body motion, the Wii is showing up in senior centers and rehabilitation hospitals all across the country. It's more than just a game.

Remember, Mr. Armstrong admits he had nothing to do with the accelerometer. He had nothing to do with putting it into the Wii remote. It's not anywhere in the warehouse. I challenge them. Search through the warehouse. You can rummage through it yourself. You're not going to find an accelerometer anywhere in there.

So, at the end of the day, ladies and gentlemen, I want to ask -- see if we can ask yourself -- as we go through the evidence in this case, I think that you'll want to ask yourself some important questions. If Mr. Armstrong's 1996 invention really does cover the GameCube and Wii controllers, those multiple input member controllers, why did he have to file an application -- a new application years later? Why wasn't the first one good enough?

Why did Mr. Armstrong have to write new claims in 2002 with the Wii -- with the GameCube controller in front of him? Why did he have to copy our product?

And, finally, ladies and gentlemen, probably most importantly, is it fair for Mr. Armstrong to change his invention, his 1996 invention, after our multiple input member controllers came on the market, the GameCube and the Wii, and try to backdate those claims to 1996?

Ladies and gentlemen, after all of the evidence is in in this case, I will come back to you; and I will ask you to answer that question. Is it fair? No.

Mr. Armstrong had an invention in 1996. We're not trying to take it away from him. Single input member. Multiple input members are bad. He said that in black and white. Now he's trying to cover our products. He didn't invent them; we did. And he's writing claims to try to cover our products. And, ladies and gentlemen, I will ask you at the conclusion of this case to come back and not let Mr. Armstrong have something for nothing. Thank you.

THE COURT: All right. Ladies and gentlemen -- and you'll get more instructions on this later, but you can tell it's one of the important issues. So, I'm going to instruct you at this time.

If someone writes an application, they can later on file a continuing application and write new

claims and they can write those claims to cover another product that's on the market. But what you will be looking at is to see if it's described in the original application. That will be the key. The fact that a later claim is written and even if it is specifically written to cover a later product does not make it invalid. What you will be instructed to do -- and that's why I'm telling you this, so you can listen to the testimony -- is compare the claim, the later claim, with the earlier application to see if it's properly completely described in that earlier application.

All right. The other thing I forgot to mention was introducing you to the other people here in the courtroom. The two ladies here are court reporters; and the reason there is two of them, unlike one like there are in most courts, is that they are actually trying to provide a live transcript to the parties; in other words, get them a realtime transcript. And from time to time, you'll see me working on this computer. I get a rough draft of a realtime transcript computer here, and I can make notes on it.

You will also see me sometimes working on this computer. This computer allows me to call up files and also to send messages to Ms. Chen over here, who is a law clerk. She is an attorney working with me, and I

will send her notes to do research on things or get me a book or get me something. We're not playing video games up here, but that's what she's doing. And if you see her going in and out from time to time, it may be I'm asking her to get me a law book or a case or something like that.

You also see the deputy clerk here, and she's in charge of making sure all the exhibits are handled. You'll also see her running the controllers up here from time to time.

And, then, finally, of course, you have already seen the court security officers in the blue jackets and the badge. And if you have any question or concern about something, need something, ask for something, you can talk to one of them; and they are here to help you as is, of course, the two deputy clerks in this case.

We're now going to go ahead and take a recess, ladies and gentlemen; and then we'll come back with our first witness. I will ask you to be back at 20 of.

(The jury exits the courtroom, 3:24 p.m.)

THE COURT: All right. We'll be in recess until 20 of.

(Recess, 3:25 p.m. to.3:39 p.m.)

(Open court, all parties present, jury present.)

(The oath is administered.)

THE COURT: Counsel?

MR. CAWLEY: Thank you, your Honor.

DIRECT EXAMINATION OF BRAD ARMSTRONG

CALLED ON BEHALF OF THE PLAINTIFF

BY MR. CAWLEY:

Q. Would you please introduce yourself, sir?

A. I'm sorry. I didn't hear you.

Q. Okay. That's not off to a great start, but let me repeat the question.

A. Okay.

Q. Would you please introduce yourself?

A. Yes, sir. My name is Brad Armstrong. I'm 54 years old, and I am an inventor.

Q. Where do you live, Mr. Armstrong?

A. I live in Tyler, Texas.

Q. And why are you here?

A. I'm here to try to protect my inventions.

Q. Do you make your living as an inventor?

A. Yes, sir, I do.

Q. What did you invent that's relevant to this case?

A. I have video game controllers.

Q. You didn't invent all video game controllers, did

you?
A. No, sir.
Q. Did you invent a better way to make video game controllers?
A. Yes, sir.
Q. Are you still an inventor?
A. Yes, sir.
Q. Before we go into more about the video game controllers, let me learn -- let us all learn a little bit more about your background. Where did you grow up?
A. I grew up in Liberal, Kansas. It's a small town right on the Kansas border, up above the panhandle of Texas, right across the Oklahoma panhandle. It's only 50 miles from the state line.
Q. And what kind of things did you enjoy when you were growing up?
A. Well, I was a regular kid; but I also was just really curious. I loved -- as you said, I loved taking things apart and seeing how they worked. I was always going to the library as a kid, also. I loved reading. And there were a lot of other things that kids just love to do.
Q. Okay. Did you know even then that you would grow up to be an inventor?
A. No, sir.

Q. What did you do after high school?
A. After high school I started to travel. I worked odd jobs. I just tried to figure out life and...
Q. Give us an idea of some of the jobs that you had after high school.
A. I was a roughneck in the oil field. I worked in a window shop where we built custom windows, kind of better store windows like the forerunners of what you can get today to upgrade your home.

And I had a job there at the -- in Austin at the bookstore, the book and record store. We sold electronics, also. I ran the electronics section.
Q. Did you ever get a college degree, Mr. Armstrong?
A. No, sir, I did not.
Q. Did you ever attend any college classes?
A. Yes, sir.
Q. Tell us about that.
A. Well, as I would travel around, I would often stay in college towns or towns that had some kind of college or university. And I would try to learn what I could.
Q. Okay. Did you settle down at some point?
A. Yes, sir.
Q. And where was that?
A. Chico, California, a small town in northern California.

Q. And how long were you in Chico?
A. Approximately in that area about 15 years.
Q. Was there anything or anyone in particular that inspired you to become an inventor?
A. Certainly the greatest inspiration to me was my father. I was just very blessed. My father is a very creative person. I think that the -- one thing I really remember is -- he was an optometrist for a profession, and he told me when I was young that he helped people to see better. And I always remember that. I thought that was a -- you know, my dad helped people to see better; and that was something that I just really loved.

But really his hobbies were extraordinary. He was a ham radio operator. He was a talented artist. He painted the most beautiful paintings. And kind of the most interesting hobby, I think, was he built airplanes, not remote control airplanes but airplanes you actually get in and fly.

Q. All right. Back there in Chico, though, Mr. Armstrong, did you face any problems or obstacles to becoming an inventor?
A. Yes, sir. The big -- you know, I had lots of ideas. I always had ideas for this could be better, that could be better. But patents -- you know, filing for patents, you have to hire patent attorneys. They're

very expensive; and, you know, I didn't have that much money.

Q. When did you first realize that there was an alternative that allowed you maybe to do something with your ideas and your inventions?

A. Well, I came across a book in a bookstore called Patent It Yourself. It was written by a patent attorney and it was an easy book to read and it just kind of told you how to do the process. And I thought, "Wow, I've got so many ideas that, you know, if I could learn how to, you know, patent things myself, I might be able to afford it."

Q. And when did you file your first patent application?

A. It would have been in the late 1980s.

Q. Was that on game controllers?

A. No, sir.

Q. What was it?

A. It was a toy for children. It blew huge soap bubbles, giant soap bubbles.

Q. And did you hire a lawyer to help you get an invention on that --

A. No, sir.

Q. I'm sorry.

-- to help you get a patent on that

invention?
A. No, sir. I filed that myself.
Q. What kind of ideas are you working on today?
A. I am fascinated by medical diagnostics. I think there is great room for improvement there. I've got ideas for how to take the salt out of seawater, which we don't need much here; but around the world it is a big problem, having freshwater. And I have some things I'm working on for energy, basically almost free energy so that when you go to the gas pump, you're not paying those giant, draining prices.
Q. How many patents do you have in your name today, Mr. Armstrong?
A. I have 32 issued U.S. patents.
Q. And about how many of the 32 patents that you have relate to game controllers?
A. About a dozen.
Q. But for purposes of this patent -- I'm sorry. For purposes of this trial, we're only talking about one patent; is that correct?
A. Yes, sir.
Q. And you've heard that referred to as the "'700 patent"?
A. Yes, sir.
Q. Now, tell us: What first interested you about the

possibility of doing something with game controllers?
A. Well, when I had that job in the bookstore in Austin, we sold video games; and we had actually a big wall screen television -- which back then, you know, in the late Seventies, that was really a rare thing -- and, you know, young people would come in and, oh, man, that was -- they just loved that. They loved the video games. But the video games were -- they were crude. I mean, they were a giant advance for the time; but I could just see so much opportunity to improve them.
Q. All right. Did you continue your interest in video games?
A. Yes, sir.
Q. When did you first start developing game controllers of your own?
A. I became very serious about that in 1989.
Q. Where were you then?
A. I was living in Chico, California.
Q. Tell us what kind of game controllers were on the market then.

To help you do that --

MR. CAWLEY: Your Honor, may I approach?

THE COURT: You may.

BY MR. CAWLEY:
Q. Mr. Armstrong, take a look at what's been marked as

Plaintiff's Exhibit 447; and, if you would, tell the jury what that is.

A. Is that this (indicating)?

Q. Yes, sir.

A. This is a traditional game controller like we had in the -- like in the late Seventies and even into the late Eighties. This is just a simple thing that goes up and down and left and right. It would be a two-axis controller; and it's really best just for controlling a two-axis game like Pac-Man, just up and down, left and right.

Q. Is this the kind of controller that you sold when you were working in the bookstore in Austin in the late Seventies?

A. Yes, sir.

Q. By the late Eighties, did you think that this kind of controller would continue to be adequate for video games?

A. No. It was clearly inadequate.

Q. Tell us why you realized that in the late Eighties.

A. Well, I could see that computers were just, you know, marching forward dramatically and the power was -- the increases were huge and I could tell that we were going to have 3-D graphics because everybody could understand them. And, so, I wanted to build controllers

that were -- really helped with 3-D graphics.
Q. So, did you start to work on that?
A. Yes, sir, I did.
Q. Did you keep all of your ideas in your head, or did you do something to put them into practice?
A. I created a -- I started an inventor's notebook, and I started making prototypes.
Q. Let me ask you to show the jury Plaintiff's Exhibit 426. Mr. Armstrong, tell us what that is.
A. Is that this (indicating)?
Q. Yes, sir.
A. Yes, sir. This is --
Q. I'm sorry. I'm confusing you a little bit. I think that we've actually marked for the record pictures of those things, but the things don't have it themselves. So, I'll try to make sure that I'm asking you to pick up the one that corresponds with the right exhibit number; and you've got the right one in your hand.
A. Okay. This is the very first 3-D graphics prototype that I ever made. I'm very proud of it. It's taken a little bit worse for wear. This part here actually was cross-shaped and it held itself in there, but that's -- you know, it's been a long time.
Q. How long?

A. Well, 1989 until now, about 19 years.
Q. Can you tell the jury a little bit about that prototype and how you made it and what it did?
A. Yes. This prototype is very economically built because I didn't have much money, as you know. The plastic box is a VHS video cassette box which back then, you know, we all had laying around under our TVs. And, so, I actually really liked the shape of a light bulb for the handle and, so, I actually had some plastic that would make a mold and I made a mold of a light bulb and then I poured it full of other molding plastic and that's how I made this handle.

And the box, I -- like, the wires that are in here, I got those out of, like, things I would buy out of a yard sale, you know, that just had wires in them and stuff. I'd buy it for 5 cents or 10 cents and take the wires out and use them for my inventions.

The wood structure is actually kind of an intricate structure; but it is, in fact, made from popsicle sticks that are cut up. You know, popsicle sticks, you think mothers get them for their kids; but they're very regularly shaped and they are very cheap. You could buy a whole bunch of them for not very much. And, so, I could make a regularly-shaped structure out of that for not much money.

And I needed to have electrical contacts which -- you know, like a sheet of aluminum would be a nice electrical contact. And what I did was I cut up coke cans and those were the electrical contacts in this prototype.

Q. Was this prototype important for you, Mr. Armstrong?

A. Yes, sir. It was very important. It was a first example of, you know, making an advance. And, so, I was very proud of it; and it kind of got me started in doing.

Q. How long did you work on that prototype?

A. I think that probably the actual building of it -- once I had the design, the actual building was probably just a few days.

Q. Tell the jury, please: What was your day like when you're working on a prototype like that?

A. Well, I would get really obsessed, I guess. I don't think of myself as an obsessive person, but it's kind of like the absent-minded professor. I'd start thinking about this and I'd get so excited about it and I just can't think about anything else. I'm drawing up designs. I'm working out problems. I'm eating breakfast, and I'm thinking about it. I wake up thinking about it. When I'm eating lunch, I think about

it. I'm taking a shower, I'm thinking about it. I'm going to bed, I'm thinking about it. And it's just -- that just totally occupies me.

Q. All right. Mr. Armstrong --

MR. CAWLEY: Your Honor, I realize now that I left one behind that I would like to ask the witness about, if I might approach again.

THE COURT: Sure.

A. Thank you.

BY MR. CAWLEY:

Q. For the record, Mr. Armstrong, that -- the picture in the court's record in evidence of that prototype is Plaintiff's Exhibit 428. Can you tell us what that is that I just handed to you?

A. Yes. This unit here is a later model of a 3-D graphics controller that I built.

Q. And what -- do you have a name for it?

A. Yes. I call this the "Global Devices controller," or "Global controller."

Q. What is Global Devices?

A. Well, Global Devices was a partnership of myself and a friend of mine. He helped me with my inventions.

Q. What did you do with this controller?

A. This controller, we --

THE COURT: Hold on a minute. Let's go off

the record a minute.

(Off the record, 3:56 p.m. to 3:57 p.m.)

BY MR. CAWLEY:

Q. Mr. Armstrong, that controller is not beeping, by any chance, is it?

A. No. No, sir, it's not. Pretty sure.

Q. If it doesn't have a beep at least, then tell us: What does it have that's different than that first controller that you showed us?

A. Well, it's much more advanced; but probably the single most important thing that this has is -- of course, it's a 3-D graphics controller. It does all of that 6 degrees of freedom that we talked about. But it has rumble, which rumble was a big advance and it was -- I was trying to put a sense of touch into the 3-D world and that's -- this has that in it.

Q. All right. Is it a 6-degree-of-freedom controller?

A. Yes, sir.

Q. And did you sell some of those controllers?

A. Yes, sir.

Q. All right. Let me ask you about another one of your prototypes. It's the blue and white one that the picture is in evidence as Plaintiff's Exhibit 425. Is that a prototype of yours?

A. Yes, sir.

Q. When were you working on that prototype?
A. When did I start working on this?
Q. Yes, sir.
A. This would have been, I believe, in 1993.
Q. Okay.

MR. CAWLEY: Your Honor, I'd like for the jury to be able to see Mr. Armstrong's explanation of how this works; although, it's a little far away. Can he step down in front of the jury box?

THE COURT: If you want to step down, go ahead, sir; but please be sure to speak up very loud because you won't have a microphone.

MR. CAWLEY: Your Honor, why don't I move this microphone down there.

THE COURT: All right. Step on down, sir.

THE WITNESS: All right.

BY MR. CAWLEY:

Q. Mr. Armstrong, tell us about this prototype.
A. This prototype is a concept study that I came up with after -- I was really working hard on some problem areas of how do you make a -- really a high-volume, low-cost, super-reliable 3-D graphics controller because I didn't want for people to have to be slaving over soldering irons in factories and sometimes the wires get wrong and it's just -- what we do is we try to put

everything onto a single circuit board and that can be manufactured now in high volume, low cost, reliable. That's why we have great TVs that don't cost too much and they last forever, because we can do that type of putting everything onto a circuit board. And, so, this was a concept study in how to do that.

Q. Can you show us how it works?

A. Yes, sir. What the -- this handle works in the 6 degrees of freedom and it's all of the rotations and all of the linear rotations that Doug described to you, up and down, left and right, forwards and backwards and turns -- and it's all of the things that Wii remote does, also, just all of those motions. And, so, the thing is I was translating those so they could all be onto a single circuit board.

And, see, if this handle goes up and down like this, you know, that is driving -- I have four rockers here; and you'll see that the rockers, when I do one of those actions, only one of these rockers is going to move --

THE COURT: Okay. Be sure to speak up loudly, sir. I know it's hard, but you've got to speak up loudly.

THE WITNESS: Sure.

A. I'll also talk louder; but if it seems like I'm

talking too loud, I'm just trying to do the best I can.

So, the thing is with this -- for example, when this handle is moving up and down, what I do is -- I don't want it to be doing anything else because it's got to stimulate just the up-and-down sensors. So, when I'm doing that -- you have to forgive me. This was a concept model I made after a dream that I had that I figured this all out in my sleep, and I had a dream about it. And, so, as the handle goes up and down, you see this rocker right here, this one right here (indicating), it's moving up and down as the handle comes up and down. The other three rockers are not moving.

Now let me take another axis, for example. Let's say the handle is moving not up and down but this way (demonstrating). All right? So, when that's moving that way, you see the up and down rocker that was moving there is not moving; but this one here will be moving. Okay? Is that clear?

And, so, what we have here is we have four axes like that. Now, I moved that way; and this one moved. But if I moved this way, like this, side to side, the handle -- see, this rocker here, this one here is going to rock; and the other three are not going to rock. So, I'm moving the handle side to side and that

moves around.

And, so, the final one -- if the handle turns like this (demonstrating), that would be kind of the same thing as if I would turn my head like this. It's a yaw. It's a rotating motion. When that happens, this rocker here -- you can see this one here is moving and none of the others are moving.

And, so, that's a way of resolving all of these things down to where they can all be put onto a circuit board and you don't have to individually wire them.

BY MR. CAWLEY:

Q. Thank you, Mr. Armstrong. Could you take the witness stand again?

Now, Mr. Armstrong, you've shown us several of your prototypes and described quite a few of your ideas to it. Did you have several ideas in the Eighties and in the Nineties that came together to make a better video controller?

A. Yes, sir, I did.

Q. Did you have a vision about how to do that?

A. Yes, sir.

Q. Could you describe that to the jury?

A. Well, the -- as I just mentioned, on this particular advance, I was just thinking and thinking and

thinking about it. And as I said, you know, I'd go to bed sleeping -- go to sleep thinking about it; and I had a dream in which the -- there was a golden ball and I could tell that that worked in 6 degrees of freedom -- I just knew that in my dream. And it vibrated and vibrated and then it broke apart and it broke apart into three two-way -- there's six axes. There was three two-ways like this (demonstrating); so, each one was going left and right and up and down like that. And they all floated down like this.

And I said, "Oh, that's really interesting because they were" -- you know, now they were all onto a sheet, right? But I didn't -- still didn't know how to translate it and I'm looking at it trying to understand it and they vibrated again and they broke apart like that and, so, there were six of them like that. And I said, "Oh, I can do that. I know how to do that." And it was a big aha moment. It was -- I was just -- I just woke up, and I was so happy. And the next day I started building this particular concept study.

Q. All right. Mr. Armstrong, what had you been doing along the way as you were describing these ideas to us -- what had you been doing to protect your ideas about better video controllers?

A. Well, in 1992 I filed a patent application.

Q. Okay. Do you have Plaintiff's Exhibit 4 in a binder in front of you?

MR. CAWLEY: Or I guess I still have it, your Honor, if I can approach.

THE COURT: You may.

MR. CAWLEY: And there's a couple more I can take up while I'm at it.

A. Thank you.

MR. CAWLEY: If you could bring up the first page of Plaintiff's Exhibit 4.

A. Yes, sir.

BY MR. CAWLEY:

Q. What is that?

A. This is a patent application I filed in 1996.

Q. All right. Is that one of your early applications relating to video games?

A. Yes, sir.

Q. And did you file a large patent application in 1996?

A. Yes, sir, I did.

Q. Is that what has been referred to before in this case as your "warehouse"?

A. Yes, sir.

Q. And tell us why you call it that.

A. Well, it was just -- it was really a lot of

technology. It had rumble. It had proportional sensors, proportional buttons. It had 6 degrees of freedom. It had 3-D graphics control. It had the sheet-connected sensors I was telling you about. It was just -- it was a wealth of inventions in that patent filing.

Q. Now, when you filed that application, this Plaintiff's Exhibit 4 that has an application in it, did you file claims?

A. Yes, sir, I did.

Q. Did you claim everything you could think of in the application, the claims that you filed in 1996?

A. No, sir.

Q. Why not?

A. Well, I just filed enough to get a good start. My understanding is that the Patent Office allows you to write claims at any later date so long as they are the original invention that you filed in that original patent application.

Q. Did you claim everything you could think of in the --

A. No, sir.

Q. -- '96 application?

Why not?

A. Well, it was just -- I just was trying to get a

good start as --
Q. Okay.
A. -- a practical matter.
Q. How did you start? What did you claim first in your '96 application?
A. There was some 6-degree-of-freedom, single input member controllers.
Q. All right. And taking some of the things in this application you filed in 1996, did you file another application in the year 2000?
A. Yes, sir, I did.
Q. And what did that include?
A. It's the same technology. It's a daughter application of the original parent that I filed in 1996.
Q. What's the relationship between the 1996 application and the 2000 application? Explain that to us again.
A. The 2000 application is based on the 1996 application.
Q. Okay. And you talked about "parent" and "daughter."
A. Yes.
Q. What do you mean by that?
A. Well, an originally-filed patent application like I filed in 1996 is called a "parent patent application."

And, then, in the future inventors file patent applications that are called "daughters" or "children application"; and it's the same patent application, in essence.

Q. Is that daughter or child application what Judge Clark has told us is called a "continuation application"?

A. Yes, sir, it is.

Q. Why is it called that -- "continuation"?

A. Because it's just a way that the Patent Office rules are. You're allowed to continue your patent application, to write more claims at a later time that are still based in the original 1996 or the original parent patent application.

Q. And why did you file this continuation application in 2000?

A. I wanted to have more -- pull more of my inventions out of the warehouse.

Q. Are there any differences between the 1996 application and the 2000 application?

A. Yes, there are.

Q. What are those differences?

A. I made some language changes just to clarify and to kind of get to the heart of the invention sooner.

Q. Okay. Now I'd like to talk to you about some of

the key features of your invention as it's described in this 2000 application. Just so we're all clear, is it the 2000 application that the Patent Office examined and eventually granted you a patent on that's the '700 patent in this lawsuit today?

A. Yes, sir.

Q. And is that in front of you, that patent?

A. It probably is, yes, sir.

Q. I think I gave you the original of it, didn't I?

A. Are you talking about this?

Q. Yes.

A. Yes, sir.

Q. Is that the original --

A. Yes, this is --

Q. -- copy?

A. This is a certified copy of that patent.

Q. Let's talk about some of the key aspects of your invention, Mr. Armstrong. Tell us about the first one.

A. Rumble is -- rumble is a technology that I invented. It's a way of getting a sense of touch into this world because, you know, it's all just graphic images, all visual. And we use our visual sense and that's an important sense, but I wanted to make it more compelling. And, so, I came up with a way to make a sense of touch into that world and --

Q. Have you brought anything to court with you today to be able to demonstrate to the jury how this rumble works?

A. Yes, sir, I do have something.

MR. CAWLEY: May I approach, your Honor?

THE COURT: You may.

A. Thank you.

BY MR. CAWLEY:

Q. Mr. Armstrong, let's start with the unit that you can see most clearly that you have in your hand there.

MR. CAWLEY: And, your Honor, since this again is small, can the witness --

THE COURT: You may.

MR. CAWLEY: -- step down again?

THE COURT: Go ahead and step down, sir.

Go ahead and put that microphone back up there, too, please.

THE WITNESS: Yes, sir.

THE COURT: And, ladies and gentlemen, let me mention. If you've been in a court before or you've seen on TV, the lawyers will go through this procedure by asking to have an exhibit admitted and the court formally admits it. To save you time, I've done almost all of that ahead of time. So, if a lawyer mentions an exhibit number, it's in; and you'll get to see it. If

there's going to be objection, you'll hear it. But if there's no objection, we've already covered that earlier just to save time so that all those words are cut out. So, if you're wondering why I haven't been saying that's admitted or that's not admitted, it's because we did that before you got here to save your time. There will be a few that there may have to be some discussion like that. When that comes up, you'll see it. But, otherwise, if it's mentioned in front of you, it will come back to the jury room for you, if it is an admitted exhibit and not just a demonstrative. A demonstrative is something that you're shown to look at, but it's not a formal exhibit. Those generally are not numbered, or they don't have either a plaintiff's number or defendant's number.

Go ahead, counsel.

MR. CAWLEY: Thank you, your Honor.

BY MR. CAWLEY:

Q. Now, Mr. Armstrong, now that you're there with the microphone, do you have something that you can use to demonstrate to the jury rumble and how it works?

A. Yes, sir, I do.

This is a very simple thing. This is just a clear plastic box with a battery inside of it, a 9-volt battery, just like we have and -- everybody has them.

And then I have a switch here, and that's all just to demonstrate.

The important part is right up here on top (indicating), and that is just a little electric motor. There's nothing fancy. It's the same electric motor that you can see in any kid's toy or all kinds of things. But the really interesting part is that it has a weight, and you can see the weight is kind of hanging down there. I'll turn it. It's a weight off to one side. And that's what I would call an "offset weight."

And, generally speaking, when engineers build motors or -- they try to make it all very balanced so it runs very smoothly. And just like you balance your tires on your car when you get new tires, to make the weight real smooth and even all the way around, this is just the exact opposite. We're putting weight intentionally off to the side and so that when it runs, it vibrates. And that's what -- I'm pressing the button, and you can (demonstrating) -- while you can't feel it, I sure can feel it. But you can hear it vibrates and you can tell that it's -- that I feel it in my fingertips and that -- when this is in a 3-D graphics controller, you go from having only image into now all of a sudden you can have a sense of touch, which is stimulating.

Q. Now, in the controller that you described to the Patent Office, Mr. Armstrong, was that weight sitting out in the open like it is there?

A. Yes, sir, it was.

Q. And did it produce that kind of vibration like the one you have in your hand?

A. Yes, sir. This is just like what I told the Patent Office about.

Q. All right. Have you looked for that kind of device in a Nintendo GameCube controller?

A. Yes, sir, I have.

Q. Do you have something that can demonstrate that?

A. Yes, sir, I can.

This is -- I take apart everything. I always have, and I always will probably. And especially if I think that it's my invention that somebody else is making.

This is a motor that's out of a Nintendo GameCube controller. Now, you don't see the weight because the weight is built into the inside. But you can tell that it's doing the same thing (demonstrating) when I turn it on. It's vibrating. And the reason why it vibrates is because there is a weight inside this motor that's off to the side and it's just -- I mean, they kind of hid it inside, but it's -- that's exactly

what's happening.
Q. Mr. Armstrong, that microphone seems to be going on and off. So --
A. Maybe the battery's low.
Q. Why don't you put that down and return to the stand so --
A. I'll try to speak up. I hope you don't feel like I'm yelling at you.
Q. Well, since there is one to go, maybe you better speak up.
But before you go, have you taken that round motor housing that you got out of the Nintendo GameCube apart to --
A. Yes, sir, I have.
Q. -- confirm that it has a weight in it?
A. Yes, sir.
Q. All right. And what's the second demonstration of a Nintendo use of this idea that you can show to the jury?
A. This is the same thing but smaller, and it (demonstrating) -- can you hear that? It's vibrating.
THE WITNESS: Judge, can they feel the vibrating?
THE COURT: You need to just show it to them, sir.

A. Okay. So, it's -- can you hear it? It's vibrating in my fingers. And this is the -- it's a motor and it has a weight off to the side inside the shell and, so, when it runs, it vibrates and that gives the tactile sensation that is in the Wii remote.

BY MR. CAWLEY:

Q. Wait a minute. You say you got that out of the Nintendo Wii?

A. Yes, sir.

Q. That's the device that we heard so much about in opening statement?

A. Yes, sir.

Q. Did you take that little button-looking thing, the motor on the top of that, apart to see if it has a weight in it?

A. Yes, sir, I did.

Q. Was it offset like the weight you described?

A. Yes, sir.

Q. All right. Why don't you take your seat again, if you would.

A. Okay.

Q. Look in the notebook in front of you, if you would, and look at Plaintiff's Exhibit 250.

MR. CAWLEY: I'd like to call up on the screen the page that's been marked as 41762.

BY MR. CAWLEY:
Q. First of all, as long as we're looking at the first page, what is this?
A. This is -- I think it's the first page of my inventor's notebook from 1989.
Q. Okay. You began this notebook in 1989; is that right?
A. Yes, sir.
Q. And it continues on to which --
A. 1992.
Q. All right.
MR. CAWLEY: Could you go to page 41762?
A. Yes, sir.
BY MR. CAWLEY:
Q. What's this?
A. This is a page out of my inventor's notebook. The date is November -- well, there's three signatures. Dates November 3rd, November 6th, and November 7th. This is a drawing of the motor with the offset weight.
Q. Mr. Armstrong, in light of the problems you had with that microphone, could we trust you with a laser pointer?
MR. CAWLEY: Your Honor, may I approach the witness?
THE COURT: You may.

BY MR. CAWLEY:

Q. Can you use that pointer to explain to the jury what we're looking at in this page from your inventor's notebook?

A. Yes. I would point first to this (indicating), the image here on the upper left. And that is a -- right in the top part of it, it says "motor." And then here it says "offset weight." And that is -- the line is shown to this little -- this is the weight that's offset on the motor, and that is to provide a vibration just like we saw. And, of course, this is, you know, 1989 when I conceived of this for 3-D graphics controllers.

Q. Was this 1989 the date on this page of your inventor's notebook?

A. Yes, sir.

Q. Did you disclose this idea of rumble in your 1996 patent application?

A. Yes, sir, I did.

Q. Can you show us where that is?

A. Yes. This is a drawing, Figure Number 21, in the 1996 -- the warehouse patent application that I made that has all of that technology in it. The orange-shaped drawing is the motor with the offset weight.

Q. Can you read us the words that you used --

A. Yes, sir.
Q. -- to describe this idea in your '96 patent application?
A. Right. It says: Figures 20 through 31 show another preferred embodiment, such a device has additional benefits including space to place active tactile feedback in a still small handle, et cetera.
Q. Okay. There are some words there that we haven't heard before; so, maybe we could take a minute and let me ask you about them.

The first line says "another preferred embodiment." What do you understand that to mean?
A. It means that there are many different inventions in this patent application. The way that those are -- those are referred to as "preferred embodiments," and that's just one way to describe the invention.
Q. Okay. Now, in that phrase "preferred embodiment," what's the meaning or the implication of the word "preferred"?
A. Well, it just means something that -- that you draw attention to as a good invention in there.
Q. Does a preferred embodiment mean, in your understanding, that it's the only way to do it?
A. No, sir.
Q. What does it mean?

A. Well, it's one way to do it; and it's a good way.
Q. Does it mean that someone could still be using -- or infringing the patent and do it some other way that's not in the preferred embodiment?
MR. GUNTHER: Objection, your Honor.
A. Yes, sir.
THE COURT: Hold on. Yes?
MR. GUNTHER: Objection, calls for a legal conclusion.
THE COURT: Overruled.
MR. GUNTHER: Thank you, your Honor.
BY MR. CAWLEY:
Q. First of all, Mr. Armstrong, anytime there is an objection, please -- I know you're eager to answer the question but -- you went ahead and answered that one, but let's hear the answer again since the judge has overruled the objection.
A. Could you ask the question again?
Q. Okay. If preferred embodiment means one way to do it --
A. Yes, sir.
Q. -- is it your understanding that someone could do it a different way but still be infringing the patent?
A. Oh, yes, sir. Absolutely.
Q. And is that because the preferred embodiment is

preferred but it's not necessarily the only way?
A. Yes, sir. That is very accurate.
Q. All right. Then in line 3, you said in your patent application in '96 that you're giving space to place active tactile feedback. What do those three words mean, "active tactile feedback"?
A. Active tactile feedback is the vibration from the electric motor with the weight set off to the side. I used the word "active" because it's a motor. It's a very active thing. I had a different kind of technology in this, also, called "passive tactile feedback" that didn't have a motor but it created some tactile feed -- some sense of touch, also. But the one that had the motor was called "active tactile feedback."
Q. That tells us about active, but I also want to make sure we understand. What is tactile feedback?
A. Tactile feedback is just -- it's just a way of saying touch. It's just a way of saying that this invention can give you a sense of touch so that when you -- you can feel it in your fingers or wherever it would be touching your skin. You can feel it and that sense of touch, that's tactile feedback.
Q. Is tactile feedback another way of saying what we've been calling "rumble"?
A. Yes, sir. That's -- rumble is the way that they

talk about it today. The words change over time, but that's -- it's the same technology.

Q. And do those three devices that are sitting in front of you that you showed to the jury, the push buttons and the little motors that whirl around and that vibrate --

A. Yes, sir.

Q. -- do those provide active tactile feedback?

A. Yes, sir, they certainly do.

Q. Including the ones that you took out of the Nintendo controllers?

A. Yes, sir.

Q. All right. You've told us about the first feature of your invention that you filed for in 2000 that became the '700 patent. What's the next feature of your invention that you want to tell us about?

A. Proportional buttons.

Q. What does that mean?

A. Well, the -- a button is a kind of -- if you think -- a button is a switch. And if you think of, like, the light switch when you go into your home is mostly -- most homes is just -- it's on, or it's off. And, so, that's just -- it's an on/off switch. But you might put a dimmer in there, in which case it's more than just on or off; it's something in between. It's

proportional. It gives you not full light and not no light but some level in between. And that would be -- that's the definition of "proportional."

Q. Okay. Why is that important in a video game?

A. Well, it's very important. As you alluded to in your opening remarks, for example, we're mimicking the real world. We're trying to make these 3-D environments really understandable and easy to use just like the real world. And you used the analogy -- and I think it's a very good one -- of a gas pedal in a car so that, you know, you don't want it all the way off where you wouldn't go anywhere; you don't want it all the way down to the floor or you would be crashing into everything. So, you want something in between; and you want to be able to vary that. According to how hard you press it means how fast you go. And that is a proportional control, and that was something that I emphasized quite a lot in my patent application.

Q. All right. Mr. Armstrong, let me ask you about that. So, you've just told us that proportional buttons was the second feature of the continuation patent you filed in the year 2000. But had you disclosed that idea of proportional buttons to the Patent Office back in your 1996 application?

A. Yes, sir, I certainly did.

Q. Can you show us?

A. This is a quote out of the 1996 application. It says: The invention can be constructed with sensors as simple as electrical contacts or more sophisticated proportional and pressure-sensitive variable output sensors or the like.

MR. GUNTHER: Your Honor, I just have a question. I may be just on the wrong page. Page 14 doesn't seem to match up with what I'm looking at.

THE COURT: All right. Is that page 14 of the prior application or the application or the prior patent?

MR. CAWLEY: The -- page 14 is the page number in the juror notebook for the application. And if we want to know how it relates back to the prosecution history, we'll have to get it out of the juror notebook and match it up.

MR. GUNTHER: We can do that later. That's no problem.

MR. CAWLEY: Okay.

MR. GUNTHER: Thank you.

THE COURT: So, just to help you, ladies and gentlemen, we have some of this information in your juror notebook so you can follow along.

And counsel on both sides, of course, when

that comes up, if you'll remind them, it will obviously be a help to them.

Thank you, counsel, for bringing that up.

MR. GUNTHER: Thank you, your Honor.

THE COURT: Go ahead, Mr. Cawley.

BY MR. CAWLEY:

Q. So, irrespective of this issue about the page numbers in the notebook versus the application, is this --

MR. CAWLEY: If we could go back to that language.

BY MR. CAWLEY:

Q. Is this an actual reproduction of the language from your '96 application?

A. Yes, sir, I believe it is.

Q. Okay. What's the next feature of your continuation application that you filed in the year 2000?

A. There was the sheet-connected sensors.

Q. What does that mean, a sheet-connected sensor?

A. That is what I was describing to the jury as that blue and white prototype really allowed for the reduction in wiring; individual wiring could be reduced. Therefore, it can be made a more reliable product.

Q. Can you -- do you have something in front of you that you can use to show the jury what the problem was?

A. Yes, sir, I do. I have this exhibit. Now, this one has the exhibit sticker.
Q. That's probably from a deposition. So, rather than get into that, it's been disclosed as a demonstrative. So, just go ahead and explain it to the jury, if you would.
My question was: What's the problem?
A. Well, the problem is that when you do just individual wiring, it's error-prone; and we want to be able to sell huge volumes of these things. I wanted to create controllers that could be sold in huge volumes and they had to be really reliable and, so, they could be manufactured and, so -- in high volumes and a reliable product. That's why I worked on these -- being able to put all of the circuits down onto a single circuit board sheet for -- as simple as possible.
Q. Okay. Once again, if you hold up that demonstrative controller --
A. This one?
Q. Yes. Is that how some of the early controllers were put together?
A. Yes, sir.
Q. Did they use circuit boards?
A. It didn't have a circuit board, but it had all of this individual wiring.

MR. CAWLEY: Your Honor, if I might approach the witness.

THE COURT: You may.

A. Yes, sir.

BY MR. CAWLEY:

Q. Can you tell us what that is that I just handed you?

A. This is a circuit board with all of the wiring reduced to just circuit traces.

Q. Now, we've probably all heard of circuit boards. But tell us, just to be clear: What is a circuit board?

A. This is out of a game controller. This is a -- this has got the ability to put multiple different sensors all onto one circuit board.

Q. Is it something that's printed?

A. Yes, sir. It's manufactured in a factory.

Q. Now, you didn't invent circuit boards, did you, Mr. Armstrong?

A. Oh, no, sir. No, sir.

Q. What did you invent involving a circuit board in your '700 patent?

A. Well, my effort was to be able to make 3-D graphics controllers that were reduced in their complexity so that they could -- so that they could be manufactured in a simple, high-volume, reliable manner.

Q. Did you think circuit boards were a good way to do that?

A. Yes, sir.

Q. Did you, in 1996, disclose to the Patent Office in your patent application the idea of using circuit boards in game controllers?

A. Yes, sir, I did.

MR. CAWLEY: Can we see that?

A. Yes. This is text from my 1996 application, the original parent patent application, where it says: Providing structure with the advantage of mounting the sensors in a generally single area or on at least one planar area, such as on a generally flat flexible membrane sensor sheet or circuit board sheet, so that the controller can be highly reliable and relatively inexpensive to manufacture.

BY MR. CAWLEY:

Q. Is that thing on the bottom a drawing or reproduction of a drawing from your '96 patent application?

A. Yes, sir. That's Figure 17.

Q. Now, while we're at it, just so there's not any confusion, in the slide we saw before this with the language from the patent application, there was some yellow highlighting like there is here, right?

A. Yes, sir.
Q. That wasn't in your '96 application, was it?
A. No. The highlighting is added here.
Q. Okay. And, likewise, we see that something in this drawing is colored green.
A. Yes, sir.
Q. Was that green in your patent application?
A. No, sir.
Q. Why did you -- why have you turned it green here?
A. Just to emphasize that part so that the jury can see what we're talking about here.
Q. Okay. And what is that green thing?
A. Well, it's a sheet. It's a sheet with a variety of different sensors on it. It's best shown as a membrane sheet, but it certainly can be a circuit board sheet.
Q. All right. And, Mr. Armstrong, what was the next novel or new feature that you included in your 2000 patent application that eventually became the '700 patent?
A. Well, it's the ability to control three-dimensional graphics; in other words, structures for controlling 3-D graphics.
Q. What does that mean?
A. Well, it's the 6 degrees of freedom that you've already described, which it's also 6 axes of control.

That was central.
Q. Okay. And why is that important?
A. It's just -- it's -- six axes is kind of a magic number in 3-D graphics control. You don't have to have exactly six, but it just is -- it's kind of a highest calling. It's the best way to do things. It's not the only way, but it's a high calling.
Q. Can you demonstrate for us how a video game controller, such as the ones made by Nintendo, can be used to control characters in up to 6 degrees of freedom?
A. Yes, sir, I can.
MR. CAWLEY: Your Honor, may the witness step down and --
THE COURT: You may.
MR. CAWLEY: -- conduct that demonstration?
BY MR. CAWLEY:
Q. You might want to give the microphone another try.
A. All right. I might just be yelling.
What I'd like to demonstrate here is some functionality of these controllers. And primarily what I'm going to demonstrate is under my right thumb here, there is a two-way pad. It has an up and down and a left and right. And under my left thumb there is a thumb stick that has an up and down and a left and

right. And I'm going to start out by demonstrating viewpoint control, in other words, how to control the view in the game.

Now, I'm just going to press, with my right -- the right button here and then the left button (demonstrating). And you can see that the view is going to the right and to the left.

And now if I press forwards, the view goes forwards. And if I press back, the view goes back.

Q. Now, are those different degrees of freedom?

A. Yes, sir.

Q. And are those all controlled by the controller?

A. Yes, sir.

Another way of controlling viewpoint is -- right now this is Super Mario Galaxy, the game; and we're looking at it from Mario's perspective. With my left thumb, I can push to the left; and he looks to the left. With my right, push to the right, looks to the right. Pull up, and he looks up. Push down, and he looks down. So, that's a way of controlling the view with these different inputs.

Now, another thing that I would like to show you is that -- now, what I did is I just clicked on that star there and I'm going to click on this world here and I'm going to click -- see, this is like a button. I'm

going to click on that button (demonstrating).

Now, these graphics are going into auto mode. We're on autopilot. I'm going to click on that star there, and the graphics are -- we can ignore the graphics for a moment because when I was clicking on those buttons and those things, what was happening was those buttons don't actually exist; they're just images. But they felt like they existed to me because when I clicked on them, this vibrated. The rumble in my hand made me -- gave me a sense that I was touching that.

Now, here we have Mario on an island; and he's running -- I'm pushing -- I'm pulling my left thumb. I'm pulling it back towards me, and he's coming back towards me. I'm pushing it away, and he's going away.

Q. Is that a degree of freedom?

A. Yes, sir.

I'm pushing it to the left and to the right (demonstrating).

Now, you might notice that he can go fast; and he can go slow. And that's another of the -- we were talking about the proportional controls, and these are proportional sensors in here. So, it's just like your gas pedal on your car. You can press it a little bit, and you'll go slow. And I'm going to press it

really slow. He's going slow to the left. And I can press it harder, and he goes faster. I can press it really slow to the right. He goes slow. I can press it harder, and he goes faster. That's true if you come back towards us like this, also. Faster. Fast, slow, fast (demonstrating).

Now, finally I just press the -- I just pressed the button, and he jumped on top of that ball. Now the control -- you see in the lower right-hand corner the -- it's showing this -- the whole handle which is in my hand. And as I lean this -- if I lean it away from me, it's like a joystick; and he's going away from me. If I lean it back towards me, he's coming back towards me.

Q. Excuse me for interrupting you, but are you now using the accelerometer that Nintendo's counsel talked about so much in their opening?

A. Yes, sir.

Q. Here's my question: Using that accelerometer to make the ball go forward and backward, are you causing it to be moved in a degree of freedom?

A. Yes, sir.

Q. Can you use the accelerometer to make it move in some other degree of freedom?

A. Yes, sir.

Q. Show us that.
A. Well, if I lean this to the left (demonstrating), he goes to the left. If I lean it to the right, he goes to the right. So --
Q. All right. Thank you. Why don't you take your seat on the witness stand again.
Mr. Armstrong, since we're all -- most of us in the room here are seeing this for the first time, I just want to make sure we're clear. You didn't invent that Mario game, did you?
A. No, sir.
Q. You didn't invent that ball; and you didn't invent that little man named "Mario," did you?
A. No, sir.
Q. What did you invent that you just demonstrated?
A. I invented --
MR. GUNTHER: Your Honor, objection.
Could we have a sidebar, please?
THE COURT: Well, what's your objection?
MR. GUNTHER: My objection is relevance and opinion testimony.
THE COURT: Say the second word again.
MR. GUNTHER: Opinion testimony.
THE COURT: All right. Step sidebar.
MR. GUNTHER: Thank you, sir.

(The following proceedings were conducted at sidebar with both parties represented.)

MR. GUNTHER: The objection -- the invention is measured by the claims. What he's doing now is a kind of glomming. He's glomming a bunch of different concepts that he says, "I did rumble. I did this. I did that." Where's the claim? The claim -- if Nintendo used rumble and that's all they used and they don't use the rest of their claim, there's nothing wrong with them doing that. So, what he's doing is he's basically saying, "My invention is four things. Nintendo's got all of them."

So, the jury basically is now left with the impression that that's what the claim is -- that's what this patent case is about. If he wants to do this, let him put up the claim. But he's not an expert. That's why it's improper opinion testimony; and, your Honor, it's unfair because that's not what this invention is. It's a bunch of stuff that he says it was his invention. It's fine for him to talk about what his invention is; but when he starts saying, "This concept is in Nintendo, this concept is in Nintendo's system," that's where the unfairness comes in; and that should be stopped.

THE COURT: Okay. I thought the objection was going to be a little bit different.

I do have a concern about him stating his own opinion that the Wii -- the way you asked that last question made it sound like he was giving opinion that the Wii was his invention; although, you said not the whole Wii, the --

MR. CAWLEY: I mean, I can see how that might -- you might have that impression; but that's not what I'm asking him.

THE COURT: I need you to rephrase that so it's not his opinion that he invented -- you started off by talking not the Wii. But right there at the end, before counsel objected -- not for reasons counsel said, but I agree with his objection. So, let's get it right. Let's -- and I've been following along in the claims, and you haven't got there yet.

MR. CAWLEY: No, and I'm not going to with this witness.

THE COURT: Well, I understand. But each of the things he's talking about so far is an element of one or more of the claims.

MR. CAWLEY: That's right.

THE COURT: There's two in 19 and one in 16 or 14 that I've been following. So, I don't have a problem with that. But I will say the way that last one was worded --

MR. CAWLEY: Okay. So, can I just ask him, "What did you invent?"

THE COURT: He can talk about that. Did I --

MR. GUNTHER: As long as it's not tied to the -- not tied to our products.

MR. CAWLEY: I'll preface it with that.

THE COURT: Okay.

MR. GUNTHER: Thank you, your Honor.

(Bench conference concluded. The following proceedings were heard in open court.)

THE COURT: Go ahead, counsel.

BY MR. CAWLEY:

Q. Mr. Armstrong, I just want to make sure to avoid confusion; so, I'll ask you again. You didn't invent the game we just saw, right?

A. No, sir.

Q. What did you invent?

A. I invented the combination of the controller that I demonstrated.

Q. Well, did you invent the four features that you described to us already today?

A. Yes, sir, I did.

Q. And did you invent the combination of those four features to use in a video game controller?

A. Yes, sir, I surely did.

Q. And did you -- going back now to this last feature that you're talking about, the control of motion or point of view and up to 6 degrees of freedom, did you disclose that idea to the Patent Office in 1996?
A. Yes, sir, I did.
Q. Can you show us that? What is this?
A. This is figure Number 22 out of my 1996 application.
Q. Do you still have a laser pointer there?
A. Yes, sir, I do.
Q. Can you use the laser pointer to briefly explain to us what this figure shows and how it accomplishes control and up to 6 degrees of freedom?
A. Yes. This figure is a drawing that's really very similar to the blue and white prototype that I showed you. There were four rockers on that blue and white prototype, and there are four rockers on this.

You see this (indicating), Number 344, is a rocker for one axis. This (indicating) number here, 342, is a rocker for another axes. This (indicating) rocker here, 346, is a third rocker. And this (indicating) rocker here, 340, is a fourth rocker. And that's essentially the equivalent of the four rockers that I showed you in the blue and white prototype.
Q. And how many degrees of freedom does that

accomplish?
A. Right here is showing 4 degrees of freedom.
Q. And did you include other drawings in the patent application to show additional degrees of freedom?
A. Yes, sir.
Q. Okay. We'll see those a little later in more detail when Professor Howe testifies. So, let me move along now and ask you this: When you combined these four features that eventually became your '700 patent and you first actually experienced them in a controller, were there any results that surprised you?
A. Yes, sir. It's a stunning sense of unexpected results. It's just -- it becomes involving, just -- you know, you put together the parts and you just think it's a sum of parts, but actually it's a whole lot more than the sum of the parts. You get the rumble which is the sense of touch. You're able to control all the 3-D graphics; that's a -- with touch in there, that's a big deal. And then you get the proportional, that variable control; and it just gets richer and richer until -- and it just is a wonderful kind of explosion of unexpected wow. You know, it just becomes compelling; and that's why I think that Nintendo has such stunning sales.
Q. Mr. Armstrong, in your mind, in an ideal world, would the controller have all four of the features that

you've described to us?
A. Yes, sir.
Q. And did you draft some of the claims in your '700 patent to require all four of those features?
A. Yes, sir.
Q. But did you draft some claims, also, that might require less than all four?
A. Yes, sir.
Q. Why did you do that?
A. Well, because, you know, there are lesser inventions, also. I have a highest calling, a great invention, the really involving ones; and there are lesser inventions. And in order to build up to the biggest and best invention, I had to build a whole bunch of smaller inventions along the way to get there. And those smaller inventions are good inventions, too. They're really good inventions, some of them. They're just not as good as the very best ones.
Q. Now, did you hire a lawyer to help you get the '700 patent?
A. No, sir, I did not.
Q. Did you talk to some?
A. Yes, sir.
Q. And how long did it take to get the '700 patent?
A. I think it was pending about five years.

Q. Did you ever get frustrated with the process?
A. At times, yes, sir.
Q. Let me show you what I hold in my hand here, Plaintiff's Exhibit 2. I guess you can't see it from here.
MR. CAWLEY: Could you pull up on the screen the first page of Plaintiff's Exhibit 2?
BY MR. CAWLEY:
Q. What is that?
A. Let me look in my book. I can't read the fine detail on the screen.
Q. Yes, please.
A. That is the -- I believe that's the file history from the '700 patent application, the processing within the Patent Office. Is that correct?
Q. Yes, that is correct.
A. Okay.
Q. You used a phrase there, "file" --
A. Right. I can read it now, yes.
Q. All right. You used the phrase or expression "file history." What does that mean?
A. Well, when you file a patent application, you know, you send in -- you put together your inventions into a comprehensive disclosure; and it has to be what -- you know, all the lines have to be a certain thickness,

drawn from a certain direction, and all that stuff. But you submit it to the Patent Office, and then the Patent Office does a search for all the inventions that are like that that they can find. And that takes -- they do a good job. They do an in-depth search and --

Q. Just -- if you would, just tell me --

A. Yes, sir.

Q. Tell me what the file history is.

A. Oh, I'm sorry. I get carried away with details sometimes. I'm that way.

It is the paper record of everything that the Patent Office does before they issue the patent.

Q. And does it include all the communications between you and the Patent Office about your '700 patent?

A. Yes, sir.

Q. And I think you've already showed us Plaintiff's Exhibit 1, but if you could hold up that certified copy again.

A. Yes, sir.

Q. Is that the patent that issued to you after the five years?

A. Yes, sir, it is.

Q. How did you feel when you got that patent?

A. It's a wonderful feeling. It's a feeling of -- when you get a U.S. patent, you're so proud. You know,

you just -- you feel like -- well, like when you got your high school diploma or -- that you've done something really good. And, you know, it's just a wonderful feeling of achievement.

Q. Let me move on to a different subject, Mr. Armstrong.

Have you entered into any agreements with companies to develop your game controller inventions?

A. Yes, sir, I have.

Q. And who was the first?

A. Key Tronic Corporation.

Q. What kind of inventions was Key Tronic interested in?

A. They were interested in my 6-degree-of-freedom '828 issued patent -- but it wasn't an issued patent at that time, but that was what they were interested in.

Q. And when was this?

A. That was in 1992.

Q. 1992? So, this is --

A. Possibly three, yeah.

Q. So, this was several years before you filed this warehouse 1996 application, correct?

A. Yes, sir.

Q. And it's quite a few years before you filed the application in 2000 that became the '700 patent,

correct?
A. Yes, sir.
Q. What kind of agreement did you finally reach with Key Tronic?
A. We reached a joint venture agreement, they called it.
Q. Okay. And if you would, take a look at Plaintiff's Exhibit 114 that's in your book.
A. Okay.
Q. Here is a picture of it on the screen. What is this Plaintiff's Exhibit 114?
A. I'm sorry. I --
Q. What is this?
A. Oh, this is the joint venture agreement that I made with Key Tronic Corporation.
Q. Okay. And what kind of agreement did you make with them?
A. It was called a "joint venture agreement." It was one in which they licensed my technology. That's basically they got the rights to make my controller in exchange for paying me money, giving me a royalty.
Q. The plaintiff in this lawsuit, the thing that actually brought the lawsuit here today, is called "Anascape." Tell us about Anascape.
A. Anascape is a partnership that I founded with my

very good friend, Kelly Tyler, in 1999.

Q. Why did you do that?

A. We created this partnership because -- well, there's several reasons to do anything, it seems. But the one real important reason was because companies -- big companies like Sony don't want to deal with individuals usually. They want to deal with other businesses. And, so, we formed a business.

Q. What does --

THE COURT: All right. Excuse me, counsel. It's 5:00. We're going to break for the day.

Ladies and gentlemen, I want to remind you of the instructions I gave you earlier. Until the trial is over, don't discuss the case with anybody, not even your family members or friends or engineers you know or anyone like that. Don't go out and do any research, get on the Net, read any books. If there's any news reports of this, if you start seeing something like that on TV or radio or read it in the paper, just stop listening, stop watching, stop reading it. Don't even talk with other jurors.

Again, if someone tries to contact you or get information out of you or influence you, that is a Federal crime. And I would ask that you just get their name. Don't talk to them. Report it to the court

security officer. You can believe me I will have that investigated. I take that very seriously. Nobody is to be interfering with a Federal juror in any way, shape, or form.

I'm going to ask you to be back at 8:45 tomorrow morning. I try to start on time, end on time. I said that once, and the next day we had a hurricane. Humberto came through and closed our courthouse down for a day in Beaumont, and something similar happened when we had Rita come through. So -- I don't think we're going to have a hurricane tomorrow; but if that happens, I can't control that. Not even a Federal judge can.

But I try to start right on time; but to do that, I need your help. I need you to be here. So, I don't need you here a half hour early; but at 8:45 I plan on having you walking in and everyone here. The lawyers know if they're not here when we're all here, they're going to miss some of the trial. I'm not going to hold up because one of them is late, but I do need you here.

At this time you are excused, and if you'll leave your notes and so forth in the jury room. I'll see you back tomorrow at 8:45.

(The jury exits the courtroom, 5:01 p.m.)

THE COURT: All right. Be very sure,

everybody, that you're not parking in the county employee parking lot. We got a call. I think it's probably one of the jurors' cars and, so, we told them not to tow the car, but watch that because they will tow it. So, that county employee parking lot, don't park there.

If you have any questions at all about where you can and cannot park, talk with Debbie or one of the CSOs or somebody who knows it. But watch that. They are careful about that.

Anything that needs to be taken up outside the presence of the jury from the plaintiff's point of view?

MR. CAWLEY: No, your Honor.

THE COURT: Anything from defendant's point of view?

MR. GUNTHER: No, sir.

THE COURT: Please be sure -- I mentioned this before -- that Ms. Chen has your cell phone number and you have hers. If something comes up -- and, again, I'm not inviting it -- it really helps if you call her and I have a chance to do a little research and you're not just coming in completely cold; although that might help your position, it's not going to help your opponent's.

I will see you, then, at 8:45 in the morning. We're in recess.

(Proceedings concluded, 5:02 p.m.)

COURT REPORTER'S CERTIFICATION

I HEREBY CERTIFY THAT ON THIS DATE, MAY 5, 2008, THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS.

Christina Bickham

CHRISTINA L. BICKHAM, CRR, RMR