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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

ANASCAPE, LTD.		DOCKET 9:06CV158
		MAY 6, 2008
VS.		8:43 A.M.
MICROSOFT CORP., ET AL		LUFKIN, TEXAS

VOLUME 2 OF __, PAGES 199 THROUGH 494

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;
TRANSCRIPT PRODUCED VIA COMPUTER-AIDED TRANSCRIPTION.

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1 (REPORTER'S NOTES ANASCAPE VS. MICROSOFT,
2 JURY TRIAL VOLUME 2, 8:43 A.M., TUESDAY, 05/06/2008,
3 LUFKIN, TEXAS, HON. RON CLARK PRESIDING)

4 (OPEN COURT, ALL PARTIES PRESENT, JURY NOT
5 PRESENT)

6 THE COURT: All right. I understand we have
7 an issue about a couple of demonstratives which I
8 understand are going to be used during Dr. Howe's
9 testimony?

10 MR. GUNTHER: Yes, your Honor. Mr. Blank is
11 going to address that issue.

12 THE COURT: Okay. And -- well, I guess the
13 easy question is, based on the objection, at the
14 pretrial I discussed Dr. Howe's supplemental report. In
15 looking through all these reports, was that really the
16 second supplemental? Because I found there is a short
17 one-page supplemental that corrected some typographical
18 errors.

19 MR. GARZA: Yes. There's three reports from
20 Dr. Howe in this case -- I'm sorry. There are four
21 reports served from Dr. Howe. The fourth one was
22 struck, and we still have the other three.

23 THE COURT: Right. The other one was just
24 some typos or some corrections. Okay. I guess the easy
25 way to deal with this one is can you show me in one of

1 the three reports that were not struck where this was
2 discussed?

3 MR. GARZA: Sure. If you'll look at
4 Mr. Howe's rebuttal -- or Dr. Howe's rebuttal report.

5 THE COURT: Okay.

6 MR. GARZA: Beginning on page 62, there is a
7 section that's entitled "Other Purported Bases For
8 Invalidity." And underneath that begins his analysis on
9 written description. That runs for about 12 pages.

10 Paragraph 148 on page 63, Dr. Howe does lay
11 out his opinion and it is: It is my opinion that the
12 claims of the '700 are supported by the originally filed
13 '525 patent application and the specification of the
14 '700 patent.

15 Now, through there, in the next few
16 paragraphs, he does cover various ways why that is; so,
17 addressing different terms in different ways. For
18 instance, on paragraph 155 that begins on page 65,
19 Dr. Howe discusses the fact that the '525 application
20 does not limit the invention to controllers that have a
21 single input member.

22 On paragraph 158 Dr. Howe --

23 THE COURT: Slow down. Hold on. Let me take
24 a look at it.

25 MR. GARZA: Sorry.

1 THE COURT: Well, can you direct me to some
2 discussion in one of Dr. Howe's reports where he talks
3 about, or even hints at support for the '525 patent
4 specification in relation to claim 19, which seems to be
5 the objection, or verbal references that these figures
6 might then apply to?

7 MR. GARZA: Sure.

8 THE COURT: Let's get specific. I can see
9 generally just a general opinion but --

10 MR. GARZA: Well, you have to look at this in
11 context, claim 16 and claim 19.

12 Claim 16 is also asserted in this lawsuit,
13 and it is another embodiment of how --

14 So, claim 16 is very similar to claim 19 in
15 this lawsuit; but it is more detailed. Claim 16 is an
16 embodiment of this patent that talks about multiple
17 sheets but like claim 19 still requires tactile
18 feedback, still requires bi-directional sensors, still
19 requires unidirectional sensors, and still requires
20 buttons.

21 In paragraph 162 of Dr. Howe's report, on
22 page 70, he discusses in great detail how claim 16 is
23 supported by various figures and elements that are
24 present in the '525 application. For instance, he
25 discusses how Figure 22 -- and this is in the middle of

1 page 71 -- in light of figures 45 and 46 discloses four
2 unidirectional sensors associated with 346 and 344
3 activated by first element 322. He goes through in
4 detail how these claim terms are met by this claim.

5 Now, it was an exemplary embodiment of
6 claim 16; but the analysis there is certainly relevant
7 to claim 19 and the fact that he did give his opinion
8 that all of these claims were supported by the '525
9 application. In light of this disclosure in here, it's
10 proper that he be able to talk about claim 19,
11 especially to the extent that claim 19 and claim 16 have
12 similar claim limitations.

13 THE COURT: Well, without going into a
14 complete recitation of the rules and purpose for the
15 rules governing expert reports and disclosure
16 requirements -- and I'll refer to and adopt some of the
17 prior opinions that I've entered on that subject -- in
18 great detail, the whole purpose of an expert report, as
19 said, I believe, in the commentary to the rules -- never
20 mind our Local Rules; we're talking about the Federal
21 Rules here -- was to allow a party to prepare for
22 cross-examination of a witness perhaps without even
23 taking a deposition.

24 Now, with experts in a field like this, that
25 doesn't often happen; but -- and maybe I'm dating

1 myself; but I know I frequently used to just go ahead
2 and not take a deposition of an expert, just take them
3 on live at trial because I had his report. That's
4 something that can be done and --

5 MR. GARZA: Your Honor, could we --

6 THE COURT: What I'm looking for, just -- I
7 mean, this is going to be the next witness; so, you have
8 a few minutes to look -- is -- I've listened to you and
9 I heard nothing that said, "Here's where Dr. Howe
10 discussed claim 19 and here's why this is a fair
11 explanation of what he said in his report or,
12 alternatively, in his deposition." I mean, that's been
13 the rule in this district for, well, as long as I
14 practiced here. I never got it by any judge in this
15 district, and I don't think I've ever allowed someone
16 just to come in and come up with something new. So --

17 Are they here yet?

18 COURT SECURITY OFFICER: They're here, your
19 Honor.

20 THE COURT: Okay. This isn't going to come
21 up until Dr. Howe, right?

22 MR. BLANK: Correct.

23 THE COURT: Take a few minutes. Take some
24 time and let's focus specifically on Dr. Howe, claim 19,
25 and anything to do with these figures and let me take a

1 look at it.

2 MR. GARZA: I would like to tell you that I
3 do plan on showing you how claim 19 is very similar to
4 claim 16.

5 THE COURT: Okay. I'm not making a ruling
6 right now.

7 MR. GARZA: Okay.

8 THE COURT: Let's bring in the jury, and
9 you've got a chance now to get me focused in on exactly
10 what you want.

11 MR. GARZA: Appreciate it. Thank you.

12 (The jury enters the courtroom, 8:53 a.m.)

13 THE COURT: Good morning, ladies and
14 gentlemen. Glad to see you back, and we'll continue on
15 now with the direct examination of Mr. Armstrong.

16 Counsel?

17 MR. CAWLEY: Thank you, your Honor.

18 CONTINUED DIRECT EXAMINATION OF BRAD ARMSTRONG

19 CALLED ON BEHALF OF THE PLAINTIFF

20 BY MR. CAWLEY:

21 Q. Good morning, Mr. Armstrong.

22 A. Good morning.

23 Q. I think that when we stopped for the day yesterday,
24 I had just asked you about the partnership that you
25 described that owns your '700 patent now. So, let me

1 ask you a few more questions about that. We've heard
2 that the name of your partnership is Anascape. Where
3 did you get that name?

4 A. Yes, sir. That name is a made-up word, and it came
5 from -- we -- my partner, Kelly Tyler, was thinking of
6 names and I was trying to think of names and he came up
7 with the best one and he said, "Look, we're describing
8 the analog landscape of the future." And, so, he took
9 the "Ana" from analog and the "scape" from landscape --
10 so, analog landscape -- put them together and got
11 "Anascape" and that's how that word came to be.

12 Q. And how much of Anascape do you own? What's your
13 interest?

14 A. I'm the majority owner.

15 Q. And who owns the rest?

16 A. Kelly Tyler owns most of the rest.

17 Q. And are there a few other people who own small
18 amounts?

19 A. Yes, sir.

20 Q. How many people?

21 A. Two others.

22 Q. Two others?

23 A. Yes, sir.

24 Q. And who are they?

25 A. Steven Bowman and Brian Carlson. They're also

1 friends of mine, people that just helped me along the
2 way with inventing.

3 Q. And what is the business of this partnership
4 Anascape?

5 A. Anascape owns the patents that I have invented, and
6 Anascape endeavors to license the technology.

7 Q. Have you personally -- and let me back up,
8 actually.

9 When you applied for the patent, you did that
10 personally in your own name; is that right?

11 A. Yes, sir.

12 Q. And then when you got the patent issued, it was
13 issued with you as the inventor; is that right?

14 A. Right.

15 Q. And had you assigned the rights to that patent to
16 your partnership, Anascape?

17 A. Yes. I mean, there's different patents over time;
18 but now they're all assigned to Anascape, yes.

19 Q. All of your game controller patents?

20 A. Yes, sir.

21 Q. Let me ask you to turn to the exhibit binder that's
22 in front of you, and I want to look at a couple of the
23 exhibits that have to do with that assignment.

24 MR. CAWLEY: First, let's see Plaintiff's
25 Exhibit 265.

1 A. Yes, sir.

2 BY MR. CAWLEY:

3 Q. What is that?

4 A. It's an assignment for a recording of a patent
5 application.

6 Q. Not a very good copy of it, is it?

7 A. It could be better.

8 Q. Does that document record with the Patent Office
9 your assignment of your interests in various patents,
10 including what was to become the '700 patent to
11 Anascape?

12 A. Yes, sir, it does. It just took me a moment there
13 to read it; but, yes, it does.

14 Q. And let's look at another exhibit. That would be
15 311.

16 A. Yes, sir.

17 Q. Tell us what this is.

18 A. This is a Patent Assignment Agreement. I signed
19 it. And it assigns all of my patents and I believe all
20 of my patent applications to Anascape.

21 Q. So, is this -- is this basically a document that
22 you signed and entered into -- you, Brad Armstrong
23 personally -- where you assigned the right to, among
24 other things, this '700 patent in this lawsuit to your
25 partnership, Anascape?

1 A. Yes, sir.

2 Q. And is that why Anascape is actually the plaintiff
3 in this lawsuit today instead of you personally?

4 A. Yes, sir.

5 Q. Now, have you and Anascape licensed and attempted
6 to license your controller patents?

7 A. Yes, sir.

8 Q. Who have you been able to license your game
9 controller patents to?

10 A. To Sony. Sony is our most significant licensee.

11 Q. Anybody else?

12 A. Yes, sir. You know, before Anascape existed, I
13 licensed patents to Mad Catz and before that --

14 Q. Mad Catz?

15 A. Yes, sir.

16 Q. Okay. Before we get too much into the discussion
17 of licensing, let's talk about that word for a minute.
18 In this context of patents and having patents and owning
19 patents and licensing patents, what does it mean to
20 license the patent?

21 A. A license is actually a simple thing. It's
22 basically where I just grant the rights to make my
23 inventions in exchange for a royalty.

24 Q. So, is it -- compare it to some other kind of
25 license that we're familiar with.

1 A. I'm drawing a blank.

2 Q. Well, is it like a license to drive a car?

3 MR. GUNTHER: Objection, leading.

4 A. Oh. Oh, sure. Yeah.

5 THE COURT: Overruled.

6 A. Yeah. A license to -- you know, the State gives us
7 a license to drive a car. We pay them a fee for the
8 license and to help them with all that, and that's a
9 wonderful regulatory thing that makes our society work.

10 BY MR. CAWLEY:

11 Q. Okay. But -- so, the State -- when the State gives
12 us a license, they give us permission to do something
13 like --

14 A. Yes.

15 Q. -- drive a car or --

16 A. That's correct.

17 Q. And when you give someone a license to your patent,
18 are you giving them permission to do something?

19 A. Yes, sir.

20 Q. And what are you giving them permission to do?

21 A. I'm giving them permission to make, use, and sell
22 my invention.

23 Q. All right. And is there -- are there licensing
24 agreements that you're familiar with that are entered
25 into from time to time by various people and companies

1 in the game controller business?

2 A. Yes, sir.

3 Q. And what's generally the standard rate for
4 licensing in that business?

5 A. Five percent --

6 MR. GUNTHER: Objection, your Honor. No
7 foundation.

8 THE COURT: I'll sustain that. You need to
9 leave a little more basis than that.

10 BY MR. CAWLEY:

11 Q. How have you become familiar with licenses in that
12 industry?

13 A. Well, I've made several; and I've talked to a lot
14 of people that are in the industry. I'm familiar with
15 licenses that other companies have made.

16 Q. Have you gone to trade shows in this industry?

17 A. Yes, sir.

18 Q. For how long?

19 A. Oh, I think the first trade shows I went to for
20 this kind of technology were in 1992 and 1993.

21 Q. And back then did you talk to people about
22 licensing activity?

23 A. Oh, surely, yes.

24 Q. And did you discuss with them what kind of licenses
25 were being entered into in the industry?

1 A. Yes, sir.

2 Q. And what kind of rates people were getting?

3 A. Yes, sir.

4 Q. And have you been doing that consistently from then
5 until pretty much now?

6 A. Yes, sir.

7 Q. So, are you familiar with what's generally a
8 standard licensing rate in the industry?

9 A. Yes, sir.

10 Q. And what rate is that?

11 MR. GUNTHER: Objection, your Honor.

12 THE COURT: What is it?

13 MR. GUNTHER: Okay. It's still lack of
14 foundation. It's been generalized, "I went to trade
15 shows," "I know this," "I know that," no specifics, no
16 one that he met with, no companies, A. And, B, your
17 Honor, it's expert testimony --

18 THE COURT: Sustained.

19 BY MR. CAWLEY:

20 Q. Now, you mentioned that Sony was one of the
21 companies that you licensed from. Tell us: Who is
22 Sony.

23 A. Sony is the company that makes all of those
24 televisions and radios and Walkmans and all that kind of
25 stuff that we all use.

1 Q. And are they in the video game business, as well?

2 A. Yes, sir, they surely are.

3 Q. Do they make controllers?

4 A. Yes, sir, they do.

5 Q. You mentioned that your company, Anascape, has
6 entered into a license agreement with Sony. How did
7 that license come about?

8 A. Well, we negotiated with them for a number of
9 years; and they just decided to step up to the plate and
10 be responsible and make a license for using my
11 technology.

12 Q. When did you first contact Sony?

13 A. The year 2000.

14 Q. And what happened next?

15 A. Well, we had a representative that had been high in
16 Sony PlayStation 1, I believe; and he took patents of
17 mine to people at high levels in Sony and that didn't
18 pan out. And, so, my partner, Kelly Tyler, and I just
19 started negotiating with them in person; and eventually
20 they took a license.

21 Q. And how long did you negotiate with them?

22 A. I think it was nearly four years.

23 Q. Was it hard?

24 A. Yes.

25 Q. Were there times when you got frustrated with the

1 process?

2 A. Surely.

3 Q. What kind of deal did Anascape finally make with
4 Sony?

5 A. It was a license agreement, and it had a few
6 different components to it. The real important thing
7 was that -- well, the real important thing to me was
8 that they paid me money. But there was a cross-license,
9 also, which was where -- a cross-license is where I
10 granted them the right to make my inventions and they
11 granted Anascape the right to make inventions covered
12 under their patents. And, so, that was very valuable, I
13 thought.

14 And then there was the money that you
15 mentioned, which was \$10 million. That was valuable to
16 me for several reasons. My partner, Kelly Tyler, had
17 over a million -- I think about a million and a half
18 dollars invested; and for an individual, that's a lot of
19 money. And I wanted him to get paid back. You know, he
20 was really out -- he was putting himself at risk for me;
21 and I wanted him to get paid back.

22 But another really important thing for us was
23 that, you know, Sony was showing that it was
24 responsible; and that would set a standard, we hoped,
25 for other --

1 MR. GUNTHER: Your Honor, I object --

2 A. -- big companies --

3 MR. GUNTHER: -- and move to strike --

4 A. -- in the --

5 THE COURT: Wait, wait, wait, wait.

6 MR. GUNTHER: I object and move to strike.

7 The question was what were the terms of the Sony

8 license, and now we're getting a lesson on corporate

9 responsibility.

10 THE COURT: Okay. All right. Just state the

11 objection.

12 MR. GUNTHER: Yes, sir.

13 THE COURT: Perhaps another question would be

14 in order to stop --

15 MR. CAWLEY: Yes, your Honor.

16 THE COURT: -- the narrative.

17 MR. CAWLEY: Sure.

18 BY MR. CAWLEY:

19 Q. So, Mr. Armstrong, let me go back to the question

20 that I asked you. And I think you were most of the way

21 through it; so, let me rephrase the question a little

22 bit.

23 You've told us that Sony paid \$10 million for

24 an exclusive license to a patent, correct?

25 A. Yes, sir.

1 Q. And you told us that Sony got the right to use all
2 your other patents, correct?

3 A. Yes, sir.

4 Q. And you got the right to use some Sony patents,
5 correct?

6 A. Yes, sir.

7 Q. Okay. When did this happen?

8 A. It was signed in 2004.

9 Q. In 2004, what was the status of the '700 patent?

10 A. It was under what they call "Notice of Allowance,"
11 which is a very advanced stage. It means that it's
12 ready to issue as a patent, that the Patent Office has
13 done all of their assessing and that they are going --
14 that they have already agreed that this will be a
15 patent.

16 Q. Okay. So, let me make sure we understand that.
17 When the patent that's involved in this lawsuit, the
18 '700 patent -- at the time you did your deal with Sony,
19 you had applied for that patent at the Patent Office in
20 the year 2000, correct?

21 A. Yes, sir.

22 Q. And at this time of the Sony deal, in 2004, the
23 Patent Office had told you that it was going to -- it
24 intended to give you a patent; is that right?

25 A. Yes, sir.

1 Q. But you didn't get that patent actually from the
2 Patent Office until the following year, 2005; is that
3 correct?

4 A. Yes, sir, that's correct.

5 Q. Now, did you agree in the Sony deal that Sony would
6 have the rights to what became your '700 patent?

7 A. Yes, sir.

8 Q. Let's take a look at Plaintiff's Exhibit 54.

9 A. Yes, sir.

10 Q. Just a minute and we'll bring it up on the screen.
11 But what is this?

12 A. This is a copy of my license with Sony.

13 Q. When you say your license, you mean Anascape's
14 license?

15 A. Anascape's license, yes, sir.

16 Q. And is this the deal that you just described?

17 A. Yes, sir.

18 Q. You said that the way that the deal was structured,
19 the \$10 million was for an exclusive license to a
20 patent. Why did you do the deal that way?

21 A. It was explained to me that that was the best way
22 to do it for taxes.

23 MR. GUNTHER: Objection, hearsay.

24 A. I --

25 THE COURT: Wait. Let me --

1 MR. CAWLEY: It's not being offered for the
2 truth of the matter, your Honor.

3 THE COURT: Overruled.

4 MR. CAWLEY: Okay. So, since we had a little
5 interchange there, could I ask him to repeat that
6 answer, your Honor? I'm afraid it just got confused.

7 THE COURT: Yes.

8 BY MR. CAWLEY:

9 Q. Do you remember the question?

10 THE COURT: Why don't you go ahead and ask
11 the question again?

12 MR. CAWLEY: Okay. That would be the easiest
13 way to do it.

14 BY MR. CAWLEY:

15 Q. Why did you do the deal that way, where you got the
16 \$10 million in exchange for an exclusive license to one
17 of your patents?

18 A. My understanding was that that was the best way to
19 structure that license for -- to get favorable tax rate
20 from the government.

21 Q. Okay. But was the overall effect of this agreement
22 that we see with Sony in Plaintiff's Exhibit 54 -- was
23 it that Sony got the right to use all of your game
24 controller inventions and technology?

25 A. Yes, sir.

1 Q. Do you think that giving that to Sony for \$10
2 million was a good deal?

3 A. Yes, it was a good deal. It's a very good deal for
4 them.

5 Q. Why do you say that?

6 A. Because it was a very, very low amount of money
7 compared to what they were selling.

8 Q. Well, then, why did you agree to give them all of
9 your technology for no more than \$10 million?

10 A. Well, we thought that it showed responsibility on
11 their part and that we could parlay that, that that
12 would start negotiating with other large companies
13 that -- you know, Sony was the industry leader. We
14 thought it showed an example of taking responsibility
15 for using my inventions.

16 Q. Did you think you'd be able to use that example to
17 help you in negotiating with others later on?

18 A. Yes, sir. We sure hoped so.

19 Q. Did you ever have discussions with Nintendo about
20 the possibility of Nintendo licensing your game
21 controller technology?

22 A. I don't know if "discussions" would be the right
23 word. We -- yes, we tried.

24 Q. Okay.

25 A. We sent letters. We had a couple of meetings --

1 Q. Let me ask you -- let me ask you some more specific
2 questions about it. And we're talking about things now
3 before the lawsuit -- this lawsuit was filed, correct?

4 A. Yes, sir.

5 Q. Did you ever meet with Nintendo or a representative
6 of Nintendo?

7 A. Yes, sir.

8 Q. When was that?

9 A. I met with Howard Cheng in 1997.

10 Q. Okay. And that's -- the court reporter discovered,
11 to her shock yesterday, that there seemed to be two
12 Chengs in the lawsuit. So, that's Mr. Howard Cheng with
13 an E. He spells his name with an E; is that right?

14 A. I think so, yes.

15 Q. C-H-E-N-G. Where did you meet with Mr. Cheng?

16 A. In Silicon Valley.

17 Q. In California?

18 A. Yes, sir.

19 Q. And did you suggest to him that Nintendo might want
20 to take a license to your patents?

21 A. Yes, sir.

22 Q. But did it ever happen?

23 A. No, sir.

24 Q. When did you first learn that Nintendo was using
25 the invention that's protected by your '700 patent?

1 A. I think that would be in the year -- well, the
2 exact year I don't know. When they would come out with
3 products, I would look at them and open them up and --
4 and if it made my invention, then that was -- for
5 example, when the GameCube controller came out, that was
6 an example of my invention.

7 Q. Right. And do you remember when that was?

8 A. I think that was 2001, right in that time frame. I
9 don't know exactly, sir.

10 Q. All right. Now --

11 A. Maybe 2000.

12 Q. And by your invention, are you -- are you referring
13 to the things that you disclosed to the Patent Office in
14 that warehouse application back in 2006?

15 A. 1996, yes, sir.

16 Q. Sorry. 1996. My mistake.

17 Now, Mr. Armstrong, do you intend to show the
18 jury this morning a point-by-point comparison of
19 Nintendo's controllers compared to your '700 patent?

20 A. No, sir.

21 Q. And why are you not going to do that?

22 A. There's a professor from Harvard University who's
23 prepared a study of that.

24 Q. And will he be here to testify later today?

25 A. Yes, sir, he will.

1 Q. Is that Professor Howe?

2 A. Yes, sir.

3 Q. Now, I want to ask you about some things we heard
4 yesterday, some accusations against you.

5 Did you ever claim that you invented an
6 accelerometer?

7 A. No, sir.

8 Q. Have accelerometers been around a long time, to
9 your knowledge?

10 A. I think so, yes, sir.

11 Q. I want to show you a slide. This is a slide that
12 Nintendo's lawyer showed to the jury yesterday during
13 opening statement. Do you recognize that?

14 A. Yes, sir. I saw that yesterday.

15 Q. And you remember that Nintendo's lawyer, using this
16 slide, said this is a part of the abstract of the
17 disclosure. Remember that?

18 A. Yes, sir.

19 Q. And that that's the very first words of the '700
20 patent. Do you remember that?

21 A. Yes, sir.

22 MR. GUNTHER: Objection, your Honor. I
23 didn't say that.

24 A. Well --

25 THE COURT: Overruled.

1 Ladies and gentlemen, remember, of course,
2 that what the lawyers say or don't say is not evidence;
3 and it will be up to you to remember what was said and
4 what the testimony was.

5 Go ahead, counsel.

6 MR. CAWLEY: Thank you, your Honor.

7 BY MR. CAWLEY:

8 Q. And do you remember that he highlighted this
9 language: A sensor connecting sheet material --
10 multiple-axes -- he highlighted this language
11 "controllers comprised of a single input member operable
12 in 6 DOF." Do you remember that?

13 A. Yes, sir.

14 Q. And do you remember that he told the jury that the
15 only thing you had actually invented was a controller
16 with a single input member? Do you remember that?

17 A. Yes, sir.

18 Q. Well, let me show you this next slide, which is the
19 next couple of sentences of that same abstract that --

20 A. Right.

21 Q. -- Nintendo's lawyer didn't show you yesterday.

22 A. Yes.

23 Q. What do we see here in the highlighted language?

24 A. This "in an alternative embodiment," and then skip
25 down to the most relevant part is "reach a widely-spread

1 3-D constellation of 6 DOF and/or other sensor
2 mountings." The "other sensor mountings" is the
3 critical language here because it was described that all
4 I had was just a single input member, and here's --
5 we're talking about other sensor mountings, and there
6 are other inputs in this specification in the patent.

7 Q. And is the "alternative embodiment," up at the top
8 there -- does that mean that, right after what
9 Nintendo's lawyer showed the jury yesterday, you said to
10 the Patent Office there is another way of doing this?

11 A. Yes, sir. I think it's even the same paragraph.

12 Q. And did you tell them there is a way of doing it
13 with other sensor mountings?

14 A. Yes, sir.

15 Q. Well, let's not stop there because we still heard a
16 lot yesterday from Nintendo about their telling the jury
17 that the invention you showed in your 1996 patent
18 application was limited just to a single input member.
19 Was that true, Mr. Armstrong?

20 A. No, sir, that's not true.

21 Q. Let me ask you to look at this next piece of your
22 1996 application.

23 A. Yes, sir.

24 Q. On the top there is a drawing from your
25 application; is that right?

1 A. Yes, sir. That is. It's Figure 6.

2 Q. On the bottom there is some text or language from
3 your application, correct?

4 A. Yes, sir.

5 Q. Tell us what is shown in that drawing, Figure 6,
6 from your 1996 application.

7 A. Right. There is a -- you can see the yellow area
8 and then inside of the yellow area is a round ball and
9 it has a Number 12 to it. And that ball is a
10 6-degree-of-freedom input member or a 3-D input member
11 and that is what -- it appeared to me he was saying
12 that's the only thing this patent has, that it doesn't
13 have any other input members.

14 Q. Don't worry about --

15 A. So --

16 Q. -- that for now, Mr. Armstrong.

17 A. The --

18 Q. Just show me --

19 A. The yellow part --

20 THE COURT: Wait.

21 THE WITNESS: Excuse me.

22 BY MR. CAWLEY:

23 Q. Sorry. Sorry.

24 THE COURT: Let me explain. The court
25 reporter can only take one person at a time. When your

1 lawyer is talking, you've got to stop. He knows that
2 when you're talking, he's got to stop; but you've got to
3 remember to stop when he's trying to say something.
4 Otherwise, it comes out as a really jumbled mess on the
5 record. Okay?

6 THE WITNESS: Okay, your Honor.

7 THE COURT: Now, I know you're not used to
8 this, but --

9 THE WITNESS: All right.

10 THE COURT: -- just remember she's trying to
11 take everything down. Okay?

12 THE WITNESS: Thank you. I'll try to be
13 better.

14 BY MR. CAWLEY:

15 Q. I apologize for my interrupting you, Mr. Armstrong.
16 I didn't mean to be rude, but I want to make sure that
17 this moves along promptly and that we really focus our
18 time. So, let me ask you some more specific questions.

19 Is the white ball that we see there that's
20 got a Number 12 pointing to it -- is that an input
21 member?

22 A. Yes, sir, it is.

23 Q. Is the yellow thing that looks kind of like a very
24 deep saucer surrounding the ball -- is that a different
25 input member?

1 A. Yes, sir, it is.

2 Q. Does this drawing, back in your 1996 application,
3 show two different input members?

4 A. Yes, sir. There are two separate input members in
5 this drawing.

6 Q. And now let's read the text that is describing
7 this. And I'll just read it out loud: Further, the
8 trackball 12 input member may be interpretable on all
9 six axes as previously described, and the rotatable
10 collet can serve as an additional secondary input
11 member.

12 Did I read that accurately?

13 A. No, sir. That's exactly what it says.

14 Q. Okay. I think -- I think -- that's good enough.
15 That's good enough for me.

16 What, though -- just so we're not confused,
17 what's a collet? I see that the third line down says
18 "rotatable collet." What's a collet?

19 A. Well, that's the part that's yellow in the drawing.
20 It's the Number 16. And it is a second part that you
21 can manipulate or control with your hand.

22 Q. Okay.

23 A. It's a second input member. Yes, sir.

24 Q. So, the yellow thing that fits around the ball is
25 called a "collet"?

1 A. Yes, sir.

2 Q. And just so we understand how this works, the ball
3 is movable; is that right?

4 A. Yes, sir.

5 Q. And you can control things on the screen with the
6 ball?

7 A. Yes, sir.

8 Q. And the yellow collet is separately movable,
9 correct?

10 A. Yes, sir.

11 Q. And you can separately control things on the
12 computer screen with the collet. Accurate?

13 A. Yes, sir.

14 Q. And does this specifically describe that collet as
15 a secondary input member?

16 A. Yes, sir. It's quoted "an additional secondary
17 input member."

18 Q. Is it true, then, Mr. Armstrong, as Anascape's
19 lawyer told the jury yesterday, that all your 1996
20 application disclosed was a way to do controllers with a
21 single input member?

22 A. That would not be true.

23 Q. Let's look at another drawing from your 1996
24 application. Is this another way you disclosed to the
25 Patent Office that your invention might be done?

1 A. Yes, sir.

2 Q. Describe, if you would, briefly what picture we're
3 looking at there.

4 A. This also has Ball 12, which is a first input
5 member. It has a collet in a different shape, 16, which
6 is a second input member. And it has individual buttons
7 136, which are another -- even an additional different
8 kind of input members.

9 Q. Okay. Just so we understand, the thing that looks
10 like a ball is a ball like we saw before; is that right?

11 A. Yes, sir.

12 Q. And it can be used to control things on the screen?

13 A. Yes, sir.

14 Q. And then the thing around the ball that has -- I
15 see the numbers both 14 --

16 A. Yeah.

17 Q. -- and 16 and -- 14 and 16 pointing to it.

18 A. Right.

19 Q. That thing around the ball, is that separately
20 movable from the ball?

21 A. Yes, sir, it is.

22 Q. And is that a separate and second input member?

23 A. Yes, sir. That's a second input member.

24 Q. And then we see the buttons.

25 A. Yes, sir.

1 Q. Are those different input members?

2 A. Yes, sir. They are different input members.
3 They're additional input members.

4 Q. Well, let's look at another example that we saw
5 from Nintendo's lawyer yesterday in the opening
6 statement.

7 On the left there, is that a reproduction --
8 that exploded thing with the yellow handle on top of
9 it -- is that a reproduction of a figure from your 1996
10 warehouse patent application?

11 A. Yes, with the exception that I believe that
12 Mr. Gunther had the yellow and the single input member
13 language put onto that.

14 Q. Okay. So, it's all black and white in the original
15 application, correct?

16 A. Yes, sir.

17 Q. And, so, Nintendo's lawyers have colored part of it
18 yellow, correct?

19 A. Yes, sir.

20 Q. And they put on that big red box that says "Single
21 Input Member," right?

22 A. Yes, sir.

23 Q. That's not in the patent application?

24 A. No, sir.

25 Q. Now, this is going to be hard to see. But if you

1 look at the knob on what Nintendo's lawyers have told
2 the jury is a single input member, do you see that there
3 is some little -- I don't know -- (indicating) yeah,
4 right there. Do you see that?

5 A. Yes, sir.

6 Q. What that arrow is pointing to?

7 A. Yes, sir.

8 Q. A little mark there.

9 A. Yes, sir.

10 Q. Is there a drawing in your patent that gives us a
11 better view of what that little mark is?

12 A. Yes, sir, there is.

13 Q. Well, let's take a look at it.

14 A. There it is.

15 Q. In the upper part, is that Figure 28 from your
16 patent --

17 A. Right.

18 Q. Is that right?

19 A. Yes, sir, that's Figure 28.

20 Q. And does that show a larger view and a view with
21 the top off of that handle that Nintendo's lawyers told
22 the jury was a single input member?

23 A. Yes, sir. That's Number 300. You can see the 300
24 in the previous drawing, also.

25 Q. Okay. Now, what are those things that we now can

1 see much larger that are marked 376 that we just saw as
2 little marks on the slide that Nintendo's lawyer showed
3 the jury yesterday?

4 A. Yes. Those are additional input members.

5 Q. What --

6 A. They're buttons on the handle. They are additional
7 input members.

8 Q. And did you actually describe that to the Patent
9 Office in the text of your patent?

10 A. Yes, sir. I did in 1996.

11 Q. And is that reproduced at the bottom of this slide?

12 A. Yes, sir. That's --

13 Q. And did you point out to the Patent Office that
14 this handle that Nintendo's lawyer told us yesterday was
15 a single input member -- that this handle had, quote, a
16 button externally operated for additional input?

17 A. Yes, sir. That's a quote.

18 Q. Just a bit more on something we heard yesterday,
19 Mr. Armstrong. We saw this slide yesterday.

20 MR. CAWLEY: If we could put that up.

21 BY MR. CAWLEY:

22 Q. Do you remember seeing this slide when Nintendo's
23 lawyer was talking to the jury yesterday?

24 A. Yes, sir.

25 Q. Do you remember that this is another patent that's

1 not -- not one of your patents, a patent from a man
2 named "Chang," with an A.

3 A. Right.

4 Q. And there is a picture. Is that apparently from
5 Mr. Chang's patent?

6 A. Yes, sir.

7 Q. And you discussed Mr. Chang's patent with the
8 Patent Office, right?

9 A. Yes, sir, I did.

10 Q. Yesterday we saw this big stack of papers that was
11 the file history of your patent. Do you remember that?

12 A. Yes, sir.

13 Q. And one of the things in the file history is -- I
14 want to say "talk," but it's not really talk. It's
15 writing back and forth between you and the Patent
16 Office, discussing some of the things about your patent;
17 isn't that right?

18 A. Yes, sir.

19 Q. And one of the things you discussed was whether
20 Mr. Chang did what you did before you did it; is that
21 correct?

22 A. Yes, sir -- I think that this was actually in the
23 original application, yes.

24 Q. Okay. But in any event, this language that we see
25 that Nintendo told the jury about yesterday is some talk

1 you had or dialogue in writing you had with the Patent
2 Office about Mr. Chang's patent and how it relates to
3 what you did?

4 A. Yes, sir.

5 THE COURT: And just for the record, counsel,
6 is this the different Chang that you mentioned earlier;
7 or is it the same Chang --

8 MR. CAWLEY: This is the different Chang.
9 This person with this invention spells his name
10 C-H-A-N-G.

11 THE COURT: Different than the previous
12 gentleman he was talking to?

13 MR. CAWLEY: And he is a totally different
14 person than Howard Cheng, who spells his name C-H-E-N-G.
15 He is the man who works for Nintendo that Mr. Armstrong
16 met with to discuss a license.

17 THE COURT: Okay.

18 MR. CAWLEY: So, thank you for that
19 clarification, your Honor.

20 BY MR. CAWLEY:

21 Q. So, Mr. Armstrong, did you hear yesterday
22 Nintendo's lawyer tell the jury that you told the Patent
23 Office that your patent wasn't like Chang because you
24 have a single input member -- excuse me -- because the
25 Chang controller does not have a single input member

1 and, therefore, it's deficient? Do you remember hearing
2 that?

3 A. Yes, in essence.

4 Q. Is that the only reason you told the Patent Office
5 your invention was different from Mr. Chang's
6 controller?

7 A. No, sir.

8 Q. Let's go to the next slide. What is this?

9 A. This is more discussion of the Chang device. It
10 was just -- the previous slide just represented by
11 Nintendo's counsel yesterday --

12 Q. Okay. Let me --

13 A. This is additional material that I talked to the
14 Patent Office about.

15 Q. Let me ask you some more specific questions. In
16 addition to what Nintendo's lawyers told the jury
17 yesterday, did you also --

18 A. Right.

19 Q. -- tell the Patent Office in writing that you --
20 your invention was different from Mr. Chang's invention
21 because --

22 A. Yes.

23 Q. -- there's the requirement that the trackball
24 housing be moved along a surface in order to input
25 linear movement information?

1 A. Right.

2 Q. Was that a reason?

3 A. I described that as a major disadvantage of the
4 Chang device, yes, sir.

5 Q. Did you also point out, as we see below, that
6 substantial physical space is required on a desk or
7 table on which to propel a mouse-type controller?

8 A. Yes, sir, I did describe that.

9 Q. Is that another reason you told the Patent Office?

10 A. Yes, sir, I did.

11 Q. Is there more?

12 A. Yes, sir, I believe there is more.

13 Q. Let's see. Did you also tell the Patent Office
14 that a mouse-type controller such as Chang's cannot
15 provide the desirable aspect of automatic
16 return-to-center along the linear axes?

17 A. Yes, sir, I did.

18 Q. Is there more?

19 A. Yes. I think there is.

20 Q. Did you also tell the Patent Office that the Chang
21 device appears relatively expensive to manufacture?

22 A. Yes, sir, I did tell them that.

23 Q. Mr. Armstrong, this is the last thing I'm going to
24 ask you about; and it's something else that we heard
25 yesterday in the opening statement by Nintendo's lawyer.

1 You know, don't you, sir, that the court reporter there
2 is working hard to provide us actual written copies of
3 the things that are said in court?

4 A. Yes. It's very impressive what they can do.

5 Q. This is a copy of something that Nintendo's lawyers
6 told the jury yesterday: And, finally, ladies and
7 gentlemen, probably most importantly, is it fair for
8 Mr. Armstrong to change his invention, his 1996
9 invention, after our multiple input member controllers
10 came on the market, the GameCube and the Wii, and try to
11 backdate those claims?

12 A. Yes. I believe he said that.

13 Q. Were you sitting in this chair when Nintendo's
14 lawyers stood here yesterday before the jury, in Federal
15 court, and accused you of backdating things in the
16 United States Patent Office?

17 A. Yes, sir.

18 Q. Mr. Armstrong, have you ever backdated any
19 documents submitted to the United States Patent Office?

20 A. No, sir. I would never do anything like that.

21 MR. CAWLEY: I pass the witness, your Honor.

22 THE COURT: Mr. Gunther.

23 MR. GUNTHER: Yes, sir.

24 Your Honor, may I hand out some binders?

25 THE COURT: Yes, please.

1 MR. GUNTHER: Thank you.

2 Your Honor, may I approach?

3 THE COURT: Please.

4 MR. GUNTHER: Thank you.

5 Your Honor, do you have the depositions; or
6 should I give them up to you?

7 THE COURT: If you're going to use them,
8 sure.

9 MR. GUNTHER: Thank you.

10 Mr. Armstrong, I'm going to give you a set of
11 your depositions, as well. Here you go.

12 CROSS-EXAMINATION OF BRAD ARMSTRONG

13 BY MR. GUNTHER:

14 Q. Mr. Armstrong?

15 A. Yes, sir.

16 Q. How are you?

17 A. I'm doing okay. Thank you.

18 Q. My name is Bob Gunther. You and I know each other,
19 don't we?

20 A. Yes, sir.

21 Q. And, in fact, we had a chance in March to spend a
22 couple of days together, didn't we?

23 A. Yes, sir.

24 Q. And we talked about a lot of things, including the
25 fact that we both have Golden Retrievers, didn't we?

1 A. Yes, sir.

2 Q. How is your Golden Retriever doing?

3 A. Okay. Thank you.

4 Q. Now, Mr. Armstrong, I just want to get a couple of
5 things straight with you, if I can. Sir, you testified,
6 in response to questions from Anascape's lawyer, about a
7 continuation application and what that is, right?

8 A. Yes, sir.

9 Q. And you said -- and Mr. Cawley made the point --
10 that the reporters have taken down everything that's
11 been said in this courtroom, including your testimony
12 yesterday, right?

13 A. Yes, sir.

14 Q. And we got the transcript last night; and you got
15 it last night, right?

16 A. I suspect my team did, yes, sir.

17 Q. Okay. Did you get it yourself?

18 A. No, sir.

19 Q. Did you read your transcript from last night?

20 A. No, sir.

21 Q. Okay. Well, sir, in the transcript, on page 157,
22 beginning at line 14, you were asked a question; and you
23 talk about -- the question is: Did you claim everything
24 you could think of in the application in 1996?

25 And you said: No. Right?

1 And then the question from Mr. Cawley was:
2 Why not?

3 And you said: Well, I just filed enough to
4 get a good start. My understanding is that the Patent
5 Office allows you to write claims at a later date so
6 long as they are the original application that you filed
7 in the original patent application.

8 That was your testimony yesterday from the
9 witness stand, sir, correct?

10 A. Yes, sir.

11 Q. And that's right as far as you understand it,
12 right?

13 A. Yes, sir.

14 Q. So, as a matter of patent law, if you're filing
15 claims in 2002 -- which is what you did in this case,
16 correct?

17 I'm just going to put up the timeline here to
18 kind of help orient ourselves.

19 If you file claims in 2002 -- that's when you
20 submitted your claims -- and you want to get back to
21 1996, what you filed in 1992 [sic] has to be the same
22 invention as what you filed in 1996, correct?

23 A. Yes, sir.

24 Q. You can't change it.

25 A. Yes, sir.

1 Q. And if you change it, you don't get back to 1996,
2 correct?

3 A. It has to have the same technology, yes, sir.

4 Q. Okay. And, so, what that means -- and you
5 understand, don't you, that when I used the term
6 "backdate," that's what I was talking about. I wasn't
7 talking about you backdating a document; I was talking
8 about you trying to say in 2002, that those claims that
9 you wrote after the GameCube was on the market, were the
10 same invention. That's what I'm talking about in terms
11 of backdating. You understand that?

12 A. No, sir.

13 Q. You don't understand, sir, that what I'm talking
14 about is whether you can get back to 1996, not whether
15 that you filed a document that has the incorrect date on
16 it? Do you understand that?

17 A. I understand that you're clarifying that now.

18 Q. Okay. And, so, that's what you understand me to
19 mean now? I just want to make sure that we're on the
20 same page so that when I'm talking to you in this
21 cross-examination about backdating, I'm not talking
22 about you putting the wrong date on a document. I'm
23 talking about you trying to say in 2002, that your
24 invention that you wrote to cover the GameCube is the
25 same as your invention in 1996. Now, I just want to

1 make sure that you and I understand what we're talking
2 about. Do you understand what I'm talking about?

3 A. I'm trying to.

4 Q. Do you get it?

5 A. I think so.

6 Q. Okay. Thank you.

7 Now, sir, for all of the claims -- you're
8 suing on five claims in this case, right?

9 A. Yes, sir, I think so.

10 Q. And for all of those claims, the invention in 2002
11 has to be the same as the invention that you disclosed
12 in 1996, right?

13 A. Yes, sir. The --

14 Q. And if --

15 A. The material in those claims has to be the same as
16 what I originally filed, yes, sir.

17 Q. And you agree, sir, don't you, that if you can't
18 get back to 1996, it would have a very bad influence on
19 the validity of your patent? You agree to that, right?

20 A. Yes, sir.

21 Q. In fact, you agree that if you can't get back to
22 1996, if you can't backdate -- remember, backdate in the
23 sense that you and I now understand we're using that
24 term. If you can't backdate to 1996, your patent is
25 invalid, correct?

1 A. I'm -- I think I understand what you're saying,
2 yes, sir, but --

3 Q. And that's true, isn't it?

4 A. I would never use the word "backdate" for that.

5 Q. Fair enough. Take backdating out of it.

6 A. Okay.

7 Q. If you don't like the word "backdating," I'll take
8 it out.

9 You agree with me that if you can't get a
10 date of invention of 1996 for your 2002 claims, you
11 agree with me that the patent is invalid, right?

12 A. The claims I wrote in 2000 have to be supported in
13 the original 1996.

14 Q. So, if they are not and if we prove to this jury
15 that they are not, your patent is invalid, correct?

16 A. Well, I guess.

17 Q. Okay. All right. So, your testimony, sir, on that
18 issue of whether you're entitled to get back to 1996 --
19 your testimony is critical in this case, isn't it?

20 A. The most important thing is the facts.

21 Q. And, sir, your testimony on that issue, you would
22 recognize it's critical, won't you?

23 A. Well, I think the most critical thing is when I
24 wrote the claims in 2002, were they fully supported in
25 my original 1996 patent application.

1 Q. Let me try one more time. You agree, sir, that in
2 this case against Nintendo that Anascape has brought
3 asking for tens of millions of dollars, that it's
4 critical that you get a 1996 date of invention for the
5 '700 patent claims that you've asserted against
6 Nintendo. The answer to that question is "yes," right?

7 A. Yes.

8 Q. Now, sir, I want to ask you, if I can, about what
9 you invented. I want to talk a little bit about what
10 you invented and what you didn't invent. And when we're
11 talking now in terms of what you invented, we're talking
12 about 1996. We're talking about what you invented then.
13 Do you understand when I'm asking you these questions,
14 that that's what I'm talking about?

15 A. Okay.

16 Q. Okay. Do you understand?

17 A. You're talking about my originally-filed 1996
18 patent application.

19 Q. So that when I ask you questions about what you
20 invented, that's what I'm talking about. Do you
21 understand me?

22 A. Okay.

23 Q. Okay.

24 A. Are you talking about what's claimed in that or --

25 Q. I'm talking about --

1 A. -- what's the --

2 Q. I'm talking about what the invention is in there.

3 A. Okay.

4 Q. All right?

5 Sir, were you the first to invent the concept
6 of 3-D graphics on a computer screen?

7 A. No, sir.

8 Q. Were you the first to invent a video game
9 controller?

10 A. No, sir.

11 Q. Were you the first to invent a 6-degree-of-freedom
12 video game controller?

13 A. No, sir.

14 Q. Were you the first to invent a single input member
15 6-degree-of-freedom controller?

16 A. No, sir.

17 Q. In fact, in your 1996 application, you described as
18 your invention -- part of your invention, certain
19 improvements to 6-degree-of-freedom controllers,
20 correct?

21 A. Yes, sir.

22 Q. And, sir, you were not the first to invent a
23 multiple input member 6-degree-of-freedom controller,
24 were you?

25 A. No, sir.

1 Q. In fact, Mr. Chang -- that's Chang with an A --
2 Mr. Chang two years before had a patent that showed a
3 multiple input member 6-degree-of-freedom controller for
4 controlling computer graphics, right?

5 A. I think that's correct, yes, sir.

6 Q. Okay. And you put that in your patent?

7 A. I did.

8 Q. You told the Patent Office about that, right?

9 A. Yes, sir.

10 Q. Now, sir, I want to -- if I can, I want to go back
11 to some of your testimony yesterday, as well. And I
12 want to ask you this question -- you were actually asked
13 this question by Mr. Cawley, Anascape's lawyer; and this
14 was when you were going through -- do you remember you
15 were going through the features of your invention? Do
16 you remember that testimony?

17 A. Maybe you could refresh my mind.

18 Q. Sure. I'll read you the transcript.

19 Question from Mr. Cawley: All right. And,
20 Mr. Armstrong, what is the next new or novel feature
21 that you included in your 2000 patent application that
22 eventually became the '700 patent?

23 Answer: Well, it's the ability to control
24 three-dimensional graphics; in other words, structures
25 for controlling 3-D graphics.

1 Now, here's kind of the key that I want to
2 get to. Question: What does that mean?

3 Now, you answered yesterday: Well, it's the
4 6 degrees of freedom that you've already described.
5 It's also six axes of control. That was central.

6 Okay. And why is that important?

7 It's just -- it's just six axes is kind of a
8 magic number in 3-D graphics control. You don't have to
9 have exactly six but it is just -- it is kind of the
10 highest calling. It is the best way to do things. It
11 is not the only way, but that is a high calling.

12 That was your testimony yesterday, right?

13 A. Yes. That sounds very familiar.

14 Q. You were talking about the importance of six axes
15 control to your invention, right?

16 A. It certainly is a valuable feature, yes, sir.

17 Q. And, sir, you didn't invent six axes control.
18 Controllers with six axes control already existed before
19 you made your invention in 1996; isn't that right?

20 A. Yes, sir.

21 Q. Thank you.

22 Now, sir, we've heard testimony about various
23 sensors; and we're going to hear some more testimony
24 about sensors in this case.

25 Were you the first to invent something called

1 a "uni directional sensor"?

2 A. No, sir.

3 Q. Were you the first to invent something called a
4 "bi-directional sensor"?

5 A. No, sir.

6 Q. Now, those concepts are used in your patent, right?

7 A. Yes, sir.

8 Q. And they're used in your 1996 application.

9 A. Yes, sir.

10 Q. But you didn't invent those things?

11 A. No, sir.

12 Q. And, sir, were you the first to invent -- I'm going
13 to throw another one at you -- something called a
14 "bi-directional proportional sensor"?

15 A. No, sir.

16 Q. Okay. That's in your patent, too, and in your
17 application in 1996; but you didn't invent that, right?

18 A. Yes, sir, that's correct.

19 Q. So, there's a lot of stuff in the warehouse that
20 you didn't invent, isn't there?

21 A. Yes, sir.

22 Q. Now, sir, were you the first to invent -- and I'm
23 going to throw another term at you, and the experts will
24 explain this issue to the jury a little bit later. Do
25 you know what a -- were you the first to invent a

1 potentiometer?

2 A. No, sir.

3 Q. Now, underneath the Nintendo joysticks in the
4 GameCube -- and I'm holding up a GameCube, if I can.
5 Here's two joysticks, correct? Can you see them?

6 MR. GUNTHER: Your Honor, may I approach?

7 THE COURT: You may.

8 MR. GUNTHER: Thank you.

9 BY MR. GUNTHER:

10 Q. I'll hand this to you, Mr. Armstrong. I'm sorry.
11 I didn't mean to make this a vision test. And maybe you
12 could hold this up to the jury while I'm asking you
13 questions.

14 A. Okay.

15 Q. My question is: Are there two joysticks there on
16 that controller?

17 A. I would presume that you're talking about this one
18 (indicating), this gray unit?

19 Q. Yes, sir.

20 A. Okay. Yes, sir, that -- and I would presume you're
21 talking about the yellow unit (indicating)?

22 Q. Correct.

23 A. Yes, sir.

24 Q. Correct. Now, underneath those there are
25 potentiometers, correct?

1 A. I don't know what's inside for sure.

2 Q. Okay. But you took this apart when you wrote the
3 claims in 2002, didn't you?

4 A. Well, I didn't take this one apart. I don't know
5 what's inside this one.

6 Q. Well, assuming it's -- let's do it this way.

7 Assuming it's the same as the one that you took apart in
8 2002 when you were writing your claims to copy

9 Nintendo's product, is there a potentiometer underneath
10 there?

11 A. I'm -- thinking back, I think that there is, yes,
12 sir.

13 Q. Okay. So, potentiometers are in the warehouse,
14 right, back in 1996?

15 A. Yes, sir.

16 Q. But you didn't invent potentiometers, right?

17 A. No, sir.

18 Q. You didn't invent rotary potentiometers, right?

19 A. No, sir.

20 Q. You didn't invent really any kind of potentiometer,
21 did you?

22 A. No, sir.

23 Q. Okay. Now, sir, I want to focus on the
24 cross-switch. And could you hold it up again for me,
25 for the jury?

1 A. Are you talking about this (indicating) right here?

2 Q. Yeah, sort of the cross.

3 Now, sir, did you invent the cross-switch?

4 A. No, sir.

5 Q. Now, underneath that cross-switch, assuming it is

6 the same one that you took apart when you copied

7 Nintendo's product -- and we've got it up on the

8 screen -- are there unidirectional sensors underneath

9 each one of those things?

10 A. I believe there are, yes, sir.

11 Q. Okay. So, sir, there is a unidirectional sensor

12 under where that arrow is, right, underneath?

13 A. I believe so, yes, sir.

14 Q. And there is another one down here on the bottom,

15 where the bottom is, correct?

16 A. Yes, sir.

17 Q. And there is another one over here?

18 A. Yes, sir.

19 Q. And then there is a fourth one over here; so,

20 there's four unidirectional sensors, right?

21 A. Yes, sir.

22 Q. So, you didn't invent the cross-switch.

23 A. No, sir.

24 Q. In fact, Nintendo was using that since the

25 Eighties, weren't they?

1 A. I think so, yes, sir. I'm not sure.

2 Q. Okay. And you didn't invent the various
3 unidirectional sensors that are underneath each one of
4 those things, right?

5 A. That's correct.

6 Q. Okay. So, you didn't invent a potentiometer.

7 A. That's correct.

8 Q. Did you invent -- let me just ask you this: Did
9 you invent a joystick?

10 A. No, sir.

11 Q. Were you the first to invent that?

12 A. No, sir.

13 Q. People did that way before you. In fact, we saw
14 one of the Atari ones from the Seventies, right, the
15 Atari 2600 that was, I think?

16 A. Yes, sir.

17 Q. And that had a joystick on it, right?

18 A. Yes, sir.

19 Q. Okay. So, you didn't invent a joystick; you didn't
20 invent a cross-switch; and you didn't invent the other
21 joystick, correct?

22 A. That's correct.

23 Q. Okay. Now, sir, I want to ask you this -- and I
24 want to go back to your testimony yesterday, if I can.

25 MR. GUNTHER: And, Kam, I'm not as good as

1 Mr. Cawley at this. Would you mind helping me with this
2 for a second?

3 BY MR. GUNTHER:

4 Q. And while Kam is getting this set up,
5 Mr. Armstrong, let me ask you this question. You talked
6 about rumble as one of the features of your invention,
7 right?

8 A. Yes, sir.

9 Q. You said rumble was in the warehouse back in 1996,
10 right?

11 A. Yes, sir.

12 Q. And, sir, you also described rumble as another way
13 of -- maybe a more technical way of talking about rumble
14 as being tactile feedback, active tactile feedback,
15 right?

16 A. Yes, sir.

17 Q. In fact, you said -- question -- this is
18 yesterday -- Mr. Cawley: Is tactile feedback another
19 way of saying what we've been calling "rumble"?

20 Answer: Yes, sir. That's rumble. That's
21 the way they talk about it today.

22 Right?

23 A. Yes, sir.

24 Q. So, active tactile feedback equals rumble; and that
25 was all in the warehouse in 1996, right?

1 A. Yes, sir.

2 Q. All right. Now, I want to show you a piece of your
3 testimony from yesterday. Okay. This is yesterday's
4 transcript. And, sir, you see at --

5 THE COURT: Do you want to focus that in just
6 a little bit more or just enlarge it just a tad?

7 MR. GUNTHER: Yes, we will do that.

8 THE COURT: Just hit the "enlarge" button if
9 you want anybody to read it.

10 MR. GUNTHER: Yes, sir.

11 THE COURT: It will go in. It will go in
12 further.

13 MR. GUNTHER: Judge, what do you think?

14 THE COURT: There you go.

15 MR. GUNTHER: Thank you, judge. I appreciate
16 that.

17 BY MR. GUNTHER:

18 Q. So, this is from yesterday, your testimony when
19 Anascape's lawyers are asking you the questions: Let's
20 talk about some of the key aspects of your invention,
21 Mr. Armstrong. Tell us about the first one.

22 Answer: Rumble --

23 Active tactile feedback, translation, right?
24 That's what that is?

25 A. Yes, sir.

1 Q. (Reading) Rumble is a technology that I invented.

2 That's what you said yesterday. That's what
3 you told the jury yesterday, correct?

4 A. That's what it says, yes, sir.

5 Q. And to sort of borrow a line from Mr. Cawley,
6 sitting here as a witness under oath in Federal court,
7 that's what you told the jury yesterday, right?

8 A. That's what it says, yes, sir.

9 Q. Okay. Now, sir, I want to show you what you told
10 me in your deposition.

11 MR. GUNTHER: Kam, can we put up --

12 BY MR. GUNTHER:

13 Q. This is from your deposition in March, two months
14 ago, Mr. Armstrong. So, you said: Rumble is a
15 technology that I invented.

16 MR. GUNTHER: Can we put up from the
17 March 17, 2008, deposition of Mr. Armstrong, page 34,
18 line 14 -- oh, I'm sorry. We have to switch back.

19 Before you do that, I just want to --

20 BY MR. GUNTHER:

21 Q. (Reading) Rumble is a technology that I invented.
22 That's your testimony?

23 A. Yes.

24 Q. Okay.

25 A. Yes. I could certainly help clarify that if you'd

1 I like.

2 Q. I'm going to show you something from your
3 deposition.

4 Sir, here is your deposition, March 17, 2008.
5 And I'd like to focus on line 14 from page 34. And I'd
6 like to blow up 14 to 25 and highlight it.

7 All right. Now, you told the jury yesterday
8 that you invented rumble. Now, Mr. Armstrong, this is
9 what you told me when I asked you questions two months
10 ago: Okay. Now, were you, sir, the first to invent --
11 strike that. I take it you were not the first to invent
12 the use of a vibrating motor for active tactile feedback
13 in a video game; is that correct?

14 Answer: In a video game, I'm not sure.

15 Question: Okay. Were you the first to -- is
16 it fair to say, sir --

17 I'm not too good at getting a sentence out
18 straight.

19 -- is it fair to say, sir, that you were
20 not -- not the first to invent the use of a vibrating
21 motor to provide active tactile feedback in a
22 controller?

23 Answer: I think there was a motor and offset
24 weight that I found somewhere, some German thing or
25 something that had one.

1 MR. GUNTHER: Can we go to the next page?

2 Page 35. Let's blow up lines 2 to 7, please.

3 BY MR. GUNTHER:

4 Q. (Reading) Before your invention?

5 This is the German thing you were talking
6 about.

7 Answer: I think so.

8 Line 4: Okay. All right. So, let's -- you
9 don't claim to have invented the two-axis joystick --
10 We talked about that.

11 MR. GUNTHER: But now focus on the rest of
12 the page, Kam. If you can go down to starting at line
13 15 and to the bottom of the page, 15 to the bottom. I'm
14 sorry. I'm messing you up.

15 BY MR. GUNTHER:

16 Q. (Reading) Okay. And you don't claim to have been
17 the first to have invented vibration with a controller,
18 correct, through some type of vibrating motor?

19 Answer: I certainly didn't invent vibration.
20 Right. Right.

21 Answer: A motor with offset weight was
22 really early on. I believe this was built from my
23 teachings, but I probably don't think I -- I don't think
24 I did the patents right; and, so, I didn't receive an
25 reward for that.

1 So, sir, you told the jury yesterday that you
2 invented rumble; but you told me two months ago that
3 some fellow in Germany came up with rumble, using an
4 offset weight and a vibrating motor for a controller
5 before you did.

6 Now, sir, I'd like to go on --

7 MR. CAWLEY: I'm sorry, your Honor --

8 THE COURT: Was there a question?

9 BY MR. GUNTHER:

10 Q. Right?

11 A. That was a long question. I believe that -- you
12 know, I suspect that that's an actual quote of what I
13 said yesterday. My intent is that I invented rumble in
14 the context of the entire invention in the 3-D graphic
15 world in a 3-D graphics controller.

16 Q. Is that what you said?

17 A. It doesn't look like that's what I said from the
18 quote, no, sir.

19 Q. Did Mr. Cawley try to correct you?

20 A. If that's a -- I think that probably is a correct
21 quote. I remember -- if we go back to that, I was
22 talking about the world, being in a world -- right -- I
23 mean, the next sentence.

24 Q. Sir, answer the question. Did Mr. Cawley try to
25 correct your testimony yesterday? It's a pretty easy

1 question. Can you answer it "yes" or "no"?

2 A. I don't think he tried to correct that, but I don't
3 think it was really wrong.

4 Q. Did he --

5 A. I think you're --

6 MR. CAWLEY: Your Honor.

7 A. -- taking it out of context.

8 THE COURT: Let him finish his answer,
9 please.

10 MR. GUNTHER: Yes, sir. I apologize.

11 BY MR. GUNTHER:

12 Q. Were you finished?

13 A. I think the statement was I invented it in a world
14 with -- meaning that I invented it with 3-D graphics
15 controllers and in the context of the entire patent
16 application.

17 Q. So, that's what --

18 THE COURT: Okay. Counsel, we're going to go
19 ahead and take a break at this time.

20 Ladies and gentlemen, I'll ask you to be back
21 at five past. Please remember my instructions. Don't
22 discuss the case among yourselves.

23 (The jury exits the courtroom, 9:55 a.m.)

24 THE COURT: Is your next witness Dr. Howe?

25 MR. CAWLEY: Yes, your Honor. On that

1 subject, your Honor, I do have a suggestion.

2 THE COURT: Please be seated.

3 MR. CAWLEY: This whole issue about
4 Dr. Howe's testimony and whether or not the
5 demonstratives are within or without his report really
6 relates to an issue of invalidity which, in any event,
7 on his testimony on our case-in-chief we would be
8 anticipating what they are even going to say about that
9 defense. So, my proposal is --

10 THE COURT: If you're not going to put it on
11 now, then I won't deal with it now.

12 MR. CAWLEY: -- that we take those slides out
13 of his direct testimony. We won't put it on now, and we
14 will redo the slides so that they comport more precisely
15 to the court.

16 THE COURT: Very good.

17 MR. CAWLEY: That's our suggestion.

18 THE COURT: If I don't have to rule, I won't.
19 We'll be in recess until five past.

20 (Recess, 9:56 a.m. to 10:07 a.m.)

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

23 THE COURT: Mr. Gunther.

24 MR. GUNTHER: Thank you, your Honor.

25 *

1 BY MR. GUNTHER:

2 Q. Mr. Armstrong, are you ready?

3 A. Yes, sir.

4 Q. Okay. I want to go to another piece of your
5 testimony from yesterday when you talked about the
6 second aspect of your invention that was in the 1996
7 warehouse. And you remember you talked about circuit
8 boards?

9 A. About what?

10 Q. Circuit boards.

11 A. Yes, sir.

12 Q. Okay. Let me put this on the screen. I'll see if
13 I can -- I've done some pretty poor highlighting, a
14 pretty poor highlighting job here, Mr. Armstrong, but if
15 you'll bear with me.

16 Question: Did you, in 1996, disclose to the
17 Patent Office in your patent application the idea of
18 using circuit boards in game controllers?

19 Do you see that?

20 A. Yes, sir.

21 Q. And you said: Yes, sir, I did.

22 A. Yes, sir.

23 Q. This is the text from my 1996 application, the
24 original parent patent application, where it says:
25 Providing structure with the advantage of mounting the

1 sensors in a generally single area or on at least one
2 planar area, such as on a flat flexible membrane sensor
3 sheet or circuit board sheet, so that the controller can
4 be highly reliable and relatively inexpensive to
5 manufacture.

6 That's what you pointed to in your 1996
7 warehouse as supporting the notion that you -- part of
8 your invention was sensor-connected sheets, correct?

9 A. Yes, sir.

10 Q. Now, sir, you remember during Mr. Cawley's opening
11 statement that he held up this controller (indicating)?

12 A. Yes, sir.

13 Q. Do you know what it is?

14 A. It appears to be an Atari controller.

15 Q. It's a controller for the Atari 2600, correct?

16 A. Okay.

17 THE COURT: Okay. Counsel, you probably want
18 to be behind the podium so we can --

19 MR. GUNTHER: I apologize, your Honor.

20 THE COURT: -- pick up on the microphone.

21 MR. GUNTHER: Thank you for that, your Honor.

22 I apologize.

23 BY MR. GUNTHER:

24 Q. This is a controller from one of the early Atari
25 systems in the 1970s, right?

1 A. Yes, sir.

2 Q. It was the controller that was used to play games
3 like Pac-Man, right?

4 A. Yes, sir.

5 Q. And that was -- Pac-Man was one of the things that
6 Mr. Cawley showed during his opening statement, right?

7 A. Yes, sir.

8 Q. Okay.

9 MR. GUNTHER: Your Honor, may I approach?

10 THE COURT: You may.

11 BY MR. GUNTHER:

12 Q. Can I hand that to you, sir?

13 A. Yes, sir.

14 Q. Thank you.

15 Now, Mr. Armstrong, have you ever taken that
16 controller apart? I know you testified about you sort
17 of have this insatiable appetite for taking things
18 apart. Have you ever taken that apart?

19 A. You know, it's quite likely. If I have, it's been
20 really a long time.

21 Q. Do you remember doing that at any point in time?

22 A. This particular one, no, sir.

23 Q. Okay. At any time before you decided to file this
24 lawsuit, did you ever take it apart, to your knowledge?

25 A. I don't have a specific memory of that.

1 Q. And after you filed this lawsuit, did you ever take
2 it apart?

3 A. I don't have a specific memory of that, no, sir.

4 Q. All right. Now, I want you to do this, sir. Could
5 you hold it up high?

6 A. (Complying.)

7 Q. It's got a rubber band on it, and I'll tell you I
8 got the drill out last night and drilled out a couple of
9 the screws so that we could take it apart. So, can you
10 take the rubber band off and take it apart for me?

11 A. Sure. (Complying.) Yes, sir.

12 Q. Sir, there is a -- if you could hold it up high,
13 there is a --

14 A. This is what you want to see, I'm sure.

15 Q. Yeah. What color is that thing?

16 A. What color is what?

17 Q. That thing that you're holding in your right hand.

18 A. It's some kind of like an orange-brown.

19 Q. Okay.

20 MR. GUNTHER: Your Honor, could I approach
21 again? I'd just like to get that back.

22 THE COURT: You may.

23 BY MR. GUNTHER:

24 Q. Mr. Armstrong, I'll just take that if you don't
25 mind.

1 A. Yes, sir.

2 Q. Thank you so much.

3 I'll grab that, too.

4 A. Do you want your rubber band?

5 Q. You can have that. I think I've got an extra one.

6 Mr. Armstrong, you had a chance to take a

7 look at this after you opened it up?

8 A. I just now did, yes, sir.

9 Q. It's a sheet, isn't it?

10 A. Yes, sir.

11 Q. And it has sensors on it, doesn't it?

12 A. Yes, sir.

13 Q. And it has several sensors on it, right?

14 A. Yes, sir, it looks like five.

15 Q. So, this is a sheet from the 1970s, a

16 sensor-connected sheet, before -- I don't know -- how

17 many years before the warehouse? Twenty? Twenty years

18 before the warehouse?

19 A. I don't know how many. A lot.

20 Q. A lot.

21 A. Yes, sir.

22 Q. So, sensor-connected sheets for video games,

23 they've been around since the Seventies.

24 A. Yes, sir.

25 Q. You didn't invent sensor-connected sheets for video

1 games, did you?

2 A. No, sir.

3 Q. The warehouse -- you threw that in the warehouse;
4 but it's nothing that you invented, is it?

5 A. By itself, no, sir.

6 Q. Okay. But you didn't say that to the jury.

7 Yesterday you told the jury that this was one of your
8 inventions, didn't you?

9 A. No, sir.

10 Q. All right. Well, we'll go -- the jury will
11 remember that, what they remember.

12 A. I said I disclosed it to the Patent Office.

13 Q. Now, sir, let me ask you this: Do you know what
14 this is?

15 A. Yes, sir.

16 MR. GUNTHER: Can we put up the N64? Just
17 wait a second for it to come up. We're going to put up
18 a picture of this on the screen.

19 BY MR. GUNTHER:

20 Q. That's the Nintendo 64 controller, right, up on the
21 screen?

22 A. Yes, sir.

23 Q. And I'm holding that in my hand, as well, right?

24 A. Yes, sir.

25 Q. Now, sir, this was a controller that you did not

1 invent, correct?

2 A. I believe I testified to that.

3 Q. Right. Your testimony is still the same today,
4 isn't it? You didn't invent this, right?

5 A. Yes, sir.

6 Q. Okay. So, you didn't invent this controller. This
7 controller was out at the time you filed the warehouse
8 application in 1996, right?

9 A. I'm not sure of the date.

10 Q. But you don't accuse this of infringement, right?

11 A. I did not accuse that of infringement.

12 Q. And you did not say that you invented anything
13 that's in this controller, either individually or in
14 combination, correct?

15 A. Okay.

16 Q. When you say "okay," I just want to make sure you
17 and I are communicating. We're communicating on the
18 backdating thing now. I want to make sure we're
19 communicating on the "okay."

20 When you say "okay," you mean "yes," don't
21 you?

22 A. You know, I'm just not really clear on that --
23 what's in that controller.

24 Q. You're not clear on what's in this controller?

25 A. No, sir.

1 Q. But, sir, you don't say you invented -- there's
2 nothing in the warehouse that covers this controller,
3 right?

4 A. (Pausing.)

5 Q. That's what you told me in your deposition, right?

6 A. You know, I'm just not real clear on that at this
7 time. I may have said that in the deposition --

8 Q. You don't have any doubt that you told me that in
9 the deposition, right?

10 A. I'm sure you could pull it up if I did say that.

11 Q. Okay. Now, sir, let me ask you this -- this is
12 something you claim not to -- you admit you did not
13 invent. Does this have a circuit board in it?

14 A. I presume it does.

15 Q. And does it have sensor-connected -- sensors on the
16 circuit board that are connected to each other?

17 A. I would think it does.

18 Q. So, here is something that you don't say you
19 invented, that's not in your warehouse, that has
20 sensor-connected circuit board sheets on it, correct,
21 within -- inside it?

22 A. If you say so, yes, sir.

23 Q. All right. But you don't have any doubt that
24 that's, in fact, the case. If I got the drill out and
25 you and I kind of drilled it open, that's what would be

1 in there, right?

2 A. I certainly believe there is a circuit board in
3 there, yes, sir.

4 Q. With sensors on it, right?

5 A. Yes, sir.

6 Q. Okay. Now, sir -- let me just do this because it's
7 a little bit bigger up here. You don't claim to have
8 invented the joystick (indicating)?

9 A. No, sir.

10 Q. Right, that's in this N64 controller, right?

11 A. That's correct.

12 Q. You don't claim to have invented the cross-switch
13 that's in this N64 controller, right?

14 A. That's correct.

15 Q. You don't claim to have invented the buttons.

16 A. That's correct.

17 Q. And there's one other thing, Mr. Armstrong -- and
18 I'm going to take this -- I actually don't have it in
19 the picture, which is a little bit unfortunate. But I
20 want to see if I can do this. This is why you're
21 supposed to practice beforehand.

22 There is a pack in here. Do you see what
23 this is (indicating)? I'm holding it up.

24 A. Yes, sir.

25 Q. What is that called? Do you know?

1 A. I think that that's the rumble module.

2 Q. That's a rumble module that's made to be inserted
3 into the Nintendo 64 controller, right?

4 A. Yes, sir.

5 Q. It's got a motor with an offset weight in it,
6 right?

7 A. Yes, sir.

8 Q. So that when you're playing a game, if the software
9 designer decides that if you crash the car into the
10 wall -- which I do with a lot of frequency when I
11 play -- that you're going to get some vibration. You'll
12 get a little feedback to know that that happened, right?

13 A. Yes, sir.

14 Q. That active tactile feedback, correct?

15 A. Yes, sir.

16 Q. And all of that was out at the time that you filed
17 your 1996 application; and you do not claim to have
18 invented any of this, right?

19 A. I'm not exactly clear on that, to tell you the
20 truth.

21 Q. You're not clear on that? Well --

22 A. No, sir.

23 Q. -- sir, are you clear enough that if you thought
24 that this was an infringement, that you had invented it
25 and it was covered, you're clear enough that you would

1 have sued us on that, right? You already sued us on the
2 GameCube and the Wii. Did you let us off easy on this
3 one?

4 A. Yeah. I have for many years, yes, sir.

5 Q. You let us off easy on this one. Is that your
6 testimony?

7 A. It's very, very difficult.

8 Q. Do you want to add it to the lawsuit now?

9 A. No, sir.

10 Q. Okay. Now, sir --

11 MR. CAWLEY: Your Honor, I'm going to object
12 to the implication that we could simply at this late
13 date add something to the lawsuit.

14 MR. GUNTHER: I'll withdraw the question.

15 THE COURT: Sustained.

16 BY MR. GUNTHER:

17 Q. Now, Mr. Armstrong, I want to go to the third.
18 We've talked about rumble. We've talked about
19 sheet-connected sensors -- circuit board connected
20 sensors. Now I want to go to the third thing that you
21 talked about as part of your invention, which was
22 proportional buttons. Do you recall that testimony?

23 A. Yes, sir.

24 Q. And the proportional buttons -- the testimony that
25 you gave is it's a button that you push; and as you push

1 it, you can get a different output. You testified that
2 it's like a gas pedal. The harder you push, the more
3 gas you get, right?

4 A. Yes, sir.

5 Q. And the less you push the button, it's like taking
6 your foot off the gas pedal, right?

7 A. Yes, sir.

8 Q. Now, sir, I want to ask you --

9 MR. GUNTHER: Your Honor, may I approach?

10 THE COURT: You may.

11 BY MR. GUNTHER:

12 Q. I'm going to hand you the Wii Remote plus the
13 Nunchuk.

14 Now, sir, here's my question. You agree with
15 me that in terms of following the money in this case --
16 can you hold those up for us, please? Would you mind?

17 A. (Complying.)

18 Q. I'm turning you into a model for us.

19 A. You've done that before.

20 Q. Okay. Sir, let me ask you this -- it's one of my
21 bad habits.

22 You agree with me that 90 percent of the
23 money that you're asking for from Nintendo relates to
24 those two things, right?

25 A. I haven't made an assessment like that.

1 Q. Sir, do you have any doubt -- let me ask you this:
2 You know, sir, that Anascape -- and you're the majority
3 owner of Anascape -- is going to ask this jury for tens
4 of millions of dollars, right?

5 A. I presume so, yes, sir.

6 Q. You presume so? You don't know that?

7 A. I know that's true.

8 Q. Okay.

9 A. Yes, sir.

10 Q. All right. In fact, they've got a damages
11 expert -- let me see if he's here.

12 MR. GUNTHER: Mr. Bratic, would you stand up?
13 Do you mind?

14 THE COURT: Counsel, that's not appropriate.

15 MR. GUNTHER: I'm sorry, your Honor. I won't
16 do that.

17 BY MR. GUNTHER:

18 Q. Without asking Mr. Bratic to stand up, there is a
19 damage expert that's sitting here in the courtroom that
20 is going to give an opinion with respect to how much
21 money Nintendo should give to you, right?

22 A. Yes, sir.

23 Q. Okay. And 90 percent -- let me just ask it to you
24 this way: Do you have any reason to disagree with me
25 that over 90 percent of the damages in this case relate

1 to those two products that I gave you, the Nintendo Wii
2 and the Nintendo Nunchuk?

3 A. I don't have any reason to disagree with that, no,
4 sir.

5 Q. Okay. Now, sir, I want to come back to the
6 proportional button question that I asked you, which is
7 one of the inventions that you have in the 1996
8 warehouse.

9 In looking at those things, sir, are there
10 any proportional buttons on the Wii Remote?

11 A. No, sir.

12 Q. Are there any proportional buttons on the Wii
13 Nunchuk?

14 A. Depending on -- I don't think so. Depending on the
15 definition of "button," I don't believe there is, no.

16 Q. Okay. So, as far as you know, sir, sitting here
17 today, with 90 percent of the damages that you're
18 requesting, there's no proportional buttons on either
19 the Nunchuk or the Remote, correct?

20 A. Yes, sir.

21 Q. Okay. So, that's the third part of your invention.

22 Now let me ask you about the last part of
23 your invention, which you testified was better control
24 of 3-D graphics, I think?

25 A. Okay. Yes, sir.

1 Q. Yes. Okay.

2 Now, sir, I want to talk to you about some of
3 the prototypes that you showed the jury yesterday.

4 MR. GUNTHER: Do we have those prototypes
5 from yesterday? They're in the box?

6 Your Honor, may I approach the witness?

7 THE COURT: You may.

8 BY MR. GUNTHER:

9 Q. Mr. Armstrong, I'm going to just pick the box up
10 because I'll never get them right. But I'm going to
11 walk over here, if I can, and ask you to pick out the
12 controllers that you talked about yesterday. Can I hand
13 those over to you?

14 Have you got them, sir?

15 A. Yes, sir.

16 Q. Thank you.

17 Can you pick out the first controller that
18 you showed the jury yesterday?

19 A. Yes, sir.

20 Q. And hold it up for us.

21 A. Are you talking about this one?

22 Q. Yeah, the one with the VCR and popsicle sticks and
23 the coke cans. Have you got that one?

24 A. Yes, sir.

25 Q. Now, sir, can you hold that one up?

1 A. Yes, sir.

2 Q. Now, how many input members does that have?

3 A. One.

4 Q. And is that input member movable in 6 degrees of
5 freedom?

6 A. Yes, sir.

7 Q. Now, can you explain to us what that means in terms
8 of moving that around? And let me ask you some
9 questions to help you through it.

10 That means that you can pull the stick up,
11 right?

12 A. Yes, sir.

13 Q. And you can push it down.

14 A. Yes, sir.

15 Q. And you can move it forward.

16 A. Yes, sir.

17 Q. And you can move it back.

18 A. Yes, sir.

19 Q. And you can move it to the side?

20 A. Yes, sir.

21 Q. And you can move it to the side?

22 A. Yes, sir.

23 Q. And then you can take the ball -- this is why you
24 like the ball -- and you can rotate it, as well.

25 A. Yes, sir.

1 Q. So, with all of those different manipulations, you
2 can get a single input member that's operable or movable
3 in 6 degrees of freedom, correct?

4 A. That's true.

5 Q. That's okay.

6 Now let's take the next prototype that you
7 showed the jury yesterday. And, sir, can you identify
8 before you do that -- I'm sorry. Can you identify the
9 exhibit number of that that you just showed to the jury?

10 A. On the Wii Remote?

11 Q. No, sir, the first prototype, your coke cans and
12 popsicle sticks.

13 THE COURT: I thought we said that the
14 exhibit numbers were on the photographs, not the demos;
15 so, I don't know if there is any way of doing that.

16 MR. CAWLEY: Correct, your Honor.

17 THE COURT: There's not labels on those.
18 Those are demos. They're on photographs somewhere.

19 MR. GUNTHER: All right. Your Honor, I
20 understand. I think I've identified it by the popsicle
21 sticks and the coke cans, that I'm okay with that for
22 the record. But I appreciate your making me aware of
23 that. I should have been.

24 BY MR. GUNTHER:

25 Q. Can you pick out the second prototype that you

1 showed to the jury yesterday?

2 A. I don't recall which one was second.

3 Q. You know what? Don't stress about that. Second or
4 third, whichever it is.

5 A. I suspect this is the one you want me to pick up.

6 Q. Well, you can pick that up. Sure.

7 A. Just trying to help you, Bob.

8 Q. Well, I appreciate that. Can you hold that up, as
9 well?

10 A. (Complying.)

11 Q. Now, sir, that has a single handle on it, too,
12 right?

13 A. Yes, sir, it does.

14 Q. And it's operable in 6 degrees of freedom, right,
15 just like the first prototype with the popsicle sticks
16 and the coke cans and the VCR box and the light bulb.

17 A. Yes, sir.

18 Q. So, that means, again, you can do the same thing.
19 You can lift it up. You can push it down. You can move
20 it forward, back, side, side; and you can twist it
21 around, right?

22 A. Yes, just like the Wiimote.

23 Q. Okay. Now, let me ask you this, sir, about the
24 Wiimote. Can you hold that up? You called it the
25 "Wiimote." I call it the "Wii Remote." But, you know,

1 apples and oranges.

2 If you could hold that up.

3 A. (Complying.)

4 Q. Now, sir, let me ask you a question. Does that by
5 itself infringe any claim of your patent?

6 A. No, sir.

7 Q. It doesn't infringe any claim of your patent. So,
8 to the extent that the Wii Remote is movable because of
9 the accelerometer and there's various movement that can
10 be sensed, that doesn't infringe your patent, does it?

11 A. That's correct.

12 Q. Okay. So, let's put the Wiimote aside, or Wii
13 Remote or whatever you'd like to call it; and let's go
14 back to what you were doing before the 1996 application.
15 Can you pull out the third one? And I know it might be
16 the second or third that you showed the jury.

17 And before you do that, Mr. Armstrong -- I'm
18 sorry. I keep giving you different instructions. If
19 you could take that second one that you just showed, and
20 I want to describe it a little bit because I don't have
21 an exhibit number so we have that for the record. Could
22 you hold it up?

23 A. The second one has an exhibit number.

24 Q. Oh, does it?

25 A. 347.

1 Q. That actually may be a deposition exhibit, which
2 will help a little bit. But what color handle does it
3 have?

4 A. Blue.

5 Q. And what color bottom does it have?

6 A. Blue.

7 Q. And does it have sort of a long, undulating armrest
8 thing?

9 A. Yes, sir.

10 Q. Okay. All right. So, we've done two of them. And
11 let me ask you this, Mr. Armstrong: Both of those
12 things reflect inventions that you put in the warehouse
13 in 1996, right?

14 A. Yes, sir.

15 Q. Okay. Now can you take out the third one? There
16 is a third one, I think.

17 A. I don't know what you're talking about.

18 Q. Did you only do two? I thought you did three.

19 A. Well, we did one that had a lot of wires in it.

20 Q. No, the concept.

21 A. This one?

22 Q. That is the concept guy. That's right.

23 A. This one.

24 Q. Can you hold that one up?

25 A. Yes, sir.

1 Q. Now, the concept guy, that again -- just to
2 describe it for the record, if you hold it face-up, in
3 the way it would normally appear, there is a handle on
4 the top --

5 A. Yes, sir.

6 Q. -- right?

7 And then there is a piece of wood or
8 something like that, right?

9 A. Right.

10 Q. And then there is all those different doohickeys on
11 the bottom, right?

12 A. Yes, sir.

13 Q. And that's part of what kind of came out of your
14 dream.

15 A. It all did, yes, sir.

16 Q. Okay. Now, can you turn it sort of the way
17 somebody would hold it if they were actually using it?

18 A. Yes, sir.

19 Q. Okay. Now, sir, that has a single handle on it,
20 right?

21 A. Yes, sir.

22 Q. And that single handle is operable in 6 degrees of
23 freedom.

24 A. Yes, sir.

25 Q. Right. And, so, all the same things that I talked

1 about before, all those different manipulations, that
2 can be done, right?

3 A. Yes, sir.

4 Q. Okay. And, sir, you put that one in the warehouse,
5 too, right?

6 A. Yes, sir.

7 Q. As a matter of fact, that's shown in Figures 20,
8 21, and 22 of your patent application, right?

9 A. I'll take your word for it.

10 Q. All right. Don't take my word for it. I'm on the
11 other side. So, why don't you take a look at 306 and
12 look at Figures 20 -- if you look in your binder, you
13 can see --

14 A. Can I put these back down in the box?

15 THE COURT: Okay. Wait, wait, wait. You're
16 talking over each other again. You need to slow down a
17 little bit.

18 MR. GUNTHER: Yes, sir.

19 THE WITNESS: Sorry, your Honor.

20 THE COURT: Go ahead.

21 BY MR. GUNTHER:

22 Q. Mr. Armstrong, go ahead and put those back, and if
23 you can get the witness binder in front of you, the
24 exhibit binder.

25 A. This one, too, in the box?

1 Q. Sure. You can put them all back in there. If we
2 need them back, we'll get them.

3 A. Can I put yours in there? Just kidding.

4 Q. I know it's hard to get a Wii, Mr. Armstrong, but
5 come on.

6 Do you have your exhibits in front of you?

7 A. Yes, sir.

8 Q. Okay. Would you look at Defendant's Exhibit 306?

9 A. 306? Yes, sir.

10 MR. GUNTHER: Could you, Kam, put 306 up on
11 the screen, Figure 20?

12 BY MR. GUNTHER:

13 Q. That's Figure 20 from your 1996 application, right?

14 A. Yes, sir.

15 Q. That's part of the warehouse, right?

16 A. This exhibits the 1996 --

17 Q. Yes, sir.

18 A. Is that right?

19 Q. Yes, sir.

20 A. You were --

21 Q. Yes, sir.

22 A. Okay.

23 Q. So, if you look at page 76 -- and when I'm
24 orienting you, if you look up on the upper right-hand
25 corner -- either the upper right-hand corner or the

1 lower right-hand corner of your page should have
2 document Bates numbers on it. Are you with me?

3 A. Yes, sir.

4 Q. Okay. So, that's part of the warehouse, Figure 20.

5 A. Yes, sir.

6 Q. And that, sir, is essentially the same as your
7 concept prototype that you showed us a moment ago that
8 came out of the dream that you had, right?

9 A. Yes, sir.

10 Q. And, sir, Figure 21, the next page, that's another
11 version of that concept prototype; it's just shown with
12 everything kind of crunched down, the way it would
13 normally be used in operation, right?

14 A. Yes, sir.

15 Q. And then if we look at Figure 22, Figure 22 is part
16 of -- it shows a part of Figures 20 and 21, right?

17 A. Yes, sir.

18 Q. So, all of what I've just shown you, including this
19 figure, are all talking about a controller that has a
20 single input member that itself is operable in 6 degrees
21 of freedom, correct? That's what this Figure 22,
22 Figure 20, and 21 are all about, right?

23 A. Yes, sir.

24 Q. Okay. Now, sir, you've got the GameCube in front
25 of you, the GameCube controller.

1 A. Yes, sir.

2 Q. Can you hold that up and show it to the jury?

3 A. That's this one (indicating)?

4 Q. Yes, sir.

5 Now, sir, does that have a single input
6 member operable in 6 degrees of freedom?

7 A. No, sir.

8 Q. How many input members does it take to get what you
9 believe to be 6 degrees of freedom on the GameCube?

10 A. This one here looks like it has three two-axis
11 members.

12 Q. Three two-axis members. Let's kind of go through
13 them. The joystick is one -- is that correct -- the
14 gray joystick?

15 A. Yes, sir.

16 Q. And then the cross-switch is the second?

17 A. Yes, sir.

18 Q. And then the candlestick is a third?

19 A. Yes, sir.

20 Q. So, when you wrote your claims in 2002, you were
21 trying to copy this. You were trying to cover this,
22 right?

23 A. Yes, sir.

24 Q. And, sir, what that means is that you were trying
25 to cover a controller that had three separate input

1 members which you contended got you to 6 degrees of
2 freedom, right?

3 A. I don't think that that claim requires 6 degrees of
4 freedom.

5 Q. But that's what the effect of it is, right? By
6 claim -- whatever claim it is, the claims that you're
7 thinking of right now, that you would get the 6 degrees
8 of freedom, whether it was required or not, that that's
9 what you would get out of those three different input
10 members, right?

11 A. Okay. Yes, sir.

12 Q. Okay. And, so, sir, what you disclosed in the
13 warehouse was a single input member capable of movement
14 in 6 degrees of freedom, correct? We went through the
15 prototypes; and we went through some of the figures,
16 right?

17 A. I described some single input members capable of
18 that. I also described some additional input members.

19 Q. Okay. But you described in your patent application
20 in 1996 input members that were operable in 6 degrees of
21 freedom, correct?

22 A. Yes, sir, I did.

23 Q. Okay. Now, I want to go, if we can, to your -- I'm
24 going to go to a couple of pages in your 1996
25 application that you talked about with Mr. Cawley

1 towards the end of your direct testimony. And he showed
2 you a figure of the patent that had a trackball around a
3 collet on it, right, or a collar kind of around the
4 trackball? Do you remember that?

5 A. Yes, sir.

6 Q. Okay.

7 MR. GUNTHER: Could you put up Figure 4 from
8 the patent -- sorry -- Figure 4 from the application?
9 I'll give you the page number, Kam. It's page number
10 60.

11 BY MR. GUNTHER:

12 Q. Now, that, Figure 4, shows the trackball with the
13 collar around it, correct?

14 A. Yes, sir, it does.

15 Q. The collar is 16, and the trackball is 12.

16 A. Yes, sir.

17 Q. Right?

18 Now, sir, that trackball is a single input
19 member operable in 6 degrees of freedom, right?

20 A. Yes, sir.

21 Q. So, when I talked about -- in my opening statement
22 about you talking about single input members, what I was
23 talking about -- and I want to make sure we're
24 communicating. We already talked about backdating. I
25 want to make sure we're communicating -- 6 degrees of

1 freedom. I was talking about a single input member on 6
2 degrees of freedom, correct?

3 MR. CAWLEY: Objection, your Honor. He's
4 asking the witness what the lawyer was talking about.

5 THE COURT: Sustained.

6 BY MR. GUNTHER:

7 Q. Sir, that trackball is a single input member
8 operable in 6 degrees of freedom, right?

9 A. Yes, sir, it is.

10 Q. Okay. And that's one of the inventions in your
11 warehouse, right?

12 A. It's one of the components, yes, sir.

13 Q. Even when the collar is there, you can grab the
14 trackball like a little basketball, as you described it
15 in your patent application, and move it in all six
16 degrees of freedom, can't you?

17 A. It would depend on how it is designed.

18 Q. Sir, isn't that what you said in your patent
19 application?

20 A. I'm sure that there certainly are some embodiments
21 in which you can do that.

22 Q. You grab it; and even with the collar, you move it
23 around. So, in that embodiment, the one I'm showing you
24 there, that embodiment, the trackball has full 6 degrees
25 of freedom, correct?

1 A. Okay.

2 Q. And it's a single input member, correct?

3 A. Yes, sir.

4 Q. Okay. Now let's go -- that was one of the ones
5 that Mr. Cawley showed you. Let's go, sir, to Figure 9.

6 Now, Figure 9, Mr. Cawley pointed out that
7 there were buttons on there; and there is that thing, I
8 guess -- looks like 16 or 14 or something like that that
9 can turn around, right? Do you see that, sir?

10 A. Yes, sir.

11 Q. But, sir, the trackball on there, Number 12, is a
12 single input member operable in 6 degrees of freedom,
13 isn't it?

14 A. Well, with this particular collet design, it would
15 be pretty hard to manipulate the ball itself on a linear
16 axis.

17 Q. That's not my question. My question, sir, is
18 Number 9 -- Figure 9 is Item 12 -- whether it might be
19 difficult or not, is that a single input member operable
20 in 6 degrees of freedom?

21 A. If you say so. Just -- I mean, the ball can move
22 in 6 degrees of freedom but --

23 Q. It can move in 6 degrees of freedom.

24 A. In this design, you know, the collet is integrated
25 with that.

1 Q. So, it's integrated. The collar is integrated like
2 the collar was integrated in Figure 4, but in both cases
3 there is still a single input member operable in 6
4 degrees of freedom, right?

5 A. Well, in this particular design I think I would
6 have to say that the -- I mean, I don't know exactly
7 what the specification says; but there's not much access
8 to moving the ball in the linear axis without moving
9 that collet on those axes. So, it might be that the
10 ball is just three axes and the collet is four. I'm not
11 sure I've read the spec on that. It just appears that
12 way to me at this time, that there's -- there's a great
13 variety of stuff in this patent application.

14 Q. Wait a second. Wait a second. Mr. Cawley just
15 asked you questions on your direct examination --

16 A. Right.

17 Q. -- about Figure 9.

18 A. Okay. Well -- let me -- I concede.

19 Q. You concede?

20 A. Ball 12 is a 6-degree-of-freedom --

21 Q. Thank you. Thank you. So, Figure 4 -- let's go
22 back to my question. Figure 4 that I showed you before
23 with the collar and the ball, in Figure 9 that's got the
24 ball and sort of the other collar. Both of them have a
25 ball that's operable in 6 degrees of freedom, right?

1 A. Okay. Yes, sir.

2 Q. Okay. Now, sir, let's go to Figure 20.

3 MR. GUNTHER: Could we put up Figure 20?

4 BY MR. GUNTHER:

5 Q. Now, Mr. Cawley asked you about this figure, too,
6 right?

7 A. Yes, sir.

8 Q. And he said that, "Look, there's a couple of
9 buttons on there. Gunther is wrong." That's what he
10 said, right?

11 A. I don't recall exactly what he said.

12 Q. Well, forget about Gunther. He said that this is
13 not a single input member because it has buttons on it,
14 right? And you said that's right. That was your
15 testimony a few moments ago.

16 A. No, sir. I think that -- you know, my
17 understanding was that -- that you were presenting that
18 there was only a single input member here and that I was
19 putting forward -- my side was putting forth, well, no,
20 there is actually more than just a single input member
21 here.

22 Q. But --

23 A. In those other drawings there is a collet, and in
24 this one there are the additional input buttons.

25 Q. But even though there is buttons, there is still in

1 this embodiment a single input member that's movable in
2 6 degrees of freedom, right?

3 A. Yes, sir.

4 Q. So, again, let's kind of count through. Mr. Cawley
5 showed you Figure 4 or Figure 6 -- but, you know, same
6 thing -- that ball with the collar. He showed you
7 Figure 9. That was kind of like the remote control
8 thing with the ball and the collar. And he showed you
9 Figure 20 and the buttons.

10 In every one of those embodiments, there is a
11 single input member operable in 6 degrees of freedom,
12 right?

13 A. Yes, sir.

14 Q. Thank you.

15 Now, sir, I want to talk to you a little bit
16 about your background. Sir, you are a -- you're a
17 pilot, aren't you?

18 A. Yes, sir.

19 Q. How long have you been flying?

20 A. Well, it depends on how you define that.

21 Q. Any definition you like.

22 A. Well, my father would take me up when I was a
23 child.

24 Q. Did he give you the controls sometimes?

25 A. Yeah. Yes, sir.

1 Q. Did he maybe sit you on his lap and let you work
2 the handles and the pedals?

3 A. Yes, sir.

4 Q. Okay. And did you get your pilot's license at some
5 point?

6 A. Yes, sir.

7 Q. When did you get your pilot's license?

8 A. Just recently.

9 Q. Okay. But have you flown even without a pilot's
10 license, you know, not improperly but with an instructor
11 or something like that from time to time?

12 A. Yes, sir.

13 Q. So, you basically know kind of -- at least for
14 small airplanes, kind of how they work and whatnot?

15 A. Pretty much, yes, sir.

16 Q. Okay. Did you ever operate an airplane or see an
17 airplane operated that had kind of a joystick-type
18 control rather than, you know, a lot of those different
19 controls that you might see when you look into the
20 cockpit of an airplane?

21 A. Yes, sir.

22 Q. Okay. When did you first see that?

23 A. Well, probably very young.

24 Q. Probably when you were a kid?

25 A. Yes, sir.

1 Q. Okay. Something that might have stuck in your
2 mind?

3 A. It's something I'm familiar with, yes, sir.

4 Q. Something that might have been maybe an influence
5 on you in determining how to -- when you started
6 thinking about video game controllers, what would be
7 good?

8 A. I try to think of everything.

9 Q. Because you have a broad experience -- broad range
10 of experience, right?

11 A. Try to.

12 Q. Okay. Now, sir -- now, your field where you've
13 really kind of spent your time is in developing
14 mechanical and electrical aspects of controllers, right?

15 A. Yes, sir.

16 Q. Remember, Mr. Cawley asked during the voir dire --
17 you were in here -- he asked the jurors who was a gamer.

18 A. Yes, sir.

19 Q. And a few folks raised their hands?

20 A. Yes, sir.

21 Q. You are not a gamer, are you?

22 A. No, sir.

23 Q. So, your focus in developing video game controllers
24 was on your experience which was based on, you know,
25 being a pilot and all of the other different things that

1 you -- experiences that you had traveling around and
2 working at different jobs as a roughneck and things like
3 that throughout the country, right? You brought that
4 all kind of to bear in terms of what you were coming up
5 with.

6 A. Yes, sir.

7 Q. But what you weren't is you weren't a gamer, right?

8 A. No, sir.

9 Q. So, in determining whether or not a controller that
10 you developed would be a controller that gamers would
11 like to play, you really didn't have experience with
12 that, did you?

13 A. No, sir.

14 Q. So, you were kind of off in your part -- look,
15 everybody's prisoners of their experience. I'm still
16 trying to get out of the bike shop. But when you were
17 doing what you were doing, you were looking at things
18 from your point of view, what you knew about the world.
19 And what you knew about the world was not video games as
20 you were not a video gamer, right?

21 A. Well, I was selling them in the late Seventies;
22 and, so, I had quite a bit of experience with that.

23 Q. But you, yourself, were not a gamer, right?

24 A. I don't -- I don't spend many hours a day playing
25 games. I don't define myself that way.

1 Q. Okay.

2 A. No, sir.

3 Q. You've never defined yourself that way, right?

4 A. No, sir.

5 Q. Okay. Now, sir, you've never built a piece of
6 video game software, a video game like Mario, right?

7 A. No, sir.

8 Q. That's not your field, right?

9 A. No, sir.

10 Q. And there's no disclosure in your patent that would
11 allow somebody to make a video game like Mario or Donkey
12 Kong or any of those kind of games, right?

13 A. A software designer would not need my patent to
14 write Donkey Kong or Mario.

15 Q. That wasn't quite my question. My question is:
16 There's nothing in your patent that would help anyone
17 who wanted to design Donkey Kong or Mario to do that, is
18 there?

19 A. You know, I haven't thought about it that way. I
20 would have to think about that.

21 Q. So, you don't have an answer for me on that?

22 A. I don't. I'm sorry.

23 Q. All right. Fair enough.

24 But is it fair to say that in terms of
25 developing video games, that's not your area of

1 expertise?

2 A. That's true.

3 Q. Now, sir, your first company, you testified was
4 Global Devices.

5 A. Yes, sir.

6 Q. And that was a company that existed in the
7 Nineties, correct?

8 A. Yes, sir.

9 Q. And you made prototypes and some controllers,
10 right?

11 A. Yes, sir.

12 Q. Now, Mr. Cawley asked you if you sold some of those
13 controllers; and you said "yes," right?

14 A. Yes, sir.

15 Q. How many did you sell?

16 A. Oh, not many. I think maybe 30 or 40 or something
17 maybe.

18 Q. Was the Global Devices controller a commercial
19 success?

20 A. No, sir.

21 Q. Now, sir, after Global Devices you made a company
22 called "Extreme" 6-degree-of-freedom controllers, right?

23 A. Yes, sir.

24 Q. Now, sir, did that company sell any controller
25 products?

1 A. I don't think I sold anything at that time.

2 Q. Did that company have any licensing activities?

3 A. It was in that time frame that I licensed Mad Catz.

4 Q. Okay.

5 A. And Kelly Tyler.

6 Q. That's Kelly Tyler -- Kelly Tyler, the gentleman
7 who is your good friend who you started Anascape with a
8 few years later, right?

9 A. Yes, sir.

10 Q. And you licensed him under two of your earlier
11 patents for video game controllers, the '828 and '891
12 patents, correct?

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

14 Q. And you also licensed him the application -- the
15 warehouse application, right?

16 A. I believe so, yes, sir.

17 Q. Okay. Now, Mr. Tyler, he's a pretty successful
18 businessman, isn't he?

19 A. Yes, sir.

20 Q. He started Mad Catz, right?

21 A. Yes, sir.

22 Q. And he founded that company as a young man; and he
23 built it up into a very large company before he sold it
24 in 1999, right?

25 A. Yes, sir.

1 Q. He actually, I think, made -- I think he
2 testified -- and tell me if you disagree with this. He
3 made something like \$20 million when he sold Mad Catz,
4 right?

5 A. I have no idea.

6 Q. Does that sound reasonable to you?

7 A. I just really don't know.

8 Q. Okay. But he had money to invest in your
9 enterprise, Anascape, right?

10 A. Yes, sir, he did.

11 Q. He put almost \$2 million into Anascape, didn't he?

12 A. Yes -- it was certainly more than a million.

13 Q. So, he's a gentleman of means; and he's a gentleman
14 of -- he's a gamer probably. Wouldn't you say?

15 A. I wouldn't define him that way.

16 Q. You would not?

17 A. No, sir.

18 Q. Okay. Is he knowledgeable about video games and
19 what people want in terms of video game controllers in
20 the marketplace?

21 A. Yes, sir, I think so.

22 Q. Now, Mr. Tyler had a license to the warehouse; and
23 he had a license to two of your other patents in the
24 Nineties.

25 Let me ask you this: Did Mr. Tyler ever make

1 a video game controller that practiced any of your
2 inventions?

3 A. No, sir.

4 Q. Mr. Tyler, the guy who founded Mad Catz, who had
5 his finger on the pulse of controllers, video game
6 controllers, never made a controller when he had his
7 license from you; is that correct? Is that your
8 testimony?

9 A. Yes, sir.

10 Q. Now, sir, has Anascape -- which formed in 1999, I
11 think you testified?

12 A. Yes, sir.

13 Q. And, sir, has Anascape ever competed in the market
14 for video game controllers since its formation?

15 A. You mean as a manufacturer? Is that what you're
16 saying?

17 Q. As a manufacturer or seller of controllers?

18 A. No, sir.

19 Q. Has Anascape ever made any video game controllers?

20 A. No, sir.

21 Q. Does Anascape compete with Nintendo in the market
22 for video game controllers?

23 A. No, sir.

24 Q. Now, sir, I want to talk about --

25 MR. GUNTHER: Could we put the timeline back

1 up, Kam, please?

2 BY MR. GUNTHER:

3 Q. I want to shift to talking a little bit about your
4 application that you filed in 2000 that led to the '700
5 patent. We've got a new date up on the timeline. This
6 is a timeline that I used in my opening statement. It's
7 got your 1996 application. Do you see that?

8 A. Yes, sir.

9 Q. It has the 2002 claims that you wrote in 2002,
10 right?

11 A. Yes, sir.

12 Q. It has the GameCube controller that you're accusing
13 of infringement in this case but which you copied in
14 writing your claims in 2002, right?

15 A. (Pausing.)

16 Q. That's on there.

17 A. Is that the one with the November, 2001, date?

18 Q. Yes. Yes. Can you see that?

19 A. Yes, sir.

20 Q. And we've added a new date sort of in the -- a
21 little bit below the GameCube controller graphic, which
22 is November 16, 2000. That's a new date we haven't
23 talked about in this case yet. That's the date that you
24 filed the application that matured into the '700 patent,
25 right?

1 A. I believe so, yes, sir.

2 Q. And, sir, that application, that '700 application,
3 issued as the '700 patent.

4 A. Yes, sir.

5 Q. And the description of what you put in the
6 application ultimately became part of the printed patent
7 which is, I think, Defendant's Exhibit 1 -- may be
8 Plaintiff's Exhibit 1 -- but it's the '700 patent,
9 right?

10 A. Okay.

11 Q. Am I right about that?

12 A. Would you say the question again, please?

13 Q. My question is that when that application
14 ultimately issued as the '700 patent, what's in the
15 patent itself, the '700 patent itself, is actually the
16 full description of the invention exactly the same as
17 you wrote it in the 1996 application, right?

18 A. (Pausing.)

19 Q. Strike that. Let me ask you another question.

20 The 2000 application that matured into the
21 '700 patent, when the patent issued in -- the '700
22 patent issued, it had the full description of what was
23 in the application in 2000, right?

24 A. Yes, sir. I believe so.

25 Q. Okay. So, now we can sort of think about two

1 documents. We can think about the 1996 application, the
2 warehouse that had your inventions, which must be the
3 same invention as your claims in 2002, right?

4 A. I'm sorry. I'm just not -- I'm not following too
5 well.

6 Q. Okay. So, we've got your 1996 application up
7 there, right?

8 A. Okay.

9 Q. All right. And now we have the '700 patent. We
10 can compare those two documents, right?

11 A. Sure.

12 Q. And you testified on your direct examination that
13 you made some changes to the application in 2000, right?

14 A. Yes, sir.

15 Q. Before you filed it.

16 A. Yes, sir.

17 Q. So, you started with the 1996 warehouse
18 application; and then you made changes to it, right?

19 A. Yes, sir.

20 Q. Now, you told us that you made changes just to
21 clarify the invention, right?

22 A. Yes, sir.

23 Q. And you didn't make changes to broaden the
24 invention, did you?

25 A. No, sir.

1 Q. Because if you made changes to broaden the
2 invention, that would be a problem, wouldn't it? If you
3 broadened the invention from 1996 to what you filed in
4 2000, then you wouldn't be able to get back to 1996,
5 right?

6 A. Yes, sir. I just wanted to clarify when I made
7 those changes.

8 Q. Okay. But stick with me. I understand the
9 clarification point. But now I'm asking you that -- you
10 say you didn't broaden the patent --

11 A. Right.

12 Q. -- in 2000 --

13 A. Right.

14 Q. -- because if you had broadened it, then you
15 wouldn't be able to get back to 1996 because you would
16 have changed the invention. Remember, the invention has
17 to be the same at both points in time, right?

18 A. Yes, sir.

19 Q. Okay. So, now let's take a look at some of the
20 changes that you made from the 1996 warehouse
21 application to the '700 patent.

22 MR. GUNTHER: All right. Let's put the first
23 slide up.

24 BY MR. GUNTHER:

25 Q. This is the Abstract of the Disclosure from your

1 1996 warehouse application. Do you see that?

2 A. Yes, sir.

3 Q. Okay. This is the first sentence of text that I
4 showed you, that Mr. Cawley showed you during his
5 examination, right?

6 A. I think so.

7 Q. Okay. So, this is 1996. This is then. The
8 abstract of the disclosure shows comprised of a single
9 input member operable in 6 degrees of freedom. Do you
10 see that?

11 A. Yes, sir.

12 Q. Now, when you filed the application that actually
13 became the '700 patent in 2000, you took that whole
14 sentence out, didn't you?

15 A. Possibly.

16 Q. You deleted it, didn't you?

17 A. Possibly.

18 Q. Do you have any doubt about that?

19 A. I don't know exactly what the changes were.

20 Q. Well, sir, why don't you take a look -- do you have
21 the '700 patent in front of you in your witness binder?

22 A. Yes, sir.

23 Q. Take a look at the abstract, sir. Do you see that
24 first sentence in the abstract of the '700 patent? Is
25 it there?

1 A. No, I don't see it, sir.

2 Q. So, you deleted it. You kind of hit the "delete"
3 key when you were filing the 2000 application, and you
4 took that whole sentence that talked about a single
5 input member operable in 6 degrees of freedom out of the
6 application in 2000, right?

7 A. It appears so.

8 Q. Okay.

9 MR. GUNTHER: Can we go to the next slide?

10 BY MR. GUNTHER:

11 Q. Now, this is page 2 of your application. 1996.

12 MR. GUNTHER: Can we bring it up?

13 BY MR. GUNTHER:

14 Q. This is a part of the application that talks about
15 your invention. It says: In the prior art there exist
16 6-degree-of-freedom controllers of a type having a
17 hand-operable, single input member -- and it goes on --
18 movable in 6 degrees of freedom. And it says: It is
19 with this type of 6-degree-of-freedom controller that
20 the present invention is primarily concerned.

21 Do you see that?

22 A. Yes, sir.

23 Q. Now, sir, I will represent to you that that was
24 deleted in the '700 patent. Do you have any reason to
25 doubt my representation?

1 A. I don't have a reason to doubt that, no, sir.

2 Q. So, you hit the "delete" key and deleted that
3 entire paragraph of your 1996 application when you filed
4 the '700 application in 2000. You took out all that
5 stuff about single input member operable in 6 degrees of
6 freedom, didn't you?

7 A. If you say so.

8 Q. And you have no reason to doubt my representation,
9 correct?

10 A. No, sir, not at this time.

11 Q. All right.

12 MR. GUNTHER: Let's put up the next one,
13 please.

14 BY MR. GUNTHER:

15 Q. This is under the Summary of the Invention, Summary
16 of the Invention in your 1996 warehouse application. It
17 talks about controllers providing structuring for
18 converting full 6 degrees of freedom physical input by a
19 human hand on a hand-operable single input member.

20 So, it's got both concepts; the single input
21 member which is operable in 6 degrees of freedom, right?

22 A. Yes, sir.

23 Q. Now, when you filed your '700 patent, you made a
24 change to that. I want to show you what the change is.

25 MR. GUNTHER: Could we put that up?

1 BY MR. GUNTHER:

2 Q. And we've got it underneath.

3 MR. GUNTHER: Excuse me one moment.

4 THE COURT: All right, counsel, we're going
5 to take a break.

6 Ladies and gentlemen --

7 MR. GUNTHER: Thank you, your Honor.

8 THE COURT: -- Let me be sure that -- and
9 lawyers and judges in this field sometimes can use
10 shorthand. Each claim in this '700 patent, the five
11 claims you're looking at, is considered an invention, a
12 separate invention. The specification in the previous
13 application is not the invention. It's a description;
14 it's a disclosure. And what you're going to be asked to
15 do at the end of this is compare those claims -- one of
16 the things you're going to be asked to do is you'll be
17 comparing each of those claims against the accused
18 product. It's the claim that's the invention. So,
19 there's five of them.

20 And sometimes lawyers will talk about a
21 shorthand of, well, the patent is the invention. The
22 patent is not the invention. Each claim is an
23 invention. And, so, you'll compare that.

24 You're also at some point going to be asked
25 to compare each claim to see if it's fully disclosed in

1 that prior specification, that prior application. So,
2 it sometimes can be confusing the way we all throw these
3 words around and you'll see this again in your written
4 descriptions, but as you're going through this, to help
5 you follow, just remember that each claim is an
6 invention and you compare those against the accused
7 products, that Wii, that GameCube. And then you're also
8 going to be asked to take a look and see is it
9 disclosed, completely, properly described in that 1996
10 application.

11 All right. At this time we are going to take
12 a break. I'll ask you to be back at quarter past.
13 Please remember my instructions not to discuss the case
14 among yourselves.

15 (The jury exits the courtroom, 10:59 a.m.)

16 THE COURT: If either side thinks my
17 definitions are incorrect, you need to make your
18 objection so that I can make a -- provide a correct
19 definition. But I think those, in fact, are correct
20 statements of the law. And I've been concerned in a
21 number of these trials about that possible confusion
22 because we sometimes talk about the patent being the
23 invention or the specification being the invention; and
24 later on they're going to get this instruction to do it
25 claim by claim, step by step. And, in fact, local

1 counsel might as well get used to it. I'm going to
2 start emphasizing that more because I think it's
3 important to avoid confusion at the end on that. But if
4 someone -- again, just to avoid any later claim that
5 I've made a final decision, if someone thinks I'm giving
6 an improper instruction, it's incumbent on you to bring
7 that to my attention. You can do it outside the
8 presence of the jury to let me rule on it, but I think
9 I'm stating the law correctly.

10 At this time we'll be in recess until quarter
11 past.

12 (Recess, 11:00 a.m. to 11:14 a.m.)

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

15 THE COURT: Mr. Gunther.

16 MR. GUNTHER: Thank you, your Honor.

17 BY MR. GUNTHER:

18 Q. Mr. Armstrong, before the break we were talking
19 about your 1996 warehouse application and then the later
20 application that was filed in 2000 that became the '700.
21 Do you recall that?

22 A. Yes, sir.

23 Q. And you testified that you made changes from the
24 1996 application when you wrote the '700 application in
25 2000, correct?

1 A. Yes, sir.

2 Q. And in several instances where you mentioned in
3 this 1996 application a single input member operable in
4 6 degrees of freedom, you deleted those from the 2000
5 application, correct?

6 A. I think so, yes, sir.

7 Q. Okay. Now, you also made certain changes -- not
8 just deletions; but you made some changes to that
9 specification, as well, correct, sir?

10 A. Yes, sir.

11 Q. And the changes were made simply to clarify but not
12 to broaden; is that right?

13 A. Yes, sir.

14 Q. Because if you broaden -- broadening is bad, right?

15 A. Yes, sir. I just wanted to clarify.

16 Q. Okay. Now let's -- if we can, I want to show you
17 part of the 1996 application; and we're going to put a
18 paragraph of that up on the screen. And what that is is
19 that's from Defendant's Exhibit 306 at page 14. That's
20 a quote from the 1996 application.

21 And it says: Another object of the invention
22 is to provide an easy-to-use 6 DOF controller -- so,
23 it's talking about 6 degrees of freedom -- which
24 includes a single input member. Do you see that?

25 A. Yes, sir.

1 Q. That's what you said an object of the invention was
2 in 1996, right?

3 A. That's an object of the invention, yes, sir.

4 Q. Okay. And that's what it was then, in 1996, right?

5 A. Yes, sir.

6 Q. Now, in 2000, when you filed the '700 application,
7 what became the '700 patent -- you made a change to that
8 paragraph.

9 MR. GUNTHER: Let's put it up, Kam.

10 BY MR. GUNTHER:

11 Q. And this is from the '700 patent, Defendant's
12 Exhibit 1, at Column 4, line 44. It says: Another
13 object of the invention is to provide an easy-to-use 3-D
14 controller. Do you see -- and I didn't highlight this.
15 But you changed "6 degree of freedom" to "3-D."

16 A. Yes, sir.

17 Q. Right?

18 A. Yes, sir.

19 Q. And then you go on and you say: Which includes at
20 least one input member, right?

21 A. Yes, sir.

22 Q. So, 1996, then you say your invention is a single
23 input member operable in 6 degrees of freedom, right?

24 A. Yes, sir.

25 Q. And in 2000, when you filed the '700 application,

1 you change it to say that your invention is at least one
2 input member operable in 3-D, which you say is the same
3 as 6 degrees of freedom, right?

4 A. Yes, sir.

5 Q. And that doesn't broaden the application.

6 A. No, sir.

7 Q. Is that your testimony?

8 A. Yes, sir.

9 Q. It just clarifies it?

10 A. Yes, sir.

11 Q. All right. Sir, do you have the GameCube
12 controller?

13 A. Yes, sir.

14 Q. Can you hold that up?

15 A. Yes, sir (complying).

16 Q. Hold it up nice and high for us, please.

17 A. (Complying.)

18 Q. Now, sir, is that a single input member
19 6-degree-of-freedom controller?

20 A. No, sir.

21 Q. So, sir, looking at that first part of the
22 specification, the object of the invention, where it
23 talks about a single input member that's operable in
24 6 degrees of freedom, would the GameCube controller with
25 multiple input members fall within that language?

1 A. Is that a question?

2 Q. Yes, sir.

3 A. What was the question again?

4 Q. The question is the GameCube -- can you hold that
5 up again for us?

6 A. Yes, sir.

7 Q. The GameCube controller doesn't have a single input
8 member, does it?

9 A. (Pausing.)

10 Q. That's operable -- again, that's operable in
11 6 degrees of freedom. Is that correct?

12 A. Yes, sir.

13 Q. So, it doesn't fit within the language of the 1996
14 warehouse application because that talks about a
15 6-degree-of-freedom controller which includes a single
16 input member, right?

17 A. Well, the GameCube controller has a single input
18 member. It has more than one input member.

19 Q. Wait a minute, now. This talks about a single
20 input member that's operable in --

21 A. Right.

22 Q. -- 6 degrees of freedom. Does the GameCube
23 controller have a 6 degree of freedom -- a controller --
24 single input member that's operable in 6 degrees of
25 freedom? Yes or no?

1 A. No, sir.

2 Q. Okay. So, it doesn't fall within that language,
3 right?

4 A. Yes, sir.

5 Q. It doesn't? Am I correct? I'm correct it does
6 not?

7 A. Well, are you saying that this is like a legal
8 claim?

9 Q. Sir, I'm not -- I'm just asking you a question. I
10 didn't say anything about a claim. I'm asking you if
11 that language that I just read to you that's in your
12 warehouse application in 1996, if that covers single
13 input member 6 degree of freedom -- does that embrace
14 that GameCube controller that has multiple input
15 members?

16 A. Well, this GameCube controller does not have a
17 single -- I'm trying to help you -- does not have a
18 single input member that moves in 6 degrees of freedom.

19 Q. Okay. So, it doesn't fit within that language,
20 right, up in the top?

21 A. I mean, if you're saying that's a claim or
22 something, then --

23 Q. No. I'm just asking you a very specific -- a very
24 easy question. Does it fit within that language?

25 A. Okay.

1 Q. Yes? Okay means "yes"?

2 A. Yes.

3 Q. Okay. Now let's look down at the way you changed
4 it, because you're not allowed to broaden.

5 A. Right.

6 Q. Right. You're not allowed to broaden. You changed
7 it to another object of the invention is to include at
8 least one input member, right? That was the change you
9 made, right?

10 A. Yes, sir.

11 Q. Now hold up the GameCube again.

12 A. Yes, sir (complying).

13 Q. Does that have at least one input member operable
14 in 6 degrees of freedom?

15 A. No, sir.

16 Q. Does it have at least one input member -- forget
17 about that -- strike the last question.

18 Does it include at least one input member?

19 A. Not one in 6 degrees of freedom, no, sir.

20 Q. Okay. That's fine. But does it include at least
21 one input member?

22 A. Yes, sir.

23 Q. Okay. So, sir, that language, the at least one
24 input member, that fits the GameCube, right?

25 A. It does have one input member, yes, sir.

1 Q. Okay.

2 A. More than one, yes.

3 Q. Okay. More than one, right?

4 A. Yes, sir.

5 Q. All right. But you can't broaden. You're not
6 allowed to broaden, right?

7 A. Yes, sir.

8 Q. Okay. Now, sir, I want to ask you this. I went
9 and counted up and I found five times in the patent --
10 in the 2000 application that led to the '700, I found
11 five different instances where you changed "single input
12 member" to "at least one input member." Does that
13 basically jive with your understanding of what you did?

14 A. That's very believable.

15 Q. Okay. It doesn't surprise you a bit?

16 A. Doesn't surprise me.

17 Q. As a matter of fact, sir, you went through this
18 application -- isn't it fair to say -- and your
19 intention was to either delete or to change from
20 "single" to "at least one," each of those instances in
21 the 2000 application, right?

22 A. I think that's a more clear teaching of the
23 original.

24 Q. It's a clearer teaching of the original?

25 A. Yes, sir.

1 Q. That's your testimony.

2 And that's the only reason that you did it?

3 A. Yes, sir.

4 Q. Now, sir, when you made this change, you filed this
5 application, the one on the bottom where you changed it
6 to "at least one input member," you made that change in
7 November of 2000 when you filed that application, right?

8 A. I think so, yes, sir.

9 Q. Okay. So, in November of 2000, you knew about the
10 GameCube controller, didn't you?

11 A. I'm not sure.

12 Q. Okay. Well, let me --

13 A. I may be -- it wouldn't surprise me.

14 Q. Okay. Let me see if I can help you out -- well,
15 actually I'll come back to that.

16 I want to go to one other thing.

17 MR. GUNTHER: Kam, could we go to Slide 17,
18 please?

19 BY MR. GUNTHER:

20 Q. And I want to talk to you about Mr. Chang, with an
21 A, your discussion of Mr. Chang.

22 A. Yes, sir.

23 Q. Now, sir, what I'm showing you -- and obviously the
24 people won't be able to read this, but it's just to get
25 the point across -- that there were seven paragraphs in

1 the 1996 application relating to Chang and your
2 discussion of the Chang patent, right?

3 A. Yes, sir.

4 Q. And I've highlighted them. It begins at about line
5 17 on the page on the left, and it takes up the whole
6 page on the right.

7 A. Okay.

8 Q. Okay. Now, sir --

9 MR. GUNTHER: Kam, could we bring the first
10 thing up?

11 BY MR. GUNTHER:

12 Q. Okay. We've got them both. Now, I've brought up
13 the first and last paragraphs of those seven paragraphs
14 of Chang from your 1996 application.

15 A. Yes, sir.

16 Q. And you talk about the Chang device being a
17 6-degree-of-freedom controller and you say that in
18 Chang's controller the lack of a hand-operable single
19 input member operable in 6 degrees of freedom has many
20 significant disadvantages.

21 You say that in the first paragraph where you
22 talk about Chang, right?

23 A. I'll take your word for it.

24 Q. Can you see it?

25 A. Are you talking about the second yellow part?

1 Q. The second yellow part, yes.

2 A. On the top, yeah.

3 Q. On the top on the left-hand side?

4 A. Yes, sir.

5 Q. Okay. Then in the lower right-hand side, this is
6 the last paragraph where you talk about Chang in your
7 1996 application. You say: The Chang controller does
8 not have one ball or one handle which can be operated --

9 And we didn't highlight this, but I want to
10 emphasize it.

11 -- in 6 degrees of freedom.

12 And then you say: Thus, the Chang device is
13 functionally and structurally deficient.

14 Right?

15 A. Yes, sir.

16 Q. You say that?

17 A. Yes, sir.

18 Q. Now, sir, the GameCube controller, that has more
19 than one input member to achieve 6 degrees of freedom,
20 right?

21 A. Yes, sir.

22 Q. And the Wii Remote, when hooked up to the Wii
23 Nunchuk, has more than one input member in order to get
24 6 degrees of freedom, right?

25 A. Well, the Wiimote can do 6 degrees of freedom by

1 i t s e l f .

2 Q. Sir, you testified in your deposition in March, two
3 months ago, that you weren't sure if the Wii Remote was
4 a 6-degree-of-freedom controller. Do you recall that
5 testimony?

6 A. I recall some testimony as to that effect.

7 Q. Okay. All right. So, two months ago you told me
8 you weren't sure.

9 A. Yes, sir.

10 Q. And, sir, have you done anything now that changes
11 your mind?

12 A. Yes, sir.

13 Q. What have you done?

14 A. I just looked at it in that light.

15 Q. So, after the deposition you looked at it in that
16 light. But did you make any change to your deposition?

17 A. No, sir.

18 Q. Okay. So, we didn't know that you, in fact, now
19 had an answer to that question; is that right?

20 A. Yes, sir.

21 Q. Because you didn't change it.

22 A. I didn't...

23 MR. CAWLEY: I guess, your Honor, I object to
24 that. Because he didn't change it? He was asked this
25 question on cross-examination, and he answered.

1 MR. GUNTHER: I'll withdraw the question,
2 your Honor.

3 BY MR. GUNTHER:

4 Q. So, in nineteen --

5 MR. CAWLEY: I also -- I hate to interrupt.
6 May I ask if the screen is on in front of the witness?

7 THE WITNESS: Yes, sir, it is.

8 MR. CAWLEY: Okay. Thank you. I just wanted
9 to make sure that he --

10 THE WITNESS: It wasn't yesterday.

11 MR. GUNTHER: Mr. Cawley, thank you very
12 much. Appreciate that.

13 BY MR. GUNTHER:

14 Q. So, in 1996, seven paragraphs on Chang. Chang is
15 structurally and functionally deficient because it does
16 not have a single input member that's operable in 6
17 degrees of freedom. Right?

18 A. (Pausing.)

19 Q. That's what you said.

20 A. I'm sorry. Could you restate it?

21 Q. Sure. In 1996 --

22 A. Yes, sir.

23 Q. -- in your warehouse application --

24 A. Yes, sir.

25 Q. -- you talk about Chang and you say that Chang is

1 structurally and functionally deficient because Chang
2 only has -- it has multiple input members and not a
3 single input member, right?

4 A. Yeah. I said what's printed right there, yes.

5 Q. Now, when you filed the application in 2000, when
6 you filed that application in 2000, you took all of
7 those paragraphs about Chang out, didn't you?

8 A. Yes, sir, I did.

9 Q. They're all gone.

10 A. Yes, sir.

11 Q. They're all missing.

12 A. Yes, sir.

13 Q. You deleted every one of them, didn't you?

14 A. Yes, sir.

15 Q. And, sir, you recognize, though, that in this case,
16 in order to determine whether or not your claims in 2002
17 are the same invention as what you filed in 1996, we've
18 got to look at the 1996 application, right?

19 A. Yes, sir.

20 Q. We can't look at the 2000 application; we've got to
21 look at what you said in 1996, right?

22 A. That's okay with me, yes, sir.

23 Q. And as a matter of fact, sir, that means that
24 you've got to live with everything that you said about
25 Chang. You don't get to hit the "delete" key if you

1 want to get back to 1996, right?

2 A. Yes, sir.

3 Q. Why did you hit the "delete" key with respect to
4 Chang?

5 A. It just was faster to get to the point, to get to
6 the invention.

7 Q. Now, you testified -- I just want to make sure --
8 in 2000, when you hit the "delete" key on the seven
9 paragraphs of Chang, you knew about Nintendo's GameCube
10 controller, right? You had seen it?

11 A. Probably.

12 Q. You don't have any doubt that you saw it, right?
13 At that time, in the 2000 time frame, you were hunting
14 on the Internet for information about Nintendo's next
15 generation controller, right?

16 A. Probably, yes.

17 Q. Okay. So, you have that in your mind; and then at
18 that point after learning about the GameCube -- is it
19 fair to say that information about the GameCube started
20 to come out and its controller a couple of months before
21 you filed your application in November of 2000?

22 A. That's possible, yes.

23 Q. Okay. And, so, sir, when you filed your
24 application and hit the "delete" key, you did that with
25 knowledge of the Nintendo GameCube controller.

1 A. I certainly wouldn't have done it because of that.

2 Q. I'm not asking you if you did it because of it or
3 not. I'm asking you: Did you do that -- at the time
4 that you did it, did you know about the game controller?
5 Did you have the GameCube controller in your mind?

6 A. I don't have a specific memory, but I probably did.

7 Q. Okay. And, so, you deleted everything; but now, in
8 order to get back, in order to get back to 1996, the
9 "delete" key doesn't work. You've got to live with
10 everything that's in the Chang, right, all seven
11 paragraphs?

12 MR. CAWLEY: Objection, your Honor. That's
13 argumentative, the "delete" key doesn't work.

14 THE COURT: Overruled.

15 BY MR. GUNTHER:

16 Q. Do you have the question?

17 A. I want to live with the 1996 application. That's
18 the one I -- that's my warehouse. That's my home.

19 That's where I live. That's what I want to live with.

20 Q. Okay. All right. And your home, it's before
21 you've deleted Chang, right?

22 A. Sure.

23 Q. And it's before you changed "single input member"
24 to "at least one input member," right?

25 A. Sure. That's fine with me.

1 Q. And it's before you changed "6 degrees of freedom"
2 to "3-D," right?

3 A. Yes, sir.

4 Q. Every one of those changes that you made in 2000
5 after you learned of the GameCube, you can't rely on if
6 you want to get back to 1996, right?

7 A. I think those changes are irrelevant.

8 Q. Okay. But can you answer my question?

9 A. No, I can't. I don't want to rely on any of those
10 changes, no, sir.

11 Q. Right. Okay. So, you're not relying on any of
12 them.

13 A. No, sir.

14 Q. But you made them after you learned of our product,
15 right?

16 A. I guess so.

17 Q. Okay. Well, let me just see if we can do just a
18 little bit more on what you knew about the GameCube
19 controller at the time shortly before you filed the 2000
20 application.

21 MR. GUNTHER: Can we put up Defendant's
22 Exhibit 211, please?

23 And can you bring up and highlight the
24 first -- where it says "Kelly," the first paragraph?

25 Yeah, from "Kelly" on down to the first

1 paragraph, right there. Bring it up.

2 BY MR. GUNTHER:

3 Q. Now, this is an email that you wrote to Mr. Tyler
4 in August of 2000, right?

5 A. (Pausing.)

6 Q. And you can look at the screen in front of you if
7 it will help you, sir.

8 A. Well, I can't see the date on the screen.

9 Q. On the small screen? We'll bring it up.

10 MR. GUNTHER: Let's bring it up. Thank you,
11 Kam.

12 BY MR. GUNTHER:

13 Q. All right. So, now we've got it up there. It's an
14 email. It's actually from Mr. Tyler to you; but inside
15 the body of it, it's an email string, right? So, there
16 is an email embedded in there which is an email from you
17 to Mr. Tyler, correct?

18 A. Yes.

19 Q. And the date of Mr. Tyler's email was August 22,
20 2000, right?

21 A. Yes, sir.

22 Q. And Mr. Tyler's email, it says: To Brad Armstrong.

23 It says: Re: Nintendo Controller, question
24 mark.

25 Right?

1 A. Yes, sir.

2 Q. August of 2002, right before -- within a couple of
3 months before you'd filed your November, 2000,
4 application, right?

5 A. Okay.

6 Q. Is that right?

7 A. Yes, sir. That appears correct.

8 Q. Okay. And it says: Kelly, I have read that this
9 is the best site for Nintendo Dolphin unofficial info.
10 Here is the Web page for the controller.

11 You were telling Mr. Tyler in August of 2000,
12 "Here's a place to look on the Internet with respect to
13 what Nintendo's next generation controller is going to
14 look like," right?

15 A. That appears true.

16 Q. Shortly before you file your new application that
17 leads to the '700 patent.

18 A. Okay.

19 Q. And then, sir, you say: Here is the Web -- it
20 says: This is the best site for Nintendo Dolphin
21 unofficial information.

22 "Dolphin" is the code name for what?

23 A. I think it's probably the GameCube.

24 Q. Okay. All right. Because the GameCube came out in
25 2001, right?

1 A. I think so.

2 Q. Okay. So, you're telling him about information
3 about the Nintendo Dolphin, a/k/a GameCube, in August of
4 2000; and you give him a Web site.

5 Now, I want to show you, sir, the next
6 Exhibit, 212. That's a copy of the Web site which we
7 got out of the -- there was an archive on the Web. And
8 you recall I showed you this at your deposition, right?

9 A. I do vaguely, yes, sir.

10 Q. Now let's look at the -- this is what you told
11 Mr. --

12 MR. CAWLEY: Your Honor, I'm sorry. I think
13 there was an objection lodged to this exhibit, and we
14 continue that objection. It's hearsay. And -- I'm
15 sorry. In addition, your Honor, there is no
16 authentication of it.

17 MR. GUNTHER: Your Honor, I don't --

18 THE COURT: I'll sustain as to authentication
19 unless you can authenticate it.

20 MR. GUNTHER: Sir, I don't think there has
21 been an objection to this exhibit. There was a later
22 exhibit that was a Web site printout as to which there
23 was an objection. I don't believe there was any
24 objection as to 212.

25 THE COURT: Do you have the list there,

1 Betty?

2 MR. GUNTHER: I could be wrong on that, your
3 Honor; but that's my recollection.

4 MR. CAWLEY: Your Honor, I'm corrected. We
5 withdraw our objection to this exhibit.

6 THE COURT: All right. Go ahead, counsel.

7 MR. GUNTHER: Thank you, your Honor.

8 BY MR. GUNTHER:

9 Q. So, I've put it up back on the screen. This is the
10 Web site that corresponds to the Web address that you
11 put on the email to Mr. Tyler. Let's look at the second
12 page.

13 Now, this was a Web site run by a company
14 called "IGN," not Nintendo. But this was a Web site by
15 that company where they were guessing what Nintendo's
16 controller for the GameCube was likely to look like,
17 right?

18 A. I presume so.

19 Q. Okay. And they actually got it pretty close,
20 didn't they? If you look, it's got two joysticks down
21 at the bottom, an analog joystick; and it's got a camera
22 stick. Right? They actually got placed a little bit
23 differently in the GameCube, but they got that right.
24 They're both there, right?

25 A. Essentially, yes.

1 Q. And, then, it's a little hard to see because of the
2 page but they call it a "D-pad," but there is a
3 cross-switch over here, too, right?

4 A. Yes, sir.

5 Q. So, in August of 2000, you knew and you had
6 actually directed your business partner, Mr. Tyler, to
7 this Web page which had IGN's best belief as to what the
8 Nintendo GameCube controller would look like, right?

9 A. Yes, sir.

10 Q. And it also talks about built-in rumble, right?

11 A. Yes, sir.

12 Q. And they got that right, too.

13 A. Yes, sir.

14 Q. So that when you sat down to rewrite your
15 application in November of 2000, when you sat down to do
16 that, you knew that this was what people were saying --
17 people knowledgeable in the industry were saying the
18 GameCube controller was likely to look like, right?

19 A. I probably did.

20 Q. Okay.

21 MR. GUNTHER: Can we go back to Defendant's
22 Exhibit 11, the email -- 211, sorry. And could we put
23 up at the very -- could you highlight from "Space World
24 is at the end of this week" to the bottom and bring that
25 out?

1 BY MR. GUNTHER:

2 Q. Now, you told Mr. Tyler -- this is now back to your
3 August email where you're telling him about information
4 on the GameCube controller. It says: Space World is at
5 the end of this week.

6 That's what you say, right?

7 A. Yes. I don't remember doing this, but I don't
8 doubt it.

9 Q. Okay.

10 A. It's believable.

11 Q. Okay. What is Space World?

12 A. Must be a show.

13 Q. Okay. And it says: At the end of this week, I
14 think, and much Dolphin info may be released by Nintendo
15 at that time.

16 So, what you were saying to Mr. Tyler is that
17 there was going to be likely more information released
18 about the GameCube controller as well as the rest of the
19 GameCube system by the end of the week in sometime in
20 August of 2000, right?

21 A. Yes, sir.

22 Q. Do you have any doubt that, in fact, happened at
23 that show?

24 A. I don't know.

25 Q. Sir, let me ask you this: If it did happen, would

1 you have been looking for it, given the fact that you
2 were searching the Internet for information about the
3 GameCube controller in 2000?

4 A. It would appear that I would have been; but, you
5 know, I'm not -- I go from one thing to another. But I
6 suspect that I did.

7 Q. But one of the things that -- you may go from one
8 thing to another. But one of the things that you were
9 doing in the summer of 2000 -- you and Mr. Tyler, your
10 business partner, were doing -- was looking as much as
11 you could for information about what the Nintendo
12 GameCube controller was going to look like, didn't you?

13 A. Well, I at least had when I wrote this, yes.

14 Q. Okay. And that was a part of the information that
15 you had in your head when you sat down in 2000 to write
16 the 2000 application that became the '700 patent, right?

17 A. Yes, sir.

18 Q. And that was information you had in your head and
19 that you had learned only a couple of months before you
20 wrote the 2000 application where you deleted all seven
21 paragraphs of Chang, right?

22 A. Yes, sir.

23 Q. And that was the information that you had
24 concerning the GameCube controller in your mind when you
25 made five different times a change from "single input

1 member" to multiple input members -- or "at least one
2 input member," correct?

3 A. The question is from "single input member" to "at
4 least" --

5 Q. "At least one."

6 A. -- "a single input member."

7 Q. "At least one," yes.

8 A. Yes.

9 Q. Okay. And that was in your mind. You knew about
10 the GameCube information you had seen on the Web, right?

11 A. I think I saw that email you just got there, yes,
12 sir.

13 Q. Okay. All right. Now, sir, I want to ask you a
14 few questions about Mr. Tyler.

15 A. Yes, sir.

16 Q. Now, Mr. Tyler you actually entered into business
17 with in 1999 with respect to the Anascape company,
18 right?

19 A. Yes, sir.

20 Q. Now, he was the money man, right?

21 A. Well, he's more than that but he did have money and
22 I didn't, yes, sir.

23 Q. Right. You had the patents; he had the money. Is
24 that a fair way to look at it?

25 A. It's a little bit simple; but yes, sir.

1 Q. Okay. I'm sure there was more to the relationship.
2 I understand you're friends. But in terms of the
3 business part of your relationship, you had the patents;
4 he had the money, right?

5 A. Yeah, I'll accept that.

6 Q. Okay. And, sir, like any good businessman -- and
7 Mr. Tyler seems like he's an awful good one -- he wanted
8 a return on his investment, right?

9 A. He was remarkably unpushy about that.

10 Q. Remarkably what?

11 A. Unpushy. I suspect that he eventually wanted money
12 back from his investment, yes, sir.

13 Q. I mean, he put over a million dollars into the
14 venture, right?

15 A. Yes, over time he did.

16 Q. And Mr. Tyler being the good businessman that he
17 was and is, even though he's good friends with you, he
18 was looking to make some money, wasn't he? That's why
19 he did this.

20 A. Yeah. He wouldn't invest in any business he didn't
21 think was a good business, for sure.

22 Q. Right.

23 Now, sir, let me put up an email from
24 Mr. Tyler to you dated June 25th of 2000. It's
25 Defendant's Exhibit 216. And, sir, can you --

1 MR. GUNTHER: Kam, can you blow out sort of
2 the heading first for us?

3 BY MR. GUNTHER:

4 Q. So, it's an email from Kelly Tyler to you dated
5 June of 2000. So, about -- what? About five months
6 before you filed your November, 2000, application that
7 became the '700 patent, correct?

8 A. Yes, sir.

9 Q. All right.

10 MR. GUNTHER: Now can we move that up, Kam,
11 to the top?

12 Now I want to pull out where it says "0 app"
13 in the first sentence underneath that. Do you see where
14 it says "Re: 0 app. I believe we can get some
15 additional" -- thank you very much. Can we pop that
16 out?

17 BY MR. GUNTHER:

18 Q. Now, this is Mr. Tyler talking to you, right?

19 A. Yes, sir.

20 Q. In June of 2000.

21 A. Yes, sir.

22 Q. Shortly after you formed Anascape with him as a
23 venture in 1999, right?

24 A. Yes, sir.

25 Q. Now, Mr. Tyler didn't invent the inventions that

1 are in the 1996 application, did he?

2 A. No, sir.

3 Q. He didn't write any of those -- that specification
4 of that application, right?

5 A. No, sir.

6 Q. He didn't do any of the drawings?

7 A. No, sir.

8 Q. He didn't write the abstract?

9 A. No, sir.

10 Q. That was all you.

11 A. Essentially, yes, sir.

12 Q. Okay. And he didn't -- let's talk about the
13 application in 2000. That was all you, too, right?

14 A. Yes, sir.

15 Q. But what he says to you in June of 2000, your
16 business partner who had not been involved in any of the
17 inventions, he says: Re: Zero application.

18 Now let's talk about that for one second.

19 The zero application is the application that's the 1996
20 warehouse application, right?

21 A. Yes, sir, it is.

22 Q. Okay. He says: Re: Zero application --

23 This is Mr. Tyler, not the inventor, the
24 business guy. He says: I believe that we can get some
25 additional valuable claims out of this application.

1 He's telling that to you, right?

2 A. Yes, sir.

3 Q. So, he looked at the -- he took the warehouse --
4 you gave him the warehouse application, right?

5 A. Yes, sir. He was very aware of it.

6 Q. Right. You gave it to him; and he read it,
7 correct?

8 A. Yes, sir.

9 Q. And then he started making suggestions to you. The
10 business guy started making suggestions to you about how
11 to write claims, right?

12 A. Yes, sir.

13 Q. He said: I believe that we can get some additional
14 valuable claims out of this application.

15 Now let's look a little bit further down the
16 page, if we can.

17 MR. GUNTHER: Can you blow up -- that's
18 right.

19 BY MR. GUNTHER:

20 Q. I'm blowing up paragraph 3. This is again
21 Mr. Tyler talking about the 1996 warehouse application
22 that he calls the "zero application," and he points --
23 his third point is pointing to a portion of the 1996
24 application and he says, remember: I believe there is
25 additional valuable claims out of this application.

1 This says: Page 28, lines 31 through 35,
2 broadens definition of 6-degree-of-freedom controllers
3 to 3-D graphic image controllers, probably a better
4 definition of controllers on the market today.

5 That's what Mr. Tyler told you in 2000,
6 correct?

7 A. Yes, sir.

8 Q. So, the business guy, your business partner who is
9 not the inventor, looks at the 1996 warehouse
10 application and starts telling you how to write new
11 claims to cover products that are on the market, right?

12 A. Well, he just read it and, you know, gave me his
13 best advice; and I really appreciate it.

14 Q. And his best advice was that you could write
15 additional claims to cover 3-D graphic image controllers
16 which were a better definition of controllers on the
17 market today. That's what he told you. That was the
18 business advice that he gave you, right?

19 A. Well, no. I don't think so.

20 Q. That wasn't business advice? He did that as a
21 friend?

22 A. I think that -- I think you're mischaracterizing
23 this email.

24 Q. Sir, I'm just reading it to you. It says -- he's
25 talking about getting some additional valuable claims.

1 And then the third point is one part of the application
2 broadens definition of 6-degree-of-freedom controllers
3 to 3-D graphic image controllers. Then he says that's
4 probably a better definition of controllers on the
5 market today.

6 So, he's telling you write some claims like
7 that, right?

8 A. No, sir.

9 Q. Oh, that's not what he's saying?

10 A. No, sir.

11 Q. Okay. All right. We can get some additional
12 valuable claims, and then he points to that as the third
13 item. But he's not suggesting you to write claims like
14 that. Is that your testimony?

15 A. Yes, sir.

16 Q. All right. Let's look at Exhibit -- now I want to
17 look at Exhibit 214. This is another email from
18 Mr. Tyler to you dated September 10th, 2000?

19 MR. GUNTHER: Let's actually see if we can
20 blow up the heading first, Kam. Thank you.

21 BY MR. GUNTHER:

22 Q. So, it's Mr. Tyler to you, September 10th, 2000;
23 and the heading is "6 dof." Do you see that?

24 A. Yes, sir.

25 Q. "6 degrees of freedom," that's what that stands

1 for, right?

2 A. Yes, sir.

3 Q. September 10th, 2000, about three months before you
4 file your 2000 application, right?

5 A. Yes, sir.

6 Q. The business guy sends you another email, right?

7 A. Kelly Tyler did, yes, sir.

8 Q. Now let's look at the body of the text. He's
9 talking about a patent response -- initial application
10 response that he got -- that you guys got from the PCT,
11 right?

12 A. Yes, sir.

13 Q. What is the PCT?

14 A. It's an organization that deals with foreign-filed
15 patent applications.

16 Q. Okay. So, it's about one of your 6 DOF patents,
17 right?

18 A. It appears to be. I mean, the subject is "6 dof."

19 Q. Right. So -- okay. So now let's look at the last
20 sentence, sir. It says: I wonder if we can change the
21 claims to reflect our new direction.

22 Do you see that?

23 A. Yes, sir.

24 Q. So, the businessperson, in 2000, September of 2000,
25 is sending you a letter -- the guy who wants a return on

1 his investment. May be the most patient guy in the
2 world, but he wants a return on his investment, is over
3 a million dollars. He sends you an email that says: I
4 wonder if we can change the claims to reflect our new
5 direction.

6 Right?

7 A. That's what this says, yes, sir.

8 Q. Sir, by this time, August/September of 2000, your
9 efforts to market a single input member controller that
10 was operable in 6 degrees of freedom, those efforts were
11 unsuccessful, correct?

12 A. I'll accept that, yes, sir.

13 Q. As a matter of fact, you talked a little bit
14 earlier about a license -- or joint venture agreement
15 that you entered into with a company called "Key
16 Tronic." Do you remember that on your direct
17 examination?

18 A. Yes, sir.

19 Q. Mr. Cawley didn't ask you if Key Tronic ever
20 actually made any product, did he?

21 A. I don't recall that.

22 Q. Did Key Tronic make any product pursuant to any of
23 your inventions?

24 A. No, sir.

25 Q. So, in 2000 you're sitting there going back and

1 forth with Mr. Tyler, the business guy. You've been
2 unable to interest anyone in your single input member
3 6-degree-of-freedom controller; and you go with --
4 you're talking about -- he's talking about and telling
5 you about a new direction for your claims, right?

6 A. I don't agree with that question, no, sir.

7 Q. I wonder if we can change the claims to reflect our
8 new direction. That's what he was telling you with
9 respect to 6 DOF in September of 2000, wasn't he?

10 A. I believe that he wrote this email, yes, sir.

11 Q. And you have no doubt that you received it, do you?

12 A. No, I don't doubt it.

13 Q. And when you sat down, sir, to write the claims
14 that matured into the '700 patent, you had received this
15 email and you had discussed with Mr. Tyler what your new
16 direction -- what the new direction should be, right?

17 A. I don't know that. I don't remember this email. I
18 mean, I remember your presenting it to me earlier; but I
19 don't remember the email itself.

20 Q. You don't remember this email?

21 A. No. I --

22 Q. That's your testimony?

23 A. I'm not contesting it.

24 Q. Okay.

25 A. I'm just -- you're saying I did these things, and I

1 don't remember.

2 Q. And --

3 A. But I'm not disputing it, either.

4 Q. All right. It's an email that you received within
5 a couple of months before you filed your 2000
6 application where you deleted the seven paragraphs of
7 Chang and where you changed all of those "single" input
8 members to "at least one" input member. That's an email
9 that you received from him talking about a new direction
10 about three months before you did that, right?

11 A. I believe so, yes, sir.

12 Q. Now, sir, I want to ask you, sir, a couple of
13 questions about the issue of the accelerometer.
14 Mr. Cawley asked you, did he not, whether or not you
15 invented an accelerometer, right?

16 A. I think he did ask me that.

17 Q. And, sir, you agree that you didn't invent the
18 accelerometer, right?

19 A. Yes. I did not invent an accelerometer.

20 Q. You did not invent the idea of including an
21 accelerometer in a controller, did you?

22 A. No, I did not invent that idea.

23 Q. That idea was Nintendo's idea, right?

24 A. I suspect it was long before Nintendo.

25 Q. You think it was before Nintendo?

1 A. I would think.

2 Q. All right. Do you know as you sit here --

3 A. I don't know.

4 Q. Do you know as you sit here today any video game
5 controller that's ever been introduced in the United
6 States, a controller that has an accelerometer so that
7 it can respond to body motion like the Wii?

8 A. I know of flying controllers in the past that had
9 things like acoustic sensors that could certainly sense
10 accelerations.

11 Q. Let me try to make my question a little more
12 precise. Do you know of any controller that's ever been
13 introduced in the United States for a video game system,
14 a home video game system, prior to the Wii Remote that
15 had an accelerometer built in so that it was able to
16 sense body motion?

17 A. I'm not recalling one right now, no, sir, for a
18 home video game system.

19 Q. So, as far as you know, Nintendo was the first to
20 do that, correct, for a home video game system?

21 A. Would you say the full question that you're asking?

22 Q. Yes, sir. The full question is: As far as you
23 know, Mr. Armstrong -- and you're a guy who keeps his
24 ear to the video game market, aren't you?

25 A. I try to but...

1 Q. Okay. As far as you know, Nintendo was the first,
2 with the Wii Remote, to come out with a controller that
3 had an accelerometer that could sense body motion so
4 that you could use the Remote, for example, to swing it
5 like a golf club or use it to bowl like a bowling ball,
6 right?

7 A. You said with an accelerometer in it?

8 Q. Yes, sir.

9 A. Yes, sir. As far as I know, yes, sir.

10 Q. All right. So, Nintendo was the first.

11 Now, sir, you didn't invent an accelerometer.
12 Did you ever design a controller that contained an
13 accelerometer?

14 A. Not -- not specifically, no, sir.

15 Q. Okay. Sir, let me ask you this.

16 MR. GUNTHER: Mr. Cawley, can I -- do you
17 have the plaintiff's -- I think it's Plaintiff's
18 Exhibit 2, the file history for the '700 patent?

19 Thank you, sir.

20 BY MR. GUNTHER:

21 Q. You'll recall that during your direct examination
22 Mr. Cawley held up Plaintiff's Exhibit 2, which is the
23 file history of the '700 patent which represents all of
24 the back and forth that you had with the Patent Office,
25 right?

1 A. Yes, sir.

2 Q. So, it has in it your inventions plus all of the
3 discussion that you had with the patent examiner during
4 the time -- I think it was five years, you said, that it
5 took you from the time you filed the application in 2000
6 to get the patent, right?

7 A. Yes, sir.

8 MR. GUNTHER: Your Honor, may I approach?

9 THE COURT: You may.

10 MR. GUNTHER: Thank you.

11 BY MR. GUNTHER:

12 Q. Mr. Armstrong, I'm going to hand this to you; and
13 I'm going to ask you this question: Is there anywhere
14 in that big pile of documents, anywhere can you point to
15 it -- dig through it for me, if you will -- where you
16 can find the disclosure of an accelerometer?

17 A. I can tell you for sure there's not the word
18 "accelerometer" in there.

19 Q. It's not in there, is it?

20 A. The word, no.

21 Q. In all of that big stack of documents, it doesn't
22 appear, right?

23 A. Yes, sir.

24 Q. And in your warehouse application, the big
25 warehouse that you go into from time to time and take

1 things out -- but sometimes you add things and delete
2 things, don't you? Isn't that true?

3 A. No, sir. I don't add anything to it.

4 Q. You didn't add -- you've never added anything to
5 it?

6 A. Well, I didn't add any -- like, anything that could
7 be considered inventive material, no, sir.

8 Q. Okay. Sir, in that 1996 warehouse application,
9 Defendant's Exhibit 306 that's in the jurors' notebooks,
10 that you've got to get back to or your patent is
11 invalid, is there any mention anywhere in the warehouse
12 of an accelerometer?

13 A. I don't believe that word is used.

14 Q. So, if you rummage through the warehouse, you're
15 not going to find it, are you?

16 A. Not that word, no, sir.

17 Q. Okay. So, despite the fact that you got a lot of
18 stuff in there -- potentiometers, unidirectional
19 switches, bi-directional proportional switches -- you've
20 got lots of stuff in there, you don't have an
21 accelerometer, do you?

22 A. That word is not used in there, as far as to the
23 best of my knowledge.

24 MR. GUNTHER: Your Honor, could I ask a
25 question of the court in terms of what time we go to?

1 THE COURT: To 12:15.

2 MR. GUNTHER: Thank you, sir.

3 THE COURT: Anything further, counsel?

4 MR. GUNTHER: No, your Honor. I'm sorry.

5 I'm just going to my next section. I apologize.

6 BY MR. GUNTHER:

7 Q. I want to talk to you, if I can, about the Sony
8 license, Mr. Armstrong.

9 A. Yes, sir.

10 Q. And you were shown the Sony license on your direct
11 examination by Mr. Cawley, correct?

12 A. Yes, sir.

13 Q. Now, sir, you testified that you were very pleased
14 that Sony -- although you thought it was low -- that
15 Sony had paid you \$10 million, correct?

16 A. I said I thought it was "love"?

17 Q. "Low."

18 A. Oh.

19 Q. I'm sorry. If I said "love," I think maybe --
20 maybe I'm getting a little tired.

21 Let me try it again.

22 A. This is a Freudian ink blot issue. Sorry.

23 Q. Okay. I won't get into that.

24 Let me ask you this: You entered into that
25 agreement; and Sony paid you \$10 million, correct?

1 A. Yes, sir.

2 Q. Now, sir --

3 A. They did.

4 Q. -- you testified that for tax reasons it was
5 structured in a certain way. But as a matter of fact,
6 sir, I want to look at how the agreement reads, in terms
7 of what it says --

8 A. Okay.

9 Q. -- not what people thought they might do in terms
10 of structuring.

11 A. Okay.

12 MR. GUNTHER: And I want to put up, if I can,
13 on the screen, paragraph 2.1 -- excuse me -- paragraph
14 2.2 from the Plaintiff's Exhibit 54, the Sony license.

15 BY MR. GUNTHER:

16 Q. Sir, I've got it up there on the screen; and it
17 talks about -- do you see the '606 patent there?

18 MR. GUNTHER: Maybe we can highlight it and
19 actually -- thank you, Kam. If you could highlight it
20 each time it appears. Once more, in the third line.

21 Thanks, Kam.

22 BY MR. GUNTHER:

23 Q. This paragraph is an exclusive license by you to
24 Sony for the '606 patent, correct?

25 A. Yes, sir, it is.

1 Q. Okay. So, that's 2.2, the '606 patent, exclusive
2 license. And, in fact, it talks about a transfer to
3 Sony of all rights held by each of the Anascape parties
4 in that patent.

5 What that means, Mr. Armstrong, is that you
6 sold the '606 patent to Sony, right?

7 A. No. No, sir.

8 Q. It wasn't a sale?

9 A. No, sir -- you know, there's legal terms for sales
10 and exclusive rights that I don't know; but it was an
11 exclusive license.

12 Q. Let me just try it one more time. Okay?

13 It says: This exclusive license to be
14 transferred to Sony all rights held by each of the
15 Anascape parties in the '606 patent.

16 Is it your understanding, sir, that Anascape
17 essentially sold the '606 patent to Sony?

18 A. I wouldn't use that word --

19 Q. All right.

20 A. -- myself, but I -- I really don't know the legal
21 definition of it.

22 MR. GUNTHER: Kam, could we put up, from the
23 March 18th session of Mr. Armstrong's deposition, at
24 page 591, line 9 -- beginning on line 9?

25 And could we highlight lines 9 to 19?

1 BY MR. GUNTHER:

2 Q. This is a question that I asked you, basically the
3 same question I just asked you a moment ago. And
4 then -- this is from Section 2.2 of the license: This
5 transfer is of a capital asset by each of the Anascape
6 parties in accordance with -- this title. And I was
7 reading the various paragraphs.

8 (Reading) Now, is it your understanding that
9 Anascape was essentially selling the '606 patent to
10 Sony --

11 There is an objection.

12 Question: -- is that right?

13 Answer: "Sale" meaning transfer of all
14 rights without limit, is that what you meant by --

15 Question: That's --

16 Answer: I think that's essentially true,
17 yes.

18 Did you -- were you asked those questions,
19 and did you give those answers in March of 2008 in your
20 deposition?

21 A. I'm not even clear what this says, but I have no
22 way to -- you know, I wouldn't dispute that this is a
23 real transcript, no.

24 Q. And you wouldn't dispute that you told the examiner
25 that -- you answered "yes" to the fact that it's

1 essentially true that Anascape was essentially selling
2 the '606 patent to Sony. That was the question; and
3 that was your answer, right?

4 A. No, sir.

5 Q. That's not what that says? That's not what I just
6 read to you?

7 A. Well, I think that I'm saying, sale -- I'm asking
8 him does sale mean, you know, transfer of all rights
9 without limit, is that what you meant. And then there's
10 some "that's" I don't understand and then "I think that
11 that's essentially true, yes," meaning I think that --
12 you know, this is a transfer of all rights.

13 Q. Right. So --

14 A. It's an exclusive transfer of all rights.

15 Q. Right. So --

16 A. You know, honestly, right now I'm feeling very
17 afraid because I think you're trying to pull some legal
18 trick on me. I have no idea what the word "sale" means
19 as far as exclusive rights.

20 Q. I'll make a deal with you. If I'm going to trick
21 you, I'll raise my hand. How about that? And everybody
22 can see. All right?

23 Now, sir, I just want to ask you a very
24 simple question. This isn't hard. Did you tell me in
25 your deposition that the '606 transfer was essentially a

1 sale?

2 A. It was an exclusive license. That's exactly what
3 it was.

4 Q. Okay. That's the best you can do, sir? Is that
5 the best you can do?

6 A. That's what it was.

7 MR. GUNTHER: Okay. Why don't we go back to
8 the license agreement.

9 BY MR. GUNTHER:

10 Q. Now, '606, exclusive license.

11 MR. GUNTHER: Now, Kam, can you put up the
12 next part?

13 BY MR. GUNTHER:

14 Q. Now I'm going to bring up another paragraph, which
15 is paragraph 3.1. It's "Payment." Do you see that?

16 And it says: 3.1. Sony shall pay the
17 Anascape parties \$10 million no later than July of 2004
18 in consideration for Sony's receipt of all substantial
19 rights in the patent described in 2.2 above.

20 2.2 is the '606 patent, right?

21 A. (Pausing.)

22 Q. Are you with me?

23 A. I'm trying to be.

24 Q. Okay. Let's try it again. 2.2 gives an exclusive
25 license to the '606 patent from Anascape to Sony. And

1 Sony, in 3.1, pays \$10 million to Anascape for that
2 license.

3 Isn't that what's up on the screen right now?

4 A. Yes, sir, that's correct.

5 Q. So, the payment by Sony was for the '606 patent.
6 That's not a patent that's involved in this lawsuit,
7 right?

8 A. That's correct.

9 Q. And as a matter of fact, you agree that Nintendo
10 does not infringe that patent, correct?

11 A. I might have, but it's not at issue here.

12 Q. Right. And, sir -- so, '606, the 10-million-dollar
13 payment is for that. That's not involved in this case,
14 is it?

15 A. The '606 patent is not involved in this case, yes,
16 sir.

17 Q. Okay. So, that's Part 1 of the Sony license.
18 Let's look at part 2.

19 MR. GUNTHER: Let's put up the next, if we
20 can, Kam.

21 BY MR. GUNTHER:

22 Q. This is 2.3. So, this is really a second part of
23 the license agreement. We got the \$10 million for the
24 '606, right?

25 A. (Pausing.)

1 Q. (Demonstrating.) Just kidding.

2 A. Oh, you're trying to trick me?

3 Q. So, now, this --

4 A. What's the question?

5 Q. Okay. Let me ask the question. So, in 2.3, what
6 the Anascape parties do is they give -- no, that's the
7 wrong paragraph. Excuse me. Let me see if I can get
8 the right paragraph.

9 MR. GUNTHER: And that's my fault, Kam.
10 That's not yours. It's 3.2. 3.2.

11 BY MR. GUNTHER:

12 Q. Now, this is 3.2. This is another part of the
13 license. It says: The Anascape parties' right to the
14 nonexclusive use of the Sony patents and permitted third
15 parties' right, et cetera, to all of the licensed
16 Anascape patents described in 2.1 that's talked about.

17 MR. GUNTHER: Let's bring that down, if we
18 can, Kam; and let's put on top of that -- let's put 2.1
19 on top of that. Let's have 3.2 on the bottom and 2.1 on
20 the top.

21 BY MR. GUNTHER:

22 Q. Just give me a second, Mr. Armstrong. We'll get
23 there.

24 A. I don't mind looking at a 10-million-dollar
25 license. I like it.

1 Q. Now, sir, let's look at the first sentence of 2.1.
2 This is now not talking about the '606 patent; it's
3 talking about the Anascape parties hereby grant a
4 nonexclusive, irrevocable, worldwide license under all
5 of the Anascape patents -- licensed patents except the
6 one in 2.2, which was the '606, right?

7 MR. GUNTHER: Let's highlight that whole
8 first sentence, if we can, Kam.

9 A. Yes, sir.

10 BY MR. GUNTHER:

11 Q. So, the structure of the license is '606, exclusive
12 license for \$10 million, right?

13 A. Yes, sir.

14 Q. And then all of your other patents are then
15 licensed; and some cross-licenses from Sony come in,
16 right?

17 A. Yes, sir.

18 Q. And one of the patents that was nonexclusively
19 licensed to Sony in 2.1 is the application that led to
20 the '700 patent, right?

21 A. Say that again, please.

22 Q. One of the applications that's listed -- that's
23 included in your -- in all of the rest of the licenses,
24 everything that's thrown in under 2.1, one of those was
25 the application for the '700 patent, right?

1 A. Yes, sir.

2 Q. And that's because it was an application because in
3 2004 when the license was signed, at that point in time
4 it wasn't a patent yet, right?

5 A. Yes. It was a patent application, yes, sir.

6 Q. It was an application.

7 So, all of your other patent rights are
8 included in that nonexclusive cross-license.

9 MR. GUNTHER: Now let's look at 3.2, and
10 let's actually -- we're going to have to get a little
11 bit more of -- let's see if we can squeeze 2.1 up a
12 little bit. Oh, I'm sorry. Let's put 3.2 in its
13 entirety, then. Thanks, Kam. The wonders of
14 technology.

15 BY MR. GUNTHER:

16 Q. So, Mr. Armstrong, now we've got 3.2 up; and this
17 is basically talking about all of the patents that were
18 thrown in in the nonexclusive license that included your
19 '700 application. And I want to focus on the sentence
20 that begins, right at the bottom, before the blue line:
21 Due to the uncertainty as to the value of any of these
22 patents that are subject of the provisions of the
23 cross-license, the parties agree and acknowledge that
24 they are unable to arrive at an appropriate royalty for
25 these licenses.

1 That's what it says, right?

2 A. Yes, sir, it says that.

3 Q. So, sir -- and you didn't talk about that on your
4 direct examination, did you?

5 A. I don't think so.

6 Q. Okay. So, the patent application that became the
7 '700 that was included in the Sony license, that was one
8 of the ones that due to the uncertainty as to the value
9 of that application, the parties agree and acknowledge
10 they are unable to arrive at appropriate royalty rates,
11 right? That was one of them that was in that group.

12 A. Yes, sir.

13 Q. And let's look at the last sentence. This talks
14 about the '700 application, too: Accordingly, the
15 parties have agreed to forego any royalties or other
16 payment of any kind for those patents subject to the
17 cross-licenses.

18 Right?

19 A. Yes, sir.

20 Q. And that includes the '700 application, correct?

21 A. Yes, sir.

22 Q. So, what we've got in the Sony license is an
23 exclusive license to the '606 patent that's not part of
24 this case for which Sony paid \$10 million, right?

25 A. That's what this agreement says, yes, sir.

1 Q. And what we also have here is that everything else
2 was thrown in, including the '700 application, for zero
3 payment of money, correct?

4 A. Yes, sir.

5 Q. So, the '700 application, Sony paid zero for that
6 application. That's what this says, correct?

7 A. I'll give you the easy answer. Yes, sir.

8 Q. I like easy.

9 Mr. Armstrong, let me ask you this: In
10 2000 --

11 MR. GUNTHER: Kam, could you put the timeline
12 back up?

13 BY MR. GUNTHER:

14 Q. Mr. Armstrong, in 2002, when you wrote your claims
15 that you are suing here on today, the five claims in the
16 '700 patent, you had gotten a GameCube controller,
17 right?

18 A. I suspect I had, yes, sir.

19 Q. And you had taken it apart, right?

20 A. Probably had, yes, sir.

21 Q. And when you were writing those claims on that
22 controller with three inputs, two joysticks and a
23 cross-switch, when you wrote those claims, you were
24 copying the GameCube controller, right? You were
25 writing those claims onto that product, correct?

1 A. Yes, sir. I believed that it was covered by my
2 invention; and, so, I needed to write a claim that
3 covered it clearly.

4 Q. So, the answer to my question is "yes," right?

5 A. I don't know what the word "copying" means.

6 Q. Sir, I'll leave that out.

7 At the time that you wrote the claims in
8 2002, you had the GameCube in front of you. You had
9 taken it apart, and you were writing those claims to
10 cover, among other things, the two joysticks and the
11 cross-switch in the GameCube controller, correct?

12 A. Yes, sir.

13 Q. And when you wrote claim 19, which is the only
14 claim that's asserted against the Wii Remote plus the
15 Nunchuk, when you wrote that claim, you had the Nintendo
16 GameCube controller in front of you; and you were
17 writing the claim specifically to cover that product,
18 correct?

19 A. Well, I write claims to express my invention, yes,
20 sir. But I'm not sure that that claim was written for
21 that product, no, sir.

22 THE COURT: All right. Counsel, at this time
23 we're going to take a break for lunch.

24 Ladies and gentlemen, I'm going to ask you to
25 be back at 1:30. Please remember my instructions.

1 Don't discuss the case even among yourselves; and don't
2 let anybody else talk to you about it, obviously. If
3 anybody should try to approach you or influence you, get
4 their name and report it.

5 For your planning purposes, I have had a
6 notice of an emergency hearing that I'm going to have to
7 hold at the end of this afternoon; so, we will probably
8 be breaking a little early, about 4:00 or ten past 4:00
9 because these parties are coming in and I've got to
10 handle that matter. I don't like to interrupt this way,
11 but I'll have to do that. So, we'll be breaking a
12 little bit early and then starting again tomorrow at
13 8:45 in the morning. You're excused at this time for
14 lunch.

15 (The jury exits the courtroom, 12:15 p.m.)

16 THE COURT: Anything to be taken up outside
17 the presence of the jury from plaintiff's point of view?

18 MR. PARKER: I do have one matter that I had
19 hoped to discuss in chambers with the court with
20 Mr. Germer.

21 THE COURT: Okay. Anything else to be
22 taken --

23 MR. PARKER: It won't take but a couple of
24 minutes.

25 THE COURT: Okay. Anything else to be taken

1 up outside the presence of the jury from defendant's
2 point of view?

3 MR. GUNTHER: No, your Honor.

4 THE COURT: All right. In that case we are
5 in recess until 1:30. And if counsel from each side
6 want to come back into chambers, that's fine.

7 (Recess, 12:16 p.m. to 1:26 p.m.)

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

10 THE COURT: All right. Counsel, go ahead

11 MR. GUNTHER: Thank you, your Honor.

12 BY MR. GUNTHER:

13 Q. Mr. Armstrong, I think I'm getting close. Let me,
14 if I can, hold up this controller. Can you see that,
15 sir?

16 A. Yes, sir.

17 MR. GUNTHER: Your Honor, may I approach?

18 THE COURT: You may.

19 MR. GUNTHER: Thank you, sir.

20 BY MR. GUNTHER:

21 Q. I'm going to hand this to you, Mr. Armstrong. And,
22 again, I'm going to ask you to be a model for us; and if
23 you could hold that up for the jury.

24 A. Okay. (Complying.)

25 Q. Sir, that's the Sony Dual Shock controller, correct?

1 A. Yes, I think so.

2 Q. And that was released for the PlayStation console
3 in 1998, correct?

4 A. I'll take your word for it.

5 Q. Do you have any reason to doubt, sir, that that was
6 available in 1998?

7 A. No, sir.

8 Q. And, sir, that has the Sony -- that's called the
9 "Sony Dual Shock controller," right?

10 A. I think it is, yes, sir.

11 Q. And, sir, if you hold that up so we can all get a
12 little bit of a look at it, it's got a cross-switch on
13 there, right?

14 A. Are you talking about this (indicating) area here?

15 Q. Yes, sir.

16 A. Yes, I believe so.

17 Q. Or sometimes people call it a "D-pad," right?

18 A. Yes, I've heard it called that.

19 Q. What does that stand for?

20 A. I don't know.

21 Q. "Directional pad," does that sound right?

22 A. That sounds reasonable.

23 Q. Okay. So, it's got a cross-switch. It has two
24 joysticks. And does it have vibration?

25 A. I can't tell you.

1 Q. Okay. Sir, let me ask you this. Let me put up on
2 the screen, sir, what's been marked as Defendant's
3 Exhibit 97.

4 What we've put up on the screen is a press
5 release that was released by Sony in May of 1998.

6 MR. GUNTHER: Kam, can you blow up where it
7 says "body" and then there's a date, a little bit down?

8 BY MR. GUNTHER:

9 Q. Okay. So, this is a May 27, 1998, press release.
10 Do you see that, sir?

11 A. I see that date, yes, sir.

12 Q. Okay. And, sir, if you look, it says: Headline:
13 New PlayStation game controller to include Dual Shock
14 Analog Controller as standard pack-in for 149.

15 Do you see that?

16 A. Yes, sir.

17 Q. So, that's May of 1998. Right?

18 A. Yes, sir.

19 Q. Now, if you look a little bit further down, it
20 says -- under the body it says -- right under the date
21 it says: Addition of dual vibrating controller provides
22 added value and unrivaled gaming experience for millions
23 of new PlayStation owners.

24 Do you see that, sir?

25 A. Yes, sir.

1 Q. Now, sir, what you have in front of you again --
2 please, if you wouldn't mind holding it up. That's the
3 DualShock; and, sir, that is, in fact, what we're
4 talking about here, right?

5 A. I think so.

6 Q. And, sir, if you are thinking correctly, then it
7 does have active tactile feedback, correct?

8 A. Yes. If this is what's described in that document,
9 yes, sir, it would.

10 Q. It has rumble, right?

11 A. Yes, sir.

12 Q. So, that's 1998 that's on the market. That's
13 before your application that was filed for the '700
14 patent in November of 2000, right?

15 A. Yes, sir.

16 Q. And, sir, if you -- let me ask you this: You agree
17 with me, don't you, that the Sony DualShock controller
18 that you have in front of you has all of the elements of
19 claim 19 of your patent, correct?

20 A. I'm not sure about that, no, sir.

21 Q. Well, sir, do you have any reason to doubt that, in
22 fact, it has all the elements of claim 19?

23 A. I would have to go over that.

24 Q. Okay. Sir, does it have -- let me ask you to
25 compare it to the GameCube controller. Can you do that

1 with me?

2 A. The GameCube controller?

3 Q. Yes, sir. Do you have the GameCube in front of
4 you?

5 A. Yes, sir.

6 Q. All right. Can you hold them both up for me?

7 A. Yes, sir (complying).

8 Q. Does the Dual Shock and the GameCube both have a
9 cross-switch?

10 A. Yes, sir.

11 Q. Does the Dual Shock and the GameCube both have two
12 analog joysticks?

13 A. Yes, sir.

14 Q. Does the Dual Shock and the GameCube both have
15 proportional buttons?

16 A. I don't think so, no, sir.

17 Q. Okay. Let's leave that one aside.

18 Do the Dual Shock and the GameCube both have
19 built-in rumble?

20 A. I think so, yes, sir.

21 Q. Do the Dual Shock and the GameCube both have
22 independent finger-pressible [sic] buttons?

23 A. I think so, yes, sir.

24 Q. Okay. Now, the Dual Shock was out in 1998, before
25 your 2000 application that led to the '700 patent,

1 right?

2 A. I think so, yes, sir.

3 Q. And, sir -- so, if you can't get back to 1996, if
4 you can't say that those 2002 claims are the same as
5 what you've put in the warehouse in 1996, then the
6 Dual Shock controller invalidates claim 19 of your
7 patent; isn't that correct?

8 A. I believe all my claims are based on the 1996
9 patent application.

10 Q. Now, I'm asking you to work with me on this -- in
11 this respect. I know that's your testimony, but I'm
12 asking you to do this for me. Suppose the jury ends up
13 disagreeing with you. Suppose the jury concludes that
14 you can't get back to 1996 because you, in fact, changed
15 your invention. If that happens, if that's the case,
16 wouldn't you agree with me, won't you admit that the
17 Dual Shock controller from Sony invalidates claim 19 of
18 your patent?

19 A. I don't know for sure. No, sir.

20 MR. GUNTHER: Kam, could we put up from
21 Mr. Armstrong's March 18, 2008, deposition, the
22 transcript at 425, lines 17 to 25? And for the record,
23 the Dual Shock controller is Defendant's Exhibit 103.

24 BY MR. GUNTHER:

25 Q. Okay. Sir, this is your deposition in March, two

1 months ago in Tyler, when we sat down and I asked you
2 some questions, right?

3 A. Okay.

4 Q. "Okay" means "right," right? It means "yes"?

5 A. I presume that it's from then, yes, sir.

6 Q. And, so, there is the question: Sir, I'm asking
7 you -- that's not my question. My question is: If the
8 jury in this case or Judge Clark makes a determination
9 that your earliest date of invention is November 16,
10 2000, the filing date of your '700 application, does the
11 Sony Dual Shock invalidate claims 19 and 20 of your
12 patent?

13 There is an objection.

14 And then there is your answer: If there was
15 such a determination, it probably would.

16 Did I ask you that question, and did you give
17 me that answer on March 18th, 2008, in Tyler, Texas?

18 A. I probably -- you probably did ask me that
19 question; and I probably did give you this answer, yes,
20 sir.

21 Q. Thank you, sir.

22 Now I want to ask you one more thing. I'm
23 holding up the Wii Remote. We've talked a lot about
24 that, right, Mr. Armstrong?

25 A. A little, yes, sir.

1 Q. Okay. The Wii Remote has got the accelerometer in
2 it, right?

3 A. I believe it does, yes, sir.

4 Q. And it allows the sensing of body motions so you
5 can do all different kinds of games that really are kind
6 of new and different. Wouldn't you agree with me on
7 that?

8 A. Yes, sir.

9 Q. Sir, this Wii Remote by itself does not infringe
10 any claims that you're asserting against Nintendo from
11 the '700 patent, correct?

12 A. By itself, it does not infringe any of the current
13 claims, yes, sir.

14 Q. And there is only one claim that's asserted against
15 the Wii Remote plus the Nunchuk; and that's claim 19,
16 right?

17 A. I believe that's true, yes, sir.

18 Q. So, all the money that you're asking for, 90
19 percent of it -- over 90 percent of it is on the Wii
20 Remote plus the Nunchuk, and it's all hinged on claim 19
21 whether there is infringement. Isn't that fair?

22 A. I have no idea the proportion of money.

23 Q. Okay. All right. But leaving aside the proportion
24 of money, isn't it fair that whether or not you win on
25 the game -- on your infringement claim with respect to

1 the Wii Remote plus the Nunchuk, there is only one claim
2 to consider, just one, claim 19, right?

3 A. I believe that's correct.

4 Q. And claim 19 is not infringed by the Wii Remote by
5 itself, correct?

6 A. I believe that's correct.

7 Q. So, remember the commercial that I showed during
8 the opening statement where you see some people bowling?
9 Is that an infringement of your patent when the Wii
10 Remote is used like that?

11 A. I don't remember the commercial.

12 Q. Well, forget the commercial. You know the bowling
13 game in Wii Sports?

14 A. Okay.

15 Q. When that game -- when somebody is playing that
16 game with the Wii Remote by itself, are they infringing
17 claim 19 of your patent?

18 A. I don't believe so.

19 Q. When they're playing the baseball game, when they
20 use the Wii Remote as a baseball bat, by itself, do they
21 infringe claim 19 of your patent?

22 A. I think there have been some infringement analyses
23 that I don't know what they are. And, so, on the
24 previous question, the bowling, I don't know.

25 Q. So, your answer is you don't know?

1 A. There's professionals that have determined this.

2 Q. I see. But did you talk to the professionals?

3 A. I have talked to them, yes.

4 Q. Because you're the head of Anascape, aren't you?

5 A. Yes, sir.

6 Q. You're not just the inventor of the '700 patent;
7 you're the majority owner of Anascape, right?

8 A. Yes, sir, I am.

9 Q. How much of an ownership interest do you have in
10 Anascape?

11 A. I think it's 56 percent.

12 Q. Fifty-six percent.

13 A. Roughly.

14 Q. Okay. So, you have a 56 percent ownership in that;
15 so, you have majority control of Anascape.

16 A. Yes, sir, I do.

17 Q. So, you're in charge of Anascape. Is that fair?

18 A. Yes, sir.

19 Q. And you made a decision to bring this lawsuit,
20 didn't you?

21 A. Yes, sir.

22 Q. And, sir, is it your testimony that you, as the
23 head of Anascape, the person who authorized this filing
24 of this lawsuit -- is it your testimony that you don't
25 know, as you sit here today, whether when someone plays

1 bowling with the Wii Remote by itself, whether it
2 infringes claim 19 of the '700 patent? Is that your
3 testimony?

4 A. My testimony is that there are professionals that
5 have determined that, and that's what I -- I want to
6 rely on their opinions.

7 Q. And what did the professionals tell you, as the
8 head of Anascape, with respect to that question?

9 A. I don't think they described the bowling game or
10 any of those games.

11 Q. So, you never asked them that question. Is that
12 fair?

13 A. No, I didn't ask that question.

14 Q. Okay. And, so, as you sit here today in that
15 witness stand as the head of Anascape, you can't tell me
16 or this jury or the judge whether or not when we play
17 bowling with the Wii Remote by itself, it infringes your
18 patent. Is that your testimony?

19 A. My understanding is that there are no claims right
20 now that describe the Wiimote by itself.

21 Q. Well, when you say "there are no claims right now,"
22 we're only here about the '700 patent, right?

23 A. Yes, sir.

24 Q. We're not here about what might happen sometime in
25 the future, correct?

1 A. That's correct.

2 Q. All right. So, what we're talking about and what
3 this jury is going to have to decide is not something
4 that you may do later, what you've done with respect to
5 the '700 patent. In the '700 patent you will admit to
6 me, will you not -- maybe you can just give me the easy
7 answer, Mr. Armstrong.

8 When I'm using the Wii like a baseball bat to
9 play Wii baseball and Wii Sports with the Wii Remote by
10 itself, I'm not infringing your patent, am I?

11 A. Well, you're kind of confusing me because you're
12 describing a method or a process, you know, kind of
13 something that you're doing, versus the device itself.
14 And, so -- but I don't think you would be, no, sir.

15 Q. So, the device itself when it's used in that way
16 doesn't infringe claim 19 of your patent, right?

17 A. I'm just going to rely on the experts.

18 Q. And is the answer to the question it doesn't
19 infringe?

20 A. The answer is I'm going to rely on the experts for
21 that.

22 Q. All right. Thank you very much.

23 MR. GUNTHER: I have no further questions.

24 A. Thank you, sir.

25 MR. CAWLEY: May I ask some redirect

1 questions, your Honor?

2 REDIRECT EXAMINATION OF BRAD ARMSTRONG

3 BY MR. CAWLEY:

4 Q. Mr. Armstrong, I have just a few questions that I'd
5 like to ask you just to clarify some of the matters that
6 the jury heard about on your cross-examination.

7 You were asked about a lot of things that you
8 testified you didn't invent. Do you remember that?

9 A. Yes, sir.

10 Q. You said you didn't invent circuit boards, you
11 didn't invent thumbsticks, you didn't invent
12 potentiometers, and a lot of other things you didn't
13 invent.

14 A. Yes, sir.

15 Q. Let me ask you a few more. Here's a GameCube
16 controller. Did you invent plastic?

17 A. No, sir.

18 Q. Did you invent wires?

19 A. No, sir.

20 Q. Did you invent buttons?

21 A. No, sir.

22 Q. What did you invent, Mr. Armstrong?

23 A. Well, I invented a collection of items that all
24 together make for a terrific video game controller.

25 Q. Are all of those things you were asked by

1 Nintendo's lawyer this morning that you didn't invent --
2 are those all like building blocks?

3 A. Yes, sir, they are.

4 Q. Are they inventions?

5 A. You know, all of those things -- wire, plastic,
6 joysticks -- at one time in the way distant past, each
7 one of those things was an invention, I'm sure. But now
8 they're just -- they are like common building blocks.
9 Yes, sir.

10 Q. And did you put those building blocks and some
11 other building blocks and take them and describe those
12 building blocks to the Patent Office in your warehouse
13 application in 1996?

14 A. Yes, sir.

15 MR. GUNTHER: Objection, leading.

16 THE COURT: Sustained.

17 BY MR. CAWLEY:

18 Q. What did you do with those building blocks in 1996?

19 A. I had this warehouse patent application and it had
20 a lot of inventive material in it and I combined them in
21 inventive ways in which the -- to basically build
22 something with the building blocks. And then the Patent
23 Office, you know, makes an assessment of that.

24 Q. And when you filed the application that became the
25 patent in this lawsuit, in 2000, did you describe to the

1 Patent Office what you thought was a new way of putting
2 those building blocks together?

3 A. Yes, sir, I surely did.

4 Q. And after the five years of examination, did the
5 Patent Office agree with you?

6 A. Yes, sir, they did.

7 Q. You were asked a lot of questions about the single
8 member of control. Is a single member of control one of
9 the things that you disclosed in your application in
10 1996?

11 A. Yes, sir.

12 Q. Is it the only thing that you disclosed?

13 A. Oh, no, sir. It's like one building block.

14 Q. Let's take a look at Figure 4 from that application
15 briefly, something you were shown in your
16 cross-examination.

17 THE COURT: And for the record, is this the
18 2000 application or the '96 application?

19 MR. CAWLEY: Thank you, your Honor. It's the
20 '96 application.

21 BY MR. CAWLEY:

22 Q. Is the ball that's Number 12 a member of control
23 thereto -- I'm sorry. Bad question.

24 Is the ball that's labeled Number 12 a member
25 of control, something that you can use to control?

1 A. Yes, sir.

2 Q. But is it the only member of control that's shown
3 in this drawing?

4 A. No, sir.

5 Q. Let's take a look at Figure 9. We saw that before.
6 Is the ball that's labeled Number 12 there a member of
7 control?

8 A. Yes, sir.

9 Q. Is it the only one?

10 A. No, sir.

11 Q. Are there others?

12 A. Yes, sir.

13 Q. What are they?

14 A. There's the Number 16 which I call a collet. And
15 then there's the buttons, 136.

16 Q. And let's take a look at Figure 20. That's the one
17 with the handle at the very top, correct?

18 A. Yes, sir.

19 Q. And in this figure we can still see those two
20 little buttons on the front of it, right?

21 A. Yes, sir.

22 Q. Does this show a single member of control?

23 A. Yes, at least. Yes, sir, it does.

24 Q. What else does it show?

25 A. It shows additional input members.

1 Q. Now, Mr. Armstrong, did you ever suggest in your
2 '96 application that it might, under some
3 circumstances -- sorry -- be a good idea to take some of
4 the control from the ball and put it somewhere else?

5 A. Yes, sir.

6 Q. Can you explain what this tells us, particularly
7 the last sentence here that I've got highlighted?

8 Let me read it.

9 A. Right.

10 Q. (Reading) The rotatable collet of Figures 5 through
11 6 may at least for some users be an easier process to
12 achieve rotation about the yaw axis as compared to
13 rotating trackball 12 at least in terms of rotation
14 about yaw.

15 A. Yes, sir.

16 Q. Is yaw one of the 6 degrees of freedom of movement?

17 A. Yes, sir.

18 Q. And does this suggest taking it out of the ball and
19 putting it into the collet?

20 A. Yes, sir, it does.

21 Q. Now, Mr. Armstrong, I believe you -- you testified
22 in cross-examination that at various times after you'd
23 filed your continuation application in 2000, you wrote
24 claims in that patent to cover the Nintendo GameCube
25 controller; is that right?

1 A. Yes, sir.

2 Q. Is there anything wrong with that as far as you
3 know?

4 A. No, sir.

5 Q. Did you hear Judge Clark's instruction about that
6 yesterday?

7 A. I believe he did give one, yes, sir.

8 Q. And did he say that there's nothing wrong with
9 that?

10 A. That's my understanding, yes, sir.

11 Q. You also testified -- and we just heard a lot of
12 testimony from you about the bowling game and so forth
13 and the Wii Remote. Do you remember that?

14 A. Yes, sir.

15 Q. And why -- whether you had accused the Wii Remote
16 and you said that you talked to experts and so forth and
17 so on.

18 Now, does Nintendo make many products that
19 you're aware of?

20 A. Yes, sir.

21 Q. Do they all infringe your patents?

22 A. No, sir.

23 Q. Have you even accused the Wii Remote by itself of
24 infringing in this lawsuit?

25 A. No, sir.

1 Q. What have you accused of infringing as far as the
2 Wii Remote goes?

3 A. The Wii --

4 MR. GUNTHER: Objection, your Honor. The
5 witness testified in cross-examination that he didn't
6 know and it was up to the expert.

7 THE COURT: Overruled.

8 A. My understanding is that the Wii Remote connected
9 to the Nunchuk is accused.

10 BY MR. CAWLEY:

11 Q. You've accused that combination of infringing; is
12 that correct?

13 A. Yes, sir.

14 Q. So, whether the Remote by itself infringes has
15 nothing to do with anything you've claimed in this
16 lawsuit, does it?

17 A. That's correct.

18 Q. And let me ask you some questions about Kelly
19 Tyler. You were asked several questions about him, and
20 Nintendo's lawyer persisted in referring to him as "the
21 money guy." Do you remember that?

22 A. Yes, sir.

23 Q. How long have you known Mr. Tyler?

24 A. Well, let's see. It's 12 or 13, 14 years,
25 something like that.

1 Q. Do you consider him your money guy?

2 A. Oh, no, sir.

3 Q. Have you spent time with Mr. Tyler outside of
4 business matters?

5 A. Yes, sir.

6 Q. Have you been to his house?

7 A. Yes, sir, I have.

8 Q. Met his wife?

9 A. Yes, sir.

10 Q. Met his children?

11 A. All of them.

12 Q. Has he been to your house?

13 A. Yes, sir, he has.

14 Q. Has he spent the night at your house when he's
15 traveled to Tyler to meet with you?

16 A. Yes, sir.

17 MR. CAWLEY: Let's bring up Defendant's
18 Exhibit 211 and highlight, if we can, the middle of the
19 page there, the analog buttons.

20 BY MR. CAWLEY:

21 Q. This was the email from Mr. Kelly to you; is that
22 right? I know it's a little confusing. Actually the
23 whole --

24 A. I think --

25 Q. Let me start over. The whole document was an email

1 from Mr. Kelly to you; but in the middle of it was a
2 reproduction of an email that you had first sent to him,
3 right?

4 A. I believe that's correct, yes, sir.

5 Q. And this statement: Analog buttons, four
6 exclamation points, you wrote that, right?

7 A. Yes. That looks like my -- I wrote that.

8 Q. Why did you put four exclamation points after that?

9 A. It was very exciting.

10 Q. Why?

11 A. It appeared to me that Nintendo was going to make
12 my controller.

13 Q. Why were you excited about that?

14 A. Well, I always like to see my inventions get made.

15 Q. Did you think that it would increase your chances
16 of getting a license from Nintendo?

17 A. I would hope so, yes, sir.

18 Q. Now, we also saw an email -- and I won't take the
19 time to pull this one up -- where Mr. Tyler was making
20 some suggestions to you about maybe how your claims
21 should be written in the patents that you were applying
22 for. Do you remember that?

23 A. Which one?

24 Q. Well, it's that -- go ahead.

25 A. Are you talking about the one that Mr. Gunther --

1 Q. Yes. Yes. Yes.

2 MR. GUNTHER: Mr. Cawley, it's Defendant's
3 Exhibit 214.

4 A. Point Number 3 on that?

5 BY MR. CAWLEY:

6 Q. Right.

7 A. Yes, sir.

8 Q. Do you think there is anything wrong with your
9 friend and business partner, Mr. Tyler, making
10 suggestions to you about how you should prosecute your
11 patents?

12 A. No, sir.

13 Q. Were you grateful to have someone to talk to --

14 A. Yes.

15 Q. -- about the issues involved in your patent
16 prosecution?

17 A. I'm very thankful.

18 Q. I mean, after all, you're not doing this through a
19 lawyer, are you?

20 A. Yes. I'm -- you're right.

21 Q. And, finally, let me ask you just a couple
22 questions about the Sony agreement. We walked through
23 that agreement in a lot of detail in your
24 cross-examination and I won't take the time to do that
25 again, but let me just ask you about the big picture.

1 At the end of the Sony deal , did Anascape
2 walk away with \$10 million?

3 A. Yes, sir.

4 Q. And the right to use some Sony patents?

5 A. Yes, sir.

6 Q. And at the end of the deal , did Sony walk away with
7 the right to use all of your game control patents?

8 A. Yes, sir; and that was the critical element.

9 Q. Well -- and did it include the '700 patent that's
10 involved in this lawsuit?

11 A. Yes, sir, it did.

12 MR. CAWLEY: Pass the witness, your Honor.

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

15 Next witness.

16 MR. CAWLEY: Call Professor Robert Howe.

17 THE COURT: Step forward, please, sir.

18 (The oath is administered.)

19 MR. CAWLEY: May I proceed, your Honor?

20 THE COURT: Go ahead, counsel .

21 DIRECT EXAMINATION OF ROBERT HOWE

22 CALLED ON BEHALF OF THE PLAINTIFF

23 BY MR. CAWLEY:

24 Q. Professor Howe, would you introduce yourself to the
25 jury, please?

1 A. Certainly. I'm Robert Howe. I'm a professor of
2 engineering at Harvard University in Cambridge,
3 Massachusetts.

4 Q. Why are you here, Professor Howe?

5 A. Well, Anascape has hired me to give my expert
6 opinion on the technology in the patents and to
7 investigate whether the Nintendo controllers infringe
8 those -- that patent.

9 Q. Now, Professor Howe, earlier today Judge Clark
10 reminded us all that it's actually the claims that
11 define infringement of the patent. Are you the man
12 who's here to talk about the claims?

13 A. Yes, indeed. I have considered them most
14 carefully.

15 Q. And what opinion have you arrived at?

16 A. It is my opinion that the Nintendo controllers do
17 infringe those claims.

18 Q. All right. I'd like to go through your opinion in
19 a good bit of detail to make sure that we all understand
20 how you arrived at it; but before we do that, can you
21 tell the jury how you do work like this? What kind of
22 things did you consider in this case?

23 A. Sure. I -- well, I considered quite a few things.
24 First of all, the controllers, I ordered those over the
25 Internet; and when I got them home, I took them apart

1 and looked carefully into them and figured out how they
2 work.

3 Of course, I also read through the patent
4 many times and the patent history file, that patent
5 prosecution file from the Patent Office.

6 Let's see. I played a few video games. I'm
7 not a big gamer myself, but I did confirm that the
8 controllers work the way they are described in the
9 claims.

10 Let's see. I went through dozens of
11 documents provided by Nintendo; and I also reviewed the
12 depositions, the records of the testimony by various
13 Nintendo employees and experts and all.

14 Q. And have you sat through some of the testimony at
15 the trial so far?

16 A. Yes, I have, not all of it but most of it.

17 Q. Before we go on, I'd like the jury to be able to
18 learn a little more about you. Tell us where you went
19 to college.

20 A. Sure. I went to college in Portland, Oregon, at
21 Reed College. I majored in physics there.

22 Q. And what did you do after that?

23 A. Well, after that I worked in the electronics
24 industry down in Silicon Valley in California, where I
25 was an electrical engineer.

1 Q. And then what?

2 A. After that, I went to graduate school at Stanford
3 University in California; and I got a master's degree
4 and then a PhD in mechanical engineering.

5 Q. And did you specialize in anything at Stanford
6 while you were getting a master's degree and a doctor's
7 degree?

8 A. Sure. My doctoral research in particular was on
9 robotics; and I looked at how to give robots an
10 effective sense of touch; so, new tactile sensors and
11 that sort of thing.

12 Q. Just so we'll understand, what is robotics?

13 A. Oh, that's -- well, in a general sense, it's how to
14 make a robot that duplicates a lot of the functions of
15 people. And I was particularly interested in robot
16 hands at that time.

17 Q. And after you got your PhD at Stanford, what did
18 you do then?

19 A. Well, I went to Harvard, where I joined the
20 faculty. I started out as an assistant professor and
21 since then I've worked my way up through the ranks
22 through associate professor and now I'm a full
23 professor.

24 Q. Do you teach at Harvard?

25 A. I do. Every year I teach -- well, lately I've been

1 teaching a freshman course for brand-new engineering
2 students on machine design and computer-aided design.
3 And then I've taught various classes at different
4 levels, up to graduate level courses for doctoral
5 students, in things like robotics and human-machine
6 interfaces.

7 Q. Now, you used a phrase there that you teach
8 graduate students about "human-machine interfaces."
9 What do you mean by those three words?

10 A. Well, it's kind of a broad term. It refers to
11 finding good ways for people to control complicated
12 systems. So, for instance, finding good ways for people
13 to control robots that are in remote locations, like
14 exploring outer space or under the ocean, or controlling
15 complicated computer systems, which could even include
16 video games.

17 Q. Do you have a research lab at Harvard?

18 A. I do. I've got about a dozen graduate students and
19 postdoctoral fellows; and we do research in robotics,
20 again, and these human-machine interfaces.

21 Q. Now I'd like to ask you at this time, Professor
22 Howe, to give us a general description of the features
23 of some of the controllers you looked at. And let's
24 start with Plaintiff's Exhibit 413.

25 MR. CAWLEY: May I approach, your Honor?

1 THE COURT: You may.

2 MR. CAWLEY: And, your Honor, at this time we
3 have exemplars of this exhibit that we would request to
4 present to the jury during Dr. Howe's testimony.

5 THE COURT: One for each of them?

6 MR. CAWLEY: Yes, your Honor.

7 THE COURT: Any objection?

8 MR. PRESTA: No objection.

9 THE COURT: All right. Go ahead.

10 Now, is that a marked exhibit; or is that one
11 of the demonstratives?

12 MR. CAWLEY: Once again, your Honor, the
13 picture of that exhibit is marked.

14 THE COURT: What number?

15 MR. CAWLEY: 413.

16 THE COURT: All right. Ladies and gentlemen,
17 the model you are holding is the actual thing. In the
18 jury room you'll see a picture marked Plaintiff's
19 Exhibit 413.

20 Go ahead, counsel.

21 MR. CAWLEY: Thank you, your Honor.

22 And, your Honor, could I request that since
23 the professor will be showing the jurors various
24 features of this controller, could he step down --

25 THE COURT: Please.

1 MR. CAWLEY: -- in front of the jury box?

2 BY MR. CAWLEY:

3 Q. First of all, let me turn this microphone on.

4 Now, I think that the question that I asked
5 you, Professor Howe, is: Can you explain to the jury
6 the features of the controller that you have in your
7 hand?

8 A. Certainly. Happy to do that. So, you've all
9 figured out by now, I'm sure, you hold it in two hands
10 like this and you'll see there are a couple of joysticks
11 or thumbsticks and they are thumbsticks, of course,
12 because you put your thumbs on them very carefully and
13 they move in two directions. You can move them up and
14 down. You can move them right and left. So, there are
15 two different directions you can use there and, of
16 course, any combination they'll move around.

17 Down here we have this cross-switch or D-pad,
18 directional pad. It goes by different names. I'm going
19 to call it the "D-pad" because that's what I'm used to.
20 And that has four different directions you can push.
21 So, again, you can go right, go left, go up, go down.
22 This one you don't do combinations on. You pick one
23 direction and push that. And you can feel a little
24 click when you push it down. That's just to tell you
25 that the switch is closed so you know that you actually

1 pushed it down.

2 There are some other buttons on the face,
3 some simple buttons; and then on the front here are a
4 couple of triggers. Okay? And there's one under each
5 of your index fingers; and then there is a little button
6 above it, the purple one here. So, those are the basic
7 input features of the device.

8 Now, there's --

9 Q. Okay.

10 A. -- one other feature that you can't see; and that's
11 this idea of a rumble motor, vibration feedback.

12 Q. Let me interrupt you because I have something to
13 show you that may help you show that.

14 MR. CAWLEY: If I may approach the witness,
15 your Honor.

16 THE COURT: You may.

17 A. So, this is a disassembled version. The cover has
18 been taken off. And the circuit board in here covers
19 up -- underneath here there is a little motor you can
20 see just peeking out there. And quite conveniently,
21 we've packaged that up into a little box. You can see
22 there is a battery. Here is the motor on top. And as
23 you push it, you get a vibration. Okay?

24 So, that's what you feel when you're playing
25 the game if you run into a wall, that sort of thing,

1 however the game programmer decided to use that
2 vibration.

3 BY MR. CAWLEY:

4 Q. Thank you. Now if you'll take a seat on the stand
5 again.

6 I'd like to ask you now, Professor Howe,
7 about the subject of infringement. What is your
8 understanding of how you can tell if something infringes
9 a patent?

10 A. Okay. Well, I should start out by saying I'm not a
11 lawyer; so, I don't know the intricacies of
12 infringement. But I do know the basic idea and that is
13 when you get a patent, you have to give a careful
14 description of what's in that patent and those are the
15 claims.

16 And then infringement refers to the situation
17 where you have a product who -- that has all of the
18 features described in that claim. So, if the claim
19 describes all -- all of the features in the claim are
20 present in the device, then it infringes the claim.

21 Q. Okay. Now, let me -- just orient us again before
22 we go on to make sure that everybody is literally on the
23 same page of the patent. And the jury has a copy of the
24 '700 patent, of course, in their notebooks; and we've
25 seen a lot of different excerpts from things.

1 But in most patents, are there some drawings
2 at the beginning?

3 A. Yes, of course.

4 Q. And then in most patents, are there a lot of words
5 called the "written description" in the middle?

6 A. That's right.

7 Q. And you've been in court for most of this trial;
8 so, you've seen on the screen and elsewhere lots and
9 lots of displays of some of those drawings and some of
10 those written descriptions.

11 A. Yes, that's right.

12 Q. But, then, what are the claims; and where are they
13 in the patent?

14 A. Well, the claims are at the very end. And in some
15 sense, they are the real meat of the matter. They're
16 the ones that give the detailed and very specific
17 description of the inventions that are patented. Each
18 one of the claims represents one invention so --

19 Q. And is that where you've gone to find out if there
20 is infringement by these Nintendo products?

21 A. That's right. That's the key thing you compare to
22 the products to see if there is infringement.

23 Q. Have you studied the claims -- at least some of the
24 claims of the '700 patent to determine whether they are
25 infringed by the Nintendo products that you've studied?

1 A. Yes, I have.

2 Q. Now, have you also used some definitions of certain
3 terms or words in some of the claims of the patents?

4 A. Yes. The judge's -- Judge Clark here has given us
5 some claim construction orders in which he gives us the
6 specific technical meanings of some of the words in the
7 patent, in the claims, so that we can use those to
8 understand exactly how we're supposed to interpret some
9 of these words in deciding if there is infringement.

10 Q. And for all of the claims that you have considered,
11 have you applied all of the definitions that Judge Clark
12 has given us for those claims?

13 A. Yes, I have.

14 Q. So, tell us the process that we're about to go
15 through in looking at some of the actual claims of the
16 patent.

17 A. Sure. Well, again, the idea is we have to make
18 sure that all of the elements in a claim are present in
19 the invention. So, an analogy might be suppose you
20 order something by mail, you know, a box of auto parts
21 or perhaps the Sears Roebuck catalog, you order a bunch
22 of different kind of clothes. Well, the mailman or UPS
23 driver brings a box; and you want to make sure that
24 everything is in that box that's supposed to be. So,
25 you get your original order; and as you take things out

1 of the box, you check them off so that you're sure that
2 everything that's in that order is present in the box.
3 And that's what we'll do here with the claims. We'll go
4 through element by element -- it can be a little
5 tedious, but we have to do it -- to make sure that
6 everything listed in that claim is present in that
7 controller.

8 Q. Have you prepared something to sort of help us keep
9 track of that process?

10 A. Yes. We have a nice big poster. We can start with
11 claim 19.

12 Q. Okay. Now, is this claim 19 from the '700 patent?

13 A. Yes, it is. That's all the words in claim 19.

14 Q. And they've been retyped onto this poster?

15 A. That's right.

16 Q. So, what's the first Nintendo product that you
17 would like to tell us about that you've studied? And
18 take us through claim 19 to tell us about your
19 conclusion about whether or not that product infringes.

20 A. Sure. Well, let's use the Nintendo GameCube
21 controller that you already have in your hands.

22 Q. Let me label this chart so later on we can remember
23 what we were talking about. This is the GameCube.

24 So, how shall we begin?

25 A. Okay. Well, let's start at the very top. And the

1 first words in the claim are "a hand operated controller
2 comprising."

3 Q. Now, let's stop you right there. We've only gotten
4 through five words, but I want to stop you there and ask
5 you: Has Judge Clark defined any of those words, any of
6 those five words that are in this very first part of
7 claim 19?

8 A. Yes, he has. And in particular, the word
9 "controller" was defined; and I can read that
10 definition. (Reading) Controller means a device held in
11 the user's hand that allows hand or finger inputs to be
12 converted into electrical signals for manipulation of
13 images or graphics on a display device which are capable
14 of being perceived by a human.

15 Q. And applying that definition, have you looked to
16 see if this is present in the GameCube controller?

17 A. Yes. It certainly does describe the capabilities
18 of this controller. It can control images as described
19 in the definition there given us by Judge Clark.

20 Q. What have you concluded about this first bit of
21 claim 19?

22 A. Well, it is present in the controller; so, we can
23 check that one off.

24 Q. All right. What's the next part of claim 19 that
25 you want to consider?

1 A. Okay. Here we have: Structure allowing hand
2 inputs rotating a platform on two mutually perpendicular
3 axes to be translated into electrical outputs by four
4 unidirectional sensors to allow controlling objects and
5 navigating a viewpoint.

6 Q. Okay. Has Judge Clark given us definitions of any
7 of the terms in that part of claim 19?

8 A. Yes. And the key here is "navigating a viewpoint,"
9 towards the end of that element. Let me read that:
10 Navigating a viewpoint means positioning or orienting a
11 user's view.

12 Q. Okay. Is this part of claim 19 in the GameCube
13 controller?

14 A. Yes, it is. It describes the cross-switch or the
15 D-pad. And I can explain that in a little more detail.

16 Q. Have you -- sure. Go ahead.

17 A. Yeah. So, I've got a slide, if I could have that.

18 Q. Have you prepared some slides to help explain --

19 A. Yes.

20 Q. -- your testimony and your research?

21 A. Yes, I have.

22 Q. Okay. Go ahead.

23 A. Okay. So --

24 THE WITNESS: Your Honor, if I might stand up
25 again?

1 THE COURT: You may.

2 THE WITNESS: Thank you. I wonder if I could
3 get a pointer, laser pointer.

4 Thank you.

5 A. Okay. Let me stand out of your way but where I can
6 still be heard.

7 Okay. So, this is the controller again.
8 It's redrawn here so that we can use some animations to
9 give you a better idea of what's going on. And this is
10 what you see if you take off the cover of the housing,
11 and we colored blue here this cross pad that sticks out
12 the top.

13 Now, if we take off that cross pad,
14 underneath it is a little rubber thing. That's called
15 "dome caps." And underneath them are some sensors
16 mounted to the circuit board. And you can see they are
17 labeled "left," "right," "up," and "down." So, what
18 happens is -- is you push down the button in the up
19 direction, for example. That forces down that dome cap,
20 and that closes the circuit here. It's essentially a
21 switch. So, this is a convenient way to make a bunch of
22 switches in a small space. And you can see that you
23 have four different sensors.

24 Now, these are unidirectional sensors. That
25 means I can only go in one direction. I can go up.

1 There is a separate sensor for down. I can go right,
2 but there is a separate sensor for left. So, they are
3 unidirectional and we have four of them and we have two
4 different directions. We have the up/down direction.
5 We have the left/right direction. So, all of those
6 pieces are present here in the cross pad.

7 Q. And is this structure to create outputs?

8 A. Yes, it is. So, the circuit board here is
9 essentially a bunch of fancy wiring. So, there is a lot
10 of copper traces that are sandwiched in between
11 insulators; and various computer chips are attached.
12 Some other sensors we'll talk about in a little bit.
13 And then these wires take the signal over, and
14 eventually that signal is sent over the cable you see at
15 the end of your controller there to the game console.
16 And the game console is the computer that's running the
17 video game. That's where the software does its thing.

18 So, these signals from the sensor, then, are
19 sent over that cable, where they can be used by the
20 programmer of the video game to control various things
21 inside the video game such as changing the viewpoint.
22 And it's clear from knowing how these work, if you're an
23 engineer and familiar with this kind of thing, that that
24 capability is present. And, furthermore, I played video
25 games where it works that way; you can use this to

1 navigate your viewpoint. So, it's clear that capability
2 is present here in this device.

3 Q. I'm not sure if you said this or not; but just to
4 be clear, in addition to being capable of navigating a
5 viewpoint, is it capable of controlling objects?

6 A. Oh, yes, it is. Again, the signal that is
7 present -- that's generated here when it's sent over to
8 the game console can be used as a lot of things,
9 controlling objects and navigating a viewpoint included.

10 Q. So, what have you concluded about this second piece
11 of claim 19?

12 A. We've gone through all of it and it matches the
13 D-pad or cross-switch and, so, we should check it off.

14 Q. What's the next language in claim 19 that you'd
15 like to consider?

16 A. Okay. Let's see. My eyesight is not real good.
17 You'll forgive me if I read off this instead.

18 Okay. So, the next piece we have is: The
19 controller including a tactile feedback means for
20 providing vibration detectable by the user through the
21 hand operating the controller.

22 Q. Now, did Judge Clark define any of these terms for
23 us?

24 A. Yes, he did. "Detectable by the user" means
25 "capable of being perceived by the hand or ear of the

1 user of the controller."

2 Q. Okay. Have you taken these words from the claim
3 and Judge Clark's definition and looked into the
4 GameCube controller to see if this is there?

5 A. Yes, I have. And, once again, it's this vibration
6 feedback motor. And I have a slide; but I can also show
7 you here that if you peek underneath the front of this,
8 there is the motor present inside the controller. And
9 here you can see what it looks like when it's removed.
10 So, we should check that one off. It's also present.

11 Q. Okay. But before we get along to that --

12 A. Okay.

13 Q. -- this picture is the inside -- is that the inside
14 of that demonstration unit that you showed us before?

15 A. I believe so. So, again, if you take this --

16 Q. We heard -- I'm sorry. Go ahead.

17 A. Yeah. If you take this apart, this is what you
18 see. The weight is separated here so you can actually
19 see it. It's inside a container here; but once you take
20 it apart the next step, you can see it. We didn't do
21 that here so it would actually operate and we can show
22 you how it works.

23 Q. Show us the weight on the slide.

24 A. Oh, yeah, sure. It's actually this piece
25 (indicating) right here.

1 Q. That's the weight?

2 A. Oh, no. I'm sorry. Right here (indicating).

3 Q. That thing that looks about like a triangle?

4 A. Yeah. And it's off-center so that as it spins
5 around, it generates that vibration.

6 Q. All right. So, excuse my interruption; but what
7 did you tell us then about your conclusion on this third
8 piece of the language in claim 19?

9 A. Once again, it's a good description of this
10 component of the GameCube controller; so, we should
11 check it off. It's present.

12 Q. Tell us about the next piece of language that
13 you've considered in claim 19.

14 A. Certainly. Okay. Here we have (reading) a second
15 element movable on two mutually perpendicular axes, said
16 second element structured to activate two bi-directional
17 proportional sensors providing outputs at least in part
18 controlling objects and navigating a viewpoint.

19 Q. And, once again, has Judge Clark given us
20 definitions of any of these terms?

21 A. Yes, he has. In this case it's the term "movable
22 on two mutually perpendicular axes," which means capable
23 of 2 degrees of freedom of movement on axes that
24 intersect at a 90-degree angle.

25 Q. Okay. So, have you looked for this part of claim

1 19 to see if it's in the GameCube controller?

2 A. Yes, I have. And this describes the thumbstick
3 feature. So, we have two thumbsticks here. And if you
4 take them apart, it turns out the sensor pieces
5 underneath these are the same. The caps are different
6 shapes; they're different colors. But the way they
7 function is the same.

8 So, we'll pick one and talk about that here.

9 Could I have my next slide, please?

10 And here you see them again with the cover
11 taken off so you can see what's underneath. And this is
12 on one of those thumbsticks.

13 You can move on.

14 And this animation will show you how it
15 works. So, there we go moving in the right/left and
16 moving in the up/down direction.

17 Now, in each case, as this thing moves, there
18 is a little set of shafts in there; and they couple to
19 these darker boxes down below. And those darker boxes
20 are the sensors. So, here you can see -- as this one
21 rotates, you see the center shaft of the sensor move.
22 Those boxes are called "rotary potentiometers," and they
23 work something like the dimmer switch in your dining
24 room so you can turn the light up or down to make it
25 brighter or darker. Another analogy might be the gas

1 pedal on a car. So, it isn't just on/off. You can
2 control how fast the car goes or how bright the light is
3 to any value you want in between.

4 Okay. So, here we have our second element,
5 then, is the top of the joystick here; and it activates
6 these two bi-directional proportional sensors. They are
7 bi-directional because they can go right or left, one
8 single sensor. The other sensor can go up or down; so,
9 that's bi-directional. And proportional, again, is this
10 idea that it can hit any value from a small value to a
11 high value or anything in between.

12 Q. And does this create outputs?

13 A. Yes. So, once again, these are the wires coming
14 out the bottom. They are soldered onto the circuit
15 board. Those signals are transmitted over the cable to
16 the game console, and there the game designer can write
17 software that uses those signals in lots of different
18 ways. And the language in the element here about
19 controlling objects and navigating a viewpoint is
20 certainly met.

21 Once again, I've played games where I've used
22 these thumbsticks to do those things in the video games;
23 so, I'm certain that capability is present in the
24 controller.

25 Q. So, what have you concluded about this fourth part

1 of claim 19?

2 A. Again, it's a good description of the GameCube
3 controller; so, we can check it off.

4 Q. What's next?

5 A. Well, okay. The next piece starts out: A third
6 element -- and then all the words are exactly the same
7 as the piece we just read that starts out "a second
8 element." So, this basically says one more just like
9 the last one.

10 Now, as I mentioned, here we have two
11 thumbsticks; and when you take off those different caps,
12 underneath it, you see the same sensing structure. So,
13 at the end of the day, we have two that are the same
14 and, thus, we've met that next term the same way we did
15 in the previous one and we can move along.

16 Q. So, check it off?

17 A. Check it off, yep.

18 Q. And what's next?

19 A. Next, we have: A plurality of independent
20 finger-depressible buttons, each button associated with.

21 So, the idea here is that we have these
22 triggers -- this is a description of these triggers and
23 they are obviously finger-depressible. You can put one
24 finger on each one to move it up and down, and they are
25 independent. I can work this one, or I can work this

1 one. They are not coupled at all with each other.

2 So, we can go ahead and check off that
3 element.

4 Q. And what's the last piece of claim 19 that you
5 considered?

6 A. Okay. And the last one is just a continuation of
7 that last piece. It says: A button sensor, said button
8 sensor outputs at least on/off data to allow controlling
9 of the objects. So, that --

10 Q. Is that in the controller?

11 A. Yes, indeed. And that's just the sensor that's
12 hooked up to these trigger buttons. Again, in looking
13 at how they are constructed, the sensors are
14 constructed, and in playing video games, I've confirmed
15 that they can be used, once again, to allow controlling
16 objects in the video game. So, that capability is
17 present here again; and we can check off that last
18 element.

19 Q. All right. Why don't you take the witness stand
20 again while I do that.

21 It looks as though, Professor Howe, that --

22 THE COURT: Excuse me one minute, counsel.

23 Ladies and gentlemen, let me remind you you
24 have in your juror book a copy of the patent with the
25 actual claims because we're going to start getting

1 testimony from both sides about them. You have the
2 patent, where you have the claims set out there; and you
3 also have the large size version under the "Claims"
4 section, if you want to follow along in your books.

5 Go ahead, counsel.

6 BY MR. CAWLEY:

7 Q. And somebody handed me a note. Just to make sure
8 I'm clear, Dr. Howe, how did you define the plurality of
9 finger-depressible buttons? What does that mean?

10 A. I'm sorry. I never defined "plurality" for you,
11 did I?

12 Plurality just means more than one. And as
13 we saw, there are two triggers; so, we've definitely met
14 that criteria as well.

15 Q. So, it looks as though we've checked off all the
16 parts of claim 19.

17 A. That's right.

18 Q. What does that mean?

19 A. Well, that means that the GameCube controller
20 infringes claim 19.

21 Q. And is that your conclusion after your study?

22 A. Yes, it is.

23 Q. Now, do you see anywhere in claim 19 where it says
24 that it requires a single input member?

25 A. No. Those words are not present.

1 Q. What kind of input members does claim 19 talk
2 about?

3 A. Well, there's more than one. You know, it starts
4 out, for instance -- it talks about (reading) a
5 structure allowing hand inputs rotating a platform on
6 two mutually perpendicular axes. And then on down, all
7 the way to the bottom, there is a plurality of
8 independent finger-depressible buttons. So, there is
9 not just one input element described in this claim.

10 Q. And there's been a lot of talk in the courtroom
11 about what Mr. Armstrong's invention is or is not. Is
12 it your understanding that these words define what the
13 invention of claim 19 is?

14 A. Yes. That's right.

15 Q. Now, does claim 19 require a 6-degree-of-freedom
16 controller?

17 A. Well, let's see. It doesn't say so explicitly but
18 it describes a number of inputs and they add up to at
19 least six; so, in effect, it does describe a
20 6-degree-of-freedom controller.

21 Q. Are there other ways to make a 6-degree-of-freedom
22 controller other than what's described in claim 19?

23 A. Certainly. This is a particularly nice one, but
24 there are many ways you can make a 6 degree of --

25 Q. What's the simplest way you can think of to make a

1 6-degree-of-freedom controller?

2 A. Well, I suppose you could put six push buttons on a
3 box and call that a 6-degree-of-freedom controller. It
4 would give you six signals.

5 Q. How would that compare to the controller that
6 you've seen described in claim 19?

7 A. Well, I would say it's a piece of junk, you'll
8 forgive me. It would not do a very good job of
9 controlling video games; although, it would have six
10 degrees of freedom in it.

11 Q. Now, now that you have shown us your analysis of
12 claim 19 for the Nintendo GameCube controller, what's
13 the next step in your study?

14 A. Okay. Well, I looked at other claims.

15 Q. Okay. Now, "looked at other claims" -- and for
16 what product?

17 A. Okay. Well, let's stick with the GameCube. There
18 are several more claims which are infringed.

19 Q. Okay. So, do you want to go through all of the
20 claims that the GameCube has been accused of infringing
21 first?

22 A. Yes. I think it's easier if we go through GameCube
23 first, and then we'll talk about some of the other
24 controllers.

25 Q. Okay. Very good. Then, what's the next claim

1 you'd like to talk about that you've studied for
2 purposes of seeing if the GameCube controller infringes
3 some other claim?

4 A. Well, let's go to claim 22 next. And we have a
5 slide rather than a chart for this one. If I can begin
6 by reading it: A hand-operated controller according to
7 claim 19 wherein -- and those words mean it's a
8 dependent claim; and that is to say, this is saying that
9 for this invention, it includes everything that's
10 already in claim 19 plus some new things.

11 Q. Okay. So, does that mean that if we were really
12 going to be tiresome about this, we would take those
13 first few words and go back and recheck off all of these
14 things from claim 19?

15 A. Yes, but I'm hoping we're not quite that thorough.

16 Q. Okay. Well, I'm in agreement with you. So, since
17 you've already shown us -- you've already shown us that
18 everything in claim 19 is there, let's use that as the
19 launching point; and tell us what's new or additional in
20 this claim 22 that you have to tell us about.

21 A. Sure. Well, the next words here are: Wherein said
22 button sensor outputs data proportionate to depression
23 of one of said buttons.

24 Q. Okay. And, then, tell us what that means and if
25 you found that in the GameCube controller.

1 A. Sure. Well, it refers to the button sensors. And
2 the button sensors, you'll recall, were just the
3 triggers here, the two of them on the front.

4 And it goes on to say that they output data
5 proportionate to the depression of one of the buttons.
6 So, this is the idea of proportional sensors again.
7 It's like your dimmer switch in your dining room or your
8 gas pedal on your car. It's not just on/off. It's all
9 the values in between. So, I can slide my finger slowly
10 up and down. That might be the gas pedal on a driving
11 game, for instance. And, so, this, in fact, matches the
12 description given in claim 22.

13 Q. So, can we check this off as infringed?

14 A. Yes, please.

15 Q. And what is the next claim of the patent that
16 you've considered for infringement of the GameCube?

17 A. Let's go on to claim 23. Okay. Claim 23 states:
18 A hand-operated controller according to claim 22 --

19 Q. Okay. Let me stop you there.

20 So, does that mean -- since claim 22 was
21 based on claim 19, you have to have, for this claim 23,
22 everything in 19 --

23 Is that right?

24 A. That's right.

25 Q. And you've already found that.

1 A. Yep.

2 Q. -- and then everything in 22 that we just saw,
3 right?

4 A. Yep.

5 Q. And you found that.

6 A. Indeed.

7 Q. Plus something additional; is that right?

8 A. That's right.

9 Q. Tell us what the additional thing is in claim 23.

10 A. So, the additional part here are the words:
11 Wherein the bi-directional proportional sensors are
12 rotary potentiometers.

13 So, here that describes the thumbsticks. And
14 we've already been through this, in fact, because the
15 bi-directional proportional sensors here were, as we saw
16 in our illustration, rotary potentiometers. And, so, in
17 fact, we've already ascertained that the description
18 here matches the GameCube controller.

19 Q. So, what have you concluded about claim 23?

20 A. That we should check it off because it's infringed.

21 Q. Thank you. And what's the next claim that you've
22 studied?

23 A. Okay. Next, I'd like to do claim 16.

24 Q. Okay. This one looks like a problem because it's
25 got a lot of words in it.

1 A. Well, fortunately a lot of them are the same, not
2 all of them. But, for instance, there is a description
3 in there about an element to activate first two
4 bi-directional proportional sensors. That's the same
5 description of the joystick. We've already done that.

6 Q. Okay. Well, then, let's take this approach. If
7 there's something in this claim that you've already
8 discussed and already decided or explained to us how
9 it's in the GameCube, let's not take the time to discuss
10 it all over again. Instead, let me ask you to point out
11 what's new in this claim 16 that you have not discussed
12 yet and have not showed us how that new piece is present
13 in the GameCube controller.

14 A. Very good. I like it.

15 So, let's begin at the first part because
16 that is something new; and I have a slide that
17 highlights this. It begins: A 3-D graphics controller
18 for controlling a television-based game.

19 Now, a couple of those terms were defined in
20 the court's claim construction order. Let me read those
21 definitions.

22 "3-D" means capable of movement in 6 degrees
23 of freedom.

24 And "controller" means a device held in the
25 user's hand that allows hand or finger inputs to be

1 converted into electrical signals for manipulation of
2 images or graphics on a display device which are capable
3 of being perceived by a human.

4 Q. All right. And have you taken into account and
5 applied that definition and looked for that in the
6 GameCube?

7 A. Yes, indeed.

8 So, it's clear that the GameCube controller
9 matches that definition of a 3-D graphics controller for
10 controlling a television-based game.

11 Q. Okay. What's the next new language or words in
12 claim 16 that you haven't told us about yet?

13 A. Okay. Well, this looks a little messy, if I could
14 have the next --

15 Q. Well, I'm looking at 3-D graphic here; and let me
16 just make sure that I understand.

17 Does 3-D, as the judge defined it, mean like
18 those old movies that I went to as a kid where you have
19 cardboard glasses and you put them on and something
20 jumps out of the screen at you?

21 A. No. I certainly remember those movies where things
22 come out of the screen, and this is completely
23 different. Again, we have a definition from Judge Clark
24 which gives us the technical meaning of that term here;
25 and it's not a 3-D movie.

1 Q. Okay. And, likewise, can the GameCube controller
2 control graphics that are movable in 6 degrees of
3 freedom?

4 A. Yes, it can.

5 Q. Tell us about that. Why do you say that the
6 controller is capable of controlling graphics movable in
7 6 degrees of freedom?

8 A. Right. Well, we can, first of all, just count up
9 the number of different ways you can control things.
10 So, with the directional pad we can do one direction
11 that's right or left, another that's up and down. We've
12 got the same thing, two directions on each of the
13 thumbsticks. So, if we just add those up, that alone
14 gives us six different degrees of freedom or six
15 different ways of controlling things.

16 Q. And is this helpful in controlling 3-D graphics?

17 A. Certainly.

18 Q. How is that?

19 A. Well, it's useful in controlling a single object
20 that moves in 6 degrees of freedom. So, for instance, a
21 spaceship in outer space can move in a line in three
22 different ways. It can also rotate in three different
23 ways. But it can also be mapped to a lot of other
24 systems; so, it can be used to control multiple objects
25 that have fewer degrees of freedom of control.

1 Q. Well, let's talk about some specific games. Have
2 you played any car racing games?

3 A. Yes, I have.

4 Q. How do you control a car on the screen in some of
5 the car racing games you've played?

6 A. Okay. Well, obviously there's steering. There's
7 right and left. And then there's, you know, usually a
8 brake and an accelerator. So, you can go forward or
9 less forward, I guess.

10 Q. Well, I'm not sure I counted right; but are the
11 things you just described to play the racing game 6
12 degrees of freedom?

13 A. Well, no. That really is just two different
14 directions, the right/left direction for rotation and
15 then the forward direction. But you can imagine having
16 other things you'd like to control. So, for instance,
17 you might like to have the -- a separate control for the
18 brake and for the accelerator -- and for the
19 accelerator. Those are separate controls in a real car.
20 Even though they really control the same thing, the same
21 direction, having separate functions for those would be
22 nice.

23 There are other things like the viewpoint.
24 You might want to be able to get a bird's-eye view so
25 you can see what's ahead as you're driving along and

1 other things. It might be fun if you go off the road in
2 a driving game, you run into some mud and you have to
3 turn on the windshield wipers so you can see again out
4 the windshield in a game.

5 So, there are a lot of functions; and
6 designers can use them in creative ways to make
7 interesting and fun video games.

8 Q. Okay. We're still on claim 16, right?

9 A. That's right.

10 Q. Why don't you take us, then, to the new things that
11 are in claim 16 that you have not talked about yet?

12 A. Okay. Now if I could have my next slide here.

13 So, there are a bunch of different things
14 highlighted there; and they all talk about sheets. So,
15 for instance, down towards the bottom there, it talks
16 about (reading) sensors at least in part connected to a
17 second sheet, said first sheet located on a first plane
18 and said second sheet located on a second plane. And,
19 so, the yellow stuff above that also talks about these
20 ideas of sheets.

21 Now, the sheets in this case are circuit
22 boards. So, it's a very general term. And in the case
23 of the GameCube controller, you can see that these --
24 the circuit board here onto which the various sensors
25 and electronics components are mounted is in the form of

1 a sheet. And it goes on to talk about a first sheet and
2 a second sheet.

3 And if I can pull this out here, you can see
4 that one of the sheets -- and do I have a slide on this,
5 too? Yeah.

6 So, one of the sheets is shown in dark green
7 there. That's the main circuit board here. And it has
8 a thumbstick and the directional pad attached to it.

9 But then the second thumbstick, you see the
10 yellow one here, is actually attached to a different
11 little circuit board connected to the first one by
12 wires.

13 So, there are two sheets; and they are
14 located on different planes; that is, one is mounted
15 higher than the other.

16 THE COURT: All right. Excuse me, counsel.

17 Ladies and gentlemen, we're going to go ahead
18 and take a break. I'll ask you to be back at ten of.
19 Please remember my instructions. Don't discuss the case
20 among yourselves.

21 (The jury exits the courtroom, 2:34 p.m.)

22 THE COURT: We'll be in recess until ten of.

23 (Recess, 2:34 p.m. to 2:48 p.m.)

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

1 THE COURT: Go ahead, counsel.

2 MR. CAWLEY: Thank you, your Honor.

3 BY MR. CAWLEY:

4 Q. Professor Howe, where were we?

5 A. Well, let's see. I think we were talking about
6 claim 16 and we had gotten to the part where we
7 mentioned that there were two sheets inside the GameCube
8 controller and I think I showed you in the actual
9 disassembled controller, but let me point it out on the
10 slide here.

11 The dark green is that first large circuit
12 board and you can see it has one of the thumbsticks and
13 the directional pad on it and if you flip it over, it
14 actually has the trigger sensors on that, as well.

15 But then if we could remove those various
16 components, you'll see there is a second bright green
17 circuit board there that's on a different level.

18 So, this meets the condition given in the
19 claim that there are two sheets on two planes.

20 Q. Thank you. And I think, to reorient us here, you
21 were in the process of going through this claim 16 and
22 telling us just about the new additional things that you
23 hadn't discussed yet. So, please proceed with that.

24 A. Okay. So, let's see, the next piece here is shown
25 highlighted; and it talks about (reading) an independent

1 first button sensor, said first button sensor
2 depressible by a single finger of the user, said first
3 button sensor at least in part connected to said first
4 sheet, said first button sensor capable of transforming
5 depression into a proportional signal useful to control
6 the television-based game.

7 Q. That's a mouthful; so, walk us through that,
8 please, and show us if you found these things in the
9 GameCube controller.

10 A. Certainly. So, let's break it up into smaller bits
11 so we can get through it. The first one is: The button
12 sensor depressible by a single finger of the user.

13 Now, again, this turns out to be another way
14 of describing the triggers. So, we can take one of them
15 and call that the first one; and you can press it with a
16 single finger, as you can see.

17 The second part of this term is: At least in
18 part connected to said first sheet. So, here again,
19 I've got the disassembled controller. If I lift it up,
20 the sensors here are underneath and slide back and forth
21 like so. And those are the button sensors in this case.
22 So, this meets the part of the sensors connected to said
23 first sheet.

24 And then the last part is: Capable of
25 transforming depression into a proportional signal. So,

1 here these sliders are potentiometers; the ones we
2 looked at before were rotary potentiometers that go
3 around in a circle. These are linear potentiometers.
4 They just slide back and forth, but they have the same
5 basic idea that it's proportional. It's not just
6 on/off. You can get all those different in-between
7 values like the gas pedal in a car.

8 So, that's the last of the new parts of this
9 particular element; and they've all been met by the
10 GameCube controller.

11 Q. And what is the last of the new things in this
12 claim 16?

13 A. Okay. That's way down at the bottom. Yeah, that's
14 it.

15 It says: Said tactile feedback means
16 supported within said controller.

17 So, the tactile feedback means again -- it's
18 our favorite little motor here that wobbles around, and
19 it's certainly mounted within the controller. It's just
20 another way of describing it. So, that condition is
21 also met by the GameCube controller; and, so, including
22 the pieces that we had covered before for claim 19,
23 we've now covered every bit of claim 16 for this
24 controller.

25 Q. And what have you concluded about claim 16?

1 A. Because all the elements of claim 16 describe the
2 GameCube controller, the GameCube controller infringes
3 claim 16 as well.

4 Q. And what's the next claim that you've considered in
5 connection with the GameCube controller?

6 A. Okay. Let's go to claim 14.

7 Q. That's another long one; so, let's do what we did
8 before. Don't bother telling us again about the things
9 you've already told us that you found are in the
10 controller. Instead, let's concentrate on anything
11 that's new in this claim that you haven't yet talked
12 about.

13 A. Excellent. Okay. There are only a few things in
14 this one. So, if I could have the first highlight,
15 please.

16 And these words, talking about the four
17 unidirectional sensors, it says: Used to input a first
18 axis and a second axis of control for the game.

19 Now, the "four unidirectional sensors" part
20 once again describes the D-pad or the cross-switch here,
21 as we saw before. What's different here is the language
22 that describes it. It says: These sensors are used to
23 input a first axis and a second axis of control for the
24 game.

25 And that axis of control idea is really just

1 an input signal; that is, it tells us one way we can
2 move things in the game. And as we saw before, the
3 right/left direction is one axis; the up/down direction
4 is a second axis. So, once again, the GameCube
5 controller meets the description given by that claim.

6 Q. Okay. And what's the next new feature of this
7 claim?

8 A. Okay. Moving down to the next highlight, very
9 good.

10 Here it talks about (reading) the first
11 bi-directional proportional sensor, and it says that
12 it's used to input a third axis of control for the game.

13 Now, the bi-directional sensors, you'll
14 recall, are the thumbsticks. They go up and down, or
15 they go right and left, the same sensor there, that
16 rotary potentiometer, does both. And, again, it just
17 uses that same axis of control language. So, moving
18 this up and down provides a signal that can be used to
19 control something in the video game in a particular way.
20 So, this one is met by one of those four thumbstick
21 sensors -- two on one thumbstick, two on the other.

22 And then there are other terms there. It
23 talks about a first bi-directional proportional sensor.
24 The next bit is a second, a third, and a fourth. So,
25 those are met by these two thumbsticks just as we saw

1 before.

2 Q. Okay. What else is new?

3 A. Okay. Then all the way down at the bottom. Good.

4 (Reading) A sheet connecting to at least eight of the
5 sensors.

6 Well, the sheet is the circuit board. So,
7 this is saying that you want to have at least eight of
8 them connected to one circuit board. So, here is our
9 circuit board again. We have the D-pad. That's got the
10 right/left, up and down. That's four sensors. One of
11 the thumbsticks. It's got the two directions. So,
12 that's another two sensors. Those are bi-directional
13 sensors. And then we've got those trigger sensors on
14 the front here that are connected to the bottom of the
15 board. So, this sheet in this case has eight -- four,
16 two, and two.

17 Q. So, looking for all of the things that you told us
18 about before that you told us were in the GameCube and
19 that are also in this claim 14 and then looking at the
20 things that are new in claim 14 that you've just told us
21 about, what have you concluded about how the GameCube
22 matches up to claim 14?

23 A. Well, all of the elements are there. We've gone
24 through and checked off both the old ones and the new
25 ones now. And, so, claim 16 is infringed by the

1 GameCube controller.

2 Q. You said 16?

3 A. I'm sorry. Claim 14 is infringed by the GameCube
4 controller. Sorry.

5 Q. Okay. Now, is that all of the claims that you have
6 considered relevant to the GameCube controller?

7 A. Yes, that's right. We're through with GameCube.

8 Q. Have you also considered other controllers?

9 A. Yes, I have.

10 Q. Okay. Let me hand you --

11 MR. CAWLEY: If I may approach, your Honor.

12 THE COURT: You may.

13 BY MR. CAWLEY:

14 Q. -- what has been marked -- at least the picture of
15 it has been marked as Plaintiff's Exhibit 440.

16 Could you tell us what that is, Professor
17 Howe?

18 A. Yes. This is the GameCube Wavebird wireless
19 controller.

20 Q. Okay. Can you tell us how this controller compares
21 to the one that the jurors have in their hands, the
22 GameCube controller?

23 A. Sure. Well, as you can see, the input looks the
24 same. The big difference here, of course, is that this
25 one has a cable and this one doesn't. This has a

1 wireless connection so that you don't need to worry
2 about that cable while you're playing.

3 It's also got a bigger housing, and one
4 reason for that is it has to have batteries so it can
5 operate. This one can get the power over the cable from
6 the console. This one has to have batteries in it. So,
7 it's kind of a bigger, clunkier-looking housing.

8 Now, the actual input elements are the same.
9 You can see there are two thumbsticks. There is the
10 cross pad, a bunch of buttons on the front. If we look
11 at the trigger, the trigger configuration is the same.
12 There is an extra on/off switch here which is present,
13 an extra little dial here. But the basic input elements
14 that we've been talking about are just the same.

15 Now, there is one key difference. This
16 device, the Wavebird wireless controller, does not have
17 rumble. It does not have the motor in it that gives you
18 active tactile feedback.

19 Q. Okay. So, let me make sure that I understand where
20 we are, then. You told us that this new controller that
21 we're looking at has a wireless communicator in it as
22 opposed to the wire of the first one and the new one has
23 an extra on/off switch and a little bit different
24 housing. Do any of those things have anything to do
25 with infringement?

1 A. No. None of those are described by the claims
2 we've been talking about.

3 Q. Okay. So, you've also said, though, that there is
4 a difference between the GameCube controller that the
5 jurors have and this Wavebird controller because -- I
6 think you said that the Wavebird controller has no
7 rumble motor. Correct?

8 A. That's it, yes.

9 Q. Okay. So, for the claims of the patent that say,
10 for example -- where is that in claim 19?

11 A. Let's see. Again, I have to look at my copy.

12 Q. It's the third? Okay. For the claims such as
13 claim 19 that say (reading) the controller including a
14 tactile feedback means, which we've heard is rumble,
15 does that mean that claim 19 is infringed?

16 A. No. It is not infringed by this controller.

17 Q. Okay. So, we couldn't -- for this controller at
18 least, we couldn't check off this box, right?

19 A. Correct. So, it does not infringe.

20 Q. Okay. But are there any claims of the patent, the
21 '700 patent, that are still infringed by the Wavebird
22 even though it doesn't have rumble?

23 A. Yes, there is, in fact. And that is claim 14.

24 So, claim 14 never describes this tactile
25 feedback feature. It's not present there.

1 Q. Okay. Is everything else there?

2 A. Yes. All the rest of the sensors, the input
3 switches and all that we talked about for the GameCube
4 controller, are just the same. They're accurately
5 described by the claim language. So, for that case, for
6 claim 14, for the same reasons we talked about with the
7 GameCube, the Wavebird controller infringes claim 14.

8 Q. Thank you, sir. Is that the only claim of the
9 patent that is infringed by this Wavebird controller?

10 A. That's the only one we're discussing, yes.

11 Q. Shall we move on to a new controller, then?

12 A. Yes, let's do.

13 Q. Which one is this?

14 A. Well, why don't we talk about the Wii Remote with
15 the Wii Classic Controller.

16 Q. All right.

17 MR. CAWLEY: Your Honor, I'd like to approach
18 the witness to hand him Plaintiff's Exhibit 416 and 414.

19 THE COURT: You may.

20 MR. CAWLEY: And at the same time, we request
21 permission to publish replicas -- or not replicas,
22 publish duplicates of these exhibits to the jury.

23 THE COURT: Any objection?

24 MR. PRESTA: No, your Honor.

25 THE COURT: Okay. You may do so. Will you

1 collect back up the other ones?

2 MR. CAWLEY: Yes, your Honor. If I could ask
3 everyone to hand the old controllers up and we'll give
4 you the new ones.

5 BY MR. CAWLEY:

6 Q. All right. Professor Howe, show us what this is.

7 A. Sure. Well, this is the Wii Classic Controller
8 plugged into the Wii Remote controller.

9 Q. Okay. And I guess since part of this is being
10 written down and just so people who are reading it
11 instead of looking at what you have in your hands --
12 give us a little more of a visual description of which
13 one is which.

14 A. Oh, sure. Okay. So, the Wii Classic Controller
15 has a pair of these thumbsticks, once again. It has a
16 cross pad, some buttons on the face of it; and it also
17 has a pair of these triggers and some buttons on the
18 front, not unlike the GameCube controller you saw
19 earlier.

20 Then the other piece of this, the Wii Remote
21 controller, the long, thin one, has a cross pad on the
22 top and has some buttons on the face. It has a simple
23 trigger, an on/off switch for a trigger underneath it.
24 And the two are connected by a cable.

25 Q. Now, can the Wii Classic -- and hold that up again

1 if you would, please.

2 A. (Complying.)

3 Q. Can the Wii Classic be used to control games by
4 itself?

5 A. No, it cannot.

6 Q. And why is that?

7 A. It can't communicate with the console, with the
8 computer that runs the video games. It has to be
9 connected to the Wii Remote, and then the Wii Remote has
10 a wireless connection over to the console.

11 Q. So, is it true that you have to have the Wii Remote
12 connected to be able to use the Wii Classic Controller?

13 A. That's right. The two of them together really make
14 up one controller in terms of communicating with the
15 console.

16 Q. And how does one use the controller?

17 A. Well, there are a couple different ways you can do
18 it. For instance, you can hold the Remote in one hand
19 and use the cross pad and buttons there. You could hold
20 the Classic in the other and use the thumbstick here.

21 Another alternative, you might drop this in
22 your lap and then you could use two hands, one on each
23 thumbstick, and so on.

24 Q. Okay. Now, you've told us that you can't use the
25 Classic by itself. Can you use the Remote by itself

1 without the Classic?

2 A. Yes, you can.

3 Q. And is there, nevertheless, some useful
4 functionality in the Classic part?

5 A. Sure. For instance, if you're used to playing a
6 game, perhaps from the old GameCube that you want to
7 play on the Wii, you might want to have the same
8 interface functions that you did on that old controller,
9 thus the name the "Classic Controller."

10 Q. Okay. Does the Wii Classic Controller have a
11 rumble motor inside of it?

12 A. Well, this piece here does not have a rumble motor
13 in it; however, the Wii Remote does have a rumble motor
14 in it.

15 Q. And since you've told us that you can't use the
16 Classic piece without the Remote, does that mean that
17 every time you're using the Wii Classic, you have a
18 rumble feature?

19 A. Yes, you do. That's right.

20 Q. And have you actually used this setup of
21 controllers to see if it uses rumble?

22 A. Yes. For instance, you can use the Wii Remote to
23 go through the menu options in a game; and every time
24 you go from one menu option to the next, you feel a
25 little pulse of vibration and that helps let you know

1 how far down the menu you've gone and that sort of
2 thing, gives you useful feedback.

3 Q. And is the rumble in this controller capable of
4 being used in other ways in other games?

5 A. Sure. The capability is there. So, we know,
6 because we've observed that -- I've observed that, that
7 the programmer can activate that rumble feature at will;
8 that is, there is a built-in way in the system for doing
9 that. So, a game controller -- a game programmer,
10 rather, could put that feature in if they want the
11 capabilities built into the system.

12 Q. And is this rumble that you felt in the menu on the
13 Wii screen menu feature?

14 A. I'm sorry. Is it in the Wii...

15 Q. The Wii screen menu, the menu for the Wii screen.

16 A. Yes.

17 Q. Okay. Now, tell us about the other features of the
18 controller. Does this controller have many of the same
19 features as the other controllers that we've seen?

20 A. Yes, it does. And as I mentioned before, a lot of
21 the input elements are just the same as with the
22 GameCube.

23 Q. Have you taken these controllers apart to be sure
24 they work in the same way?

25 A. Yes, I have.

1 Q. And have you concluded that they do?

2 A. Yes. They do.

3 Q. And have you -- as a result of that study, have you
4 reached an opinion about whether the Wii Classic
5 Controller connected to the Wii Remote controller
6 infringes any of the asserted claims?

7 A. Yes, I have.

8 So, for instance, claim 19, we can go through
9 and once again identify each of the elements in the
10 claim just as we did with the GameCube controller and
11 show that they are equivalent; and I performed that
12 exercise. But to save time, we might simply note that
13 they are the same and check them off in this case.

14 Q. Okay. And what's the next claim that you've
15 studied and found the same features in this controller
16 as in the earlier controller you described to us?

17 A. Okay. Let's go to claim 22. And as before, this
18 is dependent on claim 19; so, we've checked off claim 19
19 terms. And now we need to have the button sensor
20 outputs data proportionate to depression of one of the
21 buttons. In the GameCube, that was the trigger; and
22 once again, here it's the trigger.

23 Q. Okay. So, what have you concluded about this
24 controller's infringement of claim 22?

25 A. So, the Wii Remote and Classic infringe claim 22.

1 Q. And what's the last claim you've considered for
2 this controller?

3 A. Claim 23. And once again, it's a dependent claim.
4 It says everything in claim 22 plus the bi-directional
5 proportional sensors are rotary potentiometers. And
6 sure enough, if you look underneath the thumbsticks
7 here, just as with the GameCube, they are rotary
8 potentiometers. So, once again, all the claim terms are
9 met; and this combination of the Classic and Remote
10 infringes claim 23.

11 Q. Okay.

12 MR. CAWLEY: May I approach, your Honor?

13 THE COURT: You may.

14 MR. CAWLEY: I'd like to provide the witness
15 with Plaintiff's Exhibit 418, the Wii Nunchuk connected
16 to the Wii Remote. I'll ask the court if we may publish
17 this controller to the jury.

18 THE COURT: Any objection?

19 MR. PRESTA: No, your Honor.

20 THE COURT: You may.

21 BY MR. CAWLEY:

22 Q. All right, Professor Howe. This is the last of the
23 controllers that you're going to tell us about; is that
24 right?

25 A. That's right.

1 Q. So, would you please explain to the jury what they
2 are holding in their hands as Plaintiff's Exhibit 418?

3 A. Sure. Once again, we have the Wii Remote. This
4 time, plugged into it, we find the Wii Nunchuk
5 controller. And the Nunchuk controller has one
6 thumbstick, and it has a couple of buttons on the front
7 where the trigger goes.

8 Q. Now, can the Wii Nunchuk controller -- and hold
9 that up again so we make sure we know what we're looking
10 at.

11 A. (Complying.)

12 Q. Can the Wii Nunchuk be used by itself?

13 A. No. It's just like the Classic. It doesn't have
14 any way of communicating with the console. You have to
15 plug it into the Wii Remote, and then the Wii Remote can
16 communicate wirelessly with the video game.

17 Q. So, do you have to have both things operating
18 together to be able to use the Nunchuk?

19 A. That's right.

20 Q. And together do they both infringe at least one
21 claim of the patent?

22 A. Yes, they do.

23 Q. What claim is that?

24 A. Could I have my slide, please?

25 Claim 19. I'll just say it.

1 Q. Okay. But before we get to that, because I want to
2 look at claim 19, not in the great detail like we did
3 before but at least thoroughly, tell us about the
4 features in this controller that you've already
5 described to us, that are similar to the ones in the
6 controllers you've already testified about.

7 A. Sure. Well, some things are certainly the same.
8 For instance, here we have the cross pad; and we have
9 one thumbstick. We also have buttons of various sorts,
10 a couple where the triggers are and a couple on the face
11 of this. There are a few on the face of this. What we
12 don't have is a second thumbstick.

13 Q. Okay. Does that mean, if this controller lacks a
14 second thumbstick, that it has less functionality than
15 the GameCube that has two thumbsticks?

16 A. No, it does not.

17 Q. Why not?

18 A. Well, no words in claim 19 talk about a joystick or
19 a thumbstick. They talk about the way sensors function,
20 the way hand inputs work. And, so, if there are
21 components of this controller which match that claim
22 language, then it's infringed even though there isn't a
23 thumbstick; that is, a thumbstick is one example of an
24 invention that matches claim 19 but it's not the only
25 example.

1 Q. What does this Wii Nunchuk use for a second input?

2 A. Okay. Well, in this case it's an accelerometer
3 built into the Wii Remote itself. And that's a motion
4 sensor. It's a way of turning motion of a hand into
5 electrical signals just as the thumbstick motion of the
6 thumb is turned into an electrical signal.

7 Q. Now, how long have accelerometers been around?

8 A. Oh, for decades certainly.

9 Q. How big is an accelerometer?

10 A. Well, nowadays they're pretty small. They make
11 them using the same technology that they use for making
12 computer chips; so, you can see on the screen here --

13 THE WITNESS: If I might get down once again,
14 your Honor.

15 THE COURT: You may.

16 THE WITNESS: Thank you.

17 A. So, here you see circled in red this little black
18 chip here. That's the accelerometer.

19 If I could have the next slide, please.

20 Here is a blowup of it. You can see it
21 soldered onto the circuit board there.

22 Now, I can give you an idea of how this works
23 with the animation, the next slide. So, here's the
24 housing once again; and we can imagine the accelerometer
25 mounted inside it.

1 Now, this is a little bit bigger than that
2 tiny black square you just saw; and that's just to help
3 explain it. This is the same idea of what happens
4 inside that little chip in a miniature way.

5 So, in the center you see something that's
6 labeled a "mass." And it's connected to the frame --
7 that is, to the rest of the circuit board and all --
8 through these springs. And parallel with these springs
9 are little distance sensors.

10 Now, what happens if I grab the housing to
11 the Wii Remote and I start moving it? So, in this case
12 you'll see I'm moving it up and down. And as it moves,
13 that mass kind of lags behind; that is, you move quickly
14 and the mass doesn't quite keep up. And when you get to
15 the next place where you stop, of course, it finally
16 does. And that lag is an example of a way to measure
17 acceleration.

18 So, in this case there is an element in the
19 middle. This little bit of motion up and down you see
20 here is causing it to move. It compresses the springs
21 in either the up or the down direction and then the
22 sensors measure that displacement. So, it's another way
23 of taking hand motion and turning it into an electrical
24 signal.

25 Now, here we've shown the up and down

1 direction. You can see the way this is drawn. The same
2 thing would apply if you moved it in a perpendicular
3 direction, as well.

4 Q. Do you use accelerometers in your work?

5 A. Yes. We have for, oh, 15, 20 years.

6 Q. Thank you. If you'd take the stand again.

7 What I'd like to do now is to put up a blank
8 version of the same claim 19 chart that we looked at
9 before. I'm going to label this one -- since we're
10 talking about the Wii Nunchuk here, I'll label this one
11 Wii -- I want to make sure how to spell it. I don't
12 want to misspell it -- Wii Nunchuk and Remote.

13 Now, you earlier testified that these
14 (indicating) two parts of claim 19 that I'm pointing to,
15 the ones that begin "a second element movable" and "a
16 third element movable" -- do you see those?

17 A. I do.

18 Q. That these two parts were in the GameCube
19 controller because of the two thumbsticks, right?

20 A. That's right.

21 Q. Are these two parts in the Wii controller?

22 A. Yes, they are.

23 Q. Tell us how.

24 A. Well, one of them is a thumbstick. You can see in
25 the Nunchuk side of things you've got a thumbstick.

1 These are things you put your thumb --

2 Q. You call that the "second element" one here?

3 A. You can call that the "second element," yes.

4 Q. Is that present in the device?

5 A. Yes, it is.

6 Q. Can we check it off?

7 A. Please.

8 Q. Okay. And, then, how about this one?

9 A. Well, that one describes the accelerometer in this
10 case. So, inside the Remote, as we saw, there is a
11 little accelerometer chip; and that's able to sense
12 motion on two perpendicular axes, as required in the
13 claim language there. It's able to actuate --
14 structured to activate two bi-directional proportional
15 sensors. Those are the spring sensors we saw in our
16 animation there and they provide outputs that we know
17 can control objects and navigate viewpoints in the video
18 game because we play video games -- I've played video
19 games where you are able to do that. So, all the
20 structure and the capability described there is present
21 through that accelerometer.

22 Q. So, have you concluded that this piece in claim 19
23 is there?

24 A. Yes, it is.

25 Q. Can we check it off?

1 A. Yes, please.

2 Q. All right. Now, just to make sure that we've been
3 thorough and that we all remember your conclusions at
4 the end of the trial, would you quickly go through the
5 things in claim 19 that are not yet checked off, tell us
6 if they're in the Wii Nunchuk with Remote and tell me if
7 I can check them off or not.

8 A. Okay. Let's go through that.

9 So, the first part is a hand-operated
10 controller; and, of course, these are -- according to
11 the definitions, the claim construction definitions that
12 we have from the court, these two constitute a
13 hand-operated controller. So, we can check the first
14 element off.

15 The next part we have here is (reading)
16 structure allowing hand inputs rotating a platform on
17 two mutually perpendicular axes to be translated into
18 electrical outputs by four unidirectional sensors to
19 allow controlling objects and navigating a viewpoint.
20 So, once again, taking into account the claim
21 construction definitions, this is met by the directional
22 pad on the Wii Remote just as it was met by the
23 directional pad on the GameCube controller. So, we can
24 check that one off.

25 Okay. The next piece is (reading) the

1 controller including a tactile feedback means for
2 providing vibration detectable by the user through the
3 hand operating the controller.

4 So, as I said before, there's a rumble motor
5 inside the Wii Remote; and that produces a vibration you
6 can easily see when the game programmer activates it.

7 So, we can check that one off.

8 Okay. So, we've already done the next two.

9 And then at the bottom, (reading) a plurality
10 of independent finger-depressible buttons. And we've
11 got lots of buttons here. There are buttons on the Wii
12 Remote; and there are buttons on the Nunchuk, as well.
13 So, we match that plurality, more than one condition.
14 And it says -- and we can check that one off.

15 And, finally, (reading) each button is
16 associated with a button sensor, said button sensor
17 outputs at least on/off data to allow controlling of the
18 objects.

19 So, each of these buttons, in fact, does put
20 out on/off data; and we've confirmed by playing games,
21 for instance, that those signals are useful for
22 controlling objects. So, once again, it gives a good
23 description of this controller. We can check that one
24 off, as well.

25 Q. Dr. Howe, they are all checked off. What have you

1 concluded about claim 19 and the Wii Nunchuk controller
2 with Remote?

3 A. Well, this means that the Wii Nunchuk and Remote
4 infringe claim 19.

5 Q. All right, Dr. Howe. Can you summarize for us the
6 conclusions that you have reached about infringement of
7 the '700 patent by the Nintendo controllers as a result
8 of the study that you've just explained to us?

9 A. Sure. So, to summarize, the GameCube controller
10 infringes claims 14, 16, 19, 22, and 23.

11 The Wavebird wireless infringes claim 14.

12 The Wii Classic and Wii Remote combination
13 fringes claims 19, 22, and 23.

14 And the Wii Nunchuk/remote combination
15 infringes claim 19.

16 Q. Okay. Professor Howe, we appreciate your coming
17 today.

18 MR. CAWLEY: And, your Honor, we pass the
19 witness.

20 THE COURT: All right. Counsel?

21 MR. PRESTA: Your Honor, if I could approach
22 and hand out some binders.

23 THE COURT: You may.

24 MR. GUNTHER: Your Honor, could I help?

25 THE COURT: You may.

1 Do you want to go ahead and collect up the --

2 MR. CAWLEY: Yes, your Honor.

3 CROSS-EXAMINATION OF ROBERT HOWE

4 BY MR. PRESTA:

5 Q. Good afternoon, Dr. Howe.

6 A. Good afternoon.

7 Q. My name is Joe Presta. I represent Nintendo in
8 this matter. I believe -- you'll recall that we met
9 when I came up to Harvard and took your deposition
10 several months back.

11 A. Yes, of course.

12 Q. How are you today?

13 A. Just fine. How are you?

14 Q. Good. Thank you. Nice to get a chance to talk
15 with you again.

16 First of all, I'd like to just go over a
17 little bit of your history and your work experience.

18 A. Sure.

19 Q. And I'm looking over your resumé. I don't want to
20 take much time with it, but it looks like you have been
21 working at universities teaching or doing research for
22 most of your career, right?

23 A. Yes, that's right.

24 Q. Okay. Did you actually have a job as an engineer
25 or working outside of the university environment?

1 A. Well, I do regular consulting work for companies,
2 yes.

3 Q. Okay. Did you ever work full-time outside the --

4 A. Yes. I worked --

5 Q. -- university environment?

6 A. Sorry. Yes. I worked in Silicon Valley as an
7 engineer.

8 Q. And when was that?

9 A. Let's see. That was back before I went to graduate
10 school; so -- boy, it's painful to count those years.
11 Twenty years ago, probably more.

12 Q. Is that when you were at Kratos Display Systems?

13 A. Yes, that's correct.

14 Q. And that was back from 1979 to '81, right?

15 A. Sounds right, yeah.

16 Q. Okay. But since then you have been primarily in --
17 working in the university environment, right?

18 A. That's right.

19 Q. Okay. And have you ever built any video game
20 controllers?

21 A. Well, I have to be a little careful here. Let's
22 see. So, let me mention two instances.

23 First, back not long after I started graduate
24 school, I did as part of a project put together a very
25 simple version of a controller which interacted with a

1 very simple video game. So --

2 Q. When was that?

3 A. That was back when I started at Stanford as a
4 graduate student.

5 Q. Okay. It's not part of your regular job to work on
6 or build video game controllers, is it?

7 A. Well, again, some of our research concerns human
8 machine interfaces and, for instance, vibrotactile
9 feedback, the active tactile feedback sort of thing
10 we've been talking about here is an area in which we do
11 some research. So, some of that technology is, in fact,
12 used in video game controllers; and I've been employed
13 as a consultant by a company that's very actively
14 involved in developing --

15 Q. Okay.

16 A. -- video game controllers.

17 Q. Now, you have been hired as an expert by Anascape,
18 right?

19 A. That's correct.

20 Q. Okay. And they're actually paying for your time in
21 connection with this case, right?

22 A. Yes, they are.

23 Q. Okay. But you consider yourself to be an
24 independent expert, right?

25 A. I believe that's the term, yes.

1 Q. Okay. And, in fact, you are the first expert that
2 has testified in this case; and I just want to
3 understand from you to make sure the jury understands
4 that -- is it your understanding that your job is to
5 provide independent testimony, that --

6 A. Yes.

7 Q. -- it's not supposed to be biased to one side or
8 the other?

9 A. That's my understanding, yes.

10 Q. And is it also your understanding that it's
11 important for your opinions -- because you, unlike many
12 witnesses in a trial, are allowed to give opinions
13 regarding, for example, infringement and technical
14 issues because you're an expert. Do you understand
15 that?

16 A. Yes, uh-huh.

17 Q. And do you understand that because you're allowed
18 to give opinions, it's important that you have done the
19 underlying research and studying to make sure that your
20 opinions are accurate? Do you also understand that?

21 A. Yes, sir.

22 Q. In fact, if you didn't conduct a thorough
23 investigation or a proper investigation before giving
24 your opinions, you would agree with me that would be
25 problematic in connection with testifying in a lawsuit?

1 A. Certainly.

2 Q. Okay. Because the jury, in fact, may rely on your
3 opinions in making a decision in this case. You
4 understand that, right?

5 A. Sure.

6 Q. Okay. Before this case, had you ever heard of Brad
7 Armstrong?

8 A. Let's see. I believe I've run across at least one
9 of his patents in some years gone by.

10 Q. Okay. Now, was that in connection with the
11 Immersion case that you were involved with?

12 A. I believe so, yes.

13 Q. Okay. Now, other than your prior involvement with
14 the litigation, had you ever heard of Brad Armstrong?

15 A. I don't believe so, no.

16 Q. Okay. Had you ever heard of his company, Anascape?

17 A. No.

18 Q. Had you ever seen any of Mr. Armstrong's patents
19 other than in that litigation that you were involved
20 with?

21 A. Except for that previous litigation, no.

22 Q. Okay. That litigation, just to be clear, didn't
23 involve any of Mr. Armstrong's patents, right?

24 A. Well, Mr. Armstrong's patents may constitute prior
25 art; and, thus, they would be pertinent to that previous

1 litigation.

2 Q. Okay. But the litigation didn't involve
3 infringement or invalidity allegations regarding any of
4 his patents.

5 A. No.

6 Q. Now, you heard -- you were here -- in fact, I saw
7 you here when Mr. Armstrong was testifying, right?

8 A. I heard most of his testimony, not all.

9 Q. Okay. You understand, of course, that there is no
10 claims in this case that Mr. Armstrong is alleging would
11 go back beyond the 1996 application that he filed? Do
12 you understand that?

13 A. That is my understanding, yes.

14 Q. Okay. You understand, of course, that
15 Mr. Armstrong does not have a patent on rumble.

16 A. That is my understanding.

17 Q. Okay. In fact, would you agree with me that
18 Mr. Armstrong didn't invent rumble?

19 A. Well, I have to be careful here. I'm not sure --
20 well, let's see. When you use the word "rumble," that's
21 usually in the context of video games. I'm not sure who
22 first used this kind of vibrotactile feedback in video
23 games; so, I'm afraid I can't help you there.

24 Q. Did you hear Mr. Armstrong's testimony when he
25 explained that he had learned that through some foreign

1 reference?

2 A. I don't believe I heard Mr. Armstrong say that.

3 Q. Did you hear Mr. Armstrong testify regarding a
4 rumble feature that he learned of through a foreign
5 reference?

6 A. I may not have been present during that.

7 Q. Okay. Do you know what the term "proportional
8 buttons" means when I use that term?

9 A. I believe, at least in the context of these
10 patents, yes.

11 Q. Okay. Did you read the opening statement in this
12 case by the plaintiff's attorney?

13 A. No, I did not.

14 Q. And you weren't here for that?

15 A. I was not.

16 Q. Okay. Do you think that Mr. Armstrong invented
17 proportional buttons?

18 A. By themselves or in the context of his patent?

19 Q. Proportional buttons by themselves.

20 A. No, not by themselves.

21 Q. Okay. Did he invent proportional buttons in the
22 context of his patent?

23 A. Well, they're part of the inventions described in
24 this patent, if that's what you're asking.

25 Q. Does he have patent protection on proportional

1 buttons themselves?

2 A. In isolation, no.

3 Q. Because he didn't invent that, right?

4 A. In isolation, no.

5 Q. Okay. Mr. Armstrong also didn't invent -- did you
6 hear his testimony where he said he didn't invent
7 sheet-connected sensors?

8 A. I don't recall hearing that. I'm sorry.

9 Q. Okay. Do you believe that Mr. Armstrong invented
10 sheet-connected sensors?

11 A. Again, no, not in isolation.

12 Q. Okay. Now, you've given us a --

13 THE COURT: Excuse me. Would you pull the
14 microphone in front of you a little bit just to be sure
15 we -- thank you.

16 MR. PRESTA: Now, if I could pull up the
17 first slide, Slide 3, please.

18 BY MR. PRESTA:

19 Q. Now, Professor Howe, based on your testimony -- or
20 we understood what your testimony was going to be. So,
21 we took the liberty of putting together a chart that I
22 believe summarizes your testimony. And if you could
23 look at that chart, please, and just confirm to me that
24 that corresponds with the opinions that you just gave
25 that, in fact -- with respect to the infringement of the

1 four different products that are alleged here.

2 A. I believe that's correct.

3 Q. Okay. Now, I notice that the GameCube product,
4 which is on the far right, here (indicating), is
5 identified as infringing all of the claims -- 14, 16,
6 19, 22, and 23 -- right?

7 A. Yes, that's right.

8 Q. Now, you understand, of course, that -- and you
9 heard the testimony that Mr. Armstrong had that GameCube
10 product in front of him when he wrote those claims,
11 right?

12 A. I believe I caught that in the testimony, yes.

13 Q. In fact, Mr. Armstrong admitted that he was using
14 that product as a guide to draft those claims, right?

15 A. Again, I don't recall hearing that specific piece
16 of the testimony.

17 Q. Well, you do understand that Mr. Armstrong had the
18 Nintendo GameCube product in his possession when he was
19 drafting the claims, right?

20 A. Yes.

21 Q. Okay. So, it's not a surprise, then, that, in
22 fact, you're testifying that all of these claims are met
23 by the GameCube controller, because they were drafted
24 for the -- specifically to read on the GameCube
25 controller, right?

1 A. Again, I haven't heard Mr. Armstrong testify in
2 that regard; so, I'm sorry, I can't help you with that.

3 Q. Okay.

4 MR. PRESTA: I'm going to go to the next
5 slide.

6 BY MR. PRESTA:

7 Q. Now, this is a timeline that has been shown several
8 times by Nintendo in this case. And, in fact, the
9 claims that are written in this case that are being
10 alleged were drafted July 15th of 2002. Were you aware
11 of that?

12 A. Yes.

13 Q. Okay. And are you aware that Nintendo's GameCube
14 product came out in November of 2001?

15 A. I'm happy to take your word for that.

16 Q. Okay. Now, in view of the fact that Mr. Armstrong
17 had Nintendo's products in his hands when he was writing
18 this aspect of his patent, we didn't really need a
19 Harvard professor to come in and read the claims onto
20 those products and attempt to show that there is
21 infringement. Would you agree with me?

22 MR. CAWLEY: Your Honor, I object to that.
23 That's an argumentative question.

24 THE COURT: Sustained.

25 *

1 BY MR. PRESTA:

2 Q. Okay. Well, again, the GameCube was the product
3 that Mr. Armstrong had in his possession at the time he
4 wrote those claims; and it's -- the GameCube is the only
5 product that infringes all of the claims. You'll agree
6 with me on that, right?

7 A. Yes.

8 Q. Okay. Now, I'd like to help -- understand a little
9 bit better what you believe Mr. Armstrong invented.
10 And, in fact, I'd like to ask you if you recognize that
11 controller.

12 A. Yes, I do.

13 Q. What is it?

14 A. That's the Nintendo 64 controller.

15 Q. Okay. You understand that that's not an accused
16 product in this case, right?

17 A. Yes, I do.

18 Q. Okay. Do you have an opinion on whether that
19 controller would infringe claim 19?

20 A. Well, I haven't done a detailed analysis; so, I
21 can't say for certain.

22 Q. Okay. Well, you just testified --

23 THE COURT: Hold on a minute, counsel.

24 Since this lawyer is a little further over, I
25 think if you'll -- yes. If you'll slide that microphone

1 over.

2 THE WITNESS: Great.

3 THE COURT: The acoustics in here are not
4 real good over where I'm sitting, and sometimes they're
5 not real good over there. So, it's important that you
6 speak up.

7 THE WITNESS: I understand. I will do.

8 Thank you, sir.

9 MR. PRESTA: Thank you, your Honor.

10 BY MR. PRESTA:

11 Q. Now, Professor Howe, do you recall at your
12 deposition where I showed you the N64 and you did a
13 detailed review of it?

14 A. Vaguely, yes.

15 Q. Okay. And you have been testifying that, for
16 example, claim 19 -- an important aspect of claim 19
17 that you mentioned was that it has two joysticks and a
18 cross-switch, right?

19 A. That's right.

20 Q. Now, this particular controller does not have two
21 joysticks and a cross-switch, does it?

22 A. No. It apparently does not.

23 Q. Okay. So, in view -- then based on that, would you
24 agree with me that the N64 does not infringe claim 19?

25 A. It does not appear to.

1 Q. Okay. Now, Dr. Howe -- I'm going to demonstrate
2 with this camera slightly how the controls work on this
3 N64. Okay. You'll agree with me that there is a
4 joystick here that can be moved in two directions,
5 right?

6 A. Yes.

7 Q. You'll also agree with me that this cross-switch
8 can be moved in two directions that has four
9 unidirectional sensors under it. You explained that,
10 right?

11 A. That's right.

12 Q. Okay. Now, the one difference that this has is
13 four yellow buttons. Do you see those?

14 A. I do.

15 Q. Okay. Do you know what those buttons are called,
16 by any chance?

17 A. Well, the letter "C" appears next to them. That
18 might be a good guess maybe.

19 Q. Okay. Now, would you agree with me that these
20 buttons could be used to control a game?

21 A. Yes, I imagine they could.

22 Q. Okay. In fact, you could use the right button to
23 make something go right, the left button to make
24 something go left, right?

25 A. That's right.

1 Q. Same with up and down, correct?

2 A. Yes.

3 Q. Okay. So, this controller actually, in your view,
4 would provide 6 degrees of freedom of control, right?

5 A. Yes.

6 Q. Okay. Now, again, tell me the reason that this
7 controller does not infringe claim 19.

8 A. Well, again, we would have to go through and check
9 that each of the terms that are present in claim 19 are
10 present in the controller. The two-thumbstick
11 requirement, for instance, talks about pairs of
12 bi-directional proportional sensors. Those aren't
13 present here; so, it would seem it doesn't infringe.

14 Q. Okay. So, the important point of why it doesn't
15 infringe is because it doesn't have two joysticks,
16 right?

17 A. Well, again, we'd have to check it off and look at
18 each term separately.

19 Q. And you have done that now, right, for claim 19?

20 A. Well, we went through some of the terms. Would you
21 like to go through all of the terms?

22 Q. Okay. Do you need to look at claim 19 to see if,
23 in fact, the second joystick would be needed for
24 infringement?

25 A. No, no. That, I'm sure of.

1 Q. Okay. So, it avoids infringement because it
2 doesn't have the second joystick. You'll agree with me,
3 right?

4 A. That's -- yes. That's one reason.

5 Q. Okay. Now, do you know of any others?

6 A. Let's see. I don't off the top of my head.

7 Q. Okay. Well, it's not a memory test; so, we'll move
8 on.

9 Now, let me ask you -- when we go to the
10 GameCube product, however, you see that there is
11 actually two joysticks. And it's your opinion that that
12 GameCube controller infringes, right?

13 A. That's right.

14 Q. Okay. So, obviously the requirement of two
15 joysticks is important, in your view, for this product
16 to infringe, right?

17 A. Well, not two joysticks. The two joysticks do
18 infringe; but as we discussed with the Wii Remote, for
19 instance, there are other ways of meeting the claim
20 terms.

21 Q. Okay. Now I'm going to -- I want to show you a
22 hypothetical controller. Okay? It's not a real
23 controller. It's not a Nintendo controller. But I've
24 modified it; and we've replaced a cross-switch, which
25 was previously here, with a third joystick. Now, you'll

1 agree with me, of course, that that modified
2 hypothetical controller does not infringe claim 19, does
3 it?

4 A. Well, we need to talk about the sensors that are
5 present underneath that new joystick.

6 Q. Okay. Let's assume that they are two
7 bi-directional proportional sensors just like the other
8 joysticks that you had looked at.

9 A. Okay.

10 Q. Then, you will agree with me that that controller
11 wouldn't infringe claim 19, right?

12 A. Doesn't appear to.

13 Q. Okay. So, if we look -- if I understand your
14 testimony, the N64 controller does not infringe because
15 it only has one joystick. It doesn't have a second
16 one -- element to meet the other part of the claim. You
17 agree with me on that, right?

18 A. Yes.

19 Q. Okay. But your testimony is that the GameCube
20 controller -- because it has two joysticks and the other
21 features in the claim, it's your testimony that that is
22 alleged to infringe -- in fact, it is your opinion that
23 it does infringe, right?

24 A. Yes.

25 Q. Okay. Now, if Nintendo, of course, modified the

1 controller to put another joystick on there, then you'll
2 agree with me, based on your testimony a minute ago,
3 that that wouldn't infringe, right, claim 19?

4 A. Yes.

5 Q. Okay. So, what we're really -- in your view, then,
6 really, for purposes of claim 19 -- and, in fact, other
7 claims, as well -- that it's important to have this
8 combination of the two joysticks and a cross-switch,
9 correct?

10 A. Well, again, there are various ways you can embody
11 the language in the claims that talk about sensors and
12 function and all --

13 Q. Well, that's not really my question. You
14 understand, of course, that the reason that the two
15 joysticks and the cross-switch are important was because
16 Mr. Armstrong, in fact, had this product in front of him
17 when he drafted the claims, correct?

18 A. I'm sorry. Again you're asking about
19 Mr. Armstrong's testimony that I didn't hear.

20 Q. Well, Mr. Armstrong didn't have the pink one -- I'm
21 sorry -- didn't have this in front of him when he
22 drafted the claims, did he?

23 A. Not that I know of.

24 Q. Okay. And that one doesn't infringe.

25 Now, if we could take a look at claim 19.

1 Okay. Now what I have up on the screen is claim 19. Do
2 you see the paragraph that says "second element"?

3 A. I do.

4 Q. And the paragraph that says "third element"?

5 A. Yes.

6 Q. You'll agree with me that the language of those two
7 paragraphs is identical except for the words "second"
8 and "third," right?

9 A. That's right.

10 Q. Had you noticed that before, or are you just aware
11 of that now?

12 A. I believe I testified to that effect a few minutes
13 ago.

14 Q. Okay. Now, you also testified that as far as the
15 GameCube goes, it's this platform that corresponded to
16 the cross-switch, right?

17 A. That's right.

18 Q. And then it was one of the joysticks that
19 corresponded to the second element, right?

20 A. That's right.

21 Q. And it was another one of the joysticks that
22 corresponded to the third element.

23 A. That's right.

24 Q. You agree with me on that.

25 A. Yes.

1 Q. Now, you understand how those joysticks work, don't
2 you?

3 A. Yes, I do.

4 Q. In fact, you demonstrated how they worked.

5 A. Yes.

6 Q. I just would like to quickly show you something
7 with the camera.

8 Now, Defendant's Exhibit 158 is the inside of
9 the GameCube controller. You're familiar with the
10 inside of the GameCube controller, right?

11 A. Yes, I am.

12 Q. Okay.

13 And, in fact, you recognize this as the
14 inside of the GameCube controller?

15 A. Looks like.

16 Q. Okay. Now, it has the two separate joysticks
17 mounted on two circuit boards, right?

18 A. That's right.

19 Q. Okay. Now, the thing that you're calling the third
20 element in the claim is this little yellow joystick,
21 right?

22 A. We can call it that. They're interchangeable for
23 purposes of the claims; but, sure, we could --

24 Q. Okay.

25 A. -- call it that.

1 Q. Well, when you ran through the claim, it looked
2 like you were pointing to this one.

3 A. Okay.

4 Q. Okay. Now, this joystick, in fact, can be moved to
5 the right and to the left, like that (demonstrating),
6 right?

7 A. Yes.

8 Q. And, in fact, it can be moved back and forth
9 (demonstrating), right?

10 A. Yes.

11 Q. And under it, right there, those two black items,
12 what are they?

13 A. They're rotary potentiometers.

14 Q. And how many are there?

15 A. There are two.

16 Q. Okay. One for each direction?

17 A. That's right.

18 Q. Okay. And this yellow piece that I'm touching with
19 my finger, that's what you consider to be the third
20 element when you're reading that claim on the GameCube,
21 right?

22 A. That's right.

23 Q. And not the piece I'm touching with my lower finger
24 but the piece I'm touching now with my top finger; is
25 that right?

1 A. That's right.

2 Q. Okay. And this is actually a piece of structure, a
3 joystick, that I can touch; and when I move it, it
4 activates those sensors, right?

5 A. That's right.

6 Q. And that's how joysticks work.

7 A. Sure.

8 Q. Okay. And, of course, Mr. Armstrong didn't invent
9 the joystick. You'll agree with me on that.

10 A. No.

11 Q. And he didn't invent the rotary potentiometer.

12 A. No.

13 Q. Okay. I want to take a closer look at the claim
14 language in claim 19 relative to the joystick. Now
15 we're looking at just that third element paragraph in
16 claim 19. See that?

17 A. Okay.

18 Q. And you'll agree with me that your contention is
19 that this element right here, which is blown up, is, in
20 fact, that third joystick, right?

21 A. Yes.

22 Q. Okay. And these two black things right here are
23 the rotary potentiometers; and that corresponds to the
24 item I was just demonstrating with the camera, right?

25 A. Yes.

1 Q. Now, in fact, it's your testimony that that third
2 element is the yellow piece on the top, right?

3 A. That's right.

4 Q. And that third element -- I just demonstrated it --
5 is movable on two mutually perpendicular axes, right?

6 A. Yes.

7 Q. Because the claim actually requires that you have a
8 third element that's movable on two mutually
9 perpendicular axes. You understand that, right?

10 A. I do.

11 Q. Okay. Now, the third element has to do more than
12 that, doesn't it, to meet the claim limitation?

13 A. Yes. It continues up there.

14 Q. Okay. What else does it have to do?

15 A. Okay. So, I can read it if you like, said: Third
16 element structured to activate two bi-directional
17 proportional sensors providing outputs at least in part
18 controlling objects and navigating a viewpoint.

19 Q. Thank you, Professor Howe.

20 Now, the third element -- as you mentioned,
21 the third element must be structured to activate -- the
22 claim language requires that, right?

23 A. That's right.

24 Q. And it must be structured to activate two
25 bi-directional proportional sensors. So, in order to

1 satisfy this claim element, it must have those features,
2 right?

3 A. That's right.

4 Q. Okay. And, in fact, this joystick does have these
5 two bi-directional proportional sensors that we talked
6 about, right?

7 A. Yes.

8 Q. And, in fact, you needed to find those things to
9 show infringement, right?

10 A. Yes.

11 Q. Okay. And this third paragraph is exactly the same
12 as the -- this third element paragraph, as we already
13 said, is exactly the same as the second element
14 paragraph; and the language is exactly the same except
15 for the word "second," right?

16 A. That's right.

17 Q. So, the other joystick would have these same exact
18 features. It would have a second element that's
19 movable, that when you move it, it activates these two
20 bi-directional proportional sensors, right?

21 A. Yes.

22 Q. Okay. Now, back to this timeline. I've added
23 another feature on the timeline. When Mr. Armstrong
24 wrote his July, 2002, claims that now are being alleged
25 that you say are infringed here today in court, the

1 GameCube product was already out; and he had that in his
2 possession. Now, of course, the Wii, which is also
3 accused, didn't come out until after he wrote those
4 claims. Do you understand that?

5 A. Yes.

6 Q. Okay. In fact, do you have any reason to believe
7 that the Wii didn't come out until November of 2006?

8 A. I don't know the date of introduction. Sounds
9 about right.

10 Q. Okay. But you know for sure it wasn't before
11 July 15th of 2002, right?

12 A. As a product, no.

13 Q. Okay. As anything, was it before July of 2002?

14 A. Again, I'm not familiar with the development effort
15 inside Nintendo on that, you know, when it might have
16 started.

17 Q. Okay. But you'll agree it wasn't actually a
18 product until about four years after Mr. Armstrong wrote
19 the claims that Nintendo's accused of infringing, right?

20 A. That's right.

21 Q. Now, taking a look at the Wii Remote itself --
22 you're familiar with that, right?

23 A. I am.

24 Q. Did you have a chance to play any of the Nintendo
25 games using the Wii Remote?

1 A. Yes.

2 Q. Did you play it with the Wii Remote by itself?

3 A. No. I believe I used the Classic and the Nunchuks.

4 Q. Okay. So, you never had an opportunity just to use
5 the Wii Remote by itself to play any game?

6 A. I don't recall. I might have tried that. But I'm
7 sure the others; I'm not sure of this one.

8 Q. Okay. But you did have an opportunity to use the
9 Wii Remote and the Nunchuk together to play some
10 Nintendo games?

11 A. I did.

12 Q. Do you recall what games they were?

13 A. Oh, I played quite a few. And, again, I'm not a
14 real gamer myself. I had some help with that. Let's
15 see if I can recall a few. I played golf with Tiger
16 Woods, as I recall. Let me think. I believe I played
17 some of the Super Mario games. Super Mario Galaxy is
18 one.

19 Q. Okay. And you said you had some help playing
20 games. Who was helping you?

21 A. Members of the Anascape team.

22 Q. The lawyers?

23 A. Yes; and I believe some of the technical people
24 with them, as well.

25 Q. Okay. What technical people?

1 A. You know, I'm bad with names.

2 Q. Okay. That's fine.

3 A. Sorry.

4 Q. Okay. So, you'll agree with me, of course, that
5 the Wii Remote is not accused of infringement in this
6 case?

7 A. By itself, no.

8 Q. Right. And, in fact, you're aware that -- there
9 are many games that you can actually just use the Wii
10 Remote to play the Wii, right?

11 A. Yes.

12 Q. Okay. But your contention, then, is that when you
13 add the Nunchuk and you plug it into the Wii Remote,
14 then you allege that claim 19 is infringed.

15 A. Yes.

16 Q. And that's the allegation in this case, right?
17 With respect to the Wii and the Wii Nunchuk, there's
18 only one claim, claim 19 -- right?

19 A. That's right.

20 Q. That's the only claim in the '700 patent that is
21 alleged to be infringed, right?

22 A. That's right.

23 Q. Now, in fact, if we go back to your chart, we can
24 see that the GameCube, of course, is accused to infringe
25 all their claims; the Wavebird, only one. But what we

1 were just talking about was the Wii Remote and the Wii
2 Nunchuk, and it's only claim 19. Right?

3 A. That's right.

4 Q. Now, if we take a look at this same third element
5 paragraph that we were just talking about with respect
6 to the joysticks -- that's that same -- out of claim 19,
7 we were just looking at this language relative to the
8 joysticks, right?

9 A. Yes.

10 Q. On a GameCube product.

11 Now I'm going to ask you to take a look at
12 this language relative to the Wii Remote. I'm going to
13 take the cover off of the Wii Remote. You're familiar
14 with, in fact, what the inside of it looks like?

15 A. Yes.

16 Q. And you've taken it apart, right?

17 A. Yes.

18 Q. Okay. Just so it may help the jury, I'm going to
19 show that.

20 Now, I know you couldn't see it when I had it
21 over here; but now that it's on the screen, do you
22 recognize what that is?

23 A. Yes. That's the Wii Remote circuit board.

24 Q. Okay. Now, if I come really -- now, there's a lot
25 of chips on there, right?

1 A. Yep.

2 Q. Are there a variety of chips?

3 A. There are some, yes.

4 Q. Okay. And, in fact, on the backside there is
5 actually a large chip. Do you know what that chip is?

6 A. I do not.

7 Q. Okay. Will you be surprised to learn that it's a
8 microcontroller that handles motion detecting?

9 A. Let's see. I know there's a microcontroller built
10 into the Wii Remote. My understanding is that it does
11 not include sensors for motion detecting, if that's what
12 you were asking.

13 Q. Okay. Well, do you know what it does?

14 A. Well, the microcontroller receives signals from the
15 various sensors on the Remote and communicates to the --
16 handles part of the communication to the console.

17 Q. Okay. Now, do you know what the element is that's
18 on the end of the Wii Remote that I'm showing now?

19 A. I don't, and it's awful hard to see.

20 Q. I'm sorry.

21 Are you aware whether or not there is a
22 camera on the Wii Remote?

23 A. I'm not.

24 Q. You're not familiar with the fact that there is a
25 camera feature on the Wii Remote?

1 A. I'm familiar with the fact there are optical
2 detectors. I don't know if it's configured as a camera.

3 Q. Okay. So, it is your understanding that there is
4 an optical detector on the Wii Remote?

5 A. Yes.

6 Q. What does it do?

7 A. Let's see. One of the things I believe it does is
8 it allows you to look at the video screen and interact
9 with it during games.

10 Q. And do you have any idea how it does that?

11 A. Since it's not related to the patent, I don't.

12 Q. Okay. Are you aware of a piece of equipment that
13 comes with the Wii Remote called a "light bar"?

14 A. Oh, I remember seeing that; but, again, since it's
15 not concerned with the patent, I didn't go into the
16 details.

17 MR. PRESTA: May I approach, your Honor?

18 THE COURT: You may.

19 BY MR. PRESTA:

20 Q. I'm going to hand you Defendant's Exhibit 162 -- is
21 that one marked 162?

22 A. No.

23 Q. You have that already; so, I'll keep this one,
24 then. Thank you.

25 So, you have a copy of Defendant's

1 Exhibit 162; and so do I. And I wanted to ask you to
2 take a look at the end part of it right here
3 (indicating).

4 A. No.

5 Q. Could you take a look at it?

6 A. Oh, sure.

7 Q. Do you have any idea what that is for?

8 A. Presumably it's a window that the optical detector
9 looks through.

10 Q. Okay. And, in fact, it is a window for the optical
11 detector. Do you have any understanding how that might
12 operate with the light bar to -- that comes with the
13 Wii?

14 A. Well, I could speculate if you like.

15 Q. But you don't know?

16 A. No.

17 Q. Okay. Do you know that, in fact, the light bar --
18 when you buy a Wii, you set a light bar on top of the
19 television? Are you aware of that?

20 A. I've seen it, yes.

21 Q. And that when you move the Wii around, it detects
22 where that light bar is and that's part of the motion
23 sensing of the Wii? Are you familiar with that?

24 A. I believe I've heard that, yes.

25 Q. Okay. You've only heard that, or do you know that

1 that's true?

2 A. I did not look into that.

3 Q. Okay. Now, that motion sensing -- that motion
4 microcomputer that I showed you on the back of the
5 board, do you have an understanding that, in fact, that
6 takes signals from the camera as well as from the
7 accelerometer to figure out whether, in fact, the Wii is
8 being moved?

9 A. Again, I have a general understanding of that. I
10 don't know the details.

11 Q. Okay. Now, that information is -- you know, is
12 readily available. Did you look for it?

13 A. Again, I knew enough about it to realize it wasn't
14 pertinent to the patent claims.

15 Q. Okay. So, the operation of the product, in your
16 view, wasn't really pertinent to the patent?

17 A. Well, the product has lots of features; and I
18 became familiar with the ones that were important for
19 the patent, considering infringement to the patent.

20 Q. Okay. Now, I'll try to hold this in perspective
21 for you for a second so you can see it. I'm not trying
22 to -- I want to make sure you can see it. Do you see
23 that small chip that --

24 A. I do.

25 Q. -- I'm showing you now?

1 Do you know what that chip is?

2 A. That's the accelerometer, I believe.

3 Q. Okay. How many chips are right there? How many
4 chips constitute the accelerometer?

5 A. I'm sorry. There's one chip there. Is that what
6 you're asking?

7 Q. Yes. Is there one chip there?

8 A. There's one chip, yes.

9 Q. Okay. Is that chip mounted on the circuit board?

10 A. Yes, it is.

11 Q. Okay. Can I -- is there any way for me to put my
12 finger on that chip and move it --

13 A. No.

14 Q. -- relative to the circuit board?

15 A. No.

16 Q. Okay. And, in fact, when I don't have it opened
17 up, I can't even actually get my finger onto the chip,
18 can I?

19 A. No.

20 Q. So, you would have to open it up. And then if you
21 tried to put your finger on the chip, you won't be able
22 to move it, right?

23 A. I guess not. I'm not sure what you meant but...

24 Q. Okay. Well, the chip is mounted. It's fixed,
25 mounted on the circuit board, right?

1 A. Oh, you mean you won't be able to move it with
2 respect to the circuit board.

3 Q. Yes. You won't be able to put your finger onto the
4 chip and move it with respect to the circuit board.

5 A. That's correct, yes.

6 Q. Okay. And there's nothing on the outside of the
7 Wii Remote that would enable me to touch anything that
8 would cause the accelerometer to be activated.

9 A. Correct.

10 Q. So, there's no -- for example, there's nothing like
11 this cross-switch -- touching the cross-switch doesn't
12 activate the accelerometer, does it?

13 A. No, it does not.

14 Q. And none of these other buttons on the face
15 activate the accelerometer, do they?

16 A. No, they don't.

17 Q. Okay. Taking again -- this is that chip I was just
18 showing you in the camera. You agree with me that
19 that's the accelerometer?

20 A. Yes, sir.

21 Q. And that it's one chip, right?

22 A. Yes.

23 Q. Okay. And, in fact, if we enlarge it, you can
24 actually see what we were just showing, that it's, in
25 fact, a chip.

1 Now, what do we mean when we say "a chip,"
2 Professor Howe, just for the jury? Do you know what I
3 mean when I say "a chip"?

4 A. It typically means an integrated circuit, an
5 electronic component that includes little electronic
6 processing elements and nowadays it can include
7 mechanical sensors, as well.

8 Q. Okay. Now, you, of course, agree with
9 Mr. Armstrong's testimony -- or do you agree with
10 Mr. Armstrong's testimony that accelerometer is not
11 disclosed anywhere in Mr. Armstrong's 1996 application
12 or in the '700 patent that's accused of being infringed
13 in this case?

14 A. I'm sorry. What was the question?

15 Q. You agree that there is no accelerometer disclosed
16 in the 1996 application.

17 A. No.

18 Q. Or in the '700 patent that is accused of being
19 infringed in this case, right?

20 A. No.

21 Q. "No" means that there is no accelerometer
22 disclosed?

23 A. That is correct.

24 Q. Thank you.

25 Now, when we looked at this third element a

1 few minutes ago, you showed me how, in fact, that third
2 element of claim 19 matched up word-for-word with the
3 joystick. Do you recall that?

4 A. I do.

5 Q. Okay. And it's because the third element had the
6 structure, because it was movable on two mutually
7 perpendicular axes, because I can touch this thing and
8 move it, right?

9 A. Yes.

10 Q. And then the third element, this yellow piece, was
11 also structured to activate these two sensors when I
12 move it. We just saw that, right?

13 A. Yes.

14 Q. Okay. In fact, the claim language requires that
15 the third element have structure to activate those two
16 sensors, right?

17 A. Yes.

18 Q. Okay. Now, Professor Howe, it's your testimony
19 here today that this same claim language that you said
20 covers this joystick -- and, in fact, Mr. Armstrong
21 drafted to cover Nintendo's joystick -- also identically
22 covers this accelerometer chip, right? That's your
23 testimony.

24 A. Yes.

25 Q. Now, I didn't hear you testify to this on your

1 direct examination; but what are you identifying as the
2 piece that corresponds to this third element that the
3 claim requires?

4 A. The proof mass.

5 Q. Okay. And, so, you're saying that the proof mass,
6 which is actually part of the accelerometer, is the
7 third element?

8 A. That's right.

9 Q. Okay. And, in fact, the proof mass is part of the
10 sensor, isn't it?

11 A. Yes.

12 Q. The proof mass is inside the accelerometer sensor,
13 right?

14 A. Yes.

15 Q. Okay. And, so, it's your position -- and the proof
16 mass is actually part of the acceleration sensor, right?

17 A. That's right.

18 Q. Okay. So, it's inside this little chip. You're
19 trying to say there is something called a "proof mass,"
20 in your opinion, inside this chip, right?

21 A. Yes.

22 Q. Okay. Now, where did you get an understanding that
23 there is a proof mass inside that accelerometer?

24 A. Well, I'm familiar with the way micro-machined
25 accelerometers operate.

1 Q. Are you familiar with the way the particular
2 micro-machined acceleromometer that is used in the Wii
3 Remote is structured and operates?

4 A. I believe so. I think this is the same part we
5 used in my lab.

6 Q. I'm sorry? Could you repeat that?

7 A. Yes.

8 Q. Yes, you are familiar with --

9 A. Yes. I believe this is the same part we've used in
10 my lab; so, I'm familiar with it.

11 Q. You believe that this acceleromometer is some same
12 part that you've used in your lab?

13 A. That's right.

14 Q. Do you know that for a fact?

15 A. Model numbers change quite often with these
16 devices; so, it may not match exactly.

17 Q. Okay. Now, do you know who makes --

18 THE COURT: All right. Counsel, we're going
19 to go ahead and break.

20 Ladies and gentlemen, as I said before, I've
21 got this emergency hearing I have to take up. I'm going
22 to ask you to be back here tomorrow morning at 8:45.

23 Again, please remember my instructions. Don't discuss
24 the case with anybody. Don't let anybody discuss the
25 case with you, and don't do any research. At this time

1 you are excused. I'll ask you to be back at 8:45 in the
2 morning.

3 (The jury exits the courtroom, 4:04 p.m.)

4 THE COURT: Anything to be taken up outside
5 the presence of the jury from point of view of the
6 plaintiff?

7 MR. CAWLEY: No, your Honor.

8 THE COURT: Anything from point of view of
9 defendant?

10 MR. GERMER: Yes, your Honor. I have an
11 issue. We'd like to request an instruction in terms of
12 the Sony license. And it doesn't have to be done right
13 now. I know you've got some other matters. It could be
14 done -- as long as it's done tomorrow morning before the
15 experts, it's fine with me; but if the court would like
16 to hear it now, I'd be glad to present it.

17 THE COURT: Well, I'm going to go ahead --
18 I'm dealing with an emergency motion for stay in the
19 last case we tried here. Whoever's going to discuss
20 this can wait around a little bit. I'm hoping this will
21 be over within 30, 40 minutes. We can deal with it
22 then. If it's something you want taken up tomorrow
23 morning -- I'd just as soon discuss it this evening
24 rather than at 6:00 or 7:00 in the morning. So -- I
25 don't think that will require everyone to be here; but

1 if somebody on each side can be here, I'll get through
2 this other just as soon as I can.

3 All right. We're going to be in recess,
4 then, for about ten minutes while we get these people on
5 the phone and get stuff cleared out and get things set
6 up.

7 (Recess, 4:06 p.m. to 5:15 p.m.)

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

10 THE COURT: Mr. Germer, go ahead.

11 MR. GERMER: I wanted to ask the court to
12 give an instruction on this Sony agreement that we've
13 heard so much about and we're going to hear a whole lot
14 more about. They wanted to put that in. We said it's a
15 settlement. You decided that it was going to come in
16 because it showed a payment of \$10 million for a related
17 patent, '606, which was some evidence that their expert
18 could consider in terms of how much the license should
19 be. And that was fine. And that is clearly what the
20 agreement was.

21 I'm sure accidentally Mr. Cawley has taken
22 that and run with it in his opening, talking about
23 10 million for the patents, especially the '707 [sic].

24 His client, I'm sure accidentally, said a
25 couple of times that Sony ponied up and did the right

1 thing, which is strong evidence -- we could lose this
2 case on the jury believing, well, Sony paid -- and
3 obviously they weren't exactly in our position; so, that
4 establishes the fact that it was valid and there is
5 infringement. And that's what they were getting across,
6 I'm sure accidentally, by saying that they did the right
7 thing.

8 The last question that was asked to
9 Mr. Armstrong was something about: At the end of the
10 day, isn't it correct that Sony got paid \$10 million for
11 these patents, the '700 in particular being included.
12 It is clear to me -- and I hope it is to the court --
13 that even though under the court's ruling it's proper
14 for the jury to think about here's a related technology
15 license that they paid 10 million for -- it is clear to
16 me and hopefully to the court that they shouldn't be
17 able to use that to say this is being paid for the '700
18 patent, nor should they be able to say, indirectly as
19 they've done, that this establishes that the patent was
20 valid and infringed, which is clearly what the jury is
21 going to take and they may go on.

22 Therefore, I would request that the court
23 instruct the jury and instruct -- and the court can come
24 up with a much better instruction, I'm sure, than I can,
25 but something along the line of telling the jury that

1 they are instructed that the Sony agreement consisted of
2 \$10 million for the '606 patent and that, in addition,
3 Anascape got, for all of its other patents, including
4 the '700 application, a number of cross-licenses from
5 Sony.

6 And the court would further instruct the jury
7 that the testimony about that license is not to be taken
8 by the jury as any evidence or be given any
9 consideration on the issue of whether or not the '700
10 patent is either valid or infringed.

11 Now, I recognize, as I've heard the court say
12 it -- and I know it -- that's not a perfect solution
13 because the jury can't put that out of their mind. But
14 at least it gives us something to talk to the jury about
15 and keep this thing in context. Thank you.

16 THE COURT: Mr. Cawley?

17 MR. CAWLEY: Your Honor, that's just a
18 straightforward request for a comment on the weight of
19 the evidence. There's nothing that the jury hasn't
20 heard here. The agreement says what the agreement says.
21 Mr. Armstrong was cross-examined about it extensively.
22 He has an explanation that he's offered for why they did
23 it that way. The jury may believe that, or they may
24 not.

25 But, you know, let's face it. Since we're

1 alone in the courtroom here, we're all pretty
2 experienced in this area and we know what happened here.
3 Anascape went to Sony; and they said, "You should take a
4 license."

5 Sony at first, of course, said, "We don't
6 want to; but for sure if we ever pay you any money, it's
7 going to be for your portfolio and every continuation in
8 the future." That's the deal.

9 The parties managed to agree on \$10 million
10 and then somebody within Anascape had the idea, "Well,
11 if we structure this deal so that it's for the exclusive
12 license to one patent, maybe we can take capital gains
13 treatment" and Sony didn't care because it didn't cost
14 them any more money.

15 Well, where does that leave us? I think it
16 leaves us in the lap of the jury that the agreement is
17 available to them. Counsel for the defendant can argue,
18 as they already have forcefully, that the agreement says
19 that this is \$10 million for that one patent.

20 And then Mr. Armstrong has already testified,
21 "Well, yeah; but that's why I did it this way," blah,
22 blah, blah. And who knows what the jury will believe
23 about that, but I don't think there is a legal issue
24 here.

25 The court will instruct the jury, of course,

1 on what they are supposed to consider in evaluating
2 infringement and what they are supposed to consider in
3 evaluating validity and what they're supposed to
4 consider in evaluating reasonable royalty. I know that
5 the court in the past has given jury instructions that
6 the court is to consider licenses for similar
7 technology, which this certainly is. It's a patent that
8 is -- like the '700 is a continuation of the '96
9 application. It's very similar technology.

10 So, maybe the finder of fact will find that
11 it's probative. But I say again I don't think that
12 there is a legal issue here that's appropriate for an
13 instruction.

14 THE COURT: Well, I'll -- at this time I'm
15 going to deny the request for an instruction. I would
16 caution plaintiff, of course, about being very careful
17 of making an inference of validity based on that
18 agreement. I wouldn't expect you to, and there will
19 be -- I mean, if something like that happened, I might
20 have to tell the jury, "Now, wait a minute. This goes
21 to damages, not to validity." So, I would -- I don't
22 know how eager your damages or validity experts are
23 going to be, but they need to be warned not to try to
24 let that one slip out because that --

25 MR. CAWLEY: Of course, your Honor. I mean,

1 the damages experts are going to say that in the damages
2 analysis, you assume that the patent is infringed and
3 valid anyway.

4 THE COURT: Okay. Just with that caveat, I
5 will deny that request.

6 Was there another item, Mr. Germer?

7 MR. GERMER: No, sir. But could I just say a
8 couple more things about that?

9 One is the infringement side is of equal
10 concern or more because they've already used it very
11 effectively on both, by him saying Sony did the right
12 thing. I don't think it's going to come from his
13 experts. His experts -- in fact --

14 THE COURT: Well, if I hear it from some
15 other witnesses saying -- I mean --

16 MR. GERMER: And I would also tell the
17 court -- well, two things. One, this is not just a tax
18 deal -- and this is why we shouldn't have to get into
19 all of this. But actually that particular license, the
20 '606, was the one license that Sony had to have. We
21 didn't have to, but they did. So, there was a reason
22 why they did that.

23 But my concern continues to be -- and I would
24 implore the court to continue considering --

25 THE COURT: It doesn't --

1 MR. GERMER: If the court makes a call to let
2 this in --

3 THE COURT: Okay.

4 MR. GERMER: -- but at least let's keep it
5 confined. There is no evidence other than the fact that
6 \$10 million went for that. There really is no other
7 evidence except now they're trying to sort of speculate.
8 He didn't even say that. The plaintiff didn't even say
9 it clearly. He just sort of said, "Well, somebody said
10 tax stuff."

11 So, they're using an inference to try to take
12 away from what the -- I thought the court had the clear
13 understanding about the setup of this, and I thought the
14 court was letting it in for that limited purpose; so,
15 I --

16 THE COURT: Well, I think my remark was -- is
17 that I will let it in; but, of course, then plaintiff is
18 going to have to explain why we have a lump-sum
19 10-million-dollar payment as opposed to a reasonable
20 royalty.

21 And in most cases I've seen, defendants are
22 jumping up and down with joy when they get a lump sum --
23 small lump sum; and the plaintiffs are desperately
24 trying to dodge around those small lump sums because
25 they want the percentage when it's an ongoing.

1 So, I expect that there was going to be some
2 explanation and obviously there is another explanation
3 and that is the trade of the patents. And either side
4 can argue that one, that either the patents were -- the
5 patent rights they got from Sony were worthless or the
6 patent rights they got from Sony were incredibly
7 valuable, worth far more than a mere 50 million we're
8 asking for now. I mean, I don't know how that's going
9 to play out; but that could go either way, too. I mean,
10 we've had no testimony at all on that.

11 But, yes, you've alerted me to the issue. If
12 I see some attempt to take what is obvious unfair and
13 improper advantage of the testimony in violation of
14 Rule 403, I'm usually not very shy about instructing the
15 jury as necessary. You're both experienced attorneys
16 and are probably well aware of that.

17 I had the impression, though, from Ms. Chen
18 that you had two issues. Was there another one?

19 MR. GERMER: No, sir.

20 THE COURT: Just the one?

21 MR. GERMER: That's all I have.

22 THE COURT: Oh, okay. Well, great.

23 MR. GERMER: And I may have misstated it
24 but --


25 THE COURT: Okay. In that case I will see

1 you at 8:45 in the morning. You're excused. The court
2 is in recess.

3 (Proceedings adjourned, 5:24 p.m.)

4 COURT REPORTER'S CERTIFICATION

5 I HEREBY CERTIFY THAT ON THIS DATE, MAY 6,
6 2008, THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE
7 RECORD OF PROCEEDINGS.

8 
9 CHRISTINA L. BICKHAM, CRR, RMR

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