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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

ANASCAPE, LTD.		DOCKET 9:06CV158
		MAY 8, 2008
VS.		8:45 A.M.
MICROSOFT CORP., ET AL		LUFKIN, TEXAS

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VOLUME 4 OF \_\_, PAGES 832 THROUGH 1065

REPORTER'S TRANSCRIPT OF JURY TRIAL

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

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1 (REPORTER'S NOTES ANASCAPE VS. MICROSOFT,  
2 JURY TRIAL VOLUME 4, 8:45 A.M., THURSDAY, 05/08/2008,  
3 LUFKIN, TEXAS, HON. RON CLARK PRESIDING)

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

6 THE COURT: All right. An issue was brought  
7 up dealing with the defendant's infringement expert. I  
8 don't think we'll be getting to that person before the  
9 first break and maybe not until lunch. Is that correct?

10 MR. CAWLEY: First of all, it's not their  
11 infringement expert, your Honor; it's their PT0 expert.  
12 But second, your Honor, is correct. I don't think there  
13 is a way we can get there.

14 Oh, I'm sorry. There's objections to both of  
15 them?

16 MR. PRESTA: Yes.

17 MR. CAWLEY: Okay. My mistake, judge.

18 But despite my confusion, I think I am fairly  
19 clear we're not going to get to them before lunch.

20 THE COURT: Okay. Which one is going to be  
21 called first? Because that's the order I'm going to  
22 look at this.

23 MR. PRESTA: Our technical expert,  
24 Mr. Dezmelyk.

25 THE COURT: Okay. That's what I was

1 thinking. Very good. Let's go ahead and bring in --

2 MR. GUNTHER: Your Honor, very quickly.

3 Mr. Ikeda is going to be the next live witness after the  
4 depositions.

5 THE COURT: Right.

6 MR. GUNTHER: Do you think we're going to  
7 have a break before that just in terms of time?

8 MR. CAWLEY: Yes. I think our depositions  
9 are about an hour long.

10 MR. GUNTHER: Okay. I'll wait.

11 THE COURT: Bring in the jury, please.

12 (The jury enters the courtroom, 8:46 a.m.)

13 THE COURT: Good morning, ladies and  
14 gentlemen. Glad to see you back again, and we're now  
15 going to continue on with the deposition. As counsel  
16 indicated, the deposition is taken prior to trial.  
17 Attorneys from both sides are there. A court reporter  
18 is there. The witness is under oath. And you will  
19 evaluate and accept this testimony as nearly as possible  
20 as if the witness was testifying here live. Sometimes  
21 you can't judge a person quite as well on video as you  
22 can live but I'll tell you that the person was under  
23 oath and they are to be considered, as much as possible,  
24 by you as though they were testifying live when you're  
25 evaluating them.

1 Are we ready?

2 MR. BOVENKAMP: Yes, your Honor. Just a  
3 brief interim statement just to refresh the jury of who  
4 they are going to see.

5 THE COURT: Okay.

6 MR. BOVENKAMP: Ladies and gentlemen of the  
7 jury, as I indicated yesterday before we left for the  
8 day, you're going to see the video testimony of a  
9 Nintendo engineer named Mr. Koshiishi.

10 DEPOSITION TESTIMONY OF KAZUNORI KOSHIISHI

11 Q. Good morning, Mr. Koshiishi.

12 A. Good morning.

13 Q. Mr. Koshiishi, what is your present position with  
14 Nintendo?

15 A. Well, "post" is a vague word; but currently at  
16 Nintendo I'm affiliated with a development department.

17 Q. Which Nintendo products have you worked on the  
18 development of?

19 A. Mainly on the cartridges and accessories for the  
20 Nintendo 64, also the GameCube controller; and I'll just  
21 stop there.

22 Also GameCube accessories, also DS-type  
23 accessories, and development of the DS. I would just  
24 like to add that I didn't design the DS or the DS Lite  
25 itself, but I worked on DS-type models.



1 Q. Was the Dual Shock 2 controller a successful  
2 controller?

3 A. Well, the console was widely sold; and, so, yes, I  
4 think it sold in the same way.

5 Q. Mr. Koshiishi, the GameCube controller came out  
6 around four or five years after the Nintendo 64  
7 controller; is that correct?

8 A. Yes.

9 Q. What improvements were made to the GameCube  
10 controller over the Nintendo 64 controller?

11 A. Well, first, with the Nintendo 64 controller, there  
12 were three grips attached. That was reduced to two  
13 grips in the case of the GameCube.

14 And as for the arrangement of the buttons,  
15 they were reassigned for the sake of optimization.

16 And you referred earlier to the Rumble Pak.  
17 That was built in -- a vibration motor was built into  
18 the GameCube.

19 And the L/R buttons evolved and became analog  
20 buttons. And the C unit, which consisted of four  
21 buttons, became a C stick that is one stick. That's  
22 all.

23 Q. Because the Rumble Pak was built into the Nintendo  
24 GameCube controller, all developers know that users will  
25 be able to use that feature when they are producing

1 games; is that correct?

2 A. Yes.

3 Q. Now, you said when you were developing the GameCube  
4 controller, that it was important to keep the total cost  
5 below 900 yen; is that correct?

6 A. Yes.

7 Q. So, if the motor for the rumble feature was an  
8 expensive component, you could have saved a lot of money  
9 by not putting in the motor; is that correct?

10 A. Yes, I think so.

11 Q. Be despite the cost, Nintendo decided to include  
12 the motor for the rumble feature; is that correct?

13 A. Yes.

14 Q. So, just so I understand you, by increasing the  
15 number or types of features on a controller, it affects  
16 the variety of games that software developers can  
17 create; is that true?

18 A. That potential exists.

19 Q. If the C stick were mounted on the main circuit  
20 board, it would be taller than it is now; and it would  
21 be more difficult to use than it is right now; is that  
22 correct?

23 A. That's correct.

24 Q. And if you could turn to Figure 2 of Exhibit 292,  
25 which is the '700 patent.

1 A. Yes.

2 Q. Have you reviewed Figure 2 of Exhibit 292 before?

3 A. As I said earlier, I hadn't done that prior to  
4 looking at them -- after I had been contacted by the IP  
5 department.

6 Q. You have reviewed Figure 2 of this patent within  
7 the past year, correct?

8 A. Yes.

9 Q. Figure 2 of the '700 patent depicts a cross section  
10 of a game controller that is described by this patent;  
11 is that correct?

12 A. Yes.

13 Q. Now, in the middle of the figure, there is a circle  
14 that has been labeled with the number "12"; is that  
15 correct?

16 A. Yes.

17 Q. What is that?

18 A. It's a ball.

19 Q. Okay.

20 A. Sorry. It's a sphere.

21 Q. Do you see a component in the figure that is  
22 labeled "124"?

23 A. Yes.

24 Q. What is that?

25 A. I think it's a roller.

1 Q. Now, there are three rollers depicted in this  
2 figure; is that correct?

3 A. Yes.

4 Q. So, from looking at the structure of this figure,  
5 if a user were to rotate the ball, then the rollers  
6 could tell that the ball was moving; is that correct?

7 A. I believe so.

8 Q. So, the rollers are used to detect rotational  
9 movement of the ball; is that correct?

10 A. Yes.

11 Q. Now, the ball is surrounded by a cup-like structure  
12 that has been labeled "16"; is that correct?

13 A. Yes.

14 Q. Can you tell from looking at the figure whether the  
15 structure of the game controller allows it to sense the  
16 linear movement of the cup?

17 A. Yes.

18 Q. So, for instance, if you were to push down on the  
19 cup toward the ball, then the structure labeled "22"  
20 would move, as well; is that correct?

21 A. Yes.

22 Q. And in the same way, if you were to move the cup  
23 back and forth, the controller is structured to sense  
24 that linear movement; is that correct?

25 A. Yes.

1 Q. So, this is a 6-degree-of-freedom controller, isn't  
2 it?

3 A. Yes.

4 Q. So, there are three rollers associated with the  
5 ball and each of those rollers would provide a separate  
6 output to some sort of computer unit associated with the  
7 controller; is that true?

8 A. Yes.

9 Q. So, conversely, the CPU receives three signals  
10 associated with the trackball that represent three axes  
11 of rotational movement; is that correct?

12 A. Yes.

13 Q. So, similarly, because the cup is movable on three  
14 linear axes, the cup would send three separate signals  
15 to the CPU, each one representing movement on a  
16 different linear axis; is that correct?

17 A. Yes.

18 Q. If you removed the cup from the controller depicted  
19 in Figure 2, you would not be able to sense movement on  
20 three linear axes; is that correct?

21 A. No, you wouldn't.

22 Q. But if you still had the trackball, you would still  
23 have a 3-degree-of-freedom controller because you could  
24 still sense rotational movement on three axes; is that  
25 correct?

1 A. Yes.

2 Q. So, if you remove the cup, instead of six separate  
3 outputs being sent to the CPU, there would only be three  
4 outputs sent to the CPU, one representing each axis of  
5 rotational movement of the trackball; is that correct?

6 A. Yes.

7 Q. Now, conversely, if you did not remove the cup but  
8 you did remove the trackball, then you would still have  
9 a 3-degree-of-freedom controller except it would be able  
10 to measure linear movement on three axes and not  
11 rotational movement on three axes; is that correct?

12 A. Yes.

13 Q. If instead of having a trackball within a cup, if  
14 you had a controller with a trackball on one side and a  
15 movable cup on the other, you would still have a  
16 6-degree-of-freedom controller because you would have  
17 three axes of rotation through the trackball and three  
18 axes of linear movement through the cup; is that  
19 correct?

20 A. Are you saying that on one hand you would have a  
21 cup but no ball and on the other hand you would have a  
22 ball with no cup?

23 Q. Yes.

24 A. Yes.

25 Q. If you had this controller with a cup on one side

1 and the trackball on the other, the CPU would still  
2 receive three analog signals representing three axes of  
3 rotational movement and three analog signals  
4 representing three axes of linear movement; is that  
5 correct?

6 A. Yes.

7 Q. And software developers can use the signal sent to  
8 the CPU to program games on a television screen to do  
9 different things; is that correct?

10 A. Yes.

11 Q. So, for instance, if you had a trackball and a cup,  
12 a software developer could use the three analog signals  
13 from the trackball to move one character on a screen and  
14 use the three analog signals from the cup to move  
15 another character on the screen; is that correct?

16 A. Yes.

17 Q. So, instead of a controller with a cup and a  
18 trackball, if you had a controller with two trackballs,  
19 you would not have any signals representing linear  
20 movement; is that correct?

21 A. I believe that's so.

22 Q. But if you had two trackballs that were structured  
23 like the one in Figure 2, you could still send six  
24 analog signals to the CPU; is that correct?

25 A. Yes.

1 Q. And a game developer could use those six signals in  
2 a similar way where a user could use the left trackball  
3 to move one character on a screen and the user could use  
4 the right trackball to move another character on the  
5 screen; is that correct?

6 A. Yes.

7 Q. So, if you would like to design a controller that  
8 produces six analog signals to transmit to a CPU, one  
9 way of doing it is like a controller structured here  
10 with a trackball found in a cup; is that correct?

11 A. I think so.

12 Q. Another way to create a controller that produces  
13 six analog signals to send to a CPU would be just to  
14 have two trackballs that each sent three analog signals  
15 to the same CPU; is that correct?

16 A. Yes.

17 Q. Mr. Koshiishi, my name is Bob Gunther. I'm one of  
18 Nintendo's attorneys, and I'm going to ask you some  
19 questions at this point in the deposition.

20 I want to go first to the questioning that  
21 Mr. Garza had of you at the very end of the deposition  
22 before the break. And he showed you Figure 2 of the  
23 '700 patent, correct?

24 A. Yes.

25 Q. And then he asked you whether or not,



1 hypothetically, a controller could be developed that had  
2 a cup on one side and a trackball on the other side,  
3 correct?

4 A. Yes.

5 Q. Is there any disclosure in the '700 patent that you  
6 are aware of of a controller that has a separate  
7 trackball on one side and a separate cup on the other  
8 side?

9 A. No.

10 Q. And he also gave you a hypothetical of a controller  
11 that would have two separate three-axis trackballs. Do  
12 you recall that questioning?

13 A. Yes.

14 Q. Is -- anywhere in the '700 patent, is there a  
15 disclosure of a controller that has two separate  
16 three-axis trackballs?

17 A. No.

18 Q. Now, the three hypotheticals that Mr. Garza asked  
19 you, the one with the -- the controller with the  
20 separate trackball and separate cup, that's the first  
21 one; the second one with three -- sorry -- with two  
22 three-axis trackballs, that's the second one; and the  
23 third one is the one with three two-axis trackballs.

24 My question is: Are you aware of any video  
25 game controllers that have ever been sold that have any

1 of those hypothetical configurations?

2 A. No.

3 Q. Is there any disclosure in either of the '525 or  
4 '700 patents, to your knowledge, of a controller that  
5 has two separate analog joysticks?

6 A. No.

7 THE COURT: Hold up one minute, counsel.

8 Ladies and gentlemen, I did forget to mention  
9 that when these depositions are getting prepared to be  
10 shown to you, I tell the lawyers to edit them to get rid  
11 of as much as possible. These things go on -- some of  
12 these depositions took seven and eight hours.

13 Obviously, you didn't want to sit here for seven or  
14 eight hours; so, I've told them some time back to cut  
15 them down to what's necessary. That's why you'll see  
16 sometimes it will jump from time to time or there will  
17 be a question and then there will be a break before the  
18 answer. Maybe the lawyers had some kind of objection  
19 that got dealt with. I told them to cut all that out.  
20 I'm not trying to hide stuff from you. It's just that I  
21 think a 30-minute deposition is a lot better than an  
22 8-hour video; and you probably do, too.

23 The other thing is at one point you saw the  
24 "check interpreter." Both sides are allowed to have an  
25 interpreter present. You'll have one main interpreter;

1 but just in case there is some question about exactly  
2 what a word means, you might see that check interpreter  
3 will say something. As long as they agree, then you can  
4 accept that as the interpretation. We'll have a witness  
5 later live, and you'll see the same thing here. It's  
6 just because sometimes, especially in a technical field,  
7 there might be a little question about the precise  
8 translation of a word; and that's why the second person  
9 is there, just to be sure about it. If there was a real  
10 dispute, I would work it out. But when you see it come  
11 up there and they seem to agree, then you can just take  
12 that as what they have agreed on.

13 Go ahead, counsel.

14 MR. BOVENKAMP: Thank you, your Honor.

15 The next witness that you are going to hear  
16 from is also a Nintendo engineer, by the name of  
17 Mr. Takeda. This deposition testimony, or this video  
18 testimony that you're going to hear, is 20 minutes long.  
19 He is going to testify about the importance of complex  
20 independent controls that allow the manipulation of  
21 multiple objects in video games.

22 The other thing that's important in this  
23 testimony is the testimony about rumble that he calls  
24 the output -- or the "feedback output function." He's  
25 going to testify that that was a necessary feature in

1 Nintendo's controllers.

2 DEPOSITION TESTIMONY OF GENYO TAKEDA

3 Q. Good morning, Mr. Takeda.

4 Mr. Takeda, you are also the general manager  
5 of the integrated research and development division; is  
6 that correct?

7 A. That's correct.

8 Q. So, Nintendo owns patents, then; is that correct?

9 A. That's correct.

10 Q. Now, the Wii Nunchuk still uses a thumbstick,  
11 correct?

12 A. Well, all along there's been an ongoing debate  
13 among us. The idea is to achieve simplicity, to make  
14 things simple. When you are using the video game on a  
15 TV screen, you are moving objects. You have to control  
16 the movement of multiobjects. I think this is the  
17 history of video games. So, where you are a playing  
18 character, you have to control how that player moves.  
19 And, also, there's the head, what we call the "lover's  
20 neck" -- or "rubberneck," whether it moves --

21 Sorry, a rubberneck, not lover's neck.

22 Sorry, rubberneck. Sorry.

23 -- whether the neck moves this way or that  
24 way. And, also, for instance, with the hand holding a  
25 gun, whether the hand moves this way or that way. So,

1 this means there is history in video games of this  
2 multi movement.

3           We wish to attract new customers who had not  
4 been used to playing games and make it easy for them to  
5 get involved in gaming. In order to do that, our desire  
6 and our goal was to have a simple arrayment [sic] of  
7 buttons -- simple buttons -- was to have simple buttons  
8 and very -- and few buttons. This need to be  
9 independently controlling multiple movable objects on a  
10 TV screen so the body may move forward while the neck  
11 moves in another direction or, for instance, the body  
12 may move one way while the pistol held in the hand may  
13 move another way. So, there's this need in video games  
14 to have independent control. So, we wanted to be able  
15 to satisfy both those new gaming participants as well as  
16 what we call "gamers," those who are very used to  
17 playing games.

18           So, we wanted to present the product as  
19 something simple, while at the same time have complex  
20 controls, independent controls, that will allow  
21 manipulation of multiple objects. So, there are many,  
22 many variables that we are wanting to input. This was  
23 the concept of the Wii.

24 Q. I'm going to ask my question again.

25           Does the Wii Nunchuk have a thumbstick?

1 A. As I said earlier, many games have a stick like  
2 this. This is manipulated in this way.

3 THE INTERPRETER: And the witness revolved  
4 the stick.

5 A. This is mainly manipulated by the thumb; and, so,  
6 yes, it does have a joystick in the controller.

7 Q. Now, could you replace that joystick with a  
8 trackball?

9 A. When you say "replace," it would have a different  
10 touch and feel. And the games, the touch and feel is  
11 very important. I think it will be very difficult to  
12 replace. However, if, for instance -- you can use a  
13 keyboard to do that. So, in that sense, it could  
14 replace that. You could use that. However, I think  
15 that the touch and feel would be totally different.

16 UNIDENTIFIED SPEAKER: I'm sorry. I can't  
17 hear, please, if you are speaking in Japanese.

18 THE INTERPRETER: I'll tell you what. She  
19 was concerned that, in the second "replace," I used the  
20 phrase "replace"; and she believed he said, "You could  
21 use that." And if I recall, I think she is actually  
22 correct. "So, in that sense, you could use that."

23 Q. Games on the GameCube have been designed to take  
24 advantage of the two joysticks on the GameCube  
25 controller; is that correct?

1 A. Yes, but I think this also relates to an earlier  
2 question of yours. You have to consider the history of  
3 the Nintendo controller in the previous product; that  
4 is, the Nintendo 66 -- 64.

5 Thank you. Sorry.

6 -- the Nintendo 64. We had an analog  
7 continuous-control joystick. We were the first to  
8 create this worldwide, this thumb-operated joystick.  
9 There have been various types of controllers, joysticks.  
10 There's been the plus key, also the C button unit  
11 similar to the plus key. So, this is not the first time  
12 that there have been two of those. Already in the  
13 previous generation products, this bi-directional unit  
14 was included. So, it was already there before the  
15 GameCube -- they were already there.

16 If you are asking me a question about the  
17 GameCube controller, then, for me, it would be much,  
18 much easier to talk about that if you would place in  
19 front of me that controller from that previous  
20 generation.

21 Q. Mr. Takeda, you've been handed what has been marked  
22 Exhibit 303. And what is that?

23 A. It's a Nintendo 64 controller; however, the  
24 controller is not standard. I've not seen any  
25 controller quite as bright as -- brightly colored as

1 this one. But it is one kind of N64 controller.

2 Q. Now, is this controller the previous generation  
3 controller from the GameCube?

4 A. Yeah. This is a product that was sold about five  
5 years before --

6 THE INTERPRETER: And the witness is pointing  
7 to the GameCube controller.

8 A. -- went on sale.

9 Q. Now, the N64 controller only has one joystick,  
10 correct?

11 A. One analog joystick, yes.

12 Q. Does it have any nonanalog joysticks?

13 A. Yes. Well, it depends on the definition of  
14 "joystick." And you have to consider the history of  
15 video games. The Nintendo 64 game console was the first  
16 to offer 3-D graphics on-screen -- first game platform  
17 to offer 3-D graphics on-screen.

18 So, in order to display 3-D graphics  
19 on-screen, they are compared to 2-D graphics. There  
20 were many, many variables that were needed as inputs.  
21 So, compared to the previous generation, one was able to  
22 make many inputs. There was the plus button. Then  
23 there was this other button, which we also call our "plus  
24 button, on this side --

25 THE INTERPRETER: The interpreter is



1 speaking. The witness was referring to the right side  
2 of the controller, looking at it from his perspective.

3 A. -- and this -- these three together with the  
4 joystick, then, were the controls determining direction.  
5 So, historically, this was the first time that this was  
6 achieved was with the Nintendo 64 console. So, there  
7 was this continuous control; and then these other two  
8 controllers were able to control direction.

9 Q. Why did Nintendo include vibration in the Wii  
10 Remote?

11 A. Well, for a player, not only input but feedback,  
12 output function, is I believe very important.  
13 Therefore, in the Nintendo 64, the GameCube, and the  
14 Wii, the vibration feature was included as output. So,  
15 a decision was made to include an output as a necessary  
16 feature.

17 THE COURT: All right. Ladies and gentlemen,  
18 we're going to go ahead and take a break. I'll ask you  
19 to be back at five past.

20 Please remember my instructions not to  
21 discuss the case among yourselves.

22 (The jury exits the courtroom, 9:45 a.m.)

23 THE COURT: Okay. The objections submitted  
24 by Mr. Bovenkamp to the three -- or I guess four  
25 demonstratives or charts -- or actually I guess there

1 are several of them here dealing with -- and I'm not  
2 sure that's pronounced -- Dezmelyk?

3 MR. PRESTA: Yes. It's Dezmelyk.

4 THE COURT: Dezmelyk, okay.

5 Brings up a question that -- and this is  
6 probably a timing question. I see the dispute between  
7 the experts here as factual and not based on  
8 interpretation. In other words, it's what it is and how  
9 is that accelerometer built, made. We saw some diagrams  
10 of what it looks like on the inside. Obviously those  
11 are blown-up diagrams. And I'm not sure. Is it  
12 Dr. Dezmelyk or mister?

13 MR. PRESTA: It's mister, your Honor.

14 THE COURT: Okay. Is talking in terms of --  
15 or he seems to be distinguishing it on a different  
16 description of how vectors are described. But quite  
17 clearly, if this boils down to a couple of experts  
18 saying, "Judge Clark said this in his claim  
19 construction," "Judge Clark said that in his claim  
20 construction," or "The claim construction is this or  
21 that," that's a different matter. I'm going to have to  
22 give the jury some guidance.

23 Both sides might want to be cautious about  
24 that. I mean, a fact dispute about exactly what's going  
25 on with that little chip is one thing. Neither side

1 knows how I'm going to rule on the other side of it or  
2 what I think -- I mean, I've read 192 and the -- what I  
3 think is seen in there. But if we're going to get into  
4 some kind of claim construction dispute, I want to do  
5 that at lunch or this evening, not while the jury is  
6 hanging around wondering why we're wasting their time.  
7 So, we need to get that straightened out.

8           Now, I think that in his report, he does  
9 criticize Dr. Howe about the one chip. And that was  
10 brought up in cross-examination. So, I don't see that  
11 as a problem. And if he wants to try to explain why  
12 that one chip is not really set up with pairs of sensors  
13 like Dr. Howe said, that's -- I think that's a fair take  
14 on his report. I'm really more concerned about an  
15 attempt to say that's my construction because, honestly,  
16 I see that as a factual issue, exactly how that thing is  
17 built and what it actually does. But I'll also say  
18 if -- I mean, if I'm misreading what the doctor is going  
19 to try to say -- and I notice in his report he  
20 frequently phrases it in terms of -- which I guess any  
21 witness would like to do -- is, "Ladies and gentlemen,  
22 the judge has already told you this is true; so, it must  
23 be true." That's not -- on this particular dispute I  
24 haven't been asked to construe what that accelerometer  
25 is; and no one asked me to construe what a sensor is,

1 either, not just a sensor by itself. That's actually  
2 discussed in the patent, in the specification.

3 So, what -- I mean, do we need to have that  
4 Claim Construction Hearing before he testifies or what?

5 MR. PRESTA: Your Honor, I don't believe so.  
6 I believe it's -- we agree with you that -- I think the  
7 factual issue -- I don't think we need a claim  
8 construction of that section of the claim when it says  
9 "two bi-directional proportional sensors." In our view,  
10 we would not be representing that your Honor has made  
11 any ruling on that.

12 THE COURT: Okay.

13 MR. PRESTA: We would just be looking at that  
14 term from a factual issue.

15 THE COURT: And from plaintiff's point of  
16 view? I mean, do you see it as just --

17 MR. CAWLEY: We agree, your Honor. We don't  
18 think that term needs to be construed.

19 THE COURT: Okay.

20 MR. CAWLEY: We didn't ask for it to be  
21 construed. And there will be a factual dispute about  
22 whether there is a sensor or two sensors inside there or  
23 not, but that's a factual dispute.

24 THE COURT: Okay. Fine.

25 In that case, I do believe that he has

1 outlined that dispute and talked about it being in terms  
2 of one accelerometer and -- at least the way I read it,  
3 he's discussing how it works differently. And it may  
4 just be -- I don't know who brought it up the first  
5 time -- a matter of semantics when you discuss vectors,  
6 but that's something that in the end may just come down  
7 to the credibility of the witnesses and the other  
8 evidence as they make it. So, I'll allow him to go into  
9 that.

10           Now, if -- I mean, if you think he's trying  
11 to get into claim construction of some kind, obviously  
12 make your objection. I can't anticipate what he's  
13 actually going to say, but I don't see it here in the  
14 actual charts themselves. But, I mean, I'm not trying  
15 to cut off all possible objections on a witness I  
16 haven't heard say a word yet.

17           All right. We will be in recess, then, until  
18 five past.

19           Is the next witness going to be live with the  
20 translators?

21           MR. CAWLEY: Yes, your Honor.

22           THE COURT: Okay. If we can go ahead and get  
23 them set up. I think we have two chairs up here.

24           (Recess, 9:52 a.m. to 10:13 a.m.)

25           MR. GUNTHER: Your Honor, just one very quick

1 thing. Mr. Cawley has been kind enough to let us get  
2 set up for cross-examination of Mr. Ikeda. At a couple  
3 of points during that we're going to have him  
4 demonstrate a couple of games, and we're going to ask  
5 him to come off the witness stand. The interpreters  
6 will follow him, but I just wanted to let the court know  
7 we were going to do that.

8 THE COURT: Okay. Go ahead and get the jury,  
9 please.

10 (The jury enters the courtroom, 10:13 a.m.)

11 (The oath is administered to the  
12 interpreters.)

13 (The oath is administered to the witness  
14 through the interpreter.)

15 THE COURT: Counsel?

16 MR. CAWLEY: Thank you, your Honor.

17 DIRECT EXAMINATION OF AKIO IKEDA

18 CALLED ON BEHALF OF THE PLAINTIFF

19 BY MR. CAWLEY:

20 Q. Good morning, Mr. Ikeda.

21 A. Good morning.

22 Q. Would you tell the jury your name, please?

23 A. My name is Akio, A-K-I-O, Ikeda, I-K-E-D-A. I have  
24 come from Japan; and I work for Nintendo, which is  
25 located in Kyoto in Japan.

1 Q. Mr. Ikeda, did you invent the accelerometer?

2 A. No. I did not invent the accelerometer itself.

3 Q. Did you invent the Wii Remote?

4 A. Yes. I combined various sensors and developed the  
5 Wii Remote control.

6 Q. Did you do this by yourself?

7 A. Basically. Development was carried out by a  
8 development team.

9 Q. I see. So, was it the development team that  
10 invented the Wii Remote?

11 A. Yes. It was carried out by a development team.  
12 However, I was most knowledgeable about accelerometers;  
13 and, so, I was the leader of this development team.

14 Q. You have worked for Nintendo for about ten years,  
15 right?

16 A. No. I've been working for the company for 15  
17 years. I believe at the time of my deposition, I  
18 explained that it had been 15 years.

19 Q. Excuse me. I must have written the name down  
20 wrong.

21 How many people work for Nintendo?

22 A. At Nintendo headquarters, the main office,  
23 approximately 1,500.

24 Q. And how about in the rest of the world?

25 A. I'm sorry to say I really don't have an answer to

1 that question.

2 Q. Okay. Have you testified in court before?

3 A. No, I never have. This is my first time.

4 Q. Did you come to court earlier this week so that you  
5 could see the courtroom and sit in the witness chair?

6 A. Yes. Day before yesterday, on one occasion I did  
7 come to the court.

8 Q. Okay. And have you talked to people about your  
9 testimony at the trial?

10 A. Yes. I have spoken about it to some degree with  
11 Nintendo staff and lawyers.

12 Q. And have you talked to people about things that  
13 have happened in the trial?

14 A. I have spoken to Nintendo staff and to lawyers  
15 about the Anascape suit itself.

16 Q. I see. And have they told you things that have  
17 happened during the trial of this case?

18 MR. GUNTHER: Your Honor, I have an objection  
19 on privilege grounds, the way the question was phrased.

20 MR. CAWLEY: I haven't asked about the  
21 content of the --

22 THE COURT: Well, I'll allow him to answer  
23 whether or not he has spoken about what's gone on at the  
24 trial.

25 A. I have not been told about what has been happening



1 during the trial. I am here to tell the truth.

2 BY MR. CAWLEY:

3 Q. Okay. Good.

4 Were you involved -- you've already told me  
5 that.

6 Did you also play a role in the development  
7 of the Wii Classic?

8 A. Yes. My development team developed the Wii Remote  
9 control, the Nunchuk, and the Classic.

10 Q. And how many people are on your development team?

11 A. If we're talking about the Wii Remote control, that  
12 team would be the one that handled the development of  
13 the electronic circuits. And including myself, it would  
14 be five people.

15 Q. And where did that team work?

16 A. The main workplace would have been the  
17 headquarters, the main office of Nintendo. That would  
18 be in Kyoto in Japan.

19 Q. Did other members of the team contribute ideas to  
20 the product or only you?

21 A. As a matter of fact, at a stage before the  
22 development team, there was a planning team; and the  
23 various members of the planning team came up with  
24 various ideas. And I drew them together and arranged  
25 these ideas and in that way came up with the Remote

1 control.

2                   So, the way it worked is I had been the  
3 leader of the planning team; and having been that  
4 leader, I became the leader of the development team.  
5 And in that way the Remote control was developed.

6 Q.     But it is true, isn't it, that others besides you  
7 contributed ideas to the development?

8 A.     Yes, that is the truth.

9 Q.     Okay. Thank you.

10                  Isn't it also true, Mr. Ikeda, that you can  
11 only use the Wii Nunchuk with a Wii Remote?

12 A.     That is correct.

13 Q.     And the Wii Nunchuk connected to the Wii Remote  
14 adds another thumbstick; isn't that correct?

15 A.     That is correct.

16 Q.     And it's also true, isn't it, that connecting the  
17 Wii Nunchuk to the Remote adds additional buttons?

18 A.     That's correct.

19 Q.     Now, for simple games such as Wii Sports, sometimes  
20 the Wii Remote controller alone is enough to play those  
21 games, correct?

22 A.     Yes, that's right.

23 Q.     But for more complex games, you'd agree that it's  
24 helpful to have an added thumbstick and buttons for the  
25 left hand, correct?

1 A. Well, I think the more appropriate way to put it  
2 would be that it becomes a controller that is more  
3 appropriate to a kind of game that requires lots of  
4 buttons. In the case of my mother, for example, the  
5 more buttons it has, the more she begins to dislike it.

6 Q. But this is the question that I asked you: Isn't  
7 it true that for more complex games, it's helpful to  
8 have an added thumbstick and buttons for the left hand?

9 A. Yes. I think it makes it definitely easier to use  
10 if you're playing a game that requires a complex set of  
11 buttons.

12 Q. Thank you. And, in fact, this is so important that  
13 when someone buys a Wii, it comes with a Nunchuk; isn't  
14 that correct?

15 A. Yes. In the case of the Nintendo product, the Wii,  
16 it comes with one Remote control and one Nunchuk.

17           However, if you really want to play  
18 complicated games, you can get a Classic Controller.  
19 And, so, in my view -- and this is just my view -- I  
20 think the reason that the two come together when you buy  
21 a Wii, it's not necessarily for playing complicated  
22 games but for Wii Sports, for example, you have to have  
23 the two of them. The two of them are necessary for  
24 certain Wii Sports.

25 Q. In fact, it's true, isn't it, Mr. Ikeda, that there

1 are some games for the Wii console that cannot be played  
2 without the Nunchuk?

3 A. That's correct.

4 Q. And for those games, if you try to play the game  
5 and you do not have a Nunchuk, a message comes on the  
6 screen telling you to connect the Nunchuk; is that  
7 right?

8 A. That's correct.

9 Q. Now let me ask you about a particular game, not a  
10 sports game but the one called Zelda: Twilight Princess.  
11 You have played this game, haven't you?

12 A. Yes, I have.

13 Q. And this game was available for the GameCube  
14 console; is that right?

15 A. There is a Zelda: Twilight Princess game for the  
16 GameCube, yes; but it is sold on a different disk.

17 Q. And to control the Zelda: Twilight Princess on the  
18 GameCube, you use the GameCube controller, correct?

19 A. Yes, you operate it with the GameCube controller.

20 Q. But this video game is also available for the Wii  
21 console, correct?

22 A. It has been arranged to be played on the Wii and  
23 then put on disk, yes.

24 Q. And you have played that game on the Wii console,  
25 correct?

1 A. Yes, I have played it on the Wii.

2 Q. And to play that game on the Wii, you use the Wii  
3 Remote connected to the Wii Nunchuk, correct?

4 A. That's correct.

5 Q. You cannot play Zelda: Twilight Princess with the  
6 Wii Classic Controller, can you?

7 A. That is correct.

8 Q. And you consider Zelda: Twilight Princess to be a  
9 complex game, right?

10 A. Yes, I do.

11 Q. Are you familiar with the N64 controller by  
12 Nintendo?

13 A. Yes. It's a Nintendo product; so, I know about it.

14 Q. Do you know what I mean by the phrase "rumble"?

15 A. Yes. I think it means vibration.

16 Q. Yes. That's what I mean is -- when I say "rumble,"  
17 is vibration in the controller.

18 When the N64 controller was originally sold,  
19 it wasn't sold with rumble, or vibration, was it?

20 MR. GUNTHER: Lack of foundation, your Honor.

21 THE COURT: Overruled.

22 A. That's correct. It did not have a vibration  
23 function.

24 BY MR. CAWLEY:

25 Q. And was vibration later made available to customers

1 who wanted to purchase it separately?

2 A. Yes. The way it worked is there was a game called  
3 "Star Fox" that involved manipulating a flying machine  
4 and the decision was made at Nintendo that vibration was  
5 necessary for that game and, so, we sold, as an option,  
6 a separate vibration pack.

7 Q. And have you heard that referred to as the "Rumble  
8 Pak"?

9 A. Well, I'm sorry to say I don't know if it was ever  
10 referred to as "Rumble Pak." In Japan we referred to it  
11 as the "vibration pack."

12 Q. Okay. Well, I'll be glad to call it "vibration  
13 pack."

14                   Isn't it true, Mr. Ikeda, that Nintendo  
15 offered the vibration pack for sale in the United States  
16 for the first time in 1997?

17 A. I'm sorry to say I just don't know at what point it  
18 went on sale in the United States. The reason for that  
19 is at the time of the development of the Nintendo 64, I  
20 was still working on development of cartridges for the  
21 Super NES; and, so, I really didn't have that much  
22 information about the N64.

23 Q. About how many years after the introduction of the  
24 N64 was the Rumble Pak made available for sale?

25 A. I'm very sorry. I just don't recall that, either.

1 Q. Okay. Although rumble, or vibration, was not a  
2 standard feature of the N64 controller, it is standard  
3 in the GameCube controller, correct?

4 A. That is correct.

5 Q. And the Wii Remote has a vibration function, too,  
6 doesn't it?

7 A. That is correct.

8 Q. And it comes standard with the Wii Remote, correct?

9 A. Yes. It's included as a standard function.

10 Q. How does the vibration feature work in the Wii  
11 Remote?

12 A. It really depends on the game. But, for example,  
13 with Wii Sports, there's one called "tennis." And when  
14 you swing the racket and the racket hits the ball, then  
15 it would do such things as vibrate. It's a way of  
16 illustrating the game.

17 Q. Okay. What mechanism or machine in the Wii Remote  
18 causes it to vibrate?

19 A. There is a coin-type motor inside the controller,  
20 and there is a weight on that motor. And by means of  
21 rotating that weight, that's what gives rise to the  
22 vibration.

23 Q. Yes, sir. The Wii Remote has what's called a  
24 "D-pad," doesn't it, "D" as in "dog"?

25 A. I'm sorry. Could you go into a little more detail

1 about that?

2 Q. Sure. The Wii Remote has a pad that I've heard  
3 referred to -- and I'll give you several alternatives --  
4 as a "D-pad" or a "direction pad" or a "cross pad" or a  
5 "plus key," all the same pad but it's been called all  
6 those different names.

7 A. Yes. Now I understand what you're asking about.  
8 Thank you very much. Yes, it has one.

9 Q. Yes. And it has buttons, too, doesn't it?

10 A. Yes, it has buttons.

11 Q. How many?

12 A. Let's see. Buttons. Well, if you include the  
13 trigger button that's on the backside of the Wii Remote,  
14 then that would be -- if you're counting buttons used in  
15 games, that would make seven buttons.

16 Then there's a button for turning on or off  
17 the power supply. And then on the backside, there is  
18 another button for synchronizing wireless communication.  
19 So, there is a total of nine buttons on it.

20 Q. Thank you. And the Wii Remote also uses an  
21 accelerometer, correct?

22 A. Yes. It includes an accelerometer -- an  
23 acceleration sensor.

24 Q. The accelerometer detects movement of the Remote,  
25 correct?



1 A. Yes. When you wave the Remote, for example, it  
2 will detect that you have waved it.

3 Q. What is inside the accelerometer that let's it do  
4 that?

5 A. An accelerometer is a sensor that measures  
6 acceleration. Inside there is a portion that moves. It  
7 has a weight on it. And then there is a portion that  
8 does not move. And, so, there is a sensor that  
9 indicates or that detects whether or not there has been  
10 motion on the part that moves. So, you have a moving  
11 portion and a nonmoving portion; and they work as a kind  
12 of pair or set.

13 Q. And does that pair detect motion in one direction?

14 A. The part that has the weight on it can detect  
15 movement up/down, right/left, and forward and back. So,  
16 it can detect motion in three directions.

17 Q. Yes, sir. Thank you.

18 The distance between the probes that you  
19 described change in response to acceleration, correct?

20 A. Yes. That's right.

21 THE COURT: Excuse me, counsel, for just a  
22 minute. If we start getting into long, technical  
23 explanations, could you please ask the witness to break  
24 his answers up into smaller parts? I think it will be  
25 easier for us all to follow if we break it down just a

1 little bit. We've been going along fine; but if some of  
2 these answers start getting fairly long, if he can break  
3 it up, you can translate, and then he can continue on, I  
4 think it would be easier.

5 THE INTERPRETER: I would be happy to do  
6 that, your Honor.

7 THE COURT: If you would tell him that,  
8 please.

9 THE WITNESS: I have understood.

10 MR. CAWLEY: Thank you.

11 BY MR. CAWLEY:

12 Q. The distance between the two probes in the  
13 accelerometer causes a change in the capacitance of the  
14 static electricity, correct?

15 A. That's correct.

16 Q. And is this capacitor a sensor?

17 A. I wouldn't think of each of the individual probes  
18 as sensors; but I would think of the assembly, the  
19 entire unit, as a sensor.

20 Q. But I'm asking you, Mr. Ikeda, about the probes and  
21 actually the capacitors. Do you understand?

22 A. I do understand what you're asking, but I just  
23 don't consider those parts to be sensors.

24 Q. What senses the change in the capacitance of the  
25 static electricity caused by the relative movement of

1 the probes?

2 A. There would be several probes that are detected.  
3 But what you get as an answer -- that is to say, what  
4 you get as output -- there are three outputs.

5 THE COURT: Excuse me. Are you saying there  
6 were several "codes" or several "probes" that are  
7 detected?

8 THE INTERPRETER: That was "probes," your  
9 Honor.

10 THE COURT: I'm sorry?

11 THE INTERPRETER: "Probes." I'm sorry if I  
12 wasn't clear.

13 THE COURT: Thank you.

14 BY MR. CAWLEY:

15 Q. Mr. Ikeda, isn't it true that one set of capacitors  
16 in the accelerometer is used to detect acceleration on  
17 the X axis?

18 A. The X axis can be measured, as well. But at the  
19 same time, measurement can take place along the Y and Z  
20 axes.

21 Q. Yes, sir. That's my next question. Isn't it true  
22 that a different set of capacitors is used to detect  
23 acceleration on the Y axis?

24 A. Yes, different capacitors and probes for the Y  
25 axis.

1 Q. And isn't it true that yet a different set of  
2 capacitors detect movement on the Z axis?

3 A. Well, all of this is being measured with just one  
4 weight; whereas, the locations of the probes are  
5 different.

6 Q. Okay. I'm not asking you about the weight or the  
7 probes; I'm asking you, sir, about the capacitors.

8 A. In the same manner, there are capacitors that are  
9 for X, Y, and Z.

10 Q. So, there are capacitors that sense movement in the  
11 X axis, correct?

12 A. That's correct.

13 Q. And there are capacitors that sense movement in the  
14 Y axis, correct?

15 A. That's correct.

16 Q. Thank you, sir.

17 A. And there are capacitors for the Z axis, as well.

18 Q. Thank you even more. I appreciate that.

19 You mentioned that the accelerometer has  
20 three outputs, correct?

21 A. That's correct.

22 Q. Could these outputs be used by a game designer to  
23 control objects on the screen?

24 A. It's possible to move objects. However, an  
25 accelerometer detects acceleration; so, all it can do is

1 detect either a fast or a slow movement over a given  
2 distance. So, for that reason, if you want to -- for  
3 example, like moving a cursor on a personal computer,  
4 left and right and up and down, that would be a pretty  
5 tough thing to do using the accelerometers in the Wii  
6 Remote. In order to do that kind of cursor movement,  
7 there is a function known as the "pointer" that is  
8 included in the Wii Remote.

9 Q. Thank you. But I'm not really asking you about  
10 cursor on a screen; so, let me rephrase my question.

11 You're familiar with the game Mario Galaxy,  
12 correct?

13 A. Yes, I know about that.

14 Q. Is there a place in that game where the Wii Remote  
15 can be used to make Mario jump onto a ball and to move  
16 the ball with his feet?

17 A. Yes. Yes, it's as you said.

18 Q. So, the Wii Remote can be used to move Mario and  
19 the ball, correct?

20 A. Yes. You can make Mario jump.

21 Q. And the Wii Remote, in addition to sensing movement  
22 in a direction, can also detect tilt, correct?

23 A. Tilt, yes, off to the side. It can detect that, as  
24 well.

25 Q. And that's because gravity is a kind of

1 acceleration, correct?

2 A. It's done using gravity and also the acceleration  
3 that the person himself actually applies.

4 Q. Now, when the Wii Remote creates the three outputs  
5 from the accelerometer -- let me start over again.  
6 That's not a good question.

7 When the accelerometer creates the three  
8 outputs, Nintendo doesn't tell game designers what it  
9 must do with those outputs, does it?

10 A. No, no. We don't have any requirements.

11 Q. So, the game designer may choose to use those three  
12 outputs in any way the designer wishes, correct?

13 A. That's correct.

14 Q. And those outputs could be used to control the  
15 movement of people or characters, correct?

16 A. As I said before, an accelerometer measures  
17 acceleration. So, it's not like using a mouse and  
18 making a precise motion on the screen. But you can use  
19 it, say, if you want to use it -- it's not something  
20 that you can follow a precise movement with; but you can  
21 use it as an instruction to, say, deliver a punch or  
22 swing a racket or swing a bat.

23 Q. Well, you've already testified, Mr. Ikeda, that in  
24 Mario Galaxy it can be used to move Mario, correct?

25 A. Yes. As I said, if you're having Mario jump,

1 you're applying acceleration in the direction in which  
2 you want Mario to jump.

3 Q. So --

4 A. But you cannot say to Mario, "Okay, I want you to  
5 jump exactly a distance that is three times your  
6 height."

7 Q. Okay. I thank you for that. But my question was,  
8 just to make sure we completely understand, then: You  
9 agree it is possible for a game designer to use the  
10 output of the accelerometer to control a character?

11 A. Well, I may not have a complete understanding of  
12 how you're using the word "control"; but you cannot use  
13 it in order to make the character move precisely in  
14 accordance with the will of the game player -- in  
15 accordance with his intentions.

16 And the reason for that is an accelerometer  
17 can detect the direction in which acceleration takes  
18 place, but it cannot determine how much motion.

19 Q. You remember in Mario Galaxy, Mr. Ikeda, that once  
20 Mario jumps on the ball, he can move the ball in  
21 different directions by the player using the Wii Remote  
22 accelerometer?

23 A. Yes. That, you can do; and that's because the  
24 acceleration that is -- that arises when you slant  
25 something, it indicates a direction. So, what it's

1 saying is go in a particular direction.

2 Q. Thank you. And I'm not asking you anything about  
3 the precision of the character's movement. My question  
4 to you is very simple. Can a game designer choose to  
5 use the output of the accelerometer to move a character  
6 on the screen?

7 A. Yes. You can do a simple motion, like a jump.

8 Q. Could a game --

9 A. You can also indicate to Mario, once he's on the  
10 ball, which way to go.

11 Q. Thank you.

12                   Could the game designer choose to use the  
13 output of the accelerometer to move objects on the  
14 screen?

15 A. Well, just the way you can move Mario, if you had a  
16 ball-like character, you could move that ball in the  
17 same way.

18 Q. Could a game designer choose to use the output of  
19 the accelerometer to change the player's point of view  
20 on the screen?

21 A. I think so.

22 Q. Thank you, sir.

23                   Now, you've used a mouse before, haven't you?

24 A. Yes, I have.

25 Q. And you've used a trackball before?



1 A. Yes, I have used one.

2 Q. When you move the trackball, the trackball senses  
3 rotational movement, correct?

4 A. Yes. The portion that comes into contact with the  
5 trackball detects rotational movement.

6 Q. However, the cursor or pointer on the screen moves  
7 linearly, or in a line, in response to the rotational  
8 movement of the trackball, correct?

9 A. Yes. It moves linearly, but I think what it's  
10 doing is there is some kind of parameter that is used to  
11 transform or to convert the rotational movement into  
12 linear movement.

13 Q. Yes, sir. So, what you've just said is that when  
14 you use a trackball with a computer, the rotational  
15 movement of the trackball is translated into linear  
16 movement on the computer screen, correct?

17 A. That's right.

18 Q. Thank you, Mr. Ikeda.

19 MR. CAWLEY: I'll pass the witness, your  
20 Honor.

21 THE COURT: Ladies and gentlemen, we're going  
22 to go ahead and take a break. I will ask you to be back  
23 at quarter past.

24 (The jury exits the courtroom, 10:57 a.m.)

25 THE COURT: We'll be in recess until quarter

1 past.

2 (Recess, 10:57 a.m. to 11:20 a.m.)

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

5 THE COURT: Counsel?

6 MR. GUNTHER: Thank you, your Honor.

7 CROSS-EXAMINATION OF AKIO IKEDA

8 BY MR. GUNTHER:

9 Q. Mr. Ikeda, I'd like to start out -- Anascape's  
10 counsel asked you some questions about what you were  
11 doing during the development of the Wii Remote, but I  
12 want to ask you: What's your position right now at  
13 Nintendo?

14 A. I am the group manager of the second development  
15 group in Nintendo's integrated development department.

16 Q. Now, sir, do you speak any English?

17 A. I can more or less read and write and understand  
18 what's said; but when it comes to speaking, I only can  
19 say just a few words.

20 And because I want to be exact in what I say,  
21 I'm wanting to be able to use my native language when I  
22 testify.

23 Q. Thank you.

24 Now, I want to ask you a few questions about  
25 your background. Where were you born?

1 A. I was born in Yamaguchi Prefecture in Japan.

2 Q. And, sir, how old are you?

3 A. I'm 39.

4 Q. And, sir, have you lived in Japan your whole life?

5 A. Yes. Ever since I was born, I've lived entirely in  
6 Japan.

7 Q. Have you ever been to the United States before?

8 A. Yes. I've been in Los Angeles -- I've been to Los  
9 Angeles once, and last year I went to Honolulu.

10 Q. Have you ever been to Texas before?

11 A. This is my first trip.

12 Q. So, what do you think of Texas?

13 A. I'm impressed by how green Texas is and how good  
14 the food is. It seems like a very nice place. Also,  
15 there is a Nintendo software called Metroid; and I had  
16 heard that that had been jointly developed by Nintendo  
17 and with a Texas company. So, in that sense, I had some  
18 notion of Texas.

19 Q. Thank you. Now, did you come here from Japan to  
20 testify in this case?

21 A. That's correct.

22 Q. How long did it take you to get here?

23 A. From Japan's Narita N-A-R-I-T-A, airport to Houston  
24 airport, it took 12 hours by plane. Then to come from  
25 the Houston airport to Lufkin, here, that took about 2

1 hours by car.

2 Q. Now, back in January of this year, you had your  
3 deposition taken in Japan, correct?

4 A. That's correct.

5 Q. And that was a deposition that was taken by the  
6 Anascape lawyers in this case; is that right?

7 A. That's correct.

8 Q. Now, had you ever had your deposition taken before?

9 A. No, I never have.

10 Q. And this may have been covered, but just to make  
11 sure: Have you ever testified in a trial like this  
12 before?

13 A. No. This is my first time.

14 Q. Can you tell us your educational background?

15 A. I attended a Japanese university known as Aoyama,  
16 A-O-Y-A-M-A, Gakuin, G-A-K-U-I-N; and I graduated from  
17 the department of electrical and electronic engineering.

18 Q. What year did you graduate?

19 A. I graduated in March of 1993.

20 Q. And, sir, are you a degreed electrical engineer?

21 A. That's correct.

22 MR. GUNTHER: Your Honor, could I just ask  
23 Mr. Taylor to move the mic a little bit closer to him  
24 when he's answering? I'm just -- from standing back  
25 here, it's a little bit faint.

1 THE INTERPRETER: So, you would like to hear  
2 my answers more loudly?

3 MR. GUNTHER: If possible, Mr. Taylor.

4 THE WITNESS: All right.

5 THE COURT: Let me just suggest that you just  
6 move it back and forth between the two of you. It may  
7 make it a little easier.

8 THE INTERPRETER: All right.

9 BY MR. GUNTHER:

10 Q. When did you join Nintendo, Mr. Ikeda?

11 A. I joined Nintendo in April of 1993.

12 Q. And was that right after you got out of college?

13 A. Yes. I joined the company the very next month  
14 after I graduated.

15 Q. Thank you.

16 Your current position, you've testified, is  
17 manager of the Development Number 2 group. Can you tell  
18 us what that does and how many people you supervise  
19 currently?

20 A. Well, first of all, the number in the group,  
21 including myself, there are 21. As for the work that we  
22 do, it involves the Wii console, the Remote control, the  
23 Wii Fit. We are involved in the electronic design for  
24 this and for peripherals, as well.

25 Q. Now, before you were manager of the Development

1 Group Number 2, what was your responsibilities? What  
2 did you do at Nintendo?

3 A. Until July of last year, I was group manager of  
4 Development Group Number 5 that specializes in the  
5 design of user interfaces.

6 Q. And, sir, while you were working in that position,  
7 did you work on the development of the Wii Remote?

8 A. Yes. It was in Development Group Number 5 that I  
9 did development work for the Remote control for the Wii,  
10 the Wii Classic, and the Wii Nunchuk.

11 Q. What were your general responsibilities while you  
12 were doing that design and development work for the Wii  
13 controllers?

14 A. They were various functions. One would have been,  
15 say, the accelerometer sensor, that portion; then the  
16 wireless. That would be Bluetooth. All of these  
17 various functions, there was someone actually working on  
18 that, handling the work. I was managing that work and  
19 ensuring its progress; but at the same time, there was  
20 some actual development work that I handled myself in  
21 addition to my management work.

22 Q. Now, sir, are you a named inventor on any patents  
23 as a result of your work at Nintendo?

24 A. Yes, I am.

25 Q. And can you tell us approximately how many patents

1 you've been named as an inventor on based on your work  
2 at Nintendo?

3 A. Including applications filed in the United States,  
4 it would be approximately eight patents.

5 Q. Thank you.

6 Now, sir, were you involved -- what was the  
7 first time that you were involved in the development of  
8 a video game that involved an accelerometer?

9 A. The first time I was involved in a game that had  
10 anything to do with an accelerometer was in developing a  
11 Game Boy cartridge called "Tilt 'n Tumble," Kirby.

12 MR. GUNTHER: Your Honor, may I approach with  
13 a demonstrative exhibit?

14 THE COURT: All right. You may approach.

15 MR. GUNTHER: Thank you, your Honor.

16 BY MR. GUNTHER:

17 Q. Mr. Ikeda, I've handed you two objects. Can you  
18 tell us what they are?

19 A. This is a Game Boy Advance SP.

20 And what we have, this pink item here, this  
21 is the Kirby Tilt 'n Tumble cartridge (indicating). And  
22 it may be a little hard to make out; but here up in the  
23 top, there is an accelerometer built in.

24 Q. When did you work on the development of that  
25 cartridge?

1 A. It was around 1999. There was a planning meeting,  
2 and the purpose of the planning meeting was to decide  
3 whether or not we could do a combination of a Game Boy  
4 cartridge with a certain kind or kinds of sensor to come  
5 up with something that was particularly enjoyable. And  
6 at that meeting someone proposed that an accelerometer  
7 be combined with a Game Boy cartridge; and, so, I became  
8 involved in the work of doing that combination. I was  
9 chosen to be the main person to handle this design work.

10 Q. And, sir, the cartridge that you have in your hand,  
11 is that meant to fit into the Game Boy system?

12 A. Yes. The way you use this cartridge, you push  
13 it -- you insert it (demonstrating) into the Game Boy  
14 Advance.

15 Q. And then can you describe for us -- we're not going  
16 to actually show the game, but can you describe for us  
17 how that game works and how the accelerometer  
18 contributes to the play of the game?

19 A. Well, there's a character named "Kirby" who appears  
20 in this game. He's round, a rather ball-like character.

21 And if you take the console of the Game Boy  
22 Advance and you tilt it, then this round Kirby  
23 character, he will roll in that direction like a ball.

24 I'll just show you (demonstrating). I'll  
25 give you an example of just what sort of action that



1 would be. You operate it like this (demonstrating).

2 Q. Now, when you were operating the Game Boy with the  
3 Kirby cartridge in it, were you pressing buttons to make  
4 the Kirby character move around?

5 A. Well, if you -- you had to push a button, for  
6 example, to start the game or something like that. But  
7 for actually moving Kirby, you did that only by tilting  
8 and turning.

9 Q. And, sir, can you tell us how the accelerometer  
10 factored into what you would see on the screen in terms  
11 of the movement of the ball-like Kirby character?

12 A. When the player tilts the Game Boy, as a result of  
13 that tilting, an acceleration is generated. What the  
14 accelerometer does is detect the direction in which the  
15 tilt took place, and it sends a signal to the console of  
16 the Game Boy Advance. By tilting the Game Boy Advance  
17 console right, left, forward, and back, what you have in  
18 here is an accelerometer that detects on two axes.

19 Q. Okay. Sir, where did -- the accelerometer that's  
20 in the Kirby Tilt 'n Tumble cartridge, is that made by  
21 Nintendo?

22 A. No. Nintendo doesn't manufacture it. We purchase  
23 that part from a U.S. company called "Analog Devices."

24 Q. Now, sir, was the idea of putting the accelerometer  
25 into the Kirby Tilt 'n Tumble cartridge -- was that an

1 idea that came from Analog Devices?

2 A. No. The idea of putting an accelerometer into the  
3 cartridge, that was a Nintendo idea.

4 Q. Had any company, to your knowledge, ever done  
5 anything like that before, any video game company?

6 A. I certainly don't know anything that was out as a  
7 product like that.

8 Q. Thank you.

9 Now, sir, I want to talk for a moment about  
10 the Nintendo 64. You were asked some questions about  
11 that system by Anascape's counsel.

12 A. All right.

13 Q. Now, sir, are you familiar with the Nintendo 64  
14 system?

15 A. Yes. I have used the Nintendo product.

16 Q. What kind of graphics does the Nintendo 64 have?

17 A. These are characters that are displayed on the  
18 television screen. What's distinctive about it is that  
19 these are characters that appear to have depth.

20 Q. And when you say they appear to have depth, are  
21 they 2-D characters or are they 3-D characters or  
22 something else?

23 A. The general way of referring to them would be to  
24 say that these are 3-D graphics.

25 Q. Now, sir, I'm holding this device up. Do you know

1 what this is?

2 A. Yes. What you have in your hand is a Nintendo 64  
3 controller.

4 Q. And is that a 3-D graphics controller, Mr. Ikeda?

5 A. I think it is a controller for operating  
6 three-dimensional characters.

7 Q. Thank you.

8 Now, sir, are you familiar with the game  
9 Nintendo Super Mario 64?

10 A. Yes. I've played with it just a little.

11 Q. Okay.

12 MR. GUNTHER: With your Honor's permission,  
13 we would like to ask Mr. Ikeda to make a short  
14 demonstration of the Nintendo 64 3-D video game with the  
15 Super Mario 64.

16 THE COURT: All right.

17 BY MR. GUNTHER:

18 Q. Mr. Ikeda, I'm going to ask you, if you can, to  
19 step down towards me. We have a game set up, and we're  
20 going to ask you to play just a little bit of Super  
21 Mario 64 on the Nintendo 64 system.

22 A. May I step forward?

23 Q. Yes.

24 MR. GUNTHER: Is that okay, your Honor?

25 THE COURT: Yes.

1 MR. GUNTHER: Thank you.

2 Mr. Taylor, do you want to turn on the  
3 microphone?

4 THE INTERPRETER: I see.

5 MR. GUNTHER: I think there is a switch on  
6 there. You might have to take it out.

7 BY MR. GUNTHER:

8 Q. Mr. Ikeda, can you actually start the game? And if  
9 you could demonstrate and maybe talk a little bit, as  
10 you're playing, about what you're doing.

11 THE COURT: Stop one minute.

12 MR. GUNTHER: Yes, sir.

13 THE COURT: I think you're going to need to  
14 stand a little closer because he's going to need to talk  
15 into the microphone, also. Or else you're going to have  
16 to move off to the podium so he can talk into the  
17 microphone. One way or the other, Mr. Ikeda and the  
18 interpreter have to have access to a microphone.

19 MR. GUNTHER: Understood, your Honor. What I  
20 will do is I'm going to give him this microphone; and to  
21 the extent I have to ask a question, I will talk really  
22 loud.

23 THE COURT: Or you can bend it back towards  
24 yourself.

25 Why don't you bend it towards him now.

1 MR. GUNTHER: Yes, sir.

2 A. I will explain using this microphone. I'd like to  
3 start the game right away.

4 BY MR. GUNTHER:

5 Q. Are you controlling the game right now?

6 A. No. I'm not yet operating it.

7 Q. Tell us when you actually start to operate the  
8 game.

9 A. Now I've started operating Mario. I'm using the  
10 analog stick on this controller to go left and to go  
11 right. There appears to be a castle up ahead; so, I'm  
12 going in that direction. The way I'm doing that, I'm  
13 moving forward by taking this analog stick and pressing  
14 it forward.

15 Q. Now, let me ask you: Is this a 2-D game or a 3-D  
16 game, this Mario 64?

17 A. I think it's a 3-D game.

18 Q. Why do you say that?

19 A. Well, for example, when I go up the stairs -- and  
20 here I'm by the banister. By moving the camera angle, I  
21 can look at it from different points of view.

22 Also, I can move in towards the depth of  
23 what's on the screen; or I can move back out towards --  
24 out of the screen.

25 Q. When you change the camera angle, what features on

1 the controller do you use to do that?

2 A. I'll show you now (indicating). I use the yellow  
3 buttons here to change the angle, the camera angle, and  
4 to zoom in or zoom out.

5 Here where you have this sort of 3-D effect,  
6 it's tricky to actually get on there; and, so, I'm going  
7 to change the angle to make it easier. Uh-oh. I  
8 failed.

9 Q. Just show us just a little bit more of the game to  
10 get the idea of the 3-D nature of the game, please.

11 A. Well, then I'll just continue playing the game  
12 here.

13 Q. Okay, Mr. Ikeda. Thank you very much for that.

14 I have one more question just on this game  
15 and this system, the Nintendo 64 system. In terms of  
16 time, was this system out before or after --

17 MR. CAWLEY: Your Honor, this is precisely  
18 the matter that your Honor ruled on at the beginning of  
19 the trial in relation to the revision of certain  
20 demonstratives.

21 THE COURT: Sustained.

22 BY MR. GUNTHER:

23 Q. Mr. Ikeda, why don't you retake the witness stand,  
24 if you could.

25 MR. GUNTHER: And for the record, while the

1 interpreter is getting seated, the exhibits that we've  
2 been using, the Wii console -- sorry -- the Nintendo 64  
3 controller is Defendant's Exhibit 118. The Nintendo 64  
4 console is Defendant's Exhibit 120. And the Super Mario  
5 64 cartridge is Defendant's Exhibit 121.

6 BY MR. GUNTHER:

7 Q. If I could turn back to the Wii controllers,  
8 Mr. Ikeda.

9 Now, sir, you understand that the reason  
10 we're here is that Anascape is accusing the Wii Remote,  
11 when used with either the Wii Nunchuk or the Wii  
12 Classic, of infringing Mr. Armstrong's '700 patent; is  
13 that correct?

14 A. Yes, I understand that.

15 Q. Now, sir, during the time that you were developing  
16 the Wii Remote, had you ever heard of Mr. Brad  
17 Armstrong?

18 A. No, I had not.

19 Q. Had you ever met him before?

20 A. No.

21 Q. Do you know whether he's here in this courtroom?

22 A. No, I don't know.

23 Q. Now, sir, had you ever heard of Mr. Armstrong's  
24 '700 patent anytime before this lawsuit was filed?

25 A. No, I had not.

1 Q. Did you use anything from Mr. Armstrong's '700  
2 patent while you were developing any of the Wii  
3 controllers?

4 A. No. Not in any controller.

5 Q. To your knowledge, did anyone on the team that was  
6 working with you in developing the Wii Remote, the Wii  
7 Nunchuk, and the Wii Classic Controllers use anything  
8 from Mr. Armstrong's '700 patent?

9 A. No. I don't think that happened.

10 Q. Now, sir, can you tell me how you got involved in  
11 developing the Wii controllers and specifically the Wii  
12 Remote?

13 A. First of all, it was in May of 2003 that I moved to  
14 the department where I now find myself; that is to say,  
15 the integrated research department.

16 Within that department, a user interface  
17 planning team was established; and I was chosen as a  
18 member of that team. Then a Wii user interface planning  
19 team was put together, and ideas were exchanged within  
20 that team. Within that team, I came up with a number of  
21 different ideas for controllers; and I was made the  
22 leader of that planning team. And later on, by  
23 combining pointer technology with accelerometers, I was  
24 able to achieve the kind of control that is used in the  
25 Wii Remote control.



1 Q. Let me just ask you this, because I want to make  
2 sure that we're clear on this. Who at Nintendo had the  
3 idea of putting an accelerometer in the Wii Remote?

4 A. I was the one who pushed that idea.

5 Q. Now, sir, let me, if I can --

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

7 THE COURT: You may.

8 BY MR. GUNTHER:

9 Q. I'm handing you a Wii Remote.

10 A. Yes.

11 Q. Are there any other features in the Wii Remote that  
12 you were primarily responsible for, in terms of the  
13 idea?

14 A. I was the one who found the pointer technology.

15 Q. And, sir, can you tell us what you mean by "the  
16 pointer technology" and show us where that is resident  
17 in the Wii Remote?

18 A. The pointer is actually mounted right here  
19 (indicating), at the end of -- right here in the end.

20 Q. I'm sorry. Could you --

21 A. As for the functions of the pointer, there is a  
22 kind of camera contained here (indicating). However,  
23 it's not like your ordinary digital camera that can take  
24 pretty pictures. This is a camera that can -- is  
25 sensitive only to certain kinds of light.

1           The way it works is on the Wii itself,  
2 there's something called a "sensor bar"; and the sensor  
3 bar on the Wii gives off light. And this -- what  
4 happens here is about 200 times a second, this detects  
5 the light that's given off by the sensor bar.

6           And wireless technology is used to convey to  
7 the Wii from what angle that light is being detected  
8 here in the Remote control.

9 Q.     Now, sir, I'm going to hold something up; and I  
10 would ask you to identify it for the jury.

11 A.     On either side of the sensor bar, there is a  
12 special lamp, an infrared lamp that emits a particular  
13 kind of light.

14 Q.     So, what I just held up was the sensor bar?

15 A.     That's right.

16 Q.     And the pointer that you've been talking about,  
17 that interacts with the sensor bar? Is that your  
18 testimony?

19 A.     The way it works is the pointer here, which is like  
20 a camera, it detects or it captures the light from the  
21 sensor bar. Without the sensor bar, the pointer  
22 function cannot be used.

23 Q.     And, sir, is the pointer -- you've described it as  
24 a camera. Is it actually taking pictures of the sensor  
25 bar?

1 A. No, it's not taking pictures. What it's doing is  
2 detecting the location where there is light, the places  
3 where there is light.

4 Q. Thank you.

5 Now I want to go back to the accelerometer  
6 that you talked about that was your idea to include in  
7 the Wii Remote. How did you come up with the idea for  
8 including the accelerometer in the Wii Remote?

9 A. As I said before, I had handled the design of the  
10 Kirby cartridge. You can operate the game by tilting  
11 the Game Boy; but I didn't like the fact that when you  
12 tilt that, also the LCD screen gets tilted at the same  
13 time. So, the idea that I had was to have a screen,  
14 maybe a big screen like a television, that did not move  
15 and then have the controller with an accelerometer in it  
16 separate from that. And I thought by that means, a new  
17 kind of game could be developed.

18 Q. Now, sir, after you came up with the idea for  
19 including the accelerometer in a controller, what did  
20 you do next? After you had the idea, what was your next  
21 step?

22 A. In the case of an acceleration sensor, it wasn't  
23 very good at detecting particular distance traveled.  
24 What it was particularly good for was determining how  
25 quickly or how slowly something had taken place. For

1 that reason, I thought it would be necessary to combine  
2 it with a device that could be used for choosing from  
3 menus or for precise control of characters. And those  
4 things would be the cross key and the pointer.

5 Q. Now, sir, did you build a prototype at some point  
6 of your idea?

7 A. Yes. I made several types of prototype.

8 Q. And, sir, what did you do with the prototype, or  
9 prototypes, after you made them; that is, the ones that  
10 had your idea of an accelerometer and a pointer?

11 A. It was in May of 2005 that I made a presentation to  
12 my bosses, Managing Director Takeda, T-A-K-E-D-A, who is  
13 in charge of hardware development, and also a  
14 presentation to Managing Director Miyamoto  
15 M-I-Y-A-M-O-T-O, who is in charge of applications  
16 development.

17 After that, Managing Director Miyamoto, he  
18 liked what he saw; and he gave instructions for this  
19 idea to be demonstrated and shown to the various  
20 application teams.

21 Q. And after that, sir, did you actually start  
22 developing what became the Wii Remote?

23 A. At that point a prototype had been put together;  
24 and, so, we developed -- we went into the actual styling  
25 of what turned out to be the Remote control in an

1 accelerated way from that point.

2 Q. Now, sir, starting from the point in time when you  
3 first had your idea of including an accelerometer and a  
4 pointer in a video game controller, from that point to  
5 the point that you actually finished the development  
6 work on the Wii Remote, how long did it take?

7 A. Well, let me see. From actually having the concept  
8 to the point where product is actually being  
9 manufactured, I think that would be two to three years.

10 Q. And, sir, during that two to three-year period, how  
11 many people worked under your direction to develop what  
12 became the Wii Remote?

13 A. It would be hard to give you a specific number, but  
14 there were people who were involved in the actual  
15 styling of the Remote control. There were people who  
16 were involved in the actual mechanical aspects of it.  
17 Also, there were people who were involved in coming up  
18 with software for evaluating the Remote control. So, I  
19 would say there were at least several dozen people, some  
20 dozens of people.

21 Q. Now, sir, let me ask you this question: Was it  
22 easy for you and the rest of the people at Nintendo  
23 working on the development of this product to develop  
24 the Wii Remote? Was it really kind of an easy  
25 development project?

1 A. No. I agonized quite a lot over this before it  
2 actually took the appearance that we see here. My staff  
3 also -- I must say they agonized considerably over it,  
4 too.

5 Q. Now, sir, the Wii Remote uses an accelerometer  
6 that's purchased from Analog Devices, that same U.S.  
7 company, right?

8 A. That's correct.

9 Q. And we had some testimony yesterday, but let me ask  
10 you this: Was it just a simple matter of buying an  
11 off-the-shelf accelerometer part from Analog Devices and  
12 slapping it into a controller? Is that all that was  
13 involved in developing the Wii Remote?

14 A. No. The analog devices accelerometers that we had  
15 been using up until that point had only two axes.  
16 However, the Wii Remote control ended up taking the form  
17 that it did; and it was one that could be held this way  
18 or that way (demonstrating) or waved around. And, so,  
19 we proposed to Analog Devices that they come up with a  
20 new product that had three axes.

21 Q. So, is it your testimony -- I just want to be clear  
22 on this. Is it your testimony that it was Nintendo's  
23 idea given to the Analog Devices to come up with a  
24 three-axis accelerometer?

25 A. What we wanted from Analog Devices was a three-axis

1 accelerometer or acceleration sensor. As for how the  
2 sensor was going to work, the structure of the thing  
3 itself, that was going to be up to Analog Devices.

4 THE COURT: All right. Counsel, we're going  
5 to go ahead and break for lunch.

6 Ladies and gentlemen, I'll ask you to be back  
7 at 1:30. Of course, please remember my instructions.  
8 Don't discuss the case, and don't let anybody talk to  
9 you about it.

10 (The jury exits the courtroom, 12:15 p.m.)

11 THE COURT: I've taken a look at these other  
12 two objections, one dealing with Mr. Fiorito and one  
13 dealing with Mr. Pederson. Now, inequitable conduct is  
14 not going to the jury; so, what's the purpose of  
15 Mr. Fiorito?

16 MR. PRESTA: Your Honor, he would be our  
17 witness as a comparable witness to the plaintiff's  
18 expert, Mr. Newman, on patent procedures and what  
19 actually transpired in the file histories of this case,  
20 to help the jury understand the contents of the file  
21 history, to a limited degree; and it's in rebuttal to  
22 Mr. Newman testifying.

23 The parties actually -- we had actually  
24 proposed to the other side that neither party call  
25 patent law experts in this part of the trial and save it

1 for the bench trial, but they didn't want to agree with  
2 that. And they called Newman; so, it's our position  
3 that we would like to call Mr. Fiorito.

4 I think the main issue, your Honor --  
5 unfortunately, the Microsoft settlement was somewhat of  
6 a surprise to us and -- but I think the only  
7 technicality, if I can call it that, is that Microsoft  
8 was going to take the lead on putting Mr. Fiorito on  
9 outside the bench trial, in this trial, on behalf of  
10 both Nintendo and Microsoft; and that's indicated on  
11 Microsoft's witness list, indicated that he will be put  
12 on as Nintendo's and Microsoft's expert.

13 On our list, we were going to take charge of  
14 Fiorito in connection with the inequitable conduct bench  
15 trial. And we still intend to do that, of course; but  
16 now, with the sudden departure of Microsoft, we would  
17 respectfully request the court to allow us to put on  
18 Mr. Fiorito as was planned with Microsoft taking the  
19 lead on that.

20 That happened -- the Microsoft settlement we  
21 really had little or no warning on, basically the night  
22 before the pretrial conference. But a week ago we had  
23 talked to the other -- to plaintiff's counsel about not  
24 calling anybody in the case-in-chief, and they knew  
25 Microsoft was going to call Mr. Fiorito on behalf of



1 both of us. So, I can't imagine that there could really  
2 be any prejudice.

3 Under the agreement, we identified  
4 Mr. Fiori to yesterday by 9:00 a.m., as we're supposed to  
5 do with witnesses. If there is, in fact -- if there was  
6 some misunderstanding with the plaintiff that because of  
7 the witness list, that they actually had a confusion --  
8 which I find hard to believe. But if there was, one  
9 other thing I would mention is he doubtfully would go on  
10 until Monday, which would certainly give them even just  
11 four days from now having notice that he would be  
12 testifying very briefly on certain issues in rebuttal to  
13 Mr. Newman's testimony.

14 THE COURT: Well, I guess my first thought  
15 is -- and I think I even had a note going to Ms. Chen --  
16 what on earth was he doing --

17 What was his name, the one you had?

18 MR. CAWLEY: Mr. Newman.

19 THE COURT: Mr. Newman.

20 -- why was he on the stand in the first  
21 place, and why didn't anybody object to him. Generally  
22 I don't allow testimony about what goes on in the PT0  
23 because I regard that normally as a collateral attack or  
24 collateral bolstering of what goes on in the PT0. The  
25 jury gets -- but there was no objection to him; so -- it

1 is not my job to interfere.

2 But now you want to bring in someone to bring  
3 up what? You say a few issues. Basically he gave what  
4 I saw as a fairly -- in fact, I guess it was you who  
5 cross-examined him and gave him the exact reference to  
6 the regulations; so, what --

7 MR. PRESTA: Correct, your Honor.

8 THE COURT: What are you going to bring up  
9 now, someone else to say, "Yep, those are the  
10 regulations"?

11 MR. PRESTA: Well, your Honor, it's actually  
12 a little bit more than that. He raised the issue of  
13 what is a continuation and a continuation-in-part, and I  
14 didn't go into all the great details. I just kept the  
15 cross relative to what --

16 THE COURT: Now, wait a minute. He raised  
17 the issue, or you asked him about it?

18 And this is a continuation. I'm not going to  
19 get the jury confused about continuations and  
20 continuation-in-part and should the PT0 have made it a  
21 continuation-in-part or -- I mean, that's -- that,  
22 again, is, in my mind, a collateral attack on the PT0.  
23 This is a continuation.

24 They're going to be carefully instructed that  
25 they have to go ahead and compare the claim back to the

1 original application to be sure that each and every  
2 element is disclosed. But --

3 MR. PRESTA: Yes.

4 THE COURT: -- to try to bring in someone and  
5 say, "Well, gee, this should have been a  
6 continuation-in-part" or "Maybe the PTO wasn't careful  
7 enough" or -- I mean, what are you trying --

8 MR. PRESTA: Yes.

9 THE COURT: -- to bring out with this that is  
10 going to add anything to the trial?

11 MR. PRESTA: I understand your concern, your  
12 Honor. Now, first of all, it is an important issue; and  
13 I'm glad I have a chance to explain it to you because  
14 from our perspective, the Patent Office, under the  
15 rules, doesn't look to make a determination whether  
16 something is really a continuation or a  
17 continuation-in-part. Mr. Armstrong filed the case as a  
18 continuation-in-part and he unilaterally changed it  
19 himself to a continuation and that's the way he amended  
20 it, so it read "continuation."

21 THE COURT: How does that help the jury in --

22 MR. PRESTA: Yes.

23 THE COURT: -- making a decision on this  
24 case, what the PTO did, what he called it the first  
25 time, how he changed it, how it was finally issued? I

1 mean, you're the one who brought up the regulation and  
2 it was continuation-in-part and so forth.

3 As I said before, I would have probably  
4 sustained an objection to him in the first place; but  
5 it's not my place to suggest --

6 MR. PRESTA: Yes.

7 THE COURT: -- things. So, what are you  
8 going to add to this trial? I mean, under 403, I  
9 don't -- you know, I've got to be concerned about  
10 misleading the jury and the danger of confusion; and I  
11 don't see anything at all -- I mean, tell me what he's  
12 going to say that --

13 MR. PRESTA: Yes.

14 THE COURT: -- is going to be anything more  
15 than, "Yep, that's the regulation; and here's what it  
16 says."

17 MR. PRESTA: Okay, your Honor. It is -- our  
18 proposal is that he would -- nobody in this case so far  
19 has helped the jury -- or has taken the jury through the  
20 prosecution history of the case. That is a very  
21 important aspect of understanding what transpired in  
22 connection with getting the patent, but that's been  
23 completely absent from this case.

24 It seemed as though the file history just at  
25 the moment, without this type of an expert, is just

1 going to go to the jury with no explanation of what it  
2 is or what it means.

3 THE COURT: You mean you're going to start  
4 going through page by page?

5 MR. PRESTA: Not at all. Not at all, your  
6 Honor. We just --

7 THE COURT: I mean, what is it that he's  
8 going to give expert testimony on -- that he's qualified  
9 to give expert testimony on as to what is in the record?  
10 I mean, are you going to have an expert say, "Well,  
11 here's what the patent examiner said and, with my  
12 crystal ball as an expert, this is what he meant"?

13 MR. PRESTA: No, your Honor. He would be  
14 very careful. He would never testify what the examiner  
15 meant or what the applicant meant. Our goal --

16 THE COURT: Tell me why you need an expert --  
17 and I'm not trying to be facetious; but, I mean, I tried  
18 a lot of cases myself before I became a judge and -- I  
19 mean, let's get right to it. What is the point of  
20 this --

21 MR. PRESTA: Yes.

22 THE COURT: -- this witness as an expert  
23 witness?

24 MR. PRESTA: To help the jury understand what  
25 transpired from the 1996 application in the PT0 filing

1 through and till the '700 patent issued, actually what  
2 was filed and what was -- what papers were filed, how  
3 the application was changed, not what the examiners  
4 thought about it, not what Mr. Armstrong thought about  
5 it, just the factual record of what changes occurred in  
6 the 1996 application when it was filed as to the '700  
7 application, which is a critical issue in this case.

8           Also going to explain that, in fact, the case  
9 was originally filed with all of those changes as a  
10 continuation-in-part application, which is a recognition  
11 by Mr. Armstrong that, in fact, new matter was being  
12 added. And it continued for several years being a  
13 continuation-in-part application. That a  
14 continuation-in-part application is something that is  
15 different than a continuation.

16           And the idea that the plaintiff is going to  
17 suggest that because it's a continuation, that somehow  
18 the Patent Office has endorsed the idea that no changes  
19 were made is our big concern. It sounded like  
20 your Honor was going to instruct the jury possibly that  
21 it is a continuation, and I don't want it to be --

22           THE COURT: I'm not going to instruct them.  
23 I'm just wondering why we're bringing up this issue.  
24 This may have all been very relevant to claim  
25 construction, and I can -- I'm, obviously, when I'm

1 construing the claims, supposed to construe them in  
2 light of the specification and the prosecution history  
3 if it is in evidence. But -- and, obviously, if there  
4 is some point in there about prior art or something like  
5 that that goes to invalidity, that's one thing. But --

6 MR. PRESTA: Yes.

7 THE COURT: -- this idea that -- I mean, tell  
8 me --

9 MR. PRESTA: Yes.

10 THE COURT: Show me some piece of authority,  
11 some case -- and I've said many times I have not read  
12 every single patent case nor have I memorized them --  
13 that indicates the jury should do anything other than  
14 take that claim and then compare it against the original  
15 application and ensure or read it to see if -- or  
16 compare it to see if every element disclosed in that  
17 claim is, in fact, disclosed -- or taught in that claim  
18 is disclosed in that original application.

19 MR. PRESTA: Yes.

20 THE COURT: Why is it at all relevant other  
21 than confusing and to start throwing around words like  
22 "continuation" or "continuation-in-part" or what people  
23 thought in the middle there?

24 MR. PRESTA: Well, your Honor, the plaintiffs  
25 in their opening -- they are relying on the fact that

1 this is a continuation. We need to have some way to  
2 rebut the fact that it is truly -- the Patent Office  
3 doesn't make that determination. All of us -- if we  
4 wanted priority in patent applications, we would just  
5 write "continuation" on it and we would get priority,  
6 but it's not that simple.

7 THE COURT: That's right. It's not that  
8 simple. The jury compares one with the other, and  
9 they're going to be instructed as to that. So --

10 MR. PRESTA: Yes.

11 THE COURT: -- again, what is the purpose of  
12 going through some lengthy witness or even some short  
13 witness to try to throw up a little extra smoke as to,  
14 "Gee, maybe somebody should have called this something  
15 else"?

16 MR. PRESTA: Well, your Honor --

17 THE COURT: It's not what it's called; it's  
18 what it is.

19 MR. PRESTA: Your Honor --

20 THE COURT: And, in fact, it's supposed to be  
21 an examination of the claim words -- or claim language  
22 with what is in the application.

23 MR. PRESTA: Yes.

24 THE COURT: It's not supposed to be an  
25 examination of what was in the inventor's mind. I



1 mean --

2 MR. PRESTA: Yes, I --

3 THE COURT: As far as I know, he could have  
4 been crazy; and so could the PT0 examiner. Nobody even  
5 looks at that.

6 MR. PRESTA: We understand. It certainly is  
7 not something that we would go to anybody's mental state  
8 or anybody's thinking. It's the factual record.

9 And there's actually one thing that I want to  
10 explain at this point because it's, obviously, an issue  
11 now. We talked earlier -- there was a ruling that you  
12 had made about burdens of proof in connection with  
13 whether something has priority and it came up under one  
14 of the new cases that had come out and you made a  
15 ruling --

16 THE COURT: Power Oasis.

17 MR. PRESTA: Yes, Power Oasis, your Honor.

18 Now, we believe there is a legal issue that  
19 is going to potentially come up here that --

20 THE COURT: What issue is that?

21 MR. PRESTA: There is a legal issue of  
22 whether this is, in fact, a continuation or a  
23 continuation-in-part.

24 THE COURT: And what on earth would we have  
25 the jury deciding a legal issue for? Why isn't that

1 just presented to me?

2 MR. PRESTA: Well, it is something that we  
3 believe, in trying to study and understand that case  
4 law, that it is probably something that you have to  
5 decide. And it is something that -- on the other hand,  
6 it is also relevant to the jury to see the changes that  
7 were made from the 1996 to the '700 application. Those  
8 changes that were made -- a patent law expert like  
9 Mr. Fiorito, who has analyzed those in his expert  
10 report, is eminently qualified to explain the changes  
11 that were made in the applications. We don't have a  
12 witness really that can get up there and explain the  
13 changes that occurred between the 1996 and the '700  
14 filing; and that is something that, you know, we think  
15 would be useful for the jury to see, not a smokescreen.  
16 It's actually just the facts, not what Mr. Armstrong is  
17 thinking, not what the examiner is thinking, but the  
18 facts of what the changes were.

19 We don't have a witness that can actually do  
20 that that would be appropriate. We felt that that was  
21 appropriate for Mr. Fiorito to do, without, of course --  
22 he is a professional. He's not going to testify to  
23 anything about the examiner's intent, the lack of the  
24 PT0's ability to do anything.

25 We understand your court's orders and your

1 concerns about those type of issues. But essential to  
2 this case is the fact that there were changes made and  
3 developing the fact that when those changes were made --

4 THE COURT: Well, let me -- I'll state for  
5 the record right now -- and I have to give an  
6 instruction to the jury. It seems very clear to the  
7 court that one of the inferences Mr. Gunther was trying  
8 to raise is that if new claims are written, that's a  
9 change; and, therefore, that is outside the scope of the  
10 1996 application. And that's just a flat false  
11 statement of the law, and you know it.

12 MR. GUNTHER: Your Honor --

13 THE COURT: It is not -- if he had -- in  
14 fact, the witness pointed that out. If they had written  
15 claims that were exactly the same as the earlier claims,  
16 then it would have been denied.

17 Now --

18 MR. GUNTHER: Your Honor --

19 THE COURT: -- that is the inference I drew  
20 from your testimony, and I'm quite sure that's the  
21 inference they were trying to get. And if that's what  
22 you're trying to do is to say, "Well, changes were made  
23 in the claims," of course changes were made in the  
24 claims. If they were the same claims, it would have  
25 been the same --

1 MR. GUNTHER: Your Honor --

2 THE COURT: -- patent; and it would have been  
3 rejected out of hand.

4 MR. PRESTA: Your Honor, we've got --

5 THE COURT: One lawyer at a time arguing the  
6 motion.

7 MR. PRESTA: Your Honor, yes. And I  
8 apologize that you have that impression. That is not at  
9 all --

10 THE COURT: Well --

11 MR. PRESTA: -- our intent.

12 THE COURT: -- you worked hard on giving that  
13 impression, I'll tell you.

14 MR. PRESTA: Okay. We're very happy to have  
15 an instruction that will tell the jury that you are  
16 allowed to change the claims. That is not at all our  
17 point.

18 Our point is the changes throughout the  
19 specification that are actually -- you know, there were  
20 numerous changes. The jury hasn't seen the level of  
21 changes that were made to the application. I don't  
22 think the court has, either, because it's very difficult  
23 to sit down with those two documents and compare and  
24 find all the changes. It took us an enormous amount of  
25 time to go through ourselves and find them all. It's

1 not something that readily jumps out to a jury.

2           And if we send them back with the original  
3 application that's very many pages and the '700  
4 application and expect them to go through line by line  
5 and look for the changes with no guidance or no help as  
6 to what those changes are --

7           THE COURT: But, again, isn't the test they  
8 will be instructed on on that particular issue to take a  
9 look at the four or five claims at issue and see if they  
10 are disclosed in the original application? They don't  
11 get to sit there and compare them with the current  
12 specification of the '700 patent; they compare them, I  
13 guess, basically with the specification of the '525  
14 or --

15           MR. PRESTA: Yes.

16           THE COURT: -- or the application. So --

17           MR. PRESTA: But there's a --

18           THE COURT: -- what difference does it make  
19 on that particular issue?

20           MR. PRESTA: Okay.

21           THE COURT: There's other issues; but on that  
22 particular issue, what difference does it make if there  
23 was a change in the specification as opposed to was it  
24 disclosed in the claim?

25           MR. PRESTA: I understand your question, your

1 Honor. But one thing I want to point out is that one of  
2 the issues in this case is also just written  
3 description. We haven't -- part of our case is that  
4 there is lack of written description in the '700 issued  
5 patent to support the claims. That is a separate issue  
6 than whether the '700 claims are entitled to claim  
7 priority back to --

8 THE COURT: Okay. And on that one, then they  
9 have to take a look at the claim language and see if  
10 it's properly described in the '700 patent.

11 MR. PRESTA: Yes.

12 THE COURT: Now, hand me a case or some  
13 authority --

14 MR. PRESTA: Yes --

15 THE COURT: -- that stands for the  
16 proposition that those two should be somehow combined  
17 together or twisted together so that we have this  
18 confusion. I mean, it's hard enough to instruct the  
19 jury; but I'm going to try to instruct them very  
20 carefully that on one issue they compare claims to the  
21 first application.

22 MR. PRESTA: Yes.

23 THE COURT: On the second issue they compare  
24 claims with the specification out of the '700.

25 MR. PRESTA: Understood.

1 THE COURT: And then on infringement they're  
2 going to compare the claims with the accused product.

3 MR. PRESTA: Your Honor, that's perfectly  
4 fine with us. That's all we want the jury to do. And I  
5 guess one thing that we're noticing and raising this  
6 issue is that perhaps it is appropriate to provide that  
7 testimony just to you about the changes in the '700  
8 application. Maybe it's not something that the jury  
9 should be hearing. But we've noticed that there is an  
10 issue, in view of this Power Oasis, about the burdens;  
11 and we wanted to, when the appropriate time to --

12 THE COURT: Well, you're talking about the  
13 burden of proof and the burden of persuasion. Now,  
14 what -- I mean, if there is a legal issue there, it  
15 needs to get presented because I made the ruling once  
16 based on presumably a full and complete presentation of  
17 the issues. And at that time it was -- and the only  
18 issue I heard basically was "Do we get a late disclosed  
19 expert's report" on the grounds that somehow there is  
20 this dramatic new change in the burden of proof, burden  
21 of persuasion. My analysis of those cases, as I stated  
22 for the record, is it is no big dramatic change. There  
23 was just an emphasis on the danger someone runs if they  
24 don't come forward with evidence --

25 MR. PRESTA: Agreed.

1 THE COURT: -- after a prima facia case has  
2 been made which is --

3 MR. PRESTA: Yes.

4 THE COURT: Anybody who's tried a Civil  
5 Rights case runs into that or any other case.

6 MR. PRESTA: I understand, your Honor. Now,  
7 the one part of your -- the only thing that I would  
8 point out -- and I have to agree with you -- to confess  
9 to you that this is somewhat of a new patent law issue  
10 for me, as well. But you made -- there was an aspect of  
11 your ruling that the plaintiffs relied on when you made  
12 that ruling, was because this case was a continuation  
13 and Power Oasis was a continuation-in-part. That was  
14 the distinction that led to you saying that the burdens  
15 didn't change in any way.

16 THE COURT: No. No.

17 MR. PRESTA: That's how I understood it, your  
18 Honor.

19 THE COURT: I pointed out that there were two  
20 slightly different cases. The Power Oasis case stated  
21 or pointed out that there can be differences in priority  
22 date based upon the fact that in a continuation-in-part,  
23 some of its continuation gets the earlier; the new  
24 matter gets the later. That is what I took the Power  
25 Oasis court to be reminding us all of. I put that in as



1 an aside as -- I mean, that's what that case was saying.

2 Right now, so far all I've heard is that we  
3 have the dispute as to whether it's disclosed or not  
4 disclosed. You're saying it's not disclosed. But that  
5 didn't change the burden of proof or the burden of  
6 persuasion going forward. In other words, the  
7 difference between the kind of patent didn't change in  
8 any way who has the burden of going forward. It does  
9 change the prima facia case a little bit --

10 MR. PRESTA: Okay.

11 THE COURT: -- in some ways. But your  
12 argument was -- if I recall, on why you wanted your  
13 expert was that somehow the burden of proof changed on  
14 you dramatically from 1985 or '6 when the Fram or Pro  
15 Fram or Am Fram case -- the other one that I talked  
16 about -- was decided.

17 MR. PRESTA: Your Honor --

18 THE COURT: We get into this point where  
19 almost too much gets read into the cases. I mean, the  
20 Fed Circuit followed pretty standard law that we all  
21 learned in law school. I'm trying to follow along what  
22 they said and -- it's like an overreading. If there is  
23 some piece of evidence or some part of my ruling that I  
24 didn't make clear, let me know. I mean --

25 MR. PRESTA: Okay.

1 THE COURT: -- I'll try to clarify that. But  
2 right now we're talking about do we bring in someone --  
3 and the objection I see is to start talking about  
4 continuations and continuations-in-part and so forth  
5 like that.

6 MR. PRESTA: Well, perhaps I can simplify  
7 this for you. Now that I've had a chance to hear your  
8 further comments on the issue, your Honor, I feel more  
9 comfortable that our concern may not be as big as we  
10 feared.

11 Our concern was that the plaintiff was in  
12 some -- or at some point in the trial either the  
13 plaintiffs were going to suggest it or you were going to  
14 give an instruction that it is a continuation  
15 application; and that was going to carry along with it  
16 our concern that there was going to be prejudice to the  
17 jury that, of course, if the Patent Office said it's a  
18 continuation, then there must have been no differences.

19 THE COURT: No, they're --

20 MR. PRESTA: That's the real underlying  
21 concern, your Honor.

22 THE COURT: The jury is going to be told  
23 they're going to decide. And I presume that plaintiffs  
24 are not going to say that the PT0 has made some  
25 determinative decision here. You get the clear and

1 convincing standard but --

2 MR. PRESTA: That's our only concern, your  
3 Honor. That's the reason this issue came up. If we  
4 have the court's -- now that we understand the court's  
5 position -- we certainly don't want to cause any further  
6 burden on any of these issues. If that is your  
7 position, then we really don't have an issue with  
8 Fiorito; and I'm just happy to have a chance to clarify  
9 that.

10 THE COURT: All right. Okay. Now, that was  
11 the objection as to those charts about continuation and  
12 continuation-in-part.

13 MR. GUNTHER: Your Honor, may I be heard?

14 THE COURT: You may now, yes.

15 MR. GUNTHER: Yes, sir.

16 MR. PRESTA: Thank you, your Honor.

17 MR. GUNTHER: Your Honor, I'm very concerned  
18 about the comment that the court just made in terms  
19 of -- and the word was used that I was attempting to  
20 "mislead" the jury in some of the arguments and  
21 examination that I've been making in this case.

22 THE COURT: All right. Let me rephrase. I  
23 think I had at least once before pointed out what an  
24 invention was and you continued to refer to the earlier  
25 application as the invention. Perhaps that was

1 unintended on your part. And I will grant you that all  
2 of us in this business, especially myself, who is far  
3 less experienced than many of the patent lawyers in this  
4 room, sometimes talk about the patent as being the  
5 invention.

6           But when we stop and take a breath, we all  
7 know each claim is an invention. The specification is  
8 not the invention, and the earlier application is not  
9 the invention. But whether -- if you go back and look  
10 at the transcript, you'll find that you said that a  
11 number of times; and it got to the point where I was --  
12 I do not like to interrupt lawyers and give instructions  
13 to the jury in the middle of the trial. I don't want to  
14 interfere in how competent counsel are trying a case.  
15 But it occurred, to my perception, several times, to the  
16 point where I finally had to say that.

17           And I think it's continued since. I mean, we  
18 still get this idea that your argument seems to be  
19 this -- I mean, it's a neat argument, if you can make  
20 it, that "Well, they changed the claims. So,  
21 therefore -- that's not what's in the previous  
22 specification; so, therefore, under this rule" -- in  
23 fact, I think the witness -- Mr. Newman was actually  
24 cross-examined on that point; and he very adroitly  
25 turned it around and said, "No, if the claims are

1 exactly the same, then they would have been rejected."

2 That was on cross-examination.

3 That again alerted me to the fact that that  
4 seems to be what you're trying to edge the jury into is  
5 this idea that because the claims were changed, they  
6 can't possibly meet that test of being the same as what  
7 was disclosed in the specification.

8 MR. GUNTHER: No, sir. That's not -- that --  
9 really, your Honor, with respect, it totally misses my  
10 point.

11 My point is that in 2002 he writes a set of  
12 claims. And I've said to the jury, both in my opening  
13 statement and when I was examining Mr. Armstrong, that  
14 he is allowed to do that. He's allowed to write claims  
15 and, in fact -- not for me to decide. I didn't make up  
16 this rule. But he's allowed to write claims on our  
17 product.

18 But, your Honor -- and I've said this every  
19 time -- if he's going to do that, he has to show that  
20 what's in that application in 1996, that that supports  
21 it, that it's all there; and he has to have that in its  
22 entirety.

23 THE COURT: And I think you've just made a  
24 correct statement of the law; but I think if you go back  
25 in the transcript and take a look at how you phrased

1 some of those questions, you'll find that the way you  
2 phrased them and the way you phrased some of your  
3 statements was referring to the 1996 application as "the  
4 invention" and that if the invention is not in that  
5 specification -- if that's not there, then the claims  
6 are not there and then talking about him changing the  
7 claims. That is the perception I'm getting.

8           Now, it could be that I've misheard all of  
9 this and I didn't understand it. I'll grant you that.  
10 But that's the perception I'm getting and I probably am  
11 a little more alert to those nuances than the jury and  
12 that's what I'm trying to keep them on the straight  
13 about. But this wasn't one time. It's happened a  
14 number of different times.

15           Like I said, I will perfectly well grant  
16 you -- and given your experience and reputation, I'm  
17 quite sure it is unintentional; but it's a key -- this  
18 is more of a key issue in this case than in most. In  
19 fact, it's the cutting edge, just about, in this case;  
20 and that may be why it is coming up more and is why I'm  
21 trying to keep the jury focused on these very distinct  
22 differences that in most cases nobody cares about.

23           MR. GUNTHER: Right. But, your Honor, you  
24 and I are in agreement, I think, at the end of the  
25 day -- and you'll tell me certainly if you disagree with

1 this -- that what we're doing here, what we're about in  
2 this case in terms of the invalidity, is taking those  
3 claims that he wrote in 2002 to cover our multiple input  
4 controllers and to look back at that specification and  
5 to see if that specification, in fact, discloses a  
6 multiple controller -- multiple controllers and that's  
7 the entire specification, including the figures,  
8 including what he said about Chang, and all of those  
9 things.

10 THE COURT: Each and every element, as a  
11 matter of fact, not just -- not just a general  
12 disclosure.

13 MR. GUNTHER: That's right. That's right.  
14 And, your Honor, I appreciate that comment.

15 So, your Honor -- now, let me just move to  
16 one other thing because, your Honor, I appreciate  
17 your -- I also appreciate your clarification because I  
18 will tell you, your Honor, in 24 years of practicing  
19 law, I have never knowingly -- I may have made a mistake  
20 at some point, but I've never knowingly misrepresented  
21 anything to a court or to a jury.

22 THE COURT: I will -- okay. I will grant you  
23 on that, that the way I said it was probably a little  
24 harsh. But it -- unintentionally or whatever, my  
25 perception is -- and that's why I instructed them and

1 why I'm so concerned about this, is that seemed to be  
2 the thrust. And, in fact, I can't say that as an  
3 attorney I might not be trying to push the jury as far  
4 as I could one way or the other. It's not necessarily  
5 misleading.

6 But anyway, I will accept that this is not  
7 some intentional attempt to drive them astray; but  
8 because of how we as lawyers and judges in this field  
9 are sometimes a little bit loose with our wording, it is  
10 going to make it difficult for me -- or makes it even  
11 more important that I instruct them very carefully on  
12 what the law is. We throw around words that sometimes  
13 are used just a little bit loosely; and in the end,  
14 they've got to get their instruction.

15 Now, as far as going through the file  
16 history, if there's some reason that you want to go  
17 through pages of file history -- I mean, again, I'm not  
18 interested in giving the jury claim construction.

19 MR. GUNTHER: Your Honor --

20 THE COURT: If there's some other reason than  
21 that -- I mean, I'm not trying to cut you off on  
22 evidence you're entitled to have in but -- or that is  
23 important; but, you know, going back over is it a  
24 continuation or a continuation-in-part or going over the  
25 claim history to show how the terms should be construed



1 I think is error.

2 Now, if there's some other reason, let me  
3 know.

4 MR. GUNTHER: Your Honor, let's do it this  
5 way. If there's anything else that we have to bring to  
6 your attention on that issue, we will do it. And we  
7 appreciate your guidance on that.

8 THE COURT: And discuss it, of course,  
9 with -- you know, there may not be any objection to it.  
10 I mean, discuss it with opposing counsel on that. I'm  
11 not trying to keep out witnesses, per se; but certain  
12 lines of testimony I'm very concerned about. Okay?

13 MR. GUNTHER: Yes, sir. I understand.

14 MR. PRESTA: Your Honor, there's one comment  
15 that --

16 THE COURT: Sure.

17 MR. PRESTA: If you would indulge me for one  
18 moment.

19 THE COURT: Go ahead.

20 MR. PRESTA: And I'm going to bring this up  
21 because I know your Honor's probably thinking about how  
22 to instruct the jury on this possible issue and I just  
23 want to point out one thing because I heard you mention  
24 it a couple of times, that the claims define the  
25 invention; and I certainly agree with you about that as

1 a patent attorney.

2           The struggle I think that we're having a  
3 little bit is, under Section 112 of 35 USC, part of our  
4 case is that you have to have written description in the  
5 specification for the invention. So, the invention has  
6 to be contained within the written description.

7           THE COURT: But in that case --

8           MR. PRESTA: So, it is a little competing --

9           THE COURT: And I brought this up. In that  
10 case -- and if you've got some authority to the  
11 contrary, show me. But under that section, they're  
12 supposed to compare the claim against the '700  
13 specification.

14           MR. PRESTA: Yes.

15           THE COURT: In the other case they've got to  
16 compare the claim against the 1996 application.

17           MR. PRESTA: Oh, yes, your Honor. That is a  
18 distinction that, in fact, the -- the written  
19 description support -- the invention needs to be in the  
20 '700 specification because that's what 112 says to us.  
21 And you are correct; there is a distinction there. I  
22 just wanted to point that out to your Honor.

23           THE COURT: In other words, I've seen no  
24 authority for the proposition that if the '700  
25 specification is worded a little differently from the

1 1996 application, that that somehow goes against the  
2 written description requirement that you're talking  
3 about. Although, obviously if there are massive  
4 differences, then you go ahead and argue straight from  
5 the claim to the original application.

6 MR. PRESTA: Yes, your Honor. An issue that  
7 we are trying to -- I just wanted to apprise the court  
8 of is that really it's the full scope of the invention,  
9 whether it's supported in the earlier application; and  
10 that's our goal, is to get that issue in front of the  
11 court, as well as --

12 THE COURT: It is. And the jury is going to  
13 have to consider it also. There's no question. And  
14 obviously you're at the heart of it now with this  
15 accelerometer and does it meet that third step of claim  
16 19 and so forth and is it one sensor or is it several.  
17 I mean, that's -- but that seemed -- as I said before, I  
18 think that's a factual issue. I don't -- so far I  
19 haven't seen it come up as a claim construction.

20 MR. PRESTA: And we are going to avoid it as  
21 a claim construction issue, your Honor, because I think  
22 your Honor indicated whether you might have to make a  
23 ruling on claim construction as to whether an  
24 accelerometer is a sensor or two sensors. But,  
25 fortunately, I don't -- in my view, you would not have

1 to look at a piece of the accused device and make a  
2 claim construction with respect to that.

3 THE COURT: Let me just be very careful that  
4 no one takes from anything I've said that I am not going  
5 to make claim constructions. If it's brought up to  
6 me -- and, in fact, if you think one needs to be made  
7 and you don't object, I'm going to consider you waived  
8 it. I'm not going to get into this trap of, "Well, the  
9 mean old judge was such that we couldn't bring it up.  
10 We were afraid to bring it up."

11 If there is a legal issue or a factual issue,  
12 bring it up. I don't get mad at lawyers for trying to  
13 represent their client, really. That's your job. And  
14 I've been over there on your side a lot.

15 But on the other hand, if you don't tell me,  
16 I don't read your minds. And I'll say this one more  
17 time. There's a lot of things that go on, I can't tell  
18 whether you're just missing something or you're laying a  
19 trap for your opponent.

20 MR. PRESTA: I understand, your Honor.

21 THE COURT: There's more than one case I had  
22 where I kind of waited until they said something that  
23 would have been objectionable and let them go on with it  
24 and on with it and then if I could spring a trap on them  
25 with that, why raise the objection, get them later.

1           Now, you mess up on that, you look pretty  
2 stupid. I'll grant you that one. Your client doesn't  
3 ever hire you again. But it's still a tactic that can  
4 be used; and it's not me as a judge to jump in and say,  
5 "Hey, why aren't you objecting now" or "Why aren't you  
6 doing something?" If you've got an objection or you've  
7 got a concern, raise it.

8           MR. PRESTA: Your Honor, and I agree with you  
9 that there may have been some claim construction issues  
10 that might come up at the trial -- the pretrial  
11 conference. And I know that wasn't the greatest news  
12 for you to hear, but I can tell you this accelerometer  
13 issue was not one that I envisioned.

14           THE COURT: Okay. All right. We are in  
15 recess until half past.

16           (Recess, 12:47 p.m. to 1:27 p.m.)

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

19           THE COURT: Okay, Mr. Gunther.

20           MR. GUNTHER: Thank you, your Honor.

21 BY MR. GUNTHER:

22 Q. Mr. Ikeda, before the break -- let's just see if we  
23 can orient ourselves. We were talking about the  
24 accelerometer in the Wii Remote.

25 A. Yes.

1 Q. Now I want to ask you about one other part of the  
2 Wii Remote. And if you could hold it up to demonstrate,  
3 if necessary. You testified that there was wireless  
4 technology in the Wii Remote; is that correct?

5 A. Yes, that's right.

6 Q. Does that provide any advantages for the Wii Remote  
7 or the people who are using it?

8 A. Up until now, the games had been connected by wires  
9 to the game controllers and the wires can get in the way  
10 and, also, the fact that it's gone wireless means that  
11 it can be manipulated entirely freely (demonstrating).

12 Q. Now, there's been some testimony about the Wavebird  
13 controller for the GameCube. Is that wireless, as well?

14 A. Yes. The Wavebird is wireless; however, you have  
15 to have a receiver and attach it to the GameCube in  
16 order to operate with the Wavebird.

17 Q. And is the Wii Remote different in that regard?

18 A. Yes. In the case of the Wii, there is, inside it,  
19 something that operates as a receiver; so, you don't  
20 have to attach a receiver to it.

21 Q. Is there a particular type of wireless technology  
22 that the Wii Remote uses?

23 A. Yes. It uses wireless technology known as  
24 "Bluetooth."

25 Q. I think I've heard that term before. Can you tell

1 us: Is there any other devices besides video game  
2 controllers that use Bluetooth technology?

3 A. Yes. It is frequently used in the headsets of cell  
4 phones.

5 Q. Now, sir, does Nintendo make the Bluetooth chips  
6 used in the Wii Remote?

7 A. No, it doesn't.

8 Q. Who makes those chips?

9 A. We purchase those chips from a U.S. company called  
10 "Broad Comm."

11 Q. Now, sir, as you were developing the Wii Remote and  
12 as you got to the final stages, what did you consider to  
13 be some of its most important qualities?

14 A. What I was constantly thinking in terms of was that  
15 it could be -- that operation could be achieved by means  
16 of a kind of direct sensation.

17 Q. And how did that improve the experience, in your  
18 perception, over prior controllers?

19 A. In the case of controllers up until that point, you  
20 had complex buttons. You had to firmly grip it with  
21 both hands in order to use it. Whereas, in the case of  
22 the Wii Remote, you could simply wave it or move it  
23 around in order to operate characters. In that sense it  
24 was very simple to use.

25 Q. Okay.

1 MR. GUNTHER: Your Honor, at this time, with  
2 your permission, I'd like to ask Mr. Ikeda to come down  
3 and demonstrate the --

4 THE COURT: Please. Go ahead.

5 MR. GUNTHER: Thank you.

6 BY MR. GUNTHER:

7 Q. And, again, Mr. Ikeda, I'll try to share the mic  
8 with you.

9 If you can get the game up and running and  
10 describe what you're doing. Thank you.

11 A. Well, first of all, I'll put on a strap so as not  
12 to drop the Wii Remote.

13 Using the pointer, I'm going to select the  
14 Wii Sports menu. The way I'm moving the cursor here is  
15 by capturing the light from the sensor bar.

16 Q. And let me just ask you: Is that the sensor bar  
17 that we have right there on defense counsel table?

18 A. That's correct.

19 So, now I'm going to start up the Wii Sports  
20 game. The game I'd like to introduce here on this  
21 occasion is the bowling game. Because I'm going to be  
22 playing it by myself, I'm going to select Number 1. And  
23 I will choose a person who will represent my character.

24 Q. And let me just ask you a question. In terms of  
25 the Bluetooth wireless connection, where is the



1 communication going from and to as you use the Remote?

2 A. Communication is going in both directions, between  
3 the Wii Remote and the console itself.

4 So, now I'd like to send down a ball. First  
5 of all, by means of the cross key, I establish the  
6 locations where I'm going to stand. Then before I  
7 actually cast the ball here, I hold down the B button.  
8 When I throw the ball, the moment I release the B  
9 button, that's the moment when the ball will be  
10 released. So, I'll give it a try here.

11 (Demonstrating.)

12 Q. I'm very disappointed. When we did this, you got a  
13 strike.

14 Before you try to get that 5/10 split, let me  
15 ask you a question: When you threw the ball and when  
16 you were using that motion with the Wii Remote to throw  
17 the ball, can you tell us what was going on inside the  
18 Remote and how your body motion was translated into what  
19 we saw on the television screen?

20 A. The first thing that happens is that at the moment  
21 of the throw itself, the amount of acceleration in the  
22 throw is detected by the accelerometer; and that is  
23 conveyed to the Wii.

24 Then the Wii detects whether or not the B  
25 button has been released and conveys that fact to the

1 console. When the console receives that signal, the  
2 console then recognizes that the player has gone through  
3 the action of throwing the ball.

4 Q. Why don't you try to pick up the spare.

5 A. I'll do my best. This time I'm going to try to  
6 throw a quick ball.

7 (Demonstrating.) I'm very sorry.

8 Q. This will be the last one. Give me one more try.  
9 See if you can get a strike. No pressure.

10 A. (Demonstrating.)

11 Q. Would you like to demonstrate quickly another game  
12 for us?

13 A. Using the pointer, I get out of the bowling game.

14 Next, I'd like to explain the baseball game.  
15 Again, because I'm playing it just by myself, I will  
16 select the Number 1. And I'm going to use the same  
17 character as before.

18 In this case you don't use the buttons on the  
19 Remote at all. Just by swinging the Remote, that makes  
20 the bat swing (demonstrating).

21 The game is about to begin, and I'm the  
22 batter. All you have to do to operate it is to just  
23 swing the Remote, as you saw (demonstrating). And you  
24 don't even have to swing it very hard. You can swing it  
25 quite lightly.

1 Q. Again, if you can tell us, as you're the next  
2 batter -- sorry. I distracted you. As you're doing  
3 that, can you tell us again how the accelerometer enters  
4 into what's happening?

5 A. When I'm in the ready position, I'm holding the Wii  
6 Remote in this fashion (demonstrating). And that way  
7 the accelerometer points to the bottom; and, so, it  
8 knows that I'm going to swing in the ready position.

9 And next, when I actually take a swing, that  
10 generates an acceleration. Then when that acceleration  
11 is -- takes place, the accelerometer detects that  
12 acceleration and conveys it to the Wii Remote; and the  
13 Wii Remote then, in turn, conveys that to the console.

14 Q. Are you now the pitcher?

15 A. Yes, that's right. We've had a changeover here,  
16 and now I'm doing pitching.

17 Q. All right. We'll just do one throw. But if you  
18 can show how the Wii Remote is used to actually throw a  
19 pitch.

20 A. By using the button and using a certain kind of  
21 motion, I can throw a change-up pitch; and that's what  
22 I'd like to do here. So, I'm now going to go through  
23 the motion of pitching (demonstrating).

24 Q. Okay. Let me ask you if you could do this. I just  
25 want to demonstrate one more game, and this is the

1 boxing game.

2           Could you tell us how you do that and what  
3 you need in terms of the controllers to do that?

4 A.     First of all, by using the pointer, I'd like to  
5 switch over to the boxing game. Again, because I'm a  
6 single player, I choose the Number 1; and, also, I will  
7 stay as the same character.

8           Here comes up a screen that says to play this  
9 game, you need to use the Nunchuk controller. And, so,  
10 I will -- would it be okay if I use the controller  
11 that's right there?

12 Q.     There you go.

13 A.     In the bottom of the Remote, there is this  
14 extension connector here; and, so, that's where I'm  
15 going to connect the Nunchuk.

16 Q.     Now, before you get going -- because you're playing  
17 against the computer, aren't you?

18 A.     That's right.

19 Q.     Are you blue gloves or red gloves?

20 A.     I've got the blue gloves. And where you can see my  
21 opponent's face, that is the computer.

22 Q.     All right. So, now if you can do a little boxing  
23 for us and describe, as you're doing it, how you're  
24 using the Wii Remote and the Wii Nunchuk.

25 A.     (Demonstrating.) For both the Nunchuk and the

1 Remote control, when you thrust it forward, you get a  
2 punch. You thrust the Remote forward, you get a punch;  
3 likewise with the Nunchuk.

4           Also, if you apply acceleration to the left  
5 and the right, as you can see, the character himself  
6 goes to the left or the right. (Demonstrating.)

7           And, so, with simple motions of this kind,  
8 you can play the boxing game.

9 Q.     Now, are you using any buttons or joysticks as you  
10 play this game?

11 A.     No. It is simply the motions of thrusting the  
12 Nunchuk or the Remote control forward, as you can see  
13 here (demonstrating). I'm not using the analog stick or  
14 the buttons.

15 Q.     Thank you very much for the demonstration,  
16 Mr. Ikeda. You can re-take the witness stand.

17           MR. GUNTHER: And for the record, the Wii  
18 console system is Defendant's Exhibit 169; the Wii  
19 Sports game disk that was being demonstrated is  
20 Defendant's Exhibit 171; the Wii Remote is Defendant's  
21 Exhibit 167; and the Wii Nunchuk is Defendant's  
22 Exhibit 162.

23 BY MR. GUNTHER:

24 Q.     Mr. Ikeda, we talked about your role in developing  
25 the Wii controllers; and I'd like to ask you this

1 question: Are you proud of the work that you've done?

2 A. Yes, I am. I really agonized over the development  
3 of this Wii Remote. I was thinking every day about what  
4 I could do to come up with a game controller that people  
5 would really like. And what I was thinking about was  
6 something that appeared simple and something in which  
7 you could get real direct sensation when using it.

8 With that in mind, I worked very hard to come  
9 up with a Remote control controller that has an  
10 accelerometer and pointing technology, to come up with  
11 the kind of controller that I believe you now understand  
12 it to be.

13 Since the time the Wii has gone on sale, I  
14 have had many occasions and many reasons to be pleased.  
15 There's one thing that has made me particularly happy.  
16 I was particularly happy when my elderly relatives -- my  
17 elderly lady relatives and people in the area were  
18 actually able to say to me, "I've used the Wii, and I  
19 really enjoy it." I'm very proud to think that I was  
20 able to develop a remote control that people can use and  
21 that puts smiles on their faces. That's all. Thank  
22 you.

23 MR. GUNTHER: I pass the witness.

24 THE COURT: Mr. Cawley?

25 MR. CAWLEY: Thank you, your Honor.

1                                    REDIRECT EXAMINATION OF AKIO IKEDA

2 BY MR. CAWLEY:

3 Q.     Are you okay, Mr. Ikeda?

4 A.     Yes.    I'll be okay.

5 Q.     May I ask you a few more questions?

6 A.     Yes.

7 Q.     Thank you.

8                                    Can the accelerometer in the Wii Remote move  
9 things on the screen without pointing at the light bar?

10 A.     Yes.    As I said before, if you're talking about the  
11 motion of a ball-type object, that can be done.

12 Q.     And you described for us that the first time you  
13 used an accelerometer was in the Kirby game, correct?

14 A.     That's correct.

15 Q.     Did the Kirby game have a camera at all?

16 A.     It had no camera.

17 Q.     But the accelerometer still worked, correct?

18 A.     Yes, it worked.

19                                    MR. CAWLEY:    May I approach the witness, your  
20 Honor?

21                                    THE COURT:    You may.

22 BY MR. CAWLEY:

23 Q.     Mr. Ikeda, I've handed you a Wii Remote attached to  
24 a Wii Nunchuk; is that right?

25 A.     Yes.    They are connected.

1 Q. Thank you. And is that the controller that you  
2 just showed us how to do boxing with?

3 A. That's correct.

4 Q. Now, could you hold up your hands again and show us  
5 how, using this controller, you can punch with your  
6 right hand?

7 A. Before that -- I don't want to drop it; so, I'm  
8 going to put the strap on.

9 Q. Safety first; so, please go ahead.

10 A. All right. I'm ready now.

11 So, now I will give you the punching  
12 operation (demonstrating).

13 Q. Now, why or how does that motion with the Wii  
14 Remote in your right hand cause the character on the  
15 screen to punch?

16 A. It's because when the Remote control is pressed  
17 forward like that, the accelerometer then indicates to  
18 the Remote control itself that acceleration in that  
19 direction has taken place.

20 Q. Thank you. Now can you show us the same motion but  
21 this time punching with your left hand?

22 A. Yes. You deliver a left-hand punch with this  
23 operation (demonstrating).

24 Q. Well, Mr. Ikeda, how does the Nunchuk in your left  
25 hand know that you are making a motion with your left



1 hand when the accelerometer is in the Remote in your  
2 right hand?

3 A. Within the Nunchuk controller, there is also --  
4 there is one accelerometer. There is one accelerometer  
5 each, one in the Remote control and one in the Nunchuk.

6 Q. So, do you mean in this controller you hold in your  
7 hands, there are two accelerometers?

8 A. Yes. The way it would be is with these two  
9 controllers together, you get a total of two of them.

10 Q. I see. And the Nunchuk in your left hand, with  
11 what you've just testified is its own accelerometer,  
12 doesn't have a motion-sensing camera, does it?

13 A. There's no camera in it, no.

14 Q. But the accelerometer still works in the Nunchuk  
15 even without a camera, correct?

16 A. Yes, it does.

17 Q. Is the accelerometer in the Nunchuk also a  
18 three-axis accelerometer?

19 A. Yes. It's a three-axis accelerometer.

20 Q. Is it a 2g accelerometer or a 3g accelerometer?

21 A. The accelerometer in the Nunchuk is an  
22 accelerometer that can detect 2g's.

23 Q. And is it true, Mr. Ikeda, that the two  
24 accelerometers, the one in the Nunchuk and the one in  
25 the Remote, work basically in the same way?

1 MR. GUNTHER: Objection, your Honor. This is  
2 beyond the scope of the infringement contentions in this  
3 case, and I would request a brief sidebar.

4 THE COURT: All right. Step over here,  
5 please, Chris.

6 (The following proceedings were conducted at  
7 sidebar with both parties.)

8 MR. GUNTHER: Your Honor, there has been --  
9 obviously, I don't have any problem with him bringing  
10 out the fact that there is an accelerometer in the  
11 Nunchuk. I do not object to that. But now what he's  
12 trying to do is get into the details of that  
13 accelerometer which are nowhere in the infringement  
14 contentions for claim 19.

15 And what it's leading to is going to be a  
16 suggestion to the jury that, well, if the accelerometer  
17 in the Wii Remote is not good enough, maybe you can look  
18 at the accelerometer in the Wii. That's improper.  
19 That's not the way they've been -- they've disclosed.  
20 That's not the expert reports that they've put in, and  
21 that's where it's heading when he starts getting into  
22 the details of the accelerometer in the Wii Nunchuk.

23 MR. CAWLEY: Well, first of all, I haven't  
24 said that. But, second of all, the point of this  
25 examination is the question that I just asked. The

1 court will recall from yesterday that there was a  
2 question raised by defendants about whether the spec  
3 sheet that Dr. Howe had looked at was the right one  
4 because it was 3g instead of 2g. This witness has just  
5 said -- or is about to say, I believe, that the 2g  
6 accelerometer works the same way as the 3g  
7 accelerometer, which ties in that spec sheet.

8 THE COURT: I'll allow that question, but I'm  
9 not going to allow it to go beyond -- further than the  
10 infringement contentions. I mean, that was a  
11 distinction that was raised pretty heavily, that these  
12 must be completely different accelerometers.

13 MR. GUNTHER: Right.

14 THE COURT: So, I think he's allowed to say  
15 that. If he starts going further, object again; and  
16 I'll understand what your objection is.

17 MR. GUNTHER: Thank you, sir. I understand.  
18 Thank you.

19 THE COURT: Okay.

20 (Sidebar conference concluded. The following  
21 proceedings were heard in open court.)

22 THE COURT: Go ahead, counsel.

23 MR. CAWLEY: Thank you, your Honor.

24 BY MR. CAWLEY:

25 Q. Mr. Ikeda, let me repeat my question for you. You

1 agree, don't you, that the accelerometer in the Nunchuk  
2 works in the same way as the accelerometer in the  
3 Remote?

4 A. Yes. They operate in the same way.

5 Q. Thank you. Now, you mentioned, also, that you had  
6 some patents; is that right?

7 A. Yes.

8 Q. How did you get your patents?

9 A. Most are still in the application stage. But the  
10 way it works is at my company we have a group that  
11 specializes in patents. And when development work is  
12 being carried out, then you would hold discussions with  
13 people in that specialist group to decide whether or not  
14 patents should be applied for.

15 MR. GARZA: We have a check interpretation  
16 issue.

17 THE COURT: All right.

18 If you want to, step on up and discuss it  
19 with the translator.

20 THE CHECK INTERPRETER: Just --

21 THE COURT: You need to speak up loud enough  
22 for us to hear, or speak into the microphone.

23 THE CHECK INTERPRETER: Could you please  
24 repeat --

25 THE COURT: You need to speak into the

1 microphone.

2 THE CHECK INTERPRETER: Could you just repeat  
3 again what he said, just the --

4 Mr. Ikeda, could you please repeat your  
5 answer?

6 A. In Nintendo there is a group that specializes in  
7 patents. When we're making products of this kind, we  
8 have discussions with the patent specialist group to  
9 determine whether or not patents should be applied for.

10 BY MR. CAWLEY:

11 Q. Thank you, Mr. Ikeda.

12 Why do you apply for patents?

13 A. It's in order to protect Nintendo's technology.

14 Q. I see. And do you think that patents are  
15 important?

16 A. Yes, I do.

17 Q. And are you proud of the patents that you have  
18 applied for?

19 A. Yes, I am proud of them.

20 Q. Thank you, Mr. Ikeda.

21 MR. CAWLEY: I pass the witness.

22 MR. GUNTHER: Nothing further, your Honor.

23 THE COURT: All right. Any objection to this  
24 witness being excused?

25 MR. GUNTHER: Not from Nintendo, your Honor.

1 MR. CAWLEY: Not from the plaintiff, your  
2 Honor.

3 THE COURT: All right. In that case, the  
4 witness is, in fact, excused, which means he is free to  
5 leave; or if he wishes to stay, he may do so. He is no  
6 longer under the rule. So, he can leave or stay as he  
7 chooses.

8 Thank you for being here, sir.

9 Next witness?

10 MR. BOVENKAMP: We have some brief video  
11 clips to play, your Honor.

12 THE COURT: All right.

13 MR. BOVENKAMP: May I request a brief interim  
14 statement?

15 THE COURT: You may.

16 MR. BOVENKAMP: Ladies and gentlemen, I'm  
17 happy to say that we are almost done with our  
18 case-in-chief. We have three video clips for you, to  
19 play; and they are all very short.

20 The first witness that you're going to hear  
21 from by video testimony is an individual that is  
22 employed by Microsoft in their research division. He is  
23 going to give you about five minutes of testimony about  
24 the state of the art as he understands it.

25 (Video presentation begins with no audio.)

1 THE COURT: Now, I notice there was some  
2 adjustment done by the defendant's tech advisor when you  
3 were trying to cut back on the sound from the Wii.  
4 Perhaps that adjustment is the one we need to look at.

5 DEPOSITION TESTIMONY OF RUSSELL SANCHEZ

6 Q. Good morning.

7 A. Good morning.

8 Q. Please state your name.

9 A. Russell Sanchez.

10 Q. Where do you live?

11 A. Seattle, Washington.

12 Q. Are you currently employed?

13 A. Yes.

14 Q. Who is your employer?

15 A. Microsoft.

16 Q. How long have you worked at Microsoft?

17 A. A little over 15 years.

18 Q. And what is your current position at Microsoft?

19 A. I'm a principal program manager.

20 Q. Are you in any particular division or group within  
21 Microsoft?

22 A. I'm in the research division.

23 Q. Do you recall why Microsoft made the decision to  
24 use the optical sensing in those products, as opposed to  
25 a potentiometer?

1 A. Oh, oh, oh. Yes, I do recall.

2 Q. And what was that?

3 A. We chose to use the optical sensor because it was a  
4 much better solution for the customer. It provided  
5 higher accuracy, better resolution. It didn't drift.

6 Potentiometers, their output changes with the  
7 temperature in the room; and the potentiometers require  
8 a timing loop in the processor of the computer. So,  
9 it's an inefficient means of calculating the handle  
10 position. So, the optical sensing was -- provided a  
11 faster, more accurate, higher resolution tracking system  
12 than a potentiometer.

13 Q. Were there any advantages of using a potentiometer  
14 sensing system instead of the optical sensing system?

15 A. I would have to speculate. I think that the  
16 optical system was much better.

17 Q. Were there or are there any ways in which the  
18 potentiometer sensing is superior to the optical  
19 sensing?

20 A. I think the optical system is better in every  
21 respect.

22 Q. You now have a copy of Exhibit 201, which is U.S.  
23 Patent Number 5,694,153. Do you see that?

24 A. Yes.

25 Q. And you're one of the named inventors on this



1 patent, right?

2 A. Yes.

3 Q. Well, this patent was filed on July 31st, 1995,  
4 right?

5 A. I don't recall the exact filing date.

6 Q. If you look on the left-hand column, about a third  
7 of the way down --

8 A. Oh, yes.

9 Q. Okay. And then if you look at the top right  
10 corner, it shows that this patent issued in December,  
11 1997?

12 A. Yes.

13 Q. Do you remember reviewing the patent application  
14 that led to this patent before it was filed at the  
15 Patent Office?

16 A. I recall reviewing it, yes.

17 Q. Did you decide at the time that everything  
18 contained in this patent was accurate?

19 A. If I've -- I don't recall that feeling exactly; but  
20 if I signed the oath, then I'm sure that I was honest in  
21 signing that oath.

22 Q. Well, generally when you review a patent  
23 application before it's filed, you want to make sure  
24 your invention is accurately described.

25 A. Yes.

1 Q. And then in Column 2, the last paragraph of the  
2 background section, it says that: The inventors are  
3 unaware of a reliable and durable joystick or input  
4 device that eliminates the need for variable resistors  
5 or complex mechanical transducers.

6 Do you see that?

7 A. Yes.

8 Q. At the time you filed this patent application, was  
9 that statement true?

10 A. At the time -- I would have to speculate; however,  
11 I don't recall my thoughts at the time. But --

12 Q. You assume that you wouldn't have filed a patent  
13 application if that was untrue?

14 A. Yes.

15 Q. Then the next sentence says that: Additionally,  
16 the inventors are unaware of any joystick-type input  
17 device that provides three-dimensional position signals.

18 Do you see that?

19 A. Yes.

20 Q. You wouldn't have filed this patent application if  
21 you didn't believe that sentence to be true, right?

22 A. I don't think at the time I was aware of any other  
23 three-dimensional joysticks.

24 MR. CASSADY: Ladies and gentlemen of the  
25 jury, my name is Jason Cassady. I represent Anascape,

1 along with the rest of the team here. The next video  
2 you're going to see is from Ms. Collette Meader. She's  
3 the corporate controller for Nintendo, and she's going  
4 to describe how Nintendo of America sells products to  
5 Canada and to South America from the United States.

6 Also, and more importantly, she's going to  
7 testify that the Nunchuk is sold with the Wii every  
8 time.

9 DEPOSITION TESTIMONY OF COLLETTE MEADER

10 Q. Will you state your name for the record, please?

11 A. Collette Meader.

12 Q. What's your current position at Nintendo?

13 A. Corporate controller.

14 Q. How long have you been at Nintendo?

15 A. Twenty-five years.

16 Q. You understand that today you're testifying on  
17 behalf of Nintendo as a 30(b)(6) representative,  
18 correct?

19 A. Yes.

20 Q. What subsidiaries do you collect financial data for  
21 for Nintendo of America?

22 A. For Nintendo of America, NES Merchandising, Inc.;  
23 HFI; Siras.com -- Siras is S-I-R-A-S -- and Nintendo of  
24 Canada Limited.

25 Q. And, then, Nintendo Canada, what is that?

1 A. Nintendo of Canada is our distribution company for  
2 Canada. So, they purchase Nintendo products from  
3 Nintendo of America and distribute them in Canada.

4 Q. Is there a Nintendo Mexico?

5 A. No.

6 Q. Does Nintendo of America handle the distribution to  
7 Mexico?

8 A. We have a distributor that we sell to for Mexico.

9 Q. What's the name of that distributor?

10 A. Currently it's Latamel.

11 Q. Can you spell that?

12 A. L-A-T -- I can't remember if it's E or A -- M -- I  
13 have to do it this way.

14 Q. Go ahead.

15 A. Okay. L-A-T-A-M-E-L.

16 Q. Does Nintendo of America purchase the systems for  
17 Nintendo Canada and then they are directly shipped from  
18 Japan to Canada?

19 A. No.

20 Q. They're shipped through Nintendo of America?

21 A. Correct.

22 Q. What entity handles Latin America?

23 A. Excuse me?

24 Q. What entity handles the distribution in Latin  
25 America?

1 A. Our distributor, Latamel.

2 Q. So, Latamel handles Mexico, South America, the  
3 continent and country?

4 A. All of Latin America.

5 Q. Okay.

6 A. Right.

7 Q. Is that the same as Nintendo Canada in that  
8 Nintendo of America orders it and then distributes it  
9 to -- distributes it to Latamel?

10 A. Correct.

11 Q. What is the Wii's selling price in the United  
12 States?

13 A. Two hundred forty-nine.

14 Q. When it says -- under "Accessories" it says:  
15 Controller orange D-O-L-T-R-I. Do you know what that  
16 is?

17 A. Trilingual, meaning we had three different  
18 languages on the packaging.

19 Q. Oh. Do you know what languages those were?

20 A. English, Spanish, and French.

21 Q. Were those sold in a specific geography or --

22 A. It made it easier for us to sell one product into  
23 Canada and not have to have a French product and an  
24 English product.

25 Q. Would the packaging for all those products be made

1 in America and then distributed to Canada?

2 A. We packaged the accessories in the U.S.

3 Q. The Wii system is sold with a Nunchuk and a Wii  
4 Remote every time?

5 A. Every time.

6 MR. CASSADY: Just one last video from us.  
7 Let's see. This is Mr. Albert Penello. He is the  
8 director of marketing at Microsoft, and he's going to  
9 talk generally about how video games have become more  
10 complicated -- that's first -- and, second, how Sony  
11 made a mistake by removing the force feedback feature  
12 from their controllers and subsequently added it back  
13 in.

14 DEPOSITION TESTIMONY OF ALBERT PENELLO

15 Q. Can you state your name for the record?

16 A. Albert John Penello, Jr.

17 Q. What is your current title?

18 A. Director of marketing.

19 Q. Director of marketing.

20 What all does that entail?

21 A. I'm in charge of marketing for the Xbox hardware,  
22 the console and accessories.

23 Q. How long have you been at Microsoft?

24 A. About seven years.

25 Q. Do you think games have gotten more complicated or

1 less complicated over time?

2 A. I think it's fair to say that they're probably more  
3 complicated now.

4 Q. Do you think this kind of press about the lack of  
5 force feedback that's included throughout this exhibit  
6 is a -- has a negative impact on Sony's image in the  
7 gaming industry?

8 A. I think Sony is -- I think Sony has made a series  
9 of missteps that has attributed to the perception that  
10 it has in the industry. I think taking out vibration  
11 was probably one of those things because, again, most of  
12 the things in this exhibit have it, along with a variety  
13 of list of other complaints.

14 Q. Do you think this kind of press helps Sony's  
15 inability to sell systems right now?

16 A. I think it probably doesn't.

17 Q. Is NPD data reliable data?

18 A. It's consistent; so, it's what the industry uses.

19 MR. CAWLEY: Your Honor, with that, Anascape  
20 rests.

21 THE COURT: All right. Ladies and gentlemen,  
22 we're going to go ahead and take a break. I'll ask you  
23 to be back at 20 of.

24 Even though plaintiff has rested, the case is  
25 not over. Defendant still has to put on its case. So,

1 keep an open mind. Don't discuss the case even among  
2 yourselves.

3 (The jury exits the courtroom, 2:21 p.m.)

4 THE COURT: All right. Any motions?

5 MR. GUNTHER: Your Honor, Nintendo does have  
6 motions under Rule 50. We've made them in writing and  
7 are prepared to hand them to the court at this time.

8 THE COURT: Okay. If you'll do that.

9 MR. GUNTHER: May I approach?

10 THE COURT: Please.

11 MR. GUNTHER: Thank you. I'll hand up two  
12 copies. Thank you.

13 THE COURT: All right. Very quickly, this is  
14 on page 6. I thought the only claims we had right now  
15 are that the Wii infringed 19. Is there something still  
16 standing about the Wii Classic and Wii Remote infringing  
17 22 or 23?

18 MR. BLANK: That's our understanding of the  
19 current assertions, is that the Classic infringes 19 and  
20 22.

21 THE COURT: I thought with the chart, that  
22 it's 19 or nothing.

23 MR. GARZA: No. We had an exemplary chart  
24 for claim 19; but in our PowerPoint presentation, we did  
25 present evidence on claim 22, claim 23, claim 16, and



1 claim 14 but for different --products.

2 THE COURT: On the Wii?

3 MR. GARZA: For the Wii Classic.

4 THE COURT: Oh, okay. All right. I thought  
5 the Nunchuk.

6 MR. GARZA: It is the Wii Classic and the Wii  
7 Remote together.

8 THE COURT: Okay. The other question is I  
9 don't think -- can you point me to any evidence under  
10 the doctrine of equivalents? I thought everything was  
11 literal that I heard from the expert.

12 MR. GARZA: Well, your Honor, we haven't seen  
13 the end to the sensor discussion; and I think there is a  
14 real question as to whether there is any sort of  
15 argument as to whether a sensor is, you know, the entire  
16 package or whether it's the components inside the  
17 accelerometer, that there's been sufficient evidence for  
18 a jury to find there are no real differences between the  
19 two such that the doctrine of equivalents would be  
20 met --

21 THE REPORTER: I'm sorry. I couldn't hear  
22 you.

23 THE COURT: You'll have to speak into the  
24 microphone.

25 THE REPORTER: No real differences between

1 the two such that the doctrine of equivalents would be  
2 met...

3 MR. GARZA: I meant to say "no insubstantial  
4 differences." I think that's kind of the test.

5 MR. BLANK: There was no testimony from  
6 Dr. Howe --

7 THE COURT: No, I -- wait a minute. All  
8 right. I'll take a look at this, but I've got to say  
9 that my recollection of the cases is that there has to  
10 be some fairly clear testimony from an expert, not just  
11 conclusions. I don't think he even made a conclusory  
12 statement to that effect as equivalents. There has to  
13 be a showing in evidence -- to avoid summary judgment or  
14 JMOL, there has to be clear evidence of this is  
15 equivalent to that. You can't just have a general -- or  
16 generalized kind of equivalents. It's got to be this  
17 item is equivalent to that item.

18 But let me take a look at the motion. And if  
19 you've got some authority to the contrary to what I just  
20 said, let me know about it. I'll take the rest of it --  
21 I'll reserve my ruling on the entire motion at this  
22 time; but in all fairness, if you don't have some  
23 authority or can't point me to something else,  
24 equivalents is not your strongest argument. That's the  
25 best way to put it.

1 MR. GARZA: We'll have it to you submitted by  
2 Monday, judge.

3 THE COURT: All right. We're in recess,  
4 then, until 20 of.

5 (Recess, 2:26 p.m. to 2:39 p.m.)

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

8 (The oath is administered.)

9 THE COURT: Go ahead, counsel.

10 MR. GERMER: Your Honor, may I make a  
11 brief --

12 THE COURT: You may.

13 MR. GERMER: -- opening?

14 Thank you.

15 Ladies and gentlemen, we're going to call as  
16 our first witness in the case Jacqualee Story. She is  
17 with Nintendo from Redmond, Washington. You saw some of  
18 the games. She's going to tell us a little bit about  
19 the background of Nintendo and some of the products that  
20 they make. You've already heard some detailed testimony  
21 from Mr. Ikeda, and you'll hear more detailed testimony  
22 later in our case about the products we're talking  
23 about. One thing Ms. Story will not be talking about  
24 is -- you've heard the last few witnesses, they get  
25 asked their age. I have been told that I am not to

1 inquire about her age; so, you will not hear that.

2 DIRECT EXAMINATION OF JACQUALEE STORY

3 CALLED ON BEHALF OF THE DEFENDANT

4 BY MR. GERMER:

5 Q. Would you state your name, please, ma'am?

6 A. Sure. My name is Jacqualee Story.

7 Q. Ms. Story, what do you do at Nintendo?

8 A. I'm executive vice-president of business affairs,  
9 and I've been there for 18 years.

10 Q. Have you been executive vice-president that entire  
11 time?

12 A. No. I started out as assistant general counsel and  
13 then in the mid 1990s I became general counsel and  
14 vice-president and then in 1999 I became executive  
15 vice-president of business affairs.

16 Q. Ms. Story, I want to start out by talking about  
17 your history briefly; and then we'll talk about  
18 Nintendo. Where are you from?

19 A. I grew up in a small town in Oregon called  
20 "Tangent"; and I now live in New Castle, Washington,  
21 which is a suburb of Seattle.

22 Q. Are you married?

23 A. I am. My husband's Terry.

24 Q. Do you have any children?

25 A. I have two boys, Reid and Ryan, ages 11 and 15.

1 Q. Do they apply Nintendo games?

2 A. They sure do.

3 Q. Do you let them play any other games?

4 A. Well, if they wanted; but they choose Nintendo  
5 games.

6 Q. All right. They're very smart young men,  
7 obviously.

8 Could you tell us about your educational  
9 background, starting with high school?

10 A. Sure. So, I graduated from West Albany High School  
11 in Albany, Oregon. After that I went to Willamette  
12 University that's located in Salem, Oregon. And then I  
13 attended the University of Washington Law School and got  
14 my law degree in 1985.

15 Q. Now, was your first job out of law school with  
16 Nintendo?

17 A. No. I worked for a law firm for about four years  
18 before joining Nintendo.

19 Q. Okay. You said you were the executive  
20 vice-president of business affairs. What are your  
21 responsibilities in that job?

22 A. I'm a member of the executive team, and we handle  
23 the day-to-day business affairs for Nintendo of America.

24 Q. And how many people are on the executive team?

25 A. Seven.

1 Q. Do you hold any other positions at Nintendo?

2 A. I'm also the vice-president of Retro Studios that  
3 was mentioned earlier today. They're located in Austin,  
4 and they're what we call a "game development house."  
5 So, they develop games. And I have about 50 people.

6 I'm also the corporate secretary for several  
7 other Nintendo-affiliated companies.

8 Q. Could you give us an example of a game or two that  
9 Retro of Austin has developed for the Nintendo games --  
10 or the Nintendo video systems?

11 A. Sure. Retro has developed a series of games called  
12 "Metroid," M-E-T-R-O-I-D. And they're adventure games  
13 set in the future with a female character as the hero.

14 Q. How did Retro of Austin come to be a part of  
15 Nintendo?

16 A. We initially started out as a minority investor,  
17 and then over time we acquired all of the company to  
18 make it a full member of the Nintendo family.

19 Q. And what role do you play in the business of Retro?

20 A. As the vice-president of Retro, I provide general  
21 business guidance to the president.

22 Q. All right. Let's turn for a minute now and talk  
23 about the background of Nintendo. Does Nintendo of  
24 America -- you work for Nintendo of America?

25 A. Correct.

1 Q. Does Nintendo of America have a parent company?

2 A. We do. Our parent company is Nintendo Company  
3 Limited; and it's located in Kyoto, Japan.

4 Q. Could you give us some background about Nintendo  
5 Company Limited?

6 A. Sure. So, Nintendo Company Limited was formed  
7 about 120 years ago. I believe it's 1889. I got the  
8 date right. 1889, about 120 years ago. And they've  
9 always, generally speaking, been in the entertainment  
10 business; but they actually started as a playing card  
11 company.

12 Q. And I see up on the screen some playing cards. Are  
13 these some of those original playing cards?

14 A. They are.

15 Q. I assume you know how to play these cards.

16 A. These particular ones, I do not.

17 Q. Could you give us a little background about  
18 Nintendo of America, your direct employer?

19 A. Sure. So, Nintendo of America -- our headquarters  
20 are in Redmond, Washington, which is a suburb of  
21 Seattle. We also have some very small offices in San  
22 Francisco and New York. We were incorporated in 1982,  
23 and our real focus is the sales and marketing of the  
24 products in North America and South America.

25 Q. How many employees, roughly, does Nintendo of

1 America have?

2 A. We have about 950 employees.

3 Q. And when did Nintendo begin making video games?

4 A. Nintendo started in the business in the 1970s, and  
5 we started with arcade products. So, if you think about  
6 those upright arcades where you put in the quarters --  
7 there's the picture. We started distributing these  
8 products throughout the world.

9 Q. And I think we have on the screen a picture of the  
10 arcade and I presume one of the games that was played?

11 A. Yeah. Two of the more popular ones. Lots of  
12 quarters went into Donkey Kong and Mario Bros.

13 Q. All right. Does Nintendo still make arcade games  
14 like this?

15 A. We phased out of the arcade business and we moved  
16 towards making systems for the home that connect to your  
17 television and then also the handheld or portable games.

18 Q. All right. Let's discuss those types of systems  
19 for a bit. What home game systems has Nintendo  
20 developed?

21 A. So, if you look at the timeline that's up, we  
22 started in 1985 with the Nintendo Entertainment System  
23 and that one came out at a time when -- or it's  
24 actually -- it came out at a time when Atari was in the  
25 market -- or was in the market at the time but was



1 really struggling. So, Nintendo introduced the Nintendo  
2 Entertainment System, which was a more complex and more  
3 powerful system than what was on the market at that  
4 time.

5 Q. And then this slide, I believe, shows all of the  
6 games -- as we'll talk about them going forward, but  
7 they show different games that developed all the way up  
8 to the Wii?

9 A. Right. So, it's a progression of the products that  
10 have come out over time. And as you can see, the Super  
11 Nintendo was the next home system, the Nintendo 64,  
12 GameCube, and Wii. And on the bottom, the Game & Watch,  
13 the Game Boy product which had many different versions,  
14 and then ultimately the Nintendo DS, which is the bottom  
15 right, which is what we sell today.

16 Q. Now, there are a number of systems shown here.  
17 Generally speaking, how do they differ?

18 A. Well, each time we introduce a system, we have to  
19 come up with a way for it to be more powerful or more  
20 innovative than the last time because we want to attract  
21 consumers to buy our next product.

22 Q. How does Nintendo go about developing these games  
23 and these systems?

24 A. We, again, are looking to constantly improve upon  
25 what we've done before. So, we're constantly looking at

1 maybe the graphics or what innovation that we can bring  
2 forward.

3 Q. Do you have a mission in terms of what you're  
4 trying to accomplish?

5 A. We do. I mean, we have a corporate culture of  
6 innovation; but the way we talk about it internally, we  
7 talk about this idea that we have to surprise and  
8 delight our consumers. We have to give them something  
9 that they don't expect. So, when they hear that their  
10 friends have a system, it's all about the system. So,  
11 the way that we do that surprise element is we  
12 constantly try to innovate our products.

13 Q. All right. Thanks.

14 Let's go back now to the NES. Tell us what  
15 the video game market was like when the NES was  
16 developed.

17 A. Well, as I mentioned, this was introduced in 1985;  
18 and it was a time when there was very much a struggle in  
19 the market by Atari. And, in fact, there was this  
20 perception that maybe video games were just a fad. So,  
21 when we introduced this system, it was really  
22 challenging because, frankly, consumers were starting to  
23 become disillusioned and retailers were, as well.

24 Q. So, how did the NES do in the U.S. market?

25 A. It wound up doing really well. The Super Mario

1 Bros., the Mario Bros. games that came with it was  
2 extremely popular and the system overall was extremely  
3 popular and there was the phrase people would say, "Do  
4 you play Nintendo"; and a lot of the times this is what  
5 they were talking about.

6 Q. All right. Thanks.

7           Going forward, can you tell us a bit about  
8 the Super NES and the N64 console systems?

9 A. So, the Nintendo Entertainment System was what we  
10 called an 8-bit; and that related to sort of the quality  
11 of the graphics on the screen. So, when we introduced  
12 the Super Nintendo Entertainment System, we wanted to  
13 make those graphics even better because we wanted richer  
14 games for the players. So, this was actually a 16-bit  
15 system, again, an improvement of the graphics  
16 capability.

17 Q. Now, that was the Super NES?

18 A. That was the Super NES.

19 Q. And then were there other functions added to it?

20 A. Well, obviously there were changes to the  
21 controller, as well.

22 Q. Okay. And, then, what about the N64? We've heard  
23 a little bit about that earlier.

24 A. Right. When we talk about the N64 internally, we  
25 talk about it being very revolutionary compared to just

1 the next step. And I think we saw the demonstration  
2 that kind of said it all. But it was all about this 3-D  
3 experience, where you felt like you could really move  
4 around in the world, or in the video game world.

5 Q. You mentioned 3-D, and we've heard about 3-D  
6 graphics. What do you mean by that?

7 A. I'm just using that as a layperson's term, meaning  
8 I can control the character in this sort of virtual-type  
9 environment, just like we saw Mario entering the castle.

10 Q. Now, is Nintendo the only company that develops  
11 these game systems?

12 A. No. We have very strong competitors. Over time  
13 Sega has been a competitor. Sony has been a competitor  
14 and certainly still is a competitor, as well as  
15 Microsoft.

16 Q. We talked about some of these console systems along  
17 kind of the top. What else do we have here on the  
18 slide?

19 A. Again, just like we were constantly trying to  
20 innovate for our home systems, we were also trying to  
21 constantly innovate for our handheld systems. So, those  
22 are the ones on the bottom. These are the ones that  
23 maybe your kids take when you have the long car ride and  
24 they're in the backseat.

25 So, we started with Game & Watch. And I know

1 it looks fairly simple now, but at the time it was  
2 amazing. And it was a dedicated game inside that  
3 particular product.

4 Q. And did those games continue to develop over the  
5 years?

6 A. They did. So, then you move to the next one, Game  
7 Boy, which I believe there's been some testimony about.  
8 Again, the Game Boy system has had several evolutions.  
9 This was the first one, Dot Matrix Game. The reason it  
10 was very innovative is it wasn't a dedicated game  
11 inside; but it was -- you know, you could take three  
12 games with you because the games were on a cartridge.  
13 And that was -- that was a great aspect of it.

14 We improved upon this one. We had Game Boy  
15 Color -- so, the screen was in color -- Game Boy  
16 Advance. So, we had many different versions of Game Boy  
17 over time.

18 Q. And has anything come out in the handheld system  
19 after the Game Boy system?

20 A. So, the one that we currently have out in the  
21 marketplace is the Nintendo DS. And, again, we're  
22 trying to innovate; and, so, the idea was developed of  
23 these two screens so you can actually have game play on  
24 both screens or, say, you can have a map of your world  
25 on the top and the game on the bottom. And then you see

1 that little thing that looks like a pen. Instead of  
2 just manipulating the buttons on the DS, you have this  
3 thing called a "stylus."

4           So, how that would get used is we have a game  
5 called "Nintendogs" where you own a dog and you use the  
6 little stylus to scratch its back or flick it and the  
7 ball -- you can throw the ball for your pet dog.

8 Q.     All right. Thanks.

9           You said that Nintendo has developed these  
10 games over the years. What exactly does that involve  
11 for Nintendo to develop these?

12 A.     In terms of the games themselves?

13 Q.     Yes.

14 A.     Okay. The game development process -- I think  
15 maybe a lot of people feel like it's an easy process;  
16 but it's actually a really, really lengthy process. So,  
17 for games like Super Mario Galaxy that's been  
18 demonstrated earlier, it can take a team of 50 to a  
19 hundred people a couple of years to design and develop  
20 those games. There's game designers, producers,  
21 artists, programmers. It's a very, very involved  
22 process.

23 Q.     You mentioned Super Mario. What are some of the  
24 other significant games that Nintendo has developed?

25 A.     Well, a lot of the games that we've sold a lot of

1 revolve around certain what we call "franchise  
2 characters," which are characters that have maybe  
3 evolved over time. But, as shown on the screen, these  
4 are the ones that show up in those games that have sold  
5 really well for us.

6           And the reason the characters are significant  
7 is because as kids or adults, they start to identify  
8 with a character. So, in the upper left you have Link,  
9 who happens to, you know, ride a horse, do some fishing,  
10 and go through castles; and he's trying to, you know,  
11 solve certain puzzles.

12           You are Mario, who may be in the castle; and  
13 then in the next game he may be Mario Strikers where  
14 he's a soccer player.

15           Another example is the bottom right, Samus.  
16 I mentioned this company in Austin. They have that  
17 particular character in this adventure series.

18 Q. All right. Thanks.

19           I want to talk now about sort of the last two  
20 systems, the one involved here, the GameCube and the  
21 Wii. On the GameCube controller, is it your  
22 understanding that that's been accused of infringing  
23 this '700 patent we've heard about?

24 A. That's my understanding.

25 Q. Could you tell us a little bit about the GameCube?

1 A. So, as we migrated from the Nintendo 64 to the  
2 GameCube, we moved from cartridges that were bigger to a  
3 disk that looks almost sort of like a music CD. We  
4 also -- obviously, there are some additional buttons on  
5 the controller. I know that's been talked about. And  
6 then we improved the graphics capability. It wasn't a  
7 huge leap forward, but we did improve on the graphics.

8 Q. Now, was the GameCube a success?

9 A. It sold okay. Maybe not, frankly, as we would like  
10 it to be.

11 Q. How would you compare it to, say, the N64 that came  
12 before it?

13 A. Well, when I think about it, the N64 was this sort  
14 of revolutionary step forward, I mean, dramatically  
15 different. When people bought the system, it was kind  
16 of that big wow factor.

17 When people bought this one, it was a little  
18 bit more about, oh, I have some added graphics; and it's  
19 sort of an evolution versus a revolution, is the way I  
20 think about it.

21 Q. All right. Does Nintendo still sell the GameCube  
22 in the U.S.?

23 A. We basically phased out the hardware. The  
24 controllers -- we are still selling some of the  
25 controllers. And the games, we have very limited



1 inventory that we're selling off of the games. The  
2 games do apply on the Wii because the Wii is what we  
3 call "backward compatible."

4 Q. All right. Then, finally, let's talk about the  
5 Wii. First of all, can you tell us where in the world  
6 did the name Wii come from?

7 A. Well, I get that question a lot; and sometimes  
8 people think that it comes -- it's a Japanese word. But  
9 it actually comes from the English word W-E. And it  
10 means it's a system for everybody, and it means  
11 everybody comes together to play. It's this inclusive  
12 word of "we" are all together playing.

13 And then the idea was to change the selling  
14 to I-I because it suggests two people coming together to  
15 play, like the dots on the Is are the head of the  
16 people.

17 Q. All right. Tell us a little about the Wii itself.

18 A. Well, I think we've heard a lot about it; but we  
19 consider it one of those leaps that's really  
20 revolutionary. Obviously, with the Wii Remote in  
21 particular, you can do all those great things like  
22 Mr. Ikeda demonstrated for us. You know, you can swing  
23 the bat; and you can bowl the ball. It was just an  
24 experience that people never had before.

25 Q. Now, is it your understanding that Anascape has

1 accused the Wii in this case of infringing the '700  
2 patent?

3 A. That's my understanding.

4 Q. What is that up on the screen that the jury is now  
5 looking at?

6 A. That's the Wii Remote.

7 Q. Tell us a little bit about that, please.

8 A. Well, again, I think we've heard about the motion  
9 sensing technology inside. And what's really happened  
10 is that people are sort of getting up off the couch and  
11 really getting active because they're using that Wii  
12 Remote as we saw it demonstrated.

13 Q. Has Nintendo produced any promotional videos about  
14 the Wii?

15 A. We have. And I know we're about to show one. It  
16 shows a couple of the games, in particular, I believe  
17 that did not get demonstrated. I don't think we saw  
18 either the tennis or the golf.

19 Q. All right. Hopefully, we will go to that at this  
20 time.

21 A. Thank you.

22 (Video presentation to the jury.)

23 BY MR. GERMER:

24 Q. All right. What do you think that shows? What did  
25 we just see?

1 A. Well, one of the things that we really tried to do  
2 is attract new audiences to this product. We really  
3 wanted people who had never played games before to enjoy  
4 our product. And internally we talk about selling to  
5 folks 5 to 95; and that was a pretty dramatic idea at  
6 the time, that we were going to actually get, you know,  
7 multigenerations to play together. But it's actually  
8 happening. My mom's 82, and she plays bowling with my  
9 10-year-old. And it's pretty unusual to have a  
10 product -- at least in the video game business -- where  
11 different generations can play together and have a  
12 really good time.

13 Q. So, it looks like the kind of product where even I  
14 might have a chance of keeping up with my kids or  
15 grandkids?

16 A. You do have a chance, yes.

17 Q. All right. Not much but a little bit.

18 Has the Wii been a success in the market?

19 A. It's been very successful.

20 Q. Do you play the Wii yourself with your family?

21 A. I do.

22 Q. Is there any other company out there selling  
23 anything like the Wii?

24 A. No.

25 Q. Now, this commercial that we saw -- and you talked

1 about it -- that shows a Wii being played by different  
2 people, including senior citizens, is that really  
3 happening?

4 A. It is. We get these great letters at Nintendo, and  
5 they send us their pictures. In particular, at the  
6 retirement centers, there's these virtual bowling  
7 leagues where people are all bowling against each other.

8 Q. Does the Wii have an exercise program?

9 A. One's coming out later this month. It's May 21st.  
10 It's a product called "Wii Fit." And, again, I think  
11 it's another great example of our innovation. The whole  
12 idea is fitness made fun and you do different games and  
13 it's an exercise.

14 Q. What about the use of Wii in hospitals?

15 A. Well, a couple different examples. First of all,  
16 we've been contacted by medical -- some research  
17 facilities but also just hospitals in general and  
18 they're actually using the Wii for physical therapy for  
19 people who have had injuries.

20 Q. All right.

21 A. We've also -- just something that we do on our own  
22 is we do donate some Wii systems to hospitals because it  
23 takes the kids' mind off the pain.

24 Q. All right. Thank you.

25 We've talked a lot about patents in this

1 case. Does Nintendo hold patents on its video game  
2 systems?

3 A. We do. We have over 500 U.S. patents and many more  
4 worldwide.

5 Q. Do any of those patents relate to the N64 that  
6 we've talked about?

7 A. I think we just saw the screen. We have a hundred  
8 and --

9 Q. Yeah. You can count them up individually, or you  
10 can kind of look at the top of the screen there.

11 A. Yeah. We have, just by way of example, 103 patents  
12 that relate to the N64.

13 THE COURT: Okay. Excuse me, counsel.

14 And just to be sure, ladies and gentlemen,  
15 the issue in this case is not going to be who has the  
16 most patents. And the fact that Nintendo has patents  
17 that may describe aspects of its product does not mean  
18 that these products do or do not infringe the '700  
19 patent. Because to determine infringement -- you'll get  
20 this instruction later -- you've got to decide whether  
21 an accused Nintendo product includes each and every  
22 element of a particular claim of the '700, whether it  
23 also has a patent or not.

24 Go ahead, counsel.

25 MR. GERMER: Thank you, your Honor.

1 BY MR. GERMER:

2 Q. Are there any patents that Nintendo has that relate  
3 to the GameCube?

4 A. Yes. We have 97 patents, again, that relate to the  
5 GameCube.

6 Q. And does Nintendo have any patents that relate to  
7 the Wii?

8 A. We have 137 -- and I just want to clarify. It's  
9 137 -- 136 applications and one that's actually issued.  
10 It takes awhile for them to go through the Patent  
11 Office; so, I want to be clear that that big number  
12 there is applications.

13 Q. Good.

14 All right. I think I can tell from your  
15 testimony the answer to this, but how do you feel about  
16 your company and its products?

17 A. I'm pleased that I work for a company that has  
18 really put out many, many innovative products over the  
19 years. Like Mr. Ikeda, it's great to work and be  
20 involved with a company that's about providing  
21 entertainment and especially about families coming  
22 together. I'm also just proud of the fact that we had  
23 literally thousands of employees working many years to  
24 bring Wii to the market.

25 Q. All right. Thank you very much. We appreciate

1 your testimony.

2 A. Thank you.

3 THE COURT: Cross?

4 MR. BUNT: Yes, your Honor.

5 CROSS-EXAMINATION OF JACQUALEE STORY

6 BY MR. BUNT:

7 Q. Good afternoon, Ms. Story.

8 A. Good afternoon. I don't believe we've met.

9 Q. We have not. My name is Chris Bunt, and I practice  
10 law up in Tyler. It's nice to meet you.

11 A. Nice to meet you.

12 Q. We've seen some of the slides that you went  
13 through, and I want to talk to you about a few of the  
14 issues that have come up throughout the trial.

15 Just to clear up one issue, there was some  
16 testimony from Mr. Ikeda, I believe, a little bit  
17 earlier about the N64 controller. And I believe he  
18 testified that the rumble feature did not originally  
19 come with that controller. Do you recall that  
20 testimony?

21 A. I do recall that testimony.

22 Q. And it actually came out later as an add-on, where  
23 you could take the Rumble Pak and insert it into the  
24 controller so that it would provide vibration. Do you  
25 recall that?

1 A. I do. I just want to be careful that I -- I don't  
2 recall specifically for the U.S. market if the rumble  
3 feature was at the time we introduced or if it came  
4 later. I'm just not a hundred percent clear on that.

5 Q. You don't recall when the rumble feature actually  
6 came out?

7 A. I can't pull that date out of my head.

8 MR. BUNT: Your Honor, could we have a very  
9 brief sidebar conference?

10 THE COURT: All right.

11 (The following proceedings were conducted at  
12 sidebar with both parties represented.)

13 MR. BUNT: Your Honor, out of an abundance of  
14 caution, I didn't want to bring up this document because  
15 it has not yet been labeled as an exhibit as far as I  
16 know; but it does list the date. It is an annual report  
17 from Nintendo. It does list the date when the Rumble  
18 Pak was introduced. Obviously, defendants have made a  
19 big issue about the N64. Mr. Gunther asked my client  
20 some questions about the fact of when it came in --

21 THE COURT: Counsel, counsel, do you want to  
22 hand it to her and see if that refreshes her memory; or  
23 what do you want to do?

24 MR. BUNT: That's what I want to do, your  
25 Honor.



1 THE COURT: Any objection?

2 MR. GERMER: Your Honor, I have two  
3 objections. One is he could have done this in his case.  
4 Two, this is a very limited direct, very general; so,  
5 any detail goes way beyond any direct. He's just trying  
6 to take advantage of her to get something that he didn't  
7 get in before and --

8 MR. GUNTHER: Can I say one thing, your  
9 Honor?

10 THE COURT: Sure.

11 MR. GUNTHER: All right. Remember, you told  
12 me the N64 isn't coming in as prior art; and I accepted  
13 that. Now what they're trying to do is make it that it  
14 isn't prior art. I mean, it's crazy. We started out,  
15 and you said what we said was --

16 THE COURT: Well, it's not prior art; but, of  
17 course, you've harped on it. I'll say that.

18 MR. GUNTHER: Yes. Yes. But what I was  
19 allowed to say was at the time. And now they want to  
20 get very specific with the dates. Well, if they're  
21 going to get specific with the dates, I should be able  
22 to, too.

23 THE COURT: What date do you want to be  
24 specific with?

25 MR. GUNTHER: I'd like to be specific with

1 1995, 1996, when the product was introduced. And if  
2 they want to point out that something else was  
3 introduced, that's later. But that's opening the door  
4 as far as I'm concerned, and we ought to just do it on  
5 direct.

6 MR. CASSADY: To be fair, your Honor, he did  
7 bring up the slide.

8 THE COURT: Slow down. Slow down. What is  
9 the big deal about when the rumble came in? I'm not --

10 MR. BUNT: Well, Mr. Gunther asked my client  
11 about the N64 controller with the rumble module. And he  
12 said: All of that was out at the time you filed your  
13 1996 application, and you do not claim to have invented  
14 that in your claim. And he said: I'm not exactly sure  
15 on that.

16 The annual report shows that the Rumble Pak  
17 came out in 1997. That's why I want to ask her this  
18 question.

19 MR. GUNTHER: Your Honor, my point is if I'm  
20 going to have some dates, that's fine; but then they all  
21 should be in. If he wants '97, then I'm entitled to  
22 '95, '96.

23 MR. BUNT: I'm just trying to clear up the  
24 Rumble Pak, which they brought up earlier.

25 THE COURT: This is the testimony?

1 MR. BUNT: This is the testimony of Brad  
2 Armstrong in Mr. Gunther's questions to him; and that's  
3 all I wanted to ask, that brief question.

4 MR. GERMER: But, your Honor, at the end of  
5 the day, this is a witness -- just a fact witness; and  
6 she doesn't know. She's already said. So, what he's  
7 trying to do is just get in something -- although it's  
8 not marked as an exhibit, he's just trying to get that  
9 in. So, the whole thing seems like a lost mission to  
10 me.

11 MR. CASSADY: Your Honor, the slide he  
12 just --

13 THE COURT: Wait a minute. Wait a minute.  
14 We're not going to have ten different attorneys. Let's  
15 just slow down for a minute.

16 All right. You can ask her if she's familiar  
17 with the report -- the annual report, and you can show  
18 her that page and ask what it is.

19 You did bring it up and made a point with  
20 Mr. Armstrong at the time. They can get back -- I mean,  
21 even though we talked about this not being prior art, as  
22 I said before -- and I'm not holding it against you. A  
23 lawyer is supposed to push as hard as he can. You  
24 made -- I recall it now -- a big point with  
25 Mr. Armstrong about this is all -- everybody knew about

1 this before you came out even though it wasn't labeled  
2 as prior art. You got it in. I'm going to allow a  
3 rebut over that.

4 MR. BUNT: Thank you, your Honor.

5 MR. GUNTHER: Thank you, your Honor.

6 (Sidebar conference concluded. The following  
7 proceedings were heard in open court.)

8 THE COURT: All right, counsel. You may  
9 approach.

10 MR. BUNT: Thank you.

11 BY MR. BUNT:

12 Q. Ms. Story, I just handed you a document. And can  
13 you tell me what that is that I've handed you?

14 THE COURT: All right. Let's go ahead and  
15 kill that, please.

16 Why don't we go ahead and ask the questions.

17 A. I'm sorry. Can you repeat the question?

18 BY MR. BUNT:

19 Q. Yes. Can you identify what I just handed you?

20 A. Sure. At the top it says "Annual Report 2006,"  
21 with a big Nintendo logo on the front.

22 Q. And that's the annual report of Nintendo, correct?

23 A. The annual report is put out by Nintendo Company  
24 Limited, just so we're clear.

25 Q. Yes, ma'am.

1 A. Okay.

2 Q. And it's got a -- it's put out by Nintendo, and  
3 it's got a message from the president in it; is that  
4 correct?

5 A. Let me flip forward. Yes, message from the  
6 president.

7 Q. It's got some pictures of the Nintendo products,  
8 doesn't it?

9 A. Correct.

10 Q. It's got a history of the company in there?

11 A. Most likely.

12 Q. It also has a financial review.

13 A. Correct.

14 Q. And by the way, this is not the first annual report  
15 you've seen, is it?

16 A. No.

17 Q. All right. If you could take a look at the page  
18 that I've got tabbed for you.

19 A. Okay. I'm there.

20 THE COURT: Counsel, we didn't discuss --  
21 this isn't coming in as an exhibit. You can ask the  
22 questions, get the information.

23 MR. BUNT: Okay. I apologize, your Honor.

24 THE COURT: It hasn't been previously marked  
25 as an exhibit under the rules.

1 MR. BUNT: I apologize, your Honor.

2 BY MR. BUNT:

3 Q. Under "1997," can you read the first line for me  
4 there?

5 A. Sure. I'm glad I brought my glasses. It's very  
6 small.

7 Q. It is very small, and I apologize about that.

8 A. Okay. So, 1997: Nintendo introduces the  
9 innovative Rumble Pak attachment for the Nintendo 64  
10 controller which enables game players to feel vibrations  
11 during game play.

12 Q. And just --

13 A. Shall I keep going?

14 Q. No. That's fine. Thank you. Does that refresh  
15 your recollection as to when the Rumble Pak came out for  
16 the N64 controller?

17 A. The reason I'm hesitating is I think Nintendo in  
18 this context -- I'm not sure if it's global Nintendo.  
19 Sometimes in the annual report the focus is more on the  
20 Japanese market than the U.S. market, and that's my only  
21 hesitation.

22 Let me keep reading.

23 Just to be a hundred percent certain, it  
24 would be helpful if I had, like, a sales sheet where we  
25 were actually selling it, so I knew for U.S. market in

1 particular.

2 Q. Well, given the first sentence there, though,  
3 there's nothing that indicates to you that the Rumble  
4 Pak came out any earlier than 1997, is there?

5 A. Well, again, the reason is sometimes for the  
6 Japanese market and the U.S. market, we introduce the  
7 products at different times because it's about what  
8 particular game you're introducing. So, for example,  
9 sometimes we'll introduce games earlier in the U.S. and  
10 later in Japan.

11 So, I'm just trying to be cautious that I  
12 don't know, when it says Nintendo introduces the  
13 innovative Rumble Pak for the Nintendo 64, if they're  
14 talking about Nintendo Japan or Nintendo U.S.

15 Q. Let me see if I can be more specific.

16 A. Okay.

17 Q. In that first sentence it does not limit it to  
18 Japan or to America, does it?

19 A. No. A lot of the focus in the annual report is  
20 sometimes on the Japan side. So, I'm just telling you I  
21 can't be a hundred percent certain.

22 Q. Okay. But you have no reason, sitting here today,  
23 to quibble with that date, do you?

24 A. I do only in the sense that I don't know because if  
25 they're talking about Nintendo meaning Nintendo Company

1 Limited, that's different than the -- sorry -- we  
2 introduce products at different times. It doesn't  
3 always match up.

4 Q. Do you recall -- when Mr. Armstrong was being  
5 cross-examined, there were some questions asked of him  
6 about the rumble module. Do you recall that testimony?

7 A. In general, I do, yes.

8 Q. And I'll just show you. You'll see up there at the  
9 top, at line 7, it says, question by Mr. Gunther:  
10 That's a rumble module that's made to be inserted into  
11 the Nintendo 64 controller, right?

12 And the answer was: Yes, sir.

13 Question: It's got a motor with an offset  
14 weight in it, right?

15 Answer: Yes, sir.

16 Have I read that correctly so far?

17 A. You have.

18 Q. And then at the bottom, line 21, the question says:  
19 And all of that was out at the time that you filed your  
20 1996 application; and you do not claim to have invented  
21 any of this, right?

22 And the answer from Mr. Armstrong was: I'm  
23 not exactly clear on that, to tell you the truth.

24 Did I read that correctly, as well?

25 A. You did.



1 Q. So, if we take this annual report, which indicates  
2 that the Rumble Pak came out in 1997, in respect to the  
3 statement to Mr. Armstrong that it came out before his  
4 1996 warehouse patent, that would have been an incorrect  
5 statement by Mr. Gunther to Mr. Armstrong, correct?

6 A. That's sort of a complicated set of dialogue. My  
7 only answer is the best way to refresh my recollection  
8 is a sales sheet to show when Nintendo of America sold  
9 the product. That's the best I can give you.

10 Q. Thank you, ma'am.

11 There was also some comments during the  
12 opening statement of this case, by Nintendo, that  
13 Nintendo was not selling the GameCube anymore. And I  
14 believe you clarified that a little bit during your  
15 direct examination a moment ago.

16 Actually, the GameCube controller is still  
17 being sold, isn't it?

18 A. Yes. So, we should be very careful about the words  
19 that we use. So, the hardware itself, which is the box,  
20 if you will, the console, we basically discontinued  
21 sales of that. The GameCube controller, we do still  
22 sell some quantities of that. The software, we're in  
23 the process -- we have a small amount of inventory of  
24 the software, meaning the games; and we're in the  
25 process of selling that off, as well.

1 Q. And just so I'm clear with my words, as well, you  
2 understand that in this case Anascape is not accusing  
3 the consoles of infringement, correct?

4 A. That's my understanding.

5 Q. And we're not accusing the games of infringement.

6 A. That's my understanding.

7 Q. But what we are accusing are the GameCube  
8 controllers and the Wii controllers, correct?

9 A. (Pausing.)

10 Q. Well, I'll just -- let me just stick with the  
11 GameCube controllers. You understand that they are  
12 being accused.

13 A. Yes. Yes, I do.

14 Q. And just to be clear, you can still go out and buy  
15 those GameCube controllers, can't you?

16 A. You can.

17 Q. And, in fact, you can take a GameCube controller;  
18 and you can plug it into the Wii system and play some of  
19 the games with that, can't you?

20 A. You can.

21 Q. To get back to that issue about what's been  
22 accused, you understand in this case that there are some  
23 combinations that are being accused by Anascape.

24 A. Correct.

25 Q. And those combinations are: The Classic Controller

1 in combination with the Wii Remote and the Nunchuk in  
2 combination with the Wii Remote.

3 A. That's my understanding.

4 Q. And refresh my recollection. When did the Wii  
5 system come out?

6 A. In November, 2006.

7 Q. And the Nunchuk and the Classic Controller came out  
8 at the same time, didn't they?

9 A. The Nunchuk definitely did; and I believe the  
10 Classic Controller was at launch, if not immediately  
11 thereafter.

12 Q. In fact, when you buy a console, you get a Nunchuk  
13 with it, don't you?

14 A. That's correct. It comes packaged with one Wii  
15 Remote and one Nunchuk.

16 Q. Now, there are some games that you can just play  
17 with the Wii Remote, correct?

18 A. Correct.

19 Q. So, obviously, Nintendo could have decided to just  
20 come out with the Wii Remote. They didn't have to come  
21 out with the Nunchuk, did they?

22 A. I guess in theory, that's correct.

23 Q. But I'm assuming that one of the reasons they  
24 wanted to do that was because some of the games require  
25 the use of the Wii Remote and the Nunchuk, correct?

1 A. Yes. I think we saw a demonstration with the  
2 boxing game.

3 Q. And some of the most successful games that Nintendo  
4 sells require the use of the Wii Remote in combination  
5 with the Nunchuk, don't they?

6 A. I believe several of the games you use in  
7 combination.

8 Q. In fact, let's take a look at one of the slides  
9 that you showed us a moment ago. Can you identify this  
10 for us one more time?

11 A. Sure. This is a slide which shows what I call  
12 "Nintendo's franchise characters."

13 Q. And the first person up on the left-hand side, is  
14 that a young man?

15 A. That's Link, yes.

16 Q. Okay. And Link, I believe you said, is in the  
17 Zelda: Twilight Princess game?

18 A. He is in Zelda game, correct.

19 Q. Zelda game.

20 A. Yes.

21 Q. And the Zelda game has been across different  
22 consoles. It was there in the GameCube; is that right?

23 A. Yes.

24 Q. And now it's in the Wii system, correct?

25 A. Correct.

1 Q. And the Wii system game that has Zelda is the  
2 Zelda: Twilight Princess?

3 A. I believe so, yes.

4 Q. And --

5 A. It's the one on Wii.

6 Q. I'm sorry. What did you say?

7 A. Yes.

8 Q. And that game, to play it, it requires the use of  
9 the Nunchuk and the Wii Remote, doesn't it?

10 A. I believe so.

11 Q. And that game has sold very well, hasn't it?

12 A. It has.

13 Q. And, in fact, I believe you said that this is one  
14 of the franchise characters that you've got, correct?

15 A. Correct.

16 Q. If you skip over to the fellow on the far right,  
17 Mario -- is that --

18 A. Yes.

19 Q. -- the correct name?

20 Obviously, that's a very famous character for  
21 Nintendo, isn't it?

22 A. It is.

23 Q. He was there on the GameCube games, correct?

24 A. From the very early days.

25 Q. From the very early days.

1                   And on the Wii system games, I believe we  
2 have one that's been demonstrated throughout the trial.  
3 That was the Galaxy game; is that correct?

4 A.     Correct.

5 Q.     And to play that game, you have to have the Wii  
6 Remote in combination with the Nunchuk, don't you?

7 A.     I believe that's correct.

8 Q.     And, obviously, Mario is one of the most popular  
9 characters that you've got, correct?

10 A.    He is.

11 Q.    And the Wii Mario Galaxy game has been a very big  
12 seller for Nintendo, hasn't it?

13 A.    It has.

14 Q.    The fellow right down a little bit below Mario to  
15 the left, his name is Luigi. Does he show up in the  
16 Mario game, as well?

17 A.    I believe so. He's Mario's sidekick.

18 Q.    And he shows up in the Wii Galaxy game?

19 A.    I'm pretty sure he's in there. That's not one that  
20 I personally play a lot, though my children do.

21 Q.    The Princess Peach, is she in the Mario Galaxy  
22 game, as well?

23 A.    I believe there's a princess in it. There are two  
24 different princesses; so, I'm not sure if it's Peach or  
25 another one.

1 Q. Okay. You don't know if that's the one that Mario  
2 is trying to rescue all of the time in the Galaxy game?

3 A. Like I said, it's a princess; but sometimes there's  
4 more than one.

5 Q. And then the character on the bottom right-hand  
6 corner is Samus; is that correct?

7 A. Correct.

8 Q. And I believe you said that came out of the -- that  
9 game was put together by the Retro company?

10 A. Correct.

11 Q. And you actually -- you're the vice-president over  
12 that company?

13 A. Correct.

14 Q. And was Samus a character for the GameCube series,  
15 as well?

16 A. Yes.

17 Q. And what game does she appear in on the Wii system?

18 A. She looks quite a bit different because she wears a  
19 suit of armor.

20 Q. Okay.

21 A. But I believe -- well, she's in Metroid Prime 3.

22 Q. All right. And to play that game, you need to use  
23 the Wii Remote and the Nunchuk, don't you?

24 A. Yes. I believe you do.

25 Q. And, again, she's a very popular character,

1 obviously?

2 A. She is.

3 Q. And the Metroid Prime 3 Wii game has sold very  
4 well, hasn't it?

5 A. It has done well.

6 Q. Okay. So, we've got, it looks like, seven  
7 characters up there; and at least five of them appear in  
8 games that require the user to use the Wii Remote and  
9 the Nunchuk together; is that correct?

10 A. I believe so.

11 MR. BUNT: I'll pass the witness. Thank you,  
12 ma'am.

13 REDIRECT-EXAMINATION OF JACQUALEE STORY

14 BY MR. GERMER:

15 Q. Is a big part of the Wii the games that we saw --  
16 the golf, the tennis, things like that? Is that a major  
17 part of the Wii experience?

18 A. Absolutely. If you have a piece of hardware and as  
19 many controllers as you want, at the end of the day it's  
20 all about the games.

21 Q. And is it true that -- I don't know if "most" is  
22 correct or "a lot," but either one -- of those games,  
23 you end up just using the Wii controller?

24 A. Yeah. Obviously, like the Wii Sports ones we saw,  
25 you can use the Wii Remote for hitting the baseball and



1 for swinging the tennis racket and, for my favorite, the  
2 bowling.

3 Q. All right. I tried the bowling. It's not my  
4 favorite.

5 Quick question about the GameCube  
6 controllers.

7 A. Uh-huh.

8 Q. How many of those have been sold at this time  
9 compared to, say, the Wii system? Or do you have any  
10 idea?

11 A. Well, I can only give you a general comparison. I  
12 mean, the Wii is extremely successful; and it's -- it  
13 and the DS are the major products that we're selling.  
14 We are selling the GameCube controller, but it would be,  
15 relatively speaking, in small amounts.

16 Q. And is it in a declining amount?

17 A. Yes.

18 Q. Thank you.

19 MR. GERMER: No further questions.

20 MR. BUNT: Nothing further, your Honor.

21 THE COURT: You may step down, ma'am.

22 Next witness?

23 MR. GUNTHER: Your Honor, Nintendo calls John  
24 Pederson.

25 (The oath is administered.)

1 MR. GUNTHER: Your Honor, may I make a brief  
2 interim statement?

3 THE COURT: You may.

4 MR. GUNTHER: Ladies and gentlemen,  
5 Mr. Pederson is going to testify. He's a senior  
6 director of technical services at Nintendo of America in  
7 Redmond, Washington; and he's going to talk a little bit  
8 about the video game controllers. He's also going to  
9 talk a little bit about his background at Nintendo.  
10 He's been there for quite awhile, and he can tell you a  
11 number of things about how the company got started.

12 One of the things he is going to tell you --  
13 and I had mentioned this in my opening statement -- is  
14 how Donkey Kong got its name.

15 MR. CAWLEY: Your Honor, I hate to interrupt;  
16 but I'm told that there are some objections on  
17 demonstratives that haven't been addressed yet. I don't  
18 know if we will reach those before the next break or  
19 not, but I wanted to let the court know.

20 THE COURT: The objections are overruled.

21 MR. CAWLEY: Thank you, your Honor.

22 DIRECT EXAMINATION OF JOHN PEDERSON

23 CALLED ON BEHALF OF THE DEFENDANT

24 BY MR. GUNTHER:

25 Q. Mr. Pederson, could you please introduce yourself

1 to the jury.

2 A. My name is John Pederson, and I'm the senior  
3 director of technical services at Nintendo of America.

4 Q. And how long have you worked at Nintendo of  
5 America?

6 A. Since June of 1981.

7 Q. June of 1981, you said?

8 A. Correct.

9 Q. Now, sir, was Nintendo of America a large company  
10 when you started working there?

11 A. No. It was small. In fact, I was the second  
12 employee hired.

13 Q. And, sir, what do you do currently as senior  
14 director of technical services at Nintendo of America?

15 A. I oversee the repair of consumer products. So,  
16 when a consumer has a broken -- one of our products,  
17 they send it in for repair. I oversee those services.

18 Q. And, sir, can you tell us: In terms of that  
19 function, how many people do you supervise?

20 A. I have 60 employees, Nintendo of America employees,  
21 and about -- between 150 to 200 temporary employees.

22 Q. And those are all people that you supervise?

23 A. Yes.

24 Q. Now, sir, can you tell us anything about the return  
25 rate or the quality assurance that Nintendo has in place

1 for its products?

2 A. From what I understand -- I've been at Nintendo for  
3 a long time; so, I haven't experienced the return rates  
4 at other companies. But I've been to return seminars  
5 and heard of other companies' return rates. Ours are at  
6 2 percent or less; and many other companies are higher  
7 than that, much higher.

8 Q. Now, sir, are you familiar with the Nintendo  
9 products that -- the Nintendo products that are sold and  
10 have been sold historically and how they work?

11 A. Yes.

12 Q. And what's your basis of knowledge of those  
13 products?

14 A. Well, I need to understand how the products work so  
15 that we can properly service the products, correct any  
16 problem that exists.

17 Q. Now, sir, do you, yourself, get involved in  
18 actually developing Nintendo's video game products?

19 A. No, I do not.

20 Q. Now, let me ask a few questions about your  
21 background and how you came to work at Nintendo. Can  
22 you please describe for us your educational background  
23 starting with high school?

24 A. I went to Roosevelt High School in north Seattle  
25 and graduated in 1974, and then I went on to North

1 Seattle Community College and received an Associate of  
2 Applied Science Degree in Electronics Engineering  
3 Technologies in '76.

4 Q. That was in 1976? Let me just focus on that. That  
5 was an associate's degree, you said?

6 A. Correct.

7 Q. And how many years did you take that degree?

8 A. Two years.

9 Q. Okay. And, sir, do you have any formal education  
10 beyond that?

11 A. No.

12 Q. When did you begin working at Nintendo of America?

13 A. It was in 1981.

14 Q. And, sir, when you first joined the company, what  
15 did you do?

16 A. My job was to help customers over the phone with  
17 the repair of the coin-operated products that we were  
18 selling at that point in time and to determine what  
19 parts they needed to actually repair those and get those  
20 shipped out.

21 Q. Now, sir, when you first started with the company  
22 in 1981, was there any other special project that you  
23 were involved with?

24 A. When I started with the company, we had a stock of  
25 video games that were called "Radar Scope."

1 Q. Now, sir, was that game, Radar Scope -- was that a  
2 home video game, or was it something else?

3 A. No. It was a coin-operated video game.

4 Q. Okay, sir. And what was the special project that  
5 you got involved in with respect to the Radar Scope  
6 coin-operated video game?

7 A. The Radar Scope video game had -- it sold very well  
8 for a short period of time; and we had a number of games  
9 on the water that came to us that by the time they got  
10 to us, they wouldn't sell very well. So, we needed to  
11 actually convert those games to another game.

12 Q. And, so, what did you do -- what was your  
13 involvement in that process?

14 A. During the day, I would actually do my normal job;  
15 and in the evenings we would go in the warehouse and  
16 actually pull out the printed circuit boards and replace  
17 them with the new video game boards.

18 Q. What was the new video game that Nintendo developed  
19 to replace the Radar Scope boards?

20 A. That was Donkey Kong.

21 Q. And, sir, did that become a successful  
22 coin-operated video game?

23 A. Yes, second only to Pac-Man.

24 Q. Has it become a successful home video game?

25 A. Yes.

1 Q. And, sir, can you tell us how Nintendo came up with  
2 the name for Donkey Kong?

3 A. My understanding is that it's a sort of loose  
4 translation of stubborn monkey and we thought it was  
5 kind of a silly name when we heard it first but...

6 Q. Was that a name that folks came up with in the  
7 United States?

8 A. No. It was done in Japan.

9 THE COURT: All right. Counsel, we're going  
10 to take a break.

11 Ladies and gentlemen, I'm going to excuse you  
12 until ten of.

13 (The jury exits the courtroom, 3:34 p.m.)

14 THE COURT: We'll be in recess until ten of.

15 (Recess, 3:34 p.m. to 3:49 p.m.)

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

18 THE COURT: Counsel, go ahead.

19 MR. GUNTHER: Thank you, your Honor.

20 BY MR. GUNTHER:

21 Q. Mr. Pederson, before the break, you testified that  
22 you started at Nintendo of America in 1981 as technical  
23 services manager; and today you are senior director of  
24 technical services, managing some 260 people. Can you  
25 tell us how your duties have evolved over that time

1 period?

2 A. In the beginning I was working on strictly  
3 coin-operated video games because that was the product  
4 line that we had. And as time went on, we introduced  
5 home video games; and, you know, my job evolved to  
6 include those new products as they came along.

7 Q. How did your job change in terms of the volume of  
8 products?

9 A. Well, the sheer volume of products is very large  
10 currently. We had been selling about -- I think it was  
11 Donkey Kong coin-operated video game, within a year we  
12 sold about 65,000 pieces. Now we talk about selling,  
13 you know, as many as 5 or 6 million pieces of video  
14 games a year of one product line.

15 Q. Now, Mr. Pederson, Ms. Story talked a little bit  
16 about the Nintendo video game systems on sort of a  
17 general level. I'd like to focus with you a little bit  
18 on the evolution of the controllers for the Nintendo  
19 video game systems.

20 A. Okay.

21 MR. GUNTHER: Could we put up the first  
22 slide?

23 BY MR. GUNTHER:

24 Q. And can you identify the controllers that are on  
25 this slide for us?



1 A. Yes. Starting with the upper left-hand corner,  
2 that was the Donkey Kong Game & Watch. And it was a  
3 handheld dedicated video game that only had one game in  
4 it.

5 The second one is the Nintendo Entertainment  
6 System, also referred to as the "NES."

7 Q. Is that the controller for that system?

8 A. That's the controller, correct.

9 Q. Okay.

10 A. And then the third one on the top is the Game Boy  
11 video game system, which was a handheld video game  
12 system, again; but it accepted cartridges. So, it  
13 wasn't dedicated to just one game.

14 And then along the bottom, the first one on  
15 the left-hand side is the Super Nintendo, or Super NES  
16 which it was sometimes referred to, which was our next  
17 generation of home video games past the NES.

18 And then next one is the Nintendo 64, which  
19 was introduced after that.

20 And then the Nintendo GameCube controller  
21 after that and currently the Wii.

22 Q. Okay. Now, sir, generally speaking, how have  
23 Nintendo's controllers changed over time?

24 A. Well, they've really evolved. You know, some of  
25 the features that we had way back from the Game & Watch

1 to what we have today have been incorporated, but  
2 there's been additions along the way.

3 Q. All right. Let's focus, if we can, on the first  
4 product, the Game & Watch. And can you tell us about  
5 the controls for that product?

6 A. It had two controls, one on the left side and one  
7 on the right side. And the one on the left side is what  
8 we call a "cross pad."

9 Q. Yeah. Let me stop you right there. We also know  
10 that there is a cross pad of some type on the Wii Remote  
11 and the GameCube; is that correct?

12 A. Correct.

13 Q. All right. Now, sir, how does this cross pad  
14 compare with those?

15 A. In design it's virtually the same, just slightly  
16 different in size.

17 Q. Can you describe that design? And I'm talking  
18 about the cross pad itself and then the sensors  
19 underneath.

20 A. The cross pad itself is actually a bit of a rocker.  
21 And when you push on either left/right or up/down, it  
22 actually depresses a silicone rubber contact underneath  
23 it that then contacts the PC board and makes the switch  
24 which tells the microcomputer which direction to move  
25 the character.

1 Q. So, if we look at that cross-switch or that cross  
2 pad, is there a sensor underneath that part of the  
3 cross-switch?

4 A. Yes, there is.

5 Q. And is there a sensor sort of in each of the four  
6 corners?

7 A. Exactly.

8 Q. And have you heard the term "unidirectional  
9 sensor"?

10 A. Yes.

11 Q. Are the sensors underneath the four points of the  
12 cross pad unidirectional sensors?

13 A. Well, each one of the sensors, like I said, tells  
14 the microcomputer which direction to move the character.  
15 So, you've got four sensors there.

16 Q. Now, how about the other parts of the -- the  
17 controller parts of the Game & Watch? Can you describe  
18 those for us?

19 A. On the right-hand side, there is one button. This  
20 game was relatively simple. It had a jump, and the  
21 character Mario would just simply jump.

22 Q. Let me just stop you right there. That's this  
23 button right here (indicating)?

24 A. Correct.

25 Q. It says "jump" underneath?

1 A. Correct.

2 Q. Okay.

3 A. Above that are three buttons. The first one at the  
4 top is Game A and Game B. That's how you would select  
5 the difficulty level of the game. And that would  
6 determine the speed at which the barrels came down the  
7 game and so forth.

8                   And then the third button actually displayed  
9 the time, which was the watch function of the Game &  
10 Watch?

11 Q. Okay. Now, sir, the next controller in the  
12 timeline is the Nintendo Entertainment System  
13 controller. Can you tell us, sir, how the controller  
14 functions with respect to that system as compared, for  
15 example, to the Game & Watch?

16 A. Well, it included the cross pad again.

17 Q. Okay. So, over here on your left (indicating) is  
18 the cross pad?

19 A. Right.

20                   And it also had the -- instead of just one  
21 button, it had the A and B button on the right-hand  
22 side.

23 Q. Am I just pointing (indicating) to those right now?

24 A. Correct.

25 Q. Okay.

1 A. And then it had start/select buttons in the center.

2 Q. Now, sir, the cross-switch in terms of structure  
3 and function, is that similar or different from the  
4 cross-switch that was present in the Game & Watch  
5 system?

6 A. Very similar, just -- as I said before, just  
7 different in size.

8 Q. Now, sir, let me just ask you this question in  
9 terms of added -- there are some more buttons on this  
10 one than there were as compared to the Game & Watch. Is  
11 there a reason for that?

12 A. Well, this system was a cartridge-based system.  
13 So, it allowed different games to be inserted into the  
14 console. And, so, the buttons -- we needed more buttons  
15 to accommodate the different types of games.

16 Q. And, sir, was this a more powerful or less powerful  
17 system than the Game & Watch?

18 A. Much more powerful. In fact, it was equivalent to  
19 arcade style games of the year.

20 Q. Okay. Let's take a look at the Game Boy. And,  
21 sir, can you compare the controller functions on the  
22 Game Boy -- this is a handheld system; is that correct?

23 A. Yes.

24 Q. And can you compare the controller functions on the  
25 Game Boy to the NES?

1 A. It has virtually the same controller functions; but  
2 because it was a handheld game, they narrowed the width  
3 of it. So, the start/select button dropped down below.

4 Q. They both have a cross-switch?

5 A. They both have a cross-switch. They both have an A  
6 and B button.

7 Q. And they both have start and select?

8 A. Correct.

9 Q. Okay. Now, sir, let's take a look at, if we can,  
10 the Super Nintendo controller. And, sir, can you tell  
11 us, again in terms of the features and functionality of  
12 that controller, how that compared to prior controllers  
13 like the Nintendo Entertainment System controller?

14 A. Once again, it incorporated the cross pad on the  
15 left-hand side, had the select and start buttons as  
16 before. It also had the A and B buttons; but they  
17 actually added four new buttons to the controller, the X  
18 and Y and then also the two shoulder buttons.

19 Q. Now, sir, I'm pointing up on the top (indicating).  
20 Can you tell us what that is? It's a little bit --

21 A. That's the shoulder buttons.

22 Q. All right. And there was one on each side?

23 A. Correct.

24 Q. And, sir, can you tell us why there was added  
25 functionality in the Super Nintendo system as compared

1 to the Nintendo Entertainment System?

2 A. Well, as the game systems got more sophisticated,  
3 they added more control features to the controller so  
4 that the game developers could have more flexibility in  
5 developing these more complex games.

6 Q. And how about the power of those two systems? Can  
7 you compare them?

8 A. Well, the Super Nintendo was a 16-bit system as  
9 compared to the regular system as an 8-bit system. So,  
10 it was more than two times powerful.

11 Q. And, sir, did that increase in power have an impact  
12 on the number of functions and features on the Super NES  
13 controller?

14 A. Yes, because, you know, you could program in more  
15 complex game play with a higher-power machine; and that  
16 called for the ability to actually have more  
17 functionality in the controller.

18 MR. GUNTHER: Let's put up the next slide,  
19 which is the controller for the Nintendo 64 system.

20 BY MR. GUNTHER:

21 Q. Do you see that?

22 A. Yes.

23 Q. Now, sir, can you compare that to the controller  
24 for the Super Nintendo system?

25 A. Again, it had the cross pad on the left-hand side

1 (i ndi cating).

2 Q. Right.

3 A. And in the very center, it's got a start button  
4 (i ndi cating). It does not have a select button.

5 Q. Can I ask you this, sir? I'm interrupting you.  
6 I'm sorry.

7 Is that the start button (i ndi cating)?

8 A. Yes. The red one is the start button. Right.

9 And then it has the A and B buttons, the  
10 green and blue.

11 Q. Okay. So, the green and blue buttons are the A and  
12 B?

13 A. Correct.

14 Q. So, what we've seen so far are all features and  
15 functionality that have been on pretty much all of  
16 Nintendo's earlier controllers; is that correct?

17 A. Right.

18 Q. Okay.

19 A. Right.

20 Q. Now, how about these (i ndi cating) yellow buttons up  
21 in the corner?

22 A. Those are called the "C buttons."

23 Q. And what were they about?

24 A. Well, in -- in Super Mario 64 they were used to  
25 actually change the camera angle of the viewer from



1 where you were looking at it from the TV screen.

2 Q. Can you describe what you mean by that just a  
3 little bit more?

4 A. Well, this was the first game system that actually  
5 allowed for 3-D graphics so that instead of just having  
6 game play that occurred on the screen in front of you,  
7 you know, you had game play that was occurring all  
8 around you. So, you needed the ability to actually  
9 change the camera angle to see where your character was  
10 at, what was going on behind him as well as to the side  
11 as well as to the front.

12 Q. Okay. Now, how about this item right here  
13 (indicating) that I'm circling with the laser pointer?  
14 What is that?

15 A. That's the joystick.

16 Q. And can you tell us what the functionality of that  
17 was in the Nintendo 64 system?

18 A. Well -- and again I'll use Super Mario 64. Again,  
19 this was a cartridge-based system so that it could be  
20 used by the developer however they chose; but I'll use  
21 Super Mario 64 as the example. It was used to make  
22 Mario run left/right, forwards and backwards.

23 Q. Now, sir, can you pick -- do you have a Nintendo 64  
24 controller up there with you?

25 A. Yes.

1 Q. Can you hold it up?

2 A. (Complying.)

3 Q. Sir, are there some buttons up sort of on the top  
4 of it or on the shoulders?

5 A. Yes. There's two shoulder buttons, a right and a  
6 left (indicating).

7 Q. And can you describe the functionality of those  
8 buttons?

9 A. Well, they were used however the game programmer  
10 decided to use them. Not being a real game player, I  
11 don't know all the functions that they were used for.

12 Q. Okay. Now, sir, there's also a -- if you hold the  
13 back of it up, it looks like there is something plugged  
14 into it.

15 A. (Demonstrating.) Yes.

16 Q. And what is that?

17 A. This is a Rumble Pak.

18 Q. And, sir, what was the function of that device?

19 A. It provided feedback to the player when, for  
20 example -- I'll just use an example of if it was a  
21 driving game, if you were in a car crash, it would  
22 actually provide vibration to the controller.

23 Q. Okay. Sir, do you know when the Rumble Pak,  
24 approximately, was introduced?

25 A. No, I don't.

1 Q. Okay. Can you give us anything on that?

2 A. Other than it was after the release of the Nintendo  
3 64, no.

4 Q. Right. Do you know about how long afterwards?

5 THE COURT: Counsel, I think it's been asked  
6 and answered.

7 MR. GUNTHER: Yes, sir.

8 THE COURT: If your company can't come up  
9 with a number, we don't need a guess on it.

10 MR. GUNTHER: Yes, sir. Understood. Thank  
11 you.

12 BY MR. GUNTHER:

13 Q. Now, sir, let me ask you this: In terms of the  
14 controllers that we've looked at so far, which are the  
15 NES, the Super NES, and the GameCube -- sorry -- yes,  
16 the Nintendo 64 controller, those first three that we  
17 have as well as the Game & Watch and the GameCube --  
18 sorry -- the Game Boy -- those first five that we have  
19 here -- Game & Watch, Nintendo Entertainment System,  
20 Game Boy, Super Nintendo, and Nintendo 64 -- do each one  
21 of those have multiple input members?

22 A. Yes.

23 Q. Okay. Has Nintendo ever made a controller that  
24 you're aware of that has a single input member with  
25 no -- and that's it, just one single input member?

1 A. No.

2 Q. All right. Now, sir, let me ask you this: Have  
3 the number of input members of the controllers that  
4 we've talked about changed over time?

5 A. Yes. They have increased.

6 Q. And why is that?

7 A. Again, as I said before, the -- to allow the game  
8 programmers the ability to add more functionality into  
9 the games and more variety in what they did.

10 Q. Now, sir --

11 MR. GUNTHER: If we could go to the next  
12 slide and take a look at the GameCube controller.

13 A. Uh-huh.

14 BY MR. GUNTHER:

15 Q. Sir, can you explain to us the features and  
16 functionality of that controller?

17 A. This controller had a -- on the very left-hand side  
18 had a joystick.

19 Q. All right. Am I circling that (indicating) with  
20 the laser pointer?

21 A. Yes.

22 Q. "Yes"?

23 A. And then there was also -- just down below it was a  
24 cross pad again.

25 Q. All right. Is that the same type of cross pad

1 (indicating) going all the way back to the Game & Watch?

2 A. Same type of cross pad, correct.

3 Q. And how about this, sir (indicating), what I'm  
4 circling here?

5 A. That is called a "C stick," which is another  
6 joystick.

7 Q. Now, sir, can you compare the C stick to any  
8 functionality on the Nintendo 64 controller?

9 A. Well, in some games it was used for the camera  
10 angle as it was done on the Nintendo 64.

11 Q. And, so, these buttons were the C buttons; is that  
12 correct (indicating)?

13 A. Correct.

14 Q. On the Nintendo 64?

15 And this is (indicating) the camera stick,  
16 the yellow camera stick on the GameCube?

17 A. Yeah, the "C stick," as it's called.

18 Q. Okay. Now, sir, there are some buttons here that  
19 I'm circling (indicating) on the right-hand side of the  
20 controller. Can you describe those for us?

21 A. There was an A and a B button, which are two  
22 different sizes; and then there is an X and Y button.

23 Q. And how about up on the shoulders?

24 A. There's actually two shoulder buttons up there that  
25 are left and right that actually have a slider ability

1 to them, and then also a Z button.

2 Q. Now, those two up on the top, do they have the  
3 ability to produce proportional output?

4 A. Depending on how far you depress them, you could  
5 use that function to change how a character is moved or  
6 operates on the screen.

7 Q. And when you fully depress the button, is there  
8 another sensor at the bottom?

9 A. There is a switch at the bottom, end of travel  
10 switch.

11 Q. Is that a unidirectional switch?

12 A. It's just one sensor at the bottom; so, it's...

13 Q. Okay. Now, sir, let's take a look, if we can, at  
14 the -- well, let me just ask you this one last question:  
15 In terms of complexity of controller functions, is the  
16 GameCube more or less complex than the N64?

17 A. It's more complex. It has more features.

18 Q. Is there a reason for that?

19 A. Again, just the evolution of the game systems and  
20 the -- allowed for development of the games.

21 Q. So, is it fair to say that the GameCube has  
22 retained some of the very old features that -- from the  
23 very beginning, like the cross-switch and the A and B  
24 buttons, but has added additional features and  
25 functionality?

1 A. Yes.

2 Q. Now, sir, let's take a look, finally, at the Wii  
3 Remote plus the Nunchuk. Sir, can you describe --  
4 starting with the Remote, can you describe the features  
5 and functionality of the Remote?

6 A. The Remote is the one that looks like a wand, like  
7 a remote controller; so, it's called a "Remote."

8 It has -- at the very top it's got the cross  
9 pad that we've seen before.

10 Q. Okay. Right here (indicating)?

11 A. Right. And then it has an A button.

12 Q. (Indicating.)

13 A. And then below that it has a home button and a plus  
14 and minus button.

15 Q. And could you just describe the functionality of  
16 those buttons?

17 A. The home button is used to actually return the --  
18 to return to the system menu on the Wii. So, when  
19 you're playing a game, there is a menu that you go back  
20 to; and if you hit that home button, it takes you back  
21 to that menu.

22 Q. Okay. And there's also two buttons here  
23 (indicating). Can you tell us about those?

24 A. Yes. Those are the Buttons 1 and 2; and they are  
25 used for various game play functions, depending upon the

1 game.

2 Q. Okay. And, sir, if you actually -- we can't see  
3 it, but maybe you can hold up -- do you have a Remote  
4 there?

5 A. Yes.

6 Q. If you turn it around to the back, is there any  
7 kind of feature or functionality on the back?

8 A. There is one button back here (indicating), as  
9 well.

10 Q. Okay. And, sir, we've heard testimony about the  
11 Wii Remote that also has an accelerometer in it.

12 A. Yes.

13 Q. Now, sir, can you take us now through the Wii  
14 Nunchuk and tell us about the features and functionality  
15 of that --

16 A. It has a joystick, as can be seen towards the top  
17 of that device.

18 Q. Okay.

19 A. And then it has two buttons on the back there and  
20 they're not that easy to see, but they're here  
21 (indicating).

22 Q. Okay. And, sir, there's also been some testimony,  
23 I think -- I just want you to confirm this -- that there  
24 is also an accelerometer in the --

25 A. Yes. There is also an accelerometer in that.



1 Q. Mr. Pederson, can you -- looking from --

2 MR. GUNTHER: Maybe we could put the first  
3 slide back up again.

4 BY MR. GUNTHER:

5 Q. If we start with the Game & Watch and going all the  
6 way through the Wii Remote plus the Nunchuk, from 1982  
7 to 2006, can you summarize for us, if you can, the  
8 changes to those controllers over the years?

9 A. It's really been an add-on sort of evolution to  
10 those controllers. We found some functions in those  
11 controllers that work very well and then brought them  
12 forward and added features in kind of an evolutionary  
13 style.

14 MR. GUNTHER: I pass the witness, your Honor.

15 Thank you, Mr. Pederson.

16 Your Honor, I'm sorry. I know I passed the  
17 witness. Could I just read some exhibit numbers that  
18 I've been utilizing?

19 THE COURT: Go ahead.

20 MR. GUNTHER: Thank you, sir.

21 The NES controller is Defendant's  
22 Exhibit 216; the Game Boy is Defendant's Exhibit 308;  
23 the Super NES controller is Defendant's Exhibit 115; the  
24 N64 controller is Defendant's Exhibit 118; and then the  
25 GameCube, Defendant's Exhibit 157; the Wii Remote and

1 Nunchuk -- the Remote, Defendant's Exhibit 167; and the  
2 Nunchuk, Defendant's Exhibit 162.

3 Thank you, your Honor.

4 THE COURT: Mr. Cawley?

5 MR. CAWLEY: Thank you, your Honor. May I  
6 pull the easel over?

7 THE COURT: Please.

8 And while you're doing that, Mr. Gunther, did  
9 you say one of those is Plaintiff's Exhibit 118?

10 MR. GUNTHER: No, your Honor. I'm sorry. I  
11 may have misspoken. Let me take a look.

12 Your Honor, it's very possible I misspoke.

13 THE COURT: Okay.

14 MR. GUNTHER: I meant to say Defendant's  
15 Exhibit 118.

16 THE COURT: All right.

17 MR. GUNTHER: Thank you, sir.

18 MR. CAWLEY: May I proceed, your Honor?

19 THE COURT: Please.

20 MR. CAWLEY: Thank you.

21 CROSS-EXAMINATION OF JOHN PEDERSON

22 BY MR. CAWLEY:

23 Q. Good afternoon, Mr. Pederson.

24 A. Good afternoon.

25 Q. You've worked for Nintendo for around 25 years; is

1 that right?

2 A. Yeah, nearly 27.

3 Q. I wonder if I could get you to explain something  
4 that's sort of been in the courtroom for a bit, but I'm  
5 not sure we've had it spelled out and I want to make  
6 sure there is no confusion.

7 The company you work for is called what?

8 A. Nintendo of America, Incorporated.

9 Q. Okay. So, you work for Nintendo of America. And  
10 Nintendo of America is owned by what company?

11 A. Nintendo Company Limited.

12 Q. A Japanese parent?

13 A. Yes.

14 Q. And Nintendo Company Limited owns how much of  
15 Nintendo of America?

16 A. It's a wholly-owned subsidiary; so, it's a hundred  
17 percent, I believe.

18 Q. And just to make sure we keep this straight,  
19 Nintendo of America is obviously the U.S.-based company,  
20 correct?

21 A. Correct.

22 Q. And Nintendo Company Limited is the Japanese  
23 company?

24 A. Yes.

25 Q. And Mr. Ikeda, who was here with us earlier today,

1 works for Nintendo Company Limited, right?

2 A. That's my understanding, yes.

3 Q. In Japan.

4 And Ms. Story, who testified just before you,  
5 works for Nintendo of America, correct?

6 A. Yes.

7 Q. And you work for Nintendo of America.

8 A. Correct.

9 Q. And it's Nintendo of America that is the defendant  
10 in this lawsuit and that is accused of infringing the  
11 '700 patent; is that correct?

12 A. I'm not that familiar with the paperwork in the  
13 case, I guess.

14 Q. Fair enough. I think there will be plenty of other  
15 sources from which we can confirm that it's Nintendo of  
16 America that's the defendant in the lawsuit.

17 Now, your job is essentially to oversee the  
18 service of Nintendo products for consumers and  
19 retailers, correct?

20 A. Correct.

21 Q. And you didn't design any of the controllers that  
22 you just told us about, did you?

23 A. No, I did not.

24 Q. Instead, it's your Japanese parent, Nintendo  
25 Company Limited, that designed all those controllers; is

1 that accurate?

2 A. That's my understanding.

3 Q. And just so there is not any confusion -- I think  
4 this is clear from your testimony, but I want to be  
5 sure. The GameCube controller has a motor with an  
6 eccentric weight in it that accomplishes rumble,  
7 correct?

8 A. Yes. There is a vibration motor.

9 Q. And the way that vibration motor works is through a  
10 small electric motor with an offset weight on a shaft,  
11 correct?

12 A. That's my understanding, correct.

13 Q. And when the motor spins, it spins that eccentric  
14 weight and causes vibration, fair?

15 A. Yeah. I haven't disassembled one personally, but  
16 that's my understanding.

17 Q. Well, would you like to see one? We happen to have  
18 a couple in the courtroom here, in case you're curious.  
19 Maybe you can catch that on the way out, since I don't  
20 have any questions to ask you about it, if you're  
21 curious.

22 And in the same way, the Wii Remote also has  
23 a motor like that that provides rumble or vibration,  
24 correct?

25 A. Correct.

1 Q. Now, in the Wii controller products, a user can't  
2 use the Wii Nunchuk controller if it's not connected to  
3 the Wii Remote controller; isn't that right?

4 A. That's correct. It has no way to communicate  
5 otherwise.

6 Q. Okay. And in the same way, a user can't use the  
7 Wii Classic Controller if it's not connected to the Wii  
8 Remote controller.

9 A. Correct. Again, for communication.

10 Q. Okay. And the Wii Remote controller -- we've heard  
11 quite a bit about -- has an accelerometer in it,  
12 correct?

13 A. Correct.

14 Q. And that accelerometer in the Wii Remote provides  
15 three separate signals representing acceleration along  
16 three different axes; isn't that right?

17 A. Correct.

18 Q. And you would agree with me, wouldn't you, that the  
19 use of those three outputs is up to the game designer?

20 A. Yes.

21 Q. So, just so we understand what that means, although  
22 Nintendo has the popular games that we've seen, do other  
23 people write games for the Nintendo console?

24 A. Yes.

25 Q. And I guess Nintendo licenses them to be able to do

1 that?

2 A. Yes.

3 Q. So, if someone wanted to start a company and came  
4 to Nintendo and made their proposal and agreed to pay a  
5 licensing fee to Nintendo, that person could start  
6 designing their own games for the Wii, for example,  
7 true?

8 A. I'm not that familiar with the business  
9 relationship side of how we agree on those license  
10 agreements, but we do license other companies to write  
11 software for our machines.

12 Q. Okay. But you do know, don't you, that if a  
13 company like that decides that they want to write  
14 software to make a Wii-compatible game, they can decide  
15 how to use the outputs of the controller in their game?

16 A. Yes. As I testified, that's the -- you know, why  
17 they have evolved. Right.

18 Q. Okay. Thank you, Mr. Pederson.

19 MR. CAWLEY: That's all the questions I have,  
20 your Honor.

21 REDIRECT EXAMINATION OF JOHN PEDERSON

22 BY MR. GUNTHER:

23 Q. Mr. Pederson, I just want to ask you about one  
24 thing; and that's the vibration motor that Mr. Cawley  
25 asked you some questions about.

1 A. Uh-huh.

2 Q. I just want to make sure I'm clear on this. Do you  
3 know, sir -- because you testified you haven't taken one  
4 apart.

5 A. Right.

6 Q. Do you know whether or not the offset weight is  
7 connected to the shaft? Do you know that?

8 A. I don't, because I haven't had one apart.

9 MR. GUNTHER: No further questions, your  
10 Honor.

11 THE COURT: Do you have anything?

12 MR. CAWLEY: No, your Honor. I'm sorry.

13 THE COURT: Okay. You may step down, sir.  
14 Does anybody object to this witness being  
15 excused? In the meantime, start calling your next  
16 witness.

17 MR. GUNTHER: Not for Nintendo, your Honor.

18 MR. CAWLEY: No objection, your Honor.

19 THE COURT: All right. Then, sir, you are  
20 excused, which means you can leave or not leave as you  
21 wish. But don't discuss the testimony in this case or  
22 your -- your testimony with anybody except the lawyers  
23 until the trial is over. Once the trial is over, you  
24 can talk to anybody you want. And like I say, you can  
25 stay if you wish; or you're free to leave. Thank you,



1 sir.

2 THE WITNESS: Thank you.

3 THE COURT: Who's next?

4 MR. PRESTA: Your Honor, Nintendo calls  
5 Mr. Robert Dezmelyk.

6 THE COURT: Step forward, sir.

7 MR. PRESTA: And before I start, I'd like to  
8 request the court if I could do an interim statement.

9 THE COURT: Sure.

10 MR. PRESTA: And also hand out some  
11 notebooks.

12 THE COURT: Sure.

13 (The oath is administered.)

14 MR. PRESTA: May it please the court?

15 Ladies and gentlemen, the next witness is  
16 Mr. Robert Dezmelyk. He is an expert. He'll tell you  
17 about his qualifications. He's an expert in the field  
18 of controller design and manufacturing, and I'll let him  
19 explain his qualifications to you.

20 I'm going to be calling him for several  
21 different reasons. There's numerous issues in the case.  
22 One of the very important issues in the case involves  
23 whether the claims that were filed in 2002, after  
24 Mr. Armstrong learned about the GameCube controller that  
25 Nintendo had -- whether those games are supported by a

1 disclosure of that -- the features that were later  
2 claimed, whether that 1996 application actually  
3 discloses the features that were later claimed by  
4 Mr. Armstrong in 2002. It's a very important issue in  
5 this case that you're going to be asked to decide.

6           Now, one important thing that Mr. Dezmelyk is  
7 going to do is he's going to walk through the 1996  
8 application to try to explain, as best he can, to you,  
9 the jury, what is disclosed in that application and what  
10 is not disclosed in that application and particularly  
11 relative to the controller -- the GameCube controller  
12 that the testimony has shown that Mr. Armstrong had in  
13 his possession when he wrote the claims in 2002.

14           So, that's one of the important issues that  
15 we're going to try to address with Mr. Dezmelyk because,  
16 as you heard, that issue is important because, as  
17 Mr. Armstrong explained on the stand, if he can't claim  
18 that he had that invention back in 1996, then he has  
19 some problems with invalidity because there's other  
20 controllers out in the market that you're going to hear  
21 about in later testimony that would invalidate those  
22 claims based on Mr. Armstrong's own testimony.

23           So, that is the reason that -- you're going  
24 to be asked to see if that 1996 application actually  
25 discloses what he later claimed in 2002. Very important

1 issue in the case, and we hope that Mr. Dezmelyk is  
2 going to help walk through that application for you.  
3 That application is also in your jury notebook. So,  
4 when we start going through it today, hopefully you can  
5 reference it in your jury notebook and take a look at it  
6 yourselves.

7           Also, Mr. Dezmelyk is going to explain that  
8 in the -- he's going to give testimony related to the  
9 2000 application that Mr. Armstrong filed because  
10 there's also an issue in this case that involves whether  
11 the application that he filed in 2000 -- whether even --  
12 even whether that application has support in it for the  
13 claims that he wrote in 2002 after getting his hands on  
14 Nintendo's product.

15           So, for better or worse, there's two jobs  
16 that you're going to be asked to do with respect to  
17 that. It's comparing the claims back to the 1996  
18 application and also comparing the claims back to the  
19 2000 filing of the second application. And our goal  
20 with Mr. Dezmelyk is to help you better understand those  
21 issues.

22           Now, the second issue involves what is called  
23 "written description support"; and you're going to be  
24 asked to find out if the patent has what's called an  
25 "adequate written description." Judge Clark is going to

1 explain to you what the law on that is. And if that  
2 2000 application that he filed doesn't have support in  
3 it for the claims that he wrote in 2002, then, as you'll  
4 be instructed by the judge at the close of the case, the  
5 claims will be invalid for lack of written description.  
6 Because it's important, if you're going to claim  
7 something later, that you actually disclosed it in the  
8 application; and Mr. Dezmelyk is going to help us with  
9 that.

10 Now, unfortunately, it doesn't really stop  
11 there because there are other issues. That involves the  
12 issues of whether there is support and how far back  
13 Mr. Armstrong's inventions can go.

14 Beyond that, there is the issue of whether --  
15 once we figure out what date he's entitled to -- is he  
16 entitled to 1996, is he entitled to 2000, or is he not  
17 entitled to any date because when he wrote the claims he  
18 had no application to support it. Once we determine  
19 that date, it will be our position in the case --  
20 Mr. Dezmelyk will explain that there will be prior art,  
21 prior controllers out with the same features that he  
22 later claimed. And you'll hear actually from Sony later  
23 confirming that by deposition in a short video.

24 You'll also hear Mr. Dezmelyk explain that,  
25 explaining that, in fact, if he's not entitled to go

1 back to 1996, the reason Mr. Armstrong explained that  
2 his patent would be invalidated is because there were  
3 other products on the market that had the identical  
4 features. So, he needs to get back in time in order to  
5 say he was before these products. So, that is another  
6 issue that we are going to explain, that if, in fact, he  
7 isn't entitled to the 1996 date, Mr. Dezmelyk is going  
8 to explain that there is prior art -- prior controllers  
9 with the same features that he later claimed that were  
10 before him and, therefore, would invalidate his patent.

11 So, invalidity is another -- is the third  
12 issue that Mr. Dezmelyk is going to address. I doubt  
13 we'll be able to get to them all today, but I'm going to  
14 just give you the overall outline.

15 The last thing, which is equally as  
16 important, because invalidity is one part of the case,  
17 whether the patent is valid. And that is an important  
18 question. But also an important question is whether the  
19 patent is infringed. Validity is not really as  
20 important to Nintendo if there is no infringement. So,  
21 they are equally important because either one provides a  
22 defense to Nintendo.

23 So, you heard Professor Howe go through and  
24 say that there was infringement. Now, of course, it's  
25 our job to come back and explain to you why we believe

1 there is no infringement. And that is going to be the  
2 fourth topic that Mr. Dezmelyk is going to address. And  
3 he will explain why for each one of the accused  
4 products, which is each one of the accused claims, why  
5 the claims don't actually cover the product and  
6 particularly obviously -- which is the most important  
7 product in this case, is the Wii. He's going to explain  
8 why the claims that were copied from the GameCube don't  
9 cover the Wii. Mr. Dezmelyk will explain that.

10 So, I appreciate the opportunity to speak  
11 directly to you with this interim statement; and we will  
12 begin his testimony.

13 DIRECT EXAMINATION OF ROBERT DEZMELYK

14 CALLED ON BEHALF OF THE DEFENDANT

15 BY MR. PRESTA:

16 Q. Now, Mr. Dezmelyk, would you please introduce  
17 yourself to the jury?

18 A. Certainly. Good afternoon. My name is Robert  
19 Dezmelyk. I was born in 1956; so, I'm 52 years old. I  
20 live in Newton, New Hampshire, a small town near the  
21 coast of New Hampshire, a long way from here. I'm happy  
22 to be here where it's warmer because we're just getting  
23 spring.

24 I've been married for 17 years. I have a son  
25 who is 13, a daughter who is 9; and I miss them. But

1 that's just a general introduction of me.

2 Q. Thank you.

3 And where do you work?

4 A. I have a company called "LCS/Telegraphics." I  
5 started in business as soon as I got out of college; and  
6 I do engineering design work, development, software,  
7 hardware design, and occasionally this type of  
8 consulting.

9 Q. Okay. Now, what sort of educational background do  
10 you have?

11 A. Well, when I graduated high school, I was already  
12 pretty interested in engineering and technology. My  
13 father was an engineer. And I went to Massachusetts  
14 Institute of Technology in Cambridge, Massachusetts; and  
15 I studied a special program that was a combination of  
16 mechanical engineering and electrical engineering that  
17 focused on what are known as "control systems and  
18 instrumentation."

19 Q. Can you elaborate a little bit on what you mean by  
20 "control systems"?

21 A. Sure. A control system is an electronic or  
22 mechanical -- usually electronic combined with a  
23 mechanical system that controls something to keep it  
24 where you want it. A very simple control system is the  
25 thermostat in your house. If it's working properly, the

1 temperature stays the same; and the thermostat senses if  
2 it's too hot or too cold and adjusts the heat  
3 accordingly.

4 More complicated control systems help do  
5 things like, you know, keep an airplane level when it's  
6 flying on its auto pilot or perhaps control a robot arm  
7 so it moves where you want it to. That's what control  
8 systems do.

9 Q. And what is your position with LCS/Telegraphics?

10 A. Well, I'm the president; but it's a very small  
11 company. So, at this point I'm the president and  
12 everything else.

13 Earlier in the history of the company, I had  
14 a number of employees and I was the president then and I  
15 also, of course, led the engineering team.

16 Q. Can you tell me some of the work that you've done  
17 over the years with LCS/Telegraphics?

18 A. Sure. When I first started the company, we did a  
19 lot of different kinds of engineering products. One of  
20 the first things we did was develop some image analyzers  
21 for the scientific community. We've also developed a  
22 number of game-related products. In the early 1980s,  
23 our company -- and I was the lead engineer -- developed  
24 an arcade game known as "Eon and the Time Traveller."  
25 And it was an early example of an interactive video disk



1 game. It played video. You could navigate through it  
2 and play in kind of a real-time environment.

3 After that, the company got -- and I got more  
4 and more interested in input devices. We took a little  
5 detour in the software in the early Eighties, mid  
6 Eighties, and wrote some software programs for the PC.

7 Q. Could you tell me a little bit what you mean by  
8 "input devices"?

9 A. Sure. Sure. Input devices are the things we use  
10 to communicate with computers or other devices. So, a  
11 keyboard is an input device. A mouse is an input  
12 device. A game controller is an input device.

13 Q. I'm sorry. I cut you off. If you could continue  
14 with the type of work you were doing.

15 A. Sure. We started at one point in the 1980s working  
16 on the software that interacted with mice. And over the  
17 years we developed a number of drivers and software  
18 products that were licensed to people who manufactured  
19 mice. They were used by the millions with mice and  
20 personal computers.

21 In the mid 1990s we worked extensively on the  
22 touchpads that are located on notebook computers. If  
23 you're familiar with a notebook computer today, there's  
24 almost always a little flat pad in the front that you  
25 can touch with your finger.

1           In the middle of the 1990s, our company wrote  
2 essentially all of the software drivers for all of the  
3 touchpads that were being used, for companies like Sony  
4 or Compaq down here in Texas -- I used to spend a lot of  
5 time in Texas -- and Dell and other companies like that.

6           After that, I did much more work on  
7 interfaces and, in particular, USB. I --

8 Q.     Okay. Let me stop you right there.

9 A.     Sure.

10 Q.    For those of us who may not be familiar, what is  
11 "USB"?

12 A.    USB is universal serial bus. It's that  
13 interconnection we have on our PCs. It's a little  
14 square connector. If you've plugged a mouse into a PC  
15 these days or the little -- we call them "thumbsticks"  
16 sometimes, those little memory sticks, or a camera or  
17 things. That connector is a universal serial bus, or  
18 USB.

19           I led the standards effort for the human  
20 input device, part of that standard which covers the  
21 mice and keyboards, touchscreens, joysticks, and things  
22 like that.

23 Q.    Okay. Thank you.

24           Now, have you had any interest in game  
25 controllers over the years?

1 A. Yes, I have.

2 Q. Could you tell us a little bit about that?

3 A. Well, sure. In the arcade game I designed, of  
4 course, it had controllers; and we experimented with  
5 several different configurations -- two joysticks, one  
6 joysticks, joysticks and buttons. An arcade game is  
7 kind of unique because they have to be rugged. So, you  
8 have some limitations on the type of controllers you can  
9 use.

10 I've also designed a number of other input  
11 devices that had been useful in that environment. I  
12 actually wrote the drivers for the Cyberman, a Logitech  
13 input device that was a multidegree-of-freedom device.

14 I worked on the handheld tilt sensor that  
15 was -- you could tilt your hand to control the cursor on  
16 the screen. And a variety of other input devices.

17 Q. Do you have -- do you have any sort of collection  
18 of controllers?

19 A. Yeah. I'm a pack rat. My wife may not be very  
20 happy about that, but we live out in the countryside and  
21 there is a barn out behind our house and in it are  
22 hundreds, maybe close to a thousand input devices. Over  
23 the years I've gathered up and collected various samples  
24 of mice and joysticks and game controllers and so forth;  
25 and they're piled up in boxes in the barn and also in

1 the basement and I have a pretty strict injunction that  
2 they are not allowed to come upstairs.

3 Q. And why do you have those?

4 A. Well, I'm interested in them, first off; and I  
5 started along the way collecting them. But it's also a  
6 way of understanding what people did over time. Many of  
7 these I worked on. Some of them were prototypes that we  
8 got in the process of building things. In other cases,  
9 I bought them in stores because I liked them. They were  
10 interesting. But it gives me a way of looking back over  
11 the history of what people have done in that technology.

12 Q. Thank you.

13 Now, have you had a chance to look at the  
14 1996 patent application that was filed by Mr. Armstrong?

15 A. Yes, I have.

16 Q. Okay. And in your notebook I gave you a copy of  
17 that application. It's Defendant's Exhibit 306. And  
18 the jury also has a copy of this application in their  
19 notebook.

20 Now, I would like to ask you some questions,  
21 Mr. Dezmelyk, about what is disclosed in that 1996  
22 application. Okay?

23 A. Certainly.

24 Q. And you have had a chance to review that  
25 application in detail?

1 A. Yes, I have.

2 Q. Okay. Now, before I start --

3 MR. PRESTA: Could I pull up Slide 17,  
4 please?

5 Excuse me, your Honor. Just getting set up  
6 here.

7 Slide 17, please.

8 BY MR. PRESTA:

9 Q. Now, we've had some timelines in this case,  
10 Mr. Dezmelyk. Did you help create some graphics to help  
11 the jury sort of understand this issue of the 1996  
12 application?

13 A. Yes, I did.

14 Q. Okay. And can you tell me what is now being shown  
15 on the screen?

16 A. Well, this is just one of the pages from that  
17 application.

18 Q. Now, it indicates that that application was filed  
19 in 1996. And have you heard that application referred  
20 to in court here as the "warehouse application"?

21 A. Yes, I have.

22 Q. Okay. And do you have an understanding of why that  
23 warehouse application is important to this case?

24 A. Yes, I do.

25 Q. And why is that?

1 A. Well, this is the application that Mr. Armstrong is  
2 trying to claim the priority date of.

3 Q. Okay. And I'm also going to add some other things  
4 to the timeline. Do you recognize the July 15th, 2002,  
5 item on the timeline?

6 A. Yes, I do.

7 Q. What is that?

8 A. That's the date of a set of new claims that were  
9 submitted to the Patent Office related to this  
10 application.

11 Q. Okay. And you have heard the testimony in this  
12 case that, in fact, those claims, when Mr. Armstrong  
13 filed them, he had in his possession the GameCube  
14 product. Do you understand that?

15 A. That's correct, yes.

16 Q. Okay. And, in fact, could you explain to the jury  
17 your understanding of how the claims came to be, for  
18 example, claim 19?

19 A. Well, my understanding is that that claim was  
20 derived by Mr. Armstrong observing the GameCube  
21 controller and then drafting the claim to cover that  
22 controller.

23 Q. Okay. So, is it your understanding, then, that  
24 there are claims in that 2002 filing that are very  
25 similar to the GameCube product?

1 A. That's correct.

2 Q. Okay. Now, there is an issue in the case; and can  
3 you tell me -- I put a red arrow back here. What does  
4 that really mean to you?

5 A. Well, that means that there's -- I guess the word  
6 would be a "need" in order to sustain the validity of  
7 that claim, that that claim is entitled to the priority  
8 date or the filing date of the original 1996  
9 application.

10 Q. Okay. And why is that necessary for validity, in  
11 your opinion?

12 A. Well, that's necessary because there is intervening  
13 prior art. In other words, between 1996 and the later  
14 date, there is the filing date of the '700 application;  
15 there is other prior art that would invalidate that  
16 claim.

17 Q. Okay. Now, did you undertake -- do you have an  
18 opinion as to whether or not those claims filed in 2002  
19 that are being asserted in this case against Nintendo --  
20 whether they are entitled to go back to 1996?

21 A. I believe they are not entitled to the earlier  
22 date.

23 Q. And why is that?

24 A. Well, they contain new material.

25 Q. They contain what? I'm sorry?

1 A. New material that was not present in the  
2 original --

3 MR. CAWLEY: Objection, your Honor. That's a  
4 misstatement of a legal principle that the court has  
5 pointed out repeatedly.

6 MR. PRESTA: Perhaps I didn't under --

7 THE COURT: Why don't you rephrase the  
8 question?

9 MR. PRESTA: Okay. I forget exactly what the  
10 question was now, your Honor.

11 BY MR. PRESTA:

12 Q. But I think my point was whether you had an opinion  
13 as to whether the claims that were filed in 2002 -- that  
14 claimed invention that was submitted in 2002 is found  
15 back in the 1996 application.

16 A. I believe it is not.

17 Q. You believe it's not.

18 And why do you believe it's not?

19 A. Because the claim scope that's present is not  
20 disclosed in the written description in either of the  
21 earlier applications.

22 Q. Now, you say "either of the earlier." Are you  
23 talking about the 1996 filing?

24 A. Right.

25 Q. As well as the 2000 filing?



1 A. Right.

2 Q. Okay. Now, let me -- I'm going to ask if we could  
3 please pull up Defendant's Exhibit 306.

4 BY MR. PRESTA:

5 Q. Now, do you recognize that?

6 A. Yes, I do.

7 Q. Okay. And you'll agree with me that it's the  
8 application that Mr. Armstrong filed in 1996 that's  
9 known as the "warehouse application" here, right?

10 A. Yes. This is the front -- first page.

11 Q. Okay. Now, I'm going to ask you to turn to the  
12 figures in the application that begin on page -- mine  
13 306.57, meaning it's Exhibit 306, page 57.

14 A. Okay.

15 Q. And do you see that on the screen?

16 A. Yes, I do.

17 Q. Okay. Now, this is from -- do you understand that  
18 this is from the prosecution history, the records of the  
19 Patent Office, that it's a copy of the application that  
20 was filed?

21 A. Yes, I understand that.

22 Q. Okay. Now, I see that there is a patent number on  
23 the side, 6,222,525. Do you know what that patent is?

24 A. That would be the '525 patent.

25 Q. That actually issued from this application.

1 A. That's correct.

2 Q. Okay. But we're looking at the application itself  
3 right now.

4 A. That's correct.

5 Q. Okay.

6 MR. PRESTA: Now, the '525 patent, just for  
7 the record, is Defendant's Exhibit 15.

8 BY MR. PRESTA:

9 Q. Now, I wanted to ask you if you could take a look  
10 at Figure 1.

11 Now, first of all, is it your understanding  
12 that the claims at issue in this case all describe a  
13 controller that has two joysticks and a cross-switch?

14 A. Yes. That's the -- the claim scope that's been  
15 asserted. In other words, all of the devices that have  
16 been accused, certainly have that characteristic.

17 Q. Okay. Now -- all of the GameCube devices, right?

18 A. All of the GameCube devices. That's right.

19 Q. Okay. So, is it your understanding, then, that you  
20 need to go back to the 1996 application and see if you  
21 can find in that application a description of that type  
22 of a device with the two joysticks and a cross-switch?

23 A. Right. It's necessary, in order for the patent to  
24 have an adequate written description, that we can take  
25 the claim, the elements of the claim, and find them

1 expressed, in some way, in a way that we can identify  
2 that the inventor had that idea back in the original  
3 specification.

4 Q. Okay. And I want to do that starting with the  
5 figures. And I'd like for you to go through the  
6 figures -- in fact, we're on Figure 1 of the application  
7 that was filed in 1996. And can you tell me what that  
8 figure is showing?

9 A. Yes. This is a top view -- a drawing -- first, if  
10 I might, the drawings in patents are kind of like a  
11 formal draftsman's drawing. They're always in black and  
12 white, and they're usually shown in different  
13 directions.

14 We're looking down on the top here of a  
15 device; and it's showing a ball, which is a circle in  
16 the center. And you'll note there's two items. One is  
17 numbered 128; one is numbered 126. Those are a couple  
18 of rotary encoders that detect the ball turning. This  
19 is actually showing a trackball that is then mounted on  
20 some platforms and so forth.

21 Q. Okay. Does this figure show the combination of  
22 elements that are present in the claims that are  
23 asserted against Nintendo in this case?

24 A. No, it is not.

25 Q. Okay. What is it missing?

1 A. Well, it does not include or disclose a vibration  
2 motor. There is no motor shown in this drawing.

3 There is also no joystick shown, and there's  
4 not what we've been calling a "D-pad" or what I may call  
5 the "hat switch" occasionally.

6 Q. Okay.

7 A. None of those are present.

8 Q. Okay. Now, in turning to Figure 2, do you  
9 recognize that figure? And could you tell the jury what  
10 it is and if it relates back to Figure 1? As we go  
11 through this, I would like it if you could just try to  
12 explain to the jury what these figures are; and maybe if  
13 they relate to each other, you could indicate that.

14 A. Sure. Let me try to explain this one. This is a  
15 little more complicated drawing. This one is looking at  
16 the side of the same thing we were looking at on the  
17 top. And if I can just use a laser pointer a bit here.  
18 The ball is in the middle (indicating). That's a  
19 trackball. It's going to rotate. The person's hand is  
20 going to come down from above and rotate that ball.

21 The little detectors (indicating) that detect  
22 the rotation of these parts here, we saw them in the  
23 last figure.

24 The framework we saw from above is this  
25 structure around here (indicating).

1           And there is also a small -- what's called a  
2 "collet" or a "collar," because it goes around the ball  
3 (indicating), which can be turned or twisted by the  
4 hand.

5           So, this is describing an input device that's  
6 got a trackball in the middle and you can push this  
7 trackball back and forth and side to side or you can  
8 push it up and down a little bit and it will detect with  
9 these little switches here (indicating) whether it's  
10 being lifted up, pushed down, or slid to one of the  
11 sides.

12 Q.     Okay. Does that figure describe the features that  
13 you see on the GameCube controller that's in this case?

14 A.     No. There's obviously no joystick. There's no  
15 buttons. There's no vibration motor. And there's no  
16 D-switch.

17 Q.     All right. Now, when you say "D-switch," you  
18 mean -- I referred to it as a "cross-switch."

19 A.     Cross-switch. I'll use the word "cross-switch."

20 Q.     Okay.

21           MR. PRESTA: Can we turn to the next figure,  
22 3?

23 BY MR. PRESTA:

24 Q.     Now, if you think they are the same figure from a  
25 different angle, please explain that to the jury. I

1 don't want to belabor that for the jury, but it is  
2 important that we walk through all the figures.

3 A. Sure. This is claim 3 again, another view of the  
4 same device. We're seeing it from another angle -- the  
5 ball in the middle, of course; the sensors for the  
6 rotation of the ball; and the sensing means and the  
7 supports for the motion in X, Y, and Z.

8 Q. Okay. Again, are there two joysticks and a  
9 cross-switch in that?

10 A. No.

11 Q. Okay.

12 MR. PRESTA: Could we take a look at  
13 Figure 4, please?

14 BY MR. PRESTA:

15 Q. Again, can you just give me --

16 THE COURT: Counsel -- I need counsel to step  
17 sidebar for a minute, please.

18 (The following proceedings were conducted at  
19 sidebar with both parties represented.)

20 THE COURT: I'm not sure why we are comparing  
21 the accused product to the specification of 1996; but if  
22 this goes on, I'm going to have to give a very strict  
23 instruction to the jury that that's all nonsense. And,  
24 of course, you're killing yourself on JMOL --

25 MR. PRESTA: I understand.

1 THE COURT: -- or anything with the Fed  
2 Circuit because that's not relevant to anything. It's  
3 the claim to the specification, the claim to the accused  
4 product. But I've never -- unless you've got some case  
5 out there that says you can do accused product versus  
6 old specification.

7 MR. PRESTA: I understand. Okay. Let me  
8 just tell you what I was thinking, your Honor.

9 THE COURT: I mean, we've got days to go  
10 here. You can use your time any way you want, but at  
11 some point I've got --

12 MR. CAWLEY: There's 50 drawings, your Honor.

13 MR. PRESTA: Well, there's only four  
14 embodiments.

15 THE COURT: You can do what you want, but I'm  
16 just explaining to you that what I'm starting to think  
17 about here is I'm going to have to explain to the jury  
18 that that's not what they're doing at all. And I don't  
19 like interrupting lawyers and telling them -- I mean,  
20 the instruction makes it sound like you're wrong.

21 MR. PRESTA: I understand.

22 THE COURT: Which, in my opinion, you're --

23 MR. PRESTA: Well, let me just explain for a  
24 moment, if I could, what I was intending to do. The  
25 fact that they read it onto the GameCube --

1 THE COURT: You've got a good lawyer's voice;  
2 so, keep it down.

3 MR. PRESTA: Okay. I was trying to --  
4 because they read the claim onto the GameCube, that  
5 defines the scope of the claim; and our position would  
6 be -- I could, of course, change it if your Honor thinks  
7 it is inappropriate -- is that that defines the scope of  
8 the claim and we need to find that level of scope of  
9 protection in that application.

10 It can be done in a different way. I thought  
11 it would be easier for the jury to do it in this way;  
12 but I can do it with the claim language, read it onto  
13 the device. But visually it's a complicated task and I  
14 thought this might make it easier, but --

15 THE COURT: Okay. I'm just --

16 MR. PRESTA: I don't want to do anything that  
17 you think is improper.

18 THE COURT: It's not improper but it just  
19 gets to the point of irrelevance and I'm just pointing  
20 out to you a problem that I'm seeing with this line.  
21 That's all.

22 MR. PRESTA: I understand. My goal would  
23 be --

24 THE COURT: You've got so many hours. Use  
25 them any way you wish.



1 MR. PRESTA: Well, I don't intend to waste  
2 anybody's time. That's for sure. What I would like to  
3 do is have the claims read --

4 THE REPORTER: I'm sorry?

5 THE COURT: You can do whatever you wish.

6 MR. PRESTA: Thank you, your Honor.

7 (Sidebar conference concluded. The following  
8 proceedings were heard in open court.)

9 THE COURT: Go ahead, counsel.

10 MR. PRESTA: Thank you.

11 BY MR. PRESTA:

12 Q. Mr. Dezmelyk, now, have you undertaken a review of  
13 the asserted claims in the case?

14 A. Yes, I have.

15 Q. Okay. And you're familiar with what claims they  
16 are, right?

17 A. Yes.

18 Q. Now, what I'd like to do first is -- just so the  
19 jury can understand the procedure that you're going  
20 through -- is to pull up claim 19. And that would be in  
21 the '700 patent, which is Defendant's Exhibit 1, which  
22 is also in the jury notebook, at column 37, which is  
23 page 64.

24 MR. PRESTA: Could you pull up claim 19 for  
25 me, please? Thank you.

1 BY MR. PRESTA:

2 Q. Now, Mr. Dezmelyk, would you please give a look at  
3 claim 19 and just give the jury an overview of what is  
4 actually required by the language of claim 19 so we can  
5 get an understanding of the scope of claim 19?

6 A. Well, sure. I think we've looked at this claim  
7 some before, but let me just kind of run through it  
8 again.

9 It starts off -- we have to have -- again,  
10 just as kind of a primer, we need to find each of the  
11 limitations, as they're called in the claim. So, the  
12 first part is "a hand operated controller. The word  
13 "comprising" means made up of or having these parts, at  
14 least those parts. And it is "comprising structure  
15 allowing hand inputs rotating a platform on two mutually  
16 perpendicular axes" -- so, we need that platform -- "to  
17 be translated into electrical outputs by the four  
18 unidirectional sensors" -- so, we need the sensors --  
19 and that "to allow controlling objects and navigating a  
20 viewpoint."

21 Q. Let me stop you there. Now, when we were talking a  
22 minute ago in looking at those figures, do you  
23 understand that that element has been equated to a  
24 cross-switch on Nintendo's GameCube product?

25 A. Yes.

1 Q. Okay. But you also understand what that claim  
2 language itself means, right?

3 A. Right.

4 Q. Okay. And in simple terms, what does it mean?

5 A. Well, there has to be a physical structure or  
6 object that is a platform. It can be rotated on two  
7 mutually perpendicular axes.

8 Q. Okay.

9 A. So, we could just, for instance, go look for that  
10 element.

11 Q. Okay. Now, could you go down to the paragraph that  
12 says "a second element"?

13 A. Okay.

14 Q. And could you explain to the jury what that element  
15 is?

16 A. Well, again, it says: A second element movable on  
17 two mutually perpendicular axes. So, we need something,  
18 a physical thing, that is movable on two mutually  
19 perpendicular axes. That really just means the axes  
20 cross; that is, like the axes in a graph or two lines  
21 that come together or two roads crossing. That's the  
22 perpendicular part.

23 Q. Okay. Now, is it your understanding -- as to what  
24 element on the GameCube controller has Anascape  
25 written -- read that claim element onto?

1 A. Well, in the infringement argument or contentions,  
2 it's the joystick. So, a joystick is held up as an  
3 example of that. So, that means our claim scope has to  
4 at least have that as an example; that is, something  
5 like a joystick or a joystick.

6 Q. Okay. Now, could you also talk about the third  
7 element? And it looks like the language is similar.  
8 So, if you --

9 A. It's the same. So, we need to now find a second  
10 one, in essence, that's the same as the -- or at least  
11 meets that requirement of having -- being movable on two  
12 mutually perpendicular axes and being structured to  
13 activate two bi-directional proportional sensors.

14 Q. Okay. And the last two elements, if you could  
15 quickly just advise the jury as to what those are.

16 A. Well, buttons. We need to find buttons. "A  
17 plurality" meaning more than one. And those buttons  
18 have to have some kind of sensor that tells whether the  
19 button is on or off.

20 Q. Okay.

21 MR. PRESTA: Now, could I also get now --  
22 could we go back to the patent itself and take a look at  
23 claim 14, please, which is on Defendant's Exhibit 1,  
24 page -- oh. I'm sorry. Claim 16 on page 63, starting  
25 at the top of column 36.

1 BY MR. PRESTA:

2 Q. Now, Mr. Dezmelyk, could you just again quickly try  
3 to give the jury an understanding of what this claim  
4 is -- what is being claimed by this language that is  
5 contained in claim 16?

6 A. Well, the claim here describes a 3-D graphics  
7 controller -- that is, a controller with some  
8 properties -- that's for controlling a television-based  
9 game. And then "comprising" means the parts it's made  
10 up of. So, those parts are the important parts that  
11 we're going to be looking for.

12 A first element -- again, it's very similar  
13 here to the one we just talked about in 19 -- structured  
14 to activate four unidirectional sensors, those sensors  
15 useful to control the game.

16 Q. And what feature is alleged to correspond to that  
17 in the GameCube product?

18 A. The cross-switch.

19 Q. Okay. And the second element paragraph?

20 A. The first sheet. And that's, as an example, a  
21 circuit card, a first circuit card.

22 And then a second element, which is similar  
23 again to what we saw in 19, which is the structure to  
24 activate a first "two bi-directional proportional  
25 sensors."

1           And then we have a third element again, which  
2 is like a joystick, which is mapped onto the joystick.

3 Q.     Is it your understanding that this claim 16 has  
4 been asserted -- or read onto -- at least the first  
5 element, second element, and third element -- onto the  
6 cross-switch and two joysticks that are on the GameCube  
7 controller?

8 A.     That's correct.

9 Q.     Okay. Now, I want to take you to an embodiment of  
10 the patent; and I want to -- of the 1996 application and  
11 my question -- I want to ask you about the disclosure in  
12 that application relative to the claim scope that we  
13 have just looked at on claim 16 and claim 19. Okay?

14 A.     Okay.

15 Q.     So that we're not comparing the accused product to  
16 the earlier application, what we need to do is compare  
17 the claim to see if those features are present in the  
18 earlier application. All right?

19           And, first of all, I'd like to take you to a  
20 figure. And did you prepare some type of animation to  
21 help the jury understand a couple of the figures?

22           THE COURT: Actually, being 5:00, maybe it's  
23 best if we start that fresh on Monday morning.

24           MR. PRESTA: Okay.

25           THE COURT: So, ladies and gentlemen, we're

1 going to break at this time. I'm going to ask you to be  
2 back here on Monday morning at 8:45. We'll be following  
3 basically the same schedule. Since this is a three-day  
4 weekend, I'll stress again my instructions. Don't let  
5 anybody talk to you about this. Don't let anybody  
6 influence you on it, and don't go out and do any  
7 research or talk to any friends about it. We'll start  
8 again at 8:45 in the morning. Keeping track of the  
9 time, we're still right on track. I'm still very  
10 confident, absent a hurricane or something like that,  
11 that the evidence is going to be through on Wednesday;  
12 so, we'll be getting the case to you. And then  
13 obviously you can take as long as you want as far as  
14 deciding it. But at this time you are excused for the  
15 weekend. I'll ask you to be back at 8:45 on Monday  
16 morning.

17 (The jury exits the courtroom, 4:59 p.m.)

18 THE COURT: Anything to be taken up outside  
19 the presence of the jury from the plaintiff's point of  
20 view before we break?

21 MR. CAWLEY: Only, your Honor -- and I'll go  
22 out on a little bit of a limb here. But this is  
23 Nintendo's last witness. I think that's right.

24 THE COURT: What?

25 MR. PRESTA: Your Honor -- well, we were

1 talking about calling Fiorito; but I believe that's  
2 been --

3 THE COURT: Well, now, I indicated a problem  
4 with certain of his testimony. I'm not -- I mean, I  
5 don't want later on someone saying I cut you out of a  
6 complete witness. You said you were going to bring it  
7 up later if there was some problem. I'm not inviting  
8 him, mind you but --

9 MR. PRESTA: Yeah. Based on our  
10 conversation, I wasn't sure where we really ended up on  
11 that conversation.

12 THE COURT: Well, I think what I suggested  
13 was -- and I thought Mr. Gunther said that you would get  
14 back to me if there was -- with what you were planning  
15 to come up with because I wasn't able to get a real good  
16 answer on anything that seemed to be admissible. But on  
17 the other hand, you were on the spot; so, if you're  
18 going to come up -- the last thing I -- Mr. Gunther said  
19 was that you would get back to me with what you  
20 specifically were bringing him forward for.

21 MR. PRESTA: We will do that, your Honor.

22 THE COURT: Okay.

23 MR. PRESTA: We will send something to you --

24 THE COURT: Well, then that --

25 MR. CAWLEY: Well, in any event, this is



1 either their last or next-to-last witness. We might  
2 have two witnesses on rebuttal; but, of course, they  
3 would be fairly short. So, I think there is at least a  
4 reasonable chance we could finish the evidence in this  
5 case on Monday.

6 THE COURT: Oh, the jury will be real happy.  
7 I don't like telling people -- I'd rather give them the  
8 surprise on Monday.

9 MR. CAWLEY: Sure. I just wanted you, for  
10 the court's planning, to know Monday or early Tuesday  
11 we'll probably be through with the evidence.

12 THE COURT: All right. Anything of a  
13 substantive matter to be brought up from defendant's  
14 point of view other than scheduling?

15 MR. GUNTHER: No, your Honor.

16 THE COURT: Okay.

17 MR. PRESTA: I have one question.

18 THE COURT: We're off the record, then.

19 MR. PRESTA: I have one question, your Honor.

20 THE COURT: Okay.

21 MR. PRESTA: And it just involved that  
22 previous question, where we talked about the changes to  
23 the 1996 application to the '700. And, your Honor, it  
24 seems to be indicating you think that the changes may  
25 actually be irrelevant to issues in the case and may not

1 be an appropriate thing to show the jury.

2 I had had something prepared for Mr. Fiorito  
3 and/or Mr. Dezmelyk on the changes that have been made  
4 from the 1996 to the '700 application. I sort of wanted  
5 to get a read from your Honor if you felt that that  
6 was -- based on your last comment, whether that would be  
7 appropriate.

8 THE COURT: All right. Why don't we go off  
9 the record and that will let Chris start wrapping up.  
10 So, we're off the record.

11 (Proceedings adjourned, 5:02 p.m.)

12 COURT REPORTER'S CERTIFICATION

13 I HEREBY CERTIFY THAT ON THIS DATE, MAY 8,  
14 2008, THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE  
15 RECORD OF PROCEEDINGS.

16   
17 CHRISTINA L. BICKHAM, CRR, RMR

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