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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

ANASCAPE, LTD.		DOCKET 9:06CV158
		MAY 12, 2008
VS.		8:32 A.M.
MICROSOFT CORP., ET AL		LUFKIN, TEXAS

VOLUME 5 OF __, PAGES 1066 THROUGH 1390

REPORTER'S TRANSCRIPT OF JURY TRIAL

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

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16
17
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22
23
24
25

I N D E X

P A G E

CONTINUED DIRECT EXAM OF ROBERT DEZMELYK	1090
CROSS-EXAMINATION OF ROBERT DEZMELYK	1304
REDIRECT EXAMINATION OF ROBERT DEZMELYK	1367
RE CROSS-EXAMINATION OF ROBERT DEZMELYK	1385
REDIRECT EXAMINATION OF ROBERT DEZMELYK	1387

I N D E X O F E X H I B I T S

Plaintiff's Exhibit 428	1139
PX 428	1142
PX 426	1143
Plaintiff's Exhibit 426	1143
PX 425	1144
Plaintiff's Exhibit 192	1285
Defendant's Exhibit 306A	1102
Defendant's Exhibit 12	1102
Defendant's Exhibit 108	1149
Defendant's Exhibit 39	1215
Defendant's Exhibit 103	1217
Defendant's Exhibit 86	1217

1	Defendant' s Exhi bi t 105	1219
2	DX 105	1224
3	Defendant' s Exhi bi t 105	1226
4	Defendant' s Exhi bi t 103	1226
5	Defendant' s Exhi bi t 39	1226
6	Defendant' s Exhi bi t 103	1234
7	Defendant' s Exhi bi t 104	1235
8	Defendant' s Exhi bi t 105	1235
9	Defendant' s Exhi bi t 106	1235
10	Defendant' s Exhi bi t 39	1238
11	Defendant' s Exhi bi t 200	1285
12	Defendant' s Exhi bi t 306	1369

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14
15
16
17
18
19
20
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1 (REPORTER'S NOTES ANASCAPE VS. MICROSOFT,
2 JURY TRIAL VOLUME 5, 8:32 A.M., MONDAY, 05/12/2008,
3 LUFKIN, TEXAS, HON. RON CLARK PRESIDING)

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

6 THE COURT: Okay. We've had some emails. I
7 looked at this first one, dealing with Slide 194 of
8 defendants. I don't see a problem with that. The
9 jury's going to be specifically instructed what items of
10 prior art they are to consider for anticipation and for
11 obviousness. And I believe the Goto and DualShock 2
12 were indicated in the report and chart for obviousness
13 on claim 16.

14 Then we have -- okay. This next one deals
15 with -- slides dealing with the Chipworks report and
16 photographs of the capacitor, Slides 1 and 2. I think I
17 had previously ruled the Chipworks report was hearsay,
18 did not come in. Of course, an expert can talk about
19 things that are not necessarily admissible if that's
20 what he reasonably relies upon; but that doesn't allow
21 him to bring it in as evidence.

22 Then I think the same applies unless there is
23 some kind of basis for the photograph -- if that's what
24 it is -- of the interior of the chip. I mean, an expert
25 can draw it on a flip chart or whatever he wants based

1 on his knowledge; but in terms of -- unless he can lay
2 the predicate for a photograph or there is some other
3 predicate to get in the Chipworks report, the expert
4 can't somehow bootstrap in inadmissible evidence on
5 that. That doesn't mean he can't draw it, show it,
6 explain it, just he can't bring in the hearsay itself.

7 Then we have the question about the Susan
8 Panico depositions. I've reviewed what Anascape wants
9 to put it in. They can go ahead and put it on in. It
10 would probably be best if it was put in chronologically,
11 fit in where it fit.

12 And then we get to this question of what the
13 jury is supposed to consider. Now, defendants are
14 adamant, almost desperate, that they should be allowed
15 to focus the jury on changes between the first
16 application and the second application as opposed to the
17 current claims in dispute and the original application.
18 They are desperate to get in words like
19 "continuation-in-part" versus "continuation"; and, for
20 example, you've cited me to the Chiron Corporation
21 versus Genentech case, 363 F.3d 1247. And there was a
22 couple other cases you cited.

23 And cases talk in terms of when you file a
24 subsequent application, you cannot change the
25 disclosures or the claims themselves. But the key in

1 all these cases is still you've got to compare the claim
2 in dispute with the original application or the
3 application for which the plaintiff is attempting to
4 claim priority. And what the courts are saying is the
5 patentee cannot go ahead and somehow change his
6 application, compare the claim with language of that
7 second application, say it's disclosed, and then somehow
8 take that on back.

9 But no case holds that simply because there
10 is some change in language between the first application
11 and the second application, that that in and of itself
12 makes it wrong because, in fact, in the
13 continuation-in-part, as courts have said, some of the
14 claims may have the advantage of the earlier priority
15 date; and some of them may have to live with the second
16 application date. And that doesn't depend on a
17 comparison of the changes in the application; it depends
18 on a comparison of the claim in dispute and that
19 original application. And that's what I'm trying to
20 focus the jury on.

21 Now, Mr. Gunther has written me a lengthy
22 letter talking about the fact that he's been correctly
23 citing the law and feels hurt and confused and disturbed
24 about my indication that some of his statements are
25 misleading to the jury. Well, Mr. Gunther, I consider

1 you a very educated man and a very experienced lawyer;
2 and, so, I went back and looked at the transcript.

3 And, for example, in the Volume 1 at
4 page 123, you start off -- I think this is one of the
5 ones you cited to me -- talking about: A continuation
6 patent requires something very specific. You can't
7 change the invention. That means what's described in
8 1996 has to be the same invention as what's filed in --
9 as the claims that were filed in 2002.

10 You corrected yourself there. You recognize,
11 as we all do, that a patent doesn't cover one invention.
12 Now, it would be great, I think, from defendant's point,
13 if you could focus all at that 1996 -- plaintiff has
14 called it a "warehouse" -- and if you could just get the
15 jury thinking it is one invention in that original
16 patent application and what are all these claims doing
17 and there must be something wrong.

18 And, inadvertently or not, you've been very,
19 very careful to continuously refer to the original
20 application as "an invention," singular. For example,
21 there at page 123, line 10: And, ladies and gentlemen,
22 what that means is those claims that he wrote in 2002
23 will live or die based on whether they are the same
24 invention -- singular -- as what he described in 1996.

25 And then we get to page 307: Because if you

1 make changes to broaden the invention -- of course, we
2 all know there is more than one invention; but you keep
3 using this singular very carefully -- that would be a
4 problem.

5 If you broaden -- and this is at page 307,
6 starting at line 1: If you broaden the invention from
7 1996 to what you filed in 2000, then you wouldn't be
8 able to get back to 1996, right?

9 Answer: Yes, sir.

10 And then later down, at page [sic] 14:
11 Because if you had broadened it, then you wouldn't be
12 able to get back to 1996 because you would have changed
13 the invention. Remember, the invention has to be the
14 same at both points in time, right?

15 Yes, sir.

16 And then you go into changes in the two
17 applications, talking about taking out the single member
18 input -- or the single input member operable in
19 6 degrees of freedom from one application to the next.
20 That term, I don't believe, shows up in any of the
21 claims. And, so, even if this had been called a
22 "continuation-in-part" -- and I don't think whether it's
23 a "continuation" or "continuation-in-part" label is
24 determinative.

25 But the whole point of this exercise is is

1 that if you're comparing the claims in issue with the
2 original application, the fact that you could -- I mean,
3 a lot of claims in this case have already been
4 eliminated by this court. Others were not asserted by
5 plaintiffs. And then to -- so, obviously, defendants
6 could go in, find all kind of changes that apply to
7 those other claims, focus on those and say, "Ladies and
8 gentlemen, they made all these changes to the
9 application. Obviously something must have changed.
10 Focus in on that, ladies and gentlemen."

11 And you kind of sidle away from the focus of
12 what they have, and that is compare the claims in that
13 issue with that original application to see if it is
14 covered there.

15 And then you go on into -- then you repeated
16 that again on page 313: You testified you made changes
17 from the 1996 application when you wrote the '700
18 application.

19 And then on page 315: And in 2000 when you
20 filed the '700 application, you changed it to say that
21 your invention -- again this singular -- is at least one
22 input member.

23 And the point I raised and was trying to make
24 clear to the jury -- and in light of your letter, I'm
25 quite sure that you understand, sir -- a patent is not

1 an invention; an application is not an invention. The
2 application has to disclose all of the inventions set
3 out in the claims, whether it's a continuation or not a
4 continuation.

5 And to pretend surprised or this "I'm so
6 innocent" when, as educated and careful as you are --
7 and lawyers have to live and die on words. We're
8 trained to use and we're taught to use and we get used
9 to using words very precisely. And there is a big
10 difference, in this field, between the singular and the
11 plural.

12 The point I was trying to make to the jury is
13 keep in mind each and every claim is an invention and
14 they will have to decide whether the -- and I believe
15 it's five inventions that we have claims for now -- are
16 actually disclosed in the original application. If not,
17 they don't get the priority date of that 1996
18 application.

19 The next question, then, would be are they
20 even disclosed in the later application. No one's
21 really discussed that too much because I think it's
22 pretty obvious or it seems to be almost uncontested that
23 if he doesn't get the first priority date, he loses on
24 invalidity. I haven't heard any real contest of that
25 one at all. I mean, if that is an issue, no one's

1 really addressed it yet. No one's focused at all as to
2 whether the written description in the second
3 application is sufficient. Everyone's focusing on the
4 first one.

5 Now, yes, there are all these theoretical
6 possibilities that we could then go to the second one;
7 but if no one's addressed them, then I don't see any
8 point in spending a lot of time with the jury on that.
9 If it is an issue, bring it up.

10 But I want to make very clear that I do think
11 that this constant reference to the original application
12 as having "an invention" -- and, yes, you're right, you
13 did say it correctly one time where you talked about the
14 claims and the inventions. But most of the time you
15 refer to it as "an invention." Well, every one of those
16 claims is an invention; and there is no law at all
17 saying that the invention in the application is the
18 invention in the claims. In fact, that in and of itself
19 is self-contradictory because the claims are several
20 inventions.

21 Now, the disclosures -- they have to be fully
22 and completely disclosed there; and I will, in fact,
23 instruct the jury on that. But I am becoming very
24 concerned with this -- and you asked in your letter --
25 you couldn't believe why I instructed the jury that

1 because it seemed to be the law as you were stating it.
2 And I've mentioned several times -- and I didn't go back
3 and get them all. I found several of them where we had
4 this difference between singular and plural and this
5 idea that there was "an invention" in the original
6 application and that, therefore, because he changed the
7 application and specification in the 2000 application,
8 that, therefore, the jury should presume that there has
9 been a change and, therefore, it wasn't disclosed in the
10 first one.

11 And that's not what they look at. They look
12 at the claims that are at issue and they have to compare
13 those with the application in 1996 and there has to be a
14 showing or a determination of whether those are, in
15 fact, disclosed.

16 Now, I don't know how to make it any more
17 clear than that. And as I said before and I tried to
18 say the last time we had this discussion, I did not
19 think at that time you were doing it deliberately
20 because lawyers typically in this field, we talk about
21 that; but we all know what each other is saying. We all
22 know that we're talking about comparison to claim with
23 what was disclosed back there, and you talk about the
24 invention.

25 The jury doesn't. They're not in this field.

1 And I think it's very important to them we focus on each
2 claim is an invention; and then each of those
3 separately, individually have to be compared with what
4 was shown in that original application to see if it,
5 with all of its limitations, is fully and fairly
6 disclosed to one of ordinary skill in the art, as the
7 instruction will go.

8 And originally what I was trying to point out
9 to counsel on both sides was let's be careful about this
10 because in this case, unlike many I've had, this is
11 obviously a very important issue. And I don't think
12 it's proper, inadvertently or deliberately or any other
13 way by our loose use of the language -- which we're all
14 subject to because we're all used to talking in these
15 terms; I'll grant you that -- we somehow mislead the
16 jury and then they're looking at the instructions and
17 they're remembering what we all said.

18 And I'll even, you know, say that I have
19 probably used those terms that way over the course of my
20 career; but in this particular case, it is very, very
21 important. And the cases you cite, I don't think, make
22 any change in that. They don't say that -- and I have
23 not seen one that you cited that said that a patent was
24 invalid or a claim was invalid because there was a
25 change between one application and the next.

1 What they say is is that a earlier -- or a
2 claim is not entitled to the earlier priority date
3 because it is not disclosed in the earlier application.
4 And they pointed out a case where you could not have a
5 narrow early application and then a broad claim later
6 on, and then that is what becomes the problem. In other
7 words, the claim gets to have more than what was shown
8 in the earlier application.

9 The fact that the second application was
10 broadened or narrowed isn't what makes it wrong. What
11 they're just saying is is that doesn't allow -- just
12 because the application is changed and it may support --
13 the second application may support the second set of
14 claims is not good enough to get the earlier priority
15 date. The first application has to support the second
16 set of claims.

17 So, I'll state that to clarify what I am
18 trying to get across. If someone thinks I'm misstating
19 the law, we'll have a chance to discuss that at the jury
20 charge. And if you think an instruction I give to the
21 jury is incorrect, you need to go ahead and let me know
22 that so I can correct it in front of the jury.

23 But we're playing with words here, very
24 carefully spoken words, and words that have meaning.
25 And in this case plural and singular have a lot of

1 meaning; and, so, I think it's important that we be
2 careful about it.

3 Mr. Gunther?

4 MR. GUNTHER: Your Honor, thank you for that
5 and I appreciate that and I will tell you just a couple
6 of things, your Honor, quickly.

7 Your statement just now is the first time
8 that I have understood the point that you were trying to
9 make. And, your Honor, that's probably me being dense.
10 I'm not blaming the court for that.

11 THE COURT: Well --

12 MR. GUNTHER: And let me tell you what I
13 mean. I was -- that letter was from the heart, your
14 Honor. It was not a letter of feigning surprise or
15 anything like that. I was puzzled. And you could ask
16 Mr. Germer. When you instructed the jury the first
17 time, I said, "Why did he do that?" And, again, you
18 know -- and then when you instructed them the second
19 time, I said, "It seems like he's saying the same thing
20 I am."

21 So, your Honor, here's the point. Now I
22 understand what you're saying. It's me. Okay? I'm not
23 throwing it on the court; it's me. I'm a German; and I
24 can be thick sometimes, your Honor. I'll admit that.
25 But let me say this, because it's really important.

1 The reason why I don't think I misstated the
2 law -- and your Honor has quoted me chapter and verse of
3 me talking about it as "the invention" -- is that in
4 this particular case, with this particular
5 specification, the way that it was written, the way that
6 it was written that says the object of the invention, 17
7 different times is, a single input member movable in 6
8 degrees of freedom and where it says not only that but
9 Chang, we're not Chang.

10 Your Honor, my point is, at the end of the
11 day, he said there is one invention in that
12 specification. There may be lots of different bells and
13 whistles on it. There may be a single input member that
14 has a flexible member in sheet. There may be a single
15 input member that has this or has that.

16 But the reason, your Honor, that I felt I
17 have never misstated my position is because you look at
18 the facts and circumstances of every case. Some patents
19 have one invention in them; some patents have many
20 inventions. And in some instances, your Honor, because
21 there are many inventions, the Patent Office makes
22 patentee split them out into what are called "divisional
23 inventions."

24 In this specific case, your Honor -- and you
25 may disagree with me on this -- and in terms of the

1 legal issues, your Honor, you're going to make the
2 decision; I'm not going to make the decision. But the
3 reason why -- the way we have tried this case from the
4 very beginning is that there is one invention. It may
5 be stated different ways and there may be different
6 bells and whistles on it, but there is one thing, a
7 single input member movable in 6 degrees of freedom.
8 And that is not -- and they made this statement with
9 respect to the invention as a whole, not with respect to
10 any particular embodiments.

11 So, your Honor, now I get it. I'm a dope
12 sometimes. I'll admit it.

13 THE COURT: Well, I don't --

14 MR. GUNTHER: Now I get what your point is.
15 Your Honor, I respectfully flatly disagree with your
16 point in this particular case with respect to this
17 particular specification. I am not -- because
18 your Honor has now told me your position, I'm not going
19 to get up and call it one invention. I think it is,
20 your Honor; and I think -- with all due respect, I think
21 the court is wrong on that.

22 THE COURT: Well, now, wait a minute. If you
23 want to try to show that all that is disclosed in the
24 specification -- and you can take a look at the '525
25 patent. It has a number of claims, also. And an

1 argument can always be made that only, say, claim 1 is
2 actually disclosed; and all of these others are just
3 additional ways of describing claim 1 -- and there are
4 cases that hold that -- that would be legitimate.

5 But what is happening here is we've got five
6 different -- I think it's five different claims, maybe
7 six. Each with one of those describes, or intends to
8 describe, a different invention.

9 Now, there may be only tiny little
10 differences in them; and it may be true that none of
11 them actually are described in the first application,
12 which is your position. And that's legitimate. But in
13 the end, the jury's going to be instructed -- and, in
14 fact, defendants usually ask for an instruction about
15 "consider each claim separately and go through it
16 separately."

17 Well, consistently, I want them to look at
18 them separately and one at a time look at the -- and
19 then you're going to want them to look at each and every
20 single element of the infringement one at a time.
21 You're going to want them to look at invalidity to see
22 if something is missing there one at a time. But then
23 we don't suddenly say, "Oh, but actually you take a look
24 at the specification that it's just an invention."
25 Okay?

1 MR. GUNTHER: Your Honor, I understand your
2 position.

3 THE COURT: All right.

4 MR. GUNTHER: Your Honor one last thing,
5 because I know you want to bring the jury in.

6 THE COURT: Sure.

7 MR. GUNTHER: On the point about the changes
8 to the application, we have never said -- your Honor, if
9 there were a case where I was not complaining about the
10 breadth of the claim and the scope of the claim and all
11 I had to go on it was to come in here and say, You know
12 what? They made changes to the specification" and then
13 I would say, "You know what, jury? Look at that, don't
14 look at the claim," your Honor, in that case what you
15 said would be a hundred percent correct.

16 In this case we're not saying that it's just
17 the changes. We've never said that. There were two
18 things going on here. They changed the specification,
19 and they wrote claims that are not supported by the
20 original specification.

21 It's the combination of both of those things.
22 And when you look at the Chiron case and when you look
23 at the Reynolds case, your Honor, they're talking about
24 both of those things, the claims and the specification.
25 I am not going to stand up -- I'll tell the court this

1 right now -- in closing argument and suggest to the jury
2 that "Simply because they made changes to the
3 specification, forget about the claims, jury, and just
4 take a look at those differences." That's not my point.
5 My point is when you consider both of those things
6 together, as the Federal Circuit has done and as the
7 District Courts have done, that's perfectly appropriate.

8 I'll say one more thing, your Honor; and then
9 I'll shut up. That with respect to the last point that
10 I made in my letter, your Honor -- how did the issue of
11 the changes to the specification come up? I didn't
12 raise it in my opening. The first time that it came up,
13 your Honor, was when Mr. Cawley asked Mr. Armstrong on
14 direct examination about changes to the specification.

15 He said: Did you make changes? Your Honor,
16 I cited this to you. It's on the transcript starting at
17 page 158. The key language is 159 at 19: Are there any
18 differences between the '96 application and the 2000
19 application?

20 Answer -- direct examination -- I haven't
21 even brought it up yet.

22 Answer: Yes, they are.

23 Question: What are those differences?

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

1 Now, your Honor, them having done that,
2 opened the door like that, we are perfectly entitled to
3 show that that is not the reason that those changes were
4 made, that they were made for other reasons that have to
5 do with the core issues in this case. And to say that
6 we're not entitled, after I examined Mr. Armstrong for
7 probably 40 pages of the transcript on those issues and
8 the fact that they are not just clarifications, that, A,
9 the jury should not be instructed to disregard that
10 because that is not the law --

11 THE COURT: I don't think I've instructed
12 them to disregard your cross-examination, have I?

13 MR. GUNTHER: All right. No, I don't think
14 you have, your Honor.

15 But, B, the jury should not be instructed to
16 disregard those changes in evaluating whether both the
17 changes to the specification and the claims that he
18 wrote in 2002 are supported by that 1996 application.

19 THE COURT: And that's allowed in because
20 you're allowed to try to show that the inventor did not
21 have the invention -- one way they put it is did the
22 inventor have in his possession or did he have the
23 invention at the time he wrote the application. But I
24 haven't struck that.

25 MR. GUNTHER: All right, your Honor. Then,

1 with that, I'm going to sit down and shut up because I
2 think I can start acting at cross-purposes for my
3 client.

4 THE COURT: Okay.

5 MR. GUNTHER: But I think the point, your
6 Honor is I am now -- it's me, your Honor; it's not you.
7 I'm on the same wavelength. I understand what's going
8 on here, and I appreciate the fact that the court came
9 in here and helped me on that this morning.

10 THE COURT: All right. I think we've got all
11 the issues.

12 Who's on the stand right now? The expert?

13 MR. PRESTA: Mr. Dezmelyk, the expert.

14 THE COURT: Okay. Anything else that needs
15 to be covered?

16 Let's bring them on in.

17 All right. Is there anything else left that
18 needs to be taken up prior to continuing on with his
19 examination?

20 MR. PRESTA: I don't believe so. There may
21 be some things come late in the -- later.

22 THE COURT: Okay. And from plaintiff's point
23 of view, anything else dealing with him?

24 MR. CAWLEY: No, your Honor.

25 THE COURT: Okay. Let's go ahead and bring

1 in the jury, please.

2 Will the document camera that we have not
3 work with that stuff?

4 MR. PRESTA: Your Honor, when there's very
5 tiny chips and stuff, it doesn't.

6 THE COURT: Okay.

7 MR. PRESTA: I tried it and can't see it.

8 THE COURT: All right.

9 MR. PRESTA: Only for really small things
10 will I use it. I may not use it at all.

11 THE COURT: All right. I'm just surprised.
12 I thought our technology would handle it.

13 (The jury enters the courtroom, 8:59 a.m.)

14 THE COURT: Good morning, ladies and
15 gentlemen. I hope you all had a nice Mother's Day
16 weekend. We started a little bit later because I had a
17 motion to take up and had to deal with it in terms of
18 what we would be doing today. We're ready to continue
19 on.

20 Remember, sir, of course, you're still under
21 oath?

22 THE WITNESS: Yes, I do.

23 THE COURT: Go ahead, counsel.

24 MR. PRESTA: Thank you, your Honor.

25 *

1 CONTINUED DIRECT EXAMINATION OF ROBERT DEZMELYK

2 CALLED ON BEHALF OF THE DEFENDANT

3 BY MR. PRESTA:

4 Q. Good morning, Mr. Dezmelyk.

5 A. Good morning.

6 Q. Once again you were here testifying as an expert in
7 this case, right? We put you on the stand on Friday?

8 A. That's correct --

9 Q. Okay.

10 A. Actually, it was Thursday.

11 Q. I'm sorry. It was Thursday.

12 Now, you understand that there are several
13 issues in this case relating to whether the claims that
14 are asserted in the case can get back in time back to
15 1996.

16 A. That's correct. One of the main issues in the case
17 is whether the inventions described in the claims that
18 ultimately ended up in the patent are sufficiently
19 described in the first application that Mr. Armstrong
20 made to the Patent Office in 1996.

21 Q. Okay. Have you undertaken a -- first of all, why
22 is that important? Could you tell the jury?

23 A. Well, that's important because one of the tests is
24 whether the inventor had this invention described in the
25 claim in his mind; that is, did he really have this idea

1 at the point in time when he described his ideas and
2 gave them to the Patent Office.

3 Q. Okay. And does that somehow relate to the date
4 that he's entitled to have for his later claimed
5 invention?

6 A. Of course. When part of being -- making an
7 invention is when you did it; that is, you had an idea
8 at a particular point in time before other people had it
9 or before it was present in the marketplace.

10 So, the question we have to look into is when
11 did that person have that idea in their mind, not --
12 maybe they had -- they didn't have a -- the question
13 would be did they not have that idea when they first
14 described their ideas to the Patent Office. Because in
15 this particular case, the claims which describe the
16 invention were written later than the original
17 specification or description of Mr. Armstrong's ideas.

18 Q. And when were -- the claims that are at issue in
19 this case that Nintendo's accused of infringing, when
20 were those claims written?

21 A. Those claims -- I believe the ones we're looking at
22 were written in 2002.

23 Q. And what date is Mr. Armstrong trying to establish
24 that he, in fact, had the idea claimed in those
25 inventions?

1 A. Well, he's trying to establish that -- the date he
2 had that idea, back in 1996, when he filed his first
3 application.

4 Q. Do you have an understanding as to why that's
5 important -- why is it important that these claims in
6 2002 from Mr. Armstrong's perspective can get back to
7 1996?

8 A. Well, in this particular case the reason it's
9 important is between 1996 and 2002, there were a lot of
10 changes in general in the technology. And, in fact,
11 there are other controllers that came out in between
12 those two dates which if -- compared to the claimed
13 invention invalidated.

14 In other words, the ideas in the invention
15 that are set forth in 2002, if that idea is only
16 entitled to 2002 as the date when it was made as an
17 invention, then it's after other inventions that do the
18 exact same thing. However, the idea is if it's earlier,
19 if he really had that idea in 1996, then he is before
20 those other examples.

21 Q. And does the idea of being before or after relate
22 to the concept of invalidity?

23 A. Absolutely. If you have an idea after someone
24 else, even if you got a patent for it, it's invalid.
25 That patent claim is invalid. Because what you're

1 describing is not an invention you made but an invention
2 someone else made. So, if there's already a product
3 that does something in the marketplace and your patent
4 claim describes it, then your claim is invalid if that
5 other thing was present beforehand. That is what we
6 call "prior art," that it was available; people in the
7 public knew about it before the date of your invention.

8 Q. Are you saying that you can't get a patent on
9 something that already existed out in the market? Is
10 that a simple way of --

11 A. That's correct. That's a simple way of saying it.
12 There are some legal restrictions. That market has to
13 be, for instance, in the United States.

14 But if something is for sale in the United
15 States or published, described -- perhaps the invention
16 is described in a book that's been published anywhere in
17 the world -- or if it's for sale in the United States,
18 if you can go down to the store and buy something which
19 does what the invention claim describes before the date
20 for that claim, what's called a "priority date," then
21 that claim is not valid because it's not an invention
22 then. It's just describing something that already
23 exists.

24 Q. Now, you mentioned that a product would have to be
25 in the market in the United States. Is that also true,

1 in your understanding, for printed publications like a
2 published article or a published patent application that
3 might have happened in a foreign country?

4 A. No. Publications -- and publications means books,
5 of course, magazine articles, things like that,
6 technical papers, other patents or patent applications
7 can be from anywhere in the world. So, a publication
8 outside the United States still counts as prior art.
9 It's just there is a particular restriction for the sale
10 of physical goods, things like that. They have to be in
11 the United States.

12 Q. Okay. So, then, did you undertake a study of
13 whether, in fact, the claims that were drafted in 2002
14 that Nintendo is accused of infringing -- did you
15 undertake a study to see whether, in fact, those claims
16 are entitled to go back to 1996?

17 A. Yes, I did.

18 Q. And, in other words, did you determine in your
19 study whether Mr. Armstrong had described the ideas that
20 he later claimed in 2002 in that 1996 application?

21 A. Yes, I did.

22 Q. And what was your conclusion related to that?

23 A. Well, my conclusion is he did not describe what he
24 claimed in 2002, in 1996.

25 Q. And you have -- have you prepared some type of

1 charts that help the jury understand this?

2 A. Yes, I have.

3 Q. Okay. And I'd like now, if I could, to turn to
4 some of those and have you give an overview of your
5 opinions with your charts.

6 Now, first of all, this slide -- I see that
7 the first item there -- could you just tell me what this
8 slide is for?

9 A. Sure. This slide -- I wanted to give a little
10 roadmap because I'm going to talk about a lot of stuff
11 today. So, I wanted to kind of just lay it out there so
12 we can see progress -- because I'm going to be here for
13 a while -- and everybody would get a feel for what we're
14 going to be going through.

15 The first thing I'm going to talk about is
16 the inventions described in the claim are not entitled
17 to a date -- an invention date back in 1996. That's the
18 first thing we're going to talk about.

19 Q. Okay. And just so we're clear, when we talk about
20 the claims, is it your understanding that each claim in
21 the patent that's being asserted really constitutes its
22 own invention?

23 A. That's correct.

24 Q. Okay. So, you need to look at each one of the
25 asserted claims and go back and see if it's supported

1 back in 1996?

2 A. That's correct.

3 Q. Okay. Now -- so, you already told me that you
4 undertook the -- the first item is what we're talking
5 about there. Can you just give the jury just an
6 overview of the other items that you intend to discuss
7 with the jury?

8 A. Sure. The second item, here (indicating), is the
9 conclusion that comes from that. In other words, if the
10 claimed inventions are not entitled to the priority date
11 of 1996, if they are actually only entitled to the year
12 2002 or the year 2000, when there was an intermediate
13 application filed, then those claims are invalid because
14 there is prior art. And we'll see that prior art. It's
15 other controllers that were available in the market.

16 Q. Okay. And the third item?

17 A. The third item, down here (indicating), "Invalid
18 For Lack of Written Description," is another test that
19 needs to be made to say if a claimed invention -- a
20 claim in a patent is valid. And that is, is it
21 adequately described in the specification; that is, can
22 we look in that specification, the description that the
23 inventor made of his invention, and does it describe
24 that claim, is there enough description for that.

25 Q. Okay. So, then, it seems like your testimony is

1 saying that you're going to do two comparisons. You're
2 going to compare all the claims in 2002 to the 1996
3 application. You've said that, right?

4 A. That's correct.

5 Q. And then you've also undertaken a study where you
6 compare the 2002 claims to the other application that
7 was filed in 2000. Is that what you're telling me?

8 A. That's correct.

9 Q. Okay. And why did you do that second comparison?

10 A. Well, there's really -- these are very closely
11 related tests. The first test tells us did the inventor
12 have in mind -- did he have this idea in his mind back
13 in 1996. But the next question is did he have it in
14 mind even in 2000 when he made this second, slightly
15 different application. And that's a different test.

16 Q. And you're going to eventually explain that to the
17 jury?

18 A. That's correct.

19 Q. Okay. And the last one, can you just give us an
20 understanding of what you're going to do there?

21 A. Sure. There I'm going to show that Anascape's
22 claims that we talked about on this case are not
23 infringed by the Nintendo devices but, in fact, the
24 Nintendo controllers are quite different and there are
25 reasons which I'll go through of why they don't meet the

1 limitations of those claims even as those claims stand
2 today.

3 Q. Okay. Well, it sounds like we have a fair amount
4 to cover; so, why don't we start with the first one,
5 which is your analysis of whether the 2002 claims are
6 described in the 1996 application. All right?

7 A. Great.

8 Q. Now, you've already told me that this is your
9 conclusion; but could you just tell us again what it is?

10 A. Sure. Again, my conclusion -- or the results of my
11 analysis, which we'll go through the process here, also
12 is that those claim inventions from 2002 -- claims 19,
13 20, I think it's 22, 23, and 16 and 14 -- are not
14 supported by the 1996 application.

15 Q. Okay. And can you tell me what this timeline is?

16 A. Sure. Well, just to help us all keep all these
17 facts in mind, I made a little timeline up here; and it
18 shows when things happened.

19 In 1996 Mr. Armstrong filed the application,
20 July 5th. That's noted underneath the -- the numbers
21 underneath are the exhibit numbers, if someone wants to
22 find one of those.

23 And then again, over in 2002, he filed the
24 claims that cover the three input devices with 6 degrees
25 of freedom that are currently at issue in this case.

1 Q. Okay. And the red arrow represents?

2 A. The need for him to get a priority date for those
3 claims back in 1996.

4 Q. Okay. And if he can't get it -- as you've
5 indicated in your opinion, that he can't get back to
6 '96, right?

7 A. Well, I don't believe he can get back to '96. He
8 does not have support back in '96.

9 Q. Okay.

10 A. And what that means is that his priority date is --
11 is not back in '96, and there's prior art in between.

12 Q. Okay. And do you understand the implications of
13 that? I think you explained it, but could you explain
14 what the implications would be if Mr. Armstrong could
15 not get back to 1996?

16 A. Well, the simple implication is we get all the
17 prior art between 1996; and the filing of those claims
18 can then be compared against those claims. And, so,
19 prior art that's before his application in 2000 and
20 before the claims in 2002 then is compared against those
21 claims as prior art. And we will see that there are a
22 number of controllers in the market then that have the
23 claimed features already before his date of invention.

24 Q. Now, did you hear Mr. Armstrong testify?

25 A. Yes, I did.

1 Q. Okay. And did you review this piece of testimony?

2 A. Yeah, I've seen it.

3 Q. And this is the testimony of Mr. Armstrong in this
4 trial, right?

5 A. That's correct.

6 Q. Okay.

7 A. And basically he says that if you can't get back to
8 '96, it has a bad influence on his validity. And he
9 says "yes."

10 Q. And you agree with that, right?

11 A. Yes, I do.

12 Q. Okay. Now, I just want to make sure we're clear.
13 There was no application filed in 2002. I'm not sure if
14 I misspoke or maybe you misspoke, but I just want to
15 make clear that there is an application filed in 2000,
16 right?

17 A. That's correct. The application -- there is an
18 intermediate application filed in 2000, but the claim --
19 these particular claims here were first filed in 2002.

20 Q. Okay. But your understanding of this testimony
21 from Mr. Armstrong is that if he can't get back to 1996,
22 he has some problems with validity?

23 A. Yes.

24 Q. Okay. Now -- and could you tell me what this chart
25 is showing?

1 A. Sure. This chart is just showing a quick summary
2 of the dates of some of the prior art and, in
3 particular, the prior art I'm going to be talking about
4 later for invalidity.

5 The first one on there is in April, 1998. A
6 patent application was published. It's a European
7 patent application. It was published in April of 1999.
8 "Goto" is the man's name who's listed, the inventor.
9 That patent is assigned to Sony Corporation. It
10 describes a handheld game controller.

11 In June of 1996 a controller known as the
12 "Sony Dual Shock controller" was introduced into the
13 United States. That's the PlayStation controller.

14 And then in October 26th of 2000, Sony
15 brought out a newer improved version that was known as
16 the "Sony Dual Shock 2."

17 Q. Okay.

18 A. And those controllers are prior art.

19 Q. You don't have over there on this slide the
20 application that Mr. Armstrong filed in 2000; but he did
21 file another application in 2000, right?

22 A. That's correct. And that application is in
23 November of 2000. I don't remember the exact day.

24 Q. Okay. And that application, again, was after all
25 three of these pieces of prior art, as you're calling

1 them, were available publicly?

2 A. That's correct.

3 Q. Okay. Now let's go back, and I'm going to ask you
4 if you could please -- this is a very important issue --
5 if you could help the jury understand what's in that
6 1996 application. And I know that you spent some time
7 trying to simplify this for the jury --

8 MR. PRESTA: And, first of all, I want to
9 just point out that this 1996 application, because it's
10 such an important document, is contained in the jurors'
11 notebooks in this case. It's also Defendant's Exhibit
12 306A, which has been renumbered, your Honor, and to
13 correspond with the page numbers that are in the jury
14 notebook.

15 It's also Defendant's Exhibit 12, which is
16 the '525 file history.

17 BY MR. PRESTA:

18 Q. You reviewed both of those exhibits, right?

19 A. Yes.

20 Q. Okay. Now, in fact, the application -- the front
21 page is the application that we're showing here on the
22 jury notebook at page 1 and page 3. You realize that,
23 right?

24 A. Yes. That's where they are.

25 Q. Okay. Now, can you tell me what this slide

1 indicates?

2 A. Well, this slide is the steps. I'm going to back
3 up a little bit and make that a little clearer, that I'm
4 going to be looking, as part of my analysis, to see
5 where in that application, where in the specification --
6 the description that the inventor makes called the
7 "specification" of the patent -- where, if anywhere, he
8 disclosed the ideas that make up or that constitute the
9 claimed invention. And there is a couple different
10 parts of that application. It's a thick document. And,
11 in particular, it's got drawings. It's got his written
12 verbal text description. It's kind of complicated text;
13 so, we may have to go through it carefully.

14 But the first step is to look at the drawings
15 because it's usually a little easier to look at the
16 drawings than it is the text. And I'm going to add on
17 that there's also -- although, we don't really need to
18 look at them much in this matter -- technically
19 speaking, the claims that he filed at that point in time
20 are part of the specification. But those are not the
21 claims we're talking about now because those claims were
22 not used -- those inventions described in those claims
23 and those claims are not relevant to the matter we're
24 here on today.

25 Q. Okay. Did you undertake a review of the drawings

1 in the 1996 application?

2 A. Yes, I did.

3 Q. And you prepared some slides to help the jury
4 understand those?

5 A. Yes, I did. There's quite a few drawings in that
6 application; so, I actually sorted out the ones that
7 were important in this case. There are other ideas in
8 there that are not related at all; so, we're not going
9 to look at every picture in there because we would be
10 here for days. But we're going to focus on the ones
11 that are related to this case and the claims that came
12 out of it.

13 Q. Okay. Can you first tell the jury why you have
14 that figure?

15 A. Sure. I think this is a good starting point for us
16 to try to understand the idea that's described in that
17 specification.

18 And what this shows, Figure 7, is a ball, in
19 the middle. And, again, we're going to put highlighting
20 on things in these pictures. These are all
21 black-and-white drawings. It's a tradition in the
22 Patent Office, from the beginning of our country, to
23 make the drawings just like a pen-and-ink drawing.

24 Q. And let me just stop you for one second. I'll just
25 note that you had tried to put the jury notebook page

1 number on the slides, whenever possible, in the bottom
2 right-hand corner, correct?

3 A. That's correct. There should be, down in the
4 corner there, where somewhere -- a place that you can
5 find it if you want to look right at the actual drawing
6 or text or picture in the juror notebook or if you want
7 to make a note or something where it is.

8 Q. Okay. And what is this -- just an overview of what
9 this figure generally is?

10 A. Sure. This is a picture where Mr. Armstrong is
11 describing or beginning to describe his idea. And, in
12 particular, he's explaining that there is what he calls
13 an "input element" here, 12; and it has -- it can roll
14 around that direction. It can pitch back and forth this
15 way (indicating).

16 Q. Let me just stop you for just one second. Now,
17 this isn't actually a controller product, is it? Just
18 try and --

19 A. No.

20 Q. -- put this in perspective for the jury of what it
21 is. It's not --

22 A. Right.

23 Q. Thank you.

24 A. Okay. Just to explain this, this is a complicated
25 idea; so, he's working in steps to explain it. And the

1 first thing he's really explaining is there's going to
2 be a input member -- in this case he's showing it like a
3 ball -- and it can move every which way. It can move
4 back and forth along the first, second, or third axis;
5 or it can turn on those axes. And, really, if you think
6 about it, it's like holding a beach ball in your hand.
7 You can turn it any which way; and you can also move it
8 up and down, sideways, and back and forth. But there is
9 one kind of ball, and you can imagine that that ball
10 itself is moving in those different directions.

11 Q. Does the term "6 degrees of freedom" relate to this
12 figure at all?

13 A. Yes, it does. The technical term for that is that
14 it has 6 degrees of freedom because you can move it
15 three ways -- side to side, forward and backward, up and
16 down. Those are the three arrows of what we call
17 "linear axes," engineers. And then you can turn it,
18 rotate it.

19 And the typical words that are used for that
20 rotation, to describe it, is what people talk about in
21 boats or airplanes -- that it rolls, which means side to
22 side; that it pitches, which means front to back; and
23 yaw, for it turns, like if you turn your head, you are
24 turning your head in the yaw direction.

25 Those are just the words that people use to

1 talk about which way something is turning. So, if I was
2 trying to describe a boat, I might say my boat is
3 rolling over because the wind is pushing on the sail; or
4 if I go up and down on a wave, it pushes back and forth.
5 And I might say in an airplane that I'm turning my head
6 in a yaw direction, or I'm turning in that direction
7 (indicating). That's a way of describing these things
8 in a more formal sense.

9 Q. So, am I correct, then, that the 6 degrees of
10 freedom that are shown here involve being able to move
11 linearly along all three of the axes in
12 three-dimensional space as well as rotate on all three?

13 A. That's correct. There's six because there are the
14 three axes moving, and there are three ways of turning.

15 Q. Okay. Now let's take a look at the actual other
16 figures in the application. Could you tell me what that
17 figure is?

18 A. Sure. This is Figure 4. It's in your notebook,
19 page 56. And here Mr. Armstrong is describing what he
20 calls -- one of the ways in which he sees his idea.

21 That is what's called an "embodiment." He says: The
22 trackball-type embodiment.

23 "Embodiment" is a special word that's used in
24 patent applications. It says "One of the ways that my
25 invention can be built." And it's often that you make

1 examples of these to show people different ways you
2 could make the whole idea.

3 So, he's explaining here that in these
4 figures -- 4 is one of the set -- that this
5 trackball-type is a hand-operable 6-degree-of-freedom
6 controller. And he says: Trackball 12 -- here we see
7 that ball we talked about, just learned about how it
8 moves. It's now -- that Trackball Number 12 is sitting
9 in the middle of this mechanism.

10 One thing that we'll see a lot when we look
11 at patent drawings is you'll see a little number with a
12 line. That's just a way of talking about a particular
13 thing in the drawing to try to -- instead of using words
14 like we do in normal discussion, like "the door over
15 there" or "the window on the side," it's much easier for
16 people making these drawings -- because there are so
17 many pieces -- that they just give numbers to the
18 pieces. So, that 12 refers to the same 12 in any
19 picture where we see that number 12 pointing to a ball.
20 That's conceptually the same ball; in other words,
21 that's the same concept he's carrying forward.

22 Q. Okay. And, in fact, does that Ball 12 correspond
23 to that graph that we were looking at a minute ago?

24 A. Exactly. If we look at the last sentence that is
25 highlighted, that Trackball 12, which in this example is

1 the hand-operable single input member operable in full
2 6 degrees of freedom. He's saying --

3 Q. I'm sorry. What does it mean to be operable in
4 full 6 degrees of freedom? Because this is an important
5 concept we're going to talk about. I just want to make
6 sure that people understand it.

7 A. In this case 6 degrees operable means it moves in 6
8 degrees of freedom, and it works in the sense that it
9 outputs data or information about its motion in those
10 full 6 degrees of freedom.

11 Q. Okay. Now, did you prepare an animation; or did
12 you have an animation to help the jury understand how
13 this particular device of Mr. Armstrong's works?

14 A. Yes. There is an animation that will show how this
15 device moves.

16 Q. And I'm going to ask if we could play this and if
17 you could just try to explain to the jury, as it's
18 playing, what's going on.

19 A. Sure. This is showing the ball moving in the
20 different directions, roll -- and now if I move it
21 forward and backward, you'll see the ball and that green
22 ring around it move together, along with the whole
23 platform slides back and forth.

24 Q. Okay.

25 A. So, again it moves -- you can turn the ball in each

1 of those directions; but you can also grab the ball or
2 that little collar around it and push the whole assembly
3 either back and forth, left or right, or up and down.

4 Q. So, then, the ball and the thing around it are
5 related to each other in some way?

6 A. That's correct. And you can see that -- it will
7 get called a "collet," but it's also -- I like the
8 word -- I think he also says "collar" at one point.
9 It's kind of like the collar around your neck and your
10 shirt. It's around it. It can turn relative to it.
11 But if you move the ball from left to right, the collar
12 goes with it. So, the two are attached together
13 mechanically; and it actually is a way to hold -- you
14 don't want to try to push the ball or lift the ball up
15 and down. It's a way to move that ball in the different
16 directions.

17 Q. Okay. Thank you.

18 Now, Mr. Cawley had identified this drawing.
19 This is a figure that Mr. Cawley had put up on the
20 screen. Have you seen that?

21 A. I've seen that picture before, yes.

22 Q. Okay. And Mr. Cawley was saying that this
23 yellow -- do you recall -- that the collet was some type
24 of a second input member?

25 A. Well, it is described here, as you can see, as a

1 secondary input member for use maybe for entering other
2 parameters different from the 6 degrees of freedom.

3 If we look here, the trackball in the
4 middle -- that's 12 -- can be moved on all six axes.
5 That ball always can be moved on all six axes. The
6 collet around it, even though it moves with the ball,
7 can be twisted a little bit. So, you could rotate in a
8 twisting sense the same way you might turn a knob. You
9 can twist that extra collar around the ball, but it at
10 all times has to move with the ball. It can never move
11 separately from the ball. And I think the idea that is
12 being expressed here is that that extra secondary input
13 member adds another little bit of functionality that
14 might be used a different way, like a volume control, in
15 essence. That's an idea.

16 Q. Okay. And the part that's in pink that Mr. -- that
17 Anascape did not highlight to the jury, what does the
18 pink part mean?

19 A. Well, that's a very important point, is that this
20 trackball input member is always measured and movable on
21 all six axes.

22 Q. Okay.

23 A. These are words from the application on page 27
24 where the inventor, Mr. Armstrong, is describing how his
25 idea works. And he's saying that, in fact, that member

1 may be interpreted on all six axes and that I can get an
2 additional separate kind of input from the collet around
3 it.

4 Q. Okay. Is it true, then, that that Item 12 -- we
5 still see that Ball 12. So, is that Item 12 still, by
6 itself, a single input member that can be movable in 6
7 degrees of freedom?

8 A. Yes, it is.

9 Q. And is that exactly what Mr. Armstrong's
10 application says?

11 A. Yes.

12 Q. Okay. But, of course, there's also other things
13 that you can do and there's a secondary input that --

14 A. That's correct.

15 Q. Now, that doesn't affect the ball from being able
16 to be operated by itself in 6 degrees of freedom, does
17 it?

18 A. No. You can always operate the ball in 6 degrees
19 of freedom.

20 Q. Okay. Now, if I go to the next embodiment in
21 Mr. Armstrong's application, could you tell the jury
22 what this is?

23 A. Sure. This is a variation of the trackball idea.
24 Here, we can see that it's designed with a kind of an
25 Element 142, which is a nice comfortable handle. The

1 idea here is that you would rest your arm on that while
2 you were operating the Trackball 12.

3 And there's also shown some buttons up here
4 on the front which would be like the buttons on a mouse
5 or a trackball that you could click to control your
6 personal computer.

7 Q. Now, do those buttons have anything to do with the
8 single input member being movable in 6 degrees of
9 freedom?

10 A. No, they don't.

11 Q. Okay. Are those buttons -- can they be related to
12 that collet that we saw around the ball?

13 A. No. They're just buttons, like buttons on the
14 surface of a mouse or buttons on a phone or something.

15 Q. So, you have a 6-degree-of-freedom element in here;
16 but in addition to that, you have some buttons that you
17 could use for other things.

18 A. That's correct.

19 Q. Okay. Now, that's that same Ball 12 that you
20 described to the jury earlier, right?

21 A. That's right. It's the Ball 12 in the middle
22 there.

23 Q. Okay. And the specification in the juror notebook
24 at page 18, you just described that the trackball is a
25 hand-operable single input member, right?

1 A. That's correct.

2 Q. Okay. Now, could you tell me about this next
3 embodiment?

4 A. Sure. This is an example where the same Ball 12,
5 if we look, has been kind of miniaturized and put in a
6 handheld remote controller, like a TV remote controller.
7 And you would hold this in your hand and operate the
8 ball with your thumb. And it shows again some buttons
9 down here (indicating). And it explains how Trackball
10 12 -- which in this example it's a hand-operable single
11 input member. So, his text is explaining that you
12 operate this with your hand; and then there is a single
13 input member, that ball, which is operable -- that is,
14 returning information -- in a full 6 degrees of freedom.

15 Q. Okay. Now, can you explain to me why -- it says
16 "single." And you just told the jury that that ball is
17 a single handheld operable member in 6 degrees of
18 freedom. But my question to you then is: If it says
19 "single," why are -- what about these other buttons?
20 Can you fairly say that, in fact, that's a single thing
21 when you have all these other buttons?

22 A. Yes, because what the invention is describing is
23 the whole idea. The idea of buttons on a remote
24 controller by themselves is not the invention. In other
25 words, the idea that you can have buttons on a remote

1 controller is a well-known idea that existed long before
2 this. So, what the inventor is describing is what is
3 unique about his idea; and that is that he's got a
4 single input member for the 6 degrees of freedom. Also,
5 the buttons don't input positioning or 6 degrees of
6 freedom information. They're buttons like any other
7 button on a remote.

8 Q. Okay. So, it is your understanding that it is
9 still describing a single input member
10 6-degree-of-freedom device as long as it has one thing
11 that can do that, regardless if it has other buttons?

12 A. Right.

13 Q. Okay. And do you remember Mr. Cawley showed this
14 figure and had Mr. Armstrong testify that because there
15 were more buttons there, that there was a multiple input
16 6-degree-of-freedom device? Did you hear that
17 testimony?

18 A. I did. I think it's incorrect.

19 Q. Okay. Why is that incorrect?

20 A. Well, because we have to think in the minds of a
21 practitioner. As an engineer looking at this, I know
22 what buttons are for; and I know what trackballs and
23 controllers and -- motion controllers are for. And when
24 I look at those buttons, I'm not going to think, "Okay.
25 The buttons are giving me the motion. The motion comes

1 from the ball, that I rotate that ball, I push that with
2 the ball." That's the idea we're seeing here for
3 inputting the 6 degrees of freedom. We're not seeing
4 the idea that, "Gee, I could come down here and type a
5 number in; and that number is the position I want to be
6 in next." That's not the idea.

7 Q. Okay. Thank you.

8 Could you just briefly describe this next
9 embodiment in Mr. Armstrong's 1996 application?

10 A. Sure. Here again, he's showing that the
11 trackball-type device with the Ball 12 can be mounted on
12 a keyboard. And again he's explaining how it might be
13 an enhancement to a known keyboard. This is a standard
14 personal computer keyboard.

15 And this, I think, gives us a better
16 understanding of why these buttons are not involved with
17 an input member because that's something that's been
18 known for a long time. The invention is not typing
19 numbers in from a keyboard. The invention is the idea
20 of this -- this particular idea being expressed here in
21 this application is that ball and how you can use it to
22 input positional and angular information.

23 Q. So, then, are these drawings that we're looking at,
24 these different things, just different applications of
25 Mr. Armstrong's one input, 6-degree-of-freedom idea?

1 A. That's correct. He's showing ways that might be
2 combined or used with other known technologies and how
3 it might be mounted in them and how that might work.

4 Q. So, even though there's all of these keyboard
5 buttons here and, in fact, there is even that little
6 collet, it looks like, that goes around the ball --

7 A. That's correct.

8 Q. Even though all those other things are there, is
9 there still a single input member that's operable in
10 full 6 degrees of freedom like the application says?

11 A. Yes.

12 Q. Now if I could ask you to take a look at the next
13 one.

14 A. This is a variation of the trackball idea. In this
15 case 12 -- if you look at it here (indicating) -- is the
16 ball, and it has a handle attached to it. So, instead
17 of putting your fingers on the top of the ball and
18 pushing it back and forth like a trackball, you can just
19 grab onto the handle and then tilt it from side to side
20 or push it back and forth or lift it up and down by
21 holding onto the handle.

22 Q. Okay.

23 A. Of course, you can't turn the ball over completely
24 anymore. Right? You've now limited how much you can
25 tip it because the handle's there, but you've provided a

1 different way of holding onto that ball. And, again,
2 you get a full 6 degrees of freedom because you can lift
3 the handle up and down, push it back and forth, pull it
4 side to side, and then tip it and in which way around
5 it's --

6 Q. So, then --

7 A. -- it's in the vertical position.

8 Q. So, then, are you, then, saying that that first
9 figure we looked at with those axes of 6 degrees of
10 freedom, even though that handle looks like it might
11 just go to the left and right and forward and backwards,
12 it actually does much more than that?

13 A. Yes. It actually moves in all of the 6 degrees of
14 freedom shown for the Ball 12 in the initial picture.
15 It's just that you can't rotate it as far because if we
16 try to turn that handle, we can only really turn it some
17 amount of angles from vertical before we run into the --
18 our hand will hit the top of the container.

19 Q. Okay. And, again, this embodiment is in the jury
20 notebook at page 29.

21 Now, all of these embodiments we've seen so
22 far, does every one of them enable somebody who's using
23 it to hold it with a single hand and then operate it in
24 a full 6 degrees of freedom regardless if it's a handle
25 on a ball or the ball.

1 A. Yes. You can operate any one of these embodiments
2 we've seen, or variations, with one hand; and your hand
3 is moving relative to -- and so is that single member
4 you're holding -- moving relative to the rest of the
5 pointing device, to the housing of the --

6 Q. So, then --

7 A. -- device.

8 Q. -- at this stage does the application indicate to
9 you that it's an idea that relates to a one-handed
10 operation device?

11 A. Right. We've seen a device that operates with one
12 hand and lets you put in a full 6 degrees of freedom
13 with that one hand.

14 Q. Okay. And that's exactly what the patent
15 application is telling us, too, right?

16 A. Right.

17 Q. Okay. And just to clarify, the figures are in the
18 jury notebook at page 64. The text is at page 29,
19 right?

20 A. Thank you. That's correct.

21 Q. Now, here's another one. Could you tell the jury
22 what that one is?

23 A. Yes. This is another variation or embodiment of
24 the invention. This one uses a different design. We'll
25 now see it looks more like a hockey puck maybe, a small

1 round, cylindrical object. And here it's called a
2 6-degree-of-freedom handle. And this is just showing
3 how it would replace or mount in a keyboard the same way
4 that the little ball-based 6-degree-of-freedom input
5 device did. This one is made with a different design
6 internally or a different way of building it, which
7 we'll look at in detail.

8 Q. I'm glad you mentioned that. I mean, Mr. Armstrong
9 disclosed many different ways to make -- did
10 Mr. Armstrong disclose many different ways to make this
11 particular one-hand 6-degree-of-freedom device in this
12 application that he refers to as the "warehouse
13 application"?

14 A. Yes. In his application he describes a lot of ways
15 of building this single input 6-degree-of-freedom
16 device, one with a ball and the sliding plates we saw.
17 We're going to see another variation here where all of
18 the sensors are activated by this kind of cylindrical
19 handle we hold. And we'll see a lot of variations in
20 how it's built internally, the internal parts of this.

21 Q. So, Mr. Armstrong then disclosed -- the application
22 is very thick, isn't it?

23 A. Yes.

24 Q. It's got a lot of stuff in it.

25 A. Yes.

1 Q. And in your view, all the stuff in it, does it
2 relate -- regardless of how many pieces and how many
3 figures are disclosed, do all of the things in it relate
4 to building one of these things -- regardless of whether
5 it's in a keyboard or a remote control or anything,
6 building one thing that has 6 degrees of freedom that
7 you can hold with one hand?

8 A. Yes. But I'm going to make -- because I've read
9 every picture in here --

10 Q. Please do.

11 A. And just to make it very clear, there are other
12 pictures and other sections in the application which
13 deal with some other ideas that are not related really
14 to this litigation at all. There are some ideas in
15 there for the internal structure of a pressure-sensing
16 switch and a couple of things like that that are not in
17 the claims of the invention at all and are not really
18 related to what we're talking about here.

19 So, we're not going to show those pictures
20 because they're an entirely different technology that's
21 not really involved in the things we're talking about
22 here.

23 Q. Okay. Now, in those other things that you're
24 talking about that you're not going to show the jury,
25 did any of them have in them a 6-degree-of-freedom

1 controller where it split the 6 degrees of freedom
2 between more than one handheld element?

3 A. No. No. And they are not at all related to this.
4 I'm saying they're very detailed designs for the inside
5 of a switch, for instance, things that aren't in here at
6 all.

7 Q. So, just to be clear, is there any disclosure
8 anywhere in the 1996 application of a
9 6-degree-of-freedom device where the 6 degrees of
10 freedom are split beyond having just input member?

11 A. No. The only disclosure is a single handle, a
12 single input member.

13 Q. Okay. Could you describe to the jury this one?
14 And I believe you also have an animation for this one.
15 But could you quickly just describe what the figure is
16 showing? It's a little bit of a strange format.

17 A. Sure. Let me take a minute to explain this drawing
18 and how -- talk about it a little bit just to get us
19 orientated.

20 This is the handle (indicating), the same
21 handle design. It's got a slightly different number
22 because there's two variations of that handle. This one
23 is 300. It is attached to a stock. And these parts
24 that are shown here (indicating), this is what's called
25 an "exploded drawing." It's as if you took the physical

1 object apart and just sort of lifted up the pieces and
2 they're floating in the air. The drawing shows each of
3 the pieces as if this thing was taken apart. So, it's
4 put --

5 Q. Let me ask you, then: It's kind of like an
6 assembly drawing where it's showing you how the pieces
7 fit together?

8 A. Right. And this was kind of complicated; so, I
9 would hope I didn't get a set of directions like that
10 with something I bought at the store. So, the arrows
11 are showing how these pieces go together vertically.
12 This is a vertical exploded diagram. These pieces are
13 just as if you'd pulled it apart vertically.

14 Q. Okay.

15 A. And you're seeing each of the pieces here lined up
16 in this figure. It is in your jury notebook at page 72.
17 And it shows a lot of the pieces, and that's so he can
18 explain how this works. In other words, for an engineer
19 looking at this, how does that thing come together and
20 work. And we'll see an animation of it and talk more
21 about how those pieces actually work together to make
22 this thing operate.

23 Q. Okay. Again, though, before we do that, is there a
24 single hand-operable element here that's movable in 6
25 degrees of freedom?

1 A. Yes, there is. And let me just give a little more
2 background on it. There is the handle (indicating) that
3 you operate with your hand. 317 is the top of the
4 housing or the case. So, all the parts under 317 are
5 inside of the keyboard or inside of the input device.
6 All of these parts that we see down here (indicating),
7 when they are assembled, are not in view of the person
8 that's holding the handle. They are inside.

9 Q. Okay. So, you can't touch any of the parts under
10 this Item 317 -- you can't actually touch with your hand
11 any of those parts when it's put together?

12 A. No, not when it's assembled in the case.

13 Q. So, just this one handle sticks out above the case
14 kind of like those keyboard examples that we saw
15 earlier?

16 A. Right. In that keyboard example we saw the
17 little -- it looks like that "hockey puck" shape, I call
18 it, sticking out of the top and underneath that --
19 that's the top surface of the keyboard (indicating).

20 Q. Okay. Thank you.

21 Did you prepare some type of an animation to
22 help the jury understand this embodiment?

23 A. Yes.

24 Q. And when I say "embodiment," I mean this example of
25 Mr. Armstrong's application.

1 A. Right. We're going to use those kind of terms a
2 lot. An embodiment, again, is an example; and this is
3 an animation that shows how those pieces come together
4 and how that idea works.

5 Q. And how it actually moves in 6 degrees of
6 freedom --

7 A. Right.

8 Q. -- and operates the various sensors?

9 Okay. Could we run that animation, please?

10 A. First, it's coming together. And then we'll see
11 how it moves once it's put together. Back and forth,
12 you can see the handle slides relative to the things;
13 and you'll see underneath some of these parts moving and
14 changing. And that's how it works. See? As you pull
15 it up and down, it activates that little sensor in there
16 as it goes up and down.

17 The turning part comes from the top. The
18 very top of that handle rocks back and forth relative to
19 the bottom so you can enter it -- and you can twist it
20 to get the yaw.

21 MR. PRESTA: Could we just run that one more
22 time, please?

23 A. Yeah. Let's look at that again. That's a little
24 hard to get in one viewing.

25 Back and forth, side to side, and up and

1 down. And then here, the tipping. And finally, yaw.

2 BY MR. PRESTA:

3 Q. Okay. So, is that thing right there what you
4 described earlier as a single handle that can be movable
5 in all 6 degrees of freedom?

6 A. Yes. That's the handle or the input member that
7 you grasp in your hand and move in all 6 degrees of
8 freedom.

9 Q. Okay. Now, Mr. Cawley had pointed out
10 Mr. Armstrong said, "Well, there's these other buttons
11 here; so, that's not one element moving 6 degrees of
12 freedom. There's three there. That supports a
13 three-element 6-degree-of-freedom device." Do you agree
14 with that?

15 A. No. No. Those buttons are buttons the same way we
16 have buttons on a mouse. And if you think about your
17 mouse, your mouse moves on a table in two axes; but the
18 buttons don't have anything to do with the motion. The
19 buttons are just a way to enter information into your
20 computer. And those buttons are moving around, but we
21 don't consider that the motion of the buttons has
22 anything to do with the motion of a mouse. And the same
23 way here. There are a couple of buttons shown that
24 actually, just like a mouse button, you might grasp them
25 with your fingers while you're using this device if you

1 want to click on something on the screen.

2 Q. Thank you.

3 Again, there's a few more figures.

4 Obviously, there's a lot of figures in this application.

5 Could you tell the jury what this next one is and --

6 A. Sure. This is another picture describing a
7 variation of the controller we just looked at. Again,
8 there is the handle, the single input member, 300. In
9 this case it's been shown that it could be a little bit
10 bigger and inside of there could be a motor to give
11 vibration. It still has the same general structure.
12 Here, 317, this thing here (indicating) shown with the
13 little diagonal lines, this is the top or the outside
14 surface.

15 Again, this is a kind of a drawing that
16 you're probably familiar with, people who are involved
17 with engineering; but what we're looking at here is
18 what's called a "section" or a "cross-view." This is
19 looking into this device kind of like we've cut through
20 it and we're holding it up and looking through it, like
21 a section through it. So, we're not looking down from
22 above or from an angle; but we're kind of looking right
23 into it.

24 So, now when we see this kind of hash line,
25 that means we're looking at the edge of something that's

1 been cut.

2 Q. Okay.

3 A. So, that would be like the top surface of a
4 keyboard. Imagine we've sawed through it and now we can
5 see all of these parts that are inside that are
6 underneath the top of it. The user's hand is out here
7 (indicating), holding onto that ball and moving it.

8 Q. Does this also show a single input member -- a
9 single handheld input member that is movable in
10 6 degrees of freedom?

11 A. Yes, it does. And the text, as we can see again at
12 page 13 in the application -- or in your juror notebook,
13 sorry --

14 Q. Okay.

15 A. -- is a 6-degree-of-freedom joystick-type
16 embodiment. And this is one of the figures describing
17 them. There's quite a few of them.

18 Q. So, because he had trackball-type embodiments and
19 he had joystick-type embodiments.

20 A. Right. We've seen the trackball-type; that is, the
21 ball. Now we're on the joystick-type. And I don't want
22 to confuse the joystick-type with the handle on the ball
23 because that's kind of -- we might call that two ways.
24 We might say, "Well, that's got a handle; so, it's a
25 joystick." But it's got a ball. So, he's treating it

1 as one of his ball -- trackball embodiments. And then
2 there's the joystick-type which just has the handle and
3 no ball.

4 Q. Okay. Let me take you to the next one. Actually,
5 did you have an animation for this one so the jury could
6 understand how it works?

7 A. Yes.

8 MR. PRESTA: Could we just run --

9 A. Well, again this is just a different view. Now
10 we're getting closer to that view inside, looking at it
11 from inside instead of from above. And here we can see
12 how the internal mechanism activates the sensors below
13 when it's moved back and forth.

14 The motion of the handle causes those sensors
15 to move inside and to be activated and to generate
16 signals.

17 BY MR. PRESTA:

18 Q. Okay. Now, that whole -- the whole item's moving
19 forward now. That's just to look at the inside, right?

20 A. Right.

21 Q. But that would normally be stationary. Now we'd be
22 looking inside it?

23 A. Right. This animation -- first we see it from the
24 outside to see what handle motion is happening. Then we
25 come down. We fly inside to see how the internal parts

1 are actually working in Mr. Armstrong's idea.

2 Q. And, again, is that a single handle that's moving
3 in 6 degrees of freedom? It could actually move in 6
4 degrees of freedom, right?

5 A. That's correct. That handle can move back and
6 forward, side to side, up and down, and then be twisted
7 or rocked in any angular sense at the very top.

8 Q. Okay. Now, these buttons we see again, do those
9 buttons in any way operate any of these sensors that
10 allow it to be going in 6 degrees of freedom?

11 A. No, they don't.

12 Q. Okay. So, these are actually sensors?

13 A. These are -- these little elements here are the
14 sensors that are being activated.

15 Q. And the idea is so they can sense when your single
16 hand moves in any one of those 6 degrees of freedom,
17 there is a sensor for each way, right?

18 A. That's correct, yes.

19 Q. Okay. Thank you. Again, this looks like a
20 previous one. I don't want to spend too much time if
21 there's nothing new that you think the jury can get from
22 it, but this is another one.

23 A. Yeah. I'll just kind of give a quick overview of
24 this one. Again, the handle, single input element, a
25 different design inside the handle, the way the rocking

1 switches are mounted. And down below, also there is
2 some different design. There is no rocker. There is a
3 piece here (indicating), kind of like a cam-shaped
4 piece. It's a different way of building the idea.

5 In other words, the fundamental idea here is
6 a single handle that's movable in 6 degrees of freedom;
7 and inside we're seeing different ways to actually make
8 that -- mechanically to make that happen; in other
9 words, the different levers and cams that make that idea
10 possible.

11 Q. Is it fair to say that the reason the invention is
12 so thick and has so much stuff, anytime -- I'm sorry.
13 Not the invention. Let me strike that.

14 The reason the 1996 application, with all of
15 Mr. Armstrong's ideas in it, is so thick is because he
16 showed so many different ways to build a single handle
17 6-degree-of-freedom device?

18 A. That's correct. There are a lot of different
19 designs shown on how you could implement it internally.

20 Q. But what's the common theme of every one of those
21 things?

22 A. They all have a single handle that you can move in
23 every direction and twist from left to right, forward
24 and backward. They have a single 6-degree-of-freedom
25 input element.

1 Q. Okay. Now here's another one, and I don't want to
2 spend that much time on it. This is another example,
3 isn't it?

4 A. It's just another variation. This one is more
5 compact. More of the sensing mechanism is in the
6 handle, less inside the case. That's just again a
7 slightly different way of building that same
8 functionality.

9 Q. Okay. So, again, the reason there's so much text
10 in the application and so many figures is because he's
11 showing all different kinds of ways in which he could
12 build this single-handle 6-degree-of-freedom device,
13 correct?

14 A. That's correct.

15 Q. Thank you.

16 Now, did you hear Mr. Armstrong's testimony
17 in this trial?

18 A. Yes, I did.

19 Q. And, in fact, when Mr. Gunther was cross-examining
20 Mr. Armstrong, did you hear this part of his testimony?

21 A. Yes, I did.

22 Q. Okay. And the testimony was relating to Figure 4
23 with the collet around it. It talks about maybe 6 as
24 well, which are really generally the same; also
25 Figure 9, where we had these buttons and this ball. And

1 he also talked about Figure 20 where we had what we've
2 just animated and showed you in that exploded view.

3 And what did Mr. Armstrong testify about
4 every one of those figures?

5 A. Well, he said: In every one of these embodiments,
6 there is a single input member operable in 6 degrees of
7 freedom?

8 He said: Yep.

9 Q. And that's true, right?

10 A. Yes.

11 Q. You understand that, right?

12 A. Yes.

13 Q. Is there no debate about that in your mind?

14 A. There is no debate about that.

15 Q. Okay. Now, Mr. Cawley pointed again to these

16 little buttons on the side (indicating) and got

17 Mr. Armstrong to testify that those were additional

18 inputs. Could you again explain why that's correct?

19 A. Well, they are not additional inputs that are
20 related to motion or the 6 degrees of freedom or
21 describe anything other than motion from a single
22 handle. They are just buttons, and the idea of button
23 has been known from way before this. They are just
24 buttons like the buttons on a mouse.

25 Q. So, Mr. Armstrong's testimony is a hundred percent

1 accurate, right?

2 A. His testimony there was correct, yes.

3 Q. But do you agree with Mr. Cawley's then later
4 representation about those?

5 A. No.

6 Q. Okay. Now, again, in fact, this is -- did you hear
7 Mr. Cawley's questioning of Mr. Armstrong?

8 A. Yes, I did.

9 Q. Okay. And he says: Okay. Now, what are those
10 things that we now can see much larger that are marked
11 376?

12 Do you see that?

13 A. Yes.

14 Q. And Mr. Armstrong said: Those are additional input
15 members.

16 Do you see that?

17 A. Yes.

18 Q. And then the answer again was: They're buttons on
19 the handle. They are additional input members.

20 See that?

21 A. I see what he said, yes.

22 Q. And then Mr. Cawley said: And did you actually
23 describe to the Patent Office in the text of your patent
24 those additional input members?

25 And Mr. Armstrong said: Yes, I did.

1 Now, does that testimony in any way indicate
2 that that handle that we were seeing is -- or these
3 buttons in any way contribute or take away from the fact
4 that that embodiment has a single input member that's
5 movable in 6 degrees of freedom?

6 A. They don't change it at all. All they say is that
7 they are buttons, that you can have buttons as part of
8 this invention.

9 Q. Kind of like the buttons on the keyboard that we
10 saw?

11 A. Right, like the buttons on the keyboard or the
12 buttons on a remote controller or the buttons on a
13 mouse.

14 Q. Do you think those buttons are at all relevant to
15 the analysis that we're doing here for the court and
16 that the jury is trying to decide?

17 A. They are not relevant to the analysis of the motion
18 or the number of input elements at all. No, they are
19 not relevant to that.

20 Q. Okay. Thank you.

21 Now, Mr. Cawley also put up this slide. This
22 is the slide that he used with Mr. Armstrong. And he
23 again was pointing to the buttons, and he highlighted --
24 this is his slide. He's highlighted (reading) while the
25 design has the button, externally operated for

1 additional input.

2 Do you see that?

3 A. Yep.

4 Q. Okay. Now, what Mr. Cawley didn't highlight is
5 this part (indicating). What is that part telling us?

6 A. Well, this is Mr. Armstrong explaining in his
7 application that the button is for additional input
8 other than the 6-degree-of-freedom input.

9 Q. Okay. So --

10 A. So, it's not being used for the 6-degree-of-freedom
11 input; it's just an "other" button for other purposes.

12 Q. So, would it be appropriate, then, for the jury to
13 take from Mr. Cawley's examination that, in fact, those
14 buttons assist with the 6-degree-of-freedom control of
15 the device?

16 A. No. That would be incorrect. They are completely
17 separate.

18 Q. Okay. And the application makes clear -- the 1996
19 application, at page 39, makes that perfectly clear that
20 Mr. Armstrong knew it --

21 A. Right.

22 Q. -- right?

23 A. Right. Right there in the application, it says
24 they are other than 6-degree-of-freedom input.

25 Q. But is that consistent with Mr. Cawley's

1 questioning of Mr. Armstrong?

2 A. I don't think so, no. It's inconsistent.

3 Q. Okay. So, Mr. Armstrong, we saw that he testified
4 that, in fact, the handle itself is movable in 6 degrees
5 of freedom, right?

6 A. Right. He testified that the handle was movable in
7 6 degrees of freedom, and he told the Patent Office in
8 1996 that those switches were for other than
9 6-degree-of-freedom input.

10 Q. Okay. Thank you.

11 Now, in fact, the buttons that Mr. Cawley was
12 pointing to are shown in this other figure that are just
13 shown as the very top of that one that we animated,
14 right?

15 A. That's correct. This is actually a slight
16 variation on the top.

17 Q. Just taking a look at the inside of the top of that
18 handle in a blown-up view, this is just that handle that
19 we were looking at?

20 A. Right. This is that hockey puck handle opened up
21 and showing the components inside of it.

22 Q. Okay. So, are these things on the outside there
23 really just comparable to keyboard buttons or buttons on
24 this calculator-looking thing or this TV remote control
25 thing?

1 A. Yes.

2 Q. Okay.

3 A. They're just buttons.

4 Q. All right. And even though these have buttons,
5 does it take away from the fact that there is a single
6 input member that's movable in 6 degrees of freedom?

7 A. No. It's -- the idea is the single input -- the
8 single 6-degree-of-freedom input member, not the idea
9 that we could put buttons on an input device or buttons
10 on a keyboard.

11 Q. Okay. Now, let me just ask you: So, you've been
12 through all the figures now, right?

13 A. Yes.

14 Q. All the figures that you thought were relevant for
15 the jury to see that actually showed a product instead
16 of just little pieces of the product?

17 A. Yes.

18 Q. And do you have, then, an opinion as to what a
19 common theme is in every figure in the application that
20 shows this type of a device?

21 A. Yes. The common theme is, very simply, that there
22 is a single hand-operated input member that provides you
23 a full 6 degrees of freedom -- forward and backward,
24 left to right, up and down, and rotation.

25 MR. PRESTA: Your Honor, with your

1 permission, I'd like to ask Mr. Dezmelyk to demonstrate
2 a couple of controllers in front of the jury.

3 THE COURT: All right.

4 MR. PRESTA: Thank you.

5 MR. CAWLEY: Your Honor, if I could lodge an
6 objection. I can't help but notice that three of the
7 items that apparently are about to be asked about are
8 Mr. Armstrong's prototypes, and there is nothing in this
9 expert's report about Mr. Armstrong's prototypes.

10 MR. PRESTA: Your Honor, they're in evidence
11 and they were demonstrated in trial and we identified
12 them as a demonstrative --

13 THE COURT: Overruled.

14 MR. PRESTA: Thank you.

15 BY MR. PRESTA:

16 Q. Thank you, Mr. Dezmelyk. I'd like to ask you first
17 to take a look at -- and do you recognize the -- just
18 the three -- were you here when Mr. Armstrong explained
19 some of his testimony related to those three?

20 A. Yes, I was.

21 Q. Okay. The first thing I'd like you to do is, for
22 example, take the one with the blue ball. Okay? And
23 did you hear Mr. Armstrong's testimony about that one?

24 A. Yes, I did.

25 Q. And that is Exhibit 428, Plaintiff's Exhibit 428.

1 Okay. I'd like you just to explain to the
2 jury: Is that an example, in your view, of a single
3 input member 6-degree-of-freedom device that you can
4 hold with a single hand and move in 6 degrees of
5 freedom?

6 A. Yes, it is.

7 Q. Could you demonstrate how that would be operated?

8 A. Sure. I would grasp the ball. I can move the ball
9 to the left, to the right, forward, backward, up and
10 down; and then I can twist the ball. You see it
11 rotating. And I can tip it forward and backward
12 (demonstrating). And that lets me grab this ball and
13 manipulate it in each of the directions -- forward and
14 backward, side to side, up and down, and then
15 rotationally I can turn it.

16 Q. Okay. Do you have rotation in all three -- pitch,
17 roll, and yaw?

18 A. Yes, I can.

19 Q. Okay.

20 A. I can pitch it forward, roll it side to side; or I
21 can twist it in yaw.

22 Q. So, is that a 6-degree-of-freedom single input
23 device?

24 A. Yes, it is.

25 Q. Is that consistent with some of the figures you've

1 seen in Mr. Armstrong's 1996 application that we've just
2 looked at?

3 A. Yes, it is.

4 THE COURT: Counsel, we're going to go ahead
5 and take a break.

6 Ladies and gentlemen, I'll ask you to be back
7 at quarter past. Again, please remember my instructions
8 not to discuss the case among yourselves.

9 (The jury exits the courtroom, 9:59 a.m.)

10 THE COURT: We'll be in recess until quarter
11 past.

12 (Recess, 10:00 a.m. to 10:15 a.m.)

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

15 THE COURT: Counsel.

16 MR. PRESTA: Thank you, your Honor.

17 BY MR. PRESTA:

18 Q. Again, Mr. Dezmelyk, if I could ask you to step
19 down, with the permission of the judge --

20 THE COURT: Sure.

21 BY MR. PRESTA:

22 Q. -- and pick up again the one with the -- the
23 microphone first. Thank you.

24 And if you could take the one with the blue
25 ball and put it over on that other side of the table

1 just so we can take a look at them one at a time,
2 please.

3 A. Certainly.

4 Q. Okay. Now, could you tell me, first, the exhibit
5 number, the plaintiff's exhibit number?

6 A. This is PX 428.

7 MR. PRESTA: Okay. And we ask that that be
8 admitted in evidence.

9 BY MR. PRESTA:

10 Q. Could we now just again just demonstrate how that
11 works?

12 A. Yes. There is a ball that's grasped with one hand
13 and this ball can be moved (demonstrating) in any of the
14 directions -- forward and backwards, side to side, up
15 and down, and then rotate, as well, twisted either which
16 way or turned forward and backward or side to side.

17 Q. Okay. Could I just get you to look at the screen
18 for just one second? And this is that figure you showed
19 us in the beginning that had the Ball 12. Are those the
20 motions that you were just describing to the jury that
21 Mr. Armstrong's prototype can do?

22 A. Yes.

23 Q. And let's just back up for a second. You heard the
24 testimony from Mr. Armstrong that this was one of his --
25 the controllers that he had developed and built himself,

1 right?

2 A. That's correct.

3 Q. Okay. Do you have an opinion on whether that's a
4 single input member 6-degree-of-freedom device?

5 A. Oh, yes. It's absolutely a single input member
6 6-degree-of-freedom device.

7 Q. So, in your view, does it appear to have a
8 relationship to all of the figures in the 1996
9 application that we had looked at?

10 A. Yes, it does.

11 Q. Okay. Could I then get you to maybe pull up the
12 one with the red ball and put it up there and first,
13 please, read off the exhibit number?

14 A. The exhibit number here is PX 426.

15 Q. Plaintiff's Exhibit 426.

16 MR. PRESTA: Again, we ask that that physical
17 exhibit be put into evidence.

18 BY MR. PRESTA:

19 Q. Could you now again explain to the jury how that
20 works? And I believe -- just be careful --

21 Mr. Armstrong explained that I think it's not in fully
22 working order now. But based on his testimony and your
23 understanding of it, could you explain how it works?

24 A. Right. I'm going to handle this kind of delicately
25 because it is an old piece of hardware.

1 There is again a ball that can be grasped
2 (demonstrating) and can be moved in different
3 directions. It does seem like it's a little fragile
4 inside, and I don't want to damage it. But it could be
5 moved up and down (demonstrating) and then side to side
6 and tipped.

7 Q. Again, is that a single handle movable in 6 degrees
8 of freedom?

9 A. Yes, it is.

10 Q. Okay. Is that again consistent with the drawings
11 that you saw and you reviewed with the jury in the 1996
12 application?

13 A. Yes, it is to the extent it's -- I don't want to
14 take it apart here. It seems kind of delicate. I don't
15 want to flip it over and look it up and start picking up
16 the pieces.

17 Q. Yes, please. I know that's probably an important
18 item of Mr. Armstrong's.

19 Could you now switch over to the other one
20 with the flat handle, please, the third one of
21 Mr. Armstrong's prototypes that he demonstrated to the
22 jury? Could you tell me the exhibit number on that one?

23 A. This is PX 425.

24 Q. Thank you.

25 MR. PRESTA: And we again ask that that

1 physical exhibit be put into evidence.

2 BY MR. PRESTA:

3 Q. Now -- okay. Now, again, could you demonstrate,
4 based on your understand of Mr. Armstrong's testimony,
5 as to what that thing does?

6 A. Yes. Again -- in this case I'm going to have to
7 hold the case because it doesn't have a bottom on the
8 case and I don't want to damage the internal parts by
9 moving it while it's sitting on the surface, but it
10 would normally, of course, like these devices, be in a
11 case.

12 The handle on top can move backwards and
13 forwards (demonstrating), side to side -- it seems like
14 it's sticking a little bit -- and up and down.

15 I'm having a little trouble with -- maybe --
16 this guy looks like he's stuck in the side to side
17 direction for some reason. I don't want to force it.

18 Q. Yeah. Please don't break it. But just explain
19 consistent with Mr. Armstrong's explanation of what it
20 was and, in particular, if you recall the dream he had
21 that he testified about when he came up with that.

22 A. Well, if we look at it here, if we turn it over, we
23 can see some of the same type of mechanical design or
24 elements that are described in the pictures. You can
25 see the rockers that rock back and forth as we move this

1 (demonstrating) in a vertical direction. You can see
2 one right here (indicating).

3 This example doesn't have the circuit card or
4 wiring yet installed, but it does have some of the parts
5 we saw that are the levers that move back and forth.
6 Again, as it goes up and down or, say, when I rotate
7 here (indicating) in the yaw direction, in this example,
8 I can see it actually moving the internal lever, like we
9 saw in the drawing.

10 Q. So, again, is that something that would be designed
11 to be operated by one hand but movable in 6 degrees of
12 freedom?

13 A. That's correct.

14 Q. In fact, does that -- does the design of that look
15 familiar to you relative to some of the figure that is
16 Mr. Armstrong -- that you showed in his 1996
17 application?

18 A. Yes. It's similar to the exploded view or this one
19 we're showing here, Figure 21. Not every mechanical
20 part is present in this prototype or design study, but
21 it shows some of the same elements that are located here
22 and in the same general design.

23 I don't know if we're going to be able to see
24 it well; but the cam, the shaft that does this rotating,
25 rocking (demonstrating) -- if we can see it when I --

1 I'm going to rotate the yaw handle. You will see inside
2 this part (indicating) if you look. You can see it. It
3 tips back and forth. That same element is present in
4 the drawing. It's right there in the middle.

5 Q. Which one do you want me to point to?

6 A. Right about where you are, just above where you
7 are.

8 Q. Right here (indicating)?

9 A. Right there, yes.

10 Q. Okay.

11 A. So, this is kind of a working study like many
12 engineers do for this type of thing where we build some
13 prototype and try it and then we make a more formal
14 design idea for the patent.

15 Q. And then --

16 MR. PRESTA: Could I go to Slide 16, please?

17 BY MR. PRESTA:

18 Q. Would it be your view that Mr. Armstrong's
19 prototype that you're looking at there could, for
20 example, correspond and be incorporated into the
21 keyboard that you showed earlier?

22 A. Yes. It could be this -- again, this is sort of a
23 study. But the idea is, yes, that this is similar to
24 the hockey puck top that we have in that one.

25 Q. Okay. Thank you.

1 Now, have you seen other single input member
2 6 degrees of things in the world?

3 A. Yes.

4 Q. Okay. Do you see another one there on the table?

5 A. There is one here. That's correct.

6 Q. Okay. Could you bring that one over now? And I
7 just want you to -- now, let's see. Could you just
8 describe -- that's not one of Mr. Armstrong's prototypes
9 that he demonstrated earlier, is it?

10 A. No, it's not.

11 Q. Okay. Could you just show the jury again how that
12 operates?

13 A. Sure. This device has a handle. It sits on the
14 table, has a handle. I can put my hand on it; and I can
15 move it forward and backward, side to side, up and down
16 (demonstrating). And then I can tip the upper part in
17 various directions. So, I can tip this forward; I can
18 tip it side to side; and I can twist it.

19 Q. Now, when you do each one of those movements, are
20 there sensors that are sensing that?

21 A. Yes, there are.

22 Q. Okay.

23 A. When I move it horizontally and back and forth,
24 there are sensors in the base in that position. There
25 are sensors in the vertical portion here that know when

1 I move it up and down, and there are sensors that detect
2 when it tips or when it rotates in the yaw direction.

3 Q. So, in your view, is that an example, then, of a
4 single input member 6-degree-of-freedom device?

5 A. Yes. This is an example of a 6-degree-of-freedom
6 single input device. It also has buttons on the top.

7 Q. Let me ask you -- so, it has buttons. Could you
8 describe -- does the buttons help contribute to the
9 6-degree-of-freedom movement?

10 A. No.

11 Q. Okay.

12 A. But they are useful and they are located -- their
13 location is here (indicating), where I put my fingers on
14 them if I was moving this element.

15 Q. Is that somewhat like buttons on a mouse?

16 A. Correct.

17 Q. Okay. Now, could you read the exhibit number off
18 of that, please?

19 A. Sure. This is Defendant's Exhibit 108.

20 MR. PRESTA: And we would ask that that
21 physical exhibit also be admitted into evidence.

22 BY MR. PRESTA:

23 Q. Thank you, Mr. Dezmelyk.

24 A. Thank you.

25 Q. You can take a seat again.

1 Now, what I'd like to do is -- now, I know
2 you just went through the figures in the 1996
3 application; and I know this is an important part of the
4 case. So, I also want you now to move on and tell us
5 what you did in the next part of your analysis in trying
6 to figure out what the idea was in the 1996 application.

7 A. Sure. The next step is we have to look, of course,
8 at the totality of the application. I've got to look
9 through it and understand the whole thing and find out
10 what the ideas are that are described there.

11 So, the next step -- we've looked at the
12 pictures, which is a good way to start; but we've really
13 got to go through the text and see what's actually
14 written there and what words are used to describe this
15 idea so we get a better idea in detail of what the
16 inventor had in mind when he filed that application.

17 Q. Okay. And did you do that?

18 A. Yes, I did.

19 Q. And you prepared some slides to help the jury
20 understand that analysis?

21 A. Yes, I did.

22 Q. Okay. And this is a slide introducing the fact
23 that you are now going to go through and look at the
24 written words in the application, right?

25 A. Right.

1 Q. As you just explained.

2 Okay. And this is in the jury notebook.

3 Again, at page 3 is where the application starts. Could
4 you tell the jury what this is telling us?

5 A. Sure. The first section that's normally included
6 in this type of thing, just to get us a little
7 orientation, is what's called an "abstract of the
8 disclosure." And that's kind of a fancy way of saying
9 "summary." And the idea here is you put kind of a
10 summary of your idea in a paragraph so the people that
11 are looking at the final patent can get a quick idea of
12 what it's about. It's not necessarily all of the
13 detail, but it gives just a quick idea.

14 Q. Okay. And what does it tell you?

15 A. Well, it explains here that we have a multiple-axes
16 controller comprised of a single input member operable
17 in 6 degrees of freedom relative to a reference member.
18 That's the housing. And it says the input member can be
19 of a continuously rotatable trackball-type or a limited
20 rotation joystick-type.

21 And there again he's sort of given the
22 overview that one of them is a trackball that you can
23 roll around as much as you want, and the other one is
24 like a joystick. It has some limited range of motion in
25 each of those degrees of freedom.

1 Q. Are those words consistent with what you saw in all
2 the figures?

3 A. Yes, they are.

4 Q. And what are the words, then, telling you?

5 A. Well, it tells us what the idea is; that is, the --
6 the idea is a single input member that you can operate
7 in 6 degrees of freedom; and it is explained that there
8 can be a couple of types of it, one that's built with a
9 ball and another one that is some joystick-type thing.

10 Q. Okay. And I'm going to turn now to page -- it
11 looks like it's written page 7. I note that there's two
12 different page numbers. Because you're understanding
13 that this came out of the Patent Office records, of the
14 U.S. Patent and Trademark Office?

15 A. Yes, that's correct.

16 Q. This is part of what's called the Patent Office
17 "file history"?

18 A. That's correct.

19 Q. You understand that?

20 And there's different page numbers that some
21 patent examiner maybe or the applicant put on there but
22 they've also been numbered in the jury notebook in the
23 bottom right-hand corner and this particular page is
24 page 9. So, I just don't want there to be any confusion
25 that there are multiple page numbers. They existed at

1 the Patent Office and the court renumbered them in the
2 jury notebook and this is page 9.

3 You agree with that, right?

4 A. Yeah, I agree with that.

5 Q. Okay. Thank you.

6 So, this next page states the summary of the
7 invention -- in a section titled "Summary of the
8 Invention." Can you tell the jury what this is
9 describing?

10 A. Well, the next step in one of these specifications
11 or disclosures is usually a section which is called
12 "Summary of the Invention" which describes again what
13 the invention is, now in a little more detail than the
14 abstract.

15 Q. Okay.

16 A. And here --

17 Q. Now, you understand, of course, that claims define
18 an invention, right?

19 A. Absolutely. The claims define the invention. They
20 define the scope. I think we saw in a video in the
21 beginning that they are like a fence around the edge and
22 says exactly where the boundary is but --

23 Q. And a patent application could have many ideas in
24 it, right?

25 A. Absolutely.

1 Q. Okay.

2 A. And they usually do.

3 Q. Okay. And many times those ideas are summarized in
4 the section of the application called "Summary," right?

5 A. Right.

6 Q. Okay. Could you go ahead and tell me what the
7 summary is telling us?

8 A. Well, it starts off -- in this section I've
9 highlighted about how it's -- (reading) the
10 controllers -- that's what he's talking about -- provide
11 structuring for 6 degrees of freedom physical input by
12 the hand on a hand-operable single input member.

13 So, he's saying, "I'm making a
14 6-degree-of-freedom single input member device."

15 Q. Okay. Now, here's another little bit of -- another
16 text that you wanted me to blow up.

17 A. Right.

18 Q. Can you tell me what this is saying?

19 A. Well, here he's explaining that the input member
20 can be a trackball or the input member can be any handle
21 fit to be manipulated by a human hand, such as a
22 joystick-type handle. But in either case -- no matter
23 what, in either case, the input member accepts 6 degrees
24 of freedom of hand input relative to the case.

25 Q. Okay. So, if I understand you, then, regardless if

1 it's a handle or a joystick, in either case there's
2 always an input member that accepts 6 degrees of freedom
3 of hand input.

4 A. Right.

5 Q. Okay. Here's another section of the application.
6 Could you tell me what this is describing?

7 A. Sure. This is now more description of the
8 invention, and Mr. Armstrong is writing to the Patent
9 Office and telling them what an object of the
10 invention -- or what are the things I'm trying to
11 achieve -- is to provide a 6-degree-of-freedom image
12 controller with a single input member that you can
13 operate with your hand relative to the case.

14 Q. Okay. Here's another one.

15 A. Here again, another object is again to provide a
16 6-degree-of-freedom controller with a single input
17 member.

18 Q. Is that again consistent with what you've seen in
19 the figures and the rest of the text?

20 A. Yes, it is.

21 Q. Okay. And here's three things that we've blown up.
22 Could you tell the jury what those are?

23 A. Right. Here he's describing some of the other
24 aspects of this 6-degree-of-freedom controller. He says
25 it's a 6 degree -- the object of the invention is to

1 provide an easy-to-use 6-degree-of-freedom controller,
2 which includes a single input member and then which has
3 some structures about how well it can be built
4 internally. And he goes on to other advantages of how
5 his particular design for a 6-degree-of-freedom
6 controller with a single input member can be built
7 effectively and is a good design for this kind of thing.

8 Q. Okay. And he repeats that idea three times on that
9 page?

10 A. Right.

11 Q. Okay. Now could you tell me what -- so, did you
12 hit what you believe are the most relevant parts of the
13 words in the application with --

14 A. Yes.

15 Q. -- those slides?

16 A. Yes.

17 Q. Now, there's a lot of other words, right?

18 A. Absolutely.

19 Q. Okay. Now, is there things in the other words
20 that, in fact, you felt would be important for the jury
21 to understand to get the scope of what this 1996
22 application covers?

23 A. Well, certainly because when you're filing a patent
24 application, you're trying to describe your invention;
25 but you also need to say what its boundaries are because

1 the Patent Office is going to be looking to see is it
2 something new.

3 So, it's very common to say not only what --
4 an inventor says what his idea is but also what it
5 isn't. And you do that by contrasting your idea that
6 you've described in the specification with other
7 people's ideas or other patents that have issued before.

8 Q. Okay. And did you look for that type of thing in
9 the 1996 application?

10 A. Yes, I did.

11 Q. And did you find anything?

12 A. Yes, I did.

13 Q. Okay. Could you tell the jury what this slide is?

14 A. Well, again, this is part of the application from
15 1996. It's in your juror notebook, page 7. And here
16 Mr. Armstrong is describing what's taught in another
17 patent. He says: Another prior art disclosure -- that
18 is, another patent. This one's the '919 patent to
19 Mr. Mingtai Chang.

20 Q. Let me stop you. So, you're saying that that is
21 part of Mr. Armstrong's application where he's
22 describing that came before him?

23 A. That's correct. Another idea that came before him
24 is described in another patent.

25 Q. Okay. And that patent was issued in March of --

1 A. In 1994. This is two years before this
2 application. Mr. Chang had received a patent for his
3 inventions which are described in the '919 patent.

4 Q. Okay. What does he say in that part of the
5 specification, on page 7 of the jury notebook, about --

6 A. Well, Mr. Armstrong --

7 Q. -- about the Chang -- the prior thing that existed
8 by Mr. Chang?

9 A. Well, he says: The Chang device is basically a
10 6-degree-of-freedom computer controller. That is, it is
11 a 6-degree-of-freedom controller like his.

12 Q. Okay. Now, let me just ask you just to clarify:
13 Did Mr. Armstrong invent the idea of 6 degrees of
14 freedom?

15 A. No. No. The idea fundamentally of 6 degrees of
16 freedom is just the way the world works. If we think
17 about just holding a beach ball in your hand, you can
18 toss the ball up and down. It can move in three
19 directions, and you can turn it in all those directions.
20 His ideas and inventions are related to a controller
21 that lets you move in 6 degrees of freedom and how to
22 build that controller internally, what are ways that you
23 can build that, and what are some of the components that
24 go into that.

25 Q. Okay. Mr. Chang, in fact, was before him; and you

1 testified that his -- Mr. Armstrong said that his device
2 was a 6-degree-of-freedom controller, right?

3 A. Right.

4 Q. Mr. Chang -- he's recognizing that Mr. Chang's
5 device that came before him is a 6-degree-of-freedom
6 controller, right?

7 A. Right. It's another 6-degree-of-freedom
8 controller, an earlier one.

9 Q. Could you tell me what the next section tells us?

10 A. Well, here --

11 Q. But again -- let me just stop. The purpose that
12 you're doing here, isn't it, is to try to understand
13 what the scope of that 1996 application is and what
14 Mr. Armstrong's idea was in 1996, right?

15 A. That's correct. We want to understand what was
16 Mr. Armstrong's idea back in 1996, what real idea did he
17 have in his head.

18 Q. Okay. And this is in a section where you said --
19 where he's telling the Patent Office what his invention
20 is not, right?

21 A. Right.

22 Q. Okay.

23 A. So, one way of understanding the idea back then is
24 what Mr. Armstrong wrote to the Patent Office to
25 describe it.

1 Q. Okay. And could you tell us what Mr. Armstrong
2 told the Patent Office that his invention was not?

3 A. Well, as he said, it's -- he says it doesn't -- the
4 lack of a hand-operable single member operable in 6
5 degrees of freedom has many disadvantages. He's saying
6 there's disadvantages if you don't have a single input
7 member. So, his invention -- he's separating his
8 invention from those that do not have a single input
9 member.

10 Q. Okay. So, he's criticizing Chang?

11 A. Right. He's criticizing Chang.

12 Q. Because he doesn't have a single input member?

13 A. Right.

14 Q. Okay.

15 This is on page 8 of the jury notebook,
16 further talking about Chang. Could you tell us what the
17 relevance of that is?

18 A. Well, Mr. Armstrong in this case comes out and says
19 flat out that the Chang controller does not have a
20 single input member that can be -- you know, such as a
21 ball or one handle which can be operated in 6 degrees of
22 freedom.

23 Q. And then --

24 A. Thus --

25 Q. What does he say about -- because Mr. Chang's

1 earlier product didn't have that, what does he tell the
2 Patent Office and the world in this application about
3 that?

4 A. Well, he says that it's a bad idea in the formal
5 way of saying it is functionally and structurally
6 deficient. He's criticizing Chang's design as the
7 earlier design, and he's going to use that to highlight
8 his improvement or what he's made that's newer or
9 different and better.

10 Q. Okay. Now, have you had a chance to look at the
11 Chang patent?

12 A. Yes, I have.

13 Q. Okay. Now, this patent -- this patent number in
14 Chang was referenced by Mr. Armstrong you just showed in
15 his patent application, right?

16 A. Right.

17 Q. And it is talked about on page 8 of his patent
18 application. And I'm going to ask you, if you could,
19 just to tell us what this is showing.

20 A. Well, this is the front page from Mr. Chang's
21 patent from 1994. It's the '919 patent, filed in 1992.

22 Q. Let me stop you there. The 1996 application was
23 obviously filed when?

24 A. In 1996.

25 Q. And this was filed actually in 1992?

1 A. '92, right.

2 Q. By a different inventor, by Mr. Chang, right?

3 A. Right, Mr. Chang.

4 Q. And -- from Harvard, I guess, right?

5 A. Well, he lives in Harvard, Massachusetts.

6 Q. Okay.

7 A. Small town in suburban --

8 Q. Okay. And this patent actually issued -- it was
9 filed in '92, but you'll agree with me that it issued in
10 1994?

11 A. That's correct. The process of examining that
12 patent took a while, but it was finally issued by the
13 Patent Office on March 29th of 1994.

14 Q. Okay. And that was two years, approximately,
15 before Mr. Armstrong filed his 1996 thing he calls the
16 "warehouse," right?

17 A. That's correct.

18 Q. Okay. Now, could you describe what this figure is
19 showing?

20 A. Sure. This is Figure 1 of Mr. Chang's patent and
21 he's describing a device that, as we can see, looks kind
22 of like a mouse. Here is the cord that goes to the
23 computer (indicating). It's got a ball (indicating) on
24 the top which can be rotated by your fingers; and that
25 ball is used to input the roll, the pitch, and the yaw

1 for this device.

2 It's got three buttons on the front
3 (indicating) like a mouse does just to enter things on
4 the screen.

5 And then it's got a little roller
6 (indicating) on the side. This is kind of like a knob
7 or a wheel that you rotate with your thumb. If you
8 imagine your hand holding that, if you were
9 right-handed, your thumb would be located right here
10 (indicating) and you could move that roller up and down.
11 That's used to get up and down in this particular
12 invention. In other words, if you want to enter a
13 change vertically, you put your thumb on that roller and
14 roll it up or roll it down. If you want to change your
15 orientation, you rotate the ball on the top if you want
16 to tip yourself one way or another.

17 Q. Is there a third element described in Chang that
18 together contributes to providing 6 degrees of freedom
19 of control?

20 A. Yes. The third element is underneath; and, in
21 fact, this is really a -- based on the design of a
22 mouse. So, the location, I mean, forward and backward
23 and side to side is just like a computer mouse. You
24 push this device back and forth on the tabletop like you
25 use a mouse.

1 Q. So, this design has three separate elements that
2 the user can manipulate with its hand to achieve 6
3 degrees of freedom?

4 A. That's right. It uses three separate items.

5 Q. Okay. And, in fact, there is another figure here.
6 Could you tell me what this is disclosing?

7 A. Sure. There's -- underneath is the ball
8 (indicating). At this period in time, mice were not yet
9 optical with the little red light we see today. They
10 had a ball back in that period in time. So, he's
11 showing that there is a mouse-type ball underneath that
12 rolls on the surface; and then there is, of course, the
13 trackball-type ball on top (indicating) that you tip it
14 with your fingers to move the angle.

15 And then there is this little roller on the
16 side (indicating) that I use my thumb to roll it up or
17 down; I change my position.

18 Q. Okay. Now, the -- a typical mouse -- I think you
19 explained earlier -- sits on a desk; and you can move it
20 in 2 degrees of freedom, right?

21 A. Right.

22 Q. Kind of like the checker that Mr. Cawley used in
23 the opening, right?

24 A. Right.

25 Q. A checkerboard, like a mouse you can move forward

1 and backwards and left and right.

2 A. Right.

3 Q. A checker or a mouse.

4 A. Right. A mouse moves on a flat surface forward and
5 backward, left --

6 Q. But you just explained that this device, though,
7 adds a ball on top to get some additional degrees of
8 freedom, right?

9 A. That's correct.

10 Q. And then it adds a ball on the side, as you just
11 testified, so you can go up and down with your finger so
12 you're moving physically in 6 degrees of freedom when
13 you're operating it, right?

14 A. Well, it adds a roller on the side to be accurate.

15 Q. Okay.

16 A. That's not a ball on the side. That's a little
17 roller or cylinder that rolls.

18 Q. Okay. Now --

19 A. So, your thumb would be moving up and down to move
20 that roller on the side; and your fingers would be
21 causing the upper ball to rotate in whatever direction
22 you wanted for rotation.

23 Q. Do any one of those elements -- the first, second,
24 or third in Chang -- provide a single handheld element
25 that gives you 6 degrees of freedom?

1 A. No.

2 Q. Okay. So, that's different than the things that
3 Mr. Armstrong had described in all of the figures that
4 we looked at in the text?

5 A. Right.

6 Q. Okay. Now, again, what did Mr. Armstrong say about
7 this three-input 6-degree-of-freedom device to the
8 Patent Office and to the world in his 1996 application?

9 A. Well, he just makes the point that it does not have
10 a single input member that can be operated in 6 degrees
11 of freedom; and, therefore, it's deficient. It's an old
12 design, and it's a bad design.

13 Q. So, when someone says something is functionally and
14 structurally deficient and that it's bad, what are they
15 telling you?

16 A. Well, they're really saying don't do it, that
17 mine's better, that's a better way, this is the old way.
18 I think people writing patent applications tend to want
19 to use kind of formal wording; so, you're saying it's
20 deficient or it's lacking. It doesn't have what it
21 needs on --

22 Q. So, is he saying anything about what his invention
23 is not here, to somebody like you who is skilled in this
24 art, in reading this application?

25 A. Well, precisely. He's saying, "I'm not claiming to

1 have invented these ideas. I'm separating my ideas that
2 I'm claiming from the earlier ideas; and I'm not trying
3 to claim the ideas, for instance, that Mr. Chang
4 invented."

5 Q. Okay. So, now I want to ask you -- now you've
6 looked at the words and you've looked at the figures and
7 you've looked at the entire 1996 application, right?

8 A. That's correct.

9 Q. Or you have personally.

10 A. Yes, I have.

11 Q. We haven't had a chance to look at every single
12 piece of it. But do you believe that you have now -- in
13 your review did you come to a conclusion as to somebody
14 skilled in the art, what they would understand
15 Mr. Armstrong's idea was in that 1996 application -- or
16 ideas, plural -- when he filed it in 1996?

17 A. Yes.

18 Q. And what is that?

19 A. Well, I think there's a couple of key things. One,
20 that there is a single input member movable in 6 degrees
21 of freedom and that it moves relative to the housing and
22 that it's not a multiple input member device.

23 Q. Okay. So, that's the scope of the 1996 application
24 of what his invention is.

25 And did you also understand what -- did he

1 clearly indicate what his invention was not?

2 A. Right. He disclaimed the ideas of Chang; that is,
3 the ideas of having multiple input members. He says
4 that what Chang has is deficient and it's not what he's
5 doing.

6 Q. Okay. So, then -- thank you.

7 Now -- so, you now have just described what
8 you believe the 1996 -- the scope of that application is
9 of Mr. Armstrong's. Now there's something else --
10 another process that you undertook. Could you tell the
11 jury what the next step in your analysis was?

12 A. Right. Well, first, we have to understand the
13 scope of the invention. And I'll make it clear that
14 it's the scope of the invention that's relevant to the
15 issues here. There may be other things that are not
16 related to us that are in that patent that are not
17 something we're going to talk about at all.

18 But the next step, once we understand in our
19 minds what the idea was that that inventor had, then we
20 want to look at the actual claims in this case and we
21 want to look at those claims that have been asserted and
22 we want to look and see is there support back in that
23 application, can we find information that shows us that
24 Mr. Armstrong had the idea as described by the claim
25 back in 1996.

1 Q. Okay. And before we do that, I had noticed
2 something -- and I want to ask you about it -- in the
3 specification of the 1996. So, I don't want to confuse
4 you. We're going to come and we're going to start the
5 scope of 2002.

6 MR. PRESTA: But I'd just like Kam, please,
7 if she would just put up a part of the specification
8 that we didn't show and I want to ask you if you would
9 describe what it means to the jury. And this is on
10 page -- because we're pulling it up live, I don't have
11 the -- page 13 of the jury notebook.

12 BY MR. PRESTA:

13 Q. And I would like to ask you to describe what this
14 paragraph is getting at in the application before we
15 move on because I want to see if it affects your
16 opinions.

17 A. Sure.

18 THE COURT: And just for the record, you're
19 talking about the original application, right?

20 MR. PRESTA: Yes, your Honor.

21 BY MR. PRESTA:

22 Q. We went back to the 1996 application. We're
23 getting ready to start an analysis of the 2002 claims,
24 but I'm going back to the 1996 application. I just --
25 there's one more thing I forgot to have you look at.

1 A. Sure. Let me take a second to dig into this text a
2 little bit and explain it.

3 Again, people that are writing patent
4 applications, you want to make a clear description. So,
5 in this section Mr. Armstrong is writing about how he's
6 going to use these terms. He's saying, "I'm going to
7 define the words or the terms 'joystick-type controller'
8 and 'trackball-type controller.'" And he's saying the
9 term "joystick-type controller" -- they both represent
10 two kinds of hand-operated input devices which both have
11 a hand-operable input member which is operated relative
12 to a reference member.

13 And the difference in the two controllers is
14 as follows: For a joystick-type controller, the handle
15 can be moved or operated in up to 6 degrees of freedom;
16 but, he's saying -- this is important -- the freedom of
17 the input member is only to go with a limited range.

18 So, what he's saying is that I can't
19 necessarily rotate that joystick all the way around in
20 pitch or yaw because the joystick handle hits the
21 surface, as opposed to a trackball. The input member of
22 a trackball-type device, since it's spherical, has an
23 unlimited amount of travel in rotation.

24 So, he's really explaining that if you make a
25 trackball and you want to input the angle of, you know,

1 roll or pitch, you can roll that thing as much as you
2 want. But if you have a joystick, you have a limitation
3 in the amount you can get in the angular directions
4 because you cannot tip the handle that far without it
5 running into mechanically the surface.

6 Q. Okay. And the very last sentence there, it covers
7 Figures 1 through 10 and 13 through 36, which -- the
8 figures that you put up, that covers all the figures
9 that you put up, right?

10 A. Right.

11 Q. Okay. And what is that last sentence telling us?

12 A. Well, it says a 6-degree-of-freedom trackball
13 embodiment is in the first set of pictures -- we saw
14 those -- and the 6-degree-of-freedom joystick-type
15 embodiments or examples are illustrated in the second
16 set of pictures, 13 to 36; and those are the ones we've
17 looked at.

18 Q. Okay. And you took that statement into account
19 when you formulated your opinion about the scope of the
20 1996 application?

21 A. Yes, I did.

22 Q. Okay. And, again, your opinion is as you stated it
23 to the jury?

24 A. Yes.

25 Q. Okay.

1 MR. PRESTA: Now if I could go back to the --

2 BY MR. PRESTA:

3 Q. Now I'd like to move away from the 1996 application
4 and move to a new topic. Okay? And the topic that I'd
5 like to ask you questions about has to do now with the
6 scope of the claims that Mr. Armstrong filed in 2002.

7 Do you understand that?

8 A. Yes.

9 Q. Okay. And you undertook a study of the scope of
10 those claims of 2002?

11 A. Yes, I did.

12 Q. Okay. And why are we doing this again? Just to
13 make sure the jury is following why you and I are going
14 through this process.

15 A. Okay. Well, the claims we're going to talk about
16 here are the claims that are at issue in this case.
17 We're going to go through the claims that have been
18 asserted, the particular claims that Nintendo has been
19 accused of infringing; and we're going to ask the
20 question for each of those claims and the invention it
21 describes, can we find support for that back in the
22 original application.

23 If we go back for each claim and look, can we
24 find the elements of that claim, the full description of
25 them of what that means -- can we find support for that

1 back in 1996?

2 Q. Okay. So --

3 A. So, we're going to take a claim at a time and now
4 go back -- now that we're a little bit familiar with the
5 specification -- then go back and see if we can find
6 support for it.

7 Q. Okay. So, this is the second step in the process,
8 right?

9 A. Right, second step.

10 Q. Okay. Now, we talk about independent claims 14,
11 16, and 19. Do you understand why we only need to look
12 at those three instead of also claims 22 and 23 that are
13 dependent?

14 A. Yes. The reason is a dependent claim includes the
15 independent claim it came from. To save space in
16 writing out these things, I guess, it is kind of a
17 tradition or part of the law that you can write one
18 claim; and then you can say another claim which adds
19 something to the first one. So, it would be claim 19
20 but something else.

21 So, if there is no support for the
22 independent claim 19 in the original application, there
23 can't be support for the other parts which include 19 as
24 part of their requirements.

25 Q. So, we're lucky, then, that that simplified our

1 process a little bit, right?

2 A. Right. For a written description analysis, it
3 simplifies the work we have to do a little bit.

4 Q. Right, because we don't have to look at all five of
5 the asserted claims; you can just look at these three.

6 A. Right. We don't have to look at the independent
7 claims.

8 Q. Okay. Now, I'm going to ask you first to look at
9 claim 19. Now, obviously claim 19 has a lot of words in
10 it. Very difficult to just sit here and look at it and
11 understand exactly what it means.

12 Have you undertaken a process of trying to
13 find a way to help the jury understand what this
14 claim -- what this -- oh, I see I have a -- let's
15 clarify something first. I have a very bad title on
16 this, in fact. This could be extremely confusing
17 because the title has a typographical error.

18 A. Let's fix that title.

19 Q. Let's fix that so there is no confusion.

20 THE COURT: You read my mind.

21 MR. PRESTA: Try to.

22 BY MR. PRESTA:

23 Q. Okay. Now, this is the claim that was issued from
24 the patent application that was filed in the year 2000
25 that was actually added by Mr. Armstrong in 2002. You

1 understand that, right?

2 A. That's correct.

3 Q. Okay. So, this is a claim -- and this is, in fact,
4 claim 19, which is the only claim in the case that the
5 Wii and the Wii Nunchuk are accused of infringing. Do
6 you understand that?

7 A. Yes, I do.

8 Q. And, in fact, the majority of the damages in this
9 case that Mr. Armstrong is claiming is based on this
10 claim, right?

11 A. Well, I heard testimony to that effect, yes.

12 Q. I'm sorry. You may not actually be aware of that,
13 but I'm representing to you that that's the case.

14 Now -- and, again, this is claim 19. It's in
15 the jury notebook under the "Claims" section. And it's
16 talking about being in the '700 patent because that's
17 the patent number, the last three numbers, that contain
18 the issued claims, right?

19 A. That's correct.

20 Q. Okay. So, now we're going to undertake the process
21 of trying to understand what this claim means, right?

22 A. Yes.

23 Q. Okay.

24 A. That's the first step. We've got to get an
25 understanding of what the claim means and what it

1 describes and its scope or -- we used that in the
2 picture you saw, the idea of a fence. We need to
3 understand where is that fence, what does that fence
4 define.

5 Q. Now, the fence you're talking about was in the
6 patent video that was played at the beginning of the
7 trial. The gentleman on there explained that a claim
8 was like a fence and it defines the scope of your rights
9 under the patent, right?

10 A. Exactly.

11 Q. So, we're going to undertake a process now to
12 determine, in your opinion, what the scope of claim 19
13 is. And have you done something to help make this
14 process a little bit easier?

15 A. Yes, I have.

16 Q. Okay. And I'd ask if you would explain for the
17 jury what that process is.

18 A. Okay. Well, there's a couple steps but just as a
19 little bit of background, we have to look for what's in
20 the actual claim, but it's going to be really cumbersome
21 if we have to drag that whole claim along with us all
22 the time. So, I have made some memory aids to help us
23 do that. And, also, we're going to look over what a
24 couple of important terms are defined by the court. So,
25 let's start off with that.

1 The first part of this claim says: A
2 hand-operated controller.

3 Q. Now, I just put up this definition. Could you tell
4 the jury what that is? And, in fact, it's found in the
5 "Definitions" section of the jury notebook.

6 A. This is the definition of the word "controller"
7 that the court has ruled is the appropriate definition
8 to use when we do this analysis.

9 Q. Okay. And you use this analysis when understanding
10 what the scope of the claim is, right?

11 A. Yes. I've used this analysis and this is the
12 analysis that -- I mean, this is the definition of the
13 word "controller" that we need to use here today.

14 Q. Okay.

15 A. And that's been used in my report.

16 Q. Could you briefly describe the definition?

17 A. Briefly, it says: A device held in the user's
18 hand -- and then it says -- that allows the hand or
19 finger inputs to be converted into electrical signals so
20 you can manipulate images -- and they're saying graphics
21 here -- on a display device.

22 And the final sentence just says that you can
23 see those images.

24 Q. Okay.

25 A. (Reading) Capable of being perceived as you can see

1 them.

2 Q. So, then, in your opinion, what does this next
3 slide represent?

4 A. Well, what I'm doing here is I'm making us a memory
5 aid. We have to compare the actual claim term. But
6 what I'm going to make for us is a picture we'll use in
7 our minds to remember that; that is, that it's a
8 controller. What I'm showing here just is an idea of a
9 controller that you operate with your hand, just that
10 idea. And that should remind us of that phrase "a
11 hand-operated controller."

12 Q. Okay. Now I put up the next part of claim 19 and
13 ask you what this is representing.

14 A. This section describes -- "comprising" is a word
15 that means "including" in patent terminology -- some
16 structure, something that allows the hand inputs
17 rotating a platform on two axes to be turned into some
18 signal or output by four unidirectional sensors.

19 Q. Okay. Have you given a -- what is this -- is this
20 designed to represent that claim language?

21 A. I've drawn just something schematically to indicate
22 we've got four sensors and we've got something that
23 makes them work.

24 Q. Okay.

25 A. It doesn't have to be -- we're not saying that it's

1 a particular thing, a particular way or design, but just
2 to remember that idea --

3 Q. Okay.

4 A. -- that we're going to be looking for something
5 that activates four sensors on two perpendicular axes.

6 Q. Let me ask you about the next part of claim 19.

7 A. The next phrase adds a "controller including a
8 tactile feedback means" -- "the controller including a
9 tactile feedback means." Here I'm just putting a
10 picture of a little vibration motor to remind us that
11 this claim has a section of text which says it includes
12 "a tactile feedback means" in it.

13 Q. Okay. And now --

14 A. Then we move forward.

15 Q. I'm turning to the next part of claim 19. And just
16 so the jury understands, you're starting from the
17 beginning of 19 and flowing right down the claim; but
18 we've cut out the pieces of text that define individual
19 elements, right?

20 A. Right. We're taking each individual element of
21 text from the claim and just making ourselves a little
22 reminder of what it is.

23 Q. Okay.

24 A. We're still comparing it against the actual text
25 from that claim. But just to make it easier to talk

1 about, we are making us a little reminder of what these
2 things are.

3 Q. Okay. And what is the next one?

4 A. The second element here -- this says: A second
5 element that you can move on two perpendicular axes and
6 that it activates two sensors. So, I've made a very
7 simple idea of some element -- we saw an example of a
8 joystick handle in the infringement case -- and that it
9 moves on these two axes. It doesn't say exactly how it
10 moves or what's the method inside or anything else, just
11 that we have something which meets that claim language
12 limitation. We need that reminder to carry with us.

13 Q. And is this something that you could have touched,
14 the platform, to activate those sensors?

15 A. Yes.

16 Q. And this is representing something like a
17 joystick-type thing that you can touch and move in this
18 direction (indicating) and in this direction?

19 A. Right.

20 Q. That's what you're trying to represent?

21 A. Yes, something you can touch to move in those
22 directions.

23 Q. Okay. And that these red lines (indicating) would
24 represent the two bi-directional proportional sensors?

25 A. Right. The indication here is that there's two

1 sensors -- we're showing that it's not a straight line.
2 The reason we put the curved lines in here is this claim
3 limitation by itself does not say whether that's moving
4 linearly or tipping angularly. So, we wanted to show,
5 in fact, it really could be either one but they have to
6 be perpendicular axes and there has to be some way to
7 make them operate.

8 Q. Okay. And then the next part had a third element,
9 which the language looks basically identical to the
10 second element except for the word "third."

11 A. Right. The language is identical except for the
12 "third"; so, we just made a second copy of that picture
13 to remind us there's two of them.

14 Q. Okay. And, now, what is the --

15 A. The last two sections in the claim language at the
16 bottom says a "plurality." A "plurality" is a word that
17 is, again, used in patent claims that means more than
18 one. So, I've only shown two buttons here; but there
19 could be more. It's just that this particular
20 requirement is that we have at least two.

21 And then each button has a sensor, a button
22 sensor. Well, I've just made a little blob underneath
23 to remind us of that. And that sensor has to be at
24 least capable of saying I'm on or off like a plain and
25 ordinary switch. It could do more, but at least it

1 has on/off.

2 Q. And is that the last --

3 A. Again, I just put a little note there to remind us.

4 Q. And is that the last part of claim 19?

5 A. That's the end of the claim language.

6 Q. Okay. So, then, in your opinion, does this
7 accurately represent an illustration that, in your view,
8 would be a helpful mental reminder of what the scope of
9 claim 19 in that 2002 application is?

10 A. Yes, it does. It's a reminder of what's in that --
11 those elements, and we've got a picture for each element
12 we can keep in mind as we go through.

13 Q. Could you just give us just a quick overview, then,
14 of what we're looking at?

15 A. Well, we've got a hand-operated controller, the
16 gray thing.

17 We've got the four unidirectional sensors
18 with a platform that can activate them on two axes.

19 We've got an input element that's movable on
20 these two perpendicular axes with sensors that activate
21 them. We've got a second copy of that for the third
22 element -- I'm sorry. I'm going in order on the
23 picture. We have the element for vibration, which in
24 the actual claim comes right after the first one. And
25 then at the very bottom we've got the buttons and the

1 sensors.

2 Q. And these particular buttons that claim 19 says had
3 to be on/off, right?

4 A. They had to at least be on/off.

5 Q. Understood.

6 A. They could be more, but they have to at least be an
7 on-and-off button.

8 Q. So, you think that's a fair representation of the
9 scope of claim 19 as you understand it and as it's being
10 asserted by Anascape against Nintendo?

11 A. Yes.

12 Q. Okay. Now, the next step -- I'm going to ask you
13 to do the next thing, which is really the most important
14 thing that you've been building up to, is -- we want to
15 take this 2002 scope of claim 19 that we've now
16 represented as a visual aid and I want you to -- have
17 you undertaken a study of going back to the 1996
18 application and done a comparison of the scope of the
19 claims that were filed by Mr. Armstrong in 2002 with the
20 application that was in 1996 to see if that invention
21 that's claimed in 1990 -- in 2002 can be -- is described
22 back in 1996 as Mr. Armstrong's idea? Have you
23 undertaken a study to do that?

24 A. Yes, I have.

25 Q. And do you have a conclusion that you could tell

1 the jury about that?

2 A. Yes. My conclusion is it is not supported in the
3 1996 application.

4 Q. Okay. Now, just briefly before I start, could you
5 just give the jury just a high-level reason why, in your
6 opinion, that it's not?

7 A. Sure. The simplest reason is there is no
8 disclosure, no evidence that I see that Mr. Armstrong
9 had the idea of three input elements, three separate
10 input elements, that you could touch with your hand back
11 in 1996.

12 Q. And it's these three input elements up here
13 (indicating) that would total up to 6 degrees of
14 freedom, right?

15 A. Right.

16 Q. Instead of having one single handle?

17 A. Right. That's correct.

18 Q. Okay. Now, let's take a look back; and you can
19 recall -- could you tell the jury what -- why you're
20 doing this comparison?

21 A. Sure. This is the first embodiment we saw with the
22 Trackball 12 (indicating) where we have a single ball.
23 It moves back and forth in X and Y and moves up and
24 down. There's only a single input element here. Even
25 if we look at the collet around it, the collet moves

1 with it and does not provide -- even if we consider that
2 separate, it does not give us a second element which can
3 input more -- anything different from the first one in
4 terms of its X and Y and so on.

5 Q. Okay. And even if that was a second one, would
6 that help us with respect to the scope of claim 19?

7 A. No, because the scope of claim 19, of course,
8 requires three input elements.

9 Q. Okay. Would that together provide 6 degrees of
10 freedom?

11 A. Right.

12 Q. Okay.

13 A. The three elements together have to provide 6
14 degrees of freedom.

15 Q. Okay. Now, in your drawing up here, no one of
16 those elements alone provides 6 degrees of freedom, does
17 it?

18 A. No.

19 Q. Okay. But the Ball 12, of course, as we saw
20 Mr. Armstrong describe repeatedly that his ball did do
21 of 6 degrees of freedom, correct?

22 A. That's correct.

23 Q. Okay. Now, take a look at the next figure back in
24 1996, this handle one. Does that describe the claim
25 that Mr. Armstrong wrote in 2002, back in 1996?

1 A. No. Again, because we've only got one input
2 member, one thing we're touching with our hand that we
3 can move.

4 Q. Okay. And how about this other figure, Figure 20,
5 the other embodiment?

6 A. Again, there's only -- I only see one input member;
7 whereas, the claim scope includes three.

8 Q. Okay. But -- wait a minute. Isn't there -- what
9 about these little buttons (indicating)? Can't they be
10 these other two things?

11 A. No. They do meet this claim limitation of the two
12 buttons right here (indicating). We have two on/off
13 buttons. So, in fact, we see the two on/off buttons and
14 this one handle; but we don't have the other handles we
15 need.

16 Q. Okay. Because these buttons right here
17 (indicating), they can't be moved in two separate axes
18 like the claim required, can they?

19 A. No, and they are not connected to bi-directional
20 proportional sensors or anything of the sort.

21 Q. Okay. So, the buttons up there (indicating) are
22 really -- you could say they correspond to these
23 buttons, but they don't correspond to any of the input
24 members that provide 6-degree-of-freedom control.

25 A. That's right.

1 Q. Okay. Now, how about this other one, quickly, in
2 1996? Did that one help -- did that one provide the
3 three-input 6-degree-of-freedom or not?

4 A. No, it does not. It doesn't provide three separate
5 input elements. It only has a single handle, a single
6 input element.

7 Q. Okay. And, again, when you compare it back to the
8 text -- this is just a brief summary of the text. Does
9 any of the text describe this invention -- does any of
10 the text from 1996, in Mr. Armstrong's 1996 application,
11 describe the claim that he filed in 2002?

12 A. No. I would use the term "support" maybe.

13 Q. Okay. Thank you.

14 A. In that in every instance he says there is a single
15 input member, but here this claim scope includes three.
16 And, so, there's nothing that indicates that he had the
17 idea of having three input members back here in '96
18 where every time he talks about it he says there is a
19 single input member.

20 Q. Okay. And what about Chang? Does Chang help you
21 understand what -- what he said about Chang -- whether,
22 in fact, this 2002 claim 19 was part of his idea of what
23 he considered to be the new thing he was filing his
24 patent on back in 1996?

25 A. Well, again let's look at Chang. If you recall,

1 Chang has three separate elements. And interestingly,
2 there are three elements here. They don't exactly meet
3 the requirements; but there's three elements at least,
4 three separate elements. And he says that the Chang
5 controller doesn't have a single input member; so, it's
6 deficient. It's not good, and it's a problem because it
7 lacks a hand-operable single input member. So, in fact,
8 when he says what his invention is not, he points to
9 three separate input members, which is exactly what we
10 have in the claim scope that's asserted here.

11 Q. So, these statements about Chang that Mr. Armstrong
12 is saying in 1996 are bad and don't do it and it's not
13 my invention, do those statements also apply to this
14 claim that he filed in 2002?

15 A. Right. The same logic that he says that there's
16 three separate elements back in 1996 and that's a bad
17 thing, that's not my idea, are present now in claim 19.

18 Q. Okay. Now, based on that, do you have an opinion
19 on whether, as somebody skilled in this area of
20 technology as you are, in reading the 1996 application
21 as a whole, that it supports this claim 19 that he later
22 filed in 2002?

23 A. No. There's no support in the 1996 application for
24 the full scope of claim 19 or claim 19 as it's been
25 asserted in this case.

1 Q. Okay. Is there any support for even having three
2 elements that together combine to provide 6 degrees of
3 freedom of control in his 1996 application?

4 A. No, not with independent handles and elements.

5 Q. But they are asserting that claim 19 is actually
6 that broad -- Anascape is -- aren't they?

7 A. That's correct.

8 Q. In fact, in order to prove infringement against
9 Nintendo, they need to say it's that broad, don't they?

10 A. That's correct.

11 Q. Now, just to further emphasize, for example, this
12 embodiment of Figure 20, I'd like to ask you
13 specifically if we can find support in this embodiment
14 for the scope of claim 19. And I'd ask you what this
15 illustration is showing that you helped create.

16 A. Okay. Well, the first thing is that within this
17 disclosure -- not in this particular drawing but in one
18 of the drawings associated with it -- it is shown that,
19 in fact, this handle (indicating) rocks back and forth,
20 that it can tip forward and backward and side to side
21 and it has the unidirectional sensors and there is a
22 description of that type of four unidirectional sensors
23 that can be rotated with a platform, that rotates on
24 them and activates them. And, so, that element is
25 present inside the handle.

1 Q. So, that particular piece of claim 19 is found in
2 the Figure 20. Is that what you're telling me?

3 A. That's correct.

4 Q. Okay. And, also, what about -- is there a motor as
5 Mr. Armstrong described, that you can have a vibration
6 feature in his single handle?

7 A. Yes. I think we saw another picture again showing
8 one of the variations of this design where the cap -- it
9 was kind of a rounded top, and inside there was room for
10 a motor for vibration.

11 Q. So, Mr. Armstrong --

12 A. So, that element also has been disclosed in a way
13 that Mr. Armstrong clearly had the idea of putting that
14 motor in the handle.

15 Q. So, again, the motor is actually something he did
16 describe in 1996, right?

17 A. That's correct.

18 Q. Okay. Now, he also -- his 1996 also supports these
19 on/off buttons, doesn't it?

20 A. That's correct. As we've talked about, there's two
21 little buttons shown here on the edge that you could put
22 your fingers over this hockey puck and squeeze on and
23 those buttons -- since the claim asks for more than one
24 button and two buttons certainly is more than one, those
25 two buttons there meet that claim limitation; so, that

1 part of it is present.

2 Q. So, so far, so good.

3 A. There's support for those three elements of the
4 claim.

5 Q. Okay. Now, where's the support in this figure for
6 this other input member that you could control in two
7 axes and a third input member that you could control in
8 two axes? Is that present in Figure 20?

9 A. No. Because there is no other element that you can
10 hold onto to move to do that. There is just no other
11 element.

12 Q. In fact, Mr. Armstrong said that that would be a
13 bad idea to do that in 1996 when he criticized Chang,
14 didn't he?

15 A. That's correct. He said it was a bad idea.

16 Q. So, there is no -- so, what we're looking for is
17 scope of the full -- of the invention of claim 19, the
18 entire thing, right? That's the test.

19 A. Right. It all has to be there. We need support to
20 show that Mr. Armstrong had the idea that he's now
21 asserting is the scope of this claim back in 1996.

22 Q. Okay. And what is your conclusion with respect to
23 at least this figure about whether there's support?

24 A. Well, the test for support is the entire -- my
25 understanding is the entire application. And there is

1 no support.

2 Q. Okay. Again -- this is that figure from 1996
3 that's put back together instead of being exploded and
4 you -- I just ask you if you would agree with me again
5 that there is support in this figure for the four
6 unidirectional sensors in the platform, right?

7 A. That's correct. You actually can see the platform,
8 and you can see the sensors in there.

9 Q. You can also see the motor.

10 A. Vibration motor. Yep. There's the vibration
11 motor. Goes there (indicating).

12 Q. Mr. Armstrong did have the idea for a platform and
13 the motor back then, right?

14 A. That's correct.

15 Q. But -- and he also -- we saw before that these
16 buttons could be somewhere on there, right?

17 A. That's right.

18 Q. But again, does this figure show these other two
19 input members that he now claims in 1992 [sic], in this
20 1996 drawing?

21 A. No. There are no other input members. And you can
22 see here is the top of the housing; so, there is nothing
23 else that you can touch when it's put together.

24 Q. Okay. In fact, having multiple input members, as
25 this claim requires, would -- would it conflict with his

1 1996 application?

2 A. Well, it certainly does. It's a contradiction of
3 what he's saying is the benefit or the value or even the
4 objective of his invention.

5 Q. Okay. So, now we're back to claim 19; and I just
6 want to be very careful here, Mr. Dezmelyk, because we
7 may -- you made this illustration of claim 19 but the
8 real test, of course, is -- as I believe you know and I
9 want you to understand is the test -- is that it's
10 really claim 19, the words.

11 And I'm going to ask you now: Do you have an
12 opinion as to whether claim 19 as described, the full
13 scope of that claim, that claim that's being asserted
14 against Nintendo in this case, of whether that claim is
15 supported back in the 1996 application?

16 A. Claim 19 is not supported back in the 1996
17 application.

18 Q. Okay.

19 THE COURT: All right. Counsel, we're going
20 to go ahead and take a break.

21 Ladies and gentlemen, I'll ask you to be back
22 at 11:30.

23 (The jury exits the courtroom, 11:12 a.m.)

24 THE COURT: We went through several rulings
25 earlier this morning. Let me be very clear on that

1 Chipworks one because no one from plaintiffs spoke. The
2 precise ruling there is I had not -- I don't believe I
3 have yet heard a predicate that would allow that use of
4 those documents. So, to just bring them in without the
5 proper predicate at this point is what I'm saying.

6 We're in recess now until half past.

7 MR. PRESTA: Thank you.

8 (Recess, 11:13 a.m. to 11:29 a.m.)

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

11 THE COURT: Counsel?

12 MR. PRESTA: Thank you, your Honor.

13 BY MR. PRESTA:

14 Q. Mr. Dezmelyk, before the break, you had given us an
15 opinion on whether, after studying the 1996 application
16 and the scope of claim 19 as filed in 2002 -- you had
17 given us an opinion on whether you think that 2002 claim
18 was supported back in the 1996 application. Again,
19 could you just repeat your opinion?

20 A. Yes. My opinion is that the limitations of claim
21 19 are not supported by the 1996 application.

22 Q. Okay. And what's your main reason for that?

23 A. Well, the primary reason is that there was a lack
24 of three input elements. The specification only
25 indicates that Mr. Armstrong had the idea of a single

1 input element in mind, not three separate input
2 elements.

3 Q. And you recall that Mr. Armstrong actually said not
4 to use three input members in the 1996 application,
5 right?

6 A. That's right.

7 Q. Okay. Now, could you just tell the jury again what
8 this timeline is representing?

9 A. Sure. This timeline shows us two things: One, the
10 initial application back in 1996 and then the claims
11 that we're analyzing which were submitted on July 15th
12 of 2002. And in order for those -- we have to find
13 support for those claims. We have to be able to show --
14 for those claims to be entitled to that date of
15 July 5th, 1996, we have to be able to show that that
16 specification describes the invention in such a way that
17 we know that the inventor had it in mind back then.

18 Q. And you have given us your opinion on that. And
19 does that slide accurately represent your opinion?

20 A. Yes, it does.

21 Q. Okay. That, in fact, that claim 19, of course --

22 A. For claim 19.

23 Q. And we've only done claim 19. As the court will
24 instruct the jury and you understand, that this is a
25 separate test for every one of the asserted claims.

1 A. That's correct.

2 Q. Just because claim 19 isn't supported doesn't mean
3 the other asserted claims like 14 and 16 are
4 automatically not supported, right?

5 A. Right. But to be clear, we only have to look here
6 at the independent claims because claim 19 has dependent
7 claims. And if the independent claim 19 is not
8 supported, then neither are the dependent claims that
9 depend from it.

10 Q. Okay. Now -- now that you've spoken about the
11 dependent claims, let's just take a quick look at those.
12 The dependent claims in this case that are asserted are
13 22 and 23. And 22 relies on claim 19 that you just said
14 wasn't supported and claim 23 relies on claim 22 that,
15 in turn, goes back to claim 19. So, does that -- do
16 you, then, have an opinion on whether either of those
17 two claims are supported by the 1996 application?

18 A. Neither claim 22 nor claim 23 are supported by the
19 application because claim 19, which they depend from and
20 require, is not supported.

21 Q. Okay. Now, again, claims 22 and 23, we try to put
22 jury notebook references whenever the jury might think
23 it's helpful to look at it.

24 Now, we have to do this test again,
25 unfortunately, for claim 16 and claim 14. But have you

1 found a -- I want to ask you again: Did you find a way
2 to go about this process with -- to help speed it along
3 a little bit but still be accurate?

4 A. Yes. I think we can use the same technique we used
5 before of creating for ourselves a little memory aid
6 that gives us a mental aid to remembering each of those
7 limitations in the claim.

8 Q. Okay. And have you done that here?

9 A. Yes, I have.

10 Q. Okay. Now, there are a lot of similarities between
11 claim 16 and claim 19, right?

12 A. Yes.

13 Q. So, is it your view that it's not really necessary
14 to go detail by detail to understand the scope of
15 claim 16 now that we've already done it for claim 19?
16 Is that your understanding?

17 A. Right. I understand that, and I think that we
18 probably can focus on the differences and then maybe
19 explain it that way as a good way of understanding what
20 this claim talks about.

21 Q. Okay.

22 A. I could just point out the ones that are the same,
23 also, if you like.

24 Q. Okay. It is important that the jury understands
25 the differences between claim 19 and claim 16 so that

1 they can have an understanding of the full scope of
2 claim 16. So, if you could tell the jury what that is,
3 I would appreciate it.

4 A. Sure. In claim 16 we have the first element like
5 we had before. The first thing we run into that's
6 different is a first sheet. And that I've symbolized
7 with this green -- suggesting kind of the idea of a
8 sheet.

9 And if we look into the claims, they will be
10 connected. So, for instance, it says for the first
11 element -- this is our unidirectional sensor. It says
12 that those sensors at least in part connected to a first
13 sheet.

14 So, again, we're not saying exactly how it's
15 done or trying to make it seem like that's all it
16 possibly could be; but that's just a reminder that
17 those -- that first element's connected to that -- at
18 least in part to the first sheet.

19 Q. Okay. I also see there is a sheet over here
20 (indicating). Is that another difference in this
21 claim --

22 A. That's right.

23 Q. -- comparing it to 19?

24 A. We've got another sheet over here. I've shown it
25 not on the same level, like a step down from the first

1 sheet. And that's because when we come down in the
2 middle of the claim, it says a second sheet and says
3 said first sheet -- in other words, the first sheet over
4 here -- located on a first plane and the second sheet
5 located on a second plane.

6 So, what that means is that they're not level
7 like -- you know, like they were level like a level
8 surface of a table. They're two different planes. Now,
9 I'm showing them just like a step; but they could be in
10 any orientation to each other. Each of these sheets --
11 there's two separate sheets. They are not parallel to
12 each other. They're not lying on a tabletop together in
13 a sense, you know, flat and exactly even; but they could
14 be different in other ways than the step I'm showing.
15 I'm just showing it that way so we can remember that
16 we've got the two sheets.

17 Q. Okay. Now, I also see that this now says
18 "proportional." It used to say on and off. Why is
19 that?

20 A. Well, if we look further down this claim 16,
21 there's two sections in here that talk about an
22 independent first button sensor and independent second
23 button sensor.

24 First, this is different from before. It
25 doesn't say a "plurality." It says there's actually two

1 buttons. So, I've just shown two buttons here. And
2 also it describes in the section about the button -- it
3 says an independent first button sensor. And the sensor
4 can be, in essence, proportional, capable of
5 transforming depression -- that is, pushing -- into a
6 proportional signal.

7 So, these sensors underneath the buttons are
8 not just on/off switches. They actually are
9 proportional. I think you heard the example of a gas
10 pedal being something you depress that is proportional.
11 In that case, of course, you depress it with your foot.
12 But this is a button that the harder you press on it,
13 you know, it changes. Maybe it does more; maybe it does
14 less. But it is related to the depression or the force
15 activating the button.

16 Q. So, let me ask you, then: Would it be fair to say
17 that the primary changes between claim 16 and claim 19
18 are really -- the only differences are that the buttons
19 are proportional rather than on/off.

20 A. That's correct.

21 Q. And there's now two sheets hooked up the way these
22 two sheets are, with each of the sheets being on a
23 different plane because that's what the claim says. Is
24 that fair?

25 A. Right. And we have the first and second element on

1 the first sheet; the third element is attached to the
2 second sheet.

3 Q. Okay. So, then, is your opinion that it is an
4 accurate representation of this claim language that this
5 illustration, just like we did with claim 19, is an
6 accurate illustration of claim 16?

7 A. Yes.

8 Q. And it would be fair to use this as a mental image
9 of claim 16 when we go back to compare with the 1996
10 application?

11 A. Yes. It's a good way to remember what the claim
12 terms mean; although, ultimately, we have to come back
13 and look at the exact claim wording.

14 Q. Okay.

15 A. But this is a good way to remember what that claim
16 wording is as we go through it.

17 Q. Okay. Now, did you go back with this claim like
18 you did with claim 19 -- did you go back with this
19 claim 16 and compare it to the 1996 patent application
20 that Mr. Armstrong filed to see if the scope of that
21 claim 16 that he filed in 2002 is supported or described
22 back in the 1996 application?

23 A. Yes, I did that analysis.

24 Q. And do you have an opinion about that that you
25 could share with the jury?

1 A. Yes, I do. There is not support in the written
2 description back in the 1996 application for this scope
3 and this claim as it's illustrated and as it's written
4 in the claim.

5 Q. Now, are the reasons similar to claim 19 as to why
6 there's no support?

7 A. Yes.

8 Q. And could you tell the jury what the primary reason
9 is that there is no support?

10 A. Well, the primary reason is is that there are -- in
11 this claim, claim 16, there are three independent input
12 elements; and we only have a single element disclosed in
13 the specification. There's no evidence to suggest that
14 Mr. Armstrong had this idea, the idea of three separate
15 elements, back in 1996.

16 Q. And those three separate elements being three
17 elements that combined provides 6 degrees of freedom of
18 control, right?

19 A. Right.

20 Q. Okay. Now, in fact, isn't that the opposite of
21 what he said his invention was in 1996?

22 A. Right.

23 Q. And why is that again?

24 A. Well, because he said it was a single element that
25 you could move in 6 degrees of freedom; but here, of

1 course, we've got three that can be moved independently.

2 Q. And these three are -- could be equated to the
3 Chang -- or could these three be compared to the Chang
4 reference that had three?

5 A. Right. This is very similar to Chang where there's
6 three separate input elements, each of which gives part
7 of that total 6 degrees of freedom.

8 Q. And was Mr. Armstrong saying that having three was
9 not his invention in the 1996 application?

10 A. Yes. He was saying three input members was
11 deficient, and a single input member was his idea.

12 Q. Okay. So, then, is it fair to say your opinion is
13 that the 1996 application does not support claim 16?

14 A. It is my opinion that claim 16 is not supported in
15 the 1996 application.

16 Q. Okay. Now, you actually did the analysis of using
17 the actual claim language, not just this visual aid,
18 right?

19 A. Yes, of course.

20 Q. But you still stand by the fact that in your
21 opinion the visual aid is an accurate and useful tool?

22 A. Yes.

23 Q. Now, that's claim 16; and, again, that claim 16 is
24 in the jury notebook in the "Claims" section, under
25 claim 16.

1 Now, there's one other claim, claim 14 in
2 this case, that -- as you know, we have to do this test
3 for every claim, every --

4 A. That's correct.

5 Q. -- independent claim, right? You've said that.

6 Now, did you do this same sort of analysis
7 with claim 14?

8 A. Yes, I did.

9 Q. Okay. And I see there is a visual of claim 14, an
10 illustration on the right. Can you tell the jury what
11 the differences are between claim 14 and claim 19 and
12 help the jury understand the scope of this claim as best
13 you can?

14 A. Sure. Let me take a moment just to go through this
15 claim.

16 It starts with the first element, which we
17 have up here, movable on two axes. It does not have the
18 vibration motor; so, there's no requirement in this
19 claimed invention for a vibration motor. It's just not
20 present.

21 It does have the independent first and second
22 button with proportional signal. So, we've continued to
23 have the two buttons, each of which has a proportional
24 sensor associated with it.

25 And in this case the sheet -- and it's way

1 down at the bottom, if I can point at that for the jury
2 (indicating) -- connected to at least eight of the
3 sensors. Now, I've shown the sheet here (indicating);
4 but the only test is that the sheet is connected to at
5 least eight of them. So -- but this is a reminder that
6 we have that sheet in place.

7 And then when we get into the sensor parts
8 here, this actual claim goes through a second, a third,
9 a fourth, and a first bi-directional proportional
10 sensor; and, in fact, it does not require them to be
11 arranged in this particular way of being on two axes.
12 But the scope of the claim that we've seen -- that's a
13 broader claim, yeah, in the wording. But the scope that
14 we've seen it's been alleged to infringe is this
15 configuration. So, whatever scope it is, it has to
16 include the configuration we see here of the two input
17 devices -- or two input handles that are movable on
18 these two -- at least two axes.

19 Q. And you see in claim 14 where you have to be --
20 where the claim language talks about that you input axes
21 of control to a game?

22 A. Right.

23 Q. And that's what you would use some of these --

24 A. To do that purpose.

25 Q. -- elements to do?

1 A. Right.

2 Q. Okay. Now -- so, then, is your opinion that that's
3 an accurate illustration of claim 14?

4 A. Yes, it is.

5 Q. Did you then do the same analysis of going back to
6 the 1996 application to see if the scope of claim 14, as
7 Mr. Armstrong wrote in 2002, was, in fact, supported by
8 the 1996 application?

9 A. Yes, I did.

10 Q. And do you have an opinion on that?

11 A. Yes. It's not supported.

12 Q. Okay. And could you just briefly tell us again
13 why?

14 A. Well, again --

15 Q. What's the easiest way?

16 A. Again, this claim -- it's full claim scope and the
17 scope that's being asserted in this case has three input
18 devices, three handles, three handles -- elements, I
19 should say, that you can manipulate. And as you
20 manipulate them, that is what's the scope of the claim.
21 But that's not described anywhere in the 1996
22 application. It was only the case of a single input
23 element that you manipulate with your hand.

24 Q. Okay. So, your opinion, then, as you just stated,
25 was that claim 14 was not supported back in 1996, right?

1 A. That's correct.

2 Q. Okay. Now, just to summarize, then, could you tell
3 the jury what this slide is representing?

4 A. Well, this is just a summary of the steps we've
5 gone through here for each of the different claims.

6 Q. And because we did it for claim 14, right?

7 A. Right. Claim 14 is not supported in the original
8 1996 application.

9 Q. And, again, it has those three input members,
10 right?

11 A. Right.

12 Q. Like Chang that Mr. Armstrong said was a bad idea
13 in 1996, right?

14 A. That's correct.

15 Q. And then we did it also for claim 16, right?

16 A. Yes.

17 Q. And the scope of claim 16 was a little different
18 than claim 14. You explained that, right?

19 A. Right.

20 Q. But what common thing it had still was these three
21 input members, didn't it?

22 A. That's correct.

23 Q. And those same three input members that
24 Mr. Armstrong said in 1996 was a bad idea, right?

25 A. That's correct.

1 Q. And was that consistent with your opinion?

2 A. Yes. My opinion is it is not supported in the 1996
3 application.

4 Q. Okay. And then we move on to claim 19. And you
5 did that same analysis, right?

6 A. Yes.

7 Q. And, in fact, because -- your opinion is that claim
8 19 is not supported. You stated that?

9 A. That's correct.

10 Q. And, again, your primary reason is what?

11 A. That there are three elements -- the claim scope
12 covers three separate input elements, but there is only
13 a disclosure of an invention or an idea which contains a
14 single input element.

15 Q. Now, you're talking about three input elements and
16 talking about a single input element. But is it true
17 that it's three input elements that achieve 6 degrees of
18 freedom of control versus a single input element that
19 does 6 degrees of freedom by itself?

20 A. That's correct.

21 Mr. Armstrong's invention, as he described
22 it, the ideas in the various embodiments he showed of
23 different aspects of that idea -- in other words, his
24 idea -- were all a single input member you held and
25 could move in 6 degrees of freedom. There's nothing in

1 that application that shows to me, as practitioner, that
2 he had the idea in his head of multiple joysticks or
3 input elements or handles that could be together
4 operated to get a 6-degree-of-freedom output.

5 Q. In fact, didn't he make it clear in 1996 that that
6 was a bad idea?

7 A. Right. That's Chang's idea.

8 Q. Right. And that that wasn't his invention?

9 A. Right.

10 Q. Now, I see that claim 22 is just filled in with
11 "not supported." I just want to make sure. Could you
12 just explain to the jury why you can fill those in
13 without creating one of these illustrations?

14 A. Yes. Because, as I mentioned before, for claim 22
15 and claim 23, they depend on or require all of the
16 limitations of claim 19. So, as soon as claim 19 is not
17 supported, it's not possible that 22 or 23 could be
18 supported because they need the support from 19.

19 Q. Okay. So, then, is it your opinion that none of
20 the claims that were filed by Mr. Armstrong in 2002 that
21 are being asserted against Nintendo in this case can
22 be -- can date back to the 1996 application?

23 A. That's correct. It's my opinion that there is no
24 support in the 1996 application for the claims that we
25 see that are asserted against Nintendo.

1 Q. Is there any question in your mind about that
2 opinion?

3 A. None whatsoever.

4 Q. And that statement is consistent with your opinion,
5 then?

6 A. Yes, it is.

7 Q. Now, could you explain what this timeline, then, is
8 representing?

9 A. Well, this timeline again shows us that this
10 application, in 1996, does not show that Mr. Armstrong
11 had the ideas in his claims in his possession. So,
12 therefore, he is not entitled to that date. He's only
13 entitled to a date where there is support for that --
14 for those claims.

15 Q. Now, if Mr. Armstrong can't get back to that date,
16 do you have an opinion on what that does to the claims
17 that he's asserted in this case?

18 A. Yes. Without the 1996 priority date, his claims
19 are invalid.

20 Q. And Mr. Armstrong actually admitted that here in
21 court, didn't he?

22 A. That's correct.

23 Q. Could you tell the jury -- refresh the jury -- did
24 you hear that testimony from Mr. Armstrong?

25 A. Yes, I did. This is testimony of Mr. Armstrong.

1 And the question is basically: And you agree, sir,
2 don't you, that if you can't get back to 1996, it would
3 have a very bad influence on the validity of your
4 patent?

5 And he said: Yes, sir.

6 Q. Okay. Did you also hear this aspect of
7 Mr. Armstrong's testimony?

8 A. Right. Again there is a question and answer here,
9 and I think it's -- the relevant part starts: You agree
10 with me that if you can't get a date of invention of
11 1996 for your 2002 claims, you agree with me that the
12 patent is invalid, right?

13 And Mr. Armstrong says that what he wrote in
14 2000 has to be supported in 1996.

15 And if they are not, then your patent is
16 invalid, correct?

17 Well, I guess, is what he says.

18 Q. Okay. And then did you also see this part of
19 Mr. Armstrong's trial testimony?

20 A. (Reading) It's critical that you get a 1996 date of
21 invention for the '700 patent claims?

22 And he says: Yes.

23 Q. Okay. Now, do you agree with Mr. Armstrong's
24 testimony?

25 A. It is essential. If he were to have a valid

1 patent, he would have to have a date of 1996 for the
2 priority date for it, yes.

3 Q. Okay. And could you tell the jury -- could you
4 explain this slide to the jury?

5 A. Sure. Again, this is a timeline showing the
6 sequence of events and showing that in April of 1998,
7 the Goto European patent application published; so,
8 there is a publication in April of 1998 describing this
9 controller.

10 Then there is -- in June of 1998, Sony
11 started selling their DualShock controller in the United
12 States.

13 In October of 2000 the DualShock 2 was
14 introduced. But it wasn't until November of 2000 that
15 Mr. Armstrong filed the application that led to the '700
16 patent and the claims -- the actual claims that talk
17 about three input 6-degree-of-freedom that we're talking
18 about in this case were not filed until July 15th of
19 2002.

20 Q. So, if Mr. Armstrong was not able to get back to
21 1996, as you've testified to, then he isn't first to
22 come up with these controller designs; is --

23 A. That's right.

24 Q. And when you're not first -- if you have a patent
25 and it turns out that you're not first, what happens?

1 A. Well, then your patent is invalid.

2 Q. Okay. And do you have an opinion of whether or not
3 the claims -- and actually, we should be a little bit
4 careful here so that the jury can understand --

5 A. Right. Let me correct that.

6 Q. The validity of claims are termed on a
7 claim-by-claim basis, right?

8 A. Yes. Let me correct that. It's very common for
9 those who work in this to talk kind of generally but
10 each claim stands alone in the patent. So, we only
11 invalidate the claims that we're considering here. The
12 patent has many claims, many of which are not related at
13 all to this matter. They are a completely different
14 thing. So, when we say that a patent is invalid -- when
15 I say it, I should say to correct that I'm saying that
16 the claims that we're talking about here are invalid.
17 The other claims in the patent, we're not even
18 considering, no.

19 Q. Okay. And you understand that as an attorney for
20 Nintendo, my only concern is with the claims that
21 Mr. Armstrong is asserting against my client, right?

22 A. That's correct.

23 Q. And those are the only claims that we have, in
24 fact, looked at for this analysis, right?

25 A. Right. That's correct. I am only considering

1 claims that are related to this matter.

2 Q. And we've looked at every claim now in this
3 analysis that is being asserted against my client
4 Nintendo?

5 A. That's correct.

6 Q. Now, I'd like you to -- unfortunately, we can't
7 just -- it's important that we go through the analysis
8 so the jury can understand why it is that your opinion
9 is that these things would be invalid and why
10 Mr. Armstrong agrees that they would be invalid and I
11 want you to help the jury understand that process. Have
12 you made some slides to do that?

13 A. Yes, I have.

14 Q. Okay. Now, could you just tell me what you mean by
15 that statement first?

16 A. Sure. I am using the same analysis in these claims
17 that Dr. Howe used when he talked about the infringement
18 because one way of -- we want to look and see, in
19 essence, would these same controllers be considered to
20 infringe. In other words, that's the test for
21 invalidity, if -- the particular test we're using for
22 invalidity. If that controller was made after the
23 patent, would it infringe the patent? Because something
24 that is made before the priority date of the patent
25 which would infringe the patent means that it has all

1 the limitations and, therefore, it invalidates that
2 claim because somebody else made the same invention
3 earlier.

4 Q. Okay. Now, let's first take a look at the -- it
5 says -- or could you please just tell the jury what that
6 is?

7 A. Sure. This is a copy of the cover sheet of an
8 application for a European patent. It's published,
9 which means that the European Patent Office publishes to
10 the public the application sometimes before they finish
11 processing them. This one has an international
12 publication number. The date here is 23-04-1998.
13 They're European; so, they don't write month, day, year.
14 They write day, month, year. So, it's the 23rd of
15 April, 1998.

16 And this is a patent application that was
17 filed by a Mr. Goto.

18 Q. And let me just point out that this is Defendant's
19 Exhibit 39.

20 Now, what is this?

21 A. Well, this is Figure 2 from the Goto application.
22 And it's showing his idea -- in other words, he's
23 describing now in his specification what his idea was.
24 And as you can see, it's a controller. It's like the
25 ones we've been talking about. It's got what we've been

1 calling a "cross-switch" up on the left. These are a
2 pair of (indicating) thumb-operated joysticks, and it's
3 got some buttons here on the right (indicating).
4 There's also buttons on the front. 17 and 18 are
5 buttons you activate with your fingers as you hold this
6 device.

7 The first element, here again, the
8 cross-switch; second element, the joystick; third
9 element, the joystick. And then, of course, the housing
10 and the buttons that we see.

11 Q. Okay. Now I'd like to ask you if you could tell
12 the jury what this is.

13 A. This is another piece of prior art. This is
14 from --

15 Q. And it came in June of 1998?

16 A. June of 1998. This is a PlayStation controller
17 sold with the Sony PlayStation game. It has, over on
18 the left here (indicating), a cross-switch. It has a
19 joystick you operate with normally your left thumb and
20 then another joystick for your right thumb and it has
21 some buttons here and also some buttons on the front.
22 You can see the "L" and "R." Those are the left and
23 right. There are some buttons on the front you can
24 activate with your fingers.

25 Q. And this is --

1 A. It also has a vibration motor inside the handle
2 here (indicating), and I think you've actually got
3 motors in both handles.

4 Q. Okay.

5 MR. PRESTA: And for the record, that's
6 Defendant's Exhibit 103, physical exhibit.

7 BY MR. PRESTA:

8 Q. Could you tell the jury what this slide is?

9 A. This is just a slide showing the controller and the
10 PlayStation user's manual. This is a Japanese copy that
11 has been, I believe, translated from 1998, a PlayStation
12 user's manual.

13 Q. And you've reviewed that document?

14 A. Yes, I have.

15 MR. PRESTA: And that's Defendant's
16 Exhibit 86.

17 BY MR. PRESTA:

18 Q. Could you now tell the jury what this third thing
19 is?

20 A. Sure. This is the Sony DualShock 2 controller.
21 It's kind of a newer version or an enhancement of the
22 controller we saw before. It's got some more features.
23 It's got again the first element, the cross-switch.
24 It's got the joystick. It has a vibration motor --
25 actually, a pair of them. It has another joystick over

1 here (indicating) and buttons.

2 And it has here (indicating), we'll see -- it
3 says "analog." This switch, when you turn it on,
4 enables buttons to be analog or proportional in nature.
5 So, these buttons become proportional buttons on that
6 device. And it is also sold for use with the
7 PlayStation.

8 Q. Okay. I just want to point out again --

9 MR. PRESTA: I have to apologize to the court
10 that I see that there is an error on the date in the
11 lower left-hand side. I'd like to see if we can fix
12 that real quick and clarify.

13 Thank you.

14 BY MR. PRESTA:

15 Q. Could you just tell the jury -- again it was
16 correct, I believe, in the upper right-hand corner; but
17 down here (indicating) I believe it had a different
18 date.

19 Could you just confirm of what your
20 understanding is of when, in fact, the Sony Dual Shock
21 controller was available to the public?

22 A. My understanding from testimony I've seen of Sony
23 employees was it was in October of 2000 when it was
24 available to the public in the United States.

25 Q. Did you read the testimony from Ms. Panico from

1 Sony that related to the dates of these products that
2 were introduced?

3 A. Yes, I did.

4 Q. Okay. And you will be hearing that testimony later
5 today.

6 MR. PRESTA: This is Defendant's Exhibit 105,
7 the Sony Dual Shock 2 controller.

8 BY MR. PRESTA:

9 Q. Now, could you tell the jury what this figure
10 represents?

11 A. Yes. This is -- I'm showing here representative
12 images of each of the three prior art references -- the
13 Goto application, the Sony Dual Shock controller itself,
14 and the Dual Shock 2 controller -- next to our
15 illustration of the features in claim 19; and we can see
16 that these features mapped together.

17 For instance, we've got the cross-switch, the
18 first element; the second element, the joystick shown
19 here; the second element to the second element on the
20 right.

21 The vibration motors are inside; so, we can't
22 really see them.

23 And then at least two buttons -- all of these
24 controllers have at least two buttons. You can see each
25 one has four on the front plus the ones that are located

1 on the other side.

2 Q. Can you see -- okay. Do the input elements that
3 provide 6 degrees of freedom of control have -- are
4 they -- they are common features between all of these
5 four items on the screen?

6 A. Sure. In each instance we have a unidirectional
7 set of sensors, four unidirectional set of sensors
8 activated by a rotating platform, the first element from
9 the claim.

10 We have a bi-directional proportional sensor
11 activated in two mutually perpendicular axes in each of
12 these controllers.

13 We have a second joystick, in essence, a
14 handle that activates a pair of bi-directional
15 proportional sensors in each of these cases, a third
16 element.

17 And then there are, of course, the on/off
18 buttons. And inside the cases is a vibration motor.

19 Q. Okay. Then, do you have an opinion on whether, for
20 example, the Goto patent discloses the same thing as
21 described in claim 19?

22 A. Yes, it does. The Goto patent application from
23 1998 discloses every limitation of claim 19 and
24 invalidates it as prior art.

25 Q. Okay. Now, what is your opinion with respect to

1 the Sony Dual Shock introduced in 1998?

2 A. The Sony Dual Shock controller from 1998, summer of
3 1998, meets every claim limitation of claim 19 and
4 invalidates claim 19 because it was already anticipated
5 or done -- that invention already exists in the Sony
6 Dual Shock controller.

7 Q. Now, the invention that Mr. Armstrong filed in
8 2002, is it your testimony that it already existed in
9 Sony's Dual Shock controller in 1998?

10 A. Right. That claimed invention of claim 19 exists
11 in the Sony Dual Shock controller in 1998.

12 Q. Does that highlight the reason that Mr. Armstrong
13 was trying to get back to 1996?

14 A. Yes.

15 Q. And why does it do that?

16 A. Well, because 1996 is before 1998.

17 Q. Okay. So, if Mr. Armstrong could go back to 1996,
18 then conceivably some of these could actually be
19 infringing controllers instead of invalidating
20 controllers?

21 A. That's correct.

22 Q. Now --

23 A. No, that's incorrect because I don't think -- the
24 patent didn't issue back then. Right?

25 Q. Okay. Thank you. That was kind of an unfair and

1 complicated question --

2 A. Yeah. You caught me on that one.

3 Q. -- which I would like to withdraw.

4 The Sony DualShock 2, could you tell us the
5 impact that that has on claim 19?

6 A. Well, again, the Sony DualShock 2 from October of
7 2000 has the elements, meets the claim limitations,
8 every limitation, of claim 19 of the '700 patent. So,
9 thereby, it shows that that claim is invalid by
10 anticipation.

11 Q. Okay. Now, do you need all three of those to
12 invalidate claim 19?

13 A. No. A single example is sufficient to invalidate a
14 claimed invention.

15 Q. Okay. Now, why do we have -- why do you have three
16 up there, then?

17 A. Well, there happened to be three.

18 Q. Okay. But any one of them would be sufficient to
19 invalidate, in your opinion?

20 A. That's right.

21 Q. Okay. Just to put this into perspective again,
22 could you give the jury just another overview of this
23 timeline?

24 MR. PRESTA: In fact, I'd like to go to
25 Slide 97 instead, which I believe would be more helpful.

1 BY MR. PRESTA:

2 Q. Could you put your testimony about these
3 controllers in perspective for the jury?

4 A. Sure. Again, if we look at the timeline of events
5 here, in April of 1998, the Goto patent application was
6 published. In June of 1998 Sony started selling the
7 Dual Shock controller in the United States. And in
8 October -- or on October 26th of 2000, the Sony
9 Dual Shock was sold in the United States.

10 Q. And when did Mr. Armstrong file his claims that
11 he's suing Nintendo on?

12 A. Not until July 15th of 2002.

13 Q. So, who was first -- Mr. Armstrong or this guy
14 Goto?

15 A. Goto, Mr. Goto.

16 Q. Who was first -- Mr. Armstrong or the guy who
17 invented the Dual Shock?

18 A. The guy who invented the Dual Shock.

19 Q. And who was first -- Mr. Armstrong in 2002, when he
20 filed his claims, or the Dual Shock 2?

21 A. The Dual Shock 2 is first.

22 Q. Okay. And what does that mean with respect to
23 the -- to your opinion with respect to claim 19?

24 A. Well, it establishes, as I've said before, claim 19
25 is invalid because it is anticipated. Every claim

1 limitation is met by prior art before Mr. Armstrong
2 filed his claims that cover his described or claimed
3 invention.

4 Q. Okay. Now, it's one thing to do that in a summary
5 fashion; but I'm going to -- did you prepare some
6 detailed reasons why you believe each one of those
7 controllers is identical to the claim that Mr. Armstrong
8 filed in 2002?

9 A. Yes, I did.

10 MR. PRESTA: Could I jump, please, to
11 Slide 108?

12 BY MR. PRESTA:

13 Q. Okay. Could you tell the jury what this chart is?

14 A. Sure. I've made a little chart here to kind of
15 show us the things we have to consider and give us a
16 guide as we work through it so we can keep track of
17 where we are in the process.

18 And I've indicated here on the left the
19 claims and then each of the pieces of prior art to
20 consider. The Dual Shock, Dual Shock 2 -- that looks like
21 a typo there; DX 105 is the Dual Shock 2 -- and then the
22 Goto EP '212 patent application.

23 MR. PRESTA: Okay. I'd like to, if we could,
24 please fix that title. I apologize for the typos in the
25 slides. If we could make the second column "Dual Shock

1 2. "

2 BY MR. PRESTA:

3 Q. Just to clarify it again, to make sure that that
4 typo hasn't caused you any confusion.

5 A. Sure. The columns here are first of the Dual Shock
6 controller, the Dual Shock 2 controller, and Mr. Goto's
7 EP '212 patents, European Patent '212.

8 Q. And you were talking about claim 19 a minute ago;
9 and you had indicated that claim 19 actually
10 anticipated -- was anticipated by each one of those
11 references, right?

12 A. That's correct.

13 Q. And what do you mean by the word "anticipated"?

14 A. Well, "anticipated" means that that prior art
15 existed before the date of the invention; and it meets
16 the claim limitations of the invention described in the
17 claim. So, it meets every single claim limitation; and
18 it was before the time that the invention happened.

19 Q. And is "anticipation" another term for invalidity?

20 A. Well, anticipation is the reason for invalidity.
21 That prior art that anticipates a claim invalidates that
22 claim.

23 Q. Okay. Now I'd like to have you walk through a
24 little bit.

25 MR. PRESTA: And, again, could we fix the

1 typo, please, on Dual Shock? It should be "Dual Shock 2"
2 at the top. And I apologize.

3 Defendant's Exhibit 105, for the record, is
4 Dual Shock 2, Defendant's Exhibit 103 is Dual Shock, and
5 Defendant's Exhibit 39 is the Goto European-published
6 patent application.

7 Thank you.

8 BY MR. PRESTA:

9 Q. Now, I'm going to ask you specifically about the
10 Dual Shock 2 and explain to the jury -- did you develop
11 some slides that would help the jury actually see all
12 the claim elements --

13 A. Yes, I did.

14 Q. -- inside of the Dual Shock 2?

15 A. Yes, I did.

16 Q. Because some of the elements actually require that
17 you look on the inside, right?

18 A. That's correct.

19 Q. So, to do a complete analysis, you would need to
20 look at the inside?

21 A. That's correct.

22 Q. Did you do that?

23 A. Yes, I did.

24 Q. You've actually taken all of these apart?

25 A. Yes, I have.

1 Q. Studied all the parts in them?

2 A. Yep.

3 Q. And compared them to each one of these claims?

4 A. Yes, I have.

5 Q. Okay. Did you take pictures along the way?

6 A. Yes.

7 Q. Okay. I'm going to ask if you could tell the jury
8 what this is.

9 A. Well, again, this is the Sony DualShock 2
10 controller from October, 2000. And the picture on the
11 lower left is what we see if we take the case apart.
12 You can still see here the handles of the two joysticks,
13 and you can see a plastic structure inside that holds
14 the pieces together. You can see on here these dark
15 dots (indicating), and again shown on the sheet to the
16 right are the sensors that are underneath those little
17 buttons.

18 And then if we look down on the lower left
19 here (indicating), you'll see a darker surface and some
20 shiny chrome parts. That's a motor. That's the offset
21 weight that makes it vibrate.

22 And again if we look on the right-hand side,
23 you've got a second motor over here (indicating) with a
24 weight that can also vibrate. So, there's actually two
25 vibration motors in here.

1 Q. Okay. Now, did you compare this Sony Dual Shock 2
2 controller to every element in claim 19?

3 A. Yes, I did.

4 Q. And, again, this is claim 19 from the 2000
5 application; and this is the Sony Dual Shock 2 that came
6 out earlier, right?

7 A. Right.

8 Q. Okay. And, again, you're using for this comparison
9 the scope of the claims as asserted by Anascape, right?

10 A. That's correct.

11 Q. Okay. Can you go ahead and tell me what this first
12 thing is?

13 A. Sure. The first element is structure allowing hand
14 inputs rotating a platform. You can see the little
15 plastic element, which makes the four buttons on the
16 left for the cross-switch, is that structure. It
17 rotates as you push the buttons down on the direction
18 pad.

19 Q. Is it kind of like a cross-switch?

20 A. It is a cross-switch.

21 Q. Okay. And it looks like it's four individual
22 buttons at the top; but when you open it up, it turns
23 out it's really a platform, right?

24 A. Right. It's one piece of plastic, with actually a
25 little pivot in the middle; and it tips back and forth

1 as you push the buttons down from above.

2 Q. Okay. So, that part of the claim element is found
3 in that piece of prior art, that earlier controller,
4 right?

5 A. Yes, it is.

6 Q. Okay. Could you --

7 A. The sensors --

8 Q. Go ahead. Thank you.

9 A. The sensors underneath there, there's four of them.
10 They are these spots on this sheet (indicating) of
11 circuit board material that are pressed upon by the
12 bottom side of a -- sort of a rubber density sheet in
13 there that activates them when they are activated from
14 the handle on top.

15 Q. Okay. And just to be --

16 A. Those are the sensors, put simply.

17 Q. Just to be clear, you've labeled these 1, 2, 3, and
18 4, right?

19 A. Right. There's four of them.

20 Q. And does that correspond to these four sensors that
21 the claim says it has to have?

22 A. Right. They are the four unidirectional sensors.

23 Q. And that's like the sensors under the cross-switch?

24 A. Exactly.

25 Q. Okay. Now, can you tell the jury what the next

1 part of this claim is and whether it's present in
2 that --

3 A. It's the vibration motor. Here we can see the
4 motor, the wires that drive it, and then the offset
5 weight that spins around when it's making vibration.

6 Q. Okay. And how about the next -- the next part of
7 the element?

8 A. Well, here we have the handle which is the second
9 element. It can be moved on two mutually perpendicular
10 axes because you can tip it forwards and backwards or
11 left and right.

12 Q. Okay. So, this is that structure -- a second
13 element that's movable in two mutually perpendicular
14 axes. That's that thumbstick you --

15 A. That's the handle.

16 Q. -- can put your thumb on it and you can move it.
17 Right?

18 Were you here when I demonstrated that under
19 the camera and showed that the things could move?

20 A. Yes, I was here for that demo.

21 Q. Okay. Could we take a look at the next piece?

22 A. Here, the next elements underneath are the two
23 potentiometers, the two bi-directional proportional
24 sensors that are activated by that handle. As you rock
25 the handle back and forth, it rotates the insides of the

1 potentiometers and generates a signal that's
2 proportional to the tipping of the handle as they rotate
3 those potentiometers.

4 Q. Okay. And that is aesthetically found inside the
5 Sony --

6 A. Yes.

7 Q. -- DualShock 2 controller?

8 A. That's from inside.

9 Q. And that's a very common joystick structure that,
10 in fact, we've seen in this case before, isn't it?

11 A. Yes, it is.

12 Q. And do you recall, you know, whether, when
13 Mr. Armstrong was drafting this part of claim 19 --
14 whether he had one of those joysticks in front of him?

15 A. Well, I heard testimony that he was familiar with
16 these devices here about that, yes.

17 Q. Okay. Thanks.

18 Now, the next part of the claim?

19 A. This is the third element.

20 Q. Let me ask you about the third element. Is it
21 really identical to the second element except for the
22 words "second" and "third" --

23 A. Yes, it is.

24 Q. -- in the claim language?

25 A. Yes, it is.

1 Q. Okay. So, you're looking for a second one of those
2 joysticks?

3 A. Right.

4 Q. And did you find one in the Sony DualShock 2?

5 A. Yep. There's two joysticks. The second one is
6 exactly the same as the first one.

7 Q. Okay. So, in the DualShock 2, under Anascape's
8 view of the claim, does that thing have three elements
9 that together provide 6 degrees of freedom?

10 A. Yes, it does.

11 Q. Okay. And that was before Mr. Armstrong's 2002
12 claims on the claim 19, right?

13 A. Yes.

14 Q. And could you tell us what the next part is?

15 A. Well, the buttons on the top. The claim limitation
16 says a plurality of buttons. There's a group of them
17 here, four up on top, which is, of course, a plurality.

18 Q. Okay. Does it meet the rest of the claim element?

19 A. Yes, it does because underneath are the button
20 sensors which detect that actual actuation of the
21 button, the electronic circuit that senses the button
22 being pressed.

23 Q. So, then, could you tell me if you believe that
24 claim is identically -- the claim that Mr. Armstrong
25 filed in 2002 is identical to the product that was out

1 on the market well before he filed it?

2 A. Yes.

3 Q. And is it your opinion, then, that that claim is
4 invalid?

5 A. That claim is invalidated because this Sony
6 controller has every limitation of that claim in it.

7 Q. And it was earlier than --

8 A. And it's earlier than the effective date of that
9 claim.

10 THE COURT: All right. Counsel, we're going
11 to break for lunch.

12 Ladies and gentlemen, I'll ask you to be back
13 here at 1:30.

14 (The jury exits the courtroom, 12:13 p.m.)

15 THE COURT: We'll be in recess until 1:30.

16 (Recess, 12:13 p.m. to 1:28 p.m.)

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

19 THE COURT: Counsel, go ahead.

20 MR. PRESTA: Thank you, your Honor.

21 May I approach to hand the witness an
22 exhibit?

23 THE COURT: You may.

24 BY MR. PRESTA:

25 Q. Good afternoon, Mr. Dezmelyk.

1 A. Good afternoon.

2 Q. I just handed you a couple of exhibits, and I would
3 ask you if you could just -- first, do you recognize
4 them?

5 A. Yes.

6 Q. Could you just hold them up one at a time, grab
7 either one of them first and tell me what exhibit number
8 it is? There's two exhibit numbers on there. One is
9 from a deposition, and one is from the trial. If you
10 could just tell me the trial exhibit number.

11 A. Sure. This is Defendant's Exhibit 103. It's a
12 Sony Dual Shock controller.

13 Q. Okay. Is that one of the controllers that you, in
14 fact, were talking about before lunch?

15 A. Yes, it is.

16 Q. Could you just briefly hold that up to the jury and
17 just show them what it is?

18 A. Sure. This is the Sony controller, the joysticks
19 (indicating), the direction pad. The rumble motors are
20 in the handle, and the buttons on the front surface.

21 Q. Okay. You had also shown some of the inside of the
22 Dual Shock. You had opened that up; and some of the
23 images you saw were on the inside, right?

24 A. That's correct. You can open the cases up and look
25 at the inside parts.

1 Q. And that's Defendant's Exhibit 104, the opened-up
2 Sony controller.

3 Could I get you to lift up the other and tell
4 the jury the exhibit number and show it to them, please?

5 A. Sure. This is -- it's got a long cord. It is
6 Defendant's Exhibit 105. This is the Sony DualShock 2
7 controller.

8 Q. And you had also shown the -- go ahead. I'm sorry.

9 A. This controller, again you can see it has the
10 direction pad (indicating) and the first and second
11 joystick, the buttons on the right; and again inside it
12 has the rumble motors.

13 Q. And defendant's exhibit -- or the inside that you
14 showed the pictures of is 106, Defendant's Exhibit 106.
15 Thank you.

16 And those correspond to the controllers that
17 you, in fact, indicated before lunch invalidated claim
18 19?

19 A. That's correct.

20 Q. Thank you.

21 MR. PRESTA: If I could start the
22 presentation again, please.

23 BY MR. PRESTA:

24 Q. Now, before lunch, we had gotten to DualShock 2
25 anticipating claim 19 and you had concluded that and we

1 went through looking in detail at all of the inside of
2 the parts. Now I would like to move on to the Dual Shock
3 and compare it to claim 19. But because they are very
4 similar, I'm going to try, if we can, to do it in a
5 little bit of a summary fashion like Mr. Cawley did with
6 Professor Howe. Okay?

7 A. Sure.

8 Q. Take a look at the next slide, please, which is --
9 first of all, is it your position that the Dual Shock
10 also anticipates claim 19? I think you testified to
11 that.

12 A. Yes, it is. It's anticipated.

13 Q. Okay. Now can you tell the jury what we're showing
14 here, please?

15 A. Yes. Again we're showing claim 19, here
16 highlighted to show that we've met the requirements in a
17 single piece of prior art, the Sony Dual Shock controller
18 and again, just to go through them quickly, it has the
19 first element, the two joysticks; the second and third
20 element, the plurality of finger-depressible buttons
21 with air sensors; and it has the vibration means, the
22 two motors we see when we open the case.

23 Q. Okay. So, is there any reason to have to go
24 through the detail; or can you actually make a
25 conclusion regarding infringement based on what you can

1 see on the screen?

2 A. Well, I have gone through the detail; but yes, I
3 can also make a conclusion based on what I know and what
4 I've seen on the screen and what we've all seen in front
5 of us here that this meets every claim limitation of
6 claim 19.

7 Q. Okay. So, in your view, then, claim 19 is also
8 anticipated by Dual Shock?

9 A. Yes, it is.

10 Q. I'd also take a quick look at the Goto
11 European-published patent and ask you questions about
12 that. Okay?

13 Could you tell the jury what this slide
14 shows?

15 A. Sure. This is the first figure from the Goto
16 published patent application; and, again, it's showing
17 the elements. We have the first element here of the
18 four cross-switch buttons and their sensors; the
19 vibration sources are disclosed in the patent; there is
20 a drawing showing them in the handles; and then the
21 second element, the third element, and the plurality of
22 finger buttons here. Each of the claim limitations is
23 present and disclosed in the Goto '212 application.

24 Q. Okay. And that was a published -- actually a
25 publication, right?

1 A. It's a publication because it's -- in Europe the
2 patent applications are published.

3 Q. Okay. So -- and that is Defendant's Exhibit 39,
4 the Goto EP publication.

5 Then, is it your opinion that 19 is also
6 anticipated by the Goto?

7 A. Yes, it is.

8 Q. Okay. And that's what this chart is representing?

9 A. That's correct.

10 Q. Now, again, your idea of anticipation is based on
11 the plaintiff's scope of the claims that they are
12 asserting in the case, right?

13 A. That's correct.

14 Q. Now, I'd also like you to take a look at claims 22
15 and 23, which are the dependent claims. Could you tell
16 the jury just briefly what that slide is showing?

17 A. Certainly. The dependent claims add an additional
18 limitation. In the case of 22, it says the
19 hand-operated controller where the button input sensor
20 outputs data that is proportionate to the depression of
21 one of the buttons.

22 And here we have the DualShock 2 has
23 proportional buttons so, certainly it meets that claim
24 limitation where it outputs data that is proportionate
25 to the depression of one of the buttons.

1 Q. So, does the Dual Shock show that identical feature?

2 A. It has that identical feature and anticipates
3 claim 22.

4 Q. Okay. And how about claim 23?

5 A. For claim 23, again, the requirement here of the
6 claim limitation is where the bi-directional
7 proportional sensors are rotary potentiometers. Each of
8 Element 1 and Element 2 has rotary potentiometers
9 activated by the handle and, so, it meets the
10 requirements of claim 23 and, therefore, that claim is
11 anticipated by the Sony Dual Shock 2 controller or the
12 Dual Shock -- it's a Dual Shock 2 controller.

13 Q. And is that because the Dual Shock 2 identically
14 discloses what Mr. Armstrong claimed in both of those
15 claims?

16 A. Well, it's the Dual Shock 2 because --

17 Q. Yes.

18 A. -- claim 22 requires the Dual Shock 2 and the Sony
19 Dual Shock controller -- this photo -- the caption says
20 Dual Shock controller interior. Dual Shock controller and
21 controller 2 both have identical potentiometer-activated
22 joysticks.

23 Q. Okay. Thank you.

24 So, now I'd like you to take a look at claim
25 14 and compare it to the Dual Shock 2. And we've already

1 seen the inside of the DualShock 2; so, I again ask you
2 if there is a way to explain in a bit of a summary
3 fashion so we don't have to take the jury through all
4 the details of all of the things they've already seen --

5 A. Sure.

6 Q. -- with respect to claim 19.

7 A. Well, again, if we look at the elements quickly for
8 the DualShock 2, we have the group of sensors, the
9 cross-switch. We have -- here we're looking for a
10 first, a second, a third, and a fourth bi-directional
11 proportional sensor; and those are the sensors attached
12 to the joysticks. There are four of them.

13 And then we're looking for a first button
14 which has a limitation of a first button, which is a
15 sensor that has a proportional signal. All of these
16 buttons and the front buttons are proportional buttons;
17 so, there are certainly two of those.

18 And then we have a sheet connecting to at
19 least eight of the sensors.

20 Q. So, is it your opinion --

21 A. If we look at the inside, we see there is a sheet
22 that connects to at least eight of the sensors.

23 Q. And you have actually opened those up; and we, in
24 fact, saw those with respect to all the inside pieces,
25 right?

1 A. That's correct.

2 Q. So, what is your opinion with respect to claim 14
3 relative to the Dual Shock 2 controller?

4 A. Dual Shock 2 controller invalidates claim 14.

5 Q. And, again, that's because --

6 A. Because it anticipates it. Each and every
7 limitation is present.

8 Q. And it came before Mr. Armstrong's 2002 claims,
9 right?

10 A. That's correct.

11 Q. In fact, more accurately, it came before
12 Mr. Armstrong's 2000 patent application that contains
13 those claims, right?

14 A. Right. That's the date that is the most important
15 priority date here.

16 Q. Okay.

17 A. And it is before that date.

18 Q. So, we have one left; and it's claim 16. Now,
19 claim 16 looks a little different. It says: Goto and
20 Dual Shock 2 render obvious. It doesn't say
21 anticipation.

22 Can you explain what you mean by that chart?

23 A. Sure. There's different sections in patent law
24 that deal with the way in which an invention is tested.
25 One of them is that every single element of the claim is

1 present in a previous product or publication.

2 Another one is the question of whether it
3 would be obvious to make the invention; that is, you
4 can't obtain an invention on something that is not
5 exactly the same as something as is before in the prior
6 art but is such a small change, a slight difference from
7 something that already exists, that to make that change
8 would be obvious to a person who was a practitioner.
9 So, this is a different test that's applied.

10 And in this case we're looking -- we have to
11 look at the claims, we have to look at the prior art,
12 and then how much difference there is. And then we have
13 to ascertain whether it would be obvious to a
14 practitioner at the time to be able to make that whole
15 invention given what they already knew and some of the
16 prior art that they had available to them.

17 Q. Is it fair to say that you would be looking for
18 like insignificant changes -- insignificant differences?
19 I'm sorry. Not changes.

20 A. That's one example of what might make something
21 obvious, that the changes would be so slight that you
22 would look at it and say, "Well, that's obvious." It
23 sounds like kind of a circular definition; but I think
24 when we talk about it, it's one way to look at it or
25 examples maybe of what would be a small change.

1 Q. But because you're saying it's obvious, it's your
2 position that claim 16 is not identically shown in
3 either one of those Goto or DualShock 2 references,
4 right?

5 A. Right. But it would be obvious for a practitioner
6 at the time to make that.

7 Q. Okay. I want to ask you what the differences are.
8 I would like to take a look at 16; and I'd like you to
9 explain to the jury what the differences are, if any --
10 I understand you believe there is a difference --
11 between claim 16 and the Goto reference.

12 A. Right. The Goto reference -- first, let me focus
13 on the part of the claim that's important here -- is the
14 elements we found that are there are: the
15 unidirectional sensors; the second element; the third
16 element, the two joysticks; and the first button sensor
17 and the second button sensor, which could be any of
18 these proportional buttons; and the tactile feedback
19 means. They're all present. The question is what is
20 the difference, and what is the thing that perhaps -- we
21 have to see if it's obvious, if a practitioner would
22 have realized they could do that.

23 If we look at -- it says that (reading)
24 there's four sensors at least in part connected to a
25 first sheet and then, further on, a second sheet, said

1 first sheet located on the first plane of the second
2 sheet, in other words, a second printed circuit card.
3 There's two printed circuit cards or sheets connected to
4 the --

5 Q. Does Goto have two sheets?

6 A. No. In the Goto publication he essentially
7 discloses one sheet connecting his components.

8 Q. So, then, why would it be obvious?

9 A. Well, it would be obvious because at the point in
10 time in the Nineties when this invention was made, when
11 the Goto invention was made, the engineers knew that
12 they could use different numbers of circuit cards for
13 different sensors. We've seen other prior art examples
14 where they had more than one card inside, and we will
15 see in some of these examples that they used more than
16 one circuit card. It's just that they don't match the
17 exact configuration of how many switches were connected
18 to one and how many of the sensors were connected to the
19 other. And the choice an engineer makes about how to
20 hook those up really depends on the shape of the case,
21 the location where they can fit the cards. It's not
22 something that's really related or specific to the
23 function of the device so much as the fact that you've
24 got to get those circuit cards to fit in there and then
25 you've got to put enough in there that they will fit in

1 the case.

2 Q. Now, does the Sony Dual Shock 2 have multiple
3 circuit cards?

4 A. Yes, it does. It has two. One, the brown
5 substance here, is a circuit card. That circuit card is
6 connecting both of the potentiometers. The other
7 circuit card which is connected to it is a flexible
8 green plastic material that actually bends around for
9 several different parts of the internal connections in
10 here. So, it has two separate sheets not on the same
11 plane; but the connections to the sheet are not exactly
12 the same as described here.

13 If we look through, you know, which sensors
14 on which sheet and which of these pods is connected to
15 which sheet, it's not exactly the same as 16. However,
16 it's a very, very slight difference; and a practitioner
17 would know that they could connect those differently.
18 They could make a separate connection, a different
19 connection; and they would still get the same result.

20 Q. Is there anything significant or any great
21 improvement that Mr. Armstrong made, in your opinion, by
22 just hooking up the wires to a different sheet?

23 A. No.

24 Q. Do you consider claim 16, the way the wires are
25 said to be hooked up, to be something that would have

1 been patentable when Mr. Armstrong filed his invention
2 in 2000?

3 A. No.

4 Q. Is it common to hook up sensors on sheets in a
5 variety of ways, depending on the circumstances
6 presented to you?

7 A. Yes, it is. And an engineer would know that if he
8 hooked them up in different ways, he would know what the
9 result was. One test of obviousness for an engineer or
10 a practitioner is if I'm going to try something and do
11 it differently, am I going to get the result I expect?
12 So, in other words, if I make two circuit cards or three
13 circuit cards instead of one and I hook them together,
14 will I get the result I expect to get with having more
15 circuit cards? And the answer, of course, is yes
16 because, as you could see, you could make two circuit
17 cards instead of one and you're still going to get the
18 same effect.

19 Q. So, do you have an opinion on whether claim 16 is,
20 in fact, a valid claim -- I'm sorry. It's claim -- yes,
21 claim 16.

22 A. It is invalid because it is obvious over the prior
23 art.

24 Q. Okay. And is that what you're representing on this
25 summary chart?

1 A. Yes.

2 Q. Could you just tell, then, the jury what this chart
3 represents?

4 A. Again, just to summarize, the claims that have been
5 asserted in this litigation are invalid due to the prior
6 art of Sony Dual Shock, Sony Dual Shock 2, and the Goto
7 '212 publication in the case of claim 16 in view of Sony
8 Dual Shock. That's just the way we say them when
9 combining two references. The terminology means that
10 I'm using ideas from Goto and the Dual Shock and that,
11 together, shows that it would be obvious to do that.

12 Q. And your analysis, does it take into account the
13 scope of the claim that Professor Howe was using to say
14 that Nintendo's GameCube infringes?

15 A. Yes. I use his claim scope.

16 Q. So, can you explain the relationship, then, between
17 that test and this validity test?

18 A. Well, the test, as I understand it, is like this.
19 If we have a claim scope that we're using to determine
20 infringement, we're saying that a product that's made
21 after the patent would infringe if it meets the claim
22 scope. But if we take that same claim scope, that
23 definition of the claim, and apply it to something that
24 was before the priority date that the patent is entitled
25 to, then that would show it's invalid because we're

1 saying that we use a test to decide what the invention
2 is after the patent, we use the same test before the
3 patent to see was that prior art. And that's what we've
4 done here.

5 Q. And just to confirm, it was your opinion that
6 claim 16 was obvious over the Goto reference combined
7 with DS 2, right?

8 A. That's correct.

9 Q. Thank you.

10 A. There's a typo again on the screen here. You have
11 Sony Dual Shock --

12 Q. Okay.

13 A. -- 2.

14 Q. Let's not put that screen up again, but let's --
15 so, your opinion with respect to claim 16, please tell
16 me that opinion again.

17 A. For claim 16, it is invalid in the light of Goto
18 and the Sony Dual Shock 2. That claim is obvious and,
19 therefore, invalid.

20 Q. Okay.

21 MR. PRESTA: If we could go to Slide 155,
22 please.

23 BY MR. PRESTA:

24 Q. Now, this was a slide that you had up in the
25 beginning of your testimony. Do you recall that?

1 A. That's correct.

2 Q. Okay. Now, you said you were going to do these
3 four things. Could you tell the jury what you've done
4 so far?

5 A. Well, we've done the first one, that the claims are
6 not entitled to the 1996 filing date.

7 We've done the second one. They are invalid
8 over the prior art, the Sony-related prior art and the
9 Goto patent application.

10 Q. Okay.

11 A. And now I guess our next step --

12 Q. Go ahead.

13 A. Well, it's looking us right in the eye. We're
14 working our way down the list here.

15 -- that the claims are invalid for a lack of
16 written description.

17 Q. Now, what does that mean?

18 A. Well, an inventor must describe their invention
19 clearly in the application they file with the Patent
20 Office. And we've looked at that a lot from the point
21 of view of saying is the later-filed claims and
22 application entitled to the earliest of the filings, way
23 back in 1996.

24 But then there is another question: Are
25 those claims even supported by the disclosures that are

1 later? Are they supported by the disclosures of the
2 '700 application in 2000?

3 Q. Now, because there is a second application that was
4 filed in 2000 by Mr. Armstrong, right?

5 A. That's correct.

6 Q. And that issued as the '700 patent, right?

7 A. That's correct.

8 Q. And that '700 patent contains the claims in it that
9 are being asserted in this case against Nintendo, right?

10 A. That's right.

11 Q. So, then, if I understand you correctly, you were
12 checking to see if that 2000 application contained
13 support for the claims that Mr. Armstrong wrote in 2002,
14 right?

15 A. That's correct.

16 Q. Did you undertake an analysis to see if even that
17 later 2000 application described Mr. Armstrong's claims
18 that he drafted in 2002?

19 A. Yes, I did.

20 Q. Did you make some slides to help the jury
21 understand that?

22 A. Yes, I did.

23 Q. And this is called the "written description test"?

24 A. Right. And that means, again, that the
25 description -- and the written description includes the

1 pictures. That's a part of the description -- shows,
2 again, that the inventor had that idea at the time; that
3 is, it's fully disclosed. His idea is disclosed in the
4 application or the specification for the patent.

5 Q. Thank you.

6 Now, we have a slide up on the screen now;
7 and that is -- could you tell us what that slide is
8 representing?

9 A. Yes.

10 Q. First of all, let me just ask you: Did you review
11 the application that was filed in 2000?

12 Earlier today we went through in detail the
13 application that was filed in 1996, and now that's
14 behind us. Now I was asking you to take a look at the
15 application that was filed in 2000, the year 2000, that
16 contained the claims that are being asserted in this
17 case; and you undertook a study of that, you've told me,
18 right?

19 A. Yes, I did.

20 Q. Okay. Now, when you undertook that study, did you,
21 in fact, do the same thing that you did when you were
22 trying to find support in the 1996 application for the
23 2002 claims?

24 A. Yes. I did the same analysis but this time with
25 the November, 2000, application --

1 Q. Okay.

2 A. -- and its specification.

3 Q. Because the claims -- could you just describe the
4 relationship between these three things on the timeline
5 for the jury just so people understand now that we're
6 moving to another topic?

7 A. Sure. We started to see if the claims that were
8 written in July, 2002, and that ultimately are in the
9 '700 patent that we're talking about here were supported
10 first back in this application (indicating), this
11 written description; and we found they are not.

12 Now we're going to look to see if they're
13 even supported in the November, 2000, description when
14 Mr. Armstrong filed the patent application that became
15 the '700 patent.

16 Q. Now, why is it important that we find a written
17 description -- to see if there is written description
18 support in the 2000 application?

19 A. Well, again, a reason for a patent's claim -- a
20 claim in a patent to be invalid is if there's no written
21 description. We still have to determine did the
22 inventor have that idea, the full scope of that patent,
23 in mind when he filed that later application because
24 even if he's only entitled to the date when he filed
25 that in November, 2000, we still want to see if he had

1 enough -- if he even described the invention then, if he
2 was able to -- in his mind if he had the whole invention
3 at that point in time, the invention that he's claiming.

4 Q. You studied that issue, right?

5 A. Yes, I did.

6 Q. Did you formulate an opinion of what the answer is
7 to that question --

8 A. Yes, I did.

9 Q. -- that you just posed?

10 And what was it?

11 A. That there is no written description support in the
12 application in November, 2000, for the asserted claims.

13 Q. You mean even in the -- even in that application
14 that he filed in 2000, there is no description of the
15 invention that he later claimed in 2002? Is that what
16 you're telling me?

17 A. Right. There's not enough information to show that
18 he had that idea even at that point in time.

19 Q. Okay. Now let me --

20 MR. PRESTA: If I could go to that slide.

21 Thank you.

22 BY MR. PRESTA:

23 Q. Could you please explain to the jury -- now,
24 there's a lot of similar subject matter in the -- or --

25 I'm sorry.

1 Is there a lot of things that are the same in
2 the 2000 application as in the 1996 application?

3 A. Yes.

4 Q. Okay. Are there any differences?

5 A. Yes, there are.

6 Q. Okay. Could you just, instead of -- so we don't
7 have to go through the whole thing again, is there a
8 way -- or is it possible for you to explain to the jury
9 what the differences are and how those differences
10 affected your understanding of what the scope of that
11 2000 application was?

12 A. Sure. First off, one of the things, which
13 mercifully for us in our time today, is the pictures are
14 the same. The drawings are the same; so, we do not need
15 to go through all the pictures all over again.

16 Q. Let me stop you right there just so we understand.
17 You just said that all of the drawings that are in this
18 2000 application are the same drawings that are in that
19 1996 application?

20 A. That's correct.

21 Q. Okay. Go on, please.

22 A. The text has some differences. In many places
23 where it used to say "one input member," it's been
24 changed. The text has changed to say "at least one
25 input member."

1 Q. Now, when you compare the first one to the second
2 one, is the 2000 application broader in that regard than
3 the 1996?

4 A. Yes, it is.

5 Q. Okay. What was the equivalent language -- what was
6 the language that was in the 1996 application?

7 A. Well, something that might say "a single input
8 member" would be replaced with "at least one input
9 member."

10 Q. So, in your view was the 2000 application broadened
11 out in that regard?

12 A. Yes.

13 Q. Okay. Now, did you find any references to the
14 Chang patent in the 2000 application?

15 A. No. The section that criticizes Chang and
16 describes his prior art is no longer present in the
17 specification.

18 Q. Okay. So, does that make the 2000 application
19 broader, in your opinion?

20 A. Yes, because he's taking away his description of
21 what his invention isn't.

22 Q. Okay. And you already mentioned that the figures
23 are the same between the two applications.

24 A. Yes.

25 Q. And when we say "the figures," we mean all of those

1 things with that yellow Ball 12 and the handles and all
2 of those things that we looked at this morning?

3 A. Right. All the drawings from the patent are the
4 same.

5 Q. Okay. So, were you able to formulate an opinion as
6 to whether the claim -- starting with claim 19 and using
7 again this illustration that we have for claim 19 that
8 you made this morning -- whether, in fact, that scope of
9 claim 19 is described in that 2000 patent application?

10 A. Yes. I have analyzed it, and my opinion is that
11 claim 19 -- the scope of the claim for claim 19 is still
12 not supported or disclosed by that earlier application
13 from 2000.

14 Q. And why is that?

15 A. Well, it does not disclose three input members. It
16 still only discloses a single input member because all
17 the drawings still show a single input member, and it
18 really does not ever show that you could have three
19 input members.

20 Q. Now, when you say "three input members," do you
21 mean three input members that are capable of movement --
22 of control of 6 degrees of freedom?

23 A. Right. It's three input members that are capable
24 of giving you 6-degree-of-freedom motion and control.

25 Q. So, when you went through the drawings in the 2000

1 application, did you look for this feature that I'm
2 circling now (indicating) that we talked about that you
3 couldn't find in the 1996 application?

4 A. Right. That's the feature I looked for primarily.

5 Q. And tell me again -- well, you said the drawings
6 were the same; so, how did your conclusions compare to
7 your 1996 analysis?

8 A. Well, my conclusions are the same as the 1996
9 analysis because there is no evidence to support the
10 contention that Mr. Armstrong had the idea, even in
11 2000, and disclosed that there was three separate input
12 members that would give him 6 degrees of freedom motion.

13 Q. But you said the text was -- reads -- instead of a
14 "single input member," it reads "at least one input
15 member."

16 A. That's correct.

17 Q. Doesn't that give you the support that you would be
18 looking for for written description?

19 A. No. That's insufficient.

20 Q. Can you explain that?

21 A. Well, just to broaden it to say I might have more
22 than one doesn't indicate that the inventor, the person
23 who wrote this, actually had that complete invention
24 with the scope that he's claiming. It's certainly
25 saying I have more than one; certainly doesn't mean

1 three and that I need three. It doesn't indicate any of
2 the particulars of how it might work, and it certainly
3 doesn't show an idea that you might have a completely
4 different design with separate input elements that you
5 activate to get different degrees of freedom.

6 Q. So, specifically with respect to claim 19, can you
7 tell us your opinion, then, with respect to whether
8 there's written description support in the 2000
9 application?

10 A. There is no written description support in the 2000
11 application for claim 19.

12 Q. And if I understand your testimony, it's because
13 this claim scope -- and, in particular, these three
14 input elements with those particular sensors -- cannot
15 be found anywhere in that application?

16 A. That's correct.

17 Q. Could I ask you to do the same analysis with
18 respect to claim 16? And, again, this is the claim 16
19 that you talked about before; so, if there is any way
20 you can summarize it and help the jury understand the
21 issue without repeating yourself, it would be helpful.

22 A. Sure. Again, like we saw before, there is not a
23 disclosure of three input members in the 2000
24 application, which is necessary to support the full
25 scope of this claim that we've seen described in front

1 of us. There just simply isn't any disclosure like
2 that.

3 Q. Now, again, this application does say at least one,
4 though, right?

5 A. Right. It says at least one but it does not
6 disclose three used to form 6 degrees of freedom and it
7 doesn't provide any detail to suggest that a person
8 really had the fully formed idea, the invention, of the
9 separate handles and using them to create that
10 6-degree-of-freedom controller.

11 Q. Okay. Thank you.

12 Now, again, there's one more independent
13 claim, claim 14. And did you compare claim 14 -- and
14 again we have an illustration of claim 14 here. But my
15 question to you is -- you understand the claim scope
16 from the language of the claim. My question to you is:
17 Is claim 14 supported by the 2000 application?

18 A. No. Claim 14 is not supported by the 2000
19 application.

20 Q. And, again, could you just tell me why?

21 A. Well, because there is not any disclosure or
22 support within that application to show that the
23 inventor had in his possession as an invention at that
24 point in time what is the full claim scope of claim 14
25 and, in particular, the ability with this configuration

1 of separate control elements, they were hand-operable to
2 get that 6-degree-of-freedom control as required by the
3 claim.

4 Q. Okay. So -- this is a summary chart, and could you
5 just tell the jury what your summary of conclusions are
6 with respect to the 2000 application relative to the
7 three independent claims that Mr. Armstrong drafted in
8 2002?

9 A. Sure. For each of those claims, there was no
10 written description in the application in 2000.

11 And, again, when we get to claim 22 and 23,
12 because they depend from claim 19, since claim 19 lacks
13 support, then claim 22 and 23 also lack support.

14 Q. And when something lacks written description
15 support, when a claim lacks written description support
16 in the patent in which it's contained, as you're
17 indicating in this case, what is the result of that?

18 A. Well, the result is that claim is invalid.

19 Q. Now, is that a different type of invalidity than
20 the prior art invalidity that we talked about?

21 A. Yes, it is.

22 Q. And could you explain that?

23 A. Well, again, the test is did the inventor actually
24 have this idea, the full idea of the claim, the full
25 scope of the claim, in his possession; was that in his

1 mind when he wrote the application. And if there's not
2 enough support or description of it in the application,
3 then the inventor is not entitled to that invention
4 described in the claim.

5 Q. And are your conclusions about not having support
6 in the 2000 application similar to the reasons that
7 there's no support in the 1996 application?

8 A. Right.

9 Q. And, again, could you tell us just why -- what is
10 the main reason?

11 A. The primary reason is the lack of multiple input
12 elements that the user can touch to operate with their
13 hand to obtain 6-degree-of-freedom control in the
14 application. The disclosure there, even though it says
15 there may be more than one, it does not have enough
16 disclosure to cover the case of three separate ones.

17 Q. Thank you.

18 Now I'd like to ask you to try and explain
19 what this -- could you tell the jury what this timeline
20 is showing? Just help put things into perspective.

21 A. Right. Again, it's just showing that -- here that
22 the -- that we had the original application in '96 with
23 its priority date and then the later-filed application
24 in 2000; and then, finally, the final set of claims were
25 filed in 2002, the claims that cover three input

1 6-degree-of-freedom devices.

2 And then in between we have the prior art --
3 the Dual Shock 2, the Dual Shock, and the Goto patent
4 application.

5 Q. Okay. So, it's your view, then, that because there
6 is no support in the 2000 application, that the claims
7 that are being asserted in this case are invalid because
8 they're not supported by the application in which they
9 are contained -- or the patent in which they're
10 contained?

11 A. That's correct. But just to make sure this chart
12 is not misleading in any way, that invalidity occurs
13 because of a lack of written description support between
14 the patent and the application here. It's separate -- a
15 separate reason for invalidity from the fact that these
16 prior art devices also exist. These are more than one
17 reason why those claims are invalid.

18 Q. Thank you.

19 Now I'd like to just -- can you explain what
20 this chart is showing?

21 A. Sure. The original description back in 1996 -- the
22 description there said that the invention was really a
23 single input, a single handle, a single handheld input.

24 Then in 2000 that was changed to "at least
25 one" in many places in the specification.

1 And then in 2002 we have, I guess, the claim
2 which has three inputs.

3 Q. So, sort of a progression of the scope increasing
4 from the one to the other?

5 A. That's correct.

6 Q. Now let me ask you: Could you tell the jury again
7 the timing of when these prior art references came into
8 existence?

9 A. Sure. Again, we can see -- after the initial
10 application, we see that -- the Sony products arriving.

11 Here, in August of 2000, we see this is a
12 prototype that was -- I guess some information leaked
13 out about a Nintendo prototype.

14 And then here (indicating), after that filing
15 in 2000, the GameCube launched in 2001.

16 And then finally on July 15th are the claims
17 that require to have three inputs.

18 Q. So, the claims in 2002 having three inputs came
19 after the GameCube and the Sony references that we see
20 up there?

21 A. That's correct.

22 Q. Okay, Mr. Dezmelyk. Thank you.

23 Now we're back to our sort of summary slide.
24 And have you done another one of the things you told us
25 you were going to do in the beginning?

1 A. Yes, I have.

2 Q. Okay. And is that the third one?

3 A. Yes, it is.

4 Q. And is it your opinion that the claims are invalid
5 for lack of written description?

6 A. Yes, it is.

7 Q. Okay. Now, we have one more section, one more
8 section that is a very important section; and that is
9 noninfringement. Did you undertake a study to see
10 whether, in fact, even if the claims were valid -- I
11 understand your position is that they're not -- but even
12 if they were valid, whether or not they actually
13 infringed the claims?

14 A. Yes. I conducted that analysis, as well.

15 Q. Okay. And could you tell me what your opinion is
16 with respect to noninfringement?

17 A. Sure. None of the asserted claims are infringed by
18 the Nintendo products.

19 Q. Okay. Did you prepare some slides to help the jury
20 understand why that is?

21 A. Yes, I did.

22 Q. Now, first of all, maybe you could just tell the
23 jury briefly what is required to infringe, based on your
24 understanding.

25 A. Well, again, this is -- a test is that the accused

1 product -- that is, if we want to see if a product is
2 infringing, we have to look at that product and see if
3 it has every element that's listed in the claim. That's
4 the test. We go again through these same claims element
5 by element and see if that is present in the product
6 that is accused of infringement.

7 Q. Okay. And this chart -- I think we've seen it
8 before, but can you tell the jury what it is?

9 A. Right. This is just a chart showing the asserted
10 claims in this lawsuit and which products correspond to
11 which claims; in other words, which claims Anascape has
12 asserted are infringed upon their '700 patent.

13 Q. Okay. And I notice that, in fact -- I think
14 everybody's well aware that the Wii Remote and the Wii
15 Nunchuk are only accused of infringing claim 19, right?

16 A. That's right.

17 Q. Okay. Did you do an analysis of whether, in fact,
18 that Wii Remote controller and that Wii Nunchuk
19 controller infringed claim 19?

20 A. Yes, I did.

21 Q. Okay. And just briefly, without telling me the
22 details yet, what's your conclusion about infringement
23 with respect to claim 19 and the Wii Remote and Nunchuk?

24 A. Claim 19 is not infringed by the Wii Nunchuk
25 combined with the Wii Remote controllers.

1 Q. Okay. Now, did you see some of the videos that
2 were played earlier about all of the various ways in
3 which this controller operates?

4 A. Yes, I did.

5 Q. Okay. Have you -- could you tell me what your
6 opinion is with respect to just the nature of this
7 controller that Nintendo has made?

8 A. Well, it's a quite different kind of controller --
9 or, actually, here two controllers are quite different.

10 Q. Okay. Now, you've heard of the fact that there's
11 been some testimony about accelerometers being present
12 in --

13 A. Yes, I've heard --

14 Q. -- these controllers?

15 A. -- that testimony.

16 Q. Okay. Could you tell me what your opinion is with
17 respect to the accelerometer, just generally?

18 A. Well, that the accelerometer in the Wii Remote does
19 not cause any infringement.

20 Q. Okay. Could you tell me what this slide is
21 representing?

22 A. Well, fundamentally, that accelerometer is very
23 different from Armstrong's invention. We'll talk about
24 that in more detail, but it's a completely different
25 type of thing.

1 Q. Could you just give us a little bit of an overview
2 of why an accelerometer is something that's different
3 than Mr. Armstrong's invention?

4 A. Sure. In the simplest sense, the accelerometer
5 detects something that's completely different from your
6 motion of your hand on a handle. It detects
7 acceleration, the change in how fast something is
8 moving; and it also detects gravity, the gravity that's
9 around it. And that's completely different than the
10 moving of a handle.

11 Q. Do you recognize this slide?

12 A. Yes, I do.

13 Q. Could you tell the jury what it is?

14 A. Sure. This is, again, the description by
15 Mr. Armstrong of how there was a single input member
16 that moves in 6 degrees of freedom disclosed in his
17 application.

18 Q. And these are the things sitting on the table in
19 front of the jury?

20 A. That's correct.

21 Q. Now I'd like to get more specific now about why you
22 have the opinion that the accelerometer does not result
23 in infringement of the Wii Remote controller and the Wii
24 Nunchuk controller. Okay?

25 A. Okay.

1 Q. First of all, I'd like to ask you to explain what
2 is in these controllers.

3 A. Okay. Let's start with the controller on the
4 right, the Wii Remote controller.

5 At the top is a camera that looks out at the
6 light bar and detects the location of those lights in
7 its field of view and, therefore, it gives it the
8 position relative to the TV set.

9 We have a cross-switch here (indicating),
10 where we can rock that in either direction. The A
11 button, which is just (indicating) a button we press for
12 action.

13 Some more little buttons in the middle here
14 (indicating), a couple buttons down at the bottom
15 (indicating), a rumble motor inside, and then the
16 accelerometer which detects -- inside is a chip soldered
17 onto the board which detects acceleration of the
18 controller.

19 Q. Now, there's also an accelerometer in the Wii
20 Nunchuk controller, right -- or -- I'm sorry. Is there
21 an accelerometer in the Wii Nunchuk controller?

22 A. Yes, there is.

23 Q. And have you looked at that accelerometer?

24 A. Yes, I have.

25 Q. Okay. What other features are on the Wii Nunchuk?

1 A. The Wii Nunchuk has a little joystick handle and a
2 couple of switches in the front side.

3 Q. Okay. So, you've told me that there is an
4 accelerometer in each one; there's a cross-switch on the
5 Wii Remote; and there is a joystick on the Wii Nunchuk
6 controller; is that --

7 A. That's correct.

8 Q. -- accurate?

9 Okay. Now, why -- do you have an
10 understanding as to the reason that Anascape can't use
11 the second accelerometer to support their infringement
12 case?

13 A. Well, I have a basic understanding. I'm an
14 engineer not a lawyer; but, yes, I have a basic
15 understanding of that.

16 Q. Okay. But basically -- I'm asking relative to the
17 claims.

18 A. Okay. Relative to the claims, the primary reason
19 is that there are two controllers here and --

20 Q. Well, let me ask you to stick with the
21 accelerometer first.

22 A. Okay.

23 Q. Okay?

24 And I'd like to take a look at claim 19 and
25 explain to the jury if you have an understanding of

1 whether the second accelerometer -- or why the second
2 accelerometer would not be something that in any way
3 could support infringement and is not being relied on by
4 Anascape.

5 A. Well, my understanding is that we've heard from the
6 allegations that the cross-switch matches -- the first
7 element is the platform; the second element is the
8 joystick; and the third element, shown here in pink, is
9 the accelerometer. That's the position that Anascape is
10 taking.

11 Q. And that you need to find all of those features
12 within those three elements in order to infringe the
13 claim? Is that your understanding?

14 A. That's right.

15 Q. Okay. Now, the other accelerometer that's in this
16 slide would be, in fact, the fourth element, wouldn't
17 it?

18 A. And the claim.

19 Q. Right.

20 A. If it was an element.

21 Q. The claim requires all of those features to be
22 found in three, right?

23 A. Right.

24 Q. Now I'd like to ask you about the accelerometer.
25 Do you understand that Anascape has alleged that the

1 accelerometer corresponds to the third element in claim
2 19?

3 A. Yes, I understand that's their position.

4 Q. Okay. Do you have -- can you tell me whether that
5 third element is, in fact, present? Can you tell me --
6 if you could, tell the jury what the differences are
7 between that accelerometer and that language required by
8 the third element in claim 19.

9 A. Sure. The first step is that the third element has
10 to be movable. But, of course, the accelerometer is not
11 movable; it's attached to the printed circuit card
12 permanently by being soldered on in the factory. You
13 can't -- it's not movable in any way.

14 Q. Okay. What's the next reason?

15 A. There's no structure to activate it. As we saw
16 before, in the case of the joysticks that were pointed
17 out in other systems, there's always a handle or
18 something that actually moves the sensor. But here
19 there's nothing that moves the sensor. There's no
20 structure to activate it, no part that actually moves
21 the sensor.

22 THE COURT: All right. Counsel, we're going
23 to take a break.

24 Ladies and gentlemen, I'll ask you to be back
25 at 2:30.

1 (The jury exits the courtroom, 2:13 p.m.)

2 THE COURT: We'll be in recess until 2:30.

3 (Recess, 2:13 p.m. to 2:27 p.m.)

4 (Open court, all parties present, jury

5 present.)

6 THE COURT: Counsel?

7 MR. PRESTA: Thank you.

8 BY MR. PRESTA:

9 Q. Now, before the break, Mr. Dezmelyk, we were
10 looking at whether the claim language in claim 19, and
11 particularly the third element claim language, is met by
12 the accelerometer in the Wii Nunchuk as Anascape
13 contends -- I mean, Wii -- I'm sorry -- in the Wii
14 Remote as Anascape contends.

15 A. Okay.

16 Q. I'm going to ask you if -- first of all, if you
17 could take a look at this third element of claim 19 and
18 tell me whether, in fact, that accelerometer contains
19 the first part of that third element and, in particular,
20 the part that says: Movable on two mutually
21 perpendicular axes, said third element structured to
22 activate these two sensors.

23 Can you explain to the jury what that means,
24 please?

25 A. Sure. There is no third element that's structured

1 to activate the two bi-directional proportional sensors
2 that are required for this claim. In other words, there
3 simply isn't a third element.

4 The accelerometer, this chip, is just a
5 sensor that's soldered onto the board. There's no
6 separate element to be used to activate it.

7 Q. Let me ask you: Were you here when I was having a
8 discussion with Professor Howe about this joystick?

9 A. Yes.

10 Q. And that was, if you recall, the joystick off of
11 the game controller that Professor Howe said satisfied
12 this element. Do you recall that?

13 A. That's right.

14 Q. Do you recall when Professor Howe said that if we
15 remove that structure that activated these two sensors,
16 that claim 19 would not be infringed?

17 A. Right. I recall that portion of his testimony.

18 Q. Do you agree with that opinion?

19 A. Yes. That's true. Without that element, we do not
20 meet the requirements in this claim.

21 Q. Now, even though there would, in fact, still remain
22 two sensors?

23 A. That's right. Even with the sensors present, you
24 need the element to activate them to meet this claim
25 requirement.

1 Q. Okay. Now, were you also here when there was a
2 debate about whether or not the accelerometer has one
3 sensor in it or two sensors in it?

4 A. Yes, I was here for that debate.

5 Q. Okay. And, now, do you have an opinion on whether,
6 in fact, there is one sensor or two sensors in that
7 little accelerometer?

8 MR. CAWLEY: Objection, your Honor. This
9 expert report contains nothing about the interior of the
10 accelerometer.

11 THE COURT: I believe that's correct,
12 counsel.

13 MR. PRESTA: Your Honor, I'm sorry but I
14 thought this issue was raised before and you indicated
15 that we did, in fact, have support. He has the --

16 THE COURT: Hold on a second.

17 All right. You're correct. Go ahead,
18 counsel. Overruled.

19 MR. PRESTA: Thank you, your Honor.

20 BY MR. PRESTA:

21 Q. Now, again -- I forgot my question, but let me just
22 start again on that point.

23 You were here for the debate of whether there
24 was, in fact, one sensor or two sensors in that
25 accelerometer, weren't you?

1 A. Yes.

2 Q. And do you have an opinion on how many sensors --
3 or let me first ask you this: Are there different types
4 of accelerometers?

5 A. Sure. There are many different types of
6 accelerometers.

7 Q. Are there some that have one sensor in them?

8 A. Yes.

9 Q. Are there some that have more than one sensor in
10 them?

11 A. Yes.

12 Q. What kind has Nintendo used in this Wii Remote
13 controller?

14 A. The accelerometer in the Wii Remote controller has
15 one sensor in it.

16 Q. Okay. Now, did you undertake a study, when you
17 were asked to determine infringement or noninfringement,
18 of the products to see what type of accelerometer was in
19 there?

20 A. Yes, I did.

21 Q. And did you actually look at the chip, not the
22 inside but physically determine what chip was on there?

23 A. Yes, I did.

24 Q. Then what did you do?

25 A. Well, then I obtained the data sheets for that part

1 from Analog Devices and then I read some background
2 material that described it to get a better understanding
3 of how that part worked.

4 Q. Did you actually get the data sheet for the actual
5 chip, the specific chip that is in that product, when
6 you did your analysis?

7 A. Yes, I did.

8 Q. And was that specific data sheet that's provided by
9 the manufacturer included in your expert report?

10 A. Yes.

11 Q. Did you actually analyze the correct chip when you
12 did your study?

13 A. Yes, I did.

14 Q. Now, does the information from Analog Devices
15 clarify whether, in fact, there was one sensor or two
16 sensors in that accelerometer?

17 A. Yes, it does.

18 Q. And what does it tell you?

19 A. Well, it tells you there's one sensor in that
20 accelerometer.

21 Q. Now, first, before we get into the issue of the
22 accelerometer and the number of sensors -- first, is it
23 your position that -- does it matter, in fact, whether
24 there's one or two sensors for infringement?

25 A. No, because we still do not have the third element

1 to activate it.

2 Q. But it is still your position that there is just
3 one sensor?

4 A. That's correct.

5 Q. Okay. Now, would you be able to --

6 MR. PRESTA: Your Honor, I'd like to ask if
7 the witness could get off the stand and use the easel
8 and give a very brief description of how that
9 accelerometer works.

10 THE COURT: Yes.

11 MR. PRESTA: Thank you.

12 THE WITNESS: Thank you.

13 BY MR. PRESTA:

14 Q. Mr. Dezmelyk, perhaps -- is it possible for you to
15 use the microphone?

16 THE COURT: You'll need the microphone.

17 THE WITNESS: Thank you.

18 BY MR. PRESTA:

19 Q. And, Mr. Dezmelyk, again, I'd like to ask you if
20 you could just try to explain to the jury, using that
21 pad, how that accelerometer, the specific one that is in
22 the Wii Remote, based on your understanding, works and
23 how many sensors are in it.

24 A. Sure. This is a little tricky because
25 accelerometers are complicated. This is a kind of

1 complicated device. So, if I can, I'm going to take a
2 minute to explain a couple words I'm going to use in my
3 discussion and a little bit of background so it's a
4 little clearer what I'm talking about before I draw the
5 inside of it and how that thing is operating, how it
6 works.

7 The first idea you've probably heard here is
8 this idea of a capacitor or capacitance. Now, the two
9 words sound similar. Capacitance is a physical property
10 like distance between two objects. So, there's
11 capacitance between me and that wood or between me and
12 this surface here.

13 A capacitor is something that holds
14 electrical charge; and we actually have all had that
15 experience in our lives because if I shuffle my feet on
16 this carpet, I'll build up an electric charge. That
17 charge is sitting on me. I'm the capacitor that's
18 charged up, between me and the rest of the world. If
19 that charge accumulates on me and I get closer and
20 closer and closer to the other object, at some point if
21 I get close enough -- we've all had it happen where you
22 grab a doorknob on a dry day and you feel a spark. That
23 spark is the electricity -- the charge, we call it --
24 the buildup on you as a capacitor or part of a capacitor
25 discharging to the other side of that charge.

1 So, the idea of capacitance or a capacitor,
2 that's something that can exist just in the world. It
3 exists all around us. We make things for that purpose
4 in electrical circuits because it's a useful property.
5 We also use that to measure things in small structures
6 like this one. But the first thing to understand is
7 capacitance is a physical property like distance, and
8 actually the capacitance between me and that board will
9 increase as I get closer.

10 And probably the best example I can give of
11 that is not going to work well for the younger people
12 here but for those of us who grew up with a plain old TV
13 with an antenna, if you ever recall when you touched the
14 antenna on the TV, you got a better signal, in part
15 because that's the capacitance of your body affecting
16 the antenna for that television set.

17 So, understanding that, how does an
18 accelerometer work? I'm going to again go off a little
19 bit to give a little explanation about this.

20 Q. Now, Mr. Dezmelyk, I appreciate that. I do --

21 A. I'm moving forward.

22 Q. Thank you.

23 A. Okay. This device is very, very small. And the
24 way it's made is in flat sheets. And I'm going to make
25 a gigantic rendition of it. The actual device is tiny.

1 And it's made in a process of very thin sheets that are
2 cut and that cutting of the sheets is the same way you
3 could cut paper with a knife. So, I'm going to make a
4 diagram of the inside of that. I'm not going to draw it
5 exactly like it is because it's a little more
6 complicated.

7 But first off (illustrating), we've got this
8 chip. And inside of that chip let's say there is an
9 area where the accelerometer itself is going to be. And
10 I'm going to draw it simplified. There is a mass. And
11 actually, if we looked at a picture, that mass is more
12 like a ring to pack it all in tighter; but it's a mass.
13 And it's got little springs holding up its corners.

14 But the way this is made is these springs are
15 cut from a sheet. So, actually, I leave -- I cut out a
16 very thin film. And this film is all one piece. And
17 when I mean thin film, it's way thinner than human hair.
18 This entire structure sideways is like the size of a
19 piece of your hair. It's minuscule.

20 Then I want to know -- when the acceleration
21 happens, this mass is going to move. When there is a
22 sudden change in the acceleration, this mass is going to
23 move a little bit one way or the other. These act like
24 springs to hold it towards the center, but it will move
25 a tiny bit. So, I need to be able to measure how that

1 moves; and I want to measure it moving this direction,
2 this direction, and in and out of the page. It's going
3 to be hard to draw the in and out of the page; so, I'm
4 going to concentrate on the other two directions. And
5 the way I can do that is like this.

6 (Illustrating) I put a plate here, a plate
7 here, plate here, a plate here. And actually, those
8 plates look like a row of fingers in a comb, to get more
9 area. But conceptually, in terms of what they do, it's
10 just like this easel has capacitance; I put a plate
11 there. And I bring a wire out there and a wire out here
12 and a wire out here and a wire out here. But I don't
13 measure those wires. I put voltage onto those wires.
14 In other words, I connect up a voltage -- a signal here.
15 And I know this is complicated. But I put signals onto
16 the wires. I make this signal go to a higher voltage
17 and this one go to a lower voltage.

18 Then I make this one go to a higher voltage
19 and this go to a lower voltage. And as I change the
20 voltage on the plates around it, what's called a
21 differential capacity, the mass in the middle changes
22 its voltage.

23 And the reason it changes its voltage is the
24 capacitance between the two sides all towards the one
25 element in the middle changes. So, if this is a little

1 close for one side, it picks up more of the voltage from
2 this. If it is a little close for this side, it picks
3 up a little more from that one. And all I have to do is
4 measure the one voltage that comes off of here and
5 separate out the signal from the X and the Y direction
6 and I know how this is moving.

7 But the entire part here is the sensor.
8 There's no separate components. If I take the middle
9 out, if I take the mass out, there's nothing left that
10 can work. There's only one connection to the outside
11 world, one signal coming out.

12 Q. Let me get that right, Mr. Dezmelyk. There's one
13 signal that comes out?

14 A. One signal, one wire that comes out. Actually,
15 they use one of the springs as the path for the
16 electricity. And they take that one signal out; and
17 then you have to process it, what we call
18 "demodulating." We have to separate out the information
19 for the Y -- that is, the vertical direction -- from the
20 horizontal direction and remember in this part, this
21 direction (indicating).

22 Q. So, even though there is one wire coming out -- but
23 could you explain to the jury, does that one wire have
24 information about all three directions on it?

25 A. Yes, it does. Because when the voltages are put on

1 the plates around the outside, they are put in order.
2 This one goes up (indicating). The one opposite it goes
3 down. This one (indicating) would then right after that
4 point in time -- it would make this one go up and this
5 one go down.

6 And when you're looking at the output, first
7 you look at one of them to get the horizontal. Then you
8 look at it a moment later to get the vertical. Then you
9 look at it a moment after that to get the other
10 direction. And then you keep repeating that over and
11 over and over again to detect from one signal coming out
12 of here which way that mass in the middle is moving.

13 Q. And is that type of a structure known as a "single
14 sensor" or "multi sensor accelerometer"?

15 A. That's a single sensor accelerometer.

16 Q. Are there other -- how many differential capacitors
17 are there in there?

18 A. Well, there's really one. There's plates around.
19 There's four here and one underneath. There's five
20 plates; and then there's the center plate which is the
21 mass, which in each instance forms the opposite side of
22 the plate to the differential pair.

23 Q. Mr. Dezmelyk, that's very helpful and I appreciate
24 that and I'll ask you if you could -- unless you have
25 something else important to say about it, I would ask

1 that we get you back on the stand.

2 A. Thank you.

3 THE COURT: Okay. Let's move the easel
4 between me and the jury, please.

5 MR. PRESTA: Yes.

6 BY MR. PRESTA:

7 Q. Now, what I'd like to ask you is: That explanation
8 that you just gave, were you able to confirm or -- where
9 did you get your understanding of that?

10 A. Well, it's knowledge I have in general about how
11 this type of accelerometer works. I've also seen some
12 of the patents that cover that and also, of course, the
13 data sheet, which is the most important thing that you
14 look at as an engineer, to start.

15 Q. Okay. And did you get a copy of that data sheet?

16 A. Yes.

17 Q. Okay.

18 MR. PRESTA: Could I pull that up, please?

19 BY MR. PRESTA:

20 Q. Now, is this the actual data sheet that was
21 attached to your expert report that contains the
22 information on the particular chip that's in Nintendo's
23 Wii Remote?

24 A. Well, I think so but it's got a plaintiff's exhibit
25 tag on it and I can't --

1 Q. Okay.

2 A. I have to read it a little more carefully to make
3 sure that's the same one.

4 Q. Okay. It says Plaintiff's Exhibit 192. It's also
5 Defendant's Exhibit 200.

6 A. Okay.

7 Q. It turns out that both of us put it on the list.

8 A. Same one, fine. Thank you.

9 Q. Yes.

10 A. Because I know they had another one at one point.

11 Q. Yes. Now, does that confirm to you whether it's
12 the right data sheet?

13 A. Yes, that's correct. Thank you. I just -- it's
14 hard for me to read the small type on the screen.

15 Q. Is your monitor on on your screen?

16 A. It is, but the type is very small.

17 Q. Just checking. Thank you.

18 Now, can you tell me what this is telling
19 you?

20 A. Sure. It's explaining that it's a three-axis
21 accelerometer, all on a single chip, a single part.

22 Q. What is the drawing showing you?

23 A. A single three-axis sensor and then a demodulator
24 which takes it out to the three outputs.

25 Q. Okay. Then, let me ask you about this other

1 "theory of operation" section.

2 A. Well, in this section Analog Devices is explaining
3 that it's a single IC.

4 Q. When you say "IC," you mean integrated circuit?

5 A. That's an abbreviation for integrated circuit. The
6 little chip that's inside the package is called an
7 integrated circuit.

8 Q. And they refer to it as a single sensor?

9 A. As a sensor.

10 Q. And, again, could you tell the jury what that --

11 A. The same here, that "the sensor" is a -- and then
12 they're going into details of how it is made.

13 Polysilicon is the very thin -- those very thin sheets I
14 talked about.

15 Q. Now, let me ask you: Is the fact that they use
16 "sensor" singular, is that just a matter of semantics as
17 Professor Howe indicated it might be?

18 A. No, not at all. That's actually an important point
19 and a big selling point for this kind of chip is it only
20 has a single sensor because it avoids some errors you
21 get when you have multiple sensors.

22 Q. Now, does this document actually confirm whether
23 it's a single sensor or not?

24 A. It certainly confirms it's a single sensor.

25 Q. Okay. Does this help you with that? Could you

1 tell the jury what it means?

2 A. Sure. Again, Analog Devices, describing their
3 part, says it uses a single structure for sensing the X,
4 Y, and Z axes.

5 Q. Now I'd like to ask you now: This other part here,
6 if you could tell the jury whether or not this confirms
7 your opinion and confirms what you drew to the jury
8 that, in fact, it's one sensor?

9 A. Yes. They are explaining that they measure the
10 deflection of the structure; that is, the motion of that
11 central piece is measured using a differential capacitor
12 that consists of the independent fixed plates. Those
13 are the lines I drew around the outside that are driven
14 with the square waves and then the plates on the other
15 side are attached to the moving mass and they are part
16 of it.

17 Q. And is that saying that there is, in fact, just one
18 differential capacitor?

19 A. Just one differential capacitor, yes.

20 Q. Could you then explain what the next sentence is
21 saying?

22 A. Well, they are explaining that they determine
23 acceleration because the moving mass moves -- that is,
24 it moves a tiny bit -- and it unbalances the
25 differential capacitor; and that generates the sensor

1 output, of course, which is proportional or related to
2 the acceleration.

3 Q. And is that what you were describing on the easel?

4 A. Yes.

5 Q. And the last sentence?

6 A. They are explaining here that they demodulated --
7 that is, they take apart the information that comes out
8 from the one wire that's coming off of the sensor --
9 into the three parts to get the magnitude and direction
10 of the acceleration.

11 Q. And does that then confirm your opinion?

12 A. Yes, it does.

13 Q. That it's, in fact, one sensor?

14 A. Yes. There's one sensor.

15 Q. Thank you.

16 Were you here when Professor Howe indicated
17 that the proof mass inside the accelerometer is, in
18 fact, the third element?

19 A. I heard him testify to that, yes.

20 Q. Okay. What do you think about that?

21 A. Well, I think it's wrong because the proof mass is
22 the sensor. It's an integral part of the sensor. There
23 can't be something that's actuating it.

24 Q. Okay. And, in fact, were you here when Professor
25 Howe put up this figure?

1 A. Yes, I was.

2 Q. And he indicated that it's this little proof mass
3 in the middle that, in fact, is the structure that
4 activates the sensor, right?

5 A. I heard him testify to that, yes.

6 Q. And, again, would you agree with that?

7 A. No. That's incorrect.

8 Q. And could you please describe to the jury why you
9 believe it's incorrect?

10 A. Well, it's incorrect because that mass is the
11 sensor. And one way to confirm that in thinking about
12 it is if I could magically reach inside that chip with
13 microscopic tweezers and take that proof mass out of the
14 middle, I wouldn't have any sensor left. It is the very
15 sensor itself. It is the device that has a -- makes an
16 electrical signal that is connected to the circuitry.

17 Q. So, Dr. Howe's position, then, is that the sensor
18 is the thing that activates the sensor?

19 A. Apparently that's his position, yes.

20 Q. Does that make sense to you in the context of claim
21 19?

22 A. No.

23 Q. Thank you.

24 Now, is it your understanding that Professor
25 Howe actually, in his initial report when he did his

1 opinion, believed that there was, in fact, an
2 accelerometer that had three sensors in it?

3 A. Yes. He mistakenly identified the accelerometer in
4 the Wii Remote as one that had three sensors in it.

5 Q. Okay. And that was actually not the case, was it?

6 A. No.

7 Q. Because the accelerometer that's in the Wii Remote
8 actually only has one of those, doesn't it?

9 A. Well, it has one sensor, right.

10 Q. It has one accelerometer?

11 A. Right.

12 Q. There's also, of course, an accelerometer in the
13 Wii Nunchuk; but that's not part of this case, is it?

14 A. Right. That's not involved in this case.

15 Q. Now, let me just back up for a minute and ask you a
16 simpler question. Now, that was sort of a technical
17 reason that -- where we got into Professor Howe's -- the
18 reason that we believe there is no infringement. I'd
19 like to ask you a simpler question.

20 I'd like to just ask you: Is there an easier
21 position that you have as to why, in fact, the Nunchuk
22 and the Wii Remote do not infringe claim 19?

23 A. Well, I think there's a very simple idea; and it
24 came to me the first time I was asked to look at this.

25 And that is that if we look at the claim, what I see

1 here is two controllers. I don't see one; I see two
2 devices.

3 Q. Now, the court has construed the term "controller,"
4 right? Did you take that --

5 A. Yes.

6 Q. Are you aware of that?

7 A. Yes, I am.

8 Q. Did you take the court's construction into account
9 in connection with this analysis?

10 A. Yes, I did.

11 Q. Could you -- are you familiar with the court's
12 definition of the term "controller" that's in the jury
13 notebooks?

14 A. Yes, I am.

15 Q. And is that your understanding of what that
16 definition is on the screen?

17 A. Yes. That's the definition that says: A device
18 held in the user's hand -- and then it goes on to say:
19 That allows the hand or finger inputs to be converted
20 and so on.

21 Q. Okay. Do you have an opinion on whether, in fact,
22 the combination of the Wii Remote controller and the Wii
23 Nunchuk controller satisfied that definition?

24 A. I do not believe it does.

25 Q. And why is that?

1 A. Well, because there are two devices held in the
2 user's hands. There's not a device held in the user's
3 hand.

4 Q. Well, when you look at any one of these devices,
5 are you able to find all of the things that are in claim
6 19?

7 A. No. If we take them separately and say, "Let's
8 look at each one," then we do not find all those
9 elements.

10 Q. Did they have to combine the elements from each in
11 order to make it -- try to make a case for infringement?

12 A. That's right.

13 Q. And in your view, is that appropriate under the
14 claim language as you have been -- as you understand the
15 claim and the court's claim construction of certain
16 terms?

17 A. I believe it's incorrect under the court's
18 construction of the claim language.

19 Q. Let me also ask you about this: Do you see the
20 term "controlling objects and navigating a viewpoint" in
21 the second and third element?

22 A. Yes, I -- I see those.

23 Q. Now, are you aware that the court has also made
24 some rulings in connection with those terms?

25 A. Yes.

1 Q. So, are you familiar with those rulings?

2 A. Yes, I am.

3 Q. Have you taken those rulings into account in your
4 determination of whether there's infringement?

5 A. Yes, I have.

6 Q. Okay. And, in fact, in the jury notebook there are
7 some definitions that relate to this; and I wanted to
8 ask you: Did you do an analysis of the games that the
9 plaintiff has identified to see whether, in fact,
10 Nintendo's system actually can do those things?

11 A. Yes. I tried the games identified by the plaintiff
12 and saw how they functioned and what they were able to
13 do, what they could do.

14 Q. Okay. Do you recognize this chart?

15 A. Yes, I do.

16 Q. What is it?

17 A. This is a chart from my report where I took each of
18 the games that had been pointed out by Anascape -- and
19 the final one being the system itself -- and then
20 whether or not the second element could control an
21 object or a viewpoint and whether or not the third
22 element could control an object and/or a viewpoint.

23 Q. And what did you conclude when you looked at all of
24 the games?

25 A. Well, I found there was never an instance where the

1 third element they identified could control a viewpoint.

2 Q. And the third element that they identified is the
3 accelerometer, in their view?

4 A. Yes. In their view that's the element they
5 identified.

6 Q. And any of the games that they identified in
7 connection with the case, did they -- them -- is it your
8 opinion that none of them used the accelerometer to
9 change the viewpoint?

10 A. That's right. None of them did.

11 Q. Okay. Thank you.

12 Now I'd just like you to summarize if you
13 could and tell the jury what this screen is.

14 A. Well, on this screen I've just put forth the --
15 kind of a summary of the things we've discussed, the
16 nature that it's a new product, completely different,
17 and the really key points -- that there are two
18 controllers; there is no third element, it's not
19 movable -- the accelerometer is not movable; there is no
20 structure to activate it; and there's only one sensor.

21 So, the requirement for the third element,
22 even if you combine these two, is not met.

23 Q. So, is it your opinion, then, that this product
24 does not infringe claim 19?

25 A. It does not infringe claim 19.

1 Q. Thank you.

2 Now, the next product in line is the Wii
3 Classic and the Wii Remote connected together. Do you
4 understand that?

5 A. Yes.

6 Q. Once again, they are not accusing either the Wii
7 Classic Controller by itself or the Wii Nunchuk -- I'm
8 sorry -- I'm sorry -- or the Wii Remote by itself,
9 right?

10 A. Right. It is only the combination of those two
11 controllers that are being accused.

12 Q. Do you have an opinion on whether that combination
13 infringes claim 19?

14 A. My opinion is that it does not infringe claim 19.

15 Q. And why is that?

16 A. Well, a couple different reasons. Primarily,
17 again, that the elements are not present if we go
18 through them. If we look -- again, we have the same
19 issue where it says a hand-operated controller. The
20 definition of "controller" is a device held in the hand.
21 And if we look for the limitations present in either of
22 these devices, we cannot find it.

23 Q. Now, is there -- for example, claim 19 requires
24 that there be a rumble motor, right?

25 A. Right.

1 Q. Is there a rumble motor inside the Wii Classic?

2 A. No, there is not.

3 Q. There's one inside, though, the Wii Remote.

4 A. That's correct.

5 Q. Is that why -- so, that's why they need to be
6 combined in order to satisfy the claim language, in your
7 view?

8 A. Yes. You wouldn't have -- the Wii Classic
9 Controller by itself lacks a rumble capability; so, it
10 wouldn't meet that limitation by itself. It only meets
11 it when it's combined with the other controller.

12 Q. Did you actually try to play some games to see what
13 the functionality of the Wii Classic Controller is?

14 A. Yes.

15 Q. And what did you determine?

16 A. Well, there are also particular situations -- well,
17 first off, there's no rumble. But there's also
18 particular situations where you cannot meet all of the
19 requirements for navigating a viewpoint and controlling
20 objects with both elements with the Wii Classic
21 Controller.

22 Q. Do you recognize this chart?

23 A. Yes, I do.

24 Q. Do you know why the Wii Classic is called the
25 "Classic"?

1 A. Yes, because it's intended for playing the really
2 old games. And really there's only a couple games here
3 on this list that it can even play; and one of them, for
4 instance, Paper Mario, this is actually a Nintendo 64
5 game that was written for running with the Nintendo 64
6 system. And it can also be used to operate the Wii
7 system itself. In other words, you can use the handles
8 on the controller to operate the Wii menus with them.

9 But if you look at that game, the Paper Mario
10 game, it's not possible in that game to use a third
11 element to manipulate objects or a viewpoint or even to
12 use a second element to manipulate a viewpoint.

13 Q. Are you aware that the Wii Classic Controller -- do
14 you know if the Wii Classic Controller works with any
15 GameCube games?

16 A. Not to my knowledge.

17 Q. Okay. Are you aware of whether or not, in fact,
18 the -- there are games that Nintendo has for its system
19 where you can use both the joysticks to do anything?

20 A. I'm unaware of any, but I haven't tried all of the
21 old games nor their 2-D games.

22 Q. But the games you did look at that were identified
23 by the plaintiff, what was your conclusions with respect
24 to those?

25 A. The third element does not do anything, and the

1 second element cannot control or manipulate a viewpoint.

2 Q. Are you aware of any games where both of the
3 joysticks are operable on the Wii Classic Controller?

4 A. No.

5 Q. Have you read -- did you investigate at all to see,
6 in fact, whether there were games that the Wii Classic
7 Controller could be used, for example, to play GameCube
8 games to require actually two joysticks?

9 A. Right. I have read that it cannot be done. I
10 certainly have not tried every game in the world. I
11 only tried the games that were in this case.

12 Q. Okay. And you said you read and heard -- and read
13 it could not be done, did I hear?

14 A. Right. My understanding is it cannot be done.

15 Q. And what is your understanding of why it can't be
16 done?

17 A. I don't have a -- I don't know what the motivation
18 was or why that's the case.

19 Q. I understand. Thank you.

20 Now, I'd like to ask you a few questions
21 about the Wavebird and the Nintendo GameCube. Okay?

22 A. Sure.

23 Q. Now, when we look at claim 14, there is a term
24 "3-D" in claim 14. Do you see that?

25 A. That's correct.

1 Q. That same term also appears in claim 16. Are you
2 aware of that?

3 A. Yes.

4 Q. Now, you read the court's -- the definitions that
5 the court has given us that control certain meanings in
6 this case, right?

7 A. Yes.

8 Q. And is that term "3-D" meant to just mean
9 three-dimensional graphics?

10 A. No. The court has constructed that claim, and it
11 has a specific meaning.

12 Q. And what is that meaning?

13 A. Well, it is something that is capable of movement
14 in 6 degrees of freedom.

15 Q. Now, again, why is Figure 7 up there from
16 Mr. Armstrong's application --

17 A. Well --

18 Q. -- patent?

19 A. -- Figure 7 shows us an example of something
20 movable in 6 degrees of freedom or capable of movement
21 in 6 degrees of freedom. That's the example he used.
22 Remember, the center ball there, which was Element 12,
23 which is capable of movement in 6 degrees of freedom.
24 It can go back and forth on the axes, and it can rotate
25 around.

1 Q. Now let me ask you: When they were demonstrating
2 these games, when Anascape was demonstrating, like, the
3 Mario game and he had him running around in that game,
4 did you see him being controlled in 6 degrees of
5 freedom?

6 A. No.

7 Q. Now, did you see -- but it was 3-D graphics, right?

8 A. Right. The picture, the screen, is
9 three-dimensional in nature. It looks like a 3-D scene,
10 much like a movie.

11 Q. Now, Professor Howe was saying that those were 3-D
12 graphics. Is that relevant to the analysis of whether
13 there are 6 degrees of freedom?

14 A. Not exactly and no, because "3-D graphics" means
15 3-D in the ordinary sense of how we talk about 3-D.
16 Right? That is that something looks three-dimensional,
17 like a three-dimensional view we have with our eyes.
18 But the definition by the court of "3-D" is very
19 specific, capable of movement in 6 degrees of freedom.
20 So, that is, it is actually movable in that way, not
21 that it just appears three-dimensional.

22 Q. Did any of the stuff that was demonstrated with
23 respect to Mario running around and jumping on that ball
24 and doing all those things indicate to you that he was
25 being controlled in 6 degrees of freedom?

1 A. No.

2 Q. Okay. Could you explain why?

3 A. Well, in the game you're controlling a little sort
4 of virtual version of a person and he can jump and he
5 can run, but there's never a place in the game where you
6 can control him and make him turn end over end like an
7 astronaut floating in space or make him go sideways
8 while he's lying on his side. That's just not possible.
9 The game limits you, and you can only control him in
10 certain ways.

11 Q. So, it is important to -- when determining
12 infringement, to use the definition the court gave us
13 and not to just simply assume that 3-D graphics, in
14 fact, satisfied the claim. Is that your --

15 A. Right.

16 Q. Have you looked at the various games that are
17 accused -- that have been identified, not that are
18 accused -- and I apologize. That's not a correct
19 statement. Strike that.

20 Have you looked at the various games that
21 were identified by the plaintiff in connection with
22 these products?

23 A. Yes.

24 Q. Did you see any evidence that any object is
25 controlled in 6 degrees of freedom in any of those

1 games?

2 A. No.

3 Q. Now, is that true for the Wavebird and also the
4 GameCube?

5 A. Yes.

6 Q. Now, one thing I didn't ask you about was the
7 dependent claims with respect to the Wii Classic and the
8 Wii Remote. There's dependent claims 22 and 23 that
9 those Wii Classic and Wii Remote have been accused of.
10 Are you aware of that?

11 A. Yes.

12 Q. But you also said that claim 19, the independent
13 claim, was not infringed. So, what would be your
14 opinion with respect to the dependent claims 22 and 23?

15 A. Well, if the independent claim is not infringed,
16 then the dependent claims are not going to be infringed,
17 either, in this case.

18 Q. Now, did you also take a look at the games that
19 were identified by the plaintiff to see if, in fact, the
20 joysticks on the Wii -- I mean, on the GameCube and the
21 Wavebird could, in fact, be used in the manner set forth
22 in the claims?

23 A. Yes.

24 Q. And, in particular, did you -- if I could go to --
25 do you recognize this chart?

1 A. Yes, I do.

2 Q. What is it?

3 A. This, again, is a chart showing, for the games that
4 were listed by Anascape in Mr. Howe's report, what you
5 could do with the second element and the third
6 element -- that's those joysticks on the GameCube
7 Wavebird -- in terms of controlling an object or
8 controlling a viewpoint.

9 And as you can see, there's no way, there's
10 no case, no example where you actually can control an
11 object with the third element.

12 Q. Did you do that same -- that chart is for both the
13 GameCube and the Wavebird, isn't it?

14 A. Yes, it is.

15 Q. So, again, then, do you have an opinion on whether
16 or not the GameCube -- whether the GameCube infringes
17 any of the asserted claims?

18 A. The GameCube does not infringe any of the asserted
19 claims.

20 Q. What about the Wavebird?

21 A. The Wavebird does not infringe any of the asserted
22 claims, either.

23 Q. Well, Mr. Dezmelyk, I appreciate your time.

24 MR. PRESTA: I'll pass the witness.

25 THE COURT: Who's for plaintiffs?

1 MR. CAWLEY: Sorry, your Honor. May I
2 proceed now?

3 THE COURT: Yes. That's what I was asking,
4 who would take him.

5 CROSS-EXAMINATION OF ROBERT DEZMELYK

6 BY MR. CAWLEY:

7 Q. Good afternoon, Mr. Dezmelyk.

8 A. Good afternoon.

9 Q. I just have what I hope won't be too many
10 questions; although, I know you've been on the stand a
11 while and naturally that's raised some questions that
12 I'd like to discuss with you.

13 Let's talk first about the Sony controllers.
14 You discussed those at some length. Remind us when the
15 Sony controllers that you discussed were first
16 introduced to the market.

17 A. Sure. The Sony -- the first Sony controller
18 introduced was the Sony Dual Shock, which was introduced
19 in June to retail sales. It shipped early, of course,
20 to wholesalers; but it was on retail sale -- I believe
21 you'll hear from the Sony witness -- at the end of June,
22 in June, 1998.

23 Q. 1998.

24 And the Dual Shock 2 was released in what
25 year?

1 A. In October of 2000.

2 Q. 2000.

3 So, it's absolutely clear, isn't it, that
4 both of those products were released years after
5 Mr. Armstrong's 1996 patent application?

6 A. Yes. They are released subsequent to the original
7 1996 application.

8 Q. And you also mentioned a patent -- a foreign patent
9 called either "Goto" or "Goto" (pronouncing), something
10 like that, you remember?

11 A. Yes, I did. It's a -- to be accurate, it's a
12 foreign-published patent application from Mr. Goto.

13 Q. What was the date of that patent?

14 A. The date of the patent issuing -- I don't know the
15 publication date -- is in April of 1998.

16 Q. '98. So, that also is at least two years after
17 Mr. Armstrong's 1996 patent application, correct?

18 A. That's correct.

19 Q. Now, you spent quite a bit of time going through
20 the Sony controllers, both the DualShock and the
21 DualShock 2, and comparing them to the asserted
22 claims -- at least some of them -- in the '700 patent,
23 correct?

24 A. Yes.

25 Q. And isn't it fair to say that you concluded that

1 both of those Sony products are using the invention
2 described in those claims of the '700 patent?

3 A. No. That's an incorrect statement of my
4 conclusion.

5 Q. Well, let me ask you this: Isn't it true that you
6 said that they anticipate those claims?

7 A. Yes. They anticipate the claims.

8 Q. Doesn't that mean, then, that those devices
9 practice or do or have what is described in the claims?

10 A. It means that they meet the claim limitations, but
11 since --

12 Q. All right, sir.

13 A. -- they were issued before the --

14 Q. That really was my question. That was my question.

15 They meet or have within them what the claims
16 describe, correct?

17 A. That's correct.

18 Q. Okay. Have you had any discussions with any
19 Nintendo employees in this case?

20 A. Well, briefly I met a couple of Nintendo employees
21 here during the course of the trial, I think some of the
22 people that are --

23 Q. Is that all?

24 A. That's all.

25 Q. You haven't had any discussions with any Nintendo

1 employees about how their products work or how they
2 develop their products?

3 A. I have not spoken to them about their product
4 development process or how those products work, no.

5 Q. Have you bothered to make yourself aware that some
6 Nintendo employees have described the Wii Nunchuk as
7 being an extension of the Wii Remote?

8 A. I'm not aware of that, but that's a fair
9 characterization. It adds to its capabilities.

10 Q. And it's true, isn't it, that the Nunchuk doesn't
11 work at all without the Wii Remote.

12 A. That's true. That's similar to the way the
13 Wavebird won't work without its receiver.

14 Q. Okay. But your answer to my question is yes,
15 correct, the Nunchuk won't work without the Remote?

16 A. Right. The Nunchuk uses the Remote to transmit its
17 information back down to the Wii.

18 Q. All right. So, it wouldn't surprise you if
19 Mr. Genyo Takeda, who is an engineer and a developer for
20 Nintendo, had testified in his deposition that he
21 considered the Nunchuk to be an invention of the Wii
22 Remote. That wouldn't surprise you, would it?

23 A. No.

24 Q. Were you here for the testimony of Mr. Ikeda last
25 week?

1 A. Yes, I was.

2 Q. And did you see him playing the boxing game?

3 A. Yes, I did.

4 Q. And he needed both the Wii Remote and the Wii
5 Nunchuk together to be able to do that, didn't he?

6 A. He used both of them when he was playing that game,
7 yes.

8 Q. And he needed them to be able to do that, didn't
9 he, to be able to play that boxing game?

10 A. Yes. He used both of them in the course of playing
11 the game.

12 Q. And were you here for Ms. Jacqualee Story's
13 testimony last week?

14 A. I'm sorry. I was not present for her testimony.

15 Q. Have you read her testimony?

16 A. No, I haven't.

17 Q. Let me show you a slide, Slide Number 3, that she
18 used in her testimony. Have you seen this slide before?

19 A. I mean, I've seen the characters; and I'm generally
20 familiar with it, yes.

21 Q. In the upper left there is a character called
22 "Link." Do you see that? Are you familiar with Link?

23 A. Yes.

24 Q. Do you know that Link appears in the game of Zelda:
25 Twilight Princess?

1 A. Yes. He's one of the main characters in that game.

2 Q. And you know, don't you, that you need the Wii
3 Nunchuk connected to the Remote to play that game?

4 A. Yes. You can use it -- you use both of them in the
5 course of playing that game.

6 Q. Yes, sir.

7 And Mr. Ikeda also testified, didn't he, that
8 for games that require the use of the Nunchuk, if you
9 attempt to use the game with the Wii Remote alone, you
10 get a message on the screen saying you've got to connect
11 the Nunchuk?

12 A. Is that a question?

13 Q. Yes, sir.

14 A. Oh.

15 Q. I'm sorry.

16 A. I'm sorry. I didn't realize if -- I didn't know if
17 you were done.

18 Q. Let me add onto the end of it. You know that,
19 don't you?

20 A. Right. He has said that was the case.

21 Q. And Ms. Story also testified --

22 MR. CAWLEY: I'm sorry. If we could have
23 that slide back up again.

24 BY MR. CAWLEY:

25 Q. Ms. Story also testified, didn't she, that Mario

1 and Luigi and at least one princess are in the game
2 Super Mario Galaxy?

3 A. Well, again, who were you referring to in the
4 testimony there?

5 Q. Ms. Story's testimony.

6 A. Right. I told you I was not present for her
7 testimony; so, I don't know what she testified to.

8 Q. Okay. Then, are you aware that the characters
9 Mario and Luigi and the princess all appear in the game
10 Super Mario Galaxy?

11 A. Yes, those characters all appear in that game.

12 Q. And you need the Wii Nunchuk to play that game,
13 too, don't you?

14 A. Yes. You normally use the Nunchuk to play that
15 game.

16 Q. And then, finally, are you aware that, as Ms. Story
17 told us, this character, Samus, in the lower right-hand
18 corner of the slide, is the main character of the game
19 Metroid Prime 3?

20 A. I'm not familiar with Metroid Prime 3; so, I can't
21 really comment about Samus or the game.

22 Q. Are you aware that you need the Wii Nunchuk to play
23 that game?

24 A. As I said, I'm not -- I've never played that game,
25 not familiar with the details of it; so, I can't really

1 comment on how it's played.

2 Q. Let me show you a piece of the transcript of
3 Ms. Story's testimony. She was asked: And was Samus a
4 character for the GameCube series, as well?

5 She answered: Yes.

6 Question: And what game does she appear in
7 on the Wii system?

8 Answer: She looks quite a bit different
9 because she wears a suit of armor.

10 Okay.

11 Answer: But I believe -- well, she's in
12 Metroid Prime 3.

13 Question: All right. And to play that game,
14 you need to use the Wii Remote and the Nunchuk, don't
15 you?

16 Answer: Yes. I believe you do.

17 Do you have any reason to disagree with
18 Ms. Story about that?

19 A. Well, I don't have a reason to either agree or
20 disagree. I've never played the game. I'm not familiar
21 with the game. So, I have no more information about
22 that than her testimony.

23 Q. Let me ask you some questions about the
24 acceleromometer. You said you were here for Mr. Ikeda's
25 testimony, correct?

1 A. Yes.

2 Q. Let me ask you if you remember this testimony.

3 Question: Mr. Ikeda, isn't it true that one
4 set of capacitors in the accelerometer is used to detect
5 acceleration on the X axis?

6 Answer: The X axis can be measured, as well.
7 But at the same time, measurement can take place along
8 the Y and Z axes.

9 Question: Yes, sir. That's my next
10 question. Isn't it true that a different set of
11 capacitors is used to detect acceleration on the Y axis?

12 And his answer: Yes, different capacitors
13 and probes for the Y axis.

14 Did you hear that testimony, sir?

15 A. Yes, I did.

16 Q. Let me ask you about some other of Mr. Ikeda's
17 testimony.

18 (Reading) So, there are capacitors that sense
19 movement in the X axis, correct?

20 And he answered: That's correct.

21 And then he was asked: And there are
22 capacitors that sense movement in the Y axis, correct?

23 And he answered: That's correct.

24 I said: Thank you, sir.

25 And he added: And there are capacitors for

1 the Z axis, as well.

2 Do you remember hearing that testimony from
3 Mr. Ikeda?

4 A. Yes, I do.

5 Q. Have you ever seen a picture of the interior of the
6 accelerometer used in the Wii Remote?

7 A. I think so. I'm not sure if I've seen a photo of
8 the exact chip that's on that particular -- certainly --
9 I'm not sure -- they change by version; but I have a
10 general idea of what that chip looks like on the
11 surface, yes.

12 Q. Well, my question is -- let me ask this
13 specifically: Have you ever seen a Chipworks report for
14 the chip inside the Wii Remote?

15 A. Yes, I have. I've seen the Chipworks report.

16 MR. PRESTA: Objection. There's been no
17 foundation that that Chipworks report --

18 MR. CAWLEY: He just testified to that.

19 THE COURT: I can't hear your objection
20 anyway.

21 MR. PRESTA: I'm sorry. The objection was
22 foundation with respect to the Chipworks report.

23 THE COURT: Overruled.

24 BY MR. CAWLEY:

25 Q. You've seen that picture, haven't you?

1 A. Yes, I have.

2 Q. And I think you just said that as far as you know,
3 it's a fair depiction of what's inside the chip?

4 A. Yeah. I could direct your attention to one part of
5 it where I think is a pretty accurate description of
6 what the chip is.

7 Q. Well, it wasn't the description; it was the
8 photograph that I'm interested in. Do you think that
9 the photograph that you saw in the Chipworks report was
10 an accurate depiction of what you saw -- of what is
11 inside the Wii Remote chip?

12 A. I think the photograph I saw that shows a single
13 sense line coming from the proof mass and shows a pair
14 of drive lines, one for X and one for Y, is an accurate
15 depiction of that chip, yes.

16 Q. You heard Mr. Ikeda's testimony that actually is
17 still up on the screen about capacitors that sense
18 movement in the accelerometer, correct?

19 A. Yes.

20 Q. Have you examined the 1996 application to determine
21 whether they refer to the possibility of using
22 capacitors as sensors?

23 A. The application -- Armstrong application?

24 Q. Yes, sir, 1996.

25 A. No, not specifically.

1 Q. Do you mean that it doesn't?

2 A. No. I wasn't looking for the presence -- the
3 specific mention of a capacitor as a sensing device.

4 Q. Have you read the application?

5 A. Yes, I have.

6 Q. Well, wouldn't that be pretty important to this
7 case to know if Mr. Armstrong had described as -- the
8 possibility of using a capacitor as a sensor?

9 A. It would be relevant to the extent it was related
10 to the rest of the structure. I think -- I'd be happy
11 to look at it if you would like to point me to the place
12 that you're talking about.

13 Q. Okay. Let's look at Slide 2. You see that this is
14 an excerpt from the 1996 application?

15 A. Yes.

16 Q. And it's on -- in the jury book it's on page 12,
17 line 12. And beginning at the top it says: For the
18 purposes of this teaching, specification and claims, the
19 term "sensor" or "sensors" is considered to include not
20 only simple on/off, off/on contact switches but also
21 proportional sensors such as proximity sensors, variable
22 resistive and/or capacitive sensors. Do you --

23 A. That's correct.

24 Q. Do you see that, sir?

25 A. Yeah. He's listing that as an example of a type of

1 sensor.

2 Q. Yes, sir. And does a capacitive sensor use a
3 capacitor?

4 A. Yes.

5 Q. And is that the type of capacitors that Mr. Ikeda
6 described?

7 A. It's -- a capacitive sensor measures capacitance,
8 and it's a type of sensor.

9 Q. Yes, sir. And it's a type of sensor that was
10 specifically discussed by Mr. Armstrong both in his 1996
11 application and in the '700 application, correct?

12 A. Right. He discloses -- he listed certain types of
13 sensors --

14 Q. I think my question was: It was listed, correct?
15 And I think you just confirmed that it was,
16 right?

17 A. It was listed, yes.

18 Q. Okay.

19 MR. CAWLEY: Let me ask Mr. Martin or
20 Mr. Moreno to pull up your Slide 194.

21 BY MR. CAWLEY:

22 Q. This chart lists, among other games, the game
23 Zelda: Twilight Princess, correct?

24 A. This chart, yes. The Legend of Zelda: Twilight
25 Princess, yes.

1 Q. And you've played that game, haven't you?

2 A. Yes, I have.

3 Q. And you played it with the Wii Nunchuk connected to
4 the Wii Remote, correct?

5 A. Yes. This chart, though, is about the Wii Classic
6 and the Wii Remote.

7 Q. Okay. Did you play this game with the Wii Classic
8 connected to the Wii Remote?

9 A. Yes.

10 Q. Well, the test is -- sorry. You corrected me.
11 This is about the Wii Classic; and, so, you played the
12 game not with a Wii Nunchuk but with the --

13 A. Well --

14 Q. -- Wii Classic connected to the Wii, correct?

15 A. Well, I think you're mischaracterizing. "Playing"
16 is I tested the game.

17 Q. Okay. Fine.

18 A. And the answer is no, none of those elements do
19 anything. But you wouldn't say that you're playing the
20 game. There's a little bit of a different perspective
21 on it because the game is not played with the Classic
22 controller.

23 Q. Okay. You tested it, then?

24 A. Right. This chart is showing what I tested,
25 because I tested each of the games.

1 Q. But you can't play the game Zelda: Twilight
2 Princess with the Wii Classic Controller, can you?

3 A. As you can see in the chart here, neither of the
4 controls do anything. So, in fact, as this chart is
5 showing, you can't control objects and you can't control
6 viewpoints --

7 Q. Right.

8 A. -- with either handle, which means you can't play
9 the game.

10 Q. So, the reason that the Wii Classic Controller
11 can't control objects and navigate viewpoints is it's
12 not compatible with this game at all, is it?

13 A. Correct.

14 Q. Okay. So, you could list 50 controllers that
15 aren't compatible with this game and say the same thing
16 about it, couldn't you?

17 A. Well, I don't think there are 50 controllers. And,
18 again, I'm looking at the very specific set of games in
19 Dr. Howe's report. It's a rebuttal report. So, I'm
20 allowed to look at the games he suggested and go through
21 them and test them, and this is my test results. So, in
22 fact, I have to test them all; and that's the results of
23 the testing.

24 Q. Well, maybe there aren't 50. But, for example, the
25 Atari controller isn't compatible with any of those

1 games, is it?

2 A. Well, but again, sir --

3 Q. I'm sorry --

4 A. -- I'm writing a rebuttal --

5 Q. I'm sorry. Could you answer my question?

6 The Atari controller is not compatible with
7 that game, is it?

8 A. No, it is not.

9 Q. Okay. And that doesn't tell -- merely saying that
10 it doesn't control object and viewpoint or object and
11 viewpoint doesn't really tell you anything about the
12 Atari controller, does it?

13 A. It tells you that it does not meet that claim
14 limitation.

15 Q. Well, it tells you, doesn't it, that it's not even
16 compatible with the game and never was intended to be
17 used with that game in the first place? Isn't that
18 true?

19 A. Yes, and shows you it doesn't meet the claim
20 limitation for that game.

21 Q. Isn't that true, sir? Was your answer "yes"?

22 A. Yes, along with the rest of my answer, which is
23 that it does not operate that game.

24 Q. I'm sorry, sir. Maybe I'm being unclear in my
25 question. Was your answer "yes"?

1 A. Well, my answer was if you -- can you please
2 restate the question?

3 Q. Sure. Since the Atari controller isn't even
4 compatible with the game The Legend of Zelda: Twilight
5 Princess, saying that it doesn't control object and
6 viewpoint doesn't really tell you anything about the
7 capability of the controller, does it?

8 A. It does tell you that you cannot meet the claim
9 limitation of claim 19 with that controller.

10 Q. And that game, correct?

11 A. Right.

12 Q. What if it does it with another game?

13 A. That's a different test.

14 Q. Are you saying to the jury that it's a fair test to
15 take a controller, to see if it can control objects and
16 viewpoints, and to test that on a game that the
17 controller is not even compatible with?

18 A. No. You're mischaracterizing my statement in my
19 report.

20 Q. Well, so, you're not telling the jury that, then,
21 correct?

22 A. No.

23 Q. It's true that you can't play Shrek the Third with
24 the Wii Classic Controller, either, can you?

25 A. That's correct.

1 Q. And you can't play Animal Crossing with the Wii
2 Classic Controller, can you? That's a GameCube
3 controller.

4 A. Again, that's correct.

5 Q. You can't play Blood Omen II with the Wii Classic
6 Controller, can you?

7 A. That's correct.

8 Q. You can't play Super Mario Galaxy with the Wii
9 Classic Controller, either, can you?

10 A. That's correct.

11 Q. Now, you recognize that the left thumbstick on this
12 controller is capable of controlling objects, isn't it?

13 A. Right. That's correct.

14 Q. But isn't the right thumbstick exactly the same as
15 the left thumbstick?

16 A. In terms of its internal design --

17 Q. Yes, sir.

18 A. -- yes.

19 Q. So, wouldn't it be capable, therefore, of
20 controlling objects, too, if the game designer chose to
21 program his or her game that way?

22 A. If a game designer chose to do that, yes, it could
23 be used for similar functionality.

24 Q. All right, sir.

25 MR. CAWLEY: Let's take a look at Slide 217.

1 BY MR. CAWLEY:

2 Q. Is this another chart that you showed us?

3 A. Yes, it is.

4 Q. And this chart says that it shows the GameCube
5 controller doesn't move objects or navigate viewpoints
6 with *Zelda: Twilight Princess*, correct?

7 A. Yes.

8 Q. Did you, by any chance, review the game manual that
9 comes with *Zelda: Twilight Princess*?

10 A. Yeah, but I don't recollect it at the moment.

11 Q. Don't worry. I think I have a couple of printouts
12 from that manual.

13 Let's take a look at the slide. That's the
14 cover of it. Does it look familiar?

15 A. I've seen it, yeah.

16 Q. Do you see on the left thumbstick that it says
17 "Control Stick"? Do you see that?

18 A. I do see that.

19 Q. And do you see that it says "walk/run/swim/jump"?

20 A. Yes. But I also see -- isn't this the GameCube
21 version of *Zelda*?

22 Q. Sir, if I could get you to answer my question.

23 A. It says --

24 Q. Is that what it says?

25 A. Yeah.

1 Q. And doesn't it show that the left thumbstick is
2 used to make Link swim, run, and jump?

3 A. Yes.

4 Q. And doesn't it show that the right thumbstick is
5 used to navigate viewpoints?

6 A. It says "change camera angle," yes.

7 Q. Okay. Do you quibble with "navigate viewpoints"
8 and "change camera angle"?

9 A. No, no. That would be navigating a viewpoint.

10 Q. So, would the answer to my question be "yes,"
11 Mr. Dezmelyk?

12 A. Yes. I see that.

13 Q. Thank you.

14 And you say you've actually played these
15 games?

16 A. Well, you're putting up here a different game than
17 the one I played and a different one than I am writing
18 about in my report. Mine was the Wii version, because
19 I'm testing on the Wii platform.

20 Q. Now, you heard Mr. Ikeda's testimony, didn't you,
21 when he was discussing the Wii version of the Mario
22 game?

23 A. Yes.

24 Q. Did you hear him say that you can use the Wii to
25 move a ball-like character using the accelerometer?

1 A. I don't recall that exact line of testimony.

2 Q. Do you remember Ikeda saying he thought that a game
3 designer could use the output of the accelerometer to
4 change the player's point of view?

5 A. Again, I don't remember his exact statement. I
6 don't have any reason to doubt it if you are
7 representing that that's his statement.

8 Q. Well, I don't want to ask you to take my word for
9 it.

10 You were here during his testimony, weren't
11 you?

12 A. Yes, but I don't recall every word the guy says.

13 Q. Okay. He was asked a question: Could the game
14 designer choose to use the output of the accelerometer
15 to move objects on the screen?

16 He answered: Well, just the way you can move
17 Mario, if you had a ball-like character, you could move
18 that ball in the same way.

19 Question: Could a game designer choose to
20 use the output of the accelerometer to change the
21 player's point of view on the screen?

22 And he answered: I think so.

23 Does that refresh your recollection?

24 A. Yes.

25 Q. And do you -- were you here for the testimony of

1 Mr. John Pederson, who is the senior director of
2 technical services at Nintendo?

3 A. No, I was not.

4 Q. Okay. Did you read his testimony?

5 A. No.

6 Q. "No"? Let me make sure you've seen it.

7 He was asked the question: The Wii Remote
8 controller -- we've heard quite a bit about -- has an
9 accelerometer in it, correct?

10 He answered: Correct.

11 And that accelerometer in the Wii Remote
12 provides three separate signals representing
13 acceleration along three different axes; isn't that
14 correct?

15 He answers: Correct.

16 And you would agree with me, wouldn't you,
17 that the use of those three outputs is up to the game
18 designer?

19 You don't disagree with Mr. Pederson, do you?

20 A. No.

21 Q. So, you agree with him and Mr. Ikeda that the
22 designer of the game can choose how to use the user
23 inputs and outputs from the controller?

24 A. Yes. A game designer certainly can choose how they
25 want to use the information that comes from the

1 controller, sure.

2 Q. And the outputs from the controller are capable of
3 being used to change a player's point of view?

4 A. Well, they're capable to be used by the game
5 designer the way he wants; and so, a game designer could
6 do that, yes.

7 Q. Okay. And could it be capable of being used by the
8 game designer to move objects?

9 A. Yes.

10 Q. Okay. Thank you, sir.

11 THE COURT: Counsel, we're going to go ahead
12 and take a break.

13 I'll ask you to be back, ladies and
14 gentlemen, at ten of.

15 (The jury exits the courtroom, 3:33 p.m.)

16 (Discussion off the record)

17 THE COURT: All right. We're in recess until
18 ten of.

19 (Recess, 3:33 p.m. to 3:48 p.m.)

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

22 THE COURT: Counsel?

23 MR. CAWLEY: Thank you, your Honor.

24 BY MR. CAWLEY:

25 Q. Mr. Dezmelyk, you indicated in your expert report

1 in this case, didn't you, that Nintendo has been
2 producing multiple input member controllers since 1985,
3 correct?

4 A. Yes.

5 Q. And that's because in 1985, that was the year that
6 the Nintendo Entertainment System came out, correct?

7 A. I believe so, yes.

8 Q. And it's your opinion, isn't it, that the
9 controller for the Nintendo Entertainment System is a
10 multiple input member controller?

11 A. Yes, I believe so.

12 MR. CAWLEY: May I approach, your Honor?

13 THE COURT: You may.

14 BY MR. CAWLEY:

15 Q. Do you recognize what I've handed you,
16 Mr. Dezmelyk?

17 A. Yes, I do.

18 Q. What is that?

19 A. It's the -- it's an early Nintendo controller from
20 that vintage.

21 Q. And that's the one you say is a multiple input
22 member controller, correct?

23 A. Yes.

24 Q. Could you hold it up so the jury can see the face
25 of it?

1 A. Sure (complying).

2 Q. Walk us across what's on the face of it just sort
3 of starting from left to right.

4 A. Well, it's got a direction pad, a couple of little
5 buttons in the middle, then a couple of little buttons
6 on the right.

7 Q. Okay. Show us where the different input members
8 are.

9 A. Well, it's got an input element or member over here
10 (indicating).

11 Q. That's the D-pad, correct?

12 A. D-pad, right. And then you can also make inputs on
13 the buttons.

14 Q. A total of four buttons, right?

15 A. Right. There are four buttons on the front of this
16 device.

17 Q. And is each button a separate input?

18 A. It is. A button is an input in this case, yes.

19 Q. Okay. All right. And you say that this controller
20 has multiple input members because each button is a
21 separate input.

22 A. Well -- yes. Using the definition of a finger
23 being -- a finger-activatable element.

24 Q. Uh-huh.

25 A. These are input elements, yes.

1 Q. So, how many input members does that controller
2 have?

3 A. Well, again there's -- one, two, three, four --
4 five, four of which are buttons and one which is a
5 D-pad.

6 Q. Thank you, sir.

7 Now let's talk about the adequacy of the 1996
8 specification, whether there was enough in the 1996
9 specification to support or provide disclosure for the
10 2000 application that Mr. Armstrong filed that became a
11 patent that's involved in this lawsuit, the '700 patent.

12 Now, when you began your testimony about that
13 subject, you went through the '96 application; and you
14 testified -- and I'm not trying to put words in your
15 mouth here, but maybe we can work together to get
16 whatever words you're comfortable with. You testified
17 that in your reading the '96 application, you believed
18 that the inventions or ideas that Mr. Armstrong
19 disclosed was a single input member that could control 6
20 degrees of freedom. Is that accurate?

21 A. Well, I think it's important that we have a very
22 clear sort of definition of what that is because, first
23 off, there is a number of things described in that
24 application. Some of them are not relevant to this
25 litigation.

1 Q. Okay. And you said that this morning.

2 A. There are also a lot of descriptions of the
3 particular details of the idea, like some sheet
4 connections, some ways of mounting proportional buttons,
5 and so forth. Not all of those are necessarily related
6 to this, either. So, I don't want to appear that I'm
7 characterizing his invention in some kind of very
8 simple, narrow-minded way. I'm saying that relative to
9 the claims we're talking about here, there are certain
10 key aspects of that invention. The scope of the
11 invention -- it would be inappropriate to try to look at
12 every idea that was in the whole application. We would
13 be here for days.

14 Q. There's a lot of ideas in that application.

15 A. Right. And most of them are not related to the
16 situation at hand.

17 Q. But for the ones that are related to the claims in
18 this case, you told us, didn't you, that it was your
19 opinion -- and what you told the jury was that they all
20 relate to a single member input controlling 6 degrees of
21 freedom.

22 A. Well, I think my point is that the disclosure only
23 shows that Mr. Armstrong had in his possession at that
24 time an invention which had a single input member. And
25 remember, now, the word "input member" is being used

1 very specifically to relate to how it's used in the
2 claim. An input member that is hand-holdable the way he
3 describes it in the application, that is used in that
4 way.

5 Q. Okay. So, what you just said and what you
6 testified about earlier this morning is your summary of
7 what the pertinent parts of the disclosure disclose,
8 correct?

9 A. Well, again, I mean, it's not -- I'm looking at the
10 totality of it when I rendered my opinion. But one way
11 to describe the -- probably one of the most important
12 aspects of that invention is a single handle which you
13 can put your hand on and operate in 6 degrees of freedom
14 and that that is the core or central part of the
15 invention that is claimed in this particular --

16 Q. Okay. That's your summary of what you believe you
17 read in the disclosure as a central part of the
18 invention?

19 A. Yes. That would be my summary.

20 Q. Okay. Those are your words, right?

21 A. Right.

22 Q. Okay. So, we've got your summary.

23 Then you also drew some pictures. Let's take
24 a look at one.

25 That's not one. When I was asking for the

1 picture, forgive me, but I said it looked like a bar of
2 soap with some red spiders on it; so, I guess that's the
3 one.

4 And this, again, is generally what? And I'm
5 not so much interested in what the particular claim is
6 or -- but you had a bunch of pictures that were sort of
7 like this with some slight variations. Tell us in
8 general what this is.

9 A. Well, in general, what I'm showing here is a memory
10 aid for the limitations in the claim; that is, one
11 way -- if we look at the claim, in the full scope of
12 these claims as they were asserted, this picture helps
13 us remember the different elements in the claim.

14 Q. Okay. So, this is something you've created to help
15 people remember different things that are in the claim,
16 correct?

17 A. That's correct.

18 Q. Okay. Now, you understand, don't you, that in
19 determining whether the claims are adequately supported
20 by the '96 disclosure, the jury is not supposed to
21 compare the words of the claims to your summary, are
22 they?

23 A. Well, the test is the claim, the limitations of the
24 claim, to the known -- the knowledge of the inventor --
25 his invention or his idea at the time.

1 Q. Okay. Well, here's my question.

2 A. Neither one of those --

3 Q. Maybe I can repeat it for you if it wasn't clear.

4 Are you telling the jury that in deciding
5 whether this patent is entitled to the '96 date, that
6 they're supposed to compare the words of the claims in
7 the patents to your summary?

8 A. No.

9 Q. Okay.

10 A. They knew --

11 Q. Are you telling the jury that they're supposed to
12 compare the words of the claims to your picture?

13 A. No.

14 Q. Okay.

15 A. The picture is just a summary --

16 Q. Isn't it true, sir -- excuse me. Let me just ask
17 you questions, if I may. I think this will go a lot
18 faster for all of us.

19 Isn't it true, sir, that what the jury is
20 supposed to do is compare the words of the claims to
21 what's actually in the disclosure?

22 A. Yes.

23 Q. Okay.

24 A. They are supposed to --

25 Q. All right.

1 A. -- compare the claim scope, what's described by the
2 claim, the limitations of the claim, to --

3 Q. All right.

4 A. -- the specification.

5 Q. So, for example, if you've shown these pictures --
6 and those red things aren't supposed to be spiders, are
7 they? They're supposed to be thumbsticks, right?

8 A. No. They are the reminder that we have a claim
9 element which is an input element structured to activate
10 the two bi-directional proportional sensors, that
11 phrase. It's a reminder that we're looking for that
12 idea, that concept within the original application -- as
13 disclosed in the original application --

14 Q. All right.

15 A. -- as a part of the whole invention.

16 Q. Okay. But you've sort of drawn it like a
17 thumbstick, haven't you?

18 A. Yes.

19 Q. But, in fact, thumbstick isn't in the asserted
20 claims of the patents, is it?

21 A. No.

22 Q. Okay. So, it wouldn't be right to go look for that
23 word, for example.

24 A. Well, the task is not to go look for a word. The
25 task is to look to see what is the inventor -- did he

1 have the whole idea at the time. It's not like we're
2 looking for the words in the claim.

3 Q. Well, obviously we're not looking for the word
4 "yes" or "no" or "of" or "thumb" or something. But you
5 agree with me the word "thumbstick" doesn't appear in
6 any of the claims of the asserted patent?

7 A. Right. It does not.

8 Q. Okay. Things like "member" appears or "element" or
9 "sensor," right?

10 A. Right.

11 Q. And you would also agree with me, wouldn't you,
12 that it's not proper to compare, or to look for and
13 compare, what's disclosed in the claims to the Nintendo
14 products, at least for purposes of this exercise of
15 determining whether or not the disclosure in '96 was
16 adequate?

17 A. I actually disagree with you there in that the
18 infringement contentions and the testimony put before us
19 show a scope that's asserted.

20 Q. So, you think that when the jury is trying to
21 decide this issue and trying to decide whether what
22 Mr. Armstrong put in his claims for the '700 patent --
23 whether that's adequately described in the '96
24 application, you think they should look at Nintendo's
25 products to do that?

1 A. No. That's not what I said.

2 Q. Okay. Well, thank you, sir.

3 Let's take a look at some claims, then; and
4 I'd like to now -- instead of comparing the claims to
5 your summary or to pictures, I'd like to go through and
6 compare some of them to what's actually in the '96
7 disclosure.

8 Do you have a copy of the '700 patent in
9 front of you, sir?

10 A. Sure. I believe so.

11 Q. Since I think you started with claim 19, why don't
12 we start with claim 19. Claim 19 requires a
13 hand-operated controller, doesn't it?

14 A. Yes, it does. I think, though, I'd like to ask
15 kind of a question of you first to clarify it. You've
16 asked me to look at the '700 patent.

17 Q. Yes, sir.

18 A. Are you asking me questions related to the
19 description disclosure and specification of that patent
20 or the filed application?

21 Q. No. I'm sorry. Thank you for the clarification.
22 No, sir. I am going to ask you some questions about
23 that, but mostly I'm going to be asking you about the
24 disclosure in the '96 application.

25 A. Right. So --

1 Q. There may be some times when I also want to ask you
2 about the application that was filed for the '700
3 patent, but I'll try and make that clear when I'm doing
4 that.

5 A. Thank you.

6 Q. Okay. So, you have the patent in front of you.
7 You have claim 19, right?

8 A. Yes.

9 Q. Okay. Claim 19 requires, at the very beginning of
10 it, a hand-operated controller, right?

11 A. Yes.

12 Q. Okay. Let's take a look at Slide 6. Some of these
13 pictures are probably becoming pretty darn familiar to
14 us by now; so, I'm not going to take a whole lot of time
15 on them. But you recognize this as claim 3 from the
16 application, don't you?

17 A. Yes.

18 Q. And it shows a ball, right?

19 A. Yep.

20 Q. And it shows a collet or collar around the ball,
21 right?

22 A. That's correct.

23 Q. And can't the user use the ball with his hands?

24 A. Yes.

25 Q. And can't the user move the collet with his or her

1 hands?

2 A. Yes.

3 MR. CAWLEY: Now let's go to Slide 7.

4 BY MR. CAWLEY:

5 Q. This slide, which at the top is from the '96
6 application and from the bottom is from the '700
7 application -- let's start up top.

8 In the '96 application it says: This
9 invention relates to structuring for sheet supported
10 sensors and associated circuitry in hand-operated
11 graphic image controllers.

12 Correct?

13 A. Yes.

14 Q. And the '700 application, that disclosure says:
15 This invention relates to hand input controllers.

16 Correct?

17 A. Yes.

18 Q. Now, claim 19 also requires, a little bit further
19 on, structure allowing hand inputs rotating a platform
20 on two mutually perpendicular axes, correct?

21 A. That's correct.

22 Q. Now, I notice -- we might just note this, that this
23 structure specifically says "allowing hand inputs,"
24 doesn't it?

25 A. Yes.

1 Q. And the pictures, just to skip ahead a little, the
2 pictures that you drew for the second element and third
3 element, those red things on your picture -- remember?

4 A. Yes.

5 Q. The second and third element don't say anything
6 about the hand, do they?

7 A. No, they don't.

8 Q. Okay.

9 A. Not in the text.

10 Q. Yes, sir. But let's go back to this part of claim
11 19 that requires a structure allowing hand inputs
12 rotating a platform on two mutually perpendicular axes.
13 And take a look at Slide 8, which is Figure 28. This is
14 from the '96 disclosure, correct?

15 A. Right.

16 Q. And this thing that we've colored blue at the top,
17 that's a flat surface that's designed for someone to
18 grab and hold, correct?

19 A. That's correct. It's at the top of the handle.

20 Q. And to rotate it on the pitch and roll axes,
21 correct?

22 A. Right. You can see the pivots down below in that
23 assembly.

24 Q. And are those perpendicular axes?

25 A. Yes, they are.

1 Q. All right, sir.

2 A little further on, claim 19 requires a
3 controller including tactile feedback means for
4 providing vibration, right?

5 A. Yes.

6 Q. If we go to the next slide, which will show us
7 Figure 21 of the application, we've seen this a number
8 of times. You're familiar with it, aren't you?

9 A. Yes, I am.

10 Q. And the quote in that figure says: Another
11 preferred embodiment. Such a device has additional
12 benefits including space to place active tactile
13 feedback in a still small handle, et cetera.

14 Do you see that?

15 A. Yes, I do.

16 Q. By the way, if I forgot to mention it -- and I'm
17 trying to move along at a reasonable clip here -- all of
18 these slides have references to the specific page number
19 in the juror notebooks where these things appear, if any
20 of the jurors want to flip to that page for any reason.

21 The next thing that I want to direct your
22 attention to in claim 19 requires a second element
23 movable on two perpendicular axes.

24 Let's take a look at Figure 22 from the 1996
25 application. Do you see that figure?

1 A. Yes.

2 Q. Have you studied this?

3 A. Yes. I'm familiar with that.

4 Q. Are you familiar with how it works?

5 A. Yes.

6 Q. I want to redraw it a little bit so that it will be
7 a little clearer and we can make it actually move. So,
8 let me go to the next slide. This is a 3-D rendering of
9 that drawing. Would you take a minute to look at it? I
10 know we've given you these slides in advance; so, you
11 may have had a chance to look at this.

12 Does this appear to be a 3-D rendering of
13 Figure 22?

14 A. Right. It's animated to show the operation of some
15 of the mechanism.

16 Q. And you agree that this is how this embodiment
17 would work, at least parts of it, if it was actually
18 built, right?

19 A. Right.

20 Q. Now, you see this light purple rod, correct?

21 A. Yes.

22 Q. And when that light purple rod moves up and down,
23 the dark purple rocker in the front rocks back and
24 forth, correct?

25 A. Right.

1 Q. And when the light purple rod swings from side to
2 side, the dark purple rocker in the back rocks back and
3 forth, right?

4 A. Right. I can see that.

5 Q. And these rockers, when they do rock, push down on
6 these domes underneath them, correct?

7 A. Yes.

8 Q. And each of these domes activates a unidirectional
9 sensor, correct?

10 A. Right.

11 Q. Okay, sir.

12 If we go to the next slide, this shows Figure
13 45 from the 1996 application, correct?

14 A. Yes.

15 Q. And you're aware, aren't you, that this is a
16 bi-directional sensor?

17 A. Right.

18 Q. So that instead of just going one direction, this
19 thing can rock up or down against that potentiometer
20 that it's engaged with, right?

21 A. Right. As the Element 336 rocks back and forth,
22 the Gear 754 would rotate 752; and the Potentiometer 750
23 would change its position.

24 Q. Yes, sir. And, in fact, the '96 application that
25 Mr. Armstrong filed said that you could replace the

1 unidirectional sensors on Figure 22 with these
2 bi-directional sensors, correct?

3 A. That's correct.

4 Q. Okay. Thank you.

5 The next little bit of claim 19 requires a
6 third element movable on two mutually perpendicular
7 axes; is that right?

8 A. Yes. That's the next claim element in line, the
9 third element section.

10 Q. Let's take a look at the next slide. This is
11 another 3-D rendering of that same Figure 22 from the
12 '96 application, correct?

13 A. Yes.

14 Q. Now, what moves these dark purple rockers in the
15 controller?

16 A. I believe there's a kind of a block that comes down
17 from the plate above it inside.

18 Q. Okay. So, there's a plate above these, correct?

19 A. Right.

20 Q. And there is an engagement point that is connected
21 to that plate above that engages the top of these two
22 rockers. Fair?

23 A. Right.

24 Q. And you see these red things are supposed to
25 represent those engagement points, right?

1 A. Right. They are two parts inside the structure.

2 Q. And when the light platform moves, this light
3 purple platform moves, the engagement points fixed to
4 the plate above cause the rockers to rock back and
5 forth, correct?

6 A. Right. We can see it in animation here.

7 MR. CAWLEY: Let's go to the next slide,
8 14 -- oh, wait a minute. I skipped something. I'm
9 sorry. Let's stay on this slide and go ahead in the
10 animation.

11 Are we ready to rock? Okay. Thank you.

12 BY MR. CAWLEY:

13 Q. The middle shaft here and the small rod that
14 activates the other two rockers also moves back and
15 forth and side to side along with the bottom platform,
16 correct?

17 A. That's correct.

18 Q. Okay. Now let's look at something else that claim
19 19 requires, a plurality of finger-depressible buttons.
20 Do you see that?

21 A. Yes.

22 Q. Okay. Let's take a look at Slide 15.

23 Do you recognize this?

24 A. Yes, I do.

25 Q. It's from the '96 application, correct?

1 A. That's correct.

2 Q. And there are two buttons here, right --

3 A. That's correct.

4 Q. -- colored blue?

5 A. Yes.

6 Q. And Slide 16, you see that this is also some quotes
7 from the '96 application?

8 A. (Pausing.)

9 Q. Yes, sir?

10 A. Yeah. I'm just taking a second to read it.

11 Q. Sure.

12 A. I can't read it as fast as you can perhaps.

13 Q. Well, let's just work through them together. At
14 the top, on page 39, it says: Also shown here are two
15 buttons, 378, for operation by the user's fingers.

16 A. Okay.

17 Q. Right?

18 A. Yep.

19 Q. And on page 40 it says: Additionally, auxiliary
20 secondary buttons -- select, fire buttons, special
21 function keys, et cetera -- are readily integrated.

22 See that?

23 A. Yep. I see that.

24 Q. And then next on page 48 -- oh, where shall we
25 start -- (reading) sensors within a 6-degree-of-freedom

1 device such as for my co-pending application and for
2 finger-activated buttons which may be located elsewhere
3 within the device.

4 A. Right.

5 Q. See that?

6 (Reading) Such as on either the handle
7 housing, the base housing, et cetera.

8 Do you see that?

9 A. Right. I see that.

10 Q. Now I want to give you that alert that I talked to
11 you about before. Let's go ahead -- rather than to have
12 to go back and repeat it -- and look at something
13 similar in the '700 patent. Do you see that, likewise,
14 the '700 patent says: Also shown here are two buttons,
15 378, for operation by the user's fingers?

16 A. Yep.

17 Q. And from the '700 patent: Auxiliary secondary
18 input buttons.

19 See that?

20 A. Yes.

21 Q. And from the '700 patent, a 3-D device such as for
22 my co-pending application, et cetera, and for finger
23 activated buttons, correct?

24 A. Yes, I see that.

25 Q. In addition to the plurality -- and just remind us.

1 "Plurality" means what?

2 A. Well, a plurality is more than one.

3 Q. More than one. So --

4 A. Two is a plurality.

5 Q. -- disclosure of two buttons satisfies the
6 disclosure at least as far as a plurality is concerned,
7 correct?

8 A. It satisfies the disclosure of a button alone. It
9 doesn't necessarily satisfy the disclosure overall.

10 Q. Well, my question is about --

11 A. But in this case it does disclose two buttons, yes.

12 Q. Okay. And that's a plurality, right?

13 A. Yes.

14 Q. Okay. If we go on to claim 19, it next requires a
15 button sensor, correct?

16 A. Yeah. We're reading backwards up from the
17 bottom -- or we're reading down from "buttons." I
18 understand.

19 Q. Yep.

20 A. We've switched applications, but we're now reading
21 down.

22 Q. Right.

23 A. I just wanted to make sure I was following.

24 Q. Yes, sir.

25 A. Thank you.

1 Q. We're reading back claim 19; and we've got to find
2 support for a button sensor in claim 19, right?

3 So, let's look back now. We're back in the
4 '96 application. Does this figure show button sensors?

5 A. Yes, it does.

6 Q. All right, sir. They are associated with the dark
7 blue buttons, colored light blue, right?

8 A. Yes.

9 Q. These are the buttons (indicating); and these are
10 the button sensors (indicating), accurate?

11 A. Yes.

12 Q. Wouldn't be much point in a button without a button
13 sensor, would there?

14 A. No.

15 Q. Okay. Let's now turn our attention to the '700
16 patent and go over some of the other claims. I think
17 that has taken us through claim 19. Let's look at
18 claim 22. Maybe you know it well enough, or if you want
19 to turn to it.

20 Claim 22 requires a button sensor that
21 outputs data proportionate to depression of one of said
22 buttons, correct?

23 A. Well, if you could give me a second because --

24 Q. Yes, sir.

25 A. That's 19, dependent claim 22, the proportional

1 button claim. Yeah, I'm familiar with it.

2 Q. Okay. In the next slide we've got a couple of
3 quotes, one from the '96 application and one from the
4 '700 patent. Do you see that?

5 A. Yes.

6 Q. And the first one says: The invention can be
7 constructed with sensors as simple as electrical
8 contacts or more sophisticated proportional and
9 pressure-sensitive variable output sensors, or the like.

10 Isn't that accurate?

11 A. Yes.

12 Q. And the '700 application, likewise, it says the
13 same thing, doesn't it?

14 A. Right. I mean, the text here is obviously
15 accurate. It's the --

16 Q. Yes, sir.

17 A. The text is there.

18 Q. Let's take a look at Slide 20. This is sort of the
19 same setup. From the '96 application, Mr. Armstrong
20 disclosed, did he not, Figure 42 which shows a compound
21 membrane sensor sheet 700 containing a compound sensor
22 702 which, in essence, is a commonly known simple
23 switched membrane sensor on top of my novel proportional
24 membrane sensor.

25 Do you see that?

1 A. Right. I do think it's appropriate to note here
2 that this illustration is -- and this discussion of this
3 proportional sensor invention is a different topic.

4 Q. Well --

5 A. It's not.

6 Q. I understand that's what you say, sir; but my
7 question is -- have you read these disclosures before?

8 A. Yes, I have.

9 Q. And you see that the same one is in the '700 as is
10 in the '96?

11 A. Yes.

12 Q. Claim 23 requires, among other things, a rotary
13 potentiometer, correct?

14 A. That's correct.

15 Q. And on Slide 21 -- we already saw this picture, I
16 think, earlier. This is in the '96 application,
17 correct?

18 A. Right.

19 Q. And that is a rotary potentiometer, is it not?

20 A. That's correct.

21 Q. And, in fact, we don't have much doubt about it
22 because this line 29 through 30 of page 46 describes it
23 as a rotary encoder or potentiometer, don't they?

24 A. Right.

25 Q. And on this slide -- and this now is the '700

1 application itself -- it also describes a rotary encoder
2 or potentiometer, correct?

3 A. That's correct.

4 Q. Now going back up to claim 16 for a minute.

5 Claim 16 requires two sheets on two planes, correct?

6 A. Yes.

7 Q. Let's take a look at Figure 29 from the 1996
8 application. And this has obviously been colored,
9 since, as you told us, you don't file patent
10 applications in color. So, this has been colored. Is
11 this thing on the top a sheet?

12 A. Yes. This is --

13 Q. This part on the bottom is the sheet, correct?

14 A. Right. And there's kind of a sandwich of sheets in
15 this particular illustration, the way it's peeled apart
16 at the end.

17 Q. Okay. And these you understand for purposes of the
18 drawing -- these parts of the sandwich have been opened
19 up so that we can see what they look like; but, in fact,
20 they are meant to be sandwiched together like in the
21 corner over there, correct?

22 A. Right. They would be assembled and, you know,
23 glued or together into one composite.

24 Q. Sure. And here (indicating), this is what I'm
25 going to call a "plus" or "cross-shaped stack" of

1 sheets, isn't it?

2 A. Yes.

3 Q. And this (indicating) here, which sort of looks
4 like frog lily pads or something -- these are a
5 circular-shaped stack of sheets that have been opened up
6 to let us see that they are, in fact, made of different
7 sheets, correct?

8 A. Right. That's correct.

9 Q. All right, sir. Claim 16 also requires a button
10 depressible by a single finger, right?

11 A. Yes. I don't have the claim language memorized;
12 but --

13 Q. I'm sorry.

14 A. -- yes, I believe so.

15 Q. Would you like to consult it?

16 A. No. That's fine.

17 Q. Okay.

18 A. You know that pretty well.

19 Q. Let's go to the next slide. Does this from the
20 1996 application disclose a button depressible by a
21 single finger?

22 A. Yes, it does. There's two buttons here. One or
23 the other could be a button depressible by a single
24 finger.

25 Q. Either one of them?

1 A. Either one.

2 Q. Could be depressible by a single finger, correct?

3 A. Yes.

4 Q. Okay. And the next slide, these are some
5 quotations -- again both from the '96 application and,
6 to save time, from the '700 patent application -- about
7 finger-depressible buttons. And we read from '96 that
8 there are two finger select switches, right?

9 A. Right.

10 Q. Is that referring back to those buttons we just
11 saw?

12 A. I'm not sure that that exact 146 is the same one,
13 but it's a button.

14 Q. Okay. And the same thing, two finger select
15 switches, was disclosed in the '700 application. Fair?

16 A. Right.

17 Q. And you see, while we're at it -- although I'll get
18 to this later -- that the two finger select switches are
19 described both in the '96 application and in the '700
20 application as secondary input members?

21 A. Yes. I see that.

22 Q. Okay. Now, claim 16 that we're talking about here
23 actually begins with the term a "3-D graphics
24 controller," correct?

25 A. Correct.

1 Q. And in Slide 26 we see that Mr. Armstrong --
2 although in '96 he often used the phrase "6 degrees of
3 freedom," he did talk about "3-D graphic image
4 controllers," correct?

5 A. Correct.

6 Q. And, in fact, he described that his invention, his
7 structure enabling the use of this common break-over
8 technology in a 6-degree-of-freedom controller is a
9 highly novel and useful improvement in the field of 3-D
10 graphic image controllers.

11 Correct?

12 A. Right. That's a statement from his application in
13 1996.

14 Q. And he said the same thing in the year 2000 in the
15 '700 application; isn't that right?

16 A. Well, except that he changed "6-degree-of-freedom"
17 to "3-D" --

18 Q. Okay.

19 A. -- in the line where --

20 Q. Right.

21 A. -- it says "in a 3-D controller," "in a
22 6-degree-of-freedom controller."

23 Q. But in terms of his talking about 3-D graphic image
24 controllers in both '96 and 2000, those things are in
25 the language we just read, aren't they?

1 A. Yes.

2 Q. Okay. Let's take a look at claim 14, if you'd like
3 to look at it or if you just want to take my word for
4 it.

5 I'm going to ask you: Claim 14 requires six
6 axes of control, correct?

7 A. Yes.

8 Q. If we look at the next slide, first from the '96
9 application, this quote says: Ideally a pair of
10 unidirectional sensors are used to describe each axis,
11 thus 6 pair of unidirectional sensors, 12 individual
12 sensors, can describe 6 degrees of freedom.

13 Was that in Mr. Armstrong's '96 application?

14 A. Yes. That's a statement from the application.

15 Q. Was it in his application for the '700 patent?

16 A. Yes, it is.

17 Q. And when I ask you if it is in the '700 patent, you
18 understand that I'm referring to the '700 patent
19 specification?

20 A. Well, yes. I understand that. Just for clarity,
21 the citation there is to the '700 patent; but the '700
22 patent specification from that application from 2000 is
23 printed in the patent.

24 Q. Okay.

25 A. So, the same document --

1 Q. Right.

2 A. -- appears in both places.

3 Q. But technically the exercise as it relates to the
4 '700 patent is in comparing the claims to the
5 specification. You understand that?

6 A. Right.

7 Q. So, the questions I've asked you about what's in
8 the '700 patent, you understand that I've been showing
9 you quotations out of the patent specification.

10 A. Right.

11 Q. Which should be the same as what's in the
12 application.

13 A. Right.

14 Q. But since the exercise is a comparison of the claim
15 to the specification for purposes of the '700 patent, I
16 just want to make sure I haven't created any confusion.
17 You're with me, right?

18 A. Right. I understand that. I am relying on your
19 representation -- and I believe it's correct -- that the
20 '700 patent has the same specification -- these parts of
21 it -- as -- not in the claims but this part of it, the
22 relevant part, as it did in 2000. I believe that's the
23 case.

24 Q. Okay. We were talking about claim 14 and things
25 that it requires. One of the things that claim 14

1 requires is a sheet connected to at least eight sensors,
2 correct?

3 A. Yes.

4 Q. Okay. Let's go back and take a look at the '96
5 application and the '700 specification. We see here the
6 description that Mr. Armstrong gave back in '96 that
7 Figure 2 shows a side view of a 6-degree-of-freedom
8 two-planar device using one circuit board per plane for
9 support of sensors and electronics with eight sensors
10 located on a plane in the base.

11 Do you see that, sir?

12 A. Yes.

13 Q. And essentially, except for the change of
14 "6-degree-of-freedom" to "3-D," the same thing is
15 disclosed in the '700 specification, correct?

16 A. Right. Again, we see that "6-degree-of-freedom"
17 has been changed to "3-D." But other than that, the
18 remainder of it is the same sentence.

19 Q. Okay. Let's take a look at some other parts of the
20 '96 application now. On Slide 29, you see here that
21 this is a discussion of the rotatable collet. Right?

22 A. Yes.

23 Q. And you described this, I think, as being like a
24 collar around the trackball, correct?

25 A. That's correct.

1 Q. I guess we've also heard it referred to as a
2 "collet," a "collar," a "cup"; but all the same thing
3 we're talking about, right?

4 A. Right. Those words all describe that same shape
5 that's the element that's directly around the ball.

6 Q. Okay. And Mr. Armstrong informed readers of his
7 '96 application, didn't he, that the rotatable collet
8 can serve as an additional secondary input member for
9 whatever use may be desired by a software designer or
10 end user. Did you read that, sir?

11 A. Yes.

12 Q. And he disclosed the same thing when he got the
13 specification for his '700 patent, didn't he?

14 A. Yes, he did.

15 Q. You testified at some length this morning about
16 your opinion about the requirement in the '96
17 application of a single input member movable in 6
18 degrees of freedom, correct?

19 A. Yes.

20 Q. A single input member. Let's take a look at
21 Slide 30. We've seen this before. We've seen the
22 colored portion before. But do you remember this part
23 of the 1996 application --

24 A. Yes, I do.

25 Q. -- where it says that the rotatable collet can

1 serve as an additional secondary input member? That's
2 what the language we just read is referring to, isn't
3 it?

4 A. Right.

5 Q. And turning on the same issue to the '700 patent,
6 same figure, same language, correct?

7 A. That's correct.

8 Q. Both of them in which Mr. Armstrong made clear that
9 the collet can serve as a secondary input member,
10 correct?

11 A. That's correct.

12 Q. Let's take a look at some more language from the
13 '96 application on this issue of a single input member.
14 In '96 Mr. Armstrong disclosed to the Patent Office the
15 embodiment shown in Figure 8 is also shown with two
16 thumb select switches and two finger select switches,
17 secondary input members.

18 Do you see that?

19 A. Yes, I do.

20 Q. And do you see that in the '700 patent
21 specification, he tells us that the embodiment shown in
22 Figure 8 is also shown with two thumb select switches
23 and two finger select switches, which he tells us are
24 secondary input members.

25 Do you see that, sir?

1 A. Yes, I do see that.

2 Q. And if we go to the next slide, you see that in the
3 discussion of the single input members, Mr. Armstrong
4 told the Patent Office in his '96 application that the
5 auxiliary secondary input buttons -- select, fire
6 buttons, special function keys, et cetera -- are readily
7 integrated. Do you see that?

8 A. Yes, I do see that.

9 Q. And not to read it over again; but he said the same
10 thing in his '700 specification, didn't he?

11 A. Yes.

12 Q. Let's take a look at another section of the
13 application and of the '700 patent. Here Mr. Armstrong
14 was talking about how the input member can be operable.

15 Now, you understand what he's referring to
16 here as the input member, don't you, the joystick-type
17 controller?

18 A. I do. But your quotation there, in the clipping of
19 it, I think, is mischaracterizing it.

20 Q. The clipping of it mischaracterizes it?

21 A. Yeah. There's more to it -- you need the context
22 around it to understand what that sentence is talking
23 about.

24 Q. Well, let me ask you what I have up here first.
25 I'm sure if the context is helpful, your counsel will

1 ask you about it. But this is sort of my opportunity to
2 focus our attention narrowly on the point that I want to
3 make here.

4 Doesn't he tell us here that the
5 joystick-type controller may be manipulable or operable
6 in up to 6 degrees of freedom?

7 A. Yes. But in the context, that doesn't mean what
8 you're implying it means.

9 Q. Well --

10 A. What it means is it's comparing --

11 Q. Don't you understand, sir, that "up to" generally
12 means you can have at least that many but you may have
13 less?

14 A. In general. But you have to read the sentence
15 before it and the sentence after it, which is the
16 context of the comparison between the joystick handle
17 and the trackball handle. And I think just taking that
18 quote out without the sentences around it makes a
19 suggestion that is really incorrect.

20 Q. Are you familiar with this quotation from the
21 specification of the '700 patent where Mr. Armstrong
22 informs us that the controllers in preferred
23 embodiments, while not restricted or required to be full
24 6 degrees of freedom -- do you see that?

25 A. Yes.

1 Q. Do you understand that he's telling us there that
2 you can have a controller that's up to 6 degrees of
3 freedom but it's not required to have that many?

4 A. Yes. That's present in the '700 specification from
5 2000.

6 Q. And let's look at Slide 35. Do you see here in the
7 '96 application where Mr. Armstrong told the Patent
8 Office: This structuring also offers tremendous
9 advantage in many non 6 DOF applications.

10 Do you see that, sir?

11 A. Yes, I do.

12 Q. And do you see that the same language is contained
13 in the specification of the '700 patent?

14 A. Yes, I do.

15 Q. Now, let's go back to Figure 2 of the patent.

16 MR. CAWLEY: Or maybe it's on a slide and we
17 just need to pull it up.

18 BY MR. CAWLEY:

19 Q. You remember this, don't you?

20 A. Yes, I do.

21 Q. And this Figure 2 in the '96 application -- this is
22 actually Figure 2 from the patent but that's -- let me
23 do it backwards.

24 This is Figure 2 from the '700 patent,
25 correct?

1 A. That's correct.

2 Q. But this same figure is also Figure 2 in the '96
3 application, correct?

4 A. Yes, it is.

5 Q. Okay. And you have told the jury that the '96
6 specification does not show multiple input members that
7 together provide 6 degrees of freedom, haven't you?

8 A. I'm not sure that's an exact quote, and I think
9 that may be a mischaracterization of what I said.

10 Q. In what way?

11 A. Well, I think we went through this in detail, that
12 there is a 6-degree-of-freedom input element 12 that
13 moves in a full 6 degrees of freedom and that there is a
14 second collet around it that rotates -- that's a second
15 input element -- and that it moves back and forth with
16 the ball. And we had lengthy testimony on that. But I
17 think that that would more accurately characterize my
18 description of that than what you --

19 Q. Okay. And you haven't talked to any Nintendo
20 engineers about that?

21 A. About that?

22 Q. What you just said --

23 A. The trackball --

24 Q. What you just said or this figure.

25 A. No.

1 Q. Specifically, have you talked to or met
2 Mr. Koshiishi?

3 A. No. I do not know Mr. Koshiishi.

4 Q. Were you in court when Mr. Koshiishi's deposition
5 was played?

6 A. No, I was not.

7 Q. Have you read Mr. Koshiishi's deposition?

8 A. No, I have not.

9 Q. Are you aware that Mr. Koshiishi talked about
10 Figure 2 of the patent and that the jury heard that
11 testimony?

12 A. No. I didn't see the testimony; so, I don't know
13 what he talked about.

14 Q. And you're aware that Mr. Koshiishi, a Nintendo
15 engineer who had this patent figure in front of him,
16 stated that if you remove the cup or collet, that you
17 would no longer have a 6-degree-of-freedom controller.

18 Are you aware of that?

19 A. No, I'm not aware of that testimony; but it's
20 incorrect.

21 Q. And are you aware that Mr. Koshiishi swore under
22 oath in his deposition that if you remove the collet,
23 you would not be able to sense movement on the line or
24 axis and, instead, you would have remaining a

25 3-degree-of-freedom controller?

1 A. Well, you're asking me to comment on testimony I
2 haven't seen.

3 Q. Would you like to see it, sir?

4 A. If you'd like, if you think it would be helpful.

5 MR. CAWLEY: May we play that brief clip of
6 the deposition, your Honor?

7 THE COURT: It's your time.

8 MR. CAWLEY: Okay.

9 BY MR. CAWLEY:

10 Q. Let's see Mr. Koshiishi's testimony on this
11 subject.

12 (The following testimony was presented by
13 video.)

14 Question: Figure 2 of the '700 patent
15 depicts a cross-section of a game controller that is
16 described by this patent; is that correct?

17 Answer: Yes.

18 Question: Now, in the middle of the figure,
19 there is a circle that has been labeled with the
20 number "12"; is that correct?

21 Answer: Yes.

22 Question: What is that?

23 Answer: It's a ball -- sorry. It's a
24 sphere.

25 Question: Now, the ball is surrounded by a

1 cup-like structure that has been labeled "16"; is that
2 correct?

3 Answer: Yes.

4 Question: Can you tell from looking at the
5 figure whether the structure of the game controller
6 allows it to sense the linear movement of the cup?

7 Answer: Yes.

8 Question: If you moved the cup from the
9 controller depicted in Figure 2, you would not be able
10 to sense movement on three linear axes; is that correct?

11 Answer: No, you wouldn't.

12 Question: But if you still had the
13 trackball, you would still have a 3-degree-of-freedom
14 controller because you could still sense rotational
15 movement on three axes; is that correct?

16 Answer: Yes.

17 Question: Now, conversely, if you did not
18 remove the cup but you did remove the trackball, then
19 you would still have a 3-degree-of-freedom controller
20 except it would be able to measure linear movement on
21 three axes and not rotational movement on three axes; is
22 that correct?

23 Answer: Yes.

24 (Video presentation concluded.)

25 Mr. Dezmelyk, were you aware of that

1 testimony from a Nintendo engineer before you testified
2 to this jury this morning?

3 A. No, I wasn't.

4 Q. All right. Thank you, sir.

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

6 THE COURT: Counsel?

7 MR. PRESTA: Thank you.

8 REDIRECT EXAMINATION OF ROBERT DEZMELYK

9 BY MR. PRESTA:

10 Q. Well, Mr. Dezmelyk, did anything that Mr. Cawley
11 just showed you in the 1996 application change your
12 opinion in any way about the scope of that application?

13 A. No, not at all.

14 Q. And can you explain to me why?

15 A. Sure. The test isn't whether we can find snippets
16 of the idea -- that is, a mention of a button here or a
17 part here -- but the entire invention and, more
18 importantly, the full scope of the claim. It may well
19 be that if you interpret that claim to only read on the
20 one handle and its parts, that he can find support for
21 it. But it's when you try to stretch the claim boundary
22 out to cover other kinds of designs, that that's what
23 the test of written description is for.

24 When we go back, can we see the support for
25 the full scope of the claim, the claim that's being

1 charged as the infringement analysis, in other words,
2 the full breadth of the claim? Do we see that when we
3 go back to that original specification? That's the
4 test.

5 Q. Now, Mr. Cawley showed you various different parts
6 of very different areas in that 1996 and '700
7 application, didn't he?

8 A. Yes, he did.

9 Q. And every time he showed you one of those parts,
10 many times it was only a partial picture of the actual
11 controller that was in there, wasn't it?

12 A. That's correct.

13 Q. And were you familiar with all the parts that he
14 showed you?

15 A. Yes. Basically, yes.

16 Q. And we had actually touched on every one of the
17 ones that he had shown this morning.

18 A. Right.

19 Q. And were there any parts that he showed you that
20 weren't actually a part of a 6-degree-of-freedom single
21 input member device?

22 A. No, there were not.

23 Q. In fact, when you looked at them in isolation, one
24 could almost be misled into believing that, in fact,
25 they were stand-alone devices, right?

1 A. Right. But those are the parts of that single
2 input controller he was showing.

3 MR. PRESTA: Let's take a look at plaintiff's
4 exhibit -- well, it's the 1996 application. It's 306,
5 page 78. That's Defendant's Exhibit 306.

6 BY MR. PRESTA:

7 Q. Now, Mr. Cawley showed you this embodiment, didn't
8 he, Mr. Dezmelyk?

9 A. Yes, he did.

10 Q. And he suggested to you that, in fact, this somehow
11 supported the claim scope that they are reading -- the
12 claim scope that they are reading to say infringes the
13 Nintendo GameCube, right?

14 A. That's correct.

15 Q. Now, could we take a look at page 76 of that
16 exhibit? This is Figure 22. I want to take you back to
17 20, a couple of pages before it. Do you see that?

18 A. Yes, I do.

19 Q. Now, do you have your laser pointer still?

20 A. Sure.

21 Q. Do you actually see in there the piece that
22 Mr. Cawley was pointing you to?

23 A. Well, the vertical shaft, the little pin that's
24 coming out the side is here (indicating). The rockers
25 are down here (indicating). And the little element that

1 catches the top of the rocker is right there
2 (indicating), underneath that part inside the housing.

3 Q. And that's the part that he animated, isn't it?

4 A. That's correct.

5 Q. And he didn't show that, in fact, it was all
6 connected up to that single handle, did he?

7 A. Right. The reason it's moving is the single handle
8 is moving it.

9 Q. Okay.

10 MR. PRESTA: Now, could I actually go over
11 to --

12 BY MR. PRESTA:

13 Q. Isn't this the embodiment that we animated during
14 your direct testimony?

15 A. Yes, it is.

16 MR. PRESTA: Now if we could take a look over
17 at page 77 of this exhibit, Figure 21, please.

18 BY MR. PRESTA:

19 Q. Now, can you contrast Figure 22 and Figure 21,
20 which is the next page?

21 MR. PRESTA: Can you do a split screen on
22 that? Thank you.

23 BY MR. PRESTA:

24 Q. Now, do you see -- this is Figure 21; and this is
25 Figure 22, right?

1 A. Yes.

2 Q. Now, Mr. Cawley showed you Figure 22, didn't he?

3 A. Yes, he did.

4 Q. To suggest that it had support for something that
5 had multiple joysticks, right?

6 A. Yes, he did show that.

7 Q. Do you agree that that provides support for
8 something that has multiple joysticks?

9 A. No, not at all.

10 Q. Okay. In fact, isn't this piece in Figure 22 --
11 how does it relate up to Figure 21?

12 A. Well, the shaft here (indicating) is inside here
13 (indicating). This pin that we see (indicating)
14 protruding through that little slot we can now see from
15 an end-on view here. There is the pin (indicating).
16 And this plate with the sensors attached to it is here
17 (indicating). Here's the sensors, and there is the
18 plate (indicating).

19 So, we can see these components that are
20 shown here are actually inside the controller under here
21 (indicating). There's no way you can touch them from
22 outside or move them in any way except by manipulating
23 that single handle outside.

24 Q. Did Mr. Cawley show you the fact that that's hooked
25 up to one single 6-degree-of-freedom handle when he

1 asked you those questions?

2 A. No, he did not.

3 Q. This is just a partial figure, isn't it?

4 A. Right. It's a detail of the bottom, again, of
5 this -- it's this portion (indicating) of the whole
6 assembly. This is just the bottom. The way it's shown
7 here indicates like you've cut -- in essence, cut that
8 part inside the assembly.

9 Q. So, Figure 22, in your view, is part of Figure 21,
10 just the bottom part, right, for people --

11 A. Right. It's the bottom of 21.

12 Q. Okay. Is there any doubt in your mind about that?

13 A. None whatsoever.

14 Q. Now I'm going to show you a page from the
15 specification. And, in fact, the very bottom of that
16 page from the 1996 application --

17 MR. PRESTA: Could you highlight what it says
18 at the bottom, Figure 22 down to the end?

19 BY MR. PRESTA:

20 Q. Do you see where it says -- could you read that,
21 please?

22 A. Sure. (Reading) Figure 22 shows a perspective view
23 of the rocker-arm actuators of the embodiment of
24 Figures 20 and 21.

25 Q. So, what is that telling you about that Figure 22

1 that Mr. Cawley put up?

2 A. Well, it's just a caption for the figure; and it's
3 describing that it's just a view of the bottom of the
4 actuators of Figures 20 and 21.

5 Q. So, the application is actually making perfectly
6 clear that Figure 22 is actually just a piece of
7 Figures 21 and 20?

8 A. That's right.

9 MR. PRESTA: Could we go back and take a look
10 at Figure 20, please?

11 BY MR. PRESTA:

12 Q. And that's what the application tells us; it's a
13 piece of that single input member 6-degree-of-freedom
14 device?

15 A. That's correct.

16 MR. PRESTA: Could we run that animation on
17 Figure 20?

18 BY MR. PRESTA:

19 Q. In fact, we animated this one in your earlier
20 testimony. Before we start it, this bottom part right
21 there is the part that Mr. Cawley was showing you that
22 would support two joysticks outside that you could
23 touch, in the claim, right?

24 A. Right. That was the part he was showing that he
25 contended that supported --

1 Q. Okay. That's actually the inside of a single input
2 member 6-degree-of-freedom device, isn't it?

3 A. That's right.

4 Q. Now let's animate it again just so the jury can see
5 what Mr. Cawley was showing you. In fact, this is the
6 thing that we showed in your direct examination, isn't
7 it?

8 A. That's right.

9 Q. And is there any support -- and these are the
10 rockers that he was showing you to suggest that somehow
11 that supported the full scope of claim 19, isn't it?

12 A. That's right. That's what he was showing me.

13 Q. And does that in any way support the scope of claim
14 19 as Anascape is asserting it against Nintendo on the
15 GameCube, the Wii Nunchuk, and all the other accused
16 products?

17 A. No, not at all.

18 Q. In fact, every single embodiment in the '700 patent
19 and the 1996 application has one common feature, doesn't
20 it?

21 A. That's correct.

22 Q. And what common feature is that?

23 A. A single handle that you can operate in 6 degrees
24 of freedom.

25 Q. Now, Mr. Cawley also put up Figure 4 -- and I guess

1 that animation is still running. I think --

2 MR. PRESTA: Thank you. That will do it.

3 BY MR. PRESTA:

4 Q. Now, Mr. Cawley also had up there Figure 28.

5 MR. PRESTA: Could we take a look at
6 Figure 28 on page 31?

7 BY MR. PRESTA:

8 Q. Now, do you recognize what Figure 28 is?

9 A. Yes, I do.

10 Q. What is it?

11 A. Figure 28 is the handle. In other words, it's the
12 very top. You can see the 300 here is the same 300
13 that's over here. It's the handle for the assembly
14 shown in Figure 20.

15 Q. So, again, this whole thing -- am I correct that
16 this whole thing is just that cut-off and exploded-up so
17 you can see it?

18 A. Right. It's the exploded view of the very top.

19 Q. So, it's still a single input member
20 6-degree-of-freedom device, just a part of it?

21 A. Right. Just another part of the same device.

22 Q. So, is it appropriate to go into -- to see if there
23 is support in an application, to go around and take
24 little pieces here and there without looking at the
25 whole thing and then to suggest that you can put them

1 together in any way you want to create something that's
2 not there?

3 A. No. That's an incorrect way of looking at it. You
4 have to find the whole idea that the inventor had, not
5 just that you might find a piece here and piece there
6 that you're putting together in your own mind. The
7 pieces have to be put together by the inventor.

8 Q. Now, Mr. Cawley also suggested -- he showed you all
9 kinds of buttons, and he showed you all kinds of places
10 where the disclosure talks about buttons as being extra
11 input members. Do you remember that?

12 A. That's correct.

13 Q. Do you remember in your direct testimony where we
14 talked about buttons?

15 A. Yes. We did many times.

16 Q. Can you explain to the jury why just disclosing
17 buttons is, in your view -- whether it's relevant or
18 irrelevant to the issue of having three input members
19 that can together do 6 degrees of freedom of control?

20 A. Well, as I said, buttons are the things that you
21 touch with your fingers; but they are not the same as
22 devices that let you input an X and a Y coordinate.
23 They're just buttons and buttons are well-known and
24 there's buttons in all kinds of things -- remote
25 controllers, keyboards, et cetera.

1 Q. Were there any buttons that he showed you that
2 would, in fact, change your opinion on -- that there is
3 no support in the 1996 or 2000 application for the
4 claims as drafted by Mr. Armstrong in 2002?

5 A. No.

6 Q. Did Mr. Cawley bring up the Chang disclaimer in
7 your cross?

8 A. I don't recall. I don't think so.

9 Q. Okay. And, again, what was the significance of
10 Chang?

11 A. Well, Chang, again, says don't use separate input
12 elements, have all the 6 degrees of freedom coming from
13 one. He's saying you can use multiple input handles in
14 Chang. He has --

15 Q. What did Mr. Armstrong say about that idea in his
16 application?

17 A. Mr. Armstrong said it's a bad idea, don't use that.
18 He's saying that his invention is different from Chang.

19 Q. Now, you see Figure 4 here which is -- Mr. Cawley
20 was suggesting discloses somehow -- I'm not sure. What
21 was your testimony about this ball and collet?

22 A. Well, my testimony was explaining how the ball can
23 be moved in 6 degrees of freedom and to do so you can
24 grab the ball with your fingers the way you might hold a
25 basketball if you picked it up with your fingers and you

1 can push it back and forth in two directions and up and
2 down and you can also turn it with your fingers in any
3 direction.

4 Now, you can also grab the collet around it
5 and push this (indicating) carriage back and forth or
6 back and forth in this direction (indicating); or
7 because you're holding the collet, you can lift it up
8 and push it down.

9 However, I think, as correctly noted by the
10 Japanese gentleman that testified, if you take the
11 collet off, you cannot move it -- you can only move it
12 in two and a half directions. Without the collet you
13 can still move it this way (indicating) because you grab
14 the ball like a basketball and push it back and forth.
15 You can move it back and forth, again because you're
16 holding the ball and you can push it back and forth.
17 And you can push it down because you can push down on
18 the ball.

19 But as he correctly observed -- and he's a
20 very smart engineer -- if you try to pick it up, the
21 collet is what keeps the ball from coming out of the
22 mechanism. So, just the way people know -- if you've
23 ever taken a trackball apart, the ball can come out
24 sometimes. If you took that collar off of there and you
25 lifted up on the ball, the ball's going to come out of

1 the mechanism. So, you can't get three linear
2 directions; you can only get two and a half. You can go
3 side to side, forward and backward, and down. But as
4 the gentleman testified, you can't get the third one
5 coming up.

6 Q. Does that have any relevance to the issue of
7 support in the 1996 application?

8 A. None whatsoever.

9 MR. PRESTA: Could we animate that Figure 4,
10 please, just briefly?

11 BY MR. PRESTA:

12 Q. Now, we ran this Figure 4 animation during your
13 direct, didn't we?

14 A. Yes.

15 Q. And does the animation accurately reflect how this
16 thing works?

17 A. Yes, it does.

18 Q. Without taking it apart in some hypothetical way
19 that they asked --

20 A. Right, without taking it apart.

21 Q. Now, those two things move together, don't they?

22 A. Yes, they do.

23 MR. PRESTA: Could you run it one more time?

24 BY MR. PRESTA:

25 Q. Again, could you explain what's going on there?

1 A. Right. Well, again, the ball is rotating in each
2 of the 6 degrees of freedom and then it's being pushed
3 back and forth, up and down, and left to right.

4 Q. Does that resemble at all the GameCube controller
5 or the Wii Nunchuk and the Wii Remote or the Wii Classic
6 that's accused in this case?

7 A. No, not at all.

8 MR. PRESTA: Could we go to Slide 11, please?

9 BY MR. PRESTA:

10 Q. Now, did you read in the -- did you hear when
11 Mr. Cawley showed you that there was a mention of
12 capacitive-type sensors in Mr. Armstrong's 1996
13 application?

14 A. Yes. I remember that.

15 Q. Now, when you have a generic description of
16 capacitive-type sensors like that, did that teach to you
17 the use of an accelerometer?

18 A. No.

19 Q. Do you recall Mr. Armstrong testifying in this case
20 about whether an accelerometer was disclosed in his 1996
21 application?

22 A. I don't specifically remember one way or another
23 what he said.

24 Q. Now, again, going back to this figure, Mr. Cawley
25 was suggesting that there's -- somehow the ball is not a

1 6-degree-of-freedom device in his cross-examination?

2 A. He may have suggested that. He's wrong.

3 Q. And how do you know that?

4 A. Well, because this ball can be rotated in any roll,
5 pitch, or yaw and it can move back and forth in X and Y
6 and it can move up and down in the Z direction, the --

7 Q. Does the specification tell you that, the part that
8 he didn't highlight?

9 A. Yes, he says -- I'll just point at it -- the
10 trackball member may be interpretable on all six axes as
11 previously described.

12 Q. Would you be surprised to hear that Mr. Armstrong
13 testified there was no accelerometer in the 1996
14 application?

15 A. No, I wouldn't be.

16 Q. Have you seen any in there?

17 A. No.

18 Q. Now, there was another issue about -- Mr. Cawley
19 showed you that, in fact, in the 1996 application it
20 mentioned 3-D graphics. Are you aware of that?

21 A. That's right. It did.

22 Q. Now, in the 1996 application, there was a lot of
23 places where it said "6 DOF," right?

24 A. Right.

25 Q. And what does that mean?

1 A. Well, 6 degrees of freedom. We've heard that term
2 a lot.

3 Q. Well, in the 2000 application that term no longer
4 read "6 degrees of freedom," did it?

5 A. Right. It had been changed to "3-D."

6 Q. Okay. Now -- but you understand that the court has
7 ruled that even though Mr. Armstrong changed
8 "6-degree-of-freedom" to "3-D," that the court has ruled
9 that the term "3-D" is still to be interpreted as 6
10 degrees of freedom?

11 A. Yes.

12 Q. So, it is not appropriate to consider infringement
13 as to whether -- whether or not the graphics are
14 three-dimensional graphics, right?

15 A. Right.

16 Q. You have to determine whether something is moving
17 in 6 degrees of freedom.

18 A. That's correct.

19 Q. Because you have to use the court's claim
20 construction when you're doing infringement analysis,
21 right?

22 A. Right.

23 Q. Now, there were some issues about the
24 accelerometer. There was some testimony that was put up
25 about Mr. Ikeda's testimony about the accelerometer. Do

1 you remember that?

2 A. Yes. I saw that.

3 Q. Now, Mr. Cawley -- could you read Mr. Ikeda's
4 testimony to your -- or let me just ask you if you heard
5 Mr. Ikeda's testimony. He said that there are
6 capacitors that sense movement in the X axis, there are
7 capacitors that sense movement in the Y axis, and there
8 are capacitors that sense movement -- there are
9 capacitors for the Z axis, as well. Right?

10 A. Right.

11 Q. Do you agree with that?

12 A. There are -- it's part of the same capacitors, yes.
13 There is the capacitance for the X axis, the capacitance
14 for the Y axis, and the capacitance for the Z axis. But
15 the central element on all of those capacitors is one
16 element which is what is connected to the amplifiers and
17 the rest of the circuitry.

18 Q. Now, Mr. Ikeda didn't say that those were all
19 separate capacitors, did he?

20 A. No.

21 Q. And Mr. Ikeda's testimony, is that consistent with
22 what you drew in front of the jury, your explanation of
23 how the accelerometer worked?

24 A. Yes, it is.

25 Q. Is there anything about Mr. Ikeda's testimony that

1 is -- that contradicts your position that, in fact, the
2 accelerometer used in the Wii Remote is a single-axis
3 accelerometer?

4 A. I think you mean a single --

5 Q. I'm sorry, a single -- let me clarify that.

6 Because it is a three-axis accelerometer?

7 A. Right.

8 Q. There is no dispute about that?

9 A. Right.

10 Q. Thank you.

11 My question is: Is there anything that
12 Mr. Ikeda said inconsistent with your position that the
13 accelerometer in the Wii Remote is a single sensor that
14 senses three axes?

15 A. No, there isn't.

16 Q. In fact, is it consistent with the drawing that you
17 did on the sheet?

18 A. Yes, it is.

19 Q. And, again, the reason for that is that he didn't
20 say those were all different capacitors?

21 A. Right.

22 Q. And you explained to the jury that there was one
23 differential capacitor in there --

24 A. That's correct.

25 Q. -- in my understanding.

1 And that confirms with the data sheet, right?

2 A. Right.

3 Q. From the manufacturer of the accelerometer?

4 A. That's correct.

5 THE COURT: Anything else, counsel?

6 MR. PRESTA: If you can indulge me for one
7 second, your Honor.

8 No further questions, your Honor.

9 MR. CAWLEY: I just have 30 seconds' worth.

10 THE COURT: All right.

11 MR. CAWLEY: That will be a relief to
12 everybody.

13 RE-CROSS-EXAMINATION OF ROBERT DEZMELYK

14 BY MR. CAWLEY:

15 Q. You were just asked about Mr. Ikeda's testimony,
16 but I want to show you again the testimony on the
17 previous page to what Nintendo's lawyer just showed you.

18 Mr. Ikeda was asked -- first, he was asked
19 about the X axis.

20 And then: Yes, sir. That's my next
21 question. Isn't it true that a different set of
22 capacitors is used to detect acceleration on the
23 X [sic] axis?

24 And he answered: Yes, different capacitors
25 and probes for the Y axis.

1 Do you remember him saying that, sir?

2 A. Well, to correct you, he didn't say that. You just
3 read it incorrectly. You said --

4 Q. You're right.

5 A. -- probes -- "X axis."

6 Q. So, let me -- I want it to be clear.

7 A. That's not what you said --

8 Q. You're right. I did read it wrong; so, I've got to
9 start at the top.

10 The question I asked was: Mr. Ikeda, isn't
11 it true that one set of capacitors in the accelerometer
12 is used to detect acceleration on the X axis?

13 And he answered: The X axis can be measured,
14 as well; but at the same time, measurement can take
15 place along the Y and Z axes.

16 And then my question: Yes, sir. That's my
17 next question. Isn't it true that a different set of
18 capacitors is used to detect acceleration on the Y axis?

19 And his answer: Yes, different capacitors
20 and probes for the Y axis.

21 Do you remember hearing that testimony, sir?

22 A. I'm aware of his testimony. I heard it, yes.

23 Q. Thank you.

24 MR. CAWLEY: No more questions, your Honor.

25 THE COURT: Pass the witness?

1 MR. CAWLEY: Yes.

2 REDIRECT EXAMINATION OF ROBERT DEZMELYK

3 BY MR. PRESTA:

4 Q. Mr. Dezmelyk, you have researched the specific
5 accelerometer that is used in Nintendo's Wii Remote,
6 right?

7 A. Yes, I have.

8 Q. Do you have any doubt in your mind how that
9 structure works?

10 A. No.

11 Q. And is there any doubt in your mind that, in fact,
12 it is a single sensor as the manufacturer tells us?

13 A. It's a single sensor. I have no doubt whatsoever
14 it's a single sensor.

15 Q. Thank you.

16 MR. PRESTA: Pass the witness.

17 MR. CAWLEY: Nothing further, your Honor.

18 THE COURT: You may step down, sir.

19 And, ladies and gentlemen, by going an extra
20 five minutes -- if I let the lawyers think all night for
21 more questions for this witness, he might have been on
22 for another couple hours in the morning. So, I'm sorry
23 to keep you an extra five minutes; but it may have saved
24 us a lot tomorrow.

25 We'll start again at 8:45 in the morning.

1 I'll ask you to be here at that time. Again, please
2 remember my instructions. Don't discuss the case with
3 anybody, and don't let anybody discuss it with you.
4 You're excused at this time.

5 (The jury exits the courtroom, 5:03 p.m.)

6 THE COURT: You may step down, sir.

7 THE WITNESS: Thank you, your Honor.

8 THE COURT: Okay. For planning purposes,
9 where are we, then, on defendant's case?

10 MR. GUNTHER: I apologize, your Honor. The
11 next witness?

12 THE COURT: Right. In other words, how many
13 more witnesses do we have? I had heard some talk last
14 week that he might or might not be the last witness. I
15 didn't believe that but...

16 MR. GUNTHER: We have -- you were correct not
17 to believe it, your Honor, in this limited sense. We
18 have a deposition from a Sony witness by the name of
19 Susan Panico that will take about 15 minutes or so to
20 play. We intend to play that, and then we intend to
21 rest.

22 THE COURT: And you're not bringing
23 Mr. Ugone -- or Dr. Ugone, the damages expert?

24 MR. GUNTHER: That's correct.

25 THE COURT: Okay. And just to be very sure,

1 that's not based on some ruling of mine, is it? Or
2 you're not thinking it is, is it?

3 MR. GUNTHER: Your Honor, as much as I'd like
4 to maybe add in an angle there, I can't do it.

5 THE COURT: I don't recall ruling on him.

6 MR. GUNTHER: You did not.

7 THE COURT: Okay. All right. And I've heard
8 nothing back from you on that other gentleman other than
9 the -- that I had said certain exhibits or
10 demonstratives couldn't be used. So -- all right.

11 Then, I take it that you're likely to -- are
12 you thinking of recalling --

13 MR. CAWLEY: Yes, your Honor.

14 THE COURT: -- for invalidity?

15 MR. CAWLEY: We're going to recall Professor
16 Howe.

17 THE COURT: Okay.

18 MR. CAWLEY: I would estimate that his direct
19 on rebuttal will probably be 45 minutes to an hour, no
20 more.

21 THE COURT: Okay.

22 MR. GUNTHER: Could I ask one question on
23 that, your Honor?

24 THE COURT: Sure.

25 MR. GUNTHER: There has been a statement by

1 plaintiff's counsel that they may call Mr. Armstrong.
2 Has that been decided yet?

3 MR. CAWLEY: He's not going to be called in
4 rebuttal.

5 THE COURT: Okay. All right. Let's go off
6 the record, Chris. You can start packing up.

7 (Proceedings adjourned, 5:06 p.m.)

8 COURT REPORTER'S CERTIFICATION

9 I HEREBY CERTIFY THAT ON THIS DATE, MAY 12,
10 2008, THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE
11 RECORD OF PROCEEDINGS.

12 
13 CHRISTINA L. BICKHAM, CRR, RMR

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