

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

i4i LIMITED PARTNERSHIP * Civil Docket No.
* 6:07-CV-113 (LED)
VS. * Tyler, Texas
*
* May 11, 2009
MICROSOFT CORPORATION * 1:30 P.M.

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE LEONARD E. DAVIS
UNITED STATES DISTRICT JUDGE
AND A JURY

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transcript produced on CAT system.)

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* * * * *

1 P R O C E E D I N G S

2 (Jury in.)

3 COURT SECURITY OFFICER: All rise.

4 THE COURT: Please be seated.

5 All right. Ladies and Gentlemen of the
6 Jury, I hope you had a good lunch and back ready to get
7 the case started.

8 What we're going to do first is have the
9 opening statements by both sides. That will take about
10 45 minutes each, which is the time that's been allotted.
11 And then we'll take a short break probably around 3:00
12 o'clock, and then we will come back and start the
13 evidence.

14 So the Court will recognize Plaintiff for
15 purposes of opening statement.

16 MR. CAWLEY: Thank you, Your Honor.

17 THE COURT: Mr. Cawley.

18 MR. CAWLEY: Every lawsuit is a story.
19 It may be a little hard to believe that now when you've
20 spent this morning probably hearing a lot more
21 complications about patent law than you ever dreamed
22 that you would when you came to Court. But I think
23 you'll find that this lawsuit, like all others, is
24 basically a story about people.

25 This lawsuit is a story about two men who

1 invented a way to help people use the information in
2 computer documents. Probably none of us in this
3 courtroom had ever heard of this invention, except the
4 inventors themselves and the people they work with.

5 We don't know about it, and yet even
6 though this invention is invisible to most of us, it's
7 affected us in ways that we don't even know.

8 Businesses that we may work for or
9 somehow do business with are more efficient because of
10 the invention.

11 Because of this invention, drug
12 companies, pharmaceutical companies are better able to
13 fulfill their obligations of filing with the government
14 and reporting things, like side effects and the
15 effectiveness of drugs.

16 We're even all a little bit safer because
17 of this invention, because it's helped law enforcement
18 agencies more efficiently share information.

19 This afternoon I'd like to tell you a bit
20 more about that invention, what it is and how it works.
21 But, first, I'd like to introduce you to the people who
22 made it possible.

23 This is Stephen Owens (indicates), and
24 back here a long way away is Mr. Michel Vulpe. These
25 are the two inventors of this invention.

1 Mr. Vulpe was working on the problem when
2 he talked to his next door neighbor many years ago, and
3 his next door neighbor said, you know, my kid brother is
4 a computer whiz. You really ought to talk to him.
5 That's how these two men met, and eventually, working
6 together, came up with the invention that has brought us
7 all to the courtroom today.

8 Now, to explain a little background of
9 how the invention works, I want to now take about 10
10 minutes to talk to you about the history of documents.

11 Now, documents have been around for
12 thousands of years, of course. And this is what we
13 usually think of (indicates) when we think about a
14 document.

15 When all of us were in the first grade,
16 we first learned to make documents like this. But what
17 we'll learn -- we learned, I'll suggest to you, really
18 comprised two different parts. We learned the content
19 of documents; how to put things down in words. But we
20 also learned how to make the document look, how to leave
21 a margin down one side, how to skip a line after the
22 title.

23 The name for how a document looks as
24 opposed to its content is called formatting. For
25 thousands of years, of course, all documents were

1 handwritten like that one. But when the printing press
2 came along, there were some changes, because in printing
3 presses, it's a person called a typesetter that actually
4 takes the wooden type, in the early days, or the lead
5 type in later days, and lays it into a tray to print the
6 sheet or the pamphlet or the book that becomes the
7 document.

8 There were also people, though, whose job
9 it was to tell the typesetter how the document should
10 look, and those people were called markup men. Now, I
11 don't know if any of them were women, but the fact of
12 the matter is what they were called was markup men.
13 And the markup men and the typesetters developed between
14 themselves a specialized language that the markup men
15 would use to mark up the document to tell the
16 typesetter, any typesetter, here's how the document
17 should be formatted; here's how it should look. And
18 this special set of symbols and numbers and drawings
19 came to be called markup language.

20 Now we come to the era of the next big
21 event, the computer. The computer created a revolution
22 in documents. First of all, before the computer, almost
23 all documents were on paper. After computers, though,
24 some computer documents could be printed on the paper,
25 but the vast majority of computer documents are never

1 printed. They're created on a computer. They're read
2 on a computer. They're stored on a computer and may be
3 sent to computers all around the world, but they're
4 still known as documents.

5 Here, for example, is a simple example of
6 a computer document created on a computer and read on a
7 computer screen (indicates).

8 The availability of computers to people,
9 to everyday people in businesses beginning in the 1980s
10 created an explosion in the number of documents
11 available, and that, in turn, created two problems.

12 First, there were too many documents for
13 people to read; and, second, computers back in that
14 time, the 1980s, couldn't read documents like people do.

15 Now, let me take just a minute to explain
16 those two problems. Let's suppose that this very simple
17 document that you see is something that was created in
18 the course of some business and that that business
19 creates those documents all the time. And over the
20 years, they've accumulated enough of those documents to
21 fill this courtroom, hundreds of thousands or millions
22 of documents like this.

23 Well, if my boss comes into the office
24 one day and says, you know, I need to find all the
25 documents relating to a certain date, how am I going to

1 find those documents? If I'm lucky, maybe we've
2 organized the documents in chronological order, so all
3 I'd have to go is look for the right date. Well, that
4 solves that problem.

5 But what if instead my boss comes in and
6 says, you know, forget the date. What we're really
7 interested in is everything that happened in Tyler.

8 Well, now the dates don't help me. How
9 am I going to find everything that happened in Tyler?
10 The short answer is I'm going to have to read the whole
11 room full of documents. And for a business with
12 literally millions of documents, this was not a
13 possibility.

14 But you may well be asking yourself,
15 well, what about a computer? I mean, those documents
16 are on computer. Aren't computers really good at
17 searching for things quickly? Why couldn't you just do
18 that?

19 Well, yes, computers are very good at
20 searching for things quickly. But in the 1980s, they
21 weren't good at understanding what they had found like a
22 human could.

23 So, for example, if this was one of a
24 million documents and we asked the computer to search
25 for all the documents in which 903 occurs, within a few

1 seconds at least, a modern computer could go through
2 those million documents and give you, let's say, 10,000
3 documents in which 903 appeared.

4 But wait a minute. Does that mean area
5 code 903, or does it mean 9:03 in the morning, or does
6 it mean \$903?

7 The computer, although it has the ability
8 to search for all the 903s, it doesn't know what it's
9 reading. And if you want to tell it to go out and just
10 look for area codes, couldn't do that.

11 Well, people in the early days of
12 computing saw that this was going to be a big problem,
13 and some people came up with a solution what to do about
14 it. And what it was, was a markup language, just like
15 in the old days, except instead of using the markup
16 language just to give formatting about how a document
17 should look, this kind of markup language would be used
18 to tell the computer where there was a certain kind of
19 information.

20 Now, how did it do that? First of all,
21 what was it called?

22 There were a couple of names for these
23 languages, and you will hear these throughout the trial.
24 I don't think it's important that you remember the
25 titles and what the initials stand for, but you're going

1 to hear about something called SGML, which stands for
2 standard generalized markup language.

3 There was a certain kind of SGML, a
4 subset of SGML, if you will, called XML, which stands
5 for extensible markup language.

6 Now, the important thing to remember from
7 this -- as I said, it's not necessarily to try and
8 memorize those names -- but to remember when you see
9 these initials that end in the M-L, that stands for
10 markup language. And these are markup languages that
11 instead of telling people how documents should look
12 would tell computers what the information of the
13 document is and where it is.

14 Now, how would it do that?

15 Well, here is an example of that simple
16 document that you saw before, but this time, it's in the
17 XML markup language. And you see, it looks quite a bit
18 different than what we're used to. But if you look at
19 it carefully, you'll see on the top line here, there's
20 the My Document, the title that we had before, but now
21 it's surrounded by these two things that you will learn
22 during the trial are called tags. That's the name that
23 they're given in XML.

24 And those tags signal to the computer
25 that what is in between those two tags is the title of

1 the document. Take the area code example we discussed
2 earlier. Here's the 903 that we saw before.

3 But now that 903 is surrounded by these
4 two tags that tell the computer that this isn't a price
5 tag; it's not a time of day; it's area code 903.

6 The availability to do this had the potential to
7 revolutionize the way that people use computer documents
8 because now, in addition to being able to use computers
9 to churn out stored documents, people could actually use
10 SGML and XML to search for the information contained in
11 those documents, to let a computer read a document for
12 information in much the same way as a human being would
13 read the document, if they had time.

14 Mr. Owens and Mr. Vulpe, who were working
15 in this field, the inventors, recognized that this was
16 going to be a huge leap forward in data management of
17 computer technology. Governments would be able to share
18 information among agencies. And it wasn't only
19 information like that that could be used.

20 Any computer application that could
21 understand this SGML language, such as something that
22 would make computer drawings or even an application that
23 would operate a robot, any of those things could be
24 paired with a document using the SGML language. But at
25 the same time, they saw the promise of these markup

1 languages. Mr. Owens and Mr. Vulpe saw the problem.

2 Now, from the benefit of hindsight, it
3 may not seem like a huge problem, but at the time,
4 before SGML and XML had been widely adopted, it was a
5 huge problem, and there were actually two of them.

6 The first is in front of you. This
7 document, frankly, looks pretty much like a mess. It
8 looks very different than the kind of documents you're
9 used to seeing, if you create documents on a computer,
10 this is the kind of documents that you create. And it
11 looks very different from the kind of documents that
12 businesses at that time and today typically create.
13 And although there might be big advantages to sticking
14 these tags in the document for some purposes, businesses
15 were very reluctant to have to switch over to a system
16 that made all their letters, all their memos, all their
17 internal documents look like this.

18 The second related problem was that you
19 had to have a special piece of computer software to
20 create the tags and the content in this document. That
21 meant that you couldn't use readily available word
22 processors, like, for example, Microsoft Word, to create
23 these documents.

24 Now, some of you indicated that you use
25 Microsoft Word. If that's true, then you've spent at

1 least hours, and in some cases, many hours learning how
2 to use that word processor to create documents in the
3 way you want to.

4 If you are a word-processing
5 professional, a secretary, or someone in data entry, you
6 might have spent hundreds of hours learning how to use
7 Microsoft Word.

8 If you are a business who employs a lot
9 of those word-processing professionals, you have an
10 enormous investment in their knowledge of how to use
11 Microsoft Word. And businesses were simply flat-out not
12 willing to abandon the ability to create documents using
13 their already existing word processors in order to
14 explore the benefits of using XML.

15 Stephen and Michel realized if XML was
16 ever going to get off the ground, if businesses were
17 ever going to capture its power, somehow a way was going
18 to have to be found to let people create XML documents
19 using an ordinary word processor.

20 They thought about the problem, and one
21 day they came up with a solution. And this is a drawing
22 of it (indicates).

23 Their idea was to take the content of the
24 document and instead of burying these tags in it, to
25 separate into a separate part of the computer memory the

1 map to the tags so that someone who wanted to create an
2 XML document could use their ordinary word processor,
3 for example, Microsoft Word, create the document.

4 It would look just like an ordinary
5 document, but software would track where these tags
6 actually appear in the document. Every time the
7 document's changed, the software would keep track of
8 this.

9 This separation of the map tags and the
10 mapped content into two different portions of the
11 computer's memory solved the problem of the adoption of
12 XML.

13 Now, it's very important as the case
14 proceeds here that we be crystal clear about what Michel
15 and Stephen invented and what they didn't. Of course,
16 they didn't invent computers; they didn't invent SGML;
17 they didn't invent XML.

18 What they invented was a way to bring XML
19 to reality by enabling businesses to use an ordinary
20 word processor, like Microsoft Word, in creating XML
21 documents.

22 Now, I'd like to show you some things
23 that happened at certain times. In about five minutes,
24 you'll see why it's kind of important that we keep track
25 of these dates.

1 But let's begin with 1994. It was in
2 1994 that Mr. Vulpe and Mr. Owens filed their United
3 States patent application. And as you saw in the video
4 downstairs this morning, the Patent Office considered
5 that application. There was some back and forth.

6 In fact, they looked at it for almost
7 four years. And in 1998, the U.S. Patent Office issued
8 Mr. Owens and Mr. Vulpe a United States patent, which we
9 have in the courtroom with us right now.

10 Mr. Owens, if you would show that for the
11 jury.

12 MR. OWENS: (Complies.)

13 MR. CAWLEY: This is the original copy of
14 the United States patent issued to them that usually
15 hangs framed on the walls of i4i's offices.

16 Did I push a button up here by accident?

17 Should be left consultant computer.

18 Right? There we go.

19 At the time that Mr. Owens and Mr. Vulpe
20 followed this invention, they were working for a company
21 called Infrastructures for Information that you heard
22 referred to in this lawsuit as i4i. i4i is a Canadian
23 company. At it's largest, it's been about 115
24 employees. Today, it has about 20.

25 You will hear throughout the course of

1 this lawsuit that because it's small and had a brand new
2 idea, i4i has always struggled financially to compete in
3 the marketplace. To help them do that, in 1998, they
4 hired this man, Bill Cox.

5 Mr. Cox at that time had 35 years of
6 experience in the software industry, and he had already
7 retired. Though when Mr. Vulpe showed him this
8 invention and showed him what it could do, you'll hear
9 Mr. Cox testify that he was blown away by the
10 possibilities and insisted on coming out of retirement
11 so he could help bring this product to the marketplace.

12 i4i produced a product using the
13 invention that's called S4/Text. That's the name of the
14 product that i4i sold to the marketplace. And it
15 allowed people to use Microsoft Word as an editor to
16 prepare XML documents. That was released into the
17 marketplace in 1999.

18 And then a pretty incredible thing
19 happened. You remember the discussion about the Patent
20 Office's consideration of the invention from 1994 to
21 1998. You remember again you saw that on the video
22 downstairs and the young woman whose desk was piled up
23 with documents and so forth.

24 After S4/Text was released to the
25 marketplace, the United States Patent Office came to i4i

1 and said we want your product; we want to become a
2 customer for S4/Text; we need the power of your
3 invention.

4 This is an article from a Canadian
5 newspaper announcing that the United States Patent
6 Office itself had become a customer for i4i's product.
7 And that happened late in the year 2000.

8 Since that time, i4i has largely
9 continued to specialize in delivering its products to
10 pharmaceutical companies. These are an example of some
11 of the companies that have been its customers; companies
12 like Amgen, Bayer, Baxter, Bausch & Lomb, and other
13 major pharmaceutical companies that you may have heard
14 about.

15 Now, at this point, I need to pause a
16 moment, and I need to talk to you about the Defendant in
17 this lawsuit, Microsoft. Probably all of you know
18 Microsoft. It's one of the biggest companies in the
19 world. It's by far the biggest software company in the
20 world. The last time I saw a count they have about
21 80,000 employees all around the world.

22 One of Microsoft's most popular products
23 is called Microsoft Word, a word processor that helps
24 people in businesses create documents on a computer.
25 And Microsoft has had a lot of versions of Microsoft

1 Word all the way back into the 1980s.

2 And these little icons down below the
3 line of the dates represent different versions of
4 Microsoft Word that Microsoft has released to the
5 marketplace. Basically, what they do is they'll come
6 out with an improvement every year and sometimes every
7 two years, tell people why their product is better than
8 the old version, and encourage people to upgrade to the
9 new version.

10 But throughout this time that you see
11 here, from 1992 to 2001, every one of these versions of
12 the Microsoft Word word processor had something in
13 common: None of them worked with XML.

14 And as you are about to see, by late in
15 this timeframe, long after the application for i4i's
16 invention, long after the patent issued, Microsoft began
17 to realize there's an XML revolution coming and we're
18 not on the bus. We don't have a product that people can
19 use as an XML editor.

20 Let me show you some actual internal
21 Microsoft documents about this. Here's one (indicates).
22 This was written by a man named Jean Paoli, an employee
23 of Microsoft.

24 Now, let me caution you that in about the
25 next 10 minutes, I'm going to be throwing a lot of names

1 at you, because there are a lot of people who work at
2 Microsoft, and it's not really important that you
3 remember those names. I'll try and identify clearly
4 whenever I throw one at you that it's a Microsoft
5 employee that we're talking about.

6 But this one's name is Jean Paoli. He
7 was very familiar with XML and what it could do. And
8 early in the year 2000, he wrote this memo to other
9 people within Microsoft. And this section starts off:
10 The bad news for us. We are in deep trouble, to
11 paraphrase. We are not building a single client.
12 And there the word, client, refers to a software
13 product.

14 We're not building a single client who
15 can consume XML in its generality. Please do not be
16 fooled by what we at Microsoft are building today.
17 There is absolutely no client or product in Microsoft
18 which can consume, manipulate, modify, author, present
19 the data in a user-friendly way to the user -- sorry;
20 I'll get it in a minute -- and let her take advantage of
21 generic XML schemas.

22 So Mr. Paoli here is sounding the alarm
23 within Microsoft. We don't have a product, and we don't
24 even have a product on the drawing board that can do
25 XML.

1 And the timing here is important, because
2 Mr. Paoli wrote this memorandum to Microsoft, that
3 they're in deep trouble, early in 2000, many years after
4 i4i conceived of the invention that solves this problem
5 and a year and a half after the patent had issued.

6 But it didn't stop with Mr. Paoli.
7 During the course of the trial, you'll see quite a bit
8 of communication back and forth within Microsoft about
9 their desperate need for an XML editor.

10 But, significantly, it went all the way
11 to the top. This is an e-mail from Mr. Bill Gates, who
12 I'm sure most of you have heard of, the Chairman and
13 founder of Microsoft. And in March of 2001, he wrote in
14 his e-mail: Now the market wants a great XML editor.
15 It's hard to say we are the leader of the XML revolution
16 if we don't have an editor.

17 And when did he write this?

18 Once again, long after i4i had already
19 patented an invention that would solve this problem.
20 But then, sure enough, Mr. Gates, in a way, proved that
21 he didn't get to where he is by not having pretty good
22 sense and pretty good foresight, because almost on the
23 same day that he wrote that e-mail about needing an XML
24 editor, another employee of Microsoft named Chris
25 Pratley, who works with government agencies, sent out an

1 alarm within Microsoft.

2 He said, Here's a great example of a huge
3 customer interest in XML. The Department of Defense has
4 been searching for ways to create knowledge and then
5 find it once it has been created. It's a significant
6 portion of the revenue within North America in the
7 federal government, and I worry that they can replace
8 our cash cow.

9 We want to sell Office XP, and we want to
10 remain the best production application in the
11 government. The government is pretty hard over on the
12 XML document requirements, so how can we remain number
13 one?

14 They, the government, are also willing to
15 live with all sorts of pain to get content out of Word.
16 Well, now Microsoft had a problem. It's not just
17 theoretical anymore. One of their biggest customers,
18 the federal government, is demanding of them, how are
19 you going to let us create XML documents using Microsoft
20 Word?

21 So what did Microsoft do?

22 Well, I will suggest to you, Ladies and
23 Gentlemen, the second incredible thing in this case
24 happened. The giant, Microsoft, turned to i4i for help.
25 There's going to be a meeting in Washington, D.C. The

1 government insisted on meeting with Microsoft to be told
2 how Microsoft was going to solve this problem.

3 Microsoft invited i4i in the form of
4 these two employees, John Tulley and Keith Thomas, who
5 are both in the courtroom today, and who you'll hear
6 from later on in the trial.

7 Mr. Tulley and Thomas sat in on the
8 meeting with Microsoft and told them how the invention
9 in their product worked. They gave them handouts in a
10 presentation. In this presentation, they told Microsoft
11 that S4/Text delivers the benefits of valid XML to Word
12 users and that it provides the familiar Word
13 environment. You can make XML documents and not have to
14 use a new Word processor.

15 Significantly, they also gave a copy of
16 something called i4i At-A-Glance to Microsoft. And in
17 that document, Microsoft was informed that the
18 technology in S4/Text was patented by this U.S. patent,
19 the number which you probably recognize. It's the
20 patent in this lawsuit.

21 The next day, there was a big meeting
22 between Microsoft and the government. They asked i4i to
23 attend that meeting with them. In that meeting, when
24 the government representative insisted, how are you
25 going to provide XML capability in your Microsoft Word

1 product, Microsoft responded: Well, when we have a
2 special need for a customer like you, we often turn to
3 people like this, pointing to the representatives for
4 i4i.

5 After that meeting, the man who was in
6 charge of it, another Microsoft employee this time named
7 Mark Belk, sent a message to some of the i4i people who
8 had been involved in the meeting and said: You should
9 see this as an opportunity, since you have a capability
10 that we, Microsoft, only have on the drawing board.
11 Significantly, Mr. Belk also communicated to other
12 people within Microsoft about how the meeting between
13 Microsoft and the government and i4i had gone. And
14 here's what he said: The only way that we could do this
15 was with a third-party plug-in, and i4i came through for
16 us.

17 Well, that was pretty high praise from
18 Mr. Belk. And indeed, it indicated a relationship
19 between i4i and Microsoft that seemed to be good for
20 everybody.

21 You see here a document from April of
22 2001 in which Microsoft describes i4i as being a
23 Microsoft partner.

24 And then pretty well the icing on the
25 cake. In June, Mr. Belk sent this e-mail to Mr. Thomas

1 and other people within i4i, that Microsoft was sending
2 an invitation to i4i to attend something called the
3 Office Advisory Council. And you'll hear that this is a
4 big deal.

5 A meeting of Microsoft and some
6 third-parties that work with Microsoft to discuss the
7 future of products. And you'll hear that when i4i got
8 this invitation to the Office Advisory Council, they
9 thought to themselves, looks like our years of struggle
10 have finally paid off. We have arrived.

11 But then something strange happened. The
12 next e-mail that i4i got from Microsoft was this one.
13 It's from a man named Andy Zuckerberg, who, of course,
14 works at Microsoft. And Mr. Zuckerberg told i4i, well,
15 you know, that invitation to the big meeting, that was
16 due to a miscommunication on our end. That's not really
17 available.

18 For some reason, i4i got uninvited to the
19 party. Well, Microsoft knew why that was, and they put
20 it in a secret document that Microsoft has kept secret
21 until it's going to be seen publicly for the first time
22 today.

23 Mr. Zuckerberg told others at Microsoft on
24 the same day he uninvited the i4i: My main concern with
25 i4i is that if we, Microsoft, do the work properly,

1 there won't be a need for their product.

2 In 2003, this sequence of e-mails
3 occurred. The first that you see here is actually an
4 e-mail from another employee of i4i, Mr. Baksh, who sent
5 this e-mail to Microsoft because he hadn't heard
6 anything in a long time about their so-called
7 cooperation.

8 He reminds them about i4i's Tagless
9 Editor and what it can do, and he also reminds them that
10 this technology is protected by the U.S. patent. You
11 will see that this e-mail arrives at Microsoft and goes
12 up the chain of command until it finally arrives on the
13 desk of a man named Martin Sawicki.

14 So Martin Sawicki, who works at Microsoft
15 and works on XML, eventually receives this document, and
16 he responds back down to the Microsoft people who sent
17 it to him by saying: Thanks, we saw this tool some time
18 ago and met its creators. Word 11 will make it
19 obsolete. It looks great for XP, though.

20 Consider what this e-mail means.

21 First of all, Mr. Sawicki at Microsoft
22 says that for XP, which was the old Microsoft Word
23 product that didn't do XML -- for XP, the i4i invention
24 works great, but don't worry about it because our new
25 product, Word 11, will make it obsolete.

1 Meanwhile, what's going on at i4i?

2 Not more than a month before this e-mail
3 was written within Microsoft, Mr. Vulpe at i4i sends
4 this e-mail to Jean Paoli.

5 Remember him? He works at Microsoft on
6 XML.

7 Basically, wanting to know, so what's
8 going on. And he says: Jean, congratulations on your
9 progress with Office 11 and XDocs. Would it be possible
10 to discuss that and where i4i is. Our S4/Text add-in to
11 Word is getting attention. We have over 50,000 seats
12 out there.

13 THE COURT: Let me just advise, you
14 probably have about 10 minutes.

15 MR. CAWLEY: Thank you, Your Honor.
16 So i4i still hoped that the relationship was intact.
17 They didn't know Microsoft's internal plans. And,
18 indeed, Microsoft carried out exactly the plans that you
19 heard. They took the invention and moved it in to
20 Microsoft Word.

21 Now, there's a witness here today -- if
22 you'll stand up -- this is Mr. Tom Rhyne. You heard
23 about him briefly earlier today. I can't tell you that
24 the full explanation of how Microsoft infringes the
25 patent is going to be simple, but I can tell you that

1 when Dr. Rhyne explains it, you will understand it.
2 We brought him here, because, as you heard, he has
3 decades of experience as a professor at Texas A&M and as
4 a professor at the University in Texas -- of Texas. His
5 stock and trade is teaching and explaining complicated
6 matters like this.

7 And he will explain to you in maybe more
8 detail than we all want to hear, but in the amount of
9 detail we need to hear, how Microsoft 2003 and 2007
10 infringes the patent.

11 But the high-level story is that it
12 infringes the patent because it does this (indicates).
13 Microsoft created within its Word product this portion,
14 the metacode map that maps the tags to the content of a
15 document that's located in a separate datastructure in a
16 different part of the computer memory.

17 You'll also hear that since the time that
18 it started using i4i's invention, that Microsoft has
19 made more than \$14 billion in profit from the sale of
20 products that can be used to infringe i4i's patent.

21 Now, Microsoft lawyers can be expected to
22 argue to you, oh, but there's lots of features in
23 Microsoft Word. This XML thing, that's just one of the
24 many kinds of things that we put into Word and it's
25 really only -- it's really only a small and

1 insignificant part of the value.

2 As you hear that argument, consider,
3 though, the evidence in the case. This is a document
4 created by Microsoft in connection with their own launch
5 of Word 2003. And at that time, before they got into
6 this lawsuit, they said: Foremost among the
7 improvements in Word 2003 is the deep support for
8 customer-defined XML, not a small feature of Microsoft
9 Word but foremost among the improvements.

10 Well, sometime after Microsoft made its
11 decision and brought Word 2003 into the marketplace, i4i
12 began to suspect that something was amiss. They even
13 began to suspect that Microsoft might be infringing
14 their patent and using their invention.

15 Unfortunately, it wasn't easy to figure
16 out. When you go and buy a copy of Microsoft Word, you
17 don't actually get the code, what's called the source
18 code, to show you how it works. So i4i hired some
19 experts to help them get to the bottom of that, and
20 eventually their worst fears were confirmed. And they
21 learned that Microsoft was infringing their patent.

22 i4i then had to make a decision what to
23 do about it, and their decision eventually was to bring
24 this lawsuit to defend their patent rights. To do that,
25 they had to reorganize the company. They took i4i Inc.,

1 i4i Incorporated, the existing corporation, and they
2 formed a new company called i4i Limited Partnership.
3 All the partners in the corporation became -- sorry --
4 all of the shareholders in the corporation became
5 partners in the new limited partnership. Investors from
6 whom they raised additional money also became partners
7 in the limited partnership, and they moved the ownership
8 of the patent from i4i corporation into i4i limited
9 partnership.

10 That's the reason that Judge Davis
11 explained to you today that there are really two i4i
12 entities in this lawsuit: The corporation and the
13 limited partnership.

14 i4i has brought this case so they can ask
15 you to award them fair value for the use of their
16 invention.

17 Now, what would fair value be for
18 something like this?

19 Well, they also hired a man by the name
20 of Mike Wagner. He's right here (indicates).

21 Mr. Wagner has spent his entire career of
22 30 years plus in the business of trying to determine the
23 amount of a fair and reasonable royalty for the use of a
24 patent. He's done extensive work and analysis in this
25 case, and you'll hear from him, his conclusion, that a

1 reasonable royalty to i4i for Microsoft's use of its
2 invention is about \$200 million.

3 Now, \$200 million is a lot of money in
4 any context and by anybody's perspective. But to keep
5 that number truly in perspective, let me remind you that
6 \$200 million represents this tiny fraction of
7 Microsoft's profits.

8 And, remember, that's not their revenues;
9 just the money they took in the door. That's
10 Microsoft's profits from all of the units they have sold
11 that are capable of being used to infringe this patent.

12 So that, Ladies and Gentlemen, is the
13 story we believe that you'll hear during this trial.
14 You'll hear a story about the two men, Mr. Owens and
15 Mr. Vulpe, with a new idea.

16 You'll hear a story about the other
17 employees of i4i who worked hard to try and make it a
18 success, who worked hard to try and work in partnership
19 with Microsoft.

20 And you'll hear a story about the people
21 at Microsoft who decide it was better for them to take
22 that invention without paying fair value for it.

23 And at the end of the day, when we finish
24 the trial, I'll stand here; I will review the testimony
25 that you've heard; and I will ask you to award i4i fair

1 value for Microsoft's use of this invention.

2 THE COURT: Thank you, Mr. Cawley.

3 All right. Counsel for Defendant.

4 MR. POWERS: Thank you, Your Honor.

5 Your Honor, can we bring the lights back
6 down, if we could?

7 THE COURT: Sure.

8 MR. POWERS: Well, good afternoon.

9 Mr. Cawley and I agree that this case would be story.
10 We just don't agree what the story is. I actually do
11 agree with about 80 percent of what he said, but where
12 we disagree is some other facts that I would like to
13 bring to your attention.

14 At the end of trial, though, after you've
15 heard all the evidence -- and as Judge Davis said, it
16 really is important that you wait till the end, because
17 we have to go second. Please wait until you've heard
18 all of the evidence. At the end of all of that
19 evidence, we believe that the evidence will tell a very
20 different story.

21 Now, one of the things you're going to
22 have to decide in this case is something we talked about
23 a little bit during voir dire. There are all sorts of
24 good reasons to enforce a patent. There are some not so
25 good reasons to enforce a patent.

1 We think that what the evidence will show
2 here is that the enforcement of this patent is brought
3 wrongly. But that will be for you to decide.

4 The issue here begins with the parties.
5 And I think of cases -- and there's a lot of different
6 ways to think about them -- as being either engineer
7 cases or banker cases.

8 Engineer cases are often ones that are
9 brought to protect a patent, to protect a successful
10 patent from being copied. That's not what this case is
11 about in our view based on the evidence.

12 Other cases, the banker cases, are ones
13 where you didn't have a very successful product, and the
14 bankers decide to try to get their money out another
15 way. We think the evidence will show that is what this
16 case is about.

17 i4i, Inc., was founded by Mr. Vulpe. He
18 founded it as a software company trying to sell software
19 products, and it was not successful.

20 There's no shame in that. A lot of
21 companies don't succeed despite having good people who
22 try hard and work very hard. There's no shame in that
23 at all.

24 The shame, from our perspective, comes
25 from what happens next. A lot of great companies have

1 been formed when people who failed the first time try it
2 again.

3 The shame could be instead of -- trying
4 again to make a product that people will buy and sell
5 instead of suing people for making products that people
6 really want. And we think that's what happened in this
7 case.

8 i4i, Inc., was founded by Mr. Vulpe. He
9 originally ran it as the President. Starting around
10 2002, he was no longer the President, and the bankers, a
11 group called McLean Watson, who owned most of i4i at
12 that point, took over the company, and we'll show you
13 what impact that has on the facts of this case.

14 The second part is interesting. The
15 second part is i4i, LP, which you heard a little bit
16 about from Mr. Cawley. That was actually the party that
17 sued in this case originally back in 2007.

18 It wasn't i4i, Inc., the company that was
19 actually making the product; it's this other company
20 just owned by the bankers. They sued and only a year
21 later did they add i4i, Inc., Mr. Vulpe's company.
22 Microsoft, of course, we all know. The products that
23 are accused here are Word 2003 and 2007. But Word has
24 been being produced many, many years before that, and
25 that's important in this case for reasons we'll talk

1 about in a minute.

2 Let's talk about i4i a bit as a company.
3 It's based in Toronto. An interesting fact is that it
4 joined at the very beginning of this company to
5 Microsoft Developers Network. And that's a network that
6 Microsoft sets up for companies that want to sell
7 products that work with our products.

8 And the interesting fact about that, a
9 member of the Microsoft Developers Network gets advance
10 copies of our software. They don't have to go buy it
11 off the shelf. They actually get advance copies that
12 they can work from so they can design something that
13 works with our products.

14 And that's exactly what i4i, Inc., did.
15 i4i, Inc., got an advance copy so that they could do so.
16 And Mr. Vulpe, when he comes to testify, will tell you
17 that, in fact, they followed Microsoft's products very,
18 very closely.

19 They would go to conferences that
20 Microsoft would offer to the sponsor and say, tell us
21 what you're doing so that we can help build products
22 that work with yours. So they knew exactly what we were
23 doing because they are a member of the club. They
24 signed up.

25 The last point, and this is important,

1 is, before the accused product was released -- you heard
2 Mr. Cawley say that we effectively did them some harm.
3 Before the product they're accusing was released, they
4 had already lost over \$25 million, and you'll see that
5 their company was effectively out of money.

6 Couldn't have been caused by a product
7 they're now complaining about because it happened before
8 then. But the question that you'll have to answer is,
9 why was that? Was it because the product couldn't
10 satisfy a need? Were there problems with the product?
11 That's where there will be some evidence on that issue.
12 i4i Limited Partnership -- that's the company that
13 originally brought suit that doesn't have any technology
14 in it, just has the patent -- its sole purpose, sole
15 purpose is to bring this lawsuit.

16 It was brought into existence by a bunch
17 of legal documents six months before the lawsuit was
18 filed. Its only asset is the patent they're suing on.
19 So that's all it is. It was just designed to do this
20 lawsuit right here. And they sued us with no notice, no
21 discussion, no nothing.

22 Microsoft, you've all heard about,
23 thousands and thousands of engineers. That's important
24 because Microsoft makes its own technology. We either
25 buy it and pay good money for it, or we do it ourselves

1 using our own technology.

2 In this case, we did it ourselves using
3 our own technology, and we think that's what the
4 evidence will show you.

5 The interesting thing about Microsoft is,
6 although it has thousands of employees now, it started
7 with four guys, just like the two guys that were talked
8 about here today; four guys out of college, one of whom
9 didn't even graduate.

10 They built a successful company by
11 building products people wanted, products that worked,
12 and that makes them a target. That puts a big target on
13 their back for people who want to file lawsuits that
14 shouldn't be filing them. We think the evidence will
15 show this lawsuit is one of those.

16 Mr. Cawley showed you a timeline. I'd
17 like to show you another. Because we think these facts
18 are very important in your decision, in helping you to
19 decide what type of case this is and really whether
20 Microsoft infringes.

21 The first important fact, in late 2002 --
22 this is before Word 2003 comes out. Now, because i4i is
23 a member of our developer network, they get an advance
24 copy of our software so they can work with it.

25 And you will hear admissions from i4i

1 people, particularly Mr. Vulpe, that they got it, they
2 downloaded it, and they studied it.

3 So when Mr. Cawley says they had no
4 reason to believe that Microsoft was infringing, the
5 facts won't support that. Because they knew, when they
6 studied the software in 2002, that it did exactly what
7 they're complaining about now.

8 Here's a copy of the download, and you'll
9 see over here a little i4i and their own number. That
10 means this is a document that came from i4i's files.
11 They downloaded it from our developer website and
12 studied the software and studied how it worked and
13 learned how it worked.

14 So you would think that the next thing
15 they would do, after they had studied our software, if
16 they thought it infringed their patent, is they would
17 call us and say, you're infringing our patent. Stop it.
18 What happens next? Very quickly after they studied it,
19 Mr. Vulpe, instead of challenging us for infringement or
20 saying, you're doing something wrong, congratulates us.
21 Here's the e-mail. December 5, 2002. He sent it to the
22 man who's responsible for this part of the technology,
23 or at least part of it, and tells him -- encourages him,
24 said this is a good thing.

25 Does he accuse us of infringement in this

1 e-mail? No.

2 Mr. Vulpe will admit that at the time he
3 wrote this e-mail, he already studied the software and
4 knew how it worked and knew that it did the things they
5 are now saying are wrong. He didn't say any of that.
6 We think it's because it wasn't wrong, and he knew it.
7 After this time, December of 2002, did anyone ever from
8 i4i say anything to Microsoft that they thought
9 Microsoft was doing anything wrong? No. Never, ever a
10 hint that there was anything that Microsoft was doing
11 was wrong, even though they had an advanced copy of our
12 code and studied it very, very closely.

13 But it's not just to us that Mr. Vulpe
14 was saying there's no problem. Internally, internal
15 memos, does he say that this product, after they studied
16 it, infringes our patent? Does he say it causes a
17 problem for us? Does he say it's going to hurt us? No.
18 He says it creates an opportunity.

19 This is June 5 of 2003, about six months
20 after he had analyzed the software carefully and a few
21 months before it was even released.

22 So even internally, he's saying
23 Microsoft's entry into the marketplace creates more
24 opportunities, opens doors and opportunities. They were
25 positive about it, at least Mr. Vulpe was.

1 So Mr. Vulpe knew this patent for sure.
2 He knew our program for sure. He was studying it
3 closely. He saw no problem with it in 2002 and 2003
4 We released the product toward the end of 2003. We hear
5 nothing. The lawsuit's filed about three and a half
6 years later in March of 2007.

7 So one of the questions you're going to
8 have to ask and answer is what changed. Between the
9 time that he's saying, this is great, congratulations,
10 to the time that he's saying it's horrible, infringing
11 our rights, what changed?

12 Well, we think the clue is going to be in
13 the management change inside i4i and i4i LP. What
14 happened is the bankers took over.

15 The man in the middle, Mr. Angus, became
16 President. He's from McLean Watson, the banker that
17 owned most of i4i, Inc., at that point. The man on the
18 left, Mr. Owen, Chairman of the Board; the man on the
19 right, Mr. Stewart, became Chief Financial Officer. All
20 the top positions in the company were taken over by the
21 bankers.

22 The two men at the bottom are from a
23 company called Northwater, specifically called the
24 Northwater Patent Fund. What they do is they invest in
25 litigation, and you'll see that later as well.

1 So what changed? When they took over,
2 the bankers declared a financial crisis inside i4i, Inc.
3 Here's an internal memo to the Board of Directors of i4i
4 from Mr. Angus. Remember, he's from McLean Watson, the
5 new President. He says, it's a financial crisis; we're
6 going to run out of cash.

7 Now, why was that? Was that something
8 caused by Microsoft Word? No. It happened before Word
9 was even introduced.

10 As of April of 2003, six months before we
11 introduced the product they're complaining about, they
12 had lost already by that time a total of \$25.5 million.
13 That's the financial crisis that Mr. Angus is referring
14 to.

15 So they had to do some options. They had
16 to look at what they were going to do to solve that
17 financial crisis that the banker was talking about to
18 the board.

19 Well, they quickly seize upon one option.
20 We can sue Microsoft, in his words, to increase value,
21 whatever that means. This is Mr. Owen, Chairman of the
22 Board, again from McLean Watson, the lead banker owning
23 i4i.

24 He says, well, what are we going to do?
25 Increase value or achieve liquidity. That's banker-ese

1 for how do we get our money out of this company?

2 Well, they sue Microsoft. They've got a
3 lot of money. They're successful.

4 Mr. Owen keeps it up. February of 2005
5 sends a memo to Mr. Stewart. Remember, he's the Chief
6 Financial Officer now, both from McLean Watson. He
7 says, well, can we sell the litigation to someone who
8 hates Microsoft? Maybe that will get us some money.
9 So what's really changed here is not the patent. The
10 patent didn't change in this time period. Word 2003
11 didn't change. What changed is the people inside the
12 company who were thinking about what i4i should do.
13 Mr. Vulpe didn't see a problem with infringement. Saw
14 it created opportunities. The banker saw a different
15 kind of opportunity. They saw an opportunity to get
16 some money out of the company and get their money back.

17 So what happened? After saying that
18 they'd sue Microsoft or sell it to somebody that hates
19 Microsoft, they found somebody. They found that
20 Northwater Patent Fund, investor in patent litigation.

21 Here's the agreement by which they sold
22 the patent to them. So i4i, Inc., Mr. Vulpe's company,
23 the one that's actually making software, doesn't have
24 the patent anymore. They sold it to this LP that's
25 owned by bankers whose sole job is to sue us.

1 The very same day, September 22, i4i, LP,
2 was formed, same group of documents, and six months
3 later, the lawsuit happened.

4 That, we think, is the story of why we're
5 here. Not because Mr. Vulpe felt aggrieved by patent
6 infringement; we're here because the bankers decided to
7 achieve liquidity, as they put it. That's not what we
8 think is the right way to be doing a lawsuit. There is
9 the limited partnership in September of 2006.

10 Now, what's this case about? We're all
11 here. Even bankers can bring meritorious lawsuits. We
12 have to look at the merits of the lawsuit carefully.

13 These are the two issues that we believe
14 you're going to have to address:

15 1. Does Microsoft Word work the same way
16 as the Vulpe patent?

17 We think the answer to that is no. It
18 works in a different way, because it uses Microsoft
19 technology that we've been building on for years.

20 2. Did the Patent Office have all the
21 right information?

22 The answer to that would be no, because
23 the information we're showing you, the Patent Office
24 didn't have.

25 Why is Word different?

1 The first reason Word is different is
2 because it's building on 12 prior generations of Word.
3 Microsoft has been making Word since the early '80s, and
4 that has created a body of technology, which we're going
5 to build on.

6 So when Microsoft makes Word 2003 or Word
7 2007, it doesn't just change how it's doing and adopt
8 some other company's way of doing things; it builds on
9 what we do. And that difference will be important.

10 One of the things that I think is
11 important in any patent case is to make sure that we
12 look closely at the evidence. It's easy enough to throw
13 up a document on a screen and see a word that says map
14 or something like that, or Bill Gates saying we need an
15 editor. But we believe the evidence requires a closer
16 look, and I thought this would be an interesting way to
17 make that point.

18 This is a satellite photo taken of two
19 different things. It looks pretty similar from many
20 miles up in the sky. You zoom in, it still looks
21 awfully similar. But you zoom in a little more, and it
22 turns out the one on the right has all along been the
23 Great Wall of China. The one on the left side all along
24 has been the Sabine River. Apparently, that fork is a
25 little southeast of this courthouse.

1 That is just making the point that you
2 can't just look at the surface of the evidence in this
3 case. What we ask is that you look closer. And when
4 you look closer, we believe you're going to see that
5 Microsoft Word is different.

6 So, for example, one of the documents
7 that I put up, I'll show you this exhibit that has the
8 word XML mapping. And you'll say the patent has the
9 word map; this has XML mapping; that's all you need
10 know.

11 We're going to ask you to look closer,
12 because when you look at exactly how the Court construes
13 mapping, we think we don't infringe. And I'll show you
14 that in detail in a few minutes.

15 Mr. Gates' e-mail, which Mr. Cawley
16 showed you in opening statement, talking about XML
17 editors, well, that's interesting, because I think the
18 evidence will show that that's not what this case is
19 about.

20 What this case is about, these are three
21 requirements for i4i to meet its burden of proof on
22 infringement. And they have to meet all three, every
23 single one of them. If only one of them isn't present,
24 i4i has not met its burden. And we think it can't meet
25 any of these.

1 The first is that they have to store a
2 metacode map in what's called a datastructure. And here
3 I've shown you -- and I think it's important -- again,
4 we're asking you to look closely at the evidence.

5 You saw Mr. Cawley put up a board that
6 showed some -- a couple of boxes here and there. We're
7 showing you the actual claim, and we're showing you
8 Judge Davis' actual construction that's in your book of
9 that claim.

10 A metacode map is a datastructure. So
11 what does that mean, and why is it required?

12 Well, in order to understand that, you
13 have to understand what's a metacode and what's the
14 content.

15 Here's an example from the patent itself.
16 The patent shows this formatted document, a very simple
17 document. The title is The Secret Life of Data. The
18 first paragraph is data that's hostile, the end. This
19 is actually in the patent that's at issue here.

20 But what the patent says is -- and this
21 is similar to what Mr. Cawley showed you -- if you have
22 embedded codes in that, that would tell you which part
23 is the chapter, which part is the title, where the
24 paragraph is, et cetera, and at the bottom, mixes
25 together the content with those metacodes.

1 And what the patent teaches is exactly
2 what Mr. Cawley said. You separate that mapped content,
3 the actual words, from the metacodes. And all these
4 figures are straight out of the patent.

5 So you have the metacode map on the
6 right. That's the datastructure the Court's
7 construction is referring to.

8 So the question is, does Microsoft Word
9 2003 have a datastructure as the Court's claim
10 construction requires?

11 You see the metacodes; you see the
12 positions and the addresses. That's exactly how the
13 patent teaches it works. So it has to be in the
14 datastructure.

15 Dr. Rhyne, who was pointed out to you
16 earlier, he produced a report. And his testimony will
17 be coming to you. And he shows you the structure on the
18 left and says, well, that's a datastructure, and it
19 looks sort of like the one on the right, and therefore,
20 Microsoft infringes.

21 That was after his report and study.
22 That's what he presented to us.

23 And, again, on first look, before you
24 start looking closely, it looks like a pretty simple
25 single datastructure. It looks like a datastructure.

1 You have to look a little closely, though, because there
2 are some words obscured by the red box that Mr. Rhyne
3 put there. Those words say, Merge structures for
4 display purposes.

5 What does that mean? Well, it turns out
6 there's no such structure like that in Word, so it does
7 not exist. This is something he made up. He made it up
8 off of something on the right that comes from another
9 expert report.

10 Now you won't find that in Dr. Rhyne's
11 report, Figure 13. It turns out that there's three
12 structures on the right -- it's a little hard to see,
13 but we'll show it to you better later -- that he
14 scrunched together to create an imaginary structure on
15 the left.

16 And that was the testimony that he
17 prepared for this case. But the one on the left doesn't
18 exist in real life.

19 That's like taking a bedroom from David's
20 house and a living room from Kevin's house and a kitchen
21 from Eric's house and putting them together and saying
22 here's a house.

23 It's not a house; it's three rooms in
24 three different houses. But that is the testimony --
25 the basis of the testimony that Mr. Rhyne prepared.

1 So it turns out, even Figure 13 from
2 Dr. Martin's report, the one that he merged, even that's
3 incomplete. You see those little orange boxes that
4 we've got up there. It turns out, those aren't really
5 labeled. There's a lot more to tell there.

6 So when you actually go and figure out
7 how it works and you look closely, this is exactly what
8 it looks like. You've got structures and content all
9 over the place.

10 Now, it will be for you to decide whether
11 that, as you look at it after -- as you look closely, is
12 a datastructure in the meaning of the patent under the
13 Court's construction. We think the answer to that is
14 no.

15 The second requirement from the Court,
16 again showing you the claim language and the Court's
17 construction, not just a void with some lawyer words on
18 it, is that the metacode map must contain the metacode.
19 Clear requirement in Judge Davis' construction.

20 You see exactly what that means. Again,
21 straight out of the patent. In the patent here is a
22 metacode map, as shown in the patent, and you see it has
23 a little caret to the left and caret to the right,
24 chapter, title, paragraph, et cetera.

25 But now as you look at Dr. Rhyne's

1 supposed metacode map, it doesn't have anything right
2 here in this green box. That's where he says, in
3 theory, the metacode exists, but there's nothing there.
4 There certainly isn't a less-than sign, chapter, and
5 greater-than sign.

6 But when you see it, look really closely.
7 There's a little magnifying glass, there again partially
8 hidden behind that red box. What that magnifying glass
9 means, it turns out, is there's a lot of detail in there
10 that isn't shown.

11 And when you figure out what that detail
12 is that wasn't shown, it turns out it's back to this.
13 So, again, as presented, you've got to look a lot
14 closer.

15 But even after you go through this whole
16 process, you don't get what the patent says is the
17 metacode. Even after that, what you get is just the
18 word chapter -- you do get that -- the word title, the
19 word paragraph, but you don't get these little marks
20 that are called delimiters: The less-than sign, the
21 greater-than sign, or the slash.

22 And it turns out those are important.
23 Those are important, because if you don't have them,
24 it's not a metacode. And therefore, you won't meet the
25 Court's construction that it must contain the metacodes.

1 And there won't be a dispute about that among the
2 experts, but that is not what comes out of that process.
3 And the patent makes clear that those less-than signs
4 and greater-than signs are important parts of the
5 metacodes. And the standard, this W3C standard of XML
6 makes very clear that those marks are required. But
7 they're not there.

8 So the very thing that Dr. Rhyme is
9 calling a meta map just isn't one.

10 The third requirement is that you have to
11 map the metacodes to the input content stream. That
12 sounds like a mouthful and it sort of is.

13 But, again, Judge Davis has given us a
14 very clear construction that says, when you're making
15 this map, you have this input stream with the original
16 document, and you have to map the metacodes to the
17 places where those codes existed in that input context
18 stream.

19 And that's exactly how the patent works.
20 You take that original document, and you identify where
21 in that stream -- here is Position 37 for that one code,
22 and here is Position 56, and that's how it works.

23 The problem is, Word does not work that
24 way. Why not? Because Word is built on all the prior
25 Word technology, which means it's going to work the way

1 Word works, not the way somebody else's technology
2 works.

3 Rob Little, right here, is one of those
4 that looked at that code, he'll testify exactly how it
5 works.

6 And Stephen Gray is also here, an expert
7 witness with over 30 years of experience in exactly this
8 area, will testify about how Word takes that original
9 input stream, but it changes it. And it changes it in a
10 way that Word can understand. And it does so because of
11 Word's particular technology, because we're building on
12 Microsoft's technology, not i4i.

13 Now, as a result of that, is that input
14 positions on -- in the input content screen that were 37
15 and 56 in the patent, the way the patented invention
16 works, those don't work in ours. If we treated those as
17 a position, it would break in our system, because the
18 numbers are different.

19 Why? Because we've added a bunch of
20 other things to that stream when we did that
21 transformation. And there won't be any dispute about
22 that among the experts either.

23 So the three key requirements where i4i
24 has to prove all three, as construed by Judge Davis,
25 they can't prove any of the three. And we think that's

1 what the evidence will show on their burden of proof on
2 infringement.

3 Let's take a closer look at some of the
4 evidence they offer, some of the evidence that
5 Mr. Cawley offered today.

6 First, they'll put in a lot of evidence
7 that XML is very important to Microsoft in general.
8 True. XML is important. It has an advantage for many
9 people. But i4i didn't invent XML. It didn't invent,
10 and it will admit it didn't invent any of these types of
11 uses of XML.

12 So the issue is not whether XML is
13 valuable or even custom XML or Word ML -- Word ML, by
14 the way and Office Open ML -- XML are types of XML that
15 we invented particularly. And i4i agrees they don't
16 infringe.

17 So when someone uses our Word product and
18 does it with Word ML, the type of XML that we created,
19 even i4i agrees there's nothing wrong with that at all.
20 But the case isn't about whether XML in general is
21 valuable. We invented our own XML, and that does not
22 infringe even under i4i's position.

23 Interestingly, you can read that entire
24 patent end to end, and it doesn't mention XML at all.
25 The very thing they're now saying is the whole point of

1 it. Doesn't mention XML. Talks about SGML, which is a
2 predecessor standard, different standard.

3 Also interestingly, although i4i is here
4 now claiming that it really is the one that makes XML
5 possible. Microsoft, not i4i, was one of the people
6 involved in actually inventing and creating the standard
7 for XML. That's this Jean Paoli Microsoft.

8 W3C stands for Worldwide Web -- that's
9 what the 3 means -- Consortium. This is the same that
10 creates XML. And it's Microsoft that's involved in the
11 inventing, and now we're being accused saying that we
12 have to pay them \$200 million for something that we
13 contributed to, not i4i.

14 Now, the second big thing you heard from
15 Mr. Cawley today, that Microsoft met with i4i in 2001.
16 That's true.

17 You also heard that that's something that
18 we desperately turned to i4i on. That's not true. The
19 evidence, we think, will show quite the opposite; that
20 i4i was desperately pursuing Microsoft to try to make
21 some money, which makes sense. A lot of people do that.
22 And if they have technology that we think is worth
23 buying, we buy it.

24 In this case, the people that Mr. Cawley
25 was referring to in the meeting, they didn't write the

1 source code. They didn't design what's accused. They
2 received no confidential information. And you heard
3 Mr. Cawley say at the very end that Microsoft decided
4 to, quote, take that invention, close quote.

5 But I don't want you to be confused by
6 that. By that, he does not mean that i4i is arguing
7 that we copied, because i4i is not arguing that. They
8 said that clearly. There is no argument that Microsoft
9 copied. So the issue isn't that.

10 Microsoft independently developed Word
11 and the accused functionality. Mr. Little will testify
12 at length about what he did and how he did it. And he
13 had no access to Mr. Vulpe's information. He didn't
14 know about the patent, didn't have any i4i information
15 at all. He did it using Microsoft technology, not
16 anything from i4i.

17 So first question: Does Microsoft Word
18 work the same way as the Vulpe patent?

19 We think the answer to that is no. No,
20 because we don't meet any one of all three requirements
21 that must be met and because we used our own technology.

22 The second issue is: Did the Patent
23 Office have the right information?

24 Well, that goes to the question of
25 validity. These are the four prior art references we're

1 going to elaborate on. We will show you that each of
2 these four is before i4i's work and invalidates their
3 patent. And none of these four was considered by the
4 Patent Office, not a single one.

5 Now, how do we know that? We know that
6 from the very face of the patent in the book in front of
7 you.

8 The part we've highlighted is titled
9 References Cited, and you see four different things
10 cited there. That's the place in the patent where the
11 Examiner is required to list what it is he considered in
12 deciding whether this was patentable.

13 So we know, there's no debate whether any
14 of the four things were -- we're offering to you was
15 considered. None of those four is on that list.
16 And it's important to know that the whole process by
17 which i4i was in the Patent Office getting this
18 invention and talking to the Patent Office that is
19 referred to both by Judge Davis and by Mr. Cawley,
20 that's private.

21 That's a process which I think, as the
22 video told you this morning, no other party has a right
23 to participate. Microsoft can't be there, and nobody
24 else can be there saying, hey, here's some prior art you
25 ought to consider. It's a totally private proceeding,

1 totally confidential.

2 And the result of that is that only these
3 four things were considered by the Examiner. And those
4 four things do not include any of the four that we're
5 relying on here.

6 So you, the jury -- as Judge Davis said
7 and the video said, you, the jury, will be the first to
8 assess whether this patent's valid in light of those
9 four references.

10 Let's look at the four. The first is our
11 own technology, not surprisingly. We have products of
12 Word going back many, many years. The person that is
13 accused here is colloquially called Word 11. That's the
14 one that became Word 2003. Word 5 and 6 were much
15 earlier.

16 June of 1994 is when Mr. Vulpe filed his
17 patent application. Word 6 was released almost a year
18 later, about six months earlier; Word 5, about a year
19 and a half earlier, well before the patent application
20 was filed and six years before the patent became public.
21 The patent didn't issue until 1998. It was all
22 confidential starting in 1994. But we had already
23 released Word 5 and 6 years and years before that.

24 Now, why does that matter? It matters
25 because Word 5 and 6 did the same thing they're talking

1 about here using separate codes to influence what the
2 content looks like.

3 Here's an example. Particular codes that
4 are called in those products are RTF codes, also known
5 as rich text format. Rich text formats is codes that
6 affect content. You see these two. They converted that
7 particular bit of text to italics. These codes here
8 called para create a paragraph. Same type of technology
9 that they're talking about here.

10 Now, i4i will argue, well, those RTF
11 codes really don't count as metacodes because they're
12 formats. That's what Dr. Rhyne will say. The problem
13 is the patent doesn't square with that argument.

14 Here is Mr. Vulpe's own patent where he
15 says particularly where the metacodes are text formatted
16 codes. So we know from his own patent that metacodes or
17 formatting codes are included. So that argument doesn't
18 wash with Mr. Vulpe's patent.

19 So that's Microsoft Word 5 and 6, well
20 before, years before, and has codes that influence
21 content which works the same way.

22 The second prior art reference, second
23 validating art is something called SEMI-S4. Sometimes
24 you'll hear it called S-to-the-4th or S superscript 4 or
25 just S4.

1 Now, what that is, is a product that i4i
2 sold itself. And you might ask, well, how can I browse
3 on a product and invalidate i4i's patent? Good
4 question.

5 The answer lies in the rule of the Patent
6 Office that is absolutely clear and unchangeable. The
7 rule is that you've got a one-year grace period before
8 the time you file your patent application. And that's
9 it. As Judge Davis said to you earlier, patents, it
10 exists for a limited period of time.

11 So the way the Patent Office rules work
12 is, you get a one-year head start, but you can't start
13 selling products governed by that patent 366 days before
14 you file a patent application.

15 Why? Because that would cheat the public
16 on how many years you get protection. You can't lie
17 behind the log selling products and then come out with a
18 patent much later. You've got to file. It's a strict,
19 strict Patent Office rule.

20 So the issue is going to be, does the
21 evidence show an offer for sale by i4i before June 2 of
22 1993, which is exact -- exactly one year before June 2,
23 even though it says 12, of 1994. That's the issue.

24 Well, there won't be a debate that i4i
25 sold the product to a company called SEMI, which is a

1 semiconductor company or its consortium out in
2 California back in the fall of '92. It was way before
3 that magic date.

4 And it was actually even installed. It
5 wasn't just offered for sale, it was installed in
6 February of '93, well before that critical date.

7 So there's no debate that there was a sale. The only
8 debate remaining is whether what was sold to SEMI
9 practiced Mr. Vulpe's patent? If it did, that absolute
10 one-year bar, no way out of it. The Patent Office rule
11 is strict.

12 So that's the question is, does what was
13 sold to SEMI practice Mr. Vulpe's patent? Well,
14 Mr. Vulpe answered that for us in his own words. When
15 he's describing his company's technology, he says,
16 Infrastructures has applied for a U.S. patent, and he
17 gives the patent number to protect specific technology
18 that it has developed.

19 The initial implementation is embedded
20 into Infrastructure's S-to-the-4th product integrated --
21 targeted to the semiconductor and publishing industries.
22 Well, the semiconductor industry was SEMI, the very
23 company it sold to in '92 and '93. And S-to-the-4th was
24 the name of the product they sold to SEMI. There won't
25 be any dispute about either of those.

1 Now, that number that he says he got a
2 patent for, that number matches exactly what the number
3 is on the face of the patent that's in your books. That
4 is the application number.

5 So he's saying the very same patent
6 that's here covers what was sold to SEMI as the
7 S-to-the-4th product. That's exactly what that Patent
8 Office rule does not allow. That's jumping the gun.
9 That's breaking the one-year rule.

10 But he didn't just say it there. In
11 another document, he refers to -- it says, Summary of
12 the progress to date, talking about the state of the
13 technology, and he says U.S. Patent Application filed
14 i4i flagship product S-to-the-4th vertical market
15 product.

16 So in his own words, his own handwriting,
17 he's telling you that S-to-the-4th product was what was
18 patented, and that violates the Patent Office rule. The
19 Patent Office's invalid. You can't jump the gun and
20 sell products more than a year before you file the
21 patent.

22 Now, there's a witness called Mr. Scott
23 Young, currently works for another company. He used to
24 be an employee of both SEMI, the company that was sold
25 to, and i4i. And he'll testify squarely that Mr. Vulpe

1 told him that, yes, the patent at issue here covered
2 that SEMI system, exactly what's not allowed.

3 The third piece of prior art is this
4 Waterloo patent, this Waterloo product called Rita.
5 Waterloo is also based in Canada incidentally, just down
6 the road from where i4i is. They had a software product
7 that worked on this computer a long, long time ago, way,
8 way before Mr. Vulpe filed his patent application. No
9 doubt that it's earlier.

10 And we'll show you videotaped testimony
11 from Dr. Cowan, who is one of the people involved in the
12 Rita project and the Rita program.

13 This is a picture of a screen shot from
14 that that shows here, for example, para, para, end doc,
15 beginning doc, body. Same type of things. Codes,
16 content separated, exactly what Mr. Vulpe claims in his
17 invention.

18 And the final piece of prior art is a
19 patent, another U.S. patent, to a gentleman named
20 DeRose. Here's the piece of the patent that they show
21 you. Again, it's well before, years before Mr. Vulpe
22 filed his patent application.

23 And this is a picture from the patent
24 that shows, again, title, chapter, body, et cetera, and
25 Mr. Gray will testify in detail why, in his opinion, his

1 expert opinion, this DeRose patent does everything that
2 Mr. Vulpe claimed in his.

3 And the U.S. is unique in the world in
4 saying a patent is invalid just because you're the first
5 one to get to the Patent Office. You have to be the
6 first one to make the actual invention.

7 And even if Mr. Vulpe was first to the
8 Patent Office, he was not the first to make the
9 invention. And in the case of DeRose, he wasn't the
10 first to the Patent Office anyway.

11 Mr. Gray will testify at great length.
12 He has extensive experience in exactly this area, and
13 he'll tell you that in his view, after great study, why
14 the patent is not infringed and is invalid.

15 Now the question of damages briefly.
16 Now, Defendants don't normally like to talk about
17 damages because they don't think there's any due. If
18 they didn't meet the three requirements for
19 infringement, then the patent is invalid.

20 But in this case, I'd like to, because I
21 think the damage claim shows you something about what
22 type of lawsuit it is.

23 Here you remember they've lost \$25
24 million before our product was even introduced. The
25 company was in financial crisis, couldn't make the

1 payroll. Yet they're asking for almost \$200 million for
2 a company that your product, people didn't want, where
3 the marketplace had voted against the technology.
4 The stark difference between those two tells you
5 something about what type of claim this is. The reason
6 Microsoft is successful is not because they took i4i's
7 technology that the marketplace didn't want; it's
8 because it was using Microsoft's technology that the
9 marketplace did want.

10 And the stark difference between these
11 numbers tells you a lot about what's really going on.
12 But this also does. Here's a copy of what's being
13 accused. I actually bought it from Amazon last week.
14 And I did -- it has Word; it has Excel; it has
15 PowerPoint; it has all sorts of technology that's not
16 part of this case at all. So it has a whole lot. The
17 price I paid for that was \$97.98 from amazon.com.

18 What i4i is asking for as a royalty for
19 every person that they claim uses the little slice of
20 Word technology that they think is infringed -- they'll
21 admit that there's thousands of things Word does that
22 don't infringe, and there's lots of ways even through
23 XML that don't infringe. They'll admit all of that.
24 And they'll admit that Excel and PowerPoint and OneNote,
25 those aren't a problem at all. Despite all of that,

1 they're claiming that for everybody who actually they
2 think uses their technology on Word, they want a hundred
3 dollars, even though the price is less than that.

4 Does that make sense? That will be for
5 you to decide.

6 And you'll also hear about how they came
7 to the idea of how many people use the technology, and
8 we think that will tell you something as well. Because
9 they did a survey, and the survey is one that we believe
10 shows you what type of claim this is, and you'll hear
11 that from Mr. Wecker as well.

12 So they want \$200 million. They want it
13 despite the fact that they can't meet any one of the
14 three requirements for infringement where they have to
15 meet all three. And they want it despite the fact that,
16 really, they jumped the gun; they violated the Patent
17 Office rules. And the patent is invalid based on prior
18 art.

19 For those reasons, after you've heard all
20 the evidence, we'll ask you to return a verdict for
21 Microsoft. I thank you very much for your attention.

22 THE COURT: Thank you, Mr. Powers.

23 All right, Ladies and Gentlemen of the
24 Jury. It's 3:00 o'clock now. We're going to take our
25 afternoon break at this time. We'll be in recess for 20

1 minutes, until 3:20.

2 So remember my instructions. Don't
3 discuss the case among yourselves or with anyone else.

4 Stretch your legs, get a cup of coffee,
5 and I will see you back here at 3:20. The jury is
6 excused.

7 COURT SECURITY OFFICER: All rise for the
8 jury.

9 (Jury out.)

10 THE COURT: Please be seated.

11 All right. Let me just remind the
12 parties what our procedure is going to be when we come
13 back. I'd like for both sides to have all of their
14 witnesses that are here today, whether in the hallway or
15 elsewhere in the courtroom. We'll do a mass swearing
16 in. Just we'll line them up wherever they are, have
17 them state their name. They'll be sworn in.

18 Is either side invoking the Rule in this
19 case?

20 MR. POWERS: We are, Your Honor.

21 THE COURT: All right. The Rule will be
22 invoked. I'll give instructions to them regarding the
23 Rule.

24 Those -- have you reached an agreement as
25 to who's excluded from the Rule?

1 MR. POWERS: Just the corporate
2 representatives. We don't know who their's is. I
3 believe it's Mr. Cox, but that's for them to decide.

4 MR. CAWLEY: That's correct, Your Honor.

5 THE COURT: All right. What about
6 experts? Are they not excluded?

7 MR. POWERS: I would say not excluded.

8 MR. CAWLEY: Meaning they're not excluded
9 from the courtroom?

10 MR. POWERS: Exactly. They are excluded
11 from the operation of the Rule, but --

12 THE COURT: They are excluded from
13 operation of the Rule.

14 MR. CAWLEY: We agree.

15 THE COURT: All right. Very well.

16 All right. The parties' representatives
17 and experts will be excluded.

18 Now, as soon as we get the witnesses
19 sworn in, the next order of business will be an offer of
20 documents, and I believe I went over this with you in
21 pretrial.

22 What I will want the Plaintiff to do is
23 stand up and offer whatever exhibits the other side does
24 not object to. You will stand up and say no objection.
25 I will admit them. We'll get all those documents in en

1 masse. Then at the same time, I'll do the same thing
2 for the Defendant.

3 Do y'all have your lists ready? Have you
4 met and conferred, and are you ready to go on those?

5 MR. POWERS: We certainly have with
6 regard to the Plaintiff's exhibits that they've given us
7 for direct examination.

8 There's no -- been no exchange for
9 whatever was going to be used on cross, because I'm not
10 sure what's going to be used yet, of course. But for
11 that, we would intend to offer it as we went along.

12 THE COURT: Okay. Well, what I want to
13 avoid is having identified this exhibit, and, Your
14 Honor, I offer this; any objection. That just bogs us
15 down.

16 So you pretty well know what exhibits
17 you're going to use, and so not just for this witness,
18 but for the whole case, I'd like to just get that out of
19 the way, if you're prepared to do it today.

20 Are you?

21 MR. POWERS: There are no objections to
22 the exhibits that we're going to use, so I'm certainly
23 happy to hand Mr. Cawley a list before each witness.

24 I don't -- we didn't have an agreement
25 nor an order from the Court saying we have to give them

1 cross exhibits the night before or anything. I
2 Certainly wouldn't want to do that either way. I
3 think that's -- I don't know which ones we're going to
4 use, and I don't -- wouldn't want them admitted until I
5 know which ones I use.

6 THE COURT: All right. When do you plan
7 to offer those then?

8 MR. POWERS: Anytime the Court asks me
9 to. I would suggest perhaps, since they're not objected
10 to, and I'll represent that every exhibit I'll be using
11 with both witnesses today are not objected to, I would
12 do -- not -- I would not go through the process Your
13 Honor described of identifying, et cetera, and just
14 offer it at the end, once we know which ones we actually
15 use, because --

16 THE COURT: All right. Is that
17 acceptable?

18 MR. POWERS: -- I expect a large number.

19 THE COURT: Is that acceptable to you,
20 Mr. Cawley?

21 MR. CAWLEY: Well, offering it at the end
22 kind of begs the question, because when he confronts a
23 witness with documents, then we may have a dispute on
24 our hands about whether that's objectionable or not.

25 THE COURT: I thought he said that you

1 had already agreed they were not objectionable.

2 MR. CAWLEY: Oh, for today?

3 MR. POWERS: Yes.

4 MR. CAWLEY: Oh, I'm sorry. Yeah, for
5 today, I don't think there's an issue.

6 MR. POWERS: For every exhibit I'm
7 intending to use, they do not have an objection noted to
8 them.

9 THE COURT: Okay. Well, whatever
10 exhibits you're prepared to offer en masse, before we
11 start with the first witness, I will hear that offer and
12 acceptance, and they'll be admitted into evidence.

13 That doesn't preclude you from offering
14 other exhibits later during the course of trial, but I
15 would just like not to bog it down with a lot of
16 individual offerings.

17 That will be the procedure each day. If
18 you don't have them for the whole trial, at the
19 beginning of each day, I will give both sides an
20 opportunity to offer their exhibits for that day, and
21 you can offer them.

22 If you intend to offer them, Mr. Powers,
23 at the end of your cross-examination, for example, be
24 sure you remember and that you have an agreement that
25 you can use them without an offer at the time.

1 If you don't have an agreement, then you
2 need to offer it, and I'll hear the objections.

3 At the end of each day, I would order
4 both sides to prepare a list of those exhibits that were
5 admitted that day and furnish it the next morning to
6 Ms. Ferguson so she can reconcile it with her records to
7 be sure we have a clean record on it.

8 Also, I need from both sides -- I need
9 three hard copies of your exhibit list and three hard
10 copies of your witness list.

11 Do y'all have an agreement as to
12 exchanging who your witnesses are going to be for the
13 next day and what exhibits --

14 MR. CAWLEY: Yes, Your Honor.

15 THE COURT: Okay. Very good.

16 Anything else before we take our break?

17 MR. CAWLEY: I guess just a point of
18 clarification on a slightly different subject.

19 As it turns out, our first witness,
20 Mr. Owens, may have some testimony that will be relevant
21 to inequitable conduct. So does the Court want to hear
22 that from Mr. Owens after the jury is excused today?

23 THE COURT: Yes.

24 All right. We'll be in recess until
25 3:20.

1 COURT SECURITY OFFICER: All rise.

2 (Recess.)

3 COURT SECURITY OFFICER: Be seated.

4 All rise.

5 (Jury in.)

6 THE COURT: Please be seated.

7 All right. Ladies and Gentlemen of the
8 Jury, we are about to begin the evidence phase of the
9 case in just a few moments, but, first, we're going to
10 take care of a couple of housekeeping matters.

11 I would like to ask the parties to have
12 all their witnesses that are here that are going to be
13 testifying in the case to please stand so that we can
14 swear them in.

15 All right. Very well. Let's start here,
16 and if you would state your name for the record, please,
17 sir.

18 A WITNESS: Stephen Owens.

19 A WITNESS: William Cox.

20 THE COURT: Okay.

21 A WITNESS: George Gerstman.

22 A WITNESS: Michael Wagner.

23 A WITNESS: Stephen Gray.

24 THE COURT: Back in the front here
25 (indicates)?

1 A WITNESS: John Tulley.

2 A WITNESS: Keith Thomas.

3 A WITNESS: David Martin.

4 A WITNESS: Tom Rhyne.

5 A WITNESS: Michel Vulpe.

6 THE COURT: Okay. And?

7 A WITNESS: Robert Little.

8 THE COURT: Very well. Did the court
9 reporter get all those names alright?

10 All right. If you would, Ms. Ferguson,
11 please swear the witnesses in.

12 (Witnesses sworn.)

13 THE COURT: All right. If you would
14 remain standing just a moment and let me instruct you
15 and explain to the ladies and gentlemen of the jury, the
16 attorneys have invoked what's called the Rule in this
17 case, which means that those of you who are witnesses --
18 and if you're not a representative of a party or an
19 expert witness, then the Rule will apply to you.

20 And the rule is this: That during the
21 course of the trial, you will remain outside the
22 courtroom, except when you testify. And you shall not
23 discuss the case or the testimony or anything with any
24 other person, except the attorneys in the case.

25 So unless you are excused from the Rule

1 as being either a party representative or an expert, at
2 this time, I would like to ask you to leave the
3 courtroom and wait in the witness rooms.

4 And the rest of you may be seated.

5 (Witnesses exit the courtroom.)

6 THE COURT: All right. And I will expect
7 counsel for both sides to inform your other witnesses
8 that the Rule's been invoked and also to inform the
9 Court whenever a witness appears the first time that has
10 not been sworn.

11 All right. Do Plaintiffs have any
12 exhibits they would like to offer at this time?

13 MR. CAWLEY: Yes, Your Honor. Exhibits
14 1, 4, 7, and 8.

15 THE COURT: 1, 4, 7, and 8.

16 Any objection?

17 MR. POWERS: No objection, Your Honor.

18 THE COURT: Be admitted.

19 Does the Defendant have any exhibits they
20 wish to offer?

21 MR. POWERS: Yes, Your Honor. 2058.

22 THE COURT: Is that one exhibit?

23 MR. POWERS: That's one exhibit.

24 THE COURT: All right.

25 MR. POWERS: DTX2058. 2058.

1 THE COURT: All right.

2 MR. POWERS: 2202, 2366, 2380, 2395,
3 2396, and 2065.

4 THE COURT: All right. Any objection?

5 MR. CAWLEY: No, Your Honor.

6 THE COURT: All right. Those will be
7 admitted.

8 All right. Plaintiffs may call their
9 first witness.

10 MR. BURGESS: Your Honor, Plaintiffs call
11 Stephen Owens.

12 THE COURT: Stephen Owens.

13 MR. BURGESS: May I proceed, Your Honor?

14 THE COURT: Yes, you may.

15 STEPHEN OWENS, PLAINTIFFS' WITNESS, SWORN

16 DIRECT EXAMINATION

17 BY MR. BURGESS:

18 Q. Good afternoon, sir.

19 A. Good afternoon.

20 Q. Would you please introduce yourself to the
21 jury.

22 A. Yes, sir. My name is Stephen Owens.

23 Q. And why are you here today, Mr. Owens?

24 A. I'm here to discuss the patent that Mr. Vulpe
25 and myself were granted by the United States Patent

1 Office.

2 Q. And you understand that's the patent that's
3 at issue in this case?

4 A. Yes, sir, I do.

5 Q. Referred to as the '449 patent?

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

7 Q. Where do you live, Mr. Owens?

8 A. I live in Caledon East in Ontario, Canada.

9 Q. Is that near Toronto?

10 A. Yes, sir. It's about 45 minutes north.

11 Q. Are you married?

12 A. Yes, sir.

13 Q. What's your wife's name?

14 A. Leslie.

15 Q. Do you and Leslie have any children?

16 A. Yes, sir. Twin boys.

17 Q. And how old are your sons?

18 A. Twelve years old.

19 Q. That must be a handful.

20 You know, it occurs to me that yesterday was
21 Mother's Day, and I know you were here with me, but did
22 your sons do something special for their mom yesterday?

23 A. Yes, sir. I had to delegate the Mother's Day
24 tasks to them, and they got up early, cleaned the house,
25 and made breakfast for their mom. So I was pretty happy

1 with my delegation.

2 Q. Now, Mr. Owens, are you the first inventor in
3 your family?

4 A. Well, no, sir, I guess not. My grandfather
5 was perhaps famous. It was certainly a family story
6 where he was the first one to use cross-country skis to
7 get from lumber camp to lumber camp in northern Quebec
8 instead of using snow shoes, which was the current
9 technology.

10 Q. Is that what we call the Great White North?

11 A. I think that's how it's referred to up here,
12 yes, sir.

13 Q. Now, Mr. Owens, what do you do?

14 A. I have a very small software consulting firm.

15 Q. And can you tell us what's software?

16 A. Well, software is really anything that runs
17 on a computer and makes it do what computers do.

18 Q. What -- what might be a typical example of a
19 piece of software that people are probably familiar
20 with?

21 A. Well, certainly we've heard about Microsoft
22 Word in the introduction of this case, and that's a good
23 example. Also, the MAC operating system might be
24 another example that people would be familiar with.

25 Q. How long have you been in development

1 software?

2 A. It's been a while now. About 27 years.

3 Q. And do your boys like computers like their
4 dad?

5 A. Yes, sir. The older of the two twins says he
6 wants to take over the family firm when he gets a bit
7 older.

8 Q. Now, if you could, you've got a notebook
9 there with a couple of exhibits in it, and if I could
10 ask you to look at the first one, and you can also see
11 it on your monitor.

12 Can you tell the jury what Plaintiffs'
13 Exhibit 1 is, please?

14 A. Yes, sir. That's the patent that's at issue
15 in this court -- in this case. I believe it's being
16 referred to as the '449 patent.

17 Q. And are you one of the inventors?

18 A. Yes, sir.

19 Q. And are you proud of this patent?

20 A. Yes, sir, very proud.

21 Q. Let's take a little bit closer look at the
22 cover of the patent. I see there is a line for the
23 inventor.

24 Is that your name, sir?

25 A. Yes, sir.

1 Q. And who are the other gentlemen that are
2 listed?

3 A. That's Michel Vulpe. He's the founder of
4 Infrastructures for Information.

5 Q. And do you understand that we'll hear from
6 Mr. Vulpe later in the case?

7 A. Yes, sir.

8 Q. And is there a -- is there a shorthand that
9 people often use to refer to Infrastructures for
10 Information?

11 A. Yes. It's usually referred to as i4i.

12 Q. Now, we saw in opening and we can see here on
13 the cover of the patent that the application was filed
14 in June 2nd of 1994.

15 Now, when the application was filed, were you
16 working for i4i?

17 A. Yes, sir. I was consulting for i4i at the
18 time.

19 Q. Were you employed by i4i?

20 A. No, sir.

21 Q. Have you ever been employed by i4i?

22 A. No, sir.

23 Q. And did you eventually stop consulting for
24 i4i?

25 A. Yes, sir, I did.

1 Q. And about when was that?

2 A. That was around 1995.

3 Q. So after the application was filed?

4 A. Yes, sir.

5 Q. Now, did you ever come back after you left
6 i4i and do some additional consulting?

7 A. Yes, sir. I did a couple of projects for
8 them over the next few years.

9 Q. Now, if I were to ask you about things that
10 happened at i4i after you left in 1995, would you be
11 able to answer my question?

12 A. Well, I could certainly answer questions
13 about the particular projects I was working on, but I
14 wasn't working in the i4i offices anymore. So I only
15 have the most general information about the company.

16 Q. Now, we've heard quite a bit about SGML so
17 far.

18 And can you just -- we're going to talk about
19 it in some detail, but very briefly, could you remind us
20 what it is?

21 A. Yes, sir.

22 So SGML is a way to add information to
23 documents to make them, hopefully, of higher value and
24 more usable in the future.

25 Q. Now, are you -- are you familiar with SGML

1 now?

2 A. Yes, sir.

3 Q. What about XML; are you familiar with that?

4 A. Yes, sir.

5 Q. And did you see at opening Mr. Powers made a
6 point of emphasizing that your patent doesn't mention
7 XML?

8 A. Yes, sir, I did.

9 Q. Is there a reason for that?

10 A. Yes, sir. XML actually had not been invented
11 at the time we filed the patent application.

12 Q. Now, in terms of your patent and your
13 invention, is there a significant difference between
14 SGML and XML?

15 A. No, sir, none at all.

16 Q. Now, when you first came to work with i4i and
17 Mr. Vulpe, had you heard of SGML?

18 A. No, sir, not at all.

19 Q. How did you come to learn of it?

20 A. Well, I was lucky that I was working with
21 Mr. Vulpe. He was a very early expert in SGML, so he
22 was kind of my first teacher in explaining the concepts
23 to me.

24 Also, I was working on projects that involved
25 the technology, so I was kind of learning on the job.

1 And, again, I was also reading material on the -- on
2 the standard.

3 Q. Do you remember the first project that you
4 worked on at i4i that involved SGML?

5 A. Yes, sir. That would be the SEMI project.

6 Q. Is that the same SEMI project that we heard
7 about in Mr. Power's opening?

8 A. Yes, sir.

9 Q. Now, what software did you create for SEMI?

10 A. So SEMI, as you heard in the opening, is the
11 consortium for manufacturers of equipment for making
12 semiconductors. And we worked on a system to help them
13 track their membership, create standards, and allow
14 their members to vote on those standards.

15 Q. This is a little hard to read, but based on
16 your experience, can you -- can you tell me what this
17 is?

18 A. Yes, sir.

19 That would be an example of a document
20 created by the SEMI system for use by SEMI.

21 Q. Now, this -- this -- I'm having a hard time
22 reading it. And can you explain why this is so
23 difficult to read? I mean, other than the fact that
24 it's small.

25 A. Yeah. Yes, sir.

1 So this is an example of an SGML document.

2 And one of the reasons it's hard to read is that there's
3 a bunch of special characters that really only SGML
4 cares about. And people trying to read the document,
5 not only don't care about, but it's actually just
6 confusing.

7 Q. Is there -- is there really a document with
8 real information in amongst this mess?

9 A. Yes, sir. If you know how to read it, it's
10 buried in there.

11 Q. So did somebody actually have to keep track
12 of all this and type this all in?

13 A. Yes, sir, they did.

14 Q. And, again, is this an example of what a
15 typical document created with your SEMI software would
16 look like?

17 A. Yes, sir, it's a fair example. It's perhaps
18 a little short but the same kind of document.

19 Q. Now, let's take a look at a very different
20 kind of document.

21 Just looking at this, do you notice any
22 differences from the document we just saw in the last
23 slide?

24 A. Yes, sir.

25 So the key difference is this is much more

1 familiar. This document has not been marked up, as we
2 heard in opening, with SGML. So this is much more the
3 kind of document that everyone is familiar with writing
4 themselves, either by hand or using a word processor.

5 Q. Now, can you tell the jury why this document
6 looks so different from this document?

7 A. Well, I referred just a minute ago to adding
8 value to documents using SGML, and it might be a little
9 hard to see when you see this mess. But the difference
10 really is that this document that we're looking at now
11 has had SGML applied to it, whereas the second document
12 has not.

13 Q. Now, did you eventually deliver your product
14 to the folks at SEMI?

15 A. Yes, sir, we did.

16 Q. And what did the managers at SEMI think about
17 your work?

18 MR. POWERS: Objection, Your Honor. He
19 can testify to what was said, perhaps, depending on its
20 relevancy, but he can't testify about their internal
21 feelings.

22 THE COURT: Restate your question,
23 please.

24 Q. (By Mr. Burgess) Were you ever made aware of
25 what the managers at SEMI thought about your work?

1 MR. POWERS: As phrased, it calls for
2 hearsay, Your Honor.

3 THE COURT: Overruled.

4 A. Yes, sir.

5 My understanding was that those managers did
6 appreciate the value that they were getting out of the
7 SGML.

8 Q. (By Mr. Burgess) And what about the poor
9 folks that actually had to create documents like this?
10 What did they think about your work?

11 A. Well --

12 MR. POWERS: Same objection to relevance.

13 THE COURT: Excuse me?

14 MR. POWERS: Same objection. He asked
15 how those people thought about it, and this witness
16 can't answer it.

17 THE COURT: All right. Restate your
18 question.

19 Q. (By Mr. Burgess) Did you -- did you come to
20 understand what the folks that had to create these
21 documents thought about your product?

22 A. Yes, sir.

23 I had a number of conversations with people
24 who had to create documents for SEMI, and they weren't
25 real happy at being forced to type what they thought had

1 a pretty meaningless code.

2 Q. And so did you do something to help those
3 folks out?

4 A. Yes, sir, we did.

5 Q. And is that what you patent -- that's part of
6 what your patent is about?

7 A. Yes, sir. It certainly is part of the
8 invention.

9 Q. Now, at the time that you did your work for
10 SEMI, if someone had wanted to create an SGML
11 document -- for instance, a document like this -- what
12 software was available for them to do that with?

13 A. Well, really, it was what I'll call the text
14 editor, and a text editor really just lets you type
15 letters. And by that, I just mean individual
16 characters, so it wasn't really very easy to use.

17 Q. How does -- how does a text editor compare to
18 the tools that you delivered as part of your SEMI
19 product?

20 A. A text editor is really very simple. It just
21 lets you add the characters.

22 In the SEMI product, we gave a little bit
23 more help in terms of letting you put the tags in a
24 little more easily, but it was still essentially a text
25 editor.

1 Q. Now, back in the same time period when you
2 did your work at SEMI, if you had wanted to create a
3 document like this, a simple letter home to Mom, for
4 example, what sort of tools were available for you to do
5 that with?

6 A. So most users would have been using word
7 processors, like WordPerfect or Microsoft Word, to write
8 documents like this.

9 Q. Now, at that time, could a word processor
10 like that have created a formatted document that also
11 had SGML?

12 A. No, sir.

13 Q. So with that background, can you explain to
14 the jury what one of the problems that you sought to
15 solve with your invention was?

16 A. Yes, sir.

17 So we had a mismatch, really, where people
18 wanted to use tools they were familiar with to create
19 their content. And at the same time, management wanted
20 to take advantage of SGML, and we didn't have a solution
21 to offer to them.

22 Q. Do you think it would be helpful to explain
23 this concept to the jury if you could draw a little
24 diagram on the whiteboard?

25 A. Yes, sir. I hope that would help.

1 MR. BURGESS: Your Honor, may Mr. Owens
2 have permission to approach?

3 THE COURT: Yes, he may.

4 MR. BURGESS: Thank you.

5 Q. (By Mr. Burgess) So what is it that you could
6 draw for the jury that would be helpful to explain this?

7 A. So I'd like to just illustrate the different
8 concepts that we were trying to reconcile, trying to
9 make into one.

10 Q. Okay. So what's the first part of that?

11 A. So the first part represents with this big
12 circle, and this is really the applications that the
13 authors of the content wanted to use. And I used as an
14 example before, you know, WordPerfect, Microsoft Word,
15 and --

16 Q. Did those applications have to be word
17 processors?

18 A. No, sir.

19 So it could have easily been a drawing
20 program, if they needed to create a drawing instead of
21 text.

22 Q. Okay. Now, what about the SGML piece that
23 you described?

24 A. So the other half of the equation is what I'm
25 going to call an SGML application, and that's really the

1 thing that delivers the value that we talk about in
2 SGML.

3 Q. And so what was it that you hoped to
4 accomplish?

5 A. So what we wanted to do was come up with an
6 application that gave them the ease of use and the
7 familiarity that users had from using these types of
8 tools in the application.

9 Q. Is there another piece to that?

10 A. Yes, because what we also wanted to do was
11 not lose the value from the SGML application.

12 Q. And so did your invention provide this
13 solution?

14 A. So among other things, it, in fact, solved
15 this combined best-of-both-worlds picture that I'm
16 trying to illustrate over here.

17 Q. So you said among other things. Were there
18 other problems that your invention addressed?

19 A. There were.

20 So applications that weren't necessarily
21 content editors also had problems with combining that
22 SGML content that you saw with the -- with the
23 application. And we were trying to solve a bunch of
24 them, including being able to apply many different SGML
25 structures on to one document.

1 I'll show a bit more about that in the near
2 future.

3 Q. Thank you, Mr. Owens. You can take a seat,
4 please.

5 A. (Complies.)

6 Q. Now that you've talked about one of the
7 problems that your invention solved, let's start to talk
8 about how you actually did it.

9 Have you -- have you created a few boards
10 that illustrate the way in which your invention solved
11 this particular problem?

12 A. Yes, sir, I have.

13 MR. BURGESS: Your Honor, could we have
14 your permission for Mr. Owens to approach the other
15 easel and answer a few questions about his boards?

16 THE COURT: Yes, sir.

17 MR. BURGESS: Thank you, sir.

18 Q. (By Mr. Burgess) So what is it you want to
19 explain to the jury using your boards, Mr. Owens?

20 A. So what I'd like to try to do is put the
21 invention in context, because I think that it can be a
22 bit hard to appreciate sort of how it fits in and how it
23 delivers value.

24 So I created a number of boards that try to
25 provide some context to the history of this.

1 Q. Okay. Now, right away, I notice at the
2 bottom of that first board there is a timeline, and it
3 looks like the part that you've highlighted runs from
4 the printing press in 1455 through 1986.

5 What's the significance of that timeline?

6 A. So as we heard in the opening statement,
7 documents have a really long history. People have been
8 writing them for a long time. They've been scratching
9 them on rocks.

10 And one of the time periods that was most,
11 you know, exciting in terms of standardizing the way
12 documents look and the type of convention we have in the
13 way they look is the invention of the printing press in
14 1455, which, of course, was used to print the Gutenberg
15 Bible.

16 Q. Now, the top part of your board, what's
17 illustrated there?

18 A. So up here we have, you know, a document.
19 You know, the subject matter isn't really terribly
20 important. In fact, we've made it bland by design.
21 But it's just a document that anybody would be familiar
22 with. The layout looks fairly standard, doesn't have
23 all those nasty codes in it. Just a simple document.

24 Q. Now, does this document, this simple
25 document, convey any information?

1 A. It does. And what I think is interesting is
2 that the outcome of what's in the document, they would
3 usually say, well, there's a bunch of words, and I can
4 read my document. This is a description of my document.
5 And many people might also say, well, it has a title,
6 and the title is My Document.

7 Q. Is there any other sort of information that's
8 conveyed by this document?

9 A. There is.

10 So, you know, if we look at the way -- I
11 think it's interesting that everybody is immediately
12 going to say, well, it's just a title. But few people
13 would say, well, I wonder how I know it's a title?
14 And, of course, you know it's a title because it's bold;
15 it's large at the top; it's centered; it's got some
16 spacing. That's all formatting.

17 Another thing that people might suspect is
18 that often in documents the very first paragraph gives
19 you an overview, just explains generally what the
20 document is about.

21 So if you started reading a paragraph and it
22 said this is a description of my document, you might
23 say, yeah, this one is, in fact, an overview of the
24 document.

25 Q. Is there a term that we can use to talk about

1 that sort of information?

2 A. Yes. So when I've read my document, those
3 words are in black and white on the page. So they're
4 kind of right there in the document. And that I call
5 explicit information, because it's explicitly in the
6 document.

7 That other type where we say this is the
8 title, this is an overview, that information is what I
9 call input. And that really means you have to guess a
10 little bit. It's not written anywhere in the document
11 that it is those things.

12 Q. Now, in addition to what you just described,
13 is there any other implied information in this document?

14 A. There is. And, again, it comes back to
15 inventions and formatting.

16 Almost everybody is going to recognize this
17 is a date just because of the way it's laid out, the
18 characters there. Anybody who lives in Tyler is going
19 to recognize this as a city name. And as soon as you
20 see it near a state, Texas, almost anyone, even those of
21 us who doesn't know the city of Tyler, would recognize
22 that as a location.

23 Q. Is there anything else?

24 A. So slightly more subtle, this arrangement
25 with numbers on a page almost always means the phone

1 number to, certainly, people in North America. So I
2 think you would pick that out as a phone number.

3 Q. Now, once this document is created and saved
4 away in a file system, what happens to that implied
5 information?

6 A. Yeah, that's a great question.

7 And the way I like to think about it is when
8 someone writes this document, they have all kinds of
9 information in their head. They're really thinking
10 about what they're writing, and, of course, they know
11 their purpose. But they don't put all of that
12 information into the document. They only put part of
13 it.

14 So when they save this document, some of the
15 information that that person was thinking about at the
16 time is, in fact, lost. And unless you can find that
17 person and ask them questions about it, you may not know
18 exactly what was going on when they wrote that.

19 Q. Okay. Now, following along your timeline on
20 the bottom of your board, did something happen that
21 helps us to deal with this problem about losing vital
22 information?

23 A. So that takes us to the next board.

24 THE WITNESS: Thank you, sir.

25 A. This one picks up where the last one left

1 off.

2 Q. (By Mr. Burgess) All right. Now, I notice
3 we've got a continuation of your timeline, a much
4 shorter slice highlighted here from 1986 to 1993.

5 What's the significance of SGML standardized
6 that you've highlighted right above the timeline?

7 A. So the SGML standard was fully ratified on
8 this date, and that means we have this very long period,
9 hundreds of years, where documents were really
10 controlled by their formatting, by the way you lay them
11 on the page, the way they look, the types of things the
12 way you write them.

13 In this time period, we add something new to
14 that picture.

15 Q. I think it's clear, but just so there's no
16 confusion, did you or Mr. Vulpe invent SGML?

17 A. No, sir.

18 Q. Who did?

19 A. Dr. Charles Goldfarb.

20 Q. Did you or Mr. Vulpe ever claim to invent
21 SGML?

22 A. No, sir.

23 Q. Now, at the time that you've highlighted
24 here, from 1986 to 1993, was there a large group of
25 people that were interested in working with SGML?

1 A. No, sir. That's a very small number, sir.

2 Q. So we see a document here on the top part of
3 your slide.

4 What kind of document is this?

5 A. So this is an example, and it's a very
6 simplified example. In fact, I intentionally omitted
7 some things that would even be required in SGML, but
8 this is just meant to be an example of how an SGML
9 document looks.

10 Q. Is this the same type of document as the
11 really complicated one that we saw on the overhead
12 earlier?

13 A. It is. It's a simplified example, but it's
14 exactly the same structure.

15 Q. Now, if we can, if we can pull up your first
16 board on the overhead, so we can kind of compare and
17 contrast.

18 This looks -- this looks different. What are
19 the differences?

20 A. So I think the first thing that everyone will
21 notice is this one is just plain harder to read, so
22 we've lost the formatting. We don't have that big bold
23 title anymore. The paragraphs aren't laid out as
24 nicely. And I think that's kind of immediate.

25 Q. Is there any other difference?

1 A. So we've lost all that formatting. We have
2 gained the wonderful advantages of some special
3 characters, less-than/greater-than sign.

4 Q. And do you discuss these tags in the patent?

5 A. Yes, sir.

6 In the patent, actually, we refer to these as
7 metacodes, and there's a reason for that terminology,
8 because they're slightly different when we get into
9 that.

10 Q. Okay. Now, do these metacodes have anything
11 to do with the implied information that we discussed
12 with respect to your first board?

13 A. Yes, they do.

14 So wherein the first board we talked about,
15 we knew that was a title, because of its formatting and
16 it's location.

17 Now we've made that guess of the title, which
18 is a pretty strong guess, but we made it very explicit.
19 Now it is in black and white. It really says this is
20 the title.

21 Q. Are there any other examples like that in
22 this document?

23 A. Yes, there are.

24 So we, again, had a good guess that the first
25 paragraph was probably an overview, and that guess

1 turned out to be right. So we've got an overview there.
2 I want to draw your attention to the date. We had a
3 guess that that was a date, and certainly more than a
4 guess, because we were right about that, but notice we
5 didn't get it immediately.

6 We knew it was a date, but what we didn't
7 know is that it was a trial date. And we didn't know
8 that because the person who wrote the document hadn't
9 put that information in.

10 Q. Are there any other examples of that sort of
11 information in this document?

12 A. So, again, call your attention to the city.
13 We got that right again. It was a city, but more than
14 that, it was a trial location. So, again, we got more
15 important information from that document.

16 And the final example, we've now picked out
17 not just the phone number, we've actually identified
18 that this is an area code. And it just goes back to the
19 opening comments that one of the values that we're
20 offering is to find this information again.

21 Q. Now, you discussed with respect to your first
22 board the possibility that some of the implied
23 information would get lost.

24 Now, in this case when we create this
25 document and save it away, what happens to that

1 information?

2 A. So now that we've made the information
3 explicit, now the information is really in the document
4 in black and white, we can actually just read it.
5 When you save the document, all that information goes
6 with it, so it's now permanently associated with the
7 document. You'll always know what it is.

8 Q. Let me just ask you one more thing to make
9 sure there is no confusion. We'll just use the title as
10 a simple example.

11 I notice that there are -- there are --
12 there's a title here and there's a title here
13 (indicates). Why are there -- why is that there twice?

14 A. So what happens is you need to know that this
15 tag or metacode is here, because that tells you what's
16 coming up is the title. But the other thing that you
17 need to know is where does the title stop? How many
18 characters are inside it?

19 So what happens is, this is called start tag.
20 And it says -- the title will be starting, and then
21 here's the end tag. It just says the title ends here,
22 and this slash here tells you that you're at the end.

23 Q. Okay. So continuing to follow along your
24 timeline, did something happen next that affects the way
25 that we can use documents like this?

1 A. Yes, sir. We get another change.

2 So later in 1993, we get a new phase of this
3 work.

4 Q. And why do you label this one the invention?

5 A. So this is the period where we came up with
6 the idea. That's a discussion to file the invention.

7 Q. Okay. And I notice right away sort of an
8 obvious difference between this one and the last one,
9 which is that we've got two boxes on this that we didn't
10 have before.

11 Can you explain what these two boxes are?

12 A. Yes. So in the invention and one of the
13 things that we've done is recognize that the content
14 that the document -- what was in that very first slide
15 is not the same as the information about the document
16 and no longer has to be mixed.

17 As part of that recognition, you actually
18 create two separate places, two distinct places to store
19 that information so that we can tell -- we can
20 distinguish between those two types of information.

21 Q. Now, the right side of the board you've
22 labeled mapped content. What does that mean?

23 A. So I think everyone is fairly familiar with
24 the word content. It just means the words that are in
25 the document, My Document and its content.

1 So mapped content means that this is the
2 content, what you would expect to find in a document,
3 but it's got more value than it used to have and,
4 therefore, the word mapped.

5 Q. So the left side of the board is labeled
6 metacode map.

7 Can you tell us what that means?

8 A. So if we go back to Slide 2, we talked about
9 those tags, which are called metacodes in the patent.
10 And here in the metacode map, you see a list of all the
11 same tags that were in the second document.

12 Q. Is that all there is to the metacode map,
13 just a list of names?

14 A. No, sir. That wouldn't be enough.

15 You also have to know how the map relates to
16 the mapped contents, because you have to know that
17 they're together; they're part of the same thing.

18 Q. And how does the metacode map represent that
19 relationship?

20 A. Well, what it does is it needs to -- it needs
21 to know where each metacode has an effect in the
22 document. And that's actually called the address use in
23 the patent, and that address is the way you identify
24 where this metacode is in this document.

25 Q. So how does that work?

1 A. So let's assume this is part of a larger
2 document we've been in discussion about. All the
3 characters are in it, but if this is Character 100 right
4 here (indicates), that means I am 100 characters into
5 the document, which we counted from the beginning.
6 All we do is we say this title metacode starts at
7 Character 100, and then we just count and we say, okay,
8 I start here; I go 101, 102, 103, 4, 5, 6, 7, 8, 9, 10,
9 11. So we put 111 in at the end of it, and that tells
10 us that this title metacode takes in all the content
11 starting with this M all the way up to the T at the end.

12 Q. And could you do the same thing for, say, the
13 trial date entry on the map?

14 A. Sure. So, again, we see the word content in
15 here. I'll say that this is Character 200 counting in
16 round numbers. So we would put in here in the trial
17 date that it starts at Character 200, and that goes 201,
18 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, so up to 212.

19 And now we can say that that trial date spans
20 that whole region.

21 Q. Could you do that same thing for the
22 remainder of the entries in the map?

23 A. Yes, you could. But you would fill in all of
24 those -- all that information, then you would know where
25 all the metacodes are in the document.

1 Q. Okay. Now, I'm going to put your first board
2 back up on the screen, the overhead.

3 How does the combination of the mapped
4 content and the metacode map and the board that you're
5 just discussing compare to the document that we saw on
6 your first board?

7 A. So I think it's important to recognize that
8 this here, the mapped content, is identical. It looks
9 the same; it's got the same content, so it's really the
10 same document.

11 What this adds to the first board is that on
12 the first board we didn't have the extra information.
13 We didn't know that was the trial date. We didn't know
14 it was the trial inclusion, so what is added is that
15 extra information.

16 Q. Okay. And so how does the combination of the
17 mapped content and the metacode map on your third board
18 compare to the SGML document that we saw on your second
19 board?

20 A. So this combination preserves all the
21 information that was in that second board. We've still
22 got all that explicit information that we talked about,
23 but it adds back the nice formatting that people want to
24 read and can read easily.

25 Q. Thank you, Mr. Owens. You can take your

1 seat.

2 A. (Complies.)

3 Q. Now, just a few minutes ago you used this
4 whiteboard to illustrate for the jury one of the
5 problems that you wanted to solve with your invention.

6 A. Yes, sir.

7 Q. Can you explain to us how you mentioned
8 that you just described to actually solve that
9 problem?

10 A. Yes, sir.

11 So what happens is that -- you know, if we go
12 back to that very long history lesson at the beginning
13 where we talked about how -- way back at the Gutenberg
14 Bible, we came up with these printing conventions, for a
15 very long time, it was all about putting the formatting
16 and the content together.

17 And when we started developing computer
18 systems to do this, of course, we followed the same
19 thing. We kept putting everything together because
20 that's what we had always done for hundreds of years.
21 There's a lot of human history there.

22 And once you realized that those two things
23 don't have to be together inside a computer anymore,
24 because the computer is more flexible than paper is,
25 then it opens up a whole bunch of possibilities.

1 And in particular, what it lets you do is you
2 can refer to things that are not just plain text. So
3 you can have a word processing document in a word
4 processor like Microsoft Word but add all of that value
5 that's in the -- in the mapped content and make all of
6 that information explicit, but continue to keep the
7 same, you know, familiar word processing.

8 Q. Now, does it matter to the metacode map
9 what's in the mapped content?

10 A. No. I think that's -- you know, that's kind
11 of the key thing now is that because we're not trying to
12 mingle everything together, we no longer care what kind
13 of content is in the mapped content.

14 Q. Could the mapped content be just plain text?

15 A. Sure. Yes, it could.

16 Q. Could it be formatted text?

17 A. Yes, sir, it could.

18 Q. Could it be pictures?

19 A. Yes. You actually could mark up a drawing or
20 a picture in the same way that you mark up text.

21 Q. Could the mapped content contain technical
22 drawings?

23 A. Yes, sir.

24 Q. Could it contain blueprints for a house?

25 A. Yes, sir.

1 Q. And could it even contain metacodes?

2 A. Yes. It's -- an interesting outcome is that
3 because we really don't care what's in there, even if it
4 were an SGML document itself, it could still be referred
5 to.

6 Q. So just again so we're clear on this, is your
7 invention limited to working with word processors?

8 A. No, sir. That actually was just one of the
9 outcomes of the invention.

10 Q. And, again, can you give us some examples of
11 other sorts of programs that your invention could work
12 with?

13 A. Yes.

14 So it could work with, for example, you know,
15 a program that keeps inventory for a manufacturing
16 facility. You could describe inventory parts. And you
17 could even, then, use those descriptions to feed into a
18 robot on an assembly line to pick those parts up.

19 Q. Why is that able to happen?

20 A. Well, again, because the invention makes the
21 markup, that explicit information, independent of the
22 content, then you can really apply it to anything.

23 Q. Now, we just looked at an, admittedly, very
24 simple example on your boards. But can you explain to
25 us why this technology matters to real companies, real

1 organizations, real organizations that create lots and
2 lots of real documents?

3 A. Yes, sir.

4 So I think when you -- when you see a very
5 simplified example like this, it's easy to say, well,
6 okay, I see what you're doing, but why would you want to
7 do it?

8 And I think the why comes back to a very
9 different scale of document production than any of us
10 who are used to who have written letters or memos or,
11 you know, sort of individual documents.

12 Q. Can you give us a real-world example of where
13 this technology would make a real difference for a real
14 company?

15 A. Yes, sir.

16 So if you look at a company like Boeing, for
17 example, they produce their planes obviously, and those
18 airplanes last for decades. They are well-built, so
19 they stick around for a long time.

20 With each plane comes millions of pages of
21 documentation of that airplane. It's actually a
22 requirement that they keep that. So the value to Boeing
23 of all of those millions of pages, the effort they have
24 to go into producing them, the effort they have to go
25 into to preserve them over time, and then to use them to

1 find things in the future, there's just huge, huge value
2 there.

3 I mean, there are lots of other examples,
4 like the FDA where they have to process drug
5 applications, like the Patent & Trademark Office that
6 has to process, you know, lots of patent claims every
7 year.

8 Q. And is your invention an important part of
9 that equation?

10 A. Yes, sir, I think it is.

11 Q. Can you explain why?

12 A. Well, so all the value that I discussed
13 happens if you make that what we call the implicit
14 information, so the information we were guessing about,
15 if you make that explicit, if you really put it in the
16 document.

17 But the problem is that just like I got
18 pushed back from people at SEMI when I tried to say,
19 well, do it my way, companies don't want to give up on
20 old familiar tools and the familiar processes that they
21 have. So that means that it may not be possible to
22 realize that value to get the value out of SGML or even
23 XML just because of that disconnect, that mismatch.

24 Q. Okay. Thank you.

25 Do you feel like your invention was an

1 important step in sort of the way we progressed over
2 time and how we think about and how we use documents?

3 A. Yes, sir, I do, because I think it was -- I
4 think it was a split, a separation for things that used
5 to be joined. It was one of the first things to really
6 recognize a receptor.

7 Q. Now that we've talked about what you and
8 Mr. Vulpe actually invented, or at least one of the
9 applications of your invention, let's talk about how you
10 and Mr. Vulpe came to that invention.

11 Can you describe for us how you met
12 Mr. Vulpe?

13 A. Mr. Vulpe was my brother's next door
14 neighbor.

15 Q. And who is your brother?

16 A. Richard Owens.

17 Q. And how did that lead you to meet Mr. Vulpe?

18 A. Well, my brother called me and said that his
19 next door neighbor was looking for someone to help out
20 on a software project and suggested that I get in touch
21 with him.

22 Q. And did you?

23 A. Yes, sir. I called right away.

24 Q. And what came of that?

25 A. Mr. Vulpe described the project he was

1 working on and that he needed someone to help out, and
2 since I was available and looking for work, I suggested
3 that I would be very happy to.

4 Q. And is this when you began to consult with
5 i4i?

6 A. Yes, sir.

7 Q. And can you remind us what your first SGML
8 project with i4i was?

9 A. Yes, sir. That was the SEMI system.

10 Q. And just so we'll recall, is that the system
11 that would create documents that looked like this
12 (indicates)?

13 A. Yes, sir, that's right.

14 Q. And could you remind us what you came to
15 understand the folks that had you create these documents
16 thought about your system?

17 A. Well, the folks who helped to create it
18 weren't as happy as we would have liked. I think they
19 felt that we were messing up their workday.

20 Q. Did you ever try to convince them that, you
21 know, this formatting stuff is just not that important.
22 SGML is really powerful, and that's really what this is
23 all about?

24 A. Well, yeah, I guess I was kind of young and
25 naive, and I tried to make the argument that, hey,

1 there's a lot of value here, guys, and you should get on
2 the train and go with it.

3 Q. Were you successful?

4 A. No. I think I would have to say I was
5 definitely not.

6 Q. And did you have similar experience dealing
7 with other clients?

8 A. Yes, sir. We had a number of client
9 engagements where we would talk to the content authors,
10 the people who had to really do the work of creating the
11 documents. And they weren't as keen on our vision of
12 the SGML documents as we were.

13 Q. Did you ever come around and change your
14 viewpoint to become more sympathetic with the feedback
15 you were getting from your clients?

16 A. Yes, sir, I did. And I think that, you know,
17 what happened is that when I started out, I was looking
18 purely from the SGML side, and I was kind of neglecting
19 those hundreds of years of human experience and learning
20 with these nicely formatted documents and sort of
21 saying, oh, that stuff doesn't matter; let's just do it
22 the new way.

23 And I think they quite rightly pointed out
24 that maybe I was being a bit short-sighted in that
25 regard.

1 Q. Did this change in your own point of view
2 help to lead you to your invention?

3 A. Yes, sir, it did, because once I realized
4 that both points of view were important, that you had to
5 take into account all the things people were familiar
6 with, but, hopefully, still try to deliver the value
7 that we were offering, then I think it made it a lot
8 clearer that we needed to find a way to get those things
9 to work together.

10 Q. Do you remember the day that you and
11 Mr. Vulpe had your eureka insight?

12 A. Yes, sir. I don't remember the exact date,
13 but I sure do remember the day.

14 Q. Well, what happened?

15 A. Well, we were sitting and talking over a
16 trestle table at the i4i offices and discussing customer
17 problems and how to resolve them. And we were trying to
18 come up with, you know, something that resolved these
19 issues. And we finally did, you know, kind of in that
20 discussion come to the realization, wait, the problem
21 we've got is we keep thinking these two are the same
22 thing. And if they weren't, a lot of those problems
23 would go away.

24 Q. When you say these two, what are you
25 referring to?

1 A. So it's really the structure of the document,
2 the metacodes, that information that used to be implied,
3 and the content of the document.

4 Q. And how did you feel when you had that
5 realization?

6 A. Well, it was actually pretty exciting,
7 because I think we thought that that was a pretty new
8 idea.

9 Q. Did you tell anybody about it?

10 A. Yes, sir. I have a perhaps bad habit of
11 going home and telling my wife all about the boring and
12 geeky things I do at work, so I definitely went home and
13 excitedly told her about that conversation.

14 Q. Now, when you and Mr. Vulpe first had this
15 idea, were you sure that it would work, that it would do
16 what you wanted it to?

17 A. Oh, no, sir.

18 Q. So what did you do?

19 A. Well, you know, what you need to do is try to
20 build something. And when you're in software, building
21 something consists of sitting down at a keyboard and
22 starting to type. So I sort of ran over to my keyboard
23 and started typing.

24 Q. Where did you do that work?

25 A. That was at the i4i offices in Toronto.

1 Q. And what was that like? What was your office
2 like?

3 A. So I think a generous assessment would be
4 basic.

5 Q. And what do you mean by that?

6 A. Well, so you're looking at a few used roll
7 chairs, some trestle tables with computers setting on
8 them, and the cafeteria was the 2-for-1 pizza place on
9 the street outside.

10 Q. Were you eventually able to create a working
11 prototype?

12 A. Yes, sir, we were.

13 Q. And about how long did that take?

14 A. Well, I don't know the exact timeline, but it
15 was certainly in the months kind of range. We spent,
16 you know, several weeks just playing with ideas and
17 trying to get something that worked.

18 Q. How did you feel when you finally got it to
19 work?

20 A. Well, it was exciting. I think it's
21 something that most people looking at it would go:
22 That's all it does?

23 But to us, it really proved that we had done
24 what we set out to do, that it was now feasible to take
25 these things apart, put them back together, and deal

1 with them separately.

2 Q. Now, what sort of computer system did you
3 develop your prototypes to run on?

4 A. The computers were what's called IBM PCs, not
5 because they're made by IBM but because they have a
6 particular type of processor in them. And they were
7 mostly running DOS and Microsoft Windows.

8 Q. And why did you decide to develop your
9 prototype on that particular sort of system?

10 A. Well, there was another piece of software
11 that was available at that time called the SP Parser
12 from someone named James Clark, and it let us read all
13 those SGML characters very easily.

14 So it was very convenient to use that
15 platform. Also, I was just a lot more familiar with the
16 development tools on that platform than I was anywhere
17 else.

18 Q. Did you ever change or modify your prototype
19 to run on the Macintosh platform?

20 A. No, sir. That SP product that I just
21 mentioned wasn't available on the Macintosh at the time,
22 and I wasn't very familiar with the particular
23 development tools I was using on the PC.

24 Q. And what computer system did the SEMI product
25 run on?

1 A. It was running on the Macintosh.

2 Q. And did you ever go back and modify or
3 retrofit the SEMI system to include your invention?

4 A. No, sir. I never did that work.

5 Q. Now, we saw your patent.

6 MR. BURGESS: PX1, pull it back up here.

7 Q. (By Mr. Burgess) When did you and Mr. Vulpe
8 decide to file the application that ultimately issued as
9 the '449 patent?

10 A. I don't remember the exact date. It would be
11 late '93 or very early in '94. It was very -- very soon
12 after we had the initial discussions around the idea.

13 Q. Had you or Mr. Vulpe ever filed for a patent
14 before?

15 A. No, sir.

16 Q. Have you filed for one since?

17 A. No, sir.

18 Q. Why did you pick this idea as one to file a
19 patent application?

20 A. Well, I think that I always felt the bar for
21 a patent was pretty high, and it had to be something
22 innovative, something new. And I think this was the
23 idea that we came up with that I felt sort of meet (sic)
24 and exceeded that bar.

25 Q. Did you think the problem that you had solved

1 was an important one?

2 A. Yes, sir, I did.

3 Q. And did you have a role in actually preparing
4 the application?

5 A. Yes, sir.

6 I was asked to write a draft that would
7 provide information to the -- to the patent agent in
8 helping them actually write the patent application.

9 Q. And did you eventually sign off on the
10 application?

11 A. Yes, sir, I did.

12 Q. Look here at Plaintiffs' Exhibit 4, Page 38,
13 which is also in your handbook.

14 Can you tell me what's highlighted here?

15 A. Well, first of all, the somewhat illegible
16 bit on the left is my signature.

17 Q. And I see there's a date there. What's that
18 date?

19 A. That's the 24th of May, 1994, a pretty
20 memorable day for me.

21 Q. Why do you say it was a memorable day?

22 A. Well, my wife's birthday is the 25th, and we
23 were supposed to be leaving on a camping trip to
24 celebrate. And I was in a patent office discussing
25 last-minute details with the lawyer instead of packing

1 the car and putting everything ready to go, so I was
2 getting a bunch of increasingly annoyed phone calls all
3 day.

4 Q. Now, looking back at PX1, the cover of the
5 patent, we see that it issued in July of 1998.

6 By this time, were you still consulting for
7 i4i?

8 A. No, sir, I was not.

9 Q. Nonetheless, did you learn when the patent
10 issued?

11 A. Yes, sir, very quickly.

12 Q. And how did you find out?

13 A. Mr. Vulpe called me pretty much as soon as he
14 found out.

15 Q. And what happened there?

16 A. Well, it was kind of whoa moment.

17 Q. And how did you feel when the U.S. Patent
18 Office issued you that patent?

19 A. I felt great, and it's something that, you
20 know, I didn't think I would probably ever achieve that.
21 I think the kind of recognition that, well, maybe every
22 geeky software developer would like to get.

23 Q. Are you pleased with what you and Mr. Vulpe
24 accomplished and what the Patent Office recognized with
25 the issuance of your '449 patent?

1 A. Yes, sir, very pleased.

2 Q. Thank you.

3 Before you step down, there is one more
4 thing. Do you recall having your deposition taken in
5 this case?

6 A. Yes, sir, I do.

7 Q. Where you sat down with some lawyers and a
8 lawyer from Microsoft asked you some questions?

9 A. Yes, sir.

10 Q. Do you recall the Microsoft attorney asking
11 you about the money that i4i owed you?

12 A. Yes.

13 Q. Now, when you came back to do some consulting
14 for i4i, after you had initially left, was i4i always
15 able to pay you on time?

16 A. No, sir.

17 Q. Why not?

18 A. My understanding was they didn't have the
19 money.

20 Q. And did Mr. Vulpe ever tell you whether or
21 not he intended to pay you?

22 A. Yes, sir. We discussed it and he promised me
23 that he would make every effort to repay that debt.

24 Q. And has that happened?

25 A. Yes, sir.

1 Q. And when did that happen?

2 A. That would be late 2007.

3 Q. Do you have any hard feelings toward
4 Mr. Vulpe for the late payment?

5 A. No, sir. I've been in small business,
6 really, for quite a long time, and I do understand that
7 these things happen.

8 Q. The fact that i4i paid you six months ago
9 have any impact whatsoever on what you testified to
10 today?

11 A. No, sir.

12 Q. And if you hadn't been paid, would you have
13 said the same thing you have testified to here today?

14 A. Yes, sir, it is, in fact.

15 Q. Thank you, Mr. Owens.

16 MR. BURGESS: I'll pass the witness, Your
17 Honor.

18 THE COURT: Thank you.

19 Cross-examination.

20 MR. POWERS: Your Honor, I have a binder
21 full of exhibits I may want to use with Mr. Owens. May
22 I approach and give a copy to counsel?

23 THE COURT: Yes, you may.

24 MR. POWERS: Would Your Honor like a set?

25 THE COURT: Yes, uh-huh.

1 MR. POWERS: Would your attorney like one
2 as well?

3 LAW CLERK: Yes, sir.

4 THE COURT: Yes.

5 MR. POWERS: May I proceed, Your Honor?

6 THE COURT: Yes, you may.

7 CROSS-EXAMINATION

8 BY MR. POWERS:

9 Q. Good afternoon, Mr. Owens.

10 A. Good afternoon.

11 Q. I'd like to begin where you left off. i4i's
12 counsel asked you about some money that Mr. Vulpe paid
13 you in late 2007.

14 Do you recall that?

15 A. Yes, sir.

16 Q. That was money that had been owed for several
17 years, correct?

18 A. Yes, sir.

19 Q. At least five or six?

20 A. I would have to check the records, but that
21 doesn't sound wrong.

22 Q. And it was about \$73,000, a little more?

23 A. That sounds about right, yes, sir.

24 Q. And he paid you that \$73,000 just around
25 Christmastime of 2007?

1 A. Again, I'd have to check the date to be
2 certain, but it sounds about right, yes, sir.

3 Q. And your deposition was just a few weeks
4 later in January of 2008, right?

5 A. Again, I'd want to check the date, but that
6 sounds about right, yes, sir.

7 Q. And you raised that debt with Mr. Vulpe when
8 he called you last year to help in this lawsuit, didn't
9 you?

10 A. I'm sorry, sir. Could you repeat that?

11 Q. In 2007, Mr. Vulpe called you and asked for
12 your help in the lawsuit, didn't he?

13 A. Yes, sir.

14 Q. And when he did so, you raised this debt and
15 asked him to repay it, didn't you?

16 A. I guess I'd like to say that I don't recall I
17 explicitly asked him to repay it. He had raised the
18 debt issue.

19 Q. He raised the debt.

20 And Mr. Vulpe, who hadn't paid you for
21 several years, came up with the money three weeks before
22 your deposition; is that fair?

23 A. Again, I'd want to see the dates.

24 Q. But it was around Christmastime and your
25 deposition was around mid-January?

1 A. Yes.

2 Q. All right. Based on your use of Word, your
3 study and your knowledge of your patent, when you were
4 involved in all of these projects, you couldn't say that
5 Word infringed your patent, could you?

6 A. No, sir.

7 Q. Let's talk about the SEMI project that you
8 testified about.

9 Now, one of the things that you said was
10 important about your invention was that you could
11 separate that SGML document into different parts and
12 store them separately, right?

13 A. I don't believe I used the word store, sir.

14 Q. So it's not important that you store the
15 separate parts? Well, let's take it one piece at a
16 time.

17 You testified that one of your -- parts of
18 your invention was that you could take that SGML
19 document that was all combined and separate it into
20 different pieces, right?

21 A. There is a separate metacode map and map
22 content, yes, sir.

23 Q. Okay. And you heard counsel for i4i in
24 opening statement say that those two things, the
25 metacode map and the content, are stored in different

1 places.

2 Is that -- would you agree that's part of
3 your invention?

4 A. I don't think I heard that. I'm sorry, sir.

5 Q. You didn't hear that?

6 A. No, sir.

7 Q. Do you agree that storing the metacodes and
8 the content in different places is an important part of
9 your invention?

10 A. No, sir. I'm not sure that's in the patent.

11 Q. Have you ever been shown His Honor's claim
12 construction ruling in this case, Judge Davis'?

13 A. I don't believe so, sir.

14 Q. Now, one aspect -- let's put aside the
15 storage aspect, since you weren't shown that. The SEMI
16 system did allow separation of an SGML document into
17 separate parts, didn't it?

18 A. So I feel like we're still talking about
19 separating SMGL into the content, and no, it did not
20 allow that, sir.

21 Q. Okay. I need to show you your deposition.
22 Do you have it in front of you, or do you
23 need it?

24 A. Is it in this binder, sir?

25 Q. It's not in that one; it's in a separate one.

1 I just didn't know if you had it separately.

2 A. I don't have it, no.

3 MR. POWERS: Your Honor, there are two
4 volumes. One is January 15th, 2008, and one volume is
5 October 17, 2008. I might as well hand both of them
6 now. If I may approach?

7 THE COURT: All right.

8 MR. POWERS: Here's the January 15th.
9 I'll have you the October 17th one in a moment, Your
10 Honor.

11 So we can proceed, may I hand the witness
12 one, and then we can get going?

13 THE COURT: Yes, you may.

14 MR. POWERS: Thank you.

15 I'll give you our copy.

16 Q. (By Mr. Powers) Mr. Owens, could you look in
17 the October 17 one that I just handed you at Page 95?

18 A. Yes, sir.

19 MR. POWERS: And, Your Honor, I'll read,
20 for the record, from Page 95, Line 24 through Page 96,
21 Line 6, and then Page 99, Line 17 to 21.

22 And, Your Honor, may I explain to the
23 jury what a deposition is, or do you wish to do that, or
24 do they understand the process?

25 THE COURT: All right. Yes. I'll just

1 explain to the jury that a deposition is questions and
2 answers taken under oath at a time prior to trial, and
3 they're typed up into a formal written document that
4 shows the questions and the answers.

5 MR. POWERS: Thank you, Your Honor.

6 On Page 95, Line 24:

7 QUESTION: And they both allowed you to
8 decompose an SGML document into entities and store those
9 entities in -- as separate pieces or separate entries in
10 the database, right?

11 ANSWER: SEMI --

12 A. I'm sorry, sir. There's a slight misreading.
13 The word is entities, not entries.

14 Q. (By Mr. Powers) I thought I said entities,
15 but I'll say it again.

16 QUESTION: And they both allowed you to
17 decompose an SGML document into entities and store those
18 entities as separate pieces or separate entities in the
19 database, right?

20 ANSWER: SEMI did, and for Nelson, I just
21 don't remember. It never kind of went as far, and I
22 wasn't as involved in it, so I'm not sure about Nelson.

23 Q. (By Mr. Powers) That was your testimony in
24 that part of the deposition, Mr. Owens?

25 A. Yes, sir.

1 MR. POWERS: And then, Your Honor, I'll
2 read from Page 99 of the same transcript, Line 17.

3 QUESTION: So in the SEMI database, you
4 would import an SGML document, and you would take that
5 document, and you would decompose it into different
6 pieces or entities, correct?

7 ANSWER: Yes, I believe so.

8 Q. (By Mr. Powers) That was your testimony there
9 as well, Mr. Owens?

10 A. Yes, sir.

11 Q. Okay. The SEMI system was sold by i4i to
12 SEMI in 1992, wasn't it?

13 A. I'm afraid I'm not aware of the sale date,
14 sir.

15 Q. You just don't remember?

16 A. I wasn't on the sales side; I was on the
17 technical side.

18 Q. You were part of the group that installed it
19 in February of '93, though, weren't you?

20 A. Yes, sir.

21 Q. All right. Now, February of '93, when you
22 installed it, that's more than one year before the date
23 you filed your patent application in 1994, right?

24 A. That date would be more so, yes, sir.

25 Q. And you understood that the system that you

1 installed at SEMI, the S-to-the-4th system, practiced
2 your patent, didn't you?

3 A. No, sir, definitely not.

4 MR. POWERS: Your Honor, I'd like to
5 play -- I think we have it available to show as a video
6 clip from Mr. Owens' deposition on January 15th at
7 Page 206, Line 23 through 207, Line 17.

8 THE COURT: All right. Let him have an
9 opportunity to locate it.

10 (Video playing.)

11 QUESTION: Regardless of whether --

12 MR. POWERS: No. Wait. Wait. Wait.

13 (Video stopped.)

14 A. I'm sorry. What were the page numbers?

15 Q. (By Mr. Powers) 206, Line 23 --

16 A. Oh, yes, sir.

17 Q. -- through 207, Line 17.

18 A. Okay.

19 THE COURT: All right.

20 (Video playing.)

21 QUESTION: Regardless of whether -- if
22 they're occurring or not, which of i4i's products do you
23 understand embody your invention that you know about?

24 ANSWER: That I know about? So the only
25 system that I had direct interaction with was S4.

1 QUESTION: Now, is that S4 the core
2 engine, or was that S4/Text that we're talking about?
3 I've seen several different descriptors.

4 ANSWER: Right. Yeah.

5 So, again, the -- yeah, the -- at the
6 time that I was doing the original work, it was just S4.
7 There wasn't any other nomenclature around.

8 QUESTION: And what versions of S4 did
9 you work on?

10 ANSWER: Oh, I don't remember.

11 QUESTION: Okay.

12 ANSWER: .01 certainly.

13 QUESTION: From -- from the first, from
14 the earliest?

15 ANSWER: Yeah.

16 (End of video clip.)

17 Q. (By Mr. Powers) Now, that exact testimony,
18 you were shown that testimony at your later deposition
19 in October, and you said it was true, didn't you?

20 A. I was shown it, shown the videotape, sir?

21 Q. No. No. Read the exact portion.

22 A. Yes, sir, I believe so, although I would want
23 to see it in the deposition.

24 Q. But you don't disagree with the testimony
25 that you just gave; it's accurate?

1 A. It's -- what I said is correct, but it did
2 not refer to the SEMI system.

3 Q. Okay. Even though you said it was the very
4 first system you worked on and the only system you
5 worked on?

6 A. I don't believe that's an accurate
7 characterization, sir.

8 Q. You worked on the SEMI system, didn't you?

9 A. Yes, I did, sir.

10 Q. And that was the first system you worked on
11 for i4i?

12 A. The SEMI system was the first system I worked
13 on for i4i, yes, sir.

14 Q. All right. Now, could you turn in your
15 binder to Exhibit 2395?

16 MR. POWERS: Your Honor, this is in
17 evidence now.

18 So let's put it up on the screen, if you
19 could, Chris.

20 A. I'm sorry. That was 2395, sir?

21 Q. (By Mr. Powers) Yes, it is.

22 Let me know when you have it.

23 A. I believe I do, sir, yes.

24 Q. This was -- this is a document dated in
25 August of '94. Do you see that?

1 A. Yes, sir, I see that date on the document.

2 Q. And you -- and you were still at i4i in
3 August of '94?

4 A. Yes, sir, I was.

5 Q. Now, this document is a submission by i4i to
6 the Canadian government seeking funding for work,
7 correct?

8 A. I don't know, sir.

9 Q. Do you know that IRAP is the Industrial
10 Research Assistance Program in Canada?

11 A. I believe I've heard that term, yes, sir.

12 Q. Now, if you look -- and you are aware that
13 i4i was seeking money for further development costs,
14 weren't you?

15 A. I'm not sure I was, sir.

16 Q. Well, let me see if I can help remind you.
17 The document -- if you go to Page 10 of the document --

18 MR. POWERS: Chris, if you could pull up
19 the section that says Project Team, please.

20 Q. (By Mr. Powers) It's actually 9 on the
21 bottom. Let me -- there's two types of numbers, so let
22 me help you. The original document, it says Page 10,
23 but there's a .009 in the bottom right-hand corner, it's
24 .009.

25 A. I see it.

1 MR. POWERS: And if you could bring up
2 the Project Team, please, Chris, so we can all see it?

3 Q. (By Mr. Powers) Do you see that you are shown
4 as project leader for this project?

5 A. Yes, sir.

6 Q. Do you recall being proposed as project
7 leader for a project for the Canadian government?

8 A. No, sir.

9 Q. You still remember it?

10 A. No, sir.

11 Q. You're not denying it happened, I take it.

12 A. No, sir.

13 Q. Now, you -- you've heard Mr. Vulpe
14 characterize the S4 technology that was sold to SEMI as
15 being patented, haven't you?

16 A. No, sir, I have not.

17 Q. Let's see if this reminds you.

18 MR. POWERS: Chris, could you pull, from
19 the bottom of Page 2 of the document, which is on Page
20 1.001, starting at project technical background and pull
21 that up so we can all read it a little better.

22 Q. (By Mr. Powers) And just to make sure that
23 we're all on the same page, I'll read it. It says,
24 quote, Infrastructures has applied for a U.S. patent.
25 Then it shows a patent serial number. That's the --

1 MR. POWERS: Stop there.

2 Q. (By Mr. Powers) That's the same serial number
3 that's on your '449 patent, isn't it?

4 A. I'd have to compare them. I believe --

5 Q. Could you do that, please. You've got --
6 it's Exhibit 1 in the book in front of you that your
7 counsel gave you, the one you used on direct
8 examination.

9 A. Yes, sir. The numbers are the same.

10 Q. Same patent. In fact, i4i only has one U.S.
11 patent, right?

12 A. I don't know anymore, sir.

13 Q. All right. You only know of one?

14 A. I only know of one, yes, sir.

15 Q. All right. So the quote is,
16 Infrastructures -- and that -- when it says
17 Infrastructures, that's referring to i4i, isn't it?

18 A. I don't know, sir. I assume so.

19 Q. That was the name of the company?

20 A. Yes, sir.

21 Q. All right. Infrastructures has applied for a
22 U.S. patent -- then it's the same serial number -- to
23 protect specific technology that it has developed.
24 The initial implementation is embedded into
25 Infrastructures S-to-the-4th product, which is a

1 vertical market document development and management
2 application targeted to the semiconductor and publishing
3 industries, close quote.

4 Do you see that?

5 A. Yes, I do.

6 Q. Now, the product that was sold to SEMI was
7 called S-to-the-4th, wasn't it?

8 A. Yes, sir.

9 Q. And SEMI was a semiconductor organization,
10 wasn't it?

11 A. It was a consortium in the semiconductor
12 industry, yes, sir.

13 Q. All right. Could you turn then in the same
14 book to Exhibit 2396.

15 A. Yes, sir.

16 Q. Do you recognize on the back page --

17 MR. POWERS: Chris, if you could pull up
18 the signature of Mr. Vulpe.

19 Q. (By Mr. Powers) Do you recognize that as his
20 signature?

21 A. It's a little squooshier than I've seen it.

22 Q. But it looks similar to his normal signature;
23 that's fair, isn't it?

24 A. I'm not sure I would want to comment.

25 Q. All right.

1 MR. POWERS: And if you would go up a
2 little bit to Item 4, please, Chris, on the same page
3 where it says subcontractor, No. 1, identification.

4 Q. (By Mr. Powers) It lists you as a
5 subcontractor in this and other documents submitted to
6 the Canadian government, this IRAP document. Do you see
7 that?

8 A. Yes, sir, I do.

9 Q. Do you still not recall whether you were
10 being proposed as a subcontractor for this proposal to
11 the Canadian government?

12 A. No, sir. This would be at my usual technical
13 level.

14 Q. But you didn't even know that you were being
15 proposed for that?

16 A. I certainly don't remember it, sir.

17 Q. Okay. You're not denying it one way or the
18 other; you're just saying you just don't remember; is
19 that fair?

20 A. Correct. Yes.

21 Q. All right.

22 MR. POWERS: So let's go to the first
23 page, please, of the document, and bring up just the
24 first client information box, the big box at the top, so
25 that we can all read it.

1 Q. (By Mr. Powers) The name of the client is
2 Infrastructures for Information. That was the name for
3 i4i, wasn't it, Mr. Owens?

4 A. Yes, sir.

5 Q. And then it says, Business Products, and it
6 says S-to-the-4th, right?

7 A. It certainly could be read that way, yes,
8 sir.

9 Q. The 4 is shown as a superscript, isn't it?

10 A. About halfway in between.

11 Q. Don't you think it looks like a superscript?

12 A. Yes, sir.

13 Q. All right. And that S-to-the-4th product is
14 exactly what was called -- what the SEMI product that
15 was sold to SEMI was called, S-to-the-4th, right?

16 A. Yes, sir.

17 Q. Okay.

18 MR. POWERS: Now, if you'd turn to the
19 next page of the document, please. And, Chris, could
20 you bring up the project title?

21 Q. (By Mr. Powers) The project title is
22 called Metacodes Project. Do you recall discussion
23 inside i4i about your invention being called the
24 metacode patent or Metacode Project? Do you recall
25 that?

1 A. Sir, I don't remember specific instances, no,
2 sir.

3 Q. But that sounds like nomenclature that was
4 being used at the time, doesn't it?

5 A. The nomenclature appears in the patent, so I
6 would expect so.

7 Q. All right.

8 MR. POWERS: And, Chris, if you could
9 bring up the third box on that page, the one that says
10 Summary of Progress to Date.

11 Q. (By Mr. Powers) You see the first bullet
12 says, U.S. Patent Application filed, and there's only
13 one that was filed, right?

14 A. Again, I'm not sure now.

15 Q. As of this time, which is 1994 -- let's see
16 what the date is -- 1994, there was only one that was
17 filed as of that time, correct?

18 A. Yes, sir, that's my understanding.

19 Q. And the next bullet says, Single metacode
20 model implemented in i4i flagship product, S-to-the-4th,
21 vertical product market.

22 Do you see that?

23 A. I do see that, yes, sir.

24 Q. And that S-to-the-4th product is, again, what
25 the SEMI product was called.

1 A. The SEMI product was called S-to-the-4th,
2 yes, sir.

3 Q. All right. Now, the SEMI product had a
4 metacode map, didn't it?

5 A. No, sir.

6 Q. Could you turn to Exhibit 2065 in your book.

7 MR. POWERS: This is also in evidence,
8 Your Honor.

9 And, Chris, would you bring up, please,
10 the bottom portion? It says Infrastructures'
11 S-to-the-4th.

12 A. 2065; is that correct?

13 Q. (By Mr. Powers) 2065.

14 And the bottom part of that page refers again
15 to the S-to-the-4th SEMI product, doesn't it, right
16 there where it says Infrastructures' S-to-the-4th?

17 A. Sorry. Do you mind if I look through the
18 document?

19 Q. I don't mind if you do that, but I'd like you
20 to answer the question first. The page we're looking at
21 right now says, Infrastructures' S-to-the-4th, right?

22 A. It does say that, but I'm not comfortable --
23 you asked if it referred to the SEMI system. I'm not
24 comfortable with answering that unless looking through
25 the document.

1 Q. Fair enough. Let's -- we will look through
2 it, but the S-to-the-4th is what the SEMI system was
3 called, right?

4 A. Yes. S-to-the-4th is what the SEMI system
5 was called.

6 Q. Okay. And if you'll turn to Page 48 of the
7 document -- and by 48, I mean the .048 at the bottom
8 right-hand page.

9 MR. POWERS: And, Chris, can you bring up
10 the top half of the page, please.

11 Can everybody read that? It's a little
12 hard to read still. If you can't read it, we'll try to
13 get it a little larger.

14 Anybody not read it from the jury? Okay.

15 Q. (By Mr. Powers) Do you see at the very top of
16 that page, Mr. Owens, it says, Metacode Services?

17 A. Yes, sir, I see that.

18 Q. And then it says, S4 duplicate map?

19 A. Yes, sir, I see it.

20 Q. And there's a discussion of how the S4
21 duplicate map works under the metacode services title?

22 A. Yes, sir.

23 Q. Does that help you remember that there was a
24 metacode map in the S-to-the-4th product?

25 A. It does help me remember that this is

1 definitely not the SEMI system it was talking about,
2 yes.

3 Q. Even though it says S-to-the-4th?

4 A. And I'm sorry, sir. Even though what?

5 Q. Even though the document on the front page
6 says S-to-the-4th?

7 A. Yes, sir. The document is, obviously,
8 erroneous in that.

9 Q. Okay. Now, could you turn to Exhibit 2202 in
10 your book?

11 A. Yes, sir.

12 Q. This is a document that you used in
13 connection with the SEMI product, right? There's no
14 debate that this is the SEMI product?

15 A. Do you mind if I just take a quick look?

16 Q. Of course not.

17 A. Thank you.

18 Yes, sir.

19 Q. So 2202 is the SEMI product that was sold
20 more than a year before your patent application was
21 filed?

22 A. 22 was a document about that, yes, sir.

23 Q. All right. It's a manual that you gave to
24 SEMI about that product, right?

25 A. It's certainly a manual we authored, yes,

1 sir.

2 Q. All right. And it shows how it works, right?

3 A. Not really, no, sir.

4 Q. Well, this was a manual you gave to SEMI to
5 help them understand the system, right?

6 A. Yes, sir. It just helped to clarify how a
7 user would use it as opposed to how it would work.

8 Q. Okay. Now, in this -- in the SEMI system,
9 there was a screen called an editor screen, right?

10 A. I don't believe that's the full name.

11 Q. Could you look at Page 104 of Exhibit 2202,
12 and that's -- it's 104 either way, the real number or
13 the .104 number.

14 A. That's convenient.

15 MR. POWERS: Chris, could we get that a
16 little bigger? Is that possible? Well, that's a little
17 bigger.

18 Q. (By Mr. Powers) The title of this page,
19 Mr. Owens, is the editor screen.

20 Do you see that?

21 A. Yes, sir.

22 Q. This is a screen that would actually be on
23 the SEMI system that a user could see, right?

24 A. Yes, sir.

25 Q. And the Section B, that screen would show the

1 SGML tags that were available to that user to work from,
2 correct? That's what Item B says on the right?

3 A. Yes, sir.

4 Q. And there's also a portion of the SEMI system
5 called the document outline view, right?

6 A. Yes, sir.

7 Q. And those tags, those SGML tags you
8 described, those are metacodes, aren't they?

9 A. Well, not in the terminology of the patent,
10 no, sir.

11 Q. I thought you said on direct examination the
12 tags were metacodes.

13 A. No, sir. I think I said that in the patent,
14 we used the terminology metacode to refer to what are
15 called tags in SGML.

16 Q. Okay. So an SGML tag is a metacode within
17 the meaning of your patent, fair?

18 A. Yes, sir.

19 Q. All right. Could you turn to Page 110 of
20 Exhibit 2202. This is discussing the document outline
21 view?

22 A. Yes, sir.

23 Q. The document outline view was another type of
24 screen that a user of the SEMI system could use and see,
25 right?

1 A. Yes, sir.

2 Q. And through that screen and the editing
3 screen, you could manipulate the SGML tags or metacodes,
4 couldn't you?

5 A. I'm afraid I don't remember, sir.

6 Q. Don't remember one way or the other?

7 A. Well, you said both, and I'm not sure that it
8 could do it in both.

9 Q. It could do it in the editing screen for
10 sure.

11 A. Yes, sir.

12 Q. So you could move -- you could manipulate or
13 edit the metacodes in the editing screen in the SEMI
14 system.

15 A. Well, SGML tags, to be clear.

16 Q. Okay. And those are metacodes within the
17 meaning of your patent.

18 A. Well, if -- if we were talking about the
19 patent application, it would be, but in SEMI, of course,
20 they were just tags.

21 Q. Okay. And you could manipulate those tags
22 and edit them in a way that the user wanted to.

23 A. You could certainly insert tags, I believe.

24 Q. And you could move them, too, couldn't you?

25 A. I don't know if that's true or not, sir.

1 Q. Would you turn to Page 115 of Exhibit 2202.

2 A. Yes, sir.

3 Q. That gives you an example of moving tags to
4 the right or left, correct, as one manipulation of a tag
5 you could do in the SEMI system?

6 A. No, sir.

7 Q. There's a heading that says moving tag right
8 and tag left.

9 A. Yes, sir.

10 Q. So that doesn't mean moving tag left or tag
11 right?

12 A. That's correct. It does not mean that, sir,
13 no.

14 Q. The text reads, quote, moving tag right or
15 tag left moves your cursor one tag position either
16 forwards or backwards. This means that your cursor will
17 move from within a tag to outside a tag or from outside
18 a tag to the next tag.

19 Is that how it worked?

20 A. Yes, sir. So it did move the cursor
21 position, not the tag. They're quite different.

22 Q. And then you would use the editing screen to
23 manipulate the tag, right?

24 A. Again, that's where I'm not sure. I did say
25 we could insert, and that's -- that's my memory.

1 Q. All right. But the purpose of the editing
2 screen is to edit, isn't it?

3 A. That's a reasonable assumption, sir, yes.

4 Q. Okay. Now, there are meta -- there are tags,
5 SGML tags, in that document outline view, physical ones,
6 in the SEMI system.

7 A. In the SEMI system? Yes, sir.

8 Q. And those tags were stored in the data
9 structure, weren't they?

10 A. I'm going to say no.

11 Q. They weren't stored at all?

12 A. Well --

13 Q. How could you look at them if they weren't
14 stored?

15 A. They were in a list, so there was a GUI list
16 that held them.

17 Q. And the locations of those tags were stored
18 somewhere; otherwise, they'd be gone, right?

19 A. I'm sorry, sir. I'm not clear on the
20 question.

21 Q. I thought you said -- just said that the tags
22 aren't stored anywhere; is that right?

23 A. No, sir. I think we were talking about
24 whether there was a data structure or not.

25 Q. Okay. They were stored. The tags, the SGML

1 tags, that are visible in the document outline view are
2 stored, correct?

3 A. Well -- so to be clear, it's really the --
4 just the name of the tag.

5 Q. And that's stored?

6 A. Is it stored? It's in -- it would have to be
7 in the list.

8 Q. And the address of it had to be stored,
9 right? Otherwise, it's useless.

10 A. Well, I'm going to say no.

11 Q. So your testimony is that in the document
12 outline view or in the SEMI system, the addresses of the
13 SGML tags were never stored?

14 A. Yes, sir.

15 Q. So they're gone; can never be used.

16 A. Well, no, sir, because they were still in the
17 document.

18 Q. And they weren't stored anywhere?

19 A. Well, they were in the document. They were
20 mixed in with the content, as they are in any SGML
21 system.

22 Q. And the SEMI -- and your testimony that we
23 showed you from your deposition said that the SEMI
24 system allowed separating the SGML document into
25 separate entities and storing them separately.

1 That was what your testimony that we just read said,
2 wasn't it?

3 A. An entity is an SGML document with mixed tags
4 and content. I think that's the confusion, sir.

5 Q. Okay. So let's talk about RTF for just a
6 minute. You're familiar with rich text format?

7 A. I'm familiar with the name, sir.

8 Q. You refer to it in your patent as another
9 language that's been used, right?

10 A. As I said, a formatting code, yes, sir.

11 Q. So that has codes that affect what a document
12 looks like as well.

13 A. I believe so, yes, sir.

14 Q. And you're familiar that the rich text format
15 or RTF was created by Microsoft.

16 A. Actually, I didn't know that, no, sir.

17 Q. Could you look at your own patent, Exhibit 1.

18 MR. POWERS: And, Chris, can you bring up
19 Column 2, Line 32?

20 Q. (By Mr. Powers) Mr. Owens, let me know when
21 you have that. It's also on your screen.

22 In your own patent, you say, quote, some of
23 these formats are being used as standards in the
24 industry. Microsoft has developed a de facto standard
25 for document interchange called the rich text format or

1 RTF.

2 Do you see that?

3 A. Yes, sir. Apparently, I did know that at
4 some time.

5 Q. Okay. Now, in RTF or Microsoft's rich text
6 format, a paragraph code can be a metacode as you use it
7 in your patent, right?

8 A. That's an interesting question. I'm going to
9 say the answer is no.

10 Q. Well, let's take it backwards. There's a
11 paragraph tag in SGML, which you consider to be a
12 metacode within the meaning of your patent, right?

13 A. Yes, sir.

14 Q. And rich text format or RTF has the ability
15 to declare something a paragraph, but you say that's not
16 a metacode?

17 A. Yes, sir, I believe so.

18 Q. So one paragraph is a metacode, but one is
19 not?

20 A. In entirely different standards, used for
21 different purposes, yes, sir.

22 Q. All right. Can we -- I'd like you to look --

23 MR. POWERS: And, Your Honor, I'll read
24 from his deposition. It's the January 15 deposition.
25 And it's at Page 142, Line 5 through 12.

1 Q. (By Mr. Powers) Mr. Owens, you said in your
2 deposition, also under oath, quote:

3 QUESTION: So would an RTF code that
4 designated a body of text as a paragraph, would that be
5 a metacode?

6 ANSWER: So it would depend on what you
7 had to do to interpret that information. So if -- you
8 know, if it required a skilled human who knew RTF to
9 work that out, maybe not. If it -- yeah, it could be.

10 Q. (By Mr. Powers) That was your testimony,
11 right?

12 A. Sorry. I've lost the line number. Could you
13 give that to me again?

14 Q. 142, Lines 5 to 12.

15 A. Yes, sir.

16 Q. And the title code in RTF is also a metacode
17 within the meaning of your patent, too, isn't it?

18 A. I'm sorry, sir. Are you still reading from
19 the deposition?

20 Q. It's a question for now.

21 A. Again, so I would say no.

22 Q. So title in SGML is a metacode, but title in
23 RTF is not, as your -- according to your testimony.

24 A. Yes, sir.

25 Q. Let's go to your deposition then, please, at

1 Page 142, Lines 13 to 20.

2 MR. POWERS: And, Your Honor, I'll read
3 that into the record.

4 QUESTION: It could be.

5 Now, wouldn't an RTF code that designated
6 a body of text as being a title, would that be a
7 metacode?

8 ANSWER: So, typically, they're -- well,
9 I guess I don't know that. Yeah, if it clearly defined
10 the semantics of the content it was embedded within,
11 then, yes, it would be a metacode.

12 Q. (By Mr. Powers) That was your testimony,
13 correct?

14 A. With the proviso that that's semantics, yes,
15 sir.

16 Q. One final question, Mr. Owens. You testified
17 on direct that you created the invention on a PC, and
18 the SEMI system was a MAC or Apple-based, correct?

19 A. Yes, sir.

20 Q. And I take it what you're trying to convey in
21 that is that the invention is related to a PC and
22 wouldn't have been done on an Apple system. Is that --
23 was that the point of your testimony?

24 A. I'm sorry. Could you clarify the term
25 related to?

1 Q. Well, I was trying to figure out what point
2 you were trying to make.

3 Were you trying to make the point that the
4 invention was done on a PC, and therefore, because the
5 SEMI system was done on an Apple, they're different?

6 A. Yes, sir.

7 Q. In fact, in your patent, you specifically say
8 that the best system that you know of is an Apple
9 system, isn't it?

10 A. I don't believe I used the word best, sir.

11 Q. Well, could you look in your patent at Column
12 5.

13 MR. POWERS: And, Chris, could you please
14 bring up, oh, Lines 3 through the rest of that
15 paragraph.

16 Q. (By Mr. Powers) And you say there, Mr. Owens,
17 in your own patent specification, a specific example of
18 such an acceptable computer system comprises a Quadra
19 800 personal computer, a standard Apple 14-inch monitor,
20 a standard Apple keyboard, working RAM, et cetera.

21 That's what you say in your patent, right?

22 A. Yes, sir.

23 Q. Now, the Quadra, that's an Apple computer,
24 isn't it? Why is that?

25 A. Yes, sir, one that's easier to identify.

1 Q. All right. So when you try to set out in
2 your patent the type of computer that would work
3 acceptably with the invention, you cited the Apple
4 system, not the PC system, right?

5 A. Yes, sir, because Apples are much easier to
6 identify than PCs.

7 Q. And in fact, you cited the exact Apple system
8 in your patent for use in the invention that you
9 specified to SEMI on the SEMI system, didn't you?

10 A. I don't know that, sir. It could be.

11 Q. Would you look at Exhibit 2202 again.

12 A. Yes, sir.

13 MR. POWERS: Chris, could you bring up
14 Page 12.

15 Q. (By Mr. Powers) This is part of your SEMI
16 document that you described earlier that describes the
17 SEMI system, right?

18 A. Yes, sir.

19 Q. And on Page 12, at the third bullet, you say,
20 Machine, at least a Macintosh 2c1. We recommend that
21 you use a Quadra.

22 A. Yes, sir, that's what it says.

23 Q. So the SEMI system that you recommended is
24 exactly the same system that you recommended in the
25 patent.

1 A. I believe there are some differences, and I
2 don't think we recommended it in the patent.

3 Q. It's the only one you listed in both places;
4 is that fair?

5 A. I'd have to look through the patent. It's
6 the only one I did see in what we were just reading,
7 yes, sir.

8 MR. POWERS: No further questions, Your
9 Honor.

10 THE COURT: All right. Redirect?

11 MR. BURGESS: Thank you, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. BURGESS:

14 Q. Mr. Owens, you just had a discussion
15 regarding entities and SGML.

16 A. Yes, sir.

17 Q. Can you explain to the jury what an entity
18 is.

19 A. Yes, sir.

20 As we saw in that document, originally, we
21 had several SGML tags. We had the title; we had
22 overview; we had chapter. And entity is just a way to
23 take an entire section of that document, all the
24 characters that you see on the screen.

25 So right from that very first angle bracket

1 in front of the word overview right to the last angle
2 bracket after the end overview tag, take that whole
3 piece out and just put it somewhere else, so it still is
4 mixed.

5 SGML tags and content has been practiced
6 forever in SGML.

7 Q. Is an entity an example of mapped content?

8 A. No, sir, in no way.

9 Q. Is it a metacode map?

10 A. No, sir.

11 Q. Does it have anything to do with your
12 invention?

13 A. No, sir. It is, in fact, explicitly stated
14 in the SGML standard as a way to do a decomposition of
15 documents.

16 Q. Now, you just had a discussion about the
17 reference to Apple computer in your patent. Why did you
18 list Apple computers as an example of the system that
19 could implement your invention?

20 A. Yeah. So I referred earlier to the office
21 being quite basic, and one of the things that was basic
22 in the office were the computers that we used. So all
23 the computers were white label. There were no names on
24 them. It wasn't like we bought from, you know, some --
25 IBM or Compaq or somebody.

1 So if you wanted to identify a computer by
2 name, it was quite hard to find anything on the
3 computers. The only computer in the office that we had
4 that had a real name on it was the Apple Quadra. So
5 that was the name I chose.

6 Q. Is there any limit -- limitation in your
7 patent to the sort of system that your invention could
8 be used on?

9 A. No, sir. It's not limited in any way.

10 Q. I'll just ask you what I asked you in your
11 direct examination again. Did you ever implement your
12 invention in the SEMI system?

13 A. No, sir, we did not.

14 MR. BURGESS: Thank you, Your Honor. No
15 further questions.

16 THE COURT: Any recross?

17 MR. POWERS: No, Your Honor.

18 THE COURT: All right.

19 All right, Ladies and Gentlemen of the
20 Jury, I think we're going to call it a day. You've been
21 very attentive, put in a hard day today. We'll start
22 back at 9:00 o'clock in the morning continuing with the
23 testimony.

24 Please remember my instructions. Don't
25 discuss this case among yourselves or with anyone else.

1 Get a good night's sleep, and we'll see you back here at
2 9:00 o'clock in the morning. You are excused to the
3 jury room.

4 COURT SECURITY OFFICER: All rise.

5 (Jury out.)

6 THE COURT: Please be seated.

7 All right. Mr. Cawley, was there some
8 testimony?

9 MR. CAWLEY: Yes, Your Honor. This
10 witness had some testimony relevant to inequitable
11 conduct.

12 THE COURT: All right. Who will be
13 asking the questions?

14 MR. CAWLEY: Mr. White is going to handle
15 the inequitable conduct.

16 THE COURT: All right.

17 MR. POWERS: Your Honor, may I ask a
18 question before we proceed?

19 We had testimony from this witness on his
20 30(b)(6) deposition on this exact topic, which is why
21 didn't he disclose the sale of SEMI.

22 And we want to play that, Your Honor. We
23 don't have to do that now. We can do it whenever Your
24 Honor wishes to see it. It would make some sense for
25 Your Honor to see it now for two reasons.

1 One is it's our burden of proof, and so
2 it make sense for you to see his testimony from our
3 perspective already taken on the 30(b)(6).

4 And second, it would be relevant to
5 consider in the context of hearing what other testimony
6 he's now going to give under oath on the other side.
7 So if the high road is Your Honor wishes to hear that at
8 another time --

9 THE COURT: Well, let me ask about how
10 long you anticipate for your direct examination.

11 MR. WHITE: It shouldn't be longer, Your
12 Honor, than 30 minutes. I'm hoping to certainly keep it
13 shorter than that.

14 One of the reasons that we requested the
15 Court to allow us the opportunity to take Mr. Owens at
16 this time is that he is from out of the country, and
17 he's actually not even a party -- working for the
18 parties here.

19 And so we're trying to get him off on the
20 issues that he has to address, and so we were hoping to
21 do this today while he's here so he can go home to his
22 family.

23 The playing of the deposition, the
24 30(b)(6), since this is a bench matter, would seem that
25 it could come in at any time the Court deemed

1 A. I was responsible for the editor in
2 particular, as well as some of the pieces of the
3 membership system and the document management.

4 Q. Does that source code exist today?

5 A. No, sir, it does not.

6 Q. Do you know why it doesn't exist?

7 A. It's just gotten too old. I believe it was
8 discarded.

9 Q. If you had that source code here today, what
10 would you be able to tell this Court about the design of
11 the editor portion of that product?

12 A. Oh, I could then tell you exactly --

13 MR. POWERS: Objection, best evidence.

14 THE COURT: Excuse me?

15 MR. POWERS: Object, best evidence. I
16 mean, he either has a recollection, which he can testify
17 about, or -- but he shouldn't be speculating about what
18 he could testify about if he had source code that he
19 doesn't have.

20 THE COURT: All right. Restate the
21 question.

22 Q. (By Mr. White) Would the source code reveal
23 to you how it was internally designed and operated?

24 A. Yes, sir. Then I could tell exactly how it
25 was done.

1 Q. Thank you.

2 Despite the fact that that source code does
3 not exist today, can you testify with any degree of
4 certainty today whether the SEMI-S4 source code
5 practiced the invention of the '449 patent?

6 A. Yes, sir, I can.

7 Q. And what is your opinion on that?

8 A. It could not have, because we had not yet
9 come up with the idea.

10 Q. When did you and Mr. Vulpe conceive of the
11 invention of the '449 patent?

12 A. It was late in 1993, sir.

13 THE COURT: Late 19 what?

14 THE WITNESS: '93, Your Honor.

15 THE COURT: '93.

16 Q. (By Mr. White) And when was the source code
17 that you wrote for the SEMI S-to-the-4th product
18 completed and installed and running?

19 A. Sir, I'm not sure of the exact date, but it
20 would have been early in '93 or late in '92.

21 Q. So it was at least a year earlier than the
22 date you conceived of the idea which became the subject
23 matter of the '449 patent?

24 A. Several months --

25 MR. POWERS: Object to leading, Your

1 Honor.

2 THE WITNESS: I'm sorry.

3 MR. POWERS: Object to leading.

4 THE COURT: Overruled.

5 A. Yes, several months, sir.

6 Q. (By Mr. White) What did you and Mr. Vulpe do,
7 after you had conceived of this invention, about trying
8 to obtain a patent on that invention?

9 A. We talked to my brother, Richard Owens, to
10 see if he had any idea how to go about getting a patent.

11 Q. And why would you speak to your brother?

12 A. He was, at the time, I believe anyway,
13 corporate counsel for Infrastructures for Information.

14 Q. Does your brother practice intellectual
15 property law?

16 A. Yes, sir.

17 Q. Did your conversations with your brother lead
18 to a meeting with a patent agent in connection with the
19 preparation of the patent application?

20 A. Yes, sir. He introduced us to Dr. Brian
21 Barlow, who was a patent agent working for the same firm
22 as my brother at the time.

23 Q. Would you turn in your binder to Plaintiffs'
24 Exhibit 600.

25 MR. WHITE: And, Your Honor, at this

1 time, Microsoft has objected to the use of this
2 Plaintiff -- of this Exhibit 600 in connection with
3 Mr. Owens' testimony on the basis that Mr. Owens really
4 has no personal knowledge regarding that document.

5 This is -- Plaintiffs' Exhibit 600 is, in
6 fact, the handwritten notes of a notebook by Mr. Vulpe.
7 He will identify and authenticate the document when he
8 takes the stand.

9 We're using it today just for the purpose
10 of trying to refresh the recollection of the witness and
11 not being offered into evidence at this time, so --

12 THE COURT: All right. You may proceed.

13 MR. POWERS: Your Honor, if I may, if
14 it's being used to refresh recollection, there is not
15 yet a precise question showing a absence of recollection
16 where it can be refreshed.

17 Because if we don't do that, he's just
18 going to read it to him and say, is that right, and
19 that's not refreshing recollection. I think it's an
20 inappropriate use of the document.

21 THE COURT: All right. You may proceed.

22 MR. WHITE: Thank you.

23 Q. (By Mr. White) Would you turn to Plaintiffs'
24 Exhibit 600, Mr. Owens.

25 A. Yes, sir.

1 Q. Can -- do you -- do you recognize the
2 handwriting that is on this document?

3 A. May I just examine it for a second?

4 Q. Yes, please.

5 A. Yes. I believe that to be Mr. Vulpe's
6 scrawl.

7 Q. Are you familiar with the practice that
8 Mr. Vulpe had of taking notes at meetings in a
9 spiral-bound notebook?

10 A. Yes, sir. Actually, everyone at the company
11 followed the same practice.

12 Q. Did you also have such a practice?

13 A. Yes, sir, I did.

14 MR. WHITE: Could I have shown on the
15 screen a portion of this exhibit that has the production
16 numbers 6911?

17 Q. (By Mr. White) Mr. Owens, it's -- it's the --
18 the production number ends, and the last four digits is
19 6911.

20 A. Yes, sir, I have it.

21 Q. Do you see that?

22 A. Yes, sir.

23 Q. Now, this entry here, would you take a
24 look -- and it says -- I believe it says Brian Barlow,
25 and the date was February 18th, 1994.

1 A. Yes, sir.

2 Q. Does that refresh your recollection of a
3 meeting that occurred with Brian Barlow on that date?

4 A. Yes, sir. I know I did attend a meeting with
5 Dr. Barlow at Smith Lyons, which was my brother's -- my
6 brother's law firm.

7 Q. Is this the date of the meeting you had with
8 Mr. Barlow?

9 A. It certainly is in the right -- right
10 timeframe, yes, sir.

11 Q. Now, if you'll notice Mr. Vulpe's notations,
12 does that refresh your recollection as to the subject
13 matter of the discussions you had with Dr. Barlow at
14 that meeting?

15 A. Yes, sir. Dr. Barlow was laying out the
16 information that we had to provide to him to use as
17 input in his drafting of the patent. So we were laying
18 out what we needed to include in that -- in that set of
19 information.

20 Q. Was he requesting that you and Mr. Vulpe
21 prepare the draft specification for this patent?

22 A. Yes, sir. He did ask that we do that.

23 Q. Why -- why -- how did -- why did he make that
24 request of you; do you recall?

25 A. Well, my understanding was software patents

1 were fairly new at that time, and Dr. Barlow, I believe,
2 was more in the chemical area, and so he didn't have the
3 familiarity with the subject matter, he felt, to do that
4 preparation.

5 Q. Now, if I could have -- if you would turn
6 your attention to two pages further into the document,
7 to the page that has the production number 6193 on it,
8 there is -- there are some notations there by Mr. Vulpe
9 regarding the prior art and setting up a straw man.

10 Do you see that?

11 A. Yes, sir.

12 Q. Do you recall that discussion with Dr. -- Dr.
13 Barlow?

14 A. Yes, sir. The term straw man is particularly
15 evocative. He suggested that we set up the prior art as
16 a straw man to demonstrate how we were different.

17 Q. What did he tell you you were supposed to do
18 with respect to the disclosure of what you knew about
19 prior art?

20 A. So we had the instruction that it was our
21 obligation to disclose everything we knew really that
22 was helpful in understanding the field of the invention
23 and might be helpful to an Examiner.

24 Q. And did you prepare such a draft
25 specification?

1 A. Yes, sir, I did.

2 Q. If you would turn to Plaintiffs' Exhibit 594
3 in the binder.

4 A. Yes, sir.

5 Q. Do you recognize this document? Take a look
6 at the entire document, if you need to, Mr. Owens.

7 A. Yes, sir. I believe that's the draft that I
8 wrote of the information for the patent application.

9 Q. Now, you testified earlier today that after
10 you and Mr. Vulpe conceived of this invention, that
11 there was a period of time where you were in the process
12 of testing or validating the idea in the computer
13 program.

14 Do you recall that?

15 A. Yes, sir.

16 Q. Now, you indicated that you believed you
17 conceived of the invention in -- near the end of '93,
18 and the date of this document, the date in which you
19 delivered the first draft specification, I believe, is
20 in April of '94?

21 A. Yes, sir. April 13th, 1994 is the date on
22 this document.

23 Q. What were you doing in that interim between
24 the conception and the date that this specification was
25 delivered as far as the validation of the invention was

1 concerned?

2 A. Sir, there were two things. One of the
3 instructions that we had is that we had to disclose how
4 to practice the invention in the patent. And when we
5 came up with the original idea, we didn't know how to
6 practice the invention.

7 So we had to ensure that we had enough of
8 a -- at least a prototype implementation to prove that
9 we had, in fact, practiced it and could document that
10 for the Patent Office. So that was certainly one of the
11 activities we were undertaking.

12 Q. Now, your draft specification includes a
13 discussion of the prior art, correct?

14 A. Yes, sir.

15 Q. What was the source of the information that
16 you provided in the write-up, the first draft
17 specification, regarding the prior art?

18 A. That was based on my experience in the SGML
19 industry, sir.

20 Q. Did you have any discussions from Mr. Vulpe
21 as to what should go into this section?

22 A. I'm afraid I don't remember it, specific
23 discussions. It seems very likely.

24 Q. Okay. Have you ever heard of the duty of
25 candor in connection with the filing and prosecution of

1 a United States patent application?

2 A. Yes, sir, I have.

3 Q. And when did you first hear that concept?

4 A. Well, that concept was explained to us really
5 in that -- in that initial meeting with Dr. Barlow.

6 Q. Well, what did you understand the duty of
7 candor to mean?

8 A. My understanding was that it was related to
9 our obligation to disclose any prior art that we were
10 aware of that would be helpful in leading the Examiner
11 in evaluating and understanding the application.

12 Q. Well, how were you and Mr. Vulpe planning on
13 complying with your duty of candor after that meeting
14 with Dr. Barlow?

15 A. Well, we were drafting the information that
16 Dr. Barlow had asked for, and my plan was to include in
17 that document anything I was aware of that I thought
18 would be relevant.

19 Q. Well, do you believe that you and Mr. Vulpe
20 complied with your duty of candor in that regard?

21 A. Yes, sir, very much so.

22 Q. And how is that?

23 A. Well, the application that I made -- or the
24 draft that I did had an explicit reference to the SGML
25 standard; it had reference to the types of applications

1 that I was aware of that practiced the prior art.

2 Q. Let me stop you right there, Mr. Owens, and
3 ask that --

4 MR. WHITE: If you would pull up a slide
5 on Plaintiffs' Exhibit 1.

6 Q. (By Mr. White) If you could direct your
7 attention to the patent, PX1.

8 A. Yes, sir.

9 Q. Placed up on the screen, an excerpt out of
10 the patent. In Column 2, we'll start with -- it looks
11 like Line 41. You made reference to the SGML standard?

12 A. Yes, sir.

13 Q. Is this where you provided, in the written
14 description, the reference to the standard?

15 A. Yes, sir. I give the name of the -- of the
16 SGML language, as well as the ISO standard we referred
17 to.

18 Q. Keeping your finger on that location in the
19 patent, would you turn over quickly to Plaintiffs'
20 Exhibit 131.

21 A. Yes, sir.

22 Q. Do you recognize that document?

23 A. Yes, sir. That's a copy of the ISO standard
24 for SGML.

25 Q. Were you familiar with that standard at the

1 time you wrote this draft specification?

2 A. Yes, sir. We had to use the standard
3 frequently as a reference document anytime we were
4 producing SGML material.

5 Q. The understanding that you have regarding
6 SGML and the features of that standard come from your
7 having studied the standard itself?

8 A. Yes, sir, among other things, including --

9 Q. Do you have any other reference materials you
10 relied on to understand how SGML and the standard
11 worked?

12 A. Yes, sir. There was a book called the SGML
13 handbook written by the inventor of SMGL, Dr. Charles
14 Goldfarb.

15 Q. Could you look at Exhibit 291 and tell us, is
16 that exhibit the handbook you just referred to?

17 A. Yes, sir. That's a very familiar looking
18 cover, too.

19 Q. What was the purpose of this handbook?

20 A. So the standard, of course, is a technical
21 document. It's intended to define exactly how SGML is
22 laid out. And as such, it can be a little hard to
23 understand how to practice the standard.

24 The handbook tried to make the standard a
25 little more approachable by providing more in the way of

1 a tutorial and example-based approach to understanding
2 and using SGML.

3 Q. Why did you feel it necessary to actually
4 cite the standard by the ISO number in connection with
5 your description of your invention?

6 A. Well, I thought that, first of all, the prior
7 art that we were relying on was definitely SGML and that
8 in disclosing the standard number, we were giving a
9 whole and very large field of reference to the Examiner
10 to help understand where the invention fit in.

11 Q. Okay. If you would turn back to the patent
12 in Plaintiffs' Exhibit 1.

13 A. Yes, sir.

14 Q. You were saying that in addition to
15 disclosing the ISO standard for the SGML standard, that
16 you had described in some -- in a general sense, SGML
17 editors; is that right?

18 A. Yes, sir.

19 Q. Would you -- would you take a look then over
20 at Column 3, Lines 13 to 34 of the patent.

21 A. Yes, sir.

22 Q. What did -- what did -- what were you trying
23 to disclose here in this part of the background section
24 of the invention?

25 A. Well, I think it might be helpful if I just

1 read that section as an introduction.

2 Q. Please.

3 A. It says the current practice outlined here
4 above -- here and above suffers from the following
5 disadvantages:

6 While inventing structural information in the
7 content stream is accepted standard practice, it is
8 inefficient and inflexible.

9 In a digital age for manual production of
10 documents, the intermingling of the markup codes with
11 the content is still the best way of communicating
12 structure. For electronic storage and manipulation, it
13 suffers from a number of shortcomings.

14 That section is really referring to my
15 experience with actually having to deal with this
16 problem in trying to create the editor for the SEMI
17 application where we did have, you know, markup and
18 content mixed in the same stream, and it causes a bunch
19 of the problems that I refer to there.

20 Q. Did the SEMI editor that you wrote, the text
21 editor that you wrote, did it work with documents that
22 combine structure and content as a single unit?

23 A. Yes, sir, it did. It pertains to SGML
24 documents that had the structure and content in them.

25 Q. What do you mean by a single unit?

1 A. So the -- the tags actually appeared -- and
2 by tags, I mean the angle brackets -- the names of the
3 tags appeared within the text stream of the content,
4 just at it did in the SGML system.

5 Q. So all of the editing that would occur that
6 would cause changes to be made to the content or changes
7 to be made to the SGML tags, that would be handled by
8 processing the document combining structure and content
9 as a single unit?

10 MR. POWERS: Object to leading, Your
11 Honor.

12 THE COURT: Overruled.

13 A. Yes, sir, that's my memory.

14 Q. (By Mr. White) And that's what you were
15 trying to describe here in Column 3?

16 A. Yes, sir.

17 Q. Well, how many prior art SGML text editors
18 that processed documents combining structure and content
19 where you understood what the internal data structures
20 and the internal functions were prior to the time you
21 wrote this Column 3 disclosure?

22 A. I was only familiar with one, just the SEMI
23 editor, sir.

24 Q. Turn to Exhibit 4, if you would, Plaintiffs'
25 Exhibit 4, Mr. Owens.

1 This is a copy out of the prosecution history
2 of your oath and declaration, and I believe you've
3 already identified for the record that you signed the
4 oath and declaration on the day before your wife's
5 birthday.

6 A. Yes, sir, that's right.

7 Q. That was just prior to the time that you and
8 Mr. Vulpe filed your application?

9 A. Yes, sir, it was.

10 Q. Now, you indicated that your brother, Richard
11 Owens, is an intellectual property lawyer in Canada; is
12 that right?

13 A. Yes, sir. He was at Smith Lyons at the time.

14 Q. And he was actually working with you and
15 Mr. Vulpe in connection with getting this application on
16 file?

17 A. Yes, sir, in his capacity as counsel for
18 Infrastructures for Information.

19 Q. Did you have a meeting with your brother, Mr.
20 Owens, Richard Owens, and Mr. Vulpe prior to the time
21 that you actually signed this declaration?

22 A. Yes, sir. At the Smith Lyons' offices just
23 before we signed, my brother took us both apart to
24 discuss some of the aspects of that signature.

25 Q. Did he discuss with you your duty of

1 disclosure and duty of candor regarding this
2 application?

3 A. Yes, sir. He gave me the little brother riot
4 act about what I was signing.

5 Q. Well now, this was the second time that
6 someone had advised you that you had a duty of candor
7 with regard -- regarding the prosecution of your
8 application; is that right?

9 A. Yes, sir. And the first time would have been
10 in my initial meeting with Dr. Barlow.

11 Q. What did you say to your brother when he gave
12 you the admonition regarding your duty of candor prior
13 to the time you actually signed this oath?

14 A. I said that I did understand what I was
15 signing, sir.

16 Q. Did you feel like you were complying with
17 your duty in connection with the filing of this
18 application?

19 A. Yes, sir, very much so.

20 Q. Now, on the next -- the next page of your
21 oath and declaration, at the top of that document, there
22 is a copy of 37 CFR 1.56 A, which deals with the duty of
23 disclosure.

24 Did -- did you read that before you signed
25 your oath and declaration?

1 A. Yes, sir. I have a bit of a personality
2 quirk in actually tending to read legal documents before
3 signing them, and I did read that.

4 Q. Well, what did you think about that as you
5 read it as far as your understanding of the duty of
6 disclosure?

7 A. Well, two things really. First of all, it
8 agreed with what I felt I understood. And it also, I
9 think, drove home the seriousness of what I was
10 undertaking and signing.

11 Q. Did you have an understanding, when you
12 signed your oath and declaration, that the duty of
13 candor to the United States Patent & Trademark Office
14 was a continuing duty that required you to disclose to
15 the Patent Office any relevant information you might
16 become aware of during the pendency of the application?

17 A. Yes, sir, I did.

18 Q. Well, let me ask you, then, Mr. Owens, did
19 you, during the time that the patent application was
20 pending, learn of any details of any prior art that you
21 considered to be relevant to your invention?

22 A. No, sir, I did not.

23 Q. Mr. Owens, did you ever have any intent to
24 deceive the Patent & Trademark Office by withholding
25 information about any prior art known to you prior to

1 the time you filed this application?

2 A. No, sir, definitely not.

3 Q. Did you ever have any intent to deceive the
4 United States Patent & Trademark Office by withholding
5 information about the SEMI-to-the-4th product that you
6 were aware of prior to the time you filed this
7 application for the '449 patent?

8 A. No, sir, definitely not.

9 Q. When you signed this oath and declaration of
10 your patent application, Mr. Owens, did you believe that
11 you had complied with your duty of disclosure as you
12 understood it?

13 A. Yes, sir, I did.

14 MR. WHITE: I pass the witness.

15 THE COURT: All right.

16 Cross-examination.

17 Oh, Mr. White, Ms. Ferguson asked me do
18 you intend to offer these exhibits that you've made
19 reference to during your direct?

20 MR. WHITE: Yes. Yes, Your Honor.

21 THE COURT: That would be what exhibits?

22 MR. WHITE: Oh, where's my list?

23 MR. PARKER: May we provide you with that
24 list in a few minutes, Judge?

25 THE COURT: No, I would like to go on and

1 get it now.

2 MR. WHITE: It would be Plaintiffs'
3 Exhibits 1, 4, 79, 594, 291, and 131.

4 THE COURT: All right. Any objection?

5 MR. WHITE: PX600 is not being offered at
6 this time.

7 THE COURT: All right.

8 MR. POWERS: None to those exhibits, Your
9 Honor.

10 THE COURT: All right. Be admitted.
11 Now, the PX, that's going to refer -- your exhibit
12 numbers with an X, are those the ones -- is that
13 Plaintiffs' exhibit?

14 MR. WHITE: Plaintiffs' exhibit.

15 THE COURT: And are these numbers all
16 mixed in with your jury exhibits as well?

17 MR. WHITE: I believe so, Your Honor.

18 THE COURT: Same exhibits. But are you
19 offering these exhibits just for the inequitable conduct
20 or for the jury as well?

21 MR. WHITE: Some of these will be
22 referred to in Mr. Vulpe's direct testimony, and I'm not
23 sure, but I thought you did --

24 MR. CAWLEY: 1 and 4 have already been
25 admitted in connection with the jury testimony.

1 THE COURT: Which one is that?

2 MR. CAWLEY: 1 and 4.

3 THE COURT: Okay. Why don't we do this
4 so that we can keep these straight: If you've already
5 offered them with regard to the jury, you don't need to
6 reoffer them here, although you can if you want to.
7 And then when each side provides Ms. Ferguson with a
8 list tomorrow morning, give us two lists; one for the
9 jury and one for the Court, okay?

10 MR. WHITE: Yes, sir.

11 THE COURT: Thank you.

12 All right. Let's proceed.

13 MR. POWERS: Yes, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. POWERS:

16 Q. Mr. Owens, you provided testimony about what
17 you are contending as your conception date with
18 Mr. Vulpe.

19 Do you recall that?

20 A. Yes, sir.

21 Q. Now, you don't have any contemporaneous
22 notebooks that document that conception date, do you?

23 A. I did have them, but I'm afraid they were
24 lost, sir.

25 Q. So they're gone in the sands of time?

1 A. Apparently so, yes, sir.

2 Q. And the same with Mr. Vulpe's apparently?

3 A. I don't know, sir.

4 Q. The one that was shown to you was really
5 1994.

6 Have you seen any notebooks from Mr. Vulpe
7 from the conception period?

8 A. I have not seen anything, no, sir.

9 Q. The source code from the SEMI project and
10 that product that's gone, too, and that could have told
11 us what that product had exactly, correct?

12 A. Yes, sir.

13 Q. You testified that you were instructed about
14 your duty of candor in detail at least twice, right?

15 A. Yes, sir.

16 Q. So you knew you had to disclose anything that
17 was relevant to your invention that had been done
18 before, right?

19 A. Yes, sir.

20 Q. And do you recall that you were deposed on
21 the question -- and speaking for i4i on the question of
22 why didn't you disclose the SEMI sale.

23 Do you recall that?

24 A. Yes, sir.

25 Q. And do you recall that your answer was that

1 you tried to disclose the SEMI sale, didn't you? That
2 was your answer, right?

3 A. No, sir.

4 Q. Not your answer.

5 Let's look at Page 202 of the October 17
6 transcript from Line 12 to 203, Line 6.

7 MR. POWERS: I will read it into the
8 record, Your Honor.

9 Actually, we'll start -- I think it will
10 be easier -- it will be clearer if we start all the way
11 back at 201, Line 25.

12 A. I'm sorry. Which deposition, please, sir?

13 Q. The October 17th deposition, the one where
14 you were testifying for the company.

15 A. Yes, sir.

16 THE COURT: Now, what was -- what was the
17 page and line? 201/25.

18 MR. POWERS: 201/25 is where we're
19 starting, and this is his 30(b)(6) deposition. And I'm
20 going to include the topic in the question so that the
21 record is clear.

22 QUESTION: All right. You understand
23 that you're designated to testify as to Topic No. 19,
24 which reads: All reasons that Michel Vulpe, Stephen
25 Owens, or agents and those substantively involved in the

1 prosecution of the '449 patent did not disclose products
2 systems or technology that Michel Vulpe, Martin Hensel,
3 and/or Hensel Corp. offered for sale and/or sold to
4 designed, developed, tested, and/or installed for SEMI
5 in 1992 and 1993 to the Patent Office?

6 ANSWER: Yes.

7 QUESTION: So why don't you tell me all
8 the reasons that you didn't disclose the SEMI system to
9 the Patent Office.

10 ANSWER: Well, I think -- you know, I
11 think the best answer is we did try to. The -- you
12 know, the patent talks about the sort of preamble of the
13 patent. I'd have to look at it. Probably should,
14 actually. Let's go back, because I have a copy here.

15 And there's an off-the record discussion.

16 Answer continues: Yeah, so I'm going to
17 talk about -- you know, this whole background to the
18 invention section talks about dealing with standardized
19 generalized markup languages -- standard generalized
20 markup languages, the problems of dealing with embodied
21 markup and mixed markup.

22 And I think that -- you know, that did
23 inform the Patent Office of the problems. The -- what's
24 the word? The art is practiced in the SEMI system,
25 so...

1 That was your answer given in the deposition,
2 right?

3 A. I'm actually sorry. I want to agree with
4 you. I just didn't catch the page number. I thought it
5 was 201, but I didn't see it there.

6 Q. 201, Line 25.

7 A. 201, Line 25.

8 Q. Down through 203, Line 6.

9 A. I think I must have a different copy.

10 Q. It's October.

11 A. I'm looking at January's.

12 Q. I will wait till you find it.

13 A. Now I'm there. Sorry about that.

14 Q. All right. So your answer there was you did
15 try to disclose the SEMI system, right?

16 A. I think the answer is that we did try to
17 disclose the problems of the SEMI system or the way the
18 SEMI system practiced the prior art, which was SGML.

19 Q. But you didn't disclose the sale of the SEMI
20 system at all, did you?

21 A. No, sir.

22 Q. And you didn't disclose the fact that there
23 were repeated references that we just went through in
24 front of the jury to the SEMI S-to-the-4th system being
25 patented by the only patent i4i had. You didn't

1 disclose that patent either, did you?

2 A. I haven't seen any of those references
3 previously, sir.

4 Q. You also didn't disclose the fact that there
5 was a document outline view and editor in the SEMI
6 system that would allow you to view the SGML tags, did
7 you?

8 A. No, sir.

9 Q. You didn't disclose the fact any of the
10 substantive information from the manual about how the
11 SEMI system worked?

12 A. The SEMI system was an SGML system, so I
13 believe we did, sir.

14 Q. My question was, you didn't disclose any
15 information from the manual so that the Patent Examiner
16 could decide for himself whether the SEMI system worked
17 just in the way that you're characterizing SGML prior
18 art systems or whether it was an improvement on those.
19 You didn't disclose the manual, did you?

20 A. No, sir.

21 Q. And you didn't disclose the fact that there
22 was a specific on sale and installation more than a year
23 before the patent application was filed?

24 A. A specific what? I'm sorry, sir.

25 Q. Sale and installation more than a year before

1 the patent application was filed?

2 A. Do you mean on the SEMI?

3 Q. On SEMI precisely.

4 A. No, sir.

5 Q. You did not disclose that, correct?

6 A. Yes, sir.

7 MR. POWERS: With that, Your Honor, no
8 further questions.

9 THE COURT: All right. Any redirect?

10 MR. WHITE: No, Your Honor.

11 THE COURT: Thank you. You may step
12 down.

13 Do you wish to have this witness finally
14 excused, or do you think you may have --

15 MR. WHITE: I believe so, Your Honor.

16 MR. CAWLEY: Yes, Your Honor.

17 THE COURT: All right. Any objections,
18 Mr. Powers?

19 MR. POWERS: No objections.

20 THE COURT: All right. You are finally
21 excused.

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: Thank you for your
24 attendance.

25 All right. Anything else before we

1 adjourn for the day?

2 All right. Y'all have a good evening.

3 We'll see you back in the morning at 9:00.

4 COURT SECURITY OFFICER: All rise.

5 (Court adjourned.)

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CERTIFICATION

10

11 I HEREBY CERTIFY that the foregoing is a
12 true and correct transcript from the stenographic notes
13 of the proceedings in the above-entitled matter to the
14 best of my ability.

15

16

17

18 /s/ _____
SUSAN SIMMONS, CSR
19 Official Court Reporter
State of Texas No.: 267
20 Expiration Date: 12/31/10

_____ Date

21

22

23 /s/ _____
JUDITH WERLINGER, CSR
24 Deputy Official Court Reporter
State of Texas No.: 731
25 Expiration Date 12/31/10

_____ Date

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