

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 * 9:00 A.M.

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

APPEARANCES:

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MR. JOHN CAMPBELL
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(Proceedings recorded by mechanical stenography,
transcript produced on CAT system.)

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APPEARANCES CONTINUED:

FOR THE PLAINTIFF: MR. ROBERT M. PARKER
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P R O C E E D I N G S

(Jury out.)

COURT SECURITY OFFICER: All rise.

THE COURT: Please be seated.

All right. I understand there are some matters to take up before the jury comes in; is that correct?

MR. CAWLEY: I think there are, Your Honor.

THE COURT: All right. What do we have?

MR. CAWLEY: There -- they're both pretty easy.

THE COURT: Good.

MR. CAWLEY: Over the weekend, the Plaintiff determined that it would drop and no longer assert Claims 15, 16, and 17 of the patents. We notified Microsoft of that.

They requested that the dismissal be with prejudice, to which we have agreed, so I just want to notify the Court of that as it may require -- certainly in the jury submission, we'll need to delete the references to those claims.

THE COURT: We've already modified that in the instructions.

1 Microsoft agreeable, I guess?

2 MR. POWERS: Yes.

3 THE COURT: All right. Motion is
4 granted.

5 MR. CAWLEY: The second matter, Your
6 Honor, is really a question of decorum as much as
7 anything else.

8 If I could bring up Slide 13 for my
9 opening presentation, this is a slide that I'm going to
10 use in opening.

11 As the Court can see, in the first very
12 few words, it says, we are in deep followed by a
13 scatological term, which I don't intend to read out loud
14 in Court, but my question is, would the Court prefer
15 that we blacken out that word or --

16 THE COURT: What is this?

17 MR. CAWLEY: This is an internal
18 memorandum that Microsoft wrote describing the
19 difficulties that they were in because they lacked an
20 XML editor.

21 THE COURT: Microsoft have any opinion on
22 this?

23 MR. POWERS: Obviously, we would prefer
24 that the inflammatory nature of the document, which is
25 not really relevant to the issue, be redacted to avoid

1 undue prejudice.

2 THE COURT: And --

3 MR. CAWLEY: Be glad to do that, Judge.

4 THE COURT: Okay.

5 MR. CAWLEY: First of all --

6 THE COURT: Yeah, let's just change it to

7 S blank, blank, blank.

8 MR. CAWLEY: Can we do that?

9 THE COURT: Underscore.

10 MR. CAWLEY: Thank you, Judge. That's

11 it.

12 THE COURT: All right.

13 MR. POWERS: Nothing further.

14 THE COURT: Anything from Microsoft?

15 MR. POWERS: No, Your Honor.

16 THE COURT: Okay. Is the jury panel

17 ready?

18 MR. CAWLEY: Oh, yeah. Judge, I'm sorry.

19 I -- in connection with the Plaintiff dropping Claims 15

20 through -- 15, 16, 17 with prejudice, Microsoft has also

21 agreed to drop its counterclaims relating to those three

22 claims.

23 THE COURT: All right. Is that correct?

24 MR. POWERS: Correct.

25 THE COURT: All right. That motion is

1 granted as well. I guess that's with prejudice.

2 MR. POWERS: Yes.

3 THE COURT: And I believe Microsoft has
4 dropped its indefiniteness defense; is that correct?

5 MR. POWERS: The ones remaining to the
6 claims at issue here, yes.

7 THE COURT: Right. Okay. All right.
8 Very well.

9 All right. We'll be in recess until the
10 jury is seated.

11 COURT SECURITY OFFICER: All rise.

12 (Recess.)

13 COURT SECURITY OFFICER: All rise.

14 (Jury panel in.)

15 THE COURT: Please be seated.

16 All right. Ms. Ferguson, if you'll call
17 the case, please.

18 COURTROOM DEPUTY: Court calls Case
19 No. 6:07-CV-113, i4i Limited Partnership, et al, versus
20 Microsoft Corporation.

21 THE COURT: All right. Announcements?

22 MR. PARKER: Plaintiff's ready to
23 proceed, Your Honor.

24 MR. POWERS: Defendant's ready to
25 proceed, Your Honor.

1 THE COURT: All right. Very well.

2 All right. Good morning, Ladies and
3 Gentlemen of the Jury Panel. Welcome to jury service in
4 the Eastern District of Texas. I'm Judge Leonard Davis.
5 You've already met some of our court personnel today.
6 This is Ms. Rosa Ferguson, our courtroom deputy clerk.
7 This is Ms. Judy Werlinger, our court reporter, and we
8 have Ms. Andrea Houston, the Court's staff attorney.

9 We're about to begin the trial of a civil
10 case today. Let me first thank you for your service
11 here today. You are really playing a pivotal part of
12 our system of justice.

13 You know, we live in a country that we
14 are very, very fortunate that we have the right to trial
15 by jury. And I know we all see on the news around the
16 world countries that don't have this right, and I hope
17 that you will really consider it a privilege to be able
18 to be a part of the process that guarantees to all
19 citizens of the United States the right to trial by
20 jury.

21 I know sometimes it seems like a burden,
22 but it's one of those sacrifices we make for living in
23 this type of country. So I hope you will consider it
24 that.

25 Now, this particular civil case is what's

1 called a patent case. I believe that you've seen the
2 patent video downstairs. Haven't you all already seen
3 that?

4 Okay. And in this case, the Plaintiff
5 accuses the Defendant of infringing its patent. There's
6 going to be a lot more to be said about what the case is
7 about later, but just that general overview.

8 Now, I anticipate that this trial is
9 going to take most of this week. We're going to -- the
10 eight of you that are selected on the jury, we're going
11 to work today, Tuesday and Wednesday; you will have
12 Thursday off, because I have another hearing that I have
13 -- has already been set; we'll take back up Friday; then
14 we'll go -- come back the next Monday and probably
15 finish Monday or Tuesday is my hope.

16 The attorneys on both sides have assured
17 me they're going to move efficiently. They have some
18 time limitations, so we'll be operating within those.
19 But I wanted you to know what you can expect if you're
20 selected on the jury as far as time commitment.

21 Let me give you an overview of what's
22 going to be happening over the -- this time period.

23 Right now we're beginning the first stage
24 of the case, what we call voir dire examination of the
25 jury panel.

1 This is where the attorneys will be
2 asking you some questions to help the Court and the --
3 and the parties evaluate you as a potential juror. This
4 will probably take about an hour, maybe a little bit
5 longer.

6 Each side is then allowed to strike a
7 certain number of jurors, and the first remaining eight
8 jurors will be sworn in as the jury that will decide
9 this case.

10 After that eight has been sworn in, we
11 will then -- either late this morning or right after
12 lunch, we will begin with opening statements. That's
13 where each side will make -- present to you an overview
14 of what they expect the evidence in the case will show.

15 Following that, you will hear
16 presentation of the evidence. First, the Plaintiff will
17 put on their evidence, witnesses, documents; then the
18 Defendants; and then the Plaintiffs will have an
19 opportunity to offer rebuttal testimony.

20 After all of the evidence has come in,
21 which, again, will probably be early next week, you will
22 receive what's called a Charge by the Court, and that's
23 a series of instructions that I will give you as to what
24 the law is in regard to this case.

25 It will also include a verdict form that

1 will ask you some very simple questions, such as, do you
2 find that the Defendant has infringed the Plaintiff's
3 patent? Do you find that the -- such infringement was
4 willful, if you found it?

5 Then the Defendant's defense, do you find
6 that the patent is invalid? And then a question for you
7 to answer some damage questions. So there will be four
8 or five, six questions for you to answer at the end of
9 this case.

10 After you've heard the Charge of the
11 Court and seen what the verdict form looks like, the
12 parties will then each present their closing arguments.

13 Again, the Plaintiff will go first and
14 then the Defendant and then the Plaintiff.

15 After that, after all the evidence is in,
16 after you've been -- received the Court's Charge and
17 you've heard the closing arguments, then you would
18 retire to begin your jury deliberations.

19 That would be the first time that you
20 would discuss this case with anyone, including your
21 fellow jurors, family members or anyone else. You keep
22 your countenance to yourself until all of the evidence
23 is in and you're finally released to deliberate. Now,
24 that's an overview.

25 Now for what we're doing here today,

1 which is voir dire examination. As I mentioned, the
2 purpose of voir dire is to enable the Court to determine
3 whether or not a prospective juror should be excused
4 from jury service either by the Court for cause or by
5 counsel for the parties by way of peremptory challenges;
6 that is, a challenge for which no reason need be given.

7 Voir dire is a Latin phrase which means
8 to speak the truth, which I know each of you will do as
9 you answer the questions which will be asked of you this
10 morning.

11 Listen carefully to the questions and do
12 not be timid about speaking up if they apply to you.
13 The worst thing you could do would be to sit there,
14 think, well, that might apply to me but, and you don't
15 stand up or you don't raise your hand to be recognized.
16 There are no right or wrong answers in this process,
17 just truthful answers, and you need to be candid, and
18 you need to answer out if you have a question as to
19 whether something applies to you. Err on the side of
20 going on and bringing it up.

21 Now, I think we've already received juror
22 questionnaires that you have been thoughtful enough to
23 fill out, but just to kind of break the ice, get to know
24 each other, get you used to answering questions, I'm
25 going to ask each juror just to stand up, state your

1 name, where you're from, and what's your favorite thing
2 to do.

3 So we'll begin with Juror No. 1, which I
4 believe is Ms. Greer.

5 JUROR GREER: My name is Barbara Greer,
6 and I live in Tyler, and probably my favorite thing to
7 do is to travel.

8 THE COURT: All right. And what do you
9 do, Ms. Greer?

10 JUROR GREER: I'm a retired school
11 counselor, and then prior to that, I was a high school
12 math teacher.

13 THE COURT: All right. Thank you very
14 much, Ms. Greer.

15 JUROR CAWTHON: My name is Jack Cawthon.
16 I work out at Trane. I've been there for 31 years. And
17 my favorite thing to do is maybe watch the Cowboys win
18 the Super Bowl again.

19 THE COURT: That doesn't happen real
20 often, though, does it?

21 JUROR CAWTHON: No.

22 THE COURT: Let me ask you, Mr. Cawthon,
23 what do you do out at Trane?

24 JUROR CAWTHON: Production.

25 THE COURT: Production? Okay. Thank

1 you.

2 JUROR HUSBAND: My name is Judia Husband.
3 I'm currently unemployed, but before I was a
4 kindergarten teacher for a private school. My favorite
5 thing to do is read and play with my kids.

6 THE COURT: Okay. And what was your
7 private school where you live?

8 JUROR HUSBAND: It's Cherokee County
9 Christian Academy.

10 THE COURT: Okay. Thank you very much.

11 JUROR LOYD: My name is Jill Loyd. I
12 live in Longview, Texas. I'm a housewife. And my
13 favorite thing to do is I love to fish.

14 THE COURT: Okay. Great. Thank you.

15 JUROR JOYNER: I'm Janet Joyner from
16 Edgewood, and I work at Terrell State Hospital as a
17 clerk. And I probably like to travel, too, and mostly
18 to beaches.

19 THE COURT: Thank you.

20 JUROR CLAYTON: My name is Carlene
21 Clayton, and I'm principal of the fourth and fifth grade
22 level. And my favorite thing to do is to be with my
23 family, and we love to go to the beach.

24 THE COURT: Okay. Thank you.

25 JUROR GARRISON: Gary Garrison, Gun

1 Barrel City. I am retired from the insurance industry
2 and occasionally work as a substitute teacher. And
3 working in my shop is my hobby, my main interest.

4 THE COURT: Okay. Thank you.

5 JUROR CAPT: I'm Emmett Capt, Kilgore,
6 Texas. I'm currently employed here in Tyler for EOG
7 Resources. My favorite thing to do is to travel and
8 play with my grandkids.

9 THE COURT: Okay. Thank you.

10 Mr. Capt, what do you for EOG?

11 JUROR CAPT: I'm a completion
12 superintendent for them.

13 THE COURT: Okay. Thank you.

14 JUROR NORTON: Hi. My name is Traci
15 Norton. I work for the Texas Department of Criminal
16 Justice at the Skyview psychiatric facility. Been there
17 almost 15 years. And I like to gamble.

18 JUROR STARR: I'm Virginia Starr.

19 Originally, I'm from the Philippines.
20 I've been here in the United States for almost eight
21 years. And I've been a nurse for eight years.
22 Thirty-four years I spent with ETMC. I'm from
23 Brownsboro. And I love to watch the Mavericks. They're
24 not doing well.

25 THE COURT: Thank you.

1 JUROR NEWLAND: I'm Robert Newland. I'm
2 from Jacksonville. Kind of had early retirement from
3 Goodyear when they shut down. I'm working for LTG Tyler
4 Truck Center delivering parts now for them. And my
5 favorite thing is getting on a motorcycle and traveling.

6 THE COURT: Great. Thank you,
7 Mr. Newland.

8 JUROR LAMBERT: My name is Theresa
9 Lambert. I'm retired from Aetna Healthcare. My
10 husband's retired from Echo Creek Golf Course, so when
11 we do have some time, we still go out to the golf
12 course, and if not there, we're at Shreveport.

13 THE COURT: Thank you.

14 JUROR BARNETT: Arthur Barnett. I'm a
15 plumber, and I enjoy hunting.

16 THE COURT: Okay. Thank you, sir.

17 JUROR GRIFFITH: My name is Richard
18 Griffith. I work for Old Castle Glass Engineered
19 Products. We are building the new Cowboy stadium for
20 his champion, and I love to fish.

21 THE COURT: Okay. Thank you.

22 JUROR REESE: My name is James Reese. I
23 work for Community Health Corps in Longview. And I like
24 fishing and golf.

25 THE COURT: Okay. Thank you.

1 JUROR COOK: My name is Betty Cook. I'm
2 from Beckville, Texas. I'm a customer service
3 supervisor for Sent Retail. And I love to travel.

4 THE COURT: Okay. Thank you.

5 JUROR JORDAN: My name is Eldrin Jordan.
6 I'm a resident of Longview, Texas. I'm a machine
7 operator for General Technologies. And I'm a huge
8 Cowboy and Mavericks fan as well.

9 THE COURT: All right. Thank you.

10 JUROR CLOVER: My name is Jana Clover.
11 I'm from Tyler. I'm a receptionist at a veterinary
12 clinic. And my favorite thing to do is play with my new
13 granddaughter.

14 THE COURT: Which vet clinic do you work
15 at, Ms. Clover?

16 JUROR CLOVER: City Small Animal Clinic
17 on Glenwood.

18 THE COURT: It's Dr. --

19 JUROR CLOVER: Tipton.

20 THE COURT: Doctor what?

21 JUROR CLOVER: Tipton.

22 THE COURT: Tipton. That's right.

23 JUROR WATTS: My name is John Watts. I
24 live on 10 acres out in Arp. I'm a medical stenographer
25 at Mother Frances Hospital. And I love photography and

1 woodworking.

2 THE COURT: Thank you, Mr. Watts.

3 JUROR STEPHENSON: I'm Jarett Stephenson,
4 and I live in Chandler. I'm a -- I work for an
5 electrical contractor here in town as an estimator and
6 field supervisor. I also like to watch the Cowboys and
7 Mavericks, especially when they're winning.

8 THE COURT: Okay. Thank you.

9 JUROR RATCLIFF: I'm William Ratcliff. I
10 live in Mineola. I'm retired. And when I have time I
11 like to play golf.

12 THE COURT: Thank you, sir.

13 All right. Very good. Well, now that
14 you know who I am, you know who our court staff is, and
15 I sort of know who all of you are, I want you to have an
16 opportunity to meet the attorneys and the parties in
17 this case.

18 And in a moment, I'm going to ask each
19 side to introduce their attorneys and their clients.
20 And the reason I'm asking them to do this, one, I want
21 you to get to know them, but, secondly, I want to see if
22 you know any of them.

23 So I'm going to ask you to listen
24 carefully to their names, and they're going to give you
25 the names of the law firms that they're with, and I'm

1 also going to ask them to list any witnesses that may be
2 from the East Texas area.

3 If they're from out of state or something
4 like that, you don't need to list them. But if you have
5 any witnesses that are from this area, I'm going to ask
6 you to list their names as well.

7 And then after they've done that, I'm
8 going to ask those of you who might know some of them,
9 if any of you do, to -- a couple of questions.

10 So counsel will call on -- I mean, the
11 Court will call on counsel for i4i to introduce their
12 folks.

13 MR. PARKER: Thank you, Your Honor.

14 Ladies and Gentlemen, my name is Robert
15 Parker. I'm an attorney here in Tyler. With me as
16 counsel in this case are some lawyers from a firm by the
17 name of McKool Smith. They have offices in Dallas and
18 in Austin.

19 At the table, Mr. Douglas Cawley will be
20 serving as lead counsel in the case. Mr. Gordon White
21 from the Austin office will participate. Mr. Kevin
22 Burgess will participate.

23 And we have Mr. John Campbell, who is
24 seated out in the audience. Your Honor, he was a little
25 under the weather this morning, so I placed him by the

1 door so he could escape, if he needed to.

2 THE COURT: All right. Very good.

3 MR. PARKER: Thank you.

4 THE COURT: And we have masks available,
5 if you need them.

6 MR. PARKER: We also have seated at the
7 table Mr. Bill Cox. Mr. Cox is on the Board of
8 Directors of the Plaintiff. I'll tell you who they are
9 in just a minute.

10 Also seated at the table is Ms. Danielle
11 Sloan, my indispensable assistant.

12 We have one witness who qualifies under
13 the Court's definition, and that's Dr. Tom Rhyne.
14 Dr. Rhyne taught for 18 years at A&M. He taught after
15 that at Texas. We claim him for East Texas. I don't --
16 he lives in Austin now. I don't know whether he's on
17 the east side or west side of I-35, but we claim him as
18 an East Texan.

19 Your Honor, does the Court wish me to
20 mention to the jury who the Plaintiff is at this point?

21 JUROR: Yes. If you would, please.

22 MR. PARKER: The Plaintiff, we call i4i,
23 little i, No. 4, little i. It's short for
24 Infrastructures for Information, the name of the
25 company. It was founded in Canada in 1989. It's in the

1 business of selling computer software and computer
2 services to businesses that have to deal with a lot of
3 information and documents.

4 Most of their customers today are large
5 pharmaceutical companies, such as Bausch & Lomb and
6 Bayer.

7 Actually, there are really two i4i
8 companies. The first, i4i Incorporated, is, obviously,
9 a corporation, and there's a limited partnership, i4i
10 Limited Partnership. And the partnership is made up of
11 the shareholders of the corporation and some others who
12 have invested some money in i4i.

13 You'll hear from some of the employees
14 for i4i during the course of the trial.

15 Is that sufficient, Your Honor --

16 THE COURT: That is. Thank you.

17 MR. PARKER: -- at this point?

18 THE COURT: Thank you, Mr. Parker.

19 Does anyone on the jury panel know any of
20 the attorneys or people or entities that Mr. Parker has
21 entered -- has mentioned to you? If you do, please
22 stand up.

23 Anyone know Mr. Parker?

24 All right. Very good.

25 Counsel for the Defendant.

1 MR. POWERS: Thank you, Your Honor.

2 My name is Matt Powers. I'm from a law
3 firm called Weil, Gotshal & Manges with offices in
4 Dallas and Austin and Houston and a few other places as
5 well.

6 I'd like to introduce some of our
7 colleagues: Amber Rovner from our Austin office; Kevin
8 Kudlac from our Austin office; David Lender from our New
9 York office; and Eric Findlay is with the law firm of
10 Findlay & Craft from here.

11 And here at counsel table is Rob Little
12 from Microsoft. He's the man who wrote most of the
13 product that's being accused here, so they'll be one of
14 our first witnesses.

15 Is that sufficient, Your Honor?

16 THE COURT: Would you like to introduce
17 your client?

18 MR. POWERS: Well, my client is
19 Microsoft. Has everybody heard of Microsoft?
20 I guess everybody knows about their software, and we'll
21 certainly talk a lot more about it as the trial goes on.

22 The other person I'd like to introduce is
23 Chris Schmoller. He's one of our hard-working
24 paralegals. He's going to be responsible for making
25 sure everything that you see is organized and well

1 presented.

2 THE COURT: Okay. Thank you, Mr. Powers.

3 All right. Does anyone know any of the
4 attorneys that are involved with Microsoft that have
5 been mentioned to you? I think Mr. Findlay is from
6 Tyler, and anyone know Mr. Findlay?

7 All right. Very good.

8 Now, I believe we have our juror
9 questionnaires from you. We thank you for your
10 diligence in filling those out.

11 So at this time, the Court will recognize
12 Mr. Parker for purposes of voir dire examination.

13 MR. PARKER: Your Honor, I brought my
14 watch. Could I ask the Court's indulgence, if I forget
15 to look at it, if you'll warn me when I have about five
16 minutes.

17 THE COURT: I'll be glad to.

18 MR. PARKER: Thank you.

19 As you -- as you now know, Ladies and
20 Gentlemen, this is a patent case. The particular patent
21 involved has a very long number, 5,787,449. We refer to
22 it and you'll hear it during the course of the trial
23 referred to, for simplicity's sake, as the '449 patent.
24 It just makes it easier to deal with.

25 It was filed on June the 2nd, 1994, with

1 the Patent & Trademark Office in Washington, D.C. The
2 patent was granted on July the 28th, 1998.

3 The inventors on the patent are Michel
4 Vulpe and Stephen Owens, and the patent is owned by
5 Infrastructures for Information.

6 i4i claims that this is a patent, and
7 we'll show you this is a patent, that helps people to
8 use information in computer documents and claim in this
9 case and believe that Microsoft infringes i4i's patent,
10 the '449 patent, not only directly but by encouraging
11 their customers to use the invention.

12 At the end of this case, we will ask you
13 to follow the Court's instructions, and if you find
14 we're correct and we've proved that Microsoft infringes
15 the '449 patent, to award damages in the form of a
16 reasonable royalty. I'll discuss that with you more in
17 just a minute.

18 Now, about Microsoft. Most of you
19 indicated you're familiar, of course, with Microsoft.
20 It's a well-known software company.

21 One of the most popular products is
22 called Microsoft Word. Sometimes it's just referred to
23 as Word.

24 Microsoft Word is a word processor used
25 by Microsoft's customers to create computer documents.

1 It's sometimes sold by itself, stand-alone, but usually,
2 and I think most often, it's sold with other Microsoft
3 products in what's called a bundle that's called
4 Microsoft Office, and it's simply sometimes referred to
5 as Office.

6 Microsoft has produced several versions
7 of Word since the '80s, late '80s. The two that are
8 involved in this case are Word 2003 and Word 2007.

9 While we're talking about Microsoft,
10 anyone on the three rows on the panel own Microsoft
11 stock?

12 Okay. Have you, in the past, ever been
13 employed by Microsoft or some member of your family
14 employed by Microsoft?

15 Have you done business with Microsoft,
16 contracted with them or had some other business, maybe
17 sold something to them?

18 How many of you use Microsoft Word 2003,
19 2007, or use Microsoft Office?

20 All right. Let me see the hands one more
21 time. Thank you very much.

22 While I'm on Microsoft, Mr. Findlay,
23 Mr. Eric Findlay, the lawyer representing Microsoft from
24 Tyler, the Court asked you about him, he has a partner
25 by the name of Brian Craft. The firm is Findlay & Craft

1 as I recall.

2 Any of you acquainted with Mr. Craft,
3 Brian Craft?

4 Thanks.

5 The technology in this case, in the
6 patent, of course, involved in the case covers the
7 system and method for separate manipulation of both the
8 architecture and the content of computer documents.
9 After Plaintiff's invention was incorporated into
10 Microsoft Word, it permitted Word then to be used as an
11 editor for XML documents.

12 How many people know what an XML document
13 is?

14 I can tell you that at least you and I
15 started off even.

16 XML is Extensible Markup Language. It
17 is -- it is software that permits extensive editing and
18 brings about great efficiency and essentially turns
19 computer documents into a database and allows a computer
20 to understand what it's reading. And that's a very
21 significant step forward.

22 Anyone at this time or in the past, as part of your
23 employment, been involved in document creation? Sure,
24 you have. It can be as simple as a lengthy letter; it
25 could be a scientific report, for example; it could be

1 legal or financial documents; or it could be a patent.

2 So let me ask the question again. Any of
3 you been involved at present -- or are involved at the
4 present time, or have been in the past, in creating
5 documents, computer documents?

6 I thought so.

7 And are you aware or not of whether
8 you're using XML technology in the creation?

9 Have you found it to be a lot easier than
10 it was a number of years ago?

11 All right. So since this is a patent
12 case, I think it's appropriate to address attitudes
13 about patents for just a minute.

14 Now, I think people's attitudes about
15 patents can fall in, basically, two camps.

16 Camp No. 1 are people who think patents
17 are a good thing. Patents encourage innovation, and
18 innovation is certainly necessary for us to maintain a
19 competitive position in the world market today.

20 And patents protect intellectual
21 property. Without such protection, a lot of research
22 and development simply would not be conducted because
23 you couldn't justify the expenditure of money.

24 That's Camp No. 1, pro-patent.

25 Camp No. 2: Patents should not be

1 protected either by the Constitution or the laws passed
2 by Congress. Instead of protecting patents, we should
3 have unlimited competition.

4 Let me give you just a made-up example.
5 Let's say there's a man by the name of Hoover who had a
6 little shop or who worked in his basement. When he did
7 this, there weren't enough cars for people to have
8 garages.

9 And he designed and he experimented and
10 he worked for some period of time, and he invented the
11 machine that he called a vacuum cleaner. And he took
12 his drawings, and he took his description of it to the
13 Patent Office, and he got a patent, the Hoover vacuum
14 cleaner.

15 Now, those in Camp No. 1 would say that's
16 a good thing, and Mr. Hoover ought to be the one who
17 benefits from that patent, and he ought to be the one to
18 sell the Hoover vacuum cleaners, and he should be able
19 to either prevent someone else from selling the Hoover
20 vacuum cleaner, or he should be permitted to get a
21 royalty from them if they want to take a license for the
22 Hoover vacuum cleaner.

23 Camp No. 2 would say, anybody ought to be
24 able to make a Hoover vacuum cleaner as long as they can
25 put it together and sell it. Why should -- why should

1 the guy who has a patent have all the benefit from it?

2 Mr. Stephenson, which camp do you fall in?

3 JUROR STEPHENSON: Whoever has the
4 patent.

5 MR. PARKER: You think patents deserve to
6 be protected?

7 JUROR STEPHENSON: Yes, sir.

8 MR. PARKER: Okay. Who agrees with
9 Mr. Stephenson?

10 Pretty agreeable group today.

11 Anybody disagree a little bit, have a
12 little question about it?

13 Mr. Capt, do you deal with patented
14 products a lot?

15 JUROR CAPT: Yes, sir, I do -- we do.

16 MR. PARKER: Do you think they deserve
17 protection?

18 JUROR CAPT: I believe they deserve
19 protection, but my mind, too, if somebody can take an
20 idea and improve it, then he deserves a patent.

21 MR. PARKER: That's a different question.

22 JUROR CAPT: A different question. Okay.

23 MR. PARKER: The product that the patent
24 itself addresses, you think should be protected?

25 JUROR CAPT: Yes, the original patent.

1 MR. PARKER: You've worked for companies
2 that had patents or do now?

3 JUROR CAPT: I used to. I used to work
4 for Halliburton.

5 MR. PARKER: And do they -- Halliburton
6 is pretty aggressive about protecting their patents and
7 intellectual property; is that right?

8 JUROR CAPT: That is correct.

9 MR. PARKER: Thank you.

10 I noticed -- I haven't had time to read
11 all the questionnaires yet, but there was a question
12 there about inventions, and I think we got no
13 indications that anybody had gotten a patent; is that
14 correct? Am I correct about that?

15 But have you ever had an idea, though,
16 that you thought, well, maybe that could be an
17 invention, regardless of what you did with it?

18 Did any of you, either privately or at
19 work, come up with an idea that you thought in your own
20 mind, you know, this might -- this really might be an
21 invention; maybe I could get a patent on it?

22 Well, let's start with Ms. Greer, No. 1.
23 What was that idea?

24 JUROR GREER: Well, my husband does a lot
25 of part-time woodworking things as a hobby and as a

1 business as well, but that's not his employment. And
2 occasionally when he's doing something, I thought, well,
3 someone ought to make a tool to do this or do that.
4 So I'm always giving him ideas relating to that. I
5 said, you know, you ought to patent that; you ought to
6 invent that tool.

7 MR. PARKER: You're the one that's the
8 patent-encourager.

9 JUROR GREER: I am the encourager,
10 definitely.

11 MR. PARKER: Thank you.

12 I saw another hand on the front row.

13 JUROR HUSBAND: I'm always thinking of
14 ways to make baking easier or cooking, and so just, you
15 know, little ideas pop in my head about ways to measure
16 things out easier for me, but it never gets very far.

17 MR. PARKER: You enjoy cooking?

18 JUROR HUSBAND: Yes.

19 MR. PARKER: Okay. But you haven't
20 followed up with any of those ideas?

21 JUROR HUSBAND: No. No. It seems really
22 difficult.

23 MR. PARKER: It is. Very difficult.

24 Anyone else on the front row?

25 Second row?

1 Yes, sir. Mr. Barnett?

2 JUROR BARNETT: Yes, sir. Pretty much
3 the same thing. Just little ideas, but by the time I
4 really get around to it, somebody else has already got
5 it in the works.

6 MR. PARKER: Plumbing ideas?

7 JUROR BARNETT: Yes, sir.

8 MR. PARKER: But none far enough that
9 you've pursued them and tried to actually get a patent?

10 JUROR BARNETT: No, sir.

11 MR. PARKER: Okay. What about over here?

12 Did I see a hand over here?

13 Okay. Thank you.

14 Well, if you haven't done it, has
15 somebody in your family or have you known somebody that
16 pursued it and got a patent or tried to get a patent and
17 maybe got rejected?

18 Yes, sir. Mr. Watts?

19 JUROR WATTS: Yes, sir. It was my
20 father-in-law. He passed away in 1976 before I actually
21 got to know him, but his name was Nelson Frazier James,
22 and he had a patent on the coin-operated machine. He
23 was working on the dollar bill exchanger.

24 MR. PARKER: He followed through with it
25 and actually got the patent?

1 JUROR WATTS: Yes, sir. There was a
2 friend of his named with the Disney theme parks, and he
3 was wanting something that people could put, you know,
4 money in and get things, you know, maybe film or light
5 bulbs, flash bulbs, I think.

6 MR. PARKER: You said the Disney that was
7 involved in the theme parks?

8 JUROR WATTS: Yes, sir.

9 MR. PARKER: Okay.

10 JUROR WATTS: But as far as rubbing
11 elbows and knowing a whole lot about it, he passed away
12 before I even got to know him, but yes, sir.

13 MR. PARKER: Thank you. Thank you very
14 much.

15 Anyone else have an answer to that
16 question?

17 Well, let's start on the end with
18 Mr. Capt.

19 THE COURT: Let me interrupt you just a
20 second, Mr. Parker.

21 Let me ask the jurors, if you would, when
22 you speak, if you wouldn't mind standing, and the court
23 security officer will give you a microphone. The court
24 reporter is having a little difficulty hearing some of
25 you, so if we could.

1 JUROR CAPT: Yes. I work with some guys
2 that had some patents and applied for them and pursued
3 it and got them. In fact, I work with one guy with EOG,
4 who has five patents filed with Halliburton.

5 MR. PARKER: All right. Coworker?

6 JUROR CAPT: Coworker, yes.

7 MR. PARKER: Okay. Who else --

8 JUROR CAPT: Nobody -- nobody in my
9 family.

10 MR. PARKER: All right. Who else on the
11 row?

12 Yes, sir. Mr. Newland?

13 JUROR NEWLAND: Our pastor, and my wife
14 kind of helped him a little bit, he was making puppets,
15 children's puppets and stuff, and he made it all the way
16 to New York before he got rejected and everything.

17 MR. PARKER: Put in a lot of effort.

18 JUROR NEWLAND: That was years ago.

19 MR. PARKER: Okay.

20 JUROR NEWLAND: Been a long time ago.

21 MR. PARKER: Thank you, sir.

22 Anyone else?

23 Yes, ma'am.

24 JUROR LAMBERT: I used to work for a man
25 in Dallas. His name was Johnny Mirnhoff (phonetics),

1 and he was a Mensa on top of that, he was so
2 intelligent. But he and another friend were forever
3 sending in patents. And I just turned my head. I
4 didn't want to see.

5 MR. PARKER: Do you know how many he
6 actually got approved?

7 JUROR LAMBERT: Pages.

8 MR. PARKER: Good.

9 JUROR LAMBERT: I know the one thing that
10 he made most of his money on was, you know, the signs
11 that stick on the side of the cars, the advertising. He
12 has that patent.

13 MR. PARKER: All right. Thank you
14 very --

15 JUROR LAMBERT: Yes. They have a lot.

16 MR. PARKER: Thank you very much.

17 I know some of you have worked for
18 companies that have patents. Have any of you been
19 involved with your employment, present or past, where
20 you helped develop a product that had been invented by
21 someone at the company that they hoped to get a patent
22 on it? Anybody been involved in product development?

23 Mr. Capt, this is your day.

24 JUROR CAPT: I'm telling you. Again,
25 with Halliburton, we designed a new bridge fluent, and I

1 worked for the engineers up at Duncan to help improve
2 the system. But they received the patent for it, but it
3 helped running wells and stuff like that to improve
4 stability.

5 MR. PARKER: All right. Thank you, sir.

6 There was a question on the questionnaire
7 about people maybe having lawsuits or being involved in
8 lawsuits, and if I detected correctly on a quick
9 go-through, Mr. Stephenson, you are the only one that
10 said you had had a lawsuit or legal experience. Have
11 you had legal experience?

12 JUROR STEPHENSON: My wife worked for an
13 attorney here in town for a while.

14 MR. PARKER: Okay. Who was that?

15 JUROR STEPHENSON: Blake Bailey.

16 MR. PARKER: Okay. Doesn't at the
17 present time?

18 JUROR STEPHENSON: No, sir.

19 MR. PARKER: Okay. Thank you, sir.

20 JUROR CAPT: I apologize.

21 MR. PARKER: Mr. Capt? Like I say, in
22 every jury panel, there's one.

23 JUROR CAPT: I'm sorry.

24 MR. PARKER: You filed a lawsuit?

25 JUROR CAPT: No. I have not filed a

1 lawsuit, but I am involved in a lawsuit right now.

2 MR. PARKER: At the present time?

3 JUROR CAPT: At the present time. It's
4 an injury lawsuit.

5 MR. PARKER: Okay. Are you on the
6 Plaintiff's side or Defendant's side?

7 JUROR CAPT: Defendant's side.

8 MR. PARKER: All right. Well, you
9 understand, I represent the Plaintiff in this case.

10 JUROR CAPT: That's correct.

11 MR. PARKER: And these gentlemen and lady
12 represent the Defendant, because you're -- are you
13 personally a defendant, or are you just involved in the
14 case?

15 JUROR CAPT: I'm representing my company.

16 MR. PARKER: Okay.

17 JUROR CAPT: So I'm not personally
18 involved.

19 MR. PARKER: Okay. The fact that you're
20 a defendant and we're suing a defendant here, does that
21 put me at a little disadvantage or i4i at a little
22 disadvantage?

23 JUROR CAPT: No, it does not.

24 MR. PARKER: You can set that aside and
25 call the shots here just like you see them?

1 JUROR CAPT: That's correct.

2 MR. PARKER: Thank you.

3 Anybody been a witness in a case?

4 Okay.

5 THE COURT: Juror No. 7.

6 MR. PARKER: Oh, I'm sorry.

7 THE COURT: Mr. Garrison.

8 MR. PARKER: Yes, sir. What kind of
9 case, Mr. Garrison?

10 JUROR GARRISON: It was a case involving
11 an insurance claim many years ago.

12 MR. PARKER: Okay. That's when you
13 worked in the insurance industry?

14 JUROR GARRISON: Yes, sir.

15 MR. PARKER: What kind of job did you
16 have in the insurance industry?

17 JUROR GARRISON: Oh, various ones. Most
18 of my experience was personalized underwriting, but I
19 was -- went into commercial a little bit. The
20 particular claim involved an automobile loss.

21 MR. PARKER: Anything about that
22 experience that would affect your ability to be
23 completely fair and impartial in this case?

24 JUROR GARRISON: No, sir.

25 MR. PARKER: Thank you.

1 Let me move to a little more
2 controversial subject. That is, have any of you been
3 involved in an effort to influence what the legislature
4 does.

5 For example, there are organizations that
6 specifically target lawsuits, and there are a number of
7 them -- nothing wrong with it -- but -- but they
8 typically have the word abuse somehow in their name.

9 Have any of you, lawsuit abuse of some
10 type -- are any of you a member of any organizations
11 like that?

12 Have you contributed to any organization
13 like that, or do you receive their literature?

14 Anyone? On this row?

15 Thank you.

16 THE COURT: You have about five minutes
17 left.

18 MR. PARKER: Thank you, Your Honor.

19 Well, let's talk quickly about attitudes
20 about lawsuits.

21 Three camps: Lawsuits ought to be done
22 away with or at least severely restricted; another camp
23 is, well, in a civilized society, lawsuits are a good
24 way to resolve disputes; and then the third camp says,
25 well, some are okay and some are not okay.

1 How many are in Camp No. 1, do away with
2 them -- yes, sir, thank you.

3 Do away with them or severely restrict
4 them?

5 Camp No. 2, pretty much no limitation on
6 it?

7 Okay. Yes, sir, thank you.

8 That surprised me a little bit with your
9 insurance background.

10 Camp No. 3, well, you have to look at it
11 on a case-per-case basis? Some are meritorious; some
12 aren't?

13 All right. Thank you very much.

14 Anybody had a dispute with a governmental
15 agency, other than the IRS? Let's take them out of the
16 mix.

17 Had a dispute with a government agency
18 that might make you just not like the one involved in
19 this case, which is the Patent & Trademark Office?
20 Anybody fall in that category?

21 Okay. Have any of you been polled or
22 participated in a sample, opinion sample? They are
23 extensively used. You see it on television all the time
24 in the political context. Do you favor Candidate A or
25 B? Do you like Wheaties or Cheerios? If gas goes to

1 \$3, will you consider buying a hybrid car?

2 Anybody participated or been polled or
3 participated in a sample like that?

4 Yes, ma'am, Ms. Greer?

5 JUROR GREER: Well, I don't know if this
6 is exactly what you mean or not, but I'm thinking like
7 online polls, like CNN -- CNN polls online; is that what
8 you mean?

9 MR. PARKER: Yes.

10 JUROR GREER: Right, I do that.

11 MR. PARKER: Okay. I've got one other
12 important topic to mention and that's -- it's a legal
13 term that we call burden of proof.

14 We filed this case; we have the burden of
15 proving this case. And the burden we have is proof by a
16 preponderance of the evidence. That means we have to
17 tilt the scale a little bit one way, more likely than
18 not true, more probable than not true.

19 Microsoft has asserted a defense that
20 says, well, the Patent Office shouldn't have granted
21 this patent. The Patent Office made a mistake. The
22 Patent Office got it wrong. This patent should be
23 declared invalid.

24 But the burden Microsoft has on that
25 defense is proof by clear and convincing evidence. It's

1 a much higher burden than exists where preponderance of
2 the evidence is required.

3 Now, if you look at, say, a ruler,
4 preponderance of the evidence would get you the 6 inches
5 and maybe just a notch past. But clear and convincing,
6 you have to go far down the line pretty close to the
7 other end.

8 Does anybody think that's basically
9 unfair, that Microsoft has a more difficult burden in
10 this case than the Plaintiff has?

11 Can you follow -- if the Court gives you
12 that instruction, can you apply that in this case, that
13 burden?

14 I take it by your silence that you can.

15 One -- one last thing is I told you if we
16 persuade you that we've proved our case, we will ask you
17 to award damages in the form of a reasonable royalty.

18 Most of you are familiar with royalties
19 in the oil and gas context, where there's a percentage
20 of royalty for oil produced.

21 In the context of a case like this, it's
22 usually X amount of money per unit sold. It's going to
23 be entirely in your discretion.

24 Can you all consider awarding a
25 reasonable royalty, an amount you think to be

1 reasonable, based on the evidence you hear, if Plaintiff
2 persuades you that Microsoft has infringed in this case?

3 Anybody feel like they can't do that?

4 I appreciate very much your attention and
5 your patience. Thank you very much.

6 THE COURT: All right. Thank you,
7 Mr. Parker.

8 All right. Mr. Powers, the Court will
9 recognize you for purposes of voir dire on behalf of
10 Microsoft.

11 MR. POWERS: Thank you, Your Honor.

12 Well, good morning again.

13 The problem of going second is that most
14 of the good questions have already been taken. I do
15 have a few questions that come from Microsoft's
16 perspective.

17 And one of the -- one of the things
18 people often say about voir dire is that it's about
19 trying to find people who are fair. I never thought of
20 it that way. I think everybody is pretty much fair.
21 I think the question is what -- whether there's a good
22 fit between each person and a particular case. And I'll
23 give you a good example.

24 My wife is just crazy about dogs. She
25 would rescue any dog from anyplace. That's why we have

1 four. And she's a very fair person. But if there were
2 a case where someone was mistreating a dog, she would be
3 probably not the right person for that jury.

4 And that's what we're trying find out
5 here. I think everybody's fair, but sometimes people
6 have particular feelings that might not make them right
7 for that case. So then the question is, what -- what
8 really are the issues about this case that might hit
9 somebody's particular interests or particular concerns?

10 And one of them is a question about how
11 people feel about big companies. There's a lot of big
12 companies that have gotten some pretty bad press in the
13 last few years, often for very good reasons.

14 And sometimes that makes people feel just
15 big companies are going to do bad things. And if
16 somebody had that feeling, they wouldn't be the right
17 person for this case, because Microsoft is a big
18 company.

19 If you were me representing Microsoft,
20 you would want to know that, I think, about your jurors.
21 So let me ask that: Either as a result of interactions
22 you've had with big companies, working for a big
23 company, somebody maybe being laid off from a big
24 company, whatever it is -- it's not, again, right or
25 wrong. It's just a question of how you feel.

1 Does anybody in the first row here have
2 any feelings, strong feelings one way or the other about
3 big companies that they're really good, really bad, in
4 the middle? What would you say?

5 No feelings either way?

6 MR. PARKER: May I retrieve my watch?

7 MR. POWERS: You bet. I was going to use
8 it.

9 How about the second row; any feelings
10 about big companies one way or the other?

11 Has anybody had a relative or a friend or
12 family member laid off from a big company? Anybody in
13 the entire group?

14 Yes, sir, Mr. Newland?

15 JUROR NEWLAND: I went through a plant
16 closure out here with Goodyear.

17 MR. POWERS: A lot of that going on.

18 JUROR NEWLAND: But, you know, it did not
19 affect me. I spent a good 33 years out there. I raised
20 a family, you know, and I got an early retirement and
21 stuff, so, you know, I don't have no grudge or no, you
22 know, for them, you know. Everything's still okay with
23 them.

24 MR. POWERS: All right. Thank you.
25 You felt they handled it okay?

1 JUROR NEWLAND: Yes.

2 MR. POWERS: Anybody else had any
3 experience like that with a big company?

4 Okay. Same question about Microsoft.
5 Sometimes when your software doesn't work, you want to
6 throw the computer through the window. I think we've
7 all felt that about computers one time or another.

8 Has anybody, because of their work with
9 Microsoft, have any feelings at all about the company?

10 First row?

11 Second row?

12 Third row over here?

13 How about computers in general? People
14 feel -- some people love them, use them every day, and
15 others just hate them. My mom is a good example of
16 that. She hated them, and for that reason, she probably
17 wouldn't be a real good fit for this jury either,
18 because she just hates the whole concept of them.

19 Anybody over here that has any strong
20 feelings one way or the other either love them, hate
21 them, take them or leave them?

22 How about the first row here?

23 Second?

24 Yes, ma'am, Ms. Lambert?

25 JUROR LAMBERT: When I worked with them,

1 I loved them. I'm retired. I don't want to touch them.

2 We don't own one. We don't want one in our house.

3 MR. POWERS: I think everybody

4 understands that one.

5 Yes, sir, Mr. Griffith?

6 JUROR GRIFFITH: I can take them or leave

7 them either way.

8 MR. POWERS: No strong feelings one way

9 or the other?

10 JUROR GRIFFITH: No.

11 MR. POWERS: Now, one question that comes

12 up a lot in these cases -- and Mr. Parker touched on

13 it -- is a question about patents. He said there's two

14 camps: They're either all good or they're all bad.

15 Well, I have a third camp. Because they are like

16 anything else. They can be used for good or used for

17 bad.

18 Does anybody here feel that they are sort

19 of in that camp as well, that a patent can be used for

20 good and protecting something that's real and valuable,

21 or, like anything else, it can be used in an

22 inappropriate way?

23 Does anybody feel that way over here on

24 the front row?

25 Yes, ma'am, Ms. Cook?

1 JUROR COOK: I just think that anything
2 can be that way. Sometimes it can be good and sometimes
3 it can be bad. Depends on how it's used or how it's
4 involved.

5 MR. POWERS: Anybody here in the first
6 row feel the same way as Ms. Cook?

7 How about the second row; anybody feel
8 that patents, like anything else, can be a good thing
9 used well or something that could be misused?

10 Anybody else?

11 A JUROR: Could you give us an example
12 of, you know, misuse?

13 MR. POWERS: Yes, sir.

14 It sort of comes with the same question
15 that Mr. Parker asked about litigation, that there's
16 three camps in litigation. It can be good litigation or
17 bad litigation or you just have to see on a case-by-case
18 basis. I think it's a similar point.

19 So an example might be that somebody has
20 a patent that they're using not to protect a valuable
21 product but someone's copying, but because they are
22 attacking somebody because they just want to try to get
23 money out of them.

24 So it fits, for example, with the
25 litigation question Mr. Parker asked. So if somebody

1 felt that -- let's take this case for an example.

2 If somebody felt that the patents were being used in a
3 wrong way, not to protect a valuable product but a wrong
4 way, could you find that patent invalid or non-
5 infringed?

6 How about in the first row, if that's the
7 conclusion you came to?

8 Mr. Ratcliff, could you do that?

9 JUROR RATCLIFF: (No audible response.)

10 MR. POWERS: Mr. Reese, how about you?

11 THE COURT: Counsel, if you would
12 approach, please.

13 (Bench conference.)

14 THE COURT: I understand that you just
15 told the jury if somebody was using the patent not to
16 compete, that that was the wrong way to use the patent?

17 MR. POWERS: No, not to compete; just to
18 get money, not to protect anything. That's what I
19 asked.

20 THE COURT: What about protecting the
21 patent?

22 MR. POWERS: I'll ask it that way again.

23 THE COURT: I just -- you know, I think
24 you're sort of misstating the law, and I don't want to
25 embarrass you in front of the jury. But I would

1 appreciate it if you would clean that up.

2 MR. POWERS: I appreciate that. I will
3 do that.

4 THE COURT: Thank you.

5 MR. POWERS: Thank you.

6 (End of bench conference.)

7 MR. POWERS: How about over here in the
8 front row, if you felt that the patent is being used not
9 to protect the patent but as a weapon inappropriately,
10 if that's the conclusion you came to?

11 Yes, Ms. Jordan?

12 JUROR HUSBAND: Husband.

13 MR. POWERS: Husband. I'm sorry.

14 JUROR HUSBAND: I'm sure with anything,
15 if I felt that misuse was occurring, I could look at it
16 both ways.

17 MR. POWERS: So case-by-case?

18 JUROR HUSBAND: Yes.

19 MR. POWERS: How about on the back row;
20 anybody feel the same way as Ms. Husband?

21 So I guess one question about Word.

22 Several of you have said that you use Word 2003 or 2007.

23 Has anybody been using Word for longer than 2003; in
24 other words, before the 2003 version came out?

25 So, Mr. Capt, how far back have you been

1 using Word?

2 JUROR CAPT: That's a good question. Of
3 course, in the '90s, we used that at Halliburton. I'm
4 not a computer expert either, but, yeah, we would use
5 it. I had a little -- I used it from time to time, but
6 I had to get help from the secretary, too.

7 MR. POWERS: Understood.

8 Mr. Garrison, I think you raised your
9 hand.

10 JUROR GARRISON: Yes, sir.

11 First, to me, a computer is a glorified
12 typewriter, and I really don't know when I've used Word
13 and when I have not. But I do know that I have used it
14 over the years.

15 MR. POWERS: Anyone on the back row been
16 using Word for longer?

17 Yes, Ms. Lambert?

18 JUROR LAMBERT: Well, I retired in '02,
19 so everything -- you would have to go back and back up,
20 but I was customer service at Aetna Insurance for
21 several years. So, yeah, I might have went back into
22 the '90s.

23 MR. POWERS: Now, based on everything
24 that everybody has heard, is there anybody that would
25 say, I really, really want to sit on this jury?

1 Anybody in the first row?

2 We won't take it personally.

3 Anybody on the second row?

4 Anybody on the third row?

5 JUROR WATTS: It does sound interesting.

6 MR. POWERS: Well, it's our job to make
7 it clear and interesting, so, hopefully, we appreciate
8 that. Not many people can say that.

9 How about people who don't want to sit on
10 this jury, either because it's technical or something
11 else? Does anybody feel that this is not a jury they'd
12 like to sit on?

13 Anybody here in the third row?

14 Yes, sir, Mr. Reese?

15 JUROR REESE: Well, the only reason I
16 don't want to sit on it is because I've got a fishing
17 trip planned all weekend. It's already prepaid and
18 everything, so I will be losing that money, if I was on
19 the jury.

20 MR. POWERS: That's understandable.

21 Anybody over here in the first row
22 decide, I'm happy to serve, but this just isn't the one
23 for me?

24 How about the second row?

25 Mr. Barnett?

1 JUROR BARNETT: I just feel like
2 everybody is going to stay way over my head through the
3 whole process.

4 MR. POWERS: It's our job not to do that,
5 but I appreciate the comment.

6 Any other -- any other people feel that
7 way?

8 One last question -- I'm sorry --
9 Mr. Griffith?

10 JUROR GRIFFITH: I feel the same way as
11 the gentleman to the right of me feels.

12 MR. POWERS: Thank you.

13 THE COURT: Excuse me.

14 JUROR LAMBERT: I do, too.

15 THE COURT: Excuse me. Several of you
16 just feel like it would be over your head?

17 All right. Well, let me tell you that I
18 think it's over my head sometimes, too. But I will
19 instruct the jury panel that while this sounds
20 complicated, as Mr. Powers so well put it, it's the
21 lawyers' job to make it simple.

22 And there's going to be a lot of
23 education going on during this. And so don't -- don't
24 feel underqualified. As long as you're an honest juror
25 and you'll listen to the evidence and you'll do your

1 very best, we're not -- you don't have to be a rocket
2 scientist to be on a jury. You just have to be fair,
3 okay?

4 All right. Mr. Powers, you may proceed.

5 MR. POWERS: Thank you, Your Honor.

6 The last topic I'd like to talk about is
7 this question of validity that Mr. Parker raised. And
8 he talked about the Patent Office and Microsoft is
9 arguing that the patent is invalid. And that's true; we
10 are.

11 But we're also arguing that we don't use
12 their technology. We use technology that we've been
13 developing for years. But I want to talk about the
14 patent validity issue, because this is another one where
15 I think my mom would have had a problem.

16 THE COURT: Mr. Powers, your time is
17 about expired.

18 MR. POWERS: Thank you, Your Honor.

19 THE COURT: In fact, you're several
20 minutes over. If I -- excuse me -- no, I apologize. I
21 was looking at the wrong number. You have about 17
22 minutes.

23 [Laughter.]

24 THE COURT: I want y'all to know that's
25 the type of thing that a judge says that a lawyer can

1 just die of a heart attack.

2 You've got a lot more questions. With my
3 apologies, proceed.

4 MR. POWERS: I thought that clock had
5 stopped.

6 THE COURT: Proceed.

7 MR. POWERS: On the question of validity,
8 we are arguing that this patent is invalid, but we're
9 doing it based on information that the Patent Office
10 didn't have. That's not anybody's fault. We're not
11 saying that's anybody's fault.

12 We're just saying the Patent Office
13 didn't have the information that you will have. And one
14 of the things that Judge Davis will be instructing you
15 on at the end of the case is that's how our system
16 works.

17 The Patent Office gets whatever
18 information it gets and issues a patent based on the
19 information that it has.

20 And we're not saying the Patent Office
21 made a mistake based on the information it had. We're
22 saying it didn't have all the information. And you will
23 have information that the Patent Office -- we think,
24 important information -- that the Patent Office didn't
25 have.

1 And what we're asking -- and this is a
2 hard thing to ask -- what we're asking is, will you give
3 that information a fresh look? Not saying, well, oh,
4 my, this stuff is technical. The Patent Office is out
5 there in Washington; they're experts. Who am I to
6 disagree with them?

7 If they didn't have the information,
8 could you give this a fresh look and decide for
9 yourselves whether that patent is valid?

10 Could you do that, Ms. Husband?

11 JUROR HUSBAND: Yeah.

12 MR. POWERS: Ms. Lambert, can you do
13 that?

14 JUROR LAMBERT: You're getting over my
15 head. That's just what I say. Hey, I thought the
16 Patent Office was supposed to have all this stuff. I
17 thought it was all supposed to be sent in.

18 MR. POWERS: That's a common belief.

19 JUROR LAMBERT: That's my understanding
20 here.

21 MR. POWERS: That's a common belief, but
22 actually on the front page of the patent -- the good
23 news is you don't have to guess about this. On the
24 front page of the patent, as you will see, it lists
25 everything that the Patent Examiner looked at to decide.

1 JUROR LAMBERT: On our paper, it
2 showed that --

3 MR. POWERS: Exactly. So you will know
4 exactly what that Patent Examiner looked at when he was
5 deciding to issue this patent. And none of the
6 information that we're presenting to you was on that
7 list.

8 So if we show you that, will you give it
9 a fresh look?

10 JUROR LAMBERT: See, you're not -- you're
11 not saying what I want you to hear -- what I want to
12 hear.

13 If all of that information is on there
14 and it's labeled, this date was there, and you're saying
15 they didn't have it?

16 MR. POWERS: Exactly. I'm saying the
17 information --

18 JUROR LAMBERT: I thought they sent their
19 stuff in.

20 MR. POWERS: I'm saying the information
21 we're giving to you isn't listed there.

22 JUROR LAMBERT: And why would that be?

23 MR. POWERS: They didn't have it.

24 JUROR LAMBERT: There we go again. I'm
25 wondering -- I was of the understanding that everything

1 that's sent in is supposed to be on this paperwork that
2 that little date is on there. And you're saying they
3 didn't have it.

4 MR. POWERS: You're right. That
5 everything that's sent in and everything that is before
6 that Examiner is listed on that paperwork. You're
7 absolutely right of that.

8 The place where I think we're a little
9 different is the question of what's sent in, what the
10 Examiner finds on his own; that's not everything. The
11 Examiner finds what he finds. The Examiner gets what he
12 gets, and he lists it. So you know exactly what he
13 considered and what he didn't.

14 And we're going to give you the list of
15 what he considered and a list of what we ask you to
16 consider. And then nothing on our list is going to be
17 on his list, so he didn't have it.

18 Will you be able to take that and decide
19 the case fresh?

20 JUROR LAMBERT: I'm going to have to
21 think about that one.

22 MR. POWERS: Fair enough.

23 How about anybody else? Anybody else
24 have a problem with that?

25 Mr. Capt, can you do that?

1 JUROR CAPT: Yes, I can do it.

2 MR. POWERS: Ms. Greer, could you do
3 that?

4 JUROR GREER: Sure.

5 MR. POWERS: Thank you very much. I
6 appreciate your attention and time and will look forward
7 to presenting the case to you from Microsoft.

8 THE COURT: You've still got another 10
9 minutes if you want it.

10 MR. POWERS: Mr. Parker asked all my
11 questions.

12 THE COURT: All right. Thank you,
13 Mr. Powers.

14 You don't want to give him your 10
15 minutes, do you?

16 MR. POWERS: He already took them.

17 THE COURT: All right. Let me see the
18 attorneys at the bench here just a moment, please.

19 (Bench conference.)

20 THE COURT: All right. Is there anybody
21 that either side is going to want to challenge for
22 cause?

23 MR. PARKER: No one for cause. I don't
24 have any challenges for cause. The Court may want to
25 talk to that guy that's paying for --

1 THE COURT: I want to tell you, too,
2 there's Juror No. 7 refused to wear a coat and tie when
3 the court security officers asked him about that.

4 MR. POWERS: I wondered about that.

5 THE COURT: I'm going to visit with him a
6 little bit about that, but I wanted you to be aware of
7 that.

8 MR. POWERS: Did he say why?

9 THE COURT: Said he signed something one
10 time and said he wasn't ever going to wear one again.

11 MR. POWERS: I'd like to know. I think
12 we probably both would like to know more about that.

13 MR. PARKER: Do you want to agree just to
14 excuse him?

15 MR. POWERS: I think we can just excuse
16 him.

17 MR. PARKER: We will just agree to excuse
18 him. We don't need a nut. I don't know how -- I don't
19 know how he's going to cut.

20 THE COURT: All right. He's No. 7.

21 (End of bench conference.)

22 THE COURT: All right. Ladies and
23 Gentlemen of the Jury, what we're going to do now -- and
24 I have just a couple of more questions for you, and then
25 I'm going to give you a short break.

1 Let me just ask you this question: In
2 the trial of a case, you, the jury, are the sole judges
3 of the facts of the case. So you're going to decide the
4 facts, and that's what you're going to base your verdict
5 on. That's your responsibility.

6 My responsibility, as the Judge, is to
7 give you instructions on what the law is, which I will
8 do periodically during the case. And my question to you
9 is, is there anyone on the jury panel that has a problem
10 with that role?

11 In other words, some people maybe feel
12 like, well, if I don't like that law that I hear, I'm
13 not going to follow it, or I'm not going to -- going to
14 consider it.

15 So is there anyone on the jury panel that
16 would have a problem applying the law as the Court gives
17 it to you in the instructions?

18 And it can be for personal reasons or
19 philosophical reasons or whatever. But with what you
20 know about the case now, is there anyone on the jury
21 panel that would have a problem doing that?

22 Okay. Very good.

23 All right. Is there any other reason
24 that suggests itself to you that you would not be a
25 fair-minded juror capable of sitting on this case?

1 If there is, now's the time to raise your
2 hand.

3 All right. Very well.

4 Now, what we're going to do, we're going
5 to take a short break now. I am going to recess you for
6 25 minutes, until 10 minutes after 12:00 -- excuse me;
7 I'm having trouble reading my clock today -- 10 minutes
8 after 11:00.

9 And what we're going to do, when you come
10 back in, you can just have a seat out there in the front
11 two or three rows on this side (indicating). You don't
12 have to be in any particular order, and at that time,
13 we'll call the list of the eight jurors who are
14 selected.

15 I would like for two jurors,
16 Mr. Garrison, Juror No. 7, and Mr. Reese, Juror No. 15,
17 to remain behind, and let me ask you a couple of
18 questions.

19 And I believe that's all. So you're
20 excused other than --

21 COURT SECURITY OFFICER: All rise for the
22 jury.

23 THE COURT: -- Mr. Garrison and
24 Mr. Reese.

25 Please remember my instructions not to

1 discuss the case among yourselves.

2 (Jury panel out.)

3 THE COURT: All right. Please be seated.

4 All right. Mr. Reese, let me begin with
5 you, if I could. Let me just ask you where you are
6 going fishing.

7 JUROR REESE: Toledo Bend.

8 THE COURT: Toledo Bend?

9 JUROR REESE: Yes, sir.

10 THE COURT: Okay. And when are you
11 leaving and when are you returning?

12 JUROR REESE: We leave Thursday morning
13 and come back Sunday night.

14 THE COURT: Okay. All right. And you
15 say this is prepaid. What do you mean by that? Do you
16 have guides or --

17 JUROR REESE: No, it's a tournament.
18 It's an API tournament.

19 THE COURT: Okay. All right. And you're
20 bass fishing?

21 JUROR REESE: Yes, sir.

22 THE COURT: All right. Good luck.

23 You're excused to the hallway, and we
24 will get back with you in a little bit.

25 JUROR REESE: Thank you.

1 THE COURT: Okay. Thank you.

2 (Juror Reese exits the courtroom.)

3 THE COURT: All right. Mr. Garrison, I
4 understand from the court security officer that you had
5 a problem with wearing a coat and tie to Court.

6 Is that correct, sir?

7 JUROR GARRISON: Well, the coats
8 downstairs I could put one on each arm and wear them.
9 There's just no way I could get one on.

10 As far as that goes, I did swear an oath
11 when I was retired or fired from the insurance company
12 that I would never put a tie on again.

13 THE COURT: Well, I'd like to swear that
14 oath, too. But we have a process in Court where a lot
15 of us probably wouldn't like to have on ties, but we
16 wear them.

17 Let me ask you: If you were called to
18 serve, would you be willing to wear a tie and a coat?

19 You can bring your own.

20 JUROR GARRISON: I wouldn't have any
21 problem with a coat. I would have to check into a tie.
22 I think I've got a tie.

23 THE COURT: Okay. All right. All right.
24 Thank you, sir. You're excused to the hallway.

25 (Juror Garrison exits the courtroom.)

1 THE COURT: All right. Just for the
2 record, by agreement of counsel, Juror No. 7,
3 Mr. Garrison, and Mr. Reese, No. 15, are going to be
4 excused for cause.

5 Are there any other challenges for cause?

6 MR. PARKER: Not from the Plaintiff, Your
7 Honor.

8 MR. POWERS: Nor from the Defendant.

9 THE COURT: All right. Let's see then.
10 We have 21 jurors. We've excused 2; that leaves us with
11 19. We need 8. That leaves 11.

12 So you're each going to get five strikes,
13 and we will have -- we won't -- and that will take us
14 through Juror No. 20 on the list. So you have five
15 peremptory challenges.

16 And if you would get those back in to
17 Ms. Ferguson just as soon as possible so she can get the
18 list made up. We'll will be in recess until 11:10.

19 COURT SECURITY OFFICER: All rise.

20 (Recess.)

21 COURT SECURITY OFFICER: All rise.

22 (Jury panel in.)

23 THE COURT: Please be seated.

24 All right, Ladies and Gentlemen of the
25 Panel. Ms. Ferguson is going to call the names of those

1 eight selected, and if your name is called, if you would
2 please come forward, and the court security officer will
3 show you where to sit.

4 Ms. Ferguson?

5 COURTROOM DEPUTY: Yes, Your Honor.

6 Juror No. 1, Barbara Greer; Juror No. 2, Jack Cawthon;
7 Juror No. 3, Jill Loyd; Juror No. 4, Robert Newland;
8 Juror No. 5, Richard Griffith; Juror No. 6, Betty Cook;
9 Juror No. 7, Elvin Jordan; and Juror No. 8, Jarett
10 Stevenson.

11 THE COURT: All right. Very well.

12 At this time, I'm going to excuse those
13 members of the panel that were not selected with the
14 Court's regrets that you were not able to serve on this
15 jury.

16 You're welcome to stay and listen as
17 spectators, if you would like to, but if you would like
18 to leave at this time, with the Court's thanks, you may
19 do so. Please exit quickly and promptly, if you plan to
20 leave.

21 COURT SECURITY OFFICER: All rise.

22 (Remaining jury panel leaves the
23 courtroom.)

24 THE COURT: All right. Please be seated.

25 All right. At this time, now that you're

1 seated, I would ask the members of the jury to please
2 stand and raise your right hand, and Ms. Ferguson will
3 administer the juror's oath to you.

4 (Jury sworn.)

5 THE COURT: All right. Thank you.
6 Please be seated.

7 All right, Ladies and Gentlemen of the
8 Jury. You have now been sworn in as the jury that is
9 going to try this case.

10 As the jury, you will decide the disputed
11 questions of fact in the case. As the judge, I will
12 decide all questions of law and procedure.

13 From time to time during the trial and at
14 the end of the trial, I will instruct you on the rules
15 of law that you must follow in making your decision.

16 Very soon the lawyers for each side will
17 make what is called an opening statement. Opening
18 statements are intended to assist you in understanding
19 the evidence you're going to be hearing over the next
20 several days.

21 However, please remember that what the
22 lawyers say during their opening statements is not
23 evidence itself. It's only what they expect the
24 evidence will show.

25 What you should base your case on is the

1 evidence that you will hear and that comes into evidence
2 from the jury -- from the witness box and from the
3 exhibits that I admit into evidence. You will rely on
4 this evidence in making your decision as to the verdict
5 in this case.

6 The party who brings a lawsuit is called
7 the Plaintiff. In this case, the Plaintiffs are -- is
8 i4i Limited Partnership and Infrastructures for
9 Information, Inc., who will be referred to in this case
10 as i4i.

11 The party against whom this suit is
12 brought is called the Defendant. In this action, the
13 Defendant is Microsoft Corporation, who will be referred
14 to as Microsoft during this trial.

15 As I told you during voir dire, this is a
16 case of alleged patent infringement. After the opening
17 statements, i4i will call witnesses and present
18 evidence. Then Microsoft will have an opportunity to
19 call witnesses and present evidence.

20 After the party's main case is completed
21 i4i may be permitted to present what's called rebuttal
22 evidence.

23 After all of the evidence is in, I will
24 instruct you on the applicable law, and you will hear --
25 then hear the closing arguments of counsel, and you will

1 then retire to consider your verdict.

2 During this case, I want you to keep an
3 open mind. Do not decide any fact until you have heard
4 all of the evidence, then closing arguments and my
5 instructions. Pay close attention to the testimony and
6 the evidence.

7 If you would like to take notes during
8 the trial, you may do so. We have some notebooks that
9 I'm going to ask the court security officer to pass out
10 to you at this time, as well as a pen.

11 Does everybody have a notebook?

12 All right. That should have a cover page
13 underneath that plastic thing on the front. I'm going
14 to ask you just to flip that cover page on the front out
15 a little bit and write your name at the top of that, so
16 you'll know whose notebook that is; then you can slip it
17 back in.

18 Then if you'll open the notebook up, you
19 should find a tablet on the inside. Do you have a blank
20 tablet in there for taking notes? You find the tablet?

21 JUROR: Yes, sir.

22 THE COURT: Okay. If you would, write
23 your name on the front page of that tablet. And then
24 you can flip to the second page, and that's where you'll
25 begin taking notes, if you desire to. And that's so

1 that we can identify your tablet and your notebook. You
2 can also make notes in your notebook, if you'd like to.
3 What you're going to find in the notebook, there is a
4 copy of the patent, and there's a copy of the Court's
5 claim construction chart, and I'll go over all of that
6 with you in detail as I go through these instructions,
7 so please just listen to my instructions now, and we'll
8 go -- get to those in a moment.

9 Let me continue on with taking notes in
10 this case. If you decide that you would like to take
11 notes, I want you to be careful that you don't get so
12 involved in your note-taking that you become distracted
13 and miss part of the testimony.

14 So you don't need to write down
15 everything that happens, but take such notes as you feel
16 are appropriate or would be helpful to you.

17 However, your notes are to be used as an
18 aid to your memory, and if your memory should later be
19 different than your notes, then you should rely on your
20 memory and not on your notes.

21 Just because something gets written down
22 on the notepad doesn't make it any more important than
23 your recollection or another juror's recollection.

24 So don't be unduly influenced by the notes that others
25 may take. A juror's notes are not entitled to any

1 greater weight than the recollection of each juror
2 concerning the testimony.

3 Even though we have a court reporter
4 present who will be making stenographic notes of what is
5 said in court, a typewritten copy of the testimony will
6 not be available for your use during deliberations.

7 On the other hand, any exhibits that are
8 introduced into evidence -- that would be documents,
9 physical evidence -- will be available for you during
10 your deliberations.

11 Also during your deliberations, you will
12 receive a copy of what's called the Court's Charge,
13 which I will give you at the end of the case, which has
14 all of the law in it and your verdict form.

15 So you'll have that to take to the jury
16 room with you as well.

17 Now, this is a very -- my next
18 instructions is a very important instruction. Until
19 this trial is over, I don't want you to discuss this
20 case with anyone, and do not permit anyone to discuss
21 this case in your presence.

22 Do not discuss the case even with the
23 other jurors until all of the jurors are in the jury
24 room actually deliberating at the end of the case.

25 So, for example, here in a little bit

1 we're going to take a lunch break. Some of you may
2 decide you want to have lunch together, or when you come
3 back from lunch, you may be visiting in the jury room.
4 Visit about anything you want to except this case. And
5 the reason for that is simple: That until all of the
6 evidence is in, you've received the law, and I tell you
7 it's time for you to begin your deliberations, there
8 should be no discussion among you about, well, did you
9 hear this, or what did you think about that, during the
10 trial of the case. So visit about anything.

11 Same thing goes with family members or
12 friends. Do not discuss this case with anyone. Each
13 juror should hold themselves completely apart from any
14 discussion about this case with anyone until we get to
15 the end of the case and then only with your fellow
16 jurors when you go back to deliberate.

17 Likewise, if anyone should attempt to
18 discuss this case with you or to approach you concerning
19 this case, you should inform me immediately or through
20 my court staff, and you should not visit with them. I
21 don't anticipate that that will happen, but please
22 follow that instruction.

23 Also, hold yourself completely apart from
24 all the people that are involved in this case, the
25 parties, the witnesses, the attorneys, and the persons

1 associated with them.

2 It is important not only that you be fair
3 and impartial in this case but also that you appear to
4 be fair and impartial, and that is why you should not
5 have contact with any of them.

6 You're going -- you've got a juror badge
7 on. All of the lawyers here and spectators, they're all
8 friendly people and would love to chat with you, but
9 they're going to see that juror badge, so they're not
10 going to be communicating with you in the elevator or
11 chitchatting with you, and you should not communicate or
12 chitchat with them. Hold yourself completely apart from
13 them.

14 Also, as far as discussing this case with
15 others, if you have any type of social networking
16 internet site or tool like FaceBook, MySpace, or
17 Twitter, you should not discuss or even mention the case
18 at all on any of those sites. Do not post updates about
19 what is going on in the case to any of those sites.

20 Also, do not make any independent
21 investigation of any fact or matter in this case. Do
22 not learn anything about the case from any outside
23 source.

24 And that's very important, because what
25 you decide this case on is only the testimony that's

1 taken under oath and the exhibits that are legally
2 admitted into evidence. So you should not go to any
3 other source or receive information from any other
4 source.

5 I don't know if there will be anything on
6 television or in the newspaper about this case, probably
7 not, but do not watch TV or read the newspaper about
8 this case. If there should be something, just turn the
9 TV to another channel, disregard -- don't read the
10 article.

11 Also, do not use the internet or Google
12 to find out more information about the case, the
13 parties, or the attorneys in the case.

14 In other words, don't go home and get on
15 your computer and start doing any kind of independent
16 investigation. That would be extremely improper. It
17 would violate your oath as a juror, because you would be
18 considering something other than the evidence in the
19 case, and it could result in a mistrial of the case and
20 all of the time and expense involved in this going for
21 naught. So be sure to follow that instruction.

22 You are to be guided only by the evidence
23 in the case, only by what you see and hear in this -- in
24 this courtroom and nothing else.

25 During the trial, it may be necessary for

1 me to confer with the lawyers out of your hearing or to
2 conduct a part of the trial out of your presence. I
3 will handle these matters as briefly and as conveniently
4 for you as I can, but you should remember that they are
5 a necessary part of any trial.

6 Now let me explain to you about the
7 parties and the nature of the case. As I said, this is
8 a patent case. The case involves one patent identified
9 by its numbers as follows, and you'll see it on the
10 screen: Patent No. 5,787,449, which will be referred
11 to, by its last three digits, as the '449 patent.

12 And if you'll look in your books, you'll
13 see a copy of the patent that bears that number. And
14 you see up in the right-hand -- upper right-hand corner,
15 it has the patent number, and the last four digits are
16 '449.

17 The Plaintiffs in this case -- now, don't
18 read the patent. I see everybody looking down there.
19 We'll get to it in a minute. I know you're anxious.

20 The Plaintiffs in this case, i4i Limited
21 Partnership, and Infrastructures for Information, Inc.,
22 together referred to as i4i, contend that the Defendant,
23 Microsoft, is infringing the '449 patent by using the
24 patented method in Microsoft's Word 2003 and 2007
25 products for processing an XML document with custom XML

1 Patent & Trademark Office, which is part of the United
2 States Government. The United States Government is
3 empowered by the United States Constitution to enact
4 patent laws and issue patents to protect inventions.

5 Inventions that are protected by patents
6 may be of products, composition, or of methods for doing
7 something or for using or making a product or
8 composition.

9 The purpose of the patent system is to
10 help advance science and technology. The patent system
11 achieves this purpose by granting to the owner of a
12 patent the right for the term of the patent to exclude
13 any other person from making, using, offering for sale,
14 or selling the invention covered by the patent anywhere
15 in the United States.

16 A patent is granted for a set period of
17 time, which for the patent involved in this case is not
18 yet expired.

19 Once a patent expires, the patent owner
20 may not exclude anyone from making use of the invention
21 claimed in the patent. The invention then becomes part
22 of what is -- we call the public domain, which means
23 that anyone is free to use it.

24 During the term of the patent, however,
25 if another person, without the patent owner's

1 permission, makes, uses, sells, or offers to sell
2 something that is covered by the claims of the patent,
3 then that person is said to infringe the patent.

4 The patent owner may enforce a patent
5 against persons or companies believed to be infringers
6 in a lawsuit in federal court, such as in this case. To
7 be entitled to patent protection, an invention must be
8 new, useful and non-obvious.

9 As I noted, a patent gives its owner the
10 right to exclude other people from making, using,
11 selling, or offering for sale what is covered by the
12 claims of the patent.

13 Everyone, however, has the right to use
14 existing knowledge and principles. A patent cannot
15 remove from the public the ability to use what was known
16 or obvious before the invention was made or patent
17 protection was sought.

18 The granting of a patent by the Patent &
19 Trademark Office, however, carries with it the
20 presumption that the patent is valid.

21 From the issuance of a patent, it is
22 presumed that the subject matter is new, useful, and
23 constitutes an advance that was not, at the time the
24 invention was made, obvious to one of ordinary skill in
25 the art.

1 However, that presumption may be rebutted
2 at trial, and you, the finder of fact, may find the
3 patent to be invalid.

4 Now let me visit with you about the parts
5 of a patent.

6 A patent contains two basic parts: A
7 written description of the invention and the patent
8 claims. The written description, which may include
9 drawings, is often referred to as the specification of
10 the patent.

11 Now, please refer to the '449 patent,
12 which is in your notebook and on the screen, as I
13 identify the different sections.

14 First, let's look at the cover page of
15 the '449 patent. It provides identifying information,
16 including the date the patent was issued, July 28th --
17 let's see. No. That's the -- yeah -- July 28th, 1998,
18 up at the top and the patent number along the top, as
19 well as the inventors' names, which you will see in the
20 left-hand column, and the filing date, which you will
21 see beside Line 22; the assignee who it was assigned to,
22 which is Infrastructures for Information, Inc., which is
23 the Plaintiff in this case; and a list of the prior art
24 publications considered in the Patent Office when
25 deciding to issue the patent.

1 The specification of the '449 patent
2 begins with an abstract found on the cover page. The
3 abstract is a brief statement about the subject matter
4 of the invention.

5 Next -- next are the drawings which
6 appear as Figures 1 through 10 on the next nine pages.
7 The drawings depict the various aspects of features of
8 the invention. They are described in words later in the
9 patent specification.

10 So if you'll flip through all of those
11 drawings over through Figure No. 10 of the patent. Then
12 on the very next page, you'll see what's called the
13 written description of the invention.

14 In this portion of the patent, each page
15 is divided into two columns, which are numbered at the
16 top, and you'll see -- does everyone have that page?

17 And you'll see, at the top of the
18 left-hand column is the No. 1; the top of the right-hand
19 column is No. 2. Everyone see that?

20 Okay. And you'll also note that the
21 lines on each page are also numbered, going down the
22 middle column. You see those Nos. 5, 10, 15, and 20?
23 So when a reference is made to the patent during the
24 course of this trial, very often the attorneys will
25 refer to a column and line number.

1 For example, if you'd look at Column
2 No. 1, Line 15 -- find that in the middle column --
3 you'll see that beginning there is the background to the
4 invention.

5 So that's a quick way of referencing it.
6 It can be Column No. 1 or Column No. 2 or Column No. 8
7 and the line number.

8 The written description of the '449
9 patent actually begins at Column 1, Line 1. The written
10 description of the '449 patent begins at Column 1,
11 Line 1 and continues to Column 15, Line 33. It includes
12 a background section, which you see at Column 1, Line
13 No. 14, I guess it is.

14 It next includes a summary of the
15 invention. If you'll flip over to the next page, and
16 down near the bottom of Column No. 3 at Line 65, you'll
17 see where it shows a summary of the invention; then a
18 detailed description of the invention, including some
19 specific examples.

20 And that -- if you'll flip over about
21 two -- three more pages to Column 8, and you'll see at
22 Column 8, Line 46, a detailed description of the
23 invention. And that's where that begins, and it
24 includes some specific examples.

25 Flipping over to the next page,

1 Column 10, you see down about Line 47 of Column 10, an
2 example, and there are various examples given for the
3 next several pages.

4 If you'll flip over to the last page, the
5 specification ends with numbered paragraphs called
6 claims. And if you look down on Column 15, like about
7 Line 34, you'll see where it states we claim, and then
8 the No. 1, and then there are several paragraphs.

9 Does everybody see that?

10 All right. This is what's called the
11 claims of the invention, and they can be numbered into a
12 number of parts referred to as claim limitations.

13 In the '449 patent, the claims at issue
14 in this lawsuit -- well, all of the claims are listed in
15 those two columns, but there are only certain claims at
16 issue in this lawsuit, and I'll discuss those with you
17 in a moment.

18 Now let me instruct you about the
19 significance of the patent claims.

20 The claims of a patent are a main focus
21 of a patent case, because the claims are what define the
22 patent owner's rights under the law; that is, the claims
23 define what the patent owner may exclude others from
24 doing during the term of the patent.

25 The claims of the patent serve two

1 purposes: First, they set the boundaries of the
2 invention covered by the patent; and, second, they
3 provide notice to the public of what those boundaries
4 are.

5 Thus, when a product or a method is
6 accused of infringing a patent, the patent claims are
7 compared to the accused product or method to determine
8 whether there is infringement.

9 The claims of the patent are what are
10 infringed when patent infringement occurs because the
11 claims define what the patent is.

12 The claims are also at issue when the
13 validity of a patent is challenged. In reaching your
14 determinations with respect to infringement and
15 validity, you must consider each claim separately.
16 You will -- you will be provided with this Court's
17 construction of the meaning of certain terms in the
18 asserted claims in this case. You must use these
19 meanings that I give you when you decide the issues of
20 infringement and invalidity.

21 And you'll notice in your notebook,
22 you're looking at the claims. And I'll tell you which
23 ones are asserted in this case, or the attorneys will
24 shortly. They define the limits of the patented method.

25 You will also find behind the patent a

1 claim construction chart, and that claim construction
2 chart is something that transpired earlier in this case
3 where the attorneys got together and decided what terms
4 they agreed on, what ones they did not.

5 And if they did not agree on the meaning
6 of a term in the patent, they then asked the Court to
7 construe the patent or to resolve that dispute as to the
8 meaning of those terms.

9 And the claim construction chart, which
10 is included in your notebook, contains those
11 constructions that the Court has earlier ruled as to the
12 meaning of specific claim terms.

13 Don't worry about understanding all of
14 that now. If you're feeling a little overwhelmed, it's
15 okay at this point. There's going to be a lot of
16 explanation, but we've got to start somewhere, and I'm
17 giving you an overview, okay?

18 Now, the United States Patent & Trademark
19 Office is the agency of our Federal Government that
20 initially examines patent applications and issues
21 patents.

22 When an applicant for a patent files a
23 patent application with the Patent & Trademark Office,
24 the application is assigned to a Patent Examiner.

25 The Patent Examiner examines the

1 application to determine whether the invention described
2 in the patent application meets the requirements of the
3 patent laws for patentable inventions.

4 In examining a patent application, the
5 Patent Examiner makes a search in the Patent Office
6 records for prior art pertinent to the claims of the
7 patent application.

8 The Patent Office records -- records --
9 the Patent Office records may or may not contain all of
10 the prior art pertinent to the claims of the patent
11 application.

12 The prior art is defined by statute, and
13 I will give specific instructions, after the close of
14 the evidence, as to what constitutes prior art. But,
15 generally, prior art is technical information and
16 knowledge that was known to the public either before the
17 invention by the applicant or more than a year before
18 the effective date of the application.

19 The Patent Examiner advises the applicant
20 of his or her findings in a communication called an
21 office action. The Examiner may reject the claims if he
22 or she believes that they do not meet the requirements
23 for patentable inventions.

24 The applicant may then respond to the
25 rejection with arguments to support the claims and may

1 sometimes make changes or amend the claims or submit new
2 claims.

3 If the Examiner concludes that the legal
4 requirements for a patent have all been satisfied, then
5 the Patent Examiner is said to allow the claims and the
6 application and issues a patent.

7 The process from the filing of a patent
8 application to the issuance of the patent is called
9 patent prosecution. The record of papers relating to
10 the patent prosecution is referred to as the prosecution
11 history or file history.

12 I will now give you some information
13 about the issues that will be presented to you at this
14 trial, as well as a short overview of the applicable
15 law.

16 At the close of the trial, you will be
17 given more specific instructions that you must follow in
18 reaching your verdict. You will also be given a verdict
19 form and questions that you must answer in providing
20 your verdict.

21 First, let me visit with you about the
22 burdens of proof required in this case.

23 In any legal action, facts must be proved
24 by a required standard of evidence, which is known as
25 the burden of proof.

1 In a patent case such as this, there are
2 two different burdens of proof that are used. The first
3 is called preponderance of the evidence. The second is
4 called clear and convincing evidence.

5 In this case, i4i must prove its claims
6 of patent infringement by a preponderance of the
7 evidence.

8 When the party has the burden of proof by
9 a preponderance of the evidence, it means that they --
10 that you must be persuaded that what the party seeks to
11 prove is more probably true than not true.

12 Put in another way, if you were to put
13 the evidence for and against the party who must prove
14 the fact on the opposite sides of a scale, a
15 preponderance of the evidence requires that the scale
16 tip at least somewhat toward the party who has the
17 burden of proof.

18 Microsoft has the burden of proving its
19 defense of invalidity by a heavier burden called clear
20 and convincing evidence. When a party has a burden of
21 proof by clear and convincing evidence, it means that
22 the evidence must produce in your minds a firm belief or
23 conviction as to the matters sought to be established.

24 In other words, if you were to put the
25 evidence for and against the party who must prove the

1 fact on the opposite sides of a scale, clear and
2 convincing evidence requires that the scale tip more
3 heavily toward the party who has the burden of proof.

4 You may have heard of a burden of proof
5 that is used in criminal cases called beyond a
6 reasonable doubt. That requirement is the highest
7 burden of proof and is used only in criminal cases. It
8 does not apply in this case, and you should, therefore,
9 put it out of your mind.

10 Now let me visit with you about
11 infringement.

12 As I told you, i4i contends that
13 Microsoft infringes certain claims of its patent. More
14 specifically, i4i contends that Microsoft infringes
15 Claims 14, 18, and 20 of the '449 patent.

16 And you might just flip over to the last
17 page of the patent, and you will see there in Column 16,
18 come down to about Line 18, and you see a paragraph
19 numbered 14.

20 Does everybody have that, Claim No. 14?

21 You might just put a circle around 14.
22 That is one of the claims that's at issue in this case.
23 And then skip on down that column to Claim No. 18, which
24 is down on Line 44. Put a circle around No. 18. And
25 then down to Claim 20, which is on Line 50, and put a

1 circle around 20.

2 Those are the three claims of the '449
3 patent that are at issue in this case.

4 i4i contends that Microsoft is directly
5 infringing the patent-in-suit by actually using the
6 claimed method in Microsoft's accused Word 2003 and Word
7 2007 products for processing an XML document with custom
8 XML elements.

9 i4i also contends that Microsoft
10 infringes indirectly by inducing or contributing to the
11 direct infringement of others.

12 I will first tell you about direct
13 infringement, and then I will tell you about indirect
14 infringement.

15 i4i seeks to prove direct infringement by
16 what's called literal infringement.

17 To prove literal infringement of a
18 particular claim, i4i must prove by a preponderance of
19 the evidence that use of the accused Microsoft 2003 Word
20 and Word 2007 products for processing an XML document
21 with custom XML elements includes each and every
22 limitation of a particular claim.

23 i4i also seeks to prove direct
24 infringement through what's called the Doctrine of
25 Equivalents.

1 The Doctrine of Equivalents provides that
2 patent protection is not limited to a claim's literal
3 terms but also embraces its equivalents.

4 To prove infringement under the Doctrine
5 of Equivalents, i4i must prove by a preponderance of the
6 evidence that for each claim limitation not literally
7 met by the accused manner of use of Microsoft's Word
8 2003 or Word 2007, the limitation is met equivalently in
9 the accused manner of use.

10 I will explain more about what is meant
11 by equivalents at the end of the case.

12 i4i also alleges that Microsoft has
13 indirectly infringed the asserted claims by inducing
14 and/or contributing to another's direct infringement.
15 To prove that Microsoft induced someone else to
16 infringe, i4i must prove by a preponderance of the
17 evidence that Microsoft encouraged another person or
18 corporation to use a product in a manner that infringes;

19 That Microsoft knew of the patent and
20 knew or should have known that the encouragement or
21 instructions would result in the other person doing that
22 which you find to be an infringement;

23 That Microsoft intended to cause the
24 encouraged acts and that the encouraged acts were
25 actually performed by the other person.

1 To prove that Microsoft contributed to
2 another's direct infringement, i4i must prove by a
3 preponderance of the evidence that Microsoft sold or
4 supplied to another person a component that is a
5 material part of the patented invention and is not
6 suitable for other substantial non-infringing uses.

7 i4i must also prove that the other person
8 directly infringed the patent claims and that Microsoft
9 knew that the component was especially made for use in
10 an infringing manner.

11 Now, with regard to willful infringement,
12 i4i claims that Microsoft willfully infringed the
13 claims.

14 To prove willful infringement, i4i must
15 prove that Microsoft acted despite an objectively high
16 likelihood that its actions constituted infringement of
17 a valid patent and Microsoft either knew or should have
18 known of that risk.

19 i4i's willful infringement claim requires
20 a higher burden of proof, the clear and convincing
21 standard, that i4i's -- than i4i's other claims, which
22 require a preponderance of the evidence standard.

23 I will explain in more detail, at the end
24 of the case, how you will decide infringement.

25 Microsoft denies that it directly or

1 indirectly infringes any of these claims, whether
2 willfully or otherwise.

3 Now, with regard to the defense of
4 invalidity, Microsoft contends that the asserted claims
5 of the patent-in-suit are invalid.

6 Invalidity is a defense to patent
7 infringement. A person accused -- a person accused of
8 infringement has the right to assert that the claimed
9 invention in a patent did not meet the requirements for
10 patentability and, therefore, that the issued patent
11 claim is invalid.

12 However, the granting of a patent by the
13 Patent & Trademark Office carries with it the
14 presumption that the patent is valid. The presumption
15 of patent validity imposes the burden on Microsoft to
16 prove invalidity by the clear and convincing evidence
17 standard.

18 I will now explain to you briefly the
19 legal requirements for each of the grounds on which
20 Microsoft relies to contend that the asserted patent
21 claims are invalid. I will provide more details for
22 each ground in my final instructions at the end of the
23 case.

24 The first ground is what's called
25 anticipation. Microsoft contends that the inventions

1 covered by the asserted claims of the patent-in-suit are
2 not new. An invention is not new -- an invention that
3 is not new is said to be anticipated by the prior art.

4 To prove that a claim is anticipated by
5 prior art, Microsoft must prove by clear and convincing
6 evidence that each and every limitation of the claim was
7 present in a single item of prior art.

8 Microsoft also contends that the asserted
9 claims of the patent-in-suit are invalid for
10 obviousness.

11 To prove invalidity of a patent based on
12 obviousness, Microsoft must prove by clear and
13 convincing evidence that the invention defined by the
14 claim would have been obvious to a hypothetical person
15 of ordinary skill in the art at the time the invention
16 was made.

17 The hypothetical person of ordinary skill
18 in the art of the '449 patent would be a person who has
19 a bachelor's degree in computer science or electrical
20 engineering with an emphasis on computer systems, in
21 addition to two or three years of programming
22 experience.

23 Now, with regard to damages, i4i claims
24 that it has suffered damages as a result of Microsoft's
25 infringement in the form of a reasonable royalty on each

1 of Microsoft's infringing products.

2 Damages cannot be speculative. i4i must
3 prove the damages it has suffered as a result of
4 Microsoft's alleged infringement by a preponderance of
5 the evidence.

6 The fact that I instruct -- the fact that
7 I am instructing you about damages now does not mean
8 that i4i is or is not entitled to recover damages.
9 I will explain to you further, at the end of the trial,
10 how reasonable royalties are determined, and at the end
11 of the trial, you will get a written charge that will
12 have all of these instructions in it in much more detail
13 than I am giving them to you now.

14 And you will also have a verdict form
15 that will ask you some very simple questions, such as,
16 did Microsoft infringe the '449 patent? Is the '449
17 patent invalid?

18 If you find infringement and validity,
19 you will then be asked the amount of damages that you
20 find. So there will be questions that you will have to
21 answer in the case basically dealing with the
22 infringement, invalidity, and damages.

23 So I know this is all very complex. Do
24 not feel like you have to be an expert on patent law.
25 We have plenty of experts in the room. You're going to

1 hear a lot of testimony about it. This is just to give
2 you an overview so that as you hear a lot of these terms
3 and you hear the evidence, hopefully, this will give you
4 a little context to filter it through.

5 Now, with regard to the construction of
6 the claims, I will instruct you now and at the end of
7 the case about the meaning of some of the claim
8 language. You must use these meanings I give you when
9 you decide the issues of infringement and invalidity.

10 In deciding whether or not an accused
11 method infringes a patent, the first step is to
12 understand the meaning of the words used in the patent
13 claims.

14 It is my job as Judge to determine what
15 the patent claims mean and to instruct you about that
16 meaning. You must accept the meanings I give you and
17 use them when you decide whether or not a patent claim
18 is infringed and whether or not a patent claim is
19 invalid.

20 It may be helpful to refer back to the
21 '449 patent as I discuss the claims at issue here. As I
22 mentioned before, the claims are at the end of the '449
23 patent, and they involve Claims 14, 18, and 20.

24 Patent claims may exist in two forms
25 referred to as independent claims and dependent claims.

1 An independent claim does not refer to
2 any other claim of the patent. It is not necessary to
3 look at any other claim to determine what an independent
4 claim covers. Claim 14, for example, is an independent
5 claim.

6 A dependent claim refers to at least one
7 other claim in the patent. A dependent claim includes
8 each of the limitations of the other claim or claims to
9 which it refers, as well as the additional limitations
10 recited in the dependent claims.

11 Therefore, to determine what a dependent
12 claim covers, it is necessary to look at both the
13 dependent claim and other claims or claims to which it
14 refers.

15 For example, Claim No. 18 is a dependent
16 claim. You'll notice it begins, A method, as defined in
17 Claim 14, which means it would contain all the
18 limitations in 14, but further comprising and comparing
19 the multiplicity of metacodes in the map with a
20 predetermined set of criteria. Now that's the
21 additional limitation.

22 The words in the patent-in-suit use the
23 word comprising. Comprising means including or
24 containing. A claim that uses the word comprising or
25 comprises is not limited to methods having only the

1 elements that are recited in the claim but also covers
2 methods that add additional elements.

3 Take, for example, a claim that covers a
4 table. If the claim recites a table comprising a
5 tabletop, legs, and glue, the claim will cover any table
6 that contains these structures, even if the table also
7 contains other structures, such as a leaf or a wheel on
8 its legs.

9 I have now instructed you as to the types
10 of claims at issue -- that are at issue in this case. I
11 will next define the meaning of the words used in the
12 patent claims at issue. You must use the definitions I
13 provide when you decide infringement and invalidity.

14 Now, if you will, take a look at the
15 claim construction chart, which is behind the patent in
16 your book. And here I give you certain definitions.

17 You'll notice the first one is the word
18 metacode as used in Claims 14, 18, and 20. And the
19 Court has defined metacode to mean an -- an individual
20 instruction which controls the interpretation of the
21 content of the data.

22 And then it goes on and has a number of
23 other definitions of various terms. You have that in
24 your notebook. It will be provided to you at trial.
25 I'm not going to read all the way through it. You'll

1 have to take it to the jury room with you.

2 But you are to follow the Court's
3 construction with regard to what all of those words
4 mean. And you'll hear the experts and the attorneys
5 telling you about that in greater detail as the case
6 goes on.

7 Now, anybody have any questions?

8 Everybody understands everything?

9 All right. Let me just reassure you that
10 this is all going to become clearer as the trial
11 progresses, but this is a good starting place for you to
12 help you to understand some of the basic elements of a
13 patent and some of the basic language and nomenclature.

14 Again, you're going to hear a lot more
15 about this over the next four or five days, so don't be
16 overwhelmed. Don't feel like I didn't understand or
17 comprehend everything the Judge said.

18 You're going to have plenty of time to
19 consider it, plenty of time to hear more about it, and
20 these fine lawyers on both sides will make it as simple
21 as possible and explain it as well as possible.

22 Now, let -- after we -- since we
23 discussed patents, let me finally visit with you
24 regarding your duties as jurors.

25 Really, you have two duties. Your first

1 duty is to decide the facts from the evidence in this
2 case. That is your job and yours alone.

3 Your second duty is to apply the law that
4 I give you to the facts. You must follow the
5 instructions I give you even if you disagree with them.

6 Each of the instructions is important,
7 and you must follow them all.

8 Perform these two duties fairly and
9 impartially. Do not allow sympathy, prejudice, fear, or
10 public opinion to influence you.

11 Nothing I say now and nothing I say on or
12 do during the trial is meant to indicate any opinion on
13 my part about what the facts are or about what your
14 verdict should be. Again, you, the jury, will be the
15 sole judges of the facts in this case.

16 That concludes my opening instructions
17 for you. What we're going to do now is we're going to
18 take a lunch break, and then when we come back from
19 lunch, you're going to hear opening statements by each
20 side.

21 I have allotted each side 45 minutes for
22 opening statement. So you're going to -- they're going
23 to present to you an overview. They'll get into more of
24 what the facts of the case are, both from the side of
25 the Plaintiff and from the side of the Defendant.

1 Again, remember, that's not evidence.
2 You're going to hear the evidence over the next several
3 days. But that will be a better road map, and they'll
4 explain things in a little greater detail for you so
5 that you'll know what you can be expecting.

6 So we're going to take our noon recess,
7 and I think we'll go ahead and I'll give you a little
8 longer than usual today to let you get acquainted with
9 the restaurants around town. And we're a little late
10 getting off to lunch, so we're going to break until
11 1:30. So you'll have an hour and two minutes for lunch.

12 Again, follow my instructions. You can
13 take lunch together. Don't discuss anything about the
14 case. But have an enjoyable lunch.

15 The court security officer is going to
16 take you to the jury room, which is right through this
17 door here (indicating). That's going to be sort of your
18 new gathering place for the next several days.

19 You'll leave your notebooks with the
20 court security officer. He'll protect them. And I want
21 to tell you, those notebooks, they're not ever going to
22 be disseminated to the lawyers or anybody in the case.

23 After the case is over with, we're going
24 to take your notes up, we're going to shred the notes,
25 and so you won't have to ever provide those to anyone.

1 So feel free to make whatever notes you want to, doodle,
2 whatever you'd like to do on your notepad.

3 But this jury room is where -- when you
4 come back from lunch, try to be back five or ten minutes
5 early. Congregate in there, have a cup of coffee, if
6 you wish, or chat about anything but this case, and then
7 be ready to go at 1:30.

8 Same thing will apply when we recess this
9 afternoon. When we come in in the mornings, you'll
10 gather in the jury room. Try to be there five or ten
11 minutes before Court begins, and we will try to start
12 promptly on time.

13 I had one other instruction I wanted to
14 give you, if I can find what I did with it.

15 Our normal working day is going to be
16 from 9:00 to 5:00. Again, just so you'll know for your
17 schedules, we're going to work today, Tuesday and
18 Wednesday; you'll have Thursday off; we'll come back
19 Friday; and we'll come back Monday; come back Tuesday,
20 if we have to; come back Wednesday, if we have to.

21 Hopefully, by Monday or Tuesday, we'll be
22 winding down and getting the case to you. But to get
23 there, we're going to have to work very hard this week.
24 So it's a fairly easy day today, but beginning tomorrow
25 we're going to be hitting it pretty hard with some short

1 breaks and short lunches, because we've got so much
2 testimony to get in. So be prepared to come and pay
3 attention and listen.

4 It's all right to bring bottled water
5 into the courtroom for the jury, if the jury would like
6 to. No other coffee or soft drinks in here.

7 When you gather in the jury room, try to
8 be there a little beforehand. If you have your notepads
9 handy, I want to give you one phone number, and I'd like
10 for you to write this down. It's 1-800 --
11 1-800-998-9056.

12 Now, that number calls in to a recording
13 in the Clerk's Office, and you can call that number the
14 evening before to be sure everything is still on track.
15 If anything changes, it will be posted on that number.
16 So sometimes things happen, you know, we might not be
17 starting till 10:00 o'clock, or we might not be coming
18 back that day, but we'll be coming back another day.
19 That doesn't normally happen, but it's just a good thing
20 to check that number to be sure, okay?

21 Any questions from the jury?

22 Okay. You look like a fine jury. We're
23 going to look forward to working with all of you this
24 week, and you are excused to the jury room and on to
25 lunch, and we'll be in recess until 1:30.

1 COURT SECURITY OFFICER: All rise.

2 (Lunch recess.)

3 * * * * *

4

5

6 CERTIFICATION

7

8 I HEREBY CERTIFY that the foregoing is a
9 true and correct transcript from the stenographic notes
10 of the proceedings in the above-entitled matter to the
11 best of my ability.

12

13

14

15 /s/ _____
SUSAN SIMMONS, CSR
16 Official Court Reporter
State of Texas No.: 267
17 Expiration Date: 12/31/10

Date

18

19

20 /s/ _____
JUDITH WERLINGER, CSR
21 Deputy Official Court Reporter
State of Texas No.: 731
22 Expiration Date 12/31/10

Date

23

24

25