

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 15, 2009
MICROSOFT CORPORATION * 1:15 P.M.

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

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

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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's a matter before we bring the jury in.

MR. POWERS: Yes, Your Honor.

Very briefly, it relates to the reexamination question which Your Honor has taken under submission.

An additional basis for allowing that would be the testimony that was just elicited from Mr. Vulpe where i4i is attempting in, at least what I perceive, to be a somewhat over-the-top way to present to the jury a picture of the Patent Office validating the technology and the patent of i4i beyond the issues of the patent.

And to the extent of Mr. Vulpe testifying about hanging the framed certificate of appreciation right next to the framed patent, linking those two in the jury's mind or attempting to, that, it seems to me, is so inconsistent with the fact that the Patent Office has now said, preliminarily, we think we may have made a mistake; that it adds to the point of why it would be appropriate, given all of the affirmative things that

1 i4i has injecting, trying to get the jury to believe
2 that the Patent Office has truly validated this
3 technology when, in fact, that's inconsistent with the
4 facts right now, I think adds to that point.

5 THE COURT: All right. Any response?

6 MR. CAWLEY: First of all, Your Honor,
7 it's unquestionably relevant that we had a big customer
8 for our technology. The fact that it was USPTO happens
9 to be on your good fortune.

10 The error of what Mr. Powers is saying is
11 self-evident from his argument. He wants to offset the
12 effect of the patent and its success by an action of the
13 PTO that is emphatically not a preliminary finding that
14 there's an infirmity in the patent.

15 It is merely at this point a ministerial
16 grant saying that there's going to be a reexamination
17 and that issue is going to be taken up.

18 But unless we want to get into, either
19 through testimony or otherwise, a lengthy explanation to
20 the jury of exactly what that means, that evidence is
21 highly prejudicial and not probative.

22 THE COURT: All right. The Court's going
23 to stick with its earlier ruling on it. I don't think
24 anything has changed. I know my opinion on that issue
25 has not.

1 All right. Bring the jury in.

2 COURT SECURITY OFFICER: All rise.

3 (Jury in.)

4 THE COURT: Please be seated.

5 All right. Everyone have a good lunch?

6 Okay. Very good. We're going to

7 continue with the testimony.

8 And you may proceed, Mr. White.

9 MR. WHITE: Thank you, Your Honor.

10 Q. (By Mr. White) Mr. Vulpe, just before our
11 lunch break, we were speaking about some events that
12 took place near the end of the year 2000 between i4i and
13 the U.S. Patent Office.

14 Do you recall that?

15 A. Yes, I do.

16 Q. I'd like to now move on to the next year,
17 2001.

18 Do you recall, Mr. Vulpe, i4i receiving an
19 invitation from Microsoft to attend some meetings to be
20 held in Washington, D.C., with the government?

21 A. Yes, I do.

22 Q. Do you understand what that meeting and that
23 invitation was all about?

24 A. My understanding of it was that Microsoft had
25 a potential client who needed XML authoring and

1 Microsoft was looking for help in that -- in that
2 activity.

3 Q. Did you have any feelings about whether i4i
4 should attend those meetings?

5 A. Well, it was mixed, to be honest. On one
6 hand, this was a big validation of the world's largest
7 software supplier coming to us for help for an XML
8 authoring.

9 On the other hand, Microsoft is a very large
10 company, and I felt there was an imbalance of power
11 there, and I was unsure how to proceed.

12 Q. Did you attend those meetings personally?

13 A. Not the ones in Washington, no, I did not.

14 Q. Was there any reason why you chose not to
15 attend those meetings?

16 A. I already had other commitments.

17 Q. What do you recall was reported to you by the
18 representatives from i4i who attended that meeting as to
19 how the meeting went?

20 MR. POWERS: Objection, Your Honor,
21 hearsay.

22 THE COURT: Restate your question.

23 Q. (By Mr. White) Were -- did you receive any
24 feedback from the attendees who attended the meeting?

25 A. Yes, I did.

1 Q. What impression did you get from what they
2 said to you?

3 MR. POWERS: Your Honor, this is still
4 just based on hearsay.

5 MR. WHITE: I am not asking for the truth
6 about what anybody said. I just want to know what his
7 reactions were.

8 THE COURT: All right. Overruled.

9 A. The information I got back was indeed very
10 positive, and everybody felt that it was solid grounds
11 for going forward had been laid.

12 Q. (By Mr. White) Did those meetings result in
13 any further meetings with i4i and Microsoft?

14 A. Yes, they did.

15 Q. And when did those meetings occur?

16 A. I believe it was in June of that year in
17 Toronto.

18 Q. Were those at the facilities of i4i?

19 A. Yes, they were.

20 Q. Who requested that meeting in Toronto?

21 A. I believe they were at the request of
22 Microsoft.

23 Q. Now, you attended that meeting?

24 A. I attended, yes. There were two-day
25 meetings. I was just there for the morning of the

1 first -- first -- the first morning.

2 Q. Did -- the meetings and communications that
3 were exchanged with i4i and Microsoft that occurred in
4 2001, did they ever result in any business discussions
5 between the parties as far as doing business together?

6 A. Microsoft requested from us a -- what they
7 called a very rough order of magnitude, a VROM, about
8 how there could be an integration between our product,
9 S4/Text, the authoring tool, and their emerging product
10 called VisDoc (phonetic spelling).

11 Q. Did i4i submit such a proposal?

12 A. Yes, we did.

13 Q. Did you hear anything back from Microsoft as
14 a result of that proposal?

15 A. Not that I'm aware of.

16 Q. Did it ever appear to you during 2001 that
17 Microsoft no longer had a need for i4i?

18 A. Yes. There was -- we made this proposal and
19 reasonably short afterwards, there was just what I would
20 call radio silence. They just -- we never heard
21 anything back. It just disappeared.

22 Q. That was for the remainder of 2001?

23 A. There was one communication in regards to the
24 XML Office Council, and after that, everything
25 disappeared.

1 Q. What about the year 2002?

2 A. Year 2002, I actually reached out to
3 Microsoft to a gentleman called Jean Paoli.

4 Q. Would you take a look at Exhibit 628?
5 Is this the communication that you reached out to
6 Mr. Jean Paoli?

7 A. Yes, it is.

8 Q. Who is Jean Paoli?

9 A. Jean Paoli is -- I'm not sure of his official
10 title -- I think he's a technology evangelist for XML,
11 and he was the lead public face on the XDOCS project at
12 Microsoft.

13 Q. Did you know Mr. Paoli from a previous
14 business relationship?

15 A. I didn't know Mr. Paoli personally, but
16 Mr. Paoli had worked as a senior developer at a company
17 called Griff (phonetic spelling), which i4i had acquired
18 just prior to his leaving for Microsoft.

19 Q. What was the date of this e-mail, Mr. Vulpe?

20 A. December 5th, 2002.

21 Q. And why did you send this e-mail to
22 Mr. Paoli?

23 A. Well, we had radio silence, as I indicated,
24 and I knew Jean had been successful in getting XDOCS
25 into Microsoft Office, which was a big accomplishment

1 for him.

2 Q. Let me stop you right there, Mr. Vulpe.

3 In the e-mail, in the first paragraph, you say:

4 Congratulations on your progress with Office 11 and
5 XDOCS.

6 Do you see that?

7 A. Yes, I do.

8 Q. What is the XDOCS you're referring to in that
9 sentence?

10 A. That's a forms -- XML forms application.

11 Q. What were you congratulating Mr. Paoli about
12 in that first paragraph?

13 A. As I said, he was the technical -- the lead,
14 the public face; he was the guy in charge of this
15 project, and getting his product or his solution into
16 probably the world's largest-selling office -- was a
17 significant accomplishment.

18 So I was congratulating him on that
19 accomplishment.

20 Q. What was the meat of this e-mail and what was
21 the purpose of it?

22 A. The real purpose of the e-mail, obviously, is
23 in the second paragraph where I'm reminding Jean,
24 through Jean to Microsoft, that S4/Text is out there;
25 i4i is still in business; we're still in the software;

1 we provide valuable XML expertise and services and
2 products.

3 Q. Did you have some hope of re-establishing
4 discussions with Microsoft, like sending an e-mail to
5 Jean Paoli?

6 A. Yes, I did.

7 Q. Why Jean Paoli?

8 A. Well, previously, we'd been dealing primarily
9 with business people in the Federal Sales Group, and I
10 thought maybe a technical approach and a technical
11 reach-out might be sympathetic.

12 Q. Did Mr. Paoli ever personally respond to your
13 e-mail?

14 A. No, he did not.

15 Q. Did anyone from Microsoft respond to your
16 e-mail?

17 A. Not that I'm aware of.

18 Q. I want to shift gears now, Mr. Vulpe, and
19 talk about a patent law issue. I'm going to have to
20 step back to 1998, the year that you received the ribbon
21 copy of the patent and it issued from the Patent Office.
22 Did you start marking your products at that time with
23 your patent number?

24 A. No, we did not.

25 Q. Let me show you Exhibit PX530, and ask if you

1 can identify that exhibit.

2 A. This is a series of splash screens for the
3 X40 product, yes.

4 Q. What is a splash screen?

5 A. When you install the product or you select
6 the help about, you get this screen that tells you about
7 the product.

8 Q. That's something that a user could select who
9 was using the product?

10 A. Yes, sir.

11 Q. Would you direct your attention, I think, to
12 this splash screen that's on Production Page 854. It's
13 for the x40 product?

14 A. Yes.

15 Q. There at the bottom, what did you -- how did
16 you mark this splash screen?

17 A. We marked it, Copyright i4i 2000/2004,
18 Protected by U.S. Patent 5,787,449.

19 Q. Now, here you are using the patent number; is
20 that correct?

21 A. That's correct.

22 Q. When did you start putting the patent number
23 on this product, X40?

24 A. I can't remember exactly, but I believe it
25 was in 2004, probably the middle of the year.

1 Q. The product x4o, what is that?

2 A. That's the current state of -- name for the
3 S4/Text product referred to earlier, and that's the
4 horizontal generic XML letter that we license out.

5 Q. Is that your current flagship product?

6 A. It's the basis for it, yes, it is.

7 Q. Would you direct your attention to
8 Plaintiffs' Exhibit 531?

9 What is this?

10 A. This is an end-user computer software license
11 agreement. It's a text file.

12 Q. Is it again for the x4o product?

13 A. It looks like it is, yes, sir.

14 Q. Now, this end-user computer software license
15 agreement is dated May the 6th, 2004?

16 A. That's correct.

17 Q. And it has the patent number in the
18 agreement; is that right?

19 A. Yes, it does.

20 Q. Is this the date on which i4i began marking
21 its products with the U.S. patent number?

22 A. It appears to be, yes.

23 Q. Prior to that time, how were -- how was
24 i4i -- i4i marking its products?

25 A. We had been advised by our counsel to mark it

1 U.S. patent-approved or patent -- patent-approved from
2 the U.S., or something of that effect.

3 Q. But the patent number wasn't included?

4 A. No, it was not.

5 Q. Okay. Would you turn to Defendant's Exhibit
6 2236 in your binder?

7 Do you recognize this document?

8 A. Yes, I do.

9 Q. What is it?

10 A. It's an e-mail from myself to Mr. Loudon
11 Owen, who's the Chairman of the Board and Counsel for
12 i4i, and Richard Owens, a member of our Board of
13 Directors.

14 Q. And what does this e-mail say?

15 A. Would you like me to read the whole thing?

16 Q. Yes, please, if you would.

17 A. We just got word that we lost the SPL
18 project at the FDA. We were partnered with SRA, a big
19 U.S. contractor. Initial value of the deal is \$15
20 million dollars. We lost to Grumman with Invision --
21 this is a big problem for us in pharma -- first
22 intelligence and now pharma.

23 Q. Was this a lost sale? Did it in any way
24 relate to Word's support of custom XML?

25 MR. POWERS: Objection. No foundation;

1 calls for speculation. This witness can't know the
2 reasons why the FDA chose one over the other.

3 THE COURT: Restate your question.

4 Q. (By Mr. White) Do you have a belief,
5 Mr. Vulpe, as to why i4i lost this sale?

6 MR. POWERS: Same objections, Your Honor.

7 THE COURT: Overruled.

8 A. Yes. We believed that one of the key factors
9 in winning the Grumman proposal was the Invision
10 component of the solution. And Invision is an XML
11 editor based on Microsoft Word 2003 implementation.

12 Q. What did you mean by the comment, this is a
13 big problem for us in pharma?

14 A. Well, the FDA is not in the business of
15 endorsing products, but certainly its using a product
16 conveys a message out to the industry. And we were
17 selling our solution to that industry.

18 Q. Has anyone ever told you, Mr. Vulpe, that
19 they were not going to license your products and instead
20 use Microsoft's custom XML support in their Word
21 products?

22 A. Yes, sir, they have.

23 MR. POWERS: Objection. Calls for
24 hearsay, Your Honor.

25 THE COURT: Overruled.

1 Q. (By Mr. White) What companies have told you
2 that?

3 A. Johnson & Johnson and Pfizer.

4 Q. And how did they tell you that?

5 A. In both cases, I was meeting on their
6 campuses and was advised by their XML experts they were
7 going to use the Word implementation, thank you very
8 much.

9 Q. Mr. Vulpe, what is the current business
10 condition of the i4i?

11 A. Well, we're still in business. Our customers
12 renew their licenses and we're still selling product.
13 It's very tough out there. In a funny way, I kind of
14 feel like I'm competing with myself, but we still move
15 forward and try to do the best for our customers.

16 Q. Does i4i compete with Microsoft for the
17 selling of custom XML?

18 A. Yes, we do, sir.

19 MR. WHITE: I pass the witness.

20 THE COURT: Cross-exam.

21 MR. POWERS: May I approach, Your Honor?

22 THE COURT: Yes, you may.

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

24 THE COURT: Yes, you may.

25 MR. POWERS: Thank you.

CROSS-EXAMINATION

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BY MR. POWERS:

Q. Good afternoon, Mr. Vulpe.

A. Good afternoon.

Q. I'd like to begin discussing the SEMI product that you testified at some length about.

Now, I believe you said that the term S-to-the-4th was the term that was used to describe the product sold to SEMI and installed in February of '93, right?

A. That's correct.

MR. POWERS: Your Honor, may I pull out the flip chart?

THE COURT: Yes, you may.

Q. (By Mr. Powers) Can you see that, Mr. Vulpe?

A. Yes.

Q. So S-to-the-4th is SEMI, right?

A. That's correct.

Q. Now, you also testified about the first product that you distributed generally as being the S4/Text.

Do you recall that?

A. That was the XML Application Server, sir.

Q. And then that turned into -- part of that turned into the S4/Text product?

1 A. That's correct.

2 Q. Now there, the S4 is not S-to-the-4th; it's
3 just S4, right?

4 A. That's correct.

5 Q. Like that (indicates)?

6 A. That's correct.

7 Q. S4/Text, that was the name of the product?

8 A. That's correct.

9 Q. Now, over here on your timeline --

10 MR. POWERS: May I approach, Your Honor?

11 THE COURT: Sure.

12 Q. (By Mr. Powers) -- you referred to something
13 that Mr. White called S4-plus-patent, and he put that
14 over there somewhere between June of '94 and '95.

15 Do you see that?

16 A. Yes, I do. '94.

17 Q. In fact, there was no product ever made by
18 i4i that was S-to-the-4th-plus-the-patent; isn't that
19 true?

20 A. That's correct.

21 Q. And, in fact, the S-to-the-4th product, the
22 SEMI product, that one never changed its architecture,
23 right?

24 A. That's correct.

25 Q. That stayed the same throughout the -- in

1 terms of the product.

2 And so let's -- I won't disturb this, but I
3 will write it in a darker blue: No product about the
4 S4-plus-patent.

5 That's true, isn't it, Mr. Vulpe?

6 A. That's correct.

7 Q. All right. Now, there was another product,
8 another customer that i4i sold a product to, and that
9 was Newbridge, correct?

10 A. That's correct.

11 Q. Now, the Newbridge product was an
12 implementation of the S-to-the-4th technology, wasn't
13 it?

14 A. No, it was not.

15 Q. Let me show you your deposition, Mr. Vulpe.

16 MR. POWERS: May I approach?

17 THE COURT: Yes, you may.

18 MR. POWERS: Does Your Honor wish one?

19 THE COURT: No, that's okay.

20 Q. (By Mr. Powers) And actually, before we do
21 that --

22 MR. POWERS: Chris, can you pull up
23 Exhibit 2203?

24 Q. (By Mr. Powers) And, Mr. Vulpe, in the two
25 binders to your right, they are labeled on the spine

1 what the order is.

2 And let me know when you have found
3 Exhibit 2203.

4 MR. POWERS: Your Honor, may we dim the
5 lights so we can see the exhibit better?

6 THE COURT: Certainly.

7 Ms. Ferguson would you dim those?

8 Q. (By Mr. Powers) Have you found it, Mr. Vulpe?

9 A. Yes, I have.

10 Q. Now, Exhibit 2203 is an e-mail which you
11 wrote, correct, in December of 2000?

12 A. That's correct.

13 MR. POWERS: And, Chris, could you pull
14 up the first paragraph?

15 Q. (By Mr. Powers) And you say in your e-mail
16 that you wrote in December of 2000, quote: One of i4i's
17 very first customers was Newbridge Networks. What they
18 licensed was an implementation of a system we had built
19 for SEMI in the U.S. And it says on Macs.

20 A. That's correct.

21 Q. The NNC name is IMS, an implementation of
22 S4/Enterprise.

23 That's what you said in your memo of December
24 of 2000 in Exhibit 2203, correct?

25 A. That's correct.

1 Q. Now, you understand, Mr. Vulpe, that the sale
2 of the SEMI S-to-the 4th product is more than a year
3 before you filed your patent application in June of
4 1994.

5 You understand that, right?

6 A. That's right.

7 Q. You understand that your patent is invalid if
8 that SEMI S4 product practiced your patent?

9 A. That's correct.

10 Q. And as I understand your testimony, the SEMI
11 S4 patent product couldn't practice your patent, because
12 you hadn't invented it yet.

13 Is that fair?

14 A. That's correct.

15 Q. And the time you say you actually had the
16 a-ha, eureka moment was here somewhere around November
17 of 1993.

18 That was your testimony?

19 A. Yes, sir.

20 Q. Now, you don't have a single document
21 anywhere that documents that eureka a-ha moment, do you?

22 A. No, we do not.

23 Q. And you thought at the time it was a very
24 important event for the company, didn't you?

25 A. Yes, I did.

1 Q. Both you and Mr. Owens?

2 A. That's correct.

3 Q. That's your testimony that whenever you made
4 that invention, you knew then it was really significant
5 for your company?

6 A. That's what we believed at the time, yes,
7 sir.

8 Q. And you don't have a single e-mail between
9 you or anybody else saying we've had this eureka moment?

10 A. That's correct, not that I can recall.

11 Q. Neither does Mr. Owens?

12 A. Correct.

13 Q. You've looked, haven't you?

14 A. Well, we've looked for everything we could,
15 of course.

16 Q. Do you know that Mr. Owens kept lab notebooks
17 where he made notes about what he was doing that was
18 important?

19 A. I assume he does, but I don't know for sure.

20 Q. There's no such entry in Mr. Owens' notebooks
21 that you know of that says that eureka moment occurred
22 in November of '93, is there?

23 A. Not that I'm aware of.

24 Q. And you kept notes of what you did in your
25 developments to show what was significant, too.

1 A. I keep notes of meetings, yes, I do.

2 Q. And your notes don't show anything happening
3 in November of '93, much less a eureka moment that you
4 thought was essential for your business.

5 A. I would have to go back and look, but I take
6 your word for it.

7 Q. Well, you've looked hard for them, haven't
8 you?

9 A. Yes. I've looked for everything, yes.

10 Q. And they're not there?

11 A. Not that I can recall, sir.

12 Q. There's nothing in November of '93 that says
13 that's when the eureka a-ha moment was, right?

14 A. Correct.

15 Q. But you did manage to find an old out-of-date
16 agreement with Mr. Young. You have that, the one you
17 just showed us, a nondisclosure agreement.

18 A. Yes, we do.

19 Q. You've got that one, but nothing about what
20 you thought was the most significant event in your
21 company that you say happened in November of '93?

22 A. The Scott Young documents didn't come from my
23 file directly.

24 Q. Now, let's talk about S4 for a minute --
25 S-to-the-4th. When I say S-to-the-4th, you'll know I'm

1 talking about the SEMI product?

2 A. Yes.

3 Q. Now, as I understand your testimony, you
4 waited three months, between November of '93 and
5 February of '94, maybe two and a half, four months to go
6 talk to a lawyer about this eureka moment; is that
7 right?

8 A. That's right.

9 Q. And, in fact, you knew during this period
10 that you had already sold something embodying the
11 patent, which was the SEMI system.

12 You knew that, didn't you?

13 A. No, I don't believe I did, sir.

14 Q. You testified about Scott Young. You know
15 who he is?

16 A. Yes, I do.

17 Q. He's the person at SEMI to whom you and
18 others sold the system, right?

19 A. The SEMI system, yes, that's correct.

20 Q. The S-to-the-4th system?

21 A. That's correct.

22 Q. And you're aware that he's testified in this
23 case that he was sold that system based on the fact that
24 it could separate the content of a document, an SGML
25 document, from its structure.

1 You're aware of that?

2 A. That was made in your opening presentations,
3 yes.

4 Q. And you're aware he's testified to that under
5 oath?

6 A. I haven't seen any of his testimony, sir.

7 Q. Okay. Now, that separation of the content of
8 the document from the structure of the document, that's
9 the core of what you're patenting in the '449 patent,
10 isn't it?

11 A. That's correct.

12 Q. So if Mr. Young is right, that that's what
13 you sold him and what he bought, then your patent's
14 invalid, isn't it?

15 A. If what Mr. Young is asserting is, in fact,
16 true, yes.

17 Q. Now, you weren't involved, I take it, in all
18 the discussions with Mr. Young about what the system
19 that was being sold to him would be; Mr. Hensel was
20 involved in some of those?

21 A. Mr. Hensel is a businessman. He's not a
22 technical guy. He was involved in some of the
23 conversations, yes.

24 Q. And he was involved in some of the sales
25 conversations with Mr. Young that you were not involved

1 in, right?

2 A. That's quite possible, yes.

3 Q. So you wouldn't know what Mr. Hensel told
4 Mr. Young that i4i was proposing to sell to SEMI, at
5 least in all of its instances, because you weren't
6 there; is that fair?

7 A. i4i at the time, sir, wasn't actually -- it
8 didn't exist. It was still Image Online.

9 Q. If I use the term i4i to refer to your
10 company at the time, you will understand what I'm
11 talking about?

12 A. Okay. Fair enough.

13 Q. Is that fair?

14 A. Yes.

15 Q. Okay. Now, you have, on many, many
16 occasions, described the S-to-the-4th product as
17 practicing your '449 patent, haven't you?

18 A. After, as we indicate here, was put in, yes.

19 Q. Well, there is no S-to-the-4th product after
20 '94, is there?

21 A. Well, as we indicated here, we were porting
22 it over to the Windows platform.

23 Q. You never sold an S-to-the-4th product after
24 SEMI, did you?

25 A. No, we did not.

1 Q. So the only product ever sold that's
2 S-to-the-4th is SEMI?

3 A. That's to the best of my knowledge, yes, sir.

4 Q. Okay. And you've repeatedly characterized
5 the S-to-the-4th product as practicing your '449 patent,
6 haven't you?

7 A. No, I have not, sir.

8 Q. Never done that, have you?

9 A. I've indicated here, we only asserted that
10 after we put in the work that Stephen had done on
11 validating the concepts in the patent, and we put it
12 into S-to-the-4th, yes.

13 Q. Let's look at Exhibit 2395. Should be in the
14 second of your binders.

15 Do you recognize Exhibit 2395, Mr. Vulpe?

16 A. Yes, I do.

17 Q. This is something you prepared and submitted
18 to the Canadian government, right?

19 A. It is.

20 Q. And you're requesting money from the Canadian
21 government with Exhibit 2395, weren't you?

22 A. That's correct.

23 MR. POWERS: And, Chris --

24 Q. (By Mr. Powers) And this IRAP is, as referred
25 to there, that's the particular agency that would be

1 funding you, if they accepted this proposal?

2 A. Yes. It's an Industrial Research Assistance
3 Program.

4 Q. Now, if you go over to the second page of the
5 document -- it's still on that first slide --

6 MR. POWERS: Chris, could you pull up
7 Project Technical Background, so that we can read it?

8 Q. (By Mr. Powers) Mr. Vulpe, you wrote these
9 words, didn't you?

10 A. Yes, I did.

11 Q. And the words you wrote -- and this document
12 is in '94, June 5th of '94?

13 A. I looked at the date, but that looks correct,
14 yes.

15 Q. Right at the bottom?

16 A. That's correct, yes.

17 Q. All right. So June 5th of '94, now this is
18 the day after you submitted the application for the
19 actual patent, right?

20 A. Couple of days actually, but yes.

21 Q. June 2; you're right. So it was three days?

22 A. Within three days, yes.

23 Q. All right. Now, so three days after you
24 filed the application, you asked the Canadian government
25 for money to fund more of the work that you were wanting

1 to do, correct?

2 A. That's correct.

3 Q. And that's because at this time, you were
4 interested in finding more sources of funding for the
5 company; is that fair?

6 A. That's correct.

7 Q. And what you told the Canadian government in
8 your request for money was the problem, quote:

9 Infrastructures has applied for a U.S. patent, and then
10 it gives a serial number. That's the serial number for
11 the patent application that became the '449
12 patent-in-suit here, right?

13 A. That's correct.

14 Q. Okay. So you're referring to the patent that
15 we're talking about in this case?

16 A. Yes, sir.

17 Q. All right. Infrastructures has applied for a
18 U.S. patent to protect specific technology that it has
19 developed. The initial implementation is embodied into
20 Infrastructures' S-to-the-4th product, which is a
21 vertical market document development and management
22 application targeted to the semiconductor and publishing
23 industries, close quote.

24 That's what you said, right?

25 A. That's correct.

1 Q. Now, the only S4 -- S-to-the-4th product that
2 you had as of June of '94 was the SEMI product. That's
3 the only one that had ever, ever been sold or offered to
4 anybody.

5 That's true, isn't it?

6 A. That's correct, sir, on a Macintosh, yes.

7 Q. All right. And when you referred here that
8 it's targeted to the semiconductor industry, that's what
9 SEMI is; it's in the semiconductor industry, isn't it?

10 A. Yes, it is, sir.

11 Q. All right. Now, can you turn in your binder
12 to 2396, please, Exhibit 2396?

13 MR. POWERS: Chris, could you bring up
14 just the top half of that?

15 Thank you.

16 Q. (By Mr. Powers) Mr. Vulpe, this is another
17 form that you filled in for an application for money
18 from the Canadian government similar to 2295, correct?

19 A. That's correct.

20 Q. And at the very top section, there's an area,
21 a heading, that says Business Products. And you wrote
22 in there S-to-the-4th.

23 Do you see that?

24 A. Yes, I do.

25 Q. Now, this document --

1 MR. POWERS: Let's go to the back of it,
2 please, Chris.

3 Q. (By Mr. Powers) You signed this document on
4 behalf of i4i, didn't you?

5 A. I would have, yes. And there's my signature,
6 yes.

7 Q. The very bottom, that's your signature, and I
8 think that's September 20th, '94; is that correct?

9 A. That's correct.

10 Q. All right. So if I go back to the first
11 page, in September of '94, you submitted this form to
12 the Canadian government asking for money. And where the
13 government form asked you for your products, you said
14 S-to-the-4th?

15 A. That's correct.

16 Q. And as of September of '94, the only product
17 that you had was the SEMI S-to-the-4th product.

18 That's right, isn't it?

19 A. That's correct.

20 Q. And if you go to the very next page and you
21 look down at the section labeled 3, there the form asks
22 you to list the summary of progress to date.

23 Do you see that?

24 A. Yes, I do.

25 Q. Is this your handwriting, by the way?

1 A. No, this is not.

2 Q. Did somebody with more legible handwriting
3 fill it in and you signed it?

4 A. Obviously, yes.

5 Q. I've seen a lot of your handwriting, so I
6 didn't think it was.

7 But you did sign this and vouch for this
8 information?

9 A. That's correct.

10 Q. In fact, you supplied the information for who
11 wrote it, didn't you?

12 A. I would assume so, yes. I vouched for it,
13 yes.

14 Q. All right. So you said two things in
15 response on this form to summary of progress to date.

16 The first thing you said is U.S. patent
17 application filed.

18 A. That's correct.

19 Q. That's referring to the patent application
20 relating to the '449 patent-in-suit, right?

21 A. That's correct.

22 Q. In fact, that's the only U.S. patent
23 application i4i has ever filed?

24 A. That's not true, sir. We have filed a number
25 of ones, but this case is the one we're talking about.

1 Q. All right. The '449 patent is the only
2 patent i4i has currently issued?

3 A. Currently issued, that's correct, sir.

4 Q. Okay. And the second bullet, the second
5 thing that you say in this section of the form is,
6 quote: Single metacode model implemented in i4i
7 flagship product, S-to-the-4th, vertical market product.

8 Do you see that?

9 A. Yes, I do.

10 Q. And as of this form, the only S-to-the-4th
11 product you had was this SEMI product?

12 A. That's correct.

13 Q. Could you turn to Exhibit 2065?

14 A. Is the exhibit in the same binder?

15 Q. It will be in the first binder, Mr. Vulpe.
16 Actually, don't worry about it.

17 Let's go to 2051 instead. It's in the same
18 binder.

19 Let me know when you have Exhibit 2051.

20 A. I've got it here, yes.

21 MR. POWERS: And, Chris, could you bring
22 up just the first title page and just who it's to and
23 from?

24 There we go.

25 Q. (By Mr. Powers) So this is a March 1994

1 e-mail, or fax actually, from you to a Charles Lum; is
2 that right?

3 A. That's correct.

4 Q. And Mr. Lum was someone that you were
5 soliciting for investment in i4i, correct?

6 A. IOC had approached us, yes, about making an
7 investment in the company.

8 Q. So this Exhibit 2051 is correspondence
9 between you and someone that you'd like to invest in
10 i4i; is that fair?

11 A. That's correct.

12 Q. And this is dated March of '94. So on our
13 timeline, that's before the patent application was
14 filed, before the first draft but after the fax to
15 Barlow and after when you say conception was, correct?

16 A. That's correct.

17 Q. And one of the issues that Mr. Lum had
18 raised in your discussions of a prospective investment
19 was whether there was a patent on your technology that
20 would support the investment; is that fair?

21 A. That appears to be, yes.

22 Q. Now, if you turn to Page 5 of the document;
23 it's the last page of text.

24 MR. POWERS: And, Chris, could you just
25 bring up all of that, that entire portion?

1 Q. (By Mr. Powers) And you say to Mr. Lum in
2 this March of '94 fax, quote: I am currently exploring
3 the patenting of some fundamental ideas used in the
4 Infrastructures technology.

5 Do you see that?

6 A. Yes, I do.

7 Q. That's a reference to the patent application
8 that you're talking about with Mr. Barlow, but haven't
9 filed yet. That's the i4i patent application, right?

10 A. Yes, it is.

11 Q. And you say, quote: The basis of the patent
12 and the preliminary work on the validation precedes
13 Infrastructures'.

14 Do you see that?

15 A. Yes, I do.

16 Q. Now, when you say precedes Infrastructures',
17 you're referring to its preceding the founding of the
18 company, i4i, right?

19 A. That -- that's correct.

20 Q. And the company, i4i, was founded in late
21 '92/early '93?

22 A. Our name changed from Image Online, yes --
23 but yes.

24 Q. So when you say that the basis of the patent
25 precedes Infrastructures', you're telling Mr. Lum that

1 the basis of the '449 patent is '92 or before, right?

2 A. I'm telling him parts of the ideas behind it
3 are -- before Infrastructures', yes.

4 Q. What you're saying is the basis of the patent
5 is before -- is '92 or before?

6 A. That's what it says here, yes.

7 Q. All right. So for Mr. Lum, what you're
8 telling him is that this is the beginning of '93 on your
9 timeline, sometime before '93, Lum, basis for '449
10 patent.

11 That's what you're telling him, right?

12 A. That's what the sentence reads, yes.

13 Q. Now, that's opposite what you're telling the
14 jury here, isn't it?

15 A. It is indeed, and I certainly was
16 exaggerating in that particular sentence, yes.

17 Q. Well, exaggerating is a nice way of putting
18 it. You're telling us that you were lying to Mr. Lum?

19 A. Comes down to it, yes.

20 Q. And you were lying to Mr. Lum because you
21 wanted to prevent him from claiming that i4i could have
22 a claim to the patent. You wanted to keep it yourself,
23 right?

24 A. Well, I certainly wanted to protect Stephen's
25 and my interest, yes.

1 Q. Let's be specific. At this time, you hadn't
2 licensed anything for i4i, had you?

3 A. No, we had not.

4 Q. So what you're telling Mr. Lum is, hey, the
5 basis for the patent is before i4i, so i4i won't own it;
6 it's mine, but I'll license it to i4i?

7 A. As you can see in the next paragraph, we do
8 agree that we would license it, yes, absolutely.

9 Q. And so what you were saying to Mr. Lum is a
10 lie?

11 A. It was an exaggeration, and, yes, that can be
12 said to be a lie.

13 Q. It wasn't an exaggeration; it was a lie,
14 wasn't it, Mr. Vulpe?

15 A. It's an exaggeration, and as I said, it could
16 be said to be a lie.

17 Q. Okay. And you were lying to protect
18 yourself?

19 A. I was looking out for the best way I could
20 for our interests, yes.

21 Q. Well, our; you were looking out for your
22 interests, weren't you?

23 A. Well, mine and Stephen's, yes.

24 Q. And you didn't mention to Mr. -- you say
25 Stephen's; you mean Mr. Owens'?

1 A. That's correct.

2 Q. You didn't mention Mr. Owens at all in this
3 discussion with Mr. Lum, did you?

4 A. No, I did not.

5 Q. In fact, the opposite; you said at the very
6 bottom, the principal is you.

7 A. Well, yes, I am the principal of i4i at the
8 time, yes.

9 Q. So you were really protecting your personal
10 interests at that time against i4i's in this statement
11 to Mr. Lum?

12 A. That could be construed, yes.

13 Q. It's true, isn't it, Mr. Vulpe?

14 It's not just construction. That's what was
15 going on.

16 A. I was protecting my interests, and as I said,
17 I was also protecting -- trying to protect Stephen's
18 interests.

19 Q. Is it your testimony to the jury that you
20 were making this statement to Mr. Lum to protect
21 Mr. Stephens -- Mr. Owens?

22 A. I was protecting both of our interests.
23 That's what I sought to do here.

24 Q. Was that your motivation, though, Mr. Vulpe?
25 Weren't you really trying to protect Mr. Owens, or were

1 you trying to protect yourself?

2 A. I was trying to protect both of us.

3 If I could point out, sir, we did assign,
4 ultimately, the patent over to i4i. The company got the
5 patent with no extra compensation to us.

6 Q. But you were lying to Mr. Lum in March of
7 '94, weren't you?

8 A. As we agreed, yes.

9 Q. All right. Now, let's move to a different
10 subject.

11 You're here testifying to the jury asking for
12 money, because you are arguing that Microsoft is
13 infringing your patent. That's true, isn't it?

14 A. That's correct.

15 Q. Now, you never ever told Microsoft that you
16 thought Microsoft was infringing your patent, did you?

17 A. No, we did not.

18 Q. And during this whole period, from 2002 and
19 before, you were following what Microsoft was doing in
20 its product development very, very closely, weren't you?

21 A. That's correct.

22 Q. And you were doing that because you were
23 selling products which worked with Microsoft Word,
24 right?

25 A. That's correct, yes.

1 Q. So you had to know details about how
2 Microsoft Word worked in order to make sure that your
3 products would work well with Microsoft Word?

4 A. That's correct, yes.

5 Q. And so that's one reason that you joined very
6 early in i4i's entity as a company, the Microsoft
7 Developer Network, right?

8 A. That's correct, yes.

9 Q. Now, the Microsoft Developer Network is a
10 group of people who want access to otherwise
11 confidential information about Microsoft's products so
12 they can build products that work with them, right?

13 A. Anybody can join Microsoft Developer Network.
14 Certainly you could, sir, if you wanted to.

15 Q. But you joined it because you wanted the
16 information about the products that was confidential and
17 that you could use to work on developing your products.

18 A. No, we did not want any confidential
19 information.

20 Q. Well, in the fall of 2002, Word 2003 had not
21 been publicly released, correct?

22 A. That's correct.

23 Q. Yet you got a copy of it, an advanced copy of
24 Word 2003, in the fall of 2002 because you were a member
25 of their Developer Network?

1 A. That's correct.

2 Q. So that's confidential at that point. It
3 wasn't publicly released, but you got it.

4 A. To the best of my knowledge, sir, any member
5 of the public can join MSDN.

6 Q. But I'm not a member of MSDN and most people
7 I think, probably aren't unless they have a reason,
8 right?

9 A. Well, obviously not. Why would they spend
10 the money if they didn't have a reason to.

11 Q. Exactly.

12 So when you got a copy, an advanced copy, of
13 Word 2003 in the fall of 2002, you studied it, didn't
14 you?

15 A. That's correct, yes.

16 Q. And you didn't just study it in general. You
17 were particularly studying it with regard to what it was
18 doing with regard to XML, correct?

19 A. We were studying it to see how our S4/Text
20 product, x4o, could be ported into that environment.
21 That was the focus of our activity.

22 Q. But you also learned that in review of your
23 advanced copy of Word 2003 that Word 2003 supported XML
24 itself. You learned that?

25 A. Yes, we did.

1 Q. And you learned -- in fact, you testified on
2 your direct examination about meetings between Microsoft
3 and i4i in 2001.

4 Do you recall that?

5 A. Yes, I do.

6 Q. And one of the things that i4i learned in
7 those meetings in 2001 was that Microsoft was going to
8 support XML in its next release.

9 You learned that, didn't you?

10 A. We learned that Microsoft would support
11 what's locally known as Word ML, which is a formatting
12 use of XML for formatting.

13 Q. So you knew that there was going to be XML
14 capability in the next version of Word, and you knew
15 that in 2001, right?

16 A. That's what we had been told, yes.

17 Q. All right. And it turns out that was true?

18 A. Yes, it was.

19 Q. And when you analyzed the copy of -- the
20 advanced copy of Word 2003 that you got in the fall of
21 2002, you learned that that product, Word 2003, could
22 import custom XML file into Word.

23 You learned that?

24 A. Yes, I did.

25 Q. And that's what you're accusing here to this

1 jury, aren't you? That's what you're saying infringes?

2 A. The implementation, yes.

3 Q. And you knew in the fall of 2002 that Word
4 2003 could import custom XML into Word?

5 A. That's correct, yes.

6 Q. And you didn't, upon learning that, say to
7 Microsoft, hey, you're now infringing our patent because
8 you can import custom XML into Word, did you?

9 A. No, we had no idea how they did it.

10 Q. And as I understand your testimony that what
11 you need to learn about how they did it so that you
12 could file suit would be to look at the source code?

13 A. That certainly is the ultimate test, yes.

14 Q. And the suit was filed in 1997, right -- I'm
15 sorry -- 2007?

16 A. That's correct, yes.

17 Q. You didn't have Microsoft's source code
18 before suit was filed, did you?

19 A. No, we did not.

20 Q. In fact, you had no more information when you
21 filed the lawsuit in 2007 than you had in the fall of
22 2002?

23 A. No. We had significantly more information.

24 Q. You knew in the fall of 2002 that Word did
25 exactly what you now accuse of infringement, exactly?

1 A. That's true, yes.

2 Q. All right.

3 MR. POWERS: Now let's put up, Chris, if
4 you would, Exhibit 628.

5 THE WITNESS: Which one are we up to?

6 MR. POWERS: 628.

7 Q. (By Mr. Powers) This is -- if you look on
8 your screen, it's very short. I think it's the one that
9 you were shown during your direct examination.

10 A. Sure.

11 Q. Now, you sent this e-mail to Mr. Paoli in
12 December of 2002, right?

13 A. That's correct.

14 Q. And you sent it to him after you had analyzed
15 the advance copy of Word 2003, right?

16 A. That's correct.

17 Q. And after you learned that Word 2003 could
18 import custom XML files?

19 A. That's correct.

20 Q. And what you said in that e-mail was not,
21 hey, you're infringing our patent or you're getting
22 close to our patent or you ought to be worried about our
23 patent. You didn't say anything about the patent, did
24 you?

25 A. No, I did not.

1 Q. In fact, what you said was congratulations.

2 A. I did.

3 Q. And you knew that Mr. Paoli was -- I think
4 the word you used in direct examination was one of the
5 prime evangelists of XML within Microsoft.

6 A. As I understood it, he was a technology
7 evangelist.

8 Q. And one of the areas on which he was
9 evangelizing was XML?

10 A. Of course, yes.

11 Q. And so you sent an e-mail to the head XML guy
12 at Microsoft just after he released a product that
13 supported XML, saying congratulations on doing that.

14 A. I was congratulating him on XDocs and
15 Office 11. That was a significant feat.

16 Q. And Office 11 is the other name for what
17 you're accusing now, Word 2003?

18 A. Well, Office 11 encompasses a lot of
19 products, but yes.

20 Q. So the answer to my question is, yes, it
21 includes Word 2003?

22 A. It includes Word 2003, yes.

23 Q. Which is what you're accusing?

24 A. That's correct.

25 Q. So after you've analyzed what you're

1 accusing, you sent the main guy for XML an e-mail that
2 says not you infringe, but congratulations on releasing
3 what I think infringes.

4 But you did not say that, did you?

5 A. No, because that was not the point of the
6 congratulations.

7 Q. All right. Now, internally within i4i, you
8 also didn't say anything about any possible
9 infringement, did you?

10 A. No.

11 Q. In fact, you said the release of this product
12 is a good thing?

13 A. That's what I asserted, yes.

14 MR. POWERS: Chris, can you put up
15 DTX2018?

16 And that's also in your binder, if you
17 wish to look at it, Mr. Vulpe.

18 THE WITNESS: What's the number, please?

19 MR. POWERS: 2018.

20 Q. (By Mr. Powers) This is an internal note
21 within i4i that you wrote in June of 2003, right?

22 A. That appears to be the case, yes.

23 Q. So if you go over here on your timeline, we
24 have June -- we have December '02 -- whoops -- sorry.
25 I'm 10 years off. We won't do it.

1 In -- this is six months after you had
2 analyzed the advance copy of Word 2003?

3 A. That's correct.

4 Q. And before Word 2003 was officially released
5 to the public, right?

6 A. I think it was October, I believe, it was
7 released.

8 Q. October 2003?

9 A. Yes. So about five, six months, yes.

10 Q. All right. And this was your internal
11 comment within i4i summarizing your analysis of Word
12 2003 as it relates to XML.

13 A. That's correct.

14 Q. And nowhere in this document do you even
15 mention the '449 patent, do you?

16 A. No, I do not.

17 Q. So you had already analyzed Word 2003. You
18 certainly knew about what you thought you had done. And
19 your answer is -- this is five years after your patent
20 had issued, right?

21 A. That's right.

22 Q. So you knew about your patent?

23 A. Of course.

24 Q. It was the most important thing in your
25 company, right?

1 A. Yes, sir.

2 Q. And yet when you're analyzing the very
3 product you're here accusing, you don't mention the
4 patent at all?

5 A. No, I do not.

6 Q. And instead, what you say is Microsoft
7 releasing this product is a good thing for i4i, right?

8 A. I do say that, yes.

9 Q. In fact, that's your very conclusion.
10 If you go to the very bottom, at the very
11 last paragraph where you summarize your conclusions, you
12 go say, quote: MS' -- and that's short for Microsoft,
13 right?

14 A. That's correct.

15 Q. Microsoft's entry into the marketplace
16 creates more opportunities as it validates the market.
17 The Microsoft strategy opened doors -- opens doors and
18 opportunities in the sizeable legacy market as well as
19 opportunities for implementation of i4i technology in
20 Office 11 to make it work for customers will appear.

21 Finally, of course, it creates opportunities
22 for Infrastructure services that answers the, quote, so
23 what, close quote, question.

24 That was your summary of your internal
25 comment of what you now accuse?

1 A. That's correct.

2 Q. As of June 2003?

3 A. That's correct.

4 Q. And as of 2003, i4i was having great
5 difficult selling its products in the marketplace,
6 wasn't it?

7 A. Times were very tough at that point, yes,
8 sir.

9 Q. And you -- your conclusion, after studying
10 Word 2003 in detail, was it's going to help i4i?

11 A. It will. Yes, that's what I said.

12 Q. Now, you said the same thing for Word 2007,
13 didn't you?

14 A. Yes, I did.

15 Q. Would you look at Exhibit 2242? That will
16 be in the next binder, not the one you're in right
17 now.

18 A. What was the number again?

19 Q. 2242.

20 A. Thank you.

21 Q. Now, this is your internal summary within i4i
22 about Word 2007, that other product that you're accusing
23 in this case, right?

24 A. That's correct.

25 Q. And you wrote this on October 6th of 2008,

1 right?

2 A. That's -- yeah. It would have been released
3 in 2000 -- on that date, yeah.

4 Q. But you wrote it in 2008.

5 A. Yes.

6 Q. Last year.

7 A. Yes.

8 Q. So that's after the lawsuit was filed.

9 A. That's correct.

10 Q. It's over a year after the lawsuit was filed.

11 A. That's correct.

12 Q. And internally within i4i, you're summarizing
13 the effect of the introduction of Word 2007, the product
14 you're here accusing of infringing the patent, and you
15 don't say anywhere anything about it infringing the
16 patent, do you?

17 A. No, I do not.

18 Q. In fact, again, what you say is, Microsoft's
19 introduction of Word 2000 (sic) will help i4i; isn't
20 that right?

21 A. That's what I say, yes.

22 MR. POWERS: Chris, can you bring up the
23 conclusion paragraph?

24 Q. (By Mr. Powers) In your conclusion paragraph,
25 you say, The introduction of XML into the Microsoft

1 Office suite provides exciting opportunities for
2 extending i4i's considerable experience in developing
3 Word-based XML-authoring solutions.

4 That's what you said, right?

5 A. That's what I said.

6 Q. So even after the lawsuit was filed, when
7 you're writing an internal note about the technology you
8 accuse here, you nowhere say it infringes or might
9 infringe or could possibly infringe; that's true, isn't
10 it?

11 A. That's what this note says.

12 Q. All right. And, in fact, until the lawsuit
13 was filed, you never communicated to anyone that
14 Microsoft -- in any way anything about Microsoft's
15 products possibly infringing the patent, infringing the
16 patent, getting close to the patent, anything about that
17 at all.

18 A. We did send a note to Microsoft that we had
19 patented technology that applied in this area, yes, we
20 did.

21 Q. You're referring to the letter sent to Bill
22 Gates?

23 A. That's correct.

24 Q. That letter never said that there was
25 infringement of that; never said there was anything

1 close to that, did it?

2 A. No, it did not.

3 Q. In fact, what you were saying in that letter
4 was, you were trying to tout your technology to sell it
5 to Bill Gates, right?

6 A. That's correct.

7 Q. You weren't accusing Microsoft of
8 infringement in that letter at all, were you?

9 A. That would be a little over the top. No.

10 Q. You didn't even come close to that, did you?

11 A. We told them we had patented technology, and
12 we assumed they would know, based on the historical
13 relationship, that they could follow up and understand
14 what that letter was about, yes.

15 Q. You never accused or said anything suggesting
16 that anything Microsoft was doing infringed the i4i
17 patent, did you?

18 A. That's correct.

19 Q. Okay. Now, you testified during -- that
20 there was an extensive period of financial difficulties
21 for i4i. We've already covered that mostly with
22 Mr. Cox. I don't want to belabor it.

23 I do want to bring up one exhibit, though.
24 Could you look at Exhibit 2235, please. It should be in
25 the same binder you're looking at right now. Let me

1 know when you're there.

2 A. Yes, I've got it.

3 Q. Exhibit 2235 is a memo that was sent to the
4 Board of Directors of i4i in October of 2003, right?

5 A. Yes, it is.

6 Q. It was sent from Stuart Angus, who was
7 President of i4i at the time?

8 A. That's correct.

9 Q. And he's from McLean Watson, the investor at
10 i4i, right?

11 A. Yes, he is.

12 Q. He's not a technology person; he's a source
13 of money?

14 A. Stuart is a very able businessman, yes.

15 Q. But he's an investor. That's what he was.

16 A. He works for McLean Watson.

17 Q. Which was an investor?

18 A. That's correct.

19 Q. Okay. And the title of the Re line, the
20 subject line of the memo in October of 2003, is
21 financial crisis at i4i.

22 Do you see that?

23 A. Yes, I do.

24 Q. And you were on the Board of Directors at the
25 time that this memo was sent to the board, right?

1 A. Yes, I was.

2 Q. Now, if you go to the last bullet on the
3 first page, there is a discussion there that says, It
4 was -- it's the last full sentence -- It was therefore
5 decided to, quote, borrow disclose, quote, remittances
6 destined for CCRA with the explicit understanding that
7 all of these borrowings, in quotes, would even out to
8 zero by the end of 2003.

9 Do you see that?

10 A. Yes, I do.

11 Q. Now, CCRA is the Canadian Tax Agency, right?

12 A. Yes, it is.

13 Q. So what was happening in 2003 was that i4i
14 was taking money that it owed to the Canadian Tax
15 Agency, not paying it, not paying the taxes that were
16 due, and instead, using that for your business, right?

17 A. To make the payroll, yes, sir.

18 Q. And that's what was happening.

19 A. That's correct.

20 Q. And part of the point of this memo is that
21 the company has to decide whether it's going to pay its
22 taxes or pay payroll, but it can't do both.

23 A. That's correct.

24 Q. And that was true in October of 2003, right?

25 A. That's correct.

1 Q. One of the problems, one of the sources of
2 i4i's financial problems was the product quality issues
3 that i4i had with its products in the 2002/2003 time
4 period; that's true, isn't it?

5 A. Not that I'm aware.

6 Q. Well, you were on the Board of Directors,
7 weren't you?

8 A. Yes, I was.

9 Q. Is it your testimony that you never heard
10 discussed within the Board of Directors quality problems
11 with i4i's products as being a reason for i4i's poor
12 financial performance?

13 A. We may have discussed these matters. I'd
14 have to go back and look at the board minutes. But,
15 certainly, we did discuss quality as an ongoing issue.

16 Q. Okay. So the quality was an ongoing issue
17 within board discussions?

18 A. Yes, sir.

19 Q. It was a concern?

20 A. It always is a concern. One wants to deliver
21 a quality product to the market.

22 Q. If your customers don't think you have a
23 quality product, they won't buy it.

24 A. That's correct.

25 Q. Could you look at Exhibit 2056.

1 A. Are we in the same binder again?

2 Q. That's going to be back in the other one.

3 Sorry.

4 If it helps you, the range of exhibits is on
5 the spine, so it will tell you what's --

6 A. Okay. Thank you. Which number are we
7 looking for?

8 Q. 2056.

9 A. 2056.

10 Q. 2056 is the report on what happened at the
11 Board of Directors meeting in February of 2002, right?

12 A. That's correct.

13 Q. And at this point, a key focus of your board
14 meetings was the financial crisis within i4i; that's
15 fair, isn't it?

16 A. I'd have to go back and look at this. I
17 haven't seen this in awhile. But I will assume you've
18 read this carefully, and therefore, it's true, yes.

19 Q. Do you remember that in 2002, there was a
20 financial crisis within i4i?

21 A. At certain -- times were certainly tough,
22 yes.

23 Q. All right.

24 MR. POWERS: And, Chris, if you could, on
25 the first page of text, bring up the first paragraph

1 under Key Activities Required in Q3.

2 Q. (By Mr. Powers) Now, Q3 is a reference to the
3 third quarter?

4 A. That's right.

5 Q. And under the heading, Key Activities for the
6 Third Quarter, the summary of the board meeting says,
7 quote, with revenue continuing to be pushed off due to
8 product quality issues -- let's stop there for a minute.

9 Does that help you recall that there were
10 product quality issues that were the reason for revenue
11 problems within i4i?

12 A. As it states here, yes. I believe this is
13 Rick's report, yes.

14 Q. All right. And in fact, those product
15 quality problems had affected your largest customer, the
16 Patent & Trademark Office, true?

17 A. I'd have to go back and look.

18 Q. Do you remember that?

19 A. It may have, yes.

20 Q. I mean, can you answer that without
21 looking -- without having to look at a document? Do you
22 remember that the Patent & Trademark Office did not
23 renew its contract? You know that, don't you?

24 A. Did not renew its maintenance contract, yes,
25 that's correct.

1 Q. And you know that before it decided not to
2 renew the maintenance contract, it was telling i4i it
3 had serious concerns about the product.

4 You know that, don't you?

5 A. I'm trying to recall, but that's probably
6 true, yes.

7 Q. All right. And, in fact, that subject was
8 discussed at the board, too.

9 A. I would assume so, yes. That's a very
10 serious issue.

11 Q. Let me show you Page 2 of the exhibit.
12 There's a conclusion section in the middle.

13 MR. POWERS: Chris, if you could bring
14 that whole thing up. Perfect.

15 Q. (By Mr. Powers) The second paragraph there
16 says, The perception problems continued at the U.S. PTO,
17 although some progress has been made, but the problems
18 they have incurred are spreading to other government
19 departments, JPO, and have most likely affected the EPO
20 as well, close quote.

21 Do you see that?

22 A. Yes, I do.

23 Q. Does that help you recall that in the 2002
24 time period, the United States Patent & Trademark Office
25 was so unhappy with i4i's product, that not only was it

1 complaining to i4i, but it was hurting i4i's ability to
2 sell to other governments and government agencies, too.

3 A. That's what this says, yes, sir.

4 Q. You have no reason to doubt that, do you?

5 A. No, I do not.

6 Q. You try to make the board minutes accurate,
7 don't you?

8 A. We certainly do.

9 Q. So did they ask for their certificate of
10 appreciation back?

11 A. No, they did not.

12 Q. Okay. Now, the -- but the PTO did, shortly
13 after this period, not renew its agreement with -- its
14 contract for i4i; that's true, isn't it?

15 A. That's correct.

16 Q. Now, also in 2002, that's when management of
17 i4i changed, right?

18 A. Yes, that's correct.

19 Q. That's when Stuart Angus of McLean Watson,
20 the investors, the money sources took over --

21 A. That's --

22 Q. -- as president.

23 A. That's correct.

24 Q. I'd like to switch topics now to the question
25 of the metacode map.

1 Do you recall testifying about what the
2 metacode map was briefly in your direct examination?

3 A. Yes, I do.

4 Q. Now, let's start --

5 MR. POWERS: Chris, could we bring up
6 Exhibit 595, which, I think, is the exhibit you
7 testified about.

8 Q. (By Mr. Powers) Do you recognize Exhibit 595
9 as the document that you testified about regarding your
10 submission?

11 MR. POWERS: Go ahead and blow it up.

12 Q. (By Mr. Powers) This is the February 14th fax
13 from you to Dr. Barlow regarding the possible patent
14 application?

15 A. Yes.

16 MR. POWERS: And, Chris, could you bring
17 up the table that Mr. Vulpe testified about? That one.
18 The next page, I think, will be fine. There we go.
19 Just the top one would be perfect.

20 Q. (By Mr. Powers) Do you recall testifying
21 about this map where you had an offset and a code on the
22 right side?

23 A. That's correct.

24 Q. Now, the code on the right side is what
25 you're calling in the patent a metacode?

1 A. Yes, it is.

2 Q. And the first metacode that you refer to in
3 this February 14th, 1994, fax to Dr. Barlow is
4 paragraph, right?

5 A. That's right.

6 Q. And para here means paragraph?

7 A. That's the implication, yes.

8 Q. And by paragraph, you just mean hit a return
9 and start a new paragraph? That's what it means?

10 A. That's the convention, yes.

11 Q. And the very next metacode that you cite in
12 the summary of your patent is sentence, right?

13 A. That's correct.

14 Q. So that just means you're identifying
15 something as a sentence.

16 A. That's correct.

17 Q. And the next one, the next metacode that you
18 identify in this summary of your invention, is phrase,
19 right?

20 A. And phrase, yes.

21 Q. And phrase means that it's a phrase within a
22 sentence?

23 A. Yes.

24 Q. And then you have an end phrase, end
25 sentence, and end para, which is just the end of each of

1 those, the second half of the pair.

2 A. That's correct.

3 Q. Now, and each of those is a metacode as you
4 use that term in your '449 patent.

5 A. That's correct.

6 Q. Now, and you gave para as an example --

7 MR. POWERS: And, Chris, if we could
8 bring up the '449 patent, please, top of Column 10.

9 Q. (By Mr. Powers) This is PX1. You recognize
10 this from your '499 patent, Mr. Vulpe?

11 A. Yes, I do.

12 Q. This is what you showed in your '449 patent
13 as a metacode map?

14 A. That's what it says here, yes, sir.

15 Q. And one of the metacodes in your metacode map
16 was para?

17 A. Yes, it was.

18 Q. And that meant paragraph, just as it did in
19 your February '94 fax to Dr. Barlow?

20 A. That's certainly reasonable, yes.

21 Q. All right. Now, in fact, you -- and your
22 contention, as I understand it, is that the concept of
23 this metacode map is central to your idea of what you
24 think is invented about the '449 patent.

25 A. Yes, it is.

1 Q. But you know that you didn't invent the
2 concept of a metacode map, don't you?

3 A. No, I don't, but --

4 Q. You think you did invent the concept of the
5 metacode map?

6 A. As described in this patent, yes.

7 Q. Well, let's look at the file history.

8 MR. POWERS: Chris, could you bring up
9 PX4, which is the prosecution history of the '449
10 patent?

11 Q. (By Mr. Powers) You participated in the back
12 and forth between the Patent Office on getting the '449
13 patent issued, didn't you?

14 A. Yes, I did, sir.

15 MR. POWERS: Chris, could you turn to
16 Page 108 of the document?

17 Q. (By Mr. Powers) Do you have a copy in your
18 binder, Mr. Vulpe?

19 A. I'm sorry. What's the number, please?

20 Q. Exhibit 4.

21 A. 4?

22 Q. You should, because I want you to be able to
23 read it.

24 A. Yes, I do.

25 Q. Are you at Page 108?

1 The easiest way to -- just to make it easier,
2 at the bottom right, we've labeled 0004.108.

3 You recognize that this is the time during
4 the back and forth with the Patent Office that the
5 Patent Office rejected your claims based on a reference
6 called Kugimiya, which is, for the court reporter,
7 K-U-G-I-M-I-Y-A.

8 A. Yes, I recognize this.

9 Q. Sorry?

10 A. Yes, I recognize this.

11 Q. You were aware at the time that the Patent
12 Office said, I don't think you're patentable, because
13 Kugimiya teaches what you're claiming, right?

14 A. Well, they identify a number of issues, yes.

15 Q. And, in fact, what the Patent Office said is,
16 quote -- and this is from the first full paragraph under
17 Paragraph 4. It's up on the screen, if it helps you
18 read it.

19 It says, quote, regarding Claim 1, Kugimiya
20 teaches the claimed metacodes as tags, separating the
21 tags from the words, locating and addressing them into a
22 mapping table. And then it tells you where in Kugimiya
23 that's shown, right?

24 A. That's what it says there, yes, sir.

25 Q. And in response to that rejection, you went

1 to the Patent Office to meet with the Examiner to talk
2 to him about Kugimiya, you personally, didn't you?

3 A. I believe we did, yes.

4 Q. Could you turn to Page 129 of Exhibit 4.
5 Let me know when you're there.

6 A. Yes.

7 MR. POWERS: And, Chris, could you just
8 bring up from Examiner Interview Summary Record down to
9 the bottom of the handwriting? There we go.

10 Q. (By Mr. Powers) This is the official summary
11 by the Examiner, the Patent Office Examiner, of that
12 interview, right?

13 A. It appears to be, yes.

14 Q. And it shows at the second line that you
15 attended that interview.

16 A. That's correct, yes.

17 Q. And that the interview happened on December
18 10 of 1997.

19 A. That's correct.

20 Q. And that the subject being discussed is
21 Kugimiya, right?

22 A. That's correct.

23 Q. And when you went to talk about Kugimiya, you
24 didn't say Kugimiya doesn't have a metacode map within
25 the meaning of my patent. You didn't say that, did you?

1 A. That's a long time ago, sir. I can't
2 remember the details of the conversation.

3 Q. In fact, what you said was not that
4 Kugimiya didn't have a metacode map within the
5 meaning of your invention but that the Kugimiya
6 metacode map wasn't stored long enough; it wasn't
7 persistently stored.

8 Do you recall that? Do you recall making
9 that argument to the Examiner?

10 A. That's what it says, so -- that's what it
11 says here, yes.

12 Q. If you want to look at -- it may help you to
13 look at Page 133 of Exhibit 4. You may want to start at
14 Page 132, so you know this is your file and not the
15 Patent Office's.

16 At Page 133 of Exhibit 4 is what you, i4i,
17 submitted back to the Patent Office to summarize the
18 arguments made at the interview, right?

19 A. That's what it appears to be.

20 Q. And you didn't argue that Kugimiya didn't
21 have a metacode map within the meaning of your claim;
22 you didn't say that, did you?

23 A. Well, I'd have to read the whole thing, but
24 I'll take your word for it, yes.

25 Q. In fact, what you said is, okay, we'll change

1 our claims. And you say, quote, We seem to reach
2 agreement that the reference does not teach providing a
3 menu of metacodes or a persistent storage for the
4 metacode map.

5 Claim 1 has been further modified to make it
6 more clear that the metacode map is persistently stored
7 separately and distinctly from the content and that
8 after the storage, the metacode map and the content can
9 be resolved into a document, closed quote.

10 Do you see that?

11 A. Yes, sir.

12 Q. So you didn't say there wasn't a metacode
13 map; you're just saying that the metacode map of
14 Kugimiya wasn't stored long enough; is that fair?

15 A. That's what we're saying there, yes.

16 Q. And right after that, the Patent Examiner
17 said, okay, you've got a patent, if you want to look at
18 Page 136.

19 A. That's correct.

20 Q. So you now acknowledge that you didn't invent
21 the concept of the metacode map.

22 A. I -- yeah. Fair enough.

23 Q. Yet that's central to your patent, isn't it?

24 A. That's one of the key concepts, yes.

25 Q. Now, let's switch subjects and talk about

1 Mr. Young.

2 Scott Young, I believe you said earlier, was
3 the man who sold -- you sold product to at SEMI, the
4 S-to-the-4th product.

5 A. He was the project manager, yes.

6 Q. And you submitted a declaration in this case
7 swearing under penalty of perjury that Mr. Young, quote,
8 never worked for i4i, close quote.

9 That's what you said under penalty of perjury
10 under oath, the same oath you took in front of the jury.

11 A. That's correct. I would have to see the
12 document again, but I believe that's what I said, yes.

13 Q. Would you turn in the second binder to
14 Exhibit 2409?

15 A. 24 --

16 Q. -- 09. And I want you to just look at the
17 first --

18 MR. POWERS: And, Chris, all you need to
19 put up is the first signature block and the first
20 sentence of Paragraph 5.

21 Q. (By Mr. Powers) So on April 27th of 2009,
22 just about three weeks ago, you swore under penalty of
23 perjury that Mr. Young, quote, never worked for i4i,
24 right?

25 A. That's correct. That's what it says here.

1 Q. And that's not true, is it?

2 A. To the best of my knowledge, the best of my
3 recollection, Mr. Young worked for IDS.

4 Q. Are you saying that he never worked on behalf
5 of i4i?

6 A. I'm not -- I'm saying he worked for IDS. I
7 have no objection that he worked on behalf of i4i.

8 Q. And working -- you're saying he was
9 technically employed by IDS?

10 A. That's -- that was my recollection, yes, sir.

11 Q. And at IDS, he was selling products for i4i,
12 right?

13 A. That's -- that's correct.

14 Q. And you wouldn't call that working for i4i?

15 A. He's working on behalf of i4i; he's not an
16 employee of i4i.

17 Q. Well, you didn't say he's not an employee of
18 i4i; you said he has never worked for i4i. That's what
19 you said, isn't it?

20 A. That's what it says here, yes.

21 Q. And that's not true, is it? That statement,
22 under penalty of perjury, is not true.

23 A. I would disagree with you, sir.

24 Q. So when he's selling products for i4i, he's
25 not working for i4i?

1 A. He's working on behalf of i4i through IDS,
2 and it's -- he was working on behalf of the company,
3 yes.

4 Q. Would you look at Exhibit 2408?

5 Exhibit 2408 is an agreement with Mr. Young
6 that you signed in 1996, isn't it?

7 A. All it says here is redacted. I can't see
8 the --

9 Q. If you'll go to the last page. Certain parts
10 have been taken out by agreement of both parties.
11 That's not something we did; it was something both sides
12 did.

13 A. Okay.

14 Q. This is an agreement you signed with
15 Mr. Young in 1996, right?

16 A. I would assume so, yes, sir.

17 Q. And if you go to Paragraph 13, you say, i4i
18 will respond to inquiries respecting Young's employment
19 with i4i as follows:

20 Quote, Mr. Young worked for and helped grow
21 the business of i4i, including its U.S. customer base,
22 during 1995 and 1996 and that he voluntarily resigned
23 from i4i in 1996.

24 A. That's what it says, yes.

25 Q. So you're saying in this agreement, that

1 Mr. Young worked for i4i for two years.

2 A. I was --

3 Q. So is that false?

4 A. We were trying to be -- I was trying to be
5 most helpful to Mr. Young in his further employment
6 endeavors, and we agreed that this would be the verbiage
7 we would use, yes.

8 Q. So you're agreeing there to lie to help
9 Mr. Young? Is that your testimony?

10 A. If you want to construe it that way, yes,
11 sir.

12 Q. And that's because you were such good friends
13 with Mr. Young?

14 A. I bore him no ill will and still do not bear
15 him any ill will.

16 Q. So you're agreeing to lie. That was -- that
17 was your -- that's your testimony?

18 A. If that's what it took, then -- if that's the
19 way you want to construe it, yes, sir.

20 Q. Well, it's not -- it's not my construction
21 that matters; it's your testimony.

22 You're telling this jury that you agreed to
23 lie.

24 A. I agreed to say -- say that, and if you want
25 to construe it as a lie, then yes, it is a lie.

1 Q. But you're saying it's a lie.

2 A. I just said I agree with you.

3 Q. All right. And, in fact, Mr. Young did sell
4 products for i4i for two years.

5 A. On behalf of i4i, yes, sir, he did.

6 Q. All right. Now, you earlier referenced an
7 e-mail that you said was sent to Mr. Gates.

8 MR. POWERS: Let's pull that up, Chris.
9 I think it's Exhibit 2027.

10 A. 2027, you said?

11 Q. (By Mr. Powers) 2027.

12 A. I'm not sure I have a 2027 here. I have a
13 2026, and then I jump to a 20 --

14 Q. Well, let's do it this way.

15 MR. POWERS: Chris, can you bring up
16 Exhibit 2027?

17 A. -- 37.

18 Q. (By Mr. Powers) Oh, we've got it on the
19 screen.

20 A. Okay. That's fair enough.

21 Q. Do you recognize Exhibit 2027 as the letter
22 to Mr. Gates that you were referring to earlier in your
23 testimony?

24 A. Yes, I do.

25 Q. And so this is dated May of 2003?

1 A. Yes, it is.

2 Q. And this is the letter where you were trying
3 to sell i4i's products to Mr. Gates and Microsoft?

4 A. We were reaching out to Microsoft yet again,
5 yes.

6 Q. And part of what you're saying to Microsoft
7 in this letter is, we can help protect you against
8 companies like Oracle, right?

9 A. That's correct.

10 MR. POWERS: And if we -- Chris, if
11 you'll scroll down a little bit, you'll see that. Pull
12 up a paragraph that refers to Oracle. There you go.

13 Q. (By Mr. Powers) In this -- in the paragraph
14 on the screen under authoring the critical battleground,
15 you're suggesting that you can help protect Microsoft
16 against Oracle as an example.

17 A. That's correct.

18 Q. Now, the response you got from Microsoft is
19 Exhibit 2028, isn't it? That should be in your binder.
20 If not, we'll bring it up. It's short.

21 A. Yes. I'm afraid you'll have to bring it up.

22 MR. POWERS: All right. Chris, could you
23 bring up just the first -- all the way up from the top,
24 please. No, no, no, no. From the top.

25 Q. (By Mr. Powers) This is -- Exhibit 2028 is

1 from you to Mr. Angus, who, at that point, is President
2 of i4i?

3 A. That's correct.

4 Q. He took over from you as President, right?

5 A. No, he did not.

6 Q. That's right. You had already relinquished
7 it earlier in 2002?

8 A. I had relinquished it a long time ago, sir.

9 Q. All right. Now, the response to your letter
10 to Mr. Gates came from an automated mailbox called
11 Opportunity Management Center at Microsoft?

12 A. That's what it looks like, yes, sir.

13 Q. And the primary point of this is, Don't send
14 us any confidential information.

15 Do you recall that?

16 A. Yes, I do.

17 Q. All right. Now, at about the same time
18 you're telling Mr. Gates that you can protect Microsoft
19 from Oracle, you were also telling Mr. Ellison at Oracle
20 that you could help him attack Microsoft, weren't you?

21 A. I don't recall any correspondence like that,
22 but I could be wrong.

23 Q. Could you look at Exhibit 2026?

24 MR. POWERS: Exhibit 2026, Chris, could
25 you bring up the address line and the first two

1 paragraphs?

2 Q. (By Mr. Powers) This is a letter in April of
3 2003, just before the letter to Mr. Gates, from
4 Mr. Angus, the same man who wrote to Mr. Gates, right?

5 A. Yes, sir.

6 Q. So right about the same time.

7 A. Yes, sir.

8 Q. And in the letter to Mr. Ellison, who's the
9 CEO of Oracle, i4i says, Microsoft's success -- the very
10 first sentence to Mr. Ellison at Oracle -- Microsoft's
11 success has stemmed from their ability to effectively
12 own the desktop and thereby the data residing there. We
13 believe that our products, coupled with yours, can do
14 much to change that to Oracle's benefit, right?

15 A. That's correct.

16 Q. So at the same time you're telling Mr. Gates
17 that you'd like to sell him products to protect from
18 Oracle, you're telling Oracle you'd like to sell them
19 products to go attach Microsoft.

20 A. That's what this letter from Mr. Angus says,
21 yes.

22 Q. Now, you testified about some interactions
23 with Microsoft, but I want to talk about one more.

24 There came a time in 2005 and 2006 where i4i
25 deliberately tried not to have interactions with

1 Microsoft, right?

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

3 Q. Because you were trying to hide the fact that
4 you were thinking about suing Microsoft, right?

5 A. We were considering action against Microsoft
6 at the time, yes, sir.

7 MR. POWERS: Would you bring up, Chris,
8 Exhibit 2061?

9 Q. (By Mr. Powers) I think that is in your
10 binder, Mr. Vulpe.

11 A. Yes, it is.

12 MR. POWERS: Chris, could you bring up
13 first the bottom e-mail in that -- in this chain?

14 Q. (By Mr. Powers) The bottom e-mail in this
15 chain is an e-mail which i4i received from someone at
16 Microsoft, right, in January of 2006?

17 A. That's correct.

18 Q. And, basically, they're asking, are you going
19 to sell a product that works with Office 2007?

20 A. That's correct.

21 Q. This is well before Office 2007 was released,
22 right?

23 A. That's correct.

24 Q. And this dialogue was happening because i4i
25 was part of the developers network that worked with

1 Microsoft's products.

2 A. No, that's not correct.

3 Q. Well, Office 2007 hadn't been released yet,
4 right?

5 A. Well, they were asking about our plans to --
6 this e-mail came -- if you'll notice, it's also cc'd to
7 Martti Poutanen at Index Finland.

8 Index Finland is one of our resellers in
9 Finland, and they have a project with the Ministry of
10 Finance and the Government, and they're a long-standing
11 supplier of i4i technology to the Finnish Government.

12 Q. So in January of 2006, which is about a year
13 before Word 2007 was released --

14 A. Uh-huh.

15 Q. -- Microsoft says to i4i, Are you going to
16 sell something to work with Word 2007; is that fair?

17 A. That's a question they asked there, yes.

18 Q. All right.

19 MR. POWERS: Now, Chris, could you bring
20 up the top part of the Exhibit 2061?

21 Q. (By Mr. Powers) The top part of Exhibit 2061
22 is an internal, within i4i, discussion about what to do
23 in response to the e-mail that's at the bottom part we
24 just read, correct?

25 A. It's a note to myself and Karen Heater, who's

1 the President of i4i from a sales gentleman working for
2 us, Mr. Jeff Poisson, about this e-mail.

3 Q. And it's a question about how are we going to
4 respond to Microsoft's question?

5 A. She's looking for guidance from me on how to
6 respond to this, yes.

7 Q. All right. And in this e-mail, Jeff
8 Poisson -- is that how you pronounce his name?

9 A. That's correct.

10 Q. He's an i4i employee, right?

11 A. Yes, he is.

12 Q. He says in the first sentence, Michel --
13 that's talking about -- to you, right?

14 A. Yes.

15 Q. Michel, could you please provide some
16 suggested working (sic) for a response to this?
17 And then he says down in the middle of the next
18 paragraph -- well, the very next paragraph, This is too
19 delicate for me to comment on. What do you suggest
20 saying? Anything that we do say should not encourage
21 continued dialogue, close quote.

22 Do you see that?

23 A. That's correct.

24 Q. So within i4i at this time, you wanted to lie
25 in the weeds and not talk to Microsoft.

1 A. We had gotten word from Index that their
2 installation of our product and their professional
3 services around that product was under assault by
4 Microsoft, who was offering to replace our solution in
5 Index's implementation of that solution for free, and so
6 we decided to back off of this and didn't want to
7 communicate any further with Microsoft.

8 Q. Well, the point of the e-mail is, let's not
9 have a dialogue with Microsoft, right?

10 A. Well, we were under assault at the Finnish
11 Government, so, certainly, we were not going to respond
12 to anything from them, because we didn't understand the
13 basis of what was going on.

14 Q. And one of the reasons you didn't want to
15 have a discussion with Microsoft was that you were
16 thinking about suing them at this time, right?

17 A. In this case, sir, this was about the effort
18 by Microsoft to push us out of the Ministry of Finance
19 of Finland.

20 Q. Let's talk about -- finally, about Mr. Owens.
21 Mr. Owens is your coinventor, right?

22 A. That's correct.

23 Q. And Mr. Owens was an independent contractor
24 to i4i. Mr. Owens did work for i4i on a contract basis,
25 right?

1 A. That's correct.

2 Q. And he did work for you in '92, '93, '94, and
3 '95?

4 A. Over many years, yes, sir.

5 Q. And also some work later as well.

6 A. That's right.

7 Q. And some of the work that he did for you
8 later was work that, at least until recently, i4i never
9 paid him for, right?

10 A. That's correct.

11 Q. And that debt had been out there for at least
12 five or six years as of Christmas of 2007?

13 A. That's approximately right, yes, sir.

14 Q. And that was about \$73,000.

15 A. Approximately, yes, sir.

16 Q. And in 2007, you called Mr. Owens and said, I
17 want your help in this lawsuit, didn't you?

18 A. I believe I sent him an e-mail to that
19 effect.

20 Q. And Mr. Owens said, hey, how about my money?

21 A. That's a reasonable response from him, yes.

22 Q. And in December of 2007, just three weeks
23 before his deposition in this case, you paid him \$73,000
24 and change, didn't you?

25 A. Yes, we did.

1 Q. And could you turn in your book to 2407?

2 MR. POWERS: Chris, could you just bring
3 up the top half of that document?

4 Q. (By Mr. Powers) Let me know when you have it,
5 Mr. Vulpe.

6 A. Yes.

7 Q. Do you have Exhibit 2407?

8 A. Yes, I do.

9 Q. The bottom half of Exhibit 2407 is an e-mail
10 from you to Mr. Owens in May of 2007, right?

11 A. I'm sorry?

12 Q. The bottom half of Exhibit 2407 is an e-mail
13 from you to Mr. Owens in May of 2007.

14 A. Yes, it is.

15 Q. And the subject line that you put for that
16 e-mail is, the game is afoot.

17 A. That's correct.

18 Q. You're referring to this lawsuit, weren't
19 you?

20 A. Yes, I was.

21 Q. Because the lawsuit had just been filed just
22 before this e-mail.

23 A. That's correct.

24 Q. And the filing in 2007 was not by i4i, Inc.,
25 was it?

1 A. No, it was not.

2 Q. It was by i4i, LP, the -- the investor fund
3 that was -- that was formed to actually do this
4 litigation.

5 A. It was a vehicle that was created by the
6 shareholders of i4i, Inc., and external investors to
7 manage this activity and the licensing of the patent,
8 yes, sir.

9 Q. Well, you said the licensing of the patent.
10 The only thing that i4i, LP has done is actually bring
11 this lawsuit; isn't that right?

12 A. That's correct.

13 Q. And you referred to external investors.
14 That's the entity that's called the Northwater Patent
15 Fund?

16 A. That's correct.

17 Q. They specialize in funding litigations?

18 A. That's what they do, sir, yes.

19 Q. And when you wrote this e-mail to Mr. Owens,
20 the game is afoot, in May of 2007, can we set aside a
21 few minutes to discuss what this means, that's part of
22 when you were asking him for his help in this lawsuit.

23 A. Yes, it is.

24 Q. And the top part of Exhibit 2407 was
25 Mr. Owens' response?

1 A. Yes, it is.

2 Q. And he says, Michel, and then he puts in
3 quotes, Steve, help us out. We'll cover costs. You
4 shouldn't have anyway. You won't get anything out of
5 it, and we owe you money. Thanks, Michel.

6 Is that what Mr. Owens was saying you should
7 have said to him?

8 A. That's a pretty sarcastic summary of what he
9 thinks I should have said to him, yes.

10 Q. So he was expressing his annoyance that you
11 hadn't paid him, but you were asking him for help; is
12 that fair?

13 A. That's as I suggested, yes, sir.

14 Q. And you then paid him.

15 A. I did.

16 Q. And then he testified.

17 A. That's correct.

18 MR. POWERS: No further questions.

19 THE COURT: All right. Redirect?

20 Let me ask, approximately how long, do
21 you think, for redirect?

22 MR. WHITE: Not too long, Your Honor, but
23 if this is a convenient time, it will be fine.

24 THE COURT: All right. Let's go ahead
25 and take our afternoon break, and we'll be in recess

1 until 3:15.

2 COURT SECURITY OFFICER: All rise.

3 (Jury out.)

4 (Recess.)

5 COURT SECURITY OFFICER: All rise for the
6 jury.

7 (Jury in.)

8 THE COURT: Please be seated.

9 All right, Mr. White. You may proceed.

10 MR. WHITE: Thank you, Your Honor.

11 May I approach the easel?

12 THE COURT: Yes, you may.

13 MR. POWERS: Your Honor, before Mr. White
14 begins, may I just mark this handwritten flip chart as
15 an illustrative exhibit?

16 THE COURT: Okay.

17 MR. POWERS: I think it's Exhibit --
18 Defendant's Exhibit 1 -- 2? 2.

19 Thank you, Your Honor.

20 THE COURT: All right. You may proceed.

21 REDIRECT EXAMINATION

22 BY MR. WHITE:

23 Q. Mr. Vulpe, you were asked on
24 cross-examination about the conception event that we
25 indicated on this demonstrative.

1 Do you recall that?

2 A. Yes, I was.

3 Q. You weren't able to find any documents,
4 despite diligent searching, to see if there was any such
5 document that existed?

6 A. That's correct.

7 Q. Now, counsel then made reference to the fact
8 that the fax that you prepared and sent to Dr. Barlow
9 was some three months later after the conception.

10 Do you recall that?

11 A. That's correct.

12 Q. He asked, why did you delay in doing that.
13 So I want to ask you, sir, what were you doing during
14 that time period?

15 A. Stephen and I were trying to figure out how
16 this might be implemented in software.

17 Q. And the detail write-up that you provided to
18 Dr. Barlow was a result of the effort from the time that
19 you conceived of the idea till you had what you
20 considered to be several embodiments of your invention?

21 A. That's correct.

22 Q. And you wanted to disclose to Dr. Barlow
23 those embodiments, and that's why you attached to his
24 fax the write-up that we looked at?

25 A. Yes.

1 MR. POWERS: Object to leading, Your
2 Honor.

3 Q. (By Mr. White) Well, why did you attach the
4 write-up to your fax to Dr. Barlow?

5 A. Because we wanted to inform Dr. Barlow, as
6 best we could, what was invention was about.

7 Q. All right. Now, we have a demonstrative here
8 that is a portion of one of the examples that you
9 provided in your write-up.

10 Do you recall that?

11 A. Yes, I do.

12 Q. Now, counsel referred to this as a metacode
13 map.

14 Do you recall that?

15 A. Yes, I do.

16 Q. At the top, you have a text screen, and you
17 call this raw content.

18 A. That's correct.

19 Q. In the sense of your patent, is that your map
20 content?

21 A. Yes, it is.

22 Q. Now, this box that says map in the context of
23 your invention, is that your metacode map?

24 A. Yes, it would be.

25 Q. And these things that are under the code plus

1 sign, they're called metacodes --

2 A. Yes, sir.

3 Q. -- in the sense of your patent?

4 A. Yes, sir.

5 Q. And that when you map your metacodes,
6 according to the addresses of use, into the mapped
7 content, you produce the document at the bottom; is that
8 correct?

9 A. That's correct.

10 Q. And you indicated, sir, that in doing that,
11 that -- in fact, you highlighted para, end para, and
12 showed where it was -- was found.

13 Does this example represent an embodiment of
14 your invention of the '449 patent?

15 A. Yes, it does.

16 Q. Now, there's several other examples in this
17 write-up.

18 Do they represent examples of embodiments of
19 your invention?

20 A. Yes, they do.

21 Q. Now, you were asked about the SEMI -- let me
22 put the time chart back up.

23 You were asked about the SEMI S-to-the-4th
24 system, and you were asked, isn't it true that in that
25 system that the markup was separated out of the content,

1 according to the invention of your '449 patent?

2 Do you recall that question?

3 A. I do recall that question, yes.

4 Q. And you responded, no, it isn't.

5 A. That's correct.

6 Q. I want to hand you, Mr. Vulpe -- well,
7 actually, before I do that, let me ask you a question.
8 What did the SEMI S-to-the-4th system do for the SEMI
9 company?

10 A. As I indicated before, it databased their
11 standards documents, and it allowed them to publish them
12 in SGML to paper and to electronic form, manage the
13 voting process, and provided an editor so they could
14 create the SGML content.

15 Q. How did it database the SEMI standards?

16 A. It divided the standard up into chunks of
17 content that were to be voted upon.

18 Q. I'm going to hand you a copy of a document
19 that we -- that was produced in this litigation by the
20 SEMI company in response to a subpoena served by
21 Microsoft.

22 MR. WHITE: Your Honor, may I approach
23 the witness?

24 THE COURT: Yes, you may.

25 Q. (By Mr. White) This is Plaintiffs'

1 Exhibit 642, and I'll ask you, sir, if you can identify
2 what that document represents.

3 MR. POWERS: Objection, Your Honor. No
4 foundation. It was produced by a third party. He's
5 never seen it before. There's no way he can testify
6 about that document with any foundation.

7 THE COURT: Overruled.

8 MR. WHITE: I'm not asking him to testify
9 to the truth of anything that document contains.

10 THE COURT: Objection's overruled.

11 A. This is a SEMI standard with SGML coding,
12 according to the SGML DTD.

13 Q. (By Mr. White) Now, you indicated that the
14 SEMI S-to-the-4th product that was installed and running
15 on the computers at the SEMI company would database that
16 standard; is that right?

17 A. Yes.

18 Q. How would it do that?

19 A. Well, it would take the sections, so -- can
20 I -- may I?

21 Q. If you could use the scissors and show us how
22 you would database that document.

23 A. Well, this document is made up of a number of
24 sections. So we would take, for instance -- pretend
25 this is a piece of software. It can certainly do a

1 better job cutting than I can.

2 And we would break it up into just three
3 chunks of data on SGML tag boundaries, and we would
4 store each section. And there's a number more, but we
5 would store each one of these things in the database as
6 discreet objects.

7 Q. And each one of those chunks of data, were
8 they SGML documents?

9 A. They were SGML chunks, sir.

10 Q. Did they contain SGML tags --

11 A. Yes.

12 Q. -- according to the standard?

13 A. Yes, they do.

14 Q. Was the markup, the SGML tag, separated out
15 of the content of the text of those chunks?

16 A. No, it was not.

17 Q. It was maintained in the database in the
18 form -- the chunk as you have shown it was cut up into?

19 A. That's correct.

20 Q. Now, the editor that was provided, did it
21 process that chunk of text as an integrated single unit?

22 A. Yes, it did.

23 Q. So the invention of the '449, which is all
24 about separating markup out of content was not being
25 practiced in the SEMI S-to-the-4th product --

1 MR. POWERS: Object to the leading, Your
2 Honor.

3 Q. (By Mr. White) -- is that correct?

4 A. No, it was not.

5 THE COURT: Overruled.

6 Q. (By Mr. White) And if you would find your
7 Exhibit 2395 in one of those two large binders.

8 A. Can I put this away?

9 Q. Yes, you may set that aside.

10 A. 2395?

11 Q. 2395. I believe this is your IRAP
12 application.

13 A. Yes, I've got it here.

14 Q. You were asked what the date of this document
15 is. What is its date?

16 A. '94, 06/05.

17 Q. Is that a 6 or an 8?

18 A. Whoops. I can't -- to be honest, I can't
19 tell. It actually looks more like --

20 Q. I believe it's August the 5th, 1994.

21 A. That would be --

22 MR. POWERS: Object to leading, Your
23 Honor.

24 Q. (By Mr. White) Well, it's --

25 THE COURT: Do you have an objection?

1 A. To year, month, day format.

2 MR. POWERS: Yes, Your Honor, we do.

3 THE COURT: Excuse me just a minute.

4 Do you have an objection you wish to make?

5 MR. POWERS: Yes, Your Honor. It's
6 leading.

7 THE COURT: All right. If you would,
8 please stand, make your objection, and I'll rule on it.

9 MR. POWERS: Yes, Your Honor.

10 THE COURT: All right. Restate your
11 question, please.

12 Q. (By Mr. White) Mr. Vulpe, what is the date of
13 this document?

14 A. August 5th, 1994.

15 Q. Now, this document is the application you
16 submitted to the IRAP organization requesting funds to
17 help you fund the software development of your
18 technology of the patent, as indicated on this
19 demonstrative?

20 A. Yes, sir.

21 Q. Now, in the application, it makes reference
22 to -- it states, I believe, on the second page of this
23 document, that -- that this was being -- that a
24 one-dimensional implementation of the metacode approach
25 was being implemented in the S4 product.

1 Do you see that under the background on the
2 second page?

3 A. Yes, I do.

4 Q. Was that a reference -- the one-dimensional
5 implementation a reference to the work that Stephen
6 Owens had done and attempted to practice the invention
7 in the source code during the time of validation of the
8 invention?

9 A. Yes, it was.

10 Q. And the reference to being implemented on to
11 the S4, is that making reference to the reduction -- the
12 combination of the S4 product in the patent that's
13 indicated along -- around the August time period for
14 1994?

15 A. Yes, it is.

16 Q. Now, if you could turn to 2396. I believe
17 it's the next exhibit.

18 This is another part of your application to
19 the IRAP organization; is that right?

20 A. Yes, it is.

21 Q. Do you have the date for this document?

22 A. I'm looking --

23 Q. Was this later in September of 1994?

24 A. I'm looking for a date for this.

25 Q. If you'll look on the page --

1 A. There is a date of 9/20 at the bottom when I
2 signed it.

3 Q. So that would be September the 20th of 1994?

4 A. That's correct.

5 Q. And in this application, you say that you
6 have filed -- I'm back now on Paragraph No. 3, Summary
7 of Progress to Date.

8 You had filed your U.S. patent application,
9 correct?

10 A. That's correct. We filed it in June.

11 Q. The second bullet says: Single metacode
12 model implemented on i4i flagship product, S4, vertical
13 market product.

14 Do you see that?

15 A. Yes, sir.

16 Q. And you recall in your report to the Board of
17 Directors, you said you were going to productize the
18 S-to-the-4th for a vertical market for the semiconductor
19 industry?

20 A. Yes, sir.

21 Q. And so this single metacode model
22 implementation of the i4i flagship product is another
23 reference to the work that you had -- were doing in
24 about the August time period of 1994?

25 MR. POWERS: Object, Your Honor. He's

1 leading the witness again.

2 THE COURT: All right. Restate your
3 question, counsel.

4 Q. (By Mr. White) What was the reference here,
5 Mr. Vulpe, to a single metacode model implemented on i4i
6 flagship product, S-to-the-4th, vertical market product?

7 A. It's a reference to the work that's mentioned
8 in the Board report, that we were looking to productize
9 the PC implementation of S4 and putting Stephen's work
10 into that.

11 Q. Now, did you receive any funding from the
12 IRAP organization?

13 A. Yes, we did.

14 Q. And what was those -- what were those funds
15 used for?

16 A. They were used for the development of -- more
17 development on the SGML Application Server and what
18 became S4/Desktop.

19 Q. Now, I've indicated on the demonstrative in
20 red on the left line to the right that i4i's activities
21 on trying to create computer software programs that
22 practice the invention was an ongoing project.

23 Were these funds being used to help fund that
24 activity?

25 A. Yes, they were.

1 Q. And it resulted in the SGML Application
2 Server product?

3 A. Yes, sir.

4 Q. And that product was made available near the
5 end -- well, when was the SGML Application Server
6 available to the public as a commercial product?

7 A. To the best of my recollection, the end of
8 '94/early '95.

9 Q. Now --

10 MR. WHITE: Can I have Plaintiffs'
11 Exhibit 628?

12 Q. (By Mr. White) Mr. Vulpe, we've taken -- have
13 taken a look at your congratulatory e-mail to John
14 Paoli.

15 A. Yes, sir.

16 Q. Now, the date of this e-mail is December the
17 5th.

18 What is your recollection of when Microsoft
19 announced Office 11 in beta test?

20 A. I can't recall, but it was sometime before
21 this.

22 Q. Around October of 2002?

23 A. Probably, yes. That sounds right.

24 Q. Now, you are -- i4i is a member of the MSDN
25 network, right?

1 A. That's correct.

2 Q. Now, what do you get as a member of that
3 network?

4 A. You get software -- access to software,
5 libraries, subscriptions to magazines, a number of --
6 code snippets, a number of different resources to help
7 you develop software for Microsoft products.

8 Q. Regarding Office 11 and the Word product that
9 was being offered as part of Office 11, what did you get
10 in October or November, whenever it was, when they
11 announced the beta version was available for Office 11?

12 A. I can't recall exactly, but I would assume we
13 got a version of whatever was available of Office 11.

14 Q. Was that source code?

15 A. No, sir, it was not.

16 Q. Microsoft didn't make available to the
17 members of the MSDN its confidential, proprietary source
18 code of its Office Suite programs?

19 A. No. We would never expect that.

20 Q. So what did you get? You got a set of
21 manuals, or did you get a set of executables? Just what
22 did you get?

23 A. We -- normal course, what we receive is
24 manuals and executables.

25 Q. Would you be able to tell from those

1 executables what the internal data structures of the
2 Office Suite products were, including the Word program?

3 A. Oh, certainly not.

4 Q. Without that internal information, there's no
5 way you could have determined whether they were
6 practicing your invention, could you?

7 A. No, not without access to that.

8 Q. Well, now, in October, let's assume they make
9 the announcement about Office 11, and it's in beta.
10 Is there any chance that before they offered the
11 commercial product, which I -- in this case, occurs a
12 year later in October 2003, that they would make changes
13 to the beta version?

14 A. It's possible, yes.

15 Q. So there's no way for you to know, even in
16 2002, what it was that Microsoft was actually going to
17 sell as a commercial product; is that right?

18 A. No, there's no way we could have known what
19 the final result would have been.

20 Q. Now, you were asked about how i4i continues
21 to monitor what Microsoft does in its products.

22 A. That's correct.

23 Q. And you made the indication that if we
24 don't -- if -- if i4i doesn't keep up with that
25 information, there's a possibility that Microsoft may

1 make changes to its software that would render your
2 products inoperable; is that right?

3 A. That's correct.

4 Q. Now, is that because they might make changes
5 to the APIs of the Word program?

6 A. Yes, sir.

7 Q. Now, the APIs is something that Microsoft
8 publicly announces and provides information of just what
9 those are; is that right?

10 A. Yes, sir.

11 Q. But they don't do that for their source code.

12 A. Not that I'm aware.

13 Q. So as far as your being able to interface
14 into the Word program for those -- and let's call them a
15 set of doors, and they have locks on those doors, and if
16 Microsoft changes the doors or changes the locks, that
17 may render your product inoperable?

18 A. It could be a disaster, yes, sir.

19 Q. Is that the reason you monitored their
20 products?

21 A. Yes, sir.

22 Q. You weren't worried about what features they
23 had in their Word program?

24 A. No. We were strictly worried about making
25 sure our product worked with theirs.

1 Q. Defendant's Exhibit 2018, will you get that
2 in front of you?

3 A. Bear with me, please.

4 Q. This is an internal memo that you --
5 memorandum that you wrote regarding Office 11?

6 A. Yes, it is.

7 Q. Now, this one is still prior to the time it's
8 publicly available; is that right? It's June of 2003?

9 A. Yes. This is -- as I indicated earlier,
10 about -- it looks about five months earlier or four
11 months earlier.

12 Q. You made the comment -- and by the way, who
13 is -- who is the audience for this internal comment?

14 A. This would have been senior development staff
15 and salespeople.

16 Q. Characterize them for us, please, the value
17 of those individuals to the company, i4i.

18 A. They're critical. People are -- people are
19 our most important asset.

20 Q. Now, you said to them that Office 11, when it
21 does come out, is going to have this custom XML
22 capability. And you said that that validates the
23 market, at least in a large corporate field, to which
24 the Pro and Enterprise editions are targeted.

25 What did you mean by that?

1 A. Well, there's always been a question in the
2 general market place about why is XML so important, and
3 is it a real mainstream technology.

4 And certainly having Microsoft now providing
5 XML capabilities validates that concept. It's the
6 biggest supplier of software in the world, and for them
7 to be providing it, it says, yes, it's in the mainstream
8 now; it is important.

9 Q. So the message that i4i has been preaching,
10 from the time you started offering your first commercial
11 products, about this is valuable stuff, now there's
12 another messenger in the marketplace, and now it's
13 Microsoft; is that right?

14 A. It's the most important messenger out there,
15 yes, sir.

16 Q. And it's the one out there that's going to
17 have the most impact --

18 A. That's correct.

19 Q. -- on the acceptability of custom XML?

20 A. Yes, sir.

21 Q. Now custom XML is valid XML.

22 A. Yes, sir.

23 Q. Why did you tell your most valuable employees
24 that this is a good thing?

25 A. Well, while it provides competition, it also

1 provides opportunities, but I've got to keep my people
2 focused, and we've got to keep going ahead. And we
3 offer a good competitive product, and we wanted to do
4 that. We're quite happy to take Microsoft on.

5 Q. 2242, would you take a look at that exhibit?
6 Do you see this document?

7 A. Yes, sir.

8 Q. What's the date of it?

9 A. It was published August -- sorry -- October
10 6th, 2008.

11 Q. Now, on October 6th, 2008, how long had this
12 lawsuit been pending against Microsoft in which i4i has
13 accused them of infringing this '449 patent?

14 A. Can't remember exactly, but it's been a
15 while.

16 Q. So you sent a message to Microsoft that they
17 are violating your patent long before you wrote this
18 e-mail --

19 A. Yes, sir.

20 Q. -- this memorandum?

21 A. Yes, sir.

22 Q. Memorandum.

23 Now, again, Mr. Vulpe, who's the audience for
24 this document?

25 A. In this case, it's, again, the same audience

1 as the previous one, the senior technical staff and the
2 senior salespeople.

3 Q. And you are really putting a happy face on
4 this document for those folks, right?

5 A. Yes, sir.

6 Q. Why?

7 A. Well, we've got a huge challenge ahead of us,
8 and it's my job, as the CTO and founder of the company,
9 to lead -- keep the vision alive.

10 And if they lose faith, then that gets --
11 they're going to lose faith, and they're going to
12 project that out to our customers, and the company will
13 disappear.

14 So part of my job is to provide leadership
15 and keep the vision moving.

16 Q. Now, have you ever used the term core
17 technology in connection with your i4i products?

18 A. Yes, sir, I have.

19 Q. How have you used that term?

20 A. To describe our business model. We're a
21 provider of what we believe to be core technology.

22 Q. And you believe you're a provider of core
23 technology.

24 Does that have anything to do with your
25 patent?

1 A. Yes, sir. The core technology we provide is
2 based on that patent.

3 Q. Now, there's been use of this term in this
4 litigation of a Microsoft add-in or add-on.

5 A. Yes, sir.

6 Q. Do you understand those terms?

7 A. Yes, sir.

8 Q. Did you consider your products to be add-ons
9 or add-ins?

10 A. That was -- no. We actually --
11 interestingly, actually, Microsoft Word is an add-in to
12 our product.

13 Q. Is it the case that this Exhibit 2242 is a
14 statement that i4i is abandoning or thinking about
15 abandoning its core technology in favor of an
16 implementation using Microsoft Word's support of custom
17 XML?

18 A. That's what this suggests, yes, sir.

19 Q. Now, how did you come to this situation,
20 Mr. Vulpe?

21 A. Well --

22 Q. You're a good year and a half into this
23 lawsuit.

24 A. Well, I have really no choice. Microsoft's
25 out there. It's offering it as part of the Word -- the

1 Word offering. I can't charge for that capability
2 inside our products, so I've got a huge price pressure
3 going down, and I have to somehow really figure out how
4 to survive. And that forces me out of being a core
5 technology provider into being an add-in provider.

6 Q. Exhibit 2061, Mr. Vulpe, do you see this?

7 A. This is the -- yes, sir.

8 Q. Now, this is an e-mail from someone who is
9 currently working for Microsoft in Finland but
10 previously had worked for the Finnish Ministry of
11 Finance; is that right?

12 A. That's what it says here, yes, sir.

13 Q. And he's asking you, are you planning to
14 support Office 12. That's 2007, right?

15 A. That's correct.

16 Q. Was i4i receiving any pressure from people
17 out there saying, what are you going to do about support
18 of products based upon the Microsoft implementation of
19 custom XML?

20 A. Yes, sir, we were.

21 Q. This -- by the way, in Finland, does your
22 patent have any value?

23 A. No, it does not.

24 Q. Because it's only good in the United States,
25 right?

1 A. That's -- that's my understanding, yes.

2 Q. Okay. The memo you wrote, this 2242 here, in
3 October of 2008 --

4 MR. WHITE: Okay. Back.

5 Q. (By Mr. White) Is this --

6 A. We're back to -- okay. I'll look at it on
7 the screen.

8 Q. Is this in response to the pressures that i4i
9 are feeling from its customers, that it had to have some
10 sort of an offering based upon Microsoft's support of
11 custom XML?

12 A. Yes, sir.

13 Q. How do you view that?

14 A. Very bad. We're -- it's changed everything
15 about our company.

16 Q. Are you competing against your own
17 technology?

18 A. That's why I said that. I certainly am.
19 That's my belief.

20 Q. The Owens -- the Stephen Owens' debt that i4i
21 owed, based upon his consulting work for the company --
22 do you recall that?

23 A. Yes.

24 Q. I believe that's 2407, if you'd like to look
25 at it.

1 The debt that you owed Mr. Owens, how long
2 was it on the books of i4i?

3 A. I can't remember exactly, but four, five,
4 maybe six years.

5 Q. Why didn't you write it off as a bad debt?

6 A. I don't welch on debts. We owed Stephen the
7 money, and he was going to get the money, regardless of
8 the statute of limitations on this kind of stuff,
9 according to the Canadian accounting rules.

10 Q. Have you ever expressed that to Mr. Owens?

11 A. Yes. I told him, Stephen, I'm going to pay
12 you and make this good sometime, somewhere.

13 Q. And when this litigation came about, did you
14 find yourself in financial circumstances that you could
15 pay his debt?

16 A. Yes, sir.

17 Q. Now, did Mr. Owens receive anything more than
18 what he was owed for the work he had done for i4i?

19 A. He received just that. In fact, he didn't
20 receive the interest payments.

21 Q. He -- strike that.

22 Okay. Scott Young. The consulting agreement
23 that we looked at, is that the form of the relationship
24 that defined the working that Mr. Young did for i4i?

25 A. It's a nondisclosure agreement to cover --

1 Q. But it indicates he's a consultant.

2 A. That's correct.

3 Q. And it's your belief that Mr. Young was never
4 an employee of i4i.

5 A. To the best of my recollection, he never was
6 an employee; strictly a consultant.

7 Q. Do you see, in your mind, a difference
8 between being an employee of i4i and being a consultant
9 to i4i?

10 A. Oh, yes. They are very different things.

11 Q. Are there any legal consequences to the that?

12 A. There are legal consequences. There's
13 obligations to the Revenue Service. There's termination
14 deals. There's -- the whole series of obligations
15 between the two parties, they're very different from an
16 employee/employer to a contractor.

17 Q. Now, you had a dispute with Mr. Young towards
18 the end of the relationship; is that right?

19 A. Yes, sir.

20 Q. And the document that you looked at that has
21 the statement that he worked for i4i and then he
22 resigned from i4i, who proposed that language?

23 A. Mr. Young did.

24 Q. Now, you could have rejected it out of hand,
25 because he wasn't an employee, was he?

1 A. That's correct.

2 Q. He was a consultant.

3 A. That's correct.

4 Q. But why did you agree to that language?

5 A. Well, I bear Mr. Young no ill, and we wanted
6 to help him out in getting a job in the future.

7 Q. And you felt -- he felt like that if he could
8 represent to the rest of the world that he had been an
9 employee of i4i, that he would be -- he felt that it
10 would be easier for him to find other employment; is
11 that right?

12 A. That's what we believed, yes, sir.

13 MR. WHITE: I pass the witness.

14 THE COURT: All right. Any recross?

15 MR. POWERS: Yes, Your Honor. Thank you.
16 May I proceed, Your Honor?

17 THE COURT: Yes, you may.

18 RECROSS-EXAMINATION

19 BY MR. POWERS:

20 Q. Mr. Vulpe, I'd like to begin by discussing
21 the SEMI product that you talked about just now with
22 your lawyer.

23 You -- and let's turn to the first point.

24 Your lawyer asked you, what did it do, and
25 you described your version, your interpretation of what

1 it did.

2 Do you recall that?

3 A. Yes, sir.

4 Q. Now, if we had the source code, we would know
5 exactly what it did, right?

6 A. Yes, sir.

7 Q. And the source code for the SEMI S-to-the-4th
8 product was kept at i4i.

9 A. That's correct.

10 Q. And you threw it away sometime.

11 A. We discarded it as part of the normal course
12 of business, as I said before, yes, sir.

13 Q. You don't know when you threw it away.
14 You're not -- you can't recall the exact time, right?

15 A. I can't recall the exact time, but it was
16 after all of our obligations with SEMI had expired.

17 Q. But there was nothing that said you had to
18 throw it away, right?

19 A. No.

20 Q. It wasn't taking up a whole lot of space;
21 it's just on a disk, right?

22 A. That's correct.

23 Q. So you didn't throw it away because you
24 needed the room.

25 A. No.

1 Q. And you had spent months of work creating
2 that software source code for the SEMI S-to-the-4th
3 product for SEMI, correct?

4 A. That's right.

5 Q. But you threw it away just because you
6 weren't obligated to keep it anymore.

7 A. That's correct.

8 Q. Even though it was your work that you might
9 have been able to use sometime.

10 A. Its utility to us, as a piece of technology,
11 was -- there was really no further utility to us.

12 Q. It was just setting on a little disk that you
13 could have kept on a shelf somewhere.

14 A. It was actually a full hard drive for a
15 Macintosh.

16 Q. But you weren't throwing it away because of
17 space.

18 A. No.

19 Q. All right. Now --

20 MR. POWERS: Chris, could we bring up
21 Exhibit 2395? And the same portion on the second page
22 that we looked at before.

23 Q. (By Mr. Powers) Do you recall just testifying
24 about this a few minutes ago, Mr. Vulpe?

25 A. Yes, sir.

1 Q. Now, in the actual document that you wrote in
2 1994, you say -- after talking about your patent, you
3 say the initial implementation.

4 There you're referring to the implementation
5 of your patent, aren't you?

6 A. That's correct.

7 Q. The initial implementation is embedded into
8 Infrastructures' S-to-the-4th product, right?

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

10 Q. Now, your testimony --

11 MR. POWERS: May I approach, Your Honor?

12 THE COURT: Yes, you may.

13 Q. (By Mr. Powers) Your testimony just now was
14 that when you wrote those words, you were referring over
15 here to this S4-plus-patent that your lawyer wrote on
16 the board.

17 Do you recall saying that?

18 A. Yes, sir.

19 Q. But that wasn't a product, was it? That's
20 what you just testified to with me.

21 A. That's -- was not a product. We were working
22 on it, yes, sir.

23 Q. Not a product.

24 A. That's correct. It was not finished by any
25 stretch.

1 Q. And, in fact, you said that Mr. Owens was the
2 person who was working on that, right?

3 A. He was working on the patent part of it, yes,
4 sir.

5 Q. So Mr. Owens would know quite well whether
6 there was another S-to-the-4th product, wouldn't he?

7 A. Not necessarily.

8 Q. He wouldn't? Even though he was working on
9 it?

10 A. Well, he was working on the SGML Application
11 Service layer underneath that.

12 Q. As of mid-1994, Mr. Owens would know that,
13 wouldn't he?

14 A. Would know what?

15 Q. Whether there was another S-to-the-4th
16 product.

17 A. I would assume so, but I don't know for sure.

18 Q. In fact, you're aware that i4i designated Mr.
19 Owens specifically to testify on behalf of i4i on
20 exactly the issue of the SEMI product, right?

21 A. I don't recall.

22 MR. POWERS: Your Honor, I'd like to read from Mr.
23 Owens' October 17, 2008, 30(b)(6) deposition, and --
24 from Page 127, Line 7 through Page 128, Line 3, and this
25 was his 30(b)(6) deposition.

1 THE COURT: All right.

2 MR. POWERS: And I'm not sure the jury
3 has been told what a 30(b)(6) deposition is.

4 THE COURT: All right. Ladies and
5 Gentlemen, a 30(b)(6) deposition is when one party
6 notices a corporation to produce a witness to testify on
7 behalf of the corporation as to certain topics.

8 And then the corporation produces that
9 witness, and they testify on behalf of the -- that's how
10 a corporation speaks, through a 30(b)(6) witness in a
11 deposition.

12 You may proceed.

13 MR. POWERS: Thank you, Your Honor.

14 Q. (By Mr. Powers) QUESTION: The system that
15 was installed at SEMI that was sold at -- sold to SEMI,
16 that was the S superscript 4 product, right?

17 ANSWER: Yes.

18 QUESTION: Okay. Are you aware of later
19 versions of the S superscript 4 product that varied in a
20 substantial way from the one that was sold at SEMI?

21 ANSWER: No, I'm not aware of any such
22 versions.

23 QUESTION: Would you be aware of that as a
24 developer at i4i, if there was such a product?

25 ANSWER: Well, I haven't worked at i4i in the

1 past long while, so I suppose they could have come out
2 with that name again, and I would be unaware of it.

3 QUESTION: But, sir, you were not aware of a
4 later S superscript 4 product during your tenure at i4i,
5 correct?

6 ANSWER: I don't recall being aware of such a
7 thing, no.

8 End of his testimony.

9 Now, Mr. Vulpe, Mr. Owens was at i4i long
10 past 1994, wasn't he?

11 A. That's correct.

12 Q. So during his tenure, he's testifying in a
13 binding way for the company i4i, saying there was no
14 later S-to-the-4th product.

15 A. That's not quite what I heard, but...

16 Q. So when you said in Exhibit 2395 that the
17 initial implementation of your '449 patent is in the --
18 is in the S-to-the-4th product, the only product that
19 existed as of that time was the S-to-the-4th product
20 that had been sold to SEMI; that's true, isn't it?

21 A. Stephen's work was done on a PC. The SEMI
22 work was done on a Macintosh. We couldn't have put
23 Stephen's work into the Macintosh product because it was
24 designed to run on a PC.

25 Q. Mr. Vulpe, I didn't ask anything about PCs or

1 Macs. My question is just that the only product that
2 existed at the time you wrote Exhibit 2395, where you
3 said that the initial implementation of your patent was
4 in the S-to-the-4th product, the only S-to-the-4th
5 product in existence at the time was the SEMI product;
6 that's true, isn't it?

7 A. That's true.

8 Q. All right. Now let's look at Exhibit 2396.

9 MR. POWERS: And, Chris, please bring up
10 Section 3 that Mr. Vulpe just testified about.

11 Q. (By Mr. Powers) Mr. Vulpe, again, here you're
12 saying that your patent was implemented in the
13 S-to-the-4th product, right?

14 A. That's correct.

15 Q. And similarly, there was no other
16 S-to-the-4th product at the time you wrote Exhibit 2396,
17 other than that SEMI product that you testified about.

18 A. Other than what we talked about there, no.

19 Q. But that's not a product, is it?

20 A. Not at that point. It was a productization
21 effort.

22 Q. And on the SEMI product, you testified
23 that -- about its abilities of whether it could separate
24 content from structure in a document.

25 Do you recall that?

1 A. I'm sorry?

2 Q. You were just testifying with your lawyer
3 about whether the SEMI product, the S-to-the-4th
4 product, whether it could separate the metacodes from
5 the content, and you said no, right?

6 A. That's correct.

7 Q. But, in fact, on the editor screen in the
8 SEMI product, the S-to-the-4th SEMI product, you could
9 see the text without the tags, couldn't you?

10 A. That's correct.

11 Q. And you could also see it with the text and
12 the tags combined, couldn't you?

13 A. That's correct.

14 Q. And you could add tabs just by moving your
15 cursor and hitting enter, couldn't you?

16 A. As I recall, that sounds right, yes.

17 Q. Now, the last question I wanted to ask you,
18 Mr. Vulpe, was on the question of this beta product that
19 you received from Microsoft in the fall of 2002.

20 Your lawyer asked you some questions about
21 whether that told you about the data structures inside
22 Microsoft.

23 Do you recall that?

24 A. Yes, I do.

25 Q. And do you recall telling him that it

1 didn't -- couldn't know those until you saw the source
2 code?

3 A. I never saw the source code.

4 Q. And, therefore, you never saw that -- never
5 knew what the data structures were, right?

6 A. I have never seen their source code, so I
7 don't know what they've got there.

8 Q. So you still don't know what the data
9 structures are.

10 A. That's correct.

11 Q. But you filed the lawsuit anyway in 2007,
12 didn't you?

13 A. That's correct.

14 Q. So you filed the lawsuit without knowing the
15 data structures.

16 A. That's correct.

17 Q. But you didn't think you could even ask
18 Microsoft the question in 2000 -- in 19 -- in 2002,
19 after you studied their product and learned that it
20 could custom XML, you didn't know enough even to ask a
21 question for that all those five years?

22 A. That's not a question I would ever expect an
23 answer to.

24 Q. But you didn't raise the issue at all, did
25 you?

1 A. That's correct.

2 Q. And, in fact, you've not produced a single
3 document even within i4i in any of your testimony here
4 where you, Mr. Vulpe, raised the issue of infringement
5 by Microsoft, did you? Not a single document in any of
6 your testimony here before the jury.

7 A. That's correct.

8 Q. And you recall extensive discussion from the
9 McLean Watson Investment Fund bankers about suing
10 Microsoft at board meetings. That was discussed
11 extensively during 2004 and 2005 and 2006.

12 A. It was. Yes, it was.

13 MR. POWERS: No further questions.

14 THE COURT: All right. Any redirect?

15 MR. WHITE: No redirect.

16 THE COURT: All right. Thank you.

17 You may step down.

18 All right. Who will Microsoft -- excuse
19 me -- who will i4i's next witness be?

20 MR. CAWLEY: Your Honor, the Plaintiffs
21 rest.

22 THE COURT: All right. Very well.

23 Ladies and Gentlemen, it's late on Friday
24 afternoon, 4:00 o'clock. The Plaintiffs have rest --
25 rested their case. I think it would be a good time to

1 stop and let you have your weekend, and we'll come back
2 on Monday morning, at which time we will proceed with
3 Defendant's evidence.

4 So please remember my instructions over
5 the weekend. We've all got a lot of time invested in
6 this case, so please follow my rules. Don't discuss
7 this case with anyone. Don't discuss it among
8 yourselves. Don't do any independent investigation.

9 Just go enjoy your weekend. Don't think
10 about the case and just have a good time.

11 And we'll see you back here at 9:00
12 o'clock on Monday morning. Thank you. You are excused.

13 COURT SECURITY OFFICER: All rise.

14 (Jury out.)

15 THE COURT: Please be seated.

16 All right. For the parties' information,
17 the Plaintiffs have used 11 hours and 5 minutes, and
18 Defendants have used 7 hours and 35 minutes of their
19 allotted time.

20 Is there anything else from either party
21 that they need to bring before the Court before we
22 recess until Monday?

23 MR. CAWLEY: Not from the Plaintiff.

24 THE COURT: All right. From the
25 Defendant?

1 MR. POWERS: Nor from Microsoft, Your
2 Honor. Thank you.

3 THE COURT: All right. We'll be in
4 recess.

5 COURT SECURITY OFFICER: All rise.

6 (Court adjourned.)

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CERTIFICATION

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

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

_____ Date

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

_____ Date