

IN THE UNITED STATES DISTRICT COURT  
 FOR THE EASTERN DISTRICT OF TEXAS  
 MARSHALL DIVISION  
 IP INNOVATION, L.L.C. )  
 and TECHNOLOGY LICENSING )  
 CORP., )  
 Plaintiffs )  
 ) Civil Docket No.  
 VS. ) 2:07-CV-447-RRR  
 ) April 27, 2010  
 RED HAT, INC. and )  
 NOVELL, INC. )  
 Defendants ) 8:00 A.M.

TRANSCRIPT OF JURY TRIAL  
 BEFORE THE HONORABLE RANDALL R. RADER  
 UNITED STATES CIRCUIT JUDGE

APPEARANCES:  
 FOR THE PLAINTIFF: MR. JOSEPH A. CULIG  
 MR. ARTHUR A. GASEY  
 MR. PAUL C. GIBBONS  
 MR. PATRICK K. VICKREY  
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 903/935-3868

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

1 and address the Court on this?  
 2 THE COURT: Yes, please do.  
 3 MR. LYON: So again, as we spoke about  
 4 yesterday morning, Plaintiffs -- Plaintiffs' expert,  
 5 Dr. Zimmerman, had an expert report he put back in  
 6 November as was scheduled under the Court's scheduled  
 7 order. And again, the expert report contained no  
 8 mention -- not even the actual word, KDE, was in the  
 9 report, no mention of it whatsoever.  
 10 Plaintiffs' expert says that he relies on  
 11 their claim charts, and I have copies of the claim  
 12 charts that I'm happy to have over here. They're very  
 13 voluminous, but I'm happy to have the Court look at them  
 14 if the Court would like to.  
 15 And the claim charts, the only reference  
 16 to KDE in the claim charts is with respect to Counts in  
 17 the claim '412 and '183 patent. It has to do with a  
 18 passing reference that KDE has also provided as part of  
 19 the packages. It has no allegations of how -- it  
 20 doesn't say KDE infringes, doesn't have any analysis of  
 21 the source code, any analysis of what functions within  
 22 KDE meet the limitations. There is absolutely no  
 23 breakdown whatsoever of how KDE could possibly infringe.  
 24 There is, on the other hand, a complete  
 25 breakdown of GNOME and where GNOME interacts, and that's

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 16 \* \* \* \* \*

PROCEEDINGS

(Jury out.)

13 THE COURT: Good morning. Please be  
 14 seated.  
 15 Okay. What business do we have this  
 16 morning?  
 17 MR. LYON: Your Honor, we have a few  
 18 matters with respect to the KDE exhibits.  
 19 THE COURT: Yes. I saw your filing last  
 20 night.  
 21 MR. LYON: That was actually Plaintiffs'  
 22 filing.  
 23 THE COURT: Plaintiffs' filing. Okay,  
 24 good. I saw a filing. I should be more careful.  
 25 MR. LYON: Would you like me to come up

1 the same thing with Dr. Zimmerman's report. It focuses  
 2 entirely on GNOME, and all it does is explain how  
 3 GNOME -- it meets the claim limitations. Nowhere in  
 4 Dr. Zimmerman's the report or in the claim charts is  
 5 there any analysis of KDE and how that meets the claim  
 6 limitation.  
 7 Now, the other thing about it is that with  
 8 respect to the '521 patent, KDE isn't mentioned at all  
 9 in the claim charts. So our position is KDE is not in  
 10 this case. This is a case about GNOME. And now late  
 11 last week, Dr. Zimmerman -- I guess it was a little over  
 12 a week ago now, Dr. Zimmerman tried to put in  
 13 declarations saying that it was his opinion that KDE  
 14 infringed for the same reasons as GNOME, but we have no  
 15 background. We have no ability to cross-examine him.  
 16 We have no ability to know what that is. So that's the  
 17 issue.  
 18 THE COURT: Mr. -- remind me.  
 19 MR. GIBBONS: Paul Gibbons.  
 20 THE COURT: Mr. Gibbons.  
 21 MR. GIBBONS: Your Honor, Dr. Zimmerman's  
 22 report references these claim charts, and the claim  
 23 charts do call out that KDE is also included in the  
 24 Defendants' infringing products. The default workspace  
 25 manager is GNOME. KDE comes with it. In his report, he

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1 cites to documents about KDE, and in his report, it  
 2 details --  
 3 THE COURT: Expert report?  
 4 MR. GIBBONS: His expert report, yes, sir.  
 5 THE COURT: What does he say about KDE?  
 6 MR. GIBBONS: Well, he cites to a  
 7 document, Steinman Exhibit 5, which one of the  
 8 Plaintiffs' --  
 9 THE COURT: Could I get a copy of that,  
 10 his expert report?  
 11 MR. LYON: I have one here.  
 12 MR. GIBBONS: If you take a look, Your  
 13 Honor, page 18.  
 14 THE COURT: Give me one second to put my  
 15 eyes on. I'm with you.  
 16 MR. GIBBONS: It says, using virtual  
 17 desktops. This is Plaintiffs' Exhibit 197, and this is  
 18 discussing KDE, and it says, to switch between  
 19 desktops --  
 20 THE COURT: Where does it talk about KDE  
 21 here?  
 22 MR. GIBBONS: KDE is on the cover page of  
 23 this document which is -- this is an excerpt from that  
 24 document, Your Honor. I can get you a copy of that  
 25 document.

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1 THE COURT: But Mr. Lyon is correct that  
 2 this doesn't even use the word KDE, right?  
 3 MR. GIBBONS: That word is not in there.  
 4 Dr. Zimmerman did testify about KDE during his  
 5 deposition. He was asked questions about it. He  
 6 testified that he reviewed all the source code. He ran  
 7 KDE as well as GNOME when he was considering  
 8 infringement.  
 9 THE COURT: My worry, though, as you can  
 10 understand, is that I have --  
 11 MR. GIBBONS: This is Plaintiffs' 197,  
 12 Your Honor.  
 13 THE COURT: All right, thank you. This is  
 14 the KDE -- show me where this appears.  
 15 MR. GIBBONS: That is at page NV 7659,  
 16 page 5.  
 17 THE COURT: I found it.  
 18 MR. GIBBONS: What's important, Your  
 19 Honor, is that Dr. Zimmerman read and reviewed all of  
 20 the deposition testimony taken from the Defendants'  
 21 witnesses as well as all the exhibits, and this was one  
 22 of them. This is part of his consideration. He  
 23 reviewed all the source code that Defendants produced.  
 24 THE COURT: He may have reviewed it. My  
 25 problem is his expert report doesn't discuss it, and I'm

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1 wondering how I can be fair to the Defendants if they  
 2 haven't had a chance to cross-examine him.  
 3 MR. GIBBONS: Well, they did, Your Honor.  
 4 THE COURT: It's a notice issue. It's an  
 5 issue of fairness.  
 6 MR. GIBBONS: Your Honor, this excerpt  
 7 from that Plaintiffs' Exhibit 197 talks about the KDE  
 8 switcher output, and it says to switch between desktops,  
 9 click the desired desktop on the page on the panel.  
 10 THE COURT: This is --  
 11 MR. GIBBONS: Page 18, Your Honor.  
 12 THE COURT: Yeah, but --  
 13 MR. GIBBONS: And the Defendants did have  
 14 the opportunity to cross-examine Dr. Zimmerman on this  
 15 issue. Dr. Zimmerman testified about this during his  
 16 deposition. Mr. Lyon was there; he conducted the  
 17 deposition.  
 18 Just as important, there is notice. The  
 19 defense expert, Dr. Putnam, in his report is saying that  
 20 KDE is one of the accused products. He acknowledges  
 21 that. He's known for many months.  
 22 MR. LYON: May I respond, Your Honor?  
 23 MR. GIBBONS: The case law we put into our  
 24 bench brief is supportive of our position in terms of --  
 25 THE COURT: But I mean a --

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1 MR. GIBBONS: Let them cross-examine --  
 2 THE COURT: -- single paragraph that is  
 3 extracted from a KDE publication is hardly notice of how  
 4 KDE satisfies each of the limitations of the claim. It  
 5 doesn't go into the --  
 6 MR. LYON: May I add one thing, Your  
 7 Honor? I'm sorry, I don't mean to interrupt. I know  
 8 you're thinking this through. Just that if you look at  
 9 the actual breakdown where Dr. Zimmerman does analyze  
 10 element by element the claim language, there's no  
 11 mention of KDE. That only mention of KDE that  
 12 Mr. Gibbons is pointing out has to do with teaching the  
 13 method, and this is one of the examples that  
 14 Mr. Zimmerman gives of teaching that is being done as  
 15 part of his inducement evidence, but there is no  
 16 breakdown or analysis of where KDE actually infringes  
 17 each of the elements.  
 18 MR. GIBBONS: Well, Your Honor, on page  
 19 14, Dr. Zimmerman says, first, I have reviewed the claim  
 20 charts identified the infringing products and the claim.  
 21 I agree with the analysis in those charts. Then at his  
 22 deposition -- page 14, second paragraph from the bottom.  
 23 THE COURT: I have reviewed the claim  
 24 charts. I agree with the analysis in those charts.  
 25 MR. GIBBONS: And then when he was

1 deposited, Your Honor, for two days by the Defendants, he  
2 testified --

3 THE COURT: That it's all about GNOME,  
4 right?

5 MR. GIBBONS: No, he testified that GNOME  
6 and KDE function the same way. The analysis is the  
7 same.

8 MR. LYON: But again, there is no evidence  
9 of what parts of KDE function, and again, if you look at  
10 the claim charts, Your Honor, there's no mention.

11 THE COURT: Dr. Zimmerman is an expert,  
12 right?

13 MR. GIBBONS: Yes, Your Honor.

14 THE COURT: So, I mean, I don't -- I need  
15 a factual witness to say they function the same, don't  
16 I?

17 MR. GIBBONS: There are --

18 THE COURT: Then I need --

19 MR. GIBBONS: There are factual witnesses  
20 who were deposed whose testimony we're going to read in  
21 later on today. That would confirm Dr. Zimmerman's  
22 position, Your Honor.

23 THE COURT: Well -- excuse me.

24 Okay. My law clerk has defended the  
25 technology here. She's looking at the claim chart,

1 which requires a control means, and the structure for  
2 that is -- we have a means, so of course we're looking  
3 for the structure corresponding to that means. And the  
4 structure is identified as executable computer code,  
5 right? Are you following me, Mr. Gibbons?

6 MR. GIBBONS: Let me --

7 THE COURT: I'm on page 40 of 42 here.

8 MR. GIBBONS: Of the Court's --

9 THE COURT: Of course where I'm going to  
10 go from there is if the expert report doesn't analyze  
11 the KDE computer code, then he can't really testify as  
12 to infringement, right?

13 MR. GIBBONS: I think the expert's  
14 testified that that KDE code is functioning in the same  
15 exact infringing manner as the GNOME code, and the GNOME  
16 is the default.

17 THE COURT: He's testifying it's working  
18 in the same manner. Who's testifying to that?

19 MR. GIBBONS: Dr. Zimmerman.

20 MR. LYON: Your Honor, there's no evidence  
21 that Dr. Zimmerman's tendered that that's the case other  
22 than a conclusory opinion.

23 THE COURT: That's the problem is that we  
24 don't have any way of -- I'm looking for the factual  
25 underpinning for that. It's kind of a naked conclusion,

1 isn't it? Don't I have to have a substantiated basis  
2 for his opinions? Or that's what I'm here for is to  
3 make sure he doesn't confuse my jury with  
4 unsubstantiated opinions.

5 MR. GIBBONS: Well, Your Honor, he's  
6 testified that he reviewed all the source code, he ran  
7 the products, he looked at the code, he did his  
8 analysis. KDE functions in the same way as GNOME with  
9 respect to this infringing feature.

10 MR. LYON: If I may interject. If that's  
11 true, why didn't he put it in the expert report? He did  
12 say he did that, so he could easily have done it. This  
13 was either a conscious decision not to put it in the  
14 report, or it's just that because it was never really an  
15 issue in the claim charts, it was never put forward  
16 there. It is not part of the case, which is what we  
17 believe.

18 MR. GIBBONS: But it is our position that  
19 it is in the claim charts, Your Honor, because it is  
20 called out in the claim charts. Dr. Zimmerman  
21 references and adopts those claim charts.

22 THE COURT: I'm having a very difficult  
23 time connecting these dots, though. If -- it strikes me  
24 that if an entire system is accused of infringement, you  
25 need to have -- you made that a focus of the expert

1 report, right? Not to have mentioned KDE at all is  
2 troubling.

3 MR. GIBBONS: Well, Your Honor, it's our  
4 position he did -- in referring to the documents and  
5 saying that he's reviewed the testimony and the exhibits  
6 presented by these witnesses.

7 MR. LYON: I would ask Mr. Gibbons to  
8 identify his testimony right now if there's testimony,  
9 because there isn't, Your Honor, that would support how  
10 KDE breaks down. There is no evidence of the code and  
11 how it works, and it is completely different code than  
12 GNOME.

13 THE COURT: That's, of course, where my  
14 law clerk was taking us a minute ago. We've got to have  
15 executable computer code. Is there anywhere reference  
16 to the executable KDE computer code?

17 MR. GIBBONS: In his expert report?

18 THE COURT: Yes.

19 MR. GIBBONS: No, there's not, Your Honor.

20 MR. LYON: I submit, Your Honor, there's  
21 no evidence of it anywhere. If Mr. Gibbons can point us  
22 to that.

23 THE COURT: We're looking at the expert  
24 report at the moment.

25 Thank you, gentlemen. I think my ruling

1 will have to be that I don't see any evidence that  
 2 Plaintiff was -- that Defendant was given any notice  
 3 that KDE was in the case at all, and so Mr. Zimmerman --  
 4 Dr. Zimmerman will be precluded from exceeding the scope  
 5 of what he has provided in his expert opinion up to now.  
 6 He's willing -- he's free to testify to all of that, but  
 7 I don't see anything in here about KDE. So I believe  
 8 Dr. Zimmerman will not be permitted to go into KDE.

9 MR. GIBBONS: Can he testify about the use  
 10 of the virtual desktop that is in this document, in  
 11 Plaintiffs' 197?

12 MR. LYON: For purposes of showing  
 13 inducement for the GNOME. Now, we're not talking KDE --  
 14 is that what you're arguing?

15 MR. GIBBONS: He calls up Plaintiffs'  
 16 Exhibit 197 in his report. He discusses it, refers to  
 17 it.

18 THE COURT: He can testify to that.

19 MR. GASEY: Your Honor, if I might, the  
 20 only use of that document that's cited is KDE. It's not  
 21 a GNOME document. It says plainly on its face.

22 THE COURT: What's the context for -- let  
 23 me read back and see why he mentions this. It's an  
 24 inducement matter. How to use -- this is a how to  
 25 use --

1 same underlying product below the desktop environment  
 2 It's a very different desktop environment. That's the  
 3 issue here that Your Honor has already addressed, that  
 4 there's been no source code analysis limitation for that  
 5 particular desktop environment.

6 I submit that they have other evidence of  
 7 inducement for GNOME that they listed here, and they  
 8 listed a number of others things. This may actually be  
 9 confusing if they're going to start trying to bring KDE  
 10 to this one document which doesn't provide the  
 11 background.

12 All it does is it provides a list of how  
 13 you can do a virtual desktop. It doesn't actually show  
 14 how to do -- I mean, we can go into the facts about why  
 15 it doesn't actually show the invention or teach the  
 16 invention, but that's all it does. They have other  
 17 examples of that, and I'd submit this one is probably  
 18 going to be relevant and prejudicial if KDE is out of  
 19 the case.

20 THE COURT: KDE, as I have read this and  
 21 looked over the expert report last night, is not fairly  
 22 in the case. So to the extent that this helps you prove  
 23 your inducement case as to those things which are in the  
 24 case, which isn't KDE, you can refer to this, but it's  
 25 not a door to drive the KDE truck through.

1 MR. GIBBONS: How to use the virtual  
 2 desktops.

3 MR. LYON: How to switch between  
 4 workspaces is what it says.

5 THE COURT: Yes. So this is part of what  
 6 instructions they're giving to infringers that induces  
 7 them to infringe, right?

8 MR. GIBBONS: Yes, Your Honor.

9 THE COURT: And what are they infringing?  
 10 I think it's going to be GNOME, isn't it?

11 MR. GASEY: No. The only use that this  
 12 references is for KDE. In other words, the method  
 13 claims -- and by the way, they're correct that KDE is  
 14 explicitly called out in the '412 and the '183, which  
 15 include method claims.

16 And this goes ahead and shows the  
 17 inducement of the steps that are involved in the method  
 18 of practicing the virtual desktops, specifically for the  
 19 environment of KDE. It's the same product, you know,  
 20 the Novell openSUSE and SUSE and Linux Enterprise. All  
 21 of the products, the same products, carry both modules.  
 22 This is showing that this -- even when it's operating on  
 23 using a KDE window manager that the same steps are  
 24 involved.

25 MR. LYON: May I, Your Honor? It's the

1 MR. GASEY: Your Honor, our preliminary  
 2 infringement claim charts do specifically call out KDE.  
 3 Is it Your Honor's opinion that separate from the issue  
 4 of what Dr. Zimmerman can testify about that the  
 5 Plaintiffs cannot bring in any evidence with respect to  
 6 KDE?

7 THE COURT: We're only talking of  
 8 Dr. Zimmerman here. If you've got some -- if there's  
 9 some other way that you have some other witness that's  
 10 going to testify, that we'll identify at the time.

11 MR. GASEY: Right, Your Honor. My only  
 12 questions is with respect to what is within the four  
 13 corners of his report, the analysis of the virtual  
 14 desktop space specifically for KDE that's called out in  
 15 page 16, if he can testify as to that. It is in the  
 16 four corners of his report, Your Honor.

17 In other words, we're going to have  
 18 multiple sources of evidence, and I just want to simply  
 19 be sure that we're not prejudiced to the extent that  
 20 this source of evidence does specifically address  
 21 documents specifically called out to KDE that he'll be  
 22 allowed to testify to that.

23 THE COURT: I don't see KDE in this at  
 24 all. I don't see any reference to KDE. I don't think I  
 25 would read this as the defendant and understand that KDE

1 was invoked in the case by your single reference to an  
2 underlying document that happens to come from a KDE  
3 source. So he can point out that he referred to this,  
4 but this is not an opportunity for him to testify as  
5 to the KDE claim charts. He simply didn't do that. He  
6 didn't open that up.

7 If there's another witness who has been  
8 deposed and has been cross-examined and has had a chance  
9 to examine KDE, then that will be fine. You can  
10 certainly offer that witness, but I don't see that here.

11 MR. GASEY: Your Honor, can we go ahead  
12 and make an offer of proof pursuant to Federal Rule of  
13 Evidence 104 with respect to what Dr. Zimmerman would  
14 have provided had he been allowed to testify --

15 THE COURT: That's sounds perfectly fair,  
16 certainly.

17 MR. LYON: Let me ask a question. If you  
18 do that, there's a number of exhibits that are on his  
19 proposed list that are KDE-related. Would you put those  
20 on that offer of proof because obviously we object to  
21 those? If you do that, that's fine.

22 MR. GASEY: Well, certainly we would still  
23 put -- I think we would still put on this exhibit, which  
24 is 197.

25 MR. LYON: With respect to GNOME for the

1 know if you want to handle those on a case-by-case basis  
2 during Dr. Zimmerman's testimony since I don't know how  
3 they're going to offer them in if KDE is out of the  
4 case, or if we need to address them now.

5 THE COURT: Well, I'm anxious to not --

6 MR. LYON: I understand.

7 THE COURT: -- confuse my jury with things  
8 that they're not to be considering. So is there some  
9 way that we can extract from what he would have  
10 testified to, the KDE matters? Mr. Gibbons, is that  
11 possible?

12 MR. GIBBONS: It will be. There's going  
13 to be some overlap because he'll be talking in general  
14 about the products. KDE comes with a system  
15 automatically. GNOME is the default. I mean, I think  
16 that's all fair game. That's part of the overall  
17 system.

18 THE COURT: That strikes me as fair game,  
19 yes.

20 MR. LYON: I agree with that. That's what  
21 the products are. As long as it's not also toward KDE  
22 having functions and being part of the infringing  
23 product.

24 MR. GIBBONS: We can talk about PX197 in  
25 terms of the context of what he quotes in his report in

1 case?

2 MR. GASEY: Well, we would put it on for  
3 what it states and what he relied upon in connection  
4 with his report.

5 MR. LYON: Okay.

6 MR. GASEY: But with respect to Dr. Myron  
7 Zimmerman, we'd respectfully like to make a record that  
8 had he been allowed to testify with respect to the KDE  
9 implementation that his testimony would have shown and  
10 would have identified that the same steps were involved  
11 for the same products with respect to the use of an  
12 alternative structure within the same products, mainly  
13 the KDE window manager.

14 THE COURT: Would you like to, by the end  
15 of the day or something, provide a -- something to the  
16 record that will show exactly what he would have said?

17 MR. GASEY: That would be fine, Your  
18 Honor. Thank you.

19 THE COURT: Mr. Lyon, you're more than  
20 invited to supplement the record as to the reasons that  
21 you had no notice that this was to be part of the case.

22 MR. LYON: Okay. Thank you, Your Honor.

23 The only other thing, assuming that KDE is  
24 out there, are a number of exhibits that they have  
25 identified that relate to KDE, so I guess -- I don't

1 terms of clicking on the icon, correct? To switch  
2 between desktops, click the desired desktop and the  
3 switcher in the panel.

4 THE COURT: That's what we're talking --

5 MR. GIBBONS: Further up --

6 THE COURT: Yes.

7 MR. GIBBONS: -- it says you might, for  
8 example, use one desktop for e-mailing and calendaring,  
9 another for word processing and graphic applications.

10 THE COURT: Just don't take us into KDE in  
11 that process.

12 MR. GIBBONS: But he can -- we can quote  
13 from that, Your Honor?

14 THE COURT: He can quote from that.

15 MR. GIBBONS: In terms of how the overall  
16 switching feature works?

17 THE COURT: Yes.

18 MR. LYON: The only other issue would be,  
19 Your Honor -- maybe Mr. Gasey and I can confer outside  
20 about the exhibits to make sure there aren't further  
21 ones or ones on that.

22 But the expert report they wanted to bring  
23 in with Dr. Zimmerman, we view that as hearsay. When  
24 Dr. Zimmerman is on the stand, they can obviously bring  
25 out matters that are in his expert report, but the

1 expert report itself is hearsay.  
 2 MR. GIBBONS: Your Honor, the only true  
 3 reason we wanted the expert report marked as an exhibit  
 4 is because Exhibit A is his resume. Exhibit B is a list  
 5 of documents.  
 6 MR. LYON: I'd be fine with those --  
 7 MR. GIBBONS: I think we can do that the  
 8 same way we did at the end of yesterday's session.  
 9 THE COURT: Yes. Perfect. That's fine.  
 10 MR. GIBBONS: Is that fine with you?  
 11 MR. LYON: That's fine.  
 12 MR. GIBBONS: We had no intent of using  
 13 his report; we just wanted to get his resume and  
 14 Exhibits A and B of his report in.  
 15 THE COURT: All right. Fine.  
 16 Are we ready to bring in our jury?  
 17 MR. GIBBONS: Yes, Your Honor.  
 18 MR. REITER: Your Honor, I have one more  
 19 small issue. Plaintiffs have identified some deposition  
 20 testimony to read in.  
 21 THE COURT: Yes.  
 22 MR. REITER: A couple of little issues are  
 23 associated with that. This has to do with Mr. Agarwal.  
 24 MR. GASEY: Uh-huh.  
 25 MR. REITER: Plaintiffs designated some

1 patents expired, so it has no relevance to the  
 2 hypothetical evidence or to this case.  
 3 THE COURT: I think you'll have a chance  
 4 to point that out on cross-examination if you'd like to.  
 5 MR. REITER: Cross-examination --  
 6 THE COURT: Of your own witness since  
 7 he'll be testifying somewhat hostile to your position,  
 8 right?  
 9 MR. REITER: This is deposition testimony.  
 10 THE COURT: Oh, this is deposition?  
 11 MR. REITER: Yeah, he's not here.  
 12 MR. GASEY: They have fact witnesses  
 13 present in the courtroom.  
 14 THE COURT: You can point it out. Have  
 15 them refer to that and make explanation of what was  
 16 actually going on.  
 17 MR. REITER: Okay. The only other request  
 18 that I would have is a confirmation that you will read  
 19 in if we have counter designations --  
 20 MR. GASEY: Our plan is, because obviously  
 21 we don't have live witnesses, we're going to go ahead  
 22 and read our designations and read their designations,  
 23 the questions that they want just like a live witness  
 24 which would be our questions and their questions.  
 25 MR. REITER: Well, we have no questions.

1 testimony from Mr. Agarwal who was a 30(b)(6) deponent  
 2 on behalf of Novell. He was designated for a number of  
 3 topics, one of those not being licensing. Mr. Agarwal  
 4 was asked about licensing issues.  
 5 We raised an objection during the  
 6 deposition that it was outside the scope of the  
 7 deposition. And I can hand you the excerpts if Your  
 8 Honor would like, but nonetheless, the questioning went  
 9 forward with respect to licensing. He was not  
 10 designated as to that topic. They want to read that in.  
 11 We think it's inappropriate, Your Honor.  
 12 MR. GASEY: Your Honor, he has admitted to  
 13 the existence of a license on which they pay a per-unit  
 14 running royalty basis and, by the way, an agreement on  
 15 the specific accused products. This goes to the heart  
 16 of the issue of whether or not the Defendants would  
 17 consider a payment structure of a per-unit payment.  
 18 They've frustrated us to be able to  
 19 actually look at the physical document to establish that  
 20 that's the type of license they would pay for the  
 21 accused products. The only evidence we have of that is  
 22 the admission of their 30(b)(6) witness saying, yes, we  
 23 pay a per-unit royalty, and it was this witness.  
 24 MR. REITER: He wasn't a 30(b)(6) witness  
 25 on this topic, and that license was executed after the

1 We have questions that you had that you deleted. And  
 2 this is -- they've asked to have read in what's in  
 3 green.  
 4 THE COURT: Let's just put the whole thing  
 5 in context. Let's just put it all together, and just  
 6 read the whole thing. You'll have your -- in the record  
 7 what you need to refer to.  
 8 And you'll have in the record what you  
 9 need to explain to the context of what he refers to.  
 10 We'll just read the whole thing in context.  
 11 Are we ready for our jury?  
 12 MR. GASEY: One last item. I don't  
 13 think -- it's not an issue that's necessarily germane to  
 14 today, but I want to highlight it. It appears, given  
 15 what I heard yesterday from the Defendants, they may be  
 16 rolling in a physical computer into the courtroom to  
 17 explain some piece of prior art.  
 18 THE COURT: Sounds like it.  
 19 MR. GASEY: We've never had produced to us  
 20 any physical computer. We've never had any chance to  
 21 inspect it. We've never had any chance to go and see  
 22 any tests, any ex parte tests that they provided.  
 23 I just wanted to highlight that this is  
 24 going to be something that we are going to have issue  
 25 with if they're going to try and bring it in at this

1 date.

2 MR. REITER: Mr. Lyon knows about this.

3 Mr. Gasey is raising issues about demos on the

4 computers. We have provided notice of those. We

5 provided pictures of those. We've explained -- and as I

6 said, Mr. Lyon can speak to this better. In the

7 deposition of Dr. Wilson, he talked about the demos.

8 They had every opportunity --

9 MR. GASEY: Your Honor, that's false.

10 There was no deposition of Dr. Wilson.

11 MR. REITER: Oh, I'm sorry, I misspoke.

12 MR. LYON: He misspoke.

13 So Your Honor, we did offer a deposition

14 of Dr. Wilson. They did not take it. But we showed

15 screen shots. We provided the software as part of the

16 production. It's all been there for a long time. So

17 this is something that -- all we're doing is showing how

18 the software operates.

19 THE COURT: Let's talk about this a little

20 later. I can see this is -- it will take a while.

21 MR. KREVITT: There was no request to

22 inspect at any time.

23 MR. GASEY: Nor does there have to be

24 because it's their burden to produce it.

25 THE COURT: Let's get to this later.

1 J. CARL COOPER, PLAINTIFFS' WITNESS, PREVIOUSLY SWORN

2 DIRECT EXAMINATION CONTINUED

3 BY MR. GASEY:

4 Q. Mr. Cooper, good morning.

5 A. Good morning.

6 Q. When we broke last night, we were talking about

7 the meeting that you had with Apple as a result of an

8 attempt to try to settle your dispute with them; do you

9 recall that?

10 A. Yes.

11 Q. And now so that we can regain the context of

12 the concerns that you had on that meeting, could you

13 please restate what caused you concern as a result of

14 that meeting?

15 A. Yes. Apple sent their in-house attorney to the

16 meeting to discuss with us how their existing software

17 product worked and how their planned release of a new

18 software product that would replace the existing

19 software product was intended to work.

20 And we discovered in that meeting

21 that the existing software didn't really work quite the

22 way we thought it had, that the windows changeability --

23 excuse me -- my allergies are getting to me -- the

24 windows changeability only happened when a new user

25 signed on rather than what we had envisioned as one user

1 We've got a jury that I yelled at to be on time. Let's

2 be on time today.

3 Will you go get them?

4 (Jury in.)

5 THE COURT: Please be seated.

6 After all of my pleas that you be on time,

7 we were late this morning. We had some business we had

8 to perform just before we could invite you in, but we

9 finished our business, and I think we're ready to

10 proceed.

11 Mr. Gasey?

12 MR. GASEY: Thank you, Your Honor.

13 THE COURT: Would you remind the jury and

14 I about the witness that we're hearing from.

15 MR. GASEY: All right, Your Honor. We're

16 still talking with Mr. Carl Cooper. He is a corporate

17 representative of one of the Plaintiffs in the case,

18 Technology Licensing Corporation.

19 THE COURT: Mr. Cooper, I'd remind you

20 that you remain under oath.

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: And all the obligations of

23 that oath are still in place.

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: Thank you.

1 being able to change back and forth from window to

2 window.

3 Q. Mr. Cooper, to be clear, the existing product

4 you're talking about, what was the name of that?

5 A. Tiger.

6 Q. Okay.

7 A. So that was something that caught us by

8 surprise, and then they basically said they had delayed

9 the release of the new product. They were prepared to

10 remove the desktop change feature from the new product.

11 MR. KREVITT: Your Honor, I hate to

12 interrupt the testimony, but I must object on the

13 grounds of hearsay. This testimony is clearly

14 testifying on behalf of what Apple's intent was, what

15 Apple was thinking and is offering it to prove the

16 matter asserted.

17 MR. GASEY: Your Honor, it's not hearsay.

18 We're stating what the basis was for his concern -- why

19 was he concerned.

20 THE COURT: You may proceed.

21 MR. GASEY: Thank you, Your Honor.

22 A. That they were prepared to remove the desktops

23 feature that was covered by the patents from their new

24 product. So we really were faced with a decision about

25 going forward with the trial on the existing product.

1 Of course, you know, since the new product  
2 hadn't been released, that wouldn't be an issue at  
3 trial, and the risks involved with that versus working  
4 with Apple to get them to take a license that would  
5 cover the new product and the old product and eliminate  
6 our risk.

7 Q. So as a result of those concerns, did you  
8 settle with Apple?

9 A. We did. We worked out what I thought was a  
10 reasonably fair settlement.

11 Q. How much did you settle for?

12 A. It was a million and a quarter.

13 Q. And what were the reasons for -- again for  
14 settling? What was the state of mind -- why was it that  
15 you thought that 1.25 million was fair to settle with  
16 Apple at that point?

17 A. Well, in business management terms, it was  
18 basically a risk management decision. We had risks if  
19 we went forward with the litigation. There are several  
20 stages of litigation where really some very good things  
21 or some very bad things can happen in patent  
22 infringement.

23 Claim construction is one of those stages.  
24 It's a big stage. Summary judgment motions is one of  
25 those stages; those are big stages. And we can lose

1 those, which cause the ability to prove infringement and  
2 gain damages to be seriously diminished in a trial, or  
3 we could win those, which would greatly improve our  
4 ability to prove infringement and win damages.

5 There's a risk associated with that  
6 because the product didn't work quite the way we  
7 originally thought it was. It kind of threw us for a  
8 loop.

9 And of course, the new product, there was  
10 risk there that they wouldn't release it, or if they did  
11 release, it wouldn't use the changing desktops feature  
12 that was covered by our patents. So we made a business  
13 decision that, yeah, let's take the million and a  
14 quarter and get the license in place and go on and  
15 attend to other business.

16 Q. Now, you heard yesterday Mr. Krevitt talk about  
17 a feature known as the Apple switcher feature; do you  
18 recall that?

19 A. That's correct, yes.

20 Q. Did you ever prior to yesterday hear anything  
21 about that feature, that is, for instance, from Apple?

22 A. No. The lady didn't mention it at all in our  
23 discussions. We talked about infringement and prices  
24 for a license.

25 Q. Now, why is it that you were willing to settle

1 with Apple -- by the way, just so I get down the time  
2 frame, when did you settle with Apple, about?

3 A. It was a couple of months after we filed suit,  
4 the patent infringement suit, and that was sometime in  
5 the first part of '97, as I recall.

6 Q. '97?

7 A. Or 2007. I'm sorry. I misspoke.

8 Q. That's okay. So it was a couple months after  
9 you filed the lawsuit?

10 A. Yeah. Basically it was -- it happened fairly  
11 quickly. You know, we were able to sit down and talk  
12 with them early on in the lawsuit before anything had  
13 happened, for example, before the claim construction  
14 hearing or depositions or summary judgment motions or  
15 anything like that.

16 Q. Now, can you tell me why TLC was willing to  
17 settle for 1.25 million from Apple but is asking more  
18 from the Defendants in this case?

19 A. It's basically for Apple risk management. We  
20 were able to get a license in place, to get the Apple  
21 name behind the patents using the product that they said  
22 they wanted to use and would like to release.

23 It was early on. We didn't have to  
24 undergo the risk of litigation. However, conversely, in  
25 this case, we've never had the opportunity to sit down

1 and talk with the Defendants. We've never had the  
2 opportunity to discuss infringement positions or money.  
3 There's no offer on the table.

4 We have, in fact, made it past some of  
5 those risky points in litigation like claim construction  
6 and summary judgment. And so as I said, with Apple if  
7 you lose those risk points, the price goes down or maybe  
8 goes away, but if you win them, the price goes up.  
9 We've passed that risk now. And as a risk management  
10 business proposition, we have less risk, and therefore,  
11 we believe the case is worth more money.

12 Q. Now, what, if any, effect did Apple's potential  
13 delay of a Leopard product have on your valuation of  
14 that case?

15 A. Well, because the patent has a finite life and  
16 they were delaying the product, that meant that there  
17 would be less covered sales to generate royalties, so  
18 that's a factor in the risk consideration. It's  
19 certainly a factor in the value of the license.

20 Q. What, if any, effect did their threat to remove  
21 the switcher feature have on your valuation -- threat to  
22 remove the switcher feature on Leopard have on your  
23 valuation?

24 A. Well, as I said, if, in fact, they had released  
25 the new product without the feature, there would be no

1 royalties or no infringement, and that affects the value  
2 of the license.

3 Q. And, by the way, what, if any, details was  
4 there that affected your valuation relative to the  
5 potential value of a license as applied to Apple's Tiger  
6 product?

7 A. The existing product?

8 Q. Yes.

9 A. Well, the -- as I said, the existing product  
10 didn't work quite the way we thought it did from the  
11 publicly available information we were able to get, and  
12 so it had an impact on what we thought -- after learning  
13 how it did actually operate, what we thought our risks  
14 were, in other words, our chances of getting to trial  
15 and winning an infringement case, that they seriously  
16 diminished.

17 Q. Now, Mr. Cooper, you are aware of the notice  
18 letter and the lawsuit that was filed in this case,  
19 right?

20 A. That's correct.

21 Q. And you're aware of the fact that the -- that  
22 your lawyers went ahead and wrote the Defendants on --  
23 about October 8th of 2007?

24 A. That's correct.

25 Q. And that they filed a lawsuit the day after?

1 A. Yes.

2 Q. Why?

3 A. Why did they write the letter, or why did they  
4 file the lawsuit?

5 Q. Why did they file the lawsuit right after  
6 writing the letter?

7 A. The patents were nearing the end of their life,  
8 and we wanted to preserve our position, our rights under  
9 those patents because they diminish with time. We did,  
10 in fact, file a lawsuit. We didn't serve the complaint  
11 on the Defendants.

12 As I recall, in this jurisdiction, we have  
13 something like six months to actually serve the  
14 complaint, and it's not until the complaint is served on  
15 the Defendants that the lawsuit actually starts up and  
16 things start happening.

17 We had wanted to preserve our rights. We  
18 had wanted, as the letter stated, to sit down and  
19 discuss the situation with the Defendants to see if we  
20 couldn't arrive at a reasonably good settlement of the  
21 infringement matters and hopefully get them to take a  
22 license under the remaining life of the patent.  
23 Unfortunately, that didn't happen.

24 Q. Let's compare this to Apple. Even after you  
25 sued Apple, did you write them?

1 A. I know we were in contact with them. I don't  
2 know -- I think it was probably by phone call. We may  
3 have been by -- there may have been some letters as  
4 well, but we were able to communicate with them.

5 Q. So you talked to them after you brought the  
6 lawsuit?

7 A. Correct.

8 Q. And they were willing to go ahead and talk to  
9 you?

10 A. That's correct.

11 Q. Now, after your lawyers went ahead and wrote  
12 Apple and Novell, did they ever at any time subsequent  
13 to that pick up a phone and call you?

14 A. No.

15 Q. Did they ever write you?

16 A. No.

17 Q. How many times have you testified in a court  
18 proceeding, sir?

19 A. Quite a few, and the number of days is well  
20 over 30.

21 Q. And has a court ever found or thought that you  
22 didn't tell the truth?

23 A. Yes. I actually had an incident with Judge  
24 Posner a couple years ago now, but there was discussion  
25 about a paper that I had filed with the patent and

1 trademark office in a patent re-examination. The paper  
2 did have a misleading statement in it, which I didn't  
3 realize at the time.

4 Q. And he didn't believe that -- he didn't believe  
5 you? He didn't believe your excuse?

6 MR. KREVITT: Your Honor, Mr. Gasey is  
7 testifying again. If he could ask a question and have  
8 the witness testify, proceeding as normal.

9 THE COURT: Mr. Gasey, I think you need to  
10 restate that.

11 MR. GASEY: That's fine, Your Honor.

12 Q. (BY MR. GASEY) Did he believe you?

13 A. No. I explained the situation to Judge Posner.  
14 Judge Posner thought that I was lying and issued a court  
15 order basically taking away the patent -- or patents. I  
16 guess there were two patents that were involved in that  
17 patent office activity. And so that was a pretty black  
18 record on my reputation. I'm not happy about it even  
19 today.

20 Q. So he took away your patents, your inventions?

21 A. That's correct.

22 Q. When you had that happen to you, those rights  
23 happen to you, how did you feel?

24 A. I mean, I was devastated. That is -- first of  
25 all, filing something with the patent office that is

1 misleading is never a good thing. It's not a good  
2 thing. I'm a registered patent agent, and there are  
3 canons of ethics that you have to subscribe to.

4 And filing a misleading statement is -- no  
5 matter how trivial, is not a good thing, and it was  
6 devastating to have that -- to discover later that I had  
7 done that and then to have the judge not believe that I  
8 had not done that intentionally but instead had done  
9 that inadvertently was just, you know, a terrible  
10 devastating black mark on my reputation. I was very  
11 unhappy about that.

12 Q. Now, the patents that the judge took away from  
13 you in that case, did you have any pending patent  
14 applications still in the patent office on the same  
15 subject matter?

16 A. Yes, we did. There were additional  
17 applications in the same patent family. The patent  
18 family was the '780 resolution patent family, resolution  
19 enhancement patent family I talked about yesterday that  
20 was involved in obtaining the patents we have here  
21 today. And there were and still are, for that matter,  
22 patent applications in the patent office in that family  
23 that are related to that.

24 Q. Now, you're aware of what's called the duty of  
25 candor, right?

1 A. The patent office essentially reviewed the  
2 evidence, and the Examiner initially said the evidence  
3 wasn't pertinent to the applications.

4 Q. Wasn't pertinent to the applications that were  
5 the same applications that were -- the patents that were  
6 taken away from you?

7 A. That's correct. The Examiner reviewed it and  
8 said, this is not pertinent, we're going to go ahead and  
9 move forward with the applications. In addition, that  
10 same evidence went to what's called the office of  
11 enrollment and discipline in the patent office. That's  
12 the office that administers the disciplinary actions and  
13 requirements for adhering to the canons of ethics in the  
14 patent office, which I am bound by as a registered  
15 patent agent.

16 Q. So what did the office of enrollment and  
17 discipline have to say about that material?

18 A. They investigated, asked for even more  
19 evidence, which we supplied to them, and they finally  
20 issued a decision on the matter, saying there was --  
21 they found no evidence of any inequitable conduct or  
22 wrongdoing. There was no further action, and that was  
23 dismissed by the patent office.

24 Q. So at some point what, if any, change was there  
25 with respect to -- well, strike that.

1 A. That's correct.

2 Q. And what did you do with Judge Posner's opinion  
3 and the materials that he relied upon with respect to  
4 those pending patent applications as the same subject  
5 matter of the patents that he took away from you?

6 A. Well, first of all, let me explain. I  
7 mentioned the canons of ethics that a patent agent has,  
8 but any inventor, whether they're a patent agent or not,  
9 has a duty of candor to the United States Patent Office  
10 of fair dealing and honesty.

11 So when we received -- first of all,  
12 Mr. Posner's opinion came down, but when we -- and that  
13 was -- that involved evidence and briefs and filings  
14 that were presented before the opinion came down. So we  
15 took all that information, and we sent it into the  
16 patent office, saying, you know, I've been found guilty  
17 of this inequitable conduct. Here is all of the  
18 evidence that was used, here is Judge Posner's opinion.

19 This is something that, you know, we need  
20 to submit to the patent office so you know what the  
21 courts have done in patents that are in the same family  
22 that are related to the applications that are still in  
23 the patent office.

24 Q. And what did the patent office say when you  
25 told them all this?

1 The examiner went ahead and told you that  
2 the material you submitted, the same material that Judge  
3 Posner found was material and intentionally withheld,  
4 was material or not?

5 A. It was not material, nor did the incorrect  
6 or -- actually it was technically correct but was a  
7 misleading statement, did not rise to any sort of  
8 inequitable conduct. Basically, the patent office  
9 said Judge Posner was wrong in his ruling.

10 Q. And what, if any, change was there to Judge  
11 Posner's ruling later on?

12 A. Well, Judge Posner's ruling in the time  
13 frame -- I believe it was after the Examiner said that  
14 the evidence had been considered and had no impact,  
15 Judge Posner vacated his ruling, and as I understand the  
16 law, when a ruling is vacated, that means that it never  
17 happened.

18 Q. And that vacating, that was done by agreement  
19 of the parties? Was it?

20 A. Well, certainly, yes, we agreed to it. Both  
21 the Defendants in that action that had brought the  
22 original motion and we had agreed to vacate that ruling  
23 and dismiss the case.

24 Q. Now, Mr. Cooper, did all that activity, all the  
25 patents that were involved in Judge Posner's opinion,

1 did they have anything to do with the patents in this  
2 case?

3 A. Yes. It was the '780 family of patents, and  
4 those were the patents that led to us giving the license  
5 that also resulted in us getting ownership of the  
6 patents and three patents in this case.

7 Q. Were the patents that are in this case, were  
8 they any part of the case in front of Judge Posner?

9 A. No. They are an entirely different patent  
10 family with different inventors and not part of that,  
11 but they are only related because that's the same family  
12 that resulted in our ownership of these patents.

13 Q. Now, was the subject matter the same, the  
14 patents in this case and the patents in that case?

15 A. No, they're entirely different.

16 Q. Different inventors?

17 A. Different inventors.

18 Q. The same or different patent prosecution  
19 history?

20 A. Entirely different.

21 Q. Did you have anything to do with the  
22 prosecution of the patents in this case?

23 A. No.

24 MR. GASEY: Thank you, Mr. Cooper. I have  
25 no further questions.

1 MR. KREVITT: On these patents Mr. Cooper  
2 just testified.

3 THE COURT: The ones inequitable or this  
4 case?

5 MR. KREVITT: This case. Mr. Cooper just  
6 testified, and he drew a contrast to Apple. He said  
7 that when Apple was sued, they were cooperative, they  
8 discussed settlement, but then when we were sued  
9 following that, there was never any discussion  
10 whatsoever of settlement, no discussion ever had. There  
11 was no call. The statement is false.

12 MR. GASEY: I asked him what he ever heard  
13 about it, what he ever -- and they have never, ever,  
14 ever offered a dime, nothing. The only time we sat down  
15 is when the Court ordered us.

16 THE COURT: The question is whether there  
17 were negotiations, and he said there were.

18 MR. GASEY: He was never involved in any  
19 negotiations, Your Honor; that's true. They never  
20 called him. They never wrote him.

21 MR. KREVITT: The question wasn't whether  
22 they called him. The question was whether there were  
23 any discussions with the Plaintiff regarding settlement,  
24 and he said --

25 THE COURT: I need to look at exactly what

1 MR. KREVITT: Your Honor, may we approach  
2 the bench.

3 THE COURT: Certainly.  
4 (Bench conference.)

5 MR. KREVITT: I have a serious concern  
6 that Mr. Cooper just committed perjury. I feel it's my  
7 obligation to bring that to the Court's attention. The  
8 Court can do whatever the Court wants with that.

9 Following the lawsuit being filed here,  
10 there were extensive, extensive months and months of  
11 discussions regarding settlement, e-mails exchanged. I  
12 participated. That was just another thing I must bring  
13 to the Court's attention because it is possible I would  
14 be a witness to those things. Those discussions were  
15 had with Mr. Gasey's partner, the named partner of the  
16 Niro firm.

17 At numerous times, Mr. Niro relayed to me  
18 his discussions with Mr. Cooper about those discussions.  
19 There's only one of two possibilities. Either  
20 Mr. Cooper just committed perjury, or Mr. Niro never  
21 discussed with Mr. Cooper all of the settlement  
22 discussions including specific numbers that we had  
23 throughout months, almost a yearlong period.

24 THE COURT: This is the settlement  
25 negotiations on what?

1 he said, but it does seem that he did testify that there  
2 were no negotiations.

3 MR. GASEY: I asked if they ever called  
4 him, or if they ever talked to him. They never did.  
5 Apple called him directly.

6 THE COURT: Well, that's misleading, isn't  
7 it?

8 MR. KREVITT: At a minimum.

9 MR. HILL: May I just interject here? I  
10 don't claim to know anything about whether negotiations  
11 have gone on or haven't gone on. What I do know is  
12 typically a subject you don't see in front of a jury are  
13 settlement discussions from the present lawsuit.

14 THE COURT: No, you certainly don't.

15 MR. KREVITT: But those were just put in  
16 issue.

17 THE COURT: But he testified that he gave  
18 the impression that there was recalcitrance to talk, and  
19 apparently there was not.

20 MR. GASEY: Yeah, there was.

21 MR. KREVITT: That is false, Art. I'm  
22 warning you, you don't know what you're talking about.  
23 What you just said is false. I'm telling you, it is  
24 false. Maybe you don't know, and I'm going to give you  
25 the benefit of the doubt.

1 THE COURT: Let's --  
 2 MR. HILL: One other suggestion. I agree  
 3 there's been an impression given. Again, this entire  
 4 topic is not something appropriate for this jury. My  
 5 suggestion would be, Your Honor, that you correct this  
 6 by telling this jury through instruction that  
 7 negotiations in the present suit or the state of  
 8 negotiations of the parties in this case aren't relevant  
 9 to the decision they have to make.  
 10 MR. KREVITT: It is too late, Your Honor.  
 11 THE COURT: The trouble is there's been an  
 12 impression given. I think -- let's do this.  
 13 MR. GASEY: You can question him to ask --  
 14 MR. KREVITT: It's too late. I would have  
 15 to now do one of two things. I now need to do exactly  
 16 what Mr. Hill correctly said. I need to get into the  
 17 settlement discussions. I need to waive my client's  
 18 privilege. I need to establish the witness just lied,  
 19 or Mr. Niro, Mr. Gasey's partner, violated the rules of  
 20 ethics by not communicating settlement discussions.  
 21 That is entirely unfair.  
 22 Mr. Gasey just elicited testimony that was  
 23 directly stating that Apple acted one way, my client  
 24 acted another way, and it's false. We can't put a cork  
 25 in that jug by just saying let's ignore him.

1 to review the record and has spoken to counsel; and that  
 2 on that basis, you understand that Mr. Cooper's  
 3 testimony with respect to how the Defendants acted  
 4 following the lawsuit was not correct, and they should  
 5 ignore it.  
 6 And then we move on, and I'm able to  
 7 conduct my examination and don't have to waive our  
 8 privilege and don't have to get into those settlement  
 9 discussions that we never should have been in the  
 10 position of having to get into. Just as Mr. Hill said,  
 11 those discussions never come up at a trial like this.  
 12 THE COURT: They don't. I understand  
 13 that's --  
 14 MR. KREVITT: We shouldn't be put in the  
 15 position of having to act in a way as a consequence. So  
 16 a simple curing instruction is appropriate.  
 17 MR. HILL: Your Honor, if I could just --  
 18 THE COURT: Mr. Hill.  
 19 MR. HILL: Thank you for the indulgence,  
 20 Your Honor, because I -- I don't claim to know the facts  
 21 on the ground of what went on in terms of the  
 22 discussions.  
 23 THE COURT: It's very apparent that there  
 24 were some lengthy settlement discussions. There is a  
 25 misimpression.

1 (Bench conference concluded.)  
 2 THE COURT: I'm going to excuse the jury.  
 3 Ladies and gentlemen, we need to take a  
 4 break. Would you enjoy yourselves for a few moments.  
 5 We need to have a little discussion here, and we'll  
 6 invite you back in a few moments.  
 7 (Jury and witness out.)  
 8 MR. KREVITT: I've also had a chance to  
 9 talk to my clients and will share that with you.  
 10 THE COURT: What do you have to tell me?  
 11 MR. KREVITT: Your Honor, we request,  
 12 obviously subject to Your Honor's review of the  
 13 transcript, clearly there has been an impression  
 14 given -- more than an impression that Apple acted in a  
 15 particular way, a responsible way, a reasonable way.  
 16 Our clients, in contrast, were  
 17 recalcitrant, were obstinate, and did not act in a  
 18 reasonable way. That impression is false. It puts us  
 19 in the difficult position that I explained to Your Honor  
 20 in the sidebar. Your Honor understands that fully, of  
 21 course.  
 22 We would ask that the only solution to  
 23 this is that Your Honor provide an instruction to the  
 24 jury now so I don't have to cross-examine and waive our  
 25 privilege; simply that Your Honor has had an opportunity

1 MR. KREVITT: In which I participated.  
 2 MR. HILL: And, Your Honor, that's the  
 3 portion I wanted let Mr. Gasey to speak to and prompt  
 4 him to speak to, because I think there is -- and this is  
 5 just -- I want the Court to understand the full parties'  
 6 understanding.  
 7 THE COURT: Help me out.  
 8 MR. HILL: Mr. Gasey has a different  
 9 understanding of the communications that went on  
 10 apparently between Mr. Niro and Mr. Krevitt in terms of  
 11 there being more communication between trial lawyers  
 12 reaching out to each other saying, are there -- is there  
 13 going to be a way to work this out; can we get together;  
 14 can we sit down, and then nothing really coming of that.  
 15 There being no money ever put on the  
 16 table; no offer to convey back to Mr. Cooper as an offer  
 17 that he can even consider on which to make a decision.  
 18 So I don't believe that his testimony was  
 19 based on anything other than his perception, which was  
 20 what was conveyed to him, which was nothing, because  
 21 there was no offer to convey.  
 22 MR. KREVITT: Your Honor, it's just not  
 23 correct.  
 24 THE COURT: Now, there is an obligation --  
 25 if there was any overture made on behalf of Novell, then

1 there's an obligation to communicate that to Mr. Cooper.  
2 I must assume that Mr. Niro, whom I know as a very  
3 responsible attorney, would not have failed in that  
4 obligation.

5 MR. HILL: And, Your Honor, I wouldn't  
6 doubt that Mr. Niro would have failed in that  
7 obligation. As I understand it, no money was ever put  
8 on the table. That's the impression Mr. Cooper has and  
9 apparently had conveyed to him.

10 MR. KREVITT: Your Honor, if I could just  
11 respond. And, again, I'm giving Mr. Hill every benefit  
12 of the doubt. I really am. He doesn't know the facts.

13 MR. HILL: Don't claim to.

14 MR. KREVITT: He doesn't report to know  
15 the facts.

16 But what Mr. Hill just said is false.  
17 Again, not deliberately, but it's just wrong.

18 THE COURT: Well, I've never heard in  
19 settlement negotiations that somebody didn't mention  
20 some kind of number.

21 MR. KREVITT: Your Honor, it was not just  
22 can we all get together; can we talk. I can go back to  
23 my office, I can get the e-mails between me and  
24 Mr. Niro. The e-mails are talking about structure of  
25 licensing, specific structure of licensing, what rights

1 MR. KREVITT: With respect to what my  
2 clients did in response to the letter at any time, any  
3 conduct taken following that letter.

4 THE COURT: That sounds pretty reasonable  
5 to me at this point.

6 MR. KREVITT: Thank you, Your Honor.

7 THE COURT: Mr. Hill?

8 MR. HILL: Your Honor, I think as an  
9 appropriate instruction from the Court to seal the issue  
10 of settlement discussions, I think maybe the  
11 instruction -- and, again, Mr. Krevitt --

12 THE COURT: This sounds to me like  
13 Mr. Krevitt is being pretty reasonable here.

14 MR. HILL: I'm not quarreling with that.

15 What I'm suggesting, Your Honor, is that  
16 maybe letting the jury know that settlement discussions  
17 in the instant lawsuit in this case are things under the  
18 Rules of Evidence that they should not consider in  
19 making their decision. I mean, a broader statement,  
20 Your Honor.

21 MR. KREVITT: Your Honor, that is -- I'm  
22 sure it's obvious to --

23 THE COURT: If I were that jury, then I'd  
24 want to know an awful lot more about the settlement.

25 MR. KREVITT: Not just that, Your Honor.

1 would be conveyed, to whom, for how long, money  
2 discussed back and forth.

3 Your Honor, the problem is, I would need  
4 to testify. That's the problem, and that's not fair.  
5 It's not reasonable.

6 We think that Your Honor should consider  
7 additional appropriate sanctions that we're going to  
8 consider and suggest to Your Honor at the appropriate  
9 time. At this time, we are requesting what in our view  
10 is very, very modest relief. It is simply a curative  
11 instruction to the jury.

12 The jury was scribbling down notes. That  
13 made a big impression on the jury. It was intended to  
14 make a big impression on the jury. The only way to  
15 solve that at this point is for the Court to state that  
16 the Court has reviewed the transcript; it has had an  
17 opportunity to discuss these issues with counsel; and  
18 that the statements that Mr. Cooper made -- obviously,  
19 Your Honor doesn't have to make any judgment about  
20 intentional or not -- but the statements that Mr. Cooper  
21 made were not correct.

22 That's the bare minimum of what is  
23 necessary.

24 THE COURT: The statements Mr. Cooper made  
25 with respect to?

1 I stood up; I brought it to the Court's attention. I  
2 spoke softly, but the jury saw that I was upset.

3 And to convey that message, which is the  
4 conveying of I'm just frustrated that this discussion  
5 came up, that's not what happened.

6 Mr. Cooper either committed perjury or --  
7 or Mr. Niro violated his duty under the professional  
8 rules of conduct. That's what happened here. And the  
9 only way to -- the bare minimum, again, the starting  
10 point, is for the jury to understand.

11 Otherwise, Your Honor, I will draw it out  
12 on cross. I will draw out on cross that what Mr. Cooper  
13 just said is false. I will draw out that he told -- the  
14 statements he made were not true.

15 And I'm trying not to turn this into a  
16 side show, Your Honor. And so at a minimum, the jury  
17 needs to understand it was not true. Either Your Honor  
18 needs to do it or I need to do it.

19 THE COURT: I'm going to grant this -- I'm  
20 going to call the jury back, and I'm going to tell  
21 them -- let me tell you exactly what I'll say to them  
22 right now.

23 I'll say that during Mr. Cooper's  
24 testimony, he referred to the conduct of Defendants,  
25 after they received the letter, left the impression that

1 they were recalcitrant; that is incorrect.  
 2 I have reviewed the record; I have seen  
 3 the evidence; it is incorrect testimony. They should  
 4 not consider that, and then we'll move ahead.  
 5 MR. KREVITT: If I may just suggest this.  
 6 Recalcitrant is fine, obviously, but I want the jury to  
 7 understand there were statements; there were  
 8 discussions, because he said there were no statements,  
 9 no discussions. I want that to be -- that should be  
 10 clear.  
 11 THE COURT: All right. I can say that,  
 12 that he left the impression there were no statements or  
 13 discussions following that letter; that is incorrect.  
 14 There were statements; there were discussions; and they  
 15 should disregard his testimony to the contrary. And  
 16 we'll go from there.  
 17 MR. KREVITT: Thank you, Your Honor.  
 18 MR. HILL: Your Honor, my suggestion was  
 19 not an alternative to Mr. Krevitt. It was an addition.  
 20 MR. KREVITT: I think it's confusing, with  
 21 all due respect, because it's not that all --  
 22 MR. HILL: Basically, my suggestion would  
 23 track Rule 408, Your Honor, simply to say that the  
 24 negotiations, offers to compromise can't be used to  
 25 either prove the validity or invalidity of a claim.

1 time to review it quite carefully, and that testimony is  
 2 incorrect. You should disregard it. There were  
 3 discussions following the receipt of the letter by the  
 4 Defendants.  
 5 Let's proceed.  
 6 MR. KREVITT: Thank you, Your Honor.  
 7 JAMES CARL COOPER, PLAINTIFFS' WITNESS, PREVIOUSLY SWORN  
 8 CROSS-EXAMINATION  
 9 BY MR. KREVITT:  
 10 Q. Good morning, Mr. Cooper.  
 11 A. Good morning.  
 12 Q. I have a lot to cover, but I'll try to keep it  
 13 somewhat brief and to the point. And maybe to do that,  
 14 let's start with where you ended with Mr. Gasey, while  
 15 it's still fresh in the jury's mind.  
 16 You remember you were talking about Judge  
 17 Posner's decision?  
 18 A. Yes.  
 19 Q. Judge Posner found that you lied to the Patent  
 20 Office, correct?  
 21 A. That's what he said.  
 22 Q. He said that you had filed a document that was  
 23 a deliberate fabrication, correct?  
 24 A. I don't remember the exact wording, but that  
 25 was, in effect, what he said.

1 THE COURT: Okay.  
 2 MR. KREVITT: Your Honor, if I may. If I  
 3 may.  
 4 I think that confuses the issue, because  
 5 that isn't why I stood up. The jury shouldn't  
 6 understand that.  
 7 THE COURT: Let's call our jury back. We  
 8 need Mr. Cooper back, too, yes.  
 9 Then you'll be prepared to proceed with  
 10 your cross-examination, right?  
 11 MR. KREVITT: Right.  
 12 THE COURT: I need Mr. Cooper first.  
 13 Mr. Cooper, we're going to make an  
 14 instruction to the jury. You should not respond to it  
 15 at all.  
 16 THE WITNESS: Okay.  
 17 (Jury in.)  
 18 THE COURT: Please be seated.  
 19 Ladies and Gentlemen, from time to time  
 20 throughout the trial I'll give you special instructions.  
 21 This is one of those times.  
 22 Mr. Cooper testified that upon the receipt  
 23 of the letter, there were no discussions or -- at all  
 24 between the parties.  
 25 I reviewed the record; I've taken this

1 Q. Just one second, sir.  
 2 MR. KREVITT: If we can go to Page 7,  
 3 please.  
 4 Q. (By Mr. Krevitt) This is the judge speaking,  
 5 and he's talking about statements you made to the Patent  
 6 Office, correct?  
 7 A. That's correct.  
 8 Q. And you had filed a document under oath to the  
 9 Patent Office in which you said you had never spoken  
 10 with or met with certain experts, correct?  
 11 A. One expert in particular. There were four  
 12 experts.  
 13 Q. Is that a yes or a no, sir?  
 14 A. Well, that's correct.  
 15 Q. Okay. You had filed a document that said that  
 16 you had not spoken with any of the experts; isn't that  
 17 correct?  
 18 A. Yes.  
 19 Q. Okay. And Judge Posner found that that wasn't  
 20 true, correct?  
 21 A. That's correct.  
 22 What had happened was --  
 23 Q. Sir, you have very able counsel that will be  
 24 able to draw out any additional information you want to  
 25 redirect, if they feel it's necessary. If you can't

1 answer my question yes or no, I want you to tell me,  
2 because I don't there to be any -- any misleading for  
3 the jury.  
4 But I've got a lot of ground I want to  
5 cover, so if you could just answer my questions yes or  
6 no, I'd appreciate it. And, again, if you have trouble  
7 with that, just tell me that, okay?  
8 A. Okay.  
9 Q. Okay. Thank you.  
10 So my question is, that you, having filed  
11 a document that said that you had never spoken or met  
12 with any of the experts, Judge Posner concluded that  
13 that statement was false, correct?  
14 A. He did.  
15 Q. He concluded you had met with and had spoken  
16 with at least one of the experts, correct?  
17 A. Not entirely. He concluded that I had spoken  
18 with one of the experts.  
19 Q. Okay. I'm not sure that's different than my  
20 question, but I'll take that.  
21 So he concluded that you had spoken with  
22 one of the experts, correct?  
23 A. Yes.  
24 Q. And your statement, therefore, that you had  
25 never spoken with the expert was false?

1 A. That was his conclusion, yes.  
2 Q. He also concluded that you made a payment to  
3 the expert prior to the time you had said you had never  
4 spoken with him, correct?  
5 A. Not me personally but the company.  
6 Q. TLC; is that correct?  
7 A. Correct.  
8 Q. That's your company, correct?  
9 A. Technically, it's not. It's my wife's and her  
10 sister's and a friend's company, but it's a company I  
11 work for.  
12 Q. TLC has no employees, correct?  
13 A. Right.  
14 Q. And the Judge found -- incidentally, in that  
15 case that we're talking about, TLC was a defendant,  
16 correct?  
17 Let me do this --  
18 A. TLC was a party in the case. I don't remember  
19 now if they were a defendant in the DJ action or if they  
20 were a plaintiff in the case.  
21 Q. Fair enough.  
22 TLC was the patent owner in the case,  
23 correct?  
24 A. Correct.  
25 Q. Okay. And another party to the case was IPI,

1 also a party in this case, correct?  
2 A. Correct.  
3 Q. And you were a party individually, weren't you?  
4 A. Yes.  
5 Q. And the company you testified about yesterday,  
6 Pixel, was also a party?  
7 A. Yes.  
8 Q. And you were all represented by the Niro firm?  
9 A. Yes.  
10 Q. Okay. And in that case, the Judge concluded  
11 that the document you filed was false, because TLC not  
12 only had spoken -- not only had you spoken with the  
13 expert before, but TLC had paid that expert thousands of  
14 dollars, correct?  
15 A. The payment I think was around \$3,000.  
16 Q. That's thousands, right?  
17 A. Well, okay.  
18 Q. Okay. So the Court found out that you had  
19 paid -- TLC had paid the expert \$3,000 and had done that  
20 prior to the time that you said you had never spoken  
21 with the expert, correct?  
22 A. Correct.  
23 Q. Okay. And the Judge concluded, therefore, that  
24 your statement to the Patent Office, which was under  
25 oath, was a deliberate fabrication?

1 A. That's what the Judge said.  
2 Q. Okay. He also said that the statement was  
3 false; is that right?  
4 If we look at Page 3, for example?  
5 A. Yes.  
6 Q. It says: Cooper's statement that he had not  
7 met or talked with any of the experts prior to a month  
8 before soliciting expert reports from them was false,  
9 correct?  
10 A. Yes.  
11 Q. Okay. And if we go to Page 4 -- excuse me --  
12 not Page 4. If we go to Page 8, the Judge found that  
13 that fabrication was material; it was important,  
14 correct?  
15 A. Yes.  
16 Q. Okay. And we see that here on Page 8.  
17 Clearly, the fabrication -- that's your false statements  
18 to the Patent Office -- was material; isn't that right?  
19 A. That's what it says, yes.  
20 Q. Okay. That's what the Judge concluded, right?  
21 A. Yes.  
22 Q. Judge Posner is a well-respected judge, isn't  
23 he?  
24 A. In some circles, yes.  
25 Q. Judge Posner sits on the appellate court, like

1 Judge Rader, and was sitting by designation; isn't that  
2 right?  
3 A. You know, I don't know. I know he was sitting  
4 by designation. I don't know if he is on the CAFC or  
5 not.  
6 Q. He's an appellate judge is my point.  
7 A. Yes, he is an appellate judge.  
8 Q. And Judge Posner found you lied to the Patent  
9 Office and that was extremely serious misconduct,  
10 correct?  
11 A. Well, lying to the Patent Office is extremely  
12 serious.  
13 Q. Sir, answer my question. My question was,  
14 Judge Posner found that your lying to the Patent Office  
15 was extremely serious misconduct, correct?  
16 A. I believe that's the result of the finding.  
17 Q. You're not sure? Why don't I bring that up  
18 just so you can see.  
19 The making of deliberate, material  
20 misrepresentations to a patent examiner is extremely  
21 serious misconduct. That's what Judge Posner found,  
22 right?  
23 A. That's correct.  
24 Q. Talking about your conduct?  
25 A. That's what it says here, yes.

1 Q. Okay. And then I know you called it a trivial  
2 matter in your examination with Mr. Gasey.  
3 Is filing a document in which you say I've  
4 never spoken with an expert, when, in fact, that's  
5 false, a trivial matter to you?  
6 A. It depends under the patent -- under the --  
7 Q. It depends? Is that the answer? Is that the  
8 answer, sir, it depends?  
9 A. The answer is I cannot answer that a yes or no  
10 without more information. It depends on the nature --  
11 Q. No, I understand.  
12 A. -- of the error.  
13 Q. I understand. So it may be a trivial matter to  
14 tell the Patent Office under oath -- it may be a trivial  
15 matter to tell the Patent Office under oath, I never  
16 spoke with somebody, when the statement's false. It may  
17 be just a trivial matter to do that, in your view?  
18 A. If --  
19 Q. Sir, I'm asking you --  
20 A. It depends on whether or not it's material as  
21 to whether or not the Patent Office considers it just a  
22 misstatement, a slip of the tongue as we had here  
23 yesterday --  
24 MR. KREVITT: Your Honor --  
25 A. -- or if it's something that is pertinent.

1 MR. KREVITT: Your Honor, can I -- can I  
2 have a little assistance?  
3 Mr. Gasey, again, can have Mr. Cooper  
4 explain as long as he wants why lying to the Patent  
5 Office is a trivial matter.  
6 MR. HILL: I object that's he's --  
7 MR. KREVITT: I'm entitled to a yes or no  
8 question.  
9 MR. HILL: -- argumentative when he's  
10 trying to ask a witness -- ask the Court for an  
11 instruction regarding this.  
12 THE COURT: Okay. What we need is to  
13 listen very carefully to the question and just answer  
14 yes or no.  
15 Q. (By Mr. Krevitt) Is it your testimony, sir,  
16 that lying to the Patent Office may be just a trivial  
17 matter?  
18 A. Yes.  
19 Q. Okay. Thank you.  
20 And the Court found that you not only lied  
21 to the Patent Office --  
22 A. Excuse me.  
23 Q. -- the Court found that you not -- Mr. Cooper,  
24 I have another question.  
25 A. Well, I'm not sure I understood the previous

1 question, so could --  
2 Q. What did you not understand about it?  
3 A. Could you ask it again?  
4 Q. My question to you, sir, is, do you believe  
5 that it may be just a trivial matter to lie to the  
6 Patent Office?  
7 A. If it's a lie, as I interpret lying, no, that  
8 is not a trivial matter. If it's a misstatement of the  
9 facts or the truth, it might be.  
10 Q. It might be just a trivial matter?  
11 A. Yes.  
12 Q. Okay. But in this case, Judge Posner found it  
13 was a deliberate misrepresentation of material,  
14 important information, correct?  
15 A. He did.  
16 Q. And you characterize this as a trivial matter,  
17 correct?  
18 A. The Patent Office, I think --  
19 Q. Sir, I'm asking you --  
20 A. -- upon their investigation did.  
21 Q. I'm asking you --  
22 A. I'm reciting what they found.  
23 Q. Sir? Sir, I'm just asking you for what you  
24 think. I'm not asking you for what the Patent Office  
25 thinks. I'm not asking for you to describe that. I'm

1 just asking you for what you think. That's all. I'm  
2 entitled to know what you think.

3 And my question is, you believe that in  
4 this case, although Judge Posner found that you had  
5 committed a material and deliberate fabrication, that  
6 you had said you had never spoken with an expert when,  
7 in fact, you had; when you said you had never spoken  
8 with the expert when, in fact, you had paid him \$3,000,  
9 you believe that's a trivial matter, correct?

10 A. I believe you're mischaracterizing what  
11 happened.

12 THE COURT: That's a yes or no question.

13 THE WITNESS: I can't answer it yes or no,  
14 Your Honor.

15 THE COURT: Fine. That will do.

16 MR. KREVITT: Okay. Fine.

17 Q. (By Mr. Krevitt) And then Judge Posner found  
18 that you didn't just lie to the Patent Office, but you  
19 lied to the Court also; isn't that right?

20 A. I believe that's correct, yes.

21 Q. You testified, like you're testifying now in a  
22 federal court under oath, and Judge Posner was in Judge  
23 Rader's place, and he found that your testimony to him  
24 was false, correct?

25 A. Yes.

1 Q. Okay. So not just to the Patent Office, but  
2 then when you testified to the Court, the Judge found  
3 that you had lied?

4 A. Yes.

5 Q. Okay. In fact, if we look at Page 4, just to  
6 make sure we're all on the same page, the Court says:  
7 Cooper testified that when he submitted his report in  
8 August of 2001, he had forgotten his prior dealings with  
9 Klughart.

10 That's the expert, right?

11 A. Yes.

12 Q. I do not believe that testimony. Do you see  
13 that?

14 A. Yes.

15 Q. In fact, when you testified, you tried to blame  
16 your wife, right? You said: Well, I didn't really know  
17 about paying the bills. My wife pays the bills, so I  
18 wasn't aware of that, right?

19 A. Well, I did say my wife pays the bills, yes.

20 Q. And that's why you didn't know about it,  
21 because your wife had done it, right?

22 A. Didn't know about what?

23 Q. You didn't know about the 3,000-dollar payment,  
24 because your wife took care of that, correct?

25 A. That's correct.

1 Q. Okay. And the Judge said that that was a lie,  
2 also?

3 A. He did.

4 Q. Okay. And because you lied to the Patent  
5 Office and then because you lied to the Court, the Judge  
6 found that your patents were unenforceable, correct?

7 A. Yes.

8 Q. Because of inequitable conduct, right?

9 A. That's what it's called.

10 Q. And inequitable conduct is fraud on the Patent  
11 Office; isn't that right?

12 A. Some people use that term, yes.

13 Q. And you're a patent agent?

14 A. Yes.

15 Q. You're familiar with the fact that inequitable  
16 conduct is understood as committing fraud on the Patent  
17 Office?

18 A. That's correct.

19 Q. Okay. Now, the patents that the Judge found  
20 unenforceable were the same patents that you used to sue  
21 people that resulted in Xerox giving you the patents in  
22 this case; isn't that right?

23 A. Yes.

24 Q. So you sued some parties on these patents, the  
25 '780 and the '637 patent, and in response to that

1 lawsuit, Xerox gives you these patents, correct?

2 A. Indirectly, yes.

3 Q. In what respect is that indirect?

4 A. Well, we didn't sue Xerox.

5 Q. That wasn't my question.

6 In response to a lawsuit you filed  
7 regarding these patents that Judge Posner found to be  
8 unenforceable because of your lies to the Patent Office  
9 and the Court, because of those patents and a lawsuit  
10 you had on those patents, Xerox, in settlement of that  
11 lawsuit, gave you the patents that are at issue in this  
12 case?

13 A. But there were different cases involved, but  
14 the end result was, yes, we sued --

15 Q. The answer is yes, right?

16 We're going to have some tough questions,  
17 and I think that one is an easy question.

18 The answer is, yes, that having brought a  
19 lawsuit on the patents Judge Posner found were  
20 unenforceable, you got the patents that you're asserting  
21 in this case?

22 A. Yes.

23 Q. Okay. That's what I thought. That one I  
24 thought would have taken -- a lot shorter.

25 Now, you testified yesterday about your

1 engineering experience and the patents you have, right?

2 A. Yes.

3 Q. I just want to be clear. None of those patents  
4 have to do with workspaces; isn't that right?

5 A. That's correct.

6 Q. Or switching between workspaces, any of the  
7 things that are at issue with the patents in this case?

8 A. That's correct.

9 Q. Now, I was a little confused about one aspect  
10 of your testimony, so I want to ask you a couple  
11 questions about it. It relates to Apple.

12 And you talked about how Apple had an old  
13 product and how Apple had a new product coming out. Do  
14 you remember that?

15 A. Yes.

16 Q. Okay. And the old product did this workspace  
17 switching, as you put it, in a particular way, and the  
18 new product, in your view, was going to do it in a  
19 different way; is that right?

20 Did I get that right?

21 A. Yes.

22 Q. Okay. And I think you said that the new way,  
23 which threw you for a loop -- I think I wrote down --  
24 was that one user had to log out and another user had to  
25 log in, and that's not how you were thinking about the

1 A. We thought that there was a good probability  
2 that it might be.

3 Q. You're not --

4 A. We didn't know with certainty, because, as you  
5 well --

6 Q. Sir? Sir, I just want to make sure I  
7 understand.

8 You're not able to tell me whether you  
9 believed that one logger -- one user logging in and one  
10 user logging out was covered by your patents? You can't  
11 give me a yes or no whether that's covered by your  
12 patents or not?

13 A. Is or was?

14 Q. At the time you were negotiating with Apple,  
15 did you believe in 2007 that one user logging in and one  
16 user logging out was covered by your patents or not?

17 A. I don't believe that I had a belief one way or  
18 the other at the time. That got into such technical  
19 detail of what the claims would cover and what the  
20 operation of the product actually was that I don't  
21 believe I had a clear conviction that it would or it  
22 wouldn't.

23 Q. TLC didn't have an opinion on that one way or  
24 another?

25 A. I would have had to consult with our patent

1 patents.

2 Did I get that right?

3 A. No, I think you misunderstood.

4 Q. Okay.

5 A. The -- it was the old way that required the new  
6 user to log on, and the new way did not. I think you  
7 got it backwards.

8 Q. I think you're right; I did. I apologize.

9 The old way required one user to log off  
10 and another user to log on. And the new way may not  
11 have required that?

12 A. Yes.

13 Q. Okay. But the way where a user logs on and a  
14 user logs off, you think that infringes your patents,  
15 don't you?

16 A. At the time we had some serious questions as to  
17 whether or not that would -- that would remain covered  
18 by the claims, if we went through claim construction.

19 Q. Sir, let me ask you this question. I'm asking  
20 you about your view about what the patents cover.

21 So my question to you is this: When you  
22 were meeting with Apple in 2007, did you believe that  
23 that old way we're calling it of one user logging out  
24 and one user logging in was covered by your patents; yes  
25 or no?

1 attorneys to really establish a firm opinion.

2 Q. Okay. Again, I want to move it along. So if  
3 you can't answer my question, just tell me. That's  
4 absolutely fair. But if you can --

5 A. I'm sorry. I don't mean to delay you. I'm  
6 trying to be accurate --

7 Q. I understand.

8 A. -- and give you an answer rather than just  
9 saying I don't understand.

10 Q. But I don't mind I don't understand. I really  
11 don't. So I don't want you to answer on anything you're  
12 uncomfortable, but I don't mind an I don't understand,  
13 because then it forces me to think of a better question,  
14 and I don't mind doing that.

15 A. Okay.

16 Q. So my question to you is, at the time you were  
17 negotiating with Apple, I think you just said that TLC  
18 did not have an opinion one way or the other as to  
19 whether this one user logging in, one user logging out  
20 would be covered by the patents; is that right?

21 A. In respect to TLC, it's my recollection that  
22 that was our -- our conclusion during the discussions  
23 with the Apple attorney, yes.

24 Q. I confess I didn't understand that answer at  
25 all. So let me try it again.

1 At the time, you were negotiating with  
2 TLC -- excuse me -- with Apple, was it TLC's view that  
3 one user logging in and one user logging out was covered  
4 by the patents; yes or no?

5 A. Your question is not clear as to the precise  
6 timeframe nor the nature of our concern, so I can't  
7 answer it.

8 Q. Okay. Let's do it this way:

9 Was there a time during which TLC believed  
10 that one user logging in and one user logging out, that  
11 type of switching that we've been discussing, was  
12 covered by your patents?

13 A. In the manner that we believed Apple was doing  
14 it, there was a time when we believed it was covered,  
15 yes.

16 Q. Okay. And I'm not sure I know what you mean in  
17 the manner Apple was doing it. You didn't talk about  
18 that at all with Mr. Gasey. You simply were describing  
19 switching from one workspace to another in which a user  
20 has to log out.

21 And you said because one user has to log  
22 out, you had serious questions or concerns as to whether  
23 that would be covered by your patent. And so I'm asking  
24 you a simple question, sir.

25 Was it your view -- was it TLC's view that

1 own look and feel without having to reboot.

2 Do you see that?

3 A. Yes.

4 Q. Okay. And you believed that did fall within  
5 the scope of your claims?

6 A. Yes.

7 Q. Okay. But you believed that -- you don't have  
8 an opinion one way or another as to whether Apple's use  
9 of that functionality fell within the scope of your  
10 claims?

11 A. I can't answer that.

12 Q. Okay. Did you conclude at any point that  
13 Apple's old product did not infringe?

14 A. With certainty?

15 Q. I'm just asking a question, sir, as to whether  
16 TLC ever concluded that Apple's product, older product,  
17 did not infringe?

18 A. Unless you can define conclude, I can't answer  
19 that.

20 Q. You can't answer that question whether TLC ever  
21 made that conclusion one way or another?

22 A. Again, unless you can more accurately define  
23 what you mean by conclude, I cannot answer that.

24 Q. Okay. Fine.

25 The Apple agreement that you entered into

1 one user logging in and one user logging out would be  
2 covered by your patents?

3 A. Your question is assuming a --

4 THE COURT: Is it yes or no?

5 THE WITNESS: I can't answer the question,  
6 Your Honor.

7 THE COURT: Thank you.

8 MR. KREVITT: Okay. Can we bring up the  
9 notice letter?

10 Q. (By Mr. Krevitt) While we're bringing that up,  
11 let me preview so you know where we're going.

12 When the Niro firm sent the letter to my  
13 clients on behalf of TLC, you took the position that  
14 switching with one user logging in and one user logging  
15 out did fall within the scope of your patents; isn't  
16 that correct?

17 A. The way your client was doing it, yes.

18 Q. Did you review my clients' products?

19 A. We had some information on them.

20 Q. You did?

21 A. I personally did not review the products, no.

22 Q. Okay. So if you look at the bottom, it talks  
23 about this type of system allows users to switch between  
24 accounts -- it gets a little big there; it's at least  
25 cut off from mine -- restoring each user to his or her

1 for \$1.25 million released all of Apple's old products;  
2 isn't that right?

3 A. That's my recollection, yes.

4 Q. So TLC enters into an agreement with Apple in  
5 which it said we will release -- we will give protection  
6 to the old products; isn't that right?

7 A. Yes.

8 Q. So the Apple agreement covered the remaining  
9 time from when you entered into the agreement in 2007 to  
10 2008, correct?

11 A. Correct.

12 Q. Okay. But it also covered all the products  
13 that existed before you entered into the agreement,  
14 correct?

15 A. Well, as --

16 Q. Sir --

17 A. -- as the products were defined in the  
18 agreement, yes.

19 Q. Okay. As the products were defined in the  
20 agreement, it covered all the products in the past?

21 A. Yes.

22 Q. Okay. The license agreement did.

23 Are you aware that the way the products  
24 are defined is all products that Apple ever has?

25 A. I don't have the exact wording of the agreement

1 committed to memory.  
 2 Q. But you --  
 3 A. If we have the agreement, I'll be happy to take  
 4 a look at it.  
 5 Q. But you know that it covered all of Apple's  
 6 products, correct?  
 7 A. It would have covered all of the products that  
 8 fell under the patents.  
 9 Q. Yes. Okay.  
 10 A. It wouldn't cover products that didn't fall  
 11 under the patents.  
 12 Q. Of course. Of course. So it wouldn't cover  
 13 iTunes, for example?  
 14 A. Right.  
 15 Q. Okay. Now, when you got these patents from  
 16 Xerox, you didn't pay any money, right?  
 17 A. In terms of writing a check or something like  
 18 that, no.  
 19 Q. How about in terms of money, did you pay any  
 20 money?  
 21 A. There was no money that went from TLC to them.  
 22 Q. So that's a no, right; you didn't pay any  
 23 money?  
 24 A. Right.  
 25 Q. Let me ask you a couple questions about that,

1 cross-examination, Your Honor.  
 2 THE COURT: It was put into issue by some  
 3 of the earlier testimony of Mr. Cooper.  
 4 You may proceed.  
 5 MR. KREVITT: Thank you, Your Honor.  
 6 Q. (By Mr. Krevitt) I just want to ask you  
 7 questions about the very agreement that we've been  
 8 discussing and that you said you don't have a  
 9 recollection about.  
 10 That's the agreement that we're talking  
 11 about now?  
 12 A. Well, I don't have it committed to memory, no.  
 13 Q. I just wanted to make sure you and I understood  
 14 what agreement we're talking about that Mr. Gasey didn't  
 15 want me to show you.  
 16 A. Okay.  
 17 MR. HILL: Your Honor, I've got to  
 18 object --  
 19 THE COURT: Mr. Hill, we're proceeding  
 20 with this. Thank you.  
 21 MR. HILL: -- to the sidebar comments.  
 22 THE COURT: Thank you, Mr. Hill.  
 23 You may proceed, Mr. Krevitt.  
 24 MR. KREVITT: Thank you, Your Honor.  
 25 Q. (By Mr. Krevitt) This was an agreement between

1 if I may.  
 2 The agreement that -- in which Apple gave  
 3 you these patents was to settle litigation; is that  
 4 right?  
 5 A. Could you state that again? I didn't catch it  
 6 all.  
 7 Q. Sure. Let me try a different way then.  
 8 Xerox gave IPI and TLC the patents that  
 9 are in issue in this case as part of the settlement of a  
 10 litigation, correct?  
 11 A. I suppose you could say that, yes.  
 12 Q. Is that in any way inaccurate? Is there  
 13 anything even that one could conceive of that renders  
 14 what I just said inaccurate?  
 15 A. I think it's a somewhat complicated agreement,  
 16 and I think you really need to look at the details of  
 17 the agreement to understand what happens. I would  
 18 not --  
 19 MR. KREVITT: Let's pull up the agreement.  
 20 We'll do it the hard way.  
 21 Q. (By Mr. Krevitt) So if you look -- you're  
 22 familiar with this agreement? This is the agreement  
 23 between Xerox and IPI and TLC, correct?  
 24 MR. GASEY: Your Honor, I object. This is  
 25 not one of the exhibits that they listed on their

1 Xerox on the one hand and IPI and Technology Licensing  
 2 on the other, correct?  
 3 A. Yes.  
 4 Q. You're the Technology Licensing Corporation.  
 5 You personally aren't -- excuse me. This is the same  
 6 Technology Licensing Corporation that's a plaintiff in  
 7 this case, correct?  
 8 A. Yes. Yes.  
 9 Q. Okay. And it's the same IP Innovation that's a  
 10 plaintiff in this case?  
 11 A. Correct.  
 12 Q. So this was the agreement that I was talking  
 13 about in which Xerox assigned the patents to you, to  
 14 TLC, okay?  
 15 A. The assignment of the patents is covered by  
 16 this agreement. As I said earlier, I -- I don't know if  
 17 the assignment is affected by the agreement or by the  
 18 companion assignment documents.  
 19 Q. I understand. But I'm going to run through  
 20 some relatively simple questions just so you and I can  
 21 speak the same language about what the agreement says,  
 22 okay?  
 23 A. Okay.  
 24 Q. All right. So if you look at the whereas, a  
 25 whereas clause is a clause in a contract that often sets

1 forth the purpose of the contract, correct?  
 2 A. It does, but I'm not an attorney.  
 3 Q. I understand. Just your understanding of what  
 4 a whereas clause is; that's all I was asking.  
 5 And there's one whereas clause here, and  
 6 it says: Whereas the parties now desire to settle all  
 7 disputes between them involving the patentee's rights as  
 8 defined below and to grant and accept a license and  
 9 release under the patentee's rights.  
 10 Is that right?  
 11 A. Yes.  
 12 Q. Okay. So let me break that down just a little  
 13 bit so it's clear for everybody.  
 14 When it says patentee's rights, they're  
 15 talking about your patents, correct? TLC's patents?  
 16 A. TLC and IP, yes.  
 17 Q. Right. I just wanted it to be clear that we're  
 18 not talking yet about Xerox's patents. When it says  
 19 patentee's rights, these are the TLC and IPI patents  
 20 that we spoke about earlier that Judge Posner found were  
 21 unenforceable?  
 22 A. Yes.  
 23 Q. Okay. And that's -- that's -- just two  
 24 paragraphs later, you see that; it says: The patentee's  
 25 patents mean U.S. Patents No. 5,424,780, entitled

1 your patents, correct?  
 2 A. Well, it went beyond that. It was all of the  
 3 disputed claims.  
 4 Q. Okay. And if you go to Paragraph 5, part of  
 5 that, the value of what you were getting, part of what  
 6 was given to TLC was the Xerox patents, right?  
 7 A. Right.  
 8 Q. And we see that in Paragraph 5, correct?  
 9 A. Yes.  
 10 Q. Okay. So to settle the claims that TLC and IPI  
 11 had asserted under these patents that it had, part of  
 12 that settlement was Xerox gave TLC and IPI these  
 13 patents, the Xerox patents, correct?  
 14 A. Well, it says it will assign the patents. If  
 15 that's given, yes.  
 16 Q. Okay. It assigned the patents to TLC and IPI,  
 17 correct?  
 18 A. If that's what it means, yes.  
 19 Q. Okay. Do you have reason to believe that's not  
 20 what it means?  
 21 A. No. I'm just --  
 22 Q. Okay. Now, if you look, it says: As  
 23 identified -- it's talking about the Xerox patents  
 24 identified more specifically in Exhibit A.  
 25 Do you see that?

1 Apparatus and Method for Special Scan, Modulation, and  
 2 Video Display, and No. 529637.  
 3 Do you see that?  
 4 A. Yes, I see that.  
 5 Q. Okay. Those were the patents that TLC and IPI  
 6 had asserted in a litigation, correct?  
 7 A. Yes.  
 8 Q. Okay. And as part of that settlement, Xerox  
 9 and IPI and TLC entered into this agreement, correct?  
 10 A. Yes.  
 11 Q. Okay. And that's what the whereas clause says,  
 12 you desire to settle all disputes?  
 13 A. Correct.  
 14 Q. Okay. And then if we go to Page 2, we could  
 15 see that under the very top it says compromise.  
 16 The parties understand and agree that this  
 17 agreement and any consideration given or accepted in  
 18 connection with it and the covenants made in it are all  
 19 made, given, and accepted in settlement and compromise  
 20 of disputed claims.  
 21 Correct?  
 22 A. Yes.  
 23 Q. Okay. So this -- all the consideration that  
 24 goes one way and the consideration that goes the other  
 25 way was all done to settle this litigation that involved

1 A. Yes.  
 2 Q. Okay. Just very quickly, if we, just for  
 3 completeness, flip to Exhibit A on Page 9. You see  
 4 there's a list of -- well, you don't yet, but you will.  
 5 There's a list of ten patents or so; I'm  
 6 doing that quickly. And the second and seventh and  
 7 tenth are the three patents that are at issue in this  
 8 case?  
 9 A. That's correct.  
 10 Q. So it was -- it was pursuant to this agreement  
 11 that to settle these claims that TLC and IPI had, that  
 12 Xerox assigned these patents in this case over to TLC  
 13 and IPI?  
 14 A. Correct.  
 15 Q. Okay. And when Xerox assigned those patents to  
 16 TLC and IPI, they weren't even willing to tell you they  
 17 were valid, right?  
 18 A. I'm sorry. They weren't --  
 19 Q. Even willing to tell you they were valid?  
 20 A. Oh, valid.  
 21 Q. Right.  
 22 A. I don't know if they were willing or not. I  
 23 don't think that was in the agreement. I think it was  
 24 take them as they are.  
 25 Q. And they weren't even willing to tell you that

1 they were enforceable, right?  
 2 A. Again, I don't -- I don't know if they were  
 3 willing or not. That's something that was in their  
 4 head.  
 5 Q. Right.  
 6 A. But that's not in this agreement, as I recall.  
 7 Q. It's not in the agreement.  
 8 And they weren't even willing to tell you  
 9 that they had any value at all, these patents that they  
 10 were giving you, correct?  
 11 A. Again, I don't know what was in their head, but  
 12 they didn't assign any value to them that I know of.  
 13 Q. Well, the truth is -- the truth is Xerox wanted  
 14 to make real clear to you that they were taking no  
 15 position as to whether these patents were valid. They  
 16 were making no representations as to whether these  
 17 patents were enforceable. They were taking no position  
 18 at all as to whether these patents had any value. And  
 19 they did that in the agreement, didn't they?  
 20 A. That's correct.  
 21 Q. So let's see that, because I think a moment ago  
 22 you said it wasn't in the agreement. So I just want to  
 23 make sure you and I are on the same page that it is and  
 24 it's explicit.  
 25 So if you look at Page 5, the -- excuse

1 me -- Paragraph 5 -- excuse me -- the last sentence:  
 2 Xerox makes no representations or warranties regarding  
 3 the scope, validity, enforceability, or value of any of  
 4 the assigned patents, right?  
 5 A. Correct.  
 6 Q. Okay. And the assigned patents include the  
 7 three that are at issue in this case?  
 8 A. Yes.  
 9 Q. Okay. TLC has no products, right?  
 10 A. No. TLC sells patent licenses and  
 11 technology --  
 12 Q. So TLC's patent licenses are TLC's products?  
 13 A. Correct.  
 14 Q. It has no products other than the licenses that  
 15 it gives?  
 16 A. The agreements that it gives, yes.  
 17 Q. Is that different than licenses, sir?  
 18 A. Well, some of the agreements are covenants, not  
 19 licenses.  
 20 Q. Okay. So aside from the covenants it gives and  
 21 the licenses it gives, it has no products?  
 22 A. Correct.  
 23 Q. We established earlier I believe -- but just to  
 24 make sure I didn't forget to ask you, it has no  
 25 employees, correct?

1 A. Correct.  
 2 Q. Okay. And TLC's business is trying to get  
 3 money from patents that it acquires; isn't that right?  
 4 A. Well, not only from patents but other  
 5 technology.  
 6 Q. Okay. But at least patents?  
 7 A. Yes.  
 8 Q. And it does that by suing people, correct?  
 9 A. If it needs to, yes.  
 10 Q. It does that a lot; sues people a lot, doesn't  
 11 it?  
 12 A. Yes.  
 13 Q. Okay. And, in fact, I found it curious  
 14 yesterday, when Mr. Gasey was questioning you and you  
 15 said that when you got the patents from Xerox, the first  
 16 thing you did is you established a licensing program for  
 17 them.  
 18 Do you remember saying that?  
 19 A. Yes.  
 20 Q. Okay. And that was in 2004, right?  
 21 A. If you say so.  
 22 Q. I do.  
 23 A. I don't recall.  
 24 Q. This one you can take my word for.  
 25 A. Okay.

1 Q. Okay. 2004.  
 2 But, in fact, TLC's licensing program with  
 3 respect to these patents involved only the following:  
 4 It sued Apple in 2007, correct?  
 5 A. Yes.  
 6 Q. It sued my clients in 2007, three years  
 7 later -- or three years after acquiring the patents,  
 8 correct?  
 9 A. Yes.  
 10 Q. And it sued Google, another company, on  
 11 patents, not the three that are in this case but others  
 12 that were part of the assignment from Xerox; isn't that  
 13 right?  
 14 A. That's correct.  
 15 Q. That was TLC's licensing program, three  
 16 lawsuits against Apple, my clients, and Google, correct?  
 17 A. Yes.  
 18 Q. Okay. I think you said yesterday -- and,  
 19 again, I was scribbling notes, so forgive me if I get it  
 20 wrong -- but that these patents were -- are valuable;  
 21 they were valuable to Apple at the time; isn't that  
 22 right?  
 23 A. Yes, I believe so.  
 24 Q. And that's because Apple wanted to compete with  
 25 Microsoft, I think you said.

1 A. Well, Apple -- Apple wanted to have the  
2 changeable workspaces.  
3 Q. In order to compete with Microsoft?  
4 A. I believe that was to compete with Microsoft.  
5 Q. And that's because that changeable workspace is  
6 a valuable thing to have, in your view?  
7 A. And did you say in their view or in --  
8 Q. Your view.  
9 A. -- in my view?  
10 Q. Do you have a view?  
11 A. If we can sell it, it's valuable, yes.  
12 Q. If you can sell it, it's valuable.  
13 All right. A true entrepreneur. If you  
14 can get money, it's valuable. Fair enough.  
15 You're aware that Microsoft's Windows  
16 operating system is the most popular, widely distributed  
17 operating system in the world, correct?  
18 A. That sounds reasonable to me. I'm not an  
19 expert on Windows or operating systems.  
20 Q. You don't have any reason to doubt that  
21 Microsoft Windows is the most widely distributed  
22 operating system in the world, correct?  
23 A. No, I don't.  
24 Q. Okay. Are you aware of whether Microsoft's  
25 Windows operating system has this workspace-switching

1 feature we've been talking about over the last couple of  
2 days?  
3 A. Not directly, no.  
4 Q. It does not; isn't that right?  
5 A. Well, I can, on my computer, change workspaces.  
6 Q. So you believe that Windows operating system  
7 does have workspace switching; is that right?  
8 A. Well, it has some version of it, yes.  
9 Q. And so it has some version of workspace  
10 switching, and that's covered by your patents?  
11 A. I don't know if it's covered or not. It's not  
12 something that I recall we've looked at.  
13 Q. Okay. So would it surprise you to learn that  
14 your expert's taken a different position in this case  
15 with respect to whether Microsoft's Windows has  
16 workspace switching?  
17 A. Well, he certainly knows a lot more about it  
18 than I do. So if he differs in his opinion than I do in  
19 mine, that would not surprise me at all.  
20 Q. Okay. And Microsoft's Windows operating system  
21 could add this feature at any time; isn't that right?  
22 Microsoft --  
23 A. I don't understand the question.  
24 Q. Let me take another crack at it, because I  
25 think I jumbled it. Sorry.

1 Microsoft could add this feature to its  
2 operating system at any time; isn't that right?  
3 A. Do you mean does it have the capability or --  
4 Q. Yes.  
5 A. -- or is it --  
6 Q. It has the capability?  
7 A. Certainly, yes.  
8 Q. And your patents wouldn't be an impediment?  
9 A. Not now.  
10 Q. Your patents would never have been an  
11 impediment to Microsoft, isn't that right, because  
12 Microsoft had a broad patent license with Xerox covering  
13 thousands of patents?  
14 So they could have added this feature at  
15 any time; isn't that true?  
16 A. I don't know about the details, but it is my  
17 understanding that Microsoft would be covered under the  
18 patents.  
19 Q. Okay. And although they could have added it in  
20 at any time, they didn't add it, and yet you still  
21 believed it's a really important feature; isn't that  
22 right?  
23 A. In my view, yes.  
24 Q. Okay. What -- in thinking about what a  
25 reasonable license amount is for my clients, the amounts

1 that Xerox got when it licensed the same patents would  
2 be relevant, wouldn't they?  
3 A. If properly adjusted for the various factors  
4 involved at the times at issue, yes.  
5 Q. Okay. I think that's a yes, but it's an  
6 important question, so I just want to make sure that we  
7 ask it in a way that we all have clarity.  
8 The Xerox licenses -- I'm not applying  
9 them; I'm not asking you to apply them -- the Xerox  
10 licenses are relevant to the issue of appropriate  
11 damages; isn't that true?  
12 A. As I understand --  
13 Q. Sir, can you answer the question yes or no as  
14 to whether the Xerox licenses would be relevant?  
15 You really can't tell me whether the Xerox  
16 licenses are relevant or not? Really?  
17 A. As you asked the question, no, I can't answer  
18 it.  
19 Q. So they may be relevant; they may not be  
20 relevant; you just don't have an opinion?  
21 A. I think you need to better define the question  
22 before I can answer.  
23 Q. I just want to be clear. It may be, in your  
24 view, that the Xerox licenses, the licenses that Xerox  
25 gave to the exact same patents, may not be relevant to

1 the issue of damages in this case?

2 A. As you asked the question, I think that's a  
3 possibility.

4 Q. Okay. Are you aware of the terms of the Xerox  
5 licenses?

6 A. That's part of the problem. I haven't studied  
7 the licenses, and I haven't studied the damages issues  
8 in this case. I just don't know.

9 Q. Okay. So you have no -- although you're the  
10 corporate representative for TLC, you have no  
11 understanding of the basis for your demand from my  
12 clients for millions of dollars?

13 A. I have some understanding, but I don't know the  
14 details. And some of the documents that are involved in  
15 calculating these bases, we're not allowed to see.

16 Q. Okay.

17 A. So I don't -- I can't answer your question.

18 Q. I understand.

19 And that's because maybe they're relevant;  
20 maybe they're not; you just don't know?

21 A. If I can't see them, I can't tell you.

22 Q. That wasn't my question.

23 A. Well, okay. Then maybe they're relevant.

24 Q. And maybe they're not?

25 A. And maybe they're not.

1 Q. Okay.

2 THE COURT: These are licenses to the same  
3 patents?

4 MR. KREVITT: Yes, Your Honor, well-aware  
5 of --

6 THE COURT: Thank you.

7 MR. KREVITT: Yes.

8 THE COURT: I just wanted to make sure I  
9 understood the question.

10 MR. KREVITT: They are licenses to the --  
11 the exact same patents at issue in this case, the exact  
12 same patents.

13 Q. (By Mr. Krevitt) And those licenses were  
14 entered into way back in 1994; isn't that right?

15 A. Some of them probably.

16 Q. You don't know?

17 A. Off the top of my head, no, I don't recall  
18 dates of licenses. I haven't seen all of the licenses  
19 that Xerox had.

20 Q. That's not my question, sir.

21 I'm asking you whether you know when the  
22 licenses were entered into.

23 A. The Xerox licenses you're speaking of?

24 Q. Yes. Do you know?

25 A. No, I don't. I don't have those committed to

1 memory.

2 Q. Okay. And they were entered into in 1994, two  
3 of them, and one in 1995. And they covered the life of  
4 the patent. So at a minimum, all the way up until 2008  
5 when the patents expired; isn't that right?

6 A. Sir, I'm sorry. I don't have them committed to  
7 memory. I don't believe I've seen them. I can't tell  
8 you what they cover.

9 Q. So you don't know?

10 A. I don't know.

11 Q. Okay. And yet you're confident that your  
12 request for millions of dollars in this case is  
13 reasonable?

14 A. We have an expert to opine on that. I'm not  
15 that expert. I think --

16 Q. I'm asking you, sir.

17 A. I think we hired a reasonable expert and  
18 reasonable attorneys. So in that respect --

19 Q. I'm asking you, sir, about your understanding.  
20 That's all I get to do with you. We'll be able to talk  
21 to the experts at some point. I just want to understand  
22 your understanding. If you don't have one, that's fine.

23 You don't have an understanding as to a  
24 basis for whether your demand that my clients pay  
25 millions of dollars for a 14-month period is reasonable

1 or not?

2 A. I believe it would be reasonable, but I don't  
3 have any basis for that belief.

4 Q. Okay. Let me ask you one other question while  
5 we're talking about this on the issue of fairness. And  
6 forgive me; I was thinking about this as I was walking  
7 for a cup of coffee this morning, and it's maybe just a  
8 simple way to think about things.

9 If I went across the square here into a  
10 place to get a cup of coffee and just coincidentally you  
11 were right behind me and you went into the same place  
12 for a cup of coffee, and we've never been in there  
13 before, neither you nor me, and I ordered my coffee and  
14 I got a large coffee with milk and I was charged \$1.50.

15 And then right after me, you ordered a  
16 large coffee with milk and they said that will be \$60,  
17 that would be really unfair, wouldn't it?

18 A. It very well could be, but it may not be.

19 Q. It may not be unfair. There may be  
20 circumstances under which the two of us walking into the  
21 same place to order the same thing, it would be  
22 reasonable to charge you 40 times more?

23 A. I can envision circumstances where it might be.

24 Q. Okay. Thank you, sir.

25 MR. KREVITT: I have no further questions.

1 THE COURT: Thank you.  
 2 Mr. Gasey, should you care to inquire?  
 3 MR. GASEY: Thank you, Your Honor.  
 4 REDIRECT EXAMINATION  
 5 BY MR. GASEY:  
 6 Q. During your meeting with Apple's letter -- this  
 7 is in 2007, right?  
 8 A. As I recall the first part, yes.  
 9 Q. Did Apple's lawyer contend that any prior art  
 10 invalidated the patents here today?  
 11 A. I don't recall any discussion. I don't think  
 12 he was.  
 13 MR. KREVITT: Your Honor, this is beyond  
 14 the scope of my examination. I didn't ask any questions  
 15 about that subject. Mr. Gasey did ask questions about  
 16 that.  
 17 THE COURT: That's correct. Can we  
 18 confine ourselves to the scope of the cross?  
 19 MR. GASEY: Sure, Your Honor.  
 20 Q. (By Mr. Gasey) The Xerox agreement that  
 21 Mr. Krevitt was referring to, it settled disputes that  
 22 were involved in a lawsuit other than one that was  
 23 involving Xerox, right?  
 24 A. I'm not -- we have several Xerox agreements.  
 25 Q. Sure.

1 Q. Do you remember the numbers of any of those  
 2 other patents?  
 3 A. No, I don't. There are, I think, five now.  
 4 Q. Do you recall whether or not there was a patent  
 5 that ended with the numbers '964?  
 6 A. Yes.  
 7 Q. And do you know, was that in existence as of  
 8 the date of Judge Posner's opinion?  
 9 A. Yes.  
 10 Q. And did you -- in that case, did the Defendants  
 11 try to allege that you had committed inequitable conduct  
 12 with respect to that patent?  
 13 A. Yes, they did.  
 14 Q. And did Judge Posner find there was inequitable  
 15 conduct by you that that patent was taken away from you?  
 16 A. He made a finding on that, and the patent was  
 17 not taken away.  
 18 Q. It was not held unenforceable?  
 19 A. That's correct.  
 20 Q. And those patents -- that patent and the  
 21 subsequent patent applications, that was part of the  
 22 value that you gave Xerox in exchange for getting the  
 23 patents that are the subject matter of this case?  
 24 A. Correct. The agreement which was up on the  
 25 screen had that -- has that wording in it. It wasn't

1 A. I'm not clear which one you're talking about.  
 2 Q. The Xerox agreements, under which you, in  
 3 exchange for a license, Xerox gave TLC and IP Innovation  
 4 a group of patents, TLC and IPI did not sue Xerox,  
 5 right?  
 6 A. That's correct.  
 7 Q. They did release certain claims against one of  
 8 Xerox's customers, though, right? Which one was that?  
 9 A. Dell.  
 10 Q. Now, was there any other negotiated products  
 11 beyond what was the subject matter of the lawsuit with  
 12 Dell? In other words, were there any other Xerox  
 13 printers or products that were released?  
 14 A. No, I don't recall any.  
 15 Q. Okay. Do you know whether or not there was a  
 16 worldwide release with respect to Xerox's products?  
 17 A. I would say the agreement speaks for itself. I  
 18 don't have a recollection that there was. My  
 19 recollection is it pertained to Dell, but I would have  
 20 to point you back to the agreement itself.  
 21 Q. All right. In the timeframe of the agreement  
 22 with Xerox, was there -- were there additional patents  
 23 which were issued on your '780 family, beyond the two  
 24 that were listed in that group?  
 25 A. Yes.

1 highlighted, though.  
 2 Q. For continuations -- continuations in part and  
 3 divisionals?  
 4 A. Correct.  
 5 Q. Do you have any belief here that there are  
 6 claims being asserted here today with respect to  
 7 infringement of these patents by the use of multiple  
 8 users?  
 9 A. I have a belief, and it is that multiple users  
 10 are not at issue in this case. In other words, it's a  
 11 one-user operation that's in issue here.  
 12 Q. With respect to the Xerox negotiation, in that  
 13 Xerox negotiation in valuing the property that you were  
 14 giving Xerox, had there been claim construction with  
 15 respect to any dispute with Xerox where you'd know for  
 16 certainty the scope of the patents that you were  
 17 asserting against them?  
 18 A. No.  
 19 Q. That was a risk that you had to account for in  
 20 terms of the value?  
 21 A. Correct.  
 22 Q. That was true -- that same risk was true with  
 23 respect to other agreements that we've been talking  
 24 about here today, right?  
 25 A. That's correct.

1 Q. Like Apple?  
 2 A. Correct.  
 3 MR. GASEY: No further questions, Your  
 4 Honor.  
 5 THE COURT: Thank you, Mr. Gasey.  
 6 Mr. Krevitt, there's a pretty narrow  
 7 window here. Do you want to inquire further?  
 8 MR. KREVITT: Just very quickly to clarify  
 9 one thing.  
 10 RECROSS-EXAMINATION  
 11 BY MR. KREVITT:  
 12 Q. You testified a moment ago in response to  
 13 Mr. Gasey's question that switching from one user to  
 14 another user is not in the case, right?  
 15 A. That's my understanding.  
 16 Q. Okay. That's false, isn't it?  
 17 A. Well, that's my understanding. Whether it's  
 18 accurate or not, I --  
 19 Q. Do you remember at your deposition you  
 20 testified that you had reviewed the claim charts in this  
 21 case?  
 22 A. Yes.  
 23 Q. Okay. And are you aware that the claim charts  
 24 that you testified you reviewed explicitly state in this  
 25 case that TLC's allegations cover switching from one

1 case, right? This is a cover page from this case.  
 2 Do you recognize that caption, IP  
 3 Innovation?  
 4 A. Yes.  
 5 Q. And if you look at -- I'll try to do this  
 6 quickly. Page 7 --  
 7 MR. KREVITT: I think you're in the wrong  
 8 claim chart, although we can use that one, if you  
 9 prefer.  
 10 Page 7, you have it only in black and  
 11 white? That's too bad. Here's what I get to see. For  
 12 some reason, we only have it in black and white, which  
 13 will make it less fun to look at.  
 14 Q. (By Mr. Krevitt) But the language up above  
 15 says: While displaying the first workspace, e.g.,  
 16 desktop for User 1, do you see that?  
 17 A. Yes.  
 18 Q. Fedora can receive a switch signal, and then --  
 19 so it's talking about User 1. And then the next page --  
 20 excuse me -- yes, the next page at the bottom of Page 8,  
 21 it talks about -- very, very bottom there -- Fedora User  
 22 1 log out; do you see that?  
 23 A. Yes.  
 24 Q. Okay. And then if you look at the bottom of  
 25 Page 10, it talks about User 2 logging in. And on

1 user to another user?  
 2 A. I don't have a recollection of that, no.  
 3 Q. Okay. Would you like me to show you that, sir?  
 4 A. If you want.  
 5 Q. Okay.  
 6 MR. KREVITT: Why don't we put that up.  
 7 Q. (By Mr. Krevitt) Why don't we wait.  
 8 A. Okay.  
 9 Q. You can take my word for it for the moment that  
 10 if we had no technical difficulties, we would show it.  
 11 MR. KREVITT: I don't know if we need to  
 12 show it, Jason, at this point.  
 13 Q. (By Mr. Krevitt) So you testified that you had  
 14 reviewed the claim charts at your deposition. You  
 15 testified here in front of the jury that switching from  
 16 one workspace to another workspace is out of the case  
 17 when, in fact, in this case, TLC has repeatedly stated  
 18 that switching from one workspace to another workspace  
 19 one user to another user, does infringe; isn't that  
 20 right?  
 21 A. My answer is I don't know part of that.  
 22 Q. Okay.  
 23 MR. KREVITT: Why don't we show the  
 24 document.  
 25 Q. (By Mr. Krevitt) You see here, this is in this

1 Page 11, it talks about what happens when User 2 logs  
 2 in.  
 3 So now that you've seen that, isn't it  
 4 true that having testified at your deposition that you  
 5 reviewed and commented on the claim charts, that what  
 6 you just said to Mr. Gasey here under oath, that  
 7 switching from one user to another user has not been in  
 8 the case is false?  
 9 A. Well, could I get a couple of minutes to read  
 10 these, please?  
 11 Q. If you need that time, if that will help you.  
 12 A. Well, you're asking me to comment on them, and  
 13 I'd like to take the chance to read --  
 14 Q. Why don't we do this, and then if you need more  
 15 time, you'll tell me.  
 16 You agree that these claim charts describe  
 17 one user logging out and one user logging in?  
 18 A. I agree that that wording is here in the chart,  
 19 but whether or not that is actually now part of the case  
 20 and the infringement at issue, or whether or not that is  
 21 set forth as an example of some of the operation of the  
 22 products, I don't know.  
 23 Q. Isn't this -- this is an infringement claim  
 24 chart, isn't it?  
 25 A. I can't answer that.

1 Q. You don't know whether this is an infringement  
2 claim chart?  
3 A. Well, it appears to be, yes.  
4 Q. Okay. And you're aware that your expert, your  
5 technical expert in this case, has adopted this claim  
6 chart in this case?  
7 A. I don't know which one of the various charts it  
8 is. There have been several --  
9 Q. So the answer --  
10 A. -- sets of charts provided.  
11 Q. So the answer --  
12 A. The answer is I don't know.  
13 Q. So the answer that switching from the one user  
14 to another user that you just gave Mr. Gasey was not  
15 correct. In fact, that is in the case, correct?  
16 A. The answer I gave you was in response to the  
17 question of my belief. And I haven't reviewed all of  
18 these charts recently. I don't have them committed to  
19 memory. And so if you're --  
20 Q. So you just made a mistake?  
21 A. It's possible that I misstated what's in the  
22 case.  
23 Q. Okay.  
24 A. It's my belief, though, and if my belief is  
25 incorrect, it's incorrect.

1 Q. Is it still your belief, sir?  
2 A. Is what?  
3 Q. Is it still your belief, now that you've seen  
4 the claim charts that were filed on behalf of your  
5 company -- now that you've seen those, is it still your  
6 belief that switching from one user to another user  
7 isn't in the case?  
8 A. My belief at this point is I don't know.  
9 Q. Okay.  
10 MR. KREVITT: Thank you.  
11 THE COURT: Mr. Gasey?  
12 MR. GASEY: Thank you, Your Honor.  
13 REDIRECT EXAMINATION  
14 BY MR. GASEY:  
15 Q. Are you aware of the fact that Dr. Zimmerman  
16 testified that it was his -- not his opinion that  
17 multiple users was an infringement of these patents?  
18 A. That's been my understanding.  
19 Q. And are you aware that the User 1 and User 2  
20 that Mr. Krevitt referred to were the names of  
21 different -- of different sessions for going ahead and  
22 operating the computer?  
23 A. I'm not, at this point in time, recalling or  
24 familiar with those details. I think we have mixtures  
25 of multiple user meanings that have gone on here in the

1 past several minutes.  
2 Q. In other words, User 1 and User 2, that refers  
3 to labels to a session; that's not somebody's name,  
4 right?  
5 A. Right.  
6 Q. Now, those users, those labels could be labeled  
7 just as easily, for instance, home and office, right?  
8 A. Correct.  
9 Q. So the fact that something is called User 1 and  
10 User 2, that deals with what is presented on the screen  
11 in terms of a prompt, not whether or not there are two  
12 separate people operating this invention, right?  
13 A. That's correct. And as I indicated, we have  
14 different meanings of multiple users here.  
15 Q. All right.  
16 MR. GASEY: Thank you.  
17 MR. KREVITT: Nothing, Your Honor.  
18 Nothing.  
19 THE COURT: You may step down, Mr. Cooper.  
20 THE WITNESS: Thank you, Your Honor.  
21 THE COURT: Who wants credit for asking  
22 for a brief -- I think it's your turn, Mr. Krevitt.  
23 MR. KREVITT: I was just thinking the jury  
24 might wish to have a break.  
25 THE COURT: There you go. Let's take a

1 break, 10 or 15 minutes.  
2 (Recess.)  
3 (Jury out.)  
4 THE COURT: I'd like to remind my counsel  
5 that there was a reference to your trial judge, which I  
6 don't want to be an issue, all right? Other than  
7 referring to what I say in this courtroom as the trial  
8 judge, that's all I want said about me.  
9 MR. GASEY: I'm sorry, Your Honor. Did we  
10 do that?  
11 THE COURT: No. There was a reference to  
12 Judge Rader, who is an appellate judge sitting by  
13 designation.  
14 MR. KREVITT: Understood. I apologize,  
15 Your Honor.  
16 THE COURT: We don't need -- no problem.  
17 Just so you know.  
18 Let's start again.  
19 (Jury in.)  
20 THE COURT: Please be seated.  
21 Mr. Gibbons, am I acknowledging you at  
22 this point?  
23 MR. GIBBONS: Yes, you are.  
24 THE COURT: Would you care to proceed?  
25 MR. GIBBONS: The Plaintiffs call

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1 Dr. Myron Zimmerman.  
 2 THE COURT: All right.  
 3 DEPUTY CLERK: Raise your right hand,  
 4 please.  
 5 (Witness sworn.)  
 6 MYRON ZIMMERMAN, Ph.D., PLAINTIFFS' WITNESS, SWORN  
 7 DIRECT EXAMINATION  
 8 BY MR. GIBBONS:  
 9 Q. Would you please state your name?  
 10 A. Myron L. Zimmerman.  
 11 Q. And where do you live, Dr. Zimmerman?  
 12 A. Needham, Massachusetts, right near Boston.  
 13 Q. How old are you, sir?  
 14 A. I'm 57 years old.  
 15 Q. Are you married?  
 16 A. I am.  
 17 Q. Do you have any children?  
 18 A. I do. Three.  
 19 Q. Where did you go to school?  
 20 A. I went to Massachusetts Institute of  
 21 Technology, got my Ph.D. in physics.  
 22 Q. And how about your undergrad degree?  
 23 A. As an undergraduate, I went to Juniata College,  
 24 and I got a bachelor of science in mathematics and  
 25 physics.

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1 Q. Where is Juniata College?  
 2 A. It's located in Huntingdon, Pennsylvania.  
 3 Q. And what's your current occupation?  
 4 A. I am a software consultant.  
 5 Q. What do you do as a software consultant?  
 6 A. Well, I both write software code and I analyze  
 7 and look at software code for my clients.  
 8 Q. And what do you mean by analyze software code  
 9 for your clients?  
 10 A. That means looking at how the code was  
 11 implemented, its functionality. We're often looking to  
 12 see whether that code is -- what the feature set is  
 13 that's being implemented, how that kind of product might  
 14 compare with other competitive products in the  
 15 marketplace, and do some analysis for our clients.  
 16 Q. What sorts of companies have you consulted for?  
 17 A. Various, you know, both large and small  
 18 companies.  
 19 Q. And in what fields have you consulted?  
 20 A. In the software area.  
 21 Q. Now, are you familiar with the term open source  
 22 with respect to computer software?  
 23 A. I am.  
 24 Q. Do these consulting agreements include  
 25 open-source products?

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1 A. Some of the companies that I work with did  
 2 incorporate open-source software in their products.  
 3 Q. And what sorts of software products are these?  
 4 A. These range from some applications running on  
 5 top of various operating systems: Windows, Unix, and  
 6 Linux. And in other cases were embedded systems where  
 7 the operating system and the application are bundled  
 8 together and put on a device and delivered to the  
 9 marketplace.  
 10 Q. And how long have you worked in the field of  
 11 computer software?  
 12 A. Over 33 years.  
 13 Q. Have you worked as an expert before?  
 14 A. Once several years ago.  
 15 Q. And what court was that case before?  
 16 A. That was in the federal court in Delaware.  
 17 Q. And what was your role in that case?  
 18 A. I wrote an expert report, and I was deposed.  
 19 Q. Did that case go to trial?  
 20 A. No, it did not. It was settled at some point.  
 21 Q. And are you an expert in any other matter?  
 22 A. I'm currently retained as an expert in another  
 23 case.  
 24 Q. And what's the subject matter of that case?  
 25 A. That regards networking protocols and system

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1 software.  
 2 Q. What's the status of that case?  
 3 A. It's in its early stages. I have not yet  
 4 written any expert report.  
 5 MR. GIBBONS: Your Honor, we offer  
 6 Dr. Zimmerman as an expert. And with the Court's  
 7 permission, we'd like to publish his detailed resume to  
 8 the jury.  
 9 THE COURT: Any objection, Mr. Lyon?  
 10 MR. LYON: No objection.  
 11 THE COURT: That will be fine.  
 12 Q. (By Mr. Gibbons) We see here this is a portion  
 13 of Plaintiffs' Exhibit 32, this is your resume, correct?  
 14 A. That is correct.  
 15 Q. Okay. Now, what have you done to prepare to  
 16 give testimony in this case?  
 17 A. I have looked at the patents-in-suit, looked at  
 18 the file history associated with those patents. I've  
 19 looked at the Defendants' websites. I have looked at  
 20 the source code provided by the Defendants.  
 21 I've looked at the Court's claims  
 22 construction for this case. I've looked at the  
 23 testimony from various witnesses, the exhibits that were  
 24 associated with that testimony. I've looked at the  
 25 reports from Gray and Wilson in preparation.

1 Q. Now, Dr. Zimmerman, we've already heard some  
2 testimony in this case about computers and about  
3 desktops.

4 To set a foundation for your testimony,  
5 what is a desktop?

6 A. The desktop is what a user sees on their  
7 computer display.

8 Q. And where would I find a desktop?

9 A. The desktop would be on various computers. It  
10 could be a laptop; it could be a desktop computer; it  
11 could be a computer server or a series of servers that  
12 might be connected via a network to a display.

13 Q. And so when I have a computer or a laptop and I  
14 turn it on, what do I see?

15 A. You'll see the desktop on the system.

16 Q. Is that where I could click my mouse to open up  
17 my e-mail?

18 A. Yes. There will be a series of icons on the  
19 desktop. Those icons are associated with various  
20 applications. By clicking on that icon, you would start  
21 the application.

22 Q. Let's take a look at this.

23 What do we have here, sir?

24 A. This is a typical desktop. On the left-hand  
25 side at the upper left-hand side, we see a series of

1 icons, and those are associated with doing different  
2 operations on the computer. We also see task bars, one  
3 at the top and one at the bottom of the screen.

4 Q. Now, in the course of this trial here this  
5 week, have you also heard a desktop referred to as a  
6 workspace?

7 A. Yes, I have.

8 Q. Is that consistent with your understanding?

9 A. Yes. They're often used interchangeably.

10 Q. Let's take a look.

11 Here's another view of a workspace. What  
12 do we have here?

13 A. In this workspace, we have two open  
14 applications. We have a calculator application on the  
15 upper left-hand side, and we have a word processing  
16 application on the right-hand side.

17 So these each have their own window, and  
18 the user can interact with those applications through  
19 that window.

20 Q. Let's take a look at the next one.

21 What do we have here, sir?

22 A. Well, here we have a desktop that has many,  
23 many open windows, and we can see that when we have a  
24 lot of windows, the system gets very cluttered and  
25 messy, and it's difficult for the user to find a window

1 that they need at any given time, because it could be  
2 hidden by other windows.

3 Q. Dr. Zimmerman, are you familiar with  
4 Dr. Henderson's patents?

5 A. I am.

6 Q. And did you hear his testimony -- did you hear  
7 his testimony yesterday about the development and the  
8 problems he was trying to solve through his inventions?

9 A. I did.

10 Q. And turning back to our workspace screen, how  
11 did Dr. Henderson solve the problem that's presented by  
12 the workspace we're looking at here?

13 A. Dr. Henderson and his co-inventors invented a  
14 way to manage workspaces so that a user could switch  
15 back and forth between the different workspaces and that  
16 the user could organize and put certain windows and  
17 applications on one workspace and put different  
18 applications on a different workspace.

19 Q. Can you give me an example of how a user could  
20 use Dr. Henderson's inventions?

21 A. One example would be, let's say we have a  
22 receptionist that's working in an office that has two  
23 roles for that job. The one role might be that of  
24 answering the phones and greeting visitors coming in,  
25 and another role might be that of doing word processing

1 for the rest of the organization.

2 So on one workspace, they would put the  
3 applications necessary for doing the greeting people and  
4 doing that job function, and on the other workspace,  
5 they could have a word processor running. And so by  
6 organizing it that way, that provides a structure for  
7 the receptionist to do whatever job is necessary at the  
8 moment.

9 Q. And how would the receptionist switch between  
10 these workspaces?

11 A. With this desktop here, the way that would be  
12 done would be down in the lower right-hand side of the  
13 screen we see icons that are associated with -- here's a  
14 blowup of those to make it easier to see.

15 You see four miniature panels. Each of  
16 those panels has a representation of the windows  
17 associated with each desktop, and the user simply clicks  
18 on the workspace they're interested in, and that causes  
19 the software to switch between one workspace and the  
20 other workspace.

21 And the user then can switch back and  
22 forth very easily by just clicking on the panel they  
23 wish to use whenever -- whichever workspace they need at  
24 the time.

25 Q. And which of the Defendants' products is

1 represented here in this screen shot?

2 A. This is the Red Hat Fedora Desk Top.

3 Q. And you mentioned clicking on the panels or on

4 the icons down in the lower right-hand side of the

5 desktop or the workspace.

6 What happens when the user clicks the

7 switch icon?

8 A. By clicking on the switch icon, that causes the

9 system to switch from one workspace to the other

10 workspace.

11 Q. Why do we see four panels on that task bar?

12 A. We see four panels, because that is the default

13 number of workspaces defined by the system. The user

14 can configure that to be more workspaces if they desire.

15 Q. What will a user see when they switch from a

16 first or second workspace?

17 A. Initially, when they switch to a second

18 workspace they haven't been using before, they'll see,

19 again, a default screen here with no open applications.

20 They'll see the same icons on the second workspace in

21 the upper left-hand side there, and they'll also see the

22 switching mechanism down in the lower right-hand corner

23 of the screen.

24 Q. What will be common between these workspaces?

25 A. The things that will be common are the icons on

1 workspace.

2 What do we have here, sir?

3 A. Here we have the workspace that -- for the

4 Novell openSUSE product.

5 Q. Does this permit the user to switch workspaces?

6 A. Yes, it does. It has the same switching icon

7 and four default workspaces that the user can switch

8 back and forth, and it operates in the same fashion.

9 Q. So how would a user switch workspaces using the

10 Novell products?

11 A. They would do it the same way. They would

12 position the mouse over the workspace in the icon down

13 below there. Here we're seeing four workspaces, and

14 they would click on whichever one they're interested in

15 moving to.

16 As you can right here, we're showing the

17 first workspace. That's highlighted a little bit with a

18 slightly different color. The other three workspaces

19 are the ones that are not being shown at this time.

20 Q. And does the Novell product provide the same

21 ability for using his or her icons or windows in the

22 second workspace?

23 A. Yes. It operates in the same way.

24 Q. Here's another screen shot. What do we have

25 here?

1 the desktop, the four that we're showing here. And at

2 the very bottom, there's that panel. You'll see the

3 switching icons being the same, and there often are

4 other applets running in the panels.

5 Q. If I have an icon for a window application in

6 my first workspace, would I see that same icon when I

7 switch to a second workspace?

8 A. Yes, you would.

9 Q. And where will that be on Workspace 2 as

10 opposed to Workspace 1?

11 A. It will be located in the same area of the

12 desktop.

13 Q. What if there's a window that's open in

14 Workspace 1, will it also be open in Workspace 2?

15 A. Not normally, but a user can arrange to have

16 windows be viewed in all workspaces.

17 Q. And does that window necessarily have to be in

18 the same position, or could it be in a different

19 position in that second workspace?

20 A. It's possible for the user to make the windows

21 appear in the same place, except for the stacking order,

22 which window is the focus. And it's also possible to

23 arrange for applications that will be at different

24 locations on the screen.

25 Q. Let's take a look at this next picture of a

1 A. Here we're looking at the Novell rotating cube.

2 This provides a different way of a user switching

3 between workspaces.

4 Q. How would this work with respect to switching?

5 A. The way the user operates this is by typing on

6 a few keys. They can grab -- use the mouse and grab

7 this cube and rotate the cube to have the workspace that

8 they're interested in switching to face them.

9 So as you can see as we're going back and

10 forth here with this image here, each side of the cube

11 has a different workspace image on it. So that way you

12 have a view of which workspace you are interested in

13 moving to, and then you can release and that will be the

14 workspace you see.

15 Q. And the functionality of the cube versus the

16 prior SUSE workspace, do they function the same?

17 A. Yes. They provide just another way of

18 switching between workspaces.

19 Q. So it's just a different way to do it?

20 A. Correct.

21 Q. Dr. Zimmerman, what is source code?

22 A. Source code is the computer instructions that

23 are in human-readable form. This is the language used

24 by software development engineers that are then compiled

25 and become executable code that runs on the computer

1 processor.  
 2 Q. This is Plaintiffs' Exhibit 208, and this is  
 3 actual source code produced by the Defendants that you  
 4 reviewed, correct?  
 5 A. That is correct.  
 6 Q. Do you read and understand source code?  
 7 A. I do.  
 8 Q. Did you review source code in this case with  
 9 respect to the Defendants' products?  
 10 A. I did.  
 11 Q. Which of the Defendants' products did you  
 12 review source code?  
 13 A. I reviewed source code from the Red Hat  
 14 Enterprise Linux Versions 4 and 5 for desktop and  
 15 server. I also looked at the source code for the Red  
 16 Hat Fedora Version 7, 8, and 9. And then for the  
 17 Novell, I looked at the SUSE Linux Version 10 for the  
 18 desktop and server, as well as the openSUSE Linux  
 19 Versions 10.2, 10.3, and 11.  
 20 Q. Now, do all of these products developed by the  
 21 Defendants use the same source code?  
 22 A. In large measure, they do. There are many,  
 23 many software modules that are the same between all  
 24 these products, including the desktop environments.  
 25 Q. So just so I have it clear, with respect the

1 A. The source code modules are the ones that  
 2 are -- probably the best way to look at this would be to  
 3 start with a diagram that shows the relationship of the  
 4 various source code modules to each other.  
 5 Q. So something like this (indicates)?  
 6 A. That is correct.  
 7 Q. What do we see here, sir?  
 8 A. On the upper left-hand side, we have the  
 9 display, which is the physical screen that the user sees  
 10 where the display objects will be presented on. And  
 11 next to that we're showing a keyboard and a mouse, which  
 12 the user uses to provide input into the system.  
 13 Q. And if I may, I believe there is a laser  
 14 pointer at your seat, if you care to use it. You don't  
 15 have to, but it may be helpful.  
 16 A. So here's the display. This is really the  
 17 laptop display or the -- what everybody is familiar with  
 18 as the computer display. Here's the keyboard and  
 19 there's the mouse (indicates).  
 20 Q. In that display, that could be a computer like  
 21 someone has at home, correct?  
 22 A. That is correct.  
 23 Q. Or a laptop?  
 24 A. That's correct.  
 25 Q. Or something used with a server?

1 desktop environments, both with respect to Red Hat and  
 2 Novell products, run on the same source code?  
 3 A. That is correct. There are some minor  
 4 differences associated with maintenance versions of  
 5 those products, but that's not really material to how  
 6 the products operate in regarding the desktop.  
 7 Q. Well, how do those few minor differences affect  
 8 how the desktop environment is viewed and used by the  
 9 user?  
 10 A. It has no difference.  
 11 Q. Now, why do the Defendants all use the same  
 12 source code?  
 13 A. Well, the Defendants are all downloading and  
 14 using in their product source code that come from  
 15 open-source projects. For this area here, they're  
 16 downloading it from the GNOME.org website; they're  
 17 downloading it from KDE.org website as well as the X.org  
 18 website.  
 19 Q. And what are those source code modules which  
 20 the Defendants' product used to control the desktop  
 21 environments?  
 22 A. Excuse me. What was that?  
 23 Q. What are the source code modules that the  
 24 Defendants' products use to control the desktop  
 25 environments?

1 A. That's correct.  
 2 Q. Now, what's the reference to the X-Server  
 3 that's below the display and the keyboard and mouse?  
 4 A. The X-Server is the software module that runs  
 5 on the computer that's connected to the display, and it  
 6 provided the means for presenting display objects on the  
 7 computer display itself.  
 8 Q. And you used the term display objects.  
 9 A. I did.  
 10 Q. What do you mean by display objects?  
 11 A. Display objects -- this was, in fact, a  
 12 language that was constructed by the Court, and the way  
 13 that's defined is a visually distinguishable display  
 14 feature or set of features which is coherent in the  
 15 sense of sticking together in a display.  
 16 So what this means in more common language  
 17 would be that of an icon, a window, or those kind of  
 18 things.  
 19 Q. And what's the X-Server's role in this system  
 20 we're looking at here?  
 21 A. Well, the X-Server, again, is the software. It  
 22 contains a list of all the display objects that would be  
 23 displayed on the display. It has information about each  
 24 of those display objects in regard to their position on  
 25 the screen, what order they're supposed to be

1 positioning.

2 By order, we mean which window is on top  
3 of which so that the right top window is present so that  
4 the user is working with that window.

5 So that information is presented on the  
6 server, and the server walks that list of display  
7 objects, noting which ones are turned on or turned off  
8 at any given time, to correctly present the information  
9 on this screen.

10 Q. Okay. And do you see below the X-Server, we  
11 see a references to applications?

12 Can you tell us what this is, please?

13 A. Applications, there can be any number of them  
14 running on a system. And they connect up to the  
15 X-Server, and there's a window for each of the  
16 applications.

17 So, for example, we have applications like  
18 the editor, e-mail, the calculator, a number of things  
19 we saw earlier. So each of those applications -- there  
20 can be any number of them -- are running, and they're  
21 independent of a desktop environment itself.

22 Q. So what is the desktop environment?

23 A. The desktop environment is the software that  
24 provides the -- what the user sees on the desktop that  
25 we looked at earlier.

1 Q. (By Mr. Gibbons) Dr. Zimmerman, here's  
2 Plaintiffs' 69, and, specifically, we're looking at  
3 Page RH1302 of Plaintiffs' 69. It's a Red Hat document  
4 entitled Unix to Linux Migration.

5 Have you seen Plaintiffs' 69 before?

6 A. Yes, I have.

7 Q. And it refers to desktop environment, correct?

8 A. Yes, it does.

9 Q. It calls GNOME -- well, why don't you tell us  
10 what it calls GNOME?

11 A. It lists GNOME and KDE as software components  
12 associated with that desktop environment, and then it  
13 details GNOME is the default desktop in Red Hat  
14 Enterprise Linux.

15 Q. What is the GNOME desktop environment?

16 A. As we just saw here, it's the default desktop  
17 environment for the Red Hat product.

18 Q. What do you mean by the default environment?

19 A. By default, we mean the software that  
20 automatically starts up when the user installs the  
21 software and runs it.

22 Q. If we turn back to our diagram, is that what's  
23 shown at the top right-hand part of this picture?

24 A. Yes, it is.

25 Q. And what does it do?

1 MR. LYON: Your Honor, we may be getting  
2 into some areas we've already discussed.

3 MR. GIBBONS: It's not my intention to go  
4 there, and I'm aware of that. We discussed that.

5 THE COURT: We understand each other,  
6 Mr. Gibbons.

7 MR. GIBBONS: Yes.

8 THE COURT: You may proceed.

9 A. Here we see then two desktop environments. One  
10 is GNOME and the other known as KDE.

11 Q. (By Mr. Gibbons) Okay. Let's take a look at  
12 Plaintiffs' 69.

13 MR. GIBBONS: I have some exhibits. May I  
14 approach the witness?

15 THE COURT: You may.

16 Q. (By Mr. Gibbons) Dr. Zimmerman, I've handed you  
17 a binder. It has the exhibits we'll be going through at  
18 some point. I've handed up four disks, also exhibits.  
19 The documents on those disks are quite lengthy. We see  
20 some of them up here.

21 I'd like, for the record, everything is  
22 contained on that CD.

23 MR. GIBBONS: I also have a copy for the  
24 Court. May I approach?

25 THE COURT: Sure. Thanks.

1 A. Well, the desktop environment is providing the  
2 icons, the task bars that we saw in the previous screen  
3 shots, and it's also generally responsible for managing  
4 windows, the placement of windows on the display, the  
5 stacking order of those windows, and also for the  
6 workspaces in which windows are in which workspace.

7 Q. What does the term GNOME stand for?

8 A. GNOME, it stands for GNU Network Object Model  
9 Environment. GNU is the name of another soft --  
10 open-source project.

11 Q. Within that dotted box, we see some other  
12 components, correct?

13 A. Yes, we do.

14 Q. What are those?

15 A. Well, on -- we have a number and there's a  
16 series of elements inside of those as well. And each of  
17 those is doing different operations. So one of those is  
18 managing the panels. That was the panel we saw at the  
19 bottom of the screen and the top of the screen.

20 Others are associated with managing icons  
21 on the desktop as well. The GDM is really the piece  
22 that is taking care of when a user logs in, presenting  
23 the graphical interface for that piece of it.

24 Q. Okay. And I also see a reference to window  
25 manager.

1 A. Yes. The window manager is the component that  
 2 is placing windows on the screen and making sure that as  
 3 a window is moved around, it keeps track of where to  
 4 place the window. It also is providing the -- some of  
 5 the workspace functionality of which windows are in  
 6 which workspace.  
 7 Q. What's the reference to the term Metacity  
 8 that's inside the box entitled X-window manager?  
 9 A. Metacity is the name of the source code that  
 10 makes up the window manager for the GNOME environment.  
 11 Q. Is that the default window manager?  
 12 A. Yes, it is.  
 13 Q. And so when someone's using the Defendants'  
 14 product with the default GNOME desktop environment,  
 15 they're also using the GNOME desktop manager as well as  
 16 Metacity by default?  
 17 A. That is correct.  
 18 Q. And just quickly, below that, we see reference  
 19 to KDE desktop environment. That's not the default,  
 20 correct?  
 21 A. That's correct.  
 22 Q. If you would take a look at Plaintiffs' Exhibit  
 23 197, and if we could turn to Page 5 of this Novell  
 24 document, do you see reference to using virtual  
 25 desktops?

1 A. Yes, I do.  
 2 Q. And you discussed this in your expert report?  
 3 A. I did.  
 4 Q. And it gives an example, correct?  
 5 A. Yes. It reads: You might, for example, use  
 6 one desktop for e-mailing and calendaring and another  
 7 for word processing or graphics applications.  
 8 Q. And if we go on down to where it says No. 5,  
 9 what do you see there, sir?  
 10 A. Yeah, here it's reading: To switch between  
 11 desktops, click on the desired desktop in a pager in the  
 12 panel.  
 13 Q. And in your experience, does the switching  
 14 feature function the same in GNOME as it does in KDE?  
 15 MR. LYON: Objection, Your Honor.  
 16 THE COURT: He can answer that question.  
 17 A. Yes, it does.  
 18 Q. (By Mr. Gibbons) And so if I'm running openSUSE  
 19 from Novell, running Fedora from Red Hat in GNOME, it  
 20 would function the same way I see here listed on  
 21 Plaintiffs' Exhibit 197?  
 22 A. Yes, that's correct.  
 23 Q. There's also a reference down here that adding  
 24 additional virtual desktops, it says how to do that too,  
 25 correct?

1 A. That's correct.  
 2 Q. Now, you have run the Defendants' accused  
 3 products, correct?  
 4 A. Yes, I have.  
 5 Q. And when you ran them, which desktop  
 6 environment was available?  
 7 A. Both GNOME and KDE.  
 8 Q. And did you run both of them?  
 9 A. I did.  
 10 Q. But GNOME was the default, correct, as we've  
 11 discussed previously?  
 12 A. That is correct.  
 13 Q. Let's start with your experience running the  
 14 Defendants' products using the GNOME desktop  
 15 environment.  
 16 First, which of the Defendants' products  
 17 did you run?  
 18 A. I ran the Red Hat Enterprise Linux; I ran Red  
 19 Hat Fedora Version 9; and I ran openSUSE Linux  
 20 Version 11.  
 21 Q. And all of these Defendants' products accused  
 22 of infringement here use the same source code, correct?  
 23 A. That is correct.  
 24 Q. How did you begin your evaluation?  
 25 A. What I did is I downloaded the software

1 products for the ones I just mentioned from the websites  
 2 for Red Hat and Novell and Fedora and openSUSE, and  
 3 downloaded those.  
 4 I burnt CDs and then installed the  
 5 software on my systems. I then booted and ran those  
 6 systems and was logged in and was -- saw the desktop,  
 7 the screen shots we saw here associated with that, and  
 8 started to familiarize myself with how the workspaces  
 9 operated and how the switching operated between those  
 10 workspaces.  
 11 Q. What do you mean by the switching and how it  
 12 operated between those workspaces?  
 13 A. Well, what I was really interested in seeing,  
 14 given the patents that we'll get into in a minute, was  
 15 understanding exactly how a user would use the switching  
 16 icon to switch between those workspaces, how window  
 17 placements worked in those workspaces, and how they  
 18 changed as you moved from workspace to workspace.  
 19 Q. And did you actually use the switching icons?  
 20 A. I did, yes. I was using them as we described  
 21 earlier here, which was to look at the ones -- they were  
 22 by default down in the bottom panel, as we're showing  
 23 here. And I noted that the switching icons were showing  
 24 in miniature the windows that were associated with each  
 25 workspace and then clicking on the workspace that I

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1 wanted to switch to, and was able to switch back and  
2 forth and see how the system behaved.

3 Q. And if you would look at these panels here, it  
4 appears that what's represented in the panel is the same  
5 as what we see on the specific desktop for that panel,  
6 correct?

7 A. That's correct. Those are effectively  
8 miniature windows of the full workspace.

9 Q. Now, you did review the source code used by the  
10 Defendants in their products?

11 A. I did.

12 Q. What did you look at when you reviewed that  
13 source code of the Defendants' products?

14 A. What I was looking at was the processing flow  
15 associated with the Defendants' products in regards to  
16 the workspace switching.

17 Q. What is the processing flow?

18 A. Processing flow is really the sequence of  
19 operations the code is going through. And in this case  
20 here, I was most interested in the processing flow  
21 associated with the switching from one workspace to the  
22 other and how the windows were handled during that  
23 switching process.

24 Q. And what was your analysis of the processing  
25 flow of the source code used in the Defendants'

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1 products?

2 A. I was able to trace -- in that flow, from the  
3 time the user indicated they wanted to switch to a  
4 second workspace, I was able to trace that flow through  
5 identifying which workspace they wanted to switch to,  
6 which -- and for that workspace, which display objects  
7 or windows were associated with that workspace, and then  
8 the way those windows were processed and made to show up  
9 via the X-Server on to the display.

10 So that took us through three main  
11 software components, the -- the WNK; we'll refer to that  
12 as wink (pronouncing), and there's another module, which  
13 is the Metacity, and then there was the X-Server itself.

14 Q. What did you conclude from your analysis,  
15 Dr. Zimmerman?

16 A. Well, based on my analysis, looking at how the  
17 products operated and how the source code was  
18 structured, I concluded that the Defendants' products  
19 provided multiple workspaces, that each of those  
20 workspaces would have some display objects that would be  
21 shared and looked the same between workspaces.

22 And other display objects would be unique  
23 or specific to a given workspace and that they provided  
24 a switching mechanism to allow them to switch between  
25 the different workspaces.

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1 Q. And you testified that you had downloaded  
2 software from the Defendants' websites to run their  
3 products.

4 Did you also review source code provided  
5 by the Defendants for their products in this case?

6 A. Yes, I did.

7 Q. And if you take a look at the CD or DVD that I  
8 handed out to you -- that's Plaintiffs' Exhibit 208 --  
9 is that one of those CDs that you reviewed?

10 A. Yes. This is source code from the  
11 Defendants-provided DVDs.

12 Q. That's Plaintiffs' 208, correct?

13 A. That's right.

14 Q. And the list of the various Defendants' source  
15 code disks that you reviewed is included with your  
16 expert report, correct?

17 A. Yes, it was.

18 Q. And that's Plaintiffs' Exhibit 32, correct?  
19 Exhibit B?

20 A. Yes.

21 Q. Exhibit A of your expert report is your resume.  
22 Exhibit B is a list of all the documents and testimony  
23 and exhibits you reviewed, right?

24 A. That is correct.

25 Q. Now, Dr. Zimmerman, you understand that in

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1 order to infringe a patent claim, each of the elements  
2 of that claim have to be found in the product?

3 A. That is correct.

4 Q. And you understand that the Court has  
5 determined what the claim terms of the asserted claims  
6 mean?

7 A. I do.

8 Q. In forming your opinions, did you faithfully  
9 use the Court's definitions?

10 A. I did.

11 Q. Dr. Zimmerman, I'm sorry we need to go through  
12 this next session, but by law we're required to read  
13 each word of the asserted patents of -- asserted patent  
14 claims of Dr. Henderson's patents onto the record. I  
15 know this is going to be tedious, and I apologize in  
16 advance for doing this, but this is something we're  
17 required to do.

18 Now, Plaintiffs' Exhibit 1, which is in  
19 evidence, is Dr. Henderson's United States Patent  
20 5,072,412.

21 Are you familiar with the '412 patent?

22 A. Yes, I am.

23 Q. This is the first of Dr. Henderson's patents  
24 which we discussed yesterday.

25 Are you aware that my clients are

1 asserting that the Defendants infringe Claims 1 and 21  
 2 of the '412 patent?  
 3 A. Yes, I am.  
 4 Q. And so you're familiar with the claim language  
 5 in all the asserted claims, correct?  
 6 A. Correct.  
 7 Q. Now, you were present for yesterday's opening  
 8 statements, correct?  
 9 A. Yes.  
 10 Q. And you heard the Defendants' lawyer,  
 11 Mr. Krevitt, talk about flexibility and continuous,  
 12 correct?  
 13 A. Yes, I did.  
 14 Q. Are those words anywhere in the claims of  
 15 Dr. Henderson's patents?  
 16 A. No, they are not.  
 17 Q. Okay. Let's look at those asserted claims.  
 18 Let's turn to Claim 1 of Plaintiffs' Exhibit 1.  
 19 Claim 1 claims a system comprising a  
 20 display. Now, the Defendants' products are used with a  
 21 display, correct?  
 22 A. Yes. The computer systems that the Defendants'  
 23 products operate on have a display.  
 24 Q. And you only need one display, right?  
 25 A. That is correct.

1 Q. And have you seen -- first of all, you used it  
 2 with a display, correct?  
 3 A. That is correct.  
 4 Q. And you've seen other people, other users, use  
 5 the Defendants' products with a display?  
 6 A. Yes, I have.  
 7 Q. And you've read some testimony from the  
 8 Defendants' witnesses about their use of the Defendants'  
 9 products with a display, correct?  
 10 A. That is correct.  
 11 Q. In fact, when you were looking -- you tell me.  
 12 You looked at the --  
 13 THE COURT: Excuse me, Mr. Gibbons.  
 14 MR. LYON: I believe Counsel is testifying  
 15 for the witness. If he would ask the questions in a  
 16 more open matter.  
 17 MR. GIBBONS: That's what I was about to  
 18 do.  
 19 THE COURT: Mr. Gibbons, proceed.  
 20 Q. (By Mr. Gibbons) Now, Dr. Zimmerman, you  
 21 testified that you went to the Defendants' websites,  
 22 correct?  
 23 A. Yes, I did.  
 24 Q. And you reviewed what's on their websites with  
 25 respect to the Defendants' products?

1 A. That is correct.  
 2 Q. What did you see?  
 3 A. I saw on their websites they provided material  
 4 regarding how to install the products and how to use the  
 5 products and in particular how to use the desktop  
 6 environment on those -- with those products.  
 7 It also described the requirements for the  
 8 computer system that was needed for the user to run the  
 9 software, and that included what you normally see on a  
 10 computer, a display, a keyboard, processor, and things  
 11 like that.  
 12 Q. So the Defendants are actually telling their  
 13 users how to use their products with a display, correct?  
 14 A. That's correct.  
 15 Q. Next element here reads: First and second  
 16 workspace data structures relating respectively to first  
 17 and second workspaces that can be presented on the  
 18 display.  
 19 What are the workspace data structures?  
 20 A. Well, a workspace is the -- was, again, defined  
 21 by the Court. And it's -- it reads: A display system  
 22 entity that includes a collection of display objects  
 23 together with spatial display relationships between  
 24 them.  
 25 The data structures are the -- are defined

1 in the source code and are basically -- contain  
 2 information about the workspace itself.  
 3 Q. Now, you testified that the Defendants produced  
 4 source code used by their products?  
 5 A. Yes, they did.  
 6 Q. And you reviewed that code?  
 7 A. Yes, I have.  
 8 Q. Let's take a look at -- and this is from  
 9 Plaintiffs' Exhibit 208. This is some of the  
 10 Defendants' source code, correct?  
 11 A. Yes, it is.  
 12 Q. Did you review this code?  
 13 A. I did.  
 14 Q. How is this source code used in the Defendants'  
 15 products?  
 16 A. So in this source code here, we're highlighting  
 17 some key members of a data structure. The data  
 18 structure is called Metascreen. This is a data  
 19 structure associated with the Metacity window manager.  
 20 And the two things we're calling out here  
 21 is a Metaworkspace, which is a pointer to the current  
 22 active workspace. That's what's showing on the screen  
 23 at this point in time.  
 24 Then we're looking at a second element  
 25 there that has -- you can see G list. And list is a way

1 for the software to keep a list of a series of items.  
 2 In this case, the items are workspaces and a number of  
 3 workspaces is configurable. The default is four, as we  
 4 saw earlier, but, again, this list would support any  
 5 number.

6 So with this screen structure here, we're  
 7 seeing the indication of the workspaces that are  
 8 associated with the system as a whole.

9 Q. Now, this is -- we're talking about the GNOME  
 10 desktop environment?

11 A. Correct, that is GNOME.

12 Q. This is the default environment?

13 A. Correct.

14 Q. And you reviewed this source code as well as  
 15 the rest of the source code in formulating your opinion?

16 A. I did.

17 Q. Did you review -- did you refer to the term  
 18 Metacity in your expert report, though?

19 A. No, I did not.

20 Q. Why was that?

21 A. I considered this as part of the overall GNOME  
 22 environment.

23 Q. Because it's the default environment?

24 A. It is the default environment, and Metacity is  
 25 actually part of the GNOME.org website as well.

1 Q. Okay. You did testify about it during your  
 2 deposition, correct?

3 A. I was asked questions about that, yes.

4 Q. Your responses were that you did review the  
 5 Metacity source code, correct?

6 A. That is correct.

7 Q. Let's take a look at some more source code from  
 8 Plaintiffs' 208.

9 What do we have here?

10 A. Here we have a second data structure called  
 11 Metaworkspace. Again, associated with the Metacity  
 12 window manager. There's one of these for each of the  
 13 workspaces.

14 So you can think of this as there being  
 15 four of these workspaces. Within each of these  
 16 workspace data structures we see lists. These are the  
 17 same list kind of things we talked about earlier. And  
 18 we have a list of windows. So those are the display  
 19 objects that are associated with the workspace.

20 And we see another one called MRU list.  
 21 So the first list there, windows, are the windows for  
 22 the display objects that are going to be specific only  
 23 to a single workspace.

24 And the second list contains both display  
 25 objects that are specific to a single workspace and

1 those that would be shared across all workspaces. The  
 2 reason this is important is this MRU really stands for  
 3 most recently used, and it's a way of keeping track of  
 4 which display objects should be on the top, which is the  
 5 one the user is actively using, so that they -- and it's  
 6 called the focus window. It's where the user input will  
 7 go to.

8 And the reason we need to keep track of  
 9 that is as we switch back and forth between workspaces,  
 10 we want to make sure the user is seeing the same window  
 11 on top that they were using previously before they left  
 12 that workspace.

13 MR. GIBBONS: Let's take a look at more  
 14 source code, Plaintiffs' 208.

15 Q. (By Mr. Gibbons) What do we see here, sir?

16 A. Here we see another data structure from the  
 17 Metacity. It's called Metawindow. And in here we see a  
 18 link back to the Metaworkspace. So that switch  
 19 workspace was this window associated with -- when it was  
 20 created.

21 We also have another flag there called  
 22 GUI, which is an integer and is a flag really which says  
 23 whether this window is to be shown on all workspaces or  
 24 not.

25 We also have information there with

1 Metarectangle, which is sort of the size and location of  
 2 that window on the screen.

3 At the very end there, we have a stacking  
 4 position, which I don't know if we need to get into  
 5 here.

6 Q. We've seen some screen shots of the Defendants'  
 7 products. They all have workspaces, correct?

8 A. That is correct.

9 Q. And, again, how many workspaces can the  
 10 Defendants' products have?

11 A. By default, they have four, but, again, the  
 12 user can configure it to different numbers.

13 Q. So they'd have at least a first and a second,  
 14 correct?

15 A. They do.

16 Q. And I think you testified that the Defendants'  
 17 products include the source code which creates and  
 18 manages the workspace.

19 A. That is correct.

20 Q. Can we see the workspaces otherwise?

21 A. You would not. You need the source code to  
 22 provide that.

23 Q. Okay. Now, in your opinion, do the Defendants'  
 24 products contain this element of Claim 1 of the '412  
 25 patent?

1 A. They do.  
 2 Q. Let's move on.  
 3 The claim next calls for each of the first  
 4 and second workspaces, including a respective set of  
 5 display objects.  
 6 Do you see that, sir?  
 7 A. I do. And what that means is in each of the  
 8 workspaces we saw, there was a series of windows. If  
 9 you recall back to the data structure we had just looked  
 10 at, there was a series of windows. And each of those is  
 11 a display object.  
 12 So there would be one, two, or more. So  
 13 we have multiple display objects per workspace.  
 14 Q. And how would a user see a display object on  
 15 the workspace?  
 16 A. Display objects would be, as we're showing  
 17 here, icons of different types, as well as windows  
 18 themselves.  
 19 Q. In your opinion, do the Defendants' products  
 20 contain this element of the claim?  
 21 A. They do.  
 22 Q. Now, the claim goes on --  
 23 MR. GIBBONS: If we can go back one slide,  
 24 please.  
 25 Q. (By Mr. Gibbons) This is the Novell product,

1 each representative set being perceptible as having  
 2 spatial positions relative to each other, when the  
 3 respective workspace is presented on the display.  
 4 Now, each icon or window we've seen is  
 5 positioned on a workspace relative to each other,  
 6 correct?  
 7 A. That is correct.  
 8 Q. In your opinion, do the Defendants' products  
 9 contain this element of the claim?  
 10 A. They do.  
 11 Q. Now, the claim reads on: Display object means  
 12 for generating first and second display objects.  
 13 You see that, too, correct?  
 14 A. Yes.  
 15 Q. How?  
 16 A. The display object means -- is the software  
 17 that is -- and this is really the X-Server that is  
 18 providing the means for presenting display objects on  
 19 the computer screen itself.  
 20 Q. Let's take a look at some of the Defendants'  
 21 source code produced in this case. Again, this is  
 22 Plaintiffs' 208.  
 23 What do we see here, sir?  
 24 A. This is source code that's associated with the  
 25 X-Server. We have a data structure here that indicates

1 right?  
 2 A. Yes, it looks like it is.  
 3 Q. And the prior screen was the Red Hat product?  
 4 A. Yes.  
 5 Q. Red Hat Fedora, correct?  
 6 A. Yes. That's Red Hat Fedora. You can tell by  
 7 the little f on the top of the icon.  
 8 Q. Red Hat RHEL operates in the same way?  
 9 A. It does operate in the same way.  
 10 Q. And this is the openSUSE product?  
 11 A. This is openSUSE.  
 12 Q. SUSE functions in the same way?  
 13 A. It does.  
 14 Q. The claim goes on: Each of the display objects  
 15 being perceptible as a distinct, coherent set of display  
 16 features.  
 17 What does this mean?  
 18 A. This means that the icons that we're looking at  
 19 here are visible as being a distinct icon so the user  
 20 understands that that is separate from the icon next to  
 21 it.  
 22 Q. Now, in your opinion, do Defendants' products  
 23 contain this element of Claim 1 of the '412 patent?  
 24 A. They do.  
 25 Q. The claim continues: The display objects of

1 the location of a window and the width and height of a  
 2 window. This is used when other software components are  
 3 sending and receiving information about windows with the  
 4 X-Server.  
 5 Q. And if we turn to the next slide, we'll see  
 6 some more source code from the Defendants at  
 7 Plaintiffs' 208.  
 8 What do we see here, sir?  
 9 A. Here we have another data structure used by the  
 10 X-Server. It's internal to the X-Server. And here we  
 11 see a different way of linking together a list so that  
 12 the first five window pointer aims up there are just a  
 13 way of linking together a series of window display  
 14 objects.  
 15 We also have information about the size of  
 16 the window and its location on the screen. And at the  
 17 very bottom there, we have a flag as to whether the  
 18 window is mapped or unmapped. And by that, we mean  
 19 whether it will be displayed or not displayed on the  
 20 screen.  
 21 Q. If we can turn to the next slide, this is the  
 22 window table module, Plaintiffs' 208, produced by the  
 23 Defendants.  
 24 What do we have here, sir?  
 25 A. Here we have a data structure. Again, it's an

1 array that is acting as the anchor or the starting point  
2 for all of the display objects in the list. So this  
3 allows the X-Server to walk that list of all the display  
4 objects that it knows about and be able to generate this  
5 onto the screen, the image of those display objects on  
6 the computer screen itself.

7 Q. And, again, what are these display objects?

8 A. These display objects, as we talked about  
9 before, are the icons or windows you see on the screen.

10 Q. Are they viewed across multiple workspaces?

11 A. Yes. Some of the icons and windows would look  
12 the same on each of the workspaces, and others would  
13 look different as you move between workspaces.

14 THE COURT: Mr. Gibbons, would you suspend  
15 for one minute?

16 MR. GIBBONS: Certainly. I understand.

17 THE COURT: The jury can stand up for one  
18 second, if they'd like. I'll be right back.

19 (Recess.)

20 THE COURT: Ready to proceed, Mr. Gibbons.

21 MR. GIBBONS: I am, Your Honor.

22 THE COURT: Please do so.

23 JUROR: We're having trouble hearing.

24 THE COURT: You're having trouble hearing?

25 MR. GIBBONS: How about now?

1 THE COURT: Thank you. Just raise your  
2 hand if you're having any trouble.

3 THE WITNESS: Were you able to hear me  
4 okay?

5 JUROR: Yes.

6 THE COURT: Please proceed, Mr. Gibbons.

7 Q. (BY MR. GIBBONS) Before the break, I'm not  
8 sure where I left off on the question. I'm going to ask  
9 it again.

10 These display objects are the icons we see  
11 on the workspace, correct, Dr. Zimmerman?

12 A. That is correct.

13 Q. And these are seen across multiple workspaces?

14 A. Yes.

15 Q. So in your opinion, do the Defendants' products  
16 contain this element of the claim?

17 A. Yes, they do.

18 Q. And the claim continues. The first workspace  
19 data structure being linked to the display object means  
20 so that the first display object is in the respective  
21 set of display objects of the first workspace. Are the  
22 display objects linked to that workspace in the product  
23 source code?

24 A. Yes. As we saw in the code we looked at  
25 initially, we saw for each workspace, we saw a list,

1 link list, of the windows that are associated with that  
2 workspace. And that is providing the link list of  
3 associating a given set of windows and display objects  
4 with the workspace itself.

5 Q. Why is that in the source code, sir?

6 A. It's required in order to get the right windows  
7 and display objects to show up on the screen for the  
8 selected workspace.

9 Q. What else does the source code do here?

10 A. The source code is also making sure that when  
11 the windows have been selected that the right window is  
12 on the top. As we talked about earlier, one of the key  
13 items here is to make sure that the user, when they  
14 leave a workspace and do something else and then they  
15 come back to it, that the same window is on top so that  
16 they can resume whatever activity they were doing in  
17 that window when they left. That's called a focus  
18 window. Sometimes it's called stacking order, but it's  
19 really an important piece of being able to make sure you  
20 return to the workspace and do the same thing.

21 Q. Now, in your opinion, do the Defendants'  
22 products contain this element of the claim?

23 A. They do.

24 Q. And the second part of this element is related,  
25 the second workspace data structure being linked to the

1 display object means that the second is in the  
2 respective set of display objects of the second  
3 workspace. You see that, sir?

4 A. Yes. That is really pretty much saying the  
5 same thing as what we just looked at. This is the  
6 second workspace instead of the first workspace. So the  
7 Defendants' products do have two workspaces or more.  
8 And so the second workspace -- the same software is  
9 really processing both the first and second workspaces.  
10 It's just a different item on that workspace list that's  
11 being used.

12 Q. And in your opinion, do Defendants' products  
13 contain this element of Claim 1 of the '412 patent?

14 A. They do.

15 Q. Now, the final element of Claim 1 begins,  
16 Control means for accessing the first workspace data  
17 structure to cause the display to present the first  
18 workspace including the first display object. The  
19 control means further being for accessing the second  
20 workspace data structure to cause the display to present  
21 the second workspace including the second display  
22 object. What do we have here, sir?

23 A. What we have here is, again, the software  
24 that's providing the mechanism for, as the user selects  
25 the workspace they want to go to, that that software

1 initiates the sequence of switching workspaces. So that  
2 allows them -- the software to access the workspace,  
3 whichever one the user selected. And then display the  
4 display objects or the windows that are associated with  
5 that workspace. And we do that for both the first and  
6 the second workspace here.

7 Q. Let's take a look at some more of the  
8 Defendants' source code that they produced in this case.  
9 This is, again, Plaintiffs' Exhibit 208. How is this  
10 code used in Defendants' products?

11 A. This code is in the WNCK. That's really  
12 W-N-C-K. It's just the name of it. It stands for  
13 Windows Navigation Construction Kit. It's a part of the  
14 software. And it's -- you're looking at a screen  
15 private data structure where here we see a very similar  
16 kind of arrangement of data structures that we  
17 previously saw. There's a list of workspaces and an  
18 active workspace.

19 This is being used to set up the icon we  
20 saw down below where we saw the four panels with the  
21 windows inside. So this is really defining the layout  
22 of the workspaces and associating that with the right  
23 icon.

24 Q. Here's some more source code produced by the  
25 Defendants for their products. What do we see here,

1 same tool as the first display object when the second  
2 workspace is presented after the first workspace. How  
3 does this relate to the switching feature?

4 A. The key point in this one here is the second  
5 display object is as perceptible as the same tool as was  
6 in the first one. So this -- examples of this would be  
7 icons that we see being the same in the first and second  
8 workspace. That's a display object, and it would be  
9 seen as the first and second in both workspaces, and it  
10 would certainly look like the same tool.

11 Other examples of display objects being  
12 the same would be windows that would be shown in both of  
13 those, or even an example would be an application that  
14 is started, like a calendaring application, that you  
15 would see in one workspace, and then in the other  
16 workspace you would see another instance of that  
17 running. But it would be clear from looking at it that  
18 you would understand it's the same calendaring  
19 application.

20 Q. Now, in your opinion, do the Defendants'  
21 products contain this element of the claim?

22 A. Yes, they do.

23 Q. And based upon your analysis of the Defendants'  
24 products and their source code, Dr. Zimmerman, is it  
25 your opinion that the Defendants' products infringe

1 sir?

2 A. Here for each of the workspaces, there's a  
3 number for that, and they simply run from 1, 2, 3, 4,  
4 and there's four workspaces. And there's also the  
5 possibility of naming that workspace, again, to provide  
6 context to the user if they really use the -- there's a  
7 tool tip, if you hover over a workspace, you'll get the  
8 name of the workspace.

9 Q. And some additional code with respect to this  
10 element, what do we see here, sir?

11 A. So here we see again from the WNCK source code,  
12 the -- for each window, there is, again, which workspace  
13 number was it associated with and what is the size of  
14 that window and its position. This is then -- provides  
15 information for this module about how the workspaces in  
16 the windows are associated with it and is used then to  
17 select the workspace you want to switch to.

18 Q. Now, based on the source code used by the  
19 Defendants in their products, is it your opinion that  
20 the Defendants' products contain this element of Claim 1  
21 of the '412 patent?

22 A. It is.

23 Q. The rest of Claim 1 reads, the display object  
24 means generating the first and second display objects so  
25 that the second display object is perceptible as the

1 Claim 1 of the '412 patent?

2 A. It is.

3 Q. Now, sir, you know the Defendants' products are  
4 also accused of infringing Claim 21 of the '412 patent,  
5 correct?

6 A. That is correct.

7 Q. Let's take a look at Claim 21. Again, from  
8 Plaintiffs' Exhibit 1, Claim 21 begins, a method of  
9 operating a system that includes a display. As we  
10 covered earlier, the Defendants' products are used with  
11 a display, correct?

12 A. That is correct. The software would operate on  
13 a system that includes a display.

14 Q. And for all the reasons that we discussed in  
15 your prior testimony, it is your opinion that this  
16 element of Claim 21 is met?

17 A. It is.

18 Q. And the claim goes on to read, Input means for  
19 receiving signals from a user; what are we talking about  
20 here, sir?

21 A. We're talking about a mouse or a keyboard which  
22 is -- would be used by the user. In the case, we were  
23 just talking about, positioning the mouse, pointing over  
24 the icon. That's providing the input means.

25 Q. And have you seen users of the Defendants'

1 products using an input means?  
 2 A. Using keyboards and mice, yes.  
 3 Q. You have, correct?  
 4 A. Yes.  
 5 Q. And you've read some of the testimony from the  
 6 Defendants' witnesses about their uses and observations  
 7 of that too?  
 8 A. That's right. You will need some input device  
 9 to use a graphical user interface.  
 10 Q. What is your experience looking at the  
 11 Defendants' websites and instructions shown with respect  
 12 to using a keyboard or mouse with the Defendants'  
 13 software?  
 14 A. Those are components of a system that their  
 15 software requires.  
 16 Q. Is it fair to say, as you testified earlier,  
 17 with respect to a display that the Defendants are  
 18 instructing their users how to use a keyboard and a  
 19 mouse?  
 20 A. They're instructing them, yes, on how to  
 21 position the mouse to click on the icon to switch  
 22 workspaces.  
 23 Q. Maybe even sometimes what type of mouse, what  
 24 type of keyboard they need to use?  
 25 A. Yes. They have -- they will mention what

1 icon's use is for.  
 2 Q. That's the same with respect to window two,  
 3 correct?  
 4 A. That is correct.  
 5 Q. So in your opinion, do the Defendants' products  
 6 contain this element of the claim?  
 7 A. They do.  
 8 Q. Claim 21 goes on to read, the method comprising  
 9 the steps of causing the display to present a first set  
 10 of the display objects, the display objects of the first  
 11 set being per acceptable as having spatial positions  
 12 relative to each other when presented on the display,  
 13 the first set of the display objects including a  
 14 switching display object and a first tool display  
 15 object.  
 16 Do we see this in the Defendants'  
 17 products?  
 18 A. Yes. At the beginning of this is similar to  
 19 what we talked about before where we have a series of  
 20 display objects and their distinct and spatially  
 21 separate.  
 22 And here the additional requirement is  
 23 that the display objects include a switching display  
 24 object, and that's the switching icon that we talked  
 25 about which the user clicks on to decide which workspace

1 hardware their system will support, and it will include  
 2 a series of items, including keyboard and mice.  
 3 Q. So in your opinion, do the Defendants' products  
 4 meet this element of Claim 21 of the '412 patent?  
 5 A. Yes, it does.  
 6 Q. The claim continues on, Display object means  
 7 for generating a plurality of display objects; each of  
 8 the display objects being perceptible as a distinct,  
 9 coherent set of display features. You discussed these  
 10 terms with respect to Claim 1, correct?  
 11 A. Yes.  
 12 Q. And is your opinion the same with respect to  
 13 Claim 21?  
 14 A. It is.  
 15 Q. Where do we see the icons in the windows on the  
 16 workspace?  
 17 A. So we see display objects again are the icons  
 18 or windows. They are -- there are more than one of  
 19 those. There can be any number being used by the  
 20 system. Each of those icons or display objects has a --  
 21 you know, is clearly a separate icon, so you can see  
 22 them as being spatially separate, and they have a  
 23 coherent set of features that make up the icon. So If  
 24 you look at an icon, you'll see that they have a number  
 25 of features that together help you understand what the

1 they want to go to and also a first tool display object,  
 2 which again could be another icon or a window that would  
 3 be perceived as being the same tool in both the first  
 4 and the second workspace.  
 5 Q. So in your opinion, do the Defendants' products  
 6 contain this element of Claim 21?  
 7 A. Yes, they do.  
 8 Q. The next portion of the claim states, while the  
 9 first set of display objects is being presented,  
 10 receiving a switch request signal from the input means,  
 11 the switch request signal indicating selection of the  
 12 switching display object.  
 13 What are we talking about here, sir?  
 14 A. So here we start off with the user looking at  
 15 the first workspace, and while they're looking at that  
 16 workspace, they use their mouse to position the pointer  
 17 over the switching icon, click on that, and that then is  
 18 an indication by the user that they want to switch to  
 19 the second workspace.  
 20 Q. Now, in your opinion, do the Defendants'  
 21 products contain this element of Claim 21?  
 22 A. They do.  
 23 Q. And, finally, the claim reads, responding to  
 24 the switch request signal by causing the display to  
 25 cease presenting the first set of display objects and to

1 begin presenting a second set of the display objects,  
2 the display objects of the second set being perceptible  
3 as having spatial positions relative to each other when  
4 presented on the display. The second set of display  
5 objects including a second tool display object, the  
6 first and second tool display objects being perceptible  
7 as the same tool.

8 How does this involve the switch to the  
9 second workspace?

10 A. So here what we're looking at again is once the  
11 user has, as I talked about just before, selected the  
12 second workspace they want to switch to, the software,  
13 in response to that, will stop presenting the current  
14 display object. So whatever was on the screen, it's no  
15 longer needed. Those are removed from the display, and  
16 then the new display objects that are associated with  
17 the second workspace are presented onto the screen.

18 The additional requirement here is that  
19 one of those display objects that is on both workspaces  
20 be perceived as being the same tool. This could be, for  
21 example, the switching icon we talked about that we use  
22 to switch between workspaces; that's a tool. The user  
23 uses that to effect the switch between it, but it could  
24 also be other icons and other windows on the system as  
25 well.

1 A. I am.

2 Q. Let's take a look at Claim 8. It begins, an  
3 article of manufacture for use in a system that includes  
4 a display.

5 We've discussed this previously, haven't  
6 we?

7 A. We have.

8 Q. Is it your opinion this element of Claim 8 is  
9 met based on our discussions and the testimony you  
10 provided earlier with respect to the '412 patent?

11 A. It is.

12 Q. Now, is there any requirement where the display  
13 needs to be?

14 A. There's no limitation in this claim to that.

15 Q. It just needs to be one display somewhere,  
16 correct?

17 A. It has to be displayed somewhere. It could be  
18 right next to the computer, or it could be remotely  
19 connected.

20 Q. In your opinion, do the Defendants' products  
21 contain this element of the claim?

22 A. They do.

23 Q. The claim goes on to include a process for  
24 controlling the display. Do you see that, sir?

25 A. Yes.

1 Q. Sir, does the source code that you reviewed and  
2 we reviewed with respect to Claim 1 also apply to the  
3 operation of the Defendants' products with respect to  
4 Claim 21?

5 A. They do.

6 Q. In your opinion, do the Defendants' products  
7 contain this element of Claim 21?

8 A. They do.

9 Q. Based upon your analysis of the Defendants'  
10 products and their source code, is it your opinion that  
11 the Defendants' products infringe or those using the  
12 Defendants' products infringe Claim 21 of the '412  
13 patent?

14 A. It is.

15 Q. Let's turn to Plaintiffs' Exhibit 2 in  
16 evidence, which is U.S. Patent No. 5,394,521. This is  
17 another of Dr. Henderson's patents that we looked at  
18 yesterday, correct?

19 A. That is correct.

20 Q. You're familiar with the '521 patent?

21 A. I am.

22 Q. And you're aware that the Defendants' products  
23 are accused of infringing Claim 8, true?

24 A. That is correct.

25 Q. Are you familiar with Claim 8?

1 Q. What are we talking about here?

2 A. A processor. This is the -- a computer system  
3 itself is the microprocessor that is in the computer  
4 system. This processor is connected to the display and  
5 can control what gets presented on the display.

6 Q. And based upon your experience, your review of  
7 the Defendants' websites and their products and their  
8 documents and their testimony, the Defendants instructed  
9 users how to use hardware with their software, correct?

10 A. That is correct. They include with the -- with  
11 their description of the hardware a support. They also  
12 include which processors they're supporting for their  
13 system.

14 Q. In your opinion, do the Defendants' products  
15 include this element of the claim?

16 A. They do.

17 Q. The claim continues, and display object data,  
18 the processor can use to generate first and second  
19 display objects the processor can present on the  
20 display.

21 What is this, sir?

22 A. The display object data is the data  
23 associated -- provided by the Defendants' software, so  
24 that data then is being used by the processor. So the  
25 software running on the processor with the data

1 associated with that is used to generate first and  
2 second display objects. Again, those are the icons or  
3 windows that are then presented on the computer screen  
4 itself.

5 Q. So in your opinion, do the Defendants' products  
6 contain this element of Claim 8 of the '521 patent?

7 A. They do.

8 Q. The claim continues on, the article comprising  
9 a memory that can be accessed by the processor.

10 What would this be?

11 A. This could be a number of memory devices, RAM,  
12 hard disk, CD, those kinds of things.

13 Q. Could this be the CD that the Defendants send  
14 to their users so they can download the software?

15 A. It could be.

16 Q. It could also be the CD that a user would burn  
17 onto a disk?

18 A. That would be another way.

19 Q. In your opinion, do the Defendants' products  
20 contain this element of Claim 8 of the '521 patent?

21 A. They do.

22 Q. The claim next states, in data stored in the  
23 memory, the data comprises workspace data the processor  
24 can use to present first and second workspaces on the  
25 display. Now, the processor uses the workspace data

1 workspaces where each workspace has a series of display  
2 objects in it.

3 And each of these display objects are seen  
4 as a distinct, coherent set of display features like  
5 icons. And the display objects have a spatial position  
6 relative to each other, and that as you switch between  
7 workspaces, those positions are consistent.

8 Q. And then finally, the claim reads, the  
9 processor presenting the first display object in the  
10 first workspace's set of display objects; the processor  
11 presenting the second display object in the second  
12 workspace's set of display objects; the first and second  
13 display objects being perceptible as the same tool.

14 What does this describe, sir?

15 A. So here we're looking at a series of workspaces  
16 and display objects. The key thing here is that the  
17 first and second display objects are perceptible as the  
18 same tool. So what we're talking about here is, in one  
19 workspace, you see some display object, and in the  
20 second workspace, you would see something you would  
21 identify as being the same or perceive as being the same  
22 tool. And so that, again, could be icons, windows, and  
23 other objects that we talked about earlier.

24 Q. And in your opinion, do the Defendants'  
25 products contain this element of Claim 8?

1 it's provided, correct?

2 A. That is correct.

3 Q. Why does it do that?

4 A. So the data, again, is the data that is  
5 associated with the display objects, the workspaces, and  
6 that organization of information. And the processor is  
7 executing the software, and that software is using that  
8 data to present the first and second workspaces on the  
9 display as well as the display objects inside those  
10 workspaces.

11 Q. In your opinion, do the Defendants' products  
12 contain this element of the claim?

13 A. They do.

14 Q. And the claim continues, each of the first and  
15 second workspaces including a respective set of display  
16 objects, each of the display objects being perceptible  
17 as a distinct, coherent set of display features; the  
18 display objects of each respective set being perceptible  
19 as having spatial positions relative to each other when  
20 the respective workspace is presented on the display.

21 Now, we discussed this previously,  
22 correct?

23 A. That's correct. So the -- this is really the  
24 same thing we've sort of been looking at before, which  
25 is we have a first and a second workspace, so multiple

1 A. They do.

2 Q. And based upon your analysis of the Defendants'  
3 products in their source code, Dr. Zimmerman, is it your  
4 opinion that the Defendants' products infringe Claim 8  
5 of the '521 patent?

6 A. It is.

7 Q. Let's turn to Plaintiffs' Exhibit 3 in  
8 evidence. This is U.S. Patent No. 5,533,183, the third  
9 of Dr. Henderson's patents.

10 Are you familiar with the '183 patent,  
11 sir?

12 A. I am.

13 Q. You understand that Claim 1 is accused of  
14 infringement in this case?

15 A. I do.

16 Q. Let's take a look at Claim 1. It begins, a  
17 method of operating a system that includes a display.

18 And again, we talked about display with  
19 the other three asserted claims, correct?

20 A. That is correct.

21 Q. Based upon those discussions, your review of  
22 that testimony, the Defendants' products infringe this  
23 element of Claim 1 of the '183 patent?

24 A. It is.

25 Q. And that's because those systems running the

1 Defendants' products need a display, correct?  
 2 A. That is correct.  
 3 Q. At least one, correct?  
 4 A. That is correct.  
 5 Q. Claim 1 continues, a user input device for  
 6 receiving signals from a user.  
 7 What's this, sir?  
 8 A. Again, this input device would be the mouse or  
 9 keyboard that would be attached to the computer system  
 10 running the Defendants' software.  
 11 Q. And that's as we've discussed earlier here  
 12 today?  
 13 A. It is.  
 14 Q. And based upon that testimony, is your opinion  
 15 that this element of Claim 1 of the '183 patent is met  
 16 by the Defendants?  
 17 A. It is.  
 18 Q. The next element reads, and a data processor  
 19 that receives input signals from the user input device  
 20 and provides output signals to the display.  
 21 What are we talking about here, sir?  
 22 A. We were talking about the data processor being  
 23 the microprocessor on the computer system itself, and we  
 24 have both input signals that are coming from the user,  
 25 again, the keyboard and mouse, as well as output signals

1 first subset of the set of display objects; the display  
 2 objects of the first subset being perceptible as having  
 3 spatial positions relative to each other when presented  
 4 by the display; the first subset including a first  
 5 display object that is perceptible as a tool that  
 6 augments a user's capabilities.  
 7 Did the Defendants' products perform this?  
 8 A. Yes, they did. Again, we have Defendants'  
 9 software that's running and executing on the computer  
 10 processor, is providing the output signal to the display  
 11 and that the output signals include a first workspace  
 12 and a series of display objects associated with that  
 13 workspace and that the -- there would be positions and  
 14 relationships between those, as we've talked about  
 15 before.  
 16 The -- and that one of the display  
 17 objects would be perceived as a tool that is augmenting  
 18 a user's capabilities. So a tool would be something the  
 19 user could use to provide -- perform whatever job they  
 20 wanted to do. So the utilities can include things like  
 21 starting a word processor up or maybe using a clock or a  
 22 calculator.  
 23 Q. And in your opinion, do the Defendants'  
 24 products have this element of Claim 1 of the '183  
 25 patent?

1 though the display. So this is how you get display  
 2 objects or see things on the computer display itself.  
 3 Q. And in your opinion, do the Defendants'  
 4 products contain this element of the claim?  
 5 A. They do.  
 6 Q. The claim continues with, the output signals  
 7 causing the display to present images that include  
 8 display objects; each of a set of the display objects  
 9 being perceptible as a distinct, coherent set of display  
 10 features.  
 11 How do the Defendants' products operate in  
 12 this manner?  
 13 A. The output signals are being provided to the  
 14 display providing the information about the display  
 15 objects themselves, and then each of these display  
 16 objects, as we talked about before, would be perceived  
 17 as a separate icon or window.  
 18 Q. The next -- in your opinion, do the Defendants'  
 19 products contain this element of Claim 1 of the '183  
 20 patent?  
 21 A. They do.  
 22 Q. The next element reads, the method comprising  
 23 operating the data processor to provide first output  
 24 signals to the display; the first output signals causing  
 25 the display to present a first workspace containing a

1 A. They do.  
 2 Q. The next element reads, while the display is  
 3 presenting the first workspace, receiving a switch  
 4 signal sequence from the user input device.  
 5 What do we have here, sir?  
 6 A. Here we're talking about where the user using  
 7 the mouse or keyboard would position that over the icon  
 8 that indicates which workspace they want to switch to,  
 9 and then clicking to indicate they want to signal that  
 10 they want to switch workspaces.  
 11 Q. And in your opinion, do the Defendants'  
 12 products contain this element of the claim?  
 13 A. They do.  
 14 Q. Let's look at the next element. And in  
 15 response to the switch signal sequence, operating the  
 16 data processor to provide second output signals to the  
 17 display; the second output signals causing the display  
 18 to cease presenting the first workspace and begin to  
 19 present a second workspace containing a second subset of  
 20 the set of display objects; the display objects of the  
 21 second subset being perceptible as having spatial  
 22 positions relative to each other when presented by the  
 23 display; the second subset including a second display  
 24 object that is perceptible as a tool that augments a  
 25 user's capabilities.

