

Page 1

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

CLEAR WITH COMPUTERS, LLC)

DOCKET NO. 6:09cv479

-vs-)

Tyler, Texas
HYUNDAI MOTOR AMERICA, INC. 12:35 p.m.
ET AL) June 13, 2011

TRANSCRIPT OF TRIAL
AFTERNOON SESSION
BEFORE THE HONORABLE LEONARD DAVIS,
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFF:

MR. MARC A. FENSTER
MR. JULES L. KABAT
MR. ALEXANDER C. GIZA
MR. ADAM HOFFMAN
MR. BENJAMIN WANG
RUSS, AUGUST & KABAT
12424 Wilshire Blvd., Ste. 1200
Los Angeles, CA 90025

MR. ANDREW SPANGLER
SPANGLER LAW PC
208 N. Green St., Ste. 300
Longview, TX 75601

COURT REPORTERS:

MS. JUDY WERLINGER
MS. SHEA SLOAN

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Page 3

PROCEEDINGS

(Jury out.)

COURT SECURITY OFFICER: All rise.

THE COURT: Please be seated.

All right. Is there anything before I
bring the jury in?

MR. SCHAERR: Just one thing, Your Honor.

As Mr. McCabe indicated, we don't have an
objection to the procedure that the Court outlined for
polling the jury.

I do just want to determine, because it
wasn't clear to me, when the Court agrees to give the
instruction that we proposed or --

THE COURT: No. I was just -- to me,
your instruction, I think, would be fine for closing
argument, but I want this to be a little more informal
and not quite as where I go in and read something to
them.

So what I propose to say to them, as I
did in another case, go in and thank them for their jury
service; explain to them that they should follow the
instructions that I gave them earlier; the case -- they
haven't even heard the evidence in the case yet.

But the parties at this stage, it would
be helpful to them to just know how you view the case at

Page 2

FOR THE DEFENDANTS:

MR. PETER C. McCABE, III
WINSTON & STRAWN
35 W. Wacker Dr.
Chicago, IL 60601

MR. DOUG R. McSWANE, JR.
POTTER MINTON
P.O. Box 359
Tyler, TX 75710

MR. GENE C. SCHAERR
WINSTON & STRAWN
1700 K Street, NW
Washington, DC 20006

MR. JOHN MOSS
WINSTON & STRAWN
1700 K Street, NW
Washington, DC 20006

MR. JASON S. CHARKOW
WINSTON & STRAWN LLP
200 Park Ave.
New York, NY 10166

Page 4

this point in time, after hearing the opening
statements; and if you had to decide the case, based
just upon what you've heard, would you find for the
Plaintiff, the Defendant, or would you be undecided.

Pass out the ballots, ask them to mark
them, no discussion, and not to reveal to anybody how
they voted on it.

MR. SCHAERR: Thank you.

THE COURT: Any objection to that
procedure?

MR. SCHAERR: We would much prefer that
the Court give the instruction that we propose.

THE COURT: And would you like it given
in open court?

MR. SCHAERR: That would be fine.

THE COURT: All right. I'll do it that
way.

Bring the jury in.

COURT SECURITY OFFICER: All rise for the
jury.

(Jury in.)

THE COURT: Please be seated.

All right, Ladies and Gentlemen of the
Jury, I hope that you enjoyed your lunch, and everybody
got enough to eat.

Page 5

1 This is going to go on probably until
2 around 3:00 o'clock this afternoon, so if anybody needs
3 a break during that time, if you drank too much coffee
4 or whatever, just feel free to raise your hand or catch
5 the Court Security Officer's attention, and we'll take a
6 short break, if anybody needs to. Otherwise, we'll just
7 plan to go straight through, okay?

8 Let me give you my preliminary
9 instructions.

10 Ladies and Gentlemen of the Jury, again,
11 congratulations. You have now been sworn in as the jury
12 who will decide -- hear and decide this case. Your role
13 as the jury is to decide all disputed questions of fact,
14 and it is my role as the Judge to decide all questions
15 of law and procedure.

16 I will provide you with instructions on
17 the rules of law and procedure that you must follow in
18 making your decision. I am now giving you some
19 preliminary instructions; and at the end of the trial, I
20 will give you -- give you more detailed, final
21 instructions on the law and procedure that you must
22 follow in reaching a verdict in this case.

23 Today we are beginning the trial of this
24 case. After I have completed my preliminary
25 instructions, you will then hear the attorneys' opening

Page 6

1 statements. An opening statement is an overview of what
2 each side expects the evidence to show; but, remember,
3 what the attorneys say is not in and of itself evidence.

4 It is intended as a roadmap to help you
5 understand the evidence as you hear it during the course
6 of the trial.

7 After opening statements, beginning
8 tomorrow, the Plaintiff will present its evidence. Then
9 the Defendant will present its evidence, and finally,
10 the Plaintiff will present any rebuttal evidence.

11 Once all of the evidence is in, I will
12 then give you my final jury instructions, after which
13 both sides will present their closing arguments. And
14 then finally, you will retire to the jury room to
15 conduct your deliberations and reach a verdict. That
16 will probably happen on Friday.

17 Now, during the course of the trial, you
18 should keep an open mind until you've heard all of the
19 evidence, my final instructions, and the attorneys'
20 closing arguments.

21 Be sure to pay close attention to all of
22 the testimony and evidence. To help you, you may take
23 notes during the trial, if you wish.

24 If we could pass out the juror notebooks,
25 please.

Page 7

1 A juror notebook is being provided to you
2 for your convenience. When you get this, the thing I
3 would ask you to do first is slide that cover sheet out
4 that's under the clear plastic, and write your name in
5 the upper right-hand corner of the notebook.

6 That will allow you to -- there's a pen
7 inside the notebook; should be one in the pocket. If
8 you will do that, you will identify that as being your
9 notebook. You will turn your notebook in each day, and
10 it will then be returned to you the following day.

11 Everything you write in it will be
12 confidential, and it will be shredded at the end of the
13 case.

14 Now, you do not have to take notes; but
15 if you decide to take notes, be sure you don't get so
16 involved in your note-taking that you become distracted
17 and miss part of the testimony.

18 Until this trial is over, do not discuss
19 this case with anyone, and do not permit anyone to
20 discuss this case in your presence. This includes your
21 family, friends, and even your fellow jurors. The very
22 first time you should ever discuss this case is at the
23 end of the case when you and your fellow jurors retire
24 to the jury room to begin your actual deliberations on
25 your verdict.

Page 8

1 If anyone should attempt to discuss this
2 case with you or to approach you concerning this case
3 during the trial, you should not communicate with them
4 and you should notify me immediately through my Court
5 staff. I don't anticipate that will happen.

6 During this trial, you should hold
7 yourself completely apart from the people involved in
8 the case; the parties, the witnesses, the attorneys, and
9 the persons associated with them. It is important not
10 only that you be fair and impartial, but also that you
11 appear to be fair and impartial. And that is why you
12 should not have any contact with any of them.

13 Also, if any of you happen to have a
14 social networking internet site or tool, such as
15 Facebook, MySpace, or Twitter, you should not discuss,
16 mention, or post updates in any manner about this trial
17 or this case during the course of the trial.

18 Likewise, do not send or receive text
19 messages about this case.

20 Furthermore, don't make any independent
21 investigation of any fact or matter in this case. Do
22 not learn anything about the case from any other outside
23 source. Do not watch TV or read the newspaper about
24 this case.

25 I don't anticipate that anything will be

Page 9

1 there, but if you should open the newspaper and there is
2 something, just flip to the next page. Same thing on
3 TV; just flip to the next channel.

4 And the reason for these instructions are
5 very important. You are to decide this case based on
6 the evidence that you hear in court that's legally
7 admissible, what you hear from the witness stand by way
8 of oral testimony of witnesses and such exhibits that I
9 admit into evidence.

10 Do not use the internet or Google in an
11 attempt to find out more information about the case, the
12 parties, or the attorneys in the case. For example, if
13 you have a home computer, during the trial of this case,
14 don't go home and get on your home computer and start
15 trying to figure things out.

16 Again, you are to be guided only by the
17 evidence in this case and only by way of what you see
18 and hear in this courtroom and not anything else. And
19 that's very important, because anything you might get
20 from another source, it wouldn't be evidence in this
21 case. It might not even be admissible. But even if it
22 would have been admissible, both sides are entitled to
23 question that evidence and to question the witness.

24 So you need to decide the case solely on
25 the evidence that you hear here in this courtroom and

Page 10

1 not from any other place.

2 Now, with regard to the parties and the
3 nature of this case.

4 As I said earlier, this is a patent case.
5 Clear with Computers alleges that Hyundai Motor America
6 infringes its patent and that it is entitled to damages
7 for such infringement.

8 Hyundai Motor America denies such
9 infringement and damages and alleges that the patent is
10 invalid. Generally, there are three questions you will
11 be called upon to answer at the end of the case.

12 No. 1: Is there infringement?

13 No. 2: Is the patent valid?

14 And, No. 3, if it is not invalid and if
15 it is infringed, what are the damages?

16 This case involves one U.S. patent
17 identified by its patent number as U.S. Patent No.
18 7,606,739, frequently referred to by its last three
19 digits, the '739 patent. For your convenience, a copy
20 of the patent has been included in your juror notebook.

21 If you'll flip over to where it says '739
22 patent, you will see the patent included in your
23 notebook.

24 Up at the top, it says United States
25 patent. Over on the right, it says patent number, U.S.

Page 11

1 7,606,739 B1. I will have more to say about the
2 specific patent in a little bit, and I will walk through
3 it with you and help explain it to you in a few moments.

4 But let me just say that this '739 patent
5 may also be referred to as the patent-in-suit; in other
6 words, the patent that's involved in this lawsuit, or
7 the asserted patent, the patent that is asserted in this
8 case.

9 The patent generally relates to an
10 electronic system for creating customized product
11 proposals. You will hear more about the technology
12 during the opening statements.

13 Clear with Computers contends that
14 Hyundai Motor America is infringing the patent-in-suit
15 through its website, www.hyundaiusa.com. Hyundai Motor
16 America denies that it infringes the patent-in-suit and
17 contends that the asserted claims of the patent-in-suit
18 are invalid.

19 Invalidity is a defense to infringement.

20 Now let me visit with you about the
21 patent system in general.

22 You saw a video earlier today that gave
23 you a good overview of the U.S. patent system and how it
24 works. The United States Constitution empowers our
25 Congress to enact patent laws and issue patents to

Page 12

1 protect inventions.

2 The purpose of the patent system is to
3 help advance science and technology. The patent system
4 achieves its purpose by granting to the owner of a
5 patent the right, for the life of the patent, to exclude
6 any other person or corporation from making, using,
7 offering for sell, or selling anywhere in the United
8 States the invention covered by the patent.

9 A patent has a life for a limited amount
10 of time, which for the patent involved in this case has
11 not yet ended. However, once a patent does expire, then
12 the invention becomes part of what we call the public
13 domain, which means that anyone is free to use it, and
14 the patent owner may no longer exclude anyone from
15 making use of the invention claimed in the patent.

16 However, during the term of the patent,
17 if another person or corporation, without the patent
18 owner's permission, makes, uses, sells, or offers to
19 sell something that is covered by the claims of the
20 patent, then that person or entity is said to infringe
21 the patent.

22 The patent owner may enforce a patent
23 against those persons or companies believed to be
24 infringers in a lawsuit in federal court just as in this
25 case.

Page 13

1 Everyone, however, has the right to use
2 existing acknowledges and principles. A patent cannot
3 remove from the public the ability to use what was known
4 or obvious before the invention was made or patent
5 protection sought. Thus, to be entitled to patent
6 protection, an invention must be new, useful, and
7 non-obvious.

8 To obtain a patent, the applicant must
9 file a patent application with the United States Patent
10 Office. After the applicant files a patent application,
11 a Patent Examiner examines the patent application to see
12 whether the requirements in the patent application meet
13 the requirements of the patent laws for a patentable
14 invention.

15 If the Patent Examiner concludes that the
16 legal requirements for a patent have all been satisfied,
17 then he or she allows the claim, and the application
18 issues as a United States patent. This process from the
19 filing of the patent application to the issuance of the
20 patent is called patent prosecution.

21 It's the prosecution of the patent from
22 the filing of the application through the issuance of
23 the patent.

24 The records that are filed during that
25 period relating to the patent prosecution is referred to

Page 14

1 as the prosecution history or the file history for that
2 patent. You may hear some of the experts testifying
3 about this during the trial.

4 Now, when a patent is granted by the
5 United States Patent & Trademark Office, that patent
6 carries with it the presumption that the patent is
7 valid. From the issuance of a patent, it is presumed
8 that its subject matter is new, useful, and constitutes
9 an advance that was not, at the time the invention was
10 made, obvious to one of ordinary skill in the art.

11 However, this presumption of validity may
12 be rebutted at trial, and you, the finder of fact, may
13 find the patent to be invalid.

14 Now let me visit with you about the parts
15 of the patent. You've been provided with copies of the
16 patent in your notebook. If you will look with me at
17 the first page of the patent.

18 If you will look at the cover, it
19 provides identifying information, such as the date the
20 patent -- date of the patent, October 20, 2009; the
21 number in the upper right-hand corner. Then if you look
22 over in the left-hand column, you see the title,
23 Electronic Proposal Preparation System. You see the
24 inventor's name, Jerome Johnson. You see the assignee,
25 which is Clear with Computers.

Page 15

1 And then you see the application number,
2 the date that the application was filed, May 8th, 2000.
3 And then you see related U.S. application data. That
4 would be other patents that are related to that. Then
5 you see references cited.

6 This is referred to as prior art that was
7 considered by the Patent Office. And you will see that
8 continues on over to the next page.

9 However, in the right-hand column, you
10 will see a paragraph titled, Abstract, which is a brief
11 summary of the invention, and it says an electronic
12 system for creating customized product proposals stores
13 a plurality of pictures and text segments to be used as
14 building blocks in creating the proposal. And then it
15 goes on in some detail.

16 If you'll notice on that first page --
17 well, flip over, if you will, to the -- two pages over,
18 you will see Figure 1A. These are drawings, the next
19 several pages.

20 You can flip over probably 10, 15 pages,
21 all the way through Figure No. 42, all the way over to
22 Sheet 43 of 43 at the top. These are all various
23 drawings that relate to the patent. You will hear this
24 referred to as the figures of the patent or the drawings
25 of the patent.

Page 16

1 Then if you will flip over to the page
2 after Figure 42, you will see some printed pages. The
3 rest of the pages are what's referred to as the patent
4 specification. You will notice that there are two
5 columns, a column on the left and column on the right.

6 The left-hand column has a No. 1 at the
7 top. The next column has a No. 2.

8 On the next page, they continue Column 3,
9 Column 4.

10 Now, if you look there at the page that
11 has Column 1 and 2 on it, do you see the little numbers
12 running down the middle between the two columns where it
13 says 5, 10, 15, 20? Everybody see those?

14 All right. What this is, it's a method
15 of citing or identifying a particular passage from the
16 specification. So, for example, if I said look at
17 Column 1, Line 13, you could find Column 1 at the top,
18 come down a little over halfway between the 10 and the
19 15 to Line 13, and you would see that that says field of
20 the invention, okay?

21 Everybody follow that?

22 Then you could come on down to Line 23,
23 and that's where the background and summary of the
24 invention is. So you may hear a witness testify
25 something about the patent, and they may make reference

to Column such-and-such, Line such-and-such.

If you want to follow along, you can flip over in this and go exactly to where they are reading from in the patent.

Now let me just go through the various sections of the specification. The first paragraph there in Column 1 has the field of the invention, which, again, says something to the effect that the present invention relates to a system for creating customized proposal -- a customized proposal by linking together product pictures, environment pictures showing the environments in which the product may be used and text related to the product.

The next section is background and summary of the invention, and it starts off -- it says: Many products, such as cars, are illustrated to customers by preprinted brochures. And it goes through a rather lengthy discussion about the background and summary of the invention.

Then over at the bottom of Column 2, you see a brief description of the drawings, and there it goes there and lists each of the 42 drawings and references what it relates to.

Then on the next page in Column 4, you see a paragraph entitled detailed description of the

preferred embodiment. Preferred embodiment is a way of making the invention. And then you see some subparagraphs, introduction on the next page, overview.

And this goes on, Column 7 and 8, 9, 10; 11, 12, 13, 14, 15, 16, all the way over through -- near the end of the patent all the way over to Column 39, which is the next to the last page of the patent.

You will notice at Column 39, Line 18 the statement, what is claimed is, colon, and then No. 1 and a long paragraph; No. 2; No. 3; No. 4. That goes all the way over through the next page, through Claim No. 27 at the bottom of Column 42. These are the claims of the patent, and they are a very important part of patent law.

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

The claims of a patent serve two purposes. First, they set the boundaries set out -- first they set out the boundaries of the invention covered by the patent.

Second, they provide notice to the public of those boundaries. The claims of the patent are what

are infringed when patent infringement occurs, because the claims define what the patent is.

Thus, when a product or method is accused of infringing a patent, the patent claims are compared to the accused product or method to determine whether or not there has been infringement.

The claims are also at issue when the validity of a patent is changed -- is challenged. In reaching your determination with respect to infringement and validity, you must consider each claim separately.

Patent claims may exist in two forms referred to as independent claims and dependent claims. An independent claim does not refer to any other claim of the patent. In other words, it is not necessary to look at any other claim to determine what an independent claim covers.

Claim 1, for example, is an independent claim. And you will notice Claim 1 is rather long. It has subparagraphs, which are called different elements of the claim. And I'm not going to go through all of those with you, but you will hear testimony about those.

And those are the elements of the claim. That's an independent claim. Everything you need to know about Claim 1 is in Claim 1.

Now, that's an independent claim.

A dependent claim is a claim that is said to depend on at least one other claim in the patent. A dependent claim includes each of the limitations of the other claim or claims to which it refers as well as the additional limitations recited in the dependent claim. Therefore, to determine what a dependent claim covers, it is necessary to look at both the dependent claim and the claim or claims to which it refers.

For example, if you look at Claim 7 -- that's over at the top of Column 40 -- this is a dependent claim. And what makes it a dependent claim is, it refers back to Claim 1. Claim 7 says the computer program product of Claim 1. So that means everything in Claim 1 has to be there for there to be infringement of Claim 7.

And then it says further comprising, and then it lists additional elements that must be present.

So for an independent claim, you look just at the independent claim to see if all those elements have been satisfied.

On a dependent claim, you look at the dependent claim elements, as well as the claims of the other claim to which it refers, to see if all of those elements are present.

For example, Claim 7 of the '739 patent

Page 21

1 is a dependent claim, and I've been through that.
2 So that's basically the patent. All of these words
3 describe the invention and the claims define the
4 invention. However, sometimes there's a disagreement
5 between the parties as to what certain words or terms in
6 these claims mean.

7 When this happens, the parties ask the
8 Court to interpret these terms in light of the patent as
9 a whole. This is to help resolve their disagreement and
10 to give the jury guidance in applying the claims to the
11 facts of this case.

12 This happened in this case, and at some
13 time prior to trial, the parties met; they discussed the
14 various terms, whether they could agree on a meaning or
15 whether it's just to be given its plain and ordinary
16 meaning, and if they couldn't agree -- if one side says,
17 well, I think this term means X and the other side says
18 we think it means Y, then they file papers with me.

19 And we had a hearing many months ago
20 where I considered their arguments as to whether it
21 should mean X or mean Y. And then I will hand down an
22 order that says it means X or it means Y, or I may say
23 it means Z. But in any respect, I define what that term
24 is.

25 And if you'll look at the very front of

Page 22

1 your notebook, in front of the patent, there's a tab
2 entitled Claim Chart. And these are the terms that were
3 submitted to me in various claims for my consideration
4 and decision. And on some of them, I said no
5 construction is necessary. It just receives its plain
6 and ordinary meaning.

7 On others, such as -- if you'll look
8 down, single composite visual output, which is the third
9 one down, there I gave a construction of what that
10 means. And I said it means a single image that includes
11 the selected text and an image of a product in a product
12 environment. So that's the definition that I determined
13 should apply, and I entered in this order.

14 You must use the meanings that I have
15 given whenever you decide the issues of infringement and
16 validity. And you will probably hear the experts
17 testify about, well, Judge Davis in his claim
18 construction opinions said this means thus and so; I've
19 applied that definition, and my conclusions are thus and
20 so.

21 So that's the patent, the claim terms.

22 Next, I want to visit with you about the
23 issues you are going to be deciding. As I mentioned
24 earlier, there are really three questions. The first is
25 one of infringement; does the Defendant infringe the

Page 23

1 patent?

2 The second is invalidity; has Defendant
3 proven that the patent is invalid?

4 And, No. 3 is the question of damages;
5 Plaintiffs have proven -- have the burden of proof on
6 the issue of infringement and damages, the first and
7 third issues. Defendants have the burden of proof on
8 the issue of invalidity. However, there are different
9 burdens of proof you must apply in answering each of
10 these three questions.

11 Now, in any legal action, facts must be
12 proved by a required standard of evidence known as the
13 burden of proof. You've probably heard of these beyond
14 a reasonable doubt standard that applies in criminal
15 cases. This is the very highest standard of proof, and
16 it is not involved in this case. However, there are two
17 other burdens of proof that are.

18 The first is called the preponderance of
19 the evidence standard, and the second is called the
20 clear and convincing evidence standard.

21 The preponderance of the evidence
22 standard means that you must be persuaded that what the
23 party with that burden of proof seeks to prove is more
24 probably true than not true.

25 Put another way, if you put the evidence

Page 24

1 for and against the party who must prove the fact by a
2 preponderance of the evidence, if you put that on
3 opposite sides of a scale, the preponderance of the
4 evidence standard requires that the scale tip at least
5 somewhat toward the party who has that burden of proof.

6 The second burden of proof you're
7 concerned with in this case is the clear and convincing
8 standard of proof. This means that the evidence must
9 produce in your minds a firm belief or conviction as to
10 the matter sought to be established.

11 In other words, if you were to put the
12 evidence for and against the party who must prove the
13 fact on the opposite sides of a scale, the clear and
14 convincing evidence standard requires that the scale tip
15 more heavily toward the party who has the burden of
16 proof.

17 In this case, Clear with Computers has
18 the burden of proving infringement and damages by the
19 preponderance of the evidence standard, while Hyundai
20 Motor America has the burden of proving invalidity by
21 the higher clear and convincing evidence standard.

22 Now, this just about concludes my
23 preliminary remarks. Do not be concerned if you feel a
24 little bit lost at this point. This is not unusual. I
25 will be giving you much more detailed, written final

Page 25

1 instructions at the end of the case that will have all
2 of these instructions in them in much greater detail,
3 accompanied by a verdict form that will ask you some
4 very simple questions dealing with the three issues of
5 infringement, invalidity, and damages.

6 Now, by the time you get those questions
7 you will have a much greater understanding and
8 confidence in answering them. I'll also add that my
9 instructions to you within the case will be given to you
10 orally, just as they are now; but a written copy of
11 those instructions will also be given to you so you can
12 take them to the jury room with you. So you don't have
13 to remember all of these. These preliminary
14 instructions, again, are to give you an overview of what
15 the law is and what law you will be applying.

16 Finally, let me reassure you as members
17 of the jury that you do not have to be an expert on
18 patent law or the field of the invention. We have some
19 excellent attorneys on both sides of this case who will
20 do an outstanding job of simplifying and explaining all
21 of this to you. And they will each call very capable
22 expert witnesses who will help you to understand the
23 issues and facts of this case.

24 I've tried many of these patent cases,
25 and almost always on the first day of trial, just like

Page 26

1 the eight of you, I feel like I'm looking at a deer in
2 the headlights sometimes as you're going, what in the
3 world have we gotten ourselves into?

4 But I promise you, by the end of the
5 case -- I always visit with the juries afterwards, and I
6 always ask them this question: Now that you've heard
7 the attorneys' explanations, you've heard the expert
8 witnesses' explanations, do you feel like you understood
9 this subject matter well enough to make an informed
10 decision as to your verdict?

11 And invariably to this day, every jury
12 has said that they did. So it's going to be a learning
13 process. I think you will enjoy it. I think you'll
14 find it interesting.

15 I will tell you it's going to be hard
16 work. We're going to spend some long days here, and
17 you're going to get tired of sitting there. You're
18 going to have a little trouble concentrating sometimes.
19 And you just need to kind of bring yourself back and
20 refocus.

21 Sometimes the testimony gets a little
22 long and a little tedious, but the attorneys are very
23 good in boiling it down to what's really important and
24 trying to simplify it and shorten it.

25 I have given both sides time limits for

Page 27

1 the case, which further helps them boil it down and
2 finish on schedule.

3 So I hope that you will enjoy your
4 service on the jury. If at any time either during these
5 opening statements or during the trial, you feel like
6 you need a break, all you have to do is raise your hand
7 and we can take a five- or ten-minute break if someone
8 needs to use the restroom, or just feels like they need
9 to clear their head.

10 I try to take one break in the morning
11 and one in the afternoon and then a break for lunch, and
12 the reason is we have so many hours of testimony we have
13 to get in this week; and if we take a break every hour
14 for 10 or 15 minutes, then we're going over into Monday
15 or next week.

16 So it will seem long at times, but please
17 don't be uncomfortable. Or if you really need a break,
18 please let us know and we'll take a break.

19 With that said, those are my preliminary
20 instructions.

21 Is there anyone that needs a break before
22 closing arguments? If you do, just raise your hand and
23 we'll take a 5- or 10-minute break.

24 It's going to go on for about two hours,
25 so we'll probably finish about 3:15. When we're through

Page 28

1 with that, though, we'll be done for the day. We'll
2 quit a little early today.

3 Is everybody good to go?

4 Okay. If you need a break halfway
5 through or something, just let me know.

6 All right. The Court will recognize
7 counsel for the Plaintiff, CWC, for the purpose of
8 opening statement.

9 MR. McSWANE: Your Honor, with the
10 Court's permission, we would invoke the Rule. We
11 understand it does not include experts.

12 THE COURT: All right. We will do that
13 at the beginning of evidence tomorrow.

14 MR. McSWANE: Thank you, Your Honor.

15 THE COURT: All right. You may proceed.

16 MR. FENSTER: Thank you, Your Honor.

17 THE COURT: You may proceed.

18 MR. FENSTER: Thank you, Your Honor. And
19 may it please the Court.

20 Good afternoon, Ladies and Gentlemen.

21 As you heard, my name is Marc Fenster.

22 And my colleague, Jules Kabat, and I have the privilege
23 of representing the Plaintiff in this case, a Texas
24 company named Clear with Computers. I'll sometimes
25 refer to it as CWC, Clear with Computers, CWC.

Page 29

1 The principals of CWC are Audrey
2 Spangenberg and Erich Spangenberg. And they are both
3 here today from their home in Dallas. And on behalf of
4 CWC and the Spangenbergs, I wish to thank you sincerely
5 for your time in serving on this jury.

6 Ladies and Gentlemen, Erich and Audrey
7 Spangenberg are here today, because Hyundai Motor
8 America, the Defendant in this case, refuses to
9 recognize a patent that is owned by CWC. And they are
10 using CWC's patent without CWC's permission.

11 Patents, Ladies and Gentlemen, are
12 fundamental, basic property rights. And just like
13 people can't come and trespass on your land without your
14 permission, well, people are not allowed to use other
15 people's patents without their permission.

16 Enforcing patent rights means getting --
17 people can either stop using the patented invention or
18 pay to use that invention. And we are here today,
19 because Hyundai won't stop using CWC's patent, and it
20 refuses to pay for it.

21 Now, this case is about two American
22 success stories and how those stories came together in
23 an interesting way.

24 The first success story is about a
25 remarkable inventor named Jerry Johnson, who you will

Page 31

1 from our first story, but his company struggled and
2 needed help.

3 The Spangenbergs came to believe in Jerry
4 Johnson's patents, and they bought them, and ultimately,
5 they bought the whole company.

6 This is the '739 patent (indicates). You
7 have a copy of it in your jurors' notebooks. This is
8 what you'll have in the jury room when you go back. It
9 is Plaintiff's Exhibit 1, and I encourage you to take a
10 look at it. This one has a nice ribbon on it. This is
11 the one that was actually issued by the United States
12 Patent Office.

13 I'm going to call it either the Johnson
14 patent, after Jerry Johnson, the inventor, or CWC's,
15 because CWC owns it.

16 Now, patents are fundamental to America.
17 They are fundamental because they encourage inventing.
18 You own a patent and you own something important.

19 When drafting the Constitution, the
20 founding fathers recognized that American innovation was
21 key to America's success in keeping it strong. And the
22 best way to motivate inventors was to give them rights
23 to their inventions.

24 Thomas Jefferson, our third president,
25 helped create the Patent Office, and it was Thomas

Page 30

1 hear from, who started as a tractor salesman in
2 Minnesota in the late 1980s. Frustrated with the old
3 ways of selling tractors, he invented a new way of doing
4 business that revolutionized sales in marketing.

5 He was the first to invent this new way
6 of doing business; and for that, our United States
7 government issued him a patent.

8 Now, the second American success story
9 that I want to tell you about is that of Erich and
10 Audrey Spangenberg. Audrey and Erich both came from
11 humble beginnings. Audrey grew up on a farm in a small
12 town in Iowa, and Erich grew up in Buffalo, New York.
13 They both worked hard through school. And then they
14 worked hard to learn about business.

15 And they took what they learned, and then
16 they started building companies of their own. It
17 started, you will hear, from Audrey with a small
18 property management company with only 25 apartment units
19 under management, which she has now grown into a
20 thriving company managing over a thousand units.

21 As they built their business, they kept
22 growing and investing their profits all along the way,
23 buying and helping other companies, and they kept
24 growing. And later, they were in the position to help
25 Jerry Johnson's company. Jerry Johnson was the inventor

Page 32

1 Jefferson himself who reviewed the first patent
2 application and issued the first patent, which was
3 signed by George Washington personally.

4 So the founding fathers wrote the patent
5 system right into the Constitution, into the very first
6 part of the Constitution. And Article I, Section 8 of
7 the Constitution gives Congress the power to create the
8 patent system.

9 It says: To promote the progress of
10 science and useful arts by securing, for limited times
11 to inventors, the exclusive rights to their discoveries.

12 The exclusive rights to their
13 discoveries, that's what a patent is. It is the right
14 to exclude others or to keep others from using an
15 invention.

16 And it means that people aren't allowed
17 to use your invention without your permission and
18 without paying for it. Like a deed to a house or a plot
19 of land, a patent is like a deed to the invention. It's
20 issued by the United States government through the
21 Patent Office. And just like you can buy a house, like
22 a piece of land, and when you do, you become the owner
23 and have the right to control who comes on your
24 property, well, the same is true for patents.

25 A patent owner can sell the patent, and

Page 33

1 you can buy a patent. And when you do, you then have
2 the right to control who gets to use your invention and
3 to charge for the right to use that invention.

4 The evidence will show that lots of big
5 companies, like IBM, Texas Instruments, Microsoft,
6 Qualcomm buy and sell patents all the time; and some of
7 those companies make hundreds of millions of dollars
8 from enforcing and licensing the patents they bought.

9 Well, here, Ladies and Gentlemen, CWC
10 owns the patent that we're talking about, and so CWC has
11 the legal right, the lawful right to enforce those
12 rights against trespassers.

13 Fundamentally, this case is simply about
14 property rights. Basic, fundamental, constitutional
15 property rights. It is about the Defendant, Hyundai,
16 coming in and taking and trespassing on CWC's rights
17 without its permission. It is trespass; it's trespass
18 plain and simple.

19 This case is also about reminding Hyundai
20 that even big corporations have to live by the simple,
21 fundamental rules that most of us had to learn by
22 kindergarten. Don't take what doesn't belong to you.
23 Be responsible for your own actions. If you did
24 something, admit it and face the consequences. Don't
25 make excuses or try to pass the blame. This is

Page 34

1 fundamental.

2 Now, this is an overview of what we are
3 going to cover today. So first, when Jerry Johnson
4 testifies for you, he will tell you about his invention,
5 his company, and how it came to know the Spangenberg.

6 Then Audrey Spangenberg will testify for
7 you, and she is the owner of CWC. Audrey will tell you
8 about how CWC came to own the Johnson patent and how
9 that patent and CWC fit into the Spangenberg's broader
10 businesses.

11 I think you will be impressed by Audrey's
12 story and by Erich's, too. Erich also started from
13 humble beginnings. His dad was a shop teacher and his
14 mom was a telephone switchboard operator. Remember the
15 old switchboards?

16 Erich worked his way through school and
17 learned business, and it was Erich who first learned
18 about the Johnson patents. And it was Erich who led the
19 effort to enforce CWC's patent rights.

20 Erich Spangenberg has a lot, and I mean a
21 lot of experience negotiating with companies who want to
22 use patent rights. It is what we call patent licensing.
23 You will hear about it. Patent licensing just means
24 negotiating a deal where the company pays for permission
25 to use the patent that it wants to use.

Page 35

1 Erich has more patent licensing
2 experience by a mile than any other witness that you'll
3 hear in this entire case, including the experts.

4 The Spangenberg's will talk to you about
5 the tremendous risk they took in acquiring Jerry's
6 company and the patent and how hard and expensive it's
7 been to protect the patent.

8 And then we're going to get into the
9 technical part of the case describing the patent and
10 infringement.

11 Dr. Rhyne, Dr. Vernon Thomas Rhyne, is an
12 expert in computer science. He is a really impressive
13 guy, and in addition to his technical expertise, Dr.
14 Rhyne has meaningful, real-world patent experience.

15 It's something I wanted to point out to
16 you, because he's the only expert that you will hear
17 from who does. He is a registered patent agent. Just
18 like I have to be licensed and registered to practice in
19 this Court before Judge Davis and before y'all,
20 Dr. Rhyne is licensed to practice before the United
21 States Patent Office. He has real-world experience.

22 Dr. Rhyne will discuss his analysis of
23 CWC's patent, his analysis of Hyundai's website, and the
24 computer code for that website, and he will show you how
25 Hyundai is using CWC's patent.

Page 36

1 And finally, you will hear about damages,
2 which are what Hyundai should pay to CWC for infringing
3 CWC's patent. In his opening statement, my colleague,
4 Jules Kabat, will tell you more about that part of the
5 case.

6 So now let me tell you a little bit about
7 Mr. Johnson's invention.

8 Now, remember, back in the late 1980s,
9 Jerry Johnson, the inventor, was a tractor salesman in
10 Minnesota. The evidence will show that tractors are
11 complex, big purchases for farmers, and that Jerry would
12 have to travel around to visit the farmers to try to
13 sell tractors.

14 There were lots of tractors, lots of
15 implements, lots of attachments. And Jerry saw it as
16 his job to try to filter through a huge amount of
17 information, all the information about all the tractors
18 and all the pricing and all of that and narrow it down
19 for the customer to what the customer was actually
20 interested in.

21 Now that was a difficult task. The
22 evidence will show that Jerry literally could not carry
23 all the books and binders that had all the information
24 that he might need on a sales call. He had a few
25 preprinted glossy brochures, but they were limited in

1 what they could show. They were not effective sales
2 tools.

3 Frustrated with the old-fashioned way of
4 selling, he thought he should use technology to help
5 him. Jerry realized when it came to sales, the customer
6 wants to see the product that's of interest to them in a
7 setting, an environment, that will appeal to them with
8 words, text, that describe the product that likely
9 interests them.

10 So before -- technical difficulties on
11 the first day.

12 So before anyone else, Jerry figured out
13 how to use a computer system to automatically --
14 automatically take information about what the customer
15 wanted and to filter through all the information to put
16 together a proposal that was customized or appealing to
17 just what the customer wanted to see.

18 So how did he get there?

19 First, he broke it down. He figured out
20 that brochures and proposals -- that's information to be
21 conveyed to a user -- needed pictures. You've got to
22 have pictures of the product that you're trying to sell.

23 So you need pictures of the products, and
24 then you need pictures of the environment or setting in
25 which the product might be used. The environment for a

1 tractor might be a farm. The environment for a hybrid
2 vehicle might be a background with lots of green, so it
3 will refer to those that are environmentally friendly.

4 And if someone was interested in a sport
5 utility vehicle, the environment might be a beautiful
6 mountain lake. The environment is the setting where the
7 product might be used or look best to inspire someone,
8 to engage someone, to make a connection, to try to get
9 them to see themselves with the product, to want the
10 product, to buy the product.

11 The evidence is going to show you, Ladies
12 and Gentlemen, that it is no accident, the setting and
13 environment that Hyundai uses when it shows its cars on
14 its website.

15 So besides product pictures and
16 environment pictures, the proposals also needed text,
17 words describing the product specifications and
18 features. The patent describes these product images,
19 environment images, and text as building blocks of a
20 proposal.

21 So the patent in the abstract says: An
22 electronic system for creating customized product
23 proposals, stores a plurality of pictures, and text
24 segments to be used as building blocks in creating the
25 proposal.

1 So first, he created a database. That's
2 shown on the right. A database to hold all the pictures
3 and all of the text, to put all the building blocks in
4 one place.

5 And then -- then he created a selection
6 device, a selection device to receive the information
7 about what the customer was interested in, answers to
8 questions, then to think about it and then to
9 automatically go in here and select the right pictures
10 and the right text to give the customer what they want,
11 and then to present it in a useful way.

12 So the selection device receives
13 information about what the customer was interested in,
14 and it goes out and it automatically selects from the
15 database the images and text and it populates the
16 proposal, and it combines them into a proposal that is
17 customized for the user.

18 Now, one of the key things about
19 Mr. Johnson's invention was that it had the ability to
20 create what the patent calls a single composite visual
21 output, a single composite visual output. It's one of
22 the words that's defined on the first page of your jury
23 notebook.

24 It sounds complicated, but Judge Davis
25 will instruct you that a single composite visual output

1 is a single image that includes the selected text and an
2 image of the product in an environment.

3 17, please.

4 Now, this is a figure from the patent,
5 and it shows an example template that will be filled in.

6 Now 15, please.

7 And Mr. Johnson's invention receives
8 answers about what the customer wants in response,
9 automatically selects the product image, environment
10 image, and text -- and then 16 -- integrates them into a
11 single composite visual output.

12 The result -- No. 19, please.

13 The result is a single page, one image
14 with at least three things: A separately selected
15 environment age, a separately selected environment
16 image, and text describing the performance and
17 specifications. All three things has to be on that
18 page, three things automatically selected.

19 Now, the background and summary section
20 of the patent describes the problem that Mr. Johnson was
21 trying to solve and Mr. Johnson's solution.

22 So in the background and selection --
23 again, this is in the patent -- it describes that many
24 products, such as cars, are illustrated to customers by
25 preprinted brochures.

Page 41

1 The generic nature of these preprinted
2 brochures, however, may have a negative impact on the
3 customer's ultimate decision of whether to purchase.

4 Because, traditionally, only one brochure
5 is available for each car, for example, and every
6 potential customer of that car receives the same
7 brochure.

8 That was the problem he was trying to
9 solve. Now is how he -- this is how he solved it. The
10 present invention solves these problems by utilizing a
11 computer-based system to dynamically control --
12 dynamically create customized, printed proposals for
13 potential purchasers of a product.

14 The system queries a customer to
15 determine his or her interest and desired options, and
16 then based on the customer's answers to the queries, the
17 system links the product pictures, the environment
18 pictures, and textual descriptions into a customized
19 proposal. Three things on one image.

20 Now, part of what makes Mr. Johnson's
21 invention so remarkable is when he made it. It was
22 1992. That was 19 years ago. Think about what was
23 happening back in 1992.

24 That was when gasoline only cost \$1.05.
25 That was the year that Ross Perot ran for president.

Page 42

1 The popular senior Cyrus had a single that year. No, it
2 wasn't Miley. That was the year she was born. It was
3 her dad, Billy Ray, with Achy Breaky Heart.

4 And the Cowboys then knew Coach Jimmy
5 Johnson, coached the Cowboys to their first Super Bowl
6 win that year. That's when Johnny Carson left, and that
7 was when people had brick cell phones. Most people
8 didn't have them, but those who did had the big brick
9 cell phones.

10 And significantly, it was before you
11 could buy things on the internet. Amazon didn't exist
12 in 1992. Yahoo! didn't exist. Google, eBay did not
13 exist in 1992. In 1992, you could not go to a
14 car-maker's website and look at a car. You could not go
15 to a bookstore and buy a book back in 1992.

16 So back then it really was amazing that
17 Jerry Johnson came up with a way to use a computer
18 system to generate this customized proposal by
19 automatically selecting these things back in 1992.

20 Now, let me back up a few years to the
21 beginning of Mr. Johnson's company.

22 The evidence will show you that
23 Mr. Johnson founded his company called Firepond in 1983
24 which he led as president for over 15 years.

25 Mr. Johnson developed this technology

Page 43

1 over the course of about a decade, and in 1992, he
2 finished his invention and applied to the United States
3 Patent Office for patent protection.

4 Mr. Johnson's company was successful. It
5 grew at one point to over a thousand employees. They
6 had offices around the world. Their company went
7 public, and at one point, it was valued at over \$3
8 billion, and it was all based on Mr. Johnson's
9 technology and hard work. Pretty impressive.

10 The evidence will show that as
11 Mr. Johnson's company grew, Mr. Johnson eventually left
12 Firepond and new management took over. Unfortunately,
13 the new management did such a poor job that Firepond
14 went through some very bad years later.

15 Now, let me tell you -- tell you about
16 how CWC came to own the patent. This is the part where
17 the Johnson story and the Spangenberg story come
18 together.

19 So after Mr. Johnson testifies, you will
20 hear from Audrey Spangenberg about her background and
21 how she developed into the business woman she is today.
22 You'll hear that she specializes in helping struggling
23 companies become profitable and grow and create jobs.

24 The evidence will show that Firepond came
25 to the Spangenbergs for help -- it was struggling -- and

Page 44

1 that the Spangenberg eventually decided to purchase the
2 Johnson patents that's shown at the top. And this was
3 in 2004.

4 You will hear that CWC spent more than a
5 million dollars and took on debts and other obligations
6 to buy the patents, and the Spangenbergs formed a
7 company to own the patent rights, which is now the
8 Plaintiff, CWC.

9 Later, in 2009, the Spangenbergs bought
10 the rest of Firepond and created a company called FPX
11 continuing the business of Firepond. FPX, continuing
12 that business of Firepond, has an amazing 26-year
13 history, and how these three people came together to
14 save Firepond is a good story that I look forward to
15 telling you over the next few days.

16 The evidence will show you that Audrey
17 Spangenberg invested \$25 million in FPX and Firepond and
18 that she did so during the depths of the recession in
19 2009.

20 Now, the only other people that I know
21 who are making that kind of investment in troubled
22 companies in 2009 was -- well, I guess all of us when
23 our government decided to bail out the banks, but we
24 didn't have the choice, and the Spangenbergs did. The
25 people -- people told Audrey and Erich that they were

Page 45

1 crazy to make that investment.

2 So how is FPX doing today? The evidence
3 will show that since Audrey has taken over as CEO of the
4 company -- she runs the company -- FPX has grown from 40
5 employees to over a hundred. It's a profitable company
6 now, and it's growing like a weed. Not many other
7 companies can say they have had that kind of track
8 record over the past few years.

9 So what did the Spangenberg's do after
10 they bought the patent? Well, you know, when you buy a
11 house, you do inspections to make sure that there aren't
12 any problems you don't know about, termites and bad
13 foundation.

14 Well, when CWC bought it, it was a
15 patent. So just as you would expect, the evidence will
16 show that Audrey and Erich invested millions of dollars
17 evaluating and studying the patent rights that they
18 bought from Firepond. They hired top law firms and
19 experts to evaluate and test those patents, and they
20 confirmed with lawyers and experts that the patent
21 rights were valuable.

22 And sure enough, the evidence will show
23 that as a result of the Spangenberg's investment and
24 efforts to protect the patent, a lot of companies have
25 paid for licenses now to use the CWC patent. A license

Page 46

1 to use the invention means that those companies respect
2 the patent, and they paid for the right to use it.

3 Now, when companies take a license to a
4 patent, it suggests that the patent is valid, because
5 why would companies take licenses to invalid patents?

6 A lot of companies, who respect patent
7 rights, have taken a license to use Mr. Johnson's
8 invention. These companies include car companies that
9 sell cars, like Ford, Chrysler, GM, Honda, Toyota,
10 Nissan, BMW, a lot of cars, and a lot of other great
11 companies, Caterpillar, Kodak, Lowe's, Dell, Sears and
12 on.

13 All these companies wanted to use
14 Mr. Johnson's invention to create customized proposals
15 on their websites, and they paid for the right to do it.
16 The evidence will show that unlike all of those other
17 companies, the Defendant, Hyundai, does not have a
18 license, and they do not have permission to use CWC's
19 patent.

20 So now let's talk about CWC's patent.
21 Ultimately, that's why we're here.

22 So as Judge Davis instructed you, CWC's
23 patent has a priority date of May 5th, 1992. This is
24 important, because when the patent is valid, it must be
25 judged as of May 5th, 1992.

Page 47

1 Whether it was new, whether it was novel,
2 whether it meets the requirements for a patent has to be
3 judged way back as if you were sitting in 1992. It is
4 improper to use what we know now to decide if it's
5 valid. It has to be determined as of May 5th, 1992.

6 Now, the Examiners at the Patent Office
7 considered a lot of inventions that happened before the
8 May 5th, 1992, priority date when they were deciding
9 whether to issue the CWC patent. We sometimes call the
10 inventions that happened before the priority date prior
11 art, and that's why the priority date is important.

12 Now, to get a patent, the Patent Office
13 must be convinced that what the patent covers is new;
14 that no one has done it before; and that it is
15 sufficiently new and different from all the stuff
16 before. You can't get a patent on something if someone
17 else did it first or if it was so obvious that anyone
18 could have done it.

19 The Patent Office has trained Examiners
20 that consider the prior art, the inventions that came
21 before it, and make their expert determination of
22 whether the patent claims a real invention.

23 Now, in this case, the evidence will show
24 that the Patent Office considered no less than 95
25 different pieces of prior art. They are listed for you

Page 48

1 on the front cover of your patent and are so long, it
2 continues to the second page of the patent.

3 After reviewing the patent application
4 and all that prior art, the United States Patent Office
5 determined in its judgment that Mr. Johnson's patent
6 application did claim a real invention; that it was new;
7 that it was novel; and that it met all of the
8 requirements for a patent as of May the 5th, 1992.

9 And after all of that, the United States
10 Patent Office issued the patent on October of 2009.

11 Now let me tell you about the claims.

12 So as Judge Davis told you in the
13 preliminary instructions, the claims are the paragraphs
14 that come at the end of the patent, and they're set off
15 with a sentence that says, What is claimed is, after all
16 of that description.

17 And there's a lot of description
18 describing the invention. I encourage you -- each of
19 you to pick up Plaintiff's Exhibit 1, pick up this
20 patent and flip through it. It is substantial, and it
21 has a lot of information.

22 At the back of it, at Columns 39, there's
23 a sentence that says what is claimed is, and that's
24 where the numbered paragraphs stop. There are 27
25 numbered paragraphs.

Page 49

1 Now, remember that I mentioned that a
2 patent was like a property deed? Well, specifically,
3 it's the claims, the claims that identify what territory
4 you own. The claims mark the boundaries of your
5 property, and they tell the world where your property
6 is.

7 Think of the claims as setting out the
8 boundaries of the property that CWC can exclude other
9 people, like Hyundai, from trespassing on.

10 Now, there's 27 claims at the back of the
11 patent, but we're only going to ask you to focus on
12 four. We are asserting four claims in this case,
13 Claims 1, 8, 11, and 18. That's 1, 8, 11, and 18. And
14 for now, we're going to focus on Claim 1.

15 Now, Claim 1 has a lot of words, and they
16 seem complicated when you first look at them, but
17 they're really not that bad once you break it down.

18 Dr. Rhyne will walk you through in
19 detail, but I will walk you through this claim. But
20 I'll walk you through Claim 1 by showing you the
21 evidence that shows how Hyundai is infringing.

22 So now let's take a look at what the
23 evidence will show you regarding Hyundai's infringement.
24 The evidence will show that Hyundai, like most motor
25 companies, uses a website as its primary marketing tool

Page 50

1 to communicate with the world and tell people about
2 their cars. Their website, as you heard, is called
3 hyundaiusa.com.

4 And the evidence will show that Hyundai's
5 website, hyundaiusa.com, and the code that causes it, is
6 infringing CWC's patents. So let's take a look at the
7 website.

8 First, this is their home page; and as
9 you click through the home page, you can navigate --
10 this videographer is a little fast -- you can navigate
11 to a vehicle selector, you can select on a page; and
12 when you do, it will take you to a landing page.

13 Each one of the 13 models on Hyundai's
14 website -- there's 13 models of cars they sell, and each
15 one has a landing page or a main vehicle page that looks
16 kind of like this one. These will be important pages,
17 because these are the ones that satisfy that single
18 composite visual output requirement that I told you
19 about.

20 Now, recall that the Johnson patent
21 requires selecting images and text and then filling in
22 the template? Remember we showed Johnson's database on
23 the right holding the building blocks and the selection
24 device in the middle, the template on the left?

25 Well, Hyundai's website does exactly the

Page 51

1 same thing. The evidence will show and Dr. Rhyne will
2 explain that each of the main vehicle pages has a
3 template and that Hyundai's software receives answers
4 about what the user is interested in; and then in
5 response to what you click on, in response to receiving
6 your answers clicking what you're interested in, selects
7 the product, selects the product image, the product
8 environment image and the text. And then it puts those
9 images and texts together by filling in the template to
10 create the single composite visual output just like the
11 CWC patent describes.

12 And here is a closeup of the final
13 landing page as it exists on the website. Once the
14 selection device selects each of these things and puts
15 it all together in the template, this is what you get.
16 And on one page, one image, you have an environment
17 image, product images and text, the text regarding the
18 price and text describing the performance and
19 specifications.

20 And, Ladies and Gentlemen, this part of
21 the case is undisputed. Their own expert will admit
22 that this page has all the elements of a single
23 composite visual output. Their own witnesses, you will
24 hear admit that one page has all of those elements.

25 Now let me tell you how all of this

Page 52

1 happens. What runs Hyundai's website is computer code
2 that's called HTML. We heard about HTML during the voi
3 dire, if you recall.

4 HTML is computer commands, if you will.
5 And these actually -- you can actually see what the
6 computer code is by viewing the source for a webpage.

7 So let's say that you're on a webpage.
8 Sometimes your mouse, there's a left button and a right
9 button. If you right click on the button anywhere on
10 any webpage -- and you can do this, and you can see new
11 page source.

12 If you click new page source, you'll see
13 the actual HTML code that is this website. They are the
14 same thing. The website is the HTML and vice versa.
15 And Dr. Rhyne will explain to you how the HTML and the
16 website are just flip sides of the same coin.

17 So now let me show you a particular
18 example of how the code pulls the images into the
19 template and populates it. One of the things that
20 you'll hear about is that the selection, the automatic
21 selection, has to occur in separate steps.

22 So this is an example, this is the actual
23 Hyundai code from their actual website that's accused.

24 And here it says: Image source equals,
25 and then it shows you where to find that image in the

Page 53

1 database.

2 This is where that database is located.
3 It directly pulls images and vehicles. That's the
4 database that this image is being pulled from, and the
5 name of it is Veracruz.

6 Now, every single thing that appears on
7 Hyundai's website has a corresponding HTML code, and
8 they're very sequential meaning they're selected in
9 separate steps. Here's the code for this one. Here's
10 the code for this one.

11 The code goes through selecting these
12 images one at a time, the text one at a time,
13 integrating them into the template to create a single
14 composite visual output.

15 Now, one of the things that the claim
16 requires is that the sales proposal be customized,
17 meaning it's customized in response to the received
18 answers about what the user is interested in.

19 So let's say a person is interested -- is
20 thinking about a sport utility vehicle. So she goes to
21 the webpage, she clicks on the Veracruz webpage, and she
22 starts clicking on different pages on the website.

23 Let's say that she visits four pages.
24 When she does, each one of those pages that she clicks
25 on becomes part of her customized proposal. When she

Page 55

1 And so that's how the -- in that way,
2 Hyundai's website does give you a customized proposal in
3 response to the answers that the customer provides.

4 Now, to see if a patent (sic) is
5 infringing a patent, we have to compare that product to
6 a claim. All of the parts or what the Judge called
7 elements of the claim, if they're in the product, the
8 product infringes.

9 So let me show you what the evidence will
10 show about how Hyundai is infringing Claim 1. I'm not
11 going to read all of the language to you, but I want you
12 to see that there are numbered paragraphs for each
13 element.

14 This is Element 1(a), this is receiving
15 answers; Element 1(b), automatically selecting; 1(c) is
16 integrating; 1(d) is wherein the single composite visual
17 output.

18 So as we saw before, every time you click
19 on Hyundai's website, you are providing a response to a
20 question about what you're interested in. The website
21 poses these questions to you in the form of drop-down
22 menus.

23 Would you like to see the types of
24 vehicles offered? So you would click here, and it will
25 show you.

Page 54

1 tells the computer what she's interested in, the
2 computer will give her back a webpage. That becomes
3 Page 1 of her proposal. Then she clicks on something
4 else and gets another page. That's Page 2 of the
5 proposal. All of the pages she visits on that website
6 would become part of her customized proposal.

7 Now, Hyundai's website has lots of pages.
8 Dr. Rhyne will tell you there are thousands. There's a
9 home page and a vehicle selector, and then from the
10 vehicle selector, you can go to the 13 landing pages.
11 That's what these represent.

12 From each one of those pages, you can go
13 to a lot more pages. And from those pages, you can go
14 to a lot more pages. And so what it shows is that there
15 are thousands and thousands of pages of information
16 available about Hyundai's cars, just like that big mass
17 of books and binders that Jerry Johnson had to deal
18 with.

19 Now, when someone goes to the home page
20 and they start clicking through and visiting different
21 pages on the website, each one of those they'll get
22 different pages that pop up. And when you go through,
23 you may navigate in a different way, and you'll get a
24 different set of pages. And when you go through, you
25 might see a different set of pages still.

Page 56

1 Would you like to see Hyundai research
2 tools? So you click here. If you click here, you're
3 telling the computer that's what I want to see.

4 So that's how the computer meets --
5 Hyundai meets 1(a) receiving answers.

6 Now, Step 1(b) requires automatically
7 selecting three things in three steps: An environment
8 page, an environment image, a product image, and text,
9 in three separate steps.

10 I already showed you the HTML code and
11 how that happens. That's how it selects those three
12 steps, those three things in three steps, and meets
13 1(b).

14 And the result of that is the single
15 composite visual output that we've described that has a
16 product image, an environment image, and text all on one
17 page, one image.

18 And I told you that their own witnesses
19 admit this. Well, Mr. McLeod, who you'll hear from, was
20 asked: Do you recognize this as the vehicle landing
21 page for the Genesis?

22 And he says yes.

23 And a question: So this single webpage
24 includes both text relating to the specification and
25 performance of the Hyundai Genesis, as well as pictures

Page 57

1 of the car in an environment; is that right?

2 Answer: Yes.

3 So Even Hyundai's own witness had to
4 admit that it meets the requirements of a single
5 composite visual output. And we just went through how
6 the website is customized and meets the customized
7 proposal requirement.

8 And, of course, it is a proposal for the
9 sale of products, Hyundai's own witnesses admit that
10 they sell cars and that they advertise their cars for
11 sale on the website.

12 Dr. Rhyne will walk you through some
13 additional evidence, but the evidence will show you that
14 Hyundai infringes each of the -- each of the claims and
15 is trespassing on CWC's property.

16 Now, what does Hyundai have to say in
17 response? I expect that you will hear a lot of excuses
18 from Hyundai. They'll assert they don't infringe and
19 that the patent is invalid.

20 Now, Hyundai is going to try to convince
21 you that the patent is really invalid, meaning that it's
22 no good, and the U.S. government messed up. As the
23 Judge instructed you, to prove that, they have a higher
24 burden of proof.

25 Go to the burden of proof slide.

Page 58

1 A higher burden of proof called clear and
2 convincing evidence. You can't prove it invalid -- you
3 can't prove it invalid unless there is clear and
4 convincing evidence that the Patent Office was wrong.

5 Okay. Ladies and Gentlemen, this is the
6 highest standard of burden -- standard of proof in civil
7 cases. It means that you can't sort of agree with
8 Hyundai and find the patent is invalid. You can't kind
9 of think they might be right about the patent being
10 invalid.

11 It has to be with clear and convincing
12 evidence. You cannot overturn the action of the Patent
13 Office unless you're faced with clear and convincing
14 evidence.

15 Now, one piece of prior art that Hyundai
16 relies on is the so-called Ford Selection Center, but
17 the evidence will show that the Ford Selection Center
18 does not have all the elements of the Johnson patent.

19 Most notably, it does not have a single
20 composite visual output. There is not one single page
21 in the entire Ford Selection Center where they were able
22 to put those three things together, product image,
23 environment image, and text, on a single page.

24 Well, Hyundai says: All right. Maybe it
25 doesn't describe all of the elements, but it would have

Page 59

1 been obvious.

2 Okay. So why didn't they do it, Ladies
3 and Gentlemen?

4 The evidence is going to show you that --
5 from Hyundai's witnesses, Mr. Tancill, that he worked on
6 the development of the Ford Selection Center for eight
7 years and that he went through three different versions.

8 And never during that entire time did he
9 think to put all these three things together on one page
10 to make this proposed customized single composite visual
11 output.

12 Now, Judge Davis may instruct you that
13 other companies' willingness to license the patent is
14 something you can consider in determining whether a
15 patent is obvious.

16 In fact, CWC's patent that Hyundai wants
17 you to believe is invalid for obviousness has been
18 respected by the entire auto industry. Literally, every
19 significant automobile manufacturer selling cars in the
20 United States has paid for a license to use CWC's
21 patent. Even Hyundai's sister company, Kia, respected
22 the patent and paid for a license.

23 Ladies and Gentlemen, what you'll hear
24 from Hyundai are excuses, a lack of responsibility, a
25 lack of willingness to take responsibility for your

Page 60

1 actions. I think you'll find that Hyundai is throwing a
2 whole bunch of stuff against the wall hoping that
3 something may stick.

4 Well, the Spangenberg -- and we trust
5 You to sort through that nonsense and to hold them
6 accountable for its violation of CWC's rights. Because
7 unlike every one of these other companies, Hyundai does
8 not have a license to use CWC's patents, and it is using
9 it without permission.

10 I thank you for your attention, and now
11 I'll turn it over to my colleague, Jules Kabat, to
12 discuss what the evidence will show regarding the
13 damages that Hyundai should pay for its trespass and
14 infringement in this case.

15 THE COURT: Thank you Mr. Fenster.

16 Mr. Kabat?

17 MR. KABAT: Well, good afternoon, Ladies
18 and Gentlemen, and hello again. I am Jules Kabat. We
19 introduced everyone. That's Marc. And certainly,
20 Mrs. Spangenberg is sitting with us, the owner of CWC.

21 She and her husband are here for you
22 during this trial, and you will hear them testify from
23 their home in Dallas.

24 On behalf of all of us, thank you for
25 welcoming us into your community, and thank you for your

Page 61

1 diligence in serving on this jury.

2 As Marc explained, the evidence will show
3 that Hyundai infringes CWC's patent, protected under the
4 United States Constitution, and as Judge Davis
5 explained, presumed to be valid.

6 This is the actual patent that was issued
7 by the United States Patent & Trademark Office, and it
8 is owned by CWC. And for our engagement in this trial
9 dealing with damages, as I will explain, the evidence
10 should show that Hyundai should pay CWC reasonable
11 royalty payments damages.

12 Now, that's a mouthful, so let's say
13 CWC's damages.

14 Let me say in simple terms what Marc
15 explained to you in technical terms -- and there's going
16 to be a lot of technical terms in this case -- to help
17 sell its car, Hyundai uses CWC's patent to send selected
18 webpages combining a picture, text, and price
19 information depicted in an attractive environment to the
20 many millions of users of Hyundai's website,
21 environmental setting meaning that Hyundai shows its
22 cars in an appealing way. It shows them in a real
23 setting, like a mountain road.

24 The evidence will show that Hyundai
25 admits this is important. In Hyundai's own words, a

Page 62

1 Hyundai document, vehicle page enhancement.

2 Environmental imagery adds personality to
3 the vehicle.

4 And in the words of Hyundai's former
5 marketing executive: Some -- referring to different
6 manufacturers -- don't put a background. We like to put
7 it in an environmental -- we like to put it in an
8 environment that was natural.

9 Now, in turn, the evidence will show you
10 that Hyundai uses CWC's patent to entice visitors to
11 stay on Hyundai's website, to become engaged with
12 Hyundai's cars.

13 In the words of Hyundai's marketing
14 executive again: This is how we engage our products,
15 and we engage our products in a natural environment.
16 This is valuable to Hyundai, because the longer visitors
17 stay on Hyundai's website, the more willing visitors are
18 to buy a Hyundai car. Simply put, this is how and why
19 Hyundai uses -- how and why Hyundai infringes CWC's.

20 Now, thinking of owning and leasing a
21 building is a good way to understand CWC's damages.
22 When you own a building that someone -- some company
23 wants to use, you decide if they're going to use your
24 building, and you decide how much they should pay.

25 When you own a patent that some company

Page 63

1 wants to use -- as Marc explained, it's yours
2 exclusively -- you decide if they use your patent, and
3 you decide how much they shall pay.

4 So if a company wants to use your
5 building, they negotiate for a lease. And it negotiates
6 for a lease or agreement with you, a lease documents it
7 and for how much it should pay.

8 And if you own a patent, you negotiate,
9 also. You negotiate for an agreement. The document is
10 called a license in the patent world, instead of a lease
11 in the building world.

12 And what they pay you are what they call
13 royalty payments. So a rent check is paid to a building
14 owner and paid by the building user, and a royalty check
15 is paid by -- paid to patent owners by patent users.
16 So like lease payments are rent, license payments are
17 royalty payments.

18 Now, in that real negotiation that I just
19 described, let's say that company was Hyundai that
20 wanted to use your patent. If Hyundai did not agree to
21 pay you the royalty payments that you thought were
22 reasonable, you would not reach agreement, and they
23 could not use your patent.

24 If someone wanted to use your building
25 but didn't want to pay you the rent that you thought was

Page 64

1 fair, you wouldn't reach agreement, and they couldn't
2 use your patent -- they couldn't use your building.

3 But Hyundai is using CWC's patent without
4 a license, without CWC's permission, and without making
5 payments.

6 So if you find that CWC infringes
7 Hyundai's -- excuse me -- if you find that Hyundai is
8 infringing CWC's patent, under the law, CWC's damages
9 are at least reasonable royalty payments, in no event
10 less than a reasonable royalty for the use.

11 And under the law, you must determine the
12 reasonable royalty payments that CWC and Hyundai would
13 have agreed to in a hypothetical, that is, an assumed, a
14 pretend negotiation.

15 Now, Judge Davis will tell you the rules
16 governing that hypothetical negotiation, and they are
17 important. They control your task.

18 In the hypothetical negotiation, the
19 patent is deemed valid, and Hyundai cannot contest that.

20 In the hypothetical negotiation, the
21 patent is deemed enforceable, and Hyundai cannot contest
22 otherwise.

23 Hyundai's use of the patent is deemed to
24 and would infringe, and Hyundai cannot contest
25 otherwise. And Hyundai must pay to use the patent and

Page 65

1 cannot contest otherwise. And the parties agree to a
2 license under these rules.

3 Now, Hyundai's massive marketing efforts
4 to sell its car, directs people to its website. Listen
5 to Hyundai's own words ending its 3-million-dollar Super
6 Bowl commercial.

7 As Marc said, technology is not flawless.
8 What it says is: Visit hyundaiusa.com, and the voice is
9 the actor, Jeff Bridges.

10 So, again, Hyundai wants people to go to
11 and stay on its website to become engaged in considering
12 Hyundai cars. Hyundai wants to entice people to go to
13 and stay on its website, to go from not interested in a
14 Hyundai car, to considering a Hyundai car, to wanting a
15 Hyundai car, to buying a Hyundai car.

16 The evidence will show, as you can see
17 again -- you can see the words of Hyundai's former
18 marketing executive: The purpose is -- the principle of
19 our marketing strategy is to drive consumers to our main
20 website. There is no doubt how critical their website
21 is to their business.

22 Now, the evidence will show that Hyundai
23 pays for tools, like CWC's patent, to help achieve
24 Hyundai's marketing goal of engaging visitors on its
25 website. Hyundai's own records show that it pays for

Page 66

1 these tools on a per-click or per-visit basis. Per
2 click. You get your mouse and click on it.

3 They are a reasonable measure of value of
4 payment, because they are affirmative acts of engagement
5 by the website visitor, each of whom is a potential
6 buyer of a Hyundai car.

7 Hyundai's own records show that Hyundai
8 tracks them and pays for them, again from dimes to
9 dollars. And, again, Hyundai's own document. This
10 shows that Hyundai pays between 29 cents and \$5.28, 29
11 cents being the low here and 5.28 being the high.

12 So as will be explained by CWC's
13 independent marketing and damages experts, Lawrence
14 Chiagouris and Frank Ferrara, the evidence will show you
15 that CWC's damages are measured by a royalty rate of
16 between 30 cents and 50 cents per use, per click
17 measured against the royalty base of 20,670,678 uses,
18 infringing uses of Hyundai's -- of CWC's patent on
19 Hyundai's website, and that's from October 2009 to date.

20 The math, as you can see, is between \$6.2
21 million and \$10.3 million. That's the measure of CWC's
22 damages. Those are the reasonable royalty payment
23 damages.

24 Now, please understand, this is a
25 purposely conservative analysis. This is not for every

Page 67

1 use of Hyundai's website by every visitor to Hyundai's
2 website. This is purposely conservative, focusing only
3 on infringing website visits.

4 Now, the evidence will place this
5 conservative damages calculation in compelling context
6 for you. CWC's damages are not even a drop in the
7 bucket of Hyundai's mass marketing effort to sell its
8 cars.

9 Again, let's look at Hyundai's records,
10 Hyundai's documents. Hyundai's marketing budget for
11 just 2009 was more than \$575 million. Just for 2009,
12 Hyundai budgeted \$9 million just to print brochures,
13 brochures which are nowhere as individually responsive,
14 nowhere as individually engaging, nowhere as valuable to
15 Hyundai as Hyundai's infringing webpages using CWC's
16 patent.

17 So as you can see, CWC's damages truly
18 are just a tiny slice, a tiny slice of Hyundai's massive
19 marketing efforts to sell its cars.

20 Now, Hyundai instead will assert that in
21 the hypothetical negotiation, CWC would have agreed to a
22 single payment, way more than 95 percent less, because
23 that is what Hyundai purports to say it would have cost
24 it to redesign its website not to infringe CWC's patent,
25 not to use CWC's patent.

Page 68

1 And the way we do that is by showing its
2 cars, not in an environment, but against the plainer
3 patent background.

4 So next slide, please.

5 THE COURT: You've got about three
6 minutes left, Mr. Kabat.

7 MR. KABAT: Thank you, Your Honor.

8 So their expert says: One factor I gave
9 a great deal of weight to was the same functionality in
10 a non-infringing manner.

11 And next slide, please.

12 And I would show it in an environment --
13 the car without an environmental background.

14 They will also assert that tiny payment,
15 95 percent less -- greater than 95 percent less, is
16 there because it reflects what were paid in litigation
17 settlements, disputed litigation settlements.

18 Next slide, please.

19 And you can see -- remember, disputed
20 litigation is not hypothetical negotiation. In disputed
21 litigation; the party denies the patent is valid. It
22 denies the patent is enforceable. It denies that its
23 use would infringe. It denies it must pay.

24 And there, of course, is no agreement,
25 and everybody faces the risk and cost of coming to

Page 69

Page 71

trial, exactly the opposite of the hypothetical negotiation rules, and the hypothetical negotiation rules are what govern your determination as to CWC's damages.

Now, they also will assert that payments were made to a company called FPS, not CWC, and FPS is simply in a different business. It is in the business of selling computer software licenses and computer services. It does not sell patent licenses.

And the companies that buy its computer products, its computer software products, do not use them for any use remotely comparable to the consumer marketing to which Hyundai uses CWC's patent.

Now, you have heard and you will hear throughout this trial much that is technical, but your determining CWC's damages is a straightforward question of fairness and justice for using CWC's patent without CW -- without CWC's permission. How much shall Hyundai pay?

All of us here for CWC place our trust, our fate in your decision, in your answer, and in your job.

Thank you very much.

THE COURT: Thank you, Mr. Kabat.

All right. Would the jury like a break?

Page 70

It's going to be another hour. We can take a 15-minute break if you would like one.

Okay. All right. We'll take a break then, and we'll come back at 2:30. Please enjoy your recess. Remember my instructions. Don't discuss the case among yourselves or with anyone else.

Be in recess.

COURT SECURITY OFFICER: All rise.

(Jury out.)

(Recess.)

(Jury out.)

COURT SECURITY OFFICER: All rise.

THE COURT: All right. Ms. Ferguson, you may bring the jury in.

(Jury in.)

THE COURT: Please be seated.

All right. Mr. McCabe, you may proceed.

Mr. McCABE: May it please the Court.

Ladies and Gentlemen of the Jury, good afternoon.

My name is Pete McCabe, and with me here is Mr. Jason Erb from Hyundai; Adele Auxier from my firm; Doug McSwane from Tyler, Texas, Potter Minton Firm; John Moss from my firm as well; and Gene Schaer from my firm.

We represent Hyundai in this case. So I would like to start by thanking you for your time, just as Mr. Fenster and just as the Judge did.

As the Judge told you, there are many things that I know you would probably rather be doing, but this case is really important, because your service today is what makes our judicial system the best in the world, and it has for over 200 years. Thank you.

And obviously, it's not just important to Hyundai. It's important to CWC, too, so we know that -- we know that you'll do a good job. We know that you'll really pay attention to the evidence. I can just see it in all of your faces, and we appreciate that.

Now, this is our opportunity to tell you Hyundai's side of the case, and to tell you some facts that you really didn't hear in CWC's opening statement. Before I get into that, let me introduce my client, Hyundai.

Hyundai is a South Korea-based automobile manufacturer and distributor. In 1968, Hyundai sold its first car in the U.S. in conjunction with the Ford Motor Company. Hyundai started selling cars over its own brand name in the United States in 1986; and at that time, Hyundai was mainly known for the affordability of its cars, but it also invested heavily in quality,

Page 72

design, and safety.

And to help put its brand on the radar screen of American customers, Hyundai began the now well-known, 10-year/100,000-mile warranty program, which is largely why customers can now get similar warranties from competing auto companies.

Today, according to industry statistics, Hyundai is one of the top automakers in the world. Hyundai has dealerships across the U.S., including the Allen Samuels Hyundai dealership right down the road. And Hyundai also employs thousands of Americans, including many right here in Texas.

The evidence will show that Hyundai has a major port facility in Ft. Worth where it delivers cars by rail and truck to all 50 states.

Hyundai has its company headquarters in California, and it also has a state-of-the-art manufacturing facility in Montgomery, Alabama; and you may have heard that Consumer Reports just picked the 2011 Hyundai Elantra as the best small car of the year. I know Hyundai is proud of that.

They make high-quality cars; and as you've seen from their television commercials, they have the best warranty in the business, and even will guarantee you the price of your trade-in when you buy

Page 73

1 another new Hyundai at any Hyundai dealership.

2 I would like to have -- when I buy a car,
3 I would like somebody to guarantee my trade-in value,
4 but, of course, that never happens.

5 During the trial, you will hear from a
6 couple of people who have been heavily involved in
7 developing and managing Hyundai's website. One is Bob
8 McLeod, who Mr. Fenster showed up on his slide, and the
9 other is Susan Lee. She is the -- she oversaw the
10 development of Hyundai's website, and Mr. McLeod has
11 overall responsibility.

12 I had a whole section in my opening about
13 what is a patent, but I think you get the picture at the
14 moment, and I'm going to move right on.

15 But I do want to say this: A patent is
16 an invention, but more importantly, every genuine
17 invention solves a problem, okay?

18 That's why, as you heard in the video
19 this morning, a patent has to be new, useful, and
20 non-obvious. Inventions are new and useful, because
21 they solve a problem no one else could solve.

22 Okay. Fair enough.

23 As Mr. Fenster told you about
24 Mr. Johnson, his story began way back in the 1980s.
25 Mr. Johnson was in the business of selling farm

Page 74

1 equipment, which I'm sure many of you might be aware of
2 maybe not aware, this presents unique challenges,
3 because heavy industrial equipment, like a tractor or a
4 combine, can be used for a wide range of purposes.

5 This kind of equipment has to be
6 especially outfitted for its intended use; and because
7 this equipment costs a lot of money, a salesman has to
8 really convince his customers that they should spend all
9 that money. And what Mr. Johnson thought of is a way to
10 present his product specifically in an environment which
11 meets the customer's needs better than his competitors,
12 okay?

13 The problem that Mr. Johnson ran into was
14 not being able to effectively market his products based
15 on the specific needs and concerns of his customer.

16 All right. At that time, companies,
17 including car companies, would provide customer
18 brochures, like the ones I'm holding in my hand. These
19 are Hyundai brochures. It's the Accent, the Veracruz,
20 the Azera, and finally the Sonata. It's the bigger
21 brochure.

22 Okay. You can still get these brochures
23 at car dealerships today. These brochures have a lot of
24 information in them, and for years they've been used by
25 salespeople at dealerships like Allen Samuels.

Page 75

1 And here are a few examples of the images
2 that you'll find in the current Hyundai brochure. This
3 is the Azera brochure, which I have right here, Azera.
4 And we've taken a page out of this brochure to show you,
5 and these are a few of the images that you'll find in
6 that brochure.

7 But Mr. Johnson would testify that the
8 problem with these brochures is they were too generic.
9 They weren't -- they were meant for every customer,
10 regardless of the customer's specific needs and
11 interests. They were not tailored to a particular
12 customer's interests and desired uses.

13 So what Mr. Johnson needed was something
14 like a brochure, but which could be assembled
15 on-the-fly, according to a customer's specific needs.

16 This was a good idea, but there was a big
17 problem with this, because it would be next to
18 impossible to cut out various environments and various
19 cars and various texts and glue them altogether for a
20 specific customer.

21 That would take a lot of work. And just
22 too many materials and too many elements would have to
23 be printed up separately and then physically assembled
24 as we discussed.

25 And in order to change the environment of

Page 76

1 a picture, you'd need to separate out the environment
2 images and then make cut-outs of the projects -- the
3 products. It really would be too impractical, which is
4 one reason why folks used brochures and still use them
5 today.

6 But Mr. Johnson decided to take advantage
7 of what was then new technology, personal computer, as
8 Mr. Fenster discussed. This was the technology that
9 allowed Mr. Johnson to solve his problem and gave him a
10 way he could implement his solution.

11 Okay. The personal computer gave him the
12 ability to make a customized proposal on a single page
13 using a single image for a product he was trying to sell
14 and in an environment that was specifically tailored to
15 a customer's need. That was his problem.

16 Now, again, the personal computer
17 permitted him to come up with his -- and implement this
18 solution. For example, by answering a series of
19 questions, a customer or a salesman could generate a
20 proposal for sale of a specific product.

21 In connection with tractors, you could
22 use customized environments like a wheat field or a
23 field full of stumps. The proposal would also include
24 text.

25 Now, the proposal for a tractor in a

Page 77

1 wheat field might include text which would say how many
2 acres this particular product could cultivate in one
3 day. The proposal for the same tractor, which would be
4 used to pull stumps out of a field, might say how much
5 torque it has or how much horsepower it has, how much --
6 essentially how much strength it would have in order to
7 pull out a stump.

8 And once that specific, personalized
9 proposal was assembled inside the computer, you could
10 print it out and hand it to the customer. This is the
11 problem that Mr. Johnson solved.

12 As he will tell you, when he's on the
13 witness stand, he didn't invent the personal computer.
14 He didn't invent sales brochures, and he didn't invent
15 the internet.

16 What he did do was to use the personal
17 computer to generate a proposal for the sale of product
18 tailored to a specific customer. I want to say that
19 again, because I believe it's very important.

20 Mr. Johnson invented a way to use a
21 computer to generate a proposal for the sale of a
22 product tailored to a specific customer. In his own
23 words, a customized -- customized product proposal,
24 okay?

25 A critical feature in his system was

Page 78

1 putting a picture or an image of a product in an
2 environment with text, all of which were selected based
3 on answers by the customer, which indicated their
4 specific interests, okay?

5 As Mr. Johnson designed it, these three
6 elements -- product, environment and text -- could be
7 assembled on-the-fly, based on a series of questions
8 that a customer would answer.

9 This is the invention which is claimed in
10 the '739 patent. That is it. It generates -- the
11 invention generates a proposal for sale to customize --
12 customize to a customer on-the-fly, according to his or
13 her needs. This was something that a brochure, like
14 this (indicates) simply couldn't do.

15 The reason it couldn't do it is because
16 no matter who you are, no matter what your interests
17 are, you get the same image, you get the same text, you
18 get the same environment in this brochure. There's
19 nothing you can do to change it.

20 All right. Let me get this right out on
21 the table right now.

22 Hyundai's website constitutes the
23 problem -- the problem that Mr. Johnson solved. Repeat.
24 Hyundai's website is the problem that Mr. Johnson
25 solved.

Page 79

1 Now, how did Mr. Johnson -- strike that.

2 Once Mr. Johnson came up with his idea,
3 he decided to protect it by filing for a patent, which
4 he did in 1992. That's the invention date. That patent
5 that you saw up on the screen that Mr. Fenster, I
6 believe, was May of 1992. That's the invention date,
7 okay?

8 As you heard in the video you saw before
9 you came up here, getting a patent publicizes your
10 invention, but it also gives 20 years of exclusive
11 rights to make and use the invention, a legal monopoly,
12 if you will.

13 Now, we've already talked about the
14 problem Mr. Johnson addressed and the way he solved it,
15 but I want to take a minute and look how he described
16 and claimed -- claimed the thing we talked about before,
17 the boundaries of his property right, his invention.

18 Okay. First of all, the '739 patent is
19 titled Electronic Proposal Preparation System. So in
20 Claim 1, Mr. Johnson says that his -- it is -- this
21 proposal is a computer program that runs on a computer
22 proc -- or with a computer processor.

23 Would you go to Slide 5?

24 All right. And here -- again, this is --
25 I'm sorry. That's not -- it's a little too small, but

Page 80

1 we did the best we could. This is the first subelement,
2 if you will, of the claim.

3 Receive -- this computer product has to
4 receive answers to a plurality of questions from a
5 specific customer, okay? So the product had to receive
6 answers from a specific individual customer, and those
7 questions were related to what product he or she wanted
8 and what environment he or she wanted.

9 If you would go to 6, please.

10 All right. In response to these answers,
11 the program automatically selects three things that are
12 of particular interest to the customer, and we have
13 highlighted that work.

14 One, an image of the tangible product for
15 sale; two, an image of an environment in which the
16 product for sale is to be used; and, three, a text
17 segment comprised of a description of the product
18 specifications and performances.

19 So just like in Mr. Johnson's original
20 idea, a specific customer answers questions, and then
21 the computer program selects a product picture, an
22 environment picture, and a segment of text. But they
23 must be customized to a particular customer.

24 Okay. Now, Mr. Johnson used his
25 invention for his own use in the farm equipment

Page 81

1 industry, and he also developed the system for others --
2 systems for others.

3 In fact, after 1992, the date of his
4 invention, Mr. Johnson made a system for Mercedes-Benz,
5 which illustrates the idea of putting a single product
6 in a variety of environments.

7 Now, here's an illustration of that
8 system from Mr. Johnson's own files. You can see that
9 there are three selections that you have to make, and
10 the first is the selection of the Mercedes-Benz truck
11 image. And there were -- there were special models of
12 trucks, special -- oh, pardon me -- special models of SK
13 and special models of vans.

14 Now, there was also a special selection
15 of vocation branches for the background image, and I
16 just want to point you to the fact that certain
17 backgrounds could be in the construction field or in
18 firefighting. You get the different background,
19 depending upon your individual selection. And then the
20 text, you had available essentially in different
21 languages: German, French, Spanish, and English.

22 Okay. That -- would you go to the next
23 slide?

24 So when you make all these selections,
25 the computer product that Mr. Johnson developed had the

Page 83

1 those pages don't infringe, so I'm not quite sure why
2 Mr. Fenster showed you them on the screen, but whatever.

3 All right. Here's an actual landing page
4 for -- how can I clear this?

5 Okay. Got it. This is an actual accused
6 vehicle landing page.

7 As you will hear from CWC's expert,
8 Dr. Ray Mercer, from Texas A&M down at College Station,
9 and from the person who has overall responsibility for
10 Hyundai's website, Bob McLeod, this page has images just
11 like a brochure you get from your car dealership. Okay?

12 There is no option. There is no option
13 on any of these accused vehicle landing pages to enter
14 into -- any information about the features you want,
15 about the features you might be interested in, or how a
16 customer may want to use the car. It's prestored,
17 generic, and not tailored to any particular customer,
18 just like the generic paper brochures.

19 In fact, there is no single image which
20 contains a product contained in an environment chosen by
21 the customer and combined with text that is of interest
22 to any particular customer. Instead, the Hyundai site
23 chooses images that they hope will appear -- appeal to
24 each and every customer. It is not customized to any
25 particular customer.

Page 82

1 ability to integrate into a single image a particular
2 Mercedes product in a particular environment with text
3 tailored to the interest of a particular customer.

4 Okay. Now that you know something about
5 the '739 patent and its background, let's talk about the
6 Hyundai website, how it works, and how it compares to
7 the claims of the patents.

8 Just as a prelude to that, we are not
9 making any excuses here. This -- they have the burden
10 of proof to show infringement, and we intend to -- we
11 think the evidence will show clearly that they cannot
12 meet that burden, because we don't infringe.

13 All right. There's only one webpage on
14 Hyundai's website that CWC is accusing of infringement.
15 Those are called the vehicle landing pages, as I think
16 Mr. Fenster said, and there are 13 of them for each
17 particular Hyundai model.

18 Now, every Hyundai model has a single
19 vehicle landing page, but just one, that has basic
20 information about each model, et cetera.

21 Now, I believe Mr. Fenster showed you
22 some screenshots from other pages, like the
23 build-your-own page, the quick coat -- quick quote page,
24 and the test drive page.

25 Well, according to CWC's own witnesses,

Page 84

1 All right. So here in this landing page
2 for the Azera, we see the car driving through the city,
3 and we also see generic text that describes the product.

4 Well, everyone gets this same generic
5 page, no matter what you do, where you type it in from.

6 If you type in Azera landing page, this
7 is what you get. It's not customized at all, nor is it
8 able to be customized.

9 Well, I had to get permission from my
10 wife and daughter to use this analogy, so if you're
11 wondering, I think the answer is, yes, it took some
12 coaxing with my wife and more coaxing with my daughter;
13 but just let me illustrate the point that I just made by
14 using the following analogy:

15 Let's assume my wife and my youngest
16 daughter and myself are all interested in purchasing an
17 Azera, and, yes, why I would like to purchase an Azera.
18 I'd like to use it to go camping, which I like, with my
19 trailer being pulled, which I can sleep in, and so a
20 towing capability is important to me.

21 My wife, Cindy, would like to use her
22 Azera to go shopping for flowers at Home Depot. I think
23 we heard about somebody who likes to do that, earlier
24 today.

25 And my youngest daughter would like to

Page 85

1 use her Azera to drive to the mall with her friends and,
2 unfortunately, she is very interested in how fast a car
3 goes from 0 to 60.

4 All right. Now let's see what happens
5 when each of us goes to the Hyundai website and selects
6 an Azera.

7 Okay. This is myself, Pete. I have
8 selected the Azera from the vehicle drop-down page, and
9 that took me two clicks on the website in order to get
10 this page, okay?

11 Well, it shows an Azera in a city
12 environment. I don't see an outdoor environment or
13 information on towing capacity on this page, and I can't
14 get that information because the website won't let me.

15 Neither the images nor the text is
16 specific to what I want to use the car for, and I can't
17 make it otherwise.

18 All right. Now my wife, Cindy. She
19 selects the Azera landing page, after I send her a link
20 to it by e-mail. She gets the exact same page, same
21 car, same environment in a city. There's no image of
22 the garden store at Home Depot or any garden store, and
23 no text relating to the size of the trunk of the Azera.

24 I mean, you've got to put flowers
25 someplace.

Page 86

1 Nothing in this image is of any
2 particular interest to my wife. And by the way, because
3 my wife just clicked on the link I sent her, she got
4 right to the landing page without actually clicking on
5 the home page at all.

6 Now, my daughter, Layne, selects the
7 Azera. She's more consumer savvy -- computer savvy than
8 I am, so she gets to the landing page, and then she gets
9 to the -- pardon me -- she gets to the home page, then
10 she gets to the landing page by clicking on the Azera
11 car on the home page. Just one click to get to the
12 Azera landing page.

13 Again, she gets the same, exact page that
14 Cindy and I got. No images of the mall or any store for
15 that matter, and, thankfully, no text as to how fast the
16 car will go from 0 to 60. That's one nice thing about
17 this.

18 All right. So all three of us were
19 interested in the Azera but for different reasons as
20 I've outlined, but all three of us got the exact same
21 image of the product on a city street with the exact
22 same text.

23 In fact, my wife -- I asked my law school
24 roommate from Indiana and my fly-fishing buddy in
25 Colorado to click on the Azera landing page, okay? They

Page 87

1 got the same images. They saw the same images that my
2 wife, my daughter, Layne, and myself saw.

3 So every customer who goes to the vehicle
4 landing page will see the same images on that page as
5 every other customer.

6 The required element of the claim is not
7 part of the Hyundai site. In fact, you will see the
8 same images on paper brochures like this one,
9 e-brochures which you can print off the site, and the
10 website landing pages.

11 Do we have -- yes, I think we have a
12 slide that shows this.

13 Up on the left, on the top left is the
14 paper brochure. On the right is an e-brochure. And
15 those two images, interestingly enough, are the same
16 images that are on the Hyundai landing page. Same
17 images, paper brochure, electronic brochure, landing
18 pages.

19 Now, why has Hyundai chosen not to use
20 Mr. Johnson's invention in the '739 patent?

21 Well, the evidence will show that Hyundai
22 has found it just doesn't need the level of
23 customization that Mr. Johnson did. Its objective is to
24 provide all consumers with enough information so that
25 they will be interested enough to visit one of Hyundai's

Page 88

1 local dealerships, who, by the way, are the actual
2 people that make sales proposals to customers.

3 All right. So let's summarize why the
4 accused Hyundai website doesn't infringe. We compare
5 the website with the language of the claims.

6 All right. Can we do that?

7 There we go. Here are some of the claim
8 elements of Claim 1. So far, we've discussed how the
9 Hyundai site does not automatically select a product in
10 an environment and text, which is of particular interest
11 to the customer, customized to the specific customer.

12 The site just doesn't have any
13 customizable product or environment images, and you will
14 not hear any evidence during this trial that it does.

15 No landing page, which is accused of
16 infringement, has any ability to be customized by a
17 particular customer. And that is Mr. Johnson's
18 invention in the '739 patent.

19 All right. You can also see from the
20 plain language of the claims that the three required
21 elements, two separate images and a text, must be
22 selected in three separate steps.

23 The parties agree on that. You heard Mr.
24 Fenster say that. I agree with Mr. Fenster. It's got
25 to be three separate steps, but Hyundai selects all of

Page 89

1 the elements in one step. Okay?

2 It's a predetermined page, just like the
3 front page of today's Tyler Morning Telegraph or Dallas
4 Morning News with the Mav's championship on it.

5 Everyone gets the exact same content in
6 every paper. There is no ability to select one of the
7 stories in the papers that you might be interested in.

8 Well, here's another important claim
9 element that's missing from Hyundai's website.

10 Hyundai's system does not dynamically
11 build a template based on elements that are
12 automatically selected by the system.

13 The content of each landing page is
14 predetermined and prestored in the back office by a
15 group of Hyundai marketing employees and their
16 advertising agency, and this happened a long time ago.

17 It is not created dynamically or
18 on-the-fly, as Mr. Johnson's '739 patent requires.

19 There's something else I want you to
20 listen to when CWC's expert, Dr. Rhyne, testifies about
21 Hyundai's alleged infringement. I know that you were
22 wondering why I mentioned the number of clicks with the
23 mouse that it took my wife, my daughter, and myself to
24 get to the landing page for the Azera.

25 In my Azera example, my wife, Cindy, my

Page 90

1 daughter, Layne, and I got to the same landing page, but
2 with a different number of clicks on the mouse; or as
3 CWC has it, a different number of answers.

4 Now, why is this important?

5 Well, the '739 patent requires that the
6 environment image be selected based on a plurality of
7 answers -- pardon me -- based on a plurality of
8 questions from a specific customer, okay?

9 Well, that means you've got to answer at
10 least two questions or using two clicks, if you will.
11 But the images on the Hyundai landing page look the same
12 no matter how you get there.

13 If we could go to Slide 23, Dave.

14 Now, what does this mean?

15 Well, it means that the images on the
16 page are not based on any answers which my wife, my
17 daughter, or I gave it in terms of customizing the page.
18 It's generic; it's not customized.

19 I believe the Court at the end of this
20 case will instruct you that you should use your common
21 sense when you evaluate the evidence. And this is a
22 good place to do it.

23 As you listen to the evidence that CWC
24 presents, use your common sense. If all customers who
25 visit the Azera page get the same thing, and no matter

Page 91

1 how they get there, 0, 1, or 2 clicks, they end up
2 seeing the same landing page, well, Hyundai just doesn't
3 practice the claimed invention. Therefore, it doesn't
4 infringe.

5 The landing page is just like those
6 four -- pardon me -- those brochures we put up before.
7 Again, the Hyundai landing page is the problem that
8 Mr. Johnson solved. It's not the solution.

9 Now, we have a number of other good
10 reasons why there's no infringement of the '739 patent,
11 and we will present those to you through our expert,
12 Dr. Ray Mercer. He is at Texas A&M again. I think you
13 will find, but you will have to judge it yourself, of
14 course, that his testimony is pretty compelling. But
15 more importantly, Dr. Mercer's testimony will make
16 common sense.

17 As we explained, Hyundai's website is the
18 problem that Mr. Johnson set out to solve. It's not
19 using the solution at all.

20 All right. That's my discussion on
21 infringement.

22 Let's talk about invalidity. I told you
23 why the evidence will show that we don't infringe the
24 '739 patent. Now, in the invalidity context, I want to
25 preface this by -- personal computers were becoming

Page 92

1 popular and widely available in the 1980s.

2 When Mr. Johnson started thinking about
3 solutions to his problem, others in the car industry
4 were beginning to use computers for all sorts of
5 purposes. Mr. Johnson wasn't the only person that saw
6 potential in the personal computer.

7 As I'm sure he will tell you, he wasn't
8 the first to design a marketing system that made use of
9 a personal computer system. He will testify that he saw
10 a number of those systems at various trade shows and car
11 dealerships.

12 All right. Now, to provide some context
13 to Mr. Johnson's invention, I want to talk a bit about
14 others systems that existed in 1992, the date of
15 Mr. Johnson's invention.

16 Would you go to Slide 24?

17 All right. During this trial, you will
18 here from a woman named Paula Tompkins. That's her
19 right on the left. She was working in this industry,
20 this industry of using computer products, to generate
21 single composite visual outputs with respect to
22 products.

23 And she's going to talk about one
24 specific product, and that's the product she developed
25 for the Buick Motor Company of General Motors.

Page 93

1 It -- according to -- as the evidence
2 will show, as Ms. Tompkins will testify, that her Buick
3 product did many of the same things as Mr. Johnson's
4 invention. Her company was Softad, and it created an
5 advertising system that used software on a computer,
6 just like Mr. Johnson's system.

7 Only, Ms. Tompkins was actually selling
8 her product three years before 1992, when Mr. Johnson
9 came up with his invention.

10 The Softad system was designed to run on
11 a customer's personal computer; and as you can see from
12 the video we're about to show you, it allowed a customer
13 to see various Buick products in environments and with
14 text tailored to their interests.

15 It begins with a fancy Buick logo. This
16 talks about what the Buick products do and what the
17 program does, what the Buick -- '88 Buick line is and
18 the new Riata showcase. We've just clicked on the '88
19 Buick line, and we've gone to the LeSabre.

20 Everybody remembers the LeSabre.

21 All right. There if you pause. Hold on.
22 Go back a little bit.

23 Oh, we missed it, Dave, just as we were
24 getting to the good part.

25 All right. Well, we're going to do this

Page 94

1 again.

2 In any event, the car was in the
3 background, and it has text that are superimposed over
4 the product in an environment with text relating to
5 performance and product specifications.

6 And we're going to run through this --
7 well -- are you going to do it again?

8 All right. Let's do it. Here we go.

9 All right. Here we go again.

10 Okay. You've seen this before, and this
11 was her product that was developed in 1988. It was
12 actually four years before his invention. Pardon me.

13 Now, we've got the 1988 Buick line, which
14 we're going to click on, okay? We're going to go down
15 to the LeSabre again.

16 Stop.

17 There it is in an environment,
18 superimposed over an environment. And I believe it's
19 near the ocean, and there is a house on a bluff near the
20 ocean. Of course, there's the product.

21 All right. Keep going.

22 Now, there's the text.

23 Hold on.

24 And it relates to product performance and
25 specifications. Specifically, it's good a generous --

Page 95

1 yeah, a generous six-passenger comfort, and it's got
2 standard equipment that includes air conditioning and FM
3 stereo and locks and power locks and all that kind of
4 stuff.

5 Performance specification. Okay, let's
6 continue on through this.

7 All right. Now, we're going to go to the
8 Riata.

9 Would you stop?

10 All right. We have another environment,
11 another car, another environment. This looks like it's
12 in Arizona.

13 All right. Go ahead.

14 All right. Text relating to product
15 performance and specifications superimposed over the
16 product in an environment.

17 Okay. This -- you'll hear from
18 Ms. Tompkins on this witness stand, and she'll tell you
19 exactly how she designed this product and what it does.

20 Well, you've already seen a little bit
21 about what it did. So let's -- this is just a short
22 clip. I've only get this limited amount of time for
23 opening statement. You're going to see much more of
24 this stuff when Ms. Tompkins testifies.

25 All right. Now, let's talk about the

Page 96

1 Ford Selection Center.

2 Would you put up Slide 26?

3 That is Mr. William Tancill. You'll see
4 a video of him from 1984 when he showed his first --
5 created this Ford Selection Center product. And he
6 asked me to tell you this: That he was a young, trim,
7 and had much less gray hair at that time, so you'll be
8 able to see that.

9 Sorry, Bill.

10 I want to talk about the Ford Selection
11 Center. It was developed from 1984 to 1989, three years
12 before Mr. Johnson first filed his patent. Mr. Tancill
13 will testify that his Ford Selection Center included all
14 of the features claimed in the Johnson '739 patent.

15 Mr. Tancill spent 36 years at Ford, and
16 he was a part-time professor at the University of
17 Michigan in Ann Arbor, among other colleges. He is
18 experienced in marketing and selling vehicles, and he
19 has done a lot of computer programming. He was the
20 designer, creator, and manager of the Ford Selection
21 Center system.

22 Okay. This is a picture of some of the
23 screenshots that the Ford Selection Center gave you. As
24 you can see, it was sort of a --

25 Why don't you go to the next one.

Page 97

Page 99

1 All right. Yeah, okay. Here we go.
2 There's the various versions, 1984, 1986,
3 and 1988. The 1988 version is interesting, because the
4 cabinetry's improved, and the insides have improved.

5 And when you think about it, it looks
6 like -- an awful lot like an ATM machine today.

7 And so Mr. Tancill, frankly, was ahead of
8 his time, and, by the way, this is a touch screen. So,
9 you know, this operates exactly like an iPad -- well,
10 not exactly. It didn't have the internet, but, in any
11 event, it's a pretty advanced design product.

12 All right. Like the Ford Selection
13 Center operated on a computer and provided customers
14 with images of a product in a product environment and
15 text about those products, which a user selected.

16 Now, as you can see from the following
17 slide, and I think that was the slide we were looking
18 at. Yeah.

19 You could select a product in a
20 particular environment and with text, all right? It
21 also allowed customers to see a single composite visual
22 image that was tailored to their interests.

23 Now, here's a short video clip that
24 illustrates how the Ford Selection Center worked. It's
25 is a small slip. We'll play a more lengthy one during

1 Hyundai won't give in to a charge of
2 patent infringement that it believes is unjustified.
3 That is not the way it does business. It believes the
4 charge of patent infringement in this case is not
5 well-founded.

6 It has a right to fight these
7 allegations, just as CWC has the right to sue it. But
8 you, the jury, are the ones who are going to get to
9 decide who's right and who's wrong. Hyundai trusts your
10 good judgment and common sense to make that decision.

11 As you'll see from the evidence, both the
12 Buick Softad system and the Ford Selection Center and
13 systems from other industries, which our other expert,
14 Ms. Barb Frederiksen, will discuss like in the kitchen
15 design business, are a lot like Mr. Johnson's idea.

16 You're going to see a whole host of
17 systems that we think are prior art to the '739 patent.
18 They are all at least computerized marketing systems
19 that combine text and images of products in environments
20 according to a customer's selections, just like you saw
21 with your own eyes on that video of the Ford Selection
22 Ford Center.

23 All right. These systems are important
24 to this case, because as you've heard, they were all in
25 use before Mr. Johnson came up with his idea and filed

Page 98

Page 100

1 the trial.

2 (Video playing.)

3 MR. McCABE: That's Mr. Tancill's finger,
4 by the way.

5 (Video playing.)

6 MR. McCABE: All right. That last page,
7 it's a little hard to see, but that's -- that's a price
8 printout, and that's -- so after you get through making
9 all these selections, which were fairly extensive, then
10 the system gave you a price.

11 Now, you'll see more videotapes of this,
12 and I apologize for the poor quality. This was from
13 1988. And Mr. Tancill will run you through that -- you
14 through with them.

15 Again, this product, the Ford Selection
16 Center, wasn't just a product that was used in a
17 laboratory. This product was actually used at a number
18 of dealerships throughout the country, and it was
19 displayed at a number of automobile trade shows attended
20 by folks like Mr. Johnson.

21 All right. Now, there was some reference
22 that Hyundai hasn't taken a license and a lot of other
23 car companies have. Well, you'll hear testimony from
24 people, from Hyundai like Mr. McLeod that it has a
25 different corporate culture than other companies.

1 his patent application in 1992. This means that all of
2 these systems are part of the prior art.

3 Now, these prior art systems also have
4 one more thing in common. The Patent Office did not
5 review any of the systems that I have shown you. They
6 did not have an opportunity to determine whether the
7 invention in the '739 patent was new or novel or not
8 obvious.

9 The Patent Office didn't consider the
10 Softad system. The evidence will show that clearly. It
11 didn't consider the Ford Selection Center. The evidence
12 will show that clearly. And it didn't consider some of
13 the other prior art that you're going to hear about
14 during this trial.

15 All right. This is an important thing to
16 keep in mind when you think about whether the patent is
17 valid.

18 Mr. Fenster was absolutely right. I have
19 to prove validity or invalidity by a clear and
20 convincing standard. Okay? That is a higher standard
21 than is normally applied in civil cases, but I think I
22 can do it. I think the evidence will show clearly that
23 this patent, the '739 patent, as we've gone through the
24 claims, is not only not infringed, but it's not new. It
25 wasn't new in 1992.

Page 101

Page 103

1 Well, in view of the fact that this art
2 was not part of the Patent Office record or considered
3 by the Patent Examiner, you actually get to make the
4 decision, in view of this new art that we are going to
5 show you during this trial, as to whether this invention
6 really is new.

7 You, the jury, you are going to have to
8 make that decision. You are an integral part of this
9 process. You don't have to second-guess the Patent
10 Office, because the Patent Office didn't have this
11 material.

12 I've explained how Hyundai's landing
13 pages do nothing but essentially put a product brochure
14 online. That's not a problem for Hyundai, but Hyundai's
15 problem represents -- Hyundai's website represents the
16 problem which Mr. Johnson solved. Hyundai simply
17 doesn't use Mr. Johnson's solution as claimed in the
18 '739 patent.

19 All right. So, Ladies and Gentlemen, I
20 will ask you at the end of this case, when I get to
21 stand up and speak again, that you return a verdict in
22 favor of Hyundai of non-infringement and invalidity.

23 Okay. I'd like to finish the same way I
24 started. Thank you.

25 That was a lot of information that you

1 we are ready to go at 9:00 o'clock, and we will start
2 the evidence at that time and begin the evidence phase
3 of the case.

4 Before we do adjourn -- well, I do want
5 to remind you of your instructions, though. Please
6 don't discuss this case among yourself or with anyone
7 else while you are in recess this evening.

8 Before we do recess, though, I do want to
9 ask you to do one thing. The parties have indicated to
10 me that they would find it helpful if each of you would
11 independently and privately indicate your initial
12 impressions of this case, just based on what you've
13 heard here today during opening statement.

14 In other words, if you were to decide the
15 case today -- and I've got a little form here.

16 Ms. Ferguson, if you'll pass those out to
17 the jury.

18 That simply asks if you were to decide
19 the case, based upon just what you've heard in opening
20 statements, would you be in favor of Clear with
21 Computers?

22 Go ahead and pass those out, one to each
23 juror.

24 In favor of Hyundai, or that would you
25 not have any opinion one way or the other, based upon

Page 102

Page 104

1 had to absorb today, both with Mr. Fenster's
2 presentation and my presentation, a lot of information.

3 But we will -- like the Judge says, we
4 will do the best we can to make this technology easier
5 for you to understand.

6 We've got to go through a lot of -- a lot
7 of technological issues, but we will do our best to
8 explain them in a way that is understandable yet
9 comprehensive.

10 Now, my client, Hyundai America --
11 Hyundai Motor America very much appreciates the close
12 attention that all of you have been paying throughout
13 both parties' presentation, and for that, we thank you.

14 Thank you.

15 THE COURT: Thank you, Mr. McCabe.

16 All right. Ladies and Gentlemen, that
17 concludes the opening statements for today. I'm going
18 to release you here shortly and ask you to be back in
19 the jury room at 9:00 o'clock in the morning.

20 And the side door to the hallway -- you
21 won't have to come through the courtroom -- the jury
22 room will sort of be your home base.

23 So if you could get here 10 or 15 minutes
24 early, we will have some coffee and donuts for you,
25 something like that. Just be sure everybody is here and

1 what you've heard?

2 So I'm passing that out to you. I would
3 like for each of you to take your pen and check the
4 block that best fits you. Your answers on the form are
5 private and confidential. No looking on what your other
6 neighbor does or doesn't do. The lawyers can't see. No
7 one will know how you voted or what you put down, other
8 than me, and I won't even know which one of you did
9 what.

10 But I will simply report those results to
11 the attorneys. Please fold it in half, when you've done
12 that, and pass it down to the Court Security Officer,
13 who will collect them.

14 I also want to emphasize to you, before
15 we adjourn for the day, that what you've answered is
16 just a preliminary impression, and that's all it is.
17 You haven't heard any of the evidence yet.

18 So during the rest of the trial, you
19 should listen carefully to the evidence, and you should
20 base your final decision and verdict on the evidence
21 that you hear. All you've heard are the opening
22 statements, but you're entitled to an impression of
23 those opening statements, and the attorneys would find
24 that helpful.

25 So no matter how you've answered the

Page 105

1 questions, after opening statements, you are certainly
2 free to change your mind after hearing all of the
3 evidence. And your verdict will ultimately be based on
4 all of the evidence and on the collective wisdom of all
5 of you.

6 So you may get in there and some may feel
7 one way and some another, and you'll discuss it and
8 you'll make your points. And that's how our jury system
9 works.

10 But the Court appreciates your presence
11 here today, your attention, appreciates your cooperation
12 in this little survey for the attorneys that it will
13 give them something to think about tonight, I'm sure.

14 And I want to thank you. Please remember
15 my instructions. And you are excused to the jury room
16 and to go about your business for the evening.

17 COURT SECURITY OFFICER: All rise.

18 (Jury out.)

19 THE COURT: Please be seated.

20 All right. And the results are, of the
21 informal poll taken of the jury, one voted in favor
22 of Clear with Computers; none voted in favor of
23 Defendant; and seven were undecided. So this may have
24 been an exercise in futility.

25 I think we've probably got a very good

Page 106

1 jury who listened very carefully to my instructions that
2 they need to hear all the evidence. And both sides
3 probably did an equal job of countering the other one's
4 arguments.

5 But with that help or lack of help, I
6 know y'all have a mediation scheduled with your mediator
7 this evening. Mr. Knowles will do an excellent -- will
8 do an excellent job, and I would just encourage both
9 sides to feel free to reevaluate your positions, see if
10 y'all can work out a business solution to this
11 litigation that's been going on between the two of you
12 for a very, very long time.

13 All right. Any questions from either
14 side?

15 Be in recess until tomorrow morning.

16 COURT SECURITY OFFICER: All rise.

17 MR. FENSTER: Your Honor, I'm sorry.

18 What time tomorrow? Would you want us here before the
19 jury at 9:00 o'clock?

20 THE COURT: Do we have any matters to
21 take up?

22 MR. FENSTER: There are a few evidentiary
23 matters that relate to the witnesses that will come up
24 tomorrow morning.

25 THE COURT: All right. Well, you can be

Page 107

1 here before 9:00; and if you have matters, about 8:45 I
2 will take those up.

3 MR. FENSTER: Thank you, Your Honor.
4 (Court adjourned.)

5 CERTIFICATION

6
7
8 I HEREBY CERTIFY that the foregoing is a
9 true and correct transcript from the stenographic notes
10 of the proceedings in the above-entitled matter to the
11 best of our abilities.

12
13
14 /s/ Shea Sloan

SHEA SLOAN, CSR

June 13, 2011

15 Official Court Reporter

16 State of Texas No.: 3081

17 Expiration Date: 12/31/12

18
19 /s/ Judith Werlinger

JUDITH WERLINGER, CSR

June 13, 2011

20 Deputy Official Court Reporter

21 State of Texas No.: 731

22 Expiration Date 12/31/12
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