

In the Matter of:

MICROSOFT CORPORATION

v.

SURFCAST, INC.

RICHARD GEORGE ANDREW BONE

February 19, 2014

M E R R I L L L A D

1325 G Street NW, Suite 200, Washington, DC

Phone: 800.292.4789 Fax: 202.861.3425

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE FOR PATENT TRIAL AND APPEAL BOARD

--oOo--

MICROSOFT CORPORATION

Petitioner,

vs.

SURFCAST, INC.

Patent Owner.

Patent No. 6,724,403

Issued: April 20, 2004

Filed: October 30, 2000

Inventors: Ovid Santoro, et al.

Title: SYSTEM AND MOTHOD FOR SIMULATANEIOUS DISPLAY
OF INFORMATION SOURCES

Inter Partes Review Nos. IPR2013-00292,
IPR2013-00293, IPR2013-00294
and IPR2013-00295

VIDEOTAPED DEPOSITION OF

RICHARD GEORGE ANDREW BONE

Wednesday, February 19, 2014

Job No.: 0124-245041

REPORTER: COREY W. ANDERSON, CSR 4096 (SF-001020)

Page 2	Page 4
<p>1 INDEX</p> <p>2 INDEX OF EXAMINATIONS</p> <p>3 EXAMINATION Page</p> <p>4</p> <p>5 EXAMINATION BY MR. SUH 7</p> <p>6 INDEX TO EXHIBITS</p> <p>7</p> <p>8 No. Description Page</p> <p>9 Exhibit 2008 SurfCast, Inc.'s Declaration Of 24</p> <p>10 Richard G. A. Bone Under 35 USC</p> <p>11 Section 317(a)(8)</p> <p>12 Exhibit 2035 1999 Timesheets, Richard 29</p> <p>13 Bone/Pennie & Edmonds</p> <p>14</p> <p>15 Exhibit 2049 August 14, 1999 Invoice 283818 35</p> <p>16 (SC0058852 through 58861)</p> <p>17 Exhibit 2050 November 22, 1999 Telefacsimile 35</p> <p>18 Message to Sandy Reyes from Helen</p> <p>19 J. D'Alessandro (SC0058862</p> <p>20 through 58866)</p> <p>21</p> <p>22 Exhibit 2010 November 16, 1999 Invoice 296240 35</p> <p>23 (PENY4 - 771034.1)</p> <p>24 Exhibit 2052 Diligence Calendar: June 21, 59</p> <p>25 1999 through October 29, 1999</p>	<p>1 APPEARANCES (Cont'd)</p> <p>2 FOR THE PATENT OWNER:</p> <p>3 DLA PIPER LLP (US) (Via Telephone)</p> <p>4 One Fountain Square</p> <p>5 11911 Freedom Drive</p> <p>6 Suite 300</p> <p>7 Reston, VA 20190-5602</p> <p>8 BY: JAMES HEINTZ, ESQ.</p> <p>9 703-773-4148</p> <p>10 jim.heintz@dlapiper.com</p> <p>11</p> <p>12 FOR THE WITNESS:</p> <p>13 TURNER BOYD</p> <p>14 202 Marshall Street, Suite 640</p> <p>15 Redwood City, CA 94063</p> <p>16 BY: KAREN I. BOYD, ESQ.</p> <p>17 650-521-5930</p> <p>18 boyd@turnerboyd.com</p> <p>19</p> <p>20</p> <p>21 ALSO PRESENT:</p> <p>22 VIDEO SOLUTIONS, a Merrill Legal</p> <p>23 Solutions Company</p> <p>24 PATRICIA GUERRERO, VIDEOGRAPHER</p> <p>25</p>
Page 3	Page 5
<p>1 APPEARANCES</p> <p>2</p> <p>3 FOR THE PETITIONER:</p> <p>4 SIDLEY AUSTIN LLP</p> <p>5 1501 K Street NW</p> <p>6 Washington, DC 20005</p> <p>7 BY: WONJOO SUH, ESQ.</p> <p>8 202-736-8831</p> <p>9 wsuh@sidley.com</p> <p>10</p> <p>11 SIDLEY AUSTIN LLP (Via Telephone)</p> <p>12 1501 K Street NW</p> <p>13 Washington, DC 20005</p> <p>14 BY: JOSEPH MICALLEF, ESQ.</p> <p>15 202-736-8492</p> <p>16 jmicallef@sidley.com</p> <p>17</p> <p>18 FOR THE PATENT OWNER:</p> <p>19 DLA PIPER LLP (US)</p> <p>20 401 B Street, Suite 1700</p> <p>21 San Diego, CA 92101-4297</p> <p>22 BY: ERICA J. PASCAL, ESQ.</p> <p>23 619-699-2639</p> <p>24 erica.pascal@dlapiper.com</p> <p>25</p>	<p>1 --oOo--</p> <p>2 BE IT REMEMBERED that pursuant to notice</p> <p>3 and on Wednesday, February 19, 2014 commencing at 9:01</p> <p>4 A.M. thereof, at the Law Offices of DLA PIPER, 2000</p> <p>5 University Avenue, Palo Alto, California, before me,</p> <p>6 Corey W. Anderson, a Certified Shorthand Reporter</p> <p>7 and Realtime Reporter, personally appeared</p> <p>8 RICHARD GEORGE ANDREW BONE</p> <p>9</p> <p>10 called as a witness by the PETITIONER, who, having</p> <p>11 been first duly sworn, was examined and testified as</p> <p>12 follows:</p> <p>13 --oOo--</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

2 (Pages 2 to 5)

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SurfCast – Exhibit 2073, page 3

Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

Page 6	Page 8
<p>1 PALO ALTO, CALIFORNIA 2 Wednesday, February 19, 2014 3 9:01 A.M. 4 --o0o-- 5 P R O C E E D I N G S 6 THE VIDEOGRAPHER: Here begins volume one, 7 videotape number one in the deposition of Richard 8 Bone in the matter of Microsoft Corporation versus 9 SurfCast, Inc., Patent Owner, in the United States 10 Patent And Trademark Office before the Patent Trial 11 And Appeal Board. 12 The Inter Partes Review Numbers are 13 IPR2013-00292, et al. 14 Today's date is February 19th, 2014. The 15 time on the video monitor is 9:01. 16 The videographer today is Patricia 17 Guerrero, a notary public employed by the Merrill 18 Corporation, San Francisco, California. 19 This video deposition is taking place at 20 the Law Offices of -- excuse me, DLA Piper, 1900 -- 21 excuse me, 2000 University Avenue, East Palo Alto, 22 California. 23 Counsel, please voice identify yourselves 24 and state whom you represent. 25 MR. SUH: Wonjoo Sun at Sidley Austin</p>	<p>1 A. Richard George Andrew Bone, 777 San 2 Antonio Road, No. 60, Palo Alto, California, 94303. 3 Q. Do you understand that you are under oath 4 today? 5 A. I do. 6 Q. Have you ever been deposed before? 7 A. Yes. 8 Q. When? 9 A. July of last year. 10 Q. Is that it? 11 A. That's one time. 12 Q. What was it about? 13 A. It was in connection with Microsoft -- 14 sorry, SurfCast versus Microsoft in the District 15 Court of Maine, case that's pending at the moment. 16 Q. Have you ever testified at trial before? 17 A. No. 18 Q. Other than these, have you ever testified 19 under oath? 20 A. I don't believe so. 21 Q. Are you on any medications that might 22 impact your ability to testify today? 23 A. No. 24 Q. Are there any reasons you cannot testify 25 truthfully?</p>
Page 7	Page 9
<p>1 representing Microsoft Corporation. 2 MS. BOYD: And this is Karen Boyd of Turner 3 Boyd representing the witness. 4 MS. PASCAL: And Erica Pascal of DLA Piper 5 on behalf of SurfCast, Inc., Patent Owner. 6 MR. MICALLEF: On the telephone, Joe 7 Micallef from the firm Sidley Austin representing 8 Microsoft. 9 MR. HEINTZ: And Jim Heintz from DLA Piper 10 representing SurfCast. 11 THE VIDEOGRAPHER: Thank you. 12 The court reporter is Corey Anderson of 13 Merrill Court Reporting. 14 Would the court reporter please swear in 15 the witness? 16 RICHARD GEORGE ANDREW BONE 17 having been sworn by the Reporter, 18 testified as follows: 19 THE WITNESS: I do. 20 THE VIDEOGRAPHER: Thank you. Please 21 begin. 22 EXAMINATION 23 BY MR. SUH: 24 Q. Could you please state your full name and 25 residence address for the record, please?</p>	<p>1 A. No. 2 Q. Seems like you are already familiar with 3 the rules since you already were deposed, but I'd 4 like to go over the rules again just to make sure we 5 are on the same page. 6 A. Okay. 7 Q. Your answers are recorded by a court 8 reporter, so please answer verbally. That means no 9 shaking heads or nodding. 10 A. Uh-huh. 11 Q. When I ask a question, could you wait for 12 me to finish my question before you start answering? 13 A. Okay. 14 Q. If you don't understand the question, 15 please ask for a clarification. Otherwise I will 16 assume you heard it, understood it, and gave me your 17 best answer. 18 Is that fair? 19 A. Okay. 20 Q. We'll try to take short breaks every hour. 21 But if you need a break at any time for any reason, 22 you should tell me or your counsel. 23 A. Okay. 24 Q. All that I ask is that if we are in the 25 middle of a question we can take a break after you</p>

3 (Pages 6 to 9)

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SurfCast – Exhibit 2073, page 4

Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

<p style="text-align: right;">Page 10</p> <p>1 finish your answer. 2 Is that fair? 3 A. Yes. 4 Q. Now that this deposition has begun, you 5 are not permitted to speak with your attorney about 6 the substance or conduct of this deposition unless 7 you have legitimate questions about privilege. 8 Do you understand that? 9 A. Understood. 10 Q. Understand that you are the lead counsel 11 in this case? 12 A. Correct. 13 Q. But today you are here as a fact witness, 14 so you should not be making any objections to my 15 question. Your counsel will do that for you. 16 Do you understand? 17 A. I understand. 18 Q. Could you tell me about your educational 19 background beginning after high school? 20 A. I took a Bachelor's degree at University 21 of Cambridge in the United Kingdom. It's called 22 Bachelor's of -- a Bachelor's of natural science. 23 And then I stayed at Cambridge and did a 24 Ph.D. there in theoretical chemistry. 25 Q. Chemistry?</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. And when was that? 2 A. That was in 1995, I think. 3 Q. So before June 1999, did you have any 4 formal training in the programming of graphical user 5 interfaces? 6 A. Formal -- 7 MS. PASCAL: Object. 8 MR. SUH: You can answer. 9 THE WITNESS: Okay. Formal training, no. 10 BY MR. SUH: 11 Q. What about programming in general? 12 A. So from the beginning of my Ph.D. which 13 was in -- began in 1988, which is in theoretical 14 chemistry, I would say more than half of that time 15 as a graduate student I was writing computer 16 programs. 17 And then when I left Cambridge and was a 18 post doc for I think I would say for three to four 19 years as a post doc, I would say more than 75 20 percent of what I was doing was writing computer 21 programs in a variety of languages. 22 And then when I stayed in industry after 23 that from around 1994 to 1999, my job was almost 24 exclusively writing computer programs. 25 Q. Which languages, may I ask?</p>
<p style="text-align: right;">Page 11</p> <p>1 A. Yes. 2 After that, I did a post doctoral 3 fellowship, it's called a NATO fellowship from the 4 U.K. I spent a year in Canada and a year in the 5 United States. 6 And then I spent a few years in industry. 7 Q. So you said natural science. What was 8 that about? 9 A. Natural science is -- is the name that 10 Cambridge gives that -- basically their pure science 11 educational curriculum. So you take three sciences 12 in the first year and then most people, as did I, 13 take two subjects in the second year, I took 14 chemistry and mathematics, and in the final year you 15 take one subject, and I took chemistry. 16 Q. Did you take any computer science classes? 17 A. I took one, one computer -- yes, computer 18 programming class in the first year. It was an 19 accelerated class. 20 Q. And that's the only computer science class 21 you took? 22 A. As a formal class, that's correct. Except 23 I actually did take a C programming class later on 24 after I left Cambridge when I was working in 25 industry.</p>	<p style="text-align: right;">Page 13</p> <p>1 A. So beginning in my Ph.D. it would be 2 Fortran, principally, and then a number of the UNIX 3 based languages, the scripting languages that are 4 common on the UNIX platforms. 5 And then for the balance of the time in 6 industry mixture of Fortran, C, UNIX languages, and 7 then some proprietary programming languages to the 8 company that I worked at immediately up until 1999. 9 Q. Did you have any training in software 10 architecture? 11 A. Formal training, I would say no. But the 12 programs I was writing were quite extensive, so 13 required some design, yes. 14 Q. Could you tell me about your employment 15 history? 16 A. Okay. So beginning from the time my post 17 doctoral fellowship finished in 1994, I worked for a 18 small company called -- it was called Provin 19 Terrapin, and that was a position I held as a 20 computational chemist for about two-and-a-half 21 years. That was writing some of the software I 22 previously described. 23 And then when I left that company I went 24 back to the U.K. for about two and a half years and 25 I worked at a company there also writing software in</p>

4 (Pages 10 to 13)

<p style="text-align: right;">Page 14</p> <p>1 the computational chemistry field.</p> <p>2 And then after that I came back to the</p> <p>3 States and joined Pennie and Edmonds as a law clerk.</p> <p>4 Q. When was that?</p> <p>5 A. June of 1999.</p> <p>6 Q. And then?</p> <p>7 A. So I remained as a law clerk at Pennie and</p> <p>8 Edmonds up until basically the time I graduated from</p> <p>9 law school. And in 2002 I took the bar exam at the</p> <p>10 beginning of 2003 and I became an associate at</p> <p>11 Pennie and Edmonds at that time.</p> <p>12 Pennie and Edmonds dissolved at the end of</p> <p>13 2003. I moved with a group of attorneys from Pennie</p> <p>14 and Edmonds to Morgan, Lewis & Bockius in Palo Alto.</p> <p>15 I stayed there for almost 18 months as an associate.</p> <p>16 I left Morgan Lewis in basically the end</p> <p>17 of June of 2005, I went to Fish & Richardson as an</p> <p>18 associate. I became a principal there in I think</p> <p>19 the beginning of 2008.</p> <p>20 And I left Fish & Richardson in April 2010</p> <p>21 and joined my current firm, VLP Law Group, at that</p> <p>22 time.</p> <p>23 Q. So when you were at Pennie Edmonds, so</p> <p>24 before June 1999, have you ever prosecuted a patent</p> <p>25 application?</p>	<p style="text-align: right;">Page 16</p> <p>1 the PTO as long as I accompanied whatever I signed</p> <p>2 with that certificate. And that was tied to my</p> <p>3 employment at Pennie and Edmonds, or essentially at</p> <p>4 a firm where I was employed under the terms of my</p> <p>5 visa to engage in patent related matters.</p> <p>6 And then when I got a U.S. green card and</p> <p>7 became a permanent resident, I was given a reg</p> <p>8 number. And that was in I think March of 2004.</p> <p>9 Q. So when you were holding your license</p> <p>10 under limited recognition, you couldn't hold</p> <p>11 yourself out as a patent agent.</p> <p>12 Is that correct?</p> <p>13 A. That is correct. So I had to explain to</p> <p>14 people that, the actual qualification that I had,</p> <p>15 that is correct.</p> <p>16 Q. And of course, you couldn't hold yourself</p> <p>17 out as a patent attorney.</p> <p>18 Correct?</p> <p>19 A. That is correct.</p> <p>20 Q. And you said you passed -- passed the</p> <p>21 patent bar in November of 2000. So prior to</p> <p>22 November 1999, you were not licensed to practice</p> <p>23 before the United States Patent Office at all.</p> <p>24 Correct?</p> <p>25 A. That's correct.</p>
<p style="text-align: right;">Page 15</p> <p>1 A. No, I have not.</p> <p>2 Q. So while you were at Fish & Richardson,</p> <p>3 did you ever work on any Microsoft matters?</p> <p>4 A. No, I did not.</p> <p>5 Q. Okay. So we can step back to when you</p> <p>6 were a law clerk at Pennie and Edmonds.</p> <p>7 A. That's correct.</p> <p>8 Q. And you were not an attorney. Correct?</p> <p>9 A. Not initially, correct.</p> <p>10 Q. Until 2003 you were not an attorney?</p> <p>11 A. That's correct.</p> <p>12 Q. And you were not a member of the U.S.</p> <p>13 Patent Bar before 2003.</p> <p>14 Is that correct?</p> <p>15 A. I took and passed the Patent Bar</p> <p>16 registration exam in November -- or rather October</p> <p>17 of 2000 -- I think October-November 2000. At that</p> <p>18 time because I was not a U.S. permanent resident,</p> <p>19 under the rules that the OED promulgates, they</p> <p>20 couldn't give me a full reg number, but they could</p> <p>21 give me something called limited recognition. At</p> <p>22 the time it was under CFR 10.39 A, I think. Maybe</p> <p>23 B.</p> <p>24 So that meant that I was qualified to</p> <p>25 practice in terms of being able to sign papers at</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. Were you working full time as a law clerk?</p> <p>2 A. I was required to under the terms that</p> <p>3 Pennie had, I was required to I think in the first</p> <p>4 year bill 1500, 1500 billable hours in the system.</p> <p>5 So effectively I was working full time in the sense</p> <p>6 that I was there five days a week during the day</p> <p>7 time. But once I started law school I had to spend</p> <p>8 evenings in law school.</p> <p>9 So the actual billable hour requirement</p> <p>10 would be less than associate, but I consider it a</p> <p>11 full time job.</p> <p>12 Q. Was it listed as a full time job in your</p> <p>13 employment agreement?</p> <p>14 A. I believe it was, yes.</p> <p>15 Q. And you say you never drafted a patent</p> <p>16 application before joining Pennie.</p> <p>17 Is that correct?</p> <p>18 A. That's correct.</p> <p>19 Q. And you never received any training on how</p> <p>20 to draft a patent application before joining Pennie.</p> <p>21 Is that correct?</p> <p>22 A. That's correct, other than reading that I</p> <p>23 had done. I had done some introductory reading</p> <p>24 about the subject before I joined the firm.</p> <p>25 Q. When was that?</p>

5 (Pages 14 to 17)

<p style="text-align: right;">Page 18</p> <p>1 A. Well, in the 1998, 1999 timeframe.</p> <p>2 Q. Other than --</p> <p>3 A. Oh, sorry, I would add one more thing.</p> <p>4 When I was at the company called Terrapin, I had in</p> <p>5 fact been listed as an inventor on a patent</p> <p>6 application. So I worked quite closely with a</p> <p>7 patent attorney and outside counsel there who took</p> <p>8 me through the process.</p> <p>9 Q. Did you draft the patent application</p> <p>10 yourself?</p> <p>11 A. I did not.</p> <p>12 Q. Do you have any relationship with SurfCast</p> <p>13 other than being outside counsel?</p> <p>14 A. Can you define relationship?</p> <p>15 Q. I mean were you ever an employee or</p> <p>16 in-house counsel or consultant for SurfCast?</p> <p>17 A. No.</p> <p>18 Q. Do you have any interest in the outcome of</p> <p>19 the litigation?</p> <p>20 A. This has been made of record, I have some</p> <p>21 stock options that SurfCast has granted me.</p> <p>22 Q. How many shares?</p> <p>23 A. I don't know the precise, I don't know the</p> <p>24 precise number in my head.</p> <p>25 Q. Do you know roughly how, what the</p>	<p style="text-align: right;">Page 20</p> <p>1 based on privilege.</p> <p>2 Correct?</p> <p>3 MS. PASCAL: You'll have to ask him if he</p> <p>4 wants to follow advice of counsel.</p> <p>5 THE WITNESS: Actually, I can ask -- answer</p> <p>6 correctly and say that my fee agreement with</p> <p>7 SurfCast has no contingency based on the outcome of</p> <p>8 the IPR.</p> <p>9 BY MR. SUH:</p> <p>10 Q. What about the litigation?</p> <p>11 A. I think that's priveleged.</p> <p>12 MS. PASCAL: Objection. Same objection</p> <p>13 from all of us.</p> <p>14 THE VIDEOGRAPHER: Speak up.</p> <p>15 THE REPORTER: Could we go off the record,</p> <p>16 Counsel?</p> <p>17 THE VIDEOGRAPHER: Off the record, the time</p> <p>18 is 9:17.</p> <p>19 (Whereupon, a recess was taken</p> <p>20 commencing at 9:17 A.M. and</p> <p>21 concluding at 9:23 A.M.)</p> <p>22 THE VIDEOGRAPHER: We are back on the</p> <p>23 record. The time is 9:23.</p> <p>24 BY MR. SUH:</p> <p>25 Q. So if you can go back to the previous</p>
<p style="text-align: right;">Page 19</p> <p>1 percentage is?</p> <p>2 A. Percentage of what?</p> <p>3 Q. Of shares you have.</p> <p>4 A. I believe it amounts to .4 percent, maybe</p> <p>5 .39 percent.</p> <p>6 Q. So you would have gained financially if</p> <p>7 SurfCast obtained a money judgment against</p> <p>8 Microsoft, wouldn't you?</p> <p>9 A. I believe I would.</p> <p>10 Q. And do you have an interest in the outcome</p> <p>11 of the IPR?</p> <p>12 MS. PASCAL: Objection.</p> <p>13 THE WITNESS: I do not have an interest in</p> <p>14 the outcome of the IPR.</p> <p>15 BY MR. SUH:</p> <p>16 Q. Do you have any type of contingency fee</p> <p>17 arrangements with SurfCast?</p> <p>18 THE WITNESS: This may be privileged.</p> <p>19 MS. PASCAL: Yeah.</p> <p>20 THE WITNESS: I will ask my counsel for</p> <p>21 advice.</p> <p>22 MS. PASCAL: I think at this point we'll</p> <p>23 assert a privilege.</p> <p>24 BY MR. SUH:</p> <p>25 Q. So you won't be answering this question</p>	<p style="text-align: right;">Page 21</p> <p>1 question you asserted privilege objection to, the</p> <p>2 question was whether you do have a contingency fee</p> <p>3 arrangement.</p> <p>4 Is that --</p> <p>5 MS. PASCAL: Which are you asking?</p> <p>6 MR. SUH: I'm not interested in the term.</p> <p>7 I'm just interested in --</p> <p>8 MS. PASCAL: No, no. Just so we are clear</p> <p>9 on the question, you asked him about his fee</p> <p>10 agreement with the IPR and you asked him about his</p> <p>11 fee agreement with respect to the litigation.</p> <p>12 MR. SUH: Yes.</p> <p>13 Q. Whether or not you do have a fee,</p> <p>14 contingency fee arrangement.</p> <p>15 MS. PASCAL: In which matter?</p> <p>16 MR. SUH: In either one.</p> <p>17 MS. PASCAL: I'll object to compound.</p> <p>18 But --</p> <p>19 MR. SUH: Okay. First the District Court</p> <p>20 Maine litigation.</p> <p>21 Q. Do you have any contingency fee</p> <p>22 arrangement, whether or not you have it --</p> <p>23 A. Can you define contingency?</p> <p>24 MS. BOYD: If it's privileged you are --</p> <p>25 hang on just a minute.</p>

6 (Pages 18 to 21)

<p style="text-align: right;">Page 22</p> <p>1 MS. PASCAL: Hang on just a second.</p> <p>2 THE VIDEOGRAPHER: Shall we go off the</p> <p>3 record?</p> <p>4 MS. BOYD: Yeah.</p> <p>5 THE VIDEOGRAPHER: Off the record, the time</p> <p>6 is 9:24.</p> <p>7 (Whereupon, a recess was taken</p> <p>8 commencing at 9:24 A.M. and</p> <p>9 concluding at 9:25 A.M.)</p> <p>10 THE VIDEOGRAPHER: We are back on the</p> <p>11 record. The time is 9:25.</p> <p>12 MR. MICALLEF: Can I say something? This</p> <p>13 Joe Micallef for Microsoft. I explicitly want to</p> <p>14 make sure everybody in this deposition understands</p> <p>15 the rules of the Board as far as defense counsel</p> <p>16 objecting are extremely strict. What I have heard</p> <p>17 already was a discussion about which question are</p> <p>18 you asking and isn't that privileged. If that goes</p> <p>19 on again in front of the witness we are going to</p> <p>20 have to call the Board because that's actually not</p> <p>21 permitted in the deposition.</p> <p>22 MS. BOYD: We have heard your comment, Joe.</p> <p>23 MR. MICALLEF: Thank you.</p> <p>24 BY MR. SUH:</p> <p>25 Q. Are there documents that you reviewed in</p>	<p style="text-align: right;">Page 24</p> <p>1 A. I can't say anything about the</p> <p>2 relationship, the fee agreement between SurfCast and</p> <p>3 DLA Piper, but SurfCast had told me they would pay</p> <p>4 for my counsel.</p> <p>5 Q. Okay.</p> <p>6 A. Sorry, I want to add one more thing.</p> <p>7 Technically my counsel is also representing my firm,</p> <p>8 VLP Law Group.</p> <p>9 Q. Okay.</p> <p>10 So I'm handing you Exhibit 2008, take a</p> <p>11 look at it.</p> <p>12 A. Okay.</p> <p>13 (Whereupon, Exhibit 2008 was marked</p> <p>14 for identification)</p> <p>15 (Pause)</p> <p>16 BY MR. SUH:</p> <p>17 Q. Do you recognize this document?</p> <p>18 A. I do.</p> <p>19 Q. If you can turn to page 5? You mentioned</p> <p>20 Andrew Gray?</p> <p>21 A. Yes.</p> <p>22 Q. Brett Lovejoy?</p> <p>23 A. Yes.</p> <p>24 Q. Paul DeStefano?</p> <p>25 A. Stefano.</p>
<p style="text-align: right;">Page 23</p> <p>1 order to prepare for this deposition?</p> <p>2 A. Yes.</p> <p>3 Q. What are they?</p> <p>4 A. I reviewed my -- the declaration that I</p> <p>5 submitted, and I have reviewed some case law, some</p> <p>6 cases, and I have reviewed the time entry logbook, a</p> <p>7 copy of it that I have submitted as an exhibit.</p> <p>8 Q. Anything else?</p> <p>9 A. That's all.</p> <p>10 Q. And you are represented by counsel today.</p> <p>11 Correct?</p> <p>12 A. I am.</p> <p>13 Q. Are you represented by DLA Piper as well,</p> <p>14 or...</p> <p>15 A. DLA Piper counsel is -- sorry. DLA Piper</p> <p>16 has an attorney here representing patent owner</p> <p>17 SurfCast.</p> <p>18 Q. So DLA Piper is not representing you.</p> <p>19 Is that correct?</p> <p>20 A. That is correct.</p> <p>21 Q. Are you paying your counsel for the</p> <p>22 representation?</p> <p>23 A. I believe my client SurfCast is paying</p> <p>24 them.</p> <p>25 Q. For both DLA Piper and your counsel?</p>	<p style="text-align: right;">Page 25</p> <p>1 Q. Stefano?</p> <p>2 A. Yes.</p> <p>3 Q. And William S. Galliani?</p> <p>4 A. Yes.</p> <p>5 Q. Who are they?</p> <p>6 MS. PASCAL: Objection, form.</p> <p>7 THE WITNESS: Andrew Gray at the time was</p> <p>8 an attorney at Pennie and Edmonds.</p> <p>9 Dr. Lovejoy at the time was a law clerk at</p> <p>10 Pennie and Edmonds.</p> <p>11 Mr. DeStefano was an attorney at Pennie</p> <p>12 and Edmonds at that time, as was Mr. Galliani.</p> <p>13 BY MR. SUH:</p> <p>14 Q. Mr. Galliani was an attorney too?</p> <p>15 A. That's correct.</p> <p>16 Q. What were their titles?</p> <p>17 A. I believe at the time Mr. Gray was an</p> <p>18 associate, Dr. Lovejoy was a law clerk,</p> <p>19 Mr. DeStefano was a partner, and Mr. Galliani was a</p> <p>20 partner.</p> <p>21 Q. Did they have -- were they licensed to</p> <p>22 practice before the United States Patent Office?</p> <p>23 MS. BOYD: Objection, form.</p> <p>24 BY MR. SUH:</p> <p>25 Q. Was Mr. Andrew Gray licensed to practice</p>

7 (Pages 22 to 25)

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SurfCast – Exhibit 2073, page 8

Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

<p style="text-align: right;">Page 26</p> <p>1 before the United States Patent Office?</p> <p>2 A. Yes.</p> <p>3 Q. Was Mr. Lovejoy?</p> <p>4 A. I believe he was at the time, yes.</p> <p>5 Q. What about Paul DeStefano?</p> <p>6 A. No.</p> <p>7 Q. William S. Galliani?</p> <p>8 A. Yes.</p> <p>9 Q. What is Mr. Andrew Gray's technical</p> <p>10 background?</p> <p>11 A. I don't know specifically what his</p> <p>12 technical background is other than I know that at</p> <p>13 the time I was working with him he had quite some</p> <p>14 experience with software related matters, software</p> <p>15 related inventions.</p> <p>16 Q. What is Mr. Brett Lovejoy's technical</p> <p>17 background?</p> <p>18 A. He had a Ph.D. in some type of protein</p> <p>19 chemistry, protein crystallography, I think. I</p> <p>20 don't remember more specifically than that.</p> <p>21 Q. What was Paul's technical background?</p> <p>22 A. I don't know that he has a technical</p> <p>23 background. He is a corporate attorney.</p> <p>24 Q. Corporate?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 28</p> <p>1 the time. At that time in the office there were a</p> <p>2 lot of new projects coming in.</p> <p>3 Q. Do you know that they did not have time,</p> <p>4 or are you guessing?</p> <p>5 A. No. From my best recollection of the</p> <p>6 time, everybody was extremely busy.</p> <p>7 Q. How many lawyers or patent agents did</p> <p>8 Pennie have?</p> <p>9 MS. BOYD: Objection, form.</p> <p>10 THE WITNESS: Do you mean in the entire</p> <p>11 firm?</p> <p>12 MR. SUH: Entire firm.</p> <p>13 THE WITNESS: I don't remember</p> <p>14 specifically, although my recollection, it could</p> <p>15 have been around 200.</p> <p>16 BY MR. SUH:</p> <p>17 Q. And they could all have drafted a patent</p> <p>18 application.</p> <p>19 Is that correct?</p> <p>20 MS. PASCAL: Objection, form.</p> <p>21 THE WITNESS: I don't know. Are you asking</p> <p>22 could any of them could have drafted any patent</p> <p>23 application?</p> <p>24 MR. SUH: Yes. That's the question.</p> <p>25 THE WITNESS: I don't believe that's the</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. What was Mr. Galliani's technical</p> <p>2 background?</p> <p>3 A. I don't know specifically, but I believe</p> <p>4 it's something in electrical engineering or computer</p> <p>5 science, because his practice was almost entirely in</p> <p>6 software related patent, patent practice.</p> <p>7 Q. Are there any reasons why Mr. Andrew Gray,</p> <p>8 Mr. Lovejoy, and Mr. Galliani could not draft a</p> <p>9 patent application?</p> <p>10 MS. PASCAL: Objection, form.</p> <p>11 THE WITNESS: I don't know that there is a</p> <p>12 reason why they -- why they -- I mean, do you mean</p> <p>13 could not as a matter of capability or could not as</p> <p>14 a matter of time?</p> <p>15 BY MR. SUH:</p> <p>16 Q. Let's start with capability.</p> <p>17 A. I believe that either of them could have</p> <p>18 drafted the application.</p> <p>19 Q. They could?</p> <p>20 A. Could have.</p> <p>21 Q. Could have?</p> <p>22 A. Yes.</p> <p>23 Q. What about time?</p> <p>24 A. I think that is, you know, that is --</p> <p>25 that -- the answer to that is they might have had</p>	<p style="text-align: right;">Page 29</p> <p>1 case. I mean, for example, one of the -- one of the</p> <p>2 attorneys in the firm who does exclusively</p> <p>3 litigation I believe probably would not have held</p> <p>4 themselves out as somebody to draft a patent</p> <p>5 application, and for example, somebody whose</p> <p>6 practice was exclusively in biotechnology probably</p> <p>7 would not have drafted a software application, and</p> <p>8 vice versa.</p> <p>9 BY MR. SUH:</p> <p>10 Q. So how many lawyers or patent agents do</p> <p>11 you think Pennie had back in the 1990 timeframe that</p> <p>12 could draft a patent application?</p> <p>13 A. 1990 or 1999?</p> <p>14 Q. 1999.</p> <p>15 A. Draft any patent application?</p> <p>16 Q. Yes.</p> <p>17 A. Best guess, at least a hundred.</p> <p>18 Q. Okay. So I'm handing you out</p> <p>19 Exhibit 2035.</p> <p>20 (Whereupon, Exhibit 2035 was marked</p> <p>21 for identification)</p> <p>22 BY MR. SUH:</p> <p>23 Q. Actually, can you -- this is single-sided.</p> <p>24 A. Okay.</p> <p>25 Q. And double-sided ones are for the counsels</p>

8 (Pages 26 to 29)

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SurfCast – Exhibit 2073, page 9

Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

<p style="text-align: right;">Page 30</p> <p>1 just to save trees.</p> <p>2 Do you recognize this document?</p> <p>3 A. I do.</p> <p>4 Q. Did you write these entries each day?</p> <p>5 A. Yes, I did.</p> <p>6 Q. Did anybody see you write these entries</p> <p>7 each day?</p> <p>8 A. If you mean literally was somebody in the</p> <p>9 room as I was writing them, I think that's highly</p> <p>10 unlikely.</p> <p>11 Q. Do you have copies of the drafts that you</p> <p>12 were working on?</p> <p>13 MS. PASCAL: Objection, form.</p> <p>14 THE WITNESS: Sorry, drafts of what?</p> <p>15 BY MR. SUH:</p> <p>16 Q. Drafts of the patent application, SurfCast</p> <p>17 patent application.</p> <p>18 A. I -- I do not, no.</p> <p>19 Q. There is no evidence of your work product</p> <p>20 during this period.</p> <p>21 Correct?</p> <p>22 MS. BOYD: Objection.</p> <p>23 MS. PASCAL: Objection, lacks foundation.</p> <p>24 THE WITNESS: I don't believe that's</p> <p>25 correct.</p>	<p style="text-align: right;">Page 32</p> <p>1 BY MR. SUH:</p> <p>2 Q. Could you point me to an example?</p> <p>3 A. Okay. I have a copy of this document</p> <p>4 which has fewer redactions in it --</p> <p>5 Q. I think --</p> <p>6 A. -- and which was served on you a few days</p> <p>7 ago. May I refer to that?</p> <p>8 Q. We objected to that as untimely.</p> <p>9 A. Okay.</p> <p>10 MS. BOYD: I don't think you answered the</p> <p>11 question, though. He is asking if he can refer to</p> <p>12 it, not make it in evidence.</p> <p>13 MR. SUH: No.</p> <p>14 THE WITNESS: Okay. So --</p> <p>15 MS. PASCAL: I'm going to object as best</p> <p>16 evidence.</p> <p>17 You can continue.</p> <p>18 THE WITNESS: Okay. July 29, Thursday.</p> <p>19 BY MR. SUH:</p> <p>20 Q. So what did you do?</p> <p>21 A. That was a meeting that took place in New</p> <p>22 York City, mostly at the New York office of Pennie</p> <p>23 and Edmonds. I do remember that meeting.</p> <p>24 I believe there is also --</p> <p>25 Q. No, back to that meeting.</p>
<p style="text-align: right;">Page 31</p> <p>1 BY MR. SUH:</p> <p>2 Q. Why?</p> <p>3 A. I believe that there are in existence some</p> <p>4 e-mails that contain copies of drafts that were sent</p> <p>5 from Pennie and Edmonds to one or more persons at</p> <p>6 SurfCast.</p> <p>7 Q. Those e-mails included drafts, did you</p> <p>8 say?</p> <p>9 A. Either e-mails or faxes. I believe that</p> <p>10 those exist. I have not reviewed them.</p> <p>11 Q. But you don't have any copies of the</p> <p>12 drafts?</p> <p>13 A. I personally do not, no.</p> <p>14 Q. Do you know if anybody has copies of that?</p> <p>15 A. If they have been produced in connection</p> <p>16 with the concurrent litigation, then I believe they</p> <p>17 are there.</p> <p>18 Q. Can you tell me under oath that you</p> <p>19 specifically remember what you did on each day?</p> <p>20 A. I think for the majority of days I could</p> <p>21 not say I specifically remember.</p> <p>22 Q. Are there any days that you can</p> <p>23 specifically remember?</p> <p>24 MS. PASCAL: Objection.</p> <p>25 THE WITNESS: I believe there are, yes.</p>	<p style="text-align: right;">Page 33</p> <p>1 A. Sorry.</p> <p>2 Q. Do you know what was discussed during the</p> <p>3 meeting specifically?</p> <p>4 A. We --</p> <p>5 MS. PASCAL: Objection to the -- no.</p> <p>6 THE WITNESS: I believe that aspects of</p> <p>7 that would be covered by attorney-client privilege.</p> <p>8 BY MR. SUH:</p> <p>9 Q. The question was do you remember what was</p> <p>10 specifically discussed.</p> <p>11 A. I remember some things that were</p> <p>12 specifically discussed.</p> <p>13 Q. Are there any non-privileged discussions</p> <p>14 you had with -- during that meeting?</p> <p>15 A. I don't believe so, and certainly not that</p> <p>16 I remember.</p> <p>17 I can provide another day that I remember</p> <p>18 also, if you are finished with this day.</p> <p>19 Q. Sure.</p> <p>20 Actually, back to July 29th --</p> <p>21 MS. PASCAL: I'm sorry, he is in the middle</p> <p>22 of an answer.</p> <p>23 MR. SUH: Is that an objection?</p> <p>24 MS. PASCAL: Yes.</p> <p>25 THE WITNESS: I would just relate to you</p>

9 (Pages 30 to 33)

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SurfCast - Exhibit 2073, page 10

Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

<p style="text-align: right;">Page 34</p> <p>1 that I also remember October 19.</p> <p>2 MR. SUH: Okay.</p> <p>3 THE WITNESS: There are a couple of entries</p> <p>4 there that reference a meeting with Mr. Carberry. I</p> <p>5 remember -- I remember meeting with Mr. Carberry.</p> <p>6 BY MR. SUH:</p> <p>7 Q. Other than remembering a meeting with</p> <p>8 Mr. Carberry, do you specifically remember what you</p> <p>9 did this day?</p> <p>10 A. Not based on the narratives that are in</p> <p>11 front of me here. The other narratives are</p> <p>12 redacted. So you know...</p> <p>13 Q. Do you know what you discussed during that</p> <p>14 meeting?</p> <p>15 A. I do remember some things that I discussed</p> <p>16 with Mr. Carberry, but I believe they are covered by</p> <p>17 the attorney-client privilege.</p> <p>18 Q. At the beginning of the deposition I asked</p> <p>19 you not to make any objections, that's for counsel</p> <p>20 the make that okay.</p> <p>21 A. Okay. Understood.</p> <p>22 Q. So could you answer my question?</p> <p>23 MS. BOYD: I -- no.</p> <p>24 MS. PASCAL: We --</p> <p>25 MS. BOYD: I think we'll both make the</p>	<p style="text-align: right;">Page 36</p> <p>1 declaration, Exhibit 2008, although as you can</p> <p>2 probably tell from the actual document itself this</p> <p>3 is not a document that I prepared personally or</p> <p>4 transmitted at the time it was -- at the time it was</p> <p>5 sent. It's a facsimile. But I mean, I recognize</p> <p>6 the overall form of the contents and where it came</p> <p>7 from.</p> <p>8 For Exhibit 2049 and Exhibit 2010, I can</p> <p>9 answer in the same way. I mean, I know what these</p> <p>10 documents are.</p> <p>11 But again, other than review them in</p> <p>12 connection with preparing my declaration, I was not</p> <p>13 the author of them or reviewer of them at the time</p> <p>14 they were created.</p> <p>15 BY MR. SUH:</p> <p>16 Q. Are you finished answering?</p> <p>17 A. Yes.</p> <p>18 Q. So did you produce all the invoices that</p> <p>19 were in your possession for the period of June 29th</p> <p>20 to October 29th, 1999?</p> <p>21 MS. BOYD: Objection, form.</p> <p>22 THE WITNESS: Are you asking me personally?</p> <p>23 BY MR. SUH:</p> <p>24 Q. Yes. I could only find these three. Are</p> <p>25 there others that I missed?</p>
<p style="text-align: right;">Page 35</p> <p>1 objection that -- and the instruction to respect</p> <p>2 attorney-client privilege. And that wasn't an</p> <p>3 objection that the witness made, it was an</p> <p>4 observation in his role as an attorney saying that</p> <p>5 something is privileged.</p> <p>6 BY MR. SUH:</p> <p>7 Q. And you are here as a fact witness. Is</p> <p>8 that correct? Not as a lead counsel?</p> <p>9 A. That is correct.</p> <p>10 Q. Okay. Let's turn to Exhibit 2049, 2050,</p> <p>11 and 2010.</p> <p>12 (Whereupon, Exhibit 2049 was marked</p> <p>13 for identification)</p> <p>14 (Whereupon, Exhibit 2050 was marked</p> <p>15 for identification)</p> <p>16 (Whereupon, Exhibit 2010 was marked</p> <p>17 for identification)</p> <p>18 BY MR. SUH:</p> <p>19 Q. Do you recognize these documents?</p> <p>20 MS. BOYD: Objection, form.</p> <p>21 THE WITNESS: I will answer document by</p> <p>22 document.</p> <p>23 MR. SUH: Sure.</p> <p>24 THE WITNESS: So Exhibit 2050, I reviewed</p> <p>25 this document in connection with preparing my</p>	<p style="text-align: right;">Page 37</p> <p>1 A. I have no invoices in my possession, and I</p> <p>2 never had any invoices in my possession.</p> <p>3 Q. So where did this come from?</p> <p>4 MS. BOYD: Objection to form.</p> <p>5 MS. PASCAL: Objection.</p> <p>6 THE WITNESS: I believe they were produced</p> <p>7 by other persons involved in either the litigation</p> <p>8 in Maine or in connection with this inter partes</p> <p>9 review.</p> <p>10 BY MR. SUH:</p> <p>11 Q. So you are not aware of any invoices that</p> <p>12 exist other than these three.</p> <p>13 Correct?</p> <p>14 A. Me personally, no, that's correct.</p> <p>15 Q. If you could turn to page 11 of</p> <p>16 Exhibit 2010? Do you see an entry from Mr. Galliani</p> <p>17 on October 30th, 1999?</p> <p>18 A. I do.</p> <p>19 Q. Do you agree that this time has nothing to</p> <p>20 do with the reduction to practice of the provisional</p> <p>21 application filed on October 29th?</p> <p>22 A. If that --</p> <p>23 MS. PASCAL: Objection.</p> <p>24 THE WITNESS: If that is an accurate time</p> <p>25 entry, I agree with you.</p>

10 (Pages 34 to 37)

<p style="text-align: right;">Page 38</p> <p>1 BY MR. SUH:</p> <p>2 Q. Let's then turn to page 5 of</p> <p>3 Exhibit No. 2050.</p> <p>4 A. Yes.</p> <p>5 Q. Do you see that you billed 34.1 hours from</p> <p>6 September 14th to September 30th in the Total</p> <p>7 amount?</p> <p>8 MS. PASCAL: Objection.</p> <p>9 THE WITNESS: I haven't added up all these</p> <p>10 numbers, but I don't know that the 34.1 hours begins</p> <p>11 at September 14th.</p> <p>12 BY MR. SUH:</p> <p>13 Q. Okay.</p> <p>14 MS. PASCAL: Excuse me, can he finish his</p> <p>15 answer, please?</p> <p>16 MR. SUH: Sorry.</p> <p>17 THE WITNESS: These invoices are typically</p> <p>18 generated on a monthly billing cycle, and I would</p> <p>19 assume that the summary for each person is based on</p> <p>20 a complete month, although I don't know that that's</p> <p>21 absolutely the case for this invoice.</p> <p>22 I mean, the first page, page 3, says</p> <p>23 "Legal services rendered for the period ending</p> <p>24 September 30th."</p> <p>25 BY MR. SUH:</p>	<p style="text-align: right;">Page 40</p> <p>1 A. Yes. There is a billing number which says</p> <p>2 in the middle of the -- of page 3, it says</p> <p>3 09555.0003999. That is for another client matter</p> <p>4 that I worked on.</p> <p>5 I believe that it's possible in that</p> <p>6 timeframe some matters were entered in the time</p> <p>7 system on the wrong -- I'm sorry, some entries were</p> <p>8 entered in the time system on the wrong matter and</p> <p>9 they appeared on the SurfCast bill and they should</p> <p>10 not have done.</p> <p>11 This fax is being sent from</p> <p>12 Mr. DeStefano's secretary to somebody in the</p> <p>13 accounting department at Pennie and Edmonds, and I</p> <p>14 believe it's for the purposes of correcting the</p> <p>15 invoice.</p> <p>16 BY MR. SUH:</p> <p>17 Q. So you pointed to page 3. And I see 0.75</p> <p>18 hours, 0.25 hours, 0.25 hours and 0.25 hours. If</p> <p>19 you add that up, that's only 1.5 hours.</p> <p>20 A. Okay.</p> <p>21 Q. What is your basis for saying that this is</p> <p>22 what was struck down from 34.1 hours down to 26</p> <p>23 hours? That's almost 25 percent.</p> <p>24 MS. BOYD: Objection.</p> <p>25 BY MR. SUH:</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. Are you done?</p> <p>2 A. Yes.</p> <p>3 Q. So in the bottom of page 5, do you see the</p> <p>4 number 34.1 hours next to your name?</p> <p>5 A. I do.</p> <p>6 Q. And your time was written off down to 26</p> <p>7 hours.</p> <p>8 Correct?</p> <p>9 MS. PASCAL: Objection, lacks foundation.</p> <p>10 THE WITNESS: I believe that is probably</p> <p>11 what happened here.</p> <p>12 BY MR. SUH:</p> <p>13 Q. That means your work should have only</p> <p>14 taken 26 hours rather than 34.1 hours.</p> <p>15 Correct?</p> <p>16 MS. BOYD: Objection.</p> <p>17 MS. PASCAL: Objection.</p> <p>18 THE WITNESS: If you ask me to look at this</p> <p>19 document in total, then my understanding of this</p> <p>20 document is that there are some entries on the</p> <p>21 initial part of it that are being struck because</p> <p>22 they were ended on the wrong matter and should not</p> <p>23 have been billed to SurfCast.</p> <p>24 BY MR. SUH:</p> <p>25 Q. Do you have evidence showing that?</p>	<p style="text-align: right;">Page 41</p> <p>1 Q. Write-off?</p> <p>2 MS. BOYD: Objection.</p> <p>3 MS. PASCAL: Objection, lacks foundation.</p> <p>4 Argumentative.</p> <p>5 THE WITNESS: There is a blank page 4, and</p> <p>6 I can't tell you what happened on that page 4.</p> <p>7 If you give me a minute, I will add up the</p> <p>8 entries on page 5.</p> <p>9 Okay. So the entries on page 5 for me,</p> <p>10 they total 17.6 hours.</p> <p>11 MR. SUH: Okay.</p> <p>12 THE WITNESS: Which is less than 34.1. So</p> <p>13 there is some incompleteness in the document in</p> <p>14 front of us.</p> <p>15 BY MR. SUH:</p> <p>16 Q. So you would agree that this Exhibit 2550</p> <p>17 is incomplete.</p> <p>18 Correct?</p> <p>19 A. Well, there is a redacted page, there is a</p> <p>20 blank page here. And none of us sitting here can</p> <p>21 tell you what's on that blank page.</p> <p>22 Q. Okay. Were you responsible for billing?</p> <p>23 MS. PASCAL: Objection.</p> <p>24 THE WITNESS: Can you explain the question?</p> <p>25 BY MR. SUH:</p>

11 (Pages 38 to 41)

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SurfCast - Exhibit 2073, page 12

Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

<p style="text-align: right;">Page 42</p> <p>1 Q. Were you responsible for billing these to 2 SurfCast? 3 MS. BOYD: Objection. 4 THE WITNESS: I did not personally review, 5 edit, or send out bills from Pennie and Edmonds. 6 BY MR. SUH: 7 Q. And you don't have any personal knowledge 8 as to whether these bills were in fact billed. 9 Correct? 10 MS. PASCAL: Objection, form. 11 THE WITNESS: I find that a peculiar 12 question. In a large complex organization like a 13 law firm there is lots of things I may not have 14 personal knowledge of, but I believe they actually 15 happened. I mean, I believe the firm sends out 16 bills, even though I don't personally do that 17 myself. 18 BY MR. SUH: 19 Q. So the bills that I'm talking about are 20 Exhibit Nos. 2010, 2049 and 2050. And you don't 21 have personal knowledge as to whether these were in 22 fact billed. 23 Correct? 24 MS. PASCAL: Objection, form. And 25 objection, relevance.</p>	<p style="text-align: right;">Page 44</p> <p>1 it sends out. It has ways of taking appropriate 2 action if that's not the case. 3 And SurfCast remained a client of the firm 4 throughout the years I spent there. 5 BY MR. SUH: 6 Q. Okay. Thank you. 7 So if you can turn back to Exhibit 2008? 8 If you turn to page 9, you mention a lot of numbers 9 related to SurfCast, and I'll read the numbers: 10 9982-0009-999, and the second number is 11 9982-0009-888, and the third number is 12 9982-0005-999, and the fourth number I see is 13 9982-0002-999. 14 Were there any other numbers for SurfCast, 15 or is this it? 16 A. There were other matter numbers for 17 SurfCast that I personally did not work on. 18 Q. And page 9 says, page 9 of Exhibit 2008 19 says "Pennie firm's unique client number for 20 SurfCast is 09982." 21 Correct? 22 MS. BOYD: Objection. 23 THE WITNESS: We would write either four 24 digits, 9982, or with a leading zero making five 25 digits. Either is used interchangeably.</p>
<p style="text-align: right;">Page 43</p> <p>1 THE WITNESS: I mean, I'll answer the 2 question using what I believe is common sense. Yes, 3 it's correct, I did not personally supervise the 4 process of sending these bills out. 5 But I think it would strain credulity if I 6 were to say these bills didn't get sent out, you 7 know, if that follows from me having no personal 8 knowledge of these documents being prepared. 9 BY MR. SUH: 10 Q. And you don't have -- you don't have 11 personal knowledge as to whether SurfCast paid these 12 bills, Exhibit Nos. 2010, 2049, and 2050, in 1999. 13 Correct? 14 MS. BOYD: Objection. 15 MS. PASCAL: Objection. 16 MS. BOYD: Relevance. 17 MS. PASCAL: And form. 18 THE WITNESS: Again, my role at Pennie and 19 Edmonds, I was not concerned with accounting 20 matters. 21 So again, I have no personal -- I have no 22 personal knowledge of almost any client actually 23 transmitting money into the firm, although again, 24 I'm, you know, working in an operating business. I 25 assume that the firm is getting paid on the invoices</p>	<p style="text-align: right;">Page 45</p> <p>1 BY MR. SUH: 2 Q. Okay. And the numbers following 9982, 3 were these numbers for different tasks that SurfCast 4 asked Pennie to undertake? 5 MS. BOYD: Objection, form. 6 THE WITNESS: Yes. The numbers following 7 the hyphen after 9982 relate to different matters. 8 BY MR. SUH: 9 Q. So what were the different tasks? 10 MS. PASCAL: Objection. 11 MS. BOYD: Objection. 12 MS. PASCAL: Form. 13 THE WITNESS: Are you asking me about these 14 numbers or any number? 15 BY MR. SUH: 16 Q. The four numbers that you mention in your 17 declaration. 18 A. Okay. So 9982-00 -- 0009-999 referred to 19 a utility patent application. 9982-0009-888 20 referred to a provisional patent application. 21 9982-0005-999 related I think to an opinion matter. 22 9982-0002-999 related to a general billable matter, 23 and sometimes -- sometimes called general corporate. 24 Q. So your task, Pennie's task included 25 general corporate matters. Is that correct? Just</p>

12 (Pages 42 to 45)

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SurfCast – Exhibit 2073, page 13

Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

<p style="text-align: right;">Page 46</p> <p>1 wanted to understand what you just said when you</p> <p>2 said general corporate.</p> <p>3 A. That is correct.</p> <p>4 Q. And did it also include trademark matters?</p> <p>5 A. Yes, it did.</p> <p>6 Q. What about financing?</p> <p>7 A. I don't know specifically.</p> <p>8 Q. Let's go to Exhibit 2010 -- 2010 on page</p> <p>9 13. And the second description is "series of</p> <p>10 financing."</p> <p>11 Do you see that?</p> <p>12 A. You see page 13?</p> <p>13 Q. Page 13.</p> <p>14 A. Oh, "Series." It's highlighted. Okay.</p> <p>15 "Series A financing," it says.</p> <p>16 Q. What was this about?</p> <p>17 MS. BOYD: Objection, relevance.</p> <p>18 MS. PASCAL: Lacks foundation.</p> <p>19 THE WITNESS: I don't know. I have no</p> <p>20 specific recollection of working on that matter.</p> <p>21 BY MR. SUH:</p> <p>22 Q. Is this matter for SurfCast?</p> <p>23 MS. PASCAL: Same objection.</p> <p>24 THE WITNESS: I believe it is.</p> <p>25 BY MR. SUH:</p>	<p style="text-align: right;">Page 48</p> <p>1 than 9982-0009-999 or 9982-0009-888, other than</p> <p>2 these two numbers, the other matter numbers are not</p> <p>3 for preparation of patent application.</p> <p>4 Is that correct?</p> <p>5 MS. PASCAL: Objection, form, lacks</p> <p>6 foundation.</p> <p>7 THE WITNESS: That is correct.</p> <p>8 BY MR. SUH:</p> <p>9 Q. Do you agree that matter numbers that do</p> <p>10 not start with 9982-0009 are not related to patents</p> <p>11 at all.</p> <p>12 Correct?</p> <p>13 MS. BOYD: Objection.</p> <p>14 MS. PASCAL: Objection, form.</p> <p>15 THE WITNESS: Can you repeat the question,</p> <p>16 please?</p> <p>17 BY MR. SUH:</p> <p>18 Q. Matter numbers that do not start with</p> <p>19 9982-0009 are not related to preparing patents at</p> <p>20 all?</p> <p>21 MS. PASCAL: Objection, form.</p> <p>22 THE WITNESS: I don't agree with that</p> <p>23 statement.</p> <p>24 BY MR. SUH:</p> <p>25 Q. Why is that?</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. So you agree that SurfCast engaged Pennie</p> <p>2 for other matters in addition to preparing a patent</p> <p>3 application.</p> <p>4 Is that correct?</p> <p>5 A. That is correct.</p> <p>6 Q. In page 9, if you can go back to</p> <p>7 Exhibit 2008? Page 9? On page 9 you say 9982 --</p> <p>8 A. Yes.</p> <p>9 Q. -- dash 0009-999 is for preparation of</p> <p>10 patent application.</p> <p>11 Do you see that?</p> <p>12 A. Second -- second and third line of the</p> <p>13 page?</p> <p>14 Q. And you agree that other matter numbers</p> <p>15 are not for preparation of patent application.</p> <p>16 Correct?</p> <p>17 MS. PASCAL: Objection, form, lacks</p> <p>18 foundation.</p> <p>19 MS. BOYD: Irrelevant.</p> <p>20 THE WITNESS: The matter that ends in 888</p> <p>21 would have been used for preparation of a</p> <p>22 provisional patent application.</p> <p>23 BY MR. SUH:</p> <p>24 Q. So I can rephrase my question.</p> <p>25 Do you agree that matter numbers other</p>	<p style="text-align: right;">Page 49</p> <p>1 A. Because that statement encompasses almost</p> <p>2 any other matter that the firm has. If it does not</p> <p>3 start with 9982 it pertains to other clients and</p> <p>4 therefore --</p> <p>5 Q. No, no. 9982-0009.</p> <p>6 MS. PASCAL: Objection, form.</p> <p>7 THE WITNESS: Of the numbers that are</p> <p>8 referenced in this document, the only ones that</p> <p>9 pertain to patent applications are the ones that</p> <p>10 begin with 9982-0009.</p> <p>11 BY MR. SUH:</p> <p>12 Q. Okay. Thank you.</p> <p>13 Was it your practice to enter the time</p> <p>14 under the correct billing number?</p> <p>15 A. That was my habit. I mean, I can't say</p> <p>16 that I did not make occasional clerical errors, but</p> <p>17 I think the overwhelming majority of the time that</p> <p>18 is what I did.</p> <p>19 Q. Did you review your time entries before</p> <p>20 they were sent out to the client?</p> <p>21 A. I reviewed them before they were sent to</p> <p>22 the partner for review, the partner being the person</p> <p>23 who sends out the bill.</p> <p>24 Q. And do you have any reason to believe that</p> <p>25 any of these entries in your notebook are</p>

13 (Pages 46 to 49)

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SurfCast – Exhibit 2073, page 14

Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

<p style="text-align: right;">Page 50</p> <p>1 inaccurate?</p> <p>2 A. I do not.</p> <p>3 Q. Page 8 of, if we can go back to</p> <p>4 Exhibit 2035, if you go the page 8? It's the entry</p> <p>5 for June 22nd, 1999.</p> <p>6 MS. PASCAL: I'm sorry, Counsel, what page?</p> <p>7 MR. SUH: Page 8.</p> <p>8 THE WITNESS: May I just modify my previous</p> <p>9 answer? You asked me if I believe any of these are</p> <p>10 inaccurate, other than for a minor clerical error.</p> <p>11 MR. SUH: Okay.</p> <p>12 THE WITNESS: Yes.</p> <p>13 BY MR. SUH:</p> <p>14 Q. And page 8 of Exhibit 2035 has an entry</p> <p>15 under 992-0005?</p> <p>16 A. Yes.</p> <p>17 Q. 999. And the description is "Writing"</p> <p>18 plus "Web searching."</p> <p>19 A. Yes.</p> <p>20 Q. And if you turn to page 9 of the same</p> <p>21 exhibit, it has an entry under 9982-0009-999 with a</p> <p>22 description "Writing/Web Searching."</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Is there any difference between writing</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. So can you -- so then why did you use</p> <p>2 different billing numbers for what appears to be</p> <p>3 identical activities?</p> <p>4 MS. BOYD: Objection. Argumentative.</p> <p>5 THE WITNESS: I think I have already</p> <p>6 answered this question, but I'll say this, I will</p> <p>7 say it again.</p> <p>8 MR. SUH: Okay.</p> <p>9 THE WITNESS: I think that as you can see</p> <p>10 from the dates, this, you know, this actually is the</p> <p>11 fifth working day I'm with the firm. It's possible</p> <p>12 that I didn't fully understand at that time how to</p> <p>13 apportion my time for different projects, and you</p> <p>14 know, I may not have actually been aware that there</p> <p>15 was a separate number at that time for the patent</p> <p>16 application from the opinion matter, and that may</p> <p>17 have been clarified to me literally overnight from</p> <p>18 the 22nd or 23rd of June.</p> <p>19 But again, I'm speculating a little bit</p> <p>20 here. But I don't looking at these entries have</p> <p>21 cause to believe that these are, you know,</p> <p>22 fundamentally inaccurate.</p> <p>23 BY MR. SUH:</p> <p>24 Q. You agree that you can't tell what you did</p> <p>25 on these dates based on these descriptions alone,</p>
<p style="text-align: right;">Page 51</p> <p>1 plus Web searching and writing hyphen Web searching?</p> <p>2 MS. PASCAL: Objection, form.</p> <p>3 THE WITNESS: I don't have a recollection</p> <p>4 of why those terms were written differently, or</p> <p>5 whether there was an intent that there was a</p> <p>6 different meaning from writing them differently.</p> <p>7 BY MR. SUH:</p> <p>8 Q. You agree that what you did on June 22nd</p> <p>9 and June 23rd were different enough to be billed</p> <p>10 under different matter numbers?</p> <p>11 A. I believe this may be either -- either one</p> <p>12 of the minor clerical errors that I previously</p> <p>13 referred to or it may be that at that time I had</p> <p>14 been with the firm for looks like six or seven days,</p> <p>15 I may have just lacked clarity about which matter I</p> <p>16 was working on.</p> <p>17 Q. Looking at these two entries, you can't</p> <p>18 say, tell whether these are accurate entries.</p> <p>19 Correct?</p> <p>20 A. No, I disagree.</p> <p>21 MS. BOYD: Objection.</p> <p>22 BY MR. SUH:</p> <p>23 Q. Why is that?</p> <p>24 A. Because I was not in the habit of writing</p> <p>25 things down inaccurately.</p>	<p style="text-align: right;">Page 53</p> <p>1 then.</p> <p>2 Correct?</p> <p>3 A. I disagree.</p> <p>4 MS. BOYD: Objection.</p> <p>5 THE WITNESS: I disagree.</p> <p>6 BY MR. SUH:</p> <p>7 Q. So can you tell me what you specifically</p> <p>8 did on these two dates?</p> <p>9 MS. BOYD: Caution the witness not to</p> <p>10 reveal attorney-client communications or attorney</p> <p>11 work product.</p> <p>12 MR. SUH: You can answer.</p> <p>13 THE WITNESS: I believe in general terms</p> <p>14 that I was writing portions of a patent application</p> <p>15 and I was also carrying out some searching on the</p> <p>16 Internet related to that.</p> <p>17 BY MR. SUH:</p> <p>18 Q. Do you have any evidence of what you</p> <p>19 specifically did on this date?</p> <p>20 MS. BOYD: Objection.</p> <p>21 THE WITNESS: I believe this logbook is</p> <p>22 evidence of what I did on that day.</p> <p>23 BY MR. SUH:</p> <p>24 Q. Other than this logbook, do you have any</p> <p>25 evidence of what you did on this day?</p>

14 (Pages 50 to 53)

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SurfCast - Exhibit 2073, page 15

Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

<p style="text-align: right;">Page 54</p> <p>1 MS. PASCAL: Same objection. 2 THE WITNESS: Me personally? I don't 3 believe I have other materials from that time. 4 BY MR. SUH: 5 Q. Did you have any communications with 6 SurfCast on these two dates? 7 A. I don't specifically recall. 8 Q. Is there any reason you would be looking 9 for patents that are not prior art to that 10 application? 11 MS. PASCAL: Objection, lacks foundation, 12 form. 13 THE WITNESS: I don't have a specific 14 recollection. 15 BY MR. SUH: 16 Q. When you were looking for prior art, you 17 did determine whether the SurfCast application 18 included patentable subject matter. 19 Is that correct? 20 MS. BOYD: Objection. 21 THE WITNESS: I believe that's covered by 22 attorney-client privilege and attorney work product. 23 BY MR. SUH: 24 Q. Your counsel have not objected based on 25 attorney-client privilege.</p>	<p style="text-align: right;">Page 56</p> <p>1 MR. MICALLEF: That's what I'm asking for. 2 Thank you. 3 MS. PASCAL: Okay. Objection, privilege. 4 MS. BOYD: Objection and instruction 5 privilege. 6 BY MR. SUH: 7 Q. Did you work on any non-patent application 8 matters for SurfCast? 9 MS. BOYD: Objection, form. 10 THE WITNESS: I believe that you can say 11 that some of these entries under 9982-0005-999 I 12 probably characterized or may have characterized at 13 the time as being more closely related to the -- the 14 opinion matter than to the patent application. 15 But to the best of my recollection, I 16 considered those activities to be essentially 17 unified in my head. 18 BY MR. SUH: 19 Q. You say opinion matter. Can you explain 20 more about that? 21 MS. BOYD: Objection, privilege. 22 THE WITNESS: I believe it's listed in one 23 of the invoices, and that is the only description I 24 can really give you. 25 Well, actually, it's in my -- excuse me.</p>
<p style="text-align: right;">Page 55</p> <p>1 MS. BOYD: Sir, if we have to get the Board 2 on the phone to clarify that an attorney witness can 3 assert attorney-client privilege, we can certainly 4 do that. But I doubt that you would like to do 5 that. 6 MR. MICALLEF: Excuse me, this is Joe 7 Micallef. I don't have any problem if you'd like to 8 do that. I think it's important for a clear record 9 of whether or not a privilege is being asserted. I 10 don't think it's a lot to ask for the counsel who is 11 defending to actually assert a privilege. 12 MS. BOYD: Okay. 13 MR. MICALLEF: Do you want to go off the 14 record and discuss it? 15 MS. PASCAL: No. If you want us to echo 16 it, as long as it's clear that -- 17 MR. SUH: I want the record to be clear. 18 MS. PASCAL: Can I finish my sentence? 19 All I'm saying, so we are all on the same 20 page, is it's, you know, clear that Mr. Bone -- or 21 Dr. Bone, excuse me -- can make his record when he 22 feels he needs to protect privilege of one or more 23 of his clients. And if you want his counsel or 24 SurfCast counsel or both to echo it, as long as we 25 are on that same page, we shall do so.</p>	<p style="text-align: right;">Page 57</p> <p>1 BY MR. SUH: 2 Q. Are you talking about -- 3 MS. PASCAL: Excuse me, let him finish. 4 THE WITNESS: I'm talking about in fact 5 Exhibit 2008, my declaration. If you look at 6 paragraph 18 on page 9, this basically states what 7 that matter referred to. 8 BY MR. SUH: 9 Q. So if I understand correctly, the opinion 10 was for a patentability assessment and prior art 11 search. 12 Is that correct? 13 A. That's correct. 14 Q. And you prepared an opinion on that. 15 Correct? 16 A. I did not personally prepare an opinion. 17 Q. And why is that an opinion matter? I'm 18 just confused. 19 MS. PASCAL: Objection. 20 THE WITNESS: The matter was opened and 21 established before I joined Pennie and Edmonds, and 22 that is how the matter was designated when it was 23 opened and established. 24 BY MR. SUH: 25 Q. Well, do you know the purpose of that</p>

15 (Pages 54 to 57)

<p style="text-align: right;">Page 58</p> <p>1 matter?</p> <p>2 MS. BOYD: Objection.</p> <p>3 MS. PASCAL: Objection, and objection to</p> <p>4 the extent it calls for privilege.</p> <p>5 THE WITNESS: I can repeat to you what I</p> <p>6 put in my declaration. It's a separate matter</p> <p>7 number established for a patentability assessment</p> <p>8 and prior art search carried out for the invention</p> <p>9 described in the patent application.</p> <p>10 BY MR. SUH:</p> <p>11 Q. Okay. Other than that, did you work on</p> <p>12 any other non-patent application matters for</p> <p>13 SurfCast?</p> <p>14 A. There may be some entries under this</p> <p>15 0002-999 matter, and I may have put time on that if</p> <p>16 for instance I was sitting in a meeting for SurfCast</p> <p>17 where the discussion may not have been about the</p> <p>18 patent or something like that.</p> <p>19 But that's not very much of the time that</p> <p>20 I spent.</p> <p>21 Q. So you mentioned 9982-0002-999. And if</p> <p>22 you can turn to Exhibit 2010, page 1, I think this</p> <p>23 is what you are referring to.</p> <p>24 A. Yes.</p> <p>25 Q. You agree that this number is not the</p>	<p style="text-align: right;">Page 60</p> <p>1 Correct?</p> <p>2 MS. BOYD: Objection.</p> <p>3 MS. PASCAL: Objection.</p> <p>4 MS. BOYD: Argumentative, form, calls for</p> <p>5 legal conclusion.</p> <p>6 THE WITNESS: What's your basis for that</p> <p>7 question?</p> <p>8 BY MR. SUH:</p> <p>9 Q. You just -- I think you just testified</p> <p>10 that 9982-0002-999 is not a number for, quote,</p> <p>11 preparation of patent application, end quote.</p> <p>12 MS. BOYD: Objection, form.</p> <p>13 Mischaracterization.</p> <p>14 THE WITNESS: That's correct.</p> <p>15 BY MR. SUH:</p> <p>16 Q. And this entry seems to correspond to what</p> <p>17 was listed in Exhibit 2052.</p> <p>18 A. Yes, that's correct. But if you look on</p> <p>19 the same day in Exhibit 2052, I have -- I have an</p> <p>20 entry for revised figures and streamlined claims,</p> <p>21 spoke with Mr. Galliani, and that clearly is</p> <p>22 connected with preparing the patent application.</p> <p>23 And that's on the same day.</p> <p>24 Q. No, that's not my question.</p> <p>25 My question is, Exhibit 2052 includes</p>
<p style="text-align: right;">Page 59</p> <p>1 number for preparation of patent application.</p> <p>2 Correct?</p> <p>3 MS. PASCAL: Objection.</p> <p>4 THE WITNESS: That's correct.</p> <p>5 BY MR. SUH:</p> <p>6 Q. The same activity appears in what I'm</p> <p>7 going to hand out to you, which is Exhibit 2052.</p> <p>8 (Whereupon, Exhibit 2052 was marked</p> <p>9 for identification)</p> <p>10 MR. SUH: It seems thicker. Thicker page.</p> <p>11 MS. BOYD: Here.</p> <p>12 THE WITNESS: Thank you.</p> <p>13 BY MR. SUH:</p> <p>14 Q. So I just handed out to you</p> <p>15 Exhibit No. 2052. And can you please turn to page 8</p> <p>16 of Exhibit 2052?</p> <p>17 A. Okay.</p> <p>18 Q. On October 26 there is this entry "Met</p> <p>19 with Mr. Dechaene, Dr. Lovejoy to discuss current</p> <p>20 status of patent filings."</p> <p>21 Do you see that?</p> <p>22 A. I see that.</p> <p>23 Q. You agree that Exhibit 2052 includes</p> <p>24 activities that cannot be categorized as preparation</p> <p>25 of patent application.</p>	<p style="text-align: right;">Page 61</p> <p>1 activities that cannot be categorized as preparation</p> <p>2 of patent application.</p> <p>3 MS. BOYD: Objection.</p> <p>4 MS. PASCAL: Objection. Form.</p> <p>5 MS. BOYD: Argumentative.</p> <p>6 MS. PASCAL: Relevance.</p> <p>7 THE WITNESS: It seems to include this one</p> <p>8 activity. I don't know of any other activities that</p> <p>9 meet your description.</p> <p>10 BY MR. SUH:</p> <p>11 Q. So you agree that this activity cannot be</p> <p>12 categorized as preparation of patent application.</p> <p>13 Correct?</p> <p>14 MS. BOYD: Can you please just read which</p> <p>15 activity you are talking about? Because I have lost</p> <p>16 track of it.</p> <p>17 MR. SUH: Okay. I can repeat. It's page 8</p> <p>18 of Exhibit 2052, the entry under October 26th where</p> <p>19 it says "Met with Mr. Dechaene, Dr. Lovejoy, to</p> <p>20 discuss current status of patent filings."</p> <p>21 MS. BOYD: Thank you.</p> <p>22 THE WITNESS: So I believe I do have memory</p> <p>23 of that meeting where Mr. Dechaene came to our</p> <p>24 office, and I believe that speaking with him and</p> <p>25 discussing, you know, the status and progress of the</p>

16 (Pages 58 to 61)

<p style="text-align: right;">Page 62</p> <p>1 patent application, although I made a judgment call 2 at the time to put it on matter 0002, I don't 3 believe that's separate and distinct from working on 4 the patent application. 5 BY MR. SUH: 6 Q. So what did you say during the meeting? 7 MS. BOYD: Objection. 8 MS. PASCAL: Objection. Privileged. 9 MS. BOYD: Calls for attorney-client 10 privileged communication. Instruct the witness not 11 to answer. 12 THE WITNESS: That's correct. That would 13 be an attorney-client privileged communication. 14 BY MR. SUH: 15 Q. So why did you bill this entry under 16 general billing matter rather than under the matter 17 number specifically for preparation of patent 18 application? 19 MS. PASCAL: Objection, relevance. 20 MS. BOYD: Objection, argumentative. 21 THE WITNESS: I don't have a specific 22 recollection of why, but I can only speculate that I 23 just decided I would do that based maybe on the 24 majority of discussion. I don't exactly remember. 25 BY MR. SUH:</p>	<p style="text-align: right;">Page 64</p> <p>1 MS. BOYD: Objection. 2 THE WITNESS: Based on the best of my 3 recollection, I was not sitting in that room with 4 him drafting the patent application. 5 BY MR. SUH: 6 Q. Okay. Are you done? 7 A. I'm done. 8 MR. SUH: Okay. We can take a break. 9 THE VIDEOGRAPHER: Okay. Off the record, 10 the time is 10:15 -- 10:16. 11 (Whereupon, a recess was taken 12 commencing at 10:16 A.M. and 13 concluding at 10:30 A.M.) 14 THE VIDEOGRAPHER: We are back on the 15 record. This is the beginning of volume one, 16 videotape number two in the deposition of 17 Dr. Richard Bone. The time is 10:30. 18 BY MR. SUH: 19 Q. So I want to go back the our previous 20 question and revisit whether you had any type of 21 contingency fee arrangement with SurfCast for the 22 main litigation. 23 MS. PASCAL: Objection, relevance. 24 THE WITNESS: Okay. So I believe I have 25 permission to waive the privilege on this.</p>
<p style="text-align: right;">Page 63</p> <p>1 MS. BOYD: If there is a convenient time to 2 take a short break? 3 MR. SUH: Yeah. Can we -- 4 THE WITNESS: Well, I would add one 5 sentence to my answer, then we can break. 6 MR. SUH: Sure. 7 THE WITNESS: I mean, it is clear from my 8 recollection that Mr. Dechaene stopped by the office 9 in large part to discuss the patent application, and 10 therefore I think that this is appropriately 11 considered as something connected with the filing 12 and preparation of the patent application. 13 BY MR. SUH: 14 Q. So during the meeting, did you actually 15 draft the patent application with him? 16 MS. PASCAL: Objection. Form. 17 THE WITNESS: I have told you I don't 18 have -- or rather, the content of what was discussed 19 at the meeting is protected by the attorney-client 20 privilege. 21 BY MR. SUH: 22 Q. No, my question was not asking you the 23 content of what was discussed. Did you draft the 24 patent application during the meeting, was the 25 question.</p>	<p style="text-align: right;">Page 65</p> <p>1 MS. BOYD: It's not a waiver of privilege, 2 it's -- it's a non-assertion of privilege. 3 MS. PASCAL: Correct. 4 THE WITNESS: Thank you. Okay. 5 My fee agreement with SurfCast is 6 structured in this way. I bill my services out 7 month by month at my regular hourly rate. 8 If SurfCast is successful in litigation in 9 Maine in collecting an award based on patent 10 infringement, then I would then be eligible for a 11 bonus which is tied to the number of hours that I 12 have billed for SurfCast for the duration of my 13 representation. 14 So it has a multiplying factor on my 15 billable hour rate. 16 BY MR. SUH: 17 Q. Do you have a similar contingency fee 18 arrangement with SurfCast in connection with the 19 IPR? 20 A. Not separately. My fee agreement with 21 SurfCast is for all my services, regardless of what 22 it's in connection with. 23 Q. Thank you. 24 So if you can turn back to Exhibit 2008? 25 You list a number of matters that you worked on.</p>

17 (Pages 62 to 65)

<p style="text-align: right;">Page 66</p> <p>1 And the first one shows, appears on page 11, the 2 invalidity opinion. 3 A. Yes, I see that. 4 Q. Can you explain generally what this matter 5 relates to? 6 MS. BOYD: I'll caution the witness to not 7 disclose any attorney-client privileged 8 communications. 9 THE WITNESS: Understood. Thank you. 10 I can say generally that it was a -- an 11 opinion for a client of invalidity of a third party 12 U.S. patent. 13 BY MR. SUH: 14 Q. Was it related to SurfCast? 15 A. Not at all. 16 Q. When did you finish this project? 17 MS. PASCAL: Objection, form. 18 THE WITNESS: I will refresh my memory of 19 that by looking at Exhibit 2008. 20 (Pause) 21 THE WITNESS: In paragraph 38 on page 17 it 22 looks like the opinion was finalized on October 23 18th, 1999. 24 BY MR. SUH: 25 Q. And if you can turn to page 12, you</p>	<p style="text-align: right;">Page 68</p> <p>1 BY MR. SUH: 2 Q. Six to ten matters. 3 And on page 13 you mentioned 4 Antimicrobials Portfolio. Can you generally explain 5 what this matter related to? 6 A. The Antimicrobials Portfolio? It is 7 another portfolio of patent applications owned by 8 another client of Pennie and Edmonds. 9 Q. Was this related to SurfCast? 10 A. No. 11 Q. And when did you finish this project? 12 A. Same answer. It's a portfolio of patent 13 applications in this case U.S. and foreign, lot of 14 ongoing matters were in it. So there isn't a finish 15 point. It was ongoing. 16 Q. Do you recall roughly how many matters 17 there were in this project? 18 A. That portfolio was quite large. Possibly 19 50 or more matters. 20 Q. Now, the last one you mentioned was on the 21 same page, the Macromolecular Design Application. 22 A. Yes. 23 Q. Can you explain what this matter generally 24 related to? 25 A. That was a patent application owned by</p>
<p style="text-align: right;">Page 67</p> <p>1 mentioned the Hydrogen Exchange Portfolio. 2 A. Yes. 3 Q. Can you explain generally what this matter 4 related to? 5 A. It's a portfolio of patent applications 6 that was owned by a client of Pennie and Edmonds. 7 Q. Was it related to SurfCast? 8 A. No. 9 Q. When did you finish this project? 10 A. It's not a single project. It's -- it's a 11 patent portfolio. It has multiple matters within 12 it. And I continued to work on it until -- well, 13 two or three years later, I think. 14 Q. So you said multiple matters. Do you know 15 roughly how many matters were in that portfolio? 16 MS. BOYD: Objection. 17 MS. PASCAL: Objection. 18 MS. BOYD: Relevance. 19 MS. PASCAL: Objection, relevance. 20 MS. BOYD: And I'll caution the witness on 21 attorney-client privilege. 22 THE WITNESS: Uh-huh. 23 I believe that most of the patent matters 24 in that portfolio became published through the U.S. 25 PTO. Recollection is there were six to ten matters.</p>	<p style="text-align: right;">Page 69</p> <p>1 a -- I think I say here a European research 2 laboratory. 3 Q. And was this related to SurfCast? 4 A. No. 5 Q. And when did you finish this project? 6 A. I will refer to my declaration. Paragraph 7 30 on page 14, the application was filed on August 8 31st, 1999. 9 Q. So these four, among these four different 10 matters that are not related to SurfCast, did 11 anybody tell you to work on one rather than the 12 other on a given date? 13 MS. PASCAL: Objection, form. 14 THE WITNESS: I don't specifically recall 15 anybody saying to me you have to work on project X, 16 but not on project Y. 17 However, at various time periods it became 18 necessary to work on one project due to an imminent 19 or urgent deadline, and therefore work on other 20 projects could not be carried out with the same 21 level of commitment on that day or several days. 22 BY MR. SUH: 23 Q. So similar, but slightly different. Did 24 anybody tell you to work on these matters rather 25 than the SurfCast matter on any given day?</p>

18 (Pages 66 to 69)

<p style="text-align: right;">Page 70</p> <p>1 MS. PASCAL: Objection.</p> <p>2 MS. BOYD: Objection, form.</p> <p>3 THE WITNESS: I have no recollection of</p> <p>4 anybody ever saying that to me.</p> <p>5 BY MR. SUH:</p> <p>6 Q. From June 29th to October 29th, 1999, did</p> <p>7 you have an unreasonable backlog of work that</p> <p>8 prevented you to diligently draft the SurfCast</p> <p>9 patent application?</p> <p>10 MS. PASCAL: Objection, form, lacks</p> <p>11 foundation.</p> <p>12 THE WITNESS: I don't believe I had an</p> <p>13 unreasonable backlog. I want to refer you to my</p> <p>14 declaration again, if you just give me a minute,</p> <p>15 refresh my memory.</p> <p>16 (Pause)</p> <p>17 A. Paragraphs 14 and 15 on pages 6 and 7.</p> <p>18 Q. Page --</p> <p>19 A. Paragraphs 14 and 15.</p> <p>20 Q. 14 and 15.</p> <p>21 A. These explain that, in paragraph 14 I</p> <p>22 explain that the types of projects I was working on</p> <p>23 had different types of due dates on them.</p> <p>24 And paragraph 15 explains that during that</p> <p>25 period of time from the day I started at Pennie and</p>	<p style="text-align: right;">Page 72</p> <p>1 Antimicrobials Portfolio on page 13, and the</p> <p>2 Macromolecular Design Application on page 13, were</p> <p>3 not taken up in chronological order.</p> <p>4 Correct?</p> <p>5 MS. BOYD: Objection.</p> <p>6 MS. PASCAL: Objection. Lacks foundation,</p> <p>7 form.</p> <p>8 THE WITNESS: The way you are putting it is</p> <p>9 an oversimplification. As I explained at least with</p> <p>10 respect to the two portfolios, each of those</p> <p>11 portfolios has within it a number of matters with a</p> <p>12 number of due dates. Many of those due dates were</p> <p>13 set prior to my involvement with the project.</p> <p>14 BY MR. SUH:</p> <p>15 Q. So why did you make the statement where</p> <p>16 you say "Work on a given project can often be --"</p> <p>17 I'm sorry, I'm looking at something else.</p> <p>18 "It was not necessarily possible to take</p> <p>19 on work strictly chronologically in the sense of</p> <p>20 managing an initial influx of work." Why did you</p> <p>21 make that statement?</p> <p>22 MS. BOYD: Objection, form, calls for</p> <p>23 attorney work product. Caution the witness not to</p> <p>24 disclose that work product.</p> <p>25 THE WITNESS: It's consistent with</p>
<p style="text-align: right;">Page 71</p> <p>1 Edmonds on June 16th onwards, at least for several</p> <p>2 months I was essentially ramping up and taking on a</p> <p>3 lot of different projects in order to fill my docket</p> <p>4 out.</p> <p>5 Q. So if I understand correctly, from June</p> <p>6 29th to October 29th you did not have an</p> <p>7 unreasonable backlog.</p> <p>8 Is that correct?</p> <p>9 MS. PASCAL: Objection, form.</p> <p>10 THE WITNESS: Can you define what you mean</p> <p>11 by unreasonable backlog?</p> <p>12 BY MR. SUH:</p> <p>13 Q. Did you have a backlog of work?</p> <p>14 MS. BOYD: Objection.</p> <p>15 MR. SUH: Ask that.</p> <p>16 THE WITNESS: I don't think there was a</p> <p>17 backlog, no.</p> <p>18 BY MR. SUH:</p> <p>19 Q. So you mentioned page 7, paragraph 14.</p> <p>20 You say "It was not necessarily possible to take on</p> <p>21 work strictly chronologically in the sense of</p> <p>22 managing an initial influx of work."</p> <p>23 So here you agree that the SurfCast</p> <p>24 application invalidity opinion on page 11, the</p> <p>25 Hydrogen Exchange Portfolio on page 12, the</p>	<p style="text-align: right;">Page 73</p> <p>1 everything else I'm telling you in the sense that I</p> <p>2 could be given projects on two consecutive days, but</p> <p>3 the due dates for each of them may be different from</p> <p>4 one another.</p> <p>5 BY MR. SUH:</p> <p>6 Q. So these were not taken up in</p> <p>7 chronological order.</p> <p>8 Correct?</p> <p>9 MS. BOYD: Objection.</p> <p>10 MS. PASCAL: Objection, form and</p> <p>11 foundation, mischaracterizes testimony.</p> <p>12 THE WITNESS: What do you mean by</p> <p>13 chronological order?</p> <p>14 BY MR. SUH:</p> <p>15 Q. What I mean is your first assignment at</p> <p>16 Pennie was a SurfCast patent application.</p> <p>17 Is that correct?</p> <p>18 A. I would have to check my logbook and see</p> <p>19 if that's correct.</p> <p>20 Q. Do you know if the invalidity opinion was</p> <p>21 assigned to you before the SurfCast patent</p> <p>22 application?</p> <p>23 A. I know that my first discussion on that</p> <p>24 project was after I started work on SurfCast, but it</p> <p>25 may have been assigned to me before that. I don't</p>

19 (Pages 70 to 73)

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SurfCast – Exhibit 2073, page 20

Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

<p style="text-align: right;">Page 74</p> <p>1 know.</p> <p>2 Q. Do you have any records showing that this</p> <p>3 was assigned to you before you were assigned the</p> <p>4 SurfCast patent application?</p> <p>5 A. I do not.</p> <p>6 Q. So did you start the invalidity opinion</p> <p>7 before you finished drafting the SurfCast</p> <p>8 application?</p> <p>9 A. I started work on that project, yes,</p> <p>10 before the SurfCast application was complete.</p> <p>11 Q. So you agree that the SurfCast application</p> <p>12 and the invalidity opinion were not taken up in</p> <p>13 chronological order.</p> <p>14 Correct?</p> <p>15 MS. BOYD: Objection, form.</p> <p>16 MS. PASCAL: Objection, form, lacks</p> <p>17 foundation, mischaracterizes testimony, asked and</p> <p>18 answered.</p> <p>19 THE WITNESS: I don't understand the</p> <p>20 question. I have -- could you please restate?</p> <p>21 BY MR. SUH:</p> <p>22 Q. Okay. Let's go back to page 7 of your</p> <p>23 declaration. What did you mean when you say</p> <p>24 chronological?</p> <p>25 A. I can read back to you what it says here.</p>	<p style="text-align: right;">Page 76</p> <p>1 to me.</p> <p>2 Q. Okay. So did you work on these five</p> <p>3 matters, the SurfCast application, invalidity</p> <p>4 opinion, Hydrogen Exchange Portfolio, Antimicrobials</p> <p>5 Portfolio, and Macromolecular Design Application in</p> <p>6 a chronological order in the sense of managing an</p> <p>7 initial influx of work?</p> <p>8 MS. BOYD: Objection, form.</p> <p>9 THE WITNESS: I think I have already stated</p> <p>10 that in this paragraph of the declaration. I said</p> <p>11 it was not necessarily possible to do that.</p> <p>12 BY MR. SUH:</p> <p>13 Q. So is that a no? Just wanted to clarify</p> <p>14 for the record.</p> <p>15 A. I can't tell you about the absolute</p> <p>16 ordering of any one project relative to the others.</p> <p>17 But I can say that in -- in -- in general terms that</p> <p>18 I might have started work on a later project before</p> <p>19 completing an earlier project. That's correct.</p> <p>20 BY MR. SUH:</p> <p>21 Q. So you said might have. So you agree that</p> <p>22 you don't know as a matter of fact that you worked</p> <p>23 on it in the order it came to you.</p> <p>24 Correct?</p> <p>25 MS. PASCAL: Objection, form.</p>
<p style="text-align: right;">Page 75</p> <p>1 Q. No. My question is, what did you mean</p> <p>2 when you say, chose the word "chronological"?</p> <p>3 A. Again, the meaning is provided by the</p> <p>4 second half of the sentence in the sense of managing</p> <p>5 an initial influx of work according to the most</p> <p>6 immediate due dates.</p> <p>7 Q. So chronological order means in time order</p> <p>8 as they come in.</p> <p>9 Is that correct?</p> <p>10 MS. BOYD: Objection.</p> <p>11 MS. PASCAL: Objection.</p> <p>12 THE WITNESS: Well, I'll think about that.</p> <p>13 (Pause)</p> <p>14 THE WITNESS: I don't talk here about the</p> <p>15 time they come in. What do you mean by the time</p> <p>16 they come in?</p> <p>17 BY MR. SUH:</p> <p>18 Q. Well, you mentioned initial influx.</p> <p>19 A. Yes.</p> <p>20 Q. That means the time they come in?</p> <p>21 A. Does it?</p> <p>22 MS. BOYD: Objection.</p> <p>23 BY MR. SUH:</p> <p>24 Q. What does it mean, then?</p> <p>25 A. I believe that means time it is assigned</p>	<p style="text-align: right;">Page 77</p> <p>1 THE WITNESS: You can see from this</p> <p>2 declaration and the time entry narratives that many,</p> <p>3 if not most of these projects ongoing and receive</p> <p>4 attention over several weeks, if not two or three</p> <p>5 months. And I'm working on each of them over those</p> <p>6 periods of time.</p> <p>7 BY MR. SUH: I understand.</p> <p>8 THE WITNESS: And they get started, they</p> <p>9 get -- the first action occurs on different days and</p> <p>10 they get finished to the extent that finished can be</p> <p>11 ascribed to some of them on different days.</p> <p>12 I don't see that as -- I don't see that as</p> <p>13 inconsistent with what I'm saying in this</p> <p>14 declaration.</p> <p>15 BY MR. SUH:</p> <p>16 Q. Do you know the order in which any of</p> <p>17 these matters were assigned to you?</p> <p>18 MS. PASCAL: Objection, form.</p> <p>19 THE WITNESS: By -- I can tell you by</p> <p>20 looking at the time entry book what was the first</p> <p>21 day that I might have talked about a given matter.</p> <p>22 BY MR. SUH:</p> <p>23 Q. So could you --</p> <p>24 A. Or --</p> <p>25 Q. Sorry.</p>

20 (Pages 74 to 77)

<p style="text-align: right;">Page 78</p> <p>1 A. Worked on a given matter.</p> <p>2 Q. Yeah. Could you tell me the order in</p> <p>3 which these given matters were assigned to you?</p> <p>4 MS. BOYD: Objection, form.</p> <p>5 THE WITNESS: I would have to --</p> <p>6 MS. PASCAL: Objection, best evidence.</p> <p>7 Sorry.</p> <p>8 THE WITNESS: I would have to look at this</p> <p>9 declaration and give you the time entry.</p> <p>10 MR. SUH: Sure.</p> <p>11 THE WITNESS: All right. Excuse me.</p> <p>12 (Pause)</p> <p>13 MS. BOYD: Jot down as you are figuring</p> <p>14 things out.</p> <p>15 (Pause)</p> <p>16 THE WITNESS: Is your -- is your question,</p> <p>17 just to refresh my memory, that you wanted to know</p> <p>18 the first date I worked on each of these projects?</p> <p>19 MR. SUH: That's right.</p> <p>20 THE WITNESS: Okay. Based on the redacted</p> <p>21 book?</p> <p>22 MR. SUH: Yes.</p> <p>23 THE WITNESS: I can't tell necessarily with</p> <p>24 precision. I believe that the dates are</p> <p>25 approximately June 18, 1999 for SurfCast, June 29</p>	<p style="text-align: right;">Page 80</p> <p>1 were assigned to you?</p> <p>2 A. I do not.</p> <p>3 Q. But you would agree that you were assigned</p> <p>4 the SurfCast application at least by June 18th.</p> <p>5 Correct?</p> <p>6 A. Well, again, I started discussing it on</p> <p>7 June 18th. You know, whether somebody had assigned</p> <p>8 it to me before that day, as an example, knowing I</p> <p>9 was going to join the firm, I don't know.</p> <p>10 Q. Can you turn to page 4 of Exhibit 2035?</p> <p>11 A. Yes.</p> <p>12 Q. I'm sorry, I have got the wrong page</p> <p>13 number.</p> <p>14 Page -- actually, it's page 11 of</p> <p>15 Exhibit 2008. Here you say you worked on writing</p> <p>16 initial drafts of the background figures and</p> <p>17 descriptions of figures for the SurfCast application</p> <p>18 until June 28th, 1999.</p> <p>19 Then you say you took on two new projects</p> <p>20 from June 29th, 1999.</p> <p>21 Correct?</p> <p>22 MS. PASCAL: Objection, mischaracterizes</p> <p>23 document. Best evidence.</p> <p>24 THE WITNESS: Can you just point me to the</p> <p>25 sentences you are relying on, please?</p>
<p style="text-align: right;">Page 79</p> <p>1 for the invalidity opinion, July 23rd for the</p> <p>2 Hydrogen Exchange and the Antimicrobials.</p> <p>3 But I feel confident in my recollection</p> <p>4 that that date is actually earlier for both of</p> <p>5 those.</p> <p>6 BY MR. SUH:</p> <p>7 Q. Oh, can you repeat the last date?</p> <p>8 A. July 23rd.</p> <p>9 Q. July 23rd. And --</p> <p>10 A. And August 4th for the Macromolecular</p> <p>11 Design Application, which I will clarify it's</p> <p>12 actually a utility application, it's not a patent</p> <p>13 design application.</p> <p>14 Q. So these were the dates that you were</p> <p>15 assigned each of these projects.</p> <p>16 Correct?</p> <p>17 MS. BOYD: Objection, misstates the</p> <p>18 witness' testimony.</p> <p>19 MS. PASCAL: And objection, best evidence.</p> <p>20 THE WITNESS: Again, I'm not saying when</p> <p>21 they were assigned to me. I'm saying what I believe</p> <p>22 is the first day I either worked on the project or</p> <p>23 discussed them with a supervising attorney.</p> <p>24 BY MR. SUH:</p> <p>25 Q. So do you know when any of these matters</p>	<p style="text-align: right;">Page 81</p> <p>1 BY MR. SUH:</p> <p>2 Q. Yeah. So there is, if you go to paragraph</p> <p>3 23?</p> <p>4 A. Okay.</p> <p>5 Q. "From June 29th to July 1, I worked</p> <p>6 principally on projects for two clients other than</p> <p>7 SurfCast."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And June 29th, 1999 is the first day you</p> <p>11 worked on invalidity opinion and the Hydrogen</p> <p>12 Exchange Portfolio.</p> <p>13 Correct?</p> <p>14 MS. PASCAL: Objection, best evidence.</p> <p>15 MS. BOYD: Objection, misstates the</p> <p>16 witness' testimony.</p> <p>17 THE WITNESS: Okay, you're right. So in my</p> <p>18 answer to one of your earlier questions I had said</p> <p>19 July 23rd for the Hydrogen Exchange Portfolio, I</p> <p>20 missed this, so I would revise that answer to be</p> <p>21 June 29th.</p> <p>22 BY MR. SUH:</p> <p>23 Q. Thank you.</p> <p>24 Isn't it correct that you were tasked to</p> <p>25 draft the SurfCast patent application before being</p>

21 (Pages 78 to 81)

<p style="text-align: right;">Page 82</p> <p>1 asked whether you could take on the invalidity 2 opinion and the Hydrogen Exchange Portfolio? 3 A. Again, I have answered this question 4 before. I don't know specifically when a given 5 supervising attorney at Pennie and Edmonds decided 6 they wanted me to work on a project. I can only 7 tell you from my time entry logs when I first have 8 noted that I discussed or entered time related to 9 work on the project. 10 BY MR. SUH: 11 Q. So if I understand, understand correctly, 12 you are telling me that you don't have any records 13 showing the specific dates when any of the cases 14 were assigned to you. 15 Is that correct? 16 MS. PASCAL: Objection. 17 THE WITNESS: I'm sorry. 18 That's correct, yes. 19 BY MR. SUH: 20 Q. And you don't have docketing records 21 showing these dates, the dates in which these five 22 cases were assigned to you. 23 Correct? 24 MS. PASCAL: Objection. 25 MS. BOYD: Objection, form.</p>	<p style="text-align: right;">Page 84</p> <p>1 Actually, I'll ask for clarification of 2 your question. Common for me or common for others? 3 MR. SUH: Others. 4 THE WITNESS: Yes. 5 BY MR. SUH: 6 Q. And in fact, you did work with people in 7 the New York office of Pennie. 8 Is that correct? 9 A. Yes. 10 Q. As of August 2nd, 1999, did you finish the 11 SurfCast patent application? 12 A. I don't believe it was complete, no. 13 Q. Isn't it correct that you were tasked to 14 draft the SurfCast patent application before being 15 asked whether you could take on the Macromolecular 16 Design Application? 17 MS. PASCAL: Objection, form, 18 mischaracterizes testimony. 19 THE WITNESS: These cases were asked of me 20 by different people. 21 BY MR. SUH: 22 Q. That's not my question. My question was 23 the dates. 24 A. I started work, me personally, I started 25 work on the Macromolecular Design Application at a</p>
<p style="text-align: right;">Page 83</p> <p>1 THE WITNESS: That's correct, I don't know. 2 BY MR. SUH: 3 Q. Can you turn to page 13 of Exhibit 2008? 4 You say "I additionally began with assisting the 5 drafting of a utility patent application for a 6 complex invention in computer simulated prediction 7 of protein structures through a European research 8 laboratory," quote, "The Macromolecular Design 9 Application," end quote. "This application had a 10 bar date of August 31st, 1999, and I worked with law 11 clerks in the Palo Alto and New York offices of the 12 Pennie firm and one attorney in the New York office 13 to complete the application." 14 And you cite to Exhibit 2035 at page 46 15 and 47, which points to August 2nd and 3rd of 1999 16 of your logbook. 17 Is that correct? 18 A. Right. So I would revise also then my 19 answer to the previous question that August 2nd and 20 3rd would be the first day I worked on this as 21 opposed to August 4th. 22 Q. Was it common practice to work with other 23 offices in the 1999 timeframe? 24 MS. PASCAL: Objection, form. 25 THE WITNESS: Yes, it was.</p>	<p style="text-align: right;">Page 85</p> <p>1 later date than I started work on SurfCast. I 2 believe the Macromolecular Design Application had 3 been worked on by the firm, by people at the firm 4 for several months, even prior to my joining the 5 firm. And it was not -- the work was not -- 6 MS. BOYD: Let me -- let me caution the 7 witness not to disclose attorney work product. 8 THE WITNESS: No. Okay. 9 MS. BOYD: Okay? 10 THE WITNESS: Okay. 11 BY MR. SUH: 12 Q. Would you work on a case even though it's 13 not assigned to you? 14 MS. PASCAL: Objection, form. 15 THE WITNESS: What do you mean by assigned 16 to me? 17 BY MR. SUH: 18 Q. Docket it in your docket sheet. 19 MS. PASCAL: Objection, lacks foundation. 20 MS. BOYD: Objection, lacks foundation. 21 THE WITNESS: If that's your definition of 22 assigned, then a number of these cases might not 23 have actually been on my docket sheet. 24 BY MR. SUH: 25 Q. Which cases are those?</p>

22 (Pages 82 to 85)

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SurfCast – Exhibit 2073, page 23

Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

<p style="text-align: right;">Page 86</p> <p>1 A. I -- it's possible that initially the</p> <p>2 Macromolecular Design Application might not have</p> <p>3 been on my docket sheet.</p> <p>4 Q. But did somebody tell you to work on it?</p> <p>5 A. Yes.</p> <p>6 Q. Do you know when?</p> <p>7 A. It would have been on the first day I</p> <p>8 started working on it or shortly before that.</p> <p>9 Q. That would be approximately August 2nd.</p> <p>10 Is that correct?</p> <p>11 A. Yes.</p> <p>12 Q. Why didn't you say no to the</p> <p>13 Macromolecular Design Application project?</p> <p>14 MS. PASCAL: Objection.</p> <p>15 THE WITNESS: I think that's related in my</p> <p>16 declaration, paragraphs -- 15, I think, it talks</p> <p>17 about me having a general need to fill out my</p> <p>18 docket.</p> <p>19 BY MR. SUH:</p> <p>20 Q. So you wanted to build your docket.</p> <p>21 Is that correct?</p> <p>22 A. That was certainly something I needed to</p> <p>23 do at that point.</p> <p>24 Q. There were other patent attorneys at</p> <p>25 Pennie that could do this project.</p>	<p style="text-align: right;">Page 88</p> <p>1 Q. And you had the time?</p> <p>2 A. I believe I had the time --</p> <p>3 MS. BOYD: Objection.</p> <p>4 THE WITNESS: -- at that point.</p> <p>5 BY MR. SUH:</p> <p>6 Q. So you felt you could push off the</p> <p>7 SurfCast drafting application since there was no</p> <p>8 application for the SurfCast application.</p> <p>9 Correct?</p> <p>10 MS. BOYD: Objection.</p> <p>11 MS. PASCAL: Objection.</p> <p>12 MS. BOYD: Foundation.</p> <p>13 THE WITNESS: I haven't said any of the</p> <p>14 things that you just put in your question to me.</p> <p>15 BY MR. SUH:</p> <p>16 Q. So --</p> <p>17 A. So --</p> <p>18 Q. Let me rephrase.</p> <p>19 A. Yes.</p> <p>20 Q. What do you mean, you had time?</p> <p>21 A. I have seven or eight hours each day to</p> <p>22 work on matters.</p> <p>23 Q. Are you done?</p> <p>24 A. Yes.</p> <p>25 Q. So why didn't you finish the SurfCast</p>
<p style="text-align: right;">Page 87</p> <p>1 Correct?</p> <p>2 MS. BOYD: Objection, form.</p> <p>3 THE WITNESS: Which project are you talking</p> <p>4 about?</p> <p>5 BY MR. SUH:</p> <p>6 Q. I'm sorry about that. Let me clarify.</p> <p>7 The Macromolecular Design Application?</p> <p>8 A. Actually, that one I felt I would have</p> <p>9 been the best suited person in the firm.</p> <p>10 Q. So nobody other than you could work on</p> <p>11 this project.</p> <p>12 Is that correct?</p> <p>13 MS. BOYD: Objection.</p> <p>14 THE WITNESS: I would not say that.</p> <p>15 BY MR. SUH:</p> <p>16 Q. So there were other patent attorneys at</p> <p>17 Pennie who were law clerks or patent agents that</p> <p>18 could work on these projects.</p> <p>19 Correct?</p> <p>20 MS. PASCAL: Objection.</p> <p>21 THE WITNESS: If you are talking about</p> <p>22 technical expertise, then certainly probably one or</p> <p>23 more others could.</p> <p>24 In terms of time, I don't know.</p> <p>25 BY MR. SUH:</p>	<p style="text-align: right;">Page 89</p> <p>1 patent application?</p> <p>2 MS. BOYD: Objection.</p> <p>3 MS. PASCAL: Objection, form.</p> <p>4 THE WITNESS: I believe it's documented</p> <p>5 through my sequence of time entries that there is a</p> <p>6 ongoing process of the drafting, there is review and</p> <p>7 feedback from both SurfCast and the other attorneys</p> <p>8 I'm working with during that period of time.</p> <p>9 BY MR. SUH:</p> <p>10 Q. So was there a due date for the SurfCast</p> <p>11 patent application?</p> <p>12 A. I don't recall a specific date being told</p> <p>13 of me.</p> <p>14 Q. So you would agree that there were no due</p> <p>15 dates.</p> <p>16 Correct?</p> <p>17 MS. BOYD: Mr. Suh, could I ask you to not</p> <p>18 put your hand in front of your mouth? Makes it hard</p> <p>19 for me to hear and understand your questions.</p> <p>20 Thank you.</p> <p>21 THE WITNESS: I believe the project was</p> <p>22 assigned with a view to getting it done quickly. I</p> <p>23 would not say that there was no due date.</p> <p>24 BY MR. SUH:</p> <p>25 Q. What do you mean, quickly?</p>

23 (Pages 86 to 89)

<p style="text-align: right;">Page 90</p> <p>1 A. Um...</p> <p>2 Q. As soon as possible?</p> <p>3 A. Um, I don't recall exactly where that</p> <p>4 phrase was used. There was certainly a desire to</p> <p>5 get a patent application prepared and filed.</p> <p>6 Q. But you accepted the Macromolecular Design</p> <p>7 Application on August 2nd.</p> <p>8 Correct?</p> <p>9 MS. PASCAL: Objection, form.</p> <p>10 THE WITNESS: Again, that looks like the</p> <p>11 first day that I worked on it.</p> <p>12 BY MR. SUH:</p> <p>13 Q. And why didn't you say no, because you</p> <p>14 just mentioned that you had to work on the patent,</p> <p>15 drafting patent application for SurfCast quickly and</p> <p>16 you haven't finished the SurfCast application as of</p> <p>17 August 2nd?</p> <p>18 A. Well, I can refer, I will refer to my</p> <p>19 declaration and see how I -- see how I characterize</p> <p>20 that period of time.</p> <p>21 (Pause)</p> <p>22 A. You will see on paragraph 26 on page 12 of</p> <p>23 Exhibit 2008, in that paragraph I describe that</p> <p>24 throughout July, in fact -- well, from July 9th to</p> <p>25 August 4th I was actually working on the SurfCast</p>	<p style="text-align: right;">Page 92</p> <p>1 to the extent calls for any privileged</p> <p>2 communications.</p> <p>3 MR. SUH: Counsel, he opened the door to</p> <p>4 this subject, so we are entitled to that question.</p> <p>5 MS. PASCAL: I don't know what you are</p> <p>6 saying he opened the door to. If you want...</p> <p>7 THE WITNESS: I don't remember which</p> <p>8 specific figures of the figures that appear in the</p> <p>9 ultimate patent or that were filed with the patent</p> <p>10 application I sent to Mr. Lagermann on that day.</p> <p>11 BY MR. SUH:</p> <p>12 Q. So you don't recall what figures you sent</p> <p>13 to Mr. Lagermann on August 4th, 1999.</p> <p>14 Is that correct?</p> <p>15 A. I don't recall specifically which figures.</p> <p>16 However, if you asked me to speculate, my</p> <p>17 speculation would be that it's all of the figures I</p> <p>18 had drafted to that point and that I considered to</p> <p>19 be complete and informed for his review.</p> <p>20 Q. At this point, did you have a complete</p> <p>21 draft of the patent application as well?</p> <p>22 A. I don't recall.</p> <p>23 I will add, though, certain portions of it</p> <p>24 had been written by that point as you will note from</p> <p>25 the various time entries that are not redacted.</p>
<p style="text-align: right;">Page 91</p> <p>1 application in some form on each non-weekend day.</p> <p>2 And on August 4th, I sent to one of the</p> <p>3 inventors, Mr. Lagermann, by fax a copy of an</p> <p>4 initial draft and some figures. It's my</p> <p>5 recollection that I did that in order to provide --</p> <p>6 in order to solicit some feedback from him on those</p> <p>7 figures.</p> <p>8 And in the subsequent week, August 5th to</p> <p>9 10th, I -- while I was waiting to receive feedback I</p> <p>10 diverted my attention to the Macromolecular Design</p> <p>11 Application and the invalidity opinion.</p> <p>12 I believe there is a record on August 10th</p> <p>13 or 11th of me asking SurfCast whether they have had</p> <p>14 a chance to look at the figures, and you can see</p> <p>15 that from August 11th I then continued to work on</p> <p>16 the SurfCast matter.</p> <p>17 So from my point of view, the narrative is</p> <p>18 pretty clear and consistent.</p> <p>19 Q. So you said you faxed a copy of initial</p> <p>20 drafts and figures for the patent applications to</p> <p>21 Lagermann on August 4th?</p> <p>22 A. That's what I say here at the end of</p> <p>23 paragraph 26.</p> <p>24 Q. Do you recall what you said?</p> <p>25 MS. PASCAL: Objection. And now objection</p>	<p style="text-align: right;">Page 93</p> <p>1 Q. On page 14, you say you worked on the</p> <p>2 Macromolecular Design Application culminating,</p> <p>3 culminating with its filing on August 31st.</p> <p>4 A. This is of Exhibit 2008?</p> <p>5 Q. 2008.</p> <p>6 A. Sorry, which paragraph?</p> <p>7 Q. It is 30.</p> <p>8 A. Ah. Yes, I see.</p> <p>9 Q. Did you file the Macromolecular Design</p> <p>10 Application in time?</p> <p>11 A. In time for what?</p> <p>12 Q. Well, you mentioned that there was a due</p> <p>13 date.</p> <p>14 A. My recollection is that there was a bar</p> <p>15 date on that application due to either a forthcoming</p> <p>16 conference presentation by the inventors or due to a</p> <p>17 prior publication. So there was a date that had to</p> <p>18 be met.</p> <p>19 I did not personally file the application.</p> <p>20 As I recall, it was filed from the New York office</p> <p>21 of Pennie and Edmonds. But it was filed in order to</p> <p>22 meet the date.</p> <p>23 Q. Okay. You also say it was complex. How</p> <p>24 complex was it?</p> <p>25 A. That's a rather vague question, I will</p>

24 (Pages 90 to 93)

<p style="text-align: right;">Page 94</p> <p>1 say. I believe that the specification ran to quite 2 possibly a hundred pages. I believe there were a 3 number of equations based on molecular mechanics, 4 which is a subject that's -- was something I was 5 very familiar with from my prior career as a 6 scientist, but I think most law clerks and attorneys 7 at Pennie and Edmonds would not be familiar with. 8 It was a computer based invention. I 9 believed it was complicated. 10 Q. So you would agree that the SurfCast 11 application was not as complex. 12 Correct? 13 A. I don't know. 14 MS. PASCAL: Objection. 15 THE WITNESS: I don't know that I would 16 make that characterization. 17 BY MR. SUH: 18 Q. How long was the SurfCast patent at the 19 time, do you recall? 20 A. I don't recall, although I think it's 40 21 or 50 pages with I think some 25 or more figures. 22 Q. And you said the Macromolecular Design 23 Application was how long? 24 A. About a hundred, I think. 25 Q.)t took you less than a month to start and</p>	<p style="text-align: right;">Page 96</p> <p>1 THE WITNESS: Again, I don't know that 2 there is -- there is -- there is a simple answer to 3 that because every one is different. 4 Certainly there are cases I might spend 5 several months on if there is backwards and forwards 6 with inventors and so on, equally there have been 7 cases that I have written in less than a day if they 8 are very simple. 9 BY MR. SUH: 10 Q. Less than a day? 11 A. You have to also factor in that over a 12 15-year career, one actually gets more efficient at 13 doing the same tasks. So a case that might only 14 take me a day this year might well have taken me two 15 or three weeks ten years ago. 16 Q. Back in 1999, could you write a patent 17 application within a week? 18 MS. PASCAL: Objection, form. 19 THE WITNESS: I don't know if I can 20 reasonably answer that question, because as I said 21 in my answer to your previous question, there is a 22 lot of variety of the type of technology that could 23 go into a patent application, and it's difficult for 24 me to project backwards as to what my level of skill 25 was then.</p>
<p style="text-align: right;">Page 95</p> <p>1 finish drafting the Macromolecular Design 2 Application. 3 Correct? 4 MS. PASCAL: Objection, misstates 5 testimony. 6 THE WITNESS: It's not correct. I actually 7 was starting with a draft that a law clerk in the 8 New York office had worked on. 9 BY MR. SUH: 10 Q. Do you know how long he worked on it? 11 A. It was a lady. I don't know how much time 12 she spent on it, but the draft was substantial, a 13 substantial draft to start with. 14 Q. How many patent applications have you 15 drafted? 16 A. Me personally? 17 Q. Yes. 18 A. In my entire career? 19 Q. Yeah. 20 A. Two or 300 probably. 21 Q. And how long does it normally take to 22 draft from first to finish? 23 MS. BOYD: Objection. 24 MS. PASCAL: Objection. 25 MS. BOYD: Form.</p>	<p style="text-align: right;">Page 97</p> <p>1 BY MR. SUH: 2 Q. On page 14, you say you worked principally 3 on the Macromolecular Design Application and the 4 invalidity opinion, also "familiarized myself with 5 the aspects of the Hydrogen Exchange Portfolio." 6 And this is from August 5th to 10th, 1999. 7 Do you see that? 8 A. Yes. 9 Q. As of August 15th, did you finish the 10 SurfCast patent application? 11 A. I believe you have already asked me this 12 question. The answer is I don't believe I had 13 finished it. 14 Q. That was August 2nd. 15 A. Well, I'll refer to the logbook just one 16 minute. 17 (Pause) 18 A. So I have some entries on August 3rd and 19 4th for SurfCast. 20 Q. That's what I asked. 21 A. Right. So I believe that as of August 5th 22 I had not finished the SurfCast application. 23 Q. And isn't it correct that you were tasked 24 to draft a patent application for SurfCast before 25 being asked whether you could take on this</p>

25 (Pages 94 to 97)

<p style="text-align: right;">Page 98</p> <p>1 Macromolecular Design Application, invalidity 2 opinion, and Hydrogen Exchange Portfolio? 3 MS. BOYD: Objection, asked and answered. 4 MS. PASCAL: Objection to the extent it 5 lacks foundation. 6 MR. SUH: I agree, I believe we have 7 already covered this ground, but just wanted to make 8 a quick reference. 9 THE WITNESS: I'll answer again. My 10 logbook shows that I started work or first had 11 meetings on those cases after the time that I 12 started working on the SurfCast matter. 13 BY MR. SUH: 14 Q. In fact, you didn't work on drafting the 15 SurfCast patent application at all during the period 16 of August 5th to 10th. 17 Is that correct? 18 A. I'll refer to my logbook. 19 (Pause) 20 A. I don't see any entries for SurfCast 21 during those days. So best that I can tell, yes, 22 that's correct. 23 Q. Still on page 14 of Exhibit 2008, you also 24 say that you worked on some initial matters that 25 required immediate attention in the Antimicrobials</p>	<p style="text-align: right;">Page 100</p> <p>1 MR. SUH: Yes. 2 THE WITNESS: That refers to the 3 Antimicrobials Portfolio. And you'll see that that 4 is -- that may not be the earliest entry I have for 5 that matter, but it at least dates back to June 6 25th, which is literally days after I started 7 working on SurfCast. 8 BY MR. SUH: 9 Q. Literally days after you first or 10 literally days after you -- I didn't hear your -- 11 A. Sorry. Literally days after I first 12 started working on SurfCast, yes. 13 Q. My recollection is that you first worked 14 on SurfCast way back in June 18th. 15 MS. PASCAL: Objection, argumentative, 16 form. 17 BY MR. SUH: 18 Q. Isn't that correct? 19 A. Yes. But June 18th to June 25 is -- 20 Q. We are talking about August here, just 21 to -- 22 A. No, I'm talking about June. So I'm 23 referring you to Exhibit 2035 at page 11. 24 Q. All right. 25 A. There was a time entry narrative for June</p>
<p style="text-align: right;">Page 99</p> <p>1 Portfolio, and point to Exhibit 2035 at pages 70, 2 71, 74, and 75 which corresponds to August 26th, 3 27th, 30, and 31. 4 A. I see that. 5 Q. As of August 26th, did you finish the 6 SurfCast patent application? 7 A. To the best of my recollection, no, though 8 did you -- did you say August 31? 9 Q. It was August 26th, 27, 30, and 31. 10 A. Yes. So on August 31, I did do some work 11 on the SurfCast patent application. 12 Q. But as of August 26th, did you finish the 13 SurfCast patent application? 14 A. I don't believe I did. 15 Q. And isn't it correct that you were tasked 16 to draft the SurfCast patent application before 17 being asked to take on the Antimicrobials Portfolio? 18 MS. PASCAL: Objection, asked and answered. 19 Argumentative. 20 THE WITNESS: I believe that's true. I 21 have a -- well, if I refer you to Exhibit 2035 at 22 page 11? 23 MR. SUH: Yes. 24 THE WITNESS: The top entry that says 45 25 minutes, 8067-034?</p>	<p style="text-align: right;">Page 101</p> <p>1 25, 80 -- excuse me 8067-034, that is the 2 Antimicrobials Portfolio. 3 Q. Thank you. Thanks for the clarification. 4 A. That is just a few days after starting 5 work on SurfCast. 6 Q. So as of June 25th, had you finished 7 drafting the SurfCast patent application? 8 A. I don't believe so, no. 9 Q. So why didn't you say no to this new 10 project? You testified that it included more than 11 one matter. 12 A. I believe I had answered this previously, 13 but I am new to the firm and with essentially an 14 empty docket, and there is a process of trying to 15 get me up to speed on various types of matters and 16 to fill that docket. 17 Q. So you didn't have enough work to do. Is 18 that a fair characterization? 19 MS. PASCAL: Objection, form. 20 THE WITNESS: I don't think that's a fair 21 characterization. I think that I am starting off 22 and I am taking in work, you know, to the extent I 23 have time available. 24 BY MR. SUH: 25 Q. You also mentioned it required immediate</p>

26 (Pages 98 to 101)

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SurfCast – Exhibit 2073, page 27

Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

<p style="text-align: right;">Page 102</p> <p>1 attention. We are back to page 14 of Exhibit 2008.</p> <p>2 A. Yes.</p> <p>3 Q. Why did it require immediate attention?</p> <p>4 MS. PASCAL: Objection, form.</p> <p>5 MS. BOYD: Caution the witness not to</p> <p>6 disclose attorney-client privileged communications.</p> <p>7 THE WITNESS: I don't have a specific</p> <p>8 recollection, but I can -- I can speculate, given</p> <p>9 the types of matters involved.</p> <p>10 MR. SUH: Please do.</p> <p>11 THE WITNESS: I will refer also to my</p> <p>12 logbook.</p> <p>13 BY MR. SUH: And this is in your</p> <p>14 declaration. I'd like to note that.</p> <p>15 THE WITNESS: I understand. But it refers</p> <p>16 to Exhibit 2035 at some pages.</p> <p>17 (Pause)</p> <p>18 THE WITNESS: Again, I don't have a</p> <p>19 specific recollection of the actual work that I did</p> <p>20 in that timeframe, but I can -- but I can speculate</p> <p>21 based on the type of the portfolio in question.</p> <p>22 BY MR. SUH:</p> <p>23 Q. So what is your basis of saying that it</p> <p>24 required immediate attention?</p> <p>25 A. So providing speculation for you, I think</p>	<p style="text-align: right;">Page 104</p> <p>1 question.</p> <p>2 BY MR. SUH:</p> <p>3 Q. I'm sorry, I thought you answered whether</p> <p>4 it required immediate attention. But my question</p> <p>5 was you can't tell me why it required immediate</p> <p>6 attention based on Exhibit 2035 as filed?</p> <p>7 A. Based on what I believe to be likely to</p> <p>8 have happened with that particular matter, I believe</p> <p>9 there was some due dates in that period that</p> <p>10 required addressing. That's my best recollection.</p> <p>11 I can't tell you what specifically.</p> <p>12 Q. Was there any attorney-client</p> <p>13 communications that triggered this immediate</p> <p>14 attention?</p> <p>15 MS. PASCAL: Objection.</p> <p>16 THE WITNESS: I don't recall.</p> <p>17 BY MR. SUH:</p> <p>18 Q. So you don't recall if there were any</p> <p>19 attorney-client communications on this matter.</p> <p>20 Is that correct?</p> <p>21 MS. PASCAL: Objection to form.</p> <p>22 THE WITNESS: There were definitely some</p> <p>23 attorney-client communications in the period covered</p> <p>24 in this logbook. I don't remember specifically</p> <p>25 whether it's this exact date.</p>
<p style="text-align: right;">Page 103</p> <p>1 that what happened is that one or more patent</p> <p>2 applications in that portfolio had docketed dates</p> <p>3 that required some action.</p> <p>4 Q. So I'm trying to understand. So you</p> <p>5 are -- are you saying that your declaration is based</p> <p>6 on speculation?</p> <p>7 MS. PASCAL: Objection.</p> <p>8 THE WITNESS: No, because I base the</p> <p>9 declaration on the original copy of this exhibit,</p> <p>10 which I do not have in front of me. The original</p> <p>11 copy was not redacted.</p> <p>12 So I'm speculating as of based on what's</p> <p>13 in front of me now.</p> <p>14 BY MR. SUH:</p> <p>15 Q. So based on the Exhibit 2035 that was</p> <p>16 filed, you can't tell me why it required immediate</p> <p>17 attention.</p> <p>18 Is that correct?</p> <p>19 A. No. I can tell you that it required</p> <p>20 attention because of some due dates.</p> <p>21 Q. No, no. Why it required immediate</p> <p>22 attention.</p> <p>23 MS. PASCAL: Objection, form,</p> <p>24 argumentative.</p> <p>25 THE WITNESS: I believe I just answered the</p>	<p style="text-align: right;">Page 105</p> <p>1 BY MR. SUH:</p> <p>2 Q. Isn't it true that you didn't work on</p> <p>3 drafting the SurfCast patent application at all</p> <p>4 during the period of August 20 to 30th?</p> <p>5 A. Let me look at the declaration.</p> <p>6 (Pause)</p> <p>7 A. Looks like I had a meeting with Mr. Gray</p> <p>8 August 24th, 1999, paragraph 31 of Exhibit 2008, and</p> <p>9 that meeting was to discuss according to my</p> <p>10 narrative the timing of completing a first draft of</p> <p>11 the SurfCast application.</p> <p>12 Q. Which day is this?</p> <p>13 A. It's August 24th, 1999. So it would be</p> <p>14 page 68 of Exhibit 2035.</p> <p>15 MS. BOYD: Sorry.</p> <p>16 (Pause)</p> <p>17 THE WITNESS: I don't see any other entries</p> <p>18 for SurfCast during the time period you mentioned.</p> <p>19 BY MR. SUH:</p> <p>20 Q. And even on August 24th, it only says</p> <p>21 "Talked with Andrew Gray regarding timing of</p> <p>22 SurfCast application." It doesn't say that you</p> <p>23 worked on drafting the patent application, does it?</p> <p>24 A. It does not say that.</p> <p>25 Q. And what did you talk about with Andrew</p>

27 (Pages 102 to 105)

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SurfCast – Exhibit 2073, page 28

Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

<p style="text-align: right;">Page 106</p> <p>1 Gray?</p> <p>2 MS. BOYD: Objection.</p> <p>3 MS. PASCAL: Objection. Calls for</p> <p>4 privileged information.</p> <p>5 MR. SUH: Are you instructing him not to</p> <p>6 answer?</p> <p>7 MS. PASCAL: I am giving -- I am objecting</p> <p>8 to privilege.</p> <p>9 MR. SUH: Just for the record.</p> <p>10 MS. PASCAL: If you want to ask him if he</p> <p>11 is going to follow the instructions of counsel you</p> <p>12 ask can ask him that. I don't believe he testified</p> <p>13 to that.</p> <p>14 BY MR. SUH:</p> <p>15 Q. Are you going to answer?</p> <p>16 A. I can only state to you what the time</p> <p>17 entry log says and what I put in my declaration, and</p> <p>18 they both say the same thing, that the meeting</p> <p>19 discussed the timing of completing the first draft</p> <p>20 of the application.</p> <p>21 Q. Other than this, you don't recall</p> <p>22 discussing any other matters with Andrew Gray on</p> <p>23 this date, do you?</p> <p>24 (Pause)</p> <p>25 A. That's -- well, I do not recall, and there</p>	<p style="text-align: right;">Page 108</p> <p>1 work on the SurfCast application because of this</p> <p>2 Hydrogen Exchange Portfolio?</p> <p>3 MS. PASCAL: Objection, form.</p> <p>4 THE WITNESS: I will look at my logbook</p> <p>5 again.</p> <p>6 (Pause)</p> <p>7 THE WITNESS: I don't have any entries for</p> <p>8 SurfCast in that period, that's correct.</p> <p>9 BY MR. SUH:</p> <p>10 Q. And when you say that period, are you</p> <p>11 talking about September 5th to 10th?</p> <p>12 A. I am.</p> <p>13 Q. So you agree that you didn't work on</p> <p>14 drafting the SurfCast patent application at all</p> <p>15 during the period of September 5th to 10th.</p> <p>16 Right?</p> <p>17 MS. PASCAL: Objection, asked and answered.</p> <p>18 THE WITNESS: That's correct. I believe I</p> <p>19 would have said that.</p> <p>20 BY MR. SUH:</p> <p>21 Q. We can move on to page 16 of Exhibit 2008.</p> <p>22 If you look at September 15th to 21, you say you</p> <p>23 worked on preparing the first draft of the</p> <p>24 invalidity opinion and attended to a number of</p> <p>25 outstanding matters in the Antimicrobials Portfolio.</p>
<p style="text-align: right;">Page 107</p> <p>1 is no entry on it.</p> <p>2 Q. On page 15 of Exhibit 2008?</p> <p>3 A. Yes.</p> <p>4 Q. And looking at September 5 to 10, 1999,</p> <p>5 you say you worked on the Hydrogen Exchange</p> <p>6 Portfolio in order to file an application by a</p> <p>7 statutory bar date.</p> <p>8 And you also say this work could not be</p> <p>9 postponed any later than this period of time due to</p> <p>10 the statutory bar on claiming benefit of the</p> <p>11 priority to the provisional application.</p> <p>12 Do you see that?</p> <p>13 A. I do.</p> <p>14 Q. So why didn't you ask others for help on</p> <p>15 this Hydrogen Exchange Portfolio?</p> <p>16 MS. PASCAL: Objection, lacks foundation.</p> <p>17 BY MR. SUH:</p> <p>18 Q. It could not be postponed, as you stated?</p> <p>19 A. I don't --</p> <p>20 MS. BOYD: Same objection.</p> <p>21 THE WITNESS: I don't remember asking</p> <p>22 others for help. I was supervised by an attorney in</p> <p>23 that matter.</p> <p>24 BY MR. SUH:</p> <p>25 Q. So isn't it correct that you postponed</p>	<p style="text-align: right;">Page 109</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. As of September 15th, did you finish the</p> <p>4 SurfCast patent application?</p> <p>5 A. I don't specifically recall, but I don't</p> <p>6 believe so.</p> <p>7 Q. Was there any due date for the invalidity</p> <p>8 opinion?</p> <p>9 MS. BOYD: Caution the witness about</p> <p>10 attorney-client privileged communications.</p> <p>11 THE WITNESS: Noted.</p> <p>12 I don't recall there being a specific due</p> <p>13 date, but there was a sense of urgency for that</p> <p>14 project, and although I don't have a specific</p> <p>15 recollection of the reason for this project, as a</p> <p>16 general matter projects of that nature are prompted</p> <p>17 by -- typically by either a client having been</p> <p>18 contacted by the patent owner or by the client</p> <p>19 wanting to release a product, and therefore wanting</p> <p>20 to have the opinion done before that date.</p> <p>21 BY MR. SUH:</p> <p>22 Q. Was there any contact by the client on</p> <p>23 this matter?</p> <p>24 MS. BOYD: Objection. Calls for</p> <p>25 attorney-client privileged communication. Caution</p>

28 (Pages 106 to 109)

<p style="text-align: right;">Page 110</p> <p>1 the witness not to reveal that communication. 2 THE WITNESS: There was contact with the 3 client on that project. 4 BY MR. SUH: 5 Q. What was that about? 6 MS. BOYD: Objection and instruction. 7 THE WITNESS: I can't reveal 8 attorney-client privilege. All I can say is that I 9 and the other attorneys working on that matter had 10 contact with the client during the period that's 11 covered in this logbook. 12 BY MR. SUH: 13 Q. If we focus down to September 15th to 14 21st, was there any contact with the client? 15 A. I would have to look at my logbook and 16 see. 17 Q. Please do. 18 (Pause) 19 MS. BOYD: I'll object to this question as 20 irrelevant as well. 21 (Pause) 22 THE WITNESS: I can't tell that -- I can't 23 tell exactly what was done because those entries are 24 redacted in the copy that's in front of us. I know 25 that there were several, well, I will say more than</p>	<p style="text-align: right;">Page 112</p> <p>1 period of September 15th to 21st?" 2 MS. BOYD: Thank you. 3 MS. PASCAL: Objection, asked and answered. 4 THE WITNESS: Did you say between September 5 15 and 21? 6 MR. SUH: September 15 and 21. It's a 7 different range. 8 THE WITNESS: No, that's the range I was 9 just talking about in answer to your previous 10 question about the invalidity opinion. 11 MR. SUH: Okay. 12 THE WITNESS: Do you agree? 13 BY MR. SUH: 14 Q. I might have forgotten. But is that a yes 15 or no? I just wanted to clarify the record. 16 A. Well, I would like to clarify it too. I 17 understood your previous question about the 18 invalidity opinion and whether there was a client 19 contact to refer to the period September 15 through 20 21. 21 Q. Is that right? 22 A. 1999. I answered based on that. 23 I understand now you asked what I did for 24 SurfCast during the same period, September 15 25 through 21.</p>
<p style="text-align: right;">Page 111</p> <p>1 one visit by the client to our office in the period 2 covered in the logbook. It's possible one of those 3 was in that period. I can't say. 4 BY MR. SUH: 5 Q. So based on the evidence, evidence of 6 record, you can't -- you can't tell me whether there 7 was a client contact during this period. 8 Is that correct? 9 MS. BOYD: Objection, form. 10 THE WITNESS: I can't tell you based on, 11 that's correct, based on what's in front of me. 12 BY MR. SUH: 13 Q. Isn't it true that you didn't work on 14 drafting of the SurfCast patent application at all 15 during the period of September 15th to 21st? 16 A. Again, let me look at the chart and the 17 logbook. 18 (Pause) 19 MS. BOYD: Can you read that question back 20 for me, please? 21 (Whereupon, the reporter read back 22 the record as follows: 23 "Isn't it true that you didn't work 24 on drafting of the SurfCast patent 25 application at all during the</p>	<p style="text-align: right;">Page 113</p> <p>1 Q. That's right. That's why I asked you a 2 different question. 3 A. I thought it was a different period. 4 There is some work for SurfCast on 5 September 15th, and on September 17th. 6 (Pause) 7 A. And on -- that's it, exactly. September 8 15th, September 17th. 9 Q. September 15th you write time entry .1 10 hour. Is this what you were referring to? 11 A. Let me take a look. 12 (Pause) 13 A. No. There is -- there is an item that's 14 actually redacted. It's further up the page, one 15 quarter hour, middle of the page, 9982-009-999. 16 Q. That's .25 hours? 17 A. Yes. And September 17 there is an entry 18 there. 19 Q. Are you done? 20 A. I am. 21 Q. Where is that entry on the 17th? Can't 22 find it. 23 A. Oh. 24 (Pause) 25 A. It's the fourth line, or fifth line up</p>

29 (Pages 110 to 113)

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SurfCast - Exhibit 2073, page 30

Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

<p style="text-align: right;">Page 114</p> <p>1 from the bottom of the page. It's not redacted. 2 Q. Arrange for a transfer -- 3 A. Yes. 4 Q. -- of documents to be prepared? 5 A. Yes. 6 Q. This says nothing about drafting a patent 7 application, does it? 8 A. Correct. 9 Q. So other than the .25 hours on September 10 15th -- well, strike that. 11 From September 16th to September 21st, you 12 didn't work on drafting the SurfCast patent 13 application at all. 14 Is that correct? 15 MS. BOYD: Objection, misstates the 16 witness' testimony, misstates the document. 17 THE WITNESS: I can say there is no time 18 entry that reflects that. 19 So just to be clear, the period you 20 mentioned contains two business days, 16th and 17th, 21 Thursday, Friday, and two weekend days, 18th, 19th, 22 and then two further days, Monday 20 -- Monday the 23 20th and Tuesday the 21st. 24 BY MR. SUH: 25 Q. You mentioned September 18th and 19th?</p>	<p style="text-align: right;">Page 116</p> <p>1 BY MR. SUH: 2 Q. So if you go to page 14 of Exhibit 2008, 3 you say that you had to attend classes on campus 4 from 6:00 to 9:00 on four nights per week beginning 5 on August 11th. 6 Do you see that? 7 A. Yes. 8 Q. Did Pennie assign anyone else to help you 9 since you had to go to school? 10 A. Not that I am aware. 11 Q. Did you ask for help? 12 A. Did I ask for help with what? 13 Q. To accommodate your going to school 14 schedule. 15 A. I don't believe I did. 16 MR. SUH: So I think this is a good time to 17 have a break. What time is it now? 18 MS. PASCAL: Quarter to 12:00. 19 MR. SUH: You want to have a lunch break? 20 Or -- 21 MS. BOYD: Sure. 22 THE VIDEOGRAPHER: Okay. Going off the 23 record, the time is 11:45. 24 (Whereupon, the lunch recess taken at 11:45 P.M.) 25 --oOo--</p>
<p style="text-align: right;">Page 115</p> <p>1 A. Yes. 2 Q. Isn't it correct that there are six matter 3 entries on these dates? 4 A. It is. 5 Q. So why did you work on these days? 6 MS. PASCAL: Objection. Strike that. 7 THE WITNESS: Again, I mean, without 8 specific recollection, I can only speculate that it 9 would be because I had not completed the work in the 10 prior week and I felt that it needed to be done or 11 had been told that it needed to be done. 12 BY MR. SUH: 13 Q. Did you work on a SurfCast matter during 14 these days? 15 A. There is no entry to reflect that I did on 16 those two days, that's correct. 17 Q. Did you finish drafting the SurfCast 18 patent application as of September 17th? 19 A. Not as far as I recall. 20 Q. Do you recall why you didn't work on the 21 SurfCast patent application rather than these 22 redacted entries which amount to almost seven hours 23 per day each? 24 MS. PASCAL: Objection, form. 25 THE WITNESS: I do not recall.</p>	<p style="text-align: right;">Page 117</p> <p>1 AFTERNOON SESSION 12:36 P.M. 2 THE VIDEOGRAPHER: We are back on the 3 record. The time is 12:36. 4 BY MR. SUH: 5 Q. Did you talk to your counsel during the 6 break? 7 A. We had a conversation. 8 Q. About what? 9 A. Schools for our children, where, which 10 firms we had worked at. 11 Q. So you didn't talk to your counsel about 12 anything about the case during the break. 13 Is that correct? 14 A. Correct. Yes. 15 Q. So let's turn to Exhibit 2035, at page 7. 16 And there is an entry, 0.5 hours of Web searching 17 for software patent. You can't tell me specifically 18 what software patents are referred to in this, in 19 this entry, can you? 20 A. I can, actually. 21 Q. Which ones? 22 A. It's the SurfCast patent application. 23 Q. Do you specifically remember what you did 24 on this date? 25 A. No, beyond what's written here.</p>

30 (Pages 114 to 117)

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SurfCast – Exhibit 2073, page 31

Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

<p style="text-align: right;">Page 118</p> <p>1 Q. So you don't have any evidence of what you 2 specifically did on this date, do you? 3 MS. PASCAL: Objection. 4 THE WITNESS: This is the evidence of what 5 I did on that day. 6 BY MR. SUH: 7 Q. Other than this, you don't have any 8 evidence of what you specifically did on this date, 9 do you? 10 A. Not other than this, me personally, no. 11 Q. On this day you were looking at what 12 existed before, not the SurfCast alleged invention. 13 Is that correct? 14 MS. PASCAL: Objection, form. 15 THE WITNESS: Could you restate the 16 question, please? 17 BY MR. SUH: 18 Q. You were looking at prior art rather than 19 the invention. 20 Is that correct? 21 MS. PASCAL: Objection. 22 THE WITNESS: I think that's likely, yes. 23 BY MR. SUH: 24 Q. Let's go to page 8, this is for June 22nd. 25 Do you specifically remember what you did on this</p>	<p style="text-align: right;">Page 120</p> <p>1 were related to patentability assessment. 2 Is that correct? 3 A. Based on the matter numbers we have 4 already talked about today that's correct. But I 5 have also already told you in answer to a previous 6 question that particularly in this period of time of 7 the first few days I worked at Pennie there may have 8 been some inaccuracy in the way I characterized, or 9 the way I associated the matter number with a 10 description. 11 Q. This description writing in "Web 12 searching" relates to writing about the 13 patentability assessment. 14 Isn't that right? 15 MS. PASCAL: Objection, overbroad. 16 THE WITNESS: I don't believe it is, 17 because I personally did not write anything in 18 connection with patentability assessment. My 19 writing was on the SurfCast patent application. 20 BY MR. SUH: 21 Q. You mentioned the invalidity opinion 22 before. 23 MS. PASCAL: Objection, form. 24 THE WITNESS: So when did I -- when did I 25 talk about that? What are you -- what are you</p>
<p style="text-align: right;">Page 119</p> <p>1 date? 2 A. Not with greater detail than what is 3 described this logbook. 4 Q. So other than what's written here, you 5 don't remember anything about what you did on this 6 day. 7 Is that correct? 8 A. That's correct. 9 Q. So you don't specifically remember what 10 you talked about on this day it says "Talk with 11 Brett about, talk with Brett and Andrew." 12 Do you remember what you talked about on 13 this date? 14 A. Not specifically. 15 Q. So other than this, you don't have any 16 evidence of what you did on this day, do you? 17 MS. PASCAL: Objection, form. 18 THE WITNESS: I believe you have asked me 19 this. But the answer is no. What is written here 20 is the best description I have of what I did on that 21 day. 22 BY MR. SUH: 23 Q. And there is a billing number here. The 24 billing number 9982-0005-999 appears, and this 25 billing number indicates that these conversations</p>	<p style="text-align: right;">Page 121</p> <p>1 referring to? 2 BY MR. SUH: 3 Q. When we were talking about writing and Web 4 searching you mentioned an opinion. 5 Do you recall that? 6 A. No, I don't. Perhaps you can have them 7 read the transcript back. 8 MR. SUH: Yeah, can you find the portion? 9 (Whereupon, the reporter read back 10 the record as follows: 11 "9982-0009-888 referred to a 12 provisional patent application. 13 9982-0005-999 related I think to an 14 opinion matter.") 15 BY MR. SUH: 16 Q. Can you elaborate on that? 17 MS. PASCAL: Objection, form. 18 THE WITNESS: Would you please repeat the 19 exact narrative or the exact answer that I gave to 20 the question? 21 (Whereupon, the reporter read back 22 the record as follows: 23 "Q. Okay. And the numbers 24 following 9982, were these numbers 25 for different tasks that SurfCast</p>

31 (Pages 118 to 121)

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SurfCast – Exhibit 2073, page 32

Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

<p style="text-align: right;">Page 122</p> <p>1 asked Pennie to undertake?</p> <p>2 "MS. BOYD: Objection, form.</p> <p>3 "THE WITNESS: Yes. The</p> <p>4 numbers following the hyphen after</p> <p>5 9982 relate to different matters.</p> <p>6 "BY MR. SUH:</p> <p>7 "So what were the different tasks?</p> <p>8 "MS. PASCAL: Objection.</p> <p>9 "MS. BOYD: Objection.</p> <p>10 "MS. PASCAL: Form.</p> <p>11 "THE WITNESS: Are you asking</p> <p>12 me about these numbers or any</p> <p>13 number?</p> <p>14 "BY MR. SUH:</p> <p>15 "Q. The four numbers that you</p> <p>16 mention in your declaration.</p> <p>17 "A. Okay. So 9982-00 -- 0009-999</p> <p>18 referred to a utility patent</p> <p>19 application. 9982-0009-888</p> <p>20 referred to a provisional patent</p> <p>21 application. 9982-0005-999 related</p> <p>22 I think to an opinion matter.</p> <p>23 9982-0002-999 related to a general</p> <p>24 billable matter, and sometimes --</p> <p>25 sometimes called general</p>	<p style="text-align: right;">Page 124</p> <p>1 now during this deposition.</p> <p>2 So firstly, in this period of time, this</p> <p>3 is within my first week at Pennie and Edmonds, it's</p> <p>4 entirely possible that I was grouping, for example,</p> <p>5 writing and Web searching under one matter number,</p> <p>6 maybe not knowing at that time what the patent</p> <p>7 application matter number was.</p> <p>8 My recollection of my activities at the</p> <p>9 firm were that I did not do any writing in</p> <p>10 connection with patentability assessment. My</p> <p>11 writing was on the patent application itself.</p> <p>12 So where it says "Writing and Web</p> <p>13 searching," I believe I was beginning to write</p> <p>14 perhaps initial portions of the patent application.</p> <p>15 Web searching is in connection with the types of</p> <p>16 research you do in that process. You need to know</p> <p>17 something about references, material that come</p> <p>18 before in time.</p> <p>19 BY MR. SUH:</p> <p>20 Q. So can you show me anywhere in this</p> <p>21 document, 2030, Exhibit No. 2035 where it suggests</p> <p>22 that these entries do not relate the patentability</p> <p>23 assessment?</p> <p>24 MS. PASCAL: Objection, form.</p> <p>25 THE WITNESS: I have told you this is -- I</p>
<p style="text-align: right;">Page 123</p> <p>1 corporate.")</p> <p>2 BY MR. SUH:</p> <p>3 Q. So you referred to 9982-0005-999 as an</p> <p>4 opinion matter.</p> <p>5 A. That's correct. And if you look at my</p> <p>6 declaration, Exhibit 2008, it's paragraph --</p> <p>7 paragraph 18 on page 9, you can see that the entries</p> <p>8 designated as 9982-0005-999 -- I'm reading from this</p> <p>9 paragraph now -- pertain to a separate matter number</p> <p>10 established for a patentability assessment and prior</p> <p>11 art search carried out for the invention described</p> <p>12 in the SurfCast patent application.</p> <p>13 I used the term "opinion" loosely in the</p> <p>14 sense that it's a matter that calls for a attorney</p> <p>15 analysis.</p> <p>16 Q. So you put that number down indicating</p> <p>17 that you were working on a patentability assessment</p> <p>18 just after doing a Web search for prior art, and are</p> <p>19 you telling me that you are not really doing a</p> <p>20 patentability assessment?</p> <p>21 MS. PASCAL: Objection.</p> <p>22 MS. BOYD: Mischaracterizes the witness'</p> <p>23 testimony.</p> <p>24 THE WITNESS: I believe that I have</p> <p>25 addressed almost this exact question at least once</p>	<p style="text-align: right;">Page 125</p> <p>1 wrote the entries in this document, and so I know</p> <p>2 what they describe. And I have told you that they</p> <p>3 describe some writing, and my only writing for</p> <p>4 SurfCast was for the patent application.</p> <p>5 BY MR. SUH:</p> <p>6 Q. Isn't it common for inventors to have a</p> <p>7 patentability assessment performed before they spend</p> <p>8 money on drafting a patent application?</p> <p>9 MS. BOYD: Objection, form.</p> <p>10 MS. PASCAL: Objection, form. Relevance.</p> <p>11 THE WITNESS: I can't say the answer to</p> <p>12 that is yes. I think different people behave in</p> <p>13 different ways. Sometimes the patentability</p> <p>14 assessment is done concurrently or in conjunction</p> <p>15 with drafting a patent application.</p> <p>16 BY MR. SUH:</p> <p>17 Q. Did you have any experience in drafting,</p> <p>18 doing a patentability analysis before drafting a</p> <p>19 patent application?</p> <p>20 MS. BOYD: Objection, form.</p> <p>21 THE WITNESS: Over what period of time are</p> <p>22 you addressing the question?</p> <p>23 BY MR. SUH:</p> <p>24 Q. Any time.</p> <p>25 A. Can you restate the question?</p>

32 (Pages 122 to 125)

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SurfCast – Exhibit 2073, page 33

Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

<p style="text-align: right;">Page 126</p> <p>1 Q. Have you ever, has it ever happened to you 2 drafting a patentability analysis before drafting a 3 patent application? 4 MS. BOYD: Objection, form. Objection, 5 relevance. 6 THE WITNESS: I believe during my career I 7 have almost certainly carried out a patentability 8 assessment before drafting an application. That's 9 correct. 10 Whether I have actually reduced the 11 patentability assessment to writing, I don't think I 12 very often do that. In fact, hardly ever. 13 BY MR. SUH: 14 Q. So you never take notes? 15 MS. BOYD: Objection. 16 MS. PASCAL: Objection. 17 THE WITNESS: That's not what I said. 18 That's -- that's a large step from what I said. 19 BY MR. SUH: 20 Q. "Writing" is a broad term. Don't you 21 agree? 22 A. Well, I say "Reducing the patentability," 23 et cetera, "to writing." That's totally different 24 from taking notes. 25 Q. Well, I am looking at this entry, it says</p>	<p style="text-align: right;">Page 128</p> <p>1 in SurfCast's patent download." 2 Do you specifically remember what you did 3 on this date? 4 A. I don't specifically remember, no. 5 Q. So other than this notebook, you don't 6 have any evidence of what you did on this date, do 7 you? 8 A. Well, if you would permit me to look at 9 the un-redacted form of this notebook, the entries 10 that you see in front of you is redacted may give me 11 some indication of other things I did on that day. 12 But beyond that, I can't say that I know 13 now specifically what I did on July 9th, 1999. 14 Q. Okay. So as documented, you did not work 15 on drafting the SurfCast patent application on this 16 date. 17 Correct? 18 A. I don't believe that's a fair 19 extrapolation. 20 Q. Where does it say you worked on drafting 21 the SurfCast patent application on this date? 22 A. It doesn't say that. But it said I 23 carried out some work for SurfCast, and at that time 24 my work for SurfCast was working on the patent 25 application.</p>
<p style="text-align: right;">Page 127</p> <p>1 "Writing." 2 A. Yes. 3 Q. That's all it says. 4 A. And I have already told you that I believe 5 it means writing in the patent application. 6 Q. So you say you believe. Do you know as a 7 matter of fact? 8 A. I am confident. 9 Q. It is documented there is no mention of 10 tiles or refresh rates on this date. 11 Is that correct? 12 A. So could you please restate the question? 13 Q. The entry on this date, June 22nd, it's at 14 page 8 of Exhibit 2035? 15 A. Yes. 16 Q. Is there any mention of tiles or refresh 17 rates? 18 A. There is no mention of tiles and refresh 19 rates. And I also -- I am also prepared to say that 20 in this logbook I don't think you will find those 21 terms mentioned. 22 Q. Thank you. 23 A. Right. 24 Q. Let's go to page 24. It's your entry on 25 July 9th. Says "Miscellaneous activity for SurfCast</p>	<p style="text-align: right;">Page 129</p> <p>1 I don't believe that -- I don't believe 2 that working on the patent application is limited to 3 drafting portions of it. Working on it can include 4 research. 5 Q. So if I understand correctly, as 6 documented, there is no mention of drafting a patent 7 application for SurfCast on this date. 8 Is that correct? 9 A. Based on what's in this logbook it does 10 not say "drafting the patent application for 11 SurfCast," that's correct. 12 Q. So let's move on to page 30. 13 A. I also before we do that, I also want to 14 draw your attention to a paragraph in my 15 declaration, if you let me find that for a minute. 16 (Pause) 17 A. You will see, I am in Exhibit 2008 on page 18 8, footnote 3, in that footnote I describe my work 19 habit for writing entries in my logbook, and it 20 states that over the period of time you were just 21 looking at including July 9th, my narratives were 22 quite brief and not necessarily fully descriptive, 23 and I developed a more consistent habit later on 24 during this period. 25 Q. Okay. So if you can turn to page 30?</p>

33 (Pages 126 to 129)

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SurfCast – Exhibit 2073, page 34

Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

<p style="text-align: right;">Page 130</p> <p>1 A. Yes.</p> <p>2 Q. This is for July 15th, and there is one</p> <p>3 hour of SurfCast patent download and one hour of</p> <p>4 SurfCast reading.</p> <p>5 A. Yes.</p> <p>6 Q. Do you specifically remember what you did</p> <p>7 on this date?</p> <p>8 A. I do not specifically remember beyond what</p> <p>9 is -- what is described here.</p> <p>10 And I'll repeat my answer to your prior</p> <p>11 question, there is a portion of time here that's</p> <p>12 redacted. It's possible that if I see the</p> <p>13 un-redacted version I may be reminded of other</p> <p>14 things I did on that day.</p> <p>15 Q. Okay. And you don't have any evidence of</p> <p>16 what you specifically did on this date other than</p> <p>17 what's written here on Exhibit 2035?</p> <p>18 A. I don't believe I do, that's correct.</p> <p>19 Q. You were looking at what existed before,</p> <p>20 not SurfCast alleged investigation on this day.</p> <p>21 Correct?</p> <p>22 A. I don't believe that's correct.</p> <p>23 Q. Why is that?</p> <p>24 A. There is an entry one hour SurfCast</p> <p>25 reading.</p>	<p style="text-align: right;">Page 132</p> <p>1 you did read the draft patent application rather</p> <p>2 than something else, do you?</p> <p>3 MS. PASCAL: Objection, form.</p> <p>4 THE WITNESS: That's correct, I do not</p> <p>5 remember.</p> <p>6 BY MR. SUH:</p> <p>7 Q. And as documented, you did not work on</p> <p>8 drafting the SurfCast patent application on this</p> <p>9 date.</p> <p>10 Is that correct?</p> <p>11 MS. BOYD: Objection, form.</p> <p>12 THE WITNESS: So I'll answer as I have</p> <p>13 answered the previous questions. There is not a</p> <p>14 written narrative on this page that says I drafted</p> <p>15 the patent application.</p> <p>16 But I consider my work for SurfCast in</p> <p>17 this period to be unified in the sense that it</p> <p>18 was -- it was directed towards the patent</p> <p>19 application preparation process.</p> <p>20 BY MR. SUH:</p> <p>21 Q. So let's turn to page 31. It's an entry</p> <p>22 for July 16th, .5 hours of get book from Stacy's for</p> <p>23 SurfCast, and expense form for SurfCast, and this is</p> <p>24 for one hour.</p> <p>25 Who is Stacy?</p>
<p style="text-align: right;">Page 131</p> <p>1 Q. And do you specifically remember what you</p> <p>2 were reading on this day?</p> <p>3 A. I don't specifically remember, but I know</p> <p>4 that as part of preparing the patent application I</p> <p>5 was reading about aspects of the technology that I</p> <p>6 was going to write about, not just what might have</p> <p>7 been in the prior art.</p> <p>8 Q. You downloaded patents. Do you know what</p> <p>9 you downloaded?</p> <p>10 A. I don't remember specifically which</p> <p>11 patents I downloaded.</p> <p>12 Q. Does it say that you did not read these</p> <p>13 downloaded patents on this date?</p> <p>14 MS. PASCAL: Objection, form.</p> <p>15 THE WITNESS: It does not say that I did</p> <p>16 not read those patents.</p> <p>17 BY MR. SUH:</p> <p>18 Q. So that is a possibility. Correct?</p> <p>19 A. It is a possibility. But as I said to you</p> <p>20 earlier, those patent -- well, as I said to you</p> <p>21 earlier, part of my reading to have included reading</p> <p>22 material, reading about material that I described in</p> <p>23 the application, and that may have been included in</p> <p>24 some of the patents I downloaded.</p> <p>25 Q. But you don't remember as a fact whether</p>	<p style="text-align: right;">Page 133</p> <p>1 A. Stacy's is the name of a bookstore that</p> <p>2 existed at that time on University Avenue in Palo</p> <p>3 Alto. It specialized in scientific and computer</p> <p>4 based books.</p> <p>5 Q. Do you remember what books you got from</p> <p>6 Stacy's?</p> <p>7 A. I don't remember them by title, although</p> <p>8 I -- I think I remember just generally what they</p> <p>9 were about.</p> <p>10 Q. What was that about?</p> <p>11 A. There was -- it was either about -- I'm</p> <p>12 just trying to remember. Either about computer</p> <p>13 networks or something called Web channels, I think.</p> <p>14 Q. So you -- are you finished?</p> <p>15 A. I am.</p> <p>16 Q. So you were looking at what existed</p> <p>17 before, not SurfCast alleged invention.</p> <p>18 Is that correct?</p> <p>19 MS. PASCAL: Objection. Form.</p> <p>20 THE WITNESS: I don't know if that's</p> <p>21 correct.</p> <p>22 BY MR. SUH:</p> <p>23 Q. Why is that?</p> <p>24 A. I don't know. You can deduce that from</p> <p>25 this entry. I went to get a book.</p>

34 (Pages 130 to 133)

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SurfCast - Exhibit 2073, page 35

Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

<p style="text-align: right;">Page 134</p> <p>1 Q. In fact, there is no indication as to 2 whether you even read the book, is that correct, on 3 this day? 4 A. On this day, that's correct, it does not 5 say that I read the book. 6 Q. So as documented, you did not work on 7 drafting the SurfCast patent application on this 8 day. 9 Is that correct? 10 MS. PASCAL: Objection. 11 MS. BOYD: Objection. 12 MS. PASCAL: Form. Mischaracterizes 13 testimony. 14 THE WITNESS: As I have said to you 15 previously, I consider at that time there were a lot 16 of things that I did that went towards the 17 preparation of the patent application, including 18 getting materials. 19 BY MR. SUH: 20 Q. That was not my question. My question 21 was, did you work on drafting the patent application 22 on this date? 23 MS. PASCAL: Objection, form. And asked 24 and answered. 25 MS. BOYD: Argumentative.</p>	<p style="text-align: right;">Page 136</p> <p>1 MS. BOYD: Objection. 2 MS. PASCAL: Object to form. 3 BY MR. SUH: 4 Q. On this date, just to clarify. 5 A. Again, I will reiterate, the narratives do 6 not state that I drafted the application. But as I 7 have said before, I considered meetings, 8 discussions, and other activities were all connected 9 with the process of preparing the patent 10 application. 11 Q. So if we can go to page 36? 12 A. We are on -- 13 MS. BOYD: We are on -- 14 BY MR. SUH: 15 Q. Oh, I'm sorry, page 37. And this is an 16 entry for July 22nd? 17 A. Yes. 18 Q. I see .25 hours of travel arrangements and 19 1.5 hours of SurfCast patent downloading. And do 20 you remember what you were downloading? 21 A. I do not specifically remember. 22 Q. You would agree you were downloading what 23 existed before, not SurfCast alleged invention. 24 Correct? 25 MS. PASCAL: Objection, object to form.</p>
<p style="text-align: right;">Page 135</p> <p>1 THE WITNESS: I believe I have already 2 answered this question, but I'll state again, 3 according to these entries on this page I did not 4 draft portions of the patent application on this 5 day. 6 BY MR. SUH: 7 Q. Okay. Let's go to page 36. This is an 8 entry for July 21st. 9 A. Okay. 10 Q. There is an entry for one-and-a-half-hour 11 meeting with AG -- AJG in August and Klaus Lagermann 12 and .25 hour for talking with AJG, and half an hour 13 organizing trip to New York. 14 Do you remember what you did on this day? 15 A. Okay. Consistent with my previous answer, 16 what is written here describes what I did. I don't 17 have specific recollection, recollection of these 18 events beyond what is written. 19 Q. So you don't remember what you talked 20 about on this date. 21 Is that -- 22 A. Correct. 23 Q. And as documented, you did not work on 24 drafting the SurfCast patent application. 25 Correct?</p>	<p style="text-align: right;">Page 137</p> <p>1 THE WITNESS: I believe I use this term 2 "patent downloading" to mean retrieving patents from 3 Websites such as the PTO Website or maybe a third 4 party vendor called MicroPatent. 5 Sometimes I was downloading patents that I 6 considered to be exemplary in the software space. 7 Sometimes I was downloading patents that I thought 8 were relevant to the SurfCast invention. 9 BY MR. SUH: 10 Q. So you were looking at what existed 11 before, not the invention. 12 Correct? 13 MS. BOYD: Objection. 14 MS. PASCAL: Objection. 15 MS. BOYD: Form. 16 MS. PASCAL: Form. 17 THE WITNESS: It's correct to say I was 18 looking at things that existed before, but that's an 19 essential part of the process of preparing a patent 20 application. 21 BY MR. SUH: 22 Q. And as documented, you did not work on 23 drafting the SurfCast patent on this date. 24 Correct? 25 MS. BOYD: Objection.</p>

35 (Pages 134 to 137)

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SurfCast – Exhibit 2073, page 36

Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

Page 138	Page 140
<p>1 MS. PASCAL: Objection.</p> <p>2 MS. BOYD: Form.</p> <p>3 THE WITNESS: Again, as I have answered</p> <p>4 before, there is no narrative that says on this</p> <p>5 document drafting application, but I consider my</p> <p>6 work for SurfCast during that time to be part of an</p> <p>7 overall process of preparing the application.</p> <p>8 BY MR. SUH:</p> <p>9 Q. Go to page 38. And here there is an entry</p> <p>10 of 0.25 hours downloading sample patent for SurfCast</p> <p>11 and e-mailing Klaus.</p> <p>12 Do you remember what this was about?</p> <p>13 A. Not specifically beyond what is written.</p> <p>14 Q. And as documented, you did not work on</p> <p>15 drafting the SurfCast patent application on this</p> <p>16 date.</p> <p>17 Correct?</p> <p>18 MS. PASCAL: Objection, form.</p> <p>19 THE WITNESS: Again, the narrative does not</p> <p>20 include the term "drafting patent application," but</p> <p>21 I consider that the time spent was in connection</p> <p>22 with preparing the patent application for SurfCast.</p> <p>23 BY MR. SUH:</p> <p>24 Q. And do you have evidence showing that this</p> <p>25 was in connection with drafting the SurfCast patent</p>	<p>1 connection with that process and in connection with</p> <p>2 a forthcoming meeting in New York City that we have</p> <p>3 previously talked about today with other Pennie and</p> <p>4 Edmonds attorneys and SurfCast personnel.</p> <p>5 BY MR. SUH:</p> <p>6 Q. Let's go to page 41. There is two</p> <p>7 entries, two hours of preparing for meeting on</p> <p>8 SurfCast, this is for July 28th, and three hours of</p> <p>9 meeting on SurfCast with Ovid, Klaus, Tom, AG -- AGG</p> <p>10 and P. DeStefano.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Do you specifically remember what you did</p> <p>14 on this date?</p> <p>15 A. In part.</p> <p>16 Q. What was it?</p> <p>17 MS. BOYD: Caution the witness not to</p> <p>18 disclose attorney-client privileged communications.</p> <p>19 THE WITNESS: I remember we had a meeting,</p> <p>20 the persons listed in the second narrative in a</p> <p>21 conference room of Pennie and Edmonds in New York</p> <p>22 City.</p> <p>23 BY MR. SUH:</p> <p>24 Q. Is that it? Are you done?</p> <p>25 A. I remember some of what is talked about,</p>
Page 139	Page 141
<p>1 application?</p> <p>2 A. It says in the narrative that what I did</p> <p>3 was for SurfCast. I also sent an e-mail to Klaus,</p> <p>4 that is, Mr. Lagermann.</p> <p>5 Q. Okay. Let me rephrase it.</p> <p>6 Do you have evidence showing that you</p> <p>7 drafted the SurfCast patent application on this</p> <p>8 date?</p> <p>9 MS. PASCAL: Objection, form.</p> <p>10 THE WITNESS: The entries in this logbook</p> <p>11 are the best evidence I have for this day.</p> <p>12 BY MR. SUH:</p> <p>13 Q. And we can go to page 40. This is an</p> <p>14 entry for July 27th, 0.75 hours for reviewing</p> <p>15 materials for SurfCast to take to New York.</p> <p>16 Do you specifically remember what you did</p> <p>17 on this date?</p> <p>18 A. I do not specifically remember.</p> <p>19 Q. And as documented, you did not draft the</p> <p>20 SurfCast patent application on this day.</p> <p>21 Is that correct?</p> <p>22 MS. PASCAL: Objection, form.</p> <p>23 THE WITNESS: Again, the narrative does not</p> <p>24 say that I drafted the patent application.</p> <p>25 However, I was reviewing materials in</p>	<p>1 but I believe it's covered by attorney-client</p> <p>2 privilege.</p> <p>3 Q. You can answer.</p> <p>4 MS. BOYD:</p> <p>5 MS. PASCAL: Excuse me?</p> <p>6 MS. BOYD: What?</p> <p>7 THE WITNESS: I just answered.</p> <p>8 MR. SUH: There was no objection by</p> <p>9 counsel.</p> <p>10 MS. PASCAL: Fine. Attorney-client</p> <p>11 privilege. We have already agreed that --</p> <p>12 MS. BOYD: And I already instructed him not</p> <p>13 to answer if it was attorney-client privileged. You</p> <p>14 know, this is -- this is getting just a tad abusive,</p> <p>15 and I'm -- I'd appreciate if you could keep that</p> <p>16 under control. I really would. Thank you.</p> <p>17 MR. SUH: I just want the record to be</p> <p>18 clear. Did you not --</p> <p>19 MS. PASCAL: She made an objection to --</p> <p>20 MS. BOYD: We don't have to object to</p> <p>21 everything that comes out of your mouth. There is</p> <p>22 an ongoing -- it was an ongoing line of questioning,</p> <p>23 the objection stands, if you could move on I would</p> <p>24 appreciate it.</p> <p>25 MR. SUH: I would like an objection for</p>

36 (Pages 138 to 141)

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SurfCast - Exhibit 2073, page 37

Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

<p style="text-align: right;">Page 142</p> <p>1 each question if you want to object to the question. 2 MS. BOYD: I will object when I want to 3 object, and my witness will follow my instructions 4 as I give them. 5 MR. SUH: And I did not hear any 6 instructions from you on this question. He asserted 7 his own objection. 8 THE WITNESS: No, I believe she told me 9 that I need not answer. I heard that. 10 MR. SUH: Okay. Maybe I did not hear that. 11 MS. BOYD: You need to take a lesson in how 12 to take a deposition, sir. 13 MR. MICALLEF: I think we should take a 14 break and maybe get the Board on the phone now, 15 Counsel. 16 MR. SUH: Okay. 17 MR. MICALLEF: You are making narrative 18 objections and you are making arguments to counsel, 19 and I really think we ought to have the Board's view 20 on that because that's not your -- your -- your 21 right there. 22 MS. BOYD: Okay. 23 MR. MICALLEF: So let's call them up. 24 THE VIDEOGRAPHER: This is the end of 25 volume one, videotape number two in the deposition</p>	<p style="text-align: right;">Page 144</p> <p>1 does not reveal privileged information. 2 THE WITNESS: Noted. Thank you. 3 I also want to refresh my recollection of 4 the following page of this exhibit. 5 MR. SUH: Sure. 6 THE WITNESS: Okay. There was a breakfast 7 meeting with the persons listed here and probably 8 also Mr. Lagermann and Mr. Gray. As I recall, I 9 think it occurred in a location in Midtown, 10 Manhattan. 11 Then there was a long meeting at one of 12 the conference rooms in the Pennie and Edmonds 13 offices that at least Mr. Lagermann and myself were 14 there and Mr. Gray, and I think also Mr. Santoro. 15 BY MR. SUH: 16 Q. Okay. Do you remember what you talked 17 about on this date? 18 A. I have a partial recollection. 19 MS. PASCAL: Same caution to not reveal 20 attorney-client privileged information. 21 BY MR. SUH: 22 Q. Are you going to answer? 23 A. You haven't asked me a question. 24 Q. I asked if you specifically remember what 25 you talked about this day.</p>
<p style="text-align: right;">Page 143</p> <p>1 of Dr. Richard Bone. We are going off the record, 2 the time is 1:07. 3 (Whereupon, a recess was taken 4 commencing at 1:07 P.M. and 5 concluding at 1:10 P.M.) 6 THE VIDEOGRAPHER: We are back on the 7 record. This is the beginning of volume one, 8 videotape number three in the deposition of 9 Dr. Richard Bone. The time is 1:10. 10 BY MR. SUH: 11 Q. Okay. If you can turn to page 42? 12 A. Of Exhibit 2035? 13 Q. That's right. And there are entries for 14 July 29th? 15 A. Yes. 16 Q. And there is an hour of breakfast with 17 Ovid, Tom, Paul, et cetera. 18 A. Yes. 19 Q. Do you specifically remember what you did 20 on this day? 21 A. Yes, I have some recollection. 22 Q. Okay. Can you tell me about that? 23 MS. PASCAL: I'm going to caution you 24 against revealing attorney-client privilege in your 25 answer. But you can answer to the extent that that</p>	<p style="text-align: right;">Page 145</p> <p>1 A. And I answered in part. 2 Q. And what was it about? 3 MS. PASCAL: And I'm going to caution you 4 in your answer not to reveal any attorney-client 5 privilege. 6 MS. BOYD: And I will reiterate that 7 caution and instruction not to -- not to testify 8 regarding any attorney-client privileged 9 communication. 10 Is this really what you want your record 11 to look like, though? Really? 12 THE WITNESS: I believe that's correct. 13 What I talked about on that day is covered by 14 attorney-client privilege. 15 BY MR. SUH: 16 Q. So you are not answering. Correct? 17 A. I just answered. 18 Q. Okay. And as documented, you did not work 19 on drafting the SurfCast patent application on this 20 day. 21 Correct? 22 MS. BOYD: Objection mischaracterize 23 witness' testimony. 24 MS. PASCAL: Objection to form. 25 THE WITNESS: As I have answered you in</p>

37 (Pages 142 to 145)

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SurfCast - Exhibit 2073, page 38

Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

<p style="text-align: right;">Page 146</p> <p>1 response to previous questions of this nature, the 2 narrative does not say that I drafted the patent 3 application on this day. 4 However, my work over this time period was 5 dedicated to preparing a patent application for 6 SurfCast, and this meeting was intimately connected 7 with that process. 8 I can't say more than that. 9 BY MR. SUH: 10 Q. Okay. Let's go to page 43. There is 0.5 11 hours of tidying notes from SurfCast meeting. Do 12 you specifically remember what you did on this date? 13 A. Not beyond what is written there. And as 14 you'll note, there are portions that are redacted, 15 and if I had access to the un-redacted portions I 16 may have a better ability to refresh my memory of 17 that day. 18 Q. And as documented, you did not work on 19 drafting the SurfCast patent application on this 20 date. 21 Correct? 22 MS. BOYD: Objection. 23 MS. PASCAL: Objection to form, 24 mischaracterization. 25 THE WITNESS: Again, there is no language</p>	<p style="text-align: right;">Page 148</p> <p>1 MS. PASCAL: Objection, form. 2 MS. BOYD: Object. 3 MS. PASCAL: And mischaracterizes 4 testimony. 5 THE WITNESS: Again, at the risk of being 6 repetitive, my answer is that although the narrative 7 does not explicitly say I drafted the patent 8 application, my activities over this period were 9 focused on preparing a patent application for 10 SurfCast. 11 BY MR. SUH: 12 Q. So go to page 48. 13 MS. BOYD: Are you skipping page 47? 14 MR. SUH: Yes. 15 MS. BOYD: Okay. 16 BY MR. SUH: 17 Q. So 48 is for August 4th. Says "Figures, 18 facts to Klaus, listen to tapes." 19 Do you know how long this was for? There 20 is no time entry. There is no direction. 21 A. I understand. So it says "rest of day," 22 and it may be possible to correlate activities on 23 this day with what is in one of the invoices, the 24 Pennie and Edmonds, if it covers that period of 25 time.</p>
<p style="text-align: right;">Page 147</p> <p>1 that says that. But again, I will reiterate that 2 whatever narrative I have related to SurfCast is 3 connected with a process of preparing a patent 4 application. 5 BY MR. SUH: 6 Q. Let's turn to page 46. This is an entry 7 for August 2nd, 0.5 hours talk with Brett about 8 SurfCast. 9 Do you specifically remember what you 10 talked about on this date? 11 MS. PASCAL: I'm going to caution the 12 witness to the extent that it reveals 13 attorney-client privilege that, not to answer that 14 aspect of the question. 15 But you may answer so long as it does not 16 reveal privilege. 17 THE WITNESS: Right. Or attorney work 18 product. 19 MS. PASCAL: Yes. Thank you. 20 THE WITNESS: Yes. I don't have a specific 21 recollection of what I talked about on that day. 22 BY MR. SUH: 23 Q. And as documented, you did not work on 24 drafting the patent application for SurfCast. 25 Correct?</p>	<p style="text-align: right;">Page 149</p> <p>1 In the absence of making that connection, 2 I am -- only best that I would speculate that I have 3 spent some hours on SurfCast. It's a Wednesday. I 4 only have two hours noted for other matters. If I 5 put something like "rest of day," it's most likely 6 that I spent several hours. 7 I can also add that the narrative says 8 "figures" and includes "listen to tapes." Both of 9 those would have required some time. 10 Q. Okay. And as documented, you did not work 11 on drafting the SurfCast patent application on this 12 date. 13 Correct? 14 MS. BOYD: Objection. 15 MS. PASCAL: Form. 16 MS. BOYD: Mischaracterizes the testimony. 17 MS. PASCAL: Same objection for both of us. 18 THE WITNESS: I disagree, and to the extent 19 that I do reference figures, which I think means 20 that I quite probably worked on preparing some 21 figures, which I would -- I would say is part of 22 drafting a patent application. 23 BY MR. SUH: 24 Q. Let's go to page 63. And this is an entry 25 for August 19th.</p>

38 (Pages 146 to 149)

<p style="text-align: right;">Page 150</p> <p>1 A. Yes.</p> <p>2 Q. And "0.25 hours of SurfCast (Klaus e-mail</p> <p>3 plus print)."</p> <p>4 Do you specifically remember what you did</p> <p>5 on this day?</p> <p>6 A. I do not specifically remember.</p> <p>7 Q. And as accounted, you did not work on</p> <p>8 drafting the SurfCast patent application on this</p> <p>9 date.</p> <p>10 Correct?</p> <p>11 MS. BOYD: Objection.</p> <p>12 MS. PASCAL: Objection to form,</p> <p>13 mischaracterizes testimony.</p> <p>14 THE WITNESS: Again, as I have stated</p> <p>15 before, the narrative does not state that I drafted</p> <p>16 a patent application.</p> <p>17 However, I am involved in at least some</p> <p>18 communication with SurfCast, and that I consider to</p> <p>19 be connected with preparing a patent application.</p> <p>20 BY MR. SUH:</p> <p>21 Q. Well, you don't specifically remember what</p> <p>22 you did on this day.</p> <p>23 Is that correct?</p> <p>24 A. I don't specifically remember.</p> <p>25 Q. Let's go to page 68. This is an entry for</p>	<p style="text-align: right;">Page 152</p> <p>1 Q. And as documented in this exhibit, you did</p> <p>2 not recall drafting the SurfCast patent application</p> <p>3 on this day.</p> <p>4 Correct?</p> <p>5 MS. BOYD: Objection, mischaracterizes the</p> <p>6 witness' testimony.</p> <p>7 MS. PASCAL: Same objection.</p> <p>8 THE WITNESS: So the narrative does not say</p> <p>9 that I drafted the patent application on that day,</p> <p>10 that's correct. But clearly I was -- I was</p> <p>11 addressing aspects of preparing the patent</p> <p>12 application due to a discussion with Mr. Gray on</p> <p>13 that subject.</p> <p>14 BY MR. SUH:</p> <p>15 Q. And what is your basis for saying that?</p> <p>16 A. The narrative references SurfCast and the</p> <p>17 timing of the application.</p> <p>18 Q. It only mentions the timing. Does it</p> <p>19 mention anything else?</p> <p>20 A. It does not.</p> <p>21 Q. Are you done?</p> <p>22 A. I am.</p> <p>23 Q. Let's go to page 75. And this is a time</p> <p>24 entry for August 31st. And there is 1.5 hours of</p> <p>25 background materials for SurfCast patent.</p>
<p style="text-align: right;">Page 151</p> <p>1 August 24th, there is a 0.25 hour entry which says</p> <p>2 "Talked with Andrew Gray regarding timing of</p> <p>3 SurfCast application."</p> <p>4 Do you remember what you talked about on</p> <p>5 this day?</p> <p>6 MS. PASCAL: I'm going to caution the</p> <p>7 witness not to reveal any attorney-client or</p> <p>8 attorney work product communications.</p> <p>9 MS. BOYD: Same caution and instruction.</p> <p>10 THE WITNESS: While I have no specific</p> <p>11 recollection, the narrative says "Talked with Andrew</p> <p>12 Gray re timing of SurfCast application."</p> <p>13 BY MR. SUH:</p> <p>14 Q. So other than talking about the timing of</p> <p>15 the SurfCast application, you don't recall anything</p> <p>16 else you talked about.</p> <p>17 Is that correct?</p> <p>18 MS. PASCAL: Same caution.</p> <p>19 THE WITNESS: That's correct, if you are</p> <p>20 talking about with Mr. Gray. But as I have said</p> <p>21 before, there are other entries on this day that are</p> <p>22 redacted, and if I could see what they were, I may</p> <p>23 be -- I may be able to remember other things I did</p> <p>24 on that day.</p> <p>25 BY MR. SUH:</p>	<p style="text-align: right;">Page 153</p> <p>1 Do you specifically remember what you were</p> <p>2 looking at?</p> <p>3 A. I don't specifically remember, no.</p> <p>4 Q. So you don't have any evidence of what you</p> <p>5 specifically did on this date, do you?</p> <p>6 A. I have this logbook which is in front of</p> <p>7 both of us which narrates what I did on that day</p> <p>8 whilst at Pennie and Evans.</p> <p>9 Q. So other than this logbook, you don't have</p> <p>10 any evidence of what you did on this date.</p> <p>11 Correct?</p> <p>12 A. Not me personally, I do not, that's</p> <p>13 correct.</p> <p>14 Q. And as documented, you did not work on</p> <p>15 drafting the SurfCast patent application on this</p> <p>16 date.</p> <p>17 Correct?</p> <p>18 MS. PASCAL: Objection to form,</p> <p>19 mischaracterizes testimony.</p> <p>20 THE WITNESS: Again, I'll give you the same</p> <p>21 answer I have been giving. Whilst the narrative</p> <p>22 does not say that I drafted the patent application,</p> <p>23 it is part of an overall process of preparing an</p> <p>24 application.</p> <p>25 And you'll notice also that it says one</p>

39 (Pages 150 to 153)

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SurfCast – Exhibit 2073, page 40

Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

<p style="text-align: right;">Page 154</p> <p>1 and a half hours background materials. That's a 2 significant amount of time. And it is -- it is in 3 my view clearly connected with preparing the patent 4 application. 5 BY MR. SUH: 6 Q. Well, you were looking at what existed 7 before, not SurfCast invention. 8 Correct? 9 MS. PASCAL: Objection. 10 THE WITNESS: Possibly. But this may also 11 have been part of drafting the background section of 12 the patent application. 13 BY MR. SUH: 14 Q. Is there any portion indicating that? 15 A. There is not. But there is not also a 16 portion that indicates I was -- I was only looking 17 at prior materials. 18 Q. Okay. Let's go to page 87. This is for 19 September 12th, and 1.5 hours of "SurfCast, read 20 about XML." 21 Do you specifically remember what you did 22 on this day? 23 A. I did not specifically remember beyond 24 what is referenced in this narrative. 25 Q. And what is XML?</p>	<p style="text-align: right;">Page 156</p> <p>1 XML." 2 Do you specifically remember what you 3 talked about on this day? 4 MS. PASCAL: I'm going to caution the 5 witness to the extent the answer calls for 6 revelation of attorney-client or attorney work 7 product, you may answer except for that. 8 THE WITNESS: Yeah, I don't specifically 9 remember what I talked about on that day. 10 BY MR. SUH: 11 Q. And as documented, you don't, you did not 12 work on drafting the SurfCast patent application on 13 this day. 14 Correct? 15 MS. PASCAL: Objection, form, and 16 mischaracterizes prior testimony. 17 MS. BOYD: Same objections. 18 THE WITNESS: I'll repeat. There are two 19 entries on this day, September 13, for SurfCast, the 20 one you just read to me and then a second one read 21 further about MS -- XML. I consider that both of 22 those are consistent with the fact that I was 23 preparing the patent application for SurfCast over 24 that time. 25 BY MR. SUH:</p>
<p style="text-align: right;">Page 155</p> <p>1 A. It's a markup language that was I think 2 relatively new at that time. 3 Q. Did it exist before the SurfCast alleged 4 invention? 5 MS. PASCAL: Objection, form. 6 THE WITNESS: I don't know the answer to 7 that. 8 BY MR. SUH: 9 Q. As documented, you did not work on 10 drafting the SurfCast patent application on this 11 date. 12 Correct? 13 MS. BOYD: Objection. 14 THE WITNESS: Again, and I'll repeat my 15 answer, although the narrative does not state 16 drafting patent application, I was working for 17 SurfCast on this day, a Sunday, and I was reading 18 about something that I considered to be relevant to 19 preparing the patent application, and therefore this 20 entry is part of the overall process of preparing 21 the patent application. 22 BY MR. SUH: 23 Q. Okay. Let's go to page 88. There is an 24 entry of 0.25 hours, "Talked with Mr. Gray about 25 SurfCast," and one hour for "Read further about</p>	<p style="text-align: right;">Page 157</p> <p>1 Q. Let's go to page 89, September 14th. 2 There is 0.5 hours of read more XML, and 0.25 of 3 talk to Mr. Gray about U.S. 5,918,237, and one hour 4 of "Retrieved plus read about U.S. 5,918,237." 5 Do you specifically remember what you did 6 on this date? 7 A. No, I do not. 8 Q. Do you specifically remember what you 9 talked about on this date? 10 MS. PASCAL: And I'm going to caution the 11 witness not reveal any attorney work product or 12 attorney-client privileged information. But 13 otherwise you may answer. 14 THE WITNESS: I do not remember what I 15 talked about on this day. 16 BY MR. SUH: 17 Q. You are looking at what existed before, 18 not SurfCast's alleged invention. 19 Correct? 20 MS. PASCAL: Objection, form. 21 THE WITNESS: Can you be more specific? 22 There are several narrative entries on this day. 23 BY MR. SUH: 24 Q. You talked -- you read about XML, talked 25 about a U.S. patent that existed before this date.</p>

40 (Pages 154 to 157)

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SurfCast – Exhibit 2073, page 41

Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

<p style="text-align: right;">Page 158</p> <p>1 So isn't it correct that you were looking at what 2 existed before, not SurfCast's invention. 3 Correct? 4 MS. PASCAL: Objection, form. 5 THE WITNESS: The U.S. patent 5,918,237 6 clearly already existed at the time I was reading 7 it. I don't know temporally whether it's before 8 SurfCast or not. 9 The first entry that says "Read more XML," 10 again, I don't know exactly what the date the XML 11 came into existence was. 12 BY MR. SUH: 13 Q. And as documented, you did not work on 14 drafting the SurfCast patent application on this 15 date. 16 Correct? 17 MS. PASCAL: Objection, form, 18 mischaracterizes testimony. 19 THE WITNESS: Again, I'll repeat the answer 20 you have now heard several times. There is no 21 narrative on this day that describes drafting the 22 patent application. But everything I was doing for 23 SurfCast in this period of time was connected with 24 the process of preparing the patent application. 25 BY MR. SUH:</p>	<p style="text-align: right;">Page 160</p> <p>1 MS. BOYD: Same caution, same instruction. 2 THE WITNESS: I don't remember what I 3 talked about on this day. 4 BY MR. SUH: 5 Q. As documented, you did not work on 6 drafting the SurfCast patent application on this 7 day. 8 Correct? 9 MS. PASCAL: Objection to form. 10 MS. BOYD: Objection. 11 MS. PASCAL: Mischaracterizes testimony. 12 THE WITNESS: That's correct, there is not 13 a narrative that talks about drafting the patent 14 application on this day. 15 BY MR. SUH: 16 Q. So if you can go to page 109, that is an 17 entry, this is for October 4th, and there is an 18 entry of 0.1 hours, "Talked to Andrew Gray about 19 SurfCast." 20 Do you specifically remember what you 21 talked about on this day? 22 MS. PASCAL: I'm going to caution the 23 witness not to reveal any attorney work product or 24 attorney-client communications in your answer. 25 MS. BOYD: Same caution.</p>
<p style="text-align: right;">Page 159</p> <p>1 Q. Let's turn to page 92. There is 0.25 2 hours of "Arrange for transfer documents to be 3 prepared." 4 Do you specifically remember what you did 5 on this day? 6 A. No. 7 Q. And as documented, you did not work on 8 drafting the SurfCast patent application on this 9 date. 10 Correct? 11 MS. PASCAL: Object to the form, 12 mischaracterizes testimony. 13 THE WITNESS: I believe that's correct, I 14 do not see a narrative that refers to drafting a 15 patent application on this day. 16 BY MR. SUH: 17 Q. Let's turn to page 104. There is 0.1 hour 18 of "Talk to Andrew Gray about patent process." 19 There is a .1 hour of "Talked to Gray Williams about 20 current status." 21 Do you specifically remember what you 22 talked about on this day? 23 MS. PASCAL: I'm going to caution the 24 witness not to reveal any attorney-client or 25 attorney work product communications.</p>	<p style="text-align: right;">Page 161</p> <p>1 THE WITNESS: I don't recall what I talked 2 about on this day. 3 BY MR. SUH: 4 Q. As documented -- 5 MS. PASCAL: Excuse me. Would it be 6 possible to take a short bio break? 7 MR. SUH: Sure. I'll just finish this one 8 and I can. 9 MS. PASCAL: Okay. 10 BY MR. SUH: 11 Q. And as documented, you did not work on 12 drafting the SurfCast patent application on this 13 date. 14 Correct? 15 MS. PASCAL: Objection, form, 16 mischaracterizes testimony. 17 THE WITNESS: It's correct. There is not a 18 narrative that describes drafting the patent 19 application. 20 But I consider this entry and the previous 21 two or three that we just discussed to be connected 22 with the process of preparing the application and 23 working towards that goal. 24 MR. SUH: We can take a break. 25 MS. PASCAL: Thank you.</p>

41 (Pages 158 to 161)

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SurfCast – Exhibit 2073, page 42

Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

<p style="text-align: right;">Page 162</p> <p>1 THE VIDEOGRAPHER: Okay. Going off the 2 record, the time is 1:31. 3 (Whereupon, a recess was taken 4 commencing at 1:31 P.M. and 5 concluding at 1:43 P.M.) 6 THE VIDEOGRAPHER: Okay. We are back on 7 the record. The time is 1:43. 8 BY MR. SUH: 9 Q. Let's go to page 110 of 2035. 10 A. Okay. 11 Q. And this entry is for October 5th. 12 A. Yes. 13 Q. And there is 0.5 hours of "Discussed draft 14 of patent with Andrew Gray and Brett Lovejoy." Do 15 you specifically remember what you talked about on 16 this day? 17 MS. PASCAL: I'll caution you not to reveal 18 any attorney work product or attorney-client 19 privilege. 20 MS. BOYD: Objection. 21 THE WITNESS: I don't specifically 22 remember, no. 23 BY MR. SUH: 24 Q. And as documented, you did not talk about 25 the SurfCast patent application.</p>	<p style="text-align: right;">Page 164</p> <p>1 attorney work product privileges. 2 MS. BOYD: Same caution. 3 THE WITNESS: I don't remember 4 specifically. 5 BY MR. SUH: 6 Q. As documented, you did not work on 7 drafting the SurfCast patent application on this 8 date. 9 Correct? 10 A. I disagree. 11 MS. PASCAL: Objection. 12 THE WITNESS: The last narrative that you 13 did not read just now says "1.5 hours, revisions to 14 draft of patent." I conclude that that is working 15 on drafting the patent application. 16 BY MR. SUH: 17 Q. Other than that, you did not work on 18 drafting the SurfCast patent application on this 19 date. 20 Correct? 21 MS. PASCAL: Objection, form, misstates 22 testimony and document. 23 THE WITNESS: I mean, I hope you don't mind 24 me saying I think that's actually fatuous. There is 25 1.5 hours entry on this day in which I am basically</p>
<p style="text-align: right;">Page 163</p> <p>1 Correct? 2 MS. BOYD: Objection. 3 MS. PASCAL: Objection, form, 4 mischaracterizes testimony. 5 MS. BOYD: Mischaracterizes the document. 6 THE WITNESS: The narrative does not say 7 drafted patent application, but clearly from the 8 narrative I am involved in the process of preparing 9 the patent application because I'm discussing the 10 draft with two other persons at Pennie and Edmonds. 11 BY MR. SUH: 12 Q. Let's go to page 111. There is a 0.4 13 hour, this is for October 6th, 0.4 hour of "Talked 14 to Brett Lovejoy about status of patent," and 15 "Meeting with Ovid Santoro, Gabriel, Brett Lovejoy 16 (Klaus Lagermann via speakerphone). Print out copy 17 of patent, followup conversation with Brett Lovejoy 18 about timeline. Drew up timeline, arranged for 19 e-mail of encrypted document to Ovid, Klaus, and 20 telephone call with Andrew Gray, e-mail timeline to 21 Andrew Gray, Ovid, and Klaus." 22 Do you specifically remember what you 23 talked about on this day? 24 MS. PASCAL: I'm going to offer the same 25 caution to the witness regarding attorney-client,</p>	<p style="text-align: right;">Page 165</p> <p>1 carrying out revisions to the patent draft 2 application. There is 1.9 hours in which I am 3 talking with the client, talking with other people 4 at Pennie and Edmonds about the patent application. 5 That looks to me like half of the day I'm 6 working on SurfCast and working on matters in 7 connection with preparing the patent application, 8 including revising a draft. 9 BY MR. SUH: 10 Q. Let's go to page 113. This is for October 11 8th. And there is an entry of 0.25 hours, "Updated 12 Andrew Gray about current timetable." 13 Do you specifically remember what you 14 talked about on this date? 15 MS. PASCAL: Same caution regarding 16 privilege information. 17 MS. BOYD: Same caution. 18 THE WITNESS: I don't specifically remember 19 what I talked about, no. 20 BY MR. SUH: 21 Q. And as documented, you did not work on 22 drafting the SurfCast patent application on this 23 day. 24 Correct? 25 MS. BOYD: Object.</p>

42 (Pages 162 to 165)

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SurfCast – Exhibit 2073, page 43

Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

<p style="text-align: right;">Page 166</p> <p>1 MS. PASCAL: Objection.</p> <p>2 MS. BOYD: Mischaracterizes witness'</p> <p>3 testimony and the document.</p> <p>4 THE WITNESS: That is correct. The</p> <p>5 narrative does not say that I worked on drafting a</p> <p>6 patent application.</p> <p>7 But I can say that on that day you can</p> <p>8 tell from the time entry below it five and</p> <p>9 three-quarter hours on a matter that by the billing</p> <p>10 number I know is a training matter, and I know that</p> <p>11 throughout the period that we have been talking</p> <p>12 about in this deposition I actually attended a lot</p> <p>13 of training related matters at Pennie and Edmonds.</p> <p>14 So it looks as if on this particular day most of my</p> <p>15 day was in a training matter.</p> <p>16 So you know, I still managed to find some</p> <p>17 time to discuss the patent application with</p> <p>18 Mr. Gray.</p> <p>19 BY MR. SUH:</p> <p>20 Q. What aspects of the patent application did</p> <p>21 you discuss?</p> <p>22 MS. BOYD: Objection.</p> <p>23 MS. PASCAL: Objection.</p> <p>24 MS. BOYD: Caution the witness not to</p> <p>25 disclose attorney or work product information.</p>	<p style="text-align: right;">Page 168</p> <p>1 MS. BOYD: Mischaracterizes the testimony</p> <p>2 and the document.</p> <p>3 THE WITNESS: According to the narrative I</p> <p>4 did not draft the patent application on this day.</p> <p>5 But as previously stated, activities I carried out</p> <p>6 for SurfCast were connected with and part of a</p> <p>7 process of preparing the patent application.</p> <p>8 BY MR. SUH:</p> <p>9 Q. Let's go to page 118. This is a time</p> <p>10 entry for October 13th. There is 1.25 hours of</p> <p>11 teleconference with Brett Lovejoy, Ovid Santoro,</p> <p>12 Klaus Lagermann about patent and followup discussion</p> <p>13 with Brett Lovejoy and Andrew Gray.</p> <p>14 Do you specifically remember what you</p> <p>15 talked about on this day?</p> <p>16 MS. PASCAL: Caution to the witness with</p> <p>17 regard to revealing privileged conversation.</p> <p>18 MS. BOYD: Same caution.</p> <p>19 THE WITNESS: I do not specifically</p> <p>20 remember what I talked about on this day.</p> <p>21 But it should be clear, as with my answer</p> <p>22 to previous questions, this is a</p> <p>23 one-and-a-quarter-hour entry, it's a teleconference</p> <p>24 with both the inventors as well as other personnel</p> <p>25 at Pennie and Edmonds, and it's part of the process</p>
<p style="text-align: right;">Page 167</p> <p>1 THE WITNESS: I don't recall what I</p> <p>2 specifically discussed beyond what is written in the</p> <p>3 narrative on this page.</p> <p>4 BY MR. SUH:</p> <p>5 Q. Let's go to page 117. This is for October</p> <p>6 12th?</p> <p>7 A. Okay.</p> <p>8 Q. And there is an entry of 0.33 hours which</p> <p>9 says "Teleconference with Ovid Santoro, Klaus</p> <p>10 Lagermann, Paul DeStefano and Brett Lovejoy." Do</p> <p>11 you specifically remember about what you talked</p> <p>12 about on this day?</p> <p>13 MS. PASCAL: Caution to the witness</p> <p>14 regarding the revealing attorney-client and attorney</p> <p>15 work product classifications.</p> <p>16 MS. BOYD: Same caution.</p> <p>17 THE WITNESS: Again, I do not specifically</p> <p>18 remember what was discussed on this teleconference.</p> <p>19 BY MR. SUH:</p> <p>20 Q. As documented, you did not work on</p> <p>21 drafting the SurfCast patent application on this</p> <p>22 day.</p> <p>23 Correct?</p> <p>24 MS. BOYD: Objection, form.</p> <p>25 MS. PASCAL: Objection.</p>	<p style="text-align: right;">Page 169</p> <p>1 of preparing the patent application.</p> <p>2 BY MR. SUH:</p> <p>3 Q. And as -- let's go to page 123. This is</p> <p>4 an entry for October 18th.</p> <p>5 A. Yes.</p> <p>6 Q. And there is 0.25 hours of talk to Brett</p> <p>7 Lovejoy about TCP/IP. Do you remember what you</p> <p>8 talked about on this day?</p> <p>9 MS. PASCAL: Same cautions regarding</p> <p>10 privilege.</p> <p>11 THE WITNESS: Beyond what is discussed, I</p> <p>12 mean, beyond what is recited in this narrative I do</p> <p>13 not remember specifically what I discussed.</p> <p>14 BY MR. SUH:</p> <p>15 Q. And you were looking at what existed</p> <p>16 before, not the SurfCast invention.</p> <p>17 Correct?</p> <p>18 MS. PASCAL: Objection, form.</p> <p>19 MS. BOYD: Objection.</p> <p>20 THE WITNESS: I don't know that I can say</p> <p>21 that what I'm talking about there is before</p> <p>22 SurfCast's invention. I do know that I am talking</p> <p>23 about TCP/IP.</p> <p>24 BY MR. SUH:</p> <p>25 Q. As documented, you did not work on</p>

43 (Pages 166 to 169)

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SurfCast – Exhibit 2073, page 44

Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

<p style="text-align: right;">Page 170</p> <p>1 drafting the SurfCast patent application on this 2 day. 3 Correct? 4 MS. BOYD: Objection. 5 MS. PASCAL: Objection. Form, 6 mischaracterization. 7 THE WITNESS: I did not -- so excuse me. 8 The narratives do not describe drafting the patent 9 application on this day, but this discussion is in 10 connection with preparing the patent application. 11 BY MR. SUH: 12 Q. Can we go to page 124, please? There is a 13 time entry for October 19th. 14 A. Uh-huh. 15 Q. And there is an entry of 0.7 hours 16 attending meeting with Mr. Carberry, talking with 17 Brett Lovejoy about TCP/IP, and 0.5 hours of prep 18 for meeting with Mr. Carberry and one hour of 19 meeting with Mr. Carberry, Andrew Gray, and Brett 20 Lovejoy. 21 Do you remember what you talked about on 22 this day? 23 MS. PASCAL: Same caution revealing -- 24 regarding revealing privileged information. 25 MS. BOYD: Same caution.</p>	<p style="text-align: right;">Page 172</p> <p>1 date. 2 Correct? 3 MS. BOYD: Objection. 4 MS. PASCAL: Objection, form, 5 mischaracterization. 6 THE WITNESS: According to the narrative 7 there is no description of me drafting the patent 8 application on this day, that's correct. 9 BY MR. SUH: 10 Q. In fact, you were looking at what exists, 11 not SurfCast's alleged invention. 12 Correct? 13 MS. PASCAL: Objection, form. 14 THE WITNESS: The narrative "Reviewed prior 15 art" would appear to suggest that I am looking at 16 things that came before, that is correct. 17 MR. SUH: Microsoft objects to the 18 privilege and work product objections asserted in 19 this deposition, and Microsoft also objects to all 20 of Dr. Bone's testimony that was based on 21 speculation and any other basis beyond his own 22 memory as irrelevant, lacking foundation, and based 23 on hearsay. 24 And I think I'm done, but I'll have to 25 confer with Joe. So can we go on a five-minute</p>
<p style="text-align: right;">Page 171</p> <p>1 THE WITNESS: I don't specifically remember 2 what I talked about with Mr. Lovejoy and Mr. -- 3 well, with Mr. Lovejoy. 4 I have some recollection of what was 5 discussed with Mr. Carberry, but I believe that's 6 covered by attorney-client privilege. 7 BY MR. SUH: 8 Q. As documented, you did not work on 9 drafting the SurfCast patent application. 10 Correct? 11 MS. PASCAL: Objection, form, 12 mischaracterization. 13 THE WITNESS: Again, the narratives do not 14 describe drafting a patent application. But the 15 meetings and the discussions are all connected with 16 the process of preparing the patent application. 17 BY MR. SUH: 18 Q. Turn to page 133. This is for October 19 28th. There is one hour of "Reviewed prior art and 20 attention to docket." 21 Do you specifically remember what you did 22 on this day? 23 A. I do not specifically remember, no. 24 Q. And as documented, you did not work on 25 drafting the SurfCast patent application on this</p>	<p style="text-align: right;">Page 173</p> <p>1 break? 2 MS. PASCAL: Yeah. Just to make clear that 3 we may need to go back on the record ourselves. So 4 this deposition is still open. 5 MR. SUH: All right. 6 THE VIDEOGRAPHER: Going off the record, 7 the time is 1:55. 8 (Whereupon, a recess was taken 9 commencing at 1:55 P.M. and 10 concluding at 1:55 P.M.) 11 THE VIDEOGRAPHER: Back on the record. The 12 time is 1:55. 13 MS. PASCAL: Just before we broke, I 14 believe Mr. Wu raised some objections. I would like 15 him to state the basis for each of the objections 16 that he raised. 17 MR. MICALLEF: Erica, if I may, if we are 18 going to do that, I would like to have the witness 19 leave to room, please. 20 MS. PASCAL: On what basis? 21 MS. BOYD: Yeah. 22 MR. MICALLEF: He is not entitled to hear 23 the narrative. 24 MS. PASCAL: Why? 25 MR. MICALLEF: Because it may affect his</p>

44 (Pages 170 to 173)

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SurfCast – Exhibit 2073, page 45

Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

<p style="text-align: right;">Page 174</p> <p>1 testimony.</p> <p>2 MS. PASCAL: I'm not following. Can you</p> <p>3 cite a rule or a law which would prevent Dr. Bone</p> <p>4 from being in the room? Since Mr. Wu raised these</p> <p>5 objections?</p> <p>6 MR. MICALLEF: Go ahead. If you are going</p> <p>7 to take the position that he may hear this, then we</p> <p>8 may have to do something about it. Because while --</p> <p>9 MS. PASCAL: I'm just --</p> <p>10 MR. HEINTZ: This is Tim Heintz here.</p> <p>11 Joe, I have got to say I object to this.</p> <p>12 Mr. Suh is taking this deposition, not you. You and</p> <p>13 I are listening on the phone. We should not be on</p> <p>14 the record.</p> <p>15 So I object to this continued</p> <p>16 participation on your behalf.</p> <p>17 MR. MICALLEF: Understood.</p> <p>18 MR. HEINTZ: That's all I'm going to say</p> <p>19 on the record.</p> <p>20 MR. MICALLEF: I am backup lead counsel and</p> <p>21 I am entitled to do this. And this narrative in</p> <p>22 front of the witness is literally improper.</p> <p>23 MS. PASCAL: I believe Mr. Suh raised this</p> <p>24 himself with the witness in the room, and --</p> <p>25 MR. MICALLEF: The ongoing narrative is</p>	<p style="text-align: right;">Page 176</p> <p>1 MS. PASCAL: That you are calling his time</p> <p>2 entry log a billing record?</p> <p>3 MR. SUH: That's right. And Exhibit 2010,</p> <p>4 Exhibit 2049, and Exhibit 2050.</p> <p>5 MS. PASCAL: Okay. Just for</p> <p>6 clarification, again for clarity of record, are</p> <p>7 you -- you said Mr. -- your basis for the privilege</p> <p>8 objection was Mr. or Dr. Bone's -- I believe you</p> <p>9 addressed him as Mr. Bone's -- reliance. And now I</p> <p>10 want to be clear on which exhibits that you are</p> <p>11 actually speaking to.</p> <p>12 MR. SUH: Exhibit 2035.</p> <p>13 MS. PASCAL: Okay. So stop right there.</p> <p>14 Are you calling Exhibit 2035 a billing record?</p> <p>15 MR. SUH: Time entry record, same as</p> <p>16 billing records.</p> <p>17 MS. PASCAL: Okay. And what is the basis</p> <p>18 of your objection as it refers to --</p> <p>19 MR. SUH: Basically you can't have it both</p> <p>20 ways.</p> <p>21 MS. PASCAL: Could you let me finish my</p> <p>22 question before you --</p> <p>23 MR. SUH: I thought you were finished.</p> <p>24 Sorry.</p> <p>25 MS. PASCAL: What is your basis with regard</p>
<p style="text-align: right;">Page 175</p> <p>1 improper.</p> <p>2 MS. PASCAL: Whose? Mrs. Suh's or mine?</p> <p>3 MR. MICALLEF: What's going on right now</p> <p>4 between you and me. I can't make -- obviously I</p> <p>5 can't make anybody do it. I'm going to ask you</p> <p>6 again to have the witness leave the room, then we</p> <p>7 can have the discussion.</p> <p>8 MS. PASCAL: Okay. For now we'll -- we'll</p> <p>9 ask Dr. Bone to leave the room. We may revisit this</p> <p>10 after we have heard the basis for Mr. Wu's</p> <p>11 objections.</p> <p>12 Dr. Bone, would you just step out for a</p> <p>13 few minutes and we will call you back in?</p> <p>14 THE WITNESS: Certainly.</p> <p>15 MS. PASCAL: Thank you. I apologize.</p> <p>16 THE WITNESS: Okay. Exit stage left.</p> <p>17 MS. PASCAL: Okay. Mr. Suh, you are on the</p> <p>18 record with some objections, so I'd like you to now</p> <p>19 go through the basis of each of your -- go through</p> <p>20 each objection and the basis for each objection.</p> <p>21 MR. SUH: The basis for the objecting to</p> <p>22 the privileged and work product is because Dr. Bone</p> <p>23 relied on the billing records.</p> <p>24 MS. PASCAL: Which billing records?</p> <p>25 MR. SUH: That is Exhibit 2035.</p>	<p style="text-align: right;">Page 177</p> <p>1 to specifically Exhibit 2035 and the objection you</p> <p>2 have raised?</p> <p>3 MR. SUH: You have raised a lot of</p> <p>4 objections based on privilege and instructed the</p> <p>5 witness not to answer based on privilege. And this</p> <p>6 was offered as evidence by Mr. Bone himself. So our</p> <p>7 position is that Mr. Bone, SurfCast waived the</p> <p>8 privilege.</p> <p>9 MS. PASCAL: First of all, two things. You</p> <p>10 might recall we don't believe we have with regard to</p> <p>11 the entries that are in here, we -- we have -- in</p> <p>12 other words, what we have redacted, what is</p> <p>13 un-redacted you are entitled to have. In fact, we</p> <p>14 offered you even a more un-redacted logbook which</p> <p>15 you objected to and did not want to use today.</p> <p>16 But set that aside, I believe in answer to</p> <p>17 each of your questions -- and you are free to review</p> <p>18 the record, Ms. -- Dr. Bone said he did not recall,</p> <p>19 which did give you your answer, regardless of</p> <p>20 privilege.</p> <p>21 So I'm not really sure what you are</p> <p>22 expecting to get even without that if his answer is</p> <p>23 "I don't recall."</p> <p>24 But if you know, please let me know so we</p> <p>25 can clear it up.</p>

45 (Pages 174 to 177)

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SurfCast - Exhibit 2073, page 46

Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

<p style="text-align: right;">Page 178</p> <p>1 MR. SUH: My recollection -- okay, if you 2 are finished? My recollection is that you made a 3 series of objections and instructed the witness not 4 to answer, so that that is the basis. 5 MS. PASCAL: Right. 6 MS. BOYD: So -- 7 MR. MICALLEF: So we are going to stand by 8 our objection. You know, the record is what it is. 9 So I don't know what you want. We are not going to 10 back off of that objection. 11 MS. BOYD: Yeah. And I'll just -- if -- if 12 you have an argument which you are required actually 13 to make on the record under -- you are required to 14 explain your objection on the record, what is your 15 explanation for how the logbook is a waiver of 16 privilege? Can you point me to privileged 17 information that's in the logbook as it's been 18 entered as an exhibit? 19 MR. SUH: For example, I pointed to the 20 log, portions in the logbook where it says "Talked 21 with Andrew Gray," and I questioned about it. 22 MS. BOYD: Right. So "Talked with Andrew 23 Gray," that's foundational information for a 24 privilege. That is not privileged information. 25 MR. MICALLEF: Well, I don't -- I'm not so</p>	<p style="text-align: right;">Page 180</p> <p>1 taking the deposition. 2 But we will say here we are all convened 3 here with the witness who is presently standing 4 outside the room. You have the opportunity and the 5 time as it is only now 2:00 o'clock Pacific time and 6 you have I believe up to a certain number of hours 7 on the record to take this deposition. 8 If there is something that we can rectify 9 here, then we should do it because I think it's 10 going to be hard to explain to the Board why you 11 forego several hours of deposition with witness and 12 attorney time here because you don't want to tell us 13 what it is we can address. 14 MR. MICALLEF: We told you, and you are 15 welcome to address it on redirect. 16 MS. PASCAL: No. 17 MR. MICALLEF: Give you something to clear 18 up. 19 MS. PASCAL: Just -- 20 MR. MICALLEF: And I am -- I am not going 21 to be made to be quiet. I'm not asking questions of 22 the witness, he is out of room, I am backup lead, 23 lead counsel and lead counsel is here, I am entitled 24 to do this. 25 MS. PASCAL: Okay. I disagree with you.</p>
<p style="text-align: right;">Page 179</p> <p>1 sure that's right. 2 But we are entitled to explore all of 3 these documents, and when he put them into the 4 record, then -- and cited to them in his direct 5 testimony, in his declaration, in our view that 6 opened it up. And your assertions of privilege are 7 improper. 8 Now, you can tell the Board otherwise and 9 we'll tell the Board our, our story. You know what 10 our objection is now with respect to the privilege. 11 So I don't know what you are trying to do. 12 MS. BOYD: Okay. So -- so no, I'm going to 13 echo Jim's objection, which is you are not taking 14 this deposition. All right. So this isn't your -- 15 this isn't currently your argument to make. So I 16 will echo that. 17 Mr. Suh, if there is particular 18 information in the logbook that you believe is 19 itself a waiver of privilege, I would like you to 20 point it out right now because we would -- 21 MR. MICALLEF: No, we are not -- we are 22 not going to do that. 23 MR. SUH: We are not going to do that. 24 MS. PASCAL: Excuse me, Mr. Micallef, I 25 think we are going to caution you again about who is</p>	<p style="text-align: right;">Page 181</p> <p>1 Regardless of this, I'm going to ask 2 whoever it is going to answer, whether it's Mr. Suh, 3 and I apologize if I am misspeaking on your name, 4 I'm not -- is it Suh or Suh. 5 MR. SUH: Suh. 6 MS. PASCAL: Mr. Suh, I'm very sorry about 7 that. Mr. Suh. 8 It's your intention to say that you have 9 an objection about the witness' testimony. You have 10 a certain number of hours left to you allocated on 11 the record on which we could object -- we could 12 address this objection. That is the whole point of 13 objections, so that they can be addressed, 14 particularly ones that can be addressed while the 15 witness is still present and has time to do it as 16 well as the attorneys. 17 So as was asked of you, will you please, 18 if there are particular entries that you believe are 19 a waiver of privilege, and for example, just so we 20 can help this process along, have information that 21 would not appear on a privilege log, for example, if 22 I write you a letter as a client, my privilege log 23 is going to say talk to or wrote letter, whatever it 24 is, oral, verbal, our names and the date and some 25 general description of the subject matter without</p>

46 (Pages 178 to 181)

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SurfCast - Exhibit 2073, page 47

Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

<p style="text-align: right;">Page 182</p> <p>1 revealing the actual ins and outs content, if there 2 is something in here that you think goes beyond a 3 privilege log entry I would -- 4 MS. BOYD: Please point it out to us. 5 MS. PASCAL: Yeah, point it out. 6 MS. BOYD: So we can take that under 7 consideration. 8 And if we -- if you persuade us that we 9 have indeed waived privilege with regard to an 10 entry, then right now we have the witness, we have 11 the videographer, we have the court reporter, we 12 have the attorneys. If you can -- if you can show 13 us something where we have actually waived privilege 14 then we can address it now. 15 MR. MICALLEF: No, wait a second. We asked 16 the questions, you asserted the privilege. So it's 17 now incumbent on you if you think there is something 18 to clear up. We don't have a burden to go back and 19 start this deposition all over again and ask the 20 same questions over again because you improperly 21 asserted a privilege, and we are not going do it. 22 You have four and a half hours of redirect. 23 MS. PASCAL: Okay. I just want to clear a 24 statement that you are unwilling to do this, and if 25 that's the record you want to make, then I'm fine</p>	<p style="text-align: right;">Page 184</p> <p>1 put at least an example, if not more than one 2 example on the record to see if we can then address 3 those specific entries in Dr. Bone's deposition 4 today. 5 If you don't want to do that, then so be 6 it, but I need to know what your position is on 7 that. 8 MR. SUH: One comment -- 9 MR. MICALLEF: No -- go ahead, Wonjoo. 10 MR. SUH: One comment I would like to make 11 is this is not just a privilege log. Dr. Bone is 12 relying on these entries to establish a diligence, 13 and he even put a chart, Exhibit 2051 and 2052, on 14 it. 15 MS. PASCAL: Uh-huh. 16 MR. SUH: And it includes these narratives, 17 attend meeting with attorneys about TCP/IP, about 18 time entries. And these, by presenting these 19 evidence and relying on these evidence, SurfCast 20 waived the attorney-client privilege. And that's 21 our position. 22 MS. BOYD: Okay. So -- 23 MR. MICALLEF: So and so now we have the 24 positions on the table, and no one's going to decide 25 them today.</p>
<p style="text-align: right;">Page 183</p> <p>1 with it. I just want a clear statement that it's 2 2:04 P.M. Pacific time and it's my understanding 3 from Mr. Micallef's representation here as I guess 4 he is backup lead counsel -- if I mistook that, my 5 apologies, but it's the backup lead counsel's 6 representation that they do not want to address and 7 try to rectify this situation here, in which case 8 we -- if that is -- is that correct, we will go off 9 the record for a short break and then we will let 10 you know if there will be redirect testimony. 11 MR. MICALLEF: That is not my position. My 12 position is we did it once, and it's not incumbent 13 on us to go back and take the deposition all over 14 again, it's incumbent on to you clear up the record. 15 I don't have to do it twice. 16 MS. PASCAL: I'm just going to be clear 17 here on the record. We don't believe we have waived 18 privilege, we believe that the entries in the 19 logbook as Mr. Suh addressed them in the deposition 20 are no different than what would appear on a 21 privileged log in terms of the people involved, the 22 date and a very general description of the subject 23 matter. 24 If there are entries you believe that do 25 not conform to that, I am simply asking for you to</p>	<p style="text-align: right;">Page 185</p> <p>1 So what do you want to do? 2 MS. PASCAL: What do you mean, no one's 3 going to decide them today? I'm not following. 4 MR. MICALLEF: No one's going to resolve 5 this dispute today. It will get resolved, I'm sure, 6 or it won't matter. But no one's going to resolve 7 it today. 8 MS. PASCAL: I think if I follow, or I 9 think I understand what you are saying, I guess at 10 this point we can go off the record and take a 11 break. 12 MR. MICALLEF: Okay. 13 THE VIDEOGRAPHER: Okay. Off the record, 14 the time is 2:07. 15 (Whereupon, a recess was taken 16 commencing at 2:07 P.M. and 17 concluding at 2:18 P.M.) 18 THE VIDEOGRAPHER: We are back on the 19 record. The time is 2:18. 20 BY MR. SUH: 21 Q. Mr. Bone, did you talk to your counsel 22 during the break? 23 A. Briefly, yes. 24 Q. What about? 25 A. They mentioned the fact that I'm going</p>

47 (Pages 182 to 185)

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SurfCast - Exhibit 2073, page 48

Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

<p style="text-align: right;">Page 186</p> <p>1 come in here, I'm going to listen to some more 2 questions from you, and then I understand that the 3 deposition will be closed. 4 MR. SUH: Okay. I would like to pass the 5 witness. 6 MS. PASCAL: I have no questions at this 7 time. 8 THE WITNESS: Sorry, you would like to do 9 what? 10 MS. PASCAL: Pass the witness. He means he 11 is asking me if I am going to do redirect. 12 THE WITNESS: Okay. 13 MS. PASCAL: And no, at this time we have 14 no redirect. 15 MR. SUH: All right. 16 MS. PASCAL: So I believe the deposition is 17 closed. 18 THE VIDEOGRAPHER: Okay. This is the end 19 of volume one, videotape number three in the 20 deposition of Dr. Richard Bone. We are going off 21 the record. The time is 2:19. 22 (Whereupon, the deposition was 23 adjourned at 2:19 P.M.) 24 --oOo-- 25</p>	<p style="text-align: right;">Page 188</p> <p>1 CERTIFICATE OF REPORTER 2 I, COREY W. ANDERSON, a Certified 3 Shorthand Reporter, hereby certify that the witness 4 in the foregoing deposition was by me duly sworn to 5 tell the truth, the whole truth, and nothing but the 6 truth in the within-entitled cause; 7 That said deposition was taken down in 8 shorthand by me, a disinterested person, at the time 9 and place therein stated, and that the testimony of 10 the said witness was thereafter reduced to 11 typewriting, by computer, under my direction and 12 supervision; 13 That before completion of the deposition, 14 review of the transcript was not requested. If 15 requested, any changes made by the deponent (and 16 provided to the reporter) during the period allowed 17 are appended hereto. 18 I further certify that I am not of counsel 19 or attorney for either or any of the parties to the 20 said deposition, nor in any way interested in the 21 event of this cause, and that I am not related to 22 any of the parties thereto. 23 DATED: 24 _____ 25 COREY W. ANDERSON, CSR 4096</p>
<p style="text-align: right;">Page 187</p> <p>1 I declare under penalty of perjury the 2 foregoing is true and correct. Subscribed at 3 _____, California, this ____ day 4 of _____ 2014. 5 _____ 6 Richard George Andrew Bone 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	

48 (Pages 186 to 188)

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SurfCast – Exhibit 2073, page 49

Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

ERRATA SHEET

IN RE: MICROSOFT CORPORATION V. SURFCAST, INC.

PAGE LINE CORRECTION AND REASON

5 _4_ _Insert "LLP" after "DLA PIPER" _____

6 _20_ _Insert "LLP" after "DLA PIPER" _____

6 _25_ _Change "Sun" to "Suh" _____

11 _19_ _Change "accelerated" to "optional" _____

13 _18_ _Delete "Provin" _____

14 3, 7, 11, 12, and 14:

_ Change "Pennie and Edmonds" to "Pennie & Edmonds", and in all subsequent occurrences in the transcript. _____

15 _22_ _Insert "37" before "CFR" _____

16 _6_ _Change "green card" to "greencard" _____

20 _11_ _Change "priveledged" to "privileged" _____

24 _25_ _Change "Stefano" to "DeStefano" _____

25 _1_ _Change "Stefano" to "DeStefano" _____

39 _22_ _Change "ended" to "entered" _____

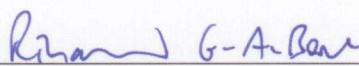
42 _13_ _Change "is" to "are" _____

46 _9_ _Change "of" to "A" _____

83 _7_ _Change "through" to "for" _____

92 _19_ _Change "informed" to "in form" _____

03/31/14
(DATE)


(SIGNATURE)

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ERRATA SHEET

IN RE: MICROSOFT CORPORATION V. SURFCAST, INC.

PAGE LINE CORRECTION AND REASON

96 _25_ ___Change "t" to "It" _____

126 22-23 ___Change <<patentability," et cetera, ">> to <<patentability
assessment>> _____

130 _20_ ___Change "investigation" to "invention" _____

140 _9_ ___Change "AGG" to "AJG" _____

148 _18_ ___Change "facts" to "FAX" _____

148 _23_ ___Change "invoices, the" to "invoices from" _____

153 _8_ ___Change "and Evans" to "& Edmonds" _____

159 _19_ ___Change "Gray" to "Gary" _____

163 _15_ ___Change "Gabriel" to "Isobel" _____

173 _14_ ___Change "Wu" to "Suh" _____

174 _4_ ___Change "Wu" to "Suh" _____

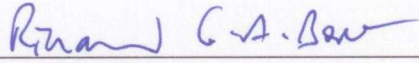
174 _10_ ___Change "Tim" to "Jim" _____

175 _2_ ___Change "Mrs." to "Mr." _____

175 _10_ ___Change "Wu's" to "Wu" _____

177 _18_ ___Change "Ms." to "Mr." _____

183 _14_ ___Change "to you" to "you to" _____

03/31/14 
(DATE) (SIGNATURE)

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1 I declare under penalty of perjury the
2 foregoing is true and correct. Subscribed at
3 Palo Alto, California, this 31 day
4 of March 2014.

5 Richard G.A. Bone

6 Richard George Andrew Bone
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CERTIFICATE OF REPORTER

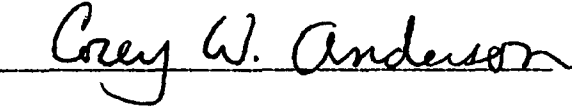
I, COREY W. ANDERSON, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of the said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

That before completion of the deposition, review of the transcript was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED:


COREY W. ANDERSON, CSR 4096