

In the Matter of:

MICROSOFT CORPORATION

vs.

SURFCAST, INC.

OVID K. SANTORO

February 27, 2014

M E R R I L L L A D

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION

Petitioner,

v.

SURFCAST, INC.

Patent Owner.

Patent No. 6,724,403

Issued: April 20, 2004

Filed: October 30, 2000

Inventors: Ovid Santoro, et al

Inter Partes Review Nos.

IPR2013-00292, IPR2013-00293,

IPR2013-00294 and IPR2013-00295

VIDEO DEPOSITION OF OVID K. SANTORO

Washington, D.C.



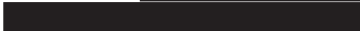
Thursday, February 27, 2014, 9:00 a.m.

Reported by: Laurie Bangart, RPR, CRR, CLR

Job No.: 0101-245247

Page 2	Page 4
<p>1 Video Deposition of</p> <p>2 OVID K. SANTORO</p> <p>3</p> <p>4 Held at the offices of:</p> <p>5 DLA Piper, LLP</p> <p>6 500 Eighth Street, NW</p> <p>7 Washington, D.C. 20004</p> <p>8 (202)799-4000</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18 Taken pursuant to notice, before</p> <p>19 Laurie Bangart, Registered Professional</p> <p>20 Reporter, Certified Realtime Reporter and</p> <p>21 Notary public in and for the District of</p> <p>22 Columbia.</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 EXAMINATION INDEX</p> <p>2 PAGE</p> <p>3 EXAMINATION BY MR. MICALLEF 7</p> <p>4</p> <p>5</p> <p>6</p> <p>7 (Previously Marked Exhibits)</p> <p>8 E X H I B I T S</p> <p>9</p> <p>10 EXHIBIT DESCRIPTION REFERENCED PAGE</p> <p>11 Exhibit 2005 Declaration by Ovid Santoro . 11</p> <p>12 Exhibit 2009 Redacted letter sent from</p> <p>13 Andrew Gray to Ovid Santoro in</p> <p>14 May of 1999 62</p> <p>15 Exhibit 2010 Invoice from Pennie & Edmonds 64</p> <p>16 Exhibit 2012 Email chain 68</p> <p>17 Exhibit 2014 Email with attached</p> <p>18 SurfCast Final Summary 71</p> <p>19 Exhibit 2015 Email sent to Pennie & Edmonds</p> <p>20 attorneys 72, 74</p> <p>21 Exhibit 2016 Email from Santoro to Klaus</p> <p>22 Lagermann and others regarding</p> <p>23 desktop.com 75</p> <p>24 Exhibit 2017 Email exchange regarding</p> <p>25 founders documents 79</p>
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<p>1 A P P E A R A N C E S</p> <p>2 ON BEHALF OF PETITIONER MICROSOFT CORPORATION:</p> <p>3 Sidley Austin, LLP</p> <p>4 1501 K Street, NW</p> <p>5 Washington, D.C. 20005</p> <p>6 (202)736-8492</p> <p>7 By: Joseph Micallef, Esq.</p> <p>8 jmicallef@sidley.com</p> <p>9 Wonjoo Suh, Esq.</p> <p>10 wsuh@sidley.com</p> <p>11 ON BEHALF OF PATENT OWNER SURFCast, INC.:</p> <p>12 DLA Piper, LLP</p> <p>13 One Fountain Square</p> <p>14 11911 Freedom Drive</p> <p>15 Suite 300</p> <p>16 Reston, Virginia 20190</p> <p>17 (703)773-4148</p> <p>18 By: James M. Heintz, Esq.</p> <p>19 jim.heintz@dlapiper.com</p> <p>20 ALSO PRESENT:</p> <p>21 Richard G.A. Bone, Ph.D.</p> <p>22 Dana Campbell, videographer</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 (Exhibits continued)</p> <p>2 EXHIBIT DESCRIPTION PAGE</p> <p>3 Exhibit 2019 Email from Lagermann to</p> <p>4 Santoro 82</p> <p>5 Exhibit 2023 Notebook containing handwritten</p> <p>6 notes by Ovid Santoro 84</p> <p>7 Exhibit 2024 Email chain 103</p> <p>8 Exhibit 2025 Document 104</p> <p>9 Exhibit 2026 Email from Santoro to Lagermann 106</p> <p>10 Exhibit 2027 Email from Santoro to Lagermann 107</p> <p>11 Exhibit 2028 Email from Santoro to Lagermann 109</p> <p>12 Exhibit 2029 Email from Santoro to Lagermann 109</p> <p>13 Exhibit 2032 Email from Santoro to Lagermann</p> <p>14 with forward from Joe Kelter . 113</p> <p>15 Exhibit 2034 Email from Santoro to</p> <p>16 Lagermann and Dechaene 118</p> <p>17 Exhibit 2036 Email chain between Lagermann</p> <p>18 and Santoro 121</p> <p>19 Exhibit 2044 Document entitled "Product</p> <p>20 Development Schedule" 122</p> <p>21 Exhibit 2049 Document 124</p> <p>22 Exhibit 2050 Document 125</p> <p>23 Exhibit 2065 Chart prepared at Mr. Santoro's</p> <p>24 direction 126</p> <p>25 Exhibit 2067 Document 142</p>

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<p style="text-align: right;">Page 6</p> <p>1 PROCEEDINGS</p> <p>2 THE VIDEOGRAPHER: We're going on</p> <p>3 record. The time is 9:01:15. Here begins</p> <p>4 tape number one in the deposition of Ovid</p> <p>5 Santoro in the matter of Microsoft</p> <p>6 Corporation vs. SurfCast, Inc. in the United</p> <p>7 States Patent and Trademark Office, before</p> <p>8 the Patent Trial and Appeal Board, inter</p> <p>9 partes review numbers IPR2013-00292,</p> <p>10 IPR2013-00293, IPR2013-00294, and</p> <p>11 IPR2013-00295.</p> <p>12 Today's date is February 27, 2014.</p> <p>13 The time is 9:01:58. The video operator</p> <p>14 today is Dana Campbell of Merrill Deposition</p> <p>15 Services. This video deposition is taking</p> <p>16 place at the offices of DLA Piper, LLP, at</p> <p>17 500 Eighth Street, Northwest, Washington,</p> <p>18 D.C., and was noticed by Joseph Micallef,</p> <p>19 counsel for the petitioner.</p> <p>20 Would counsel please identify</p> <p>21 themselves and state whom they represent.</p> <p>22 MR. MICALLEF: Joe Micallef</p> <p>23 representing the petitioner Microsoft.</p> <p>24 MR. SUH: Wonjoo Suh representing</p> <p>25 Microsoft.</p>	<p style="text-align: right;">Page 8</p> <p>1 A Ovid Kenneth Santoro, 22 Carol Street,</p> <p>2 Portland, Maine.</p> <p>3 Q You have been deposed before?</p> <p>4 A Yes.</p> <p>5 Q You understand you need to answer my</p> <p>6 questions as best as you can?</p> <p>7 A Yes.</p> <p>8 Q You understand that we're going to take</p> <p>9 breaks at various points in this proceeding, and</p> <p>10 during those breaks you are not permitted to</p> <p>11 discuss the conduct or substance of this</p> <p>12 deposition with your counsel?</p> <p>13 A Yes.</p> <p>14 Q Could you describe your educational</p> <p>15 background, please.</p> <p>16 A I'd just like to interject for a second.</p> <p>17 </p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 Q That's absolutely fine. Just let me</p> <p>24 know.</p> <p>25 A Yeah, sure.</p>
<p style="text-align: right;">Page 7</p> <p>1 MR. HEINTZ: James Heintz</p> <p>2 representing patent owner SurfCast, Inc.</p> <p>3 DR. BONE: Richard Bone</p> <p>4 representing patent owner SurfCast, Inc.</p> <p>5 THE VIDEOGRAPHER: The court</p> <p>6 reporter today is Laurie Bangart with Merrill</p> <p>7 Deposition Services. Would the court</p> <p>8 reporter please swear in the witness.</p> <p>9 (Witness duly sworn.)</p> <p>10 (Discussion held off the record.)</p> <p>11 THE VIDEOGRAPHER: Going off record</p> <p>12 at 9:05:05.</p> <p>13 (Discussion was held off the</p> <p>14 record.)</p> <p>15 THE VIDEOGRAPHER: We're back on</p> <p>16 record at 9:04.</p> <p>17 OVID K. SANTORO,</p> <p>18 having been first duly sworn, testified</p> <p>19 upon his oath as follows:</p> <p>20 EXAMINATION BY COUNSEL FOR PETITIONER</p> <p>21 BY MR. MICALLEF:</p> <p>22 Q Good morning.</p> <p>23 A Hi.</p> <p>24 Q Could you state your full name and</p> <p>25 residence address.</p>	<p style="text-align: right;">Page 9</p> <p>1 Q Is there -- I suppose I should ask you:</p> <p>2 Is there any reason you could not give accurate</p> <p>3 testimony today?</p> <p>4 A No. </p> <p>5 </p> <p>6 Q Okay. Good.</p> <p>7 Just describe your educational</p> <p>8 background, please.</p> <p>9 A High school degree, several years of</p> <p>10 college at different universities, including</p> <p>11 University of Miami, Bennington College, Columbia</p> <p>12 University, and I have a bachelor's degree.</p> <p>13 Q What's your bachelor's degree in?</p> <p>14 A Literature. Creative writing.</p> <p>15 Q Is that what you studied at all of the</p> <p>16 different colleges you attended?</p> <p>17 A I studied, I think it was called</p> <p>18 business law at Miami, and then I studied</p> <p>19 painting, photography and film at Bennington. And</p> <p>20 then at Columbia it was creative writing, but</p> <p>21 there was no creative writing department. We</p> <p>22 created a course within the literature division,</p> <p>23 created a course of study.</p> <p>24 Q Fair to say that you don't have any</p> <p>25 formal training in any technological field?</p>

3 (Pages 6 to 9)

<p style="text-align: right;">Page 10</p> <p>1 A I'm thinking about that.</p> <p>2 Well, I suppose it depends on your view</p> <p>3 of technical field. We have a farm. I've been</p> <p>4 trained by various people in things like working</p> <p>5 with chainsaws, working with heavy machinery,</p> <p>6 working with tractors, big machines like that,</p> <p>7 which in a broad sense is technical. If you mean</p> <p>8 computer science, I don't have a formal training</p> <p>9 in computer science.</p> <p>10 Q I believe I said "technological" field,</p> <p>11 not "technical." Does that change your answer?</p> <p>12 A No. I still consider a chainsaw</p> <p>13 technology.</p> <p>14 Q Okay.</p> <p>15 Fair to say you don't have any -- just</p> <p>16 to make sure I understand, you don't have formal</p> <p>17 training in any kind of computer programming?</p> <p>18 A No.</p> <p>19 Q Do you have any formal training in any</p> <p>20 kind of engineering?</p> <p>21 A No.</p> <p>22 Q You've never worked as a programmer?</p> <p>23 A No.</p> <p>24 Q And you've never worked as an engineer?</p> <p>25 A No.</p>	<p style="text-align: right;">Page 12</p> <p>1 THE WITNESS: I think that</p> <p>2 persistence has many aspects to it, and this</p> <p>3 is possibly -- I mean this is, this is one of</p> <p>4 them. I think, I think our patent owner's</p> <p>5 response was pretty comprehensive in listing</p> <p>6 various other aspects, such as passwords and</p> <p>7 various other aspects of what I consider to</p> <p>8 be or we consider to be persistence in tiles</p> <p>9 in the patent.</p> <p>10 BY MR. MICALLEF:</p> <p>11 Q Okay.</p> <p>12 You mentioned passwords as one other</p> <p>13 aspect. Can you tell me what other aspects of</p> <p>14 persistence you believe exist?</p> <p>15 A I'd love to see the patent owner's</p> <p>16 response if you have it and look at that as a</p> <p>17 guide, because I think that's a pretty</p> <p>18 comprehensive, as I said, a pretty good reflection</p> <p>19 of all the instances there.</p> <p>20 Q Okay.</p> <p>21 Can you remember any other than</p> <p>22 passwords?</p> <p>23 A Well, certainly more than the same</p> <p>24 position of the grid. Certainly -- I, off the top</p> <p>25 of my head I'd like to look at something to</p>
<p style="text-align: right;">Page 11</p> <p>1 Q I've put in front of you SurfCast</p> <p>2 Exhibit 2005 that was entered in this proceeding.</p> <p>3 Is this a declaration that was submitted by you in</p> <p>4 this proceeding?</p> <p>5 A I'd like to just look at it for a</p> <p>6 moment, please.</p> <p>7 That looks correct.</p> <p>8 Q Okay.</p> <p>9 I would ask you to turn to page 4 of</p> <p>10 your declaration, Exhibit 2005. In paragraph 11</p> <p>11 of your declaration, which actually starts on page</p> <p>12 3 and goes over to page 4, I'd like to direct your</p> <p>13 attention to the last, second to the last</p> <p>14 sentence, I guess, the sentence that begins "and</p> <p>15 whatever the state of tiles."</p> <p>16 Do you see that?</p> <p>17 A Yes.</p> <p>18 Q Okay, the sentence says, "Whatever the</p> <p>19 state of tiles when the user logs off, it's the</p> <p>20 same state when they log on again," colon. "The</p> <p>21 user's tiles will be in the same position in the</p> <p>22 grid."</p> <p>23 My question about that sentence is, "is</p> <p>24 this what you mean by "persistence"?</p> <p>25 MR. HEINTZ: Object to the form.</p>	<p style="text-align: right;">Page 13</p> <p>1 refresh my memory if possible.</p> <p>2 Q So you can't remember any right now as</p> <p>3 you're sitting here today, any other than</p> <p>4 passwords?</p> <p>5 A Well, let's think about persistence.</p> <p>6 So what did we mean by persistence? We</p> <p>7 meant that unlike an icon or unlike a window or</p> <p>8 say an icon is pretty static, it's there in the</p> <p>9 same place, in a, in a grid in a tile, the grid</p> <p>10 would be persistent in that it would have the</p> <p>11 various tiles that were on that particular grid in</p> <p>12 those particular places in their particular state.</p> <p>13 In -- unlike a window, for instance,</p> <p>14 which would go away, your -- when you turn your</p> <p>15 machine back on, there was your, your grid with</p> <p>16 your tiles as they were.</p> <p>17 Q Are you done with your answer?</p> <p>18 A I'd really like to see the patent</p> <p>19 owner's response, if possible.</p> <p>20 Q Well, we may get to that, but the patent</p> <p>21 owner's response says whatever it says. I'm</p> <p>22 trying to get to whatever you recall right now.</p> <p>23 A Okay.</p> <p>24 Q Are there any other characteristics or</p> <p>25 aspects of persistence that you recall right now?</p>

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<p style="text-align: right;">Page 14</p> <p>1 A Well, why don't I look through here for</p> <p>2 a moment and see if anything refreshes my memory.</p> <p>3 Do you mind?</p> <p>4 Q No. Go ahead.</p> <p>5 A I'd like to continue going through this</p> <p>6 document, but one thing is, for instance, if the</p> <p>7 tile was assigned a particular data source, such</p> <p>8 as a TV channel or such as a, a photo album or</p> <p>9 whatever, it might be a file, that that tile would</p> <p>10 still stay associated with that particular</p> <p>11 information source; that the attributes that a</p> <p>12 user could configure the tile with would also</p> <p>13 persist, such as a refresh rate.</p> <p>14 So for instance, if a -- I had multiple</p> <p>15 video tiles and some are more important than</p> <p>16 others, because of limited band width back then in</p> <p>17 '99, we might not have three videos tiles pushing</p> <p>18 through video at the same frame rate or refresh</p> <p>19 rate, so we might say that this one updates every</p> <p>20 30 frames a second or this one updates every</p> <p>21 second or this one updates every five seconds.</p> <p>22 Those aspects of the refresh rate would persist</p> <p>23 from session to session.</p> <p>24 So I'd like to continue reading, and</p> <p>25 I'll let you know if any others come to mind.</p>	<p style="text-align: right;">Page 16</p> <p>1 as refresh rate, so that when you shut the</p> <p>2 computer off, if you had to, for instance, when</p> <p>3 you turn it back on, there it is, everything you</p> <p>4 wanted again. So you didn't have to rebuild this</p> <p>5 interface every time you turned a computer on.</p> <p>6 So to us, I would say to me, to us, to</p> <p>7 the company, to Klaus Lagermann, my co-inventor,</p> <p>8 and I, the, the -- one of the most, if not the</p> <p>9 most fundamental aspects of the invention was that</p> <p>10 it was meant to be persistent.</p> <p>11 Q So you said that passwords are an aspect</p> <p>12 of persistence. What did you mean by that?</p> <p>13 A I guess what I meant was an example of</p> <p>14 persistence.</p> <p>15 Q Okay.</p> <p>16 So an example of persistence would be a</p> <p>17 password is assigned to, for example, a tile?</p> <p>18 A Yes.</p> <p>19 Q And when you turn the machine off and</p> <p>20 turn it back on, that password is still relevant</p> <p>21 to that tile?</p> <p>22 A Yes.</p> <p>23 Q And you would say that tile was</p> <p>24 persistent because of that password?</p> <p>25 A Yes, or the whole grid, the grid and the</p>
<p style="text-align: right;">Page 15</p> <p>1 Q Okay.</p> <p>2 A Okay.</p> <p>3 So if we go back to the beginning of</p> <p>4 your, the bullet point you pointed out, 11, and we</p> <p>5 look at the whole section here about this being</p> <p>6 effectively an electronic program guide variation</p> <p>7 or evolution, I think this is really what it's all</p> <p>8 about.</p> <p>9 So the most fundamental nature of what</p> <p>10 we were creating was something that was meant to</p> <p>11 be persistent. As you may recall, Judge</p> <p>12 Woodcock's comment about it being so obvious that</p> <p>13 it would be persistent, at least I think that's</p> <p>14 what he said, but to us it's so implied and it's</p> <p>15 so obvious that it's persistent, because it</p> <p>16 wouldn't make sense otherwise.</p> <p>17 So why would you put a password, for</p> <p>18 instance, on a tile if at the end of the session</p> <p>19 it expired? Why would you save passwords in a</p> <p>20 tile if it didn't persist to the next session?</p> <p>21 The idea of being able to store</p> <p>22 information in a tile for a subsequent session was</p> <p>23 so fundamental to the idea, that you are creating</p> <p>24 your own interface of the content sources that you</p> <p>25 want with -- that you could configure things such</p>	<p style="text-align: right;">Page 17</p> <p>1 tile system was persistent.</p> <p>2 Q So let me just make sure I understand</p> <p>3 your testimony. Take a grid of four tiles.</p> <p>4 A Yep.</p> <p>5 Q One of them has a password associated</p> <p>6 with it.</p> <p>7 A Yes.</p> <p>8 Q And the password will stay from session</p> <p>9 to session.</p> <p>10 A Yes.</p> <p>11 Q But none of the other tiles have</p> <p>12 passwords. Okay?</p> <p>13 A (Nods.)</p> <p>14 Q With just those facts, are you saying</p> <p>15 that the grid would therefore be considered</p> <p>16 persistent?</p> <p>17 A Yes.</p> <p>18 MR. HEINTZ: Object to form.</p> <p>19 THE WITNESS: So, so remember also</p> <p>20 that there was a -- one variation of the</p> <p>21 product was for there to be a client server</p> <p>22 mode so you could save your grid up to the</p> <p>23 SurfCast website or a site.</p> <p>24 So the idea being that if I have</p> <p>25 multiple machines or multiple devices, such</p>

5 (Pages 14 to 17)

<p style="text-align: right;">Page 18</p> <p>1 as a PDA, such as a phone, such as a computer 2 at home, such as a computer at work, and I'm 3 working on my machine at work, and my grid is 4 a certain state or certain position -- 5 "position" is not the right word. I guess 6 say certain state. 7 When I closed my machine at work 8 and saved my session on the, of the grid, of 9 the tiles up to the SurfCast website, say, 10 when I went home to my machine and I turned 11 it on, there would be my grid in the state 12 that I left it in my last session, which 13 would have been presumably say an hour ago 14 when I left the office. 15 BY MR. MICALLEF: 16 Q You agree that icons before 1999 were 17 persistent? 18 A I would view icons as being static. I 19 don't know all the qualities of an icon, so I 20 don't know if I'd use the same term. 21 Q Do you think static means something 22 different than persistence? 23 A Yes. 24 Q What does static mean to you? 25 A A stasis, the same state continually,</p>	<p style="text-align: right;">Page 20</p> <p>1 with the idea that things on a computer screen 2 should be persistent from session to session; 3 fair? 4 MR. HEINTZ: Objection. Scope. 5 THE WITNESS: I find that a 6 difficult question to answer. I'm sorry. I 7 can't answer that. I just don't even know 8 how to answer that question. 9 BY MR. MICALLEF: 10 Q Do you believe that you were the first 11 person to ever come up with the idea that 12 something on a computer screen should be 13 persistent from session to session? 14 MR. HEINTZ: Objection. Scope. 15 THE WITNESS: Yes, in the form of 16 what we created, yes. 17 BY MR. MICALLEF: 18 Q Well, that wasn't my question. 19 A Well, I answered it in the way that I 20 feel makes sense to me. So in the form of what I 21 understand persistence to be, I feel we were the 22 first guys to create a product that had the 23 properties of persistence as we knew it as applied 24 to a particular application such as what we 25 created.</p>
<p style="text-align: right;">Page 19</p> <p>1 regardless, unchanging. 2 Q You agree that icons before 1999 would 3 remain in the same position from session to 4 session on a computer; agree with that? 5 A I, I don't know enough about icons and 6 what's behind them to, to say everything about 7 icons. 8 Q I'm not asking you everything about 9 icons. I'm just asking about that one aspect. 10 In your experience, haven't you seen 11 icons -- 12 A Yes. 13 Q -- in the '90s that would stay in the 14 same position on the screen from session to 15 session? 16 A Yes. 17 Q You didn't invent persistence; agree 18 with that? 19 MR. HEINTZ: Object. Scope. 20 THE WITNESS: Do you mean in the 21 form of -- what do you mean by the word 22 persistence or what do you mean by did I 23 invent persistence? 24 BY MR. MICALLEF: 25 Q You were not the first person to come up</p>	<p style="text-align: right;">Page 21</p> <p>1 Q You would agree that Active Desktop 2 items were persistent, right? 3 MR. HEINTZ: Objection. Scope. 4 THE WITNESS: I can't agree with 5 that, because I don't know enough about 6 Active Desktop items. 7 BY MR. MICALLEF: 8 Q You would agree that some window systems 9 in the prior art, say before 1999, were also 10 persistent; you agree with that? 11 MR. HEINTZ: Objection. Scope. 12 THE WITNESS: Could you repeat the 13 question, please. 14 BY MR. MICALLEF: 15 Q Sure. I'll strike it and restate it. 16 A When you say "window system," I don't 17 understand what you mean. 18 Q Would you agree that windowing systems 19 before 1999, at least some windowing systems 20 before 1999 had persistent windows? 21 MR. HEINTZ: Objection. Scope. 22 Objection. Foundation. 23 THE WITNESS: I can't agree to 24 that, because I don't have sufficient 25 knowledge of specific systems or all systems</p>

6 (Pages 18 to 21)

<p style="text-align: right;">Page 22</p> <p>1 or enough systems to make an educated answer</p> <p>2 to that.</p> <p>3 BY MR. MICALLEF:</p> <p>4 Q Okay. So you don't know either way,</p> <p>5 right?</p> <p>6 MR. HEINTZ: Objection. Scope.</p> <p>7 Objection. Foundation.</p> <p>8 THE WITNESS: I know what we</p> <p>9 created we believed and our patent attorneys</p> <p>10 believed was novel at the time.</p> <p>11 BY MR. MICALLEF:</p> <p>12 Q I'm not asking you what you believed.</p> <p>13 I'm asking you: You can't say one way or the</p> <p>14 other whether prior art windowing systems had</p> <p>15 persistent windows; isn't that right?</p> <p>16 MR. HEINTZ: Objection. Scope.</p> <p>17 Objection. Foundation.</p> <p>18 THE WITNESS: I apologize. Could</p> <p>19 you please repeat that or ask a similar</p> <p>20 question again.</p> <p>21 BY MR. MICALLEF:</p> <p>22 Q My question is: You can't say one way</p> <p>23 or the other whether prior art windowing systems</p> <p>24 had persistent windows; isn't that right?</p> <p>25 MR. HEINTZ: Objection. Scope.</p>	<p style="text-align: right;">Page 24</p> <p>1 windowing systems; agree?</p> <p>2 MR. HEINTZ: Objection. Scope.</p> <p>3 Objection. Foundation.</p> <p>4 THE WITNESS: There may have been</p> <p>5 other windowing systems. I just wasn't aware</p> <p>6 of them, that they even existed.</p> <p>7 BY MR. MICALLEF:</p> <p>8 Q That's what I'm asking, Mr. Santoro.</p> <p>9 You can't say one way or the other whether</p> <p>10 windowing systems in the mid to late 1990s</p> <p>11 included persistent windows?</p> <p>12 MR. HEINTZ: Objection. Scope.</p> <p>13 Objection. Foundation.</p> <p>14 THE WITNESS: The windowing systems</p> <p>15 that I knew existed were not persistent.</p> <p>16 BY MR. MICALLEF:</p> <p>17 Q And for the ones you didn't know exist</p> <p>18 you couldn't give any testimony about; agree with</p> <p>19 that?</p> <p>20 MR. HEINTZ: Objection. Scope.</p> <p>21 Objection. Foundation.</p> <p>22 THE WITNESS: I, I can't answer</p> <p>23 that.</p> <p>24 BY MR. MICALLEF:</p> <p>25 Q You don't know whether you can testify</p>
<p style="text-align: right;">Page 23</p> <p>1 Objection. Foundation.</p> <p>2 THE WITNESS: Can I say one way or</p> <p>3 the other? Windowing systems I may have seen</p> <p>4 I don't recall being persistent. I mean if</p> <p>5 you look at Microsoft Windows in the Windows</p> <p>6 operating system, they were not persistent.</p> <p>7 So my experience with, with that is that, no,</p> <p>8 they were not persistent.</p> <p>9 BY MR. MICALLEF:</p> <p>10 Q I'm not asking you just about Microsoft</p> <p>11 Windows. My question was broader.</p> <p>12 A Okay.</p> <p>13 Q I just want to make sure it's clear.</p> <p>14 You cannot testify here whether or not prior art</p> <p>15 windowing systems had persistent windows? You</p> <p>16 just don't know whether they do or not?</p> <p>17 MR. HEINTZ: Objection. Scope.</p> <p>18 BY MR. MICALLEF:</p> <p>19 Q Did or not. Excuse me.</p> <p>20 MR. HEINTZ: Objection. Scope.</p> <p>21 Objection. Foundation.</p> <p>22 THE WITNESS: The windowing systems</p> <p>23 that I knew of were not persistent.</p> <p>24 BY MR. MICALLEF:</p> <p>25 Q But you're not, you're not an expert in</p>	<p style="text-align: right;">Page 25</p> <p>1 about things you don't know about? Is that your</p> <p>2 testimony?</p> <p>3 A Yes.</p> <p>4 MR. HEINTZ: Objection. Scope.</p> <p>5 Objection. Foundation.</p> <p>6 BY MR. MICALLEF:</p> <p>7 Q Would you agree that you used the word</p> <p>8 persistent once in your patent, in your utility</p> <p>9 patent application?</p> <p>10 MR. HEINTZ: Objection. Scope.</p> <p>11 Objection. Foundation.</p> <p>12 THE WITNESS: I do not know if it</p> <p>13 appears more than once, but certainly the</p> <p>14 concept of what we call persistence or what</p> <p>15 is being defined as persistence, in our, in</p> <p>16 our, in our view, is explained in many ways</p> <p>17 throughout the patent.</p> <p>18 BY MR. MICALLEF:</p> <p>19 Q You agree that your patent application</p> <p>20 never said that persistence was the heart of your</p> <p>21 invention? Do you agree with that?</p> <p>22 A Well, no, I don't agree with that. I</p> <p>23 think it's implicit throughout that the system is</p> <p>24 persistent, and it says it in many places.</p> <p>25 Q And so you want the board to conclude</p>

7 (Pages 22 to 25)

<p style="text-align: right;">Page 26</p> <p>1 that persistence was really the heart of your 2 invention; is that your testimony? 3 A I'm not saying it's the heart. I'm 4 saying it's one of the core aspects of the 5 invention, and it seems obvious through various 6 examples that we've detailed in the patent owner's 7 response, as well as in the patent itself, it's -- 8 if you'd like to read through the patent, I'd be 9 more than happy to point out many, many places 10 where persistence is, in Judge Woodcock's words, 11 "obvious." 12 Q I'd like to direct your attention back 13 to Exhibit 2005, and if you could turn to page 6, 14 paragraph 14 of that exhibit. 15 A Are we looking at Bates page numbers or 16 the page numbers on the -- so I guess you were 17 looking at the page numbers of the, of the 18 document, not the Bates numbers. 19 Q I am. I am. It's the page on which 20 paragraph 14 begins. 21 A Okay. 22 Q So on that, in that paragraph 14 you 23 refer to something called "mosaics." 24 Do you see that? 25 A Yes.</p>	<p style="text-align: right;">Page 28</p> <p>1 Q My question was: Do you think a mosaic 2 is the exact same thing as a grid? 3 A I think a mosaic -- 4 Q Let me rephrase that. Strike that. Let 5 me Rephrase it to make sure we get the point here. 6 A Yep. 7 Q In the context of what you were trying 8 to develop in 1999, did you think a mosaic was the 9 exact same thing as a grid? 10 MR. HEINTZ: Objection. Scope. 11 Objection. Foundation. 12 THE WITNESS: Between December 2, 13 1998, when the idea of this germinated, and 14 subsequent months, the definition of mosaic 15 or grid had evolved, and so a lot of it 16 depends on when you mean. And we were 17 continually developing our technology on an 18 ongoing basis for years, so do you mean in 19 the scope of the patent? Do you mean in the 20 scope of the product? 21 BY MR. MICALLEF: 22 Q When did you switch from use of the term 23 mosaic to use of the term grid? 24 A I don't know. We, we could probably pin 25 it down if we look at the documents, but I, I</p>
<p style="text-align: right;">Page 27</p> <p>1 Q And you also refer to something called 2 "mini screens." 3 Do you see that? 4 A Yes. 5 Q And so is there a difference between a 6 mosaic and a mini screen? 7 A Sure. The mosaic is a collection of 8 mini screens, or a mini screen is effectively a 9 mini screen within a collection of many mini 10 screens which I was calling a mosaic. 11 Q So it would be fair to say that you 12 later, instead of using the word "mosaic," you 13 decided to use the word "grid"? 14 A Yes. 15 Q Okay. 16 In your view, are there any differences 17 between a grid and a mosaic? 18 A Well, sure. I was actually going to 19 bring an example for you of a mosaic that was one 20 of the inspirations for this, which was a 21 2,000-year-old piece of floor from the Roman 22 forum, but if you look at that chunk of floor, 23 it's a mosaic of tiles, physical tiles in probably 24 an early form of cement. So I'm assuming that's 25 not what you mean.</p>	<p style="text-align: right;">Page 29</p> <p>1 think the mosaic term was used early, very early 2 on, and then we started adopting grid probably 3 in -- I don't know -- April or May, maybe, but I 4 could be wrong. 5 Q Okay. 6 A We could look at the documents and 7 figure it out. 8 Q Is a mosaic persistent? 9 MR. HEINTZ: Objection. Scope. 10 Objection. Foundation. 11 THE WITNESS: Not to sound 12 flippant, but I mean mosaic tiles in a floor, 13 for instance, are very persistent in that 14 context. 15 BY MR. MICALLEF: 16 Q But the mosaics that you refer to in 17 paragraph 14 of your declaration, were they 18 persistent? 19 A Let me read paragraph 14, please, in its 20 entirety so I can be more precise. Could we 21 see -- could I see the Exhibits 2023 and 2041, 22 please? 23 Q In a little bit. 24 A I can't -- if we're, if we're 25 answering -- if I'm answering a question regarding</p>

8 (Pages 26 to 29)

<p style="text-align: right;">Page 30</p> <p>1 something that this is referring to, I'd like to 2 see what those are, or I can't really answer the 3 question completely, but . . . 4 Q Are you done with your answer? 5 A No. Well, I reiterate that I can't 6 answer that without seeing the exhibits. 7 Q Okay. 8 Where did you get the word mosaic? 9 A If you -- if I brought the mosaic 10 tiles -- my parents lived in Italy for many years 11 before I was born, and I have on my desk a mosaic 12 from the Roman forum. 13 Q I see. So as far as you know, in 1999 14 the term mosaic was not a term of art in the 15 computer arts; is that fair? 16 MR. HEINTZ: Objection. Scope. 17 Objection. Foundation. 18 THE WITNESS: I, I don't know 19 whether it was or not. 20 BY MR. MICALLEF: 21 Q And as far as you know, the term 22 persistence in 1999 was not a term of art in the 23 computer arts; is that fair? 24 A Not that I knew of. 25 Q Okay.</p>	<p style="text-align: right;">Page 32</p> <p>1 limited point. 2 First of all, just to get it down here, 3 mini screens are analogous to tiles in the work 4 you were doing in 1999; is that fair? 5 A Yes. 6 Q Okay. 7 So the structures that you were pointing 8 to and calling mini screens -- 9 A Yes. 10 Q -- at least something similar you 11 eventually called tiles; fair? 12 A Yes. 13 Q Okay, and your testimony is that 14 whatever attributes there were to mini screens, 15 you can't say today whether what you eventually 16 called tiles had the same or different attributes; 17 is that fair? 18 MR. HEINTZ: Objection. Form. 19 THE WITNESS: Sorry. Could you 20 repeat that, please. 21 BY MR. MICALLEF: 22 Q Well, I thought your testimony was that 23 you could not say today whether the attributes you 24 were thinking about for mini screens, you also 25 were thinking about for tiles back in the 1999</p>
<p style="text-align: right;">Page 31</p> <p>1 Now, in this paragraph 14 you also refer 2 to mini screens, correct? 3 A Yes. 4 Q And so at some point is it fair to say 5 that you stopped using the phrase "mini screens" 6 and started used term "tile"? 7 MR. HEINTZ: Objection. Scope. 8 Objection. Foundation. 9 THE WITNESS: It's -- in the 10 context of our patent or product or -- 11 BY MR. MICALLEF: 12 Q Yes, I mean in the context of what you 13 were trying to develop in 1999, did you go from 14 the term mini screen to tile? Is that fair? 15 A Excuse me. I beg your pardon. 16 Early on when we were sketching the idea 17 out in the early part of 1999, we seemed to have 18 used the word mini screens and maybe other terms, 19 and then as things progressed, we settled on the 20 terms grid and tiles. I can't say whether looking 21 back at all our notes off the top of my head, were 22 there attributes of mini screens that we -- we 23 switched all those attributes over to tiles? I 24 can't say that. 25 Q Okay. Well, my question was a much more</p>	<p style="text-align: right;">Page 33</p> <p>1 time frame. 2 Is that a fair characterization of your 3 testimony? 4 A I think some of the attributes -- and 5 this was an evolving process. Some attributes may 6 have been left behind and some attributes may have 7 been new, so is there, is there an exact 8 like-by-like comparison to what we were calling 9 mini screens and what we were calling tiles? 10 There was an evolution through that period is all 11 I can say. 12 Q Okay, and I'm trying to get to what you 13 remember about it. If the answer is you don't, I 14 get it, but I want to make sure the record is 15 clear. 16 A Yep. 17 Q So, so do you remember any attributes of 18 mini screens that you also attributed to tiles 19 back in the 1999 time frame? 20 A Yes. 21 Q Okay. What are they? 22 A Well, let's look at this, first of all. 23 That they could be organized so the mini screens 24 could be organized into a mosaic, or tiles could 25 be organized into a grid; that they sat on top of</p>

9 (Pages 30 to 33)

<p style="text-align: right;">Page 34</p> <p>1 what was known at the time as the user's desktop, 2 so the fact that when you turned on your machine, 3 there it was on top of everything else; that a 4 user could assign a tile to be any information 5 source, such as a television signal, a Word 6 document, or a website, not just a website, for 7 instance; that a user could assign a refresh rate 8 to tiles or mini screens; that a user could put a 9 password into a, a tile, that tiles could be 10 saved, hence persistence; that tiles were not 11 permitted to overlap each other, because they were 12 put into this grid structure. 13 Those are some of the attributes. 14 Q Before I forget, where did you get the 15 term mini screen? 16 A No idea. 17 Q As far as you know, that was not a term 18 of art in any computer programming arts back in 19 1999? 20 A As far as I know, it was not. It was 21 probably just something we came up with when we 22 were brainstorming, like a placeholder word. 23 Q If I could ask you to turn to the next 24 page of your declaration, which would be page 7, 25 and this is the page on which paragraph 16 begins.</p>	<p style="text-align: right;">Page 36</p> <p>1 sentence that a right mouse button click would 2 cause the tile to refresh, correct? 3 A Let me just read this in its entirety, 4 please. 5 Okay, sorry. Would you please either 6 repeat the question or ask it a different way if 7 you like. 8 Q Sure. The question was just in that 9 sentence, what you're saying is a right mouse 10 click button causes a tile to refresh. 11 A Yes. 12 Q Okay, and just to be clear, what that 13 sentence means is that the right mouse click 14 button, while the mouse is pointing to a 15 particular tile, causes that particular tile to 16 refresh; is that fair? 17 A Yes, I believe so. 18 Q And the notion that you're describing 19 here in paragraph 16 was that it wouldn't cause 20 all of the tiles to refresh; it would just be the 21 one that you were pointing at. 22 Is that fair? 23 A Well, first, there were automatic 24 refresh rates. Then there were individually 25 assigned refresh rates, and then there were mouse</p>
<p style="text-align: right;">Page 35</p> <p>1 Do you see that? 2 A Yes. 3 Q The first couple of sentences of 4 paragraph 16 talk about double clicking, 5 clickable, right mouse button clicks, and even 6 something called a mouse-over. 7 Do you see that? 8 A Yes, yes. 9 Q Okay. 10 So would a right button click on a tile 11 be a way to select that tile in the system that 12 you were developing in 1999? 13 A At this point in 1999, I don't know if 14 we had specific -- functionality was moving 15 around. Do we make this a right-click, do we make 16 that a mouse-over, do we make that a double click. 17 I think is it a single click or double click 18 evolved at certain points, so I can't say at what 19 date things were attributed to what, what 20 functionality was attributed to what particular 21 actions. 22 Q Well, my question was a little bit 23 different than that. Let me, let me ask it a 24 different way. 25 In paragraph 16 you say in the second</p>	<p style="text-align: right;">Page 37</p> <p>1 click refresh rates so that if, for instance, I 2 had a tile that was configured to refresh it say 3 every 15 seconds or every minute, I could 4 intervene and get it to refresh in between its 5 configured refresh rate setting. There was also 6 the ability to refresh the entire grid. Excuse 7 me. 8 Q Well, I'm just asking about -- I'm not 9 asking about all those different refresh 10 operations that you just talked about. I'm just 11 asking about this right mouse button click, and I 12 just want to make sure the record is clear. 13 What you're describing here in paragraph 14 16 is functionality in which a right mouse button 15 click while pointing to a particular tile will 16 cause that particular tile to refresh but not the 17 others. 18 Is that fair? 19 A It's partially fair, because the answer 20 is it depends. It depends if there's already 21 attributed refresh rates, so that clicking for a 22 particular tile would not necessarily affect other 23 tiles, but that tile already may have a refresh 24 rate that -- so for instance, it may -- if it's 25 refreshing every second or every half a second,</p>

10 (Pages 34 to 37)

<p style="text-align: right;">Page 38</p> <p>1 for instance, which it could be dialed that, and 2 you clicked on it and it got refreshed, there may 3 be simultaneous refreshing from both that mouse 4 click and its assigned refresh rate. One may 5 override the other. 6 Q I understand that there may be different 7 ways, in your view, to cause a tile to refresh. 8 I'm just trying to get at what the mouse click 9 does, the mouse click alone. 10 A Okay. 11 Q And I just want to know if I'm reading 12 this correctly, that the right mouse click causes 13 just that tile that you're pointing to to refresh 14 at that moment or whether it causes all the tiles 15 to refresh at that moment. 16 A So I don't recall precisely, but I think 17 that if you clicked on, for instance, the grid, 18 what we call the grid space, the entire grid would 19 refresh. If you clicked on a tiles space or the 20 tile space, that tile would refresh. 21 Q So fair to say in the situation when you 22 clicked on the tile space, what you call the tile 23 space, that would be a way of selecting that 24 particular tile for a refresh operation at that 25 moment?</p>	<p style="text-align: right;">Page 40</p> <p>1 you, are you saying that your use of selecting in 2 the context of your '403 patent is something 3 different than the ordinary English definition? 4 A Sure. 5 Q You agree you didn't put any special 6 definition for the word select in your patent 7 application; agree with that? 8 MR. HEINTZ: Object to form. 9 Sorry. Object to the form. 10 THE WITNESS: I believe we used the 11 word select, and we give it defined 12 terminology or defined use of the word select 13 in our patent application and in the patent 14 and in the patent owner's response. Select 15 means X and Y as opposed to everything listed 16 in the dictionary. 17 BY MR. MICALLEF: 18 Q I'm not talking about the patent owner's 19 response. I'm talking about the patent, the '403 20 patent. You agree you never gave a special 21 definition to the word select in the '403 patent? 22 MR. HEINTZ: Object to the form. 23 Objection. It calls for a legal conclusion. 24 THE WITNESS: Sorry. Could you 25 repeat that.</p>
<p style="text-align: right;">Page 39</p> <p>1 A I don't know if "select" would be the, 2 the optimal word, because we use that in other 3 ways, but let's just say that if you clicked, if 4 you right-clicked on a particular tile, that would 5 refresh. 6 Q So why don't you think that's selecting? 7 A I think selecting has more meaning than 8 just refresh, even if it's just access. 9 Q What do you mean by even if it's just 10 access? 11 A So if you're accessing the information 12 in the tile. 13 Q So selecting as you use it means, 14 requires both refreshing and accessing 15 information? 16 A Yes. 17 Q Does it mean anything else as you use 18 it? 19 A Well, it could if you -- it could mean 20 for configuration. 21 Q Isn't selecting just an ordinary English 22 word? 23 A Sure. Every, every word is an ordinary 24 word. 25 Q Well, I don't know about that, but are</p>	<p style="text-align: right;">Page 41</p> <p>1 MR. HEINTZ: Object to form. 2 Object to the extent it calls for a legal 3 conclusion. 4 THE WITNESS: I didn't hear that 5 last part. 6 I -- did you, did you say -- would 7 you please repeat that. 8 MR. MICALLEF: We can read it back. 9 (Whereupon, reporter reads 10 requested material.) 11 MR. HEINTZ: Same objections. 12 THE WITNESS: No, I don't agree. 13 BY MR. MICALLEF: 14 Q Let's make sure we're communicating with 15 each other. 16 Would you agree that you did not 17 explicitly redefine the word select in the '403 18 patent? 19 MR. HEINTZ: Object to the form. 20 Object to the extent it calls for a legal 21 conclusion. 22 THE WITNESS: I'm not a patent 23 owner. Sorry. I'm not a patent attorney, 24 and, and the prosecutor who wrote the patent 25 or the people that wrote the patent used the</p>

11 (Pages 38 to 41)

<p style="text-align: right;">Page 42</p> <p>1 word with certain meaning, and so there are</p> <p>2 specific ways the word was used.</p> <p>3 BY MR. MICALLEF:</p> <p>4 Q I'm not trying to play word games. What</p> <p>5 I'm trying to say is would you agree -- because we</p> <p>6 can go through the patent and spend a lot of time,</p> <p>7 but would you agree that nowhere in the '403</p> <p>8 patent did you or Mr. Lagermann say the word</p> <p>9 select should be defined as follows? There's</p> <p>10 nothing like that in the '403 patent; agree?</p> <p>11 A No, I don't agree.</p> <p>12 Q You think there is something like that</p> <p>13 in the '403 patent?</p> <p>14 A Whether it's explicit or implicit, yes.</p> <p>15 Q Okay.</p> <p>16 Well, let's, let's divide those two up</p> <p>17 so we have a clear record. Let's talk about</p> <p>18 explicit. Do you think there is an explicit</p> <p>19 redefinition of the word select in the '403</p> <p>20 patent?</p> <p>21 A I wouldn't call it a redefinition. I'm</p> <p>22 not trying to play word games. I'm saying that I</p> <p>23 think we used the word select to mean something.</p> <p>24 We defined it. We meant it to be something</p> <p>25 specific, and if it's not, if there's something --</p>	<p style="text-align: right;">Page 44</p> <p>1 patent attorney, to say, but we used the word</p> <p>2 select in a specific way, as it states in the</p> <p>3 patent, and I don't know if we used the word</p> <p>4 refresh as selecting, but, but we use, we --</p> <p>5 tiles could be refreshed, and I don't know if</p> <p>6 you'd say that right mouse clicking is</p> <p>7 selecting, but right mouse clicking is</p> <p>8 refreshing.</p> <p>9 BY MR. MICALLEF:</p> <p>10 Q Does selecting require access to</p> <p>11 information?</p> <p>12 MR. HEINTZ: Objection.</p> <p>13 Foundation. Objection. Scope.</p> <p>14 THE WITNESS: Do you mean within</p> <p>15 the product, the patent? I mean --</p> <p>16 BY MR. MICALLEF:</p> <p>17 Q In the system you were developing in</p> <p>18 1999, what did you mean by, when you testified a</p> <p>19 little earlier about selecting required access to</p> <p>20 information?</p> <p>21 A Yes.</p> <p>22 Q Okay, it does. So what do you mean by</p> <p>23 access to information?</p> <p>24 A You click on a tile, and it provides you</p> <p>25 access to the underlying information.</p>
<p style="text-align: right;">Page 43</p> <p>1 there's more likely than not more than something</p> <p>2 in there that also gives selection an implied</p> <p>3 meaning as well.</p> <p>4 Q And the meaning that you've attributed</p> <p>5 to this word select, that you say you've</p> <p>6 attributed to this word select requires both</p> <p>7 refresh and access to information?</p> <p>8 A Does it require that? Again, please</p> <p>9 don't take this the wrong way. I'm not a patent</p> <p>10 attorney, so I don't, I don't know, but we use the</p> <p>11 word select to mean certain things, and whether</p> <p>12 that's, that limits it, I don't -- limits the way</p> <p>13 we used the word, I don't know.</p> <p>14 Q I'm trying to get at what those certain</p> <p>15 things are. Let me ask the question, and you</p> <p>16 mentioned refresh and access to information</p> <p>17 before.</p> <p>18 A Yes.</p> <p>19 Q And I just want to confirm that those</p> <p>20 are two of the certain things, correct?</p> <p>21 A (Nods.)</p> <p>22 MR. HEINTZ: Object to the form of</p> <p>23 the question.</p> <p>24 THE WITNESS: Well, I am not in a</p> <p>25 position to really, as I said, not being a</p>	<p style="text-align: right;">Page 45</p> <p>1 Q So if before I click on the tile, the</p> <p>2 tile is displaying let's say a web page.</p> <p>3 A Yes.</p> <p>4 Q Let's say a stock market web page.</p> <p>5 Before I click on that tile, don't I also have</p> <p>6 access to that information?</p> <p>7 A You have a visual representation of that</p> <p>8 information. Excuse me. Whether that's</p> <p>9 completely up to date or not, I don't know.</p> <p>10 Depending on whether it has had a configured</p> <p>11 refresh rate.</p> <p>12 Q I see, so if it's not up to date, you</p> <p>13 would say I do not have access to that information</p> <p>14 source, the website?</p> <p>15 MR. HEINTZ: Objection. Form.</p> <p>16 BY MR. MICALLEF:</p> <p>17 Q Is that fair?</p> <p>18 A No.</p> <p>19 MR. HEINTZ: Same objection.</p> <p>20 BY MR. MICALLEF:</p> <p>21 Q Okay.</p> <p>22 So I just want to be clear. I have a</p> <p>23 tile, it shows CNN Money, and it's refreshing</p> <p>24 every 15 minutes. Okay? If in the middle of one</p> <p>25 of those 15-minute intervals, I just look at it</p>

12 (Pages 42 to 45)

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<p>1 without clicking, no clicking, I do have access to</p> <p>2 that website, correct?</p> <p>3 A There's --</p> <p>4 MR. HEINTZ: Object to form.</p> <p>5 THE WITNESS: It depends on what</p> <p>6 you mean by the word "access." You have the</p> <p>7 information in front of you, and then you can</p> <p>8 click on it and access the underlying</p> <p>9 information live and also then work on it if</p> <p>10 need be.</p> <p>11 BY MR. MICALLEF:</p> <p>12 Q I'm trying to get to what you mean by</p> <p>13 the word access in the context of the '403 patent,</p> <p>14 and so my question is: Before clicking on it in</p> <p>15 that context, do I have access to the underlying</p> <p>16 information, in your view?</p> <p>17 A Well, yes. I mean it depends what one</p> <p>18 means by access, but sure. You have a view of it.</p> <p>19 That's potentially access.</p> <p>20 Q Well, let me, let me ask a slightly</p> <p>21 different situation.</p> <p>22 Again in the context of the system you</p> <p>23 were developing in 1999, imagine a tile that's</p> <p>24 associated with an email program, and it doesn't</p> <p>25 show me any of my emails before clicking, but it</p>	<p>1 A And the answer is I don't know.</p> <p>2 Q You have a bank account, right?</p> <p>3 A Yes.</p> <p>4 Q Do you have access to the funds in that</p> <p>5 bank account right now?</p> <p>6 MR. HEINTZ: Objection. Form.</p> <p>7 Objection. Scope.</p> <p>8 THE WITNESS: What do you mean by</p> <p>9 "access"?</p> <p>10 BY MR. MICALLEF:</p> <p>11 Q Let me turn it around. That's one fair</p> <p>12 use of the word access at least in that context,</p> <p>13 that your bank has given you access to the funds</p> <p>14 in your bank account; isn't that correct?</p> <p>15 MR. HEINTZ: Objection. Scope.</p> <p>16 Objection. Foundation.</p> <p>17 THE WITNESS: Again, with, without</p> <p>18 sounding smart alecky, yes, I have access to</p> <p>19 my funds right now.</p> <p>20 BY MR. MICALLEF:</p> <p>21 Q And so the reason I ask the question is:</p> <p>22 That type of access, you don't have to have the</p> <p>23 money in the room or see it on a screen. It's the</p> <p>24 notion that you can get to it if you want it</p> <p>25 through some mechanism, whether you go into the</p>
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<p>1 does show me that I have one new one.</p> <p>2 Do I have access to that underlying</p> <p>3 information source?</p> <p>4 MR. HEINTZ: Objection. Form.</p> <p>5 THE WITNESS: Without sounding</p> <p>6 smart-alecky, you have access because you</p> <p>7 could see it. It's right there. You can see</p> <p>8 part of it. If you want to see all of it,</p> <p>9 you click on it, and then you see more of it.</p> <p>10 You access the underlying information in its</p> <p>11 entirety or more of it.</p> <p>12 BY MR. MICALLEF:</p> <p>13 Q Okay.</p> <p>14 Outside of the context of your</p> <p>15 invention, would you agree that the word access</p> <p>16 has an even broader notion than just being able to</p> <p>17 see something?</p> <p>18 MR. HEINTZ: Objection. Form.</p> <p>19 Objection. Foundation.</p> <p>20 BY MR. MICALLEF:</p> <p>21 Q Do you want me to put a point on that?</p> <p>22 Is that too ambiguous a question, or do you</p> <p>23 understand my question?</p> <p>24 A I think I understand your question.</p> <p>25 Q Okay.</p>	<p>1 bank or an ATM. Is that fair?</p> <p>2 MR. HEINTZ: Objection. Scope.</p> <p>3 Objection. Foundation.</p> <p>4 THE WITNESS: If there are funds in</p> <p>5 the account, yes.</p> <p>6 BY MR. MICALLEF:</p> <p>7 Q Let's assume there is.</p> <p>8 So my question is: Would you agree that</p> <p>9 that sense of the word access is just as</p> <p>10 applicable to the system that you were developing</p> <p>11 in 1999?</p> <p>12 A Not necessarily.</p> <p>13 Q Not necessarily? Did you put a special</p> <p>14 definition of the word access in your '403 patent?</p> <p>15 A I don't know.</p> <p>16 MR. MICALLEF: We've been going for</p> <p>17 over an hour. Would you like to take a</p> <p>18 break?</p> <p>19 MR. HEINTZ: I know I would.</p> <p>20 MR. MICALLEF: Okay, let's do that.</p> <p>21 THE VIDEOGRAPHER: Going off record</p> <p>22 at 10:07:28.</p> <p>23 (Whereupon, a short recess was</p> <p>24 taken.)</p> <p>25 THE VIDEOGRAPHER: We're back on</p>

13 (Pages 46 to 49)

<p style="text-align: right;">Page 50</p> <p>1 record at 10:20.</p> <p>2 BY MR. MICALLEF:</p> <p>3 Q I'd like to direct your attention back</p> <p>4 to Exhibit 2005, and in particular, page 12,</p> <p>5 paragraph 26, and this is a paragraph where you</p> <p>6 described your business plan document.</p> <p>7 Do you see that?</p> <p>8 A Yes.</p> <p>9 Q And that was on or about July 15, 1999?</p> <p>10 A Yes.</p> <p>11 Q And you say that that document included</p> <p>12 a description of a product that you intended to</p> <p>13 implement, correct?</p> <p>14 A Yes.</p> <p>15 Q And just, just to be clear, so as of</p> <p>16 July 15, 1999, there was no such product that had</p> <p>17 actually been implemented; is that fair?</p> <p>18 A That's fair.</p> <p>19 Q And is it fair to say that there was no</p> <p>20 such actual product that had been implemented</p> <p>21 before you filed your provisional patent</p> <p>22 application in October of 1999?</p> <p>23 A That's correct.</p> <p>24 Q Now, on the next page, page 13 of your</p> <p>25 declaration, Exhibit 2005, in paragraph 27 you</p>	<p style="text-align: right;">Page 52</p> <p>1 tell me what you remember about the conversation</p> <p>2 with Mr. Gray that's referenced in paragraph 27 of</p> <p>3 your declaration.</p> <p>4 MR. HEINTZ: Again I'll object to</p> <p>5 the extent that question calls for</p> <p>6 attorney/client privileged information. You</p> <p>7 can answer that question only to the extent</p> <p>8 doing so would not reveal that information.</p> <p>9 THE WITNESS: It was, it was -- I</p> <p>10 would say it was attorney/client privileged</p> <p>11 communication, discussions of aspects of the</p> <p>12 patent.</p> <p>13 BY MR. MICALLEF:</p> <p>14 Q Just to be clear, do you remember more</p> <p>15 details of that discussion than what you just said</p> <p>16 in your last answer?</p> <p>17 MR. HEINTZ: Again I'll just</p> <p>18 caution the witness not to reveal any</p> <p>19 attorney/client communications in answering</p> <p>20 his question.</p> <p>21 THE WITNESS: Yes.</p> <p>22 BY MR. MICALLEF:</p> <p>23 Q Are you refusing to share those details</p> <p>24 with me based on the instruction from your</p> <p>25 attorney?</p>
<p style="text-align: right;">Page 51</p> <p>1 refer to a discussion with Mr. Andrew Gray.</p> <p>2 A Yes.</p> <p>3 Q Was Mr. Gray a patent attorney?</p> <p>4 A Yes. I believe he was. I'm almost</p> <p>5 certain he was.</p> <p>6 Q Do you have a recollection of the</p> <p>7 conversation that's referred to in paragraph 27?</p> <p>8 A Let me read the paragraph so we can be</p> <p>9 more specific.</p> <p>10 I remember the bill. I do not -- I</p> <p>11 remember having the conversation. I do not</p> <p>12 remember all the specifics of the conversation.</p> <p>13 Q Do you remember some specifics of the</p> <p>14 conversation?</p> <p>15 A Generally.</p> <p>16 Q General specifics?</p> <p>17 A Well, I remember --</p> <p>18 MR. HEINTZ: I'm going to object to</p> <p>19 the extent that, to the extent that question</p> <p>20 calls for attorney/client privileged</p> <p>21 information. If you can answer the question</p> <p>22 without revealing the information, you can do</p> <p>23 so.</p> <p>24 BY MR. MICALLEF:</p> <p>25 Q Let me put a fine point on it. Please</p>	<p style="text-align: right;">Page 53</p> <p>1 A Yes.</p> <p>2 Q On the next page of your exhibit, page</p> <p>3 14, I'd like to direct your attention to paragraph</p> <p>4 31.</p> <p>5 Do you see that?</p> <p>6 A Yes.</p> <p>7 Q And that paragraph refers to an</p> <p>8 August 11, 1999 discussion with Richard Bone of</p> <p>9 Pennie & Edmonds, correct?</p> <p>10 A Yes. There's an O in Edmonds, not a U.</p> <p>11 I've been making the mistake even to this day.</p> <p>12 Q Do you have a recollection of what was</p> <p>13 said in that discussion?</p> <p>14 MR. HEINTZ: I'll just caution the</p> <p>15 witness not to reveal any attorney/client</p> <p>16 communications in answering Mr. Micallef's</p> <p>17 question.</p> <p>18 THE WITNESS: I recall what we</p> <p>19 discussed, most of which was privileged.</p> <p>20 BY MR. MICALLEF:</p> <p>21 Q Will you tell me what that -- what was</p> <p>22 discussed?</p> <p>23 MR. HEINTZ: And I'll instruct the</p> <p>24 answer -- sorry -- I'll instruct the witness</p> <p>25 not to answer that question, to the extent</p>

14 (Pages 50 to 53)

<p style="text-align: right;">Page 54</p> <p>1 doing so would reveal any attorney/client 2 privileged communication. 3 THE WITNESS: I will say that we 4 were discussing the preparation of the patent 5 application. 6 BY MR. MICALLEF: 7 Q And are you aware of more details 8 concerning that discussion or about that 9 discussion than what you just said in your last 10 answer? 11 A Yes. 12 Q And will you share those details with 13 me? 14 MR. HEINTZ: And I'll instruct the 15 witness not to answer that question to the 16 extent doing so would reveal attorney/client 17 privileged communication. 18 THE WITNESS: I will respectfully 19 decline. 20 BY MR. MICALLEF: 21 Q I'd like to direct your attention to 22 paragraph 15 -- I'm sorry -- page 15, paragraph 37 23 of your declaration, Exhibit 2005. Just a minor 24 point. 25 In that paragraph you reference your</p>	<p style="text-align: right;">Page 56</p> <p>1 Q Okay. 2 I'd like to direct your attention to 3 page 16 of your declaration, paragraph 41. And 4 paragraph 41 refers to an October 6, 1999 5 discussion with attorneys from Pennie & Edmonds 6 and also with your co-inventor, correct? 7 A Yes. 8 Q And in that paragraph the co-inventor 9 would be Mr. Lagermann, correct? 10 A Yes. 11 Q Who were the attorneys involved in that 12 conversation? 13 A I could probably corroborate it 14 completely via the various emails we have setting 15 up the meeting, but it more likely than not was 16 Andrew Gray, Richard Bone, probably Paul Destefano 17 and possibly Bret Lovejoy. I think it was all 18 four. 19 Q Was there anyone else other than the 20 folks you've named so far involved in the 21 conversation? 22 A I don't believe so. 23 Q Do you have a recollection of what was 24 said during that conversation? 25 A No, other than generally discussing the,</p>
<p style="text-align: right;">Page 55</p> <p>1 co-inventor, Mr. Dechaene. 2 A Yes. 3 Q Am I pronouncing his name correctly? 4 A You're not going to get it right. It's 5 as close, it's as close as he pronounces it. 6 MR. HEINTZ: I'm sorry. Can I hear 7 that question read back, please, the last 8 question. 9 (Whereupon, reporter reads 10 requested material.) 11 MR. HEINTZ: Thank you. 12 THE WITNESS: Yes. 13 BY MR. MICALLEF: 14 Q I am? 15 A That's how I say it. 16 Q Okay. 17 Just to clarify, he's not your 18 co-inventor on the '403 patent? 19 A That's correct. 20 Q He didn't have anything -- strike that. 21 Let me ask a different way. 22 You would agree that Mr. Dechaene did 23 not attribute to the ideas that eventually were 24 described in the '403 patent? 25 A That's correct.</p>	<p style="text-align: right;">Page 57</p> <p>1 preparing the patent application. 2 Q On the next page, page 17, I'd like to 3 direct your attention to paragraph 42. There's 4 reference to I guess either one very long 5 conversation or two different conversations on 6 October 12 and 13 of 1999. 7 Do you see that? 8 A Yes. 9 Q Would that be two conversations? 10 A That was not one long conversation. 11 Q And it refers to your co-inventor, so 12 Mr. Lagermann was involved in that -- in -- well, 13 strike that. Let me ask it a different way. 14 Was Mr. Lagermann involved in both 15 conversations? 16 A I don't recall, but I'm assuming he was, 17 because it was at a point where we were tidying 18 things up. 19 Q If you don't recall, why did you put 20 that in this paragraph 42? 21 A I'm assuming he was, based on emails 22 that said various things like "hey, great phone 23 call" or something of that sort. 24 Q Let's take it one at a time. For the 25 October 12, 1999 discussion, do you recall if</p>

15 (Pages 54 to 57)

<p style="text-align: right;">Page 58</p> <p>1 Mr. Lagermann was involved?</p> <p>2 A Let me rephrase things. I -- if I put</p> <p>3 this here and wrote this, then he would have been</p> <p>4 involved.</p> <p>5 Q Well, you did write it, correct?</p> <p>6 A Yes.</p> <p>7 Q Okay.</p> <p>8 So for the October 12th conversation,</p> <p>9 who else was involved other than yourself and</p> <p>10 Mr. Lagermann?</p> <p>11 A I don't recall specifically, but I'm</p> <p>12 assuming it was Richard Bone and probably Andrew</p> <p>13 Gray and Bret Lovejoy. I'm not sure whether Paul</p> <p>14 Destefano was there for the entirety of both</p> <p>15 calls, but we could probably look at the bills and</p> <p>16 figure that out.</p> <p>17 Q Do you recall any details about the</p> <p>18 October 12, 1999 conversation?</p> <p>19 A General details, yes.</p> <p>20 Q And what do you recall about the</p> <p>21 October 12th, 1999 conversation referenced in</p> <p>22 paragraph 42 of your declaration?</p> <p>23 MR. HEINTZ: I object to that</p> <p>24 question to the extent it calls for</p> <p>25 attorney/client privileged communications.</p>	<p style="text-align: right;">Page 60</p> <p>1 THE WITNESS: Yes.</p> <p>2 BY MR. MICALLEF:</p> <p>3 Q In paragraph 44 of your declaration, you</p> <p>4 refer to a Mr. Carberry.</p> <p>5 Do you see that?</p> <p>6 A Dr. Bob Carberry.</p> <p>7 Q And what is Dr. Carberry's -- strike</p> <p>8 that.</p> <p>9 What was Dr. Carberry's relationship</p> <p>10 with SurfCast in October of 1999?</p> <p>11 A He was a founder, an investor, and he</p> <p>12 was the chairman of our advisory board.</p> <p>13 Q Fair to say he had nothing to do with</p> <p>14 the development of the system that's described in</p> <p>15 the '403 patent?</p> <p>16 A Do you mean the patent or do you mean</p> <p>17 the product?</p> <p>18 Q I mean the patent. The system described</p> <p>19 in the patent.</p> <p>20 A Sorry.</p> <p>21 MR. HEINTZ: Objection.</p> <p>22 Foundation. Objection. Form.</p> <p>23 BY MR. MICALLEF:</p> <p>24 Q Well, then strike it. Let me ask it</p> <p>25 again so we have the form correctly.</p>
<p style="text-align: right;">Page 59</p> <p>1 I'll instruct the witness not to answer that</p> <p>2 question to the extent doing so would reveal</p> <p>3 those attorney/client privileged</p> <p>4 communications.</p> <p>5 THE WITNESS: It was, as far as I</p> <p>6 recall, attorney/client privileged</p> <p>7 conversations.</p> <p>8 BY MR. MICALLEF:</p> <p>9 Q And you're not willing to share the</p> <p>10 details with me; is that fair?</p> <p>11 A I decline.</p> <p>12 Q And for the October 13, 1999 discussion</p> <p>13 referenced in paragraph 42 of your declaration, do</p> <p>14 you recall the details of that conversation?</p> <p>15 A The same. We were preparing the patent</p> <p>16 application, and to the best of my recollection,</p> <p>17 it would have been attorney/client privileged</p> <p>18 discussions.</p> <p>19 Q And so you're not willing to share the</p> <p>20 details with me based on the assertion of the</p> <p>21 attorney/client privilege; is that fair?</p> <p>22 MR. HEINTZ: Just for the record,</p> <p>23 I'll instruct the witness not to answer that</p> <p>24 question by revealing any attorney/client</p> <p>25 communication.</p>	<p style="text-align: right;">Page 61</p> <p>1 I just want to know -- my question is:</p> <p>2 Is it fair to say that Mr. Carberry did not have</p> <p>3 anything to do with the development of the system</p> <p>4 that is described in the '403 patent? Correct?</p> <p>5 MR. HEINTZ: Objection. Form.</p> <p>6 THE WITNESS: We used to call him</p> <p>7 "Dr. Bob." Dr. Bob was an extremely</p> <p>8 distinguished technologist. He would run the</p> <p>9 hardware divisions, various hardware</p> <p>10 divisions at IBM, the mainframe division</p> <p>11 under Jim Cannavino, one of our other</p> <p>12 cofounders. He ran the development of</p> <p>13 various computers. He was responsible for</p> <p>14 the OS2 operating system. He oversaw the</p> <p>15 Think Pad's development under Jim Cannavino.</p> <p>16 He ran all software development at IBM at</p> <p>17 various points before he moved on to run</p> <p>18 Fireworks Partners, their venture fund, and</p> <p>19 my understanding was that his last job at IBM</p> <p>20 was taking the, their patent portfolio and</p> <p>21 creating a monetization business for it.</p> <p>22 And so we were very aware of Bob's</p> <p>23 expertise in patents and overseeing IBM's</p> <p>24 many, many thousands of patents, or hundreds,</p> <p>25 but probably thousands, I think, and so we</p>

16 (Pages 58 to 61)

<p style="text-align: right;">Page 62</p> <p>1 had given him various drafts to review to see</p> <p>2 if they met his standards and if he'd look</p> <p>3 through them, but he was not a co-inventor.</p> <p>4 BY MR. MICALLEF:</p> <p>5 Q I'm going to ask you to take a look at</p> <p>6 Exhibit, SurfCast Exhibit 2009.</p> <p>7 A Yes.</p> <p>8 Q You've seen this before?</p> <p>9 A Yes.</p> <p>10 Q Can you tell me what it is?</p> <p>11 A It is a redacted letter that was sent</p> <p>12 from Andrew Gray to myself in May of 1999.</p> <p>13 Q And that's the Andrew Gray that you</p> <p>14 mention in your declaration?</p> <p>15 A Yes, yes.</p> <p>16 Q Now, at this time were you working at</p> <p>17 Deutsche Bank in London?</p> <p>18 A Yes.</p> <p>19 Q And you were also working for SurfCast?</p> <p>20 A Yes.</p> <p>21 Q Did Deutsche Bank have an interest in</p> <p>22 SurfCast?</p> <p>23 A Yes.</p> <p>24 Q What was the interest?</p> <p>25 A I think they owned about 500,000</p>	<p style="text-align: right;">Page 64</p> <p>1 Q So was this document a draft?</p> <p>2 MR. HEINTZ: Objection.</p> <p>3 Foundation.</p> <p>4 BY MR. MICALLEF:</p> <p>5 Q Strike that. Do you know if this</p> <p>6 document was a draft?</p> <p>7 A I don't know. I don't know why it's</p> <p>8 stamped draft.</p> <p>9 Q Do you have a recollection of ever</p> <p>10 receiving Exhibit 2009?</p> <p>11 A Yes.</p> <p>12 Q Do you have a recollection of receiving</p> <p>13 Exhibit 2009 in 1999?</p> <p>14 A Yes.</p> <p>15 Q And did the document you received in</p> <p>16 1999 have a draft stamp on it?</p> <p>17 A I don't specifically recall that, but</p> <p>18 I'm assuming it did, because I think this came out</p> <p>19 of my files.</p> <p>20 Q I'm going to ask you to look at SurfCast</p> <p>21 Exhibit 2010.</p> <p>22 Have you seen Exhibit 2010 before?</p> <p>23 A Yes.</p> <p>24 Q Can you tell me what it is?</p> <p>25 A Let me just look through it.</p>
<p style="text-align: right;">Page 63</p> <p>1 something, 536,000 shares. I'm not sure of the</p> <p>2 exact number. Maybe 536,900, something like that.</p> <p>3 Actually, I could probably do the math and give</p> <p>4 you a precise number, back-of-the-envelope,</p> <p>5 because I remember the share price, but they're a</p> <p>6 shareholder in SurfCast.</p> <p>7 Q Are they still a shareholder?</p> <p>8 A Yes.</p> <p>9 Q Do you know what information has been</p> <p>10 redacted from this?</p> <p>11 A Yes.</p> <p>12 Q Can you tell me what it is?</p> <p>13 MR. HEINTZ: And I'll instruct the</p> <p>14 witness not to reveal any attorney/client</p> <p>15 communications when answering that question.</p> <p>16 To the extent you can answer without doing</p> <p>17 so, you may.</p> <p>18 THE WITNESS: I can't really</p> <p>19 discuss it without revealing attorney/client</p> <p>20 privilege.</p> <p>21 BY MR. MICALLEF:</p> <p>22 Q On several of these pages of this</p> <p>23 Exhibit 2009, for example, page 2, it has a</p> <p>24 "draft" stamp on it.</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 65</p> <p>1 It is one of many bills from Pennie &</p> <p>2 Edmonds.</p> <p>3 Q Was it sent to you?</p> <p>4 A Yes.</p> <p>5 Q On the first page there is a redaction.</p> <p>6 Do you see that?</p> <p>7 A Yes.</p> <p>8 Q Do you know what is redacted?</p> <p>9 A Yes, because I have the originals. I</p> <p>10 don't recall specifically what's in this</p> <p>11 particular block off the top of my head.</p> <p>12 Q Do you know if it relates to the</p> <p>13 provisional patent application that SurfCast filed</p> <p>14 in October of 1999?</p> <p>15 MR. HEINTZ: I'll instruct the</p> <p>16 witness that he can answer that question to</p> <p>17 the extent doing so does not reveal any</p> <p>18 attorney/client communications.</p> <p>19 THE WITNESS: I believe it does.</p> <p>20 BY MR. MICALLEF:</p> <p>21 Q As you sit here today, you don't</p> <p>22 recall -- maybe I misunderstood your prior answer,</p> <p>23 but as you sit here today, do you recall what is</p> <p>24 redacted from page 1 of Exhibit 2010?</p> <p>25 A Off the top of my head at this moment,</p>

17 (Pages 62 to 65)

<p style="text-align: right;">Page 66</p> <p>1 no, but I know -- I recall that Karen worked with 2 the patent guys. 3 Q Was she an attorney? You're referring 4 to Karen K. Layman? 5 A Yes. 6 Q Was Ms. Layman an attorney? 7 A I don't believe so. 8 Q On page 3 of Exhibit 2010, there's a 9 name, Spencer F. Simon. 10 Do you know who that is? 11 A Yes. 12 Q Who is that? 13 A He was our corporate attorney. 14 Q Did he have anything to do with the 15 preparation of the provisional patent application? 16 A No. 17 Q I think you already testified that 18 Mr. Destefano was involved in the preparation of 19 the provisional patent application; is that right? 20 A Paul, to my understanding, did not write 21 it. Dr. Bone and Dr. Lovejoy wrote it, and there 22 were several attorneys involved. Paul was our, as 23 I believe you're aware, was our general counsel 24 and our company secretary and was intimately 25 involved with the company, and had been -- I don't</p>	<p style="text-align: right;">Page 68</p> <p>1 view. 2 BY MR. MICALLEF: 3 Q Okay. 4 There are a number of redactions in 5 Exhibit 2010. Do you know if any of them redact 6 information that relates to the preparation of 7 SurfCast's provisional patent application? 8 A It would appear so. 9 Q Can you tell me which ones? 10 A Oh, well, there's actually -- maybe it's 11 listed under trademark matters, but on page 6 on 12 October 7, I don't know what was discussed between 13 Andrew Gray and Richard Bone, but they were 14 working on the patent side of things. Maybe it 15 was regarding diligence. Maybe it was 16 regarding -- I doubt it was regarding trademarks. 17 Again, on page 13 under "Andrew Gray," 18 it looks like a trademarking or service marking 19 issue, possibly. Other than that, I can't say 20 here. I don't have this bill memorized. I try to 21 put these things out of my mind. 22 Q I'd ask you to take a look at 23 Exhibit 2012. Just let me know when you've had a 24 chance to glance at that. 25 A Yes.</p>
<p style="text-align: right;">Page 67</p> <p>1 believe he's a patent attorney, but was very 2 familiar with patents. So we would always discuss 3 all aspects of what was going on, both corporate 4 and technology-wise and product-wise and 5 patent-wise with Paul. 6 Q So other than the preparation of the 7 provisional patent application, were you using the 8 law firm of Pennie & Edmonds in 1999 for other 9 legal matters? 10 A Other legal matters related to SurfCast? 11 Q Yes. 12 A Yes. 13 Q Can you tell me generally what those 14 other matters were? 15 MR. HEINTZ: Just caution the 16 witness not to reveal any attorney/client 17 communications, any privileged 18 attorney/client communications when answering 19 that question. 20 THE WITNESS: I can say that -- I 21 believe this is okay to say. They were 22 helping us with corporate matters, trademark 23 matters, corporate matters being financing, 24 incorporation, possibly tax. Cross border 25 issues as well, from a corporate point of</p>	<p style="text-align: right;">Page 69</p> <p>1 Q Okay. Can you tell me what Exhibit 2012 2 is? 3 A Let's start at the back. I'm assuming 4 it runs from the back to the front. I see -- yes. 5 So it looks like there was an original 6 note from Andrew Gray when in Palo Alto and 7 discussing something else that's been redacted. 8 Then I respond, and then Andrew responds to me 9 with something that's more likely than not 10 attorney/client privilege. 11 My response, I don't know what's apropos 12 of -- I'm not sure, and then Klaus wrote -- I must 13 have forwarded it to Klaus, and then Klaus 14 responded, and then we -- I responded to him, and 15 we were discussing Dixon or the running of our 16 servers. 17 Q And when you say the running of your 18 servers, is that because it indicates that Klaus 19 Lagermann wrote and then refers to server 20 properties? Is that what you're referring to? 21 A Dixon Chan Dick was running our website 22 server at the time. 23 Q Okay, and do you know what server 24 properties are referenced on that first page of 25 Exhibit 2012?</p>

18 (Pages 66 to 69)

<p style="text-align: right;">Page 70</p> <p>1 A No.</p> <p>2 Q In that same passage of the document it</p> <p>3 refers to a "phase development/product plan."</p> <p>4 Do you see that?</p> <p>5 A Yes.</p> <p>6 Q Do you know what that was?</p> <p>7 A No. Sorry. I shook my head. I don't</p> <p>8 know.</p> <p>9 Q Before I forget, this Exhibit 2012</p> <p>10 appears to be on its face at the very top an email</p> <p>11 from you to an email address Cebra -- C-E-B-R-A --</p> <p>12 @IBM.net.</p> <p>13 Do you see that?</p> <p>14 A Yes.</p> <p>15 Q And is it true that cebra@IBM.net is</p> <p>16 Mr. Lagermann?</p> <p>17 A Yes.</p> <p>18 Q Okay.</p> <p>19 Do you see any reference on Exhibit 2012</p> <p>20 to the provisional patent application that</p> <p>21 SurfCast filed in October 1999?</p> <p>22 A Well, I actually don't see it, but most</p> <p>23 likely it's under the blocks that are redacted.</p> <p>24 Q Do you know as you sit here today that</p> <p>25 there is a reference to the provisional patent</p>	<p style="text-align: right;">Page 72</p> <p>1 this, but --</p> <p>2 Q Well, it does, it does appear to be an</p> <p>3 attachment called SurfCast Final Summary, dot,</p> <p>4 dot.</p> <p>5 A Yes.</p> <p>6 Q Is that what you're referring to?</p> <p>7 A Yes.</p> <p>8 Q Putting that aside for a second, do you</p> <p>9 know if there is any text that's been redacted?</p> <p>10 A I don't believe there is. I think it</p> <p>11 was a forward, and I think the subject matter is</p> <p>12 self-explanatory. Hey, guys, here's a briefing</p> <p>13 doc cover letter.</p> <p>14 Q What's a briefing doc?</p> <p>15 A A document, a briefing document.</p> <p>16 Q Let me ask you to take a look at</p> <p>17 Exhibit 2015.</p> <p>18 A Yes.</p> <p>19 Q If I could ask you to take a look back</p> <p>20 at Exhibit 2014 for just a moment. Do you know if</p> <p>21 the, the document that was attached to</p> <p>22 Exhibit 2014 still exists?</p> <p>23 A I believe it does.</p> <p>24 Q Do you know if it included a request for</p> <p>25 legal advice?</p>
<p style="text-align: right;">Page 71</p> <p>1 application that has been redacted from this</p> <p>2 document?</p> <p>3 A I have fairly good certainty that it</p> <p>4 would be, because it's from Andrew, who did not do</p> <p>5 corporate work and was our lead patent guy.</p> <p>6 Q And you're speculating, based on that</p> <p>7 fact, that he would send you something about the</p> <p>8 provisional patent application; is that fair?</p> <p>9 A Related to the provisional patent</p> <p>10 application.</p> <p>11 Q When was the last time you saw the</p> <p>12 unredacted version of Exhibit 2012?</p> <p>13 MR. HEINTZ: Objection.</p> <p>14 Foundation.</p> <p>15 THE WITNESS: Within the last</p> <p>16 several weeks, probably.</p> <p>17 BY MR. MICALLEF:</p> <p>18 Q I'd like you to take a look at</p> <p>19 Exhibit 2014.</p> <p>20 Do you recognize Exhibit 2014?</p> <p>21 A Yes.</p> <p>22 Q Do you know if there's any information</p> <p>23 that's been redacted from Exhibit 2014?</p> <p>24 A I thought there was something attached</p> <p>25 to this, or maybe there was something attached to</p>	<p style="text-align: right;">Page 73</p> <p>1 MR. HEINTZ: Object to the form of</p> <p>2 the question.</p> <p>3 THE WITNESS: I have to read</p> <p>4 through it. I'm not sure.</p> <p>5 BY MR. MICALLEF:</p> <p>6 Q Have you read it in the past?</p> <p>7 A In the past, yes.</p> <p>8 Q Have you read it in the recent past?</p> <p>9 A Probably, but not in its entirety, and</p> <p>10 it could have been several weeks ago.</p> <p>11 Q Did you read it in preparing for your</p> <p>12 testimony today?</p> <p>13 A Not in its entirety.</p> <p>14 Q You read parts of it in preparing for</p> <p>15 your testimony today?</p> <p>16 A Or I may have just glanced at it.</p> <p>17 Q Did it refresh your recollection at all?</p> <p>18 MR. HEINTZ: Objection. Form.</p> <p>19 THE WITNESS: It, of course,</p> <p>20 refreshed some recollection.</p> <p>21 BY MR. MICALLEF:</p> <p>22 Q Is there a date on that document?</p> <p>23 A I can't say, but there's probably</p> <p>24 metadata on it. There would be either a cover</p> <p>25 page with a date or a -- you know how down at the</p>

19 (Pages 70 to 73)

<p style="text-align: right;">Page 74</p> <p>1 bottom there are like Bates numbers. A lot of 2 times in the documents we created, there are 3 little metadata there or little identifiers, and 4 then there's metadata in the document. 5 Q And does that document describe the 6 system that was eventually described in SurfCast's 7 provisional patent application? 8 MR. HEINTZ: Object to the form of 9 the question. 10 THE WITNESS: Partially. 11 BY MR. MICALLEF: 12 Q And so does it address topics other than 13 the system that was eventually included in the 14 provisional patent application? 15 A Most likely, yes. 16 Q You don't know for sure? 17 A There are lots of documents, various 18 types with effectively modules that would be 19 inserted or taken out. I could say with fair 20 certainty that it would have included other things 21 in it. 22 Q Okay. 23 Back to Exhibit 2015. 24 A Yes. 25 Q So this is an email to a couple of</p>	<p style="text-align: right;">Page 76</p> <p>1 A It is an email from myself to Tom, 2 Klaus, Paul Destefano and Andrew Gray regarding 3 desktop.com. 4 Q What was desktop.com? 5 A It was a -- I guess you would call it 6 a -- we referred to it or I think they referred to 7 themselves as a virtual desktop company. It was 8 funded by Accel Ventures, A-C-C-E-L, Accel. And I 9 believe Kohlberg, Krabis & Roberts, and Mitch 10 Kapur, a very famous technologist, was on their 11 board. He was an Accel advisor. I don't think he 12 was a partner. 13 Q Did they sell a product or a service? 14 A I don't believe they ever did. 15 Q Were they developing a product or a 16 service in 1999? 17 A I don't know the current state at that 18 point where they were in their development cycle. 19 I think that was the intention, though. 20 Q And do you know what the intended 21 product or service was? 22 A Only what I derived from news articles 23 and conversations with Mitch, with the guys at 24 Accel. 25 Q And what was that? What were they</p>
<p style="text-align: right;">Page 75</p> <p>1 Pennie & Edmonds lawyers? 2 A Yes. 3 Q Do you know what is redacted from this 4 email? 5 MR. HEINTZ: I'm going to caution 6 the witness not to reveal any attorney/client 7 privileged communications when responding, 8 answering that question. 9 THE WITNESS: Yes. 10 BY MR. MICALLEF: 11 Q Can you tell me what is redacted from 12 this document? 13 A No. 14 Q Are you refusing to tell me because of 15 the assertion of the privilege? 16 A I don't like to use the word "refuse." 17 I'd say that I decline. 18 Q And you decline because of the assertion 19 of the privilege? 20 A Yes. 21 Q I'm going to ask you to take a look at 22 Exhibit 2016. 23 Can you tell me what this is? 24 A Yes. 25 Q What is it?</p>	<p style="text-align: right;">Page 77</p> <p>1 developing? What did you derive that they were 2 developing? 3 A Basically a desktop in the sky, so to 4 speak. 5 Q In the cloud, you mean, as we would say 6 today? 7 MR. HEINTZ: Objection. 8 Foundation. 9 THE WITNESS: I don't really know 10 how their architecture was designed. I 11 didn't know that detail. 12 BY MR. MICALLEF: 13 Q So by "desktop" you mean sort of a 14 graphical user interface on a computer? 15 MR. HEINTZ: Objection. 16 Foundation. 17 THE WITNESS: I don't believe it 18 was. 19 BY MR. MICALLEF: 20 Q Well, did their -- did you believe that 21 their intended product or service had something to 22 do with computers? 23 A Yes. 24 Q Okay, and did you view it as a 25 competitor of SurfCast in 1999?</p>

20 (Pages 74 to 77)

<p style="text-align: right;">Page 78</p> <p>1 A If you'll recall our prior conversations</p> <p>2 during my first deposition, we cast a very wide</p> <p>3 net, mapping the universe, so to speak, of</p> <p>4 potential competitors, customers, partners, and</p> <p>5 because we had access to Accel, and I knew the</p> <p>6 guys there, because I sat on boards with them,</p> <p>7 this may have fallen into the category of</p> <p>8 potential competitor but also maybe potential</p> <p>9 partner, depending on whether a deal could be</p> <p>10 struck or not.</p> <p>11 Q Do you know what is redacted from</p> <p>12 Exhibit 2016?</p> <p>13 A Yes.</p> <p>14 Q Can you tell me what's redacted from</p> <p>15 Exhibit 2016?</p> <p>16 MR. HEINTZ: I'll instruct the</p> <p>17 witness not to answer that question to the</p> <p>18 extent doing so would reveal attorney/client</p> <p>19 privileged communications. And I'll object</p> <p>20 to the question to the extent it calls for</p> <p>21 attorney/client privileged communications.</p> <p>22 THE WITNESS: I think it would be</p> <p>23 revealing of our attorney/client privilege.</p> <p>24 BY MR. MICALLEF:</p> <p>25 Q And so you decline to --</p>	<p style="text-align: right;">Page 80</p> <p>1 Q And it refers to -- well, first of all,</p> <p>2 do you know who sent that?</p> <p>3 A Let me just take a quick look from the</p> <p>4 back.</p> <p>5 Q Sure.</p> <p>6 A Sorry. One moment. From the top --</p> <p>7 well, it looks like in the -- let me start in the</p> <p>8 back.</p> <p>9 It looks like in the back, this is</p> <p>10 communication between Spencer Simon and myself and</p> <p>11 Tom and Isabelle regarding founders documents, and</p> <p>12 then it leads to the point where I say, or we, you</p> <p>13 know, have everything from everyone, we're missing</p> <p>14 Dr. Bob's, and then I sent, apparently forwarded</p> <p>15 this to Dr. Bob and his assistants, saying you're</p> <p>16 the only one that we need to get signatures from</p> <p>17 at this point, please do this, and then he</p> <p>18 responded with the paragraph, the section tried to</p> <p>19 call, and then the top one is me responding to him</p> <p>20 responding to me.</p> <p>21 Q Okay, and so what's a founders document?</p> <p>22 A The -- there was a series of paperwork</p> <p>23 that needed to be signed by all the founders of</p> <p>24 the company, such as nondisclosure. I'm not sure</p> <p>25 if it's called intellectual property assignments,</p>
<p style="text-align: right;">Page 79</p> <p>1 A Yes.</p> <p>2 Q -- tell me about it based on the</p> <p>3 privilege.</p> <p>4 A Okay.</p> <p>5 Q The tape probably needs to be changed,</p> <p>6 so why don't we take a break right now.</p> <p>7 THE VIDEOGRAPHER: This marks the</p> <p>8 end of tape number 1 in the deposition of</p> <p>9 Ovid Santoro. Going off the record, the time</p> <p>10 is 11:06:58.</p> <p>11 (Whereupon, a short recess was</p> <p>12 taken.)</p> <p>13 THE VIDEOGRAPHER: We're back on</p> <p>14 record at 11:23:31. Here begins tape number</p> <p>15 2 in the deposition of Ovid Santoro.</p> <p>16 BY MR. MICALLEF:</p> <p>17 Q Okay, Mr. Santoro, I'm going to have you</p> <p>18 take a look at Exhibit 2017.</p> <p>19 A Yes.</p> <p>20 Q Okay.</p> <p>21 Now, at the bottom of the first page of</p> <p>22 2017, it looks like there's an email to you with</p> <p>23 about a paragraph of text.</p> <p>24 Do you see that?</p> <p>25 A Yes, yes.</p>	<p style="text-align: right;">Page 81</p> <p>1 but the assignments of all your stuff to the</p> <p>2 company that's relevant, things like there's a,</p> <p>3 there was a founders agreement, shareholders</p> <p>4 agreement, probably sign-off on things like bylaws</p> <p>5 and charter -- so it's not called -- I've always</p> <p>6 signed charter amendments, so I'm not sure what</p> <p>7 the original -- the corporate charter, stuff like</p> <p>8 that.</p> <p>9 Q Okay.</p> <p>10 So there's a reference to signing in</p> <p>11 person or by fax on the bottom of page 1, I guess,</p> <p>12 of Exhibit 2017.</p> <p>13 Do you see that?</p> <p>14 A "I could stop by tomorrow and sign in</p> <p>15 person or by fax." Yes.</p> <p>16 Q And so that's a reference to</p> <p>17 Mr. Carberry signing a founders document?</p> <p>18 A I believe so, yes.</p> <p>19 Q So on the fifth page, on page 5 --</p> <p>20 A Yep.</p> <p>21 Q -- of Exhibit 2017, is there information</p> <p>22 redacted from this?</p> <p>23 A I don't believe so. I believe this is</p> <p>24 one of those things, you know, when you forward</p> <p>25 emails, particularly lawyers, or it could have</p>

21 (Pages 78 to 81)

<p>Page 82</p> <p>1 been Deutsche Bank, there's always like a little</p> <p>2 attachment down below that says something like</p> <p>3 this, and when you forward these, they sometimes</p> <p>4 stack up in space below, so I don't believe</p> <p>5 there's anything redacted. I don't know why it</p> <p>6 paginated like this, but I think this is just that</p> <p>7 stuff.</p> <p>8 Q Well, I was really referring to sort of</p> <p>9 the large blank white spaces.</p> <p>10 A Yeah, I don't know why that's like that.</p> <p>11 Q So as far as you know, there's no</p> <p>12 redaction?</p> <p>13 A No. As far as I know, no. I think it's</p> <p>14 just a pagination thing.</p> <p>15 Q Okay.</p> <p>16 Can I ask you to take a look at</p> <p>17 Exhibit 2019?</p> <p>18 A Yes.</p> <p>19 Q So Exhibit 2019 is an email from</p> <p>20 Mr. Lagermann to you?</p> <p>21 A Yes.</p> <p>22 Q And at the very top of the first page it</p> <p>23 says, "Okay, Sparky."</p> <p>24 Do you see that?</p> <p>25 A Yes.</p> <p>Page 83</p> <p>1 Q I guess you are Sparky?</p> <p>2 A I guess I'm Sparky and he's Bambam.</p> <p>3 Q He signed it Bambam. Okay. I guess</p> <p>4 he's using a different email address than his</p> <p>5 cebra.</p> <p>6 A Yes. This is a Danish one that he used.</p> <p>7 Q No question it's the same Klaus</p> <p>8 Lagermann, your co-inventor?</p> <p>9 A I don't know any other one, but that was</p> <p>10 another email address he used.</p> <p>11 Q Okay.</p> <p>12 He writes to you in the I guess the</p> <p>13 second sentence, "I feel weird about doing it like</p> <p>14 this. It is asking for the result of a process</p> <p>15 before the process has run."</p> <p>16 A Yes.</p> <p>17 Q Do you see that?</p> <p>18 A Yes.</p> <p>19 Q Do you know what he meant by that?</p> <p>20 A Yes.</p> <p>21 Q What did he mean?</p> <p>22 A Klaus felt -- and keep in mind he had</p> <p>23 never done patent stuff before. He was not</p> <p>24 familiar with how patents worked. He had felt</p> <p>25 that, well, and I think a bit naively, couldn't we</p>	<p>Page 84</p> <p>1 just develop the product and then see what there</p> <p>2 is and then patent it? And maybe this was a way</p> <p>3 of him wanting to just dive into product</p> <p>4 development before he did patent work.</p> <p>5 Q Okay.</p> <p>6 I'm going to ask you to take a look at</p> <p>7 Exhibit 2023.</p> <p>8 A Yep.</p> <p>9 Q Now, Exhibit 2023 is your notebook,</p> <p>10 correct?</p> <p>11 A Yes.</p> <p>12 Q And all of the handwriting in</p> <p>13 Exhibit 2023 is yours, correct?</p> <p>14 A Let me just take a quick peek.</p> <p>15 Q Mm-hmm.</p> <p>16 A Flip through. Yes.</p> <p>17 Q Okay.</p> <p>18 If I can direct your attention to page 7</p> <p>19 of Exhibit 2023, and just for the record it</p> <p>20 appears to bear a Bates number from the main</p> <p>21 litigation, SC0040643.</p> <p>22 Do you see that?</p> <p>23 A Yes.</p> <p>24 Q Okay.</p> <p>25 So you're on that page?</p> <p>Page 85</p> <p>1 A Yes.</p> <p>2 Q Okay.</p> <p>3 Now, could you -- the second sentence on</p> <p>4 that page starts with the word "so."</p> <p>5 A Yes.</p> <p>6 Q Could you read that sentence all the way</p> <p>7 down to the period?</p> <p>8 A "So the computer does not have" --</p> <p>9 sorry. Let me start over. "So the computer does</p> <p>10 not have 64 live feeds," brackets, "it could if</p> <p>11 the PC could buffer," close bracket. "It has a</p> <p>12 mux/remux for each 'member.' So every" --</p> <p>13 Q Just to the period.</p> <p>14 A Oh, I'm sorry. Okay.</p> <p>15 Q After member.</p> <p>16 A Okay.</p> <p>17 Q That is a period after member.</p> <p>18 A Okay.</p> <p>19 Q What did you mean by "mux/remux"?</p> <p>20 A Multiplexer, multiplexing, which is</p> <p>21 effectively something from the broadcast</p> <p>22 television head end, and I'm not a broadcast</p> <p>23 technologist, so I'm not going to get this</p> <p>24 precisely right, but you take various feeds and</p> <p>25 you what's called multiplex them and push them</p>
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22 (Pages 82 to 85)

<div>Page 86</div> <div> <p>1 out.</p> <p>2 So in other words, my understanding is</p> <p>3 there's, there's processing power that's remote</p> <p>4 from the device itself, so I think what I was</p> <p>5 referring to here is if the PC could buffer all</p> <p>6 this and process it, because we had pretty slow</p> <p>7 chips back then.</p> <p>8 Q So when you refer to "the computer,"</p> <p>9 that a reference to a user's computer that you</p> <p>10 were envisioning would make use of your system?</p> <p>11 A Yes.</p> <p>12 Q Okay, and does this sentence mean that</p> <p>13 you were envisioning having only one line into</p> <p>14 the, or one path into the user's computer over</p> <p>15 which multiple information sources might send --</p> <p>16 A Not necessarily. I mean we built it so</p> <p>17 the idea would be that some people would be</p> <p>18 running on just a dial-up connection, because</p> <p>19 that's what there was back then. Back then a lot</p> <p>20 of people had 28.8 modems. 56K was kind of for</p> <p>21 more advanced users. Very few people external to</p> <p>22 an intranet had anything more than that, I</p> <p>23 believe. Maybe 128 or whatever.</p> <p>24 Some people had -- if you wanted to get</p> <p>25 television on your computer -- I don't know the</p> </div>	<div>Page 88</div> <div> <p>1 effectively a transcription of the -- I think</p> <p>2 it was January 25 was the date, or two days,</p> <p>3 24th/25th, 25th/26th, '99 meeting in London</p> <p>4 between Klaus Lagermann, Dixon Dick and Lori</p> <p>5 Traikos, where we threw up a bunch of ideas</p> <p>6 on the white board. So this was a lot of --</p> <p>7 this was a notation, a distillation of what</p> <p>8 went on in those white boards.</p> <p>9 So I may not have as much</p> <p>10 understanding of broadcast technology as -- I</p> <p>11 think you know Dixon ran Compaq's website and</p> <p>12 their intranet and extranet and all that. He</p> <p>13 was a networking expert. Klaus was a</p> <p>14 broadcast technology expert.</p> <p>15 So this, these words may have been</p> <p>16 more from Klaus than from myself necessarily,</p> <p>17 so I can't say with exactitude exactly what</p> <p>18 he meant, even though it's my handwriting.</p> <p>19 It was a transcription of notes from the</p> <p>20 board that we all contributed to.</p> <p>21 BY MR. MICALLEF:</p> <p>22 Q Now, two of the people you mentioned</p> <p>23 being at that meeting, Dixon Chan Dick and then --</p> <p>24 A Lori Traikos.</p> <p>25 Q And Ms. Traikos is your wife?</p> </div>
<div>Page 87</div> <div> <p>1 exact date of when YouTube happened, but YouTube</p> <p>2 were static videos, and I don't believe YouTube</p> <p>3 was around then, but the idea of going to sites</p> <p>4 and getting videos was pretty early days, and</p> <p>5 very, very few people had the ability to get</p> <p>6 television on their computer screen.</p> <p>7 And so the only way you could do that</p> <p>8 was by having either something like a Brooktree</p> <p>9 chip in your computer or external cards, tuner</p> <p>10 cards. Sorry. So some -- so we envisioned -- we</p> <p>11 meant this to be modular in the sense that the</p> <p>12 product would work if you only had one connection,</p> <p>13 but boy, if you had TV coming in here or multiple</p> <p>14 stacked tuners or Ethernet plugged in and your</p> <p>15 computer could buffer all this information, the</p> <p>16 idea would be that, wham, SurfCast would really</p> <p>17 come alive with lots of stuff.</p> <p>18 Q I see. Maybe my question wasn't focused</p> <p>19 enough. The mux/remux part would be used when you</p> <p>20 wanted to have multiple information sources send</p> <p>21 data over the same pathway; is that fair?</p> <p>22 MR. HEINTZ: Objection.</p> <p>23 Foundation.</p> <p>24 THE WITNESS: The first thing I'd</p> <p>25 like to say is that this notebook was a,</p> </div>	<div>Page 89</div> <div> <p>1 A Yes.</p> <p>2 Q Okay, and it's fair to say that neither</p> <p>3 of them would probably be called inventors of the</p> <p>4 '403 patent; is that fair?</p> <p>5 A That's right.</p> <p>6 Q Okay, and are you suggesting that the</p> <p>7 reference to mux/remux on this page of</p> <p>8 Exhibit 2023 came from Mr. Dick?</p> <p>9 A No. Dixon was there as we, as I think</p> <p>10 we discussed in the past, as a kind of sanity</p> <p>11 check of Klaus and I throwing up our ideas and</p> <p>12 hey, does this work, and mux/remux is really</p> <p>13 something from the Klaus world of broadcasting</p> <p>14 technology, and Lori was there really more as a</p> <p>15 clean-white-sheet-of-paper consumer, so how would</p> <p>16 you use this and what about that.</p> <p>17 Q Is it fair to say that you don't</p> <p>18 understand the reference here to mux/remux on page</p> <p>19 7 of Exhibit 2023?</p> <p>20 A Well, I understand it to a degree, but</p> <p>21 not, not on how to implement it necessarily.</p> <p>22 Q Well, do you understand it sufficient to</p> <p>23 answer my question that, is that a reference to</p> <p>24 the idea that multiple information sources could</p> <p>25 transmit data over the same pathway?</p> </div>

23 (Pages 86 to 89)

<div>Page 90</div> <div> <p>1 A The same or more than one pathway,</p> <p>2 because remember, we designed the system to have a</p> <p>3 couple inputs into the -- I'm not going to get it</p> <p>4 right, where on the computer we were doing this,</p> <p>5 but those inputs could have been the hard drive,</p> <p>6 an Internet connection via DSL or cable modem, or</p> <p>7 a television signal, so one or more inputs.</p> <p>8 Q Well, see, what I'm not understanding is</p> <p>9 if you have more than one pathway into the</p> <p>10 computer, what are you multiplexing?</p> <p>11 A All the various information sources. So</p> <p>12 the idea was that SurfCast is effectively a</p> <p>13 multiplexer at this point, in this early point in</p> <p>14 January.</p> <p>15 Q You mean the software itself was a</p> <p>16 multiplexer?</p> <p>17 A Yes.</p> <p>18 Q And what does that mean?</p> <p>19 A You'd have to ask Klaus that, but on a</p> <p>20 technical level, he would be more, more better</p> <p>21 person -- a better person to ask that -- answer</p> <p>22 that.</p> <p>23 Q So the next sentence, could you read the</p> <p>24 next sentence for me.</p> <p>25 A "So every frame/second, a new</p> </div> <div>Page 91</div> <div> <p>1 tile/channel updates. So every channel grabs a</p> <p>2 frame from source, updates once a minute,</p> <p>3 refreshed every minute." Oh, sorry. That's two</p> <p>4 sentences.</p> <p>5 Q That's okay. Let's start with the first</p> <p>6 one. "So every frame/second, a new tile/channel</p> <p>7 updates." There should be a period after that?</p> <p>8 A Probably.</p> <p>9 Q Okay.</p> <p>10 So use of a slash could mean different</p> <p>11 things, so I'm kind of wondering what they mean</p> <p>12 here in this sentence. Can you tell me?</p> <p>13 A In the television/film world, you, you,</p> <p>14 you have a, what's called a frame rate, which is</p> <p>15 commonly expressed as FPS, frames per second,</p> <p>16 whether that's in television or film.</p> <p>17 Q In preparing for your deposition today,</p> <p>18 did you read your prior deposition?</p> <p>19 A Yes.</p> <p>20 Q Do you recall testifying about this page</p> <p>21 in your prior deposition?</p> <p>22 A No.</p> <p>23 Q Do you recall telling me in that prior</p> <p>24 deposition that this page marked SC0040643 does</p> <p>25 not explicitly show assigning a refresh rate to a</p> </div>	<div>Page 92</div> <div> <p>1 tile?</p> <p>2 MR. HEINTZ: Objection.</p> <p>3 Foundation.</p> <p>4 THE WITNESS: I don't recall that.</p> <p>5 BY MR. MICALLEF:</p> <p>6 Q Mr. Santoro, I'd like to refresh your</p> <p>7 recollection, which is something lawyers can do on</p> <p>8 cross-examination.</p> <p>9 A Yep.</p> <p>10 Q So I'm going to show you page 71 of your</p> <p>11 deposition transcript from the Maine litigation,</p> <p>12 and I'd like to direct your attention to that</p> <p>13 page, 71, lines 7 through 11.</p> <p>14 And my question is just: Does this</p> <p>15 refresh your recollection about the testimony you</p> <p>16 gave in your Maine deposition?</p> <p>17 A Yep.</p> <p>18 Q For the record, I've just handed you the</p> <p>19 Maine deposition.</p> <p>20 MR. HEINTZ: What line is he</p> <p>21 directing his attention towards?</p> <p>22 MR. MICALLEF: Page 71, line 7 to</p> <p>23 11.</p> <p>24 MR. HEINTZ: Thank you.</p> <p>25 THE WITNESS: 7 to 11 where I say</p> </div> <div>Page 93</div> <div> <p>1 "that sounds fair, yes."</p> <p>2 BY MR. MICALLEF:</p> <p>3 Q This has refreshed your recollection</p> <p>4 that in the Maine deposition you testified that</p> <p>5 this page of Exhibit 2023, page 7, does not</p> <p>6 explicitly show assigning a refresh rate to a</p> <p>7 tile?</p> <p>8 MR. HEINTZ: Objection.</p> <p>9 BY MR. MICALLEF:</p> <p>10 Q Is that correct?</p> <p>11 MR. HEINTZ: Objection. Misstates</p> <p>12 the testimony.</p> <p>13 THE WITNESS: What did you say?</p> <p>14 MR. HEINTZ: I said objection.</p> <p>15 Misstates the testimony.</p> <p>16 THE WITNESS: So, no pun intended,</p> <p>17 I would answer that the way I answered it in</p> <p>18 line 4 of the deposition, "explicitly no, but</p> <p>19 implicitly in my mind it does when you say</p> <p>20 that the consumer programs is choices," so</p> <p>21 someone's setting a refresh rate, and the</p> <p>22 idea of this invention was that the consumer</p> <p>23 could, consumer/user could set a refresh</p> <p>24 rate.</p> <p>25</p> </div>
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24 (Pages 90 to 93)

<div>Page 94</div> <div> <p>1 BY MR. MICALLEF:</p> <p>2 Q My question was a little bit different.</p> <p>3 My question was just: Does this refresh your</p> <p>4 recollection that during the Maine deposition,</p> <p>5 when I asked you about this page, you agree that</p> <p>6 it does not explicitly show assigning a refresh</p> <p>7 rate to a tile?</p> <p>8 MR. HEINTZ: Objection. Misstates</p> <p>9 the testimony.</p> <p>10 THE WITNESS: I believe that's not</p> <p>11 an accurate description of the testimony.</p> <p>12 BY MR. MICALLEF:</p> <p>13 Q Is it an accurate -- well, why don't you</p> <p>14 read for us from that Maine deposition transcript,</p> <p>15 page 71, line 7 to 11.</p> <p>16 A One moment, please.</p> <p>17 So you'd like me to recite lines 7 to</p> <p>18 11?</p> <p>19 Q Yes, sir.</p> <p>20 A "Okay, and on the page ending Bates</p> <p>21 number 643" -- this is, by the way, your question</p> <p>22 -- "it does not say that you, does not explicitly</p> <p>23 say that you assign a refresh rate to a tile, is</p> <p>24 that fair?" And I answer: "That sounds fair."</p> <p>25 Q Thank you. May I see the transcript?</p> </div> <div>Page 95</div> <div> <p>1 A As my counselor said, I believe it</p> <p>2 mischaracterizes it or misstates it, because we</p> <p>3 talk about implication and implying before and</p> <p>4 after that.</p> <p>5 Q Thank you.</p> <p>6 A Do you need this back?</p> <p>7 Q Yes, I do. Thank you.</p> <p>8 So just back to this page of</p> <p>9 Exhibit 2023, what would happen in the, in the</p> <p>10 system that was envisioned here if you had a lot</p> <p>11 of tiles on the screen and they were all updating</p> <p>12 in a way where you were pushing the limits of</p> <p>13 whatever connection or connections you had to</p> <p>14 these various information sources?</p> <p>15 Do you understand my question?</p> <p>16 MR. HEINTZ: Objection.</p> <p>17 Foundation.</p> <p>18 THE WITNESS: I believe I</p> <p>19 understand that you mean what would happen to</p> <p>20 the computer or to the tile interface if the</p> <p>21 system was overwhelmed.</p> <p>22 BY MR. MICALLEF:</p> <p>23 Q Let's try that.</p> <p>24 A I don't know.</p> <p>25 Q Can I get you to turn to page 20 of</p> </div>	<div>Page 96</div> <div> <p>1 Exhibit 2023.</p> <p>2 First of all, on the right-hand side of</p> <p>3 this page, there is a passage that looks like it</p> <p>4 begins with the word "except," colon, and that's</p> <p>5 underlined.</p> <p>6 Do you see that?</p> <p>7 A Yes, except, E-X-C-E-P-T.</p> <p>8 Q Can you read what's after the colon for</p> <p>9 me, down to the close parenthesis?</p> <p>10 A "Except" -- one moment. I really think</p> <p>11 we should step up a couple words, because it's</p> <p>12 kind of taking a sentence, something in the middle</p> <p>13 of a sentence. So for instance, up top we say</p> <p>14 "these tiles are, act like desktop shortcuts</p> <p>15 except," et cetera, and here we're saying "tiles</p> <p>16 are like bookmarks except," colon. "They are a,</p> <p>17 quote, live link with a website, not simply an</p> <p>18 address. It is a live pointer."</p> <p>19 Would you like me to keep going?</p> <p>20 Q No. That's what I wanted to ask you</p> <p>21 about. What do you mean by "live pointer"?</p> <p>22 A So think of what a bookmark is. It's a</p> <p>23 textual pointer, effectively, and so rather than a</p> <p>24 line of text, which is static, doesn't change, and</p> <p>25 which is not graphical, this would be a live</p> </div> <div>Page 97</div> <div> <p>1 graphical bookmark, pointing to an information</p> <p>2 source.</p> <p>3 Q So this page is not using the term</p> <p>4 pointer in the sense that a computer programmer</p> <p>5 would use the term pointer?</p> <p>6 A No, I mean more like a -- well, I don't</p> <p>7 know how a computer programmer would use the term,</p> <p>8 so I should slow down and say I don't know that or</p> <p>9 how widely encompassing a computer programmer</p> <p>10 would refer to a pointer. I just mean pointer as</p> <p>11 a kind of target.</p> <p>12 Q So this page, page 20 of Exhibit 2023,</p> <p>13 would you agree doesn't, doesn't describe how a</p> <p>14 tile communicates with an information source?</p> <p>15 A Do you mean from a technical</p> <p>16 perspective?</p> <p>17 Q Yes.</p> <p>18 A Meaning like the source code or the</p> <p>19 technical aspects?</p> <p>20 Q Well, my question is broader than that.</p> <p>21 This page 20 of Exhibit 2023 doesn't describe how</p> <p>22 a tile communicates with an information source in</p> <p>23 any manner. Isn't that fair?</p> <p>24 MR. HEINTZ: Objection.</p> <p>25 Foundation.</p> </div>
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25 (Pages 94 to 97)

<p style="text-align: right;">Page 98</p> <p>1 THE WITNESS: I think this is more</p> <p>2 a case of where it describes how a tile could</p> <p>3 communicate as opposed to how a tile would</p> <p>4 communicate.</p> <p>5 BY MR. MICALLEF:</p> <p>6 Q Well, what words on this page do you</p> <p>7 think describe how a tile could communicate?</p> <p>8 A I think all of it. I said tiles can be</p> <p>9 websites, TV channels, et cetera. It becomes a</p> <p>10 channel -- I believe what it's all saying here,</p> <p>11 here's how this could work.</p> <p>12 Q So your view is that the statement that</p> <p>13 a tile can be a website somehow indicates how a</p> <p>14 tile might communicate with an associated website.</p> <p>15 Did I get that right?</p> <p>16 A I think if you read the whole thing in</p> <p>17 its entirety, the whole page, you get a feeling</p> <p>18 for -- remember, this is very rudimentary. We are</p> <p>19 talking about what are the fundamental ways, you</p> <p>20 know, fundamental ways we're thinking of doing</p> <p>21 this, what are the fundamental properties this</p> <p>22 thing is going to have, at least in January, late</p> <p>23 January 1999.</p> <p>24 So when you say "tiles are like desktop</p> <p>25 shortcuts, except they are animated," that to me</p>	<p style="text-align: right;">Page 100</p> <p>1 A What do you mean by "a round robin</p> <p>2 fashion" more specifically? Do you mean how would</p> <p>3 you implement that?</p> <p>4 Q Well, I don't know how to implement it.</p> <p>5 Let me put it this way. Imagine a system with</p> <p>6 four tiles. The first one updates, and when</p> <p>7 that's done, the second one updates, and when</p> <p>8 that's done, the third one updates, and when</p> <p>9 that's done, the fourth one updates.</p> <p>10 I mean is that -- when you say "new</p> <p>11 tile," does it mean every frame or second, the</p> <p>12 next tile updates?</p> <p>13 MR. HEINTZ: Objection. Form.</p> <p>14 THE WITNESS: Let me reread this</p> <p>15 again slowly. Sorry.</p> <p>16 BY MR. MICALLEF:</p> <p>17 Q Sure.</p> <p>18 A New as in different. I think what we</p> <p>19 meant here was that tiles would update according</p> <p>20 to when they would be -- there was a call to be</p> <p>21 service, so for instance, if you go around a</p> <p>22 robin, around the carousel of the grid, it's not</p> <p>23 as if this one gets updated once a second and then</p> <p>24 the next one gets updated once a second, and then</p> <p>25 the next one.</p>
<p style="text-align: right;">Page 99</p> <p>1 is how it could be done. Now, then you hand that</p> <p>2 specification off to a coder, who does the</p> <p>3 animation or does whatever is necessary to make it</p> <p>4 animated. So we're not explaining here how that</p> <p>5 would be done but how it could be done. That's in</p> <p>6 my view.</p> <p>7 Q Can I get you to -- I want to ask you</p> <p>8 another question about page 7 of this document</p> <p>9 that we talked about a little earlier. Just back</p> <p>10 to that same sentence in the middle of the page</p> <p>11 where it says "so every frame/second, a new</p> <p>12 tile/channel updates."</p> <p>13 A Yep.</p> <p>14 Q Do you see that? What do you mean by a</p> <p>15 new tile?</p> <p>16 A I don't recall.</p> <p>17 Q Is that -- do you think that means what</p> <p>18 you're saying here is that the tiles, however many</p> <p>19 you have, would update in sort of a round robin</p> <p>20 fashion? Do you know what I mean by that?</p> <p>21 A Yes.</p> <p>22 Q Okay.</p> <p>23 So let me ask it again: Is this a</p> <p>24 statement that the tiles would update in a round</p> <p>25 robin fashion?</p>	<p style="text-align: right;">Page 101</p> <p>1 It might be -- let's take three tiles,</p> <p>2 one that updates every five seconds, one that</p> <p>3 updates every ten seconds, one that updates every</p> <p>4 say 15 seconds. So I as the user could -- maybe</p> <p>5 this was not a good choice of words, but I believe</p> <p>6 what I meant was that I could randomly choose any</p> <p>7 of these, meaning I could choose any, any tile.</p> <p>8 So this one's updating at five, the next</p> <p>9 one is updating at ten, so the first one updates</p> <p>10 then at five seconds. Then at ten seconds, the</p> <p>11 first one and the second one update. Then at 15</p> <p>12 seconds, the first one and the third one update.</p> <p>13 Then you skip fast forward to 30 seconds, and they</p> <p>14 all update at the same time.</p> <p>15 Q Well, Mr. Santoro, this passage on page</p> <p>16 7 of Exhibit 2023 says "so every frame/second, a</p> <p>17 new tile/channel updates." Isn't that saying they</p> <p>18 all have the same rate?</p> <p>19 A Let me just give this context, but I</p> <p>20 know what we meant by -- no, I don't believe it</p> <p>21 does mean that. I believe what it means is that</p> <p>22 in order to prevent the system from being</p> <p>23 overwhelmed or because the buffer probably</p> <p>24 couldn't handle it, that the tiles would update</p> <p>25 when they were called to update, based on their</p>

26 (Pages 98 to 101)

<p>Page 102</p> <p>1 different assigned rates.</p> <p>2 Q And how would that mean that every</p> <p>3 frame/second a new tile updates?</p> <p>4 A So every second a different tile is</p> <p>5 updating according to its assigned rate, according</p> <p>6 to when it's been called to be updated. So for</p> <p>7 instance, going back to the five, ten and 15</p> <p>8 second one, at five seconds only one tile is</p> <p>9 updating. At ten seconds, a different tile is</p> <p>10 also updating, a new tile is also updating, and at</p> <p>11 15 seconds, two different tiles are updating. You</p> <p>12 get up to 30 seconds, three tiles are updating.</p> <p>13 Now, if you explode that into 64 or however many</p> <p>14 component tiles, you're going to get a lot of</p> <p>15 stuff where a new tile or a different tile is</p> <p>16 updating at that -- when it's been called to, to</p> <p>17 service or called to be updated.</p> <p>18 Q Would you agree this page 7 of</p> <p>19 Exhibit 2023 doesn't say anything about multiple</p> <p>20 tiles updating at the same time?</p> <p>21 MR. HEINTZ: Object to form.</p> <p>22 THE WITNESS: Well, I'd say it</p> <p>23 depends on when the program, when the times</p> <p>24 were programmed to be updated.</p> <p>25</p>	<p>Page 104</p> <p>1 A Yes.</p> <p>2 Q Can you tell me what this is?</p> <p>3 A So going down to the bottom, it looks</p> <p>4 like "Chop Happyville," also known as Klaus, wrote</p> <p>5 "Happy New Year's." It looks like it was probably</p> <p>6 on January 1, '99. "To try to schedule a session</p> <p>7 to brainstorm." And then I responded later that</p> <p>8 day with more logistical and personal stuff and</p> <p>9 some talk about the idea we were working on, as</p> <p>10 well as funding.</p> <p>11 Q I just want to make sure we have a clear</p> <p>12 record. This document, Exhibit 2024, you would</p> <p>13 agree that -- well let me ask it this way.</p> <p>14 Did you ever try to find in this</p> <p>15 document, Exhibit 2024, just this one, all the</p> <p>16 elements of any claim of your '403 patent?</p> <p>17 MR. HEINTZ: Object to form.</p> <p>18 THE WITNESS: No, I did not.</p> <p>19 BY MR. MICALLEF:</p> <p>20 Q Okay.</p> <p>21 Would you agree that -- well, that's</p> <p>22 fine.</p> <p>23 I'll ask you to look at Exhibit 2025.</p> <p>24 A Yes.</p> <p>25 Q And sort of the same question here for</p>
<p>Page 103</p> <p>1 BY MR. MICALLEF:</p> <p>2 Q I'm just talking about this page 7 of</p> <p>3 Exhibit 2023. My question is: Do you agree it</p> <p>4 doesn't say anything about multiple tiles updating</p> <p>5 at the same time?</p> <p>6 MR. HEINTZ: Object to form.</p> <p>7 THE WITNESS: Respectfully, no. I</p> <p>8 think that this is a very, very simple</p> <p>9 notation of something that ended up becoming</p> <p>10 articulated over -- I don't know how many</p> <p>11 pages the patent is, but this is a very</p> <p>12 simplified statement, so there's a lot of</p> <p>13 implication in here.</p> <p>14 BY MR. MICALLEF:</p> <p>15 Q I'm not asking about what's in the</p> <p>16 patent. I'm asking about -- let me finish my</p> <p>17 question. I'm asking about what is on this</p> <p>18 specific page, page 7 of Exhibit 2023, and it</p> <p>19 doesn't say anything about multiple tiles updating</p> <p>20 at the same time; isn't that right?</p> <p>21 MR. HEINTZ: Object to form.</p> <p>22 THE WITNESS: I disagree.</p> <p>23 BY MR. MICALLEF:</p> <p>24 Q I'm going to ask you to take a look at</p> <p>25 Exhibit 2024.</p>	<p>Page 105</p> <p>1 Exhibit 2025. Would you agree that you've never</p> <p>2 tried to find all of the elements of the '403</p> <p>3 patent in Exhibit 2025?</p> <p>4 MR. HEINTZ: Object to the form.</p> <p>5 MR. MICALLEF: What's your</p> <p>6 objection?</p> <p>7 MR. HEINTZ: Can you repeat the</p> <p>8 question.</p> <p>9 (Whereupon, reporter reads</p> <p>10 requested material.)</p> <p>11 MR. HEINTZ: I withdraw the</p> <p>12 objection.</p> <p>13 THE WITNESS: I have not tried to</p> <p>14 find all the elements of the claims in this</p> <p>15 particular email.</p> <p>16 BY MR. MICALLEF:</p> <p>17 Q Or of any claim of the '403 patent?</p> <p>18 A Oh. Well, no, I don't agree to that.</p> <p>19 Q Okay.</p> <p>20 So what claim of the '403 patent did you</p> <p>21 try to find all of its elements in this</p> <p>22 Exhibit 2025?</p> <p>23 A I thought you said any of the elements.</p> <p>24 Q No. Let's be clear. Let's just be very</p> <p>25 clear. I just want to know if you've ever tried</p>

27 (Pages 102 to 105)

<p style="text-align: right;">Page 106</p> <p>1 to find all elements of any single claim of your 2 patent in Exhibit 2025. 3 A All elements of any single claim? 4 Q Yes, sir. 5 A I believe that this email has elements 6 which are in the scope of the claims. 7 Q So my question is much different than 8 that, so let me try it one more time. 9 Did you ever try to find all the 10 elements of any single claim of the '403 patent in 11 Exhibit 2025? 12 A No, I did not. 13 Q Okay. 14 I'm going to have you look at 15 Exhibit 2026. 16 A Yes. 17 Q This is an email from you to 18 Mr. Lagermann? 19 A Yes. 20 Q Okay, and again, did you ever try to 21 find all of the elements of any claim of the '403 22 patent in Exhibit 2026? 23 A Without taking the time to read through 24 it, I could say that I personally did not look for 25 every element of every claim in this particular</p>	<p style="text-align: right;">Page 108</p> <p>1 personally that's not really a role that, that I 2 had examined or did on a comprehensive basis, but 3 it's quite possible that for a claim there is 4 every element in here. 5 Q Whether that's so or not, you have never 6 attempted to determine that; is that fair? 7 A I did look at these documents, all of 8 these documents, and in these documents I found 9 certain elements within the scope of our claims. 10 Q And did you ever attempt to confirm that 11 all the elements of any claim in the '403 patent 12 can be found in Exhibit 2027? 13 Just to be clear, I'm not asking you to 14 do it now. I'm not asking you to say whether it's 15 there or not. I just want to know if you made 16 that determination in the past, or attempted to. 17 A I went through all these documents in 18 the preparation of my declaration -- 19 Q Okay. 20 A -- with counsel, and we went over these 21 in detail and looked for elements of our claims, 22 which we found. Are every -- is every element 23 found? I don't know. 24 Q Okay. 25 I'll ask you to take a look at</p>
<p style="text-align: right;">Page 107</p> <p>1 email, but I believe that there are many elements 2 within the scope of the claims in this email. 3 Q Whether that's true or not, my question 4 was, again, different than that. I want to know 5 if you have ever attempted to find every element 6 of any claim of the '403 patent, every element of 7 any claim of the '403 patent in Exhibit 2026. 8 A Oh, again, without sounding too smart 9 alecky, I, I have never tried to, but that doesn't 10 mean that there may not be. 11 Q Okay. 12 I'm going to ask you to look at 13 Exhibit 2027, and again I guess my first question 14 is: This is an email from you to Mr. Lagermann, 15 correct? 16 A Yes, but for some reason, I think that 17 below might be an email from Klaus to me, although 18 I'm not sure who wrote the one, the second part of 19 it, but it's either him or me or back and forth. 20 I don't -- it's between us. 21 Q Okay. Thank you. 22 And again, have you ever tried to find 23 every element of any claim of the '403 patent in 24 Exhibit 2027? 25 A Well, I'm sure my lawyers have, but</p>	<p style="text-align: right;">Page 109</p> <p>1 Exhibit 2028, and just first of all, this is again 2 an email from you to Mr. Lagermann? 3 A Yep. 4 Q Can we agree that this email does not 5 include all of the elements of any claim of the 6 '403 patent? 7 A Not all the elements, but I believe it 8 has some. 9 Q I'll ask you to take a look at 10 Exhibit 2029. Again, this is another email 11 between you and Mr. Lagermann, correct? 12 A Yes. 13 Q I'll go back to my, my other question, 14 which is: Did you ever attempt to identify every 15 element of any claim of the '403 patent in 16 Exhibit 2029? 17 A I did attempt -- excuse me -- to find 18 elements of our claims here in this document. 19 Q Some elements; is that your testimony? 20 A Well, we looked for elements. 21 Q Okay, and do you believe Exhibit 2029 22 discloses every element of any claim of the '403 23 patent? 24 A Excuse me. 25 MR. HEINTZ: And I'll object to</p>

28 (Pages 106 to 109)

<p style="text-align: right;">Page 110</p> <p>1 that question to the extent that it calls for</p> <p>2 attorney/client privileged communication. If</p> <p>3 you can answer that question without</p> <p>4 revealing those communications, if any, you</p> <p>5 can do so.</p> <p>6 THE WITNESS: I'm sorry. Could I</p> <p>7 hear the question again.</p> <p>8 (Whereupon, reporter reads</p> <p>9 requested material.)</p> <p>10 THE WITNESS: I don't know, because</p> <p>11 I'm not a patent attorney, and I don't feel</p> <p>12 I'm really capable of answering that</p> <p>13 question.</p> <p>14 BY MR. MICALLEF:</p> <p>15 Q Let me just understand your last answer.</p> <p>16 You feel you're not capable of answering my</p> <p>17 question, because, as someone who is not a patent</p> <p>18 attorney, you feel you could not read the claim</p> <p>19 language on whatever is in this Exhibit 2029? Am</p> <p>20 I understanding your position correctly?</p> <p>21 A Partially, yes.</p> <p>22 Q What, what am I not understanding about</p> <p>23 it then?</p> <p>24 A Well, it's a two-way sword, so</p> <p>25 understanding the claims and being able to</p>	<p style="text-align: right;">Page 112</p> <p>1 I said, that there are elements within the scope</p> <p>2 of various claims in this.</p> <p>3 Q Do you know -- there's a reference in</p> <p>4 this Exhibit 2029 to a website,</p> <p>5 dubdubdub.dynasite.net?</p> <p>6 A Yes.</p> <p>7 Q Do you know what that was?</p> <p>8 A It was something we created. It was</p> <p>9 just a term, like a, a name, a placeholder before</p> <p>10 we said, ooh, it's SurfCast.</p> <p>11 Q It was not a real website?</p> <p>12 A No, not -- there was no external</p> <p>13 reference.</p> <p>14 MR. HEINTZ: I've noticed</p> <p>15 Mr. Santoro is kind of flushed. I'm</p> <p>16 wondering if he's having a reaction to these</p> <p>17 peanuts or something. Is there a time you</p> <p>18 want to break for lunch, 12:30?</p> <p>19 MR. MICALLEF: Let's do it right</p> <p>20 now, why don't we take an hour for lunch and</p> <p>21 come back at 1:30.</p> <p>22 THE VIDEOGRAPHER: Going off</p> <p>23 record, the time is 12:23:03.</p> <p>24 (Whereupon, the lunch recess was</p> <p>25 taken.)</p>
<p style="text-align: right;">Page 111</p> <p>1 interpret those, but also understanding what the</p> <p>2 constituent parts of those claims are, those</p> <p>3 elements.</p> <p>4 Q And, and you feel because you're not a</p> <p>5 patent attorney, you can't apply those claims to</p> <p>6 Exhibit 2029; is that fair?</p> <p>7 Would you like the question read back?</p> <p>8 A No, that's okay.</p> <p>9 Actually, yes, would you read the</p> <p>10 question back, please.</p> <p>11 (Whereupon, reporter reads</p> <p>12 requested material.)</p> <p>13 THE WITNESS: What I do believe is</p> <p>14 that there are elements of claims of our '403</p> <p>15 patent or our provisional that are --</p> <p>16 sorry -- that are within the scope of certain</p> <p>17 claims of the patent in this email.</p> <p>18 BY MR. MICALLEF:</p> <p>19 Q So that wasn't my question. My question</p> <p>20 is: Your testimony was that because you're not a</p> <p>21 patent attorney, you believe you cannot apply the</p> <p>22 claims to whatever is disclosed in Exhibit 2029;</p> <p>23 is that right?</p> <p>24 A I believe that it's best to leave that</p> <p>25 up to my patent attorneys, but I believe that, as</p>	<p style="text-align: right;">Page 113</p> <p>1 THE VIDEOGRAPHER: We're back on</p> <p>2 record at 13:32:27.</p> <p>3 BY MR. MICALLEF:</p> <p>4 Q Mr. Santoro, did you have any</p> <p>5 discussions with your attorneys over the break</p> <p>6 about the substance or conduct of this deposition?</p> <p>7 A No.</p> <p>8 Q I'm going to hand you Exhibit 2032, have</p> <p>9 you take a look at that.</p> <p>10 A Yes.</p> <p>11 Q So Exhibit 2032 is again an email from</p> <p>12 you to Mr. Lagermann that appears to be forwarding</p> <p>13 another email from someone named Joseph Kelter</p> <p>14 (phonetic); is that fair?</p> <p>15 A Yes.</p> <p>16 Q Who is Joseph Kelter?</p> <p>17 A Joe Kelter was a renowned graphical or</p> <p>18 graphic artist who designed our SurfCast logo, and</p> <p>19 was a friend, and we were talking with him about</p> <p>20 getting involved with SurfCast.</p> <p>21 Q What is the SurfCast logo supposed to</p> <p>22 depict?</p> <p>23 A You'd have to ask Joe Kelter, but I</p> <p>24 think it looks like an S and looks like a C, and</p> <p>25 it looks kind of like a steaming cup of coffee,</p>

29 (Pages 110 to 113)

<p style="text-align: right;">Page 114</p> <p>1 but I think it was just a stylized thing that 2 looked cool as opposed to anything grid-like. 3 Q So in your declaration, Exhibit 2005, 4 you cite to Exhibit 2032 at I believe page 16, 5 paragraph 38. 6 Could you pull that out? 7 A Yes. Yep. 8 Q And in paragraph 38 you characterize 9 Exhibit 2032 as depicting how your inventions 10 would be different from products then on the 11 market. 12 Is that a fair characterization? 13 A Sure. Yes. 14 Q Can you tell me how Exhibit 2032 15 distinguishes the products that were then on the 16 market? 17 A You mean by me saying we're going to get 18 a lot of this? 19 Q Well, you say that, in paragraph 38, "on 20 this date [you] conferred with your co-inventor 21 regarding how our tile user interface inventions, 22 and particularly as embodied in the SurfCast 23 product, would be different from products then on 24 the market." 25 A Yes.</p>	<p style="text-align: right;">Page 116</p> <p>1 that, hey, there are products out there attacking 2 or trying to solve similar problems to what you're 3 talking about, so I gave him what I'd call 4 helicopter view, not a detailed view of what we 5 were sketching out, what we had invented at that 6 point in September. And on a very cursory basis, 7 his view was, well, what did he say? He said what 8 he said there. "Sounds interesting. Not sure how 9 it's different or complements or competes with 10 Active Desktop or something like Point Cast," 11 so . . . 12 Q Above that, on page 2 of 20 -- are you 13 done with your answer? 14 A Yes. 15 Q Above that, on page 2 of Exhibit 2032, 16 Mr. Kelter seems to say "this is extremely 17 confidential." 18 A I'm not sure if that's him saying that 19 or he's replying to an email. I don't know why 20 there's that little indent there. 21 Q Did you send him some information before 22 this email? 23 A I may have sent him a summary. 24 Q You got to let me finish my question, or 25 the court reporter is going to get really mad.</p>
<p style="text-align: right;">Page 115</p> <p>1 Q And then you say "Exhibit 2032 is a true 2 and correct copy of an email I sent to my 3 co-inventor on that date." 4 A Yes. 5 Q So is the email, Exhibit 2032, supposed 6 to indicate some kind of differences between your 7 product and what was on the market? 8 A No. When I used the word "conferred," I 9 mean we discussed this. So Klaus and I would talk 10 five, ten times a day sometimes, to the point 11 where the phone would ring and I would pick it up 12 without even seeing who it is and say, hey, Klaus, 13 because my wife just doesn't call me, so if my 14 phone was ringing, it would more likely than not 15 have been him, and when I send something like this 16 and the phone rings, I'm like, all right, so what 17 do you think, and then having a discussion along 18 those lines. 19 Q Okay, but the document, Exhibit 2032, 20 doesn't include any distinction between your 21 system and Microsoft Active Desktop; is that fair? 22 A Yes. 23 Q Why was Mr. Kelter commenting about 24 Active Desktop? 25 A I think in a very broad or general sense</p>	<p style="text-align: right;">Page 117</p> <p>1 A Beg your pardon. 2 Q The question is: Did you send 3 Mr. Kelter something before this email on page 2 4 of Exhibit 2032? 5 A I probably did. 6 Q Do you remember what it was? 7 A It would probably have been one 8 generation of those summaries, a version of those 9 summaries we were writing up, what we call the 10 business plan or -- and as I said before, they 11 were very modular, so I don't recall what sections 12 we gave him. 13 Q Did you have any other communications 14 with Mr. Kelter about Microsoft Active Desktop? 15 A No. 16 Q Mr. Kelter also mentions Point Cast. 17 A Yes. 18 Q Do you know what that is? 19 A I, I vaguely -- I mean I know what it -- 20 I'm aware of it existing, because it's been 21 mentioned recently, but I don't really recall the 22 layout or all its functionality. Every time I 23 tried to use Point Cast back in the '90s, it would 24 grind to a halt. 25 Q And so Mr. Kelter's email to you is</p>

30 (Pages 114 to 117)

<p style="text-align: right;">Page 118</p> <p>1 dated September 8, 1999, correct?</p> <p>2 A Yes.</p> <p>3 Q And your email to Mr. Lagermann would be</p> <p>4 on page 1 of Exhibit 2032, is the next email,</p> <p>5 correct?</p> <p>6 A Yes.</p> <p>7 Q In between those two, did you respond to</p> <p>8 Mr. Kelter?</p> <p>9 A I don't recall. I don't recall whether</p> <p>10 it really -- I felt it required a response.</p> <p>11 I was also just looking at the time</p> <p>12 stamps, because I don't know whether this is -- he</p> <p>13 lived in Philadelphia. Whether this was</p> <p>14 11:00 p.m., 11:50 p.m. Philly time or London time</p> <p>15 and whether my response was London time, or I may</p> <p>16 have been in Maine then. So I don't know how much</p> <p>17 time there was in between those.</p> <p>18 Q I see. Okay.</p> <p>19 I'm going to have you take a look at</p> <p>20 Exhibit 2034.</p> <p>21 A Yes.</p> <p>22 Q And this is an email from you to</p> <p>23 Mr. Lagermann and Mr. Dechaene, correct?</p> <p>24 A And, well, they're copied on it. PRD is</p> <p>25 Paul Destefano.</p>	<p style="text-align: right;">Page 120</p> <p>1 Competition"?</p> <p>2 A Yes.</p> <p>3 Q And do you know what information has</p> <p>4 been redacted from this document?</p> <p>5 A Yes.</p> <p>6 Q Can you tell me what that information</p> <p>7 is?</p> <p>8 MR. HEINTZ: I'll object to that</p> <p>9 question on the basis it calls for</p> <p>10 attorney/client privileged communication, and</p> <p>11 I'll instruct the witness not to answer to</p> <p>12 the extent doing so would reveal those</p> <p>13 communications.</p> <p>14 THE WITNESS: I can say that this</p> <p>15 is an example of, aside from the opportunity</p> <p>16 we were discussing, the, some of the, what we</p> <p>17 would view as competition or partners or</p> <p>18 customers that we would have given to Paul</p> <p>19 with the expectation that he passed this</p> <p>20 along to Richard Bone and Bret Lovejoy and</p> <p>21 Andrew Gray in the diligence of the patent.</p> <p>22 BY MR. MICALLEF:</p> <p>23 Q Can you tell me anything else about the</p> <p>24 information that's been redacted?</p> <p>25 MR. HEINTZ: Again same</p>
<p style="text-align: right;">Page 119</p> <p>1 Q I see.</p> <p>2 A And then -- sorry. In the top you can</p> <p>3 see it says Paul Destefano, and those two punch</p> <p>4 marks on the top, I think this -- I'm pretty</p> <p>5 certain this was taken out of -- when Pennie</p> <p>6 liquidated, a lot of the files got shipped to me.</p> <p>7 So I believe this document was taken out of their</p> <p>8 files.</p> <p>9 Q What does the subject line refer to?</p> <p>10 A "Opportunity and Competition," meaning</p> <p>11 this would have been another extrapolation or</p> <p>12 module out of the various documents we were</p> <p>13 writing up that discussed both the SurfCast</p> <p>14 opportunity, the company's opportunity, the</p> <p>15 corporate opportunity, as well as the product</p> <p>16 opportunity, and the competition that was in the</p> <p>17 marketplace.</p> <p>18 Q And so would it be correct to</p> <p>19 conclude -- and I'm just looking at the top margin</p> <p>20 that you pointed out and noting that the first</p> <p>21 page has a different one than all the other pages.</p> <p>22 So my question is: Would it be correct</p> <p>23 to conclude that the first page is an email and</p> <p>24 that all the other pages of Exhibit 2034 are some</p> <p>25 kind of Word document entitled "Opportunity and</p>	<p style="text-align: right;">Page 121</p> <p>1 instruction. I'll object to the question to</p> <p>2 the extent it calls for attorney/client</p> <p>3 privileged communications and instruct you</p> <p>4 not to answer to the extent doing so would</p> <p>5 reveal privileged communications.</p> <p>6 THE WITNESS: Other than that, I'd</p> <p>7 say that it would be privileged, and I</p> <p>8 decline to say any more about that particular</p> <p>9 aspect of it.</p> <p>10 BY MR. MICALLEF:</p> <p>11 Q Okay.</p> <p>12 I'm going to ask you to take a look at</p> <p>13 Exhibit 2036.</p> <p>14 A Yes.</p> <p>15 Q We may get back to this later, but I</p> <p>16 want to ask you one question about this. This is</p> <p>17 an email chain -- several emails, I guess, but</p> <p>18 they are all between you and Mr. Lagermann.</p> <p>19 Is that fair?</p> <p>20 A Yes.</p> <p>21 Q Okay.</p> <p>22 A Well, hold on. Sorry. Let me just</p> <p>23 double-check that.</p> <p>24 Yes.</p> <p>25 Q I'm going to ask you to take a look at</p>

31 (Pages 118 to 121)

<p style="text-align: right;">Page 122</p> <p>1 Exhibit 2044.</p> <p>2 A Yes.</p> <p>3 Q Now, this is a document entitled</p> <p>4 "Product Development Schedule," correct?</p> <p>5 A Yes.</p> <p>6 Q And so would it be fair to say that this</p> <p>7 is describing a prospective schedule, at least as</p> <p>8 of the time of its creation?</p> <p>9 A I checked metadata on all these</p> <p>10 documents, but I can't remember off the top of my</p> <p>11 head when this document was created, but I'm, I'm</p> <p>12 assuming it was created during 1999, and maybe,</p> <p>13 maybe the declaration refers to that particular</p> <p>14 date. Maybe we could match it up, but that was</p> <p>15 before development had begun, so yes, I'd say that</p> <p>16 was a fair statement.</p> <p>17 Q Okay.</p> <p>18 Now, it looks like the first line under</p> <p>19 the first task of Exhibit 2044 refers to a demo</p> <p>20 prototype.</p> <p>21 Do you see that?</p> <p>22 A Yes.</p> <p>23 Q Can you tell me what that was?</p> <p>24 Well, first of all, let me ask you a</p> <p>25 different question. Did you ever actually make a</p>	<p style="text-align: right;">Page 124</p> <p>1 Q And did that prototype actually</p> <p>2 communicate with real information sources?</p> <p>3 A I don't recall.</p> <p>4 Q And so by "emulate" do you mean it sort</p> <p>5 of appeared to someone looking at the product that</p> <p>6 it worked in the way you were wanting it to work?</p> <p>7 A Yes, and Klaus put that together, so I</p> <p>8 don't know what he did behind the screen, so . . .</p> <p>9 Q You don't know?</p> <p>10 A I don't know.</p> <p>11 Q Okay.</p> <p>12 I'm going to have you look at</p> <p>13 Exhibit 2049. Do you know -- and my question is:</p> <p>14 Do you know what material is redacted from this</p> <p>15 document?</p> <p>16 A Yes, but I can't recall it off the top</p> <p>17 of my head.</p> <p>18 Q So let me ask you a different question.</p> <p>19 As you sit here today then, you don't know what's</p> <p>20 redacted; is that fair?</p> <p>21 A No. I do, because I read these and know</p> <p>22 what's there, but I can't recite it to you what's</p> <p>23 in a particular line.</p> <p>24 Q I see. Can you tell me anything about</p> <p>25 what is redacted from this document?</p>
<p style="text-align: right;">Page 123</p> <p>1 demo prototype?</p> <p>2 A There were various -- as you know from</p> <p>3 the last deposition, there were various versions</p> <p>4 of the product. Earlier on there were some demos</p> <p>5 that were more emulations or -- I think there's a</p> <p>6 SurfCast movie, which I've been unable to see, but</p> <p>7 I know there was a SurfCast movie out there that</p> <p>8 was done early on, so I believe that's what that</p> <p>9 was referring to.</p> <p>10 Q And would the demo prototype -- when you</p> <p>11 say "an emulation," was it something that did not</p> <p>12 have the actual functionality that you were</p> <p>13 envisioning?</p> <p>14 A It emulated it, as the word means to,</p> <p>15 to, how the product was proposed to work, would</p> <p>16 work.</p> <p>17 Q But when you say "emulated," does that</p> <p>18 mean it didn't actually operate as the product was</p> <p>19 proposed to work?</p> <p>20 A That's right.</p> <p>21 Well, sorry. Let me rephrase that. No,</p> <p>22 I rephrase to say it emulated exactly as how the</p> <p>23 product would propose to work, but the emulation</p> <p>24 was an emulation, not the actual functioning of a</p> <p>25 product.</p>	<p style="text-align: right;">Page 125</p> <p>1 MR. HEINTZ: And I'll object to</p> <p>2 that question to the extent it calls for</p> <p>3 attorney/client privileged information, and</p> <p>4 instruct the witness that he can answer that</p> <p>5 question to the extent doing so would not</p> <p>6 reveal such attorney/client privileged</p> <p>7 communications.</p> <p>8 THE WITNESS: I, I can't talk about</p> <p>9 it.</p> <p>10 BY MR. MICALLEF:</p> <p>11 Q Because of the privilege assertion?</p> <p>12 A Because I don't want to -- yeah, because</p> <p>13 of privilege.</p> <p>14 Q Okay.</p> <p>15 I'm going to ask you to take a look at</p> <p>16 Exhibit 2050.</p> <p>17 A Yes.</p> <p>18 Q Do you know what has been redacted from</p> <p>19 this document?</p> <p>20 A Yes.</p> <p>21 Q Can you tell me what it is?</p> <p>22 MR. HEINTZ: Caution the witness</p> <p>23 that he should not reveal any attorney/client</p> <p>24 privileged communications when answering that</p> <p>25 question.</p>

32 (Pages 122 to 125)

<p style="text-align: right;">Page 126</p> <p>1 THE WITNESS: No, I can't talk 2 about it without risking privilege. 3 BY MR. MICALLEF: 4 Q Okay. 5 On page 3 of Exhibit 2050 -- 6 A Yes, yes. 7 Q -- there is some handwriting. 8 A Yes. 9 Q Can you read that? 10 A Yes. 11 Q What's it say? 12 A It says "transfer to 9555.003." 13 Q Do you have an understanding of what 14 that means? 15 A I believe it's an internal Pennie 16 designation of a case number. 17 Q Do you know if that internal Pennie 18 designation refers to SurfCast or any SurfCast 19 matter? 20 A I'm not sure what their case numbers are 21 or how they match up with our various matters. 22 Q Mr. Santoro, I'm going to have you take 23 a look at Exhibit 2065. 24 A Yes. 25 Q So you -- Exhibit 2065 you describe on</p>	<p style="text-align: right;">Page 128</p> <p>1 it as a lawyer is something different. 2 Q Did the lawyers tell you which parts of 3 the document should correspond to which claim 4 elements? 5 MR. HEINTZ: Object. It calls for 6 attorney/client privileged information. 7 Instruct the witness not to answer. 8 THE WITNESS: Sorry. I'll take 9 advice of my counsel and decline to answer. 10 BY MR. MICALLEF: 11 Q What claim interpretations did you use 12 in picking out the portions of the document that 13 you say correspond to the claim elements? 14 A What do you mean by "claim 15 interpretations"? 16 Q Do you know what a claim interpretation 17 is? 18 A Not how you're -- no, I don't. I mean I 19 might know it, but I don't know what you're 20 referring to. 21 Q Have you ever heard the term claim 22 interpretation before? 23 A I'm not sure if I have. 24 Q How about claim construction? 25 A I've heard that term, yes.</p>
<p style="text-align: right;">Page 127</p> <p>1 page 9, paragraph 19 of your declaration, as a 2 chart prepared at your direction, correct? 3 A Yes. 4 Q And you did have someone prepare this? 5 A I worked in collaboration with counsel. 6 Q And you didn't actually pick out the 7 portions of the documents that you say correspond 8 to the claim elements, did you? 9 A In some cases, yes. 10 Q Well, how could you do that if you were 11 not a patent lawyer? 12 A When you take certain claims, I could 13 read the patent and see that there were certain 14 sections or certain references that indicated that 15 they were in the scope of the elements of what we 16 were claiming, and then I'd hand that to the 17 lawyers, or they would come up with those sections 18 themselves, and determine if it was viable to use 19 as a reference. 20 Q Didn't you just tell me before lunch 21 that you couldn't read the claims of the patent on 22 one of your other exhibits, because you were not a 23 patent lawyer? 24 A I don't recall exactly what I said, but 25 I could read a claim. Whether I could understand</p>	<p style="text-align: right;">Page 129</p> <p>1 Q What's your understanding of a claim 2 construction? 3 A Terms or phrases used to construct a 4 claim or support a claim. 5 Q What do you mean by "support"? 6 A Show evidence of. 7 Q Show evidence of a claim? 8 A Of a claim description or claim element. 9 Q And by that do you mean evidence in the 10 patent specification? 11 A Or evidence in these various documents 12 that support the, what was in the claim 13 specification. 14 Q When you were directing people to create 15 this chart, did you apply any particular claim 16 construction? 17 A Imply or apply? 18 Q Apply. 19 A I don't know what that would mean. 20 Sorry. 21 Q When you were directing people to make 22 this chart, did you use any particular definition 23 for any of the words or phrases in the claim? 24 A I mean the claims are pretty 25 self-explanatory and precise, so I think if</p>

33 (Pages 126 to 129)

<p style="text-align: right;">Page 130</p> <p>1 anything, it was done in the reverse, where we 2 would look at the claim and then look at the 3 various documents we referred to in these various 4 exhibits, and say there's an example of where that 5 indicates -- supports the claim. Excuse me. 6 Q Did you read the board's order in this 7 proceeding, instituting these proceedings? 8 A Yes. 9 Q Do you recall that the board adopted 10 certain interpretations of various words and 11 phrases in the claims? 12 A Yes. 13 Q Did you use -- when you were directing 14 someone to make Exhibit 2065, did you use the 15 board's interpretations? 16 A Use their interpretations of the claims? 17 Q Yes, sir. 18 A I believe we used the claims themselves 19 from the '403. 20 Q Just so I understand that last answer, 21 then you did not use the board's claim 22 interpretations when you were directing people 23 to -- 24 A I don't know -- 25 Q Let me finish -- when you were directing</p>	<p style="text-align: right;">Page 132</p> <p>1 or not, because I was not the sole author of the 2 document, so it's, it's not a complete picture. 3 It's an unfair depiction to say did I do it or 4 not. I don't think it gives a complete answer -- 5 Q So -- 6 A -- whether I did or not. 7 Q -- would you say that Exhibit 2065 was 8 not prepared at your direction? 9 A No, it was, but it was also prepared in 10 collaboration with others, with patent counsel. 11 Q And just the directions that you gave, 12 the input that you gave, did you use the board's 13 claim interpretations? 14 A I don't recall. 15 Q Are you aware -- did you read SurfCast's 16 patent owner's response in these proceedings? 17 A Yes. 18 Q Okay. 19 Are you aware that SurfCast has urged 20 the board to modify several of its claim 21 interpretations in that response? 22 A Yes. 23 Q Did you apply the claim -- in having 24 Exhibit 2065 prepared, did you apply the claim 25 interpretations that SurfCast is urging the board</p>
<p style="text-align: right;">Page 131</p> <p>1 peopled to create Exhibit 2065? 2 A I don't know if the lawyers also used 3 the board's interpretation or not. 4 Q But I'm talking about you, Mr. Santoro, 5 so I just want to understand your testimony. 6 You did not use the board's claim 7 interpretations when you were directing people to 8 put together Exhibit 2065; is that fair? 9 A This was a collaborative document that I 10 had involvement in, edited, but I don't know what 11 the lawyers putting this together used, whether it 12 was just the '403 claim terms or whether it was 13 also the board's construction, so I don't know. 14 Q Again I'm not asking you about what the 15 lawyers did now. I'm just asking about you, and I 16 need to know whether you applied the board's claim 17 constructions when you were directing people to 18 put together Exhibit 2065. 19 A I don't know if it can be characterized 20 that way, because I didn't direct, I didn't lay 21 out the definition of here's to do -- here's what 22 needs to be done, here is what you need to 23 include, don't include anything else. 24 So as this was being pulled together, I 25 don't know whether this was -- that was included</p>	<p style="text-align: right;">Page 133</p> <p>1 to adopt? 2 A Let me look through this. 3 I'm not sure I really understand the 4 question, to be honest. 5 MR. MICALLEF: Can we have it read 6 back. 7 (Whereupon, reporter reads 8 requested material.) 9 THE WITNESS: I don't know. 10 BY MR. MICALLEF: 11 Q Do you know what it means to apply a 12 claim interpretation? 13 A I'm not sure I do. 14 Q In your declaration back at page 9, 15 paragraph 19, where you say that Exhibit 2065 is a 16 chart "prepared at my direction," what do you mean 17 by prepared at your direction? 18 A In putting this together, we discuss, I 19 discuss with counsel what we could create to show 20 support of the claims from our old documents. 21 Q And was your input limited to simply 22 telling the lawyers go make a chart without any 23 substantive input? 24 A No. 25 Q So you identified certain things in the</p>

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<p style="text-align: right;">Page 134</p> <p>1 referenced documents that you thought corresponded 2 to one or more claim elements. 3 Is that fair? 4 A Yes, or an element would be identified 5 and clarification would be sought. Does this mean 6 that or were you thinking this? So it was a 7 collaborative ongoing process where I'd edit and 8 we'd have sessions to work on it together. 9 Q And so did you identify support in these 10 referenced documents for every element of the 11 claims that are listed that are here or just some 12 of them? 13 A I'm not sure, but I believe that the 14 elements that are listed here are all within the 15 scope of these claims. 16 Q But I asked a different question. 17 Were you the one who picked out what to 18 put in this chart for every, in every box or just 19 some of the boxes? 20 A I was a coauthor, so I picked out some, 21 I edited others, I reviewed all of them. 22 Q Who were the other coauthors or 23 coauthor? 24 A Lawyers at DLA and Dr. Bone. 25 Q Which lawyers at DLA?</p>	<p style="text-align: right;">Page 136</p> <p>1 in the row. So let's make sure we agree on our 2 terms. 3 So obviously this chart is a bunch of 4 rows and columns, correct? 5 A Yes. 6 Q There is a row with four columns, the 7 left which has "partitioning" in it. 8 Do you see that? 9 A Yes. 10 Q And that starts at the very bottom of 11 page 2 and goes over to page 5. 12 A Yes. 13 Q Okay, so I'm talking about that row. 14 A All right. Because of the size, it's a 15 little offputting. 16 Q And my question is: Will you agree that 17 nothing in that row uses the word persistence? 18 A Let me just look through it, please. 19 I don't see the word persistence. 20 Q Is there something in that row that you 21 think means persistence? 22 A Well, sure. I think the way we define 23 persistence has a couple dimensions to the 24 meaning, but if you look at the second column -- 25 let's just go through this. It's kind of like an</p>
<p style="text-align: right;">Page 135</p> <p>1 A Gianni Minutoli, Tiffany Miller, Amy 2 Walters, Jim Heintz. I'm not sure if there's 3 anyone else. Maybe Erica Pascal. 4 Q Can you tell me which portions of this 5 chart you were the author of? 6 A Not necessarily, because the way we'd 7 work would be very -- several sessions where we'd 8 get on the phone and add pieces or subtract pieces 9 or move pieces around, so it really was a 10 collaborative document. 11 Q I'd like to direct your attention to the 12 portion of the chart that begins on page 2 and 13 goes over -- actually, I think it goes over to 14 page 5. This is the chart that -- the portion of 15 the chart that deals with the partitioning step. 16 A Yep. 17 Q Do you see that? 18 A Yes. 19 Q You agree that the word persistence 20 doesn't appear anywhere in that row? 21 A Which row? 22 Q The row that has the partitioning step 23 in the -- 24 A In the column? 25 Q -- in the left-hand column. No, I mean</p>	<p style="text-align: right;">Page 137</p> <p>1 advanced bookmarked page. I think bookmarks are 2 persistent. 3 Let me just take it column by column, so 4 that way rather than getting us confused by 5 jumping back and forth -- and then again, 6 everything I want bookmarks on one page of my 7 face, an EPG whereby my 20 favorite websites are 8 playing. So to me an EPG, the idea of what we 9 were creating as an electronic program guide was 10 persistent, because why would you build it and 11 then for it just to go away. 12 And again down on page 4, what I want is 13 a home page, one page with what I want and need. 14 I subscribe to the New York Times, Wall Street 15 Journal, My Ski Report, et cetera. To me all that 16 is persistent. 17 Then moving to the next column -- I mean 18 when you look at in the next column, the section 19 beginning "you click on it, it opens and explodes 20 like an app," and it dials into SurfCast and 21 updates all the tiles, the tiles would be 22 persistent, because they would have already been 23 there. They wouldn't have updated with 24 information if they hadn't already been configured 25 or programmed to be persistent.</p>

35 (Pages 134 to 137)

<p style="text-align: right;">Page 138</p> <p>1 I mean again, even the next column or 2 next -- page 4, "each tile can be programmed to 3 point to a file," to me that's again part of 4 persistence. 5 Next section. "Each tile represents a 6 stream, an address tuning that address to a 7 location." Again, further below, "these tiles are 8 programmable or configurable to configure 9 streaming which are clickable." 10 And again further down, addresses or 11 channels can be file docs images." You wouldn't 12 do this if there wasn't meant to be persistent, in 13 my view, and -- "SurfCast enabled PC screen is a 14 grid of tiles covering the entire PC screen." I'm 15 just muttering. I was reciting, "a SurfCast 16 enabled PC screen is a grid of tiles covering the 17 entire PC screen." I was reciting what's in the 18 far right column of that section. 19 Again, "the user can program each tile 20 to represent an address or application." Sorry. 21 So that's it, and, and I think in many 22 ways that's an example of what we mean by 23 persistence. You wouldn't do any of these actions 24 if it wasn't meant to be persistent. 25 Q Mr. Santoro, it's true, isn't it, that</p>	<p style="text-align: right;">Page 140</p> <p>1 whole thing. 2 So going to the top of that section, it 3 states that "tiles are programmable or 4 configurable" so that a user could configure the 5 streaming thumbnails or tiles to be clickable with 6 the following, I guess, functionalities, 7 mouse-over. It would explode, like enlarge its 8 view. Right-click to refresh it, left click 9 audio. If there was any, you know, particular 10 site, for instance, or double click to navigate. 11 So I think it's pretty self-explanatory 12 that we're talking about the configurable aspects 13 a user could give tiles. 14 Q And by "navigate" what did you mean? 15 A Go to access underlying information. 16 Q Okay, and so when it says "clickable," 17 do you think a mouse-over is a type of 18 clickability? 19 A Maybe that's not the best use of the 20 word "clickable," but I think that mouse-over is a 21 functionality that is available to a user through 22 that particular device. It also provides 23 clickability. 24 Q And so by "mouse-over," you mean simply 25 moving the mouse cursor over a tile?</p>
<p style="text-align: right;">Page 139</p> <p>1 you don't have a single document from the 1999 2 time frame that expressly says that persistence is 3 an important part of your invention? 4 A Do we have a document that says that? 5 I, I don't know whether we do or not. I think 6 that it is so innate and inherent to the idea of 7 SurfCast, that the product and the patent, that it 8 explains it is persistent, that it's just very 9 clear to me in many places, such as these examples 10 I just gave, that those are examples of 11 persistence, to me. 12 Q Could I direct your attention to the 13 portion of Exhibit 2065 that deals with claim 5, I 14 believe it starts at the bottom of page 8 and goes 15 over to page 9. 16 A Yes. 17 Q Now, in the middle -- I'm sorry. I 18 guess the third column there, there is reference 19 to "mouse-over." I'm looking now at the top of 20 page 9, there's reference to "mouse-over - 21 explode." 22 Do you see that? 23 A Yes. 24 Q Can you tell me what that means? 25 A Yes. Hold on. I'm just looking at the</p>	<p style="text-align: right;">Page 141</p> <p>1 A Yes. 2 Q Okay. 3 So this claim, claim 5, talks about 4 attributing a selected state to a tile, basically. 5 Are any of these that you just talked about -- 6 mouse-over, right click, left click, double 7 click -- examples of attributing a selected state 8 to a tile? 9 A Yes. 10 Q Are they all different examples of 11 attributing a selected state to a tile? 12 A Would you please read back the question. 13 (Whereupon, reporter reads 14 requested material.) 15 BY MR. MICALLEF: 16 Q Do you understand my question? 17 A Not really. Sorry. 18 Q Let me break it up. 19 Is the mouse-over -- when you mouse-over 20 a tile, would that be an example of attributing a 21 selected state to a tile? 22 A I'd call that maybe more of an 23 unselected state. 24 Q So the tile, when you mouse-over it, 25 that tile is not selected?</p>

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<p style="text-align: right;">Page 142</p> <p>1 A That's right.</p> <p>2 Q Okay.</p> <p>3 A right-click of a tile, is that an</p> <p>4 example of attributing a selected state to a tile?</p> <p>5 MR. HEINTZ: Object to that on</p> <p>6 foundation.</p> <p>7 THE WITNESS: I'm not sure.</p> <p>8 BY MR. MICALLEF:</p> <p>9 Q Okay.</p> <p>10 Left-click to get audio, is that an</p> <p>11 example of attributing a selected state to a tile?</p> <p>12 A I'm not sure there either.</p> <p>13 Q I want you to keep Exhibit 2065 in front</p> <p>14 of you. I'm going to give you also Exhibit 2067.</p> <p>15 The reason, the reason I want them both in front</p> <p>16 of you is because there's a, a reference in</p> <p>17 Exhibit 2065 to Exhibit 2067 that I want to ask</p> <p>18 you about.</p> <p>19 A Okay.</p> <p>20 Q So here's Exhibit 2067.</p> <p>21 So on Exhibit 2065, on that same page 9</p> <p>22 we were just looking at, in the lower right-hand</p> <p>23 corner, there is a quote that reads, quote, "a</p> <p>24 user can," dot, dot, dot, "configure the refresh</p> <p>25 rate of each tile," end quote.</p>	<p style="text-align: right;">Page 144</p> <p>1 So the second sentence in that</p> <p>2 paragraph, beginning on the top line, "A user can</p> <p>3 dynamically bookmark an address, place it as a</p> <p>4 tile in a mosaic that covers the entire PC screen,</p> <p>5 where this tile is a clickable streaming</p> <p>6 thumbnail, pointing to applications, files and</p> <p>7 channels of content from different types of</p> <p>8 networks, and configure the refresh rate of each</p> <p>9 tile, for instance." And then further on, "tiles</p> <p>10 are clickable to right-click equals refresh tile."</p> <p>11 I think that's an answer to what you</p> <p>12 asked.</p> <p>13 Q I don't think so. Let me just make sure</p> <p>14 you understand my question.</p> <p>15 A I guess I don't.</p> <p>16 Q Page 9 of Exhibit 2065.</p> <p>17 A Yes.</p> <p>18 Q Lower right-hand corner.</p> <p>19 A Yes.</p> <p>20 Q That's a quote, isn't it?</p> <p>21 A "A user can," dot, dot, dot, "configure</p> <p>22 the refresh rate of a tile."</p> <p>23 Q And it's a quote, right? So I'm looking</p> <p>24 for the quote, those exact words. Can you find it</p> <p>25 on page 3 of Exhibit 2067?</p>
<p style="text-align: right;">Page 143</p> <p>1 Do you see that?</p> <p>2 A Yes.</p> <p>3 Q And on the next page, if you turn the</p> <p>4 page, it appears to be --</p> <p>5 A Yes.</p> <p>6 Q -- a citation to Exhibit 2067 at page 3.</p> <p>7 A I see that.</p> <p>8 Q And can you show me where on page 23</p> <p>9 [sic] of Exhibit 2067 that quote appears?</p> <p>10 A Page 3.</p> <p>11 Q Page 3 of Exhibit 2067, yes.</p> <p>12 A Yes. So if you look at, on page 3 of</p> <p>13 Exhibit 2067, the third paragraph or third bullet</p> <p>14 point, "Each tile behaves like a streaming</p> <p>15 thumbnail," in quotes, streaming thumbnail, in</p> <p>16 brackets, "in that it continually refreshes, i.e.,</p> <p>17 the refresh rate can be configured by the user,"</p> <p>18 close bracket, comma, "except these thumbnails</p> <p>19 represent not only websites but networks such as</p> <p>20 terrestrial television, satellite, cable TV, cable</p> <p>21 modem broadband."</p> <p>22 And then further down under the</p> <p>23 configurable properties of the SurfCast tile, you</p> <p>24 can see "tiles are clickable to" -- oh, wait.</p> <p>25 Sorry. That's a long sentence.</p>	<p style="text-align: right;">Page 145</p> <p>1 A It would seem -- yes, I can. So I would</p> <p>2 assume what it means is if you go to the paragraph</p> <p>3 that's entitled "The Configurable Properties of a</p> <p>4 SurfCast Tile," colon, and then the top line at</p> <p>5 the end, "a user can," and then put dot, dot, dot</p> <p>6 right there, so there's the beginning of that</p> <p>7 sentence that's dot, dot, dotted, and then go down</p> <p>8 to the fifth line, "can configure the refresh rate</p> <p>9 of each tile."</p> <p>10 And then so they take out everything in</p> <p>11 between and take out the "for instance," so that</p> <p>12 would be an exact match. I guess what they should</p> <p>13 have done or the lawyers is put a dot, dot, dot</p> <p>14 after the word "tile" in Exhibit 2065.</p> <p>15 MR. MICALLEF: We're going to have</p> <p>16 to go off the record, because the tape is</p> <p>17 about to run out. So let's go off the</p> <p>18 record.</p> <p>19 THE VIDEOGRAPHER: This marks the</p> <p>20 end of tape 2 in the deposition of Ovid</p> <p>21 Santoro. The time is 14:28.</p> <p>22 (Whereupon, a short recess was</p> <p>23 taken.)</p> <p>24 THE VIDEOGRAPHER: We're back on</p> <p>25 record at 14:35:22. Here begins tape number</p>

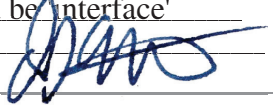

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<p style="text-align: right;">Page 146</p> <p>1 3 in the deposition of Ovid Santoro.</p> <p>2 MR. MICALLEF: Pass the witness.</p> <p>3 THE WITNESS: Sorry. What was</p> <p>4 that?</p> <p>5 MR. HEINTZ: He's passing the</p> <p>6 witness, which means it's my turn to ask</p> <p>7 questions. I'm sorry. I wasn't quite</p> <p>8 prepared. Can we go off the record for just</p> <p>9 a minute?</p> <p>10 MR. MICALLEF: Yes. I apologize.</p> <p>11 THE VIDEOGRAPHER: Going off record</p> <p>12 at 14:35.</p> <p>13 (Whereupon, a short recess was</p> <p>14 taken.)</p> <p>15 THE VIDEOGRAPHER: We're back on</p> <p>16 record at 14:44:39.</p> <p>17 EXAMINATION BY COUNSEL FOR ***00</p> <p>18 BY MR. HEINTZ:</p> <p>19 Q Mr. Santoro, I'll ask you to pick up</p> <p>20 Exhibit 2065 if you would.</p> <p>21 A Yes.</p> <p>22 Q Do you remember earlier Mr. Micallef</p> <p>23 asked you about the row that begins at the bottom</p> <p>24 of page 2 of 2065 and continues on toward page 5</p> <p>25 of Exhibit 2065?</p>	<p style="text-align: right;">Page 148</p> <p>1 column from the right. Do you see the line that</p> <p>2 reads "client, question mark" and then an</p> <p>3 ellipsis, "sits over windows," ellipsis, "open</p> <p>4 computer, turn on, you see SurfCast."</p> <p>5 Do you see that?</p> <p>6 A Yes.</p> <p>7 MR. MICALLEF: Object to form.</p> <p>8 MR. HEINTZ: What's the objection?</p> <p>9 MR. MICALLEF: You said third</p> <p>10 column from the right.</p> <p>11 THE WITNESS: Yes, it's the second</p> <p>12 column from the right. I was going to</p> <p>13 correct him.</p> <p>14 MR. HEINTZ: You're right. Third</p> <p>15 column from the right.</p> <p>16 BY MR. HEINTZ:</p> <p>17 Q All right. Again, talking about the</p> <p>18 third column from the left, you see those words,</p> <p>19 do you not, sir?</p> <p>20 A Yes.</p> <p>21 Q Can you explain what the words "open</p> <p>22 computer" mean?</p> <p>23 MR. MICALLEF: Objection.</p> <p>24 Foundation.</p> <p>25</p>
<p style="text-align: right;">Page 147</p> <p>1 Do you recall those questions?</p> <p>2 A Some of them, yes.</p> <p>3 Q Okay, and this row pertains to</p> <p>4 partitioning a visual display of the device into</p> <p>5 an array of tiles, where each tile in said array</p> <p>6 of tiles is associated with an information source</p> <p>7 in said plurality of information sources."</p> <p>8 Do you see that?</p> <p>9 A Yes.</p> <p>10 Q Okay, and is it your understanding that</p> <p>11 that's the claim language in that first column,</p> <p>12 the left-hand column?</p> <p>13 MR. MICALLEF: Objection. Leading.</p> <p>14 THE REPORTER: I'm sorry. I didn't</p> <p>15 hear the answer.</p> <p>16 THE WITNESS: No.</p> <p>17 BY MR. HEINTZ:</p> <p>18 Q Let me rephrase the question. Do you</p> <p>19 have an understanding of what's in the left-hand</p> <p>20 column of Exhibit 2065?</p> <p>21 A It looks to me like the claim, a claim</p> <p>22 from the '403 patent.</p> <p>23 Q Okay.</p> <p>24 I'd like to direct your attention now,</p> <p>25 sir, to the page 3 near the top, in the third</p>	<p style="text-align: right;">Page 149</p> <p>1 BY MR. HEINTZ:</p> <p>2 Q Let me withdraw that.</p> <p>3 Sir, do you have an understanding of</p> <p>4 what the words "open computer" mean?</p> <p>5 A I think we meant -- if I recall</p> <p>6 correctly, we meant something as simple as taking</p> <p>7 your laptop and opening the lid or top of it.</p> <p>8 Q That would be -- do you mean -- I'm</p> <p>9 sorry.</p> <p>10 A Yes, physically opening the laptop.</p> <p>11 Q Okay, and then do you have an</p> <p>12 understanding of what the words "turn," or the</p> <p>13 word "turn on" means?</p> <p>14 A To turn on the machine.</p> <p>15 Q What does "turn on the machine" mean?</p> <p>16 A If the machine was off and I wanted to</p> <p>17 do something, I'd have to turn on the machine,</p> <p>18 power it on.</p> <p>19 Q Okay, and then the words appear, "you</p> <p>20 see SurfCast."</p> <p>21 Do you see that?</p> <p>22 A Yes.</p> <p>23 Q What do those words mean?</p> <p>24 A The idea was that you sit at your desk,</p> <p>25 you open your computer, you power it on, and when</p>

38 (Pages 146 to 149)

<p style="text-align: right;">Page 150</p> <p>1 the screen -- when the machine is powered on, the</p> <p>2 first thing you would see would be SurfCast.</p> <p>3 Q And when you say "you would see</p> <p>4 SurfCast," what did that mean?</p> <p>5 A You would see SurfCast the product we</p> <p>6 were designing.</p> <p>7 Q So can you describe the visual image</p> <p>8 that you would see when you opened the computer</p> <p>9 and turned it on?</p> <p>10 MR. MICALLEF: Object to form.</p> <p>11 THE WITNESS: You would, you would</p> <p>12 see a grid on your computer, what we called a</p> <p>13 grid, that was composed of what we called</p> <p>14 tiles overlaying the screen.</p> <p>15 BY MR. HEINTZ:</p> <p>16 Q Would the tiles be blank?</p> <p>17 MR. MICALLEF: Object to form.</p> <p>18 Outside the scope.</p> <p>19 THE WITNESS: The tiles would be</p> <p>20 filled with information sources.</p> <p>21 BY MR. HEINTZ:</p> <p>22 Q What information sources?</p> <p>23 MR. MICALLEF: Same objection.</p> <p>24 THE WITNESS: Any -- a tile could</p> <p>25 be, in our view, any digital information</p>	<p style="text-align: right;">Page 152</p> <p>1 computer, you turn on the power, and you see, I</p> <p>2 believe you describe it as a grid of tiles.</p> <p>3 A Yes.</p> <p>4 Q And I think you also answered earlier</p> <p>5 that the tiles could be anything.</p> <p>6 A Yes.</p> <p>7 MR. MICALLEF: Same objections.</p> <p>8 BY MR. HEINTZ:</p> <p>9 Q But on a particular day when you opened</p> <p>10 up your computer and turned it on, which tiles</p> <p>11 would you see?</p> <p>12 MR. MICALLEF: Same objections.</p> <p>13 THE WITNESS: I think I understand</p> <p>14 what you're saying, and I think I understand</p> <p>15 Mr. Micallef's objections. The idea of the</p> <p>16 grid would be that the tiles within a grid</p> <p>17 would be those tiles that I as a user chose</p> <p>18 to be there.</p> <p>19 BY MR. HEINTZ:</p> <p>20 Q And in the context of opening your</p> <p>21 computer and turning it on, when did the choice</p> <p>22 that you, the user, made occur?</p> <p>23 MR. MICALLEF: Object to form.</p> <p>24 Incomplete hypothetical. Outside the scope.</p> <p>25 Lack of foundation.</p>
<p style="text-align: right;">Page 151</p> <p>1 source. The idea would be that if my</p> <p>2 computer was capable of receiving television</p> <p>3 signals, a tile could be a TV screen.</p> <p>4 If a tile -- sorry. If a, if a</p> <p>5 computer had a photo album on it, it could be</p> <p>6 photographs. If it had the ability to</p> <p>7 receive audio signals, it could be an MP3</p> <p>8 player or an audio player playing -- that was</p> <p>9 capable of playing music. It could be</p> <p>10 something from your hard drive, such as a</p> <p>11 Word document. It could actually be a Word</p> <p>12 document from something that might have been</p> <p>13 stored on the SurfCast server that you</p> <p>14 stored -- that I or you stored on the</p> <p>15 SurfCast server.</p> <p>16 BY MR. HEINTZ:</p> <p>17 Q Would the information you saw in any</p> <p>18 particular tile be randomly assigned?</p> <p>19 MR. MICALLEF: Object to form.</p> <p>20 Outside the scope. Incomplete and improper</p> <p>21 hypothetical.</p> <p>22 THE WITNESS: Would you, would you</p> <p>23 repeat the question, please.</p> <p>24 BY MR. HEINTZ:</p> <p>25 Q Well, you said that you open the</p>	<p style="text-align: right;">Page 153</p> <p>1 THE WITNESS: The tiles, once I</p> <p>2 turn on my computer, would have been there</p> <p>3 from a prior session, whether it would have</p> <p>4 been the near prior session or a long time</p> <p>5 ago prior session. The idea would be they</p> <p>6 were tiles that I saved both as far as the</p> <p>7 configurations to them as well as the sources</p> <p>8 they were targeting.</p> <p>9 MR. HEINTZ: No further questions.</p> <p>10 FURTHER EXAMINATION BY COUNSEL FOR ***C</p> <p>11 BY MR. MICALLEF:</p> <p>12 Q As of the date of your notebook, you did</p> <p>13 not have any working software that could implement</p> <p>14 what you claim to be your invention; is that fair?</p> <p>15 A Which notebook are you referring to?</p> <p>16 Q The notebook that's referenced in the</p> <p>17 third column from the left on Exhibit 2065.</p> <p>18 A The -- is that Exhibit 2023 or --</p> <p>19 Q Yes, sir.</p> <p>20 A And did we have any working prototype?</p> <p>21 Q That's right.</p> <p>22 A No.</p> <p>23 MR. MICALLEF: Pass the witness.</p> <p>24 MR. HEINTZ: No further questions.</p> <p>25 THE VIDEOGRAPHER: This marks the</p>

39 (Pages 150 to 153)

<p style="text-align: right;">Page 154</p> <p>1 end of tape number 3 and concludes today's 2 deposition. Going off record at 14:52:48. 3 THE REPORTER: You both want a 4 transcript? 5 MR. MICALLEF: Yes. 6 MR. HEINTZ: Yes. 7 THE REPORTER: Do you need a rough 8 draft? 9 MR. MICALLEF: That would be nice. 10 (Signature having not been 11 waived, the video deposition of 12 OVID SANTORO was concluded at 13 2:53 p.m.) 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 156</p> <p>1 ERRATA SHEET 2 IN RE: MICROSOFT CORPORATION V. SURFCAST, INC 3 RETURN BY: 4 PAGE LINE CORRECTION AND REASON 5 8 1 'Carol' should be 'Carroll' 6 9 4-5 Should be redacted 7 14 16 'band width' should be 'bandwidth' 8 27 22 'forum' should be 'Forum' 9 30 12 'forum' should be 'Forum' 10 35 17 missing word? Change to: 11 "I think whether it is..." 12 56 17 'Bret' should be 'Brett' 13 58 13 'Bret' should be 'Brett' 14 61 8 'would' should be 'had' 15 76 9 'Krabis' should be 'Kravis' 16 76 10 'Kapur' should be 'Kapor' 17 80 15 'assistants' should be 'assistant' 18 93 20 'is' should be 'his' 19 100 20 delete 'be' 20 100 21 change 'around a' to 'round' 21 133 18 'discuss' should be 'discussed' 22 133 19 'discuss' should be 'discussed' 23 137 7 'face' should be 'interface' 24 30 March 2014 25 (DATE) (SIGNATURE) </p>
<p style="text-align: right;">Page 155</p> <p>1 2 3 4 5 6 ACKNOWLEDGEMENT OF WITNESS 7 I, Ovid K. Santoro, do hereby 8 acknowledge that I have read and examined the 9 foregoing testimony, and the same is a true, 10 correct and complete transcription of the 11 testimony given by me, and any corrections 12 appear on the attached Errata sheet signed by 13 me. 14 15 16 30 March 2014  17 (DATE) (SIGNATURE) 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 157</p> <p>1 ERRATA SHEET 2 IN RE: MICROSOFT CORPORATION V. SURFCAST, INC 3 RETURN BY: 4 PAGE LINE CORRECTION AND REASON 5 _____ 6 _____ 7 _____ 8 _____ 9 _____ 10 _____ 11 _____ 12 _____ 13 _____ 14 _____ 15 _____ 16 _____ 17 _____ 18 _____ 19 _____ 20 _____ 21 _____ 22 _____ 23 _____ 24 _____ 25 (DATE) (SIGNATURE)</p>

40 (Pages 154 to 157)

CERTIFICATE OF SHORTHAND REPORTER -- NOTARY PUBLIC

I, Laurie Bangart, Registered
Professional Reporter, Certified Realtime
Reporter, the officer before whom the
foregoing deposition was taken, do hereby
certify that the foregoing transcript is a
true and correct record of the testimony
given; that said testimony was taken by me
stenographically and thereafter reduced to
typewriting under my supervision; and that I
am neither counsel for, related to, nor
employed by any of the parties to this case
and have no interest, financial or otherwise,
in its outcome.

IN WITNESS WHEREOF, I have hereunto
set my hand and affixed my notarial seal this
6th day of March, 2014.
My commission expires: March 14th, 2016

LAURIE BANGART
NOTARY PUBLIC IN AND FOR
THE DISTRICT OF COLUMBIA

**VIDEOTAPED DEPOSITION OF OVID SANTORO
CONDUCTED ON THURSDAY, FEBRUARY 27, 2014**

* * *

ACKNOWLEDGMENT OF DEPONENT

I, Ovid Santoro, do hereby acknowledge that
I have read and examined the foregoing testimony, and
the same is a true, correct, and complete
transcription of the testimony given by me, and any
corrections appear on the attached errata sheet signed
by me.

30 March, 2014

(Date)



(Signature)

Job No.: 0101-245247

**Merrill Deposition Services
21 Church Street, Suite 150, Rockville, MD 20850
(800) 292-4789**

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6 CERTIFICATE OF SHORTHAND REPORTER -- NOTARY PUBLIC

7 I, Laurie Bangart, Registered
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9 Reporter, the officer before whom the
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