



Transcript of **GLENN E. WEADOCK**

Date: May 14, 2014

Case: MICROSOFT CORPORATION v. SURFCAST, INC.

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Court Reporting | Videography | Videoconferencing | Interpretation | Transcription

1 UNITED STATES PATENT AND TRADEMARK OFFICE

2 BEFORE THE PATENT TRIAL AND APPEAL BOARD

3 -----x

4 MICROSOFT CORPORATION, : Inter Partes

5 Petitioner, : Review Nos.

6 v. : IPR2013-00292,

7 SURFCAST, INC., : IPR2013-00293,

8 PATENT OWNER. : IPR2013-00294,

9 : IPR2013-00295

10 -----x

11
12 Videotaped Deposition of GLENN E. WEADOCK

13 Washington, DC

14 Wednesday, May 14, 2014

15 9:29 a.m.

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19
20 Job No.: 58527

21 Pages: 1 - 150

22 Reported By: Lee Bursten, RMR, CRR

VIDEOTAPED DEPOSITION OF GLENN E. WEADOCK
CONDUCTED ON WEDNESDAY, MAY 14, 2014

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1 Videotaped Deposition of GLENN E. WEADOCK,
2 held at the offices of:

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Pursuant to notice, before Lee Bursten,
Registered Merit Reporter, Certified Realtime
Reporter, and Notary Public in and for the District
of Columbia, who officiated in administering the oath
to the witness.

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A P P E A R A N C E S

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11 ALSO PRESENT:

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By Mr. Micallef	7
By Mr. Bone	126

E X H I B I T S

(Attached to transcript.)

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SurfCast – Exhibit 2089, page 6
Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

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P R O C E E D I N G S

1		09:29:01
2	THE VIDEOGRAPHER: Here begins tape number	09:29:01
3	1 in the videotaped deposition of Glenn Weadock in	09:29:02
4	the matter of Microsoft Corporation versus SurfCast	09:29:05
5	Inc., in the United States Patent and Trademark	09:29:09
6	Office. Today's date is May 14, 2014. The time on	09:29:15
7	the video monitor is 9:29. The videographer today is	09:29:19
8	Elvis Centeno, representing Planet Depos.	09:29:22
9	This video deposition is taking place at	09:29:25
10	500 8th Street, Northwest, Washington, DC. Will	09:29:27
11	counsel please voice identify themselves and state	09:29:31
12	whom they represent.	09:29:34
13	MR. MICALLEF: Joe Micallef and Wonjoo Suh	09:29:35
14	from Sidley for petitioner Microsoft.	09:29:41
15	MR. BONE: Richard Bone of VLP Law Group	09:29:43
16	for patent owner SurfCast, and representing the	09:29:44
17	witness.	09:29:46
18	MR. HEINTZ: James Heintz from DLA Piper,	09:29:47
19	representing patent owner SurfCast.	09:29:49
20	THE VIDEOGRAPHER: Thank you, counsel. The	09:29:52
21	court reporter today is Lee Bursten, representing	09:29:54
22	Planet Depos. Would the reporter please swear in the	09:29:55

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1	witness.	09:29:57
2	GLENN E. WEADOCK	09:30:10
3	having been duly sworn/affirmed, testified as	09:30:10
4	follows:	09:30:11
5	EXAMINATION BY COUNSEL FOR PETITIONER	09:30:11
6	BY MR. MICALLEF:	09:30:11
7	Q Good morning, Mr. Weadock.	09:30:12
8	A Good morning, Mr. Micallef.	09:30:13
9	Q Would it be fair to say that your principal	09:30:15
10	source of income is working as an expert or	09:30:17
11	consultant for people in legal disputes?	09:30:19
12	A That would be fair to say, over the last	09:30:23
13	six months. It would not be fair to say for a time	09:30:28
14	prior to that.	09:30:31
15	Q Okay. Prior to that, you did, however,	09:30:31
16	work for people in legal disputes; is that fair?	09:30:37
17	A Yes, that's true.	09:30:40
18	Q Can you estimate for me just last year what	09:30:41
19	portion of your income came from that activity?	09:30:43
20	MR. BONE: Objection, relevance.	09:30:45
21	A Oh, gosh. Over the last year, I haven't	09:30:48
22	really done that analysis. As I say, for the past	09:30:52

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1	six months, I've been doing a lot of legal-related	09:30:58
2	work. Prior to that, I was doing a lot of classes	09:31:01
3	for Global Knowledge. So I don't know exactly what	09:31:09
4	the percentage would be over the last year.	09:31:13
5	BY MR. MICALLEF:	09:31:14
6	Q Okay. All right. I'm going to place in	09:31:14
7	front of you Paper 28 in this proceeding, which is	09:31:25
8	patent owner's motion for conditional amendment.	09:31:28
9	I'll have you take a look at that.	09:31:31
10	MR. BONE: Has this been marked with an	09:31:43
11	exhibit number?	09:31:45
12	MR. MICALLEF: No, I don't think we need to	09:31:46
13	mark it, since it's in the record. Don't you think?	09:31:47
14	MR. BONE: I think so.	09:31:50
15	BY MR. MICALLEF:	09:31:55
16	Q So you've seen this Paper 28 motion to	09:31:56
17	amendment before, correct?	09:31:58
18	A Yes, I have.	09:31:59
19	Q Okay. I would like you to turn to proposed	09:32:00
20	substitute claim 53, which begins at the bottom of	09:32:07
21	page 1 and goes over, I think, all the way over to	09:32:10
22	page 3. But we'll start on 1, okay?	09:32:15

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1	A	Okay.	09:32:19
2	Q	You got it?	09:32:19
3	A	I've got it.	09:32:20
4	Q	Okay. So the bottom of page 1 of Paper 28	09:32:20
5		is the preamble of this claim which states, "a system	09:32:26
6		for facilitating the organization and management of	09:32:31
7		multiple data sources comprising." Do you see that?	09:32:33
8	A	Yes.	09:32:36
9	Q	Do you agree you have not advanced any	09:32:37
10		argument that MSIE Kit does not satisfy that	09:32:40
11		preamble?	09:32:46
12		MR. BONE: Objection, form. I'll also	09:32:47
13		object on relevance.	09:32:53
14	A	So your question was, it was kind of one of	09:32:55
15		those negative questions. You were asking me that I	09:32:59
16		have not offered any opinion that this is not	09:33:03
17		satisfied by MSIE Kit?	09:33:07
18		BY MR. MICALLEF:	09:33:10
19	Q	That's right.	09:33:10
20	A	I think that's a fair statement.	09:33:12
21	Q	Okay. Thank you. Now, at the top of page	09:33:14
22		2, there's some claim language in this claim that	09:33:21

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1	states, "a device that includes a processor	09:33:24
2	configured to execute instructions, a memory	09:33:27
3	connected to said processor to store at least one	09:33:30
4	program that includes a graphical user interface and	09:33:32
5	an input device wherein said processor executes	09:33:37
6	instructions to."	09:33:40
7	Do you see that?	09:33:41
8	A I do.	09:33:42
9	Q You agree that MSIE Kit satisfies that	09:33:43
10	claim language?	09:33:48
11	MR. BONE: Objection, foundation.	09:33:48
12	Objection, form.	09:33:50
13	A Well --	09:33:52
14	MR. BONE: Also object to scope.	09:33:59
15	A Yeah, I don't know that I've been through	09:34:01
16	MSIE Kit looking to see if they disclose a processor,	09:34:05
17	a memory, a graphical user interface, and an input	09:34:10
18	device. It generally describes a software product.	09:34:15
19	So I'm not sure that I've gone through the document	09:34:20
20	to see if it contains references to these -- to these	09:34:24
21	items.	09:34:29
22	BY MR. MICALLEF:	09:34:30

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1	Q	Do you agree -- go ahead. I'm sorry.	09:34:30
2	A	But I don't think I've put forth any	09:34:32
3		arguments that these things are not disclosed in MSIE	09:34:36
4		Kit.	09:34:40
5	Q	Thank you. And so the next element of this	09:34:40
6		proposed claim, "wherein said processor executes	09:34:47
7		instructions to 'control simultaneous communication	09:34:53
8		with a plurality of information sources,'" you	09:34:56
9		haven't put forth any argument in this proceeding	09:35:01
10		that MSIE Kit doesn't satisfy that language; is that	09:35:04
11		fair?	09:35:08
12		MR. BONE: Objection, form. Foundation.	09:35:08
13		Scope and relevance.	09:35:10
14	A	I don't recall putting forth any such	09:35:14
15		arguments.	09:35:17
16		BY MR. MICALLEF:	09:35:17
17	Q	Okay. Thank you. Now, the next portion of	09:35:17
18		proposed substitute claim 53 includes certain	09:35:26
19		proposed amendments, correct?	09:35:30
20	A	That's right.	09:35:33
21	Q	And before the amendments, that claim	09:35:34
22		language read, "arrange of display into an array of	09:35:39

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1	tiles." Do you agree with that?	09:35:44
2	MR. BONE: Objection, form. Objection,	09:35:46
3	foundation.	09:35:47
4	A I believe that's correct. My understanding	09:35:51
5	here is that the strike-through indicates language in	09:35:58
6	the original claim, and the underline indicates added	09:36:01
7	language.	09:36:03
8	BY MR. MICALLEF:	09:36:03
9	Q Okay. Thank you. And so would you agree	09:36:03
10	that you have not advanced any argument that MSIE Kit	09:36:06
11	does not satisfy instructions to arrange a display	09:36:11
12	into an array of tiles under the Board's	09:36:15
13	interpretations?	09:36:20
14	MR. BONE: Objection, form, foundation,	09:36:22
15	scope, relevance.	09:36:25
16	A To answer your question there, I think I	09:36:26
17	would like to refresh my memory as to the Board's	09:36:30
18	interpretation of "array."	09:36:37
19	BY MR. MICALLEF:	09:36:38
20	Q Okay.	09:36:39
21	MR. MICALLEF: Can we have his --	09:36:39
22	BY MR. MICALLEF:	09:36:48

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1	Q	I'm going to get your declaration, earlier	09:36:48
2		declaration in this case, which I believe has the	09:36:50
3		Board's claim interpretations in it. I'm going to	09:36:54
4		place in front of you what's been marked in this	09:37:18
5		proceeding as Exhibit 2004.	09:37:21
6		(Deposition Exhibit 2004 was previously	09:37:21
7		marked for identification and attached to the	09:37:21
8		deposition transcript.)	09:37:39
9	MR. BONE:	Do you want to reference the	09:37:39
10		exhibit number for this, Joe?	09:37:42
11	MR. MICALLEF:	I just did. Exhibit 2004.	09:37:45
12	MR. BONE:	Okay.	09:37:51
13	BY MR. MICALLEF:		09:38:29
14	Q	If it will speed things up, I'll represent	09:38:29
15		to you that the Board in its institution decision,	09:38:31
16		Paper 19 at page 11, construed array of tiles as "an	09:38:36
17		ordered set of two or more tiles."	09:38:41
18	A	Okay. That's what I was looking for here.	09:38:43
19	MR. BONE:	Do you have a printout of that,	09:38:47
20		Joe?	09:38:49
21	MR. MICALLEF:	No, I don't think I do.	09:38:50
22	A	Okay. So I'll accept your representation	09:38:53

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1	that the complete definition of "array" was -- "an	09:39:01
2	ordered set of two or more tiles"?	09:39:05
3	BY MR. MICALLEF:	09:39:06
4	Q Correct.	09:39:07
5	A No, I don't think I would agree with -- I'm	09:39:07
6	not sure what the original question was, but MSIE Kit	09:39:12
7	I don't think does disclose that.	09:39:16
8	Q My original question was have you ever	09:39:18
9	asserted in this case, before today, that MSIE Kit	09:39:20
10	doesn't satisfy that "arrange a display" portion of	09:39:24
11	the claim.	09:39:29
12	MR. BONE: Objection.	09:39:30
13	BY MR. MICALLEF:	09:39:30
14	Q In claim 46, the unamended version.	09:39:31
15	MR. BONE: Sorry. Objection to form,	09:39:33
16	scope, foundation, relevance.	09:39:35
17	A Well, I don't know whether I've advanced	09:39:41
18	that or not. I could look through the declaration to	09:39:44
19	see, both declarations, to look for that. But I can	09:39:52
20	tell you that that is -- it's not my opinion that the	09:39:56
21	MSIE Kit discloses "array" by that definition.	09:40:01
22	BY MR. MICALLEF:	09:40:06

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1	Q	Well, you have opinions in Exhibit 2004 on	09:40:07
2		MSIE Kit, page 44, beginning on page 44, sir.	09:40:11
3	A	Okay.	09:40:15
4	Q	Can you tell me -- and let me just put a	09:40:17
5		point on my question. Can you tell me in Exhibit	09:40:19
6		2004, in the paragraphs 114 through 126, do you	09:40:24
7		advance an opinion that MSIE Kit does not show an	09:40:35
8		array?	09:40:39
9		MR. BONE: Objection, form, foundation,	09:40:40
10		scope, and relevance. And I will make a following	09:40:43
11		statement, Joe. We understand this deposition to be	09:40:47
12		on Mr. Weadock's reply declaration, not the	09:40:50
13		declaration that was submitted in January.	09:40:55
14		MR. MICALLEF: Counsel, that's a speaking	09:40:58
15		objection.	09:41:00
16		MR. BONE: I understand.	09:41:00
17		MR. MICALLEF: And if it happens again, I'm	09:41:01
18		going to call the Board. If you want to talk to me,	09:41:03
19		we can do it. We can ask the witness to step outside	09:41:06
20		and we can have a discussion; but with the witness in	09:41:08
21		the room, I object to that. I view that as a	09:41:10
22		violation of the rules.	09:41:12

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1	Now, I hear your objection.	09:41:13
2	BY MR. MICALLEF:	09:41:16
3	Q Can you answer my question, sir?	09:41:16
4	A Well, I will, after rereading those	09:41:17
5	sections. So you said paragraph 114 to which, which	09:41:21
6	paragraph?	09:41:26
7	Q 126.	09:41:27
8	A 126. Okay. Well, let me read through	09:41:28
9	them, and then I'm happy to answer.	09:41:31
10	Okay. So I see in paragraph 114 a sentence	09:41:55
11	about six lines down that says, "Although Active	09:42:02
12	Desktop did not in fact implement a grid	09:42:09
13	functionality in practice." And so it doesn't use	09:42:12
14	the word "array" there, it uses the word "grid," but	09:42:20
15	the concept is related. So that would be one	09:42:23
16	reference indicating an opinion that seems relevant	09:42:27
17	to what you were asking about.	09:42:32
18	I'll continue to read.	09:42:34
19	Q Let me ask you about that, sir.	09:42:39
20	A Okay.	09:42:43
21	MR. MICALLEF: I'll let him --	09:42:45
22	BY MR. MICALLEF:	09:42:46

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1	Q	Well, go ahead and finish reading. Go	09:42:47
2		ahead. We'll go through it that way. That's fine.	09:42:49
3		Actually, let me withdraw the question and ask you a	09:43:03
4		different one.	09:43:05
5		Do you see a difference between a grid and	09:43:06
6		an array in this context?	09:43:08
7		MR. BONE: Objection. Form, foundation,	09:43:10
8		scope, relevance.	09:43:12
9	A	Do I see a difference between a grid and an	09:43:25
10		array in this context?	09:43:27
11		BY MR. MICALLEF:	09:43:29
12	Q	Yes, sir.	09:43:29
13	A	And can you identify the context? Are we	09:43:29
14		talking about the Board's construction of "array"?	09:43:32
15	Q	In the context of this IPR proceeding.	09:43:37
16		MR. BONE: Objection, form.	09:43:41
17	A	And can you just repeat for me the Board's	09:43:49
18		construction of "array"?	09:43:56
19		BY MR. MICALLEF:	09:43:58
20	Q	Of course. "An ordered set of two or more	09:43:58
21		tiles."	09:44:00
22	A	So a grid is certainly an ordered set. And	09:44:03

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1 here in the context of the amended claim, we're 09:44:11
2 talking about a grid of tiles. So I think there's a 09:44:14
3 similar concept in that both grid and array are 09:44:20
4 ordered, orderly structures. 09:44:27

5 Q And would you agree that tiles can be put 09:44:34
6 in an array that would not be a grid? 09:44:37

7 MR. BONE: Objection. Form, foundation. 09:44:41
8 Calls for a hypothetical. Objection, scope. 09:44:44

9 A Well, I'm not sure I've ever thought about 09:44:50
10 whether tiles could be put into an array that was not 09:44:54
11 a grid. I mean, in the context of this proceeding 09:44:58
12 here, we're expressly talking about a grid. So I 09:45:16
13 didn't really do that analysis in preparation for the 09:45:23
14 declaration having to do the -- having to do with the 09:45:28
15 conditional amendment. 09:45:31

16 I suppose it's -- it would be -- it might 09:45:43
17 be possible to position -- well, I just don't know. 09:45:47
18 I haven't really -- I haven't really thought about 09:45:56
19 that. 09:46:01

20 BY MR. MICALLEF: 09:46:02

21 Q So it's fair to say that you can't think of 09:46:02
22 a way to arrange tiles in an array that would not 09:46:06

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1 also be arranging them in a grid? 09:46:08

2 MR. BONE: Objection. Form, foundation, 09:46:11

3 mischaracterizes testimony, relevance, and scope. 09:46:14

4 A Well, that's not what I said. I can give 09:46:18

5 that proposition some thought right now, if you would 09:46:24

6 like. I suppose it might be possible to arrange 09:46:26

7 objects in a -- in a circular array that would not be 09:46:37

8 what I would think of as a grid. 09:46:47

9 BY MR. MICALLEF: 09:46:52

10 Q You agree that an Active Desktop item is a 09:46:53

11 graphical user interface element; is that fair? 09:46:58

12 MR. BONE: Objection. Form, foundation, 09:47:01

13 relevance, scope. 09:47:04

14 A Yeah, I wouldn't normally put it that way. 09:47:08

15 I understand that -- and I think we may have even 09:47:14

16 chatted about this in our previous deposition, where 09:47:17

17 I think you referred to one of my earlier books. An 09:47:24

18 application can be presented in the context of a 09:47:29

19 graphical user interface. Normally, it's less 09:47:35

20 typical to talk about an application presenting a 09:47:43

21 graphical user interface. 09:47:45

22 Typically, applications adopt the graphical 09:47:47

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1	user interface of the operating environment in which	09:47:52
2	they execute. So sitting here today, I probably	09:47:54
3	wouldn't using the language that you just used.	09:47:58
4	BY MR. MICALLEF:	09:48:02
5	Q Have you advanced an argument in this	09:48:03
6	proceeding that an Active Desktop item is not a	09:48:05
7	graphical user interface element?	09:48:08
8	MR. BONE: Objection. Form, relevance,	09:48:10
9	scope.	09:48:12
10	A No, I don't think I've advanced such an	09:48:16
11	argument.	09:48:18
12	BY MR. MICALLEF:	09:48:19
13	Q You agree that the information displayed in	09:48:19
14	an Active Desktop item can be dis -- excuse me, can	09:48:23
15	be refreshed?	09:48:27
16	MR. BONE: Objection. Form, foundation,	09:48:28
17	relevance, scope.	09:48:30
18	A I'm sorry. The information in an Active...	09:48:32
19	BY MR. MICALLEF:	09:48:40
20	Q Displayed in an Active Desktop item. I'll	09:48:40
21	restate the question.	09:48:43
22	A Okay.	09:48:44

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1	Q	Would you agree that the information	09:48:44
2		displayed in an Active Desktop item can be refreshed?	09:48:46
3	A	Yes.	09:48:50
4	Q	Would you agree that an Active Desktop item	09:48:59
5		can be selected by a user?	09:49:02
6		MR. BONE: Objection. Scope, relevance.	09:49:04
7	A	Yes.	09:49:09
8		BY MR. MICALLEF:	09:49:15
9	Q	This, directing your attention back to the	09:49:15
10		Paper 28, the motion to amend, that same language on	09:49:21
11		page 2, the "arrange of display" claim element; do	09:49:28
12		you see that?	09:49:32
13	A	Yes.	09:49:33
14	Q	So there is some language that the patent	09:49:34
15		owner seeks to have added to the claim that says "are	09:49:40
16		not permitted to overlap" or "that are not permitted	09:49:52
17		to overlap."	09:49:55
18		Do you see that part?	09:49:56
19	A	I do.	09:49:57
20	Q	Okay. So is it your view that without that	09:49:57
21		amendment, the "arrange a display" claim language	09:50:17
22		requires tiles in a nonoverlapping configuration?	09:50:24

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1	MR. BONE: Objection. Form, foundation,	09:50:29
2	calls for speculation, scope.	09:50:32
3	A Okay. So it was kind of a complicated	09:50:40
4	question. I'm sorry, but do you mind restating it?	09:50:42
5	BY MR. MICALLEF:	09:50:44
6	Q Sure. Let's just put aside the amendments	09:50:45
7	first, and then we'll get to the differences, because	09:50:47
8	that's what I'm trying to get at.	09:50:50
9	A Okay.	09:50:52
10	Q This claim as originally drafted, claim 46,	09:50:52
11	said, as you said earlier, "arrange a display into an	09:50:56
12	array of tiles," at least this portion of the claim,	09:50:59
13	correct?	09:51:02
14	MR. BONE: Objection, form.	09:51:02
15	A That's correct, yes.	09:51:04
16	BY MR. MICALLEF:	09:51:06
17	Q And is it your view that that claim	09:51:06
18	language requires tiles to be in a nonoverlapping	09:51:09
19	configuration?	09:51:15
20	MR. BONE: Objection. Form, foundation,	09:51:15
21	calls for speculation. Objection, scope. Sorry.	09:51:18
22	A Right. So you're asking about those one,	09:51:27

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1 two, three, four, five, six words, taken out of 09:51:29
2 context, out of the context of the specification of 09:51:32
3 the patent? 09:51:37

4 BY MR. MICALLEF: 09:51:37

5 Q Oh, no, sir. No, no. I'm talking about 09:51:38
6 the claim language in claim 46 of the '403 patent. 09:51:40
7 "Arrange a display into an array of tiles." Is it 09:51:45
8 your view that language requires tiles in a 09:51:52
9 nonoverlapping configuration? 09:51:54

10 MR. BONE: Objection. Form, scope, 09:51:57
11 foundation, calls for speculation. 09:51:59

12 A Certainly that's my understanding from 09:52:00
13 reading the patent as a whole, that the tiles of the 09:52:04
14 '403 are not overlapping. 09:52:11

15 BY MR. MICALLEF: 09:52:17

16 Q I asked a little different question. 09:52:17

17 A Well, let me see if I can -- you did ask a 09:52:19
18 little different question, and I apologize. Let me 09:52:23
19 see if I can give you a more precisely stated answer. 09:52:25
20 The original claim 46, as I read it in the context of 09:52:29
21 the entire '403 patent, suggests to me that the tiles 09:52:34
22 are arranged into a nonoverlapping configuration. 09:52:40

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1 Q And when you're talking about claim 09:52:45
2 language, does that mean that the claim requires a 09:52:50
3 nonoverlapping configuration? 09:52:52

4 MR. BONE: Objection -- 09:52:55

5 BY MR. MICALLEF: 09:52:56

6 Q In order to be satisfied. 09:52:56

7 MR. BONE: Objection. Form, foundation, 09:52:57
8 scope, calls for speculation. 09:52:59

9 A Well, I'm not a patent attorney. And I 09:53:06
10 understand that the specification helps us understand 09:53:12
11 the claims, and that the claims should be read in 09:53:17
12 light of the specification. But the original claim 09:53:23
13 46 does not expressly state that the tiles are not 09:53:30
14 permitted to overlap. 09:53:36

15 BY MR. MICALLEF: 09:53:40

16 Q So would you agree a prior art reference 09:53:40
17 could satisfy claim 46 even if it never arranged a 09:53:43
18 display into a nonoverlapping configuration of tiles? 09:53:49

19 MR. BONE: Objection. Form, foundation, 09:53:54
20 scope, lack of relevance. 09:53:56

21 A No, I wouldn't necessarily agree with that. 09:54:01

22 BY MR. MICALLEF: 09:54:05

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1 Q Okay. So your view is that in order for 09:54:06
2 claim 46 to be satisfied by a prior art reference, 09:54:08
3 for example, that prior art reference must disclose 09:54:15
4 "arrange a display into an array of tiles that are 09:54:21
5 nonoverlapping"; is that fair? 09:54:23

6 MR. BONE: Objection. Form and foundation, 09:54:26
7 scope, lack of relevance, mischaracterizes testimony. 09:54:28

8 A Are we -- I guess I have to try to put some 09:54:43
9 context in here, because "tiles" is a term that has 09:54:50
10 been construed. And I guess if you're asking about 09:54:55
11 this proceeding, we kind of have to zero in on the 09:55:03
12 definition of "tiles," which I think maybe we should 09:55:06
13 look at the Board's construction of "tiles" and try 09:55:11
14 to apply that to this claim that you're asking about. 09:55:14
15 BY MR. MICALLEF: 09:55:17

16 Q Well, sir, I'm asking about a prior art 09:55:17
17 reference. I want you just to assume that the prior 09:55:19
18 art reference has tiles under the Board's 09:55:22
19 interpretation. 09:55:26

20 MR. BONE: Objection, form. Objection, 09:55:26
21 scope. Objection, calls for a hypothetical. 09:55:28
22 Objection, foundation. 09:55:31

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1	A	One thing I would like to do is just	09:55:32
2		confirm that the Board's definition -- what the	09:55:35
3		Board's definition of "tile" is, if we're talking	09:55:40
4		about the claim construction here that is proposed by	09:55:43
5		the Board. So I would kind of like to look at that.	09:55:45
6		I don't know if we have that document available.	09:55:49
7		BY MR. MICALLEF:	09:55:51
8	Q	I can represent to you that the Board's	09:55:51
9		construction of "tile" is, "a graphical user	09:55:52
10		interface element whose content may be refreshed and	09:55:56
11		that when selected provides access to an information	09:56:01
12		source."	09:56:04
13		Can you answer my question, though?	09:56:05
14		MR. BONE: Objection, form.	09:56:07
15	A	Under that definition of "tile," then I	09:56:10
16		still feel, reading the patent, that the	09:56:29
17		nonoverlapping characteristic is all through the	09:56:37
18		patent. But it's not expressly disclosed in the	09:56:40
19		definition that you just read from the Board. And	09:56:46
20		it's not expressly disclosed in the language of claim	09:56:50
21		46, which is probably the reason for this amendment,	09:56:53
22		to help -- to help clarify that.	09:56:59

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1 Certainly when I read the '403 in its 09:57:02
2 entirety, I come away with the sense that prior art 09:57:07
3 showing overlapping tiles would not generally meet 09:57:12
4 the requirements of the claims in the '403. But it 09:57:17
5 doesn't expressly state -- the original claim 46 09:57:24
6 doesn't expressly state the tiles are not permitted 09:57:27
7 to overlap. 09:57:31

8 BY MR. MICALLEF: 09:57:34

9 Q Do you see any requirement in claim 46, 09:57:34
10 whether it's express or otherwise, that would require 09:57:40
11 a nonoverlapping configuration? 09:57:42

12 MR. BONE: Objection. Form, scope, 09:57:43
13 foundation, relevance. 09:57:46

14 A In the original claim 46? 09:57:50

15 BY MR. MICALLEF: 09:57:53

16 Q Yes, sir. 09:57:54

17 MR. BONE: Objection, scope. 09:57:54

18 A Well, the original claim language talks 09:58:04
19 about an array of tiles. And I would not think of an 09:58:07
20 array as a grouping of overlapping elements. So I 09:58:12
21 wouldn't think that "array" would connote 09:58:22
22 overlapping. When I think of the word "array," I 09:58:26

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1 don't think of items that overlap. 09:58:31

2 BY MR. MICALLEF: 09:58:39

3 Q Well, if that's so, sir, what change in 09:58:39

4 claim scope would be implemented by amending the 09:58:46

5 claim to require that the tiles are not permitted to 09:58:50

6 overlap? 09:58:53

7 MR. BONE: Objection. Form, foundation, 09:58:53

8 calls for a hypothetical. Objection, scope. 09:58:57

9 Objection, relevance. 09:59:01

10 BY MR. MICALLEF: 09:59:04

11 Q If any. 09:59:05

12 A I think certainly the amended language 09:59:05

13 makes explicit what to me is implicit in the word 09:59:07

14 "array." So it serves to clarify. And I think 09:59:11

15 that's part of the function of that addition or 09:59:21

16 amendment, would be to clarify something that to me 09:59:27

17 is already implicit in the concept of an array. 09:59:30

18 I'm just trying to think of examples of 09:59:33

19 arrays of things where those things can overlap, and 09:59:36

20 sitting here right now, I just can't think of any. 09:59:39

21 Q Any other differences? 09:59:49

22 MR. BONE: Objection. Form, foundation, 09:59:51

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1	scope.	09:59:54
2	A No, I think that's my complete answer.	09:59:57
3	BY MR. MICALLEF:	09:59:59
4	Q Okay. Thank you. Did I give you Exhibit	09:59:59
5	2063 or --	10:00:21
6	A I don't think so.	10:00:23
7	Q No. Okay. I'm going to hand you what's	10:00:24
8	been previously marked as Exhibit 2063, which is the	10:00:30
9	"Declaration of Glenn E. Weadock in Support of Patent	10:00:32
10	Owner SurfCast's Motion for Conditional Amendment."	10:00:39
11	Take a look at that.	10:00:42
12	(Deposition Exhibit 2063 was previously	10:00:42
13	marked for identification and attached to the	10:00:42
14	deposition transcript.)	10:00:42
15	A Okay.	10:00:42
16	BY MR. MICALLEF:	10:00:51
17	Q And you've seen Exhibit 2063 before,	10:00:51
18	correct?	10:00:54
19	A Yes.	10:00:55
20	Q Now, Exhibit 2063 is the declaration that	10:00:56
21	you submitted originally in support of patent owner's	10:01:04
22	motion to amend; is that fair?	10:01:11

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1	A	Yes.	10:01:13
2		MR. BONE: Sorry. Objection, form.	10:01:14
3		Objection, scope. Objection, relevance.	10:01:16
4		BY MR. MICALLEF:	10:01:21
5	Q	And in this declaration, you did not	10:01:21
6		advance any opinion as to whether the proposed	10:01:23
7		substitute claims satisfied the written description	10:01:25
8		requirement, correct?	10:01:29
9		MR. BONE: Objection. Form, foundation,	10:01:30
10		scope, relevance, calls for speculation.	10:01:32
11	A	Well, let me just -- let me just check. So	10:01:39
12		I would disagree with that.	10:02:03
13		BY MR. MICALLEF:	10:02:05
14	Q	Okay. Are you looking at something	10:02:05
15		specific?	10:02:08
16	A	Yes, sir.	10:02:09
17	Q	Where?	10:02:09
18	A	On page 11.	10:02:10
19	Q	Okay.	10:02:16
20	A	Paragraph 27.	10:02:17
21	Q	Okay. I see that. Did you provide any	10:02:20
22		details on that opinion?	10:02:26

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1	MR. BONE: Objection, scope. Objection,	10:02:27
2	foundation. I will restate the objection I	10:02:30
3	previously made, Joe, about the scope of this	10:02:33
4	deposition.	10:02:36
5	A So I'm sorry, Mr. Micallef, what was the	10:02:40
6	question?	10:02:45
7	BY MR. MICALLEF:	10:02:46
8	Q Let me withdraw the question. Hang on.	10:02:46
9	All right. Let me ask you a different question.	10:02:49
10	In this Exhibit 2063, you don't have any	10:02:54
11	opinions that relate to Professor Myers' paper on the	10:03:03
12	Sapphire system; is that fair?	10:03:10
13	MR. BONE: Objection. Form, foundation,	10:03:15
14	relevance, scope, calls for speculation. Objection,	10:03:17
15	relevance.	10:03:27
16	A I don't have it called out specifically.	10:03:32
17	I'm not sure whether I mentioned Sapphire, the	10:03:37
18	subject of the Myers article, in the report. But I	10:03:44
19	didn't break it out as a separate reference in this	10:03:50
20	declaration. I'm not sure that I may not have	10:03:57
21	mentioned it at some point in the report.	10:04:01
22	BY MR. MICALLEF:	10:04:04

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1	Q	Were you aware of the Myers article before	10:04:06
2		you signed Exhibit 2063?	10:04:08
3		MR. BONE: Objection, relevance.	10:04:10
4		Objection, scope.	10:04:12
5	A	Oh, I was aware of the Sapphire software	10:04:13
6		that is the subject of the Myers article.	10:04:19
7		BY MR. MICALLEF:	10:04:21
8	Q	But were you aware of the Myers article?	10:04:22
9		MR. BONE: Objection, scope. Objection,	10:04:25
10		relevance.	10:04:26
11		BY MR. MICALLEF:	10:04:26
12	Q	Before you signed Exhibit 2063.	10:04:27
13	A	I don't remember if I had seen the Myers	10:04:32
14		article. I do remember seeing Sapphire referenced in	10:04:35
15		a reference that Dr. Karger cited, I think	10:04:41
16		Shneiderman; so I was familiar with that reference.	10:04:49
17		I'm not sure if I had seen reference to the Myers	10:04:53
18		article at that time.	10:04:55
19	Q	Did you read Dr. Karger's original report	10:04:55
20		in this IPR?	10:04:59
21	A	Yes.	10:05:01
22		MR. BONE: Objection.	10:05:03

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1	BY MR. MICALLEF:	10:05:04
2	Q All of it?	10:05:04
3	MR. BONE: Excuse me. Objection,	10:05:05
4	relevance. Objection, scope.	10:05:07
5	BY MR. MICALLEF:	10:05:08
6	Q Did you read all of it?	10:05:08
7	A Yes.	10:05:10
8	Q Okay. I'm going to hand you a copy of the	10:05:10
9	'403 patent. I just want to ask you a few questions	10:05:20
10	about that.	10:05:23
11	MR. MICALLEF: For the record, the '403	10:05:33
12	patent has already been marked as Exhibit 1001.	10:05:36
13	(Deposition Exhibit 1001 was previously	10:05:36
14	marked for identification and attached to the	10:05:36
15	deposition transcript.)	10:05:41
16	MR. BONE: Yes, noted.	10:05:41
17	BY MR. MICALLEF:	10:05:47
18	Q Mr. Weadock, I would like you to turn to	10:05:48
19	figure 8 of the '403 patent.	10:05:59
20	A Okay.	10:06:07
21	Q And so figure 8 of the '403 patent	10:06:08
22	discloses one example of the display produced by the	10:06:12

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1 system disclosed in the patent; is that fair? 10:06:17

2 MR. BONE: Objection, form. Objection, 10:06:20

3 scope. Objection, relevance. 10:06:22

4 A Well, it may not be entirely fair, because 10:06:25

5 when you say "the system," I'm not sure whether 10:06:28

6 you're referring to a specific embodiment or the 10:06:34

7 invention of one of the claims. But let's see what 10:06:39

8 the patent -- what the patent author describes figure 10:06:43

9 8 as being. 10:06:46

10 So in column 5, the patent authors say 10:06:52

11 "Figure 8 shows an exemplary layout of the display 10:06:57

12 produced by the current invention." So that would 10:07:01

13 seem to correspond with your characterization. 10:07:06

14 BY MR. MICALLEF: 10:07:08

15 Q Okay. Thank you. And I just want to make 10:07:08

16 sure we understand -- have a common understanding of 10:07:10

17 this figure. There are rectangles designated, for 10:07:16

18 example, 802-11 and 802-12 and 802-13. Do you see 10:07:23

19 that? 10:07:29

20 A I do. 10:07:29

21 MR. BONE: Objection, form. 10:07:30

22 THE WITNESS: Sorry. 10:07:32

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1 BY MR. MICALLEF:

10:07:33

2 Q And would you agree that those rectangles
3 are meant to depict tiles that would be displaying
4 information from some information source?

10:07:33

10:07:38

10:07:41

5 MR. BONE: Objection. Form, foundation,
6 relevance, scope. Calls for speculation.

10:07:43

10:07:45

7 A Okay. Well, let's see what he says here.

10:07:48

8 So I think this is discussed in column 11 or 12.

10:08:10

9 Let's see if I can find the discussion of figure 8.

10:08:16

10 Right. So the bottom of column 11.

10:08:19

11 So it says, "In a preferred embodiment, the

10:08:26

12 grid permits a regular layout of tiles on the display

10:08:29

13 screen such that the tiles are uniform in size and

10:08:32

14 shape as depicted in figures 8 to 11." So I think

10:08:35

15 your question was, would these, 802-11 through

10:08:43

16 802-1-3, be tiles in the current invention. And it

10:08:50

17 looks like that's exactly how they're described here.

10:08:58

18 BY MR. MICALLEF:

10:09:00

19 Q Okay. And 802-1-N on figure 8 would also
20 be a tile; is that fair?

10:09:00

10:09:05

21 MR. BONE: Objection, form. Objection,

10:09:07

22 foundation. Objection, relevance. Objection, scope.

10:09:09

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1	A	Okay. 802-1-N in the upper right. Let's	10:09:13
2		go see what he says about that one. Well, I think	10:09:18
3		there may be a typo in the patent there, because he	10:09:35
4		says at the bottom of 11, for example, 802-2-1 is the	10:09:42
5		first tile -- oh, well, that's the second row that	10:09:46
6		he's talking about.	10:09:50
7		Tiles on the second row go to 802-2-N. So	10:09:53
8		I think it's probably fair to say that the tiles on	10:09:57
9		the first row go to 802-1-N.	10:09:59
10		BY MR. MICALLEF:	10:10:04
11	Q	Okay.	10:10:04
12	A	Yes.	10:10:04
13	Q	All right. And so in between 802-1-3 and	10:10:04
14		802-1-N, that's a -- depending on how you're holding	10:10:09
15		the paper, if you're holding it where figure 8 is	10:10:12
16		the -- the phrase "figure 8" is readable, it's	10:10:15
17		vertical, a vertical line; do you see that?	10:10:19
18	A	I do.	10:10:21
19	Q	It's not designated by any numeral,	10:10:22
20		correct?	10:10:24
21		MR. BONE: Objection, form. Objection,	10:10:25
22		scope. Objection, relevance.	10:10:26

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1 A You're correct that that line is not 10:10:29
2 designated by any numeral. 10:10:32

3 BY MR. MICALLEF: 10:10:35

4 Q Okay. And is it your understanding that 10:10:35
5 that line indicates that there are additional tiles 10:10:39
6 between 802-1-3 and 802-1-N? 10:10:45

7 MR. BONE: Objection. Form, foundation, 10:10:49
8 scope, relevance, calls for speculation. 10:10:51

9 A That's my hunch, looking at it. Let's 10:10:56
10 see -- let's see what the patent authors say. So in 10:11:01
11 column 12, they have the language starting on line 4, 10:11:04
12 it looks like. "There are no gaps between the tiles. 10:11:11
13 The tiles are not permitted to overlap and the whole 10:11:14
14 grid is covered by tiles." 10:11:18

15 So that would seem to agree with your 10:11:21
16 characterization that this is like an ellipses, I 10:11:23
17 guess. 10:11:28

18 BY MR. MICALLEF: 10:11:29

19 Q Okay. And so if I can get you to look at 10:11:29
20 figure 1. 10:11:47

21 A Okay. 10:11:48

22 Q And in figure 1, that's an array or a grid 10:11:52

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1	of nine tiles, correct?	10:12:02
2	MR. BONE: Objection, form. Objection,	10:12:03
3	foundation. Objection, scope.	10:12:05
4	A Yes.	10:12:07
5	BY MR. MICALLEF:	10:12:10
6	Q Okay. And would you agree that each of the	10:12:10
7	tiles depicted here has an application program	10:12:14
8	associated with it?	10:12:17
9	MR. BONE: Objection. Form, foundation,	10:12:17
10	scope, relevance.	10:12:19
11	A It does look like it. I would say that's a	10:12:22
12	yes.	10:12:28
13	BY MR. MICALLEF:	10:12:29
14	Q Okay. Do you see -- well, let me ask you	10:12:29
15	this: Would you agree that each of the tiles here,	10:12:35
16	the application-- strike that. Let me rephrase it.	10:12:40
17	Would you agree that the application	10:12:43
18	program associated with each of the tiles as depicted	10:12:44
19	in figure 1 has been launched?	10:12:47
20	MR. BONE: Have you finished?	10:12:54
21	MR. MICALLEF: Yes, sir.	10:12:55
22	MR. BONE: Objection. Form, foundation,	10:12:56

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1 scope, relevance, calls for speculation. 10:12:57

2 A Well, I don't know. 10:13:10

3 BY MR. MICALLEF: 10:13:16

4 Q So let's talk about one in particular. 10:13:16

5 Let's say the one in the lower left-hand corner that 10:13:21

6 is designated number 70. Do you see that? 10:13:22

7 A I do. 10:13:24

8 Q That looks like it's displaying an eBay web 10:13:25

9 page; is that fair? 10:13:32

10 MR. BONE: Objection, form. Objection, 10:13:33

11 foundation. Objection, scope. 10:13:34

12 A It looks like that. I don't know whether 10:13:38

13 that's a -- when you look at something like this, you 10:13:42

14 don't know whether you're looking at a live web page 10:13:45

15 or whether you're looking at a thumbnail. It could 10:13:48

16 be an esthetic graphic. I can't really tell just 10:13:54

17 from looking at figure 1. 10:13:58

18 BY MR. MICALLEF: 10:14:00

19 Q Okay. How about the tile that's designated 10:14:00

20 number 20; do you see that? 10:14:01

21 A I do. 10:14:03

22 MR. BONE: Objection, form. 10:14:04

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1	BY MR. MICALLEF:	10:14:06
2	Q Would you conclude that the Outlook Express	10:14:06
3	application program is associated with that tile?	10:14:11
4	MR. BONE: Objection. Form, foundation,	10:14:13
5	scope, relevance. Calls for speculation.	10:14:15
6	A Again, just by looking at figure 1, you	10:14:19
7	can't really tell. Again, it could be just a still	10:14:23
8	graphic that is intended to represent that	10:14:25
9	application. I don't know whether Outlook Express is	10:14:31
10	actually running. Maybe the patent will tell us in	10:14:34
11	the description of figure 1, we can take a peek and	10:14:37
12	see if there's a clue.	10:14:41
13	So this is in column 6. So he says, "Tile	10:14:46
14	20 displays the active folders in an electronic mail	10:14:57
15	utility." So -- and that's column 6, about line 43.	10:15:01
16	So since the patent authors use the term "the active	10:15:07
17	folders in an electronic mail utility," that would	10:15:13
18	make me suspect that we're looking at an application	10:15:16
19	and not just a still graphic.	10:15:20
20	BY MR. MICALLEF:	10:15:23
21	Q And so if you're looking at an application	10:15:23
22	and not a still graphic, would you agree that would	10:15:27

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1 mean that the application has been launched? 10:15:28

2 MR. BONE: Objection. Form, foundation, 10:15:31

3 scope, relevance, calls for speculation. 10:15:33

4 A Well, the patent doesn't say that 10:15:37

5 explicitly. But it does use the phrase "active 10:15:40

6 folders," which would suggest to me that that would 10:15:43

7 be plausible. 10:15:47

8 BY MR. MICALLEF: 10:15:47

9 Q Okay. And do you see how in tile 20, the 10:15:47

10 word "clients" appears to be highlighted? 10:16:02

11 A Yes. 10:16:06

12 Q Wouldn't that suggest that what's in tile 10:16:08

13 20 is an active application? 10:16:11

14 MR. BONE: Objection. Form, foundation, 10:16:15

15 scope, relevance, calls for speculation. 10:16:17

16 A Well, all right. So let's be careful about 10:16:20

17 our wording here. What's in tile 20, I think earlier 10:16:24

18 you were asking about, you know, what's associated 10:16:27

19 with the tiles. So, you know, the mere highlighting 10:16:29

20 of "clients" on its own doesn't really tell me 10:16:37

21 anything. But what I think tells me more is the 10:16:41

22 patent authors' description of tile 20 as displaying 10:16:44

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1 active folders in an electronic mail utility. 10:16:49

2 But the patent authors don't go into a 10:16:56

3 whole lot of detail here. But it seems plausible to 10:16:58

4 believe that Outlook Express is an application that 10:17:07

5 is active and that is associated with tile 20. 10:17:14

6 BY MR. MICALLEF: 10:17:17

7 Q Mm-hmm. So would you agree that tiles 40, 10:17:17

8 50, 60, 70, and 80 -- let me direct your attention 10:17:37

9 back to column 6, where there's a sentence at line -- 10:17:40

10 begins at line 45, and it says, "Tiles 40, 50, 60, 10:17:46

11 70, and 80 point to websites displaying, 10:17:51

12 respectively, high technology news, electronic goods 10:18:01

13 for sale, categories of business news, items 10:18:02

14 available by auction, and the Wall Street Journal." 10:18:03

15 Do you see that sentence? 10:18:06

16 MR. BONE: Objection -- 10:18:08

17 A I do. 10:18:09

18 MR. BONE: -- to form. 10:18:10

19 BY MR. MICALLEF: 10:18:11

20 Q Would you agree that that suggests that 10:18:11

21 tiles 40, 50, 60, 70, and 80 are displaying active 10:18:13

22 application programs? 10:18:21

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1	MR. BONE: Objection.	10:18:22
2	BY MR. MICALLEF:	10:18:22
3	Q Or the output from active application	10:18:23
4	programs?	10:18:24
5	MR. BONE: Objection. Form, foundation,	10:18:25
6	scope, relevance, calls for speculation.	10:18:27
7	A Well, right. It doesn't actually say that.	10:18:30
8	It says that the tiles point to websites. So that's	10:18:33
9	a bit more ambiguous than what we were reading about	10:18:41
10	tile 20. So I don't know whether what we're looking	10:18:44
11	at here in these tiles is a snapshot that is going to	10:18:50
12	be refreshed at a certain interval. I don't know	10:18:59
13	whether this is active -- whether these are active	10:19:01
14	browser instances or not.	10:19:08
15	I mean, "point to," the language in the	10:19:10
16	patent, "point to" is a little bit ambiguous, because	10:19:12
17	I can point to an application that maybe hasn't been	10:19:18
18	launched yet, or I can point to an application that	10:19:20
19	is already running. So I don't necessarily see from	10:19:22
20	this language in column 6 that it's a -- that these	10:19:27
21	tiles are pointing to an active launched application.	10:19:31
22	BY MR. MICALLEF:	10:19:37

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1	Q	You just can't say one way or another?	10:19:37
2		MR. BONE: Objection, form.	10:19:41
3	A	I just can't say one way or another.	10:19:42
4		BY MR. MICALLEF:	10:19:44
5	Q	Would you agree that in order to get these	10:19:45
6		images that are in those tiles 40, 50, 60, 70, and	10:19:49
7		80, at some point in the past, a web browser would	10:19:55
8		have had to have been launched?	10:19:59
9		MR. BONE: Objection. Form, foundation,	10:20:00
10		scope, relevance, calls for speculation.	10:20:03
11	A	That sounds like a reasonable assumption to	10:20:08
12		me.	10:20:11
13		BY MR. MICALLEF:	10:20:11
14	Q	Okay. And so I'm going to ask you to	10:20:11
15		direct your attention to figure 6.	10:20:22
16	A	Okay.	10:20:24
17	Q	And figure 6 is an example of some HTML	10:20:37
18		code to create a tile in a web browser embodiment;	10:20:44
19		isn't that correct? And let me -- before you answer,	10:20:51
20		I will direct your attention to column 10, lines 23	10:20:53
21		to 26, which is where I think it's introduced.	10:20:58
22		MR. BONE: Objection. Form, scope, and	10:21:01

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1	relevance.	10:21:03
2	A Okay. So I apologize, Mr. Micallef. If	10:21:18
3	you would kindly just repeat the question, now that	10:21:22
4	I've read those lines.	10:21:24
5	BY MR. MICALLEF:	10:21:25
6	Q Sure. Just figure 6 is an example of code	10:21:25
7	to display a tile in a web browser; is that fair?	10:21:30
8	MR. BONE: Objection, form. Objection,	10:21:35
9	foundation. Objection, relevance and scope.	10:21:37
10	A Yes. I think that's fair. The patent says	10:21:39
11	"suitable for display in a web browser" and describes	10:21:47
12	it as HTML or XML.	10:21:52
13	BY MR. MICALLEF:	10:21:59
14	Q Okay. And in figure 13, if I could direct	10:22:00
15	your attention there.	10:22:04
16	A Okay.	10:22:04
17	Q This is another embodiment designed for use	10:22:06
18	with a web browser; do you agree with that?	10:22:10
19	MR. BONE: Objection. Form, foundation,	10:22:12
20	scope, and relevance.	10:22:15
21	A I'm inclined to agree. But let me just	10:22:18
22	confirm with the patent here. And maybe you can help	10:22:21

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1	me, because it looks like he jumps in the patent from	10:22:33
2	discussing figure 12 to figure -- oh, here, I found	10:22:36
3	it. Column 13, I think.	10:22:40
4	So in one embodiment, the grid is created	10:22:43
5	in a markup language and suitable for display via web	10:22:49
6	browser. So he's talking here about the grid. I	10:22:52
7	don't know if your question was asking about a tile.	10:22:56
8	It looks like he's talking about the grid here.	10:22:58
9	BY MR. MICALLEF:	10:23:00
10	Q Well, my question was, figure 13 depicts a	10:23:00
11	number of tiles for display in a web browser.	10:23:08
12	MR. BONE: Objection. Form, scope,	10:23:13
13	relevance.	10:23:15
14	A Sure. I would agree.	10:23:18
15	BY MR. MICALLEF:	10:23:19
16	Q Okay. And just so we understand each	10:23:19
17	other, there is in figure 13, about ten lines down	10:23:31
18	there, is an instruction that has the phrase "HREF"	10:23:42
19	in it, H-R-E-F, all caps. Do you see that?	10:23:48
20	MR. BONE: Objection to form.	10:23:53
21	A I do.	10:23:54
22	BY MR. MICALLEF:	10:23:54

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1	Q	And just so the record is clear, it says	10:23:55
2		HREF equals "HTTP colon backlash backlash www dot	10:23:58
3		somewhere dot com backlash some target dot HTML"; do	10:24:03
4		you see that?	10:24:13
5	A	Well, you're close. Your backslashes	10:24:13
6		should be forward slashes; but other than that, yes.	10:24:15
7	Q	I always get that wrong. And so would you	10:24:17
8		agree that that HREF instruction defines a link that	10:24:25
9		will cause the web browser to navigate to	10:24:32
10		www.somewhere.com/sometarget.html?	10:24:38
11		MR. BONE: Objection. Form, foundation,	10:24:45
12		scope, relevance, calls for speculation.	10:24:47
13	A	Well, no, that's not exactly my	10:24:48
14		understanding, because in the context of the patent,	10:24:51
15		it talks about tiles being selectable. So I would	10:24:54
16		interpret that HREF as associated with the tile, not	10:24:59
17		as associated with a link within the tile.	10:25:05
18		BY MR. MICALLEF:	10:25:15
19	Q	But just to be clear, if you -- it does	10:25:15
20		define a link?	10:25:25
21		MR. BONE: Objection.	10:25:26
22		BY MR. MICALLEF:	10:25:26

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1	Q	Is that fair? You don't think it defines a	10:25:27
2		link?	10:25:29
3		MR. BONE: Objection, form. Objection,	10:25:30
4		mischaracterizes testimony. Objection, scope and	10:25:31
5		relevance.	10:25:35
6	A	It defines a link that is associated with	10:25:36
7		the tile itself. In other words, the '403 specifies	10:25:42
8		tiles that are selectable to provide access to	10:25:46
9		information. So when I see this code or pseudocode,	10:25:49
10		I read it in the context of the rest of the patent.	10:25:57
11		BY MR. MICALLEF:	10:25:59
12	Q	I see.	10:26:00
13	A	And so I interpret this as where that tile	10:26:00
14		should go when the tile is selected.	10:26:06
15	Q	Okay. Well --	10:26:08
16	A	So I would not describe it as a link in the	10:26:10
17		sense of a link sitting in a browser window.	10:26:13
18	Q	I see. Well, let me ask you this: In this	10:26:15
19		embodiment of figure 13, that tile is being displayed	10:26:20
20		by the web browser; is that fair?	10:26:23
21		MR. BONE: Objection to form, foundation,	10:26:25
22		scope, relevance.	10:26:27

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1	A	Being displayed by the web browser? Well,	10:26:30
2		let's see. I want to be careful here about the words	10:26:36
3		we use. Let me take a look at the description here	10:26:39
4		in the patent.	10:26:41
5		Right. So if we look at this paragraph in	10:26:57
6		column 13, the patent authors write, "In this	10:26:59
7		embodiment, the addresses of the parent grid, the	10:27:07
8		grid itself, and each of the tiles are expressed as a	10:27:10
9		universal resource locator." And then it talks about	10:27:14
10		"The various functions controlled by the grid are	10:27:19
11		accessible through function calls devised according	10:27:24
12		to methods familiar to one skilled in the art."	10:27:28
13		So those functions controlled by the grid,	10:27:32
14		you know, may or may not be performed by a web	10:27:37
15		browser. So I'm not sure that I would characterize	10:27:39
16		it the way you did.	10:27:41
17		BY MR. MICALLEF:	10:27:43
18	Q	All I said was that the tile is displayed	10:27:43
19		by the web browser. You don't think that's accurate?	10:27:46
20		MR. BONE: Objection, form. Objection,	10:27:47
21		relevance, scope.	10:27:50
22	A	Well, I'm not sure it is. Because we're	10:27:52

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1 talking about here, again, about the grid. He's 10:27:54
2 saying the grid is a document created in this markup 10:27:56
3 language and is therefore suitable for display via a 10:28:00
4 web browser. So I think "display via web browser" is 10:28:04
5 certainly contemplated in figure 13. 10:28:11

6 You know, the exact details of whether the 10:28:14
7 browser handles all aspects of the grid and the tile 10:28:17
8 doesn't seem clear from this paragraph. 10:28:24

9 BY MR. MICALLEF: 10:28:27

10 Q I'm really asking a much simpler question. 10:28:27

11 A Sorry. I sometimes make things more 10:28:30
12 complicated than they need to be. 10:28:33

13 Q Let me ask it this way: If you were to 10:28:35
14 implement this code that is in figure 13, would the 10:28:44
15 user see a web browser window with the tiles that are 10:28:47
16 defined in this code in it? 10:28:49

17 MR. BONE: Objection. Form, relevance, 10:28:51
18 calls for a hypothetical, scope. 10:28:55

19 A Yeah, I don't really know if you would 10:28:56
20 see -- I think that's probably a reasonable inference 10:28:58
21 from this language here that says "suitable for 10:29:07
22 display via a web browser." 10:29:09

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1	BY MR. MICALLEF:	10:29:11
2	Q Is there any other reasonable inference	10:29:11
3	that you can draw from that?	10:29:15
4	A I haven't really analyzed it from that	10:29:15
5	standpoint.	10:29:18
6	Q Okay.	10:29:18
7	A So I don't know.	10:29:19
8	Q Okay. And in that situation where the	10:29:19
9	tiles are displayed in a web browser, you would agree	10:29:29
10	that selecting one of the tiles would not launch the	10:29:32
11	web browser?	10:29:39
12	MR. BONE: Objection. Form, foundation,	10:29:39
13	scope, relevance, calls for speculation.	10:29:41
14	A No. I wouldn't agree to that.	10:29:44
15	BY MR. MICALLEF:	10:29:46
16	Q Well, wouldn't you agree that if you're	10:29:46
17	displaying a tile in the web browser window, the web	10:29:49
18	browser must already be launched?	10:29:52
19	MR. BONE: Objection. Form, foundation,	10:29:53
20	scope, relevance.	10:29:56
21	A Well, I would say if I'm -- and again, this	10:29:59
22	embodiment isn't discussed in tremendous detail here	10:30:04

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1	in the patent, so this is a bit speculative, so I'm	10:30:07
2	not sure that I can really say what they had in mind	10:30:14
3	when we analyze it in that level of detail. It would	10:30:17
4	be I think reasonable to assume that a web browser	10:30:21
5	instance of some kind is running in order to display	10:30:24
6	the grid that is indicated here by the patent authors	10:30:28
7	as suitable for display via a web browser.	10:30:32
8	And whether selecting a tile would invoke	10:30:36
9	another instance of the web browser is not really	10:30:40
10	specified here.	10:30:43
11	BY MR. MICALLEF:	10:30:44
12	Q Okay. Great.	10:30:44
13	MR. MICALLEF: We've been going for about	10:30:45
14	an hour. Why don't we take a break.	10:30:46
15	MR. BONE: Yes, that's fine.	10:30:50
16	THE VIDEOGRAPHER: Going off the record.	10:30:52
17	The time on the video monitor is 10:30.	10:30:53
18	(Recessed at: 10:30 a.m.)	10:30:55
19	(Reconvened at: 10:57 a.m.)	10:57:20
20	THE VIDEOGRAPHER: We are back on the	10:57:48
21	record. The time on the video monitor is 10:57.	10:57:50
22	BY MR. MICALLEF:	10:57:54

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1	Q	Mr. Weadock, I'm going to hand you what's	10:57:55
2		been marked as Exhibit 2081 in these proceedings,	10:58:00
3		"Declaration of Glenn E. Weadock in Support of Patent	10:58:04
4		Owner's Reply to Opposition to Motion to	10:58:09
5		Conditionally Admit," and have you take a look at	10:58:10
6		that.	10:58:11
7		(Deposition Exhibit 2081 was previously	10:58:11
8		marked for identification and attached to the	10:58:11
9		deposition transcript.)	10:58:11
10	BY MR. MICALLEF:		10:58:25
11	Q	And you've seen Exhibit 2081 before?	10:58:25
12	A	Yes.	10:58:28
13	Q	Now, I would ask you to turn to paragraph	10:58:28
14		8, which is on page 5 of Exhibit 2081. Do you see	10:58:34
15		that?	10:58:47
16	A	Yes.	10:58:47
17	Q	And in that paragraph, you're discussing	10:58:47
18		patent owner's proposed construction of the word	10:58:49
19		"persistent," right?	10:58:53
20	A	Mm-hmm. Yes.	10:58:54
21	Q	Now, could you -- would you also pull out	10:58:55
22		the '403 patent and turn to column 15, line 63 to 64.	10:58:58

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1	A	Okay.	10:59:17
2	Q	Now, you've seen that, you've read that	10:59:17
3		line before, correct?	10:59:20
4	A	Yes.	10:59:21
5	Q	Okay. And that line says, "Items in the	10:59:22
6		metabase are persistent, that is, they are not saved	10:59:26
7		explicitly, but are preserved from session to	10:59:32
8		session." That's what it says, right?	10:59:35
9		MR. BONE: Objection, form.	10:59:36
10	A	That's what it says.	10:59:37
11		BY MR. MICALLEF:	10:59:39
12	Q	Okay. Now, would you agree that that line,	10:59:39
13		that sentence I just read in column 15, lines 63 to	10:59:44
14		64 of the '403 patent, is an express definition of	10:59:49
15		the word "persistent" as it's used in this patent?	10:59:52
16		MR. BONE: Objection. Form, foundation,	10:59:55
17		scope, relevance, calls for speculation.	10:59:58
18	A	Well, I'm not quite sure if there is a	11:00:02
19		legal meaning to the word "express." He's talking	11:00:04
20		here about items in the metabase. And it is	11:00:08
21		certainly -- as I read that sentence, it certainly	11:00:16
22		tells me that one aspect -- at least one aspect of	11:00:23

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1 persistence is the fact that items are preserved from 11:00:25
2 session to session. 11:00:30

3 BY MR. MICALLEF: 11:00:30

4 Q Well, isn't it saying that persistent, the 11:00:31
5 word "persistent" should be construed to mean they 11:00:35
6 are not saved explicitly, but are preserved from 11:00:38
7 session to session? 11:00:42

8 MR. BONE: Objection to form, foundation, 11:00:43
9 scope, relevance, calls for a legal conclusion. 11:00:45

10 A So, right, the answer to that is no. I 11:00:49
11 mean, it's not a -- necessarily a one-to-one 11:00:51
12 relationship. It could be a one-to-many. In other 11:00:54
13 words, one of the meanings or one of the implications 11:00:56
14 of the word "persistent" is that the items are 11:01:00
15 preserved from session to session. 11:01:03

16 But that I don't think should be properly 11:01:05
17 taken to mean that that's an equation, that this is 11:01:07
18 what "persistent" -- that this is the only thing that 11:01:12
19 "persistent" can mean or imply. 11:01:15

20 BY MR. MICALLEF: 11:01:17

21 Q Isn't the phrase "that is" a signal that 11:01:18
22 says this is what we mean by "persistent"? 11:01:20

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1	MR. BONE: Objection, form.	11:01:24
2	A I think it is properly read as, this is at	11:01:27
3	least one of the things that we mean by "persistent,"	11:01:30
4	but not necessarily the only thing that we mean by	11:01:33
5	"persistent."	11:01:37
6	BY MR. MICALLEF:	11:01:44
7	Q Well, would you agree that if the Board	11:01:44
8	views that sentence as a definition of "persistent,"	11:01:49
9	that's the construction it should apply over what the	11:01:53
10	patent owner has proposed for "persistent"?	11:01:58
11	MR. BONE: Objection. Form, foundation,	11:02:01
12	scope, relevance, calls for speculation.	11:02:04
13	A I'm not entirely sure I understand your	11:02:08
14	question. I think that -- I would suppose, again,	11:02:12
15	not being a patent lawyer, but I suppose that the	11:02:18
16	Board would rely on the entirety of the patent here	11:02:20
17	and what it says about the -- what the specification	11:02:24
18	says, what the claims say and so forth, and not just	11:02:28
19	necessarily rely on one sentence for the meaning of a	11:02:33
20	relevant term.	11:02:35
21	BY MR. MICALLEF:	11:02:36
22	Q So that's a no?	11:02:37

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1 MR. BONE: Objection, form. Objection, 11:02:38
2 mischaracterizes testimony. Objection, relevance and 11:02:42
3 scope. 11:02:44

4 A Why don't you restate your question, and 11:02:46
5 then I'll tell you whether it's an exact no. I tried 11:02:48
6 to explain my answer, but maybe I can give you a 11:02:51
7 yes-or-no answer if you'll re-ask it. 11:02:53

8 BY MR. MICALLEF: 11:02:55

9 Q Yes. My question is, if the Board 11:02:56
10 concludes that column 15, lines 63 to 64 represents 11:02:58
11 an express definition of the word "persistent," 11:03:02
12 that's the definition it should use, and it should 11:03:05
13 not use the construction or proposed construction of 11:03:07
14 "persistent" from patent owner that you quote in your 11:03:10
15 paragraph 8; isn't that right? 11:03:14

16 MR. BONE: Objection, calls for a legal 11:03:16
17 conclusion. Objection, scope, foundation, form, 11:03:18
18 relevance. 11:03:21

19 A I guess -- I guess I'm having a hard time 11:03:24
20 with your question because it's kind of a 11:03:27
21 hypothetical that doesn't make sense to me. As I 11:03:29
22 just explained, this sentence does not define -- does 11:03:32

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1 not -- does not draw a one-to-one correspondence 11:03:37

2 between a term and all that that term can convey. 11:03:39

3 I mean, I could probably think of an 11:03:44

4 analogy here. But what this sentence says is 11:03:48

5 "persistent," that is, in the context of the 11:03:53

6 metabase, one of the things that "persistent" implies 11:03:56

7 is that items are not saved explicitly, but preserved 11:03:59

8 from session to session. 11:04:03

9 And you're asking me a question, if the 11:04:05

10 Board decides that this is an express definition. I 11:04:07

11 don't really know what that term is. I feel like I'm 11:04:11

12 probably out of my depth on that. That's probably a 11:04:13

13 legal term that I shouldn't be opining on. 11:04:15

14 BY MR. MICALLEF: 11:04:17

15 Q So you can't answer one way or the other? 11:04:17

16 MR. BONE: Objection, form. 11:04:19

17 A I don't think I can. 11:04:20

18 BY MR. MICALLEF: 11:04:23

19 Q Okay. So if you could -- if I could direct 11:04:23

20 your attention back to 2081. 11:04:27

21 A Okay. 11:04:31

22 Q And you can put the '403 patent aside for a 11:04:31

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1	moment. But now, paragraph 9 of your Exhibit 2081, I	11:04:35
2	just want to clear -- just want to make sure I	11:04:41
3	understand. The first sentence of that paragraph	11:04:44
4	refers to "this language." Do you see that?	11:04:46
5	A Yes.	11:04:51
6	Q I just want to make sure that when you say	11:04:51
7	"this language," you're referring back to patent	11:04:53
8	owner's proposed construction for "persistent" that's	11:04:58
9	in your paragraph 8? Is that fair?	11:05:01
10	A That's fair.	11:05:03
11	MR. BONE: Objection. Form, foundation.	11:05:06
12	THE WITNESS: Sorry. I'll learn.	11:05:07
13	BY MR. MICALLEF:	11:05:21
14	Q So if I could get you to look at paragraph	11:05:21
15	12 of your Exhibit 2081.	11:05:24
16	A Okay.	11:05:32
17	Q Now, in the first sentence of that	11:05:34
18	paragraph, you cite to the '403 patent in column 11,	11:05:37
19	lines 32 to 33, correct?	11:05:42
20	A Correct.	11:05:45
21	Q And you cite that passage for the notion	11:05:48
22	that it replaces the functionality of the computer	11:05:51

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1	desktop, correct?	11:05:55
2	MR. BONE: Objection, form.	11:05:56
3	A Well, if by "it" you mean the grid of	11:05:57
4	tiles, then yes.	11:06:01
5	BY MR. MICALLEF:	11:06:02
6	Q Right. And so -- and you can open up the	11:06:03
7	patent, the '403 patent there. But you would agree	11:06:06
8	that the passage you've cited is directed to a	11:06:10
9	preferred embodiment of the invention, right?	11:06:15
10	MR. BONE: Objection. Form, foundation,	11:06:17
11	scope, and relevance.	11:06:20
12	A Well, let's double-check that. I think	11:06:23
13	you're right, but let's make sure. Yes, that's what	11:06:24
14	it says.	11:06:30
15	BY MR. MICALLEF:	11:06:33
16	Q And there are -- there are other	11:06:33
17	embodiments disclosed in this patent, in fact, we	11:06:37
18	looked at some text that related to web browser	11:06:41
19	embodiments earlier, correct?	11:06:44
20	A That's correct.	11:06:46
21	MR. BONE: Objection, form.	11:06:47
22	BY MR. MICALLEF:	11:06:47

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1	Q	You would agree that a web browser	11:06:48
2		embodiment of the grid of tiles of the '403 patent is	11:06:49
3		not going to be a desktop replacement; would you not?	11:06:54
4	MR. BONE:	Objection. Form, foundation,	11:06:58
5		scope, relevance, calls for speculation.	11:06:59
6	A	Honestly, I don't know. The patent doesn't	11:07:03
7		describe that embodiment in sufficient detail for me	11:07:07
8		to be able to answer that.	11:07:10
9	BY MR. MICALLEF:		11:07:11
10	Q	What's your definition of a "desktop	11:07:12
11		replacement"?	11:07:13
12	MR. BONE:	Objection. Relevance, scope.	11:07:14
13	A	Well, let's see what the patent authors	11:07:20
14		say. I think they can shed some light on that. So	11:07:23
15		in the lines following the lines that are cited in my	11:07:28
16		declaration that you just mentioned, the patent	11:07:33
17		authors write, "Whereas a desktop is typically	11:07:37
18		populated by static icons and toolbars, a grid of	11:07:42
19		tiles instead presents to the user an array of	11:07:46
20		snapshots of current programs and files."	11:07:49
21		From that sentence, we could derive that a	11:07:52
22		desktop is typically populated by icons and toolbars.	11:07:59

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1 So the functionality of icons and toolbars presumably 11:08:07
2 is what's being discussed here. In the more general 11:08:12
3 case, the capability of a desktop includes the 11:08:18
4 ability to organize one's computing environment and 11:08:21
5 launch programs. 11:08:28

6 And so those would be some of the functions 11:08:32
7 that are replaced by the grid of tiles here. 11:08:35

8 BY MR. MICALLEF: 11:08:39

9 Q So if you had a grid of tiles in a web 11:08:39
10 browser embodiment, you could still have icons and 11:08:42
11 toolbars; isn't that right? 11:08:46

12 MR. BONE: Objection. Form, foundation, 11:08:47
13 scope, relevance. 11:08:50

14 A Well, I wouldn't think so, based on what we 11:08:52
15 just read. 11:08:56

16 BY MR. MICALLEF: 11:08:57

17 Q Why not? 11:08:58

18 A Well, because the patent talks about a grid 11:08:59
19 of tiles replacing the functionality of the desktop. 11:09:03

20 Q Well, it says it in the preferred 11:09:07
21 embodiment. It never says that about the web 11:09:10
22 browser, does it? 11:09:12

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1	MR. BONE: Objection, form.	11:09:13
2	BY MR. MICALLEF:	11:09:14
3	Q Excuse me. The web browser embodiment.	11:09:14
4	A It --	11:09:16
5	MR. BONE: Same objection.	11:09:17
6	A Right. The patent doesn't say much about	11:09:18
7	the web browser embodiment, so it's hard to -- it's	11:09:20
8	hard to know what that would look like.	11:09:25
9	BY MR. MICALLEF:	11:09:27
10	Q Okay. So you agree then that the '403	11:09:27
11	patent never says that the web browser embodiment	11:09:30
12	would be a desktop replacement; is that fair?	11:09:32
13	MR. BONE: Objection, form. Objection,	11:09:34
14	mischaracterizes testimony. Objection, scope and	11:09:37
15	relevance.	11:09:40
16	A Well, I don't know. They say never say	11:09:40
17	never. Let me go and look. If you're going to ask	11:09:45
18	me that question, I would want to review the	11:09:50
19	discussion of that web browser embodiment, which --	11:09:51
20	to make sure that I can answer your question.	11:09:54
21	BY MR. MICALLEF:	11:10:00
22	Q Okay. I think it was column 13.	11:10:01

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1	A	Well, and there's also some in column 10, I	11:10:04
2		think, too, right?	11:10:07
3	Q	Yes, sir.	11:10:09
4	A	Okay. So in column 10, roughly lines 23 to	11:10:27
5		34, that paragraph doesn't use the term "desktop	11:10:32
6		replacement." And let's see. The other was column	11:10:50
7		13?	11:10:57
8	Q	Yes, sir.	11:10:57
9	A	Thank you.	11:10:58
10	Q	I believe it's about line 32, line 31.	11:10:58
11	A	Right. Okay. So in -- let's see. We've	11:11:02
12		got two paragraphs there. Let me just read them	11:11:16
13		both. So in those two paragraphs from line -- about	11:11:19
14		line 32 to 51, I don't see a reference in those	11:11:29
15		paragraphs to a desktop replacement.	11:11:33
16	Q	So do I understand -- I just want to get to	11:11:40
17		your meaning of what a desktop replacement would be,	11:11:45
18		and that is something that would replace icons and	11:11:47
19		toolbars; is that fair? Or is -- is that fair?	11:11:49
20		MR. BONE: Objection. Form, foundation,	11:11:52
21		scope, and relevance.	11:11:55
22	A	I would probably use slightly different	11:11:56

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1	language, because toolbars can be used in application	11:12:00
2	Windows. So when I think of Windows, if we're	11:12:08
3	talking about the Microsoft Windows environment, I	11:12:12
4	think of the desktop functionality as icons, the	11:12:16
5	taskbar, the Start button, the Start menu, you know,	11:12:19
6	the Quick Launch bar, the system tray, those sorts of	11:12:26
7	things that one sees when one starts the machine.	11:12:30
8	BY MR. MICALLEF:	11:12:33
9	Q So a desktop replacement would be something	11:12:33
10	that replaces those things; is that fair?	11:12:36
11	MR. BONE: Objection. Form, foundation,	11:12:37
12	mischaracterizes testimony, scope, and relevance.	11:12:40
13	A No, not necessarily on a one-to-one basis,	11:12:43
14	but replaces the primary functionality of those	11:12:46
15	elements, would probably be a better way to put it.	11:12:52
16	BY MR. MICALLEF:	11:13:03
17	Q Could I get you to -- I direct your	11:13:03
18	attention back to Exhibit 2081, and this time to	11:13:05
19	paragraph 18, which I believe is on page 11.	11:13:09
20	A Okay.	11:13:16
21	Q On here, you're talking about figure 2 of	11:13:17
22	the '403 patent, correct?	11:13:21

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1	A	Yes.	11:13:22
2	Q	Okay. Now, you agree that -- would you	11:13:22
3		agree that an operating system can be loaded into	11:13:26
4		RAM?	11:13:30
5	A	Yes.	11:13:34
6	Q	You agree that most modern operating	11:13:39
7		systems have a GUI, G-U-I, all caps?	11:13:41
8		MR. BONE: Objection to form.	11:13:46
9	A	Sure.	11:13:47
10		BY MR. MICALLEF:	11:13:48
11	Q	Windows NT had a GUI, right?	11:13:48
12		MR. BONE: Objection to form.	11:13:52
13	A	It did.	11:13:53
14		BY MR. MICALLEF:	11:13:54
15	Q	And you agree that application programs are	11:13:54
16		loaded into RAM when launched; is that fair?	11:13:56
17		MR. BONE: Objection, form. Objection,	11:13:59
18		relevance. Objection, scope.	11:14:01
19	A	That's fair.	11:14:05
20		BY MR. MICALLEF:	11:14:26
21	Q	You would also agree that you don't need to	11:14:26
22		load an entire operating system into RAM in order for	11:14:28

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1	it to work?	11:14:30
2	MR. BONE: Objection. Form, foundation,	11:14:32
3	scope, relevance.	11:14:35
4	A Yes, that's correct.	11:14:38
5	BY MR. MICALLEF:	11:14:45
6	Q In fact, modern computer systems actually	11:14:46
7	swap information between RAM and nonvolatile memory	11:14:48
8	all the time, right?	11:14:56
9	MR. BONE: Objection. Form, foundation,	11:14:57
10	scope, and relevance.	11:14:59
11	A Yes, that's typical behavior.	11:15:01
12	BY MR. MICALLEF:	11:15:21
13	Q And so could I direct your attention, in	11:15:22
14	Exhibit 2081, to paragraph 24.	11:15:24
15	A Okay.	11:15:32
16	Q In the second sentence, you write, "Even	11:15:33
17	so, the very first summary of the summary of the	11:15:37
18	invention refers to providing 'a stored program	11:15:39
19	controlled electronic switching system,' the use of	11:15:44
20	the word 'stored' clearly indicating persistent	11:15:49
21	storage from which main memory may be populated."	11:15:52
22	Do you see that sentence?	11:15:56

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1	MR. BONE: Objection, form.	11:15:57
2	A Right. I think you may have missed one	11:15:58
3	word; but yeah, I see the sentence.	11:16:01
4	BY MR. MICALLEF:	11:16:02
5	Q What word did I miss?	11:16:02
6	A I think you said "Even so, the very first	11:16:04
7	summary of the summary." And I said "the very first	11:16:06
8	sentence of the summary." Sorry to nitpick.	11:16:10
9	Q Okay. That's okay. I -- just I wanted to	11:16:12
10	focus on the latter part of that sentence. I mean,	11:16:15
11	what you're saying here is that main memory is	11:16:18
12	populated from persistent storage? That's what	11:16:23
13	you're referring to, correct?	11:16:28
14	MR. BONE: Objection. Form,	11:16:29
15	mischaracterizes testimony, scope, relevance.	11:16:30
16	A Certainly in the context of this patent	11:16:39
17	that Dr. Karger was pointing to, the program that	11:16:43
18	controls this switching system would be loaded from a	11:16:51
19	nonvolatile device, just as in all of the operating	11:16:57
20	systems we've just been chatting about, RAM is loaded	11:17:02
21	from a nonvolatile device.	11:17:07
22	That's a typical way that computers work.	11:17:11

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1 And so it's just normally what one sees. I think the 11:17:18
2 Microsoft expert agreed that file systems and 11:17:23
3 operating systems typically are installed on 11:17:26
4 persistent storage, and then they get loaded into 11:17:30
5 memory from that persistent storage. 11:17:31

6 It's just silly to think that you would, 11:17:33
7 you know, reload Windows into RAM from the original 11:17:38
8 media every time you wanted to run Windows. 11:17:45

9 BY MR. MICALLEF: 11:17:48

10 Q If I could direct your attention to Exhibit 11:17:48
11 2081, there is a section at the bottom of page 15 11:17:50
12 called -- entitled "Session to session." Do you see 11:17:57
13 that? 11:17:59

14 A I do. 11:18:00

15 Q And that's referring to some language in 11:18:00
16 the proposed substitute claims, correct? 11:18:04

17 MR. BONE: Objection, form. 11:18:06

18 A Yes, that's right. 11:18:08

19 BY MR. MICALLEF: 11:18:09

20 Q And so if I understand your position here, 11:18:10
21 you are not suggesting that the Board needs to 11:18:17
22 interpret that "session to session" language; is that 11:18:20

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1	fair?	11:18:23
2	MR. BONE: Objection. Form,	11:18:23
3	mischaracterizes testimony, scope, relevance.	11:18:25
4	A Well, I don't know whether the Board	11:18:30
5	members are persons of skill in the art. I think --	11:18:34
6	I think what I'm saying here is that "session to	11:18:37
7	session" has a well-understood meaning in the art.	11:18:42
8	So, you know, I think a person of skill in the art	11:18:48
9	would know what that means. I think Dr. Karger knows	11:18:55
10	what that means.	11:18:58
11	I think in deposition, he said he had an	11:18:59
12	understanding of what sessions are. There are a	11:19:02
13	couple or three different definitions of "session."	11:19:05
14	But it's well-understood by people of skill in the	11:19:05
15	art. And as long as Board members understand that,	11:19:07
16	then I think then we're fine.	11:19:10
17	BY MR. MICALLEF:	11:19:12
18	Q Let me ask you point blank, do you think	11:19:12
19	the Board should construe "session to session"?	11:19:14
20	MR. BONE: Objection, form. Objection,	11:19:16
21	scope, relevance, calls for a legal conclusion, calls	11:19:18
22	for speculation.	11:19:20

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1 A Yeah, I don't know. I think if the Board 11:19:22
2 members all would qualify as persons of skill in the 11:19:25
3 art of the patent, they would probably not need to 11:19:29
4 have it construed, because it's a term of art that's 11:19:34
5 generally understood. If they're not, then maybe 11:19:36
6 it's something that needs to be explained. I don't 11:19:40
7 know. 11:19:47

8 It's not a particularly complicated or 11:19:47
9 difficult concept. And I think your expert 11:19:49
10 understands it, and I understand it, and we've both 11:19:53
11 articulated it. 11:19:56

12 BY MR. MICALLEF: 11:19:57

13 Q So in the paragraph that begins at the 11:19:57
14 bottom of page 15, paragraph 28 -- I'm sorry. Let me 11:19:59
15 direct your attention -- strike that. Let me direct 11:20:18
16 your attention to paragraph 29. And there you quote 11:20:19
17 some testimony from Dr. Karger about what he 11:20:24
18 understands a session to be, correct? 11:20:32

19 A That's right. He gives a couple of 11:20:33
20 examples of what a session might be. 11:20:35

21 Q Right. And he says -- well, it's there. 11:20:37
22 Do you agree that those are all sessions, as the term 11:20:40

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1 is used in the amended claims?

11:20:43

2 MR. BONE: Objection, form. Objection,
3 scope and relevance.

11:20:44

11:20:46

4 A Sure. I think those are two examples. I
5 think there are others. He doesn't mention logging
6 off and logging back on. That's another kind of
7 session. I would expect that he would agree that
8 that's also known in the art as a session.

11:20:48

11:20:52

11:20:55

11:20:57

11:21:02

9 BY MR. MICALLEF:

11:21:04

10 Q I see. And so you agree that working on a
11 computer, then leaving it to get a cup of coffee and
12 then coming back, when you came back, it would start
13 another session; is that fair?

11:21:05

11:21:10

11:21:14

11:21:17

14 MR. BONE: Objection. Form, foundation,
15 scope, relevance, calls for hypothetical -- calls for
16 speculation.

11:21:18

11:21:20

11:21:25

17 A That's more of an English language use of
18 the term "session." I think normally a computer
19 person would think of a session as something a little
20 bit different than that. I think typically when we
21 talk about sessions, we don't talk about just walking
22 away for a cup of coffee and then coming back.

11:21:25

11:21:27

11:21:31

11:21:37

11:21:39

11:21:43

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1 That's more of an English definition. 11:21:45

2 Typically in computing circles, when we say 11:21:48

3 "a session," we're talking about something that is 11:21:51

4 punctuated by an event such as a log-off and log-on 11:21:54

5 cycle or a power-off and a power-on cycle. 11:21:59

6 BY MR. MICALLEF: 11:22:03

7 Q So I need to know what your opinion is 11:22:04

8 here, Mr. Weadock. Dr. Karger, a full professor of 11:22:07

9 electrical engineering at the Massachusetts Institute 11:22:07

10 of Technology, is clearly a computer person, and he 11:22:11

11 says that's a session. Now, my question is, do you 11:22:13

12 agree with that? 11:22:15

13 MR. BONE: Objection, form. Objection, 11:22:16

14 relevance. Objection, scope. 11:22:18

15 A As I think I've said, both of these are 11:22:21

16 examples of sessions. I think that Dr. Karger is 11:22:26

17 probably allowed to opine on English common 11:22:28

18 definitions as well as computer person definitions. 11:22:32

19 And I wasn't implying that he wasn't a computer 11:22:34

20 person. 11:22:36

21 BY MR. MICALLEF: 11:22:37

22 Q Okay. 11:22:37

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1	A	And if there's any doubt about what I mean,	11:22:38
2		I'm happy to clear it up for you, because it's, as I	11:22:41
3		say, not a particularly complicated concept.	11:22:47
4	Q	So I would like to direct your attention to	11:22:53
5		paragraph 39 of your Exhibit 2081.	11:22:54
6	A	Okay.	11:23:03
7	Q	Now, in the second sentence of paragraph	11:23:05
8		39, you state, "It was well-known to those of	11:23:09
9		ordinary skill in the art at the time of the '403	11:23:12
10		patent that Microsoft's operating systems, such as	11:23:15
11		Windows 95 and Windows 98, included a Start button on	11:23:18
12		the taskbar (typically located along the bottom of	11:23:23
13		the screen) that, when pressed, provided a	11:23:27
14		menu-driven mechanism for calling applications to	11:23:33
15		provide access to underlying information."	11:23:37
16		Do you see that?	11:23:40
17		MR. BONE: Objection, form.	11:23:41
18	A	Yes, I see it.	11:23:42
19		BY MR. MICALLEF:	11:23:43
20	Q	Did I read that one correctly?	11:23:43
21	A	I think so.	11:23:44
22	Q	Okay. So, and then skipping a sentence,	11:23:45

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1	you also refer to Windows operating systems including	11:23:51
2	something called a command line interface. Do you	11:23:56
3	see that?	11:23:59
4	A I do.	11:24:00
5	MR. BONE: Objection, form.	11:24:01
6	BY MR. MICALLEF:	11:24:03
7	Q And so these are -- the command line	11:24:03
8	interface and the Start button are two examples in	11:24:06
9	the prior art of calling an application without	11:24:10
10	selecting a tile; would you agree with that?	11:24:14
11	MR. BONE: Objection. Form, foundation,	11:24:15
12	scope, relevance, calls for a hypothetical.	11:24:18
13	A Okay. So -- sorry, can you just restate	11:24:23
14	the question? I want to make sure I answer it	11:24:28
15	directly.	11:24:30
16	BY MR. MICALLEF:	11:24:30
17	Q Yeah. I just -- I want to make sure I	11:24:33
18	understand what you're saying.	11:24:37
19	A I think the answer is yes, but if you could	11:24:38
20	just restate it.	11:24:40
21	Q So if the Start button in Windows 95 and 98	11:24:41
22	is an example in the prior art of a way to call an	11:24:45

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1 application without selecting a tile, would you agree 11:24:48

2 with that? 11:24:50

3 MR. BONE: Same objections, and calls for a 11:24:51

4 legal conclusion. 11:24:52

5 A Right. Well, technically, the Start button 11:24:55

6 then allows you to pick a menu off of a Start menu, 11:24:58

7 and that's a way of starting an application without 11:25:03

8 selecting a tile of the '403 patent. 11:25:05

9 BY MR. MICALLEF: 11:25:07

10 Q Okay. And the command line interface of 11:25:08

11 Windows was another way to call an application 11:25:13

12 without selecting a tile, correct? 11:25:15

13 A I would agree with that. 11:25:19

14 Q Okay. And so the last sentence in this 11:25:20

15 paragraph, you're saying that you can replace the 11:25:29

16 desktop with a grid of tiles, but that doesn't 11:25:38

17 necessarily mean that you get rid of the Start button 11:25:41

18 functionality or the command line interface 11:25:44

19 functionality; is that fair? 11:25:46

20 MR. BONE: Objection, form. Objection, 11:25:47

21 foundation. Objection, calls for a hypothetical. 11:25:50

22 A Right. What I say is that replacing the 11:25:54

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1 desktop with an array of tiles as disclosed in the 11:25:59
2 patent would not necessarily eliminate other methods 11:26:02
3 such as some of the ones discussed in that paragraph 11:26:08
4 of calling applications. It would not necessarily 11:26:10
5 forestall those other methods. 11:26:13

6 BY MR. MICALLEF: 11:26:15

7 Q Okay. So and let's just use the language 11:26:16
8 of the proposed amended claim. You would agree that 11:26:19
9 just because you have a grid of tiles -- let me 11:26:23
10 strike that. Let me ask it a different way. If you 11:26:26
11 had a grid of tiles, you can still have other ways to 11:26:28
12 select an application program such as a menu or a 11:26:31
13 command line interface; would you agree with that? 11:26:35

14 MR. BONE: Objection, form. Objection, 11:26:37
15 foundation. Objection, relevance. 11:26:39

16 A Well, I don't know about the "such as" 11:26:43
17 part. But if you have a grid of tiles, I don't see 11:26:46
18 anything in this patent that says you can't have 11:26:49
19 other ways of calling applications. 11:26:51

20 BY MR. MICALLEF: 11:26:53

21 Q Okay. And if you implemented the web 11:26:54
22 browser embodiment of the disclosed grid of tiles, 11:27:07

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1	wouldn't you expect to still have things like a Start	11:27:11
2	button or a command line interface on the system?	11:27:17
3	MR. BONE: Objection, form. Objection,	11:27:19
4	relevance. Objection, calls for speculation.	11:27:21
5	A Yes, I really don't know, as we were	11:27:25
6	chatting about earlier, there's really not a lot of	11:27:30
7	discussion in the '403 about that web browser	11:27:32
8	embodiment. It's got to be combined with the grid	11:27:34
9	functionality. I'm not sure exactly how that would	11:27:38
10	be done, so I don't think I can answer that question.	11:27:40
11	BY MR. MICALLEF:	11:28:02
12	Q So I'm going to ask you to turn to	11:28:03
13	paragraph 45 of your Exhibit 2081.	11:28:04
14	A Okay.	11:28:07
15	Q And here you have a statement about	11:28:13
16	software that implements a grid of tiles requiring	11:28:17
17	code to test for overlap. Do you see that?	11:28:20
18	MR. BONE: Objection, form.	11:28:27
19	A I do.	11:28:29
20	BY MR. MICALLEF:	11:28:33
21	Q So I'm going to give you a hypothetical.	11:28:33
22	If I have a system that by default displays tiles,	11:28:38

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1	four tiles, each in one of four nonoverlapping	11:28:43
2	quadrants on the screen, and the system has never	11:28:47
3	been given the ability to move the tiles after	11:28:53
4	they're displayed, then there would -- and nothing	11:28:58
5	else, I'm not giving you any more of the system, it	11:29:01
6	makes your paragraph 45 untrue, doesn't it?	11:29:09
7	MR. BONE: Objection. Form, foundation,	11:29:12
8	incomplete hypothetical, relevance.	11:29:14
9	A So you're asking me a hypothetical question	11:29:16
10	that you refuse to elaborate on, and you're asking me	11:29:20
11	if that makes my statement in paragraph 45 untrue. I	11:29:23
12	can't comment on that. You haven't given me enough	11:29:26
13	to go on.	11:29:29
14	BY MR. MICALLEF:	11:29:30
15	Q Well, if a user doesn't have -- if a system	11:29:30
16	does not provide the capability to move tiles, and it	11:29:35
17	by default displays them in a nonoverlapping	11:29:38
18	configuration, then what would the system test to	11:29:44
19	determine whether there's overlap?	11:29:49
20	MR. BONE: Objection, form. Objection,	11:29:51
21	foundation. Objection, incomplete hypothetical.	11:29:53
22	A I guess I haven't really analyzed your	11:29:57

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1	hypothetical scenario, because all of the systems	11:30:02
2	that we're talking about in this proceeding and with	11:30:08
3	regard to this patent have the ability for users to	11:30:10
4	configure their environment. And so a system such as	11:30:16
5	you describe in which we have items that are somehow	11:30:21
6	fixed on the display and can't be moved isn't really	11:30:27
7	something that I've analyzed.	11:30:32
8	Certainly, you know, you may have picked a	11:30:35
9	nit in my paragraph 45 to the extent that I was	11:30:42
10	thinking in this paragraph about environments in	11:30:45
11	which users could do things with their desktop.	11:30:49
12	BY MR. MICALLEF:	11:30:53
13	Q I see. Well, let me ask you this: Is it	11:30:53
14	your view -- so let me, if I understand your --	11:30:59
15	MR. MICALLEF: Can I have his answer read	11:31:12
16	back.	11:31:13
17	(Requested portion of record read.)	11:31:13
18	BY MR. MICALLEF:	11:31:53
19	Q So do you think that, for example, any	11:31:54
20	prior art reference that does not permit overlap of	11:31:57
21	tiles must have the requisite code in place to test	11:32:03
22	for overlap and to reject it when it occurs?	11:32:10

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1 MR. BONE: Objection. Form, foundation, 11:32:13
2 calls for speculation, calls for a legal conclusion. 11:32:16

3 A No, I don't think that's necessarily true. 11:32:20
4 I think, for example, I remember Dr. Karger 11:32:23
5 describing a system in which you can have borders 11:32:28
6 between rectangular regions, and those borders can be 11:32:33
7 moved. And the moving of the border causes the 11:32:37
8 shrinking of one tile and the expansion of another 11:32:42
9 tile. It's coded that way. 11:32:45

10 So one could argue that that aspect of the 11:32:48
11 coding of the behavior of the borders is done in such 11:32:51
12 a way as to prevent overlap. But -- but I think 11:32:54
13 there's an argument to be made that even in that 11:33:03
14 scenario we have code in the system that has the 11:33:06
15 effect of forestalling or preventing overlap. 11:33:12

16 So my main point here is that Dr. Karger's 11:33:20
17 analysis that because this feature of not being 11:33:25
18 permitted to overlap is expressed as a negative 11:33:30
19 therefore requires the absence of functionality, 11:33:33
20 that's an assertion that I disagree with. 11:33:39

21 BY MR. MICALLEF: 11:33:46

22 Q Just give me a minute. I'm going to get an 11:33:57

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1	exhibit.	11:33:59
2	A Okay.	11:34:00
3	Q Mr. Weadock, I'm going to place in front of	11:34:13
4	you what's been previously marked as Exhibit 1113,	11:34:17
5	which is the deposition of David Karger on April	11:34:20
6	24th, 2014, and I'll direct you to a certain portion	11:34:27
7	of that in a minute.	11:34:30
8	(Deposition Exhibit 1113 was previously	11:34:30
9	marked for identification and attached to the	11:34:30
10	deposition transcript.)	11:34:30
11	BY MR. MICALLEF:	11:34:35
12	Q I'm actually going to ask you about	11:34:35
13	paragraph 51 in your Exhibit 2081, so you might want	11:34:38
14	to get that out as well.	11:34:42
15	A Paragraph 51, you said?	11:34:50
16	Q Yes. Are you with me?	11:34:51
17	A I'm getting there.	11:34:59
18	Q Okay.	11:35:01
19	A And that also refers to -- okay.	11:35:02
20	Q I think it refers to the deposition	11:35:05
21	transcript I just gave you.	11:35:06
22	A To this, this is 1113. Okay. I'm getting	11:35:07

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1	there. Bear with me.	11:35:11
2	Q Okay.	11:35:11
3	A So...	11:35:22
4	Q So it's page numbers in the lower	11:35:24
5	right-hand corner, not the depo page numbers, if that	11:35:26
6	helps.	11:35:31
7	A Yes. I'm catching on. Sometimes we number	11:35:31
8	pages, sometimes we number paragraphs.	11:35:37
9	Q Right.	11:35:40
10	A Okay. So I think I'm there.	11:35:44
11	Q Okay. So just to be clear, in paragraph 51	11:35:47
12	of your Exhibit 2081, at the very end, you cite	11:35:49
13	Dr. Karger's deposition, Exhibit 1113, at page 170,	11:35:54
14	line 7, through 171, line 3. Correct?	11:36:01
15	A Right.	11:36:07
16	MR. BONE: Objection to form.	11:36:07
17	BY MR. MICALLEF:	11:36:11
18	Q Just so the record is clear, again, that	11:36:12
19	citation would correspond to deposition pages 357 and	11:36:14
20	358, right?	11:36:21
21	A Right.	11:36:22
22	Q Okay. And you have those deposition pages	11:36:22

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1	in front of you?	11:36:27
2	A I do.	11:36:27
3	Q Okay. Now, this passage of Dr. Karger's	11:36:28
4	deposition is where he is being questioned about the	11:36:31
5	Sapphire system as it's described in the Myers paper,	11:36:37
6	Exhibit 1110; do you agree with that?	11:36:42
7	MR. BONE: Objection to form.	11:36:45
8	A Yes, I do.	11:36:47
9	BY MR. MICALLEF:	11:36:48
10	Q Okay.	11:36:49
11	A Gosh. It might be nice also, if we're	11:36:51
12	going to talk about this, if we have Exhibit 1110.	11:36:54
13	Do we have that handy?	11:36:57
14	Q You know, I don't want to put that in front	11:36:59
15	of you right now.	11:37:01
16	A Okay.	11:37:02
17	Q I want to ask you something about your	11:37:02
18	citation to Dr. Karger's --	11:37:04
19	A Okay.	11:37:06
20	Q -- deposition testimony. Because you state	11:37:07
21	in your paragraph 51 of Exhibit 2081 that	11:37:10
22	"Petitioner's expert admitted on cross-examination	11:37:18

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1	that Myers' icons are not selectable to call assigned	11:37:20
2	application programs as is required by what	11:37:26
3	petitioner has identified as the principal	11:37:29
4	amendment."	11:37:33
5	Do you see that?	11:37:34
6	MR. BONE: Objection to form.	11:37:34
7	A I do.	11:37:35
8	BY MR. MICALLEF:	11:37:36
9	Q And then you cite this portion of	11:37:36
10	Dr. Karger's testimony, correct?	11:37:38
11	A Correct.	11:37:41
12	Q And so I would like to direct your	11:37:42
13	attention to the portion of his testimony on page	11:37:45
14	170, line 20 through 23, which states, "So, again, if	11:37:50
15	I make a particular window a listener, and now I	11:37:57
16	start typing, that application program is now going	11:38:01
17	to be called to receive the typing that I'm doing."	11:38:05
18	Do you see that?	11:38:09
19	MR. BONE: Objection, form.	11:38:10
20	A I see it.	11:38:11
21	BY MR. MICALLEF:	11:38:12
22	Q Okay. And in that passage, Dr. Karger is	11:38:12

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1 saying that the Myers icons do call an assigned 11:38:16
2 application program if you interpret "call" as making 11:38:25
3 the program a listener. 11:38:31

4 MR. BONE: Objection, form. 11:38:34

5 BY MR. MICALLEF: 11:38:35

6 Q Isn't that fair? 11:38:36

7 MR. BONE: Objection, foundation. 11:38:36

8 Objection, relevance. 11:38:37

9 A No. That's not fair. So maybe I can sort 11:38:39

10 of help explain that. I say in my paragraph 51, 11:38:45

11 "Myers' icons are not selectable to call assigned 11:38:51

12 application programs." And that's what Dr. Karger 11:38:54

13 agrees with on this page. 11:38:57

14 BY MR. MICALLEF: 11:39:00

15 Q Well, doesn't Dr. Karger say on page 170, 11:39:00

16 beginning at line 15 -- I'm sorry, beginning at 11:39:04

17 line -- well, line 15, he says, "That gets to the 11:39:06

18 ambiguity of call, all right? So if I click on an 11:39:10

19 icon in order to turn that window into the listener, 11:39:14

20 you can certainly see that as a -- as a step towards 11:39:17

21 calling that application program, right? So again, 11:39:20

22 if I make a particular window a listener, and now I 11:39:24

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1	start typing, that application program is now going	11:39:27
2	to be called to receive the typing that I'm doing."	11:39:30
3	He says that, right?	11:39:33
4	MR. BONE: Objection, form.	11:39:35
5	A He does. It's a little bit unusual use of	11:39:36
6	"call." But yes, that's what he says.	11:39:43
7	BY MR. MICALLEF:	11:39:46
8	Q He's saying that the application program is	11:39:46
9	now going to be called at lines 21 to 22, correct?	11:39:48
10	A Yes. We have to be careful, though,	11:39:52
11	because when you make a window a listener, we are	11:39:55
12	presuming that that window also exists. So in this	11:40:00
13	scenario that Dr. Karger is discussing, by making a	11:40:06
14	window a listener, that only works if the application	11:40:10
15	is already running.	11:40:13
16	And if the application isn't running, then	11:40:15
17	you can't use the icon to call the program.	11:40:18
18	Q So you can use the icon to call the program	11:40:20
19	if "call" means making it a listener; do you agree	11:40:26
20	with that?	11:40:32
21	MR. BONE: Objection. Form, foundation,	11:40:32
22	relevance.	11:40:33

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1 A I always hate agreeing to questions that 11:40:34
2 posit something that I think is not right. I don't 11:40:36
3 think it's a proper use of the word "call." What we 11:40:39
4 would normally use in that context is a word like 11:40:42
5 "focus," making that window the focus. We wouldn't 11:40:47
6 normally describe making a window the focus or making 11:40:50
7 it the listener in Dr. Karger's language here as 11:40:53
8 calling a program. 11:40:57

9 So I wouldn't use those terms. 11:40:58

10 BY MR. MICALLEF: 11:40:59

11 Q Well, I just want to get to the point of 11:40:59
12 disagreement. And it seems to me that Dr. Karger has 11:41:03
13 testified that the word "call" could be used to mean 11:41:07
14 make it a listener, and I think he also says it could 11:41:10
15 mean something else, and you are disagreeing with 11:41:14
16 that first part, you disagree that the word "call" 11:41:17
17 fairly could be read to mean make that thing a 11:41:20
18 listener; is that fair? 11:41:23

19 A Yes, I'm disagreeing with that. I don't 11:41:24
20 think that's a normal use of the word "call." 11:41:26

21 MR. BONE: I object to characterization of 11:41:29
22 the exhibit. 11:41:31

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1	BY MR. MICALLEF:	11:41:38
2	Q And so -- and so you would interpret "call"	11:41:38
3	to mean launch an application?	11:41:45
4	MR. BONE: Objection, form. Foundation.	11:41:48
5	MR. MICALLEF: Strike that. Let me	11:41:51
6	rephrase.	11:41:53
7	BY MR. MICALLEF:	11:41:53
8	Q You would interpret "call" in that context	11:41:53
9	to mean launch?	11:41:56
10	MR. BONE: Same objections. Objection,	11:41:57
11	relevance.	11:42:00
12	A Certainly one of the meanings of "call" is	11:42:01
13	to launch.	11:42:03
14	BY MR. MICALLEF:	11:42:47
15	Q So -- give me a moment. I would like to	11:42:47
16	ask you to turn to page 29 of your Exhibit 2081.	11:42:57
17	A Okay.	11:43:04
18	Q Let me back up for a second. What other	11:43:11
19	meanings of "call" do you think there are?	11:43:14
20	MR. BONE: Objection, relevance.	11:43:17
21	Objection, scope.	11:43:20
22	A One can call a program that has already	11:43:22

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1 been launched to perform some task, for example. 11:43:29

2 BY MR. MICALLEF: 11:43:33

3 Q Well, why wouldn't that, making that -- why 11:43:34

4 wouldn't that be making the program that gets called 11:43:38

5 a listener? 11:43:44

6 A Because making something a listener doesn't 11:43:47

7 ask it to do a task. 11:43:49

8 Q Well, in Myers, if you're typing into a 11:44:00

9 program, why wouldn't receiving information from 11:44:07

10 typing be a task? 11:44:09

11 MR. BONE: Objection, form. Objection, 11:44:10

12 foundation. Objection, relevance. 11:44:11

13 A Well, you're asking me about something 11:44:15

14 different now. You're asking about a user who's 11:44:18

15 typing. A moment ago, you asked me about making a 11:44:21

16 window a listener. Making a window a listener is not 11:44:24

17 in my view a typical or normal use of the word 11:44:28

18 "call," because I'm not asking the program that I'm 11:44:34

19 making the listener to do a task. 11:44:36

20 BY MR. MICALLEF: 11:44:39

21 Q Well, would receiving information from an 11:44:39

22 input device be a task? 11:44:42

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1 MR. BONE: Objection, form. Objection, 11:44:44
2 foundation. Objection, relevance. 11:44:45

3 A Well, that's an awfully broad hypothetical. 11:44:47
4 It might be. 11:44:51

5 BY MR. MICALLEF: 11:44:56

6 Q What would you need to know to determine 11:44:57
7 whether or not it is? 11:45:00

8 MR. BONE: Objection, form. Objection, 11:45:02
9 relevance. 11:45:04

10 A Well, I'm not sure I can fashion your 11:45:06
11 questions for you, Mr. Micallef. If you want to ask 11:45:09
12 me a question, I'll try to answer it. I've already 11:45:12
13 testified that I don't think making a window a 11:45:14
14 listener is what is normally meant in the industry by 11:45:18
15 the verb "to call." 11:45:21

16 And when you call a program, typically a 11:45:25
17 normal person of skill in the art would understand 11:45:30
18 that to mean launching an application or possibly 11:45:32
19 asking an application to do a task, to perform some 11:45:35
20 function. 11:45:41

21 BY MR. MICALLEF: 11:45:42

22 Q And you believe that receiving input from 11:45:43

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1 an input device could be asking the application to 11:45:45
2 perform a function? 11:45:48

3 A Yes, it could be. 11:45:53

4 Q And can you give me any indication of how I 11:45:56
5 would know when it is and when it isn't? 11:45:58

6 A We could talk about a specific situation, a 11:46:00
7 specific program, a specific operation, and we could 11:46:03
8 chat about whether it's a -- whether it would be 11:46:07
9 construed as a call by a person of skill in the art, 11:46:09
10 if you want to point to a particular program, a 11:46:14
11 particular action, we can talk about it. 11:46:17

12 Q Oh, I see. 11:46:19

13 A But I don't think that -- my point here is 11:46:20
14 that I don't think it's normal use of the verb "to 11:46:24
15 call an application" to make it a listener. And the 11:46:27
16 other part of the point is Dr. Karger has agreed here 11:46:31
17 on this page 357 or page 170, depending on which 11:46:34
18 corner you look at, that in the Sapphire system, you 11:46:39
19 can't call an application that isn't running by 11:46:43
20 selecting an icon. 11:46:45

21 Q So my question was a little bit different. 11:46:46
22 I want to get to the kinds of things an expert would 11:46:48

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1	consider when trying to determine whether asking a	11:46:51
2	program to receive information from an input device	11:46:57
3	is calling it.	11:47:00
4	MR. BONE: Objection, form.	11:47:01
5	A Gosh. There's -- there are probably many.	11:47:05
6	I haven't done that analysis.	11:47:12
7	BY MR. MICALLEF:	11:47:13
8	Q Can you tell me any?	11:47:15
9	MR. BONE: Objection, calls for	11:47:15
10	speculation. Objection, form.	11:47:16
11	A Not off the top of my head.	11:47:34
12	BY MR. MICALLEF:	11:47:36
13	Q Okay. I would like to ask you some	11:47:36
14	questions about -- well, could I get you to direct	11:47:42
15	your attention to page 29 of your Exhibit 2081.	11:47:46
16	A Okay. We're still there. Same page,	11:47:50
17	right?	11:47:52
18	Q Page 29 of Exhibit 2081? Are you there?	11:47:52
19	A Right. I'm already there.	11:47:57
20	Q Oh. That was quick. And this section that	11:47:59
21	starts on this page deals with MSIE Kit, correct?	11:48:04
22	A Yes.	11:48:09

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1	Q	Okay. Now, you have studied Active Desktop	11:48:10
2		in the past, correct?	11:48:15
3		MR. BONE: Objection, form.	11:48:17
4	A	Yes.	11:48:20
5		BY MR. MICALLEF:	11:48:21
6	Q	Was the first time -- when was the first	11:48:22
7		time?	11:48:24
8		MR. BONE: Objection, relevance.	11:48:24
9	A	Well, golly. It would have been pretty	11:48:28
10		soon after it came out.	11:48:30
11		BY MR. MICALLEF:	11:48:32
12	Q	1997?	11:48:33
13	A	That sounds about right.	11:48:35
14		MR. BONE: Objection, foundation.	11:48:36
15		BY MR. MICALLEF:	11:48:37
16	Q	And can you just briefly, under what	11:48:37
17		circumstances were you studying it?	11:48:39
18		MR. BONE: Objection, relevance.	11:48:41
19		Objection, scope.	11:48:42
20	A	Well, I was teaching Windows at the time.	11:48:44
21		I was writing about Windows at the time. And I was	11:48:50
22		doing consulting work about Windows at the time. So	11:48:54

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1 every new version of Windows that came out, every new 11:48:59
2 version of Internet Explorer that came out, I would 11:49:04
3 get it, install it, study it, work with it, try to 11:49:09
4 understand it. 11:49:14

5 BY MR. MICALLEF: 11:49:16

6 Q Were you ever a member of the Microsoft 11:49:18
7 Developers Network? 11:49:22

8 MR. BONE: Objection, relevance. 11:49:22

9 A That's a good question. I may have been at 11:49:25
10 one time. I think I did have an MSDN subscription at 11:49:27
11 one time. 11:49:32

12 BY MR. MICALLEF: 11:49:32

13 Q Do you remember when? 11:49:32

14 A Not exactly, no. 11:49:33

15 Q So when you got the new software that came 11:49:34
16 out, for example, that had Active Desktop on it, 11:49:41
17 would you buy it, or would it come to you 11:49:45
18 automatically from Microsoft? 11:49:48

19 MR. BONE: Objection, relevance. 11:49:49

20 A Yes, I don't remember the details of IE4, 11:49:50
21 how I received that. But yes, during -- during that 11:49:54
22 time frame generally, especially the several years 11:49:58

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1 during which I was writing books, I generally just 11:50:02
2 got new software from Microsoft. I don't know 11:50:06
3 whether that was via an MSDN subscription. It might 11:50:12
4 have been a TechNet subscription. 11:50:16

5 But I just pretty much got anything, and 11:50:19
6 anything that I was interested in, generally it was 11:50:21
7 just a matter of requesting it from the software 11:50:24
8 companies, and they would send on copies for me to 11:50:26
9 study. 11:50:29

10 BY MR. MICALLEF: 11:50:29

11 Q And you would load it up and study it for 11:50:30
12 purposes of writing your books? 11:50:32

13 MR. BONE: Objection, relevance. 11:50:33

14 A Well, as one example, I think I mentioned 11:50:34
15 that I was writing books about Windows at the time, 11:50:38
16 and I was also teaching seminars about Windows at the 11:50:40
17 time, and writing seminars about Windows at the time. 11:50:44
18 And I made some videos. And I had some consulting 11:50:47
19 clients. 11:50:51

20 So there were many reasons for me to try to 11:50:52
21 stay on top of Windows and related subjects. 11:50:55

22 BY MR. MICALLEF: 11:51:02

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1 Q Okay. And did you use Active Desktop 11:51:02
2 items? Just to be clear, I'm talking about when they 11:51:09
3 first came out in 1997, did you use Active Desktop 11:51:11
4 items? 11:51:14

5 MR. BONE: Objection. Foundation, 11:51:15
6 relevance. 11:51:20

7 A Sure. I set it up, I played with them, I 11:51:21
8 experimented with it. Yes. 11:51:26

9 BY MR. MICALLEF: 11:51:34

10 Q And I think you would agree Active Desktop 11:51:34
11 items, a user can move them around? 11:51:40

12 MR. BONE: Objection, form. Objection, 11:51:42
13 foundation. Objection, relevance. 11:51:44

14 A I would agree that -- 11:51:47

15 MR. BONE: Objection, scope. 11:51:49

16 A -- you -- pardon me. I agree that users 11:51:50
17 could move Active Desktop items around. 11:51:56

18 BY MR. MICALLEF: 11:51:59

19 Q You would agree that users could resize 11:51:59
20 Active Desktop items? 11:52:02

21 MR. BONE: Objection. Form, relevance, 11:52:04
22 foundation, scope. 11:52:05

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1	A	Yes.	11:52:06
2	BY MR. MICALLEF:		11:52:06
3	Q	Do you recall how that was done back in	11:52:06
4		1997?	11:52:08
5	MR. BONE: Objection. Relevance, scope.		11:52:10
6	A	Yes. You would click on the item and then	11:52:18
7		you would be able to see the resize controls. You	11:52:23
8		could click and drag the border.	11:52:31
9	BY MR. MICALLEF:		11:52:34
10	Q	And then at that point, without doing	11:52:35
11		anything more, the Active Desktop item would be the	11:52:36
12		selected element on the screen; is that fair?	11:52:39
13	MR. BONE: Objection. Form, foundation,		11:52:41
14		scope, relevance.	11:52:46
15	A	Well, you would have to click on it, and	11:52:47
16		then you could drag the border to resize it. So I'm	11:52:53
17		not sure I understood your question about "without	11:52:57
18		doing anything more."	11:52:59
19	BY MR. MICALLEF:		11:53:00
20	Q	Would the -- at that point after the	11:53:02
21		resizing, would the Active Desktop item be the	11:53:03
22		selected element on the screen?	11:53:07

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1	MR. BONE: Objection, form.	11:53:08
2	A Yes.	11:53:10
3	MR. BONE: Foundation.	11:53:10
4	THE WITNESS: I'm sorry, Richard.	11:53:11
5	MR. MICALLEF: We are running out of tape	11:53:18
6	so we're going to have to take a little break.	11:53:20
7	MR. BONE: Do we want to make this a lunch	11:53:24
8	break?	11:53:27
9	THE VIDEOGRAPHER: This marks the end of	11:53:28
10	tape number 1. We're going off the record at 11:53.	11:53:29
11	(Whereupon, at 11:53 a.m., a lunch recess	11:53:35
12	was taken.)	13:04:04
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		

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1	AFTERNOON SESSION	13:04:04
2	(1:04 p.m.)	13:04:06
3	THE VIDEOGRAPHER: Here begins tape number	13:04:06
4	2. We are back on the record at 1:04.	13:04:08
5	BY MR. MICALLEF:	13:04:26
6	Q Mr. Weadock, I would like to direct your	13:04:27
7	attention to -- let's see -- Exhibit 2081 again. And	13:04:28
8	let's look at paragraph 56, which I believe is on	13:04:36
9	page 28.	13:04:39
10	A Okay.	13:04:47
11	Q And there you're talking about a persistent	13:04:47
12	display of a grid of tiles, correct?	13:04:54
13	MR. BONE: Objection to form.	13:04:56
14	A Yes.	13:04:59
15	BY MR. MICALLEF:	13:05:04
16	Q And I just want to make sure I understand	13:05:05
17	your position on this. Where information concerning	13:05:09
18	a grid of tiles is stored in or on a nonvolatile hard	13:05:17
19	disk, that certainly -- that fact alone certainly	13:05:24
20	does not mean that the grid of tiles is displayed	13:05:30
21	every session; would you agree with that?	13:05:33
22	MR. BONE: Objection. Form, foundation,	13:05:35

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1	relevance.	13:05:39
2	A Well, I'm trying to think of some	13:05:52
3	circumstance in which the grid would not be	13:05:57
4	displayed. I mean, if it's functioning as a desktop	13:06:00
5	replacement, then one would expect a grid to be	13:06:04
6	displayed in each session.	13:06:08
7	BY MR. MICALLEF:	13:06:09
8	Q But you certainly agree that you can have	13:06:09
9	information on your hard drive that doesn't get	13:06:10
10	displayed from session to session?	13:06:13
11	MR. BONE: Objection. Form, foundation,	13:06:14
12	relevance.	13:06:18
13	A Yes.	13:06:18
14	BY MR. MICALLEF:	13:06:36
15	Q Okay. Let's see. Okay. I would like to	13:06:37
16	direct your attention to paragraph 63 of your Exhibit	13:06:48
17	2081.	13:06:52
18	A Okay.	13:06:58
19	Q Okay. And you make a point about the	13:06:59
20	helper applications not being assigned to the Active	13:07:02
21	Desktop item in your view, correct, in that	13:07:05
22	paragraph?	13:07:07

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1 MR. BONE: Objection, form. 13:07:08

2 A Right. Let me just put this in the proper 13:07:09

3 context here. So this is referencing Karger -- we 13:07:14

4 don't have paragraph numbers, but we're referencing 13:07:23

5 in the previous paragraph the helper applications 13:07:25

6 cited by Dr. Karger. And so yes, what I'm saying in 13:07:28

7 63 is that those helper applications are not assigned 13:07:35

8 to the Active Desktop item. 13:07:38

9 BY MR. MICALLEF: 13:07:41

10 Q Just to be clear, you're interpreting the 13:07:49

11 amended claim, proposed amended claim 53 as requiring 13:07:52

12 that an application program be assigned to a tile; is 13:07:56

13 that fair? 13:08:01

14 MR. BONE: Objection, form. Foundation. 13:08:01

15 A Yes, I think that's fair. But let's go 13:08:02

16 back and let's just take a look at the alternate 13:08:08

17 claim language. And actually, I think I may have to 13:08:12

18 go to a different document to see that. 13:08:19

19 BY MR. MICALLEF: 13:08:20

20 Q You may want to try the actual motion to 13:08:20

21 amend, at the bottom of page 2. 13:08:24

22 A Right. Okay. So at the bottom of the page 13:08:26

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1 2 of the patent owner's motion for conditional 13:08:41
2 amendment, the underlying material at the bottom of 13:08:44
3 the page includes the words "wherein selecting a tile 13:08:49
4 calls an assigned application program to provide 13:08:52
5 access to information." 13:08:56

6 And yes, I do read that to mean that the 13:08:58
7 application program is assigned to the tile. 13:09:02

8 Q Okay. But -- okay. That's fine. So let 13:09:04
9 me ask you this question: Would you agree that 13:09:21
10 Active Desktop was a subset of Internet Explorer 4? 13:09:24

11 MR. BONE: Objection. Form, foundation, 13:09:30
12 relevance. 13:09:33

13 A Microsoft refers to Active Desktop as being 13:09:38
14 in Internet Explorer 4. And it is discussed as a 13:09:43
15 part of Internet Explorer 4. I think I have some 13:09:50
16 references in my latest declaration to that effect. 13:09:53
17 I'm not sure Microsoft characterizes it as a subset, 13:10:01
18 so I'm not sure that I would necessarily have a basis 13:10:09
19 for characterizing it as a subset. But it certainly 13:10:12
20 is the case that Microsoft describes Active Desktop 13:10:17
21 in multiple places as being a part of Internet 13:10:19
22 Explorer 4. 13:10:22

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1	BY MR. MICALLEF:	13:10:23
2	Q A part of Internet Explorer --	13:10:23
3	A A part of Internet Explorer 4, right.	13:10:25
4	Q So would you agree that Internet Explorer 4	13:10:28
5	included functionality that would not be fairly	13:10:30
6	called Active Desktop functionality?	13:10:32
7	MR. BONE: Objection. Form, foundation,	13:10:34
8	relevance.	13:10:35
9	A Well, I'm not sure I would agree with that,	13:10:37
10	because the Active Desktop items are basically	13:10:39
11	browser Windows, and IE4 is basically a browser; so	13:10:42
12	I'm not sure I would agree with that.	13:10:47
13	BY MR. MICALLEF:	13:10:58
14	Q Well, would you agree that Internet	13:10:58
15	Explorer 4 includes some functionality that would not	13:11:01
16	be fairly called Active Desktop item functionality?	13:11:04
17	MR. BONE: Objection. Form, foundation,	13:11:06
18	relevance.	13:11:09
19	A That I think I could agree with, because	13:11:14
20	one could use IE4 on a system that did not have	13:11:16
21	Active Desktop installed; so in that sense, yes.	13:11:20
22	BY MR. MICALLEF:	13:11:24

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1 Q And so from that would it be fair to 13:11:25
2 conclude that Internet Explorer 4 includes at least 13:11:27
3 some computer instructions that are not used with 13:11:31
4 Active Desktop items? 13:11:34

5 MR. BONE: Objection. Form, foundation, 13:11:36
6 relevance. 13:11:38

7 A No, that's a different thing that you're 13:11:39
8 asking. I think that Internet Explorer 4, the fact 13:11:42
9 that it can be run on a system that doesn't have 13:11:48
10 Active Desktop installed doesn't mean that it has 13:11:52
11 code modules that aren't used in Active Desktop, for 13:11:55
12 example. I don't think you could draw that 13:12:00
13 conclusion. 13:12:02

14 BY MR. MICALLEF: 13:12:02

15 Q Would you agree that Active Desktop 13:12:02
16 includes computer instructions that are not necessary 13:12:04
17 to be used with Internet Explorer 4? 13:12:11

18 MR. BONE: Objection. Form, foundation, 13:12:13
19 relevance. 13:12:15

20 A That Active Desktop contains instructions 13:12:20
21 that are not designed to be used with Internet 13:12:25
22 Explorer 4? 13:12:29

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1	BY MR. MICALLEF:	13:12:29
2	Q Necessary to be used.	13:12:29
3	A That are not necessary to be used with	13:12:30
4	Internet Explorer -- I don't know whether that's the	13:12:32
5	case either. I don't think I could agree with that,	13:12:35
6	sitting here.	13:12:40
7	Q Well, you agree you can install Internet	13:12:41
8	Explorer 4 and use it without having Active Desktop	13:12:44
9	installed?	13:12:47
10	A Yes.	13:12:48
11	Q And in that situation, when Active Desktop	13:12:51
12	is not installed, are there any computer instructions	13:12:54
13	related to Active Desktop that Internet Explorer 4	13:12:59
14	cannot make use of, as far as you know?	13:13:06
15	MR. BONE: Objection. Form, foundation,	13:13:08
16	relevance.	13:13:09
17	A I haven't analyzed the code at that level	13:13:09
18	of detail, so I can't really reply.	13:13:13
19	MR. MICALLEF: I'm going to have the court	13:13:35
20	reporter mark as Exhibit 1114 passages from the	13:13:36
21	Microsoft Computer Dictionary, certain pages,	13:13:46
22	copyright 1991 and have you take a look at it.	13:13:52

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1	(Deposition Exhibit 1114 was marked for	13:13:57
2	identification and attached to the deposition	13:13:57
3	transcript.)	13:14:12
4	MR. BONE: I'll just preserve an objection	13:14:12
5	for authenticity.	13:14:14
6	BY MR. MICALLEF:	13:14:16
7	Q So let me ask you, would you agree that the	13:14:16
8	computer instructions that implement Active Desktop	13:14:24
9	items are not exactly the same as the computer	13:14:29
10	instructions that Internet Explorer 4 can execute?	13:14:36
11	MR. BONE: Objection. Form, foundation,	13:14:43
12	relevance.	13:14:45
13	A Well, gosh. I'm not sure I can even agree	13:14:47
14	with that, in the sense that if Internet Explorer 4	13:14:50
15	were taken to mean, in Microsoft's words, something	13:14:53
16	that contains Active Desktop, if we buy that, then I	13:14:58
17	don't think we could say what you just said.	13:15:02
18	BY MR. MICALLEF:	13:15:04
19	Q How about, do you know what an Active	13:15:04
20	Channel is?	13:15:06
21	A Yes.	13:15:07
22	Q What is it?	13:15:07

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1	A	An Active Channel is a structure that	13:15:09
2		Microsoft provides some guidance for, for example,	13:15:15
3		companies hosting websites, to create an entry on a	13:15:23
4		channel bar to develop a file, a specific kind of	13:15:28
5		file called a channel definition file, that can be	13:15:33
6		used to access an item on Active Desktop.	13:15:38
7	Q	And is an Active Desktop channel as far as	13:15:45
8		you know something different from an Active Desktop	13:15:48
9		item?	13:15:51
10		MR. BONE: Objection. Form, foundation,	13:15:51
11		relevance.	13:15:53
12	A	They're different things.	13:15:53
13		BY MR. MICALLEF:	13:15:56
14	Q	And would you agree that at least some of	13:15:56
15		the computer instructions that implement Active	13:15:58
16		Desktop channels must be different from the computer	13:16:00
17		instructions that implement Active Desktop items?	13:16:02
18		MR. BONE: Objection. Foundation,	13:16:05
19		relevance.	13:16:08
20	A	Oh, I suppose that's probably a reasonable	13:16:09
21		statement, in that if you have a channel definition	13:16:13
22		file, a .CDF file, then that has some code in it that	13:16:17

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1	may not be present on another Active Desktop	13:16:28
2	installation that doesn't have active channels set up	13:16:32
3	or CDF files set up.	13:16:36
4	So yeah, I think I would say yes to that.	13:16:38
5	BY MR. MICALLEF:	13:16:42
6	Q So this Exhibit 1114 --	13:16:42
7	MR. MICALLEF: Did I give you the one I	13:16:46
8	marked on the front page? That's all right. Strike	13:16:48
9	that.	13:16:54
10	BY MR. MICALLEF:	13:16:54
11	Q Back to Exhibit 1114.	13:16:55
12	A Okay.	13:16:57
13	Q So on the fifth page of the exhibit,	13:16:58
14	there's a definition for the noun "program." Do you	13:17:10
15	see that?	13:17:15
16	A I do.	13:17:15
17	Q Would you agree that's a reasonable	13:17:15
18	definition for the claim term "program" as it's used	13:17:18
19	in substitute -- proposed substitute claim 53?	13:17:22
20	MR. BONE: Objection. Form, foundation,	13:17:26
21	calls for a legal conclusion.	13:17:29
22	A Well, I'm not sure that's a perfect	13:17:45

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1	mapping. So a sequence of -- so the definition here	13:17:52
2	in the Microsoft Computer Dictionary defines	13:17:58
3	"program" as "a sequence of instructions that can be	13:18:02
4	executed by a computer." I mean, one could write a	13:18:05
5	two-line batch file that changes the date or time	13:18:19
6	setting of a computer. And that wouldn't be what we	13:18:24
7	would consider an application program, I guess, to	13:18:32
8	use the term "application program."	13:18:34
9	A sequence of instructions that can be	13:18:39
10	executed by a computer could also be a module within	13:18:41
11	a program, right? So I can have a program that	13:18:46
12	consists of multiple objects, multiple methods,	13:18:49
13	multiple procedures, each one of which according to	13:18:52
14	this definition would be a program, but in normal	13:18:57
15	parlance, we wouldn't call it a program.	13:18:59
16	For example, you could probably identify	13:19:03
17	hundreds of methods or procedures or objects of one	13:19:05
18	kind or another in Microsoft Word, but we wouldn't	13:19:09
19	say that Microsoft Word was hundreds of programs.	13:19:13
20	BY MR. MICALLEF:	13:19:17
21	Q So you think the proper interpretation of	13:19:17
22	"program" as far as substitute -- proposed substitute	13:19:20

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1	claim 53 is something different than what's in at	13:19:22
2	least this particular dictionary; is that fair?	13:19:25
3	MR. BONE: Objection. Form, foundation,	13:19:27
4	mischaracterizes testimony.	13:19:29
5	A You know, I think I would go ahead and	13:19:30
6	agree with it. I don't particularly love this	13:19:33
7	definition. I think this, as I just explained, this	13:19:36
8	definition could be used to describe Microsoft Word	13:19:39
9	as containing hundreds of programs. I just don't	13:19:41
10	think that's something that we would do, either a	13:19:44
11	person of skill in the art would consider it that, or	13:19:48
12	just a regular computer user.	13:19:51
13	So, right, I don't think this is the best	13:19:53
14	definition of "program."	13:19:57
15	BY MR. MICALLEF:	13:20:08
16	Q I would like to direct your attention to	13:20:08
17	paragraph 82 of your Exhibit 2081.	13:20:09
18	A Okay. Okay. I'm there.	13:20:13
19	Q Okay. In this paragraph, you're discussing	13:20:29
20	a couple of different aspects of the Kostas,	13:20:36
21	K-O-S-T-E-S, prior art reference, in particular the	13:20:40
22	main view and the montage view, correct?	13:20:42

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1	MR. BONE: Objection, form.	13:20:44
2	A Correct.	13:20:46
3	BY MR. MICALLEF:	13:20:51
4	Q And at the bottom of that page, page 42 of	13:20:51
5	Exhibit 2081, you state that "It would not be obvious	13:20:54
6	to 'cherry pick' attributes of main view rectangular	13:20:56
7	regions, and combine them with attributes of montage	13:21:01
8	view rectangular regions"; do you see that?	13:21:05
9	MR. BONE: Objection to form.	13:21:09
10	A I do.	13:21:11
11	BY MR. MICALLEF:	13:21:11
12	Q But wouldn't you agree a person of ordinary	13:21:12
13	skill in the art could combine the teachings of	13:21:14
14	Kostes that relate to the main view with the	13:21:16
15	teachings that relate to the montage view, like	13:21:19
16	pieces of a puzzle?	13:21:22
17	MR. BONE: Objection. Form, foundation,	13:21:23
18	calls for a legal conclusion. Calls for speculation.	13:21:26
19	A Well, gee. I'm not sure what you mean by	13:21:30
20	"like pieces of a puzzle." When I look at Kostes, I	13:21:34
21	see that he's got two different kinds of rectangular	13:21:41
22	regions. And what I'm talking about here in this	13:21:44

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1 paragraph is that Dr. Karger sometimes conflates the 13:21:47
2 two by talking about rectangular regions generally in 13:21:52
3 Kostas. 13:21:55

4 And I don't think that that's a fair 13:21:56
5 statement, really, because -- your statement, because 13:21:59
6 if Kostas is teaching, hey, let's divide the display 13:22:04
7 up in two different regions with two different kinds 13:22:07
8 of animals in each of these regions, he is doing so 13:22:10
9 for a -- for a particular reason, for a purpose. 13:22:15

10 And in fact, this is a little bit contrary 13:22:17
11 to the concept of the '403, which has a certain set 13:22:20
12 of uniform capabilities associated with tiles and the 13:22:26
13 grid of tiles, and we just have one grid of tiles, we 13:22:29
14 don't have two grids, that do different things. So I 13:22:33
15 would say probably no. 13:22:36

16 BY MR. MICALLEF: 13:22:37

17 Q But just as a matter of obviousness, 13:22:37
18 principles, don't you agree that a person of ordinary 13:22:39
19 skill in the art can combine the teachings of the 13:22:42
20 prior art like pieces of a puzzle? 13:22:44

21 MR. BONE: Objection. Form, foundation, 13:22:46
22 relevance, calls for a legal conclusion, calls for 13:22:48

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1 speculation.

13:22:50

2 A Well, I'm not a patent attorney, but I do
3 understand that when a person of skill in the art is
4 looking at the art, it's inappropriate to use -- I
5 think the phrase that the attorneys sometimes use is
6 "20/20 hindsight" and just pick, you know, item one
7 from list one and item two from list two and put
8 something together.

13:22:51

13:22:56

13:22:59

13:23:10

13:23:11

13:23:16

13:23:21

9 There has to be motivation to do that.

13:23:22

10 There has to be a reason to do that. There has to be
11 some teaching that that would be appropriate. And to
12 me, from my limited understanding of the law, if I've
13 got Kostas, and he's got two different kinds of
14 rectangular regions, a person of skill in the art is
15 going to assume that there is a reason for that, and
16 I don't think would automatically assume that it
17 would be appropriate to pick characteristics from one
18 region and characteristics from another region.

13:23:30

13:23:33

13:23:35

13:23:39

13:23:42

13:23:43

13:23:46

13:23:47

13:23:50

19 I don't think that would necessarily be
20 obvious, any more than it would be obvious if I'm
21 talking about a machine that has -- that has
22 different parts for me to combine parts of the

13:23:52

13:23:53

13:23:56

13:24:04

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SurfCast – Exhibit 2089, page 115
Microsoft Corp. v. SurfCast, Inc. IPR2013-00292

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1 characteristic of one machine component with parts 13:24:08
2 from another machine component. 13:24:11

3 I mean, if I have two different things, 13:24:13
4 they're different for a reason, they're disclosed as 13:24:16
5 different for a reason. So no, I don't think it 13:24:18
6 would necessarily be obvious in the abstract to do 13:24:21
7 that. 13:24:23

8 BY MR. MICALLEF: 13:24:24

9 Q Do you think obviousness requires a 13:24:24
10 motivation to combine prior art references? 13:24:26

11 MR. BONE: Objection. Form, foundation, 13:24:28
12 calls for a legal conclusion. Objection, relevance. 13:24:30
13 Objection, calls for speculation. 13:24:32

14 A You know, I do understand that the law in 13:24:34
15 that area has changed somewhat over the years, and 13:24:39
16 that may not be the only requirement. But I also 13:24:43
17 understand that a person of skill in the art is 13:24:46
18 presumed to be capable of thinking analytically, and 13:24:48
19 that they would have to have some kind of reason to 13:25:03
20 combine two references that are being referred to as, 13:25:04
21 you know, constituting an obviousness situation. 13:25:09

22 So I don't know whether there has to be 13:25:14

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1	always a motivation to combine. But I think it has	13:25:20
2	to make sense to do this. There has to be -- for a	13:25:24
3	person of skill, there has to be some reason to put	13:25:28
4	these things together, something that would guide a	13:25:31
5	person of skill to put two different things together.	13:25:33
6	And here we have Kostas saying, hey, let's put these	13:25:35
7	two things in separate buckets.	13:25:39
8	BY MR. MICALLEF:	13:25:48
9	Q So I'll hand you the Kostas patent	13:25:48
10	application, which has previously been marked as	13:25:50
11	Exhibit 1051, just in case you want to refer to it.	13:25:54
12	(Deposition Exhibit 1051 was previously	13:25:54
13	marked for identification and attached to the	13:25:54
14	deposition transcript.)	13:26:02
15	A Okay.	13:26:02
16	BY MR. MICALLEF:	13:26:02
17	Q So I would like to direct your attention to	13:26:02
18	page 45 of your report, paragraph 88, paragraph 88 of	13:26:03
19	Exhibit 2081.	13:26:11
20	A Okay. So that starts with a "therefore."	13:26:20
21	So I would like to read the previous paragraph to put	13:26:22
22	it in context.	13:26:24

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1	Okay.	13:26:54
2	Q So in paragraph 81, you refer to	13:26:55
3	Dr. Karger's conclusion that one of ordinary skill in	13:26:59
4	the art would understand that in order to interact	13:27:01
5	with email, a user must have selected a pane in	13:27:03
6	Kostes, correct?	13:27:08
7	MR. BONE: Objection, form.	13:27:09
8	A Right. Yeah, I don't see that requirement	13:27:12
9	in the Kostes document.	13:27:15
10	BY MR. MICALLEF:	13:27:18
11	Q Yeah, I didn't see in this paragraph --	13:27:18
12	maybe I'm missing it, the ones before it in your	13:27:22
13	report, where you cite to a particular portion of	13:27:24
14	Kostes that refers to that email functionality. But	13:27:27
15	if you look at Kostes, page 31, I think that is the	13:27:31
16	passage that Dr. Karger was referring to.	13:27:37
17	A Okay.	13:27:39
18	Q Would you let me know if you agree with	13:27:40
19	that. Well, let me ask this.	13:27:42
20	A Oh, I can't presume to know what's in	13:27:44
21	Dr. Karger's mind here.	13:27:46
22	MR. BONE: Objection, form. Objection,	13:27:47

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1	foundation.	13:27:49
2	BY MR. MICALLEF:	13:27:49
3	Q Okay. Let me ask a different question. Is	13:27:49
4	page -- is the passage on page 31 of Kostas what	13:27:52
5	you're referring to when you refer to email in	13:27:55
6	paragraph 88 of your Exhibit 2081?	13:27:59
7	A Oh, well, let's see. I'm actually	13:28:02
8	referring back to something that was in Dr. Karger's	13:28:05
9	declaration. So his conclusion that one of ordinary	13:28:08
10	skill in the art would understand that in order to	13:28:12
11	interact with email, a user must have selected the	13:28:15
12	pane of Kostas, and gosh, you know, I don't seem to	13:28:17
13	have a citation there.	13:28:21
14	I'm not sure whether that was in his	13:28:22
15	declaration or maybe in his deposition. So -- oh,	13:28:25
16	wait a second. Yeah, I would have to -- let's see.	13:28:29
17	I think I would have to go hunt for that, because I'm	13:28:36
18	not sure where Dr. Karger makes that assertion. It	13:28:38
19	might be in his deposition.	13:28:43
20	Q All right. That was part of my confusion.	13:28:45
21	But let me ask you, let me direct your attention back	13:28:47
22	to Kostas Exhibit 1051, and specifically page 31.	13:28:48

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1	A	Okay.	13:28:53
2	Q	Do you have that in front of you?	13:29:00
3	A	I do.	13:29:02
4	Q	And that passage talks about a third	13:29:02
5		application, which it calls a Unified In-Box. Do you	13:29:05
6		see that?	13:29:10
7	A	I do.	13:29:10
8	Q	And there is a sentence in there that says,	13:29:11
9		"Users can read email, listen to voicemail, and view	13:29:15
10		faxes all from the same Unified In-Box application."	13:29:20
11		Do you see that?	13:29:24
12	A	I do.	13:29:25
13	Q	So you would agree that whatever else that	13:29:25
14		sentence I just read means, it means that users can	13:29:28
15		interact with the Unified In-Box application?	13:29:33
16		MR. BONE: Objection to form. Foundation.	13:29:37
17		Calls for speculation.	13:29:40
18	A	Yes, I would agree.	13:29:43
19		BY MR. MICALLEF:	13:29:44
20	Q	And if that Unified In-Box is in a pane, in	13:29:45
21		order to interact with that application, a user would	13:29:50
22		have to select that pane; is that fair?	13:29:53

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1	MR. BONE: Objection. Form, foundation,	13:29:54
2	calls for speculation. Objection, relevance.	13:29:57
3	A No, I don't see anything in Kostas that	13:30:00
4	supports that.	13:30:03
5	BY MR. MICALLEF:	13:30:06
6	Q Do you see anything -- strike that. Did	13:30:07
7	you ever look for something in Kostas that says the	13:30:14
8	Unified In-Box application is presented in something	13:30:17
9	other than a pane?	13:30:21
10	MR. BONE: Objection. Form, foundation,	13:30:23
11	relevance.	13:30:26
12	A Well, going by memory here, I think the	13:30:28
13	Unified In-Box is only discussed on page 31. You	13:30:32
14	know, I would have to go through the whole thing to	13:30:35
15	verify that 100 percent. But here Kostas is talking	13:30:37
16	about the Unified In-Box as a third application. And	13:30:45
17	then we have other applications. And back on page	13:30:49
18	30, in the middle paragraph, I think he says, "All of	13:30:55
19	these applications can be hosted in the montage	13:31:00
20	view."	13:31:02
21	So I think he's talking about the panes in	13:31:02
22	the montage view, as best I can read it.	13:31:05

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1 BY MR. MICALLEF:

13:31:07

2 Q All right. I would like to direct your
3 attention to paragraph 90 of your Exhibit 2081. And
4 so here you make the statement that certain portions
5 of Dr. Karger's report, Exhibit 1110, apply only to
6 net channels in the main view; do you see that?

13:31:07

13:31:19

13:31:30

13:31:33

13:31:40

7 MR. BONE: Objection, form.

13:31:43

8 A Yeah, I do. And I'm afraid -- maybe you
9 can point me to which page. I would like to
10 cross-reference this with Karger, but this printout
11 doesn't -- oh, that's a deposition. Do I have --

13:31:45

13:31:48

13:31:51

13:31:53

12 BY MR. MICALLEF:

13:31:57

13 Q I don't know.

13:31:58

14 MR. MICALLEF: Do we have Karger's report,
15 Exhibit 1110?

13:31:58

13:32:01

16 BY MR. MICALLEF:

13:32:03

17 Q I don't think you have it in front of you
18 right now.

13:32:04

13:32:05

19 A I don't think I do.

13:32:05

20 Q All right. So I am handing you Exhibit
21 1110.

13:32:12

13:32:15

22 (Deposition Exhibit 1110 was previously

13:32:15

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1	marked for identification and attached to the	13:32:15
2	deposition transcript.)	13:32:28
3	A Okay. And let's see. Paragraphs 296 --	13:32:28
4	BY MR. MICALLEF:	13:32:35
5	Q You might want to hear my questions first.	13:32:35
6	You can certainly look at that.	13:32:37
7	A Okay.	13:32:39
8	Q But -- I note that you don't cite any	13:32:39
9	portion of Kostas in paragraph 90 of Exhibit 2081 to	13:32:46
10	support your assertion that what Dr. Karger is	13:32:51
11	talking about in those paragraphs applies only to net	13:32:56
12	channels in the main view.	13:33:00
13	MR. BONE: Objection to form.	13:33:00
14	BY MR. MICALLEF:	13:33:01
15	Q Correct?	13:33:01
16	A In my paragraph 90, I don't cite to a	13:33:03
17	specific location in Kostas, that's true.	13:33:07
18	Q Did you look for support in Kostas for the	13:33:09
19	proposition that Dr. Karger's testimony in those	13:33:13
20	paragraphs applies only to net channels in the main	13:33:17
21	view?	13:33:19
22	MR. BONE: Objection. Form, irrelevance.	13:33:19

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1	A	And with that question, let me read those	13:33:22
2		paragraphs, and then I'll answer you.	13:33:26
3	BY MR. MICALLEF:		13:33:28
4	Q	Okay.	13:33:29
5	A	Okay. So first of all, we see in Karger,	13:33:56
6		in the referenced paragraphs, we have support for the	13:34:00
7		statement that his discussion only applies to net	13:34:04
8		channels, because he starts out in his first citation	13:34:08
9		there in paragraph 296 by referring to net channels.	13:34:13
10		And he says "whether the net channel in question is a	13:34:22
11		pull or a push channel," and then he goes on to talk	13:34:25
12		about pull and push processing.	13:34:30
13		And the rest of paragraph 296 and in	13:34:32
14		paragraph 297, so clearly this all has to do with net	13:34:36
15		channels. And in 298, he says, "The above passage,"	13:34:41
16		again referring to the things he was talking about in	13:34:43
17		297. So again, we're still talking about net	13:34:45
18		channels. And now let's see -- so you could just	13:34:49
19		read Karger and figure that out. But let's be	13:34:52
20		precise about it.	13:34:57
21		In 297, he talks about -- let's see.	13:34:58
22		Karger refers to Kostas -- let's see -- at page 20,	13:35:02

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1	when he's talking about these pull-type channels. So	13:35:10
2	let's go look at Kostas on page 20 and see what	13:35:13
3	Kostas is talking about there. Yes, so you can just	13:35:19
4	look at page 20, you don't have to read every word,	13:35:30
5	to know that he's talking about channels, in the very	13:35:32
6	first full sentence, "Channel designers," dot dot	13:35:36
7	dot, "channels can be tested," dot dot dot. The next	13:35:42
8	paragraph, "The invention provides a full set of data	13:35:47
9	services to channel models." Very first line of the	13:35:50
10	next paragraph, "Full type channels request model	13:35:53
11	services."	13:35:54
12	So it's pretty clear that Kostas here is	13:35:54
13	talking about channels. So I think that's a fair	13:35:57
14	amount of evidence to support my assertion that these	13:35:58
15	paragraphs in Karger apply to net channels. And	13:36:02
16	there's -- we can look through Kostas elsewhere and	13:36:07
17	find where he talks about the fact that the net	13:36:10
18	channels are visible in the main view and the	13:36:12
19	applications are visible in the montage view.	13:36:14
20	Q But that's wasn't my question, actually.	13:36:15
21	It was a little different. What you answered is	13:36:18
22	whether that stuff applies to net channels.	13:36:20

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1	A	Right.	13:36:22
2	Q	And what I asked you is, did you ever look	13:36:22
3		for a citation that says that testimony applies only	13:36:24
4		to net channels?	13:36:29
5	A	Oh.	13:36:30
6		MR. BONE: Objection, form. Relevance.	13:36:31
7	A	I see. Okay. Well, I read through Kostas,	13:36:33
8		and I didn't see anything that indicated to me that	13:36:37
9		that would be the case.	13:36:43
10		BY MR. MICALLEF:	13:36:45
11	Q	Okay.	13:36:45
12	A	And I don't think I saw anything in	13:36:51
13		Dr. Karger's declaration or deposition that does so	13:36:53
14		either.	13:36:59
15	Q	Okay.	13:37:10
16		MR. MICALLEF: I pass the witness.	13:37:16
17		MR. BONE: Thank you. We will take a	13:37:18
18		ten-minute break and we'll reconvene.	13:37:19
19		THE VIDEOGRAPHER: Going off the record.	13:37:26
20		The time on the video monitor is 1:37.	13:37:29
21		(Recessed at: 1:37 p.m.)	13:37:32
22		(Reconvened at: 1:49 p.m.)	13:49:16

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1	THE VIDEOGRAPHER: Back on the record. The	13:49:41
2	time on the video monitor is 1:49.	13:49:43
3	EXAMINATION BY COUNSEL FOR PATENT OWNER	13:49:46
4	BY MR. BONE:	13:49:46
5	Q Mr. Weadock, I would refer you to paragraph	13:49:48
6	51 of your reply declaration, Exhibit 2081.	13:49:51
7	A Okay.	13:50:09
8	Q And I'm going to also draw your attention	13:50:25
9	to page 170 of Exhibit 1113, which is deposition	13:50:28
10	transcript of Dr. Karger. And you remember, it's the	13:50:40
11	page numbers at the bottom.	13:50:43
12	A Yes. Okay.	13:50:44
13	Q So if I draw your attention to page 170 of	13:50:59
14	Exhibit 1113, lines 15 to 23.	13:51:05
15	A Yes.	13:51:12
16	Q Dr. Karger says, at one point he says, "If	13:51:12
17	I click on an icon in order to turn that window into	13:51:19
18	the listener, you can certainly see that as a -- as a	13:51:22
19	step towards calling that application program,"	13:51:26
20	right? Then on lines 21-22, he says, "Now I start	13:51:29
21	typing. That application program is now going to be	13:51:34
22	called."	13:51:37

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1	So what in your view, Mr. Weadock, calls	13:51:38
2	the program? Is it the typing or is it the selecting	13:51:41
3	the icon?	13:51:43
4	MR. MICALLEF: I object to form. Calls for	13:51:45
5	speculation.	13:51:47
6	A Well, the selecting, as I was saying	13:51:49
7	earlier, clicking on an icon in order to turn that	13:51:52
8	window into the listener, would not normally be	13:51:56
9	considered to be calling a program. It would have to	13:52:01
10	be something done after that, in this example,	13:52:06
11	starting typing in an application that is receiving	13:52:11
12	the typing, whatever that application might be.	13:52:14
13	So I don't know where the calling is	13:52:23
14	actually happening here, but in my view, it is not	13:52:25
15	the clicking of the icon in order to turn the window	13:52:27
16	into the listener. And Dr. Karger seems to agree.	13:52:29
17	He refers to that as a step towards calling the	13:52:32
18	program. He doesn't refer to it as calling the	13:52:35
19	program.	13:52:38
20	BY MR. BONE:	13:52:38
21	Q Okay. Thank you. So the next one to turn	13:52:38
22	your attention to, Exhibit 1001, the '403 patent.	13:52:48

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1	A	Okay.	13:52:53
2	Q	And on column 10, I draw your attention to	13:53:05
3		lines 23 to 25. Where it says, "In one embodiment of	13:53:12
4		the present invention, the tile is itself a document	13:53:22
5		created in a markup language such as HTML or XML as	13:53:24
6		shown in figure 6 and is suitable for display in a	13:53:28
7		web browser."	13:53:31
8	A	Yes.	13:53:34
9	Q	I'm now going to turn attention, having	13:53:37
10		read that, to column 14 of Exhibit 1001.	13:53:41
11	A	Okay.	13:53:50
12	Q	And there's a title -- there's a subtitle,	13:53:50
13		"Architecture of Application Program Software," at	13:53:56
14		around line 26.	13:53:56
15	A	Yes.	13:53:59
16	Q	In the following paragraphs, lines 28 to	13:54:07
17		53, I'm going to ask you to just read those and	13:54:11
18		familiarize yourself with them for a minute.	13:54:13
19	A	Okay.	13:54:16
20		Okay.	13:54:53
21	Q	So based on that section of the '403 patent	13:54:54
22		and also the previous sections I referred you to in	13:54:56

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1	column 10, where do you think that the material	13:54:59
2	displayed in the tile originates in the --	13:55:04
3	MR. MICALLEF: Objection. Go ahead. I'm	13:55:08
4	sorry.	13:55:10
5	BY MR. BONE:	13:55:11
6	Q -- in the context of the '403 patent?	13:55:11
7	MR. MICALLEF: I object to form. Outside	13:55:13
8	the scope. Ambiguous.	13:55:15
9	A Well, in the architecture sections in	13:55:23
10	column 14, there is discussion that the SurfCast	13:55:26
11	program takes its underlying data from potentially	13:55:28
12	two sources, metabase and a system library, and that	13:55:32
13	the data structures for tiles can be obtained from	13:55:37
14	the XP core, so for example, from the operating	13:55:40
15	system environment.	13:55:44
16	And the metabase can contain various	13:55:47
17	so-called widgets that can be used to compose the	13:55:50
18	tile as well. So the SurfCast program in displaying	13:55:54
19	a tile can draw from its own metabase. It can draw	13:55:59
20	from the operating system library of code modules as	13:56:04
21	well.	13:56:10
22	BY MR. BONE:	13:56:10

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1	Q	So in your estimation, are those materials	13:56:10
2		drawn upon by the tiles the same as an application	13:56:14
3		program?	13:56:16
4		MR. MICALLEF: I object to form. Outside	13:56:16
5		the scope. Leading.	13:56:18
6	A	No.	13:56:27
7		BY MR. BONE:	13:56:38
8	Q	So referring to another section on the	13:56:38
9		same -- on the same column, column 14, line 62 to 65.	13:56:40
10	A	I see it.	13:56:49
11	Q	If you would just familiarize yourself with	13:56:50
12		that for a minute. So it says that "Underlying all	13:56:53
13		of the application programs's operations." And which	13:57:01
14		application program is that?	13:57:06
15		MR. MICALLEF: I object to form. Outside	13:57:07
16		the scope. Leading.	13:57:10
17	A	I believe that's referring to the SurfCast	13:57:10
18		application program.	13:57:13
19		BY MR. BONE:	13:57:13
20	Q	Okay. That application program relies on	13:57:14
21		functions from the operating system library?	13:57:17
22		MR. MICALLEF: I object to form. Leading.	13:57:20

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1	Outside the scope.	13:57:22
2	MR. BONE: Sorry, I had not finished.	13:57:24
3	BY MR. BONE:	13:57:26
4	Q I was just going to ask, do you agree with	13:57:26
5	that assessment?	13:57:28
6	MR. MICALLEF: Same objections.	13:57:29
7	A Yes, that's exactly what it says here.	13:57:30
8	BY MR. BONE:	13:57:31
9	Q Okay. And are those pieces different from	13:57:31
10	an application program that's assigned to a tile, for	13:57:40
11	example?	13:57:42
12	MR. MICALLEF: Objection, form. Leading.	13:57:42
13	Outside the scope.	13:57:44
14	A Yes, they would be.	13:57:46
15	BY MR. BONE:	13:57:47
16	Q Okay. Turning next to column 15 of Exhibit	13:57:47
17	1001.	13:57:56
18	A Okay.	13:57:58
19	Q I'll just draw your attention to lines 10	13:58:00
20	to 25 of that column.	13:58:05
21	A Yes.	13:58:16
22	Q In your view, is a tile rendered	13:58:17

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1	independently of an application program? In other	13:58:21
2	words, based on the material in column 14 that you	13:58:24
3	were just reviewing?	13:58:28
4	MR. MICALLEF: I object to form. Leading.	13:58:29
5	Outside the scope.	13:58:31
6	A Yes.	13:58:35
7	BY MR. BONE:	13:58:37
8	Q Okay. Thank you. So when you think about	13:58:37
9	what renders a tile in the context of the '403	13:59:05
10	patent, and we've talked about that being described,	13:59:12
11	for example, in column 14, is that different from an	13:59:17
12	application program that's associated with a tile?	13:59:21
13	A Yes.	13:59:26
14	MR. MICALLEF: I object to form. Leading.	13:59:26
15	Outside the scope.	13:59:28
16	THE WITNESS: I'm sorry.	13:59:29
17	A Yes, it is.	13:59:29
18	BY MR. BONE:	13:59:37
19	Q So earlier in today's deposition, opposing	13:59:37
20	counsel presented a hypothetical to you. I'll do my	13:59:45
21	best to reconstruct it. It comprised a computer	13:59:48
22	display having four tiles, one in each of four	13:59:54

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1	quadrants, displayed in a nonoverlapping fashion,	13:59:56
2	such that the tiles in question were very bare bones.	14:00:01
3	The user had no control over their features or	14:00:05
4	placement.	14:00:08
5	How do you think a computer system, when	14:00:11
6	attempting to render such tiles in this hypothetical,	14:00:15
7	would determine whether those tiles should be	14:00:22
8	overlapped without knowing the tile sizes or the	14:00:24
9	screen resolution?	14:00:27
10	MR. MICALLEF: I object to form,	14:00:29
11	mischaracterizes prior testimony. Irrelevant as	14:00:31
12	stated. Leading.	14:00:34
13	A Well, I'm not sure how the program would be	14:00:38
14	able to do that without knowing the size and without	14:00:41
15	knowing the details of the user's display.	14:00:46
16	BY MR. BONE:	14:00:49
17	Q So for example, if the tile were different	14:00:49
18	sizes of one another, I don't believe the	14:00:51
19	hypothetical required the tiles to be of the same	14:00:54
20	size, if the tiles were of different sizes to one	14:00:57
21	another, how would the system ensure that they didn't	14:01:01
22	overlap?	14:01:04

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1	MR. MICALLEF: Objection. Same objections	14:01:04
2	as before.	14:01:05
3	A I don't know. It's a hypothetical system,	14:01:06
4	so it's hard to talk about it in any great detail.	14:01:11
5	But...	14:01:17
6	BY MR. BONE:	14:01:18
7	Q Let me add maybe a couple of other details	14:01:19
8	to the hypothetical. Extending it a little, suppose	14:01:21
9	the screen resolution was 480 by 640, and suppose	14:01:25
10	each of the tiles was 300 by 400. How do you think	14:01:29
11	the system would render the tiles?	14:01:34
12	MR. MICALLEF: Same objections.	14:01:35
13	A Well, if it wanted to -- if the system was	14:01:36
14	designed to display the four tiles at specific	14:01:39
15	locations, but if it was intending to display all of	14:01:49
16	them on the display, one would think that --	14:01:54
17	depending on how the hypothetical system was	14:01:58
18	programmed, but one would think that it would	14:02:00
19	almost have to overlap them in order to fit the outer	14:02:03
20	boundaries of each tile within the user's display.	14:02:06
21	BY MR. BONE:	14:02:12
22	Q So if it were then to ultimately obey the	14:02:12

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1	constraint that they cannot overlap, would the system	14:02:14
2	have to do any appropriate processing?	14:02:17
3	MR. MICALLEF: Objection, mischaracterizes	14:02:18
4	the prior testimony. Leading. Outside the scope.	14:02:20
5	Irrelevant.	14:02:23
6	A Yes, my general feeling is yes, and my	14:02:27
7	general reaction to this whole issue is that if a	14:02:31
8	program is deemed to forbid a certain behavior, there	14:02:35
9	generally will be and possibly always will be some	14:02:40
10	code to enforce that behavior.	14:02:43
11	BY MR. BONE:	14:02:48
12	Q Thank you. My next question, I'm going to	14:02:49
13	direct you to several places in the '403 patent that	14:02:54
14	use the term "session."	14:02:59
15	A Okay.	14:03:04
16	Q There's an instance at column 15, line 64.	14:03:04
17	And I'll just read that. This is an item that was	14:03:10
18	quoted earlier in this deposition. It says, "Items	14:03:13
19	in the metabase are 'persistent,' that is, they are	14:03:19
20	not saved explicitly but are preserved from session	14:03:22
21	to session."	14:03:26
22	Do you see that?	14:03:28

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1	A	I do.	14:03:29
2		MR. MICALLEF: I object. I object to form	14:03:29
3		and to the narrative question as leading.	14:03:31
4		BY MR. BONE:	14:03:37
5	Q	I'll now direct you to column 17 of Exhibit	14:03:37
6		1001, at line 32. Yes, at line 32. "Contents store	14:03:40
7		1918 is a cache that contains content of tiles for	14:03:52
8		the previous session."	14:03:57
9		(The reporter asked for clarification.)	14:03:57
10	Q	"Contents store 1918 is a cache that	14:03:58
11		contains content of tiles for the previous session."	14:04:01
12		And then column 22, for example, line 22, turning	14:04:06
13		next to fig. 25, "Each time a user logs on to the	14:04:17
14		server 2402, a session is initiated, step 2500."	14:04:21
15		Does each of those uses of the term	14:04:30
16		"session" comport with your understanding of the term	14:04:34
17		in the computer arts?	14:04:37
18		MR. MICALLEF: I object to form. Outside	14:04:39
19		the scope. Leading. Compound.	14:04:41
20	A	Yes, it does.	14:04:43
21		BY MR. BONE:	14:04:43
22	Q	Okay. Is the usage of the term "session"	14:04:44

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1	in any of those pieces of the '403 patent consistent	14:04:50
2	with a broader use of the term "session"? For	14:04:54
3	example, a user going away to have a cup of coffee?	14:05:00
4	MR. MICALLEF: I object form. Compound.	14:05:03
5	Leading. Outside the scope.	14:05:05
6	A These uses do not seem to point to that	14:05:07
7	kind of a scenario.	14:05:11
8	BY MR. BONE:	14:05:12
9	Q What sort of scenario do you think they	14:05:12
10	point to?	14:05:14
11	A Well, I think we can look at the --	14:05:15
12	MR. MICALLEF: Excuse me. Outside the	14:05:17
13	scope. I object. Go ahead.	14:05:19
14	A Okay. So we can take some guidance from	14:05:21
15	the patent. For example, the lines on column 22, a	14:05:23
16	log-on and log-off action, as I stated earlier today,	14:05:27
17	would normally be considered by a person of skill in	14:05:33
18	the art of the patent to constitute a session.	14:05:35
19	BY MR. BONE:	14:05:40
20	Q Okay. Thank you. In my other question, I	14:05:40
21	referenced a user going away essentially from the	14:06:03
22	station, for example, for a cup of coffee, as was	14:06:06

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1 referenced in I think Dr. Karger's declaration and 14:06:10

2 was also referenced earlier in this deposition. 14:06:12

3 In that context, suppose that was all the 14:06:16

4 user did, they did not log off, they did not shut 14:06:18

5 down, they just left their desk for some reason and 14:06:22

6 returned. Does that comport with your understanding 14:06:25

7 of the term "session to session" in the computer 14:06:29

8 context? 14:06:32

9 MR. MICALLEF: Objection to form. Leading. 14:06:33

10 Outside the scope. 14:06:34

11 A Not really -- as I said earlier, not really 14:06:35

12 in the computer context. It's a valid use of the 14:06:38

13 term "session" in the term of a human being having a 14:06:40

14 work session. But in the computer context, as I 14:06:44

15 think I testified earlier, we generally talk about 14:06:47

16 log on, log off being the delimiters for a session or 14:06:49

17 power on and power off. 14:06:53

18 There are other types of session too. 14:06:56

19 There are things called HTTP sessions, but they don't 14:06:58

20 really apply with respect to this particular patent. 14:07:02

21 BY MR. BONE: 14:07:04

22 Q Okay. So with respect to the '403 patent, 14:07:04

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1	how do you understand the term "session" to be used	14:07:08
2	there?	14:07:10
3	A I would understand it to be --	14:07:11
4	MR. MICALLEF: I object to form. Go ahead.	14:07:12
5	THE WITNESS: Sorry.	14:07:14
6	A I would understand it to be used in the	14:07:14
7	sense of between log-on and log-off operations or	14:07:16
8	between power cycles.	14:07:20
9	BY MR. BONE:	14:07:24
10	Q Okay. Thank you. Staying with Exhibit	14:07:25
11	1001, I draw your attention now to figure 2 of the	14:07:31
12	'403 patent.	14:07:40
13	A Okay.	14:07:43
14	Q And in figure 2, there's an item 112; do	14:07:48
15	you see that?	14:07:54
16	A Yes.	14:07:55
17	Q And according to the '403 patent, at column	14:07:56
18	6, line 64, 112 is a main memory. Do you see that?	14:08:07
19	A I do.	14:08:17
20	Q Okay. How do you understand the term "main	14:08:19
21	memory" to be used in the context of the '403 patent?	14:08:24
22	MR. BONE: I object to form. Outside the	14:08:27

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1	scope.	14:08:28
2	A So "main memory" here may be referring to	14:08:33
3	RAM memory, it may be referring to disk memory, it	14:08:40
4	may be referring to both of those things. All of the	14:08:44
5	items in the 112 box here in figure 2 would typically	14:08:47
6	reside in persistent storage, and portions of them,	14:08:55
7	or in the case of the application program, possibly	14:08:59
8	all of them would then be loaded into RAM volatile	14:09:02
9	memory.	14:09:07
10	But looking at the box 112, I see an	14:09:07
11	operating system, a file system, a cache, GUI,	14:09:10
12	application programs. Those are things that would	14:09:14
13	normally reside on a hard drive.	14:09:17
14	BY MR. BONE:	14:09:18
15	Q So the file system, for example, where	14:09:19
16	would that normally reside?	14:09:21
17	A That would normally reside on a hard drive.	14:09:22
18	And then in operation, portions of the file system,	14:09:25
19	and file system is often incorporated under the	14:09:29
20	operating system nomenclature as well, would be	14:09:34
21	loaded into RAM memory, volatile memory for the	14:09:40
22	current computing session.	14:09:42

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1	Q	Okay. I believe that earlier in this	14:09:44
2		deposition, you made a reference to the operating	14:09:46
3		system being loaded into RAM. Is that the entire	14:09:50
4		operating system?	14:09:56
5	MR. MICALLEF:	I object to form. Leading.	14:09:58
6	A	No. As I think I said earlier, as I think	14:10:00
7		Mr. Micallef and I discussed, typically portions of	14:10:04
8		the operating system are loaded into memory. It	14:10:09
9		would not be necessary to load the entire operating	14:10:12
10		system into memory. And the operating system in fact	14:10:14
11		may have a conversation, an ongoing conversation	14:10:17
12		between RAM memory and hard disk storage.	14:10:20
13	BY MR. BONE:		14:10:22
14	Q	So when you see in figure 2, "The operating	14:10:23
15		system 120 in this portion 112 main memory," how do	14:10:26
16		you interpret that as to where the operating system	14:10:32
17		is?	14:10:34
18	MR. MICALLEF:	I object to form. Leading.	14:10:34
19		Outside the scope.	14:10:35
20	A	Well, I look at everything here in this box	14:10:37
21		112 as these are components that would typically live	14:10:40
22		on a hard drive, and some or all of them would be	14:10:44

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1	loaded into RAM memory in the course of actually	14:10:48
2	using the computer.	14:10:51
3	BY MR. BONE:	14:10:53
4	Q Okay.	14:10:53
5	MR. BONE: I think we would like to take a	14:10:57
6	break for five minutes or so, and we will reconvene.	14:10:59
7	MR. MICALLEF: Okay.	14:11:03
8	MR. BONE: And we'll take it from there.	14:11:05
9	Go off the record.	14:11:07
10	THE VIDEOGRAPHER: Going off the record.	14:11:08
11	The time on the video monitor is 2:11.	14:11:08
12	(Recessed at: 2:11 p.m.)	14:11:11
13	(Reconvened at: 2:23 p.m.)	14:23:03
14	THE VIDEOGRAPHER: We are back on the	14:23:45
15	record. The time on the video monitor is 2:23.	14:23:46
16	BY MR. BONE:	14:23:51
17	Q Okay, Mr. Weadock, I want to refer you	14:23:51
18	again to figure 1 of Exhibit 1001, the '403 patent.	14:23:54
19	A Okay.	14:24:07
20	Q In your testimony earlier today, you said	14:24:07
21	that item number 70, which is the tile in the bottom	14:24:10
22	left-hand corner, was a web browser, was displaying a	14:24:14

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1	web browser, I believe; is that correct?	14:24:20
2	MR. MICALLEF: I object to form. Leading.	14:24:22
3	Mischaracterizes the testimony.	14:24:23
4	A Yeah, let me just refer to where the patent	14:24:26
5	discusses that.	14:24:32
6	BY MR. BONE:	14:24:33
7	Q Column 6.	14:24:33
8	A So the patent says that the tiles 40, 50,	14:24:40
9	60, 70, and 80 point to websites. And I think my	14:24:46
10	testimony was that that might be an active instance	14:24:50
11	of a browser, or it might -- it might not. We can't	14:24:57
12	determine that that's actually a browser by the	14:25:03
13	patent description that says it points to a website.	14:25:06
14	Q Okay. Let me draw your attention again to	14:25:10
15	a portion we discussed a few minutes ago, which is at	14:25:16
16	column 14 of Exhibit 1001.	14:25:19
17	A Right.	14:25:25
18	Q It's the portion in lines 36 through 53.	14:25:28
19	A Right.	14:25:34
20	Q Did you need to refresh your memory of that	14:25:37
21	for a minute?	14:25:39
22	MR. MICALLEF: I object to form.	14:25:40

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1	Inappropriate use of refreshing recollection.	14:25:43
2	Leading. Ambiguous. Irrelevant. Outside the scope.	14:25:45
3	A No. I recall those two paragraphs.	14:25:49
4	BY MR. BONE:	14:25:52
5	Q So based on your understanding of column	14:25:52
6	14, what do you think is being rendered in tile 70 --	14:25:57
7	MR. MICALLEF: I object to form.	14:26:01
8	BY MR. BONE:	14:26:03
9	Q -- of fig. 1?	14:26:04
10	MR. MICALLEF: I object to form, leading,	14:26:06
11	outside the scope.	14:26:07
12	A Well, those two paragraphs would suggest	14:26:08
13	that the rendering is being done from, for example,	14:26:10
14	the metabase, so there might be a user interface	14:26:15
15	element in the metabase that could be used to display	14:26:19
16	that tile.	14:26:23
17	BY MR. BONE:	14:26:24
18	Q Okay.	14:26:24
19	MR. BONE: We're going to pass the witness.	14:26:28
20	MR. MICALLEF: I don't have any further	14:26:31
21	questions for you, Mr. Weadock, but I do want to	14:26:32
22	object on the record to all of Mr. Weadock's	14:26:35

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1 testimony about the Myers reference based on the fact 14:26:38
2 that it was not treated in his original report or 14:26:40
3 your motion. 14:26:46

4 MR. HEINTZ: I disagree with that 14:26:52
5 characterization. Your objection is noted. We'll 14:26:53
6 also note for the record that it was raised in 14:26:58
7 Dr. Karger's report, and Mr. Weadock was within his 14:27:00
8 rights and we were within our rights to reply to 14:27:02
9 them. 14:27:05

10 That's it for us. Off the record. 14:27:05

11 MR. MICALLEF: I think so. 14:27:07

12 THE VIDEOGRAPHER: This marks the end of 14:27:08
13 the deposition. We're going off the record at 2:27. 14:27:10

14 (Signature having not been waived, the
15 videotaped deposition of GLENN E. WEADOCK was
16 concluded at 2:27 p.m.)

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ACKNOWLEDGMENT OF DEPONENT

I, _____, 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.

(DATE) (SIGNATURE)

SUBSCRIBED AND SWORN before and to me this ____ day of
_____, 20____.

NOTARY PUBLIC

Printed Name: _____

My Commission expires: _____

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C E R T I F I C A T E

I, LEE BURSTEN, Certified Reporter and
Notary Public within and for the District of
Columbia do hereby certify:

That GLENN E. WEADOCK, the
witness whose deposition is hereinbefore set forth,
was duly sworn by me before the commencement of such
deposition and that such deposition was taken before
me and is a true record of the testimony given by such
witness.

I further certify that the adverse party,
SURFCAST, INC., was represented by counsel at the
deposition.

I further certify that the deposition of
GLENN E. WEADOCK, occurred at the offices
of DLA PIPER, LLP, 500 Eighth Street, Washington DC
on Wednesday, May 14, 2014, commencing at
9:29 a.m. to 2:27 p.m.

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1 I further certify the inspection, reading
2 and signing of said deposition were NOT WAIVED by
3 counsel for the respective parties and by the witness.
4

5 I further certify that I am not related to
6 any of the parties to this action by blood or
7 marriage, I am not employed by or an attorney to any
8 of the parties to this action, and that I am in no way
9 interested, financially or otherwise, in the outcome
10 of this matter.
11

12 IN WITNESS WHEREOF, I have hereunto set my
13 hand this 19th day of May, 2014.
14

15 My commission expires June 30, 2014.
16

17
18
19  

20 NOTARY PUBLIC IN AND FOR THE
21 DISTRICT OF COLUMBIA
22

No. 58527

Re: Deposition of **Glenn Weadock**

Date: 05/14/2014

Caption: Microsoft Corporation -v- SurfCast, Inc.

Page	Line	Correction/Change and Reason
37	16	"ellipses" should be "ellipsis" (reason: spelling.)

5/21/14
(Date)


(Signature)

No. 58527

Re: Deposition of **Glenn Weadock**
Date: 05/14/2014
Caption: Microsoft Corporation -v- SurfCast, Inc.

ACKNOWLEDGMENT OF DEPONENT

I, Glenn Weadock, 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.

5/21/14

(Date)



(Signature)

PLANET DEPOS
888.433.3767 | WWW.PLANETDEPOS.COM

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