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

ORIGINAL

RICOH AMERICAS CORPORATION
and XEROX CORPORATION,

Petitioner,

vs.

Case: IPR2013-00302
Patent 7,986,426 B1

MPHJ TECHNOLOGY INVESTMENTS, LLC,

Patent Owner.

- - -

VIDEOTAPED DEPOSITION OF
GLENN WEADOCK
APRIL 10, 2014
8:30 A.M.

HILL, KERTSCHER & WHARTON
3350 RIVERWOOD PKWY
SUITE 800
ATLANTA, GEORGIA

REPORTED BY:
STEVEN S. HUSEBY, RPR
CCR-B-1372

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P R O C E E D I N G S

THE VIDEOGRAPHER: This is the beginning of Disc Number One in the deposition of Glenn Weadock in the matter of Ricoh Americas Corporation and Xerox Corporation versus MPHJ Technology Investment, LLC, Case Number IPR2013-00302.

Today's date is April 10, 2014, and the time on the monitor is 8:42 a.m.

My name is Damon Okoro, and I'm the videographer. The court reporter is Steve Huseby. We're with Huseby Global Litigation.

Counsel, please introduce yourselves, after which the court reporter will swear in the witness.

MR. SABHARWAL: Keeto Sabharwal from the law firm of Sterne Kessler Goldstein Fox on behalf of the petitioner.

MR. BEMBEN: Richard Bemben, also from the law firm of Sterne Kessler Goldstein & Fox on behalf of the petitioner.

MR. WARRIER: Nakul Warrier with Ricoh Americas Corporation.

MR. SPECHT: Michael Specht, also with Sterne Kessler, on behalf of the petitioner.

MR. HILL: Steve Hill for patent owner, MPHJ, and for the witness.

GLENN WEADOCK,

being first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. SABHARWAL:

Q. Good morning, Mr. Weadock.

A. Good morning.

Q. Did I pronounce your name correctly?

A. It's actually Weadock. It's not pronounced like it's spelled, unfortunately.

Q. If I mispronounce it, please correct me.

A. It's not a problem.

Q. Mr. Weadock, have you been deposed before?

A. Yes, I have.

Q. When was the last time you were deposed?

A. It would have been about a month ago.

Q. Was it a patent case?

A. Yes.

Q. Prior to that?

A. Prior to that, probably about ten

months.

Q. Okay. In sum total how many times, approximately, have you been deposed?

A. I think at this point it's about ten.

Q. All right, sir. You're probably pretty familiar with the ground rules, but let me go over them just in case, okay?

A. Okay.

Q. First of all, you understand you're testifying today under oath?

A. I do.

Q. And as part of your oath, do you understand that you are to testify fully and accurately to the best of your knowledge?

A. I understand.

Q. Mr. Weadock, I'm not here to play word games with you. I expect you to understand plain English. Having said that, however, if you don't understand any question or any portion of a question, will you let me know?

A. I will.

Q. Otherwise, can I assume you understood the question?

A. Yes.

Q. And if you need a break at any time,

just let me know, all right?

A. And vice-versa.

Q. Great. Thank you.

Can you just tell me, sir, what you did to prepare for your deposition today?

And before you answer, you don't need to tell me any conversations that you had with your counsel.

A. Sure. I looked over the relevant materials, the patent, the prior art, the board institution document, and I looked over my declaration as well.

Q. You have some materials that are set forth in Appendix A of your declaration. Do you recall that?

A. I do.

Q. Did you review any materials other than the ones set forth in Appendix A for the purposes of your deposition today?

A. If you have a copy of Appendix A --

Q. Sure.

A. -- I could answer that question.

Q. Sure. Sir, I'm going to be handing you what has been marked previously marked as Exhibit 2002 for identification purposes.

A. (Witness reviews document.)
So the only document that I reviewed in preparation for today that's not on this list is my declaration.
Q. Okay. Did you review any deposition transcripts in preparation for your deposition today?
A. No.
Q. So you did not review the deposition transcript of Dr. Melen; is that correct?
A. That's correct.
Q. Did you speak to anyone other than your lawyers in preparation for your deposition today?
A. No.
Q. And did you meet with your attorneys in preparation for your deposition today?
A. Yes.
Q. When did you meet with them?
A. Yesterday.
Q. For how long?
A. About half a day; the afternoon.
Q. Was that the only time that you met with them?
A. Yes.
Q. And who did you meet with?

A. Mr. Hill and Mr. Ganti.
Q. And when were you first retained for this engagement?
A. Oh, I don't remember exactly when it was, but I guess it was pretty close to the beginning of the year.
Q. And how were you contacted?
A. By Mr. Hill.
Q. And how did he get your name?
A. Through a service called Technikon that I'm working through in California.
Q. And had you had any face-to-face meetings with Mr. Hill or any of the other attorneys involved on behalf of the patent owner before yesterday?
A. No, I don't think so, although I should say that I'm not necessarily aware of all the attorneys that might be working for the patent owner. But to my knowledge, no, yesterday was the first meeting.
Q. Have you spoken to or been in contact with any counsel other than Mr. Hill or Mr. Ganti for the purposes of your engagement in this patent office proceeding?
A. No, I don't think so.

Q. Okay. Sir, directing your attention to Exhibit 2002, just turn to the last page, page 40, please.
A. Okay.
Q. All right. And is that your signature, sir?
A. It is.
Q. And as you sit here today, is there anything in your declaration that you would like to change, revise or add?
A. No, I don't think so.
Q. No corrections whatsoever?
A. No.
Q. All right. Sir, I'm also going to be handing you what has been previously marked as 1001, if you could take a look at that.
Do you recognize the document, sir?
A. I do.
Q. Can you identify it for me, please?
A. This is U.S. Patent 7,986,426, to Klein.
Q. And you've obviously read this document before, correct?
A. Yes.
Q. Do you believe you understand the invention disclosed?

A. Yes.
Q. Tell me what your definition is of the invention disclosed.
MR. HILL: Object to the form.
THE WITNESS: My definition of the invention --
BY MR. SABHARWAL:
Q. What your understanding of the invention?
MR. HILL: Same objection.
THE WITNESS: Well, I hesitate to try to distill a 90-page patent into a sentence or two, but I think we can look at the abstract of the patent and get a sense of what it means.
BY MR. SABHARWAL:
Q. Uh-huh.
A. So the patent owner describes and summarizes as the patent as a system and/or method that enables the typical PC user to add electronic paper processing to their existing business process, and it goes on from there. But I think the abstract is a pretty good summary of what's here.
Q. Okay.
A. But, again, I wouldn't -- I wouldn't

presume to summarize a 90-page patent in a paragraph.

Q. But do you agree with me that the invention includes software referred to as a virtual copier or VC?

MR. HILL: Objection, calls for a legal conclusion.

You can still answer.

THE WITNESS: Well, the patent certainly -- the patent specification certainly spends a fair amount of time on the concept of a virtual copier or VC, and I think it's a central concept in the patent.

BY MR. SABHARWAL:

Q. You think it's a what?

A. Central concept.

Q. What do you mean, it's a central concept?

A. The inventor spends a fair amount of time in the patent explaining that concept, discussing what it means, and it receives a fair amount of attention. It's mentioned many times.

Q. So when you say it was a central concept, you mean like it's a fundamental concept?

MR. HILL: Objection, form. It's vague.

THE WITNESS: I think it's an important concept in this patent. I don't have any particular disagreement with the word fundamental.

BY MR. SABHARWAL:

Q. All right. Let me direct your attention to Column 47 of the '426 patent.

A. Okay.

Q. Line 50.

A. Okay, Column 47.

Q. Yes. And are you at line 50?

A. Yes.

Q. Now, at line 50, I'm going to read it into the record. It says, For example, VC, meaning virtual copier, can be viewed as a copier. Like a copier, VC takes paper in and produces paper going out. The only difference is that VC does not distinguish between electronic and physical paper.

Do you see that?

A. I do.

Q. So you would agree with me that this can be viewed as essentially a copier, correct?

MR. HILL: I object to the form. It's vague.

BY MR. SABHARWAL:

Q. At least the software?

A. I'm sorry, can you state the question again?

Q. Sure. Would you agree with me that the VC can be essentially viewed as a copier?

A. Well, it's not identical to a copier. I think the patent owner here is using a metaphor in order to help explain the concept. So it can be viewed as a copier according to the inventor, but it's not exactly the same as a copier. Otherwise, we wouldn't have a patent here to discuss.

Q. All right. Well, let's look at Column 45 for a second.

A. Okay.

Q. So to your point, if you go to lines -- starting on line 34, Column 45, it says, VC, meaning virtual copier, is an extension of the concept we understand as copying.

You would agree with that, correct?

A. I think that's a fair statement, yes.

Q. It says, In its simplest form it extends

the notion of copying from a process that involves paper going through a conventional copier device, comma, to a process that involves paper being scanned from a device in one location and copied to a device in another location.

You agree with that?

A. Yes.

Q. Okay. So is it fair to say, sir, that the VC software was essentially designed to mimic the functionality of a conventional copier at the time of the invention?

A. No.

Q. Why do you say that?

A. Well, I think your question had to do with intent.

Q. Okay.

A. And I don't know what was in the patent owner's mind.

Q. Okay. Putting aside the intent part of it, if you read the lines 34 to 39 that I just asked you about, would you agree with me that based upon the express wording of Column 45, lines 34 to 39, that the VC was designed to mimic the functionality of a conventional copier?

A. No.

Q. Why do you say that?
A. Well, again, we wouldn't have a patent to discuss if that's all it did.
Q. What in your mind is the precise difference between a conventional copier and whatever you think is part of the invention here?
A. Well, there are lots of differences.
Q. Okay.
A. I mean, the V in VC indicates virtual copier, so that would be the first and most obvious difference, right? It's not just a copier. It's a virtual copier, and there are quite a number of differences between this invention and a -- and a physical copier.
Q. So help me understand then. If the inventor said VC is an extension of the concept we understand as copying, and then goes on to say in its simplest form it extends the notion of copying from a process that involves paper going through a conventional copier device, comma, to a process that involves paper being scanned from a device in one location and copied to a device in another location, what other differences are there other than what's recited there?
MR. HILL: Objection, calls for a

legal conclusion, vague.

THE WITNESS: Well, we have some 90 pages talking about all the differences.

BY MR. SABHARWAL:

Q. Okay. So what?

Tell me -- tell me in your mind, as a purported expert here, what are the differences between a VC and a conventional copier other than what's discussed here between lines 34 to 39?

A. Well, I'm happy to do that. Let's go through the patent and see.

Q. All right.

A. And we'll start where you pointed to on Column 45. So we'll just continue from where you left off and what you read into the record.

Q. Okay.

A. In its more sophisticated form, VC can copy paper from a device at one location directly into a business application residing on a network or on the internet or vice-versa. So we didn't have to go very far before we found the first distinction.

Q. Well, I guess maybe -- let me try it this way. It says here, In its simplest form it extends the notion of copying from a process that

involves paper going through a conventional copier device, comma, to a process that involves paper being scanned from a device at one location and copied to a device at another location.

So taking that sentence in the simplest form, what other differences are there between a VC and a conventional copier?

MR. HILL: Let me just object to the extent that you interrupted the witness before he finished answering --

MR. SABHARWAL: I apologize.

MR. HILL: -- the question that preceded that question.

THE WITNESS: So I don't think that the sentence that I read, which was the very next sentence, is the only distinction. We see that in a more sophisticated form, and much of the rest of this document addresses itself to discussing the various permutations and variations on that very simple concept that the patent inventor began with.

He goes on to elaborate ways in which the VC invention is different. So the first one was in that very same paragraph; that we can electronically and seamlessly copy in and out of

devices and business applications, as I read.

Continuing in the same paragraph, the inventor states that the VC software can reside on a PC, LAN, WAN server, digital device such as digital copier, or on a web server to be accessed over the internet. So that would be -- that's the end quote at the word internet. So that would be another example of how the invention can differ from the simplest form sentence that you asked about.

We can continue into the next paragraph and see more distinctions.

BY MR. SABHARWAL:

Q. Well, you're not answering my question, though.

A. I'm doing my best to. I'm sorry.

MR. HILL: Objection to form, argumentative.

THE WITNESS: Please help me to answer the question.

BY MR. SABHARWAL:

Q. Would you agree with me that the invention in its simplest form takes a physical process and makes it a virtual process?

MR. HILL: Objection. The word

invention there calls for a legal conclusion, outside the scope.

MR. SABHARWAL: Mr. Hill, could you please stop coaching the witness?

MR. HILL: I'm not.

MR. SABHARWAL: The rules are very strict about the way you can object in a patent office proceeding. Maybe this is your first one. You can't get into speaking objections. State objection to form. That's all you can say.

I'm sorry, sir. Go ahead.

MR. HILL: Objection to form.

THE WITNESS: Can you repeat your question, please?

BY MR. SABHARWAL:

Q. Sure. Would you agree with me that, in its simplest form, the invention takes a physical process and makes it a virtual process?

MR. HILL: Object to form.

THE WITNESS: Well, I don't know that that's a completely fair characterization.

Again, I would hesitate to reduce a 89-page document to one sentence.

BY MR. SABHARWAL:

Q. Do you think that sentence is inaccurate

then?

A. Well, it's not -- it's not a sentence that I would use. I think it's probably an oversimplification.

Q. I didn't ask you whether you would use it. I asked you, based on the invention disclosed and the language I just read you, would you agree with me that in its simplest form it takes a physical process and makes it a virtual process?

Please listen to the question I'm asking you.

A. Would you repeat the question, please?

Q. Sure. Let's do it for the third time. All right.

MR. HILL: Objection. Argumentative.

BY MR. SABHARWAL:

Q. I'm going to go back to line 34. Are you there?

A. Yes.

Q. Okay. Read it to yourself. Tell me when you're done.

A. I'm done.

Q. Okay. Would you agree with me based upon that sentence that in its simplest form, in

its simplest form, the invention takes a physical process and makes it a virtual process?

MR. HILL: Objection. Form.

THE WITNESS: No.

BY MR. SABHARWAL:

Q. Why not?

A. Because the sentence that you're referring to does not restrict itself to virtual activities. It discusses devices which are physical.

Q. Okay.

Okay, let me try it this way. Would you agree with me that in its simplest form the invention takes a physical process and makes it an electronic process?

MR. HILL: Objection, form.

THE WITNESS: No.

BY MR. SABHARWAL:

Q. Why not?

A. For the same reason I gave before.

Q. Because it has -- uses physical devices?

A. Right. There's more involved here than electronics.

Q. All right. So is it fair to say, sir, that you disagree with the inventor's statement?

A. No.

Q. Okay. If it says it extends the notion of copying from a process that involves paper going through a conventional copier to a process that involves paper being scanned from a device at one location and copied to a device at another location, what was inaccurate about my statement that the invention takes a physical process and makes it an electronic process?

A. Well, I don't think that it's accurate to describe it as a purely electronic process.

There is -- there are electronic components to the process, but that doesn't define the entire process. We're still dealing with physical, where we still in this sentence can be dealing with physical documents and physical devices.

So to the extent that your re-characterization might be interpreted to mean a purely electronic process, I disagree with it.

Q. Would you agree with me, sir, that the invention included software that implemented the concept of distributed copying?

A. No, I don't think I would.

Q. Let me see if I -- make sure I read that

correctly.

Would you agree with me that the invention included software that implemented the concept of distributed copying, and you say no?

A. Well, it depends on how we want to define distributed copying.

Again, this -- you began the deposition by saying we're not going the play word games, and yet you're trying to distill an 89-page patent into a single sentence, which is kind of a word game.

I mean, the patent is what it is, and it is comprised of a fair amount of content here. And so I'm not trying to be resistive to answering your questions, but the exercise of trying to distill this invention into a single sentence is not an analysis that I have undertaken, nor is it an analysis that I think is called for by the job I was asked to do here today.

Q. So you're just not prepared to answer the question; is that right?

A. I'm not prepared to answer every question you ask if it pertains to an analysis that I wasn't asked to do.

Q. Okay. Fair enough. All right.

Sir, since you aren't prepared to undertake the type of, as you called it, analysis that I asked, let me try it from a different direction.

Sir, I'm going to be handing you -- we should probably mark this as an exhibit.

(Exhibit Number 1
marked for identification.)

BY MR. SABHARWAL:

Q. Mr. Weadock, you've been handed what's been marked by the court reporter as Exhibit 1 for identification purposes. Please take a look at the document and just look up when you're ready.

MR. HILL: Can you reread the instruction?

(The record was read.)

MR. HILL: Objection. Lack of foundation.

THE WITNESS: (Witness reviews document.)

BY MR. SABHARWAL:

Q. Are you ready, sir?

A. I'm ready.

Q. You've seen this document before?

A. No, actually.

Q. Oh, you haven't?
A. I don't think I have.
Q. Okay. This is the substitute patent owner response and opposition to petition that was served, I believe -- when was it filed? On March 10th of 2014. And you have not seen this document before?
A. No, sir.
Q. Okay. Well, this was a response that was filed by the patent owner, do you understand that?
A. I do.
Q. All right. Now, since you haven't read it, I'm not going to try and put words in your mouth. If you need to get some context that's fine, but if you direct your attention to Roman II, Technology Background, can you read that first sentence under Technology Background into the record, please?
A. Yes. It says, "The '426 patent is directed to a single software solution referred to as a virtual copier."
Q. Do you agree with that sentence?
A. The wording I think is correct here, directed to. So this sentence doesn't attempt to

distill the entire patent into one sentence. I think it's fair to say that the patent is directed to a software solution referred to as a virtual copier.

Q. And we agreed before that a virtual copier is, according to you, a central concept of the invention, correct?

A. That's right.

Q. And it goes on to say, While printers, fax machines and scanners were in use in business environments, an extensible software solution that provides integration for destination devices and destination applications did not exist at the time of the invention.

Do you agree with that?

A. I think that's a fair statement, yes.

Q. It goes on, In some embodiments, the virtual copier disclosed in the '426 patent provides a stand-alone modular application that enables a user to scan (copy) paper from a device to a third-party application, and to print (copy) the reference of an image document from a third-party application to a printing device.

Do you agree with that statement?

A. (Witness reviews document.)

Well, I'm not entirely sure what is being referred to by the reference of an image document. That language is not entirely clear to me, I have to admit.

Q. So you cannot agree with that statement?

A. Well, I don't know that I disagree or agree with it. I don't entirely understand what's being meant by the reference of an image document.

Q. Sir, you were the author of a number of books and other publications, correct?

A. Yes.

Q. And were you the author of a book entitled, Bulletproof Your PC Network?

A. Yes.

Q. I assume as you sit here today you agree with the contents?

A. I hope that they are accurate.

Q. Okay.

A. I do my best.

Q. All right.

MR. SABHARWAL: Let's mark this as Exhibit 2 for identification purposes.

(Exhibit Number 2
marked for identification.)

BY MR. SABHARWAL:

Q. Sir, while the court reporter is marking this, were you aware of any software in the mid-1990s that mimicked the software of a copier or scanner?

A. Well, let me think back.

That mimicked -- your question was that mimicked the functionality of a copier or a scanner?

Q. Yes.

A. It wouldn't surprise me if there was software at the time that might have mimicked the ability to copy a document in the sense of, for example, performing a scan and then a printout.

Q. Flipping back to the patent owner response, which is Exhibit 1.

A. Okay.

Q. The second sentence in the first paragraph that we read into the record, While printers, fax machines and scanners were in use in business environments, an extensible software solution that provides integration to destination devices and destination applications did not exist at the time of the invention.

Do you see that?

A. I do.

Q. All right. Would you agree with me that an extensible software solution for integration of these types of devices did exist in the mid-'90s?

A. I'm sorry, you said devices, but this says devices and applications, if we're talking about the same sentence.

Q. Yes. An extensible software solution that provides for integration of devices and destination applications, did that exist as of the mid-1990s?

A. As I said before, I don't think that it did.

Q. Well, what specifically don't you think existed?

A. What you just read.

Q. All right. Let's go back.

We agree that as of the mid-1990s there was software that mimicked the functionality of a copier or scanner, correct?

A. No. I don't think I said that.

Q. Oh, okay. What did you say?

A. I think I said that it wouldn't surprise me if that were the case.

Q. So you think there might have been, it wouldn't surprise you, but you don't know for sure?

A. Sitting here right now, that's correct.

Q. All right. Going back to the second sentence, in the patent owner response, it says, While printers, fax minutes and scanners were in use in business environments, an extensible software solution that provides integration for destination devices and destination applications did not exist at the time of the invention.

You agree 100 percent with that statement?

A. To the best of my knowledge, sitting here today, that looks like an accurate statement.

Q. Okay. So help me understand something. If it wouldn't surprise you that there was software that mimicked the functionality of a copier/scanner as of the mid-1990s, how can you at the same time say with 100 percent confidence that an extensible software solution that provides for integration of printers, fax machines and scanners and destination applications absolutely did not exist as of the mid-1990s?

MR. HILL: Objection, mischaracterizes the witness's testimony.

THE WITNESS: I believe a few minutes ago you said you weren't going to put words in my mouth, but that was a pretty good attempt.

BY MR. SABHARWAL:

Q. Okay. I wasn't trying to do it.

A. You did it nevertheless.

Q. Okay.

A. You characterized my statements inaccurately.

Q. Okay.

A. You used words like --

Q. Listen, we've got seven hours. We'll spend as much time as we need to to make sure we understand each other.

A. My understanding of these proceedings is it's important to try to be accurate.

Q. Absolutely.

A. And I think what I said, and I didn't use words that you characterized in my response like 100 percent and absolutely.

I think I said that sitting here today, looking at a sentence from a document that I

haven't read, that I haven't gone back and researched myself, I believe that the sentence that you read, While printers, fax machines and scanners were in use in business environments, an extensible software solution that provides integration for destination devices and destination applications did not exist at the time of the invention, close quote, to be a fair statement.

I did not state that it is -- that I'm absolutely, 100 percent certain that it is correct. I said I believe, sitting here today, based on my recollection at the time that that's a fair statement and an accurate statement.

Q. Okay. What -- were you done?

A. Well, I think it's important that you not mischaracterize my statements.

Q. Okay. What's the difference between a fair statement and 100 percent accuracy?

A. Well, I think we can look at the plain English meaning. I think you have a understanding of the difference between a fair statement and 100 percent accuracy, but I'll explain it to you.

Q. Okay.

A. In my view, I try to make accurate statements all the time, as accurate as I can make them based on my knowledge at the time.

You're handing me a document that I haven't read before with words that I did not myself write, so if I look at a sentence and it seems to me to be correct based on my knowledge sitting here, without the benefit of doing my own research, without the benefit of going back to the time here and doing a study of the products that were available at the time, then I think my characterization of a fair statement is what it says. I believe that this is, as far as I'm aware, sitting here today, without the benefit of that research.

Now, if I were able to conduct extensive research, then I could get close to a 100 percent answer. But even with the benefit of extensive research, I'm not sure I could tell you that an answer would be 100 percent correct because there might be a reference that I missed.

I recognize that despite my best efforts I sometimes might make a statement that's not 100 percent accurate. So although I do my best, I wouldn't presume to say that I could comment

with 100 percent accuracy on this sentence.

Q. Okay. Let me just make sure I understand. You said here -- let me pause for a second. Okay.

So is it fair to say, sir, that you haven't actually done research with respect to the accuracy of whether or not an extensible software solution provided integration for destination devices such as printers, fax machines and scanners and destination applications as of the mid-1990s?

A. No. I have done some investigation into that and I do have personal recollection of that time, but I'm not going to comment on a sentence that I didn't write and give you a 100 percent answer. I would have to think about it. I would have to do a little bit of checking, but I'm trying to answer your question as best as I can.

I believe this is an accurate statement. I don't -- I don't recall an extensible software solution that provided integration for destination devices and destination applications that existed at the time of the invention.

And I would also like to comment that I think in one of your earlier questions you asked about

software that mimics the action of a scanner, and I'm not sure I have a complete understanding of what you may have meant by that.

I understand the concept of mimicking the action of a copier, but also in order to try to answer your question I think it might be helpful for you to explain to me what you mean by mimicking the action of a scanner.

Q. Well, I'll tell you what, I'll ask the questions, and you answer the questions. And you still haven't answered the question that I asked you previously.

So let me just make sure I understand. Let's use your words. You think that the sentence in -- the second sentence in the first paragraph of the patent owner response on page 2 is fair, right?

A. Right.

Q. Okay. And without putting any percentages on it, you think it's accurate?

A. It strikes me as an accurate statement.

Q. Okay. Now, I'm going to go back to another question that I asked you previously.

Were you aware of any software in the mid-1990s that mimicked the functionality of a

copier/scanner?

I thought you said it wouldn't surprise me if there was such software. And I can read it back into the record.

A. Right, and thinking back about it, there was something that bothered me a little bit about the question at the time. And in quick retrospect, I'm realizing that I wasn't entirely clear on what you meant by mimicking the operation of a scanner. But --

Q. I thought you said --

A. But focussing on the part -- excuse me, I was still talking.

Q. Okay.

A. Focussing on the part of your question that did make sense to me, mimicking the action of a copier, that was the basis for my response, which I stand by.

I'm just trying to answer your questions as completely and accurately as I can.

Q. Okay, but now I'm completely confused by your answer.

A. Well, let me see if I can clear it up for you.

Q. Were you aware of any software in the

mid-1990s that mimicked the functionality of a copier?

A. Yes. I think -- I think -- well, I think it wouldn't surprise me if there was such software. I can't think of a specific product sitting here right now, but it wouldn't surprise me if that were the case.

Q. Were you aware of any software in the mid-1990s that mimicked the functionality of a scanner?

A. I'm not sure what that question means.

Q. What is confusing about the question?

A. Well, a scanner is a device for making an electronic copy of a physical document. I'm not sure how you would mimic that function.

Q. What's the difference between a scanner and a copier?

A. Well, I think of a copier as a device that duplicates a document. So I'm happy to try to explain the distinction.

Q. Hold on. Hold on.

A. Oh, okay.

Q. I'm just reading your answer. You would agree with me that a scanner duplicates a document, correct?

A. No.
Q. It doesn't duplicate a document?
A. Not necessarily, no.
Q. Have you used a scanner before?
A. Yes, many times.
Q. What does it do with a document?
If I'm scanning a document in, are you telling me that when I scan a document into a scanner that it does not duplicate the copy?
A. It doesn't necessarily duplicate a document. You have a piece of paper. You're not necessarily making a copy of that piece of paper. You're converting it into an electronic format.
Q. But when you convert it into an electronic format, are you not duplicating its contents?
A. Oh, I suppose one could in some sense use that -- use that word, but you're creating a copy of the contents in a different form. So I suppose one could use the term duplicate, but I can scan a document without creating another hard copy of that original document.
Q. Okay. All right. So let me ask it this way. Were you aware of any software in the mid-1990s that mimicked the functionality of a

scanner, meaning it duplicated the contents?

MR. HILL: Object to the form.

THE WITNESS: Duplicated the contents, I'm sorry, in hard copy form or --

BY MR. SABHARWAL:

Q. Any form. Electronic form.

MR. HILL: Same objection.

THE WITNESS: Oh, I think so. I think I probably used software at the time that could scan a document into an electronic file, and if one considers that to be duplicating the content then sure.

BY MR. SABHARWAL:

Q. Okay. And at that same time in the mid-1990s were you aware of any software that duplicated the contents of a document, hard copy document using either a copier or scanner and then transmitted across a network?

A. A single program that did both of those things?

Q. Yes.

A. I'm not sure that I am, sitting here today.

Q. Okay. Were you aware of a multiple program, meaning something other than a single

program, that did both of those things?

MR. HILL: Object to the form.

THE WITNESS: Something other than a single program?

BY MR. SABHARWAL:

Q. Yeah, you know what? That's a bad question.

When you said a single program, what did you mean by that?

A. I don't know how to say it any better. One program.

Q. One program, meaning what?

A. One program that does those two functions.

Q. Okay. How would I as a lay person define something as -- something that's a single program versus not a single program?

A. Well, there are various ways to distinguish one program from another program.

For example, application programs or programs that users use typically have names associated with them. They typically require actions in order to start them. Those would be examples of ways that I would know that I was running two programs as opposed to one program.

Q. Okay. I use Microsoft Office. Is that a single program?

A. Well, that's a debatable point. But I think most users would consider, for example, if they were running Word that they would be running one program.

And if they were running PowerPoint, also, I think most users and most IT professionals would consider that you're running two programs, even though those two programs might be you bundled in a package called -- or in a suite called Microsoft Office.

Q. When you're reading the sentence in patent owner's response beginning with the word, While printers, the one we've been talking about --

A. Yes.

Q. -- are you assuming that the extensible software solution is a single program?

A. Probably so. I mean, solution is maybe a little bit ambiguous. The software solution to any given problem might be a single program. It might be a collection of programs.

Q. All right. Now, let me try it this way. If we assume that the words extensible software

solution would include multiple programs, would you still agree with that statement; that an extensible software solution that provides for integration of destination devices and destination applications did not exist at the time of the invention, meaning 1995?

A. Well, I mean, when we say a solution, that to me would imply or suggest that we're talking about a program, but if we're going to take the premise of your question and say that we could have multiple programs, I would be inclined to read this in the sense of perhaps multiple programs from the same vendor, right?

When I think of a software solution I would be inclined to think, well, we're talking about -- if you're going to posit that we must consider the possibility of multiple programs, that those programs would be somehow designed to work together as a solution to this particular problem.

So I don't remember exactly what your question was, but I don't think my opinion would change.

Q. All right. So now what you're saying is that even if the term extensible software

solution included multiple programs, you still believe it's a fair statement that an extensible software solution that provides for integration of destination devices like printers, fax machines, and/or scanners, and destination applications did not exist at the time of the invention, meaning around the mid-1990s?

MR. HILL: Objection, form.

THE WITNESS: Yeah, I still think that's a fair statement.

BY MR. SABHARWAL:

Q. Okay. Now, I'm going to go back to another question that I asked you before.

Were you aware of any software, meaning not just a single software application, multiple software applications, in the mid-1990s that duplicated the functionality of a copier?

A. Gosh, I think that's the same question you asked me earlier.

Q. Yes.

A. And I think I would give you the same answer.

Q. Which is?

A. Which is it wouldn't surprise me if that were the case. I can't think of a specific

program sitting here today, but it wouldn't surprise me if that were the case.

Q. Okay. Now, the same question, but instead of copier what about a scanner?

A. Right, and that gets to what I was trying to explain a little while ago. I'm not entirely sure what you mean when you say mimic the operation --

Q. I'm sorry, I tried to use your word, which is duplicate the functionality. Let's say duplicate the contents.

A. Okay. So, for clarity, could you state the question completely for me here?

Q. Sure. Absolutely.

A. Thank you.

Q. Were you aware of any software in the mid-1990s that mimicked the functionality of a scanner, meaning it took a hard copy and duplicated the contents of that into, for example, electronic form?

A. Just software that did that?

Q. Yes.

A. That could take a physical document and duplicate its contents?

Q. Yes.

A. Just in software? No, I'm not sure -- I'm not sure I'm aware of such a program at the time.

Q. Okay. Let's go back to this statement again. You would agree in the patent owner's response that there was a software solution that provided for integration of destination devices and destination applications, meaning printers, fax machines and scanners, as of the mid-1990s, correct?

A. No.

Q. Okay. What did I misstate?

A. Well, I think you said -- I think you equated destination devices and destination applications with printers, fax machines and scanners, which I don't think is what this sentence says.

Q. Okay. How do you define the term destination devices?

A. Well, I would define that as a device that is a destination for some content; in other words, an output device, an end point.

Q. Could a printer be an output device?

A. Yes.

Q. Could a fax machine be an output device?

A. Yes.
Q. Could a scanner be an output device?
A. Yes.
Q. So could a printer be a destination device as being used in this sentence?
A. It could, but it couldn't be a destination application.
Q. It didn't say a destination application.
A. Well, it sounded to me like you were equating them in your question. We can have the question read back.
Q. Sure. We've got seven hours. We'll do it again.
All right. Assuming that when I'm talking about destination devices I'm talking about, as examples, printers, fax machines and scanners, are you following me so far?
A. Well, actually no.
Q. Okay.
A. I don't think a scanner would normally be considered a destination device.
Q. Okay. How about printers and fax machines?
A. Right.
Q. Right.

A. That's fine.
Q. You would agree with me that printers and fax machines could be destination devices, right?
A. I would agree with that, yes.
Q. What about a PC, is that a destination device?
A. It could be.
Q. All right. So would you agree with me then that, assuming that the term destination devices could include as examples printers, fax machines and/or PCs, while printers, fax machines and scanners were in use in business environments, an extensible software solution that provides integration for destination devices and destination applications did not exist at the time of the invention, meaning the mid-1990s, you still think that's a fair statement?
A. I do. And I note that this sentence doesn't discuss PCs.
Q. Well, it says destination devices, right?
A. Right.
Q. And you would agree with me that a PC could be a destination device?

A. It could be.
Q. All right. I tell you what, let's take a look at your book. I'm sorry, pages from your book. And I believe the date on this is 1995; is that right?
A. That sounds right.
Q. Okay.
A. Although the copyright I think is maybe '96. Yeah, the copyright is '96.
Q. Okay, but it was publically available as of 1995, right?
A. I honestly don't remember.
Q. Well, it says here Library of Congress, on the second page, Library of Congress catalog, cataloging in publication data, and it has Glenn Weadock, Bulletproof Your PC Network, solving the 210 most common problems before they happen, and there's a date there of 1995. Do you see that?
A. Oh, yeah, I do, uh-huh.
Q. All right. And I would like to direct your attention to the -- this is going to be page 239 of Exhibit 2.
A. Okay.
Q. All right. The top there, first full sentence, Figure 6-12, do you see that?

A. I do.
Q. It says, Figure 6-12 illustrates a typical TWAIN-compliant scan dialogue box. Do you see that?
A. I do.
Q. Can you define TWAIN for me, please?
A. Sure. TWAIN was an acronym at the time used to describe some of the technological details of scanning a document into an electronic format.
I think -- I'm not sure about the accuracy of this, but the joke at the time was that the acronym stood for tool kit without an interesting name.
Q. All right. Now, this particular depiction says Epson TWAIN scanner control, do you see that?
A. I do.
Q. What is meant by Epson TWAIN scanner control?
A. That appears to be the title of this window.
Q. Right. And what does scanner control mean?
A. Well, this window is allowing the user

to control the scanner's operation.

Q. And this is Epson software?

A. Yes.

Q. Would you agree with me that this is an example of a graphical user interface for scanning a document, or GUI?

A. Well, I don't think I'd phrase it that way. The GUI is really Windows, and this is using the Windows GUI.

Q. Okay. But this is something that -- that an individual who is looking to scan a document would use, correct; this is the user interface?

A. This is at least a part of the user interface for this Epson scanner, yes.

Q. And just so we're clear, this is software, right?

A. We are looking at a screen snap of the user interface of a piece of software, yes.

Q. And is Epson the scanner that's being used?

A. This, in fact, was an Epson scanner, as I recall.

Q. And this existed as of the mid-1990s, correct?

A. It did.
Q. All right. And how did you get ahold of it?
A. I paid a lot of money for it. Scanners were expensive back then. I think that was a 1700 dollar scanner, something that we would spend 50 dollars on today.
Q. So you purchased it?
A. I did.
Q. From Epson?
A. I don't remember where I purchased it from.
Q. All right. Now, sir, would you agree with me here that the scanner is the device for which you are providing input?
In other words, I'm inputting information into the scanner, correct?
A. Right. That's all you can do with a scanner.
Q. Now, did this particular scanner communicate with an output device or a destination device?
A. No, I don't --
MR. HILL: Objection, form.
Go ahead.

THE WITNESS: Sorry.

No, I don't think it did.

BY MR. SABHARWAL:

Q. Could it have?

A. I don't recall.

Q. All right. Well, let me ask you this. You see the words target device there?

A. I do.

Q. Okay. What is target device?

A. Well, looking at this now, I think that is allowing the user to specify what format the user would like the data to be saved in, a format that would be compatible with a fax or a thermal printer or a laser printer or a VGA screen.

Q. Okay. So, in other words, if I'm using this particular software, I go to the Epson scanner and I can push the button that says target device, and the scanner will then scan the contents and then send it to the target device?

A. No.

Q. Why is that incorrect?

A. Well, because -- well, first of all, it's not what I said. Secondly --

Q. I wasn't saying what you said. I'm trying to understand it.

A. Okay. No, as I explained, I think the best of my recollection is that that button allows the user to specify the data format that the scanned image would use when stored on the PC.

It is not my recollection that the device actually sent data to any of these target devices. I think that that target device button was to specify a data format rather than to identify a destination to which the scanner would direct data.

Q. Okay. But I could scan this thing and have it -- have it duplicated in the format of a fax machine -- of a fax, is that what you're saying?

A. Well, sort of. I think what -- I think what would happen is the user could say target device and pick fax, and then the scanner would scan the document, for example, at a dots per inch or resolution that would be compatible with a fax machine, should I then later decide to send that document to a fax machine.

It's not my recollection that this software could actually send the data to a fax machine, but it could scan the device -- it could scan the

document, pardon me, in a format that would be compatible with a fax machine.

Q. Did you ever try to use the scanner to actually set up a target device like a fax machine or a thermal printer or a laser printer?

A. Oh, I'm sure I used all of these different settings in the course of using the scanner.

Whether I ever used the scanner to actually send a document via fax I don't recall.

Q. Let me ask it this way. If I scanned a document, could this particular functionality be used to then transmit the document to a fax machine?

A. I don't think so.

Q. Did you ever try that?

A. I don't think the software was capable of doing that, to the best of my recollection.

Q. Why do you say that?

A. Well, as I've explained, I don't think this software was able to send anything to a fax machine.

I think what we're looking at here is the ability to say or to scan data with settings that would be compatible with the fax format.

Q. Thank you.

MR. SABHARWAL: Let's take a break.

THE VIDEOGRAPHER: The time is now 9:49 a.m.

(Brief recess.)

THE VIDEOGRAPHER: The time is now 10:06 a.m., and we are back on the record.

BY MR. SABHARWAL:

Q. Mr. Weadock, before the break we were talking about the TWAIN-compliant scan dialogue box on page 239 of Exhibit 2, correct?

A. Yes.

Q. And I want to go back to the questions about the target device in the scan mode. What does scan mode mean?

A. Well, I'm trying to remember. Let's see. One example here is black-and-white line art. I don't remember what the other choices were. But my recollection is that, again, this would be a way for the user to make settings that would optimize the scanner for certain types of original material.

Q. All right. And I believe you testified that to the best of your recollection there was a button that allows the user to specify the data

format that the scanned image would use when stored on the PC, correct?

A. Yes. And to make that even more accurate, it could be stored on the PC or it could be resident in memory as well.

I don't remember all the details of this since it was 20 years ago, but yes. And also to be strictly accurate, I don't know that selecting that target device would necessarily set every possible setting, but it would make some settings that would be appropriate for those types of output devices.

Q. All right. Now, you said it could be stored in memory on the scanner; is that right?

A. No.

Q. Oh, where would the memory be?

A. In the PC.

Q. Okay. And the PC is not part of the scanner, right?

A. Right.

Q. Okay. So you would scan the document, and then it would then be electronically transmitted to the PC?

A. That's right.

Q. All right. Now, when it was transmitted

to the PC, was that across a network?

A. I don't think so. My recollection is that this was a SCSI scanner. That's capital S-C-S-I, small computer systems interface.

Q. Okay. Could it have been transmitted across a network at that time?

A. I don't think so. Not with that -- my recollection is that that model -- well, I should say I don't know. I didn't use the scanner in that way if it had that capability.

Q. Okay. So you just don't know one way or the other?

A. I don't know for sure, but I do know that it could use a SCSI, S-C-S-I, interface.

Q. So the document was then scanned and stored on the PC, correct?

A. It could be stored on the PC. Again, one could scan it and just have it in memory and then the user, as I recall, could look at it and say, oh, that didn't look good.

Q. Okay.

A. And then delete it without storing it on the PC's hard disk.

Q. Okay. And then could it then have been transmitted from the PC to, for example, a fax

machine if it was in fax format?
A. That would have been possible.
Q. And how would it have gotten from the PC to the fax machine?
A. I think the user would have had to have some -- a fax program that could do that.
Q. On the PC?
A. On the PC.
Q. So it would then be using the fax program. The document would go from the Epson scanner to the PC, and then electronically could then be transmitted to the fax machine, correct?
A. That could be achieved with at least two programs.
Q. And which programs were they?
A. The one that we're looking at here and a fax program.
Q. Okay. And what's the program called that we're looking at?
A. Well, what we're looking at here is the Epson TWAIN scanner control.
Q. No, but is that the name of the program?
A. I don't remember. Again, it's 20 years ago. I'm basing that on the Figure 6-12 here.
Q. Okay. So I could have used the program

that was on the Epson TWAIN scanner control to direct the document to be printed at the fax machine electronically, correct?

A. No.

Q. From the PC?

A. Can you restate your question?

Q. Let's start over.

A. Okay.

Q. All right. Because I thought we were getting to understand each other.

I scan the document, right, and the contents of the fax is then transmitted to a PC, correct?

A. No.

Q. Okay. How does it make its way to a PC?

A. Well, you said contents of the fax. It's not a fax yet. It's a scanned document.

Q. A scanned document is then transmitted electronically to a PC?

A. Right.

Q. And then when does it become -- when is it converted to the format of a fax?

A. Well, this -- my recollection is that this program, the Epson TWAIN scanner control, will handle the fax compatible formatting.

Q. I think that's what I was asking you

before.

A. Well, if you want to read your question back --

Q. Sure.

A. -- that's fine.

Q. Sure.

A. Sorry if I misunderstood.

Q. No problem. Let's try it again.

When we -- when you scan a document on the scanner itself, it can convert it into the format of a fax?

Did I say that correctly?

A. Well, it's a little ambiguous. What do you mean by it, the scanner?

Q. Yes, the scanner.

A. No, I don't think so. I think that's done by the software, but I don't remember in detail what the division of labor was between the scanner hardware and this program here.

Q. Oh, I'm sorry, when I'm saying the scanner, I'm talking about the entire scanner including the software, including this interface.

I'm not differentiating between the hardware in the scanner and the software on the scanner. I'm talking about the scanner as a whole.

A. Well, I'm sorry, I have to correct you because I think -- I think you're laboring under a misconception. This software isn't running on a scanner. It's running on a PC.

Q. Okay. All right. So this particular interface is on a PC, correct?

A. Right.

Q. Okay. Now, I go to the PC, and where do I actually physically scan the document?

A. At the scanner.

Q. Okay. So I scan the document at the scanner. Do I need to -- do I need to identify which target device I want before I scan it?

A. I think it was usually done that way, and the reason that I say that is that we have a preview button here on this dialogue box which sort of suggests to me that we would make these settings and then we could click the preview button, see if it looked good, and then once we got the settings the way the user wanted, the user could then click the scan button.

Q. I see.

A. And perform the scan finally with the desired settings.

Q. Okay. So I would put in the settings on

the PC using this particular dialogue box, correct?

A. Right.

Q. Okay. Then what would happen?

A. Then, as I just said, I think a user would have the option to preview the results, and I think that would open up a preview window.

Q. Okay.

A. And then if everything looked good, the user could click scan, and that would send an instruction to the scanner to scan the document and transmit it to the PC.

Q. Okay. Go back to the PC? It would --

A. Well, it wasn't -- it wasn't -- yeah, it wasn't ever there, so I don't know what you mean by go back.

Q. The scanner is a separate piece of hardware, right?

A. Right.

Q. So you're saying that the PC is connected to the scanner, right?

A. That's true.

Q. And let's say I'm at the PC, I identify the format, I preview it, it looks good, I hit the scan button, then the scanner will scan the

document, right?
A. Right.
Q. Okay. And then the image will go from the scanner to the PC?
A. Yeah, the image contents, sure.
Q. All right. And let's say that I hit fax format. You following me so far?
A. Well, it just says fax.
Q. Okay, yeah, fax.
A. Right.
Q. Then after the document was scanned, it would go back to the PC in a fax format, correct?
A. Yeah, again, I'm not quite sure what you mean by go back. It hasn't gone anywhere yet but, yes, it would be -- when that electronic image of that document is acquired by the PC, it would be in a format that's compatible with the fax standard.
Q. What do you mean by fax standard?
A. Oh, well, for example, dots per inch. I think faxes -- the fax standards specified a certain DPI value.
Q. Is that resolution?
A. Sure, yes. I think, also, as memory serves, you would -- one of the settings would be

to just scan the individual pixels as black or white rather than gray scale, so things like that.

Q. And then how would I be able to fax the document?

A. Well, right, like I said before when you asked me that question earlier, the user would have a fax program.

Q. A fax program?

A. Right.

Q. I see. On the PC?

A. Right.

Q. So it could be then facsimiled electronically from the PC?

A. It being the scanned document?

Q. Yes.

A. Yes.

Q. All right. Same question with respect to thermal printer. If I previewed the document, selected instead of fax thermal printer, then the image would be in a resolution compatible with a thermal printer, correct?

A. Resolution and other settings. Again, like number of bits per pixel and so forth. So I don't remember all the details of what the specs

were, but it wouldn't -- it might not just be resolution. It might be other things as well.

Q. And how would I then print the document?

A. One would have to have a program capable of printing it.

Q. Right.

A. So, for example, a graphics program.

Q. Okay. And let's say I had the graphics program on the PC, then how would I actually print it?

What would do the printing?

A. Well, the graphics program on the PC would be executed, the user would do a file open command to open the image that had originated at the scanner, and then the graphics program would have a -- at least in the Windows GUI, graphical interface, a file print command.

Q. And then it would be printed electronically by the printer?

A. Right.

Q. Okay. Now, was this -- strike the question.

Could this have been done in a network environment?

A. I don't know.

Q. You don't know because you didn't try, or you just don't know?
A. It's 20 years ago. I don't remember all the -- all the details of this particular program.
Q. Do you know, sir, whether or not there were network printers that existed at this time?
A. Oh, sure, there were.
Q. And there were network faxes that existed at this time as well?
A. Yes.
Q. All right. Going back to the thermal printer scenario.
A. Okay.
Q. It was known at the time that you could, over a network, send a command from the PC to the network printer to print the document, correct?
A. Well, I'm not sure it's correct as you described it.
One would typically, again, have to have a graphics program that you would open the document in and then --
Q. Sure.
A. -- and then print from that program.
Q. Right. But at the time you could have

done that across a network, right?

A. Print to a thermal printer across a network? Well, I'm actually not sure.

The thermal printers were usually -- I mean, I remember having one called an HP ThinkJet, I think. I'm not sure -- those were really designed as personal printers. I'm not sure if they were networkable or not, so I'm not sure that you could do that.

Q. What about a fax machine?

A. Yeah, there were -- I think, yeah, you asked me if there were networked fax machines at the time, and there were.

Q. Okay. Great.

Sir, you recall in this scenario using the Epson TWAIN scanner control we were talking about utilization of a PC?

A. Yes.

Q. Okay. Do you recall what brand of PC that was?

A. What brand?

Q. Yes. In other words, it wasn't an Epson printer -- excuse me, an Epson PC, was it?

A. I don't think I've ever owned an Epson PC in my office, so I'm pretty sure it was not an

Epson PC.

Q. So it was a different vendor?

A. It would have been a non-Epson PC.

Q. And then the fax machine -- well, strike the question.

Is it your understanding that the TWAIN standard was a standard that enabled different vendors to be able to communicate with one another, the devices?

A. Well, no, I'm -- I'm not sure. Let me think about that for a moment.

Q. You know what? Actually --

A. Oh, do you want to withdraw that or --

Q. Yes, let's look at page 238.

A. That might be the case. I'm just trying to remember. And the reason I'm hesitating is that it was an Epson scanner, and as we're looking at this it said Epson TWAIN standard control, and I remember at the time that it was typical I think for scanner manufacturers to provide their own TWAIN software that was sort of guaranteed to work with their scanner.

Q. Okay.

A. And so I think typically one would use the TWAIN driver provided by the scanner

manufacturer.

But I think your question was about the intent of the standard, and I think the intent of the standard was broader than that. But at that time as this was implemented, I think it was typical for users to employ the TWAIN drivers provided by the scanner manufacturers to make sure that they worked right.

Q. But when you say the intent of the standard was broader than that, what did you mean by that?

A. I think the intent was to provide a standard that could be used by multiple companies.

Q. You mean multiple companies with multiple different devices?

A. Multiple companies with multiple different devices, sure. I think it was an attempt to -- all standards are an attempt to -- well, I shouldn't over-generalize, but often standards are provided so that more than one manufacturer can use the standard.

Q. All right. Sir, you mentioned something about a driver; is that right?

A. Yes.

Q. Okay. What's a driver?
A. Well, broadly speaking a driver is a piece of software that allows a computer to communicate with a device.
Q. All right. Now, if we look back at this particular depiction, the Epson TWAIN scanner control, do you see that?
A. Okay.
Q. So I'm looking at this particular interface on the PC, correct?
A. I'm not sure I would call it an interface. It's a window.
Q. Okay, a window.
A. Sure.
Q. All right. I assume that the PC that was being utilized had memory?
A. I would presume that, too.
Q. Okay. And can we also assume that it had a processor?
A. We certainly can.
Q. And how would I get to, on this particular window, the scan button in particular? Is that by using a mouse?
A. Sure, one could use a mouse. I think at the time one could also use the keyboard. You

could use the tab key to get there as well.

Q. The tab key. Okay, okay.

A. Any pointing device, also; graphics tablet. A variety of ways.

Q. Okay. Once I set the document in the format that I wanted on the PC, how would I implement the scanning function?

A. The user would click the scan button.

Q. The scan button. Okay, so that's like a go button or start button?

A. Well, it's not like a go button in the context of the '426 patent. It's a scan button. It does the scan operation.

Q. But it's the button that initiates the operation of the scan, correct?

A. That's true.

Q. Okay. Now, if I'm still looking at this figure, could I adjust the brightness or sharpness of the document, do you recall?

A. Well, it looks like you could adjust the brightness but not the sharpness.

Q. Why do you say that?

A. Because sharpness is grayed out, and the scroll box is not shown for some reason. I can't tell you why.

Q. Is that because I have fax?
A. Probably.
Q. Okay. If I had hit thermal printer, it's possible that I could have adjusted the sharpness as well?
A. I would think so.
Q. Okay. And I could also adjust the magnification?
A. Yes.
Q. Okay. And if I was adjusting, for example, the brightness, would that be -- would that adjustment be reflected in the preview window?
A. I would hope so.
Q. Okay.
A. And I would assume so.
Q. Thank you. The same --
A. If everything was working as expected, I would expect to see that.
Q. Same question with respect to sharpness?
A. I would expect to see that setting reflected in the preview window.
Q. Okay. And the same question with respect to magnification?
A. Yes, I would expect to see that

reflected in the preview window as well.

Q. Okay. And what do you call the functionality that is adjusting the brightness or the sharpness or the magnification?

A. What do I call that functionality?

Q. Yes. Yes. Is that the processor that's enabling a user to do that?

A. I'm not sure I understand your question. Without a processor I couldn't do anything with the computer.

Q. Right.

A. And your earlier question, what do I call that, I guess I would call that making adjustments.

Q. Right, but I mean I'm using the processor of the PC to be able to make those adjustments, correct?

A. Well, indirectly, certainly.

Q. Okay, sir, I would like now to shift gears and talk about your specific opinions with respect to some of the claim terms as recited in your declaration.

A. Okay.

Q. So let's go to -- let's see here. I believe it starts on paragraph 40.

Oh, I'm sorry, the claim construction section starts on page 4 of your declaration.

A. Okay.

Q. All right. Now, sir, when you were providing your proposed constructions of some of the terms that are set forth in your declaration, do you believe that you implemented the broadest reasonable interpretation standard?

MR. HILL: Objection, form.

BY MR. SABHARWAL:

Q. Do you understand what I mean by BRI?

A. I understand what you mean by BRI, yes.

Q. And so when you were opining on proposed construction of certain claim terms, do you believe in your opinion that those constructions comport with the BRI?

A. Yes.

Q. Now, I'd like to direct your attention to paragraph 18. You say in paragraph 18 that the term software in the abstract need not only refer to software that executes on a general purpose computer such as a PC, but can also refer to software that is embedded in a device such as, for example, the firmware resident on a controller circuit in a scanner or printer,

correct?

A. Yes.

Q. All right. Then you go on to say that, The term application, however, is in my experience typically used in reference to software that executes on a general purpose computer such as a PC, and, furthermore, software that is separate and distinct from the operating system of a computer.

Do you see that?

A. Of such a computer, yes.

Q. Yes, of such a computer. Do you see that?

A. I do.

Q. So in your mind when you understand the term application, you are differentiating between the software that is -- strike the question.

When you are opining on the term application, you are distinguishing between the software that is on the operating system versus the software that executes on a general purpose computer, correct?

A. No.

Q. Okay. What did I say that was incorrect?

A. Could we read back your question?
Q. Sure, sure.
MR. SABHARWAL: Can you read back the question?
(The record was read.)
THE WITNESS: Yeah, okay, so what was wrong with that question is that it implies that I'm saying that operating systems don't run on general purpose computers, which is not --
BY MR. SABHARWAL:
Q. Oh, no, I wasn't trying to imply that.
A. That's the way it was worded.
Q. Okay. Let me ask it this way.
A. Thank you.
Q. When you're talking about software that executes on a general purpose computer, such as a PC, what type of software are you talking about?
A. Well, there's system-level software, and there's application software typically.
Q. All right.
A. Those are -- that's one way of categorizing the software that runs on a general purpose PC.
Q. Okay. Give me an example of system-level software.

A. An operating system.
Q. Such as? Windows?
A. Windows, sure.
Q. Anything else?
A. DOS.
Q. All right. Anything else?
A. Mac OS, UNIX, Lenox. Lots of operating systems out there.
Q. And then, according to you, there's also application software; is that right?
A. Right. I think that's a -- that's a common way of categorizing software that runs on a general purpose PC, system software and applications.
There are other possible categories one could use. Sometimes, for example, we may refer to utilities, which may in some context be considered system-level software. So these aren't necessarily hard-and-fast rules, but it's a convenient way of categorizing software that runs on a PC.
Q. What do you mean, they are not hard-and-fast rules?
A. Well, for example, a utility program might be considered by some to be more

system-level software, but it also has some characteristics of an application.

Q. Okay. Could application software be considered system-level software?

A. Typically not.

Q. What do you mean, typically not?

A. Well, it's not the way the word is usually used.

Q. By who?

A. By professionals in the industry, by authors, by teachers, by students, by people who are practicing in the IT industry.

Q. So there's a -- they typically differentiate between application software and system-level software?

A. I think that's what I said, yeah.

Q. All right. What about in the patent, did the disclosure of the patent differentiate between system-level software and application software?

A. Well, I think those terms are -- are used. I think the patent does use the term application. I think it uses application software. I think it uses operating system. I'm not sure whether the patent uses the phrase

system software verbatim. I would have to look and see.

Q. Do you recall anywhere in the specification of the '426 patent where there was a distinction made between application software and system-level software?

A. Well, I remember the patent talking about operating systems and applications, and I remember the patent giving some examples of applications, like I think Microsoft Word is one. So I think that's a distinction that is made in the specification.

I'd have to take a look at it and point you to specific places, but I'm happy to do that.

Q. No. I guess I'm asking you, as you sit here today do you recall anywhere in the specification of the '426 patent where the inventors distinguished between application software as used in the patent versus system-level software?

That's my question.

A. Well, I think so. I think the patent does talk about applications, and it talks about them and gives a couple of examples. I think Lotus Notes maybe was one. And that comports

with the general distinction between applications and system software that I alluded to earlier.

I don't know whether there's a sentence in the patent that says, by the way, here are the differences between system software and application software, if that's what you're asking, but I think that the discussions of applications in the patent are harmonious with the -- with the definition of application software and application that I propose in my declaration.

Q. Did you see anything in the specification that specifically excluded system-level software from the term application software?

A. Well, I haven't memorized the 89-page patent but --

Q. Well, you read it, right?

A. Sure, I read it.

Q. And when you were reading it, did you ever -- do you recall ever seeing any sentence, line, word that distinguished between application-level software and system-level software?

Let me ask the question again.

A. Well, I --
Q. Let me ask a different question.
A. Okay.
Q. Do you recall ever reading anywhere in the '426 patent a difference between application software and system-level software?
A. Well, sure, I mean, it's all through the patent. The patent's use of application and the patent's discussion of operating systems and -- I don't remember anything in the patent that is not in harmony with the common understanding, as I've expressed it, of the distinction between applications and operating system software.
As I said before, I'm not sure that there's any sentence in the patent that says, by the way, here's the difference between applications and operating systems. Because it was understood by a person of skill in the art at the time that would not have been something that would have been needed to be explained to a person skilled in the art.
And as I recall the patent and reading through it a number of times, I don't remember seeing anything that jumped out at me as not being harmonious with that general explanation of

the distinction between applications and system software.

Q. Right. But my question is, did you see anything in the patent that would lead you to believe that the inventor excluded application -- excuse me, excluded system-level software from the term application software?

A. Sure. I mean, the entire patent shows no indication of any such unusual position.

Q. That wasn't my question. I'm asking you a very simple question. All right. I'm not trying to play word games with you. I think you're trying to play word games with me.

A. No. I'm trying --

MR. HILL: Objection, argumentative. Ask a question, please.

BY MR. SABHARWAL:

Q. I'm asking you, did you read anywhere in the patent where the inventor excluded system-level software from the term application software; yes or no?

A. Explicitly excluded --

Q. Yes.

A. -- system software --

Q. Yes.

A. -- from the term application software?
Q. Yes.
A. It wouldn't have been necessary to do that. But, no, I don't recall seeing any sentence that did that.
Q. Okay. Now, do you recall seeing anything where the inventor specifically distinguished between application software and system-level software?
A. Well, sure. I mean, he talks about applications like Lotus Notes and Microsoft Word, pointing out that, hey, this is what I mean by application.
And Lotus Notes and Microsoft Word are not operating systems. I can try to point you in the patent where he has those discussions.
Q. Do you recall whether the inventor characterized the internet as an application?
A. Oh, I think there was one place in there where he was talking about destinations and he talked about -- he bundled in internet with Lotus Notes, I think, if I remember correctly.
Q. Right. As an application, correct?
A. Yeah, which seemed odd to me. I just assumed that what he probably meant by that was a

browser, internet browser.

Q. Did he say internet browser?

A. No.

Q. He just said internet, right?

A. I believe so, but if we can look at the patent I can tell you for sure.

Q. Sure, sure. Let's go to the patent. Column 46, lines 44 to 46.

A. I'm sorry, what was the line?

Q. Line 44. Column 46, beginning at line 44.

A. Okay.

Q. Now, would you mind, sir, reading into the record the passage between 44 and 46?

A. Okay. It says, quote, The power of virtual copier is the fact that the from -- capital F -- can be a physical device (e.g., digital copier, fax or scanner) or an application, (e.g. Lotus Notes, Microsoft Exchange, the internet, or an electronic filing system).

Q. Thank you. Now, would you agree with me, sir, that the internet includes hardware?

A. Sure, the internet includes hardware.

Q. And the internet includes firmware?

A. Okay. I don't see any reason to disagree with that.

Q. And would you agree with me that it includes software?

A. I would, indeed.

Q. Now, an electronic filing system, do you have an understanding of what that is?

A. I do.

Q. And what is your understanding of the term electronic filing system as used in the patent?

A. Well, I think as used in this line, you know, again, it's -- I would assume he's talking about an application for managing an electronic filing system like a file manager. In Windows we have Windows Explorer. In newer versions of Windows we have File Explorer.

So something that's going to help a user store, organize data in files and folders typically.

Q. Okay. Thank you very much.

So you, when you're reading the term electronic filing system, you're construing that to mean application for managing an electronic filing system such a file manager, correct?

A. In this context, yes.
Q. Okay. You are not construing the term electronic filing system to include any hardware?
A. Not in this context, I don't think so. But let me look at it again.
Q. Sure.
A. (Witness reviews document.)
Right, because the sentence after that, it says the To, right, the destination, T-O, can also be a physical device or an application, right? So it's distinguishing between physical devices and applications.
So to the extent that we have electronic filing system listed as an application here, it's being distinguished by the patent author from a physical device.
Q. Right, but it's not distinguishing between system-level software and application software, is it?
A. No, this sentence doesn't explicitly make that distinction.
Q. So wouldn't you agree with me that when the inventor was defining the term application and using examples, he, himself, did not distinguish between system-level software and

application software?

A. Oh, no, I don't think that's true. I mean, the way I read this, you've got Lotus Notes, which is a typical application that a user would use, Microsoft Exchange, the same thing, the internet, by which I think he means here a browser.

Q. Does he say browser?

A. He didn't say that, no, and it struck me, to be honest with you, a little odd that he didn't say browser.

An electronic filing system, again in this context, bundling it with be these other applications, I'm assuming he means an application for managing an electronic filing system.

Q. Did you ask him what he meant?

A. Oh, I haven't had any discussions with the inventor so, no.

Q. Did you ever raise this with anyone that you assumed that when he's talking about application that it meant internet browser as opposed to the internet based on the plain language of what's stated here?

A. I don't think I brought that out in my

declaration, no.

Q. All right.

A. Sometimes these patents are written with the input of attorneys who don't necessarily use the terms always in the traditional methods, but certainly Lotus Notes and Microsoft Exchange and an internet browser would all be examples of applications.

Q. Right, but the internet itself would include, as we talked about before, hardware and firmware, correct?

A. I can say that that's true, and the internet has never been referred to as an application in my recollection in all my years of being in this industry.

Q. Well, I guess --

A. So I think this is an unusual wording here.

Q. Well, do you understand that a patentee can be his own lexicographer?

Do you know what that means?

A. I do.

Q. Do you think that it's possible that the patentee was his own lexicographer here?

A. No.

Q. Why not?
A. It wouldn't make any sense.
Q. Why not?
A. Because the internet is not an application.
Q. Did you ask him?
A. I think I told you just a minute ago that I didn't ask him.
Q. So you don't know what he intended, right?
A. I don't know what he intended, but I know what makes sense and what doesn't make sense.
Q. Right, but I'm talking about not what makes sense based on what you think. I'm talking about what makes sense based on the plain language of what's written here.
That's how you were interpreting the term application, right?
A. Well, I interpret the term application based on the words in the patent, based on my experience in the industry, based on my communications with technical professionals over a period of, you know, 25 years or so.
And I'm pretty comfortable that the patent

author here is not trying to define the entire internet as an application. I think that that's -- that can't be what was intended here. It just wouldn't make any sense to a person of skill in the art.

Q. Okay. And you're also pretty comfortable with -- even though you've never talked to the inventor, that when he used the term electronic filing system he was only talking about software, right?

A. That's what I derived from this sentence in context, yeah.

Q. Okay. Now, let's go back to your declaration, sir.

A. Sure.

Q. You understand that the board defined application differently from you, correct?

A. Yes.

Q. And so you think the board's definition is wrong?

A. Well, I like mine better.

Q. That wasn't my question. You think they are wrong?

A. Let's -- can I look at the board's definition before I answer you?

Q. Sure. I believe it is in --
A. I may have cited it here.
Q. -- paragraph 20.
A. Okay. So was that the complete board's definition, a program that may or may not be on a device --
Q. We can actually look at the decision.
A. That might be useful, just to be sure.
Q. I think you put it in here.
A. I think I did, too, but I don't know whether it's complete.
Q. I will represent to you that, and while my colleague is getting it, the board construed the term application to be a program that may or may not be stored on a device, such as a printer or a scanner.
A. Okay.
Q. And --
A. And so given that, and I accept your representation, yes, I disagree with that.
Q. Okay. All right. Now, let's look back at -- sorry to keep flipping you back and forth. Let's look back at Column 46, lines 44 to 46 --
A. Okay.
Q. -- in the patent.

A. Right. Okay, I'm there.
Q. Now, would you agree with me that based upon the board's construction, that Lotus Notes would fall within the scope of their construction?
A. Well, let's see. I mean, I'm not sure I've ever seen Lotus Notes stored on a device or --
Q. Okay.
A. -- or --
Q. Or not?
A. I mean, let's see. Well, a program that may or may not be stored on a device.
Any time I've ever seen Lotus Notes, it's been running on a general purpose PC.
Q. A PC is a device, right?
A. Yeah, I'm not sure if a PC is a device in the context of the board's definition. I just don't remember.
Yeah, I would call a PC a device.
Q. Okay. Would you say that your definition is more narrow than the board's definition of the term application?
A. I would, yes.
Q. So, in other words, you would agree with

me that the board's definition is broader than your definition?

A. It's broader and less reasonable, yes.

Q. Okay. So you think the board's not reasonable?

A. I think that definition is not a reasonable definition. I'm not characterizing the entire board as being unreasonable.

Q. Right. You just think that their construction of this term was unreasonable?

A. Yeah, not as reasonable as my definition.

Q. Okay.

THE VIDEOGRAPHER: We've got about five minutes left on this tape.

MR. SABHARWAL: Oh, yeah? Okay. All right, let me ask one more question, and then we'll change the tape.

BY MR. SABHARWAL:

Q. Now, would you agree with me that the board's definition is, in fact, the broadest reasonable interpretation as opposed to your definition?

A. No.

Q. Why not?

A. Because I don't think it's reasonable.
Q. Oh, okay. You think it's the broadest unreasonable interpretation?
A. Well, I don't know.
Q. You think it's the broadest less than reasonable interpretation?
A. Well, I don't know if I understand that -- that phrase.
Q. Okay.
A. I don't think it's reasonable. I think it reads out the distinction between application programs and the system software programs.
Q. Okay.
MR. SABHARWAL: Sorry, let's change the tape.
THE VIDEOGRAPHER: This is the end of Disc Number One. The time is now 10:55 a.m., and we are off the record.
(Brief recess.)
THE VIDEOGRAPHER: This is the beginning of Disc Number Two. The time is now 10:59 a.m. We're back on the record.
BY MR. SABHARWAL:
Q. Sir, I'd like to know, talk a little bit more about your proposed construction of the term

application.

When you say that the term application is software that is separate and distinct from the operating system of a computer, what do you mean by separate and distinct?

A. Not the same as.

Q. I'm sorry?

A. Not the same as.

Q. Not the same as. Okay, but could they overlap with each other or interact with each other?

A. Well, they would have to interact with each other to accomplish anything.

Q. Okay. The reason that I'm asking you this is because you also used the word discrete, and I'm trying to figure out if discrete is the same thing as separate and distinct?

A. Well, I can try to help you with that.

Q. Sure.

A. I think when I use the word discrete, I think in general that means I can draw a dotted line around it. I can say this is what this is.

Q. Okay.

A. Right? So if I'm looking at an application like Microsoft Word or Lotus Notes,

it comes on a CD, back then it would have been a CD, and I can say this is the software. I can identify a set of files that I can draw a dotted line around it. It has, when I run it, Windows that appear that are associated with that application.

So discrete, when I used the word, I don't know what the dictionary definition is, but I intend it to mean discrete as in something that one can identify by drawing a metaphorical dotted line around it.

Q. Okay. Would you say that the internet is a discrete program?

A. Well, I wouldn't say that the internet is a program.

Q. What about an electronic file system, is that a discrete program?

A. Well, in the sense that it was used in the patent lines that you were pointing me to a little bit earlier, my presumption is that the intent of the author was to discuss a file system management utility which would have been a discrete program, but he doesn't go into any particular detail there so it's hard to know exactly.

Q. Okay. But if you just look at the words electronic filing system conventionally, you would never call that a discrete program, right?

A. I would not be inclined to, no.

Q. Okay. Now, the software program that you drew the dotted lines around could be part of a broader software application, correct?

A. Well, no, not -- I mean, not typically. I mean, there are always special cases, but in my experience usually the term application means a program that stands on its own two feet.

Q. You've heard of Microsoft Office?

A. Sure.

Q. Is that a single application?

A. Most -- I don't think most people would refer to it as a single application. It was typically referred to in the industry as a suite.

Q. A suite, okay. Now, does the Microsoft Office in your opinion have separate and distinct applications?

A. Yes.

Q. Discrete applications?

A. I think so, yes.

Q. But they do interact with each other, correct?

A. Oh, yeah, the quality of separateness or discreteness doesn't discount the possibility for interaction.

Q. So they can overlap?

A. Well, that's a different thing.

Q. Okay.

A. And less likely, although it is certainly possible that multiple applications in a suite might share certain components. That's not unheard of.

Q. Now, in paragraphs 18 to 24, specifically in paragraph 23 --

A. Okay.

Q. -- you opine that your definition is consistent with a couple of publications that you see there, correct?

A. Let's see. Right.

Q. Okay. Exploding The Computer Myth, right?

A. Yes.

Q. And Newton's Telecom Dictionary, correct?

A. Yes.

Q. The publication Exploding The Computer Myth was not cited anywhere in the patent, was

it?

A. No. I wish it would have been. It might have helped me sell some books.

Q. Okay. And do you recall whether it was cited in the prosecution history?

A. No, I don't think it was.

Q. The same question with respect to Newton's Telecom Dictionary?

A. To my recollection Newton's Telecom Dictionary was not cited in the patent or the prosecution history.

Q. Okay. With respect to the Exploding The Computer Myth publication, is it your opinion that that's a publication that persons of ordinary skill would have consulted when trying to come up with the definition of application as it's used in the '426 patent?

A. Well, I think -- let's see if I can answer that question. I think that the concept of application was so well understood that a person of skill in the art would not have found it necessary to go look it up anywhere.

Q. That wasn't my question.

A. Well, it was implicit in your question. You, I think, implied in your question that a

person of skill in the art would go look up application to find out what it meant, and I feel like that's a false presumption.

Q. Well, then why did you even consult it?

A. Why did I consult what?

Q. Why did you even -- if you think that the term application is so readily understood by a person of ordinary skill in the art, why did you even cite Exploding The Computer Myth as part of the support for your term application?

A. Well, I have an audience here that's not IT professionals. I mean, the board are not necessarily experts or persons of skill in the art of the patent, so my goal in this declaration, one of my goals is to explain terms to people who are not IT professionals. So I'm providing documentary support for my position.

Q. Okay. So the only reason that you provided it is because you wanted to provide a more fundamental treatise to the board?

MR. HILL: Objection, form.

BY MR. SABHARWAL:

Q. Let me try it again.

A. I don't understand the question.

Q. Okay. Let me just make sure I

understand your testimony. A person of ordinary skill in the art would not have consulted the publication Exploding The Computer Myth in trying to arrive at the definition of the term application?

Did I understand you correctly?

A. Well, I think that's right. A person of skill in the art would have understood the conventional meaning of that term in the industry.

Q. And they wouldn't have even had to have consulted this publication, correct?

A. I don't think they would have had to, no. It was a well-known term of art.

Q. All right. And do you understand that when the board is construing the term application, it is construing it from the prospective of a person of ordinary skill in the art?

A. Well, I'm not a -- I'm not a patent lawyer and I'm kind of new to the IPR process here, so I hesitate to wade too deeply into the legal nuances of the criteria so it's hard for me to answer that.

Q. That's fair.

A. I'm trying to help whoever reads this report, and I presume that the board will be reading it, help understand the rationale for those instances where I am suggesting alternatives to their proposed constructions.

Q. You said, well, I have an audience here that's not IT professionals, correct?

A. Right, not necessarily. I mean, they might be. I don't know. I don't know the board members.

Q. Are you an IT professional?

A. Yes.

Q. Is an IT professional considered to be a person of ordinary skill in the art?

A. Well, not all IT professionals. I think we have a more specific definition that -- that we're using here with the context of this patent.

Q. What is the difference between a person of ordinary skill in the art, for the purposes of the '426 patent, and an IT professional?

A. Well, I think one is a subset of the other. Not all IT professionals would meet the criteria that I propose for a person of skill in the art with this patent. You could have an IT professional who's been an IT professional for

one week that would not, in my view, qualify as a person of skill in the art.

Q. So then they are not necessarily a subset then, are they?

A. Sure. I think -- I think what I said is that the -- a person of skill -- the universe of persons of skill in the art in the '426 at the time of the patent's filing is a subset of the universe of all IT professionals at that time.

Q. Is a subset, I see, so you're saying that you could have -- let me see if I understand this. You're saying that all persons of ordinary skill in the art for purposes of the patent are IT professionals, but not all IT professionals are PHOSITAs? P-H-O-S-I-T-A.

A. Right. That was my meaning, right.

Q. All right. And tell me again, what is the difference between an IT professional who's not a PHOSITA?

A. Well, let's look. I think I set it forth here, so let's just take a look.

Q. I believe you talked about that. I could direct you to it.

A. Okay.

Q. I believe it's paragraph 15.

A. Okay.
Q. Do you need a second to review that?
A. Well, I remember it pretty well.
Q. Okay.
A. So, I mean, it states here, In my opinion, a person of ordinary skill in the art at the time of the effective filing date would have had at least a bachelor of science degree in computer science or software engineering, or a bachelor of science degree in a technical field requiring computer science or software engineering courses, as well as two to four years of experience designing, writing or implementing software products, such experience to include printing, networking, scanning, and e-mail. In addition, more experience can offset less education.
So, you know, there are lots of IT professionals. I could have a chip designer, right, who might qualify as an IT professional, but they wouldn't meet this requirement.
Q. And you believe that you are an individual of at least ordinary skill in the art --
A. Yes.

Q. -- in the '426 patent, right?
A. Yes, according to both my definition and Dr. Melen's, which I think didn't require experience in the field.
Q. Okay. I'll tell you what, let me just finish up application, and then we will come to this.
A. Okay.
Q. I just want to close this out.
A. Sure.
Q. So just so I'm clear, sir, and I'm sorry if I'm repeating myself, a person of ordinary skill in the art would not have consulted the treatise Exploding The Computer Myth when coming up with the definition of application, correct?
A. Well, again, the way you word it, I don't think a person of ordinary skill in the art would have had to come up with the definition. They would have known it. As I said before, it was a well-known term of art. One wouldn't need to run to a dictionary to look it up, or a textbook, although my book was used as a textbook at Rutgers University, but I don't believe anybody would need to go look that term up. It was well understood at the time.

Q. Did you consult any other individuals of ordinary skill in the art about your definition of the term application before you put it down on paper?

A. Well, no. I made reference to a couple of contemporaneous references that supported what I already knew, based on my experience in the field.

Q. And the contemporaneous references are Exploding The Computer Myth and Newton's Telecom Dictionary?

A. Yeah, I think they are both from the mid-'90s.

Q. All right. Do you recall whether or not the publication Exploding The Computer Myth defined application the way you did in your declaration?

A. Well, I mean, let's look. I think it's quoted here, right?

So on page 5 of my declaration, paragraph 23, I quote it.

Q. I'm sorry, page 5?

A. Yeah, page 5, paragraph 23 of my declaration, I quote it.

"In contrast to system software, programs

that enable users to do specific and useful tasks with the computer, such as word processing and inventory management, are application software." So I think that means the answer to your question is yes.

Q. Okay. And do they define these as being discrete?

A. Do they? Who is they?

Q. Does this definition define application software as being a discrete application?

A. It doesn't use the word discrete.

Q. But you think that's implied?

A. Right, I think so. I mean, programs that -- I mean, it uses the word specific. Programs that enable users to do specific and useful tasks, and then it gives examples of some discrete application programs; word processing, inventory management. But I didn't use the word discrete back in 1995, but I think it comports with this definition.

Q. Did you look for any other books or treatises to support your definition of application?

A. Beyond these two?

Q. Yes.

A. No, I don't think so.
Q. Would a person of ordinary skill in the art have done that?
A. Oh, gosh, I mean, as I mentioned before, I don't think a person of ordinary skill in the art would have needed to look up a single reference to get a definition of that term.
Q. Of the term application?
A. Right.
Q. Okay. So if the board were construing the term application based upon the prospective of a PHOSITA, they could actually ignore Exploding The Computer Myth when coming up with the definition of application, right?
A. Well, I don't know why they would ignore it. It was a contemporaneous reference written by a professional in the field, anymore than they would ignore Newton's Telecom Dictionary.
Again, my presumption, and I could be wrong, I don't know the board members, but my presumption is that they are not necessarily persons of ordinary skill in the art, and so I'm trying to document and explain my positions.
Q. Okay. All right. Let's go back to -- let's go back to the definition of PHOSITA that

we looked at; paragraph 15.

A. Okay.

Q. Okay. Let's start with the beginning part of the definition regarding the educational component.

You said a person of ordinary skill in the art at the time of the effective filing would have had at least a bachelor of science degree in computer science or software engineering, correct?

A. Well, that's the first part of the sentence.

Q. Yes, yes. I'm going to go through the whole thing.

A. Okay.

Q. All right. And you do not have a bachelor of science degree in computer science or software engineering specifically; is that correct?

A. That's correct.

Q. You go on to say or a bachelor of science degree in a technical field requiring computer science or software engineering courses. Let me just stop there for a second.

Do you mean that prong of the educational

component of a PHOSITA?

A. Yes.

Q. Now, your degree was in general engineering, right?

A. Right.

Q. And you graduated in 1980?

A. Correct.

Q. And how many, if any, computer science courses did you take?

A. Well, we can take the "if any" out of there because there were some. I don't remember how many.

Q. Okay.

A. But I remember many late nights at the LOTS, low overhead time-sharing computer center in Stanford learning languages that are now little used.

I think FORTRAN was certainly one of the languages that I learned, and a lot of the engineering courses required computer programming. So pretty much everybody who came out of the engineering school had to take some comp sci.

Q. And you took specifically comp sci -- strike the question.

You learned about FORTRAN in these comp sci courses?

A. I remembered FORTRAN at least being one of the languages that was taught that I took classes in.

Q. Any other languages?

A. I don't remember.

Q. Was FORTRAN -- strike the question.

I'm a chemistry major so forgive my questions. Is FORTRAN a software program?

A. One wouldn't normally call it that. It was a programming language.

Q. Programming language, okay.

A. One could write programs in FORTRAN.

Q. Do you know if there were any programs written in FORTRAN for purposes of printer software?

A. No, I don't know that.

Q. You didn't do it, right?

A. I didn't write any printer programs in FORTRAN. I'm pretty confident about that.

Q. Okay. Did you write any scanning programs in FORTRAN?

A. No. At the time I was in college I'm not even sure scanners were around.

Q. Okay. What about fax machines?
A. You're asking if I wrote any fax machine software in FORTRAN?
Q. Yes.
A. No.
Q. All right. Did you write any printer programs, meaning software programs, in any language?
A. Well, some of the software that I've written had print capabilities. So I've written applications over the years that had the ability to interact with printers and create printouts.
Q. No, that wasn't my question.
A. I'm sorry.
Q. I'm asking did you actually write specifically printer programs in any language?
A. You have to help me understand then what you mean by printer program.
Q. Well, you used the word printer program before when you were talking about FORTRAN, so I'm using it the same way you used it.
A. I think I was responding to a question you asked, so I think that was you, not me.
Q. When you answered the question you seemed to understand it. So let me repeat the

question back, and I'll take out the word FORTRAN.

A. Well, since you're focussing on it maybe we should worry about defining it a little more clearly.

Q. Well, you answered the question. So you said, I didn't write any printer programs in FORTRAN. Did you understand what you meant when you answered that question?

A. I think I took it to mean programs that were specifically focused on printing capabilities, and if that's what you mean then the answer was the answer that I gave.

Q. Okay.

A. And since you're asking more questions about printer programs, I just want to make sure I'm clear on what you're asking about. And so I didn't write -- I have not written programs that are primarily oriented towards printing functions. I have written programs that can perform print operations.

Q. All right. Did you write any programs that are primarily oriented towards scanning?

A. No.

Q. Did you write any programs at any time

that are primarily oriented towards copying?

A. No.

Q. Did you write any programs that are primarily oriented towards any of the target devices that we've been talking about today?

A. Well, let's think about that for a minute. So the targets are destinations in the sense of the '426 patent, can include printers and faxes and filing systems and applications.

So, gosh, I mean, if we take the last one, which is kind of a big category, I've certainly written programs that constitute applications. So in that sense I guess the answer to your question would be a yes.

Q. Did you write any programs at any time that are primarily oriented towards facsimiles?

A. No.

Q. Did you write any programs in any language that are primarily oriented towards any piece of hardware?

A. Well, I mean, maybe. I wrote a financial education product that's oriented towards displaying information on a screen. I mean, that's kind of a broad way of interpreting your question, but if you could include it in

that sense then I guess the answer would be yes.
Q. Besides displaying information on a screen?
A. Then I think the answer is no.
Q. Okay. So then is it fair to say, sir, you have not written any software that is primarily oriented for any commercial device?
A. Well, again, to the extent that a display is a commercial device I wrote a program, a pretty extensive program designed and oriented towards displaying information on a screen.
Q. Other than that?
A. No, I don't think so.
Q. All right. Now, other than the computer science course in FORTRAN and some other languages that you don't recall, do you recall any other computer science courses that you took?
A. Oh, there was at least one programming class in FORTRAN. I think there were two or three, but I just don't recall. It's been a long time.
Q. Did you take any circuit design courses?
A. No, I don't think I did.
Q. Did you take any hardware courses?
A. No, I don't think so. I think the only

computer science classes I took were in programming; in college. I've taken a number of classes since then.

Q. Did you take any courses in networking?

A. Oh, I'm sure there was some networking in some of the classes that I took.

Q. Do you recall specifically which class?

A. No, I really don't.

Q. Was it a computer science class?

A. Yeah, I believe so. There was certainly some discussion of networking. It was fairly -- fairly primitive by today's standards.

Q. Okay. Did you take any courses in software engineering?

A. Well, to the extent that programming is part of software engineering, sure.

Q. So when you're talking about courses in computer science, you are also talking about the courses in software engineering, right?

A. Sure. I would include software engineering as under the umbrella of computer science.

Q. So based upon the courses that you took in the FORTRAN programming language and some other languages that you don't recall, you

believe that you are qualified from an educational perspective to be a person of ordinary skill in the art that can opine on what is disclosed in the '426 patent?

A. Oh, sure. I mean, look at my definition, my proposed definition. It doesn't say that you have to be even necessarily a programmer. My definition is that you need to have some computer science education, and then you have to have some experience -- quoting from my paragraph 15 -- designing, writing, or implementing software products.

I have a lot of experience implementing software products. I have a lot of experience designing systems, including networking and printing and faxing and so forth. Such experience, going back to the quote, such experience to include, printing, networking, scanning, and e-mail, period, end of quote.

So to the extent your question implies that a person of skill in the art has to have done programming primarily directed towards printing or faxing, that's not a correct characterization of my proposed definition.

Q. Okay. So I guess --

A. I meet my proposed definition, and I meet Dr. Melen's proposed definition.

Q. At least that's your opinion?

A. I think mine is more rigorous than his.

Q. So is it fair to say, sir, that if I'm a general engineer and I take computer science -- a computer science course that has nothing to do with applications that are directed towards printing or copying or scanning or fax machines, that I am necessarily at least a person of ordinary skill in the art to opine on the teachings of the '426 patent?

A. No, I wouldn't say that.

Q. Okay. You would say that that person would not be qualified?

A. No, I wouldn't say that either.

Q. What would you say?

A. I would say what I said in my paragraph here. There's an education component, which I meet. There's an experience component, which I meet.

Q. That's what -- I understand that's your opinion, and I'm trying to understand --

A. Well, it's a fact.

Q. It's -- I think that's probably your

allegation.

A. It's not an allegation. It's a fact. It's my experience is my experience.

Q. I didn't ask you about your experience.

A. Well, that's part of the definition.

Q. But would you agree with me that you have to have both education and experience? That's what you said.

A. I would, and I do, and I stand by that statement.

Q. All right. So I'm just trying to understand, what type of computer science courses does a person of ordinary skill in the art need to have taken in order to be able to opine on the '426 patent?

I'm not talking about experience. Please don't tell me about your experience. We'll get to that. I'm talking about education.

A. I think I stated here. I refer you to paragraph 15 of my report.

Q. Okay. So if I take computer science courses in FORTRAN that have nothing to do with printer applications or copier applications or scanner applications or fax applications, I still have the educational requisite to opine on the

'426 patent, is that what you're saying?

A. That's what I'm saying.

Q. All right. You don't think that's stretching it a bit?

A. No, I don't. I think that's very reasonable. In fact, I think probably in this industry the experience component, which you didn't want me to talk about just now, is more significant even than the education component.

I think that a lot of some of the interesting, innovative and important work that has been done in this industry has been done by people who have no formal training and have taken no computer science classes. So I think my education component is appropriate here. I think the experience component is appropriate, and I feel comfortable with my own -- meeting both of those.

Q. Now, you said you believe that you met Dr. Melen's definition of a PHOSITA, correct?

A. I think so, yeah.

Q. All right.

A. It would be nice to look at it to refresh my memory.

Q. I'm going to read it to you right now.

A. Okay.
Q. And you also said that you believe your definition is more rigorous?
A. I think so, because I have an experience component that he didn't have.
Q. I just need to finish the question.
A. Oh, pardon me. I didn't mean to interrupt.
Q. You believe your definition is more rigorous than Dr. Melen's definition?
A. Yeah, I think so.
Q. Okay. Dr. Melen said, in paragraph 18 of his declaration, that a PHOSITA at the time of the invention claimed in the '426 patent is a person holding a bachelor of science degree in a computer-related technical field, such as electrical engineering, computer engineering, or a computer science, without experience in the field.
You don't have a degree in electrical engineering, correct?
A. I took electrical engineering classes, but my degree was a self-designed degree. You referred to it as general engineering, which was the nomenclature at the time, and that was a --

it was not general in the common English use of the word. I designed my own major in energy technology, so it wasn't a standard degree and, therefore, all nonstandard degrees, which are typically more rigorous than most normal engineering degrees, were given the nomenclature of general engineering at Stanford at the time.

Q. But there was an electrical engineering degree at Stanford at the time, right?

A. Sure.

Q. And you didn't get that degree?

A. No, I didn't.

Q. And you didn't get a degree in computer engineering, right?

A. That's correct.

Q. And you didn't get a degree in computer science, right?

A. That's correct.

Q. So how do you meet the definition of -- excuse me, how do you fall within the scope of Dr. Melen's definition of a person of ordinary skill in the art?

A. Well, I think he says -- doesn't he say a technical degree?

Q. He says a computer-related technical

field.

A. Okay. So I would consider my degree to be computer related in the sense that I had to take computer classes. Many of the engineering classes required computer programming, modelling. It was a computer-related degree in that sense.

You couldn't get through an engineering degree at Stanford without having a pretty solid computer background.

Q. Okay. You used a term that I had not heard before, sir. You said computer-related -- strike that.

You said computer classes, right? That's what you took?

A. I probably said that, sure.

Q. Okay. Let me read your statement into the record again.

A. Fine.

Q. Okay, so I would consider my degree to be computer related in the sense that I had to take computer classes. Many of the engineering classes required computer programming, modelling. It was a computer-related degree in that sense. Right?

A. Sure.

Q. Okay. Now, when you were talking about computer-related classes, were you differentiating between the computer science class in FORTRAN and other languages that you can't recall from computer-related classes?

A. No. I'm lumping them together.

Q. Okay. So can you tell me of any other computer-related classes that you took other than the classes on FORTRAN and the languages that you don't recall?

A. I just don't remember the specific courses.

Q. Okay. Did you take any electrical engineering courses, sir?

A. Yes.

Q. What course did you take, if you recall?

A. Oh, gosh. I mean, we're going back into the dark ages here.

No, I don't recall specifically which classes.

Q. Okay, that's fine.

A. But I took electrical, chemical, nuclear, mechanical, civil, lots of engineering classes for my degree on energy technologies.

Q. So the degree was entitled energy

technologies?

A. No. The degree was titled, as I explained, general engineering, but the focus was on energy technologies.

Q. How do you define energy technologies?

A. Oh, well, let's see. Well, oil and gas, nuclear, wind, solar technologies that are used to generate energy sources. That was the focus of my major.

Q. None of those have anything to do with printers or copiers or scanners, do they?

A. Oh, well, anything to do? I mean, in any technical field you're producing reports that have to be printed. I don't think scanning was a technology in widespread use at the time.

But, yeah, the focus -- the focus of my degree was on energy technologies. And I would add, too, you mentioned electrical engineering. I'm not sure any of the electrical engineering courses at the time would focus on scanning or faxing or printing.

Those, when we talk about printing and faxing, we're talking about technologies that are often used in an office environment, in a business environment and in a commercial

environment. Those topics to my recollection in the late '70s were not the focus of computer science classes.

Q. But --

A. Or engineering classes. I don't remember any classes on Printing 101 or Faxing 101.

Q. But there were computers -- excuse me, there were copiers that existed commercially at that time, right?

A. Well, we're talking about -- sure, there were, but we're talking about the education component, and you seem to be concerned that I didn't take any faxing classes or scanning classes or printing classes, and I'm not sure such an animal existed at the time.

Q. I didn't say that.

A. Those are things that are -- those are things that are focused on in the workplace rather than in the academic world.

Q. I didn't say that.

MR. SABHARWAL: Why don't we take a break.

THE VIDEOGRAPHER: The time is now 11:37 a.m. We're off the record.

(Brief recess.)

THE VIDEOGRAPHER: The time is now 11:57 a.m. We're back on the record.

BY MR. SABHARWAL:

Q. Sir, we're almost done with the questions regarding your education.

Did you take any courses at Stanford in circuit design?

A. Oh, I think you may have asked me that. No, I did not.

Q. Okay. Networking?

A. I'm sure networking was a component of at least one of the comp sci classes that I took, but I just -- beyond that I can't give you any detail.

Q. Okay. All right. Now, you say in paragraph 8 that after you graduated you developed some software in the early-to-mid 1980s, correct?

A. Okay. Let's go look at that.

Q. Sure.

A. So, right, I guess I probably started writing software in about 1981.

Q. And you have here that you wrote data acquisition and billing analysis software in the

1981 to '85 time period, right?

A. Right.

Q. Then you have a royalty, calculating and reporting program for an oil and gas company in 1984 to 1986?

A. Right.

Q. And then a database software for a travel magazine for a credit collections bureau from 1987 to 1989?

A. Yes.

Q. And during that timeframe do you recall writing software for purposes of anything other than the -- strike that question.

Did you write any other type of software in that time period other than the ones that are set forth in paragraph 8?

A. Oh, golly, I think those were probably the main projects at the time.

Q. Okay.

A. I don't recall anything else specifically sitting here.

Q. Now, during this period of time --

A. Well, let me, actually --

Q. Sure.

A. Pardon me, but I can go back and I can

probably fill that in a little bit. I think in the -- oh, this would have been about '86, '87, I did write some software in connection with -- one of my consulting clients was a real estate company, and so I wrote some software, kind of office automation scripts. And it was a language, I think it was called DCL, digital command language, and I wrote some scripts in DCL that -- and this is, again, predating PC networks, but we're talking here about Digital Equipment Corporation, minicomputers, and there was a financial accounting system. So I did some programming in DCL, or scripting really might be a better term.

Q. Okay.

A. Yeah, there may have been a few incidental things like that as well, but these were the main projects.

Q. And I'm sure it's in your CV, sir, but where were you employed at the time that you were writing this software?

A. Well, at the time I was doing what I just described, I had started my own company, so that would have been I think '86, '87 and '88 when I started Independent Software, or went

full-time on Independent Software.

Now, the acquisition and billing analysis software that you mentioned was in the '81 to '85 time period. That was a time period when I was employed at an engineering firm in Dallas called Wetzel Enterprises, and I was doing programming in Pascal, programming Hewlett-Packard acquisition computers. We were doing solar energy research.

I also took care of the company's -- I set up and managed the company's network. It was an Apple network at the time, and designed that and troubleshot it and so -- but that was as an employee of Wetzel Enterprises.

Q. And how long were you at Wetzel?

A. I think it was about four years, four and a half.

Q. When you say that you designed the network at Wetzel, you didn't design the hardware or the software, correct?

A. Oh, no, no. Designed it from the standpoint of what we would call system integration, right. So --

Q. You formed the network?

A. I set it up, I configured it, got it

working, picked the pieces, put them together and made them work.

Q. Okay. Thank you.

A. Uh-huh. And we did have printers. I don't think we had scanners, but we did have printers back then.

Q. During your time at Wetzel Enterprises you never designed any hardware or software for printers, correct?

A. That's true.

Q. The same question with respect to scanners?

A. That's also true.

Q. Copiers?

A. Also true.

Q. And fax machines?

A. Yes.

Q. At any time prior to 1995, had you ever designed software for any of those devices?

A. Designed software for printers or faxes or scanners? No.

Q. Or copiers?

A. Or copiers, no.

Q. And prior to 1995, had you designed any software or hardware -- excuse me, any hardware

for printers, scanners, copiers, or fax machines?
A. No.
Q. At any time prior to today have you ever designed any software for any of those devices?
A. No.
Q. The same question with respect to hardware. At any time prior to today have you designed any hardware for any of those devices?
A. No, I don't think so.
Q. Okay. And you've never been employed by or worked for a scanner or a copier company, correct?
A. Well, let's see. I think that's a fair statement.
Q. That you have never been employed by a scanner or a copier company?
A. I've never been an employee of a scanner company or a copier company.
Q. Have you ever been retained by a scanner or copier company as a consultant?
A. Sure.
Q. Okay. When was that?
A. Well, I think the exact dates are in my CV. I was involved in a litigation at the ITC between Ricoh and Okidata.

Q. Who did you represent?
A. I was working on behalf of Ricoh.
Q. Other than -- I'm sorry, and what was your role in that case?
A. Consultant, expert witness, testimony expert.
Q. Other than your engagement as an expert witness, have you ever been retained as an IT consultant by a scanner or copier company?
A. Yes.
Q. Which company?
A. I was -- I did some work for IBM in Dallas, and they made copiers. I don't know if you call them a copier company, but they certainly make copiers.
Q. Okay. Anybody else?
A. Not that I recall sitting here, no.
Q. Did the engagement with IBM involve any work on their copiers, scanners, fax machines, or printers?
A. No, I don't think so. I think that was a tech support. I was helping them set up a tech support center in one of their Dallas offices, as I remember that engagement.
Q. Okay. If we could take a look at your

CV.

A. Okay.

Q. Okay. I am on page 42 of your declaration, which lists Appendix B or curriculum vitae.

A. Okay.

Q. As far as you know, sir, is this a true and accurate copy of your CV?

A. Yeah, I certainly try to make it true and accurate.

Q. All right.

A. I'm not aware of any errors here.

Q. Okay. Now, is it fair to say that none of the clients of independent software are copier companies?

A. Well, I don't know. We just talked about IBM.

Q. Other than IBM?

A. Other than IBM?

Q. Yes.

A. Let's see. (Witness reviewed document.) Yeah, I think that's right.

Q. You have several titles, one of which is MCT. What does MCT stand for?

A. Microsoft certified trainer.

Q. Does that involve designing software?
A. No. That's a training certification.
Q. And it doesn't involve designing hardware, right?
A. That's correct.
Q. And MCITP?
A. Right. Microsoft certified information technology professional, I think is what that one stands for.
Q. The same questions with respect to MCITP?
A. I'm sorry --
Q. It does not involve the design of any software or hardware, right?
A. Well, I don't know. I guess it depends on what you mean by design.
Certainly MCITP is a certification that there's lots of different flavors of it, but there's certainly some MCITP certifications that have to do with building networks. So from the standpoint of designing networks using Microsoft software, that certainly is a big component of some of the specific MCITP certifications, as well as some of the other ones that are listed there; MCSA and MCSE and so forth, but not in

terms of writing programs but in terms of designing, building networks.

Q. Meaning configuring the devices to work together?

A. Configuring -- well, configuring devices, operating system software, network operating system software, and my -- most of my Microsoft certifications have to do with system-level software, so Windows, Windows networks, Windows server, active directory and so forth.

Q. And that's -- when you say system-level software, you are differentiating between that and application software?

A. Yeah, I've taught some courses in Microsoft Office, but that's the exception rather than the rule.

Q. And when you say that you've taught some courses that included system-level software, you're not talking about designing that software, are you?

A. No. I'm talking about designing -- for example, designing networks, designing large-scale networks. Not designing specific software products, right.

Now, sometimes, just to shade that a little bit --

Q. Sure.

A. Just to try to be completely accurate, as part of configuring and optimizing networks, sometimes it is appropriate to write some software. For example, I think I used the word scripts earlier when talking about DCL. For example, Microsoft PowerShell is a scripting language. You know, command line scripts, visual basic scripting edition, VBS or scripts, so occasionally we'll talk about writing scripts for network management.

Q. But this is system-level software, right?

A. That's -- well, yes, that's system-level stuff, generally, right.

Q. Have you ever the designed any type of application software as opposed to system-level software?

A. Oh, sure.

Q. All right. And for what purpose?

A. Well, I think we talked about some of them a little bit earlier. So when I was working at Wetzel Enterprises --

Q. I'm sorry, right, you did talk about that. I'm sorry about that. That's what you meant by the application software?

A. Well, right. That was -- the utility build analysis tool was an application that I wrote in Pascal. I suppose one could consider the data monitoring tools or the tool that I wrote could be considered an application. It certainly wasn't one that you would go out and sell in the retail market.

The database programs that I developed would generally be considered applications. They were database programs for Travel Host magazine and for National Bureau of Credit in Dallas, and these were applications that users would interact with that were -- that performed useful functions and that had discrete boundaries so they meet my proposed definition of applications.

Q. Okay.

A. And there have probably been some others, too.

Q. Now, in paragraphs 10 to 12 of your declaration --

A. Okay.

Q. -- you talk about a number of books that

you've authored and seminars that you have taught, correct?

A. Let me just get there. Okay, yes.

Q. Sir, when you were talking about your work at Wetzel --

A. Uh-huh. Sorry; yes.

Q. Actually strike that question.

Prior to 1995 were you ever involved in the design of networks?

And I'm talking about configuring devices to operate in a network environment.

A. Prior to '95?

Q. Yes.

A. Oh, yes.

Q. And that was at Wetzel as well as your consulting?

A. Yes.

Q. All right. Now, the publications that are listed in paragraph 10, sir --

A. Yes.

Q. Are any of these about developing software for a network scanner or copier?

A. No.

Q. Do they involve in any way the development of software for any type of network

device?

A. Oh, I suppose so. Some of the books probably include some -- for example, some of that scripting capability --

Q. Which one is that?

A. -- that we chatted about.

Oh, you know, I don't know. I haven't gone back through all of these to see which one or ones of them I talk about scripting.

But I would imagine that some of these might talk about scripting or batch files; maybe some of these earlier ones. But not in the sense of -- none of these books are focused on developing full-scale commercial, retail applications.

Q. Okay. They are actually about troubleshooting problems, right?

A. Some of them are, yes.

Q. Okay. So I want to go back to paragraph 15 again.

A. Okay. I'm there.

Q. And, I'm sorry, but I'm still struggling here with your qualifications from an experiential standpoint.

What software have you designed which would

include printing, networking, scanning, or e-mail?

A. Well, the utility analysis tools or tool that I developed at Wetzel Enterprises.

Q. Hold on a second. Let me make sure I'm following you.

A. Sure.

Q. All right. Go ahead.

A. So the energy utilization analysis and reporting tool that I designed at Wetzel Enterprises had some printing capabilities.

In fact, it was rather more sophisticated than that, now that I think back on it. It had the ability to send data not only to dot matrix printers but also to line plotters to generate graphs. So there was some pretty serious printing capability in that tool.

Q. Did you design that software?

A. Well, I wrote the program in Pascal, which is -- so I did write it. I didn't write it in a vacuum, right? I'm leveraging the capabilities of the operating system.

The database software that I developed at Travel Host and also the database software that I developed at National Bureau of Credit, a big

part of that was generating hard copy output, and so printer functions were an important part of those products.

Let's see. Yeah, database printouts are very important, so they had a printing component, and they also had a networking component. I don't think those early projects had a scanning component. I'm sorry, I'm probably going beyond what you asked about.

Q. That's fine.

A. And so those were some of the early ones that did have printing as part of the mix of the capabilities of the software.

Q. Okay. So what you're saying is that in your opinion a person of ordinary skill is qualified because he or she can design software which may have a printing capability or function, is that how I'm reading your definition?

A. Well, I think we can go from the words in my declaration. I think that experience, to include printing, networking, scanning and e-mail, so I didn't mean by that that a person of skill in the art would have to be able to write a printer driver, for example.

Q. Okay.

A. They have to be able to -- we're talking about using these capabilities in the design, creation or implementation, right?

So designing, writing, or implementing software products and that -- so in my view a person of skill in the art could be somebody who has had two to four years' experience implementing products, software products that they didn't write but that include printing, networking, scanning, and e-mail capabilities. So what we would call systems integration, for example.

Q. So you didn't mean to state that a person of ordinary skill in the art would need to have any printer driver experience, right?

A. Writing printer drivers?

Q. Writing printer drivers.

A. No, that's correct.

Q. Okay. Or implementing those?

A. Implementing would be satisfactory. If you're implementing products that include printing, networking, scanning and e-mail, and you've done that kind of thing for two to four years, then that was what I considered to be a component of a person of skill in the art with

regard to this patent.

MR. HILL: Can we go off the record for just a few minutes and go ahead and get the lunch orders out?

MR. SABHARWAL: Sure, sure.

THE VIDEOGRAPHER: The time is now 12:19 p.m. We're off the record.

(Off-the-record discussion.)

THE VIDEOGRAPHER: The time is now 12:28 p.m. We're back on the record.

BY MR. SABHARWAL:

Q. Sir, directing your attention back to paragraph 15 --

A. Okay, I'm there.

Q. -- in your definition of a person of ordinary skill in the art, when you're talking about the experience you say two to four years of experience in designing, writing, or implementing software products, such experience to include printing, networking, scanning, and e-mail. Right?

A. Right.

Q. What about copying?

A. I didn't put copying in here.

Q. Why not?

A. I don't think it's necessary for a person of skill in the art. I think what I have here is adequate experience. And, again, pointing out that this is a lot more experience than Dr. Melen put in his definition of a person of skill in the art.

Q. So let me see if I understand this. You do not think that a person of ordinary skill in the art should have any experience in copying in order to provide an opinion about the '426 patent?

A. I'm comfortable with the definition that I have here. I think that if we have two to four years of experience with software that involves printing, networking, scanning and e-mail, that that's adequate experience for a person of skill in the art with respect to this patent.

The patent mentions a number of other technologies. I don't think it's necessary to have direct experience with every technology mentioned in the '426 to be considered a person of skill in the art.

Q. Well, but the patent does contemplate quite extensively the implementation of copiers, does it not?

A. Well, it's a virtual copier, so there's a lot of discussion of --

Q. I mean, we talked about earlier the fact that you believe virtual copying is the central concept of the patent, right?

A. I'm not sure I said the central concept, but I said it was a central concept.

Q. Okay. So you don't think that a person of ordinary skill in the art should have experience about a central concept of the patent that he or she is opining on?

A. Well, no, I wouldn't say that. Look at what I say here. Designing, writing or implementing software products, right, so I'm not talking about hardware. I'm talking about stand-alone copiers. I'm talking about software products that involve the technologies that are contemplated by the virtual copier. And so the technology is contemplated by a virtual copier, scanning and printing, right, for example, and those are included here.

Q. But doesn't a virtual copier also contemplate copying?

A. It does, and I feel that copying using a copy machine was a technology that was reasonably

well understood by most people at the time.

Q. Using a printer was also reasonably well understood by a person of ordinary skill in the art at the time, right?

A. Well, that's right but --

Q. I'm sorry, I got to finish the question.

A. I'm sorry, I talked over you. My apologies.

Q. Luckily the court reporter is getting it down.

I said using a printer was also reasonably well understood by a person of ordinary skill in the art at the time?

A. Well, I think less so, especially with regard to the software aspects of including printing in networks. That was something that I think a little experience would be helpful in understanding the '426, which is why I explicitly included it here.

Q. Okay. So you're saying that the copying software was well-known in the art at the time of the invention, right?

A. Well, I don't think I said that, but copying, right, in the sense of a stand-alone copy machine, which is used by the author of the

'426 to provide an analogy, if you will.

But I think that the basic functions of a copier were -- were understandable to a person of skill in the art at the time, and so that's probably why I didn't include it here.

Q. So you deliberately left it out; is that right?

A. Well, I didn't go out of my way to leave it out.

Q. But did you contemplate the term copying and decided not to include it here?

A. You know, I don't really know whether I contemplated including copying here or not, but certainly my feeling was that some experience with printing, networking, scanning and e-mail, which are some of the technologies that are mentioned frequently in the '426, would be useful.

Q. By the way, did you write this declaration?

A. I did.

Q. Every word of it?

A. Probably some of the legal sections I got some help with, the parts that have to do with the law, and the IPR parts. I can kind of

point you to that but, yeah, I wrote most of it.
Q. Okay.
A. I can tell you that starting on page 11 there's a legal basis for opinion --
Q. Yes, you don't need to tell me who did what.
A. Oh, okay.
Q. You can just -- you agree with the contents, right?
A. I wrote -- I wrote most of this document, and I agree with everything that's in it.
Q. Okay. Now, what about with respect to the definition of a person of ordinary skill in the art?
A. Uh-huh.
Q. You came up with that definition?
A. I think I did.
Q. And you would agree with me that the patent also contemplates software for copiers, right, since it's called a virtual copier?
A. I don't think that's the same thing.
Q. You don't?
A. I don't think virtual copier is the same thing as software copiers.

Q. I didn't say that. I didn't say that, but it would include software for copiers, right?

A. Well, I'm not entirely sure. I would have to take a look at it and see.

Q. Sure.

A. Let me take a look. (Witness reviews document.)

Okay, so it looks like, yeah, in Column 46, it says that the from can be a digital copier or a fax or a scanner.

Now, I'm not sure if I would agree with your phrasing of software for copiers. I'm not sure that the patent here discloses in any of the claims or, indeed, in the specification designing software for a copier.

Q. Okay. Let's look at the claims then.

A. Sure.

Q. And, sir, my question with respect to Claim 1 is whether it's your opinion that Claim 1 includes software for copiers?

A. Yeah, I mean, the only problem that I have with your -- with the way you're phrasing it is that we're not being very precise when we say software for copiers.

Q. Okay.

A. I mean, I think in Claim 1, looking at it, we have a digital copier mentioned here, and we have to have --

Q. I'm sorry, where --

A. -- a software application for interfacing and communicating with the copier.

It doesn't -- Claim 1 doesn't necessarily say software for copiers in the sense of, for example, the firmware that might be needed to run a copier. I'm not sure that that's contemplated in Claim 1.

Q. Okay. So when I'm saying software for copiers, you're interpreting that as the firmware on the copier, right?

A. Well, I guess the proper thing for me to do would be to ask you what you mean.

Q. Okay.

A. Rather than assume it.

Q. Okay. So I'm -- let's start with that. I'm talking about the firmware that's on the copier itself.

A. Okay. And I don't think that that's necessarily required by Claim 1.

Q. Is it your opinion that the -- excuse me, strike that.

Is it your opinion that Claim 1 would require an interface on the copier?

A. I think that Claim 1 requires an interface to the copier, which may or may not be the exact same thing as an interface on the copier, just looking at the language of the claim here.

We have to have a software application that -- a software application for interfacing and communicating with the plurality of external devices.

Q. Where are you reading, sir?

A. I'm sorry, I'm reading at line 53, 54.

Q. Okay.

A. Right around in there.

Q. Okay.

A. So we have a software application for interfacing and communicating with the plurality of external destinations, including the one or more of external devices and applications.

And so if a copier is one of those devices, then we have to have an interface to that device. And I think you used the word "on". I would use the word "to", but the claim doesn't --

Q. Where would that interface reside then?

A. The claim doesn't say.
Q. Could it reside on the copier?
A. Well, normally an interface, parts of an interface have to live on, you know, the two things that are communicating. So when we talk about an interface, we usually are talking about something that has a component on each side of the communications channel.
Q. So that the two devices can interact with each other, right?
A. That's right.
Q. And in your experience that interface would reside on one of the two physical devices?
A. Well, in my experience with interfaces, there's support for that interface on both sides of the communications channel.
Q. What does that mean?
A. That means if, for example, I have a PC that's connected to a fax modem, the interface on the PC has to understand how to send and receive data to the fax modem, and we also have some hardware and firmware on the fax modem that has to understand how to send and receive across that interface.
Q. Okay.

A. So we normally don't point to an interface as saying it resides entirely on one or the other.

Q. It resides on both?

A. Typically we would consider it as residing on both of the communicating devices.

Q. Okay. So then let's take the scenario of a PC interfacing with a copier.

A. Okay.

Q. Okay. Do you -- would you agree with me that a PC interfacing with a copier is contemplated by the limitations of Claim 1?

MR. HILL: Object to the form.

THE WITNESS: Well, let's -- let me look at it carefully. I think the answer is that it would be.

Claim 1 says we've got a digital copier here, in line 45.

BY MR. SABHARWAL:

Q. Uh-huh.

A. And then we've got to interface and communicate with -- on lines 54 to 56.

Q. Right, correct.

A. With the external destinations. So I think it would be reasonable to assume that we

have some kind of interface between the computer running the application, the software application referred to in line 53 --

Q. Okay.

A. -- and the copier or the printer or the fax or whatever devices we're talking about. That would seem to be a reasonable assumption.

Q. And the interface would exist on both the PC as well as the copier in that scenario?

A. In the case where we're talking about the software application executing on a PC -- I don't think it says it has to, right? And the system is using a digital copier as a external destination, then I would think it's a fair statement that there has to be an interface.

Q. So in that scenario the scanner or the copier could be the external destination, correct?

A. Yeah, I'm not sure a scanner can be an external destination.

Q. What about a copier?

A. I think a copier could be an external destination.

Q. So given the fact that the claim specifically recites a digital copier and also

talks about an interface between, for example, a PC and a copier, tell me again why you don't think a person of ordinary skill in the art needs to have experience with copiers.

A. I would expect that the person of skill in the art who knows about an interface between let's say a PC and a printer would have a reasonable understanding of an interface between a PC and a copier being used as a printer.

Q. Okay. What if it's just being used as a copier?

A. Then it wouldn't fall under Claim 1 as an external destination.

Q. So unless the copier is being used as a printer, it does not fall within the scope of Claim 1?

A. No, I don't think that's what I said.

Q. Okay, I'm sorry.

A. If the copier is functioning as a scanner, and I think I did include scanner in my list of suggested topics that would be understood by a person of skill in the art, then I would expect that the interface between a digital copier being used as a scanner would not be radically dissimilar from an interface, from an

actual scanner, a single purpose scanner.
Q. And what's your basis for saying that?
A. My experience using these devices.
Q. Just using them?
A. Using them, building networks that have them.
Q. But you've never built a software for any of these types of devices, right?
A. Built the software? I've put together lots of networks that use these devices.
Q. That wasn't my question.
A. When you say built the software, what do you mean?
Q. I mean the software that, for example, resides on any of these devices.
A. I've never done any firmware programming for any of these devices.
Q. And you've never designed any software for firmware that would enable one device to communicate with the other, correct?
A. Oh, gee, I don't know. That's kind of a broad statement. I'm not sure that's true.
Q. Remember we were talking about the interface protocols?
A. I'm not sure which -- what interface

protocols are you referring to?

Q. Okay. Let me direct your attention to the second limitation of Claim 1, starting on line 49.

A. Line 49. Okay.

Q. You see where it says interface protocols?

A. Right. I didn't remember that we discussed that.

Q. No problem.

A. Okay, I'm sorry, what's the pending question?

Q. So the question is, you've never designed these types of interface protocols, right?

A. These types of interface protocols?

Q. Yes.

A. No, I think that's probably true. I've never written software specifically for an interface protocol.

Q. All right. Sir, I'd like to take a look at your CV and specifically talk about the list of clients that you had.

A. Okay.

Q. Would it be fair to say that the clients

that you have listed here had retained you to help them as end users?

In other words, I'm a client, I'm having some IT issues based on software and hardware that I've already purchased or devices that I've already purchased. I would then call you if I'm having trouble with some sort of IT issue related to that, right?

A. No.

Q. Okay. And we can go through each one of these. I'd rather not do that. I would rather do this more in sort of a general category, so maybe you can start by telling me what was the general nature of why you were consulting for these companies?

A. Oh, well, I mean, each one was kind of different, but I can put the consulting work into categories.

Q. Sure, let's do that.

A. I'm happy to do that to speed the proceedings along.

Q. Okay.

A. But it wasn't all just sort of troubleshooting for end users. In fact, I did fairly little of that kind of work.

So for some of these companies I was helping them create networks, specify networks for their businesses or for offices within their businesses, in which case I would help them choose hardware and choose software.

In many cases I would then help them build that functioning --

Q. What do you mean by build that?

A. Well, I'll get there. Build that functioning network by assembling and configuring all the parts and pieces so that they work together.

In some cases I would also perform training of some of the technical people within the organization so that they could provide support to their organization and to their users.

Q. Uh-huh.

A. So that's kind of one category.

And then the other -- another category would be what you mentioned. Some of these companies would rely on me to help them solve problems that they were having issues solving themselves.

Q. Okay.

A. Those might be network-related problems. There's a variety of -- might be software

related, might be hardware related.

For some of these companies, I consulted with them to help them set up technical support organizations, help desks.

For some of these companies I did training for their technical people who had to deal with troubleshooting or configuration issues.

For some of these companies I helped them develop some websites.

For some of these companies I had specific programming projects that I was hired to do. Mary Kay Cosmetics, for example. They hired me to do a specific programming project for them.

For some of these companies I designed databases. There's Travel Host magazine, which we were chatting about a little bit earlier.

Q. I'm sorry, what was that, Travel Host?

A. Travel Host, right. Designing and extending databases.

Q. Okay.

A. And, let's see, in some cases I was providing assistance in some legal matters, right? You've got Department of Justice and DLA Piper and some other companies that I did this sort of work, helping them understand the

technologies and in some cases doing some testifying.

And, yeah, I think that those are probably -- sorry, it was kind of a lot of categories. You have to do a lot of things to make a buck as an independent consultant.

Q. I understand.

A. But those are the major categories, I think.

Q. Okay. Did any of these categories of responsibility that you had as an IT consultant involve designing the software for any of the devices that were used in the network?

A. Designing the software. I would put it more -- probably not. Probably more in terms of configuring. Some of the scripts that I was talking about that I would have to write for the mainframes or minicomputers or PC networks would have device configuration capabilities.

Configuring printing on Novell netware involves, for example, back in the early days, that involves a fair amount of software configuration, but I wasn't writing Novell netware. I was configuring it.

Q. Is it fair to say that with respect to

all the categories of responsibility you had, you were also not involved in designing any of the hardware that could have been used in any of these networks for the clients, right?

A. No. I helped my clients specify the hardware, I helped them purchase it, I helped them select it, but I didn't build any of the hardware myself or design the hardware in the sense of a designer working away at Ricoh to create a digital copier, for example.

Q. Okay. Have you read Dr. Melen's declaration?

A. I did, yes.

Q. And you know that he was the vice president of research and development at Cannon Research Center America?

A. Yeah, I remember that.

Q. By the way, did you -- strike the question.

Were you attending Stanford at the same time that Dr. Melen was teaching there?

A. I don't know.

Q. You never took any course with him?

A. Not that I recall.

Q. Were you aware that while at Cannon

Research Dr. Melen was working on technology specifically for network copiers and scanners at the time of the invention?

A. I'm sure I read that if it was in his declaration.

Q. Do you think that type of experience is important for a person of ordinary skill in the art?

A. That type of experience, okay. What specific experience were you referring to again?

Q. Experience working on the technology for network copiers and scanners.

MR. HILL: Object to the form.

THE WITNESS: Working on. Well, I guess it would depend on what working on means in that context.

BY MR. SABHARWAL:

Q. That's a fair point.

All right. Do you understand that Dr. Melen was actually designing the software for the network copiers?

Did you know that?

A. I don't recall that. I admit to not focussing greatly on Dr. Melen's CV. I was more concerned with his lines of reasoning.

Q. Would you agree with me that the ability -- that the experience in designing software specifically for copiers, faxes, scanners would be an important aspect for the qualifications of a person of ordinary skill in the art?

A. Well, I don't know. It would depend. I think if somebody was designing, you know, an integrated circuit for a circuit board that would work in a copier and a scanner, I'm not sure that that experience would necessarily translate or be adequate or sufficient to meet my definition of a person of skill in the art.

Q. I said software actually. Did you --

A. I'm sorry if I misunderstood your question. Could you restate it for me?

Q. Sure. Do you think that experience with designing software for network copiers and scanners is an important aspect of experience for a person of ordinary skill in the art?

A. Not necessarily. Again, it's the same kind of concept. It depends on what the software is. If one is designing the software to, you know, advance a stepper motor in order to do paper feed for a document being scanned, I'm not

sure that that would necessarily translate to useful background --

Q. What if it's firmware to communicate with other devices, do you think that's an important aspect of a person of ordinary skill in the art's qualifications?

A. I don't think you have to be a firmware designer to be a person skilled in the art.

Q. I didn't ask you that. I said do you think that's an important aspect for a person of ordinary skill in the art?

A. Well, I think I answered you. No, I don't think designing firmware is necessarily important to meeting the requirement of a person of skill in the art.

Q. What about designing hardware?

MR. HILL: Object to the form.

THE WITNESS: What about designing hardware? I don't think it's necessary to design hardware in order to be a person of skill in the art, if that's your question.

BY MR. SABHARWAL:

Q. Yes, that's my question.

A. No, I don't think that's necessary.

Q. Do you think a person that's got

experience designing the hardware and software for network copiers is more qualified than a person who has not had that experience?

A. I can't answer that in the abstract.

Q. You just don't know one way or the other?

A. Well, there's not enough information.

MR. HILL: Object to the form.

THE WITNESS: I'm sorry. There's not enough information in your question for me to give you a --

BY MR. SABHARWAL:

Q. What more information do you need?

A. Who's the person? What's the specific work that they have done?

Q. Okay. Well, I asked you before whether you had designed any software for any of the devices that are discussed in, for example, Claim 1, and you said no; right?

A. Right.

Q. Okay. Do you think that type of experience is important for a person of ordinary skill in the art to opine on the invention of Claim 1?

A. No. As I've testified, my definition of

a person of skill in the art -- we've gone over it many times -- I don't think you have to have written software for these specific devices in order to be a person of skill in the art.

Q. By the way, do you consider yourself to be at least a person of ordinary skill in the art or an expert in the field of the '426 patent?

MR. HILL: Object to the form.

THE WITNESS: No, I would say both.

BY MR. SABHARWAL:

Q. You're both a person of ordinary skill in the art and an expert?

A. Sure. One is a superset of the other.

Q. Are you just an expert?

MR. HILL: Object to the form.

BY MR. SABHARWAL:

Q. Are there aspects where you're just a person of ordinary skill in the art versus aspects where you're an expert?

MR. HILL: Same objection.

THE WITNESS: I confess to not understanding the question.

BY MR. SABHARWAL:

Q. Okay. It's pretty simple. You understand that a person of ordinary skill in the

art is different from a person of extraordinary skill in the art like an expert, right?

A. That sounds reasonable.

Q. Okay. So we've got an expert on one hand and we've got a person of ordinary skill in the art in the other. Do you follow me so far?

A. I do.

Q. Do you consider yourself to be either a person of ordinary skill in the art or an expert in the field contemplated by the '426 patent?

A. As I said before, I consider myself to meet both of those categories.

Q. As to all aspects of the '426 patent?

MR. HILL: Object to the form.

THE WITNESS: Well, I mean, all aspects. I feel very comfortable with my characterization of myself as a person of ordinary skill. I also feel very comfortable based on my background and experience to be sitting here today testifying as an expert witness.

BY MR. SABHARWAL:

Q. Are there aspects where you feel that you're more of an expert with respect to this field than others?

MR. HILL: Object to the form.
BY MR. SABHARWAL:
Q. Or are you just an expert on all aspects of the '426 patent?
MR. HILL: Object to the form.
THE WITNESS: I've always been -- well, let me see if I can answer that. I think it's fair to say that I have more experience in certain aspects of the technological landscape set forth in the '426 than in others. My expertise is not equally deep in all areas, nor could it be for any individual.
BY MR. SABHARWAL:
Q. Okay. So taking, for example, Claim 1 --
A. Okay.
Q. -- what areas do you think you have more experience and what areas do you think you have less experience?
A. Oh, gosh, I haven't done that analysis.
Q. Well, why don't you do it? Why don't you take a look at Claim 1 and tell me?
MR. HILL: Object to the form.
THE WITNESS: Well, I'm not sure that I can. I never really thought about Claim 1

in those terms.

Okay, so we can take this item by item if you want to try.

BY MR. SABHARWAL:

Q. Great.

A. But, yeah, I'm comfortable as I'm reading this, I'm comfortable with my expertise and I think I'm capable of opining on all the areas that are discussed here in Claim 1.

Q. And you consider yourself to have -- strike that.

And you consider yourself to be an expert with respect to all areas of Claim 1; is that right?

A. Yeah, I mean, I think in general the answer to that is yes. I mean, I've done all of these things. I've worked with all this technology. I mean, as you have pointed out at some length here today, I haven't written printer drivers. Somebody who has written a printer driver might not have as much experience building networks as I've had.

I don't think anybody -- it's kind of an odd question that you're asking. I've never really thought about it in this sense, but I don't think

there's any human being who has exactly the same level of expertise in a dozen different areas that are covered, or more than a dozen, by any particular patent.

But I can tell you sitting here that I'm comfortable with the fact that I meet the criteria for a person of skill in the art as I've defined it and as Dr. Melen has defined it, and I'm comfortable sitting here testifying as an expert with regard to these technologies.

I'm sure there's some of the technologies discussed in the '426 that I have more experience than others. I have more experience building networks than I do writing C++ code, for example. I think that's probably true of anybody.

So I wouldn't represent to you that my expertise is exactly the same breadth and depth for every technology presented here in the patent, but generally speaking I'm very familiar with the technologies in this patent. I've worked with all of them. I understand the patent, and I'm very happy to be here characterizing myself as a person of skill and as an expert.

Q. Okay. I'd like to just go back to

your -- the excerpts of your book that we were looking at before.

A. Sure.

Q. I believe it's Exhibit 2?

A. Okay.

Q. Do you have Exhibit 2? Okay. Give me one second.

I'm sorry, put that away. I'm going to give you a new exhibit.

A. Okay, great.

Q. Okay. It looks like we're back to Exhibit 2 again.

A. Okay.

(Off-the-record discussion.)

BY MR. SABHARWAL:

Q. Did you write the introduction, sir?

A. To Bulletproof Your PC Network?

Q. Yes.

A. Oh, I think Jim Seymour of PC Magazine wrote the introduction.

Or, wait a minute, maybe it was me. Maybe he wrote the forward. Let me take a look.

Q. Okay.

A. Yeah, so, sorry, the introduction was me, and Mr. Seymour wrote the forward.

Q. Okay. I'm going to direct your attention to, in the introduction, the page denoted as XIX.

A. Okay.

Q. You see where it says first, second on that page? First, many PC coordinators?

A. Yes.

Q. You say, First, many PC coordinators, network managers, and troubleshooters don't have time to keep up in detail with all the simultaneous fronts of technological advancement.

Do you see that?

A. I do.

Q. Would you say that in the mid-'90s the network copier/scanner field was a subject of technological advancement?

A. The network scanner --

Q. Yes, using copiers, scanners and printers on a network, was that the subject of technological advancement?

A. I would say yes.

Q. And do you feel that you kept up with all the technological advancements in that field?

A. Oh, I kept up. It was my job to keep up with as much of it as I could. Anything that

pertained to the work that I was doing, teaching or consulting, I tried to stay on top of it.

Q. Was --

A. But the statement here is an inaccurate one. Nobody can stay on top of all the developments in IT. It's just a physical impossibility.

Q. Well, at any time prior to today did you go back and do any type of review about the technological advancements in the field of network copying and scanning?

A. I'm sorry, can you repeat the question for me?

MR. SABHARWAL: Could you read it back?

(The record was read.)

THE WITNESS: And do you mean with reference to this proceeding?

BY MR. SABHARWAL:

Q. Yes. We'll start with that.

A. Well, I certainly reviewed the prior art that was brought forth by the petitioners, so to that extent I guess the answer would be yes.

Q. Did you look at any other prior art?

A. No, I don't think so. I made the

assumption that the petitioners brought out the most relevant prior art, and given the fact that the petitioners have a long experience in the industry I trusted that they probably brought out the prior art that they felt was most relevant.

Q. When you say that you looked at the prior art that petitioners cited, are you talking about in the petition itself?

A. Right. I mean, the references that we're talking about here. For example, the XNS references and the Salgado.

And then in the other proceeding, the other, the Scan Jet and the other things that were in the other part of the -- I guess it's a different proceeding, so -- but I looked at the prior art brought forth by the petitioner.

Q. When you say the prior art brought forth by the petitioner, I just want to make sure that I very clearly understand your testimony.

Did you look and review and analyze all of the prior art or just the prior art that was relied upon by the board to institute this proceeding?

A. Well, I certainly looked at the prior art that was relied upon by the board.

And with respect to the other prior art, I don't know if we've got the petition handy, I can look at that and tell you whether I looked at any of those other references.

Q. Sure.

A. I'm not sure that I did.

Q. I'm going to hand you what has been -- let's mark this as Exhibit 3.

(Exhibit Number 3
marked for identification.)

BY MR. SABHARWAL:

Q. You will be handed what's been marked as Exhibit 3 for identification purposes.

A. (Witness reviews document.)

Q. Mr. Weadock, if it makes it any easier, there's actually an index of references on page 10.

A. Okay, great.

Q. No problem.

MR. HILL: No rush, but when you get to a good stopping point, I'm told the food is here.

MR. SABHARWAL: Okay. We'll stop after this question.

THE WITNESS: Okay. I looked at

some of this. I don't think I looked at every single reference. I looked at XNS. I think I looked at Ohkubo. I looked at Salgado. I'm not sure I looked at Harkins; I may have briefly. So some but probably not -- I probably didn't read every word of every one of these.

BY MR. SABHARWAL:

Q. What about APA?

A. APA, I'm not sure I understand what that means actually.

Q. And Motoyama?

A. Yeah, I may have. I just don't recall.

Q. So you did not analyze, for example, Motoyama in any detail, correct?

A. I think that's fair to say. My understanding from reading the board's decision was that they said, okay, we're going to look at XNS and we're going to look at Salgado as being the main references, and I think the board said I don't even want to hear anything about anything else so I focused my analysis on those.

MR. SABHARWAL: All right. Why don't we go off the record and take a quick lunch break.

THE VIDEOGRAPHER: This is the end

of Disk Number Two. The time is now 1:13 p.m. We're off the record.

(Lunch recess.)

THE VIDEOGRAPHER: This is the beginning of Disk Number Three. The time is now 1:54 p.m. We're back on the record.

BY MR. SABHARWAL:

Q. Mr. Weadock, I'd like to turn your attention to Appendix A in your declaration, please.

Are you there, sir?

A. I am.

Q. All right. Now, earlier at the beginning of the day I asked you whether you had considered any references for the purpose of your declaration other than what is recited in Appendix A. Do you recall that?

A. I do.

Q. And I believe you said that you had not considered anything outside of what is listed in Appendix A, correct?

A. I think that's correct.

Q. Okay. All right. In terms of the patents, you looked at the Klein patent, the '426 patent, which is the patent that's the subject of

the petition, and then you looked at the Salgado patent, correct?

A. That's correct.

Q. And you don't recall looking at any other patents for the purposes of anything that is recited in your declaration, correct?

A. Well, no, I don't think that's correct.

Q. Okay. Well, why is it not correct?

A. Well, I think as we were chatting about before the lunch break, there was some other patents that were listed in the petition, and I took a look at some of those, not all of them.

Q. Okay.

A. And that would fall under, I think in Appendix A under the second heading of that says petitions, depositions and declarations, there's the petition for the IPR and all references cited therein.

Q. Okay.

A. Also, the declaration of Dr. Melen and all reference cited therein.

Q. But you didn't look at all those references, right?

A. Well, I looked -- I tried to look at all of them. I think I didn't have time to analyze

each one of them in depth, but I certainly tried to look at as many of them as I could.

Q. Do you know what a claim chart is, sir?

A. Yes.

Q. Did you do a claim chart for any of the references?

A. Did I create one?

Q. Yes.

A. No.

Q. In terms of analysis, as you used the word, which references did you actually analyze?

A. The ones I analyzed closely were the two put forward by the board as being the subject for this proceeding, which would have been XNS and Salgado.

Q. Okay. You're going to have to raise your voice just a little bit.

A. Oh, sorry, sorry.

Q. No problem. Other than the XNS reference and this Salgado reference, you don't recall analyzing any other prior art reference; is that correct?

A. Well, no, that's note quite correct. I guess there was another reference, GIS 150 or something like that.

Q. Okay. Any others?
A. I think those were the ones that I primarily focused on.
Q. Meaning the ones you analyzed?
A. Right.
Q. Okay. And you didn't, yourself, conduct any type of independent prior art search to look at any references that you didn't otherwise analyze, correct?
A. That's correct, I did not institute a separate prior art search like I would do for an invalidity report.
Q. I don't quite understand that.
You said, I did not institute a separate prior art search like I would do for an invalidity report?
A. For, if I had been -- in the past I've had some engagements where I've been asked to do a detailed invalidity report and I've been asked as part of that to do my own search of the prior art, and I was not asked in this engagement to do a search of the prior art.
Q. Okay. Thank you.
A. Sorry that that wasn't clear.
Q. No problem.

Okay. Now I would like to shift gears and turn to your proposed construction of the term module.

A. Okay.

Q. And that is going to be starting on paragraph 27, page 6.

A. Okay.

Q. All right. Now, you state that in paragraph 27, The board has interpreted "module" as "a logically separable part of the recited software application, and may include another module and may overlap with another module in functionality."

Right?

A. Right.

Q. Is it fair to say that you do not agree with the board's construction of the term module?

A. Yes, that's fair to say.

Q. Do you believe that the board's construction of the term module comports with the BRI standard that is required by this type of proceeding?

A. No, I don't think it does as well as it could.

Q. What do you mean by that?

A. Well, as I explain here in paragraph 27, I think that the second sentence, I find this interpretation to be overly broad, and I point out that module refers to a component of the claimed software application of the data management system.

And, additionally, I don't find -- I did not find support in the '426 that the second part of the board's definition is an essential part of the module that is the part that begins and may include another module and may overlap with another module in functionality.

While those things may in some circumstances be true, I didn't feel that that was an essential aspect of module.

Q. Okay. So is it fair to say that you think the board's construction is a broad interpretation but not a broad reasonable interpretation?

A. Well, I don't think it's as reasonable as it could be. I think my interpretation is more reasonable while still remaining within that criterion of broadest reasonable that I understand is the criterion to be used here.

Q. But I think we can agree that you

believe that the board's interpretation is broader than yours, correct?

A. I think so. Let me just refresh my memory as to what I proposed here.

Q. Sure.

A. (Witness reviews document.)

Yes, I think that's fair to say. Mine is -- my definition is somewhat more specific than the board's.

Q. Meaning yours is narrower?

A. Yes, it is.

Q. Okay.

A. Well, in a sense it's narrower. In a sense it's broader in that I don't feel the part about one module being able to include another module, it may overlap with another module is really necessary for the definition of module, so in that regard my definition is actually a little broader than the board in that respect.

So it's broader in some respects, narrower in others.

Q. Okay, let's break this down. The board's construction is a logically separable part of the recited software application, and your construction is, in part, a logically

separable part of the claimed data management system software, right?

A. In part, yes.

Q. In part, right. So with respect to that particular interpretation, is it your opinion that the board's construction is broader than yours or yours is broader than the board's?

A. All right, so we're dividing the pieces up. Right, so I think when I say -- let me try to answer this.

Q. No problem.

A. I didn't take it apart in pieces like that. Let's see. When I say that I feel the best definition of module is a logically separable part of the claimed data management system's software, I think those are the words that you excerpted.

Q. Yes.

A. I feel that that is more specific or narrower than the part of the board's definition that says a logically separable part of the recited software application.

Q. Okay. And then you go on to say that can function in a plug-and-play manner with the virtual copier, right?

A. Right, yes.
Q. Whereas the board said, and may include another module and may overlap with another module in functionality, right?
A. Right.
Q. And I'm not trying to put words in your mouth. Is it your opinion that the second part of your definition is broader than the board's?
A. Well, no. It's a mix. I mean, I think part of it is broader and part of it is narrower.
Q. Okay.
A. And I can try to explain that, if you'd like.
Q. Sure, sure.
A. So I think my definition is broader in the sense that I don't include a requirement that one module has to be able to include another module. I think it's broader in the sense that I don't include a requirement that one module has to overlap with another module.
Q. Okay.
A. I think it's narrower in the sense that I say it can function in a plug-and-play manner with the virtual copier.
Q. That part you agree is narrower than the

board's, right?

A. Well, it's a narrowing of the definition I think, yeah.

Q. Now, you would agree with me that the board doesn't require another module; it just says it may include another module, correct?

A. Oh, that's right. So my choice of require was incorrect. I should have said, you know, characterizes it as having that capability.

I don't think the ability to include another module or to overlap with another module is essential to the concept of module. So I would -- I would broaden the definition by just taking that language out.

Q. Now, with respect to your proposed construction, Mr. Weadock, does the claimed data management software overlap with any other module or is it separate and distinct -- I'm sorry, discrete?

A. Better try that all again start to finish.

Q. Sure. Is it your opinion that the claimed data management system software can overlap in any way?

A. Can overlap what?

Q. With another module.
A. Well, the data management system software isn't a module itself. It's made up of modules.
Q. Okay. So when you say a logically separable part of the claimed data management system software, you're talking about a separate software module?
A. Right. I'm trying to define module here.
Q. Right.
A. Not the -- I'm not trying to define the data management system software.
Q. Right, I understand.
A. Okay.
Q. You're talking about a piece of the claimed data management software that can function in a plug-and-play manner with a virtual copier, right?
A. That's right.
Q. Now, can that piece of software overlap with any other software in the data management system?
A. Gosh, you know, I suppose that's possible, and I haven't -- I can go through the

patent and try to look for any examples of that. None jump out to my mind.

And normally when we talk about modules, we think of them as not overlapping, but there might be situations in which modules could share some code. There might be some common code between two modules.

Q. Okay. And so, again, without putting words in your mouth, would you agree with me that even in your definition the modules may overlap but they don't have to?

A. I don't necessarily disagree with that, if we mean overlap in the sense of possibly sharing some code modules, some other code -- there might be some shared procedures, for example, that are common and that are included in two separate modules, so I wouldn't rule it out.

Q. All right. Now, could the module as you've defined it overlap in functionality with another module; not required, but could it?

A. Well, it's hard to answer a question like that in the abstract.

I mean, normally the whole point of designing modular software is to separate functionality for the purposes of -- well, various purposes which

you didn't ask me about, so I won't go into all that. But in software it's hard to say that anything is impossible, but certainly generally the intent of the modular design is to separate functionality between the modules.

Q. But it's not required that they be an absolute separate functionality, right?

A. Yeah, again, I hesitate to ever make any absolute statements when it comes to software.

Q. I understand.

A. Because there's so many different designers and so many different philosophies, but it would -- I can say that it would surprise me to see a modular software application with heavy overlap of functionality between the modules.

Q. Sir, I would like to ask about other aspects of your proposed construction; for example, regarding plug-and-play manner.

What do you mean by plug and play?

A. Well, so the virtual copier concept, we have multiple modules working together in a way that they can interface with each other. The patent, for example, discusses the fact that we might add a new destination device, and we can create a new output module that would work with

that device that I could drop in and it would work with the other modules in the virtual copier. That's what I mean by a plug-and-play.

Q. Is the term "plug-and-play" a term of art that's used by persons of ordinary skill in the art?

A. Well, it actually is when capitalized, these days at least and probably at the time. I didn't capitalize it so I didn't mean it in the sense of hardware plug-and-play, automatic loading of device drivers.

So I mean it here in a more English sense rather than the capital P, capital P sense, which refers to hardware devices.

Q. Okay. Now, what about a scenario where you're not necessarily adding a new destination twice, how would the plug-and-play functionality work then?

A. Well, we could look at the other side. We could look at the input side and say we're adding a new input device. And so, again, the patent discusses input modules as well as output modules, so then we would -- this is part of the extensibility of the system described in the '426. So we could then take a new input module

and drop that into the virtual copier application, and it would work without a lot of custom programming.

Q. Okay. In paragraphs 27 to 31 of your declaration --

A. Right.

Q. -- you said that you -- well, you didn't say that.

You say, I note that software modules are not inherit in all software; software can be designed in a modular or in a monolithic fashion. For example, The Developer's Guide to Microsoft Prism, Footnote 3, notes that -- and then you have a quote there, right?

A. Right.

Q. Did you rely on this particular publication to support your construction of the term module?

A. Oh, no. I cite it here as exemplary. Again, just to -- I already had a concept of modular versus monolithic. It's, again, something that anybody who has worked in the IT field for as long as I have is familiar with the concept of modular versus monolithic design. It's a common concept. So this is just to

provide some documentary evidence that I'm not coming out of left field on this point.

Q. Right. I guess my question is, why did you rely on a publication that was made available as of February, 2012 when the priority date here is in the mid-'90s?

A. Oh, well, first of all, I didn't rely on it. And, you know, I did a web search looking for a reasonably authoritative source, and I don't have much doubt that if I had taken more time I could have found a contemporaneous reference and would have loved to do that.

It would be nice to have an infinite amount of time to work on these reports. But I found that, and the meaning of those terms hasn't changed over time. That's not a time dependent term of art. It means the same thing today that it meant in the mid-'90s.

But you're exactly right, if I had taken more time with the report I probably -- that probably would have been one of the things that I would have done. Again, my goal here is to help document what I'm saying that I know from my own background and experience, but I'm trying to give some examples, again so that the people reading

the report will have some confidence in what I'm saying.

Q. Okay. But I guess my question, Mr. Weadock, is you don't expect the board to rely on this publication for the construction of the term module, correct?

A. Oh, I don't know that I would say that. I think it's exemplary. I don't think the meaning of these terms has changed over time, so I think the board could certainly rely on this reference.

Q. And they should just rely on your representation that the definitions haven't changed over 20 years?

A. I would recommend that they rely on that representation. I think it's a fair representation.

You know, I don't have a footnote for every sentence in the report. I would do that if I had an infinite amount of time and the client had an infinite amount of money.

Q. Is this the only publication that the board should rely on for your proposed construction of the term module?

A. Well --

Q. Let me ask the question a different way. Is this the only support other than your own personal opinion that the board should rely on for purposes of the term module?

A. Oh, I think there's lots and lots of support, and I could have cited probably 50 documents, again if I had infinite time and the client had infinite money.

Q. Do you know whether any version of The Developer's Guide to Microsoft Prism was recited anywhere in the '426 patent specification or prosecution history?

A. Oh, I don't know, but I don't remember seeing it referred to in either of those documents.

Q. But you're not suggesting that the time of the invention has changed, right?

A. No, I wasn't suggesting that.

Q. Okay. All right. I noticed that you didn't cite any recitation to the specification or the claims of the prosecution history of the '426 patent to support your proposed construction of the term module.

As you sit here today can you point me to any specific section, passage, sentence that supports

your proposed construction of the term module?

A. If you have a printout of the prosecution history, I would be happy to go through that and do that analysis for you.

Q. Well, let's start with the specification.

A. Oh, the specification?

Q. Yeah, yeah.

A. Well, let me take a look and see.

Q. Okay.

A. (Witness reviews document.)

So the first one that I find is Figure 31.

Q. Okay.

A. Which shows the different types of modules discussed in the specification; client input, output, server and process. And those are -- those are shown as separate entities. I think my phrase was logically separable part of the software, so they have got boxes around them so they are logically separable.

And that figure is discussed in the specification text in Column 70, specifically here is a little introduction.

Q. Column 70, you say?

A. Yeah, Column 70, line 40. So there's a

statement there that says, "To accommodate third-party extensions, VC is divided into five essential modules. Each module is a counterpart to an aspect that is found in a conventional copier. Based on the modular design of VC, each aspect of VC can be independently extended, offering much greater flexibility than conventional copiers."

So that comports pretty well and provides some support for my definition. Because, again, we've got logically separable, we've got part of the claim data management system software, right? Because it says VC is divided into these five essential modules.

And then can function in a plug-and-play manner with the virtual copier, that's not explicitly disclosed here but that's going to be discussed elsewhere in the patent so we'll find that. So that's the first place that I find Figure 31 that provides support for my proposed definition of module, and I'll keep looking.

Q. Okay, sir. And while you're looking, I just want to make sure, you agree with the section you just recited in Column 70, lines 39 to 45, right?

You agree with all the statements there?

MR. HILL: Object to the form.

THE WITNESS: I don't understand what you mean. This is the inventor's -- the patent author's description of the --

BY MR. SABHARWAL:

Q. The modules?

A. The modules. I mean, it's what the inventor says about the modules. I don't have any reason to disagree with the inventor, and this is consistent with the rest of the patent as I recall.

Q. Great.

A. So I don't have any specific reason to disagree.

So let me resume looking. So Figure 32 sort of provided some implicit support in that we have input and output modules here showing bidirectional communication with a third-party app, and that I think suggests the extensibility part, right, because we have multiple third-party apps and then we can have multiple modules.

So we've got an input/output module there, again logically separable parts of the virtual copier software application, so I think that