

1 And, you know, this -- this -- in some ways,
2 it's like a child for me where I was involved in the
3 original conception and development of it. And the fact
4 that I became convinced that we actually had an
5 opportunity here to make a business and help people with
6 this technology, and that was exciting to me.

7 Q. What is your position at VirnetX?

8 A. I'm the Chief Science Officer.

9 Q. What are your responsibilities?

10 A. I'm -- I'm responsible for the design,
11 directing the development, and I do a lot of the
12 development on the -- on the Gabriel product.

13 Q. And tell us again, what stage of development
14 is your Gabriel product in?

15 A. It's at the beta stage.

16 Q. Are you continuing to develop it?

17 A. Yes, sir.

18 Q. But, Dr. Short, do you believe that your
19 Gabriel product can be successful in internet
20 applications if Microsoft continues to infringe your
21 patent?

22 MR. BOBROW: I need to object. It
23 assumes that Microsoft, again, is infringing.

24 THE COURT: Overruled.

25 A. Can you repeat the question, sir?

1 Q. (By Mr. Cawley) Yes, sir.

2 Do you believe that your Gabriel product can
3 be successful in internet applications if Microsoft
4 continues to infringe your patent?

5 A. No, sir.

6 Q. Why not?

7 A. I don't believe that -- that -- number one, I
8 don't believe we can compete with them, if they decide
9 to compete head-to-head with us.

10 The other is, I think it's going to be
11 difficult, if not impossible, to team with other
12 companies who have to invest in this effort when they
13 see the potential of having to compete against
14 Microsoft.

15 Q. And finally, Dr. Short, in -- in developing
16 products such as Gabriel, did you try to avoid
17 infringing others' patents?

18 A. Yes, sir. We were really careful. If it
19 comes to our attention that we need to license software
20 and we need to license the capability, we do that.

21 Q. Thank you, Dr. Short.

22 MR. CAWLEY: I'll pass the witness.

23 THE COURT: All right. Cross-exam.

24 MR. BOBROW: Thank you, Your Honor.

25 Your Honor, may I approach the witness

1 with a notebook?

2 THE COURT: Yes, you may.

3 THE WITNESS: Excuse me.

4 CROSS-EXAMINATION

5 BY MR. BOBROW:

6 Q. Dr. Short, good morning.

7 A. Good morning.

8 Q. My name is Jerry Bobrow. I represent
9 Microsoft. I have some questions for you this morning.

10 And I wanted to start, if I might, with some
11 questions about what you believe that you invented, and
12 I want to then take you back to around the year 2000
13 when you filed your patent applications, okay?

14 A. Okay. Yes, sir.

15 Q. So I believe that your first patent was filed
16 in February of 2000, correct?

17 A. Yes, sir.

18 Q. Now, certainly by that time, there were a
19 number of technologies that were already in existence
20 for securing communications over the internet; is that
21 fair?

22 A. Yes, sir.

23 Q. One of those technologies -- and you alluded
24 to it a little bit -- is the technology that was called
25 https, correct?

1 A. Yes, sir.

2 Q. And you've already told us, if we can keep all
3 of these letters straight, what https stood for. And I
4 think you said it was something like hypertext transfer
5 protocol secure; is that right?

6 A. I believe that's right. I may not be exactly
7 right.

8 Q. All right. And if I understand what you're
9 saying, before your patents were filed, users of the
10 internet, like the people in this courtroom, if they are
11 at home or what-have-you, that they could use https to
12 set up a secure connection on the internet; is that
13 right?

14 A. Yes, sir.

15 Q. And one of the things that you could do to set
16 up a secure connection on the internet before the year
17 2000, before you filed your patents, was you could be at
18 your, say, home computer and you could type in something
19 called a domain name; is that right?

20 A. Yes, sir.

21 Q. So I could have a web browser opening like
22 Internet Explorer; I could type in www.amazon.com; and
23 that would take me to a website, right?

24 A. Yes, sir.

25 Q. And with https, what I could do is type in

1 https:\\www.amazon.com, and that would take me to a
2 secure page at Amazon, correct?

3 A. Yes, sir.

4 Q. And then I could conduct e-commerce. I could
5 buy a book; I could buy whatever product that was being
6 sold at Amazon, right?

7 A. Yes, sir.

8 Q. And I could do that securely, correct?

9 A. That's correct.

10 Q. The credit card information, any other
11 information I needed to enter that was private to me
12 would be secure over the internet from my computer to
13 Amazon, because it was encrypted, right?

14 A. That's correct, yes, sir.

15 Q. And part of that connection, and one of the
16 issues I wanted to ask you about, is that when I'm at
17 home, to create that secure connection, all I have to do
18 is type in https www.amazon.com and hit enter, and that
19 connection was automatically created, right?

20 A. Yes, sir.

21 Q. And not just the connection but the secure
22 connection was automatically created, right?

23 A. Yes, it was.

24 Q. Users didn't have to do anything else,
25 correct?

1 A. That's correct.

2 Q. So from the user's standpoint before 2000,
3 what I could do was type in what's called the domain
4 name, hit enter, and have a secure, encrypted
5 connection, right?

6 A. That's correct.

7 Q. And the technology doing that connection was
8 something called SSL, right?

9 A. I believe that's correct, yes, sir.

10 Q. Secure socket layer, SSL; is that right?

11 A. Yes, sir.

12 Q. And all of that, from the user's perspective,
13 was easy, wasn't it?

14 A. Yes, sir.

15 Q. It was fast?

16 A. Yes, sir.

17 Q. And it was, from the user's standpoint, fast,
18 easy, and efficient and, frankly, user-friendly, wasn't
19 it?

20 A. Yes, it was.

21 Q. And that whole system, https, that's not
22 something that you invented or Mr. Munger invented or
23 any of your co-inventors invented, is it?

24 A. That's correct.

25 Q. Now, if we might, I'd like to pull up from

1 that explanation you gave. Remember, you used some
2 animations and some PowerPoints and the like?

3 MR. BOBROW: If we could pull up one of
4 them.

5 Right. I think we need to dim the
6 lights. I don't think we can see that.

7 Thank you very much.

8 Q. (By Mr. Bobrow) Now, Dr. Short, this is a
9 still image from the presentation you gave in response
10 to Plaintiff's counsel earlier today; is that right?

11 A. Yes, sir.

12 Q. And I want to make sure I understand the
13 various elements of this, okay?

14 A. Yes.

15 Q. So if I've got this right, up in the upper
16 left corner, I have what you're calling a remote user,
17 right?

18 A. Yes, sir.

19 Q. The remote user, I think you even said it
20 might be somebody at home, may be somebody at an
21 airport, may be somebody at a hotel; this is somebody
22 who is remote, correct?

23 A. Yes, sir.

24 Q. Seeking access to the internet, right?

25 A. Yes.

1 Q. And that remote user may -- in this example
2 that you've illustrated, the idea here is that that
3 remote user could use https to get to Acme, right?

4 A. Yes, sir.

5 Q. And I think what you're showing us and what
6 you told us earlier is that on the internet what you do
7 to communicate is you don't use physical envelopes, of
8 course, but you use something that you call packets,
9 right?

10 A. Yes, sir.

11 Q. And I think what you were saying was that an
12 envelope and a packet were kind of similar in that they
13 will have information on the outside of them, and they
14 will have information on the inside of them, right?

15 A. Yes.

16 Q. When you were describing here how the https
17 system works, what you were saying, I think, is that
18 there's a source address and a destination address on
19 the outside of the packet, right?

20 A. Yes, sir.

21 Q. And on the inside of the packet is the
22 content, right? The payload it's sometimes called, I
23 think, right?

24 A. Yes, sir.

25 Q. And what you're showing there is that the

1 https system would encrypt or scramble up the inner
2 content of the packet, right?

3 A. Yes, sir.

4 Q. But the outer parts of the packet, the source
5 address and the computer that was sending the message
6 and the destination address of the computer that would
7 receive the message, would be visible, correct?

8 A. Yes, sir.

9 Q. So if there was a hacker of the type you
10 described earlier, somebody who, unfortunately in this
11 day and age, may be pulling information off the
12 internet -- that hacker would be able to see the source
13 address and the destination address, right?

14 A. That's correct.

15 Q. And as a result of that, it would know which
16 two computers were communicating with each other,
17 correct?

18 A. Yes, sir.

19 Q. All right. Now, I understand from what you
20 said that this automated system -- this easy automated
21 system called https is something you didn't invent,
22 right?

23 A. That's correct.

24 Q. There were a number of other elements involved
25 in internet communication, secured internet

1 communication you didn't invent either, right?

2 A. I'm sure that's correct.

3 Q. The whole domain name system is something that
4 you didn't invent, is it?

5 A. No, sir, we did not.

6 Q. The use of domain names was something you
7 didn't invent, correct?

8 A. That's correct.

9 Q. Encryption is something that you didn't invent
10 in these patents, correct?

11 A. That is correct.

12 Q. And another thing that you didn't invent
13 related to secure communication were the actual VPNs
14 themselves, correct?

15 A. That's correct.

16 Q. VPNs were already known prior to 2000 when you
17 filed the patents, right?

18 A. Yes, sir.

19 Q. And they were known before September 1999 when
20 you had the train ride that you described earlier,
21 correct?

22 A. That's correct.

23 Q. By September of 1999, there were a number of
24 different kinds of VPNs, weren't there?

25 A. I believe that's correct, yes, sir.

1 Q. One of them that you described and spent some
2 time over there, when you were marking up on those
3 large, white boards, that was a VPN that was called an
4 IP SEC tunnel-mode VPN, right?

5 A. Yes, sir.

6 Q. All right. That was one VPN that was out
7 there at the time prior to the filing of your patents
8 and prior to the time that you had the idea that led to
9 your patents, correct?

10 A. That's correct.

11 Q. But that wasn't the only one, was it?

12 A. That's correct. Yes, sir.

13 Q. There was also something that was available
14 before those times that was called a PPTP VPN, PPTP VPN,
15 right?

16 A. I understand that's true, yes, sir.

17 Q. And a PPTP VPN, and I think -- you were here
18 for the opening statements, right?

19 A. I was, yes, sir.

20 Q. And so you heard something about PPTP VPNs in
21 that context, right?

22 A. Yes, sir.

23 Q. All right. But that is your understanding
24 that was a VPN that was available before the year 2000?

25 A. That's what I understand, yes, sir.

1 Q. And there was also a VPN that was called an
2 L2TP, if I can just keep with the alphabet soup, an L2TP
3 VPN that was also available before the time you filed
4 your patents, right?

5 A. I'm not sure I'm familiar with L2TP. It
6 sounds familiar, but I can't answer yes or no on that.

7 Q. Well, you mentioned that you did some research
8 before the time that your patent was filed, right?

9 A. Yes, we did.

10 Q. You're not claiming your research in this
11 field was comprehensive, was it?

12 A. Probably not, no, sir.

13 Q. So you're not saying there that L2TP didn't
14 exist; you're just saying you don't know either way; is
15 that right?

16 A. That's correct.

17 Q. Now, when you were talking about the IP tunnel
18 VPN earlier and you had all the boards up over there,
19 that was not saying how to configure a PPTP VPN, was it?

20 A. No, sir.

21 Q. None of those steps, none of those pages of
22 bullet points and numbered paragraphs, none of that had
23 to do with how you configure a PPTP VPN, right?

24 A. Yes, sir; that is true.

25 Q. And none of those steps that you described in

1 that long list of boards that we went through, describe
2 the steps for how to implement an L2TP VPN, correct?

3 A. Well, I don't know how to configure it, so I
4 don't know if any of those are relevant or not.

5 Q. But what the document described and what you
6 said was that those were the steps for an IP SEC
7 tunnel-mode VPN, not for any other VPN, right?

8 A. Yes, sir, that's true.

9 Q. Now, I'd like to pull up, if we might, another
10 graphic that you used as part of your explanation of
11 this process.

12 And I think, if I was listening and paying
13 attention to what you were saying -- I was certainly
14 doing my best, and I hope I didn't get it wrong -- so
15 tell me, I believe this is a graphic of what you were
16 describing as a basic VPN.

17 Did I get that right?

18 A. Yes. This was an example, sir.

19 Q. I understand.

20 And I -- I'm just trying to make sure that I'm
21 not confusing this image with an https image.

22 So this is a VPN, right?

23 A. Yes.

24 Q. Okay. Thank you very much.

25 And what you've depicted here is a very

1 typical situation where, even before 2000, a user would
2 want to use a VPN, correct?

3 A. That's correct.

4 Q. And what you're depicting here is, once again,
5 the remote user up in the upper left-hand corner, okay?
6 Is that right?

7 A. Yes, sir.

8 Q. And, again, this could be someone who's
9 seeking what's called remote access, right?

10 A. Yes, sir.

11 Q. All right. So this person has a computer at
12 the airport, at a hotel, maybe at home, one of those
13 types of places where you're seeking remote access.
14 And what you're trying to get to by the remote access is
15 you're trying to get -- for information, you're trying
16 to access information back at your company, right?

17 A. Yes, sir.

18 Q. So you want to get those resources that are at
19 your company, but you're remote from your company,
20 right?

21 A. Yes. Or send information.

22 Q. And so I think what you're depicting here is
23 that here's this remote user. He or she is away from
24 the Acme Company and wants to set up a VPN back into the
25 Acme Company, correct?

1 A. Yes, sir.

2 Q. Now, with the scenario that's painted here
3 with the remote user seeking remote access, that
4 scenario, the common scenario for using a VPN, has
5 absolutely nothing to do with the VPN configuration that
6 you talked about with all those big poster boards when
7 you were describing an IP SEC tunnel VPN, correct?

8 A. Can you repeat the question, please?

9 Q. I will. Sure.

10 A. Thank you.

11 Q. This scenario of creating a VPN by a remote
12 access user has nothing to do with the VPN that you were
13 describing when you were using those -- the white poster
14 boards and the red ink and you were going through the
15 steps to create that IP SEC tunnel VPN, correct?

16 A. I don't know if that's true or not, sir.

17 Q. All right. Well, you certainly read -- and if
18 we can put it up -- Exhibit PX983.

19 Now, sir, I don't have those boards. Maybe
20 they're over there, but what I'm showing you on that
21 screen is an image of the document that you walked
22 everybody in the courtroom through, to show all the
23 different steps that are involved in creating an IP SEC
24 tunnel VPN, right?

25 A. Yes, sir.

1 Q. With Windows 2000, right?

2 A. Yes, sir.

3 Q. All right. Now, this document is a Microsoft
4 document, as you said, right?

5 A. Yes, sir.

6 Q. When was the first time you read this
7 document?

8 A. I've never seen this document. An earlier
9 version of this document, back in the 2000 timeframe.

10 Q. So not this version of it but an earlier
11 version from 2000?

12 A. Yes, sir. I believe this is a revised
13 version.

14 Q. And that version back then and this version
15 now we're describing, again, this IP SEC tunnel-mode,
16 right?

17 A. Yes, sir.

18 Q. Now, what I'd like you to do -- I'd like to
19 direct your attention to the text that is underneath --
20 it's about the middle of the page, and there's a
21 paragraph that begins: Windows 2000 IP SEC tunneling.

22 MR. BOBROW: Let's see how big we can
23 make that.

24 Can you make that any bigger, Chris?

25 Thank you.

1 Q. (By Mr. Bobrow) So the first page of this
2 document is not a page that you marked up for the
3 ladies of the jury, correct?

4 A. Yes, sir.

5 Q. All right. But you did read this page to
6 yourself, either back in 2000 or recently, right?

7 A. I'm sure I did, yes, sir.

8 Q. What this paragraph says at the start is that
9 Windows 2000, the IP SEC tunneling is not supported for
10 client remote access VPN use.

11 You see what I'm referring to there, right?

12 A. Yes. Yes, sir, because the NRFCs don't
13 provide the access solution.

14 Q. Right.

15 So what this is saying to people who are
16 reading the Microsoft information is that the IP SEC
17 tunneling mode with Windows 2000 is not for use in the
18 remote access VPN scenario, correct?

19 A. Yes, sir. Those two aren't.

20 Q. What it's saying instead is, don't use that
21 remote -- don't use that IP SEC tunnel-mode VPN.

22 What this document says, does it not, is use a
23 different VPN, correct?

24 A. Yes, sir.

25 Q. What it says to do is, instead of using the IP

1 SEC tunnel-mode VPN that you showed on these boards, is
2 that instead to use an L2TP VPN, right?

3 A. Yes, sir.

4 Q. And what it adds is that there were several
5 companies, including Microsoft and Cisco, who
6 specifically developed the L2PT VPN for the purpose of
7 providing client remote-access VPN connections, right?

8 A. Yes, sir.

9 Q. So what this document is saying is, forget the
10 IP SEC VPN. Use the L2PT VPN when you want to have
11 remote access of the type that you were describing in
12 your graphics.

13 When you want to do that, use the L2PT VPN,
14 correct?

15 A. Yes, sir.

16 Q. And one of the things that it further adds is
17 that in Windows 2000, it says that client remote-access
18 VPN connections are protected using an automatically
19 generated IP SEC policy, correct?

20 A. Yes, sir.

21 Q. So the user isn't creating that policy. That
22 policy is automatically created, right?

23 A. Yes, sir.

24 Q. Now, I noticed that as you were going through
25 all of the steps describing the IP SEC tunnel VPN, I

1 wanted to through with you some of the other VPNs that
2 were around at that time just so that we're all clear
3 about what you were trying to demonstrate to us.

4 And -- and there was one technology that's
5 been discussed -- you were here for at least part of it,
6 because it was in the opening -- was a technology that
7 was called Aventail.

8 Does that name ring a bell?

9 A. Yes, sir. Yes, sir.

10 Q. Now, that lengthy protocol of steps that you
11 went through with all these pages for IP SEC tunnel
12 mode, that was not describing how Aventail works, was
13 it?

14 A. No -- not to my knowledge, sir. No.

15 Q. To your knowledge, Aventail did not use an IP
16 SEC VPN, right?

17 A. I don't know one way or the other, sir.

18 Q. And so as far as you know, Aventail didn't use
19 that technology, correct?

20 A. That's correct, sir.

21 Q. Now, I'd like you in your book, or you can
22 simply look on the screen -- I want to direct your
23 attention to Defendant's Exhibit 3121.

24 Now, I know you said you did some research
25 back in the day when you were looking to secure

1 information, and you were looking at different VPN
2 technologies, correct?

3 A. Yes, sir.

4 Q. And you certainly had done enough research to
5 have seen a prior version of this Windows 2000 exhibit
6 that we just looked at a moment ago, right?

7 A. Yes, sir.

8 Q. All right. So one of the things I wanted to
9 find out, Dr. Short, was, I put in front of you this
10 exhibit, which is called Microsoft Windows NT Server
11 Operating System, a white paper, and then underneath it
12 says Microsoft Virtual Private Networking Using
13 Point-to-Point Tunneling Protocol for Low-Cost, Secure,
14 Remote Access Across the Internet.

15 Do you see that?

16 A. Yes, sir.

17 Q. All right. And if you would turn the page --

18 MR. BOBROW: This is going to be hard
19 for, I think, everybody to read, so could you blow that
20 up, Chris? How do you like that for a copyright page?

21 Why don't we take a look, though, and
22 blow that up if we can.

23 Q. (By Mr. Bobrow) And you'll see in the very
24 upper left, that this document bears a copyright date of
25 1996.

1 Do you see that?

2 A. Yes, sir.

3 Q. And if you go to the next page, there was some
4 information available to folks to look at about PPTP
5 VPNs.

6 Do you see what I'm referring to?

7 A. Yes, sir.

8 Q. And in the upper left corner, it talks about
9 virtual private networking, right?

10 A. Yes, sir.

11 Q. And it mentions the point-to-point tunneling
12 protocol or PPTP, right?

13 A. Yes, sir.

14 Q. And you understand that back in this time in
15 1996, that was a technology that Microsoft was working
16 on, PPTP VPN.

17 A. Yes, sir.

18 Q. And what this manual is telling people is that
19 those PPTP VPNs were for remote users, if you look in
20 the third line, right?

21 A. Yes, sir.

22 Q. This technology was about allowing remote
23 users to connect securely using a VPN, right?

24 A. Yes, sir.

25 Q. And it describes those VPN connections using

1 PPTP as being easy-to-implement solutions for creating
2 secure and encrypted communications across the internet.

3 Do you see that?

4 A. Yes, sir.

5 Q. All right. Now, if I direct your attention to
6 Page -- and there are lots and lots of page numbers on
7 these documents, so forgive me.

8 I need to direct your attention to a page
9 that's called 3121.007. It's in the -- the page numbers
10 are in the lower right corner. And it will be up on the
11 screen, but feel free to look at it in your book, if you
12 wish.

13 A. This is easier, actually.

14 Q. All right. And I wanted to first have you
15 look at the top of the page where there's a figure, and
16 that figure is describing some VPN connection scenarios
17 using PPTP, correct?

18 A. Yes, sir.

19 Q. All right. And the scenario that is being
20 painted here is one where you have remote users on the
21 one hand trying to connect to corporate resources on the
22 other hand, correct?

23 A. Yes, sir.

24 Q. And what this is saying is that back in 1996,
25 you could use PPTP to connect remotely to corporate

1 resources using a VPN, correct?

2 A. Yes, sir.

3 Q. It describes doing that lower down on the
4 page.

5 MR. BOBROW: If we could show that.

6 Q. (By Mr. Bobrow) This publication,
7 Exhibit 3121, from 1996 describes doing that as being
8 easy, easy implementation, correct?

9 A. Yes, sir.

10 Q. Now, if we go to Page 11, there's a -- the
11 second paragraph from the top is called Making PPTP Easy
12 to Use.

13 Do you see that?

14 A. Yes, sir.

15 Q. And that, once again, is describing that it is
16 easy for clients and servers and for clients -- I'm
17 sorry.

18 It says that ease of use has been built into
19 VPN from its inception for both the server and client
20 personal computer.

21 Do you see that?

22 A. Yes, sir.

23 Q. And right underneath that --

24 MR. BOBROW: If we can go down the page.

25 Q. (By Mr. Bobrow) -- it says that setting up the

1 VPN on Windows NT Server 4.0 is easy, correct?

2 A. Yes, sir.

3 Q. So certainly, Exhibit 3121 is describing and
4 telling people that using PPTP VPN, it was easy to make
5 a remote access connection securely to corporate
6 resources.

7 That's what this is saying, isn't it?

8 A. Yes, sir.

9 Q. And finally, if you go to Page 3121.013,
10 Page 13 --

11 MR. BOBROW: If we can highlight the
12 bottom paragraph.

13 Q. (By Mr. Bobrow) -- this is, once again,
14 talking about PPTP, correct?

15 A. Yes, sir.

16 Q. And creating VPN connections, correct?

17 A. Yes, sir.

18 Q. And at the bottom of this paragraph, it says
19 that to further simplify use, both the ISP connection
20 and the VPN connection can be set up and activated from
21 one easy AutoDial phone book entry.

22 Do you see what I'm referring to there?

23 A. Yes, sir.

24 Q. And you were here when there was some mention
25 of AutoDial in the courtroom, correct?

1 A. Yes, I was.

2 Q. All right. And what this is describing is how
3 you can use AutoDial to easily create a VPN connection
4 in that remote access VPN scenario, correct?

5 A. Yes, sir.

6 Q. And I take it that you understand that this
7 kind of a VPN, when you're talking about remote access
8 and the like, that this kind of a system is using the
9 DNS infrastructure that was already in existence,
10 correct?

11 A. That PPTP was using the -- I don't know one
12 way or the other, sir.

13 Q. Well, let's take a look at Page 20, and you'll
14 see, at the bottom of that page, there's a paragraph
15 labeled summary.

16 Do you see that?

17 A. Yes, sir.

18 Q. And towards the bottom of that paragraph, in
19 talking about PPTP VPNs, it says that the security,
20 reliability, ease of use, and speed of PPTP-enabled
21 Windows NT servers, combined with the DNS infrastructure
22 provides significantly enhanced business-to-business
23 communications across the internet.

24 Do you see that?

25 A. Yes, sir, I see that. I see that, yes, sir.

1 Q. So what this -- so what this is saying is that
2 when you're using PPTP and you have remote access, that
3 that's taking advantage of the DNS infrastructure to
4 create secure communications across the internet, right?

5 A. Yes, sir.

6 Q. Okay. And that was in 1996, correct?

7 A. Yes, sir.

8 Q. That was three or maybe four years before you
9 filed your patent application, right?

10 A. That's correct.

11 Q. Certainly, three years before you had the idea
12 that led to your patent applications, correct?

13 A. That's correct.

14 Q. All right. Now, I wanted to shift subjects a
15 bit, and I now wanted to ask you some questions about
16 the demonstration that you were kind enough to show to
17 us using the two computers that are over there, one
18 that's in front of Mr. Munger and one that is on -- that
19 was on that little easel or what-have-you over by the
20 jurors.

21 You know what I'm talking about, right?

22 A. Yes, sir.

23 Q. And I think what you told us was that both of
24 these computers in the courtroom were running what
25 you're calling the Gabriel connection software; is that

1 right?

2 A. Yes, sir.

3 Q. And this is the software that you've been
4 working on for several years, right?

5 A. That's correct.

6 Q. This technology, this software includes the
7 patented technology that is the subject of your patents,
8 right?

9 A. Yes, sir.

10 Q. Now, when you ran this demonstration in the
11 courtroom, I trust that this was not the first time that
12 you used the computer that is over by Mr. Cawley right
13 now, was it?

14 A. No, sir.

15 Q. And this wasn't the first time that Mr. Munger
16 used the computer that's in front of him, was it?

17 A. No, sir.

18 Q. I assume the two of you have communicated
19 using these computers at various times over the last
20 several years, right?

21 A. No, sir. Those were just set up specifically
22 for this demonstration.

23 Q. Ah, okay. So -- so how old are those
24 computers? How long have you had them?

25 A. The one over on the easel, maybe for a month,

1 and then this one, a couple of days now.

2 Q. Now, I trust that when you first got those
3 computers and you plugged them into the wall and you
4 pushed the power button, I assume those computers were
5 not ready at that time to do VPN communication, correct?

6 A. That's correct.

7 Q. You had to configure the computers in various
8 ways to do a VPN communication even using your
9 invention, right?

10 A. Yes, sir. We had to download our software and
11 install it.

12 Q. There are things that you need to install on
13 the computer, aren't there?

14 A. That's correct.

15 Q. And there are things that you need to activate
16 on the computer, aren't there?

17 A. Yes, sir.

18 Q. And that takes time, doesn't it?

19 A. Yes, sir.

20 Q. So the first time that you use something like
21 this, and you create on your computer the various
22 resources, as it were, that you needed to do a VPN, that
23 takes time, right?

24 A. Yes, sir.

25 Q. You can't just click your fingers, click the

1 mouse once when you first power up the computers, and
2 have your invention work; you need to do some work
3 behind the scenes, right?

4 A. Yes, sir.

5 Q. All right. I'd like you, if you would,
6 please, to take a look at Exhibit 3578. It's in your
7 binder.

8 So I will apologize in advance for the font
9 size. This is as big as we got it from VirnetX. And I
10 hope you'll recognize this if we maybe blow up the top
11 title, that what this document is called is the Gabriel
12 Connection Technology Beta Version 3 User's Guide by Vic
13 Larson from May of 2009.

14 Do I have that right?

15 A. Yes, sir. That's what it says.

16 Q. Now, just to get our bearings here, if we may,
17 Vic Larson is actually Dr. Vic Larson, right?

18 A. Yes, sir.

19 Q. He's one of the coinventors on the patents
20 that are involved in this suit, right?

21 A. Yes, sir.

22 Q. And you're familiar with this document from
23 May of 2009, a little less than a year ago, I guess,
24 right?

25 A. Yes, sir.

1 Q. This is a document that's, what, about 12
2 pages long?

3 A. Yes, sir.

4 Q. What this document is describing is how you
5 install and set up the Gabriel connection software of
6 the type that you demonstrated here today, correct?

7 A. Yes, sir.

8 Q. But this is just a version that existed about
9 a year ago. That's what this document, 3578, is
10 describing, right?

11 A. Yes, sir.

12 Q. What this document does in part -- and let's
13 turn to the second page.

14 And if I got this right, what this is saying
15 is that, essentially, if you are a user of this beta --
16 and I think we heard earlier what a beta is, right?

17 It's kind of like a test where you let people
18 outside of the company use the software to see how well
19 it's working and help -- I think it's called debug it,
20 get the bugs out of the software?

21 A. Yes, sir.

22 Q. That's what's going on here, right?

23 Okay. So if I want to use this Gabriel
24 software in the VirnetX beta test, use the software,
25 I've got to go through all of these steps in order to be

1 able to set up a VPN on my computer, right?

2 A. Yes, sir.

3 Q. So if I took this computer over on our desk
4 over here, I would have to walk through the steps in
5 this manual before I could do a VPN of the type that you
6 and Mr. Munger showed us about an hour ago, right?

7 A. I'm not sure you have to go through all these
8 steps.

9 Q. Well, one of the things I'd have to do if I
10 want to participate in a beta is, you told the folks who
11 were participating that they had to register, correct?

12 A. Yes, sir.

13 Q. So that's on Page 2, right?

14 A. Yes, sir.

15 Q. And if you go down to the bottom, it looks
16 like there's a screen where you have to type in -- the
17 user has to type in all kinds of information before they
18 can get your beta software so that they can create a
19 VPN, right?

20 A. That's correct.

21 Q. User name, a first name, a last name, their
22 e-mail, all kinds of information has to be put into the
23 computer before they can use your software and connect
24 using a VPN, right?

25 A. Yes, sir. This is being put into our

1 registry.

2 Q. Sure. And then --

3 A. Yes, sir. Sorry to interrupt you, sir.

4 Then the next page --

5 MR. BOBROW: If we can go there.

6 Q. (By Mr. Bobrow) -- it tells you how you

7 download and install the software, right?

8 A. Yes, sir.

9 Q. So before that happens, before I download the
10 software and install the software, there's no way that I
11 could use Gabriel to do a VPN connection of the type
12 that you and Mr. Munger showed us earlier, correct?

13 A. That's correct.

14 Q. So I've got to go through a downloading and
15 installing process, correct?

16 A. Yes.

17 Q. That takes time, doesn't it?

18 A. Yes, sir.

19 Q. Then if I go to the next page, this is now a
20 page that headed, Running the Gabriel Connector Software
21 for the First Time.

22 Do you see what I'm referring to there?

23 A. Yes, sir.

24 Q. What this is referring to, it's talking about
25 all kinds of issues that may come up after I download

1 and install the software but attempt for the first time
2 to create a VPN connection using your software that
3 includes your invention, right?

4 A. Yes, sir.

5 Q. All right. So what this manual is telling us
6 about your Gabriel software is that it is not a
7 situation where I can simply power up my computer and
8 click and create a VPN; what I need to do is, in fact,
9 install your software, download the software and take
10 some steps to configure my computer so that I can
11 communicate, right?

12 A. That's correct.

13 Q. All right. And those steps, at least in part,
14 are laid out in a 12-page document that VirnetX created
15 to describe how that process works, 12 pages long,
16 right?

17 A. Yes, sir.

18 Q. Now, I'd like to shift gears and go to a
19 subject that I mentioned just briefly earlier and that
20 had to do with some software mentioned briefly here in
21 Court already called Aventail.

22 You remember hearing about that from the
23 opening statements, correct?

24 A. Yes, sir.

25 Q. Now, Aventail and the Aventail software, the

1 first time you heard about this software was not in
2 opening statements, was it?

3 A. That's correct.

4 Q. Okay. You heard about Aventail back around
5 the year 2000-2001, that timeframe, didn't you?

6 A. Probably 2001, but I'm not sure, sir.

7 Q. Back at that time, Aventail was one of the
8 companies that was in the market trying to compete to
9 sell software to perform and create secure connections
10 on the internet, right?

11 A. Yes, sir.

12 Q. They were one of many companies out there that
13 were trying to compete in this market, correct?

14 A. Yes, sir.

15 Q. Along with SAIC, correct?

16 A. Yes, sir.

17 Q. Now, in the -- I think you said it was in the
18 2001 timeframe, you not only learned about Aventail, but
19 you also were aware of a company called ANX, weren't
20 you?

21 A. Yes, sir.

22 Q. ANX was an SAIC company, right?

23 A. I believe that's correct, yes, sir.

24 Q. So ANX was essentially owned by the company
25 that you and Mr. Munger worked for back in 2001,

1 correct?

2 A. Yes, I -- I believe that's correct.

3 Q. And what you learned back in 2001 was that
4 ANX, this SAIC company, wanted to try some security
5 software; they wanted to do a beta trial of some
6 software, didn't they?

7 A. I'm not sure if they wanted a beta or if they
8 were looking for a product that they could actually use,
9 sir.

10 Q. And certainly, one of the things that you were
11 trying to do, and I believe at the request of
12 Dr. Beyster from SAIC, was to try to set up a beta trial
13 of your software, what you were working on, would use
14 your invention, you wanted to set that up at ANX,
15 correct?

16 A. You're talking about our group now, sir?

17 Q. Your group, yes.

18 A. Yes, sir.

19 Q. So your group, Mr. Munger, yourself,
20 Dr. Larson, your group at SAIC wanted to have ANX run
21 your software, right, to do these automatic VPN
22 connections, correct?

23 A. I believe there were discussions about that,
24 sir. I wasn't involved.

25 Q. Well, I wanted to ask you about that, because

1 my understanding is, is that you actually were one of
2 the people who briefed ANX about the technology; isn't
3 that right?

4 A. I don't recall. It's possible.

5 Q. All right. Let me ask you to turn -- it's not
6 in that book of exhibits, but if you'll close that book.
7 Underneath it, there's a spiral-bound volume that has
8 your deposition transcript.

9 Do you have that, sir?

10 A. Yes, sir.

11 Q. Let me ask you, please, to turn to the third
12 tab.

13 A. (Complies.)

14 Q. Do you have that, sir?

15 A. Yes, sir.

16 Q. All right. Please turn to Page 111, if you
17 would.

18 And just to remind everyone, sir, you were
19 deposed in this case, meaning you had your deposition
20 taken, right?

21 A. Yes, sir, that's correct.

22 Q. And of course, that deposition didn't happen
23 in a courtroom; it happened in an attorney's office; but
24 you were sworn to tell the truth when -- when you
25 testified, right?

1 A. Oh, yes, sir.

2 Q. So it's testimony under oath just like here
3 today, right?

4 A. Yes, sir.

5 Q. Now, if you'll look down at the bottom of Page
6 111, you'll see that there's a reference there at Line
7 21 down to Line 23, and it says there -- you were asked
8 a question about a document that says: The straw that
9 broke the camel's back was the loss of the ANX beta site
10 as they decided to go with an Aventail solution.

11 Do you see that?

12 A. Yes, sir.

13 Q. And you recall, don't you, that during the
14 middle of 2001, essentially, SAIC decided to no longer
15 continue to seek commercial funding for your inventions,
16 right, in the middle of 2001?

17 A. Yes, sir.

18 Q. All right. And so what this document is
19 saying is that the straw that broke the camel's back,
20 the reason for no more commercial funding, was that --

21 A. Yes, sir.

22 Q. -- Aventail got this beta site, right?

23 A. Yes, sir.

24 Q. And if you go down further, from Page 111 over
25 to 112, you were asked a question: Do you recall an

1 effort by SAIC to set up a beta at ANX?

2 Do you see that?

3 A. Yes, sir.

4 Q. And at Page 112, your answer at Lines 2 and 3
5 was: I recall a briefing to the ANX program people
6 about VirnetX, yeah. I recall that.

7 A. Yes, sir.

8 Q. Do you see that?

9 All right. So at the very least, at the very
10 least, what you remember was that your team provided a
11 briefing to --

12 A. That's --

13 Q. -- to ANX about your inventions; is that
14 right?

15 A. Yes, sir. I do recall there was some
16 briefing. I don't recall being at it.

17 Q. I see.

18 And the briefing took place -- there was a
19 discussion about your software and technology and ANX
20 decided against your technology in favor of Aventail; is
21 that right?

22 A. Yes, sir. They -- which I thought was the
23 right decision, sir.

24 Q. In 2001, and after you learned that ANX had
25 decided to go with Aventail, you learned that SAIC

1 invested in Aventail in 2001, didn't you?

2 A. I don't recall when I learned about the
3 investment, sir.

4 Q. Let me refresh your recollection, if I might.
5 If you would turn -- and I'm sorry to have you turn to
6 all these books, but turn back to that binder of
7 exhibits and take a look at Exhibit 3256.

8 A. (Complies.)

9 MR. BOBROW: And if we highlight the top,
10 please.

11 Q. (By Mr. Bobrow) You can see that, essentially,
12 this is --

13 MR. BOBROW: Actually, Chris, the wrong
14 one. If you can highlight the very top. Thank you.
15 I'm sorry I wasn't clear on that.

16 Q. (By Mr. Bobrow) You'll see here that this is a
17 message from Foley to Mr. Munger and others, including
18 yourself, Bob Short, correct?

19 A. Yes, sir.

20 Q. And this was an e-mail that you received on
21 September 28th, 2001, correct?

22 A. Yes, sir.

23 Q. This is about the SAIC/Aventail partnership,
24 correct?

25 A. Yes, sir.

1 Q. And what was happening here was that somebody
2 was forwarding to you and others an e-mail about the
3 relationship and investment by SAIC in Aventail,
4 correct?

5 A. Yes, sir, it looks like that.

6 Q. All right. And what you learned and what this
7 document is saying is that SAIC and ANX were,
8 essentially, partnering together to provide full
9 extranet VPN services, correct?

10 That's one of the things you learned from this
11 e-mail, right?

12 A. Yes, sir.

13 Q. And you also learned something about Aventail
14 from this e-mail, correct?

15 A. Yes, sir.

16 Q. In that bottom paragraph, you learned that
17 Aventail provides secure and authenticated access to a
18 customer's critical software applications and thus makes
19 these applications available to business partners and
20 employees who are working remotely, right, working
21 remotely off the customer's corporate network, correct?

22 A. Yes, sir.

23 Q. You also learned from this that Aventail
24 provides that security by providing identity
25 authentication, user authorization, and encryption

1 services, correct?

2 A. Yes, sir.

3 Q. You also learned that Aventail was being used
4 by Fortune 100 companies, correct?

5 A. Yes, sir.

6 Q. Certainly, at this time in September of 2001,
7 there were no Fortune 100 companies that were using your
8 software or your inventions, correct?

9 A. That's correct.

10 Q. And to this day, you have not licensed that
11 software or those patents to any Fortune 100 companies
12 or anyone else for that matter, correct?

13 A. Not exactly, sir.

14 Q. Well, if we put aside the SafeNet license for
15 which SAIC received no money, correct?

16 A. Yes, sir.

17 Q. Putting that aside, your patents have not been
18 licensed by any Fortune 100 companies, correct?

19 A. That's correct, yes, sir.

20 Q. Now, in the courtroom here, we observed your
21 demonstration of software here in 2010, the software
22 you've been working on since you joined VirnetX in 2007,
23 correct?

24 A. Yes, sir.

25 Q. Now, back in 2000 to 2001, in that timeframe,

1 you also demonstrated software that embodies your
2 patents, that uses your patent to others, correct?

3 A. Yes, sir.

4 Q. There were any number of times that you and
5 your colleagues would visit someone or someone would
6 visit you, and what you would do is demonstrate the
7 software, show how it works, show the creation of the
8 VPN, much like we saw here, and in doing that, you were
9 trying to interest others in either providing funding
10 for you or helping you develop your inventions further
11 or license your -- your patents, correct?

12 A. Yes, sir.

13 Q. And certainly, back in 2001, one of the things
14 that you were trying to do was provide information to a
15 number of government organizations to try to see whether
16 they were interested in providing funding for you or
17 using your inventions, correct?

18 A. Yes, sir.

19 Q. And so even after SAIC pulled the plug on its
20 commercial, that is, its effort to get private
21 businesses to fund your development -- and that -- that
22 was not successful, was it?

23 A. No, sir.

24 Q. So after SAIC decided on that, one of the
25 things that you did was you tried to get the government

1 interested in using your inventions, right?

2 A. Yes, sir. If you're talking about us as a
3 group, that's correct, sir.

4 Q. One of the -- one of the government
5 organizations that you tried to get interest from to use
6 your patented ideas was a company called -- or an
7 entity, I should say, called OSIS, O-S-I-S; is that
8 right?

9 A. That doesn't ring a bell to me, sir, but it's
10 possible.

11 Q. All right. Well, why don't we take a look at
12 Exhibit 3347, and we'll see if that refreshes your
13 recollection, okay?

14 THE COURT: Counsel, I don't know whether
15 this is a good time, but let me just inquire how much
16 longer you anticipate on cross-examination.

17 MR. BOBROW: I imagine perhaps another 15
18 to 20 minutes.

19 THE COURT: All right. I think we'll go
20 ahead and stop at this point then and take our noon
21 break. It's about ten after the hour.

22 So, Ladies of the Jury, we're going to
23 recess for lunch, and I will remind you of your
24 instructions not to discuss the case among yourselves or
25 with anyone else.

1 We're going to recess until 1:30. That
2 will give you an hour and 20 minutes today. So enjoy
3 your lunch, have a nice break, and we'll see you back
4 here at 1:30. We'll be in recess until then.

5 COURT SECURITY OFFICER: All rise.

6 (Lunch recess.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/ _____
SUSAN SIMMONS, CSR
Official Court Reporter
State of Texas No.: 267
Expiration Date: 12/31/10

Date

/s/ _____
JUDITH WERLINGER, CSR
Deputy Official Court Reporter
State of Texas No.: 731
Expiration Date: 12/31/10

Date

EXHIBIT F4

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

VIRNETX * Civil Docket No.
* 6:07-CV-80
VS. * Tyler, Texas
*
* March 9, 2010
MICROSOFT CORPORATION * 1:30 P.M.

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE JUDGE LEONARD DAVIS
UNITED STATES DISTRICT JUDGE

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(Proceedings recorded by mechanical stenography,
transcript produced on CAT system.)

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* * * * *

P R O C E E D I N G S

COURT SECURITY OFFICER: All rise.

All rise for the jury.

(Jury in.)

THE COURT: Please be seated.

1 All right. Counsel, you may proceed.

2 MR. BOBROW: Thank you, Your Honor.

3 ROBERT D. SHORT, III, Ph.D., PLAINTIFF'S WITNESS,

4 PREVIOUSLY SWORN

5 CROSS-EXAMINATION (CONTINUED)

6 BY MR. BOBROW:

7 Q. Good afternoon, Mr. Short.

8 A. Good afternoon. Thank you.

9 Q. Welcome back.

10 I have just a few more questions for you on a
11 couple of topics, okay?

12 A. Yes, sir.

13 Q. Thank you.

14 I think where we broke for lunch was I was
15 asking you about some of the efforts that SAIC made
16 after SAIC had decided to stop trying to seek funds from
17 the commercial market in the summer of 2001.

18 Do you recall that?

19 A. Yes, sir.

20 Q. What I had asked you about was whether SAIC
21 had made an approach to a government agency called OSIS
22 in the summer of 2001.

23 Do you recall that?

24 A. Yes, sir.

25 Q. Let me please -- and I believe, sir, your

1 testimony may have been -- and forgive me if I've gotten
2 this wrong -- that you weren't sure whether there was
3 such an approach to OSIS; is that right?

4 A. Yes, sir. It was not a name that rang a bell
5 in my head.

6 Q. Thank you.

7 All right. So what I'd like you to do, then,
8 is take a look at the exhibit that I mentioned right
9 before the break, and that's Exhibit 3347.

10 And, sir, Exhibit 3347 should also be on the
11 screen in front of you. And it appears to be a
12 presentation from SAIC to OSIS dated June 6th of 2001.

13 Do you see that?

14 A. Yes, sir.

15 Q. Do you see, for example, that Mr. Munger's
16 name is listed on this presentation, right?

17 A. Yes, sir.

18 Q. And you see also that your name is listed on
19 this presentation as well?

20 A. Yes, sir.

21 Q. And Mr. Zimmet as well?

22 A. Yes, sir. I don't recall that name.

23 Q. All right. So in all events, you and
24 Mr. Munger were involved in this presentation to OSIS,
25 correct?

1 A. Yes, sir, it appears so.

2 Q. And does this refresh your memory that you,
3 indeed, were so involved?

4 A. Not really, but I believe that I probably was.
5 My name is on there.

6 Q. Right. And OSIS, as you recall, was a
7 government agency that was involved in intelligence,
8 don't you?

9 A. I seem to recall that, yes, sir.

10 Q. And one of the things that you did when you
11 went to OSIS in the summer of 2001 was you were trying
12 to interest OSIS in your invention, right?

13 A. Yes, sir.

14 Q. You were hoping to get OSIS to help fund the
15 continuing development of your invention, right?

16 A. Yes, sir.

17 Q. So one of the things that you had to do to get
18 them interested in your invention was to describe it to
19 them, right?

20 A. Yes, sir.

21 Q. And one of the things that you did on
22 Page 3 -- if you'd take a look there, please, Page 003
23 at the top -- was you wanted to let OSIS know what the
24 problem was that your invention was trying to deal with,
25 right?

1 A. Yes, sir.

2 Q. You told them one of the things you were
3 trying to address was the secure connectivity of road
4 warriors, right?

5 A. Yes, sir.

6 Q. People on the road trying to access corporate
7 resources from remote locations, correct?

8 A. Yes, sir.

9 Q. Now, what you did was you told them about the
10 technology you were trying to get patents on; am I
11 right?

12 A. Yes, sir.

13 Q. And if you take a look at Page 7 towards the
14 bottom, you describe a situation where you have a client
15 on the Wal-Mart LAN who wants to access services at
16 Mattel using a secure link, and you go through a series
17 of steps there.

18 Do you see what I'm referring to?

19 A. Yes, sir.

20 Q. And at the end of those steps which involve a
21 gatekeeper and which involve entering a domain, a secure
22 domain name with .scom in there into a browser, at the
23 end of that, you get a VPN tunnel, right?

24 A. Yes, sir.

25 Q. And essentially in those steps, you're

1 describing your invention, right? The invention that
2 brings us here into this courtroom?

3 A. I'm not sure if we were describing our
4 invention or describing the prototype that we had
5 developed.

6 Q. The prototype you developed to embody your
7 inventions, right?

8 A. Yes, sir.

9 Q. All right. One of the things that you also
10 did on Page 6 was you described for OSIS -- and it's
11 probably a little hard to read because of the copy, but
12 if you look at the box all the way over to the
13 right-hand side, it says 280-plus patent claims pending.

14 Do you see that?

15 A. Yes, sir.

16 Q. So you're also telling OSIS that you were
17 getting patents on the technology you're presenting to
18 OSIS, correct?

19 A. Yes, sir.

20 Q. And after telling them all of this information
21 about your inventions, what you did, on Page 9, was you
22 asked OSIS to consider doing a beta trial of your
23 technology, right?

24 A. Yes, sir.

25 Q. You describe on Page 9 some of the

1 possibilities for a beta trial, 45 days, 10 clients,
2 available mid-July.

3 Do you see that?

4 A. Yes.

5 Q. That beta never happened with OSIS, did it?

6 A. No, sir.

7 Q. They rejected your approach to them, didn't
8 they?

9 A. Yes, sir.

10 Q. Now, after June of 2001, as you had mentioned,
11 we all do remember those tragic events of September
12 11th. And those events transpired. And I think you
13 mentioned on direct examination that you were looking
14 for ways that you could help to contribute in light of
15 the effort that all of us needed to take to respond to
16 that challenge, right?

17 A. Yes, sir.

18 Q. One of the things that you and Mr. Munger
19 decided to try to do, in response to that challenge and
20 those horrible events, was to approach government
21 agencies to try to interest them in these inventions
22 that are the subject of these patents, correct?

23 A. That's correct, sir.

24 Q. You had the idea, as did Mr. Munger, that the
25 government at that time of 9/11 should be particularly

1 interested in internet security and in protecting the
2 internet infrastructure that our country had come to
3 depend on so much, right?

4 A. Yes, sir.

5 Q. So one of the things that you did was you
6 approached a number of government agencies that were
7 involved with security and infrastructure, correct?

8 A. Yes, sir, we did.

9 Q. One of those agencies was the -- was the FAA,
10 right?

11 A. Yes.

12 Q. Federal Aviation Administration?

13 A. Yes, sir, I do recall it.

14 Q. Yes. And you approached the FAA, which, of
15 course, is responsible for aviation, in September of
16 2001, just shortly after the events of September 11th,
17 correct?

18 A. I think that's correct, yes, sir.

19 Q. And one of the things that you recognized and
20 I think that OSIS recognized is that these horrible
21 events could be used as an opportunity to get funding
22 from the federal government to further develop and
23 enhance the technology that you were working on as a way
24 to get funding so that the FAA or others could use that
25 technology, correct?

1 A. I'm not sure I would say it that way.

2 We -- we believed that maybe our technology could help
3 in improving security for the country.

4 Q. Indeed. And you learned at that time that the
5 federal government was anxious to spend money on
6 security in securing the internet, correct?

7 A. I believe there was an interest, yes, sir.

8 Q. And so why don't you take a look at Page 3525.

9 A. I'm sorry --

10 Q. I'm sorry. I said page. I meant
11 Exhibit 3525.

12 A. 3525. Yes, sir.

13 Q. Thank you.

14 And do you see at the bottom of that first
15 page that there is an e-mail from Dan Woolley to you and
16 Mr. Munger?

17 Do you see that?

18 A. Yes, sir.

19 Q. And it says must read; see highlight
20 paragraph.

21 Mr. Woolley, who was he at that time?

22 A. Let's see. What's the date here?

23 Q. September 18, 2001.

24 A. I don't recall what his role was. Earlier, he
25 was leading the effort to help commercialize.

1 By September of 2001, I don't think he was
2 doing that, serving that role anymore. I'm not sure
3 what his role was at that point.

4 Q. Now, if you turn to the second page of this
5 exhibit, please.

6 A. Uh-huh.

7 Q. You'll see that there is an article that was
8 being forwarded to you by someone named Thomas Temin,
9 from Government Computer News Staff Writer, dated
10 September 17, 2001.

11 Do you see that?

12 A. Yes, sir.

13 Q. And what that tells you in the first paragraph
14 is that federal technology managers have jammed the
15 pedal to the metal on information security. The
16 terrorist events of September 11 have seen to that.

17 Do you see what I'm referring to there?

18 A. Let me look here.

19 Yes, sir.

20 Q. All right. So what this article was telling
21 you was that those responsible for spending money may
22 very well be interested in spending money on internet
23 security, information security, and the like, in light
24 of those tragic events, correct?

25 A. Yes, sir.

1 Q. So then if we turn back to the prior page, the
2 first page, it appears about the middle of the page that
3 Mr. Munger, copying you and others, sent an e-mail to
4 Michael Brown at FAA.

5 Do you see what I'm referring to there?

6 A. Yes, sir.

7 MR. BOBROW: And, Chris, if you would
8 please go up above that to the text above that.

9 Q. (By Mr. Bobrow) It appears that Mr. Munger
10 sent an e-mail that discusses your IP hopping research
11 and also our latest work in Dynamic IP SEC VPNs.

12 You see what I'm referring to there?

13 A. Yes.

14 Q. And what you're referring to there is, again,
15 part of the work that you were doing related to the
16 inventions that bring us here into this courtroom,
17 right? The Dynamic VPNs?

18 A. Yes, sir. The second part of that, the
19 Dynamic IP SEC VPNs would be that, yes, sir.

20 Q. And if you look even further up the document,
21 there's a mention in an e-mail from Mr. Munger to FAA
22 and others, including yourself, from September 18th,
23 wherein the first line of the e-mail, it talks about
24 VirnetX's ISC.

25 Do you see that?

1 A. Yes, sir.

2 Q. And that stands for instant secure connect?

3 A. I believe that's correct, yes, sir.

4 Q. And that's also describing your inventions,
5 correct?

6 A. Yes, sir. And that was another name we used.

7 Q. And despite the fact that you had this
8 information that the federal technology managers wanted
9 to spend money on internet security and information
10 technology, the government simply didn't fund your
11 effort or your invention, after you talked to the
12 Federal Aviation Administration; is that right?

13 A. That's correct.

14 Q. What happened after this mid-September
15 timeframe, as I understand it, is that your project at
16 SAIC basically ran out of money around October or so of
17 2001; is that right?

18 A. That's correct, yes, sir.

19 Q. And not much happened after October 2001 with
20 respect to this project until about the middle or so of
21 2002; is that right?

22 A. Yes, sir, that's true.

23 Q. Okay. Around that period of time, you were
24 involved in some discussions with a company called
25 SafeNet about taking a license to your technology; is

1 that correct?

2 A. Yes, sir.

3 Q. You were one of the people, not the only
4 person, but one of the people that was involved in that
5 effort with SafeNet; is that right?

6 A. Yes, I was.

7 Q. If you would take a look at 3199, Defendant's
8 Exhibit 3199.

9 And, sir, you'll see towards the top there are
10 a couple of e-mails, and you are copied on the lower
11 one. It's talking about some SafeNet deal points.

12 Do you see that?

13 A. Yes, sir.

14 Q. And this is dated in April of 2003, correct?

15 A. 2002.

16 Q. Did I say '3? I apologize.

17 A. Yes, sir.

18 Q. April of 2002. Thank you.

19 If you go to the last page, there are a set of
20 points for discussion, and it appears from these points
21 that someone at SAIC is describing reasons to do a deal
22 with SafeNet at that time, correct?

23 A. Yes, sir.

24 Q. One of them is that SafeNet had a track record
25 of success in internet security.

1 Do you see that? That's --

2 A. Yes, sir.

3 Q. All right. And another reason -- it's a
4 little farther down, but it's the second to last
5 paragraph -- another reason is -- is -- was the simple
6 reason that no other company had come forward with an
7 offer to spend their own money on a significant
8 development effort, such as required to develop more
9 instant secure connect, or ISC technology, correct?

10 A. Yes, sir.

11 Q. So a deal was done in the middle of 2002
12 between SafeNet and SAIC, correct?

13 A. That sounds right, yes, sir.

14 Q. And as I understand it, SafeNet, under that
15 agreement, had an option under which it could
16 unilaterally terminate the license.

17 That's your understanding, right?

18 A. I believe that's correct, yes, sir.

19 Q. They could essentially terminate the license,
20 as you understood it, for any reason or no reason at
21 all. They could simply turn it down?

22 A. That's my understanding, yes, sir.

23 Q. Now in the process of the steps following the
24 entry of the license agreement, SAIC gave some
25 information to SafeNet, right?

1 A. Yes, sir, we did.

2 Q. One of the things that you gave to SafeNet was
3 the source code for the software that used your patented
4 technology, right?

5 A. Yes, we did.

6 Q. They had access to the -- essentially the
7 secret information that was the set of instructions for
8 the computer to follow in executing and implementing
9 your inventions, right?

10 A. That's correct.

11 Q. So they had every -- a full and fair
12 opportunity to look at that code and see what they
13 thought of it, right?

14 A. Yes, sir, they did.

15 Q. And thereafter, after getting that code and
16 having an opportunity to review it, SafeNet decided to
17 terminate the license, right?

18 A. Yes, sir.

19 Q. They decided not to pursue your inventions,
20 correct?

21 A. That's correct.

22 Q. And decided to terminate the license without
23 paying any royalties or money whatsoever to SAIC,
24 correct?

25 A. That is correct, yes, sir.

1 Q. Thank you very much, Dr. Short.

2 MR. BOBROW: I pass the witness.

3 THE COURT: All right. Redirect?

4 MR. CAWLEY: Thank you, Your Honor.

5 MR. BOBROW: And actually, Your Honor, if
6 I may, one housekeeping matter.

7 We had marked two illustrative exhibits,
8 which we'd simply like to enter into the record as
9 illustrative exhibits. These are --

10 THE COURT: What are the numbers?

11 MR. BOBROW: Illustrative -- Defendant's
12 Illustrative Exhibit 1 and Defendant's Illustrative
13 Exhibit 2. Those were the https example from Dr.
14 Short's illustration and also the VPN illustration from
15 Dr. Short.

16 THE COURT: Any objection?

17 MR. CAWLEY: No, Your Honor.

18 THE COURT: Be admitted.

19 MR. BOBROW: Thank you.

20 MR. CAWLEY: And on that subject, Your
21 Honor, we're going to mark the boards with the red ink
22 on them Plaintiff's Demonstrative Exhibits 1 through 5.

23 THE COURT: Okay. They are admitted.

24 REDIRECT EXAMINATION

25 BY MR. CAWLEY:

1 Q. Just a few questions, Dr. Short, because I
2 think -- I think maybe there was a little bit of
3 information that wasn't covered in some of the questions
4 that you were just asked that it's important that we
5 hear to understand the rest of the story.

6 First of all, on Plaintiff's Exhibit 983,
7 those are the -- that's the Microsoft document that you
8 blew up on big boards and wrote on with red ink, right?

9 A. Yes, sir.

10 Q. In your view, is that document a fair example
11 of how people had to set up VPNs back in that timeframe,
12 the year 2000?

13 A. Yes, sir.

14 Q. Well, we saw in that document that it
15 wasn't -- Microsoft didn't recommend that it be used for
16 remote access.

17 What do you understand remote access is?

18 A. My understanding for a remote access is that
19 you had an average user who had their laptop or desktop
20 at home.

21 Q. So why wouldn't it be used for remote access?

22 A. It was just -- it would be too hard.

23 Q. Okay. So that's -- basically, you testified
24 earlier it was too hard for average people to use, like
25 remote users, right?

1 A. Yes, sir.

2 Q. What was it used for?

3 A. It was used primarily for connecting --
4 interconnecting networks. Like if you had two offices
5 that were remotely located from each other and you
6 wanted to connect them, like you had a virtual network
7 between them, then you could set up each side and
8 establish a VPN between those two networks. So you
9 would have network engineers doing that.

10 Q. Okay. Then you were asked some questions
11 about a different way of setting up a VPN back then,
12 something called PPTP.

13 Do you remember that?

14 A. Yes, sir.

15 Q. And you were shown some documents that seemed
16 to create the impression that that was easy using PPTP?

17 A. Yes, sir.

18 Q. Let's take a look at that document again,
19 though, Defendant's Exhibit 3121.

20 This is the document that Microsoft's lawyer
21 showed you that had easy in it, right?

22 A. Yes, sir.

23 Q. Let's look at Page 7 where that appears first,
24 that bold -- that's a little bit more than halfway down
25 the page. Right there.

1 And let me read it to you: Microsoft virtual
2 private networks have been designed to make their
3 implementation easy for network administrators.

4 Who are network administrators?

5 A. Typically, these are network engineers, the
6 kind I was talking about.

7 Q. Okay. And let's go to the next place in this
8 document that Microsoft's lawyer pointed you to. Page
9 11.

10 I want to find the language that says that
11 setting up a VPN is easy. Right there: Setting up a
12 VPN on Windows NT Server 4.0 is easy.

13 Right?

14 A. Yes, sir.

15 Q. You were shown that sentence by Microsoft's
16 lawyer?

17 A. Yes, sir.

18 Q. Well, let's skip over the next sentence that
19 talks about considering a special case or use of RAS,
20 and let's highlight the sentence that follows that.

21 As a result, setting up a VPN using PPTP
22 involves many of the same steps an IS administrator
23 takes when setting up a server to accept dial-up
24 networking connections via RAS.

25 What does that tell us?

1 A. The way I read that, an IS administrator is
2 like a network engineer.

3 Q. Have you seen a Microsoft document that
4 describes those steps?

5 A. Yes, sir.

6 Q. Well, let me show you a document that
7 Microsoft's lawyer did not show you in your
8 cross-examination, even though it is one of Defendant's
9 exhibits. It's 3021.

10 What's this?

11 A. This is an instruction manual, I believe,
12 for --

13 MR. CAWLEY: If we can highlight that
14 little language that says installing, configuring, et
15 cetera.

16 Q. (By Mr. Cawley) So this tells us it's an
17 instruction manual about how we're going to install,
18 configure, and use PPTP, right?

19 A. Yes, sir.

20 Q. So let's go to Page 4 of this Microsoft
21 document.

22 Is that an index or table of contents of the
23 steps that you have to follow to set up a VPN using
24 PPTP?

25 A. Yes, sir.

1 Q. And many of these steps, as we can see from
2 the numbers in the right-hand side, those refer to page
3 numbers of the manual?

4 A. Yes, sir.

5 Q. So you have to go through all these steps,
6 many of which have multiple pages.

7 Is that accurate?

8 A. Yes, sir.

9 Q. You were also asked some questions about the
10 demonstration you gave to the jury in Court, and that
11 when you got your computers, when you bought computers
12 so you could be able to demonstrate that to the jury,
13 you had to install your software.

14 Do you remember that?

15 A. Yes, sir.

16 Q. Well, Dr. Short, does any software have to be
17 installed on a computer to be used?

18 A. Yes, sir.

19 Q. It's not any good in the box, is it?

20 A. That's correct.

21 Q. Now, it is possible, isn't it, as many people
22 have done, that sometimes when you buy a computer,
23 someone like Dell has already installed software on it?

24 A. Yes, sir.

25 Q. But it's also the case that if you want to

1 have some additional software, like maybe a game, like
2 maybe a word processor, like maybe something that helps
3 you take care of taxes, or whatever it is, you have to
4 buy that software and install it on your computer?

5 A. Yes, sir.

6 Q. That's not unusual for Gabriel, is it?

7 A. No, sir.

8 Q. And it's possible, isn't it, that if you could
9 find a computer-maker who was willing to do it, they
10 could pre-install Gabriel on a computer that they sold
11 to someone and the buyer of the computer wouldn't have
12 to install anything?

13 A. That's correct.

14 Q. Microsoft's lawyer also showed you a section
15 in the manual about how to get your Gabriel software
16 registered, that you have to register the software?

17 A. Yes, sir.

18 Q. Why is that?

19 A. There are a couple of reasons. One, we were
20 running a beta, so we wanted to get information about
21 people who were doing the testing so we would know who
22 they were and be able to interact with them on the
23 results of their test.

24 Q. So when the user of Gabriel for the first time
25 is using your beta test is going to have to register the

1 software, what kind of complicated information are they
2 going to have to enter to get it registered?

3 A. This is after it's installed?

4 Q. Yes, sir.

5 A. All -- all they'd have to do is -- is register
6 their name and ask for a domain name.

7 Q. Once it's installed, once it's registered,
8 what does the user of your software have to do to set up
9 a VPN?

10 A. Basically what I showed in the demo, sir.

11 Q. Okay. Let me ask you briefly about Aventail.
12 Microsoft's lawyer was asking you about SAIC's decision
13 in evaluating what it was going to use for security for
14 its subsidiary, ANX, and they were looking at your
15 invention and they were looking at Aventail, and they
16 chose Aventail.

17 I believe the response you gave to Microsoft's
18 lawyer was that's true, and you thought they made the
19 right decision.

20 A. Yes, sir, I did.

21 Q. They didn't ask you about that, so let me.
22 Why do you think that SAIC made the right decision in
23 choosing Aventail over your invention at that time?

24 A. Our -- our technology was really in the very
25 early beta stage at that point, and they were trying to

1 put together a system to immediately service real
2 customers. So they needed a solid product that was
3 tested and of commercial quality.

4 So I would have made the same decision.

5 Q. Was your product there yet?

6 A. No, sir.

7 Q. And finally, let me ask you about SafeNet.

8 This is the company that entered into a license
9 agreement to pay 20 percent of its revenues from the
10 invention to the owner of the patents.

11 Do you remember that?

12 A. Yes, sir.

13 Q. But then they canceled that agreement before
14 they ever paid anything under it?

15 A. That's correct.

16 Q. And you understand that they did that --
17 why -- why did they do that?

18 A. My understanding from their letter was that
19 they had decided at that time they did not want to put
20 the capital investment in it to productize it.

21 Q. Because what they were licensing in the
22 agreement was not a product, right?

23 A. That's correct.

24 Q. It was just the right to use your invention?

25 A. Yes, sir.

1 Q. And where would they get a product?

2 A. They would have had to do a fair development
3 themselves.

4 Q. So they would have to spend a bunch of money
5 developing your idea into an invention, correct?

6 A. Yes, sir.

7 Q. And they eventually decided that they didn't
8 want to do that?

9 A. That's correct.

10 Q. Thank you.

11 MR. CAWLEY: I'll pass the witness, Your
12 Honor.

13 THE COURT: Any recross?

14 MR. BOBROW: Yes, Your Honor. Very
15 brief.

16 RECROSS-EXAMINATION

17 BY MR. BOBROW:

18 Q. Dr. Short, in response to the questions just
19 posed to you, you were asked some questions about PPTP.

20 Do you recall that?

21 A. Yes, sir.

22 Q. You were asked some questions about
23 Exhibit 3121, which is the Windows NT server white paper
24 that talks about PPTP.

25 Do you recall that?

1 A. Yes, sir.

2 Q. Do you still have that in front of you?

3 A. Yes, sir.

4 Q. Now, let me ask you about a page of this
5 exhibit that VirnetX's lawyer didn't ask you about on
6 redirect examination, all right?

7 Would you please turn to Page 12?

8 And if you look towards --

9 A. Yes.

10 Q. Please look towards the bottom where there is
11 a reference --

12 A. I'm sorry. I have the wrong document here.

13 Q. 3121, please.

14 A. 21?

15 Q. 3-1-2-1.

16 A. That's what I've got.

17 And this is Page?

18 Q. Please look at Page 12, if you would.

19 A. Okay. I'll just look here.

20 Q. Okay. And you'll see towards the bottom there
21 is a reference where it says on the client.

22 Do you see that?

23 A. Yes, sir.

24 Q. And unlike on the server side, which is a side
25 that's written for administrators and others, the client

1 side is talking about the side of the VPN where the
2 client actually enters a domain name into a computer,
3 hits enter, and a connection is created, right? That's
4 the side we're talking about here?

5 A. Yes, sir.

6 Q. And what this says, for PPTP from the client's
7 side, is that VPN setup in use on the client is also
8 easy.

9 That's what it says, doesn't it?

10 A. Yes, sir.

11 Q. And it says that when PPTP support is provided
12 by an ISP -- now, let me pause there.

13 An ISP is a service like --

14 A. Excuse me.

15 Q. That's fine. Are you alright?

16 A. Yes, sir.

17 Q. An ISP is a company like AT&T or someone like
18 that that provides internet service, right?

19 A. Yes, sir. It's internet service provider.

20 Q. So what this is saying is that when PPTP
21 support is provided by an ISP, like AT&T, for example,
22 no change in setup is required to the client computer,
23 correct?

24 A. Yes, sir.

25 Q. The user doesn't need to do anything, because

1 the ISP, like AT&T or what-have-you, has taken care of
2 that, right?

3 A. Yes, sir.

4 Q. And what it goes on to say is that in that
5 situation, when you're hooked up through an ISP, the VPN
6 support with PPTP is transparent.

7 A. Yes, sir.

8 Q. Transparent to the user, correct?

9 A. Yes, sir.

10 Q. Now, as we went through Exhibit 3021, which
11 VirnetX's lawyer showed you, I think he just showed you
12 the table of contents.

13 Do you recall that?

14 A. Yes, sir.

15 Q. Okay. Now, back in 1996, you had not set up a
16 PPTP VPN, correct?

17 A. No, sir.

18 Q. Is that correct?

19 A. That is correct, yes, sir.

20 Q. And you hadn't set one up in 1997 either,
21 right?

22 A. No, sir, we had not.

23 Q. Or in '98, correct?

24 A. That's correct.

25 Q. You had not set up a PPTP VPN?

1 A. That is correct.

2 Q. Thank you.

3 MR. BOBROW: No further questions. Pass
4 the witness.

5 THE COURT: Redirect?

6 MR. CAWLEY: Nothing further, Your Honor.

7 THE COURT: All right. Thank you. You
8 may step down.

9 THE WITNESS: Thank you, sir.

10 THE COURT: All right. Mr. Cawley, who
11 will be your next witness.

12 MR. CAWLEY: Your Honor, may this witness
13 be excused?

14 THE COURT: Yes, he may.

15 Who will be your next witness?

16 MR. CALDWELL: Your Honor, Plaintiff
17 calls its expert, Mr. Mark Jones.

18 THE COURT: All right. Mr. Jones.

19 MR. CALDWELL: May we approach the bench?

20 THE COURT: Yes, you may.

21 (Bench conference.)

22 MR. CALDWELL: There is a motion in
23 limine on the new operating system, Windows 7, and we
24 are not going to say Windows 7 infringes. But rather
25 than have the elephant in the room, while everybody's

1 seen it on the Olympics, I want to ask why is that not
2 in your analysis, and have him say that it just came out
3 too late to be part of the case.

4 I have not discussed this with
5 Mr. Powers, so that's why we wanted to approach.

6 MR. POWERS: I think within reason, it
7 raises a question in the jurors' minds about why does
8 that mean it would be infringing, if it's not.
9 I think just discussing it is going to raise the
10 question.

11 THE COURT: I think the jurors -- so
12 don't go into it.

13 MR. CALDWELL: Okay.

14 (Bench conference concluded.)

15 MR. CALDWELL: May I approach, Your
16 Honor?

17 THE COURT: Yes, you may.

18 MARK JONES, Ph.D., PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

19 DIRECT EXAMINATION

20 BY MR. CALDWELL:

21 Q. Good afternoon.

22 A. Good afternoon, sir.

23 Q. Would you please introduce yourself to the
24 jury.

25 A. My name is Mark Jones, and I am a professor at

1 Virginia Tech.

2 Q. Are you a Dr. Jones?

3 A. Yes, sir.

4 Q. A medical doctor.

5 A. No, not that kind. Not the kind to do you any
6 good.

7 Q. A Ph.D. like Dr. Short?

8 A. Yes, sir.

9 Q. Are you a VirnetX employee?

10 A. No, sir.

11 Q. Well, Dr. Jones, why are you here today?

12 A. Well, I'm here because I was able to look at a
13 lot of information in the case, including confidential
14 information, study it, and then form conclusions.

15 And then I'm here to explain those conclusions
16 to the jury today in a way that they can understand the
17 issues.

18 Q. Okay.

19 THE COURT: Dr. Jones, you may want to
20 get a little closer to the microphone. Not too close or
21 it will pop. But you have a soft voice, and it's a
22 little hard to hear you.

23 THE WITNESS: Thank you.

24 Q. (By Mr. Caldwell) Is that because we're going
25 to dig into the technology today?

1 A. Yes, sir.

2 Q. Now, just at a very, very high level, the
3 30,000-foot level, what kinds of opinions are you going
4 to talk about today?

5 A. I'm here to talk about opinions related to
6 infringement of the VirnetX's patents.

7 Q. Professor Jones, we're going to get to your
8 infringement opinions in detail. Your presentation is
9 one of the longer ones that Mr. Cawley alluded to in
10 opening.

11 But before we get into that, we need to find
12 out a little bit about you. So how old a man are you?

13 A. I'm 44 years old.

14 Q. Have any kids?

15 A. Yes, I do. I have four children.

16 Q. How old are they?

17 A. They are 18, 16, 8, and 8.

18 Q. Are the eight year olds twins?

19 A. No, they're two months apart. They're both
20 adopted.

21 Q. Where do you live?

22 A. I live in Blacksburg, Virginia.

23 Q. And what's in Blacksburg, Virginia?

24 A. Pretty much Virginia Tech.

25 Q. Is that a big town?

1 A. No, sir.

2 Q. Okay. Have you always lived in Virginia?

3 A. I was born there, but shortly -- shortly after
4 that, we moved to the Dallas area.

5 Q. Well, where did you live when you were a
6 little kid when you lived in Virginia?

7 A. I was in the Norfolk, Virginia area where my
8 dad was stationed while he was in the Army. He had been
9 assigned to work on the space program and was designing
10 new nose cones for the space program.

11 Q. And that was in Norfolk, Virginia?

12 A. Yes, sir.

13 Q. And how long did you live in Norfolk before
14 you moved to Dallas?

15 A. Oh, I was a real little kid. Just a few
16 years.

17 Q. What took you guys to Dallas?

18 A. My dad had an opportunity to join the faculty
19 at SMU in engineering, and he took that opportunity.

20 Q. And did you go to high school in Dallas?

21 A. Yes, I did. I went to Richardson High School.

22 Q. And then at some point, you guys moved back to
23 Virginia?

24 A. Yes. Dallas was getting pretty big. My
25 parents wanted to move to a smaller town, so we moved to

1 Blacksburg, Virginia.

2 Q. Your dad is a professor, and he's in
3 Blacksburg, and we know that the only thing there is
4 Virginia Tech, so did your dad become a professor at
5 Virginia Tech?

6 A. Yes, he did. He's an engineering professor,
7 or was an engineering professor there.

8 Q. Jumping forward several years, was there ever
9 a time when there were two Professor Joneses in the
10 engineering department?

11 A. Yes, there was. We overlapped for about five
12 or six years before he retired.

13 Q. Did you get a bunch of misdirected mail?

14 A. Yes, I did.

15 Q. All right. Well, Professor Jones, when did
16 you first think that you might want to be a teacher?

17 A. Growing up watching my dad teach, and then my
18 mother went back to school to become a reading
19 specialist to help disabled -- kids that were reading
20 disabled, learn to read. Watching both of them, I
21 admired them a lot, and it was just a natural career
22 choice.

23 Q. So where did you go to college?

24 A. I went to Clemson University in South
25 Carolina.

1 Q. What did you study at Clemson?

2 A. I studied computer science.

3 Q. Now, we've heard a lot about computer science,
4 but can you kind of tell us generally what that is?

5 A. That's the study of computer hardware and
6 software and how to use those things to solve real
7 problems.

8 Q. So when you were at Clemson studying computer
9 science, did you go to school full-time or did you take
10 a job?

11 A. Both, actually. I was going to school
12 full-time, and I had a job working for a group of
13 professors in an Air Force research laboratory, working
14 on networking together computers for the Air Force.
15 I also supervised dorm rooms.

16 Q. So going to school and working two jobs, how
17 long did it take you to get your computer science
18 degree?

19 A. It seemed like a while. It took about three
20 years.

21 Q. After that, did you keep going to school?

22 A. Yes, I did. I went to Duke University in
23 North Carolina.

24 Q. What did you study at Duke?

25 A. Again, computer science.

1 Q. And what degree did you want to get from Duke?

2 A. A Ph.D.

3 Q. Did you have a job while you were at Duke?

4 A. Yes, I did. During -- during the summers, I
5 worked at NASA Langley Research Center, and actually
6 ended up working in the same department where my father
7 had worked when I was a little kid.

8 Q. Did people remember your dad?

9 A. Yeah, there were still a few people there who
10 had worked with him.

11 Q. I think we can all probably agree that NASA
12 has a whole bunch of really smart people.

13 So what did NASA want from this Ph.D. student
14 down at Duke?

15 A. This was a couple of years after the
16 Challenger tragedy with the space shuttle, and they were
17 looking at ways to analyze space vehicles and how to
18 make them safer.

19 And I was working on computer software and
20 computer methods for using parallel computers to analyze
21 those kinds of structures.

22 Q. You mentioned parallel computing.

23 What is that?

24 A. Well, parallel computing is basically the idea
25 of taking hundreds or thousands of computers, putting

1 them altogether, networking them together so that you
2 can take all that power and apply it to a problem and
3 solve it more quickly.

4 Q. Did you do a dissertation?

5 A. Yes, I did, in 1990.

6 Q. Is that when you got your Ph.D.?

7 A. Yes, sir.

8 Q. All right. So in 1990, when you have your
9 Ph.D. and you're a newly minted Dr. Jones, did you go
10 straight back into the university as a professor?

11 A. No, sir, I did not. I wanted to get some
12 real-world experience, so I took a job at Argon National
13 Laboratory.

14 Q. What is Argon National Laboratories?

15 A. That's a government research facility, a
16 Department of Energy facility outside of Chicago.

17 Q. What sort of work did you do for Argon
18 National Labs?

19 A. Well, I was doing more of this parallel
20 computing work and applying it to problems, trying to
21 improve the -- what we were working on, trying to
22 improve how the country can use energy and use it more
23 efficiently. And I was applying parallel computing to
24 those problems.

25 Q. So by the time you came in here to the

1 courtroom, about how long had you been working on
2 parallel computing and related matters?

3 A. It goes back about 25 years at this point.

4 Q. Has your work in parallel computing and your
5 other research work involved network security?

6 A. Yes, sir. I've worked on multiple projects
7 funded by the government on computer network security.
8 Some of those projects have been funded by the National
9 Security agency, the Air Force Research Laboratories as
10 well as DARPA.

11 Q. What is DARPA?

12 A. DARPA is the Defense Advanced Research
13 Projects Agency.

14 Q. So you were working at Argon National Labs.
15 When did you decide to, hey, it's time to go fulfill
16 that dream of being a teacher?

17 A. There was an older guy that I respected a lot
18 who had been at Argon for a long time and went to the
19 University of Tennessee. And he offered me a position
20 to come and join him at the University of Tennessee, and
21 I really couldn't pass that up, and it was a lot warmer
22 there as well.

23 Q. What did you teach, then, at the University of
24 Tennessee?

25 A. I taught computer science.

1 Q. And then you eventually moved to Virginia
2 Tech?

3 A. Yes, sir, I did. I got an offer in 1997 to
4 move there, a chance to be a lot closer to my family.
5 And I couldn't pass that up.

6 Q. So did you do both research and teaching
7 during your jobs at these universities?

8 A. Yes, sir, I did.

9 Q. What has made up most of your research?

10 A. In one way or another, taking networks of
11 computers and computing devices and applying them to
12 solve important problems.

13 Q. Are there any really interesting projects
14 you've been working on in recent years?

15 A. Well, a project that I'm real excited about
16 that I've been working on for the last 10 years is
17 something called e-textiles.

18 Q. What are e-textiles?

19 A. Well, e-textiles is short for electronic
20 textiles.

21 Q. What are those?

22 A. Well, the idea there is to take computing
23 devices and sensors that can tell what's going on and
24 actually putting them together in your clothing -- and
25 putting a network of them in your clothing and using

1 that to see what's going on in the clothing.

2 Q. It sounds probably a little strange to some of
3 us, but why -- why would you do something like that.

4 What could it be used for?

5 A. Well, two applications that we've worked on
6 that I think are important. One is to monitoring of
7 heart patients. Say a doctor wants to get more
8 information on the health of a heart patient and monitor
9 their heart, they can use this type of clothing to have
10 sensors for detecting what their heartbeat is doing over
11 time as well as the rest of your body so that the doctor
12 can better understand how healthy or unhealthy that
13 person is.

14 Q. Is that instead of laying in a hospital bed,
15 for instance, and just being monitored over a long
16 period of time?

17 A. Yes, sir. And you could do -- sort of allow
18 someone to do this in their home or just as they're
19 walking around their daily activity in clothing that is
20 going to look and feel normal, so that they're not
21 self-conscious, and the Doctor can get better reads in
22 that case as well.

23 Q. Any other health missions you're working on
24 with your research?

25 A. Yes, sir. With the same e-textiles, we've

1 been looking at or working with other faculty to monitor
2 how people walk, and especially certain elderly people
3 who are at risk for slip and fall and breaking a hip,
4 for example, which can be very painful and debilitating.
5 Our work has been trying to detect and prevent those
6 kind of falls.

7 Q. Do you weave some of these networks of sensors
8 into clothing?

9 A. Yes, sir, we do.

10 Q. Can you show us how you do that?

11 A. Yes, I'd like to do that.

12 So this is a picture of the electronic
13 computer-automated loom that's in my lab that we use to
14 weave and create these e-textile fabrics. We can put in
15 sensors and wires as well as we put lots of regular
16 cotton and polyester fabrics in as well.

17 Q. Now, do you have an example of what the
18 clothing would look like?

19 A. Yes, sir.

20 So this is one of our prototype garments that
21 is used to monitor how people walk. It has networks in
22 it. It has lots of kind of sensors to determine how
23 you're walking and what you're doing.

24 Q. Now, I thought you said this clothing looks
25 normal. I can confidently say my wife would not let me

1 out wearing that.

2 So what's up with the color scheme that we see
3 here?

4 A. Well, this is normal for Virginia Tech. This
5 is maroon and orange, and these are our school colors,
6 so I designed this in a check pattern. And I find it
7 very fashionable.

8 Q. You took Jason Cassady's burnt orange and my
9 Aggie maroon and combined them --

10 A. In a very tasteful way.

11 Q. -- would be a tragic piece of clothing.

12 Okay. Thank you. Thank you, Dr. Jones.

13 Now, do others research in that area as well?

14 A. Yes, sir they do. There are other groups
15 working on that, but I believe that we're a leader in
16 it. We're the first group that comes up when you search
17 for e-textile online.

18 Q. All right. Let's go back to your more general
19 research and teaching.

20 What kind of students do you teach? What
21 levels?

22 A. I teach all kinds of students from freshmen to
23 seniors in design classes to graduate students.

24 Q. Do you teach computer networking?

25 A. Yes. I've taught classes there specifically

1 in computer networking. But at this point with the
2 importance of computer networks and the internet, in
3 every class I teach, I'm going to teach them about
4 networking.

5 Q. Professor Jones, is this the first time that
6 you've been retained to serve as an expert in a patent
7 case?

8 A. No, sir, it's not.

9 Q. Approximately how many other times have you
10 been retained?

11 A. I believe it's nine at this point.

12 Q. Now, have you always worked for the party that
13 owns the patent?

14 A. No, sir. About half the time I've worked for
15 the party that owns it and half the time for the other
16 party.

17 Q. Now, Professor Jones, I want to give basically
18 a road map to the jury of the things that we need to
19 cover today.

20 Can you help us out with that?

21 A. Yes. Let me put up a slide for that.

22 Q. What are we seeing here?

23 A. This is sort of an overview of what I would
24 like to talk about today.

25 First is a description of the investigation

1 that I performed.

2 Next is really two cases within a case to talk
3 about there. First, I'll talk about the '135 patent,
4 and then I'll talk about the '180 patent.

5 Q. So, for example, looking at the '135 patent,
6 what -- what bullets do we need to cover here?

7 A. I'll talk somewhat about the invention of the
8 '135 patent. I'll follow that with the operation of
9 Microsoft's products that relate to that patent, compare
10 the '135 patent to those products, and then examine how
11 Microsoft infringes those products.

12 Q. Are we basically going to go through what
13 infringes those patents?

14 A. Yes, sir.

15 Q. Then are we basically going to go through
16 those same topics for the '180 patent?

17 A. Yes, sir.

18 Q. Now, candidly, this looks like a lot of
19 information. Let me ask you, how long do you think this
20 is going to take?

21 A. I think it will take about two and a half
22 hours, sir.

23 Q. Is it going to be a fair amount of work?

24 A. Yes, it is, but I think there's a lot of
25 information there that -- evidence that I've examined

1 that I would like for the jury to see how I reached my
2 opinions, what I've based my opinions on. And so I
3 think it's important that everyone see that.

4 Q. Professor Jones, I'd like you to give us a
5 preview of what the conclusions are going to be so we
6 can get in our minds or fit the pieces into the right
7 spot as we come to them.

8 So can you do that for us?

9 A. Yes, sir.

10 Q. All right. Now, what are we looking at on
11 this slide that's identified as the Microsoft '135
12 products?

13 A. These are the products I'm going to talk about
14 with infringement with respect to the '135 patent.

15 Q. Okay. At the top -- I was going to ask you
16 what -- at the top, that says operating system.

17 A. Yes. Windows XP and -- are operating systems.
18 And on the right, the other four are client
19 applications. Those are Windows Message 5.X. Office
20 Communicator 2005, 2007, and 2007 R/2.

21 Q. Okay. And then on the lower right-hand side,
22 what are these on the lower right-hand side?

23 A. Those are four server programs. Those are
24 Live Communication Server 2003 and 2005, as well as
25 Office Communications Server 2007, and 2007 R/2.

1 Q. Now, we've seen Dr. Short teach us a lot about
2 how the internet works and how VPNs work, and we have
3 sort of this graphical arrangement where we have the
4 user laptop computer, another in the left, and Acme
5 Company on the right; fair?

6 A. Fair.

7 Q. Can you tell us, for example, starting with
8 the operating system -- I know you can't see the green
9 dot over your head, but looking at the operating
10 systems, where would those be in Dr. Short's picture?

11 A. The operating systems would be in the proxy
12 server that Dr. Short talked about.

13 Q. Would that be on the user computer?

14 A. Yes, sir.

15 Q. What computer would be running the client
16 machine, these client applications?

17 A. That would be the user's laptop computer that
18 was shown in the animation.

19 Q. Then last, the servers like Live Communication
20 Server and Office Communication Server, where would
21 those be running?

22 A. Those would be back at Acme.com.

23 Q. Now, about the '135 patent, we heard that it
24 related to a system where you have a DNF proxy server
25 that creates a virtual private network for the user.

1 Did you find that in these Microsoft products?

2 A. Yes, sir, I did.

3 Q. Can you show us that?

4 A. Yes, I can.

5 Q. Now, I understand that you worked with graphic
6 slides taken from Dr. Short's presentation.

7 A. Yes. This is based on Dr. Short's
8 presentation, and I modified it for this presentation.

9 Q. Explain to us what would be here (indicates).

10 A. What we see up here is an application up at
11 the top, and that would be, for example, Office
12 Communicator 2007 running on the user's computer.

13 Q. Okay. And now here we have the DNS proxy as
14 Dr. Short described?

15 A. That would be the products I mentioned, and
16 within those operating system products Windows RTC
17 interfaces.

18 Q. I assume we're going to talk more about that
19 in a minute.

20 A. Yes, sir.

21 Q. All right. And then what did you find for the
22 gatekeeper?

23 A. That would be Office Communications Server,
24 those products on the right-hand side of the previous
25 screen.

1 Q. Now, there is a faint domain name we can see
2 sort of hanging back there behind the scenes. I notice
3 you didn't point to that for anything.

4 Why is that?

5 A. That's not part of the requirements of the
6 claim.

7 Q. Well, looking at the slide here, when
8 Microsoft's products are used in this manner, did you
9 conclude that that infringes the patent?

10 A. Yes. I concluded that Microsoft's '135
11 products infringe the '135 patent.

12 Q. Now, about the '180 patent, can we talk about
13 that for a second?

14 A. Yes, sir.

15 Q. Okay. Dr. Jones, what products are we looking
16 at for the '180 patent?

17 A. These are those same two operating systems
18 that I saw before: Windows XP and Windows Vista.

19 Q. And just so everybody is clear, XP and Vista
20 are both operating systems; is that fair?

21 A. Yes, sir.

22 Q. Is Vista a later generation of XP?

23 A. Yes, it is.

24 Q. All right. Now, can we go to the scene that
25 Dr. Short showed us for the '180 patent? And explain to

1 us what we're going to see.

2 A. Okay. What we see, again, is an application
3 running on that user computer, and we see a secure
4 domain name, john.acme.scom. And on that computer, we
5 have running what are called the Windows PeerNet
6 interfaces.

7 Q. Okay. And now, is there a secure domain name
8 service in the Microsoft '180 products?

9 A. Yes, sir. It's PeerNet resolution protocol,
10 and that's the DNS -- I'm sorry -- the secure domain
11 name service.

12 Q. Thank you.

13 What did you conclude when the Peer name (sic)
14 resolution protocol was used in this fashion.

15 A. I concluded that the Microsoft '180 products
16 infringed the '180 patent.

17 Q. Thank you, Professor Jones.

18 Now, next, I think, in our -- in our road map
19 here, we've got to talk about the investigation that you
20 performed. I'd like to start looking at that.

21 A. Okay.

22 Q. Is it reasonable to assume that you have, at
23 this point, a detailed understanding of the patents that
24 are in this lawsuit?

25 A. Yes, sir. I've studied the patents carefully,

1 as well as the file history for those patents and the
2 claim constructions that Judge Davis has given us to
3 use.

4 Q. Okay. Can you introduce us to some of the
5 first few pages of the -- of the patent?

6 A. Yes. I'd like to do -- this is Page 1 of the
7 '135 patent, and in the upper right-hand corner is the
8 full number, 6,502,135, and that's the '135 for short.

9 Q. Okay. And what do we see under that?

10 A. That's the date that the Patent Office awarded
11 the patent to the inventors, December 31st, 2002.

12 Q. And I believe Judge Davis gave us a pretty
13 good introduction to this, so we might kind of run
14 through these -- these quick parts here.

15 A. Yes, sir.

16 Q. The title?

17 A. There's the title, and then the list of the
18 inventors underneath, and we see the two familiar names,
19 Mr. Munger and Dr. Short.

20 Q. Munger and Dr. Short.

21 A. Then the company to which the patent was
22 assigned, who they were working for. That's SAIC.

23 Q. Okay.

24 A. And then it was filed on February 15th, 2000.

25 Q. Thank you.

1 MR. CALDWELL: Mr. Moreno, can I get you
2 to pull up Plaintiff's Exhibit 1?

3 Q. (By Mr. Caldwell) Now, there's some other
4 information on this page that I'd like to pull out here.

5 MR. CALDWELL: If you could, Mr. Moreno.
6 It's below that, actually. There you go. And now also
7 in the upper right-hand corner.

8 Q. (By Mr. Caldwell) We see references cited.
9 What is all this information we're seeing right here,
10 Professor Jones?

11 A. These are patents and other publications that
12 the Patent Office considered when determining whether or
13 not to issue this patent.

14 MR. CALDWELL: Can we go to the next
15 page, Mr. Moreno?

16 Q. (By Mr. Caldwell) And what are all these
17 documents right here, Professor Jones?

18 A. Well, this is a list continued from the front
19 page of more patents and more publications that were
20 considered by the Patent Office when they're determining
21 whether to issue this patent.

22 MR. CALDWELL: Now, can we flip to,
23 basically, Page 32 of the document?

24 Q. (By Mr. Caldwell) Now, I see Figure 26 here.
25 What is Figure 26?

1 A. This is one of the figures in the section that
2 Judge Davis described earlier. This is a figure that --
3 or a block diagram describing some of the parts of the
4 inventions and some of the ways that those parts can
5 talk.

6 Q. What is a block diagram?

7 A. It's a high-level description or drawing that
8 engineers use to show some of the parts of a system.

9 Q. Now, if all you do is look at this figure,
10 does that tell us what all the various components are
11 and exactly what they send back and forth?

12 A. No, sir. This is just a high-level view. We
13 need to look into the text of the patent, the detailed
14 description, to get more information on this.

15 Q. And I believe the jurors have a copy of the
16 patent with them in their binder if they want to follow
17 along, but my understanding is, there are dozens of
18 columns of text?

19 A. Yes, sir, many in this patent.

20 MR. CALDWELL: Can we flip to Page 39,
21 Mr. Moreno?

22 Q. (By Mr. Caldwell) What are we seeing right
23 here?

24 A. Well, this is the beginning of the -- of the
25 detailed description, and this is the part called the

1 background of the invention when the inventors will talk
2 about sort of the state of the art at the time.

3 Then that's followed in the lower right by the
4 summary of the invention where the inventors give a
5 brief summary of what they have invented.

6 Q. You said that's a brief summary, so I assume
7 that there must be something that's a little bit less
8 brief that describes the invention.

9 A. Yes, sir. They're going to have a -- further
10 on, there will be a much more detailed description.

11 MR. CALDWELL: Can we skip ahead to
12 Page 57, Mr. Moreno?

13 And now, there's an element I want you to
14 highlight there in the upper left corner.

15 Q. (By Mr. Caldwell) What do we see here in
16 Column 37 of the patent?

17 A. This is a section entitled Use of a DNS Proxy
18 to Transparently Create Virtual Private Networks. This
19 is where the inventors go into more detail on examples
20 of how to build and use their invention.

21 Q. And does this document refer back to the
22 figure that you just showed us?

23 A. Yes, it does.

24 Q. All right. But, Dr. Jones, is this the
25 portion of the patent that we look to in order to

1 determine if the patent is infringed?

2 A. No, sir. This is just where the inventors are
3 teaching about the invention and giving some -- some
4 examples of how to use it. We would turn to the claims
5 to determine whether or not the patent is infringed.

6 Q. Well, here in the detailed description, all
7 this column after column after column, are those the
8 only ways to practice the invention?

9 A. No, sir. They're just examples of how to
10 practice the invention.

11 Q. Well, then let's turn to those claims that you
12 referred to.

13 MR. CALDWELL: Can we go to Page 62,
14 Mr. Moreno? And I want to pull out Claim 1 here.

15 Q. (By Mr. Caldwell) All right. Tell us what
16 we're seeing here.

17 A. Well, this is the beginning of the claims of
18 the '135 patent starting underneath the highlighted
19 portion, and this is the first claim of that patent,
20 Claim 1.

21 Q. With regard to this patent, the '135 and the
22 '180 patent, is it fair to say that they contain very
23 technical information?

24 A. Yes, sir, it is.

25 Q. So who is the target audience of this patent?

1 A. Well, the target audience for this patent is
2 someone -- an engineer who would want to construct this
3 invention or use this invention.

4 Q. I've got a lot of family members who are -- I
5 think are smart anyways, and they -- but they're just
6 really not into computers. Would this patent be written
7 to teach them how to use the invention?

8 A. No, sir. Its purpose -- it's written for
9 people who are termed ordinary skill of the art; people
10 who would be using the invention or building it in one
11 way or another.

12 Q. Okay. And so who is that -- who is that
13 person, that person of ordinary skill in the art, for
14 these patents?

15 A. In this patent, it would be someone who has a
16 master's degree in computer science or computer
17 engineering, a couple of additional years in -- in
18 computer networking, as well as computer security.

19 Q. So if that's the person this is -- this patent
20 is targeted towards, how do you use that concept when
21 you review the patent and analyze infringement?

22 A. Well, when I read the patent for infringement,
23 I put myself in the shoes of that person of ordinary
24 skill in the art at the time of the filing of the
25 patent, approximately the year 2000.

1 Q. As opposed to, say, the mindset of just sort
2 of a layperson that doesn't work in the computer
3 industry?

4 A. That's correct, sir.

5 Q. Now, you also mentioned the prosecution
6 history of the patents. What is that?

7 A. The prosecution history is a record of what
8 the Patent Office considered or how it made its
9 considerations from the time the application was filed
10 until the patent was issued. And it also -- it includes
11 communications between the Patent Office and the
12 inventors.

13 Q. So, Dr. Jones, have you reviewed that
14 prosecution history?

15 A. Yes, sir, I have.

16 Q. Is this it (indicates)?

17 A. Yes, it is.

18 Q. I want to talk to you in a little bit more
19 detail about the claims that you mentioned.

20 How do the claims of the patent help us
21 determine if Microsoft is infringing VirnetX's patent?

22 A. The claims of the patent determine the
23 boundaries of the property rights that the Patent Office
24 have granted to the inventors.

25 Q. Okay. I want to get --

1 MR. CALDWELL: Your Honor, if I may move
2 about here, I'd like to pull out a foam board of
3 Claim 1.

4 THE COURT: Yes, you may.

5 MR. CALDWELL: Thank you.

6 Q. (By Mr. Caldwell) Now, I know the jury may not
7 be able to read every word of this, but can you see it
8 at least enough to see the pieces.

9 So I know that the jury has the patents in
10 their -- in their notebook, if they wish to follow
11 along, but where -- where would they find Claim 1 in the
12 '135 patent?

13 A. This on the last two or three pages of the
14 '135 patent.

15 Q. All right. So if we have the claim, Claim 1,
16 how do we know what is in or out of the property right
17 that has been awarded to VirnetX by the United States
18 government?

19 A. Well, we have to look at each and every
20 element of these claims and compare them to what we're
21 looking at to determine whether or not something is in
22 or out those -- those property rights.

23 Q. I mean, I -- if somebody buys a plot of land,
24 there's normally a deed or a description of the property
25 that says: Here are the lines.

1 A. Yes, sir.

2 Q. Is that analogous to what we're seeing here?

3 A. Yes, sir. You can essentially think of this
4 as the lines, the boundary lines of the property. The
5 elements of this -- this claim define those lines.

6 Q. Now, Professor Jones, has Judge Davis also
7 provided some guidance about the meaning of words that
8 appear in this claim?

9 A. Yes. Judge Davis has provided definitions for
10 several of the terms in the '135 patent, as well as the
11 '180.

12 Q. Now, I recall this, I think, came up in jury
13 selection. It might be the thing that's in the very
14 front of your binder, if I remember correctly, the claim
15 construction with the terms, in case anybody is curious.
16 So how do those definitions from Judge Davis fit into
17 your analysis?

18 A. Well, everywhere I see those words used, I
19 used Judge Davis' definition for those words.

20 Q. Okay. Well, let's start here in Claim 1.
21 Claim 1 starts with a method of transparently
22 creating a virtual private network.

23 Is virtual private network one of those words
24 that Judge Davis has defined?

25 A. Yes, sir, it is.

1 Q. Can you see that on the screen?

2 A. Yes.

3 Q. We have the claim construction chart.

4 A. And then blowing up, virtual private network
5 or VPN is a network of computers which privately
6 communicate with each other by encrypting traffic on
7 insecure communication paths between the computers.

8 Q. Now, have you used that definition when you
9 evaluate the patents?

10 A. Yes. Everywhere I see that in the claims, I
11 used the definition.

12 Q. Have you done that for all of the terms on
13 Judge Davis' chart?

14 A. Yes, sir.

15 Q. Have you done that for all of your opinions?

16 A. Yes, sir.

17 Q. Professor Jones, so if you have the claim,
18 you have Judge Davis' definitions, and then you know
19 about how Microsoft's products work, which we'll get to
20 in a minute, how do you determine if Microsoft's
21 products infringe the claim?

22 A. Well, I have to compare those products to each
23 of the elements of the claims and determine whether each
24 element is in Microsoft's products. Every element has
25 to be present for there to be infringement.

1 Q. Now, I see these three basic chunks of this
2 claim, three basic pieces. Must Microsoft software have
3 only those three pieces and nothing more in order to
4 infringe?

5 A. No, sir. They can have more and still
6 infringe, but they have to have every element.

7 Q. Okay. Now, Professor Jones, if we're going
8 through these elements and we see something in an
9 element that isn't exactly the same in Microsoft's
10 product, does that mean that there's no infringement?

11 A. No, sir. If there's just an insubstantial
12 difference between the product and the claim, the
13 claim -- or the product still infringes.

14 Q. Does that concept have a name?

15 A. Yes, it does. It's one of the two ways to
16 infringe that Judge Davis mentioned called the Doctrine
17 of Equivalents.

18 Q. All right. Thank you.

19 That helps us understand better how you
20 studied the patents. Now, how did you come to learn
21 about how Microsoft's products operate?

22 A. Well, I started by studying their manuals and
23 user guides and other information that they put on their
24 website.

25 I looked at deposition testimony from

1 Microsoft engineers. I looked at source code from
2 Microsoft. I looked at technical documents from
3 Microsoft. And I also operated the Microsoft products.

4 Q. Now, you mentioned technical documents. I
5 want to follow up on that just briefly. I can go down
6 to Barnes & Noble -- I think it's down on Broadway
7 across from the -- across from the mall -- and I can get
8 books, gigantic, fat books, like Windows Vista for
9 dummies, something like that.

10 Are those the kind of technical documents
11 you're talking about?

12 A. No, sir. Those documents might -- that you're
13 talking about there might be something more like a user
14 guide. What I'm talking about are internal confidential
15 Microsoft documents.

16 Q. So if they're confidential internal Microsoft
17 documents, how were you able to get them and study them?

18 A. Well, as part of this case, Judge Davis put
19 into place orders that allowed me access to those
20 documents.

21 Q. And did you mention software source code?

22 A. Yes, sir, I did.

23 Q. What is source code?

24 A. Well, source code is the language or the way
25 of describing a program. For example, a computer

1 programmer would write source code in a programming
2 language, and that would ultimately become an
3 application or software.

4 Q. I'm not sure I'm clever enough to work the
5 document camera. There we go.

6 Now, I won't -- I don't really intend to
7 belabor this, Dr. Jones, but this is a portion of the
8 source code, fair?

9 A. Yes, sir.

10 Q. And I see what to me looks like a whole bunch
11 of gibberish with pound sign, include, alt engine dot H,
12 and down at the bottom slash, slash, state SIP off,
13 something.

14 What are we looking at here?

15 A. We're looking at the source code, and this is
16 written in a programming language, and this language
17 would ultimately be turned into something that would --
18 an application or an execute -- a program that would
19 execute on a computer.

20 Q. And do you have training in interpreting this
21 sort of source code?

22 A. Well, yes, sir. In computer science, this
23 is -- we write source code, and this is something I read
24 and write on a daily basis.

25 Q. Thank you, Dr. Jones.

1 Have you looked at a large amount of source
2 code for this case?

3 A. Yes, sir. Thousands of pages of source code.

4 Q. Can we rest comfortably knowing that you're
5 not going to walk us page by page through thousands of
6 pages of source code?

7 A. Yes, sir. We won't be spending a lot of time
8 looking at source code.

9 Q. Have you taken it into account, though, in
10 your opinions?

11 A. Oh, absolutely. My opinions are based on
12 looking at the source code.

13 Q. Well, if you had the technical documents, why
14 was the source code for their software helpful?

15 A. Well, the source code is sort of the ultimate
16 way to determine what's going on in the programs, and I
17 used it to confirm the understandings I reached from the
18 documents I was reading.

19 Q. Now, Professor Jones, you also mentioned
20 deposition testimony.

21 A. Yes, sir.

22 Q. Tell us what that is.

23 A. Well, Microsoft engineers were under oath and
24 were asked a series -- questions about how the Microsoft
25 products operated and how they were designed.

1 Q. All right. So with all your information from
2 your study of the patents and all the information that
3 you got on Microsoft, what did you do with all of that
4 information that you analyzed?

5 A. Well, I took that information, and I studied
6 it and formed opinions. I then wrote those up in some
7 long reports that contained the opinions, as well as the
8 reasons for those opinions and evidence for them.

9 Q. Can you show us -- give us a -- just hold up
10 your report, so we see it. I think it's actually the
11 other pile.

12 A. Yeah. They're actually these -- these right
13 here (indicates).

14 Q. And those are double-sided, Professor Jones?

15 A. Yes, sir, they are.

16 Q. Have copies of your reports been provided to
17 Microsoft so they can see exactly what your opinions
18 are?

19 A. Yes, sir.

20 Q. All right. Now, the next issue that we need
21 to talk about, according to our road map, is discussing
22 the invention of the '135 patent. And we've already had
23 some introduction to that, so I'll try to keep it brief.
24 But you told us that we were going to need to look at
25 the claims of the patent in order to determine if

1 there's infringement.

2 A. Yes, sir.

3 Q. How many claims do we need to look at in order
4 to know whether or not the patent is infringed?

5 A. To know that, we only have to look at one
6 claim. If one claim is infringed, then the patent is
7 infringed.

8 Q. Well, trusty Claim 1 is still here on the
9 easel, so we'll just start with that one. I'd like to
10 walk through briefly how this claim establishes a
11 property right for the invention that Dr. Short taught
12 us about.

13 Can you do that for us?

14 A. Yes, sir. All right.

15 Q. Now, we've -- we've seen this -- we've seen
16 this animation before, but now I want to walk through it
17 with the claims and see where everything fits in.

18 A. All right.

19 Q. The first thing we have in this patent in the
20 claim is the introduction sometimes known as the
21 preamble.

22 It says: A method of transparently creating a
23 virtual private network between a client computer and a
24 target computer comprising the following steps.

25 Now, is this what Dr. Short showed us:

1 Transparently creating a virtual private network?

2 A. Yes, sir. He's shown a virtual private
3 network being established between the client computer in
4 the upper left and the computers in acme.com at the
5 lower right.

6 Q. Now, Professor Jones, the first step of that
7 was generating from a client computer a domain name
8 service request that requests an IP address
9 corresponding to a domain name associated with the
10 target computer.

11 Now, where is that in the presentation that
12 Dr. Short provided?

13 A. That happens in the -- when the application
14 takes its domain name, www.acme.com, and that goes to
15 the DNS proxy server.

16 Q. Now, the next step that we see in the claim is
17 determining whether the DNS request transmitted in step
18 one is requesting access to a secure website.

19 Where is that in Dr. Short's presentation?

20 A. That happens in the DNS proxy server where the
21 proxy server is looking to determine whether or not the
22 DNS request is for a secure website.

23 Q. All right. And now, the last step says:
24 Recognize to determining that the DNS request in step
25 two is requesting access to a secure target website

1 automatically initiating the VPN between the client
2 computer and the target computer.

3 What is happening in that step?

4 A. In that step, the DNS proxy server has
5 determined that a VPN should be set up, and it's sending
6 a request to the gatekeeper to start the process of
7 setting up the VPN.

8 Q. And so then the gatekeeper receives it, and
9 what happens?

10 A. At that point, the VPN will be created.

11 Q. And I note this claim uses the word website.

12 A. Yes, sir.

13 Q. I'd like to talk to you about website for a
14 second.

15 Yesterday during -- during opening,
16 Microsoft's lawyers seemed to -- I don't think your name
17 was used by name, but he seemed to attack your opinions
18 on the term website by saying: It's important from our
19 point of view that you understand their theory, meaning
20 VirnetX's theory, almost everything is a website, even a
21 phone.

22 Even a phone can be a website under their
23 definition or an equivalent to a website, and I think
24 that sort of argument tells you exactly what their
25 position is.

1 Do you recall that?

2 A. Yes, sir, I do.

3 Q. Now, first of all, did Mr. Powers' statement
4 to the jury that almost everything is a website
5 accurately characterize VirnetX's position in this trial
6 on what constitutes a website?

7 A. No, sir, it doesn't.

8 Q. Why not?

9 A. Well, the statements that were being referred
10 to there were in regard to opinions given before we had
11 a definition from the Judge as to what a website is and
12 what we were to use in this case.

13 Q. Okay. And now you've gotten the definition
14 from Judge Davis about website?

15 A. Yes, sir.

16 Q. And what are you doing with those definitions
17 now that we know the Court's definitions of terms in the
18 patent?

19 A. Well, that's the definition that I'm applying.

20 Q. Well, I'm still curious there, Dr. Jones.
21 Microsoft's lawyers seemed to sort of make fun of the
22 fact that even a cell phone can be a website. And I
23 recall him holding up a phone, if memory serves, saying:
24 A phone can be a website.

25 I snuck your phone into the Court today, and

1 my -- it's turned off, but I snuck your phone in. Can
2 this phone -- this iPhone that you can go buy at Best
3 Buy or wherever else, can this be a website?

4 A. Absolutely. I have a website on that phone.
5 You can have web servers and websites in lots of
6 devices. You can put them in printers. They're all
7 over the place. It's very simple at this point to put a
8 small web server in very small devices.

9 These cell phones and then other devices now
10 have processors in them that are almost like computers
11 20 years ago.

12 Q. Now, Dr. Jones, notwithstanding Microsoft's
13 argument on that point, are we even talking about cell
14 phones in this case?

15 A. No, sir.

16 Q. Well, let's get to what we are talking about.
17 Next on our road map is, we want to talk about the
18 accused products, the Microsoft '135 products, and how
19 they -- how they operate.

20 Can you put those products back up?

21 A. Yes, I can.

22 Q. Thank you.

23 Now, we've heard Microsoft -- we've heard the
24 '135 patent described as relating to a DNS-triggered
25 virtual private network.

1 Do any of these Microsoft products include a
2 DNS-triggered virtual private network?

3 A. Yes. That's what these products do, sir.

4 Q. Do any of these products have the DNS proxy
5 service?

6 A. Yes. The DNS proxy server is in the operating
7 system products, Windows XP and Windows Vista.

8 Q. Now, what part of Microsoft Windows XP and
9 Vista has a DNS proxy server?

10 A. The -- two things called -- and I apologize
11 for more acronyms, but the RTC API and the UCC API.

12 Q. Okay. And that's -- I guess that's nine --
13 nine new letters we add to our alphabet soup. Can you
14 break that down for us, what the RTC APIs and UCC APIs
15 are?

16 A. Yes. Let me put up a slide for that.
17 RTC is real-time communications. And then the next one,
18 UCC is unified communications client. And then these
19 are both APIs, which are application programming
20 interfaces.

21 Q. So the two that are listed on the left side,
22 RTC, real-time communications, and unified
23 communications client, is there a relationship between
24 those two?

25 A. Yes, sir. The unified communications is a new

1 version of the real-time communications.

2 Q. Now, Professor Jones, is there a name by which
3 we can refer to all of these so we don't have the -- all
4 the letters, something that's not quite as much of a
5 mouthful?

6 A. Yes, sir. I like to use the term RTC
7 interfaces.

8 Q. Now, are these RTC interfaces standalone
9 software products you buy from Microsoft?

10 A. No. They're part of the Windows XP and Vista
11 operating systems.

12 Q. Do they come with Windows XP and Vista?

13 A. Well, they're built into Windows XP. They're
14 not preinstalled in Windows Vista.

15 Q. So how do the interfaces get installed into
16 Windows Vista then?

17 A. Well, a person could download them from the
18 internet, or they could come with an application that's
19 using them and be installed on the user's computer.

20 Q. And when you showed us all the Microsoft
21 products that we were talking about, there were user
22 applications in the lower left, correct?

23 A. Yes, sir.

24 Q. Do any of those come with the RTC interfaces?

25 A. Yes, they do.

1 Q. Is that the Office Communicator products?

2 A. Yes. The Office Communicator products come
3 with them.

4 Q. All right. Well, let's just be clear, though,
5 if you say that the RTC interfaces do not come
6 preinstalled in Vista, why is it you say that they are a
7 part of Vista?

8 A. Well, first, the RTC API, no one disagrees
9 that that's part of Windows XP.

10 Q. The older one.

11 A. And this newer one called the UCC API is just
12 a newer version of those RT -- or the RTC API.

13 Second, these APIs, their purpose is to
14 enhance the functionality of Windows. So they're
15 enhancing the functionality of Windows Vista and are a
16 free product for that.

17 Q. All right. Now, the right-hand side of that
18 last slide talked about application programming
19 interfaces --

20 A. Yes, sir.

21 Q. -- sometimes called APIs.

22 A. Yes, sir.

23 Q. What do APIs do?

24 A. Well, an API is a way that an application or a
25 program running on a computer could basically send

1 requests to the operating system to ask it to do things,
2 a way to communicate with the operating system to
3 perform tasks for it.

4 Q. So can you give us an example of an
5 application programming interface?

6 A. Yes, sir. Let's say you had a word processing
7 program running on your computer, and you want to open a
8 file. And that program could use an application program
9 interface to ask the operating system to open a file for
10 it.

11 Q. All right. So why is it a good idea to have
12 the word processing program, like Microsoft Word or Word
13 Perfect, something like that, ask the operating system,
14 Windows, to open the file on behalf of the word
15 processor?

16 A. Well, basically, it makes it easier to write
17 these applications. For example, lots of programs need
18 to open files. We talked about the word processing
19 program needing to open a file or a photograph-viewing
20 program where I want to look at pictures of my kids,
21 that needs to open a file.

22 Lots of programs do that. And instead of
23 having that functionality in every single program, you
24 can have that functionality in one place, in the
25 operating system.

1 Q. Can you demonstrate that for us?

2 A. Yes, sir.

3 So here's the -- what I've described as each
4 of these programs, a word processor, a spreadsheet
5 program, say for doing taxes, and a picture-viewing
6 program, we could have each one of them having the code
7 to open files, or to make it simpler, we could have that
8 code in the operating system, and the programs can use
9 an API to access that underlying functionality for the
10 API.

11 Q. So is it important to have these kind of
12 interfaces in the operating system?

13 A. Yes, sir. It makes it much easier to develop
14 programs. And basically, when it makes it easier to
15 develop programs, that makes an operating system
16 platform much more attractive to developers to write new
17 programs. It's really the new programs that are the
18 reason that people buy operating systems.

19 Q. So while we're discussing the Windows
20 operating system, does Microsoft Windows software get
21 updated from time to time?

22 A. Yes, sir, it does.

23 Q. And does that apply to the RTC interfaces as
24 well?

25 A. Yes, sir. They receive several updates over

1 the course of time, including this transition to the UCC
2 API.

3 Q. So what versions of the RTC or UCC interfaces
4 are -- have you investigated and are pertinent to your
5 opinions?

6 A. Well, I've looked at the Versions 1.2 and
7 later of the RTC API, as well as the -- all versions of
8 the UCC API.

9 Q. Do companies write programs to take advantage
10 of these RTC interfaces?

11 A. Microsoft does. They have written those
12 applications we saw on the lower left side, such as
13 Office Communicator.

14 Q. What is Office Communicator used for?

15 A. It's used for large groups of people to
16 communicate with one another. For example, employees in
17 a large company send back and forth things like instant
18 messages and get presence information on other
19 employees.

20 Q. Can you give us examples of some of the
21 features that are offered by Office Communicator?

22 A. Yes, sir. Let me show you -- this is a screen
23 shot that I prepared.

24 Q. So you had a computer where you set it up to
25 test the software?

1 A. Yes. I set up a few computers running Office
2 Communicator and Office Communication Server, and this
3 is essentially a picture I took of the operation of
4 Office Communicator.

5 Q. All right. Now, I thought you mentioned --
6 well, can you show us what we're seeing on the screen?

7 I'm sorry.

8 A. Yes, sir.

9 On the left side, I want to show you a bit of
10 the -- what's called that presence information.

11 So you see a list of names there, and one of
12 those, the first one, Rebecca Lazlow, is showing as
13 being available. That means that you could communicate
14 with that person at this point, and the other people are
15 offline.

16 Q. And then what do we see on the right-hand
17 side?

18 A. On the right side are an example of some
19 instant messages I sent back and forth between the
20 computers. For example, the first one from Andy Jacobs
21 is: How are your sales calls going today?

22 Q. Now, were these sort of like the kind of
23 messages we saw in Dr. Short's example where they sent a
24 message saying, Cut our prices today, or something like
25 that?

1 A. Yes, sir, they are.

2 Q. Now, does this messaging that you're showing
3 us here in Office Communicator take place over a virtual
4 private network in Microsoft's software?

5 A. It does when those products are -- operate in
6 the default mode, yes, sir.

7 Q. Now, what is the significance of using a
8 virtual private network for those communications?

9 A. Well, the virtual private network allows those
10 communications to be protected from someone trying to
11 snoop them, for example, on the internet.

12 Q. So if there's this presence information and
13 instant messaging and whatnot, how does Office
14 Communicator and the related products keep all that
15 straight, all that information straight inside the
16 virtual private network?

17 A. It uses something called the session
18 initiation protocol or SIP for short.

19 Q. So what is a protocol?

20 A. A protocol in a network is an agreement
21 between computers of how they're going to talk to one
22 another. It's essentially a precise description of
23 what's going to go back and forth, because computers
24 are -- they're very literal. They take what you mean.
25 So that protocol needs to be very precise.

1 Q. So they generally indicate, for instance, who
2 sent the message?

3 A. Yes, sir. The SIP protocol would indicate who
4 sent the message and who received it.

5 Q. Protocols in general are going to -- are they
6 going to generally indicate -- I guess networking
7 protocols, are they generally going to indicate that
8 sort of information?

9 A. Yes, sir. Many of them will.

10 Q. We've heard about internet protocol numbers,
11 some of those strings of numbers that are used for
12 addressing. Are internet protocol addresses the only
13 kind of addresses you can use inside those VPNs?

14 A. No, sir. You can use these what are called
15 SIP addresses inside the SIP protocol, is one example of
16 another type of address.

17 Q. Now, sorry for the interruption about
18 protocols, but can you please continue explaining how
19 this Microsoft product forms a virtual private network?

20 A. Yes, sir, if I could show an example here.

21 Let me start --

22 Q. That's -- I noticed the title on this one
23 says: Microsoft Office Communicator Unsecure Mode. So
24 the products can be set up in a non-VPN mode?

25 A. Yes, sir. The user could configure the system

1 differently or could reconfigure the system in a way
2 that would be not secure, if they chose to.

3 Q. So show us what we -- what we have here.

4 A. Okay. This is starting off with Dr. Short's
5 example of sending a message. And for example, Cut our
6 prices today, that could be put inside a sent message
7 with a source and destination address.

8 Q. So instead of those numbers, like the IP
9 address kind of addresses, we have a different form of
10 address used with the SIP protocol?

11 A. Yes, sir.

12 Q. All right. What do we see next?

13 A. Next, that would be put into an IP packet, for
14 example, with a source and destination address, and that
15 would be sent over the internet.

16 Q. Okay. And in this instance, what happens if
17 our trusty hacker that we've used a few times intercepts
18 our message?

19 A. Well, at this point, the hacker would be able
20 to read everything in that message, including the cut
21 our prices today, as well as the source and destination
22 SIP addresses.

23 Q. Okay. Now, is there a secure mode throughout
24 this communicator?

25 A. Yes, sir, there is. We basically start off

1 again with the cut our prices today message --

2 Q. Okay.

3 A. -- and put that into the SIP package just as
4 before. Now, this time the difference is, we're going
5 to encrypt that, put it in this -- basically, at that
6 point, it's not readable.

7 Q. Okay.

8 A. Put that into that IP packet and send it over
9 the internet.

10 Q. I see.

11 And now, Dr. Jones, what happens if our hacker
12 intercepts this message?

13 A. Well, if the hacker intercepts this message,
14 the hacker won't be able to make any sense of what's
15 inside there. That -- that -- all those scrambled
16 characters, they will not be able to figure out what the
17 message that's being sent is or look at those addresses.

18 Q. Is this communication private?

19 A. Yes, sir, it is.

20 Q. Now, if Office Communicator is in this mode,
21 do you believe that it infringes?

22 A. Yes, I do. I believe it infringes the '135
23 patent.

24 Q. And so how is it that you know that Windows XP
25 and Vista and the other products -- the other Microsoft

1 '135 products operate like this?

2 A. Well, I know this from Microsoft's documents,
3 but I also know it from experiments that I've done
4 myself.

5 Q. So, I mean, we've looked at a lot of things
6 through animations, because that definitely helps, I
7 know, me understand what's going on better, but I want
8 to get to some real -- sort of the hard evidence of what
9 a hacker could see.

10 So I'm going to ask you to play hacker for us
11 a little bit today. Do you have a way of showing us
12 exactly what a hacker might see if they intercepted one
13 of those messages going across the network?

14 A. Yes, sir. I can use a tool I downloaded from
15 the internet.

16 Q. What's the name of that tool?

17 A. That tool is called Wireshark.

18 Q. Wireshark.

19 Can you tell us, first of all, what Wireshark
20 is?

21 A. Wireshark is a program that can collect all
22 the network traffic on a particular network link and
23 store it and allow it to -- and record it.

24 Q. Did you save up a whole bunch of money to buy
25 Wireshark?

1 A. No, sir. It's free.

2 Q. And so this could be just a bored teenager who
3 wants to see what's -- what's happening on the network?

4 A. Yes, sir, or the students in my classes.

5 Q. Okay. So show us a screen of what Wireshark
6 looks like. I'm fairly confident I don't understand all
7 of the stuff that's on here, so can you show us what we
8 are seeing on the screen?

9 A. Yes, sir. This is going to be a collection of
10 the packets that are going back and forth, and I
11 highlighted a few places in there to explain what's
12 going on.

13 Q. Okay. So tell us what we're seeing.

14 A. All right. Well, I blew those up a little
15 bit. In that packet, we're seeing the two outer IP
16 addresses; for example, 192.168.0.81; and then some of
17 the data within that packet is also shown there; for
18 example, AJ@Fabrikam.com.

19 Q. Okay. Now, I'm going to try this little touch
20 screen wizardry here, and I just see a bunch of seeming
21 chaos down here. What is all that?

22 A. Well, that's just data that's sent in that
23 packet. Some of it is readable by humans, and other
24 parts are not.

25 Q. So does the Wireshark program translate it to

1 make it a little bit better?

2 A. Yes. It understands the -- how the packets
3 are formatted and then can present that in a way that's
4 a little easier to analyze.

5 Q. Now, Professor Jones, I know I recognize some
6 words here. This is from some of those log-in screens
7 you showed us. Excuse my really, really awful oval, but
8 do you see where it's @Fabrikam.com?

9 A. Yes, sir.

10 Q. Now, am I supposed to be able to read that on
11 this Wireshark?

12 A. Yes, you are. This is -- this packet isn't
13 part of the VPN. This is other traffic that I
14 collected. I'm collecting all the network traffic on
15 the system.

16 Q. I see. Okay.

17 And you gave us an example earlier about how
18 Office Communicator can be in the unsecure mode or in
19 the secure mode.

20 Can you walk us through what you would see on
21 Wireshark if Office Communicator is reconfigured to be
22 in that unsecure mode?

23 A. Yes, sir.

24 So this is another screen shot of when I used
25 Wireshark, and I was collecting this data when

1 Communicator was operating in the unsecure mode, and I'd
2 like to show you a little bit of what I captured there.

3 Q. Okay.

4 A. So the first part I captured in this unsecure
5 mode were the source and destination addresses.

6 Q. Now, you mentioned SIP addresses earlier. Is
7 that what we're seeing?

8 A. Yes, sir.

9 Q. Okay. What else can you see?

10 A. Well, I can also see the message itself, that
11 how is your work going message that we saw earlier, that
12 shows up in plain and readable.

13 Q. This is the example of the hacker who sees cut
14 our prices today, for example, or whatever it may be.

15 A. Yes, sir, whatever message is going across.

16 Q. All right. Now, what else do you see in the
17 unsecure mode.

18 A. Well, so I can also -- well, let me show you
19 where these fit into the packet --

20 Q. Okay.

21 A. -- then show you what else I can see.

22 Q. Fair enough.

23 A. So I can put in the two addresses, so I'll
24 show you where those fit. Remember, this SIP packet
25 sits inside another packet to go over the internet, and

1 that other packet is the IP packet.

2 Q. Right.

3 A. Okay.

4 Q. So what are we seeing here, Dr. Jones?

5 A. Well, those are the two IP addresses, the
6 source and destination addresses that go in that outer
7 packet, and I can see those as well.

8 Q. Okay. Thank you.

9 Now, I know this is sort of stylized, and
10 there looks to be a bunch of other information on the
11 screen, but can you explain to us why we're sort of
12 simplifying this a little bit and what other kinds of
13 information might be there?

14 A. Well, there would be information about the
15 underlying network sending this, ethernet. There's all
16 kinds of things in these packets that -- that I'm not
17 showing.

18 Q. You're not -- you're not trying to suggest to
19 the jury that there's nothing more than what you've put
20 in the little add-on graphic or anything of that nature,
21 are you?

22 A. No, sir. No, sir, there's not. And I put all
23 this information and made it available to Microsoft as
24 well.

25 Q. All right. Thank you.

1 Now, can you compare this to what we would see
2 in secure mode?

3 A. So this is a screen shot of Wireshark that I
4 captured when operating Office Communicator in that
5 secure mode.

6 Q. Can we pop up that sort of stylized packet at
7 the bottom, and let's see what we can see.

8 Can we see these outer packet addresses, the
9 source and destination?

10 A. Yes, sir, we can still see those. In fact,
11 we'll always see those.

12 Q. Okay. Why do you always see those?

13 A. Those are the addresses that are used to
14 transport or to direct this packet over the internet.
15 As Dr. Short showed, the packet making its way through
16 all the computers on the internet, these are the
17 addresses that will -- that will help do that.

18 Q. I see.

19 And so just because you can see the source and
20 destination, does that mean it's not a virtual private
21 network?

22 A. No, sir. That's not the test that we use. We
23 apply the Judge's construction.

24 Q. I see.

25 Now, looking at the remaining portion of the

1 information here, what can we see?

2 A. Well, let me show you. We see this indicator
3 that says this is a SIP TLS connection. And that TLS --
4 I think we heard this acronym before, but it's transport
5 layer security, and it's a way to encrypt this data, do
6 that scrambling of the information that we saw earlier.

7 Q. I see.

8 And now, what about the source SIP address and
9 destination SIP address that we can see on the last
10 message? Can we just go ahead and pop those up here?

11 A. Well, we're not going to be able to do that.
12 All we're going to see is this encrypted application
13 data, those scrambled letters. We can't make out
14 anything inside that.

15 Q. I see.

16 And where would those go in the message?

17 A. Those would go into the lower right.

18 Q. Now, Dr. Jones, do you remember yesterday when
19 Microsoft's lawyer told the jury during opening
20 essentially that we can see the IP address numbers for
21 computers using Office Communicator, so it's not
22 anonymous --

23 A. Yes, I did.

24 Q. -- or private?

25 Was his conclusion presented to the jury there

1 correct in your opinion?

2 A. No, sir.

3 Q. And why is that?

4 A. Well, it -- that's not the definition of
5 anonymity. We can -- we can always see these outer IP
6 addresses.

7 Q. I mean, are there certain other kinds of tools
8 you could use to make it where you could hide those IP
9 addresses?

10 A. Yes. There are -- there are something called
11 IP address hopping, which is really another claim that's
12 not at issue in this case.

13 Q. I see.

14 So then in your opinion, in a VPN, would you
15 expect those addresses to be visible?

16 A. Yes. I expect in a VPN on the internet to see
17 these -- to see source and destination addresses.

18 Q. So, now, Dr. Jones, in your opinion, when
19 Office Communicator is used in that secure mode, does it
20 form a virtual private network as that term has been
21 defined by Judge Davis?

22 A. Yes, it does.

23 Q. Now, Dr. Jones, I'm sorry to keep going back
24 to opening statements, but there's one other thing,
25 while we're on it, I'd like to clear up.

1 Do you recall Microsoft's lawyer very quickly
2 flashed up a document, and it had some statement about
3 don't need a VPN, something of that nature?

4 A. Yes, sir, I believe I do.

5 Q. I went back and I found that document, with
6 their help, actually, and we looked at that, because I
7 remembered it differently.

8 MR. CALDWELL: Mr. Moreno, can you put
9 that document up? I think it was 3111; is that right?
10 This is -- this is it. And I think it might have been
11 about the eighth page. Can you zoom in on the area
12 there that's highlighted?

13 Q. (By Mr. Caldwell) Now, what Microsoft's lawyer
14 told the jury was, and I quote, do we say it's great
15 because of the VPN, and therefore, it's secure? Well,
16 actually, we tell you the opposite. It doesn't require
17 a VPN, and it needs only an internet connection, so it's
18 the opposite.

19 Does this document say that Office
20 Communicator and Office Communicator Server do not form
21 a VPN?

22 A. No, sir. It says you won't -- you won't need
23 a VPN or an additional VPN to provide the security.

24 Q. So what does that mean? Explain.

25 A. Well, what it's saying is that you don't need

1 to use a separate VPN product, like PPTP, because this
2 product is forming a VPN that will provide the security
3 that you need.

4 Q. Thank you.

5 Now, Professor Jones, all this Wireshark data,
6 did you provide all that to Microsoft?

7 A. Yes, sir, I did.

8 Q. The VPN that we saw for Office Communicator,
9 is that triggered by a DNS, like we've talked about, for
10 the '135 patent?

11 A. Yes, sir, it is.

12 Q. Excuse me. Can you explain to us how that
13 works?

14 A. Yes, I'd like to do that.

15 Q. Now, what are we seeing here?

16 A. This is the screen you see when you start off
17 Office Communicator and you sign into it. And you sign
18 into it with a name like AJ@Fabrikam.com.

19 Q. So how -- is there a domain name there?

20 A. Yes, sir, that Fabrikam.com.

21 Q. How will that be used to set up a VPN?

22 A. Well, that is going to -- once the user types
23 that into the application on the client computer, that
24 domain name is going to be sent to the RTC interfaces
25 acting as to proxy server.

1 Q. That's what I was going to ask you. Did you
2 tell us earlier that those RTC interfaces that we looked
3 at, RTC and UCC, that those are a DNS proxy server in
4 your opinion?

5 A. Yes, sir.

6 Q. So can you walk us through how they are a DNS
7 proxy server?

8 A. Yes, sir. They're going to receive that
9 domain name. Then they'll examine the domain name and
10 then look out on the internet to determine what
11 connections are available for that domain name.

12 Q. Okay. So will they determine whether the user
13 is requesting access to a secure site?

14 A. Yes, sir, they will.

15 Q. How do they make that determination?

16 A. Well, they do that by asking some questions
17 over the internet to servers authorized by the company
18 to determine what kind of connections are available for
19 this domain name.

20 Q. I see the laptop, and I see the servers, so
21 what do you mean what kind of connections? Is there not
22 just a single kind of connection that it could make?

23 A. No, sir. We talked about the secure and
24 unsecure conditions. There are also external and
25 internal connections that are available.

1 Q. Okay. And so that using encryption or not --
2 and what do you mean by internal or external?

3 A. The question is about whether or not the user
4 is inside the company network or outside the company
5 network.

6 Q. Why might not the connection differ if the
7 user is connecting inside the company versus outside the
8 company?

9 A. Well, in some situations, we might be much
10 more concerned with security. So inside the company, we
11 might be willing to send things that are unencrypted,
12 but outside we would be more likely to send them in an
13 encrypted mode.

14 Q. Now, by my count, that gives us four
15 alternative ways of connecting. There's internal
16 network with encryption, an internal work that doesn't
17 use encryption, external with encryption, or an external
18 network without; is that fair?

19 A. Yes, sir.

20 Q. So how did the RTC interfaces here from
21 Windows, the RTC interfaces in Windows, determine which
22 connection types should be used?

23 A. Well, they send out a question over the
24 internet and ask servers associated with the company
25 what kind of connections are available.

1 Q. And is this how the program normally operates?

2 A. Yes, sir, it is.

3 Q. Have you seen that in Microsoft's technical
4 documents?

5 A. Yes. I'd like to show that to you.

6 Q. Please do.

7 Now, what are we seeing here? What's the --
8 what's the title of this document first?

9 A. I believe this is --

10 THE COURT: Counsel, excuse me. Let me
11 interrupt you. Before we get into that, I think we'll
12 take our afternoon break at this time. We've been going
13 for almost two hours now.

14 So we're going to be in recess until
15 3:35. So remember the Court's instructions. Enjoy your
16 afternoon break. We'll be in recess.

17 COURT SECURITY OFFICER: All rise.

18 (Jury out.)

19 (Recess.)

20 COURT SECURITY OFFICER: All rise.

21 (Jury in.)

22 THE COURT: Please be seated.

23 All right. You may proceed.

24 MR. CALDWELL: Your Honor, I forgot to
25 tell you earlier, I believe that -- or we move that

1 Exhibits 567 and 606 from Plaintiffs be admitted.

2 I think there's agreement between the
3 parties. I just forgot to tell, Your Honor.

4 THE COURT: All right. Be admitted.

5 Q. (By Mr. Caldwell) Okay. Professor Jones,
6 let's resume where we were. I think I had asked you if
7 we had seen in Microsoft's technical documents any proof
8 that it really tries to decide which of these four
9 configuration types --

10 A. Yes, sir.

11 Q. What are we looking at here?

12 A. This is a Microsoft design document talking
13 about those four connections, and it reads, the
14 highlighted portion: In automatic configuration mode,
15 the client application will extract the domain name from
16 the user URI and use this API to obtain SIP servers
17 associated with the domain name.

18 Q. Now, I'm quite confident the court reporter is
19 going to smack one of us upside the head for all these
20 acronyms, but can we unpack those just a little bit and
21 spell those out?

22 What is the URI referring to?

23 A. That's that information that the user typed in
24 with the domain name. And so that aj@Fabrikam.com, and
25 they'll take the Fabrikam.com information out of there

1 and use that to determine whether or not to make a
2 secure connection.

3 Q. And now in order to perform this automatic
4 configuration mode, do we know that the RTC interfaces
5 are going to look for those four -- which of the four
6 kinds of connections to make?

7 A. Yes, sir. I'd like to look at another page as
8 part of that document.

9 Q. What are we seeing here?

10 A. Well, these are those four questions we talked
11 about earlier. The first one is internal TLS; that's
12 encrypted. Internal TCP; that's unsecure. External
13 TLS; that's the encrypted connection. And then external
14 TCP; that's the unencrypted one.

15 Q. So these are the four requests you mentioned?

16 A. Yes, sir.

17 Q. What happens to these requests?

18 A. These requests are sent over the internet to a
19 server associated with the company that will provide
20 answers as to what kind of connections are available for
21 that domain name.

22 Q. Now, have you verified that all of this really
23 happens?

24 A. Yes, sir. Using that same Wireshark program,
25 I have prepared a screen shot.

1 Q. Okay. And what are we seeing here?

2 A. This is a record of what network traffic is
3 going on while trying to determine whether or not to
4 make a secure connection.

5 So you have the four questions that were
6 identified in the Microsoft document. The first one is
7 asking for that encrypted internal connection.

8 Q. Okay.

9 A. We've got another one for the unencrypted
10 internal connection, the encrypted external connection,
11 and the unencrypted external connection.

12 Q. I see. So can we go back to our animation to
13 where all of this fits in?

14 A. Yes, sir.

15 Q. Now, we are trying to connect across the
16 internet instead of inside Acme, so which kind of
17 responses are we likely to get back in terms of
18 identifying a server that's available?

19 A. We would like to get back responses for the
20 external network.

21 Q. Okay. Just to be clear, could you set up a
22 VPN on the internal network as well?

23 A. Yes, sir.

24 Q. Are internal connections sometimes public
25 links?

1 A. Yes, they can. For example, Virginia Tech
2 owns its links, but they wouldn't necessarily be secure
3 links. Lots of people can see the traffic on them.

4 Q. Now, in our example, we decided that we would
5 like to use an external connection; fair?

6 A. Yes, sir.

7 Q. Now, will I find a server that will allow me
8 to connect encrypted and unencrypted? Will I have two
9 different options?

10 A. You may have both options. It depends to what
11 policies that the company has established.

12 Q. What do you mean?

13 A. The company is going to determine for that
14 domain name whether it will make secure and unsecure
15 connections available.

16 Q. I see. And if I understand you correctly,
17 you're saying that the company might choose not to allow
18 unencrypted communications so that company business
19 isn't sent on encrypted?

20 A. Yes, sir. Especially in the external case,
21 the company might very well choose to only allow
22 encrypted connections.

23 Q. Well, in either case, when the Windows RTC
24 interfaces pick a server name to choose to connect to,
25 what do they do then?

1 A. Well, once they determine, for example, in
2 this case, to make an encrypted connection, they need to
3 get an address for the server to talk to, an IP address.

4 Q. What do they do with that address then?

5 A. With that address, they will use that to
6 establish -- or to send a request to set up the VPN. So
7 they'll send that from -- once they have the address,
8 they'll send that from the RTC interfaces in an IP
9 packet to Office Communications Server down on the lower
10 right.

11 Q. I see. Now, if these RTC interfaces find out
12 that the company allows both unencrypted or encrypted
13 connections and they get back responses saying you can
14 connect encrypted or you can connect unencrypted, how do
15 the RTC interfaces determine which way the client is
16 requesting to connect?

17 A. Well, there's logic in the source code in
18 these RTC interfaces that determines to pick the
19 encrypted connection first, if that's available.

20 Q. So when we started down this path talking
21 about the choices and alternatives, we started by asking
22 whether the RTC interfaces have a DNS-triggered virtual
23 private network.

24 Do you recall that?

25 A. Yes, sir.

1 Q. So when do we set up our virtual private
2 network?

3 A. Well, once we've made this determination, we
4 send out this request to initiate the virtual private
5 network. So it goes out over the network to Office
6 Communications Server, which is the -- acting as
7 gatekeeper computer.

8 Q. And at this point, will the Office
9 Communications Server just let anybody connect because
10 they sent a request to connect?

11 A. No, sir. Only users who are authorized to
12 make that connection will be allowed to establish the
13 secure connection.

14 Q. Now, I know we simplified things for the
15 presentation here. But how many copies or instances of
16 Office Communications Server or Live Communication
17 Server might be running back at Acme, or whatever the
18 company may be?

19 A. Well, there may be several copies or instances
20 of that running on computers back there for -- in the
21 case where there's a large number of employees of these
22 companies, they might need several servers to make this
23 happen.

24 Q. Why else might you need different servers set
25 up?

1 A. Different servers may play different roles.
2 There may be different servers involved in external
3 connections than there are in internal connections.

4 Q. I see. Now, when we looked through the claims
5 of the '135 patent, one of the words that we talked
6 about -- we talked about it with regard to the cell
7 phone -- was websites.

8 A. Yes, sir.

9 Q. In the case of Office Communicator, is our
10 user accessing a secure website?

11 A. No, sir, they're not.

12 Q. What is the user accessing?

13 A. The user is accessing Office Communications
14 Server, which doesn't literally -- which is not
15 literally a website, and it doesn't literally send web
16 pages back and forth. Instead it does similar
17 communications to a website between Office Communicator
18 and Office Communications Server.

19 Q. Does it work like a website?

20 A. In many respects it does, yes.

21 Q. In what ways does it work like a website, for
22 example, just at a high level?

23 A. At a high level, once the VPN is established,
24 the kind of traffic that goes back and forth between the
25 two is not material to what's happening in these claims.

1 Q. Now, in your example, I want to say that we
2 saw a picture referring to Office Communicator 2007.

3 But how does this explanation correlate to the
4 other versions of the Microsoft '135 products?

5 A. Well, this explanation is the same for each
6 one of them. The only exception is Live Communications
7 Server 2003, which just asks two of the four questions.

8 Q. Instead of internal secure, internal unsecure,
9 external secure, and external unsecure, which two were
10 asked in that older -- the very first generation of the
11 product?

12 A. In the first version, it was -- just encrypted
13 or unencrypted were the two questions.

14 Q. Was there still a determination made as to
15 whether to connect in the secure VPN mode or the
16 unsecure mode?

17 A. Yes, sir.

18 Q. Now, how do you know that all the different
19 versions are consistent in this regard?

20 A. Well, I know that by reading, for example,
21 deposition testimony from Microsoft employees.

22 Q. All right. Now, I think it's time for us to
23 move to one of the next chunks of our road map here.

24 Let's go to that.

25 Okay. So now it's time for us to compare the

1 '135 patent to the Microsoft products.

2 What claims of the '135 patent are you going
3 to talk with us about today?

4 A. I'm going to talk about Claims 1, 10, and 12.

5 Q. Now, remind us, do we need to show that every
6 claim in the patent is infringed?

7 A. No sir. If one claim is infringed, the patent
8 is infringed.

9 Q. Now, the way I would suggest that we do this
10 is, I'll sort of man the flip chart here, the easel, and
11 then you can show us some different things and explain
12 it to us.

13 So I want to start with the preamble of the
14 claim, which says: A method of transparently creating a
15 virtual private network between a client computer and a
16 target computer.

17 Is that what we do in Office Communicator and
18 the remaining Microsoft '135 products?

19 A. Yes, it is. That's what happens when the
20 remote computer establishes a VPN to the computers back
21 at Acme.com.

22 Q. Are there words in here that Judge Davis has
23 defined for us?

24 A. Yes, there are.

25 As we saw earlier and the definition I read

1 was for virtual private network.

2 Q. And you've already read that definition to us.
3 Did you apply it in analyzing these claims?

4 A. Yes, sir.

5 Q. Now, let's move to the first step, which is
6 generating from the client computer a domain name
7 service request that requests an IP address
8 corresponding to a domain name associated with the
9 target computer.

10 What is happening -- I'm sorry. Did Judge
11 Davis provide us definitions for that term?

12 A. Yes, he did. For two of those terms.
13 The first one is domain name service, and that is a
14 lookup service that returns an IP address for a
15 requested domain name. And the second one is the
16 definition of domain name, which is a name corresponding
17 to an IP address.

18 Q. So did you find that in the Microsoft '135
19 product?

20 A. Yes, I did. That is when the -- for example,
21 the application is sending that domain name to the RTC
22 interfaces.

23 Q. Did you find that element met in all of the
24 Microsoft '135 products?

25 A. Yes, sir, I did.

1 Q. Now, Professor Jones, we have check boxes
2 here.

3 What I want to know is, can I check off that
4 element as being met in the Microsoft '135 products?

5 A. Yes, sir.

6 Q. The second element of the claim says -- the
7 second step -- excuse me -- says: Determining whether
8 the domain name service, or DNS, request transmitted in
9 Step 1 is requesting access to a secure website.

10 Has Judge Davis provided us definitions of
11 some of the words there?

12 A. Yes, sir.

13 Secure website, and the definition for that is
14 a website that requires authorization for access and
15 that can communicate in a VPN.

16 For website, it's one or more related web
17 pages at a location on the worldwide web.

18 Q. Now, in the Microsoft '135 products, did you
19 find that the RTC interfaces determine whether the DNS
20 request is requesting access to a secure site?

21 A. Yes, I did, as I described for the DNS proxy
22 server with those four questions about available
23 connections.

24 Q. Does the site require authorization for
25 access?

1 A. Yes, sir. As discussed, the user has to be an
2 authorized user or the gatekeeper computer will not
3 allow the connection.

4 Q. Now, more specifically, in the Microsoft '135
5 products, did you find that the RTC interfaces determine
6 whether the DNS request is requesting access to a secure
7 website?

8 A. No, sir, I did not.

9 Q. Okay. Why not?

10 A. Well, as I mentioned earlier, the Office
11 Communications Server is not literally a website.

12 Q. Well, Professor Jones, if you found the
13 Microsoft '135 products do not involve requesting access
14 to a secure website, does that mean that this element of
15 the claim is not met by the Microsoft '135 products?

16 A. No, sir, it doesn't.

17 Just making a small change does not mean that
18 you don't infringe. If -- if the product is
19 insubstantially different from the claims, then it still
20 infringes under this Doctrine of Equivalents that we
21 talked about earlier.

22 Q. Well, Professor Jones, did you determine this
23 Office Communicator features offered over the virtual
24 private network are not substantially different than a
25 secure website?

1 A. Yes, sir, I did.

2 Q. For instance, would the virtual private
3 network be triggered any differently, if it were to
4 carry website traffic?

5 A. No, sir, it wouldn't.

6 The -- the triggering mechanism here would
7 still be the same whether it was literally web pages or
8 presence information or instant messaging. It wouldn't
9 work any differently.

10 Q. Would the virtual private network itself
11 operate any differently in a significant way if the
12 information sent across it were a web page instead of,
13 say, an instant message?

14 A. No, sir, it wouldn't.

15 Q. Now, did you do anything -- rather than just
16 deciding that you think the difference is not
17 substantial, did you do anything to confirm your
18 conclusion that Microsoft meets this element under the
19 Doctrine of Equivalents?

20 A. Yes, sir, I did. I applied by what's called
21 by the courts the function-way-result test. And that
22 test would test whether things perform substantially the
23 same function in substantially the same way to achieve
24 substantially the same result.

25 Q. Now, let's be clear. Is this an analysis that

1 you came up with yourself?

2 A. No, sir. This is an analysis that the courts
3 use.

4 Q. So were you able to determine if the Microsoft
5 '135 products perform substantially the same function as
6 a secure website?

7 A. Yes, sir, they do. They make use of computers
8 to communicate in the VPN to present information to
9 clients, and they require that the clients be authorized
10 to access the servers.

11 Q. Were you able to determine if the Microsoft
12 '135 products perform in substantially the same way as a
13 secure website?

14 A. Yes, sir, they do.

15 They make use of computers to communicate in
16 the VPN using protocols. They present information to
17 clients through windows over the internet, and they do
18 so in a way in which the client's and servers cooperate
19 to ensure that the clients are authorized to connect.

20 Q. And finally, did you determine whether the
21 Microsoft '135 products achieve substantially the same
22 result as a secure website?

23 A. Yes, sir, I did.

24 I found that the result achieved was that the
25 client is able to communicate with computers in a VPN.

1 It does so over a public network and in a way in which
2 only clients that are registered are able to communicate
3 in that network with those servers.

4 Q. And, Professor Jones, did you conclude that
5 the Microsoft '135 products meet the element of
6 determining whether the DNS request in Step 1 is
7 requesting access to a secure website?

8 A. Yes, sir, I did under the Doctrine of
9 Equivalents.

10 Q. May I check that element?

11 A. Please do.

12 Q. Let's look now at the last claim element,
13 which reads: In response to determining that the domain
14 name service request, or DNS request, in Step 2 is
15 requesting access to a secure target website,
16 automatically initiating the VPN between the client
17 computer and the target computer.

18 What is happening in that claim element?

19 A. In that element, the DNS proxy server is
20 sending a request to -- to initiate the VPN. And in the
21 Microsoft products that happens when the RTC interfaces
22 initiate the VPN with the gatekeeper computer.

23 Q. I think you touched on this earlier, but is
24 that VPN just always going to be to a single Office
25 Communications Server?

1 A. No, sir. As I mentioned earlier, that's a
2 group of servers as well as other computers that form a
3 network back at the company.

4 Q. Now, has Judge Davis provided any additional
5 definitions that help us with this claim element?

6 A. Yes, sir.

7 So for the claim term, automatically initiated
8 in the VPN, we use the definition initiating the VPN
9 without involvement of a user.

10 Q. In the Microsoft products, after it is
11 determined that the DNS request pertains to a secure
12 site, do the products automatically initiate a VPN
13 between the client computer and the target computer?

14 A. Yes, sir, they do. They send that request to
15 the gatekeeper computer to -- or the RTC interfaces sent
16 that request to the gatekeeper computer to initiate the
17 VPN.

18 Q. Will that gatekeeper computer make sure that
19 the proper credentials are presented?

20 A. Yes, sir, it will.

21 Q. Now, remind us, really, what was the user's
22 involvement here with all this information going back
23 and forth?

24 A. Well, the user, as we saw in the screen shot,
25 types in that domain name and his log in. And after

1 that, this all happens behind the scenes automatically.

2 Q. Professor Jones, did you find this last
3 element met in the Microsoft '135 products?

4 A. Yes, sir, I did under the Doctrine of
5 Equivalents.

6 Q. May I check that box?

7 A. Please do.

8 Q. Well, Professor Jones, we have checked all the
9 boxes on Claim 1.

10 What does that mean?

11 A. Well, that means that the Microsoft '135 --
12 '135 products infringe Claim 1 of the '135 patent, and,
13 therefore, they infringe the '135 patent.

14 Q. Okay. We've talked about Claim 1, but did
15 you -- did you find that the Microsoft '135 products
16 infringe other claims of the '135 patent?

17 A. Yes, sir. Claims 10 and 12.

18 Q. May I pull those up now?

19 A. Yes, sir.

20 Q. Now, I put Claim 10 up here, and the preamble
21 of Claim 10 begins with: A system that transparently
22 creates a virtual private network between a client
23 computer and a secure target computer.

24 Is that what we're seeing?

25 A. Yes, sir, it is. This is the same --

1 essentially the same as what we're seeing in Claim 1.

2 Q. Now, I want to ask you, if I remember
3 correctly, Claim 1 starts with a method of
4 transparently, whereas Claim 10 starts with a system of
5 transparently.

6 Is that significant?

7 A. Yes, sir, it is.

8 When it starts with a method, that's
9 describing a set of steps. And to infringe Claim 1, a
10 set of steps has to be performed to infringe the claim.
11 In Claim 10, it -- to infringe Claim 10, you would have
12 to assemble the parts of Claim 10, basically assemble
13 the system to infringe it.

14 Q. So did you find that the Microsoft '135
15 products have a system that transparently creates a
16 virtual private network between a client computer and a
17 secure target computer?

18 A. Yes, sir, I do as we discussed for Claim 1.
19 Same as Claim 1.

20 Q. Now, Professor Jones, in case the jury --
21 excuse me; I'm sorry -- in case the jury is following
22 along in the patent, I know that the Patent Office's
23 printing of this claim, it looks a little bit different
24 in that all of this information is kind of squished
25 together in one really, really long block.

1 Now, will you explain to us why you've chosen
2 to break it out into three pieces here?

3 A. Yes, sir. I thought that one big block was a
4 pretty big mouthful, but also there are three basic
5 requirements going on here.

6 One is that the proxy server is going to
7 receive a request, and then in the next step, it's going
8 to return an IP address. And in the next, it's going to
9 generate a request in these three different parts of it.
10 And so I thought it would be much easier to analyze it
11 piece by piece to make sure I didn't miss anything.

12 Q. So the same words?

13 A. Yes, sir.

14 Q. Now, the first section that we have is a DNS
15 proxy server that receives a request from the client
16 computer to look up an IP address for a domain name.

17 Has Judge Davis provided us any definition for
18 that?

19 A. Yes, sir, he has.

20 For a DNS proxy server, we have a computer or
21 program that responds to a domain name inquiry in place
22 of a DNS.

23 Q. What is the DNS proxy server that you've
24 identified in the Microsoft '135 products?

25 A. It is the RTC interfaces in Windows XP and

1 Vista.

2 Q. Now, let's be clear about something.

3 The RTC interfaces, those are software,
4 correct?

5 A. Yes, sir.

6 Q. But this element says it's got to be a DNS
7 proxy server.

8 A. Let me pull up the -- the construction and
9 explain that.

10 We've been told that a DNS proxy server could
11 be a computer or program, and it doesn't have to be one
12 or the other. So it could be hardware or it could be
13 software.

14 Q. But did you find that first piece of the claim
15 met in the '135 products of Microsoft?

16 A. Yes, sir, I did.

17 Q. May I check that?

18 A. Please do.

19 Q. Professor Jones, the second set -- the second
20 element is: Wherein the DNS proxy server returns the IP
21 address for the requested domain name, if it is
22 determined that access to a non-secure website has been
23 requested.

24 What's happening in that step?

25 A. In that step, after the DNS proxy server has

1 made its determination, if it finds that a non-secure
2 website has been requested, it's just going to return an
3 IP address so that an unsecure connection could be
4 formed.

5 Q. Did you find that element in the Microsoft
6 '135 products?

7 A. Yes, I did and in the RTC interfaces.

8 Q. Now, I note that this element says -- it
9 refers to a non-secure website, access to a non-secure
10 website has been requested.

11 What about website?

12 A. Well, just as in Claim 1, the website is not
13 literally present in the Microsoft products, but it's
14 present under the Doctrine of Equivalents.

15 Q. The second way of infringing that was
16 identified by Judge Davis?

17 A. Yes, sir.

18 Q. So what did you conclude for the second piece
19 of Claim 10?

20 A. I concluded that the Microsoft '135 products
21 meet this under the Doctrine of Equivalents.

22 Q. Now, Professor Jones, the third piece says:
23 Wherein the DNS proxy server generates a request to
24 create the VPN between the client computer and the
25 secure target computer, if it is determined that access

1 to a secure website has been requested.

2 What's happened in that piece of the claim?

3 A. Well, in this case, the DNS proxy server
4 determines that access to a secure website has been
5 requested and is going to send a request to create the
6 VPN.

7 Q. Now, candidly, I should have done this
8 earlier. But we've seen this in the animation a couple
9 of times.

10 And tell us where the pieces are. So we first
11 got -- the DNS proxy server receives the request. Where
12 was that in our animation?

13 A. That's when -- the DNS proxy server is on the
14 laptop computer, and it's receiving that from the
15 application.

16 Q. So that's when A.J. at Fabrikam.com moved down
17 to the RTC interfaces?

18 A. Yes, sir.

19 Q. Then in the instance where, if you were trying
20 to connect to an unsecure site, what would happen?

21 A. Well, that, again, happens in the RTC
22 interfaces on the user's computer where it determines
23 that an unencrypted connection is going to be made and
24 that IP address comes up, that number we saw appear
25 there.

1 Q. Now, when we see this third part here, if
2 you're trying to connect to a secure site, the DNS proxy
3 server generates a request that the VPN keeps that up.

4 Where was that in the animation?

5 A. That is after the DNS proxy server has made
6 its determination on the user's computer, on the client
7 computer. That request is sent over the internet and
8 will ultimately go to the gatekeeper computer.

9 Q. So that's when we had our laptop, and after
10 the DNS proxy server figures out we want to connect
11 encrypted and the message goes across the internet to
12 the gatekeeper?

13 A. Yes, that -- that -- the computer is at the
14 bottom -- in the basement of that Acme.com building.

15 Q. Did you find this third piece of Claim 10 met?

16 A. Yes, I did under the Doctrine of Equivalents.

17 Q. Now, the last element for this claim says: A
18 gatekeeper computer that allocates resources for the VPN
19 between the client computer and the secure web computer
20 in response to the request by the DNS proxy server.

21 Did you find that in the Microsoft '135
22 products?

23 A. Yes, I did.

24 That happens when the Office Communications
25 Server, which is the gatekeeper computer, receives that

1 request from the DNS proxy server and makes, for
2 example, allocates -- well, allocates resources for that
3 VPN.

4 Q. So what do you mean by allocates resources for
5 the VPN?

6 A. For example, the Office Communications Server
7 will allocate connection records to make the connection
8 for the VPN possible.

9 Q. And what is the secure web computer?

10 A. The secure web computer is one of those
11 instances of Office Communications Server that were
12 discussed, or another computer.

13 Q. Now, Office Communications Server is -- is
14 software that comes on a DVD, right?

15 A. Yes, sir.

16 Q. All right. But do you see that this element
17 requires a gatekeeper computer?

18 A. Yes, I do.

19 Q. Can that gatekeeper computer portion of the
20 claim be met by Microsoft's software as opposed to only
21 being met by hardware?

22 A. Yes, it can be met by the Microsoft software,
23 the functionality of that in the Office Communications
24 Server product.

25 Q. Is that kind of like when we looked at the DNS

1 proxy server?

2 A. Yes. As you recall, the DNS proxy server
3 could be either a computer or program. And in this
4 case, the gatekeeper computer is the Office
5 Communications Server software.

6 Q. Well, does the expert retained by Microsoft
7 agree with you on that point, that this element of a
8 gatekeeper computer can be met by the software?

9 A. No, sir, he does not.

10 Q. What does he say?

11 A. Well, he says it has to be -- that the
12 gatekeeper computer must be hardware.

13 Q. Well, Professor Jones, even if he's right that
14 the gatekeeper computer has to be hardware, would that
15 mean that Microsoft doesn't infringe the claim?

16 A. No, sir, it doesn't.

17 Well, first of all, that Office Communications
18 Server software is meant to run in a computer. It
19 doesn't have any other purpose.

20 Second, Microsoft itself puts that software on
21 computers and infringes these claims.

22 Q. So, Professor Jones, did you find that the
23 last element of Claim 10 is met by the Microsoft '135
24 products?

25 A. Yes, sir, I did under the Doctrine of

1 Equivalents.

2 Q. And what have you concluded about Claim 10?

3 A. I have concluded that the Microsoft '135
4 products infringe Claim 10 of the '135 patent.

5 Q. Now, let's look at Claim 12.

6 The entirety of Claim 12 is the system of
7 Claim 10 wherein the gatekeeper computer determines
8 whether the client computer has sufficient security
9 privileges to create the VPN. And if the client
10 computer lacks sufficient security privileges, rejecting
11 the request to create the VPN.

12 Professor Jones, why is this claim so much
13 shorter than the others?

14 A. This is one of the dependent claims, that type
15 of claim that Judge Davis talked about that refers back
16 to another claim.

17 This one refers back to Claim 10.

18 Q. Okay. And so what do you need to show in
19 order to prove infringement of Claim 12?

20 A. You have to show that Claim 10 is -- that the
21 elements in Claim 10 are met as well as the elements in
22 Claim 12.

23 Q. And we've already shown Claim 10?

24 A. Yes, sir.

25 Q. So what more must be shown for Claim 12?

1 A. We have to show that these terms here are
2 present in the Microsoft '135 products.

3 Q. And what are those terms?

4 A. These are wherein the gatekeeper computer
5 determines whether the client computer has sufficient
6 security privileges to create the VPN.

7 Q. Okay. Let's start with that one.

8 Does the gatekeeper computer that you've
9 identified as the server software determine whether the
10 client has sufficient security privileges to create the
11 VPN?

12 A. Yes, sir, it does.

13 As we discussed, the user has to be authorized
14 to connect to the VPN.

15 Q. So can we check that box?

16 A. Yes, sir.

17 Q. Then if the client computer lacks sufficient
18 security privileges, rejecting the request to create the
19 VPN, does Office Communicator Server and Office
20 Communications Server software from Microsoft do that?

21 A. Yes, sir, if it does.

22 If you're not authorized, the request to
23 create that VPN, the connection will be terminated.

24 Q. So do you have any proof of that you can show
25 us?

1 A. Yes, sir, I do.

2 Q. What are we seeing here, Professor Jones?

3 A. This is some of the deposition testimony that
4 I talked about earlier. This is from Mr. Mu Han. He is
5 a Microsoft engineer, a man who's programmed parts of
6 this -- these products that we've been talking about.
7 And he was designated by the company as someone who
8 could answer these questions for us.

9 Q. And what did he tell us?

10 A. The question he was asked: So when the client
11 cannot be authenticated, can you describe for me how the
12 connection is terminated?

13 And his answer -- and let me just go down to
14 the highlighted portion -- is: If the access proxy does
15 not see the valid success code, the access proxy would
16 drop the connection.

17 Q. I see.

18 And just so nobody -- nobody thinks you're
19 running from the first part of that answer, what is he
20 explaining there? In fact, you can tell us if you --

21 A. Sure. Let me go -- basically, what he -- let
22 me go back and read it.

23 So if the client is authenticated
24 successfully, the server will return a success return
25 code to the client. The access proxy would see this

1 success return message and keep the connection up.

2 Q. Then if the access proxy does not see that
3 valid success code, it will drop the connection?

4 A. Yes, sir.

5 Q. What did you conclude about Claim 12,
6 Professor Jones?

7 A. I concluded that the '135 Microsoft products
8 infringe Claim 12 of the '135 patent.

9 Q. So one tiny piece of good news is I think
10 that's our check marks for the '135 patent, but we have
11 a little bit more to talk about on the '135 patent,
12 which is you said that Microsoft infringes directly and
13 indirectly.

14 A. Yes, sir.

15 Q. Can you tell us what you mean there?

16 A. Well, what I mean by that is that Microsoft
17 itself infringes these claims as well as through the
18 design of its products and how it advertises those and
19 instructs its customers, it indirectly infringes the
20 claim.

21 Q. Well, in what ways does Microsoft directly
22 infringe the '135 patent?

23 A. They do that, for example, through the way --
24 when they test their products, but they also do it when
25 they -- when they use it internally themselves.

1 Q. Well, does Microsoft make, use, sell, or offer
2 for sale products that include the DNS proxy server?

3 A. Yes, they do.

4 The products that include the DNS proxy server
5 are Windows Vista and Windows XP, and those are things
6 that they make, use, sell, and offer to sale.

7 Q. Do they make, use, sell, or offer for sale the
8 gatekeeper computer of the asserted claims?

9 A. Yes, sir, they do.

10 That's Office Communications Server and Live
11 Communications Server.

12 Q. Now, does Microsoft use the DNS-triggered
13 virtual private networks internally at Microsoft?

14 A. Yes, they do.

15 They -- they run this system for communication
16 among their own employees.

17 Q. So does Microsoft perform the method of Claim
18 1 and make use of the build or make use of the systems
19 of Claim 10 or 12?

20 A. Yes, they do. They do all of those things,
21 sir.

22 Q. Now, how do you know that?

23 A. Well, I know that from Microsoft deposition
24 testimony as well as internal Microsoft documents.

25 Q. How many employees at Microsoft are using the

1 '135 patent?

2 A. Well, it's my understanding that -- sorry;
3 wrong one -- that Microsoft has over -- or approximately
4 80,000 employees using this system, and some are --
5 between 40 and 50,000 of those employees are in the
6 United States.

7 Q. 80,000 with 40 or 50,000 in the U.S.?

8 A. Yes, sir.

9 Q. Where did you get those numbers?

10 A. I got that from the deposition testimony of
11 Mr. Mu Han as well as documents from Microsoft that
12 describe how to set up and run this system and the best
13 ways to do it.

14 Q. Well, that's what I was going to ask you.

15 Do you know how Microsoft actually sets up
16 their software?

17 A. Yes, sir, I do.

18 Q. And how do you know that?

19 A. I know that from deposition testimony and
20 those same documents. I'd like to show you that
21 deposition testimony.

22 Q. Okay.

23 A. So this is, again, deposition testimony from
24 Mr. Mu Han, the Microsoft programmer. And he was asked:
25 Did Microsoft always use the OCS product with the DNS

1 service record functionality for initiating SIP
2 connections?

3 His answer: We always use the DNS record to
4 discover the servers.

5 Q. They always?

6 A. Yes, sir.

7 Q. Do you have other evidence of how Microsoft
8 configures their own Office Communicator products
9 internally at Microsoft?

10 A. Yes, sir, I do.

11 MR. CALDWELL: Mr. Moreno, can you pull
12 up Plaintiff's Exhibit 130?

13 Q. (By Mr. Caldwell) Now, what are we seeing in
14 this document right here?

15 A. This is a document where Microsoft describes
16 the -- basically recommended ways in which to set up the
17 system. And as an example of that, they describe how
18 Microsoft IT does that at Microsoft.

19 Q. And when Microsoft deployed it, did they use
20 DNS service records to create a virtual private network?

21 A. Yes, sir, they did. I'd like to --

22 Q. So, Professor Jones, in your opinion, does
23 Microsoft directly infringe Claims 1, 10, and 12?

24 A. Yes, sir, they do.

25 Q. Now, let's move on to indirect infringement.

1 You introduced us to indirect infringement briefly, but
2 what did you -- what did you tell us indirect
3 infringement was?

4 A. Essentially, Microsoft indirectly infringes by
5 inducing or encouraging others to infringe the patent as
6 well as contributing to the infringement of others.

7 Q. Let's talk about induced infringement.

8 I understand that Judge Davis will instruct the jury on
9 -- on the metes and bounds of the law, but did you have
10 some understanding of induced infringement in order to
11 form your opinions and analysis?

12 A. Yes, sir. Let me walk through that.

13 To -- to induce infringement, Microsoft would
14 need to have knowledge of the patent. They would have
15 to encourage or instruct others to perform acts that
16 infringe. Others would have to infringe the claims.

17 And then Microsoft would have had to have
18 known or should have known that encouragement or
19 instruction would result in others infringing.

20 Q. So for the first element, did you find that
21 Microsoft had -- did you find evidence that Microsoft
22 had knowledge of the '135 patent?

23 A. Yes, sir, I did. I'd like to show that to
24 you.

25 Q. Okay. This is Plaintiff's Exhibit 401.

1 What are we seeing here?

2 A. This is an information sent from the U.S.
3 Patent & Trademark Office from -- well, from there to
4 Microsoft representatives during the -- what's called
5 the prosecution of a patent by Microsoft.

6 Q. So Microsoft was applying for a patent on some
7 technology it wanted to patent?

8 A. Yes, sir.

9 Q. And this is correspondence from the United
10 States Patent Office back to Microsoft?

11 A. Yes, it is, and it's dated September 26th,
12 2003.

13 Q. Now, where does Mr. Munger and Dr. Short's
14 '135 patent fit into this document?

15 A. Well, let me turn to a little bit later part
16 of it.

17 So I've highlighted two portions of this
18 document. The first one says, essentially, that the
19 claims that Microsoft had submitted as part of the
20 patent application were unpatentable in view of Munger.
21 And they mention the '135 patent explicitly.

22 And a little lower down, we see as to
23 Claim 12, Munger teaches the method of Claim 9 wherein
24 the communication device is a proxy server.

25 Q. So does this mean that the patent claims that

1 Microsoft was trying to get, that in September of 2003,
2 they were rejected because of the Munger '135 patent
3 we've talked about?

4 A. Yes, sir.

5 And this is the record of the information or
6 the discussion that the Patent Office sent back to
7 Microsoft's representatives.

8 Q. So have you seen other evidence besides this
9 patent document that indicates Microsoft had knowledge
10 of the '135 patent?

11 A. Yes, sir.

12 This is -- I believe we've seen this letter
13 before. This is a letter that -- from SAIC to Microsoft
14 that was received, as we can see in the upper right-hand
15 part, on May 2nd, 2006, in the Microsoft Legal
16 Department.

17 And this is mentioned -- let me read the part
18 below: We believe the '135 patent would be of interest
19 to your company in connection with its Live
20 Communications Server 2005 product with Service Pack 1
21 and in connection with its Office -- Microsoft Office
22 Communicator 2005 product.

23 Q. So, Professor Jones, have you found evidence
24 that Microsoft knew of the '135 patent?

25 A. Yes, sir. It's my conclusion that Microsoft

1 had knowledge of the '135 patent.

2 Q. The second element is encouraged or instructed
3 others to infringe.

4 Have you found evidence of that?

5 A. Yes, sir.

6 For example, in that deployment guide we saw a
7 few pages ago, where Microsoft tells people how to
8 install and operate its system.

9 Q. What about websites? Have you seen any
10 information on websites?

11 A. Yes, sir.

12 I've examined many technical documents as well
13 as information on Microsoft's website that describes how
14 to use these products in the way that infringes.

15 Q. Now, does Microsoft allow software developers
16 to download the code they need to use these ATIs?

17 A. Yes. It -- Microsoft has what's called a
18 software development kit that you can download for these
19 RTC interfaces that will allow you to develop
20 applications and includes examples.

21 Q. It's sort of common sense, does Microsoft want
22 people to buy Office Communicator Communications Service
23 and use them?

24 A. Yes, sir. Definitely, they do. And they --
25 they, obviously, encourage people to do that and use

1 those products and tell them how to do it.

2 Q. So can we check that element?

3 A. Yes, sir.

4 Q. Now, what about others infringing the claims?

5 Have you found that others -- or others have infringed
6 the claims?

7 A. Yes, sir, I have.

8 For example, based on Microsoft deposition
9 testimony, I understand that Intel and HP use the
10 products in a manner that infringes.

11 Q. And are you telling us that only Intel and HP
12 do?

13 A. No, sir. Those are just two examples that
14 were cited in the Microsoft deposition testimony.
15 But also, Microsoft basically sells these products, and
16 they sell the software, and they expect you to use them.

17 Q. My understanding is that Mr. Reed is going to
18 testify later more about the amount of sales that
19 Microsoft has. That's not something that's been inside
20 the scope of your investigation, correct?

21 A. That's correct, sir.

22 Q. And did we understand that Microsoft's own
23 internal IT department installs the -- the products in
24 these ways?

25 A. Yes, sir.

1 That was that deployment guide where we
2 talked -- and -- and the discussion of 80,000 employees
3 at Microsoft using it.

4 Q. We saw a document earlier that referred to the
5 four different kinds of connections you check for. It
6 said checking for these four connections is the default
7 case -- default case.

8 What does that mean?

9 A. Well, a default operating mode is the way in
10 which the product operates when you first get it. In
11 this case, it's the recommended way to operate it.
12 To operate it in a different way, you have reconfigure
13 the product.

14 Q. Is it your understanding that customers
15 typically deploy software in the default mode?

16 A. That's my understanding, yes, sir.

17 Q. So how many different ways can Microsoft's
18 customers infringe the '135 patent, for example, the
19 method Claim 1 that we saw?

20 A. Well, they can infringe Claim 1 by using the
21 software, and they can infringe Claim 10 by assembling
22 the system.

23 Q. The same for Claim 12?

24 A. Yes, sir.

25 Q. What about using that system?

1 A. Well, simply as a -- so if they were to use
2 the system of Claim 10 or of Claim 12, that would also
3 infringe.

4 Q. So have you concluded that others have
5 infringed the claim?

6 A. Yes, sir.

7 Q. All right. Now, can we look at the final
8 element?

9 Microsoft -- the final element to prove
10 inducement is that Microsoft knew or should have known
11 that their encouragement or instruction would result in
12 others infringing the claim.

13 Do you believe Microsoft should have known
14 that the software they were selling and the way they
15 were encouraging users to use the software would result
16 in others infringing?

17 MR. POWERS: Object, Your Honor. No
18 foundation for the reasons and our earlier motion in
19 limine on this subject.

20 THE COURT: Overruled.

21 A. It's my opinion that even Microsoft's own
22 knowledge of the way its products operate, as well as
23 their knowledge of the '135 patent, that as one of
24 ordinary skill in the art would have understood, that
25 using those products in the way that Microsoft describes

1 would have resulted in infringing the '135 patent.

2 Q. (By Mr. Caldwell) Did you find that last
3 element met?

4 A. Yes, I did.

5 Q. Thank you.

6 Now, let's move to contributory infringement,
7 which you've also mentioned.

8 There's a test for contributory infringement.
9 Can you summarize that for us?

10 A. Yes, sir.

11 The -- there has to be -- Microsoft would have
12 to have knowledge of the patent. Others would have to
13 infringe the claims. Microsoft would have to sell a
14 component or apparatus for use in practicing the claimed
15 invention. And there would be no substantial
16 non-infringing uses of the component or apparatus.

17 Q. Now, the first two are probably easy. I think
18 we addressed that in the last test.

19 Have you found that Microsoft had -- evidence
20 that Microsoft had knowledge of the patents?

21 A. Yes, sir.

22 Q. And did you determine that others are
23 infringing?

24 A. Yes, sir.

25 Q. Okay. But now let's talk about this other new

1 part here: Sale of a component or apparatus that's for
2 use in practicing the claimed invention.

3 Have you identified a component that Microsoft
4 is selling for use in practicing the claimed invention?

5 A. Yes, sir.

6 This is the automatic connection feature or
7 mode of the RTC interfaces, which are part of Microsoft
8 Windows XP and Windows Vista.

9 Q. And does use of that component infringe method
10 Claim 1?

11 A. Use of that component in combination with the
12 applications infringes method Claim 1.

13 Q. Okay. What about system Claims 10 and 12?
14 Does use of that component infringe the system Claims 10
15 and 12?

16 A. Yes, it does.

17 Q. Did you find that element met?

18 A. Yes, sir.

19 Q. Now, the final -- final piece here: No
20 substantial non-infringing uses of that component or
21 apparatus.

22 Professor Jones, do you believe there is
23 substantial non-infringing uses for that automatic
24 connection mode component that you've identified?

25 A. No, sir. I don't find any other -- any

1 substantial non-infringing uses of it.

2 Q. Does Microsoft disagree with you on that
3 point?

4 A. Yes, they do.

5 And they've identified, for example, what they
6 call high-security mode as being a substantial
7 non-infringing use, but I disagree with that.

8 Q. Okay. Are there other alternatives Microsoft
9 has said, oh, we can use this component in a way that
10 doesn't infringe?

11 A. Yes, they have, but I've identified those as
12 just non-uses rather than non-infringing uses.

13 Q. Not using the component at all?

14 A. That's right.

15 Q. I see.

16 So as your final last item, you put
17 contributory infringement, right?

18 A. Yes, sir, I did.

19 Q. Well, in summary, Dr. Jones, we have now
20 discussed Claims 1, 10, and 12 of the '135 patent, and
21 after all of your investigation, what have you concluded
22 regarding those three claims?

23 A. I concluded that Microsoft directly and
24 indirectly infringes Claims 1, 10, and 12 of the '135
25 patent through the Microsoft '135 products.

1 Q. Thank you, Dr. Jones.

2 Now, can we see the next step of our road map?

3 Now, I want to kind of give a ray of hope
4 here. My understanding is that this second portion will
5 go a little faster than the part before now that we've
6 been through it once.

7 A. Yes, sir. I believe we'll be able to complete
8 this quite a bit faster.

9 Q. So let's move on to that second case with a
10 case, to use your words.

11 Now, remind us generally what the '180 patent
12 covers.

13 A. Well, the '180 patent is -- covers a secure
14 domain name service that's used to facilitate the setup
15 of VPNs.

16 Q. Is that an important idea?

17 A. Yes, sir, it was.

18 Q. Why is it important?

19 A. Well, it's important because there's a need
20 when you're -- when you're forming a VPN or
21 communicating with someone through a VPN, to be assured
22 that you're talking to the correct party.

23 For example, if you were talking to the wrong
24 person in a VPN, you might be sending all the
25 information you thought was private to someone who's a

1 hacker.

2 Q. So we've seen slides like this before, but can
3 you run through quickly some of the key parts of the
4 '180 patent.

5 A. Yes, sir.

6 Q. Do you see the number?

7 A. Yes, sir. The number is the '180 patent. The
8 date the patent was awarded to the inventors was March
9 6th, 2007. And, again, the title, then the inventors,
10 and again, some familiar names there, Dr. Short and Mr.
11 Munger. And this patent was -- the rights for the
12 patent are assigned to VirnetX.

13 Q. Now, we've already spent some time looking at
14 the '135 patent. Is this '180 patent just a completely
15 new, starting-from-scratch patent?

16 A. No, sir, it's not. It's what's called a
17 continuation-in-part patent where the inventors add new
18 material describing a new invention to their original
19 application, as well as new claims.

20 Q. Do you remember when they added the new
21 material and filed the continuation?

22 A. That was two months after the previous
23 application. I believe that was in April of 2000.

24 MR. CALDWELL: Mr. Moreno, I want you to
25 introduce us just a little bit to the new material. Can

1 you go to Plaintiff's Exhibit 4, Page 39?

2 Q. (By Mr. Caldwell) Okay. This is Figure 33 of
3 the '180 patent. What do we see here?

4 A. This is one of the block diagrams that we
5 talked about earlier. This is a new one for this
6 patent, and this is in that figures and drawings section
7 that was discussed.

8 Q. Well, to go along with the new figures, was
9 there a new technical description added to the patent?

10 A. Yes, sir. There's a more detailed description
11 of this figure, as well as the new invention in the
12 detail description later on.

13 Q. Can we take a look at that real quick?

14 And what do we see here, Professor Jones?

15 A. Well, this is a new section that's entitled
16 One-Click Secure Online Communications and Secure Domain
17 Name Service.

18 Q. The present invention provides a technique for
19 establishing a secure communication link between a first
20 computer and a second computer over a computer network.

21 Is that the '180 patent description that
22 Dr. Short gave us earlier?

23 A. Yes, sir, it is.

24 Q. Okay. Now, I'm going to pull up Claim 1 of
25 the '180 patent.

1 Professor Jones, I'd like to quickly run
2 through how Claim 1 defines a property right for the
3 '180 invention that Dr. Short described.

4 So let's look at the claim here. I see a
5 whole bunch of words, but can you boil this down for us
6 a little bit; just give us the high-level overview of
7 what's happening in this claim?

8 A. Yes, sir. This is a method for a client
9 computer to find an address for VPN communications and
10 to use that address to set up a VPN link where it will
11 ultimately make a request for information over that VPN
12 link.

13 Q. Now, the preamble of this claim at the top
14 says: A method for accessing a secure computer network
15 address comprising the following steps.

16 And the first step is receiving a secure
17 domain name. Can you show us what that is?

18 A. Yes, sir.

19 So here we have a computer with an application
20 that has a secure domain name, and that domain name in
21 this example is john.acme.scom, as Dr. Short showed us
22 earlier.

23 Q. Is that received into the computer?

24 A. Yes. That will be received on to the user's
25 computer, and then we'll move on to the next step of the

1 claim.

2 Q. And the next step of the claim is sending a
3 query message to the secure domain name service
4 requesting from that secure domain name service a secure
5 computer network address corresponding to the secure
6 domain name.

7 What is that?

8 A. In that step, that query message gets sent out
9 to the secure domain name service saying, I'd like an
10 address to use to make this connection.

11 Q. Now, let's be clear. Where is this secure
12 domain name service?

13 A. Well, the secure domain name service could be
14 on the client computer, or it could be on another
15 computer out on the internet.

16 Q. Does it -- I mean, does it really matter where
17 the secure domain name service is?

18 A. No, sir. The claims don't specify where the
19 secure domain name service is. They're flexible on
20 that.

21 Q. All right. Thank you.

22 And so then did you say we send a query
23 message to the secure domain name service?

24 A. Yes, sir. So -- yes. A query message goes
25 out, and it's received by the secure domain name

1 service.

2 Q. So then the next step is receiving from that
3 secure domain name service a response message containing
4 the secure computer network address corresponding to the
5 secure domain name.

6 Now, what happens there?

7 A. Well, what happens there is, the secure domain
8 name service responds with an address that goes back to
9 the user's computer.

10 Q. Now, Professor Jones, I mean, I hate to
11 interrupt the animation here for a second, but I want to
12 dig into one thing in the claim.

13 I know we have this element where the name was
14 put into the computer, and then the query message was
15 sent out in this element, correct?

16 A. Correct.

17 Q. The response came back in this element.

18 What I don't see between those elements is
19 some particular explanation of how that number, that
20 address, must be computed by the secure domain name
21 server.

22 Why is that?

23 A. Well, the claims are flexible with respect to
24 how the secure domain name service determines what the
25 answer should be, and the patent gives different

1 examples of how that can happen.

2 Q. I see.

3 But even the examples in the patent, are those
4 the only way that the secure domain name service can
5 come up with the address?

6 A. No, sir. The claims don't specify how that
7 must happen.

8 Q. So at this point, we've got our address back.
9 Can we set up our VPN?

10 A. Yes, we can.

11 Q. All right. And now I see that the very last
12 step here is sending an access request message to the
13 secure computer network address using a virtual private
14 network communication link.

15 What happens there, Professor Jones?

16 A. Well, in that step, the access request message
17 is going to go from the user's computer over on to a
18 computer at acme.com asking for information. And that
19 all happens over the VPN.

20 Q. Now, Professor Jones, do you recall that in
21 the last patent, it had the word website, talking about
22 secure target website, things like that?

23 A. Yes, sir, I do.

24 Q. All right. Is there any requirement in the
25 '180 patent, any requirement at all in these claims,

1 that what is being accessed is a website of any sort?

2 A. No, sir. The claims don't -- aren't
3 restricted to a website or any other kind of specialized
4 or special server.

5 Q. And then do you also recall back when we were
6 talking about the other patent, that Claim 10 required a
7 gatekeeper computer?

8 A. Yes, sir, I do.

9 Q. Do these '180 patent claims require any kind
10 of traditional, dedicated server at all?

11 A. No, sir, they don't. They're very flexible.
12 There's no specified gatekeeper computer here, for
13 example.

14 Q. So what alternatives could you have to a
15 traditional server?

16 A. Well, for example, we could remove that
17 server, and this could just include the normal network
18 at acme.com without the need for a specialized server.

19 Q. Well, thank you for that introduction to the
20 patents. What's next on our road map?

21 A. If I can get it upright. There we go.

22 The next thing we'll talk about are the
23 operation of Microsoft products that are related to the
24 '180 patent.

25 Q. In your opinion, are there Microsoft products

1 that have this secure domain name server?

2 A. Yes, sir. The Microsoft Windows XP and
3 Windows Vista products that we talked about earlier have
4 a secure domain name service.

5 Q. Same operating systems as for the other
6 patent?

7 A. Yes, sir.

8 Q. What is the name of that secure domain name
9 service in Windows XP and Vista?

10 A. That's the peer name resolution protocol
11 service that lies on there, and the short for that is
12 PNRP.

13 Q. What kinds of software would use the peer name
14 resolution protocol?

15 A. That would be something like -- peer-to-peer
16 applications would use that.

17 Q. Well, peer-to-peer, that's a relatively new
18 term for us. What does it mean? What is peer-to-peer
19 networking?

20 A. Well, peer-to-peer networking is essentially
21 networking computers together without the use of a
22 centralized server. You know, traditionally, as we saw
23 before, we had the client and we had a server. Well,
24 peer-to-peer doesn't require that there be a centralized
25 server.

1 Q. Have you seen any documents from Microsoft
2 that describe how a peer-to-peer network differs from a
3 more traditional client server model?

4 A. Yes, sir, I have.

5 Q. Can you show those for us?

6 Now, what is this document that we're seeing?

7 A. This is a Microsoft document that described --
8 it's basically an introduction to Windows peer-to-peer
9 networking, and it reads: The typical computing model
10 for many applications is a client/server model. A
11 server computer typically has vast resources and
12 responds to requests for resources and data from client
13 computers.

14 Q. Can you give us a practical -- oh, I'm sorry.

15 Did I -- I cut you off, didn't I?

16 Is there -- is there a description in this
17 document of how peer-to-peer differs from that
18 traditional model?

19 A. Yes, sir. Actually --

20 Q. These aren't consecutive locations in the
21 document, right? I think the graphic is, by accident, a
22 little bit misleading there.

23 A. Yeah.

24 Q. The second paragraph you're pointing to is --
25 the first one was from Page 6. The second one is from

1 Page 10. I just didn't want anyone to be confused about
2 that.

3 A. Right.

4 Q. But what does this document -- how does it
5 summarize peer-to-peer networking?

6 A. So as it says -- well, I --

7 Q. You know what? Actually, that's not -- that
8 it is from Page 10, isn't it? I misspoke.

9 So how does this document describe
10 peer-to-peer networking?

11 A. Well, essentially, peer-to-peer networking,
12 the peers don't rely on a centralized server. They
13 share resources with one another without the need for
14 that centralized server.

15 Q. I see.

16 So can you give us a practical example of
17 peer-to-peer networking, how that might actually get
18 used?

19 A. Yes, sir.

20 Consider an example where we might have a
21 group of students working on a term paper together at
22 the UT-Tyler library, and they bring their laptops, and
23 they are going to work together to turn this thing in as
24 a group project.

25 And their laptops could communicate with one

1 another. They could all see and work on the same
2 document without setting up a single centralized server.

3 Q. I see.

4 And is this an important technology for
5 Microsoft?

6 A. Yes, sir, it is. This technology is
7 something -- they're building what's called a
8 peer-to-peer platform.

9 Q. Well, what kinds of data could someone share
10 on a peer-to-peer network?

11 A. Well, we talked about that term paper, but --
12 or documents, but you could also share music. You could
13 share video files. You could share pictures of family
14 and friends. It's also possible to share software over
15 a peer-to-peer network.

16 Q. If you want to have one of these peer-to-peer
17 groups, peer-to-peer meetings, do all of the
18 participants need to be sitting at that same library or
19 sitting around the same conference table?

20 A. No, sir. There's no need for that.

21 For example, in our -- with the students in
22 the UT library working on the term paper, perhaps one of
23 them is actually, instead of being at the library, home
24 celebrating a family member's birthday and logged in
25 from home.

1 Another family member could be -- or I'm
2 sorry -- another group member could be on a job
3 interview and working remotely from a coffee shop.

4 Q. Are there any unique challenges that are
5 presented by peer-to-peer networks as opposed to the
6 traditional client/server model?

7 A. Yes, sir. One of those is trying to find the
8 right name for the people that you are -- or people or
9 computers that you want to talk with.

10 In the client/server model, it's very easy to
11 remember names like Amazon.com, and those names are
12 essentially going to remain unchanged and have addresses
13 that change very, very infrequently.

14 If I'm talking to people in a group, say a
15 group of students, well, I may not know -- or it's
16 unlikely I know the names of their computers. In
17 addition, those -- their addresses for their computers
18 are likely to change frequently.

19 Q. Well, in the peer-to-peer setting, is it
20 important to be able to know that the computer you're
21 connecting to is the right computer if you're going to
22 share data?

23 A. Yes, sir. And this gets back to that naming
24 issue. I need to know that I'm talking to the person
25 I'm talking to and that I have some guarantee of that.

1 If I'm -- think I'm talking to someone I
2 trust, but instead I'm talking to someone, say a hacker,
3 I could give them important information, information I'd
4 like to keep private.

5 Q. So is this an important problem for Microsoft
6 to be able to address?

7 A. Yes, sir, it is.

8 Q. Have you seen documents that confirm how
9 important this is to Microsoft?

10 A. Yes, sir.

11 MR. CALDWELL: Mr. Moreno, can you pull
12 up Plaintiff's Exhibit 151?

13 Q. (By Mr. Caldwell) What are we seeing in this
14 document right here, Plaintiff's Exhibit 151, Professor
15 Jones?

16 A. This is a slide presentation describing this
17 name resolution, this naming problem we've talked about.

18 This is written by a man named Christian
19 Huitema, and he is an architect, a software architect at
20 Microsoft, who designs these protocols and designs these
21 systems.

22 Q. So, I mean, does -- a software architect, does
23 that mean that he's sort of a high-up programmer or
24 something of that ilk?

25 A. Yes, sir. He's a person who is designing the

1 systems rather -- he might not be the person who's
2 implementing every last bit of the code. He's a higher
3 level designer.

4 MR. CALDWELL: So can we flip to Page 3
5 of this document?

6 Q. (By Mr. Caldwell) What is Microsoft saying on
7 this page of this presentation?

8 A. Well, they're describing their goal, which is
9 making Windows a great platform for P2P, and P2P means
10 peer-to-peer.

11 Q. Something just occurred to me. I just -- that
12 we might want to point out. I know this date down here
13 says January 4th, 2008. Is that an accurate date from
14 when this presentation was created?

15 A. No, sir, it's not.

16 Q. What -- why are we seeing that date?

17 A. I believe that's the date it was printed out
18 on.

19 Q. I see. Okay. Just didn't want that to be
20 hanging over our heads here.

21 Now, what is the key to making Windows a great
22 platform for peer-to-peer like Microsoft wanted?

23 A. Well, the key to that is this naming issue I
24 discussed earlier. You have to be able to find the
25 computers you want to talk to and know that they're the

1 right ones.

2 Q. Can we see that on Page 4?

3 A. Yes, sir.

4 Q. Explain what we're seeing here, Professor
5 Jones.

6 A. Well, this is a slide entitled Naming: The
7 Key to P2P Development. And it explains that names have
8 to be stable and that it be possible to find addresses
9 for those names and locate members of a group.

10 MR. CALDWELL: Now, could we flip to Page
11 6?

12 Q. (By Mr. Caldwell) Tell us what Microsoft has
13 figured out about this problem, at least as of this
14 presentation.

15 A. Well, they figured out that the Number One
16 design goal is security; that the names have to resolve
17 to the intended addresses so that another person, a
18 hacker, can't fake and give you fake -- fake that
19 identifier; basically, give you the wrong address so you
20 talk to them instead of who you wanted to talk to.

21 Q. Well, is being able to find somebody's address
22 a really big time deal. I mean, is it a one-time shot
23 problem, in other words? Like if you find somebody's
24 address, are you all set; forevermore, you've got their
25 address?

1 A. Well, in something like the client/server
2 model, the address of somebody like Amazon.com is not
3 going to frequently change.

4 But in peer-to-peer, take our example in the
5 library. Those student laptops are not going to be as
6 stable as Micro -- or sorry -- as, say, Amazon servers,
7 but also we talked about those students moving from one
8 place to another.

9 In those situations, their IP addresses
10 change. There are other reasons for IP addresses to
11 change as well. So they won't have stable addresses.

12 MR. CALDWELL: Now, can we pull up
13 PowerPoint Slide 54?

14 Q. (By Mr. Caldwell) Has Microsoft recognized
15 this problem with addresses changing?

16 A. Yes, sir. They call it transient
17 connectivity. Let me read the highlighted portions.

18 Many client computers have transient
19 connectivity. They connect for unpredictable amounts of
20 time and can be assigned a new IP address for each
21 connection.

22 Q. And then it goes on to talk about -- it was
23 comparing some of the more traditional computers, but
24 what does it say about peer computers specifically in
25 the lower highlight?

1 A. Well, it explains that peer computers, on the
2 other hand, have resources to share. However, they
3 still have transient connectivity.

4 Q. And what is that telling you?

5 A. Well, that's telling us that essentially those
6 peer -- the addresses for those peers are going to
7 change, and they could change in unpredictable ways
8 resulting in new IP addresses, but that that's a problem
9 that needs to be addressed.

10 Q. Well, before I ask you whether it was
11 important or not, you were telling us about the peer
12 name resolution protocol in Windows XP and Vista. Where
13 does the peer name resolution protocol fit into
14 Microsoft Windows?

15 A. Well, the peer name resolution protocol is
16 part of the -- what's called the PeerNet interfaces or
17 the PeerNet API.

18 MR. CALDWELL: Thank you, Mr. Moreno.

19 Q. (By Mr. Caldwell) So can you use those PeerNet
20 interfaces built into Microsoft Windows to set up a
21 virtual private network?

22 A. Yes. You can make use of the PeerNet
23 interfaces to find the address of a computer that you
24 wish to talk to. And that virtual private network in
25 the PeerNet interface is what's called a group.

1 Q. In what ways are the communications in a
2 PeerNet group private?

3 A. Well, first of all, all communications in the
4 PeerNet group are encrypted.

5 Second, in the PeerNet group, you cannot
6 see -- you cannot determine who the sender of an
7 address -- or sorry -- the sender of a message is.

8 Further, if you're observing the group, you
9 cannot tell which applications on which computers will
10 receive information sent over the VPN.

11 Q. So, in your opinion, are the transmissions
12 within that group anonymous?

13 A. Yes, sir.

14 Q. Are they private?

15 A. Yes, sir.

16 Q. Have you seen additional documents or
17 presentations confirming the privacy of communications
18 in the group?

19 A. Yes, I have.

20 MR. CALDWELL: Okay. For the record, we
21 identify also Plaintiff's Exhibits 151 and 245.

22 Q. (By Mr. Caldwell) How does the peer name
23 resolution protocol fit into the formation of a secure
24 group?

25 A. Well, the peer name resolution protocol can be

1 used to find a member of the group, to find the address
2 with whom the computer wants to speak.

3 Q. So at a high level, how does that work?

4 A. Well, let me show you.

5 Q. I think -- I think the part you're thinking of
6 is going to come later.

7 A. Okay.

8 Q. So just give us an overview and --

9 A. Yeah.

10 So the basic -- basically, the idea is that a
11 computer or an application will want to become a member
12 of the group. That application will -- will have a
13 domain -- secure domain name to contact, and it will
14 need to get an address from the -- from PRNP, from the
15 secure domain name service, to make a connection in the
16 VPN.

17 Q. Has Microsoft released any applications that
18 use these PeerNet interfaces to create groups?

19 A. Yes, they have. They've released an
20 applications called Windows Meeting Space.

21 Q. Can you show us that?

22 A. Yes, sir.

23 Q. What are we seeing here, Professor Jones?

24 A. This is a screen shot of a test I ran using a
25 couple of computers running Windows Meeting Space.

1 On the right side are two participants in the
2 meeting. I just gave them the names Admin 1 and Admin
3 2.

4 And then on the left side is what their -- is
5 a desktop that they're sharing between them.

6 Q. And let's talk about that a little bit.

7 You say they're sharing a desktop. Are you
8 saying -- there's, basically, two computers here?

9 A. Yes, sir.

10 Q. And one computer is called what?

11 A. Admin 1, and another is Admin 2.

12 Q. And what are we seeing in the big slide here?
13 Not the part in the red box, but what is the whole big
14 slide?

15 A. All right. The -- the entire slide is
16 what's -- the picture of Windows Meeting Space where
17 basically the computers screen on Admin 1.

18 Q. Okay. And what are we looking at inside the
19 screen on Admin 1?

20 A. We're seeing the -- actually, I should restate
21 that. The entire screen is for Admin 1, but -- I'm
22 sorry. The entire screen is for -- let me see if
23 there's a right way to say this. This is the entire
24 screen of -- I believe it's Admin 2.

25 Q. Okay.

1 A. And then what's showing inside of the little
2 red -- or the smaller red box is for -- is the desktop,
3 the screen of the computer, Admin 1.

4 Q. So on one of the computers, we could work on a
5 word processing document, we could type a term paper,
6 and then the other folks on their computer screen could
7 see it?

8 A. Yes, sir. Everybody will see -- whatever's
9 running on the screen of Admin 1 will be seen by all the
10 other computers in the group.

11 MR. CALDWELL: So can we go to the next
12 slide here?

13 A. Yes, sir.

14 Q. (By Mr. Caldwell) And now, tell us where all
15 the parts fit together.

16 A. Okay. The Windows PeerNet interfaces are on
17 the laptop computer, that remote user. The secure
18 domain name service, which is the peer name resolution
19 protocol, can be running on another computer on the
20 internet.

21 And those can -- I'm sorry. And those -- I
22 should say that that peer name resolution protocol could
23 be running on other computers as well.

24 Q. Can you -- you say that there's a secure group
25 name that's used to find the group. Can you give us an

1 example of what the secure group name looks like?

2 A. Sure. The secure group name -- one example of
3 this is given on this slide. This is a long string of
4 characters on the left side followed by a dot and then a
5 classifier associated with an application.

6 Q. I see.

7 And now -- now, did the user have to type this
8 secure group name into the program in order to use it?

9 A. It's unlikely that they would have done so.

10 It's much more likely that they would have
11 gotten this in an e-mail to use to connect to the group
12 with. That way they could just click on a link, for
13 example, rather than having to type all this in.

14 Q. So can you give us an example of what the name
15 would look like if it were an unsecure group name?

16 A. Yes, sir.

17 So -- and -- well, or an unsecure peer name in
18 Windows PeerNet interfaces is something like 0.PeerNet.
19 It's much simpler.

20 Q. Does Windows refer to -- I'm sorry -- does
21 Microsoft refer to secure group names as secure group
22 names?

23 A. Yes, sir, I believe they do. I believe I've
24 seen documents that say that. But it falls into the
25 class of names called secure peer names.

1 Q. Okay. Well, Professor Jones, though, are you
2 calling a secure group name a secure domain name for
3 purposes of these patents just because they both say the
4 word secure?

5 A. No. I'm not calling it just because they use
6 that name secure. I analyzed these and matched them to
7 the claim elements rather than just say, well, they say
8 it's a secure name, so it must meet the claim terms.

9 Q. So why does the secure group name look like
10 that, all that crazy chaos, the 5fe531661, et cetera?

11 A. Well, it looks like that so that you can have
12 some assurance that it's the right name. They use that
13 kind of name, because it's difficult to fake that name.

14 It's hard for someone -- or almost impossible
15 for someone to fake the correct secure group name.

16 Q. So my computer knows I want to join a group by
17 that name?

18 A. Yes, sir.

19 Q. What does it do with that name?

20 A. Well, it uses that name, sends it to the
21 PeerNet interfaces, and the PeerNet interfaces would
22 send those to PNRP.

23 Q. Now, can we just take that name and send it to
24 the ordinary domain name server that Dr. Short told us
25 about?

1 A. No. If we send that name to the ordinary
2 domain name service, all we'll get back is an answer
3 that says something like error, not found.

4 Q. Have you verified that?

5 A. Yes, sir, I have.

6 Q. Have you seen testimony from Microsoft's
7 engineers to that effect?

8 A. Yes. Let me show that to you.

9 Q. Okay.

10 A. This is deposition testimony, sworn testimony
11 from Mr. Christian Huitema. He was asked: Can you tell
12 by looking at a secure peer name, that it must be
13 resolved by PNRP rather than DNS?

14 His answer: Oh, yes. They have a very
15 different syntax, APN. A DNS name will be something
16 like www.microsoft.com, whereas a peer name, a secure
17 peer name, in particular, will include a sequence of 32
18 hexadecimal digits.

19 Q. Well, so we've got a crazy secure group name.
20 How can the PeerNet interfaces in the Windows I'm
21 running -- and I'm assuming the user doesn't have to
22 deal with that crazy name, correct?

23 A. That's correct.

24 Q. So how do the Windows PeerNet interfaces find
25 the right secure computer network address for that group

1 name?

2 A. Well, they can -- they do that by asking other
3 computers around them for a secure computer network
4 address associated with that name.

5 Q. Well, let me back up a little bit, because I
6 did -- I did a bad job of introducing something earlier.

7 Let's say we have our students that are at the
8 library, and they want to have a meeting, but I'm at
9 home, and I want to be part of the meeting.

10 Does somebody tell me, send me some message,
11 something to say: Hey, it's time to join our group
12 meeting and work on a paper together?

13 A. Yes. That's essentially what happens.

14 For example, you can receive -- if you're --
15 if somebody wants to make you a part of the group, you
16 could receive an invitation file to allow you to join
17 that group. And that invitation file would have, for
18 example, the secure group name.

19 Q. Well, if they're sending me an invitation
20 file, why don't they just go ahead and send me the
21 address I'm going to need in order to connect to the
22 group?

23 A. Well, at times, they actually -- they do send
24 you that IP address, and you could use that to connect
25 to the group in some cases.

1 Q. So what's the problem?

2 A. Well, it's this transient connectivity
3 problem. There will be times where that address is
4 going to work just fine. There will be other times,
5 however, where that address will no longer be functional
6 and you won't be able to join the group if you just had
7 the address.

8 Q. Are there other ways that my computer might
9 already know the addresses it needs to connect to a
10 group?

11 A. Yes, sir. There's another method called
12 People Near Me so that if -- for computers near you, you
13 may be able to easily know the addresses for the people
14 near you.

15 Q. Well, so People Near Me, somebody could just
16 e-mail me the -- or e-mail me a file that has the
17 addresses I need.

18 Will those ways of getting the address I need
19 to join the VPN always work?

20 A. No, sir, they work. Like this transient
21 connectivity problem, it may be the case that the
22 address is no longer the right one for that person, or
23 the person who sent you the invitation may no longer be
24 part of the group.

25 Q. Well, then if we don't have an address for

1 somebody that's on the group that we want to connect to,
2 can we join the group?

3 A. No. You won't be able to join the group if
4 you don't know how to reach anyone in it, and that would
5 be pretty frustrating, so...

6 Q. So has Microsoft built in a failsafe way of
7 getting the address you need in order to connect to one
8 of these secure groups?

9 A. Yes, they have. That's that peer name
10 resolution protocol. That will find the name of a group
11 member if it can be found.

12 THE COURT: Counsel, let me ask you, it's
13 almost 5:00 o'clock. Are you at a good stopping place
14 or close to one?

15 MR. CALDWELL: I guess I could stop now.
16 I could probably finish in 30, 35 minutes.

17 THE COURT: I think we'll go ahead and
18 quit for the day today. We'll come back in the morning
19 at 9:00 o'clock, at which time we'll start back up and
20 finish with this witness and then cross-examination.

21 So I know it's been a long, hard day, Ladies of the
22 Jury. Thank you for your careful attention. I've
23 looked over there several times, and you've been really
24 paying good attention.

25 So remember my instructions. Have a safe

1 drive home. We'll see you back here in the morning
2 ready to go at 9:00 o'clock. The jury is excused.

3 COURT SECURITY OFFICER: All rise for the
4 jury.

5 (Jury out.)

6 THE COURT: Please be seated.

7 MR. CALDWELL: Your Honor, I don't know
8 if this is an appropriate time, but can I mark these as
9 Demonstrative Exhibits 6, 7, and 8, the three -- the
10 three claim charts that have been checked?

11 THE COURT: Sure. You can mark them and
12 offer them in the morning.

13 MR. CALDWELL: Okay. Thank you.

14 THE COURT: All right. We're going to
15 adjourn for the evening.

16 Is there anything the Plaintiff wishes to
17 bring up?

18 MR. CAWLEY: No, Your Honor.

19 THE COURT: Defendants?

20 MR. POWERS: No, Your Honor.

21 THE COURT: All right. Let me just
22 comment, I've looked at the objections to the exhibits
23 of Dr. Reed, and I think what I'm going to do with those
24 is, I've reviewed the briefing again, and I think I can
25 pretty well submit it on the briefs without a lot of

1 argument.

2 But what I would like to do is just,
3 whenever we get to that point in the testimony, approach
4 the bench or let me know, and I'll take it up at that
5 time.

6 MR. SAYLES: Your Honor, are you asking
7 that I approach each time, or shall I approach --

8 THE COURT: No.

9 MR. SAYLES: -- at the appropriate time?

10 THE COURT: At the appropriate time.

11 We'll try to deal with all of them or
12 groups of them.

13 MR. SAYLES: All right.

14 THE COURT: All right.

15 MR. CASSADY: Your Honor, just so we're
16 clear, what you're asking us to do is, we can still
17 en masse let those exhibits in at the beginning of
18 Mr. Reed's testimony, and then we'll discuss the
19 objections at the bench.

20 THE COURT: Well, no. They won't come in
21 until you offer them. And if they're objecting to them,
22 I need to rule on that first.

23 Do you need those in at the very
24 beginning of his testimony or --

25 MR. CASSADY: The reason I asked, Your

1 Honor, is that there are 80 of them.

2 THE COURT: How many?

3 MR. CASSADY: I think there's 80 plus.

4 THE COURT: Okay.

5 MR. CASSADY: I can go through the
6 process of identifying them through the testimony, but,
7 obviously, we're not going to put 80 documents up.

8 THE COURT: No. I don't -- I don't think
9 that will be necessary. What I'm getting at is, is
10 there some introductory predicate before you get to
11 needing to rely on those documents with regard to his
12 opinions, or do you get to those very promptly into --
13 or very quickly into his testimony?

14 MR. CASSADY: I think the first set or
15 first group is pretty quickly, at the beginning of his
16 testimony, and then there's two other groups that happen
17 maybe 30 minutes into his testimony.

18 THE COURT: And what are the three groups
19 that you're referring to?

20 MR. CASSADY: I think, actually,
21 Mr. Sayles identified them as groups in his list of
22 documents that they're objecting to.

23 I don't know where the cutoff is, but the
24 first group, I believe, is financial data, Microsoft
25 financial data.

1 And then the second group, if you see the
2 sequence start over?

3 THE COURT: Yes.

4 MR. CASSADY: The second group, I
5 believe, is the summaries.

6 MR. SAYLES: Correct.

7 MR. CASSADY: And the third group would
8 be the licenses that Microsoft has an issue with.

9 THE COURT: All right. I go down
10 through -- well, wait a minute.

11 Yeah. Financial data goes down through
12 the top of Page 6, first item, right? And then you get
13 into the licenses.

14 MR. CASSADY: Top of Page 6, and that's
15 where the -- I believe that's when the -- yeah, correct.
16 That's the licenses.

17 No. Actually, Your Honor, I apologize.
18 It says licenses, but that's actually -- I apologize,
19 Your Honor. Yes, that's the licenses. You got that
20 correct.

21 And then --

22 THE COURT: Then there's a bunch of
23 summaries of -- irrelevant financial data is the
24 objection, right?

25 MR. CASSADY: Yes.

1 THE COURT: And maybe you can help us
2 here, Mr. Sayles. I'm just trying to get -- are there
3 some groupings here that it would be logical to take up?

4 MR. SAYLES: There are groupings. Let me
5 get my notes, if I may, Your Honor.

6 THE COURT: Well, y'all look at them, and
7 we'll take them up in the morning. Y'all try to get
8 together and see if you can get me some way to manage
9 them.

10 MR. SAYLES: We will, and they do follow
11 the three groups.

12 THE COURT: Okay. Very well.

13 Anything further?

14 MR. POWERS: No, Your Honor.

15 THE COURT: All right. We'll be
16 adjourned. See you in the morning.

17 COURT SECURITY OFFICER: All rise.

18 (Court adjourned.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/ _____
SUSAN SIMMONS, CSR
Official Court Reporter
State of Texas No.: 267
Expiration Date: 12/31/10

Date

/s/ _____
JUDITH WERLINGER, CSR
Deputy Official Court Reporter
State of Texas No.: 731
Expiration Date: 12/31/10

Date

EXHIBIT F5

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

1			
2			
3	VIRNETX	*	Civil Docket No.
4		*	6:07-CV-80
5	VS.	*	Tyler, Texas
6		*	March 10, 2010
7		*	9:00 A.M.
8	MICROSOFT CORPORATION		

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE JUDGE LEONARD DAVIS
UNITED STATES DISTRICT JUDGE

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(Proceedings recorded by mechanical stenography,
transcript produced on CAT system.)

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* * * * *

P R O C E E D I N G S

COURT SECURITY OFFICER: All rise.

THE COURT: Please be seated.

(Jury in.)

THE COURT: All right. Good morning.

1 All right. Are y'all ready to go?

2 Okay. All right. Counsel, you may
3 proceed.

4 MR. POWERS: Your Honor, do you wish to
5 handle exhibits before we begin?

6 THE COURT: Yes. Uh-huh.

7 MR. McLEROY: May I approach, Your Honor,
8 with our list of exhibits?

9 THE COURT: Yes, you may.

10 All right. You've given Plaintiff's list
11 of exhibits admitted on March 9.

12 Any objection to that?

13 MR. POWERS: No, Your Honor.

14 THE COURT: All right. That will be
15 marked as Plaintiff's Exhibit No. -- whatever it is --
16 2, okay?

17 MR. POWERS: We have a similar list, Your
18 Honor. And I believe it was one exhibit from yesterday
19 that we need to formally move into evidence. That is
20 DX3578, and that was the Gabriel user's guide, in
21 addition to the four that are listed on the list.

22 THE COURT: Any objection?

23 MR. McLEROY: No objection, Your Honor.

24 THE COURT: Be admitted.

25 This will be Defendant's Exhibit List No.

1 2. Any objection to it, as far as what was admitted
2 yesterday?

3 MR. McLEROY: No, Your Honor.

4 THE COURT: Be admitted.

5 All right. Anything else before we
6 begin?

7 MR. POWERS: Not from Microsoft, Your
8 Honor.

9 THE COURT: Okay.

10 MR. CALDWELL: Are we ready, Your Honor?
11 May we proceed?

12 MARK T. JONES, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

13 DIRECT EXAMINATION

14 BY MR. CALDWELL:

15 Q. Professor Jones, let's remind everybody where
16 we were very briefly just to get our context back.

17 Could we look at the road map you provided us?

18 A. Yes, sir.

19 Q. Okay. So yesterday we talked about the '135
20 patent, and can you refresh us which products are at
21 issue in the '135 patent?

22 A. Yes, sir. Up at the top, you see the two
23 operating systems, Windows XP and Vista. On the left
24 are the client applications, and the right bottom side
25 are the server applications, such as Live Communications

1 Server and Office Communications Server.

2 Q. Professor Jones, how do those products fit
3 into your infringement analysis for the '135?

4 A. So the application running on the user's
5 computer would be one of those applications on the
6 bottom left, such as Office Communicator or Windows
7 Messenger or Live Meeting Console.

8 The operating system and specifically the
9 Windows RTC interfaces would be the DNS proxy on the
10 user's computer. And then back in the basement of
11 acme.com was the gatekeeper computer, which is Office
12 Communications Server.

13 Q. The Live Communications Server?

14 A. Yes, sir.

15 Q. And what did you conclude about the '135
16 patent?

17 A. I concluded that when these applications use
18 the automatic connection feature of the Windows RTC
19 interfaces to form a VPN, including the Office
20 Communications Server as the gatekeeper computer, they
21 infringe Claims 1, 10, and 12 of the '135 patent.

22 Q. Then we moved on to the '180 patent. And
23 you've already discussed the description of the '180
24 patent. You provided that yesterday. And we were
25 talking about the operations of Microsoft's products

1 related to the '180 patent.

2 A. Yes, sir.

3 Q. What products do you believe infringe the '180
4 patent?

5 A. These are the Microsoft operating systems that
6 we saw on the -- a couple of slides ago, Windows XP and
7 Windows Vista and specifically in those -- the PeerNet
8 interfaces.

9 Q. And what kind of networks do you create with
10 the PeerNet interfaces?

11 A. Those are peer-to-peer networks that form --
12 through grouping, form VPNs.

13 Q. Can you remind us what peer-to-peer networks
14 are like?

15 A. Those are networks like we saw, the -- the
16 example I talked about of the students working on a
17 project together in the UT-Tyler library.

18 Q. Can you show us that picture?

19 A. Yes, sir.

20 Q. Now, did we hear that the '180 patent involved
21 a secure domain name service that's used to find an
22 address?

23 A. Yes, we did. And that secure domain name
24 service we see in the center there is the peer name
25 resolution protocol running on a computer, say on the

1 internet or on the user's computer.

2 Q. Professor Jones, when did this functionality
3 get added to Microsoft Windows?

4 A. This was added, for example, in 2003 in the --
5 when -- when Microsoft released the advanced networking
6 pack.

7 Q. Was the advanced networking pack an update for
8 Microsoft Windows?

9 A. Yes, it was.

10 Q. So that was in 2003? Is that what you said?

11 A. Yes, sir.

12 Q. When was that in relation to when Dr. Short,
13 Mr. Munger, and their colleagues filed their application
14 that became the '180 patent?

15 A. That was three years after they filed the
16 application. They filed the application in 2000.

17 Q. All right. So Microsoft released these
18 PeerNet interfaces as part of the advanced networking
19 pack in '03, but was the advanced networking pack the
20 only way to get these PeerNet interfaces into XP?

21 A. No. They were part of, for example, Service
22 Pack 2 and other updates for Windows.

23 Q. What is a service pack for Windows?

24 A. Well, a service pack, for example, is a set of
25 updates that may be new functionality or repairs to old

1 functionality that can update something like Windows XP.

2 Q. Professor Jones, how does an update like
3 Service Pack 2 get into Windows?

4 A. Updates into Windows can come by the user
5 going to the Microsoft website and downloading those,
6 or, for example, Microsoft recommends you set up your
7 computer so that they can automatically be downloaded
8 into your computer and installed.

9 Q. Now, on my work computer, sometimes I see this
10 little bubble that pops up that says updates are
11 installed; we need to restart; or updates need to be
12 installed, that sort of thing. Is that what you're
13 talking about?

14 A. Yes, sir.

15 Q. Okay. But would it always have to come in
16 through an update?

17 In other words, could the Service Pack 2 and
18 all these PeerNet interfaces be preinstalled in your
19 copy of Windows?

20 A. Yes, they could.

21 For example, a manufacturer, like Dell, could
22 have them installed on a new computer. You could also
23 get them from retail copies.

24 Q. That's what I was going to ask. Let's say I
25 cruised into Best Buy a couple of years ago, and I want

1 to go in and buy Windows XP, even before Windows Vista
2 came out, but Windows XP. If I were to buy a copy of
3 the disk, would it have the PeerNet interfaces on it?

4 A. Yes, it would, for when the Microsoft began to
5 sell Windows XP with Service Pack 2 in it.

6 Q. Now, Professor Jones, I'm holding up retail
7 copies of Microsoft Windows. This is a box that could
8 have -- you could have bought this at Best Buy?

9 A. Yes, sir.

10 Q. This is Plaintiff's Exhibit 830. I note right
11 here it promotes right across the top Service Pack 2
12 with Advanced Security Technologies.

13 Does this include the PeerNet interfaces?

14 A. Yes, it does.

15 Q. And do you know what the significance of the
16 green box is?

17 A. I believe that's a -- if I read properly,
18 that's a different edition. That may be the home
19 edition of Windows XP.

20 Q. Your eyesight is -- checks out fine.

21 Now we have the blue box, but it also says
22 Service Pack 2 with Advanced Security Technologies.

23 What is this?

24 A. That's another version of Windows XP. I
25 believe that may be the professional version, which has

1 some additional features.

2 Q. Yes, sir, it is, and that's Plaintiff's 947.

3 Do both of those have the PeerNet interfaces
4 built right in on the disc?

5 A. Yes, sir.

6 Q. Now, those are the XP products. Let's talk
7 about Vista. Whoa, I thought I was dropping something.

8 Let's talk about Vista.

9 This one doesn't say it's a later version with
10 a service pack or anything. Does Windows Vista have the
11 PeerNet interfaces on it?

12 A. Yes. Windows Vista had the PeerNet interfaces
13 from its inception.

14 Q. Now, did you test these products to make sure
15 they had the PeerNet interfaces in them?

16 A. Yes, sir. I did those installations on my own
17 computer to ensure that they did have the PeerNet
18 interfaces on them.

19 Q. Now, did you also just test how the PeerNet
20 interfaces operate?

21 A. Yes, I did.

22 Q. Can we look back at your slide?

23 I note here in the top, you have the Windows
24 PeerNet interfaces, and you have a box there identified
25 as a secure group name?

1 A. Yes, sir.

2 Q. Have you identified a secure domain name?

3 A. Yes. That's the secure group name.

4 Q. Will you refresh our memory on what the secure
5 group name looks like?

6 A. Yes, sir. This is that long string of digits
7 and numbers and letters followed by a dot and then that
8 string at the end.

9 Q. Professor Jones, is it fair to say the secure
10 group name looks different than a standard domain name?

11 A. Yes, it does. It's designed to be a secure
12 name, a name that can't be faked by someone trying to
13 get you to talk to the wrong person.

14 Q. And will an ordinary domain name server
15 provide an address for that name?

16 A. No, it won't. An ordinary domain name server
17 would return something like: Error, not found.

18 Q. So how do we get an address for that secure
19 domain name you've identified?

20 A. We would have to use the peer name resolution
21 protocol to resolve that address.

22 Q. And if the peer name resolution protocol
23 resolves that and gives us an address, can we establish
24 a VPN connection using the PeerNet interfaces?

25 A. Yes, sir.

1 Q. Now, will you please walk us through how the
2 PeerNet interfaces setup a VPN using secure domain names
3 and the peer name resolution protocol?

4 A. Yes, sir.

5 So starting off, we see that the PeerNet
6 interfaces are running on the user's computer, and they
7 have a secure group name that we talked about earlier,
8 a -- in that case, the -- an application could be
9 running on the user's computer, such as Windows Meeting
10 Space, and it would have that secure group name.

11 Q. Okay. So Windows Meeting Space, was that the
12 screen we looked at yesterday where you would set up two
13 computers and, basically, looking at the screen of one
14 computer, you could really see what the person over here
15 on the other computer was doing?

16 A. Yes, sir. When they're sharing -- for
17 example, a group of people sharing a desktop working on
18 a document.

19 Q. So if that's the application that's running,
20 how do we kick off the process of joining that group?

21 A. Well, the user, for example, would press a key
22 or click their mouse, and that would result in a request
23 to join the group. That would result in that secure
24 group name going to the PeerNet interfaces.

25 Q. Okay. And now, there might be some

1 circumstances where the PeerNet interfaces already know
2 the correct address; is that fair?

3 A. Yes, there would be. For example, it could
4 come in an invitation file, and they might already have
5 an address to which to connect.

6 Q. Will that always work?

7 A. No, sir, it won't. There will be cases, like
8 we talked about, where a student might have moved their
9 computer and have a new address, or they might have
10 closed their computer and left the library.

11 Q. So if the PeerNet interfaces do not know the
12 correct address they need and they need to find the
13 address, how does that work?

14 A. Well, they need to send a request to PNRP, a
15 request for an address.

16 Q. All right. So will you show us what the
17 PeerNet interfaces do with the name?

18 A. Well, they send out a request message that
19 goes from the user's computer over the internet to
20 another computer on the internet.

21 Q. Now, how is it that there are other computers
22 on the internet that would be able to receive that name
23 and know what to do with it?

24 A. Well, there would be other computers on the
25 internet running Windows. They would also be running

1 the PeerNet resolution protocol. And they cooperate
2 with one another and, basically, agree to help one
3 another find the address.

4 And so the PeerNet interface that's running on
5 this user's computer would send out a request to another
6 one of those computers asking, do you know where I can
7 find this address?

8 Q. And might the same thing happen if we weren't
9 talking about the context of the internet, but it was
10 a -- another -- a new student that walked into the
11 library?

12 A. Yes, sir.

13 Q. Okay. Now, we've -- we've sent a request
14 message to another computer that's connected to the
15 internet, fair?

16 A. Yes, sir.

17 Q. What happens if that computer does not know
18 the address that we need?

19 A. Well, if it doesn't know the address, it may
20 point us in the direction of another computer that does.

21 Q. Well, what happens if it thinks it does have
22 the address we need?

23 A. Well, if it thinks it has the address, like a
24 possible address, then it will send that in a message
25 back to the PeerNet interfaces on the user's computer.

1 Q. All right. So our -- our user, who we're
2 calling a remote user, receives back that address on
3 their computer -- but at that point, do they know they
4 have a secure computer network address?

5 A. No, they don't know that. As we talked about
6 earlier, there could be someone faking the address.
7 They're not certain yet that this is the right address.

8 Q. Well, does the user's computer, then, take any
9 additional steps to make certain that it has found an
10 address that's corresponding to the secure domain name?

11 A. Yes, sir. They would send out a request to
12 that address to verify or for verification information
13 on whether this is the correct address.

14 Q. Now -- so we send it to one -- to one of the
15 group members over here in the library that we would
16 like to connect to?

17 A. Yes, sir.

18 Q. Is that peer or that group member going to
19 send us something back to tell us, here's your
20 legitimate address; you found it?

21 A. Yes. They're going to send -- send back
22 proof. They're going to send what's called a certified
23 peer address.

24 Q. And let's talk about a certified peer address
25 for a little bit. What is -- or what all is inside a

1 certified peer address?

2 A. Well, the certified peer address has an IP
3 address in it. It has a port number. It has a
4 protocol, as well as information that can be used to
5 verify the address.

6 Q. Now, what's going to happen -- this whole
7 thing is the certified peer address that we're seeing on
8 the screen right here?

9 A. Yes, sir.

10 Q. And, again, I'm not very good at drawing
11 ovals.

12 What's going to happen with that certified
13 peer address?

14 A. That's going to be sent back in a message to
15 the user's computer, and there the PeerNet interfaces
16 will receive it and use that verification information to
17 ensure that this is the correct address.

18 Q. Okay. So at that point, do we know then that
19 we have a secure computer network address?

20 A. Yes, we do.

21 Q. So now that we have the address back at our
22 computer, what does our computer do?

23 A. At that point, the computer will set up the
24 VPN connection to the group.

25 Q. Okay. And now what does our computer do upon

1 joining the VPN?

2 A. After becoming part of the group, part of the
3 VPN is going to send a request to a computer --
4 actually, that same computer asking it for information,
5 for records.

6 Q. So does our user get any further information
7 indicating that it is now certified as a member of the
8 group?

9 A. Well, it will begin to -- it will get that
10 information and see what's going on in the group at that
11 point.

12 Q. Okay. Now, you've described several details.
13 What does the user really have to do here?

14 A. Well, the user had to press a key or click on
15 an invitation file, something along those lines. And
16 after that, everything else happens behind the scenes.

17 Q. Well, Professor Jones, you have described
18 using the peer name resolution protocol to find an
19 address and newly join a virtual private network, but is
20 that the only time the client computer will use PNRP?

21 A. No, it's not. The -- for example, the client
22 computer may need to make new connections to the group,
23 and that will happen whenever that -- whenever it needs
24 to make those new connections, it will use PNRP.

25 Q. Well, Professor Jones, if you already have a

1 connection to the VPN, why would you want to make
2 additional connections to that VPN?

3 A. Well, remember, we talked about -- earlier
4 about this transient connectivity problem where
5 computers may leave the group, a user may leave the
6 library, close their laptop, or an address may change,
7 and by having additional connections, we can have a more
8 reliable operation. That way we don't get -- we don't
9 lose the connection to the group just because someone
10 left the group.

11 Q. And what does Microsoft call this process of
12 making extra connection?

13 A. That's called graph maintenance.

14 Q. Does this process of forming additional
15 connections during maintenance happen automatically?

16 A. Yes, it does. It happens -- they check every
17 few minutes.

18 Q. Now, is it illustrated in Microsoft documents?

19 A. Yes, it is.

20 MR. CALDWELL: Mr. Moreno, can you pull
21 up Plaintiff's Exhibit 938?

22 Q. (By Mr. Caldwell) All right. What is the --
23 what are we seeing here?

24 A. This is the -- one of the Microsoft internal
25 documents -- confidential documents that we talked

1 about. This one describes how peer-to-peer grouping
2 works.

3 MR. CALDWELL: Mr. Moreno, can I have you
4 flip to Page 23? And make that as big as you can for
5 us.

6 Q. (By Mr. Caldwell) Will you tell us what's
7 illustrated here, Professor Jones?

8 A. Well, what we're seeing in this illustration
9 is that a node in the graph, a computer in the graph or
10 this -- when we're talking about a group, has multiple
11 connections, more than one connection to other group
12 members in some cases.

13 Q. I see.

14 And now, I'm going to point at one of these
15 new members, hopefully. Okay. The one that's -- the
16 one that's up ahead of that arrow, and I'm going to try
17 and count here. It appears that that group member has
18 one, two, three, four, five different connections?

19 A. Yes, sir.

20 Q. Now, are there also specifications for
21 graphing and grouping that explain this process?

22 A. Yes, there are.

23 MR. CALDWELL: We'll identify Plaintiff's
24 Exhibit 811 and 288.

25 Your Honor, we also identify Plaintiff's

1 Exhibits 1027 and 1028 and move those into evidence.

2 THE COURT: Any objection?

3 MR. POWERS: No objection, Your Honor.

4 THE COURT: Be admitted.

5 Q. (By Mr. Caldwell) Does the client computer
6 send another request for those records that you
7 mentioned if it connects to a second peer or a third
8 peer?

9 A. Yes, sir, it does.

10 Q. Each time?

11 A. Every time.

12 Q. Okay. So now, if we can go back to our
13 presentation, and I'll clear the screen.

14 It's time for us to -- for me to make some
15 checkmarks maybe. We're going to talk about the
16 comparison of the '180 patent to the Microsoft products.

17 Will you tell us which claims that we're
18 talking about today?

19 A. Yes, sir. We're talking about Claims 1, 4,
20 and 15, and then Claims 17, 20, and 31.

21 Remember, 4 and 15 are these dependent claims
22 that we'll see depend on Claim 1; 20 and 31 depend on
23 17; and 35 depends on 33.

24 Q. Well, Professor Jones, I see a fair number of
25 claims there. I mean, is the list there, one, two,

1 three, four, five, six, seven, eight on there, is it
2 really sort of starting from scratch eight times?

3 A. No, sir. There -- there's quite a bit of
4 similarity between these claims, and I think it will
5 move pretty quickly.

6 Q. Okay. Well, let's start with Claim 1, if
7 you're okay with that.

8 A. Yes, sir.

9 Q. Now, Claim 1 is on the foam board. I'm going
10 to start with the preamble to Claim 1.

11 The preamble of Claim 1 says: A method for
12 accessing a secure computer network address comprising
13 the steps of.

14 Has Judge Davis given us any definitions that
15 help with that term?

16 A. Yes, sir, he has.

17 Q. And what has he defined?

18 A. For secure computer network address, it means
19 a network address that requires authorization for access
20 and is associated with a computer capable of virtual
21 private network communications.

22 Q. Did you apply that construction?

23 A. Yes, sir, I did.

24 Q. So what is the secure computer network address
25 in the Windows PeerNet system?

1 A. That's the address of the group member that
2 you're -- to which you're connecting that we described
3 in that animation.

4 Q. Does it require authorization for access?

5 A. Yes, it does.

6 The -- when the client computer is connecting
7 to that group member, the client computer has to prove
8 that it should be part of the group by giving either a
9 password or a group membership certificate.

10 Q. Now, do the Windows PeerNet interfaces perform
11 a method for accessing a secure computer network
12 address?

13 A. Yes, they do, just -- just as I described in
14 that animation.

15 Q. All right. Professor Jones, I want to start
16 with the first element now of the claim: Receiving a
17 secure domain name.

18 Has Judge Davis provided us any definitions in
19 that first part of the patent?

20 A. Yes, sir, he has.

21 For secure domain name, we have a domain name
22 that corresponds to a secure computer network address.

23 Q. Do the Windows PeerNet interfaces receive a
24 secure domain name?

25 A. Yes, sir, they do; for example, when they

1 receive it from an application like Windows Meeting
2 Space.

3 Q. Was that the secure group name you pointed to?

4 A. Yes, sir.

5 Q. Do we need a secure computer network address
6 in order to join the group?

7 A. Yes, we do. We have to find a way to connect
8 to that group securely and form a VPN.

9 Q. Well, what did you find, then, for this claim
10 element?

11 A. I found that the -- that this is -- this claim
12 element is met by the Windows PeerNet interfaces.

13 Q. May I check the element?

14 A. Yes, sir.

15 Q. Now, the second claim element, Professor
16 Jones, says: Sending a query message to a secure domain
17 name service, the query message requesting from the
18 secure domain name service a secure computer network
19 address corresponding to the secure domain name.

20 Now, has Judge Davis provided any
21 additional -- I mean, some of the same words that we
22 used, but has Judge Davis provided any additional new
23 definitions in that term?

24 A. Yes, sir, he has.

25 For secure domain name service, we have a

1 lookup service that returns a secure network address for
2 a requested secure domain name.

3 Q. Now, do the Windows PeerNet interfaces send a
4 query message to a secure domain name service?

5 A. Yes, they do, when the -- when the PeerNet
6 interfaces require an address for that secure domain
7 name.

8 Q. Do they send -- did you say they send query
9 message to -- to what?

10 A. To PNRP.

11 Q. Now, what is this -- what is that secure
12 domain name service?

13 A. That secure domain name service is the peer
14 name resolution protocol running as part of the PeerNet
15 interfaces.

16 Q. All right. Now, I want to dig into that a
17 little bit.

18 Professor Jones, you call the peer name
19 resolution protocol a form of domain name service or
20 DNS, right?

21 A. Yes, sir.

22 Q. Does Microsoft acknowledge that PNRP is a
23 special form of DNS?

24 A. Yes, sir, they do.

25 Q. Have you seen that on their web page, for

1 example?

2 A. Yes. I've seen it on their web pages.

3 Q. Can we take a look at that?

4 A. Yes, sir.

5 MR. CALDWELL: Mr. Moreno, I'd like to
6 pull up Plaintiff's Exhibit 148.

7 And can you pull us in on the first
8 couple of sentences there?

9 Q. (By Mr. Caldwell) What is this page, first of
10 all?

11 A. This is a Microsoft web page that describes a
12 PNRP, the peer name resolution protocol.

13 Q. Okay. Now, what does this website say about
14 PNRP?

15 A. It says: The peer name resolution protocol,
16 PNRP, name space provider, NSP, is a serverless DNS
17 technology.

18 Q. So if Mr. Cawley gives me a few minutes to
19 play around on the internet this evening, and I were to
20 go to Microsoft's website and find this page, I assume I
21 would see that it says the peer name resolution protocol
22 name space provider is a serviceless DNS technology,
23 right?

24 A. No, sir, you wouldn't see that.

25 Q. Why is that?

1 A. Well, during the -- last spring, during the
2 course of the litigation, this web page was changed.

3 Q. Okay. What does it say now? Can we look at
4 that?

5 A. Yes.

6 MR. CALDWELL: Can we pull up 507,
7 Mr. Moreno?

8 Q. (By Mr. Caldwell) And what does it say where
9 it used to say serviceless domain service?

10 A. Well, now it says serviceless name resolution
11 technology.

12 Q. The words DNS were removed?

13 A. Yes, sir.

14 Q. But were you able to print it off before it
15 got changed?

16 A. Yes, I was.

17 Q. All right. Professor Jones, regardless of
18 what changes have been made to Microsoft's website, have
19 you seen other internal Microsoft documents confirming
20 that PNRP is a form of DNS?

21 A. Yes, sir, I have.

22 MR. CALDWELL: Can we pull up Plaintiff's
23 Exhibit 812?

24 Q. (By Mr. Caldwell) At a high level, what is
25 this document?

1 A. This is a document where Microsoft --

2 THE COURT: Let me interrupt you for a
3 moment. Let me just ask the juror, are you okay, or do
4 we need to take a short break, or --

5 JUROR: Take a break.

6 THE COURT: Okay. Let's -- we'll take
7 about a 10-minute break, until 25 till.

8 COURT SECURITY OFFICER: All rise for the
9 jury.

10 THE COURT: And if you're not feeling
11 well, tell the court security officer, and I'll visit
12 with you.

13 (Jury out.)

14 (Recess.)

15 COURT SECURITY OFFICER: All rise.

16 (Jury in.)

17 THE COURT: Please be seated.

18 All right. That's very frustrating when
19 you -- if you need another break, just let us know, or
20 if anybody on the jury does for any reason, just raise
21 your hand or get someone's attention, and we'll be glad
22 to take it.

23 Mr. Powers?

24 MR. POWERS: Yes, Your Honor.

25 Ms. Ferguson has reminded us of a

1 housekeeping matter, that DX3339 has not been formally
2 offered. There is no objection.

3 THE COURT: Okay. Is that correct?

4 MR. McLEROY: I believe that's right,
5 Your Honor.

6 THE COURT: All right. It will be
7 admitted.

8 All right. You may proceed.

9 MR. CALDWELL: Thank you, Your Honor.

10 So can we put Plaintiff's Exhibit 148
11 back?

12 Q. (By Mr. Caldwell) Now, Professor Jones, we had
13 seen here that on Microsoft's website, they used to call
14 the peer name resolution protocol a serverless DNS?

15 A. Yes, sir.

16 Q. And what has happened to that?

17 A. That page has since been changed during the
18 course of this lawsuit.

19 Q. Now, can we look at other technical documents
20 to get the same message from Microsoft?

21 A. Yes, sir.

22 MR. CALDWELL: Can we pull up Plaintiff's
23 Exhibit 812?

24 Q. (By Mr. Caldwell) What does this mean, the P2P
25 Group API?

1 A. This is an internal Microsoft document
2 describing the -- the grouping aspect of these PeerNet
3 interfaces.

4 MR. CALDWELL: Can we go to Page 5,
5 Mr. Moreno?

6 And will you zoom in on -- yes, sir.

7 Thank you.

8 Q. (By Mr. Caldwell) What do we see here,
9 Dr. Jones?

10 A. This is another description of how they -- how
11 PNRP is a serverless DNS technology. It reads: Peer
12 networking is providing a serverless DNS technology
13 entitled PNRP.

14 Q. Now, is this the only other document Microsoft
15 has referring to PNRP as a form -- a special form of
16 DNS?

17 A. No, sir, it's not.

18 MR. CALDWELL: Can we take a look at
19 Plaintiff's Exhibit 938?

20 Q. (By Mr. Caldwell) And now, we've seen this
21 before, but can we look at Page 12?

22 And what does Microsoft say in its
23 confidential presentation on peer-to-peer networking,
24 Professor Jones?

25 A. They say that PNRP, peer name resolution

1 protocol, and they describe that as a distributed DNS.

2 Q. So these are some of the confidential
3 documents you've been telling us about?

4 A. Yes, sir.

5 Q. All right. Now, back to applying the claim,
6 Professor Jones, is the query message requesting from
7 the secure domain name service a secure computer network
8 address corresponding to the secure domain name?

9 A. Yes, sir. That's the message to PNRP.

10 Q. And what did you conclude with regard to this
11 claim element?

12 A. I concluded that the Microsoft PeerNet
13 interfaces meet this element of the claim.

14 Q. We talked about this briefly yesterday, but
15 before we get to the receiving step, do we need to talk
16 about the specific nitty-gritty details of how the
17 secure domain name service comes up with the address?

18 A. No, sir. These claims are flexible, and they
19 don't place -- they don't describe a specific
20 requirement on how it resolves that address.

21 Q. So the next thing is the receiving back step,
22 correct?

23 A. Yes.

24 Q. And that element says: Receiving from the
25 secure domain name service a response message containing

1 the secure computer network address corresponding to the
2 secure domain name.

3 Do the Windows PeerNet interfaces receive from
4 the secure domain name service a response message
5 containing the secure computer network address?

6 A. Yes, they do. That happens when the certified
7 peer address, as we saw in that animation, is returned
8 to the user's computer.

9 Q. And what's in that certified peer address?

10 A. That has, for example, an IP address, port,
11 number, it has protocol, as well as verification
12 information.

13 Q. And is that secure computer network address
14 corresponding to the secure domain name?

15 A. Yes, sir, it is.

16 Q. Okay. Dr. Jones, does it matter which one of
17 the peers out there running the PeerNet interfaces is
18 the one who sends back the certified peer address in
19 terms of analyzing the claim?

20 A. No. In terms of the claim, the claim says
21 that it's a -- it's a receiving step. So it matters
22 that the -- that it receive the message.

23 Q. What did you conclude for this claim element,
24 Professor Jones?

25 A. I concluded this claim element is met by the

1 PeerNet interfaces.

2 Q. Now, the final element of this claim says:
3 Sending an access request message to the secure computer
4 network address using a virtual private network
5 communication link.

6 Did you find this element met in the Windows
7 XP and Vista products?

8 A. Yes, I did. As I described in that animation,
9 this happens when the client is sending the access
10 request message that's the message asking for records or
11 information from the group.

12 Q. Does that occur if the connection made to the
13 VPN is the client computer's first connection to the
14 VPN?

15 A. Yes, sir, it does.

16 Q. What about if one of those supplemental
17 maintenance connections is made?

18 A. It also occurs then as well.

19 Q. So what did you conclude for this final
20 element?

21 A. I concluded this element is met by the PeerNet
22 interfaces.

23 Q. All right. Professor Jones, we've checked all
24 the elements of Claim 1. Can you tell us what that
25 means?

1 A. Well, that means that the Microsoft PeerNet
2 interfaces, part of the Windows XP and Vista operating
3 systems, infringe Claim 1 of the '180 patent, and
4 therefore, infringe the '180 patent.

5 Q. Thank you, Professor.

6 Now, we're going to get two for one on this
7 foam board here with a couple of those short dependent
8 claims.

9 The first one we see is Claim 4. That's that
10 same method from Claim 1 wherein the response message
11 contains provisioning information for the virtual
12 private network.

13 Do the PeerNet interfaces receive a response
14 message that also includes provisioning information?

15 A. Yes, sir. That's the certified peer address
16 that contains, for example, the port number, protocol,
17 and verification information.

18 Q. Did you conclude that Claim 4 was infringed?

19 A. Yes, I did.

20 Q. All right. And then Claim 15. Claim 15 is
21 the method of Claim 1 performed by a client computer.
22 Was that method of Claim 1 performed by a client
23 computer for the accused products?

24 A. Yes, it was. All of those steps took place on
25 the client computer in the explanation that I gave.

1 Q. Can I check these two boxes for these two
2 claims?

3 A. Yes, sir, please do.

4 Q. All right, Professor Jones. We have another
5 long independent claim, but, I mean, is this going to
6 take us quite as long as it appears?

7 A. No, sir. We'll see that the bottom portion of
8 it is similar to Claim 1.

9 Q. Well, at a high level, how does this claim
10 differ from Claim 1?

11 A. Well, this is a computer-readable storage
12 medium claim. It requires a computer-readable storage
13 medium, which would be like a storage area, as well as
14 computer instructions for performing the steps that we
15 just discussed for Claim 1.

16 Q. So are the Microsoft Windows XP and Vista,
17 therefore, the PeerNet interfaces, distributed on
18 computer-readable storage media?

19 A. Yes, they are. For example, they can be
20 distributed on Microsoft's servers, which contain a
21 storage area. They could also be distributed on
22 computer DVDs and CDs containing these instructions.

23 Q. Okay. And for example, in this box, what's in
24 here?

25 A. That would contain a CD or DVD that has

1 computer-readable -- it has a storage area, and it's a
2 computer-readable storage medium.

3 Q. Now, have you -- I mean, that may sound
4 trivial, but have you checked if this is a
5 computer-readable media in this box, and it has a
6 storage area?

7 A. Yes, sir, I've done exactly that.

8 Q. So remind us, what other kinds of media does
9 Microsoft use just besides the DVDs?

10 A. Well, for example, they have a master disk
11 that they give to manufacturers like Dell to allow them
12 to install this on their computers.

13 They also have the storage media on their web
14 servers. It would also be on computers that Microsoft
15 itself uses.

16 Q. Now, remember when you discussed updates, like
17 the Advanced Networking Pack and Service Pack for XP 2
18 (sic)?

19 A. Yes, sir.

20 Q. Were those on computer-readable media?

21 A. They would be. They could be, for example, on
22 Microsoft's web servers that contain storage disks to --
23 that have -- that are computer-readable.

24 Q. Now, does that media, in all cases, contain a
25 storage area?

1 A. Yes, sir, it does.

2 Q. And then -- so may I check the storage area
3 off?

4 A. Please do.

5 Q. Now, on the storage area -- on a
6 computer-readable storage media -- excuse me -- are
7 there computer-readable instructions for a method for
8 accessing a secure computer network address?

9 A. Yes. They contain the PeerNet interfaces,
10 which the computer can read those, and those perform the
11 method that we just talked about as in Claim 1.

12 Q. Can we be fairly confident that the DVD that's
13 in this Windows Vista box is computer-readable?

14 A. Yes, sir.

15 Q. Same for the versions?

16 A. Yes.

17 Q. Have you found this element met?

18 A. Yes, I have.

19 Q. Now, I notice here -- I notice here, Professor
20 Jones, that from this point on (indicates), there's --
21 it's, basically, the same words as what we've seen in --
22 in the '180 patent, Claim 1.

23 A. Yes, sir.

24 Q. Okay. So first, did you find that the accused
25 products have -- they receive a secure domain name?

1 A. Yes, I did, just as explained for Claim 1.

2 Q. And did you find that they send a query
3 message to a secure domain name service, the query
4 message requesting from the domain name service a secure
5 computer network address corresponding to the secure
6 domain name?

7 A. Yes, I did, as explained for Claim 1.

8 Q. Did you find that then the software receives
9 from the domain name service a response message
10 containing the secure computer network address
11 corresponding to the secure domain name?

12 A. Yes, I did, as explained for Claim 1.

13 Q. And finally, did you find sending an access
14 request message to the secure computer network address
15 using a virtual private network communication link?

16 A. Yes, sir, I did, as explained for Claim 1.

17 Q. Professor Jones, what have you concluded about
18 Claim 17?

19 A. I concluded that Microsoft infringes Claim 17
20 of the '180 patent.

21 Q. So we're rolling now, Professor Jones.
22 Computer readable medium, according to Claim 17 -- I
23 think we've seen this before -- wherein the response
24 message contains provisioning information for the
25 virtual private network.

1 Did you find that element met?

2 A. Yes, sir, I did, as explained for Claim 4.

3 Q. What did you conclude about Claim 20?

4 A. That Microsoft infringes Claim 20.

5 Q. Now, 31. A computer-readable medium, again
6 from Claim 17, wherein the method is performed by a
7 client computer.

8 Did you find that, Professor Jones?

9 A. Yes, I did, just as explained for Claim 15,
10 and I find that Microsoft infringes Claim 31 of the '180
11 patent.

12 Q. Now, Claim 33 is a data processing apparatus.
13 Can you give us an example of what that might be?

14 A. That would be a computer.

15 Q. Do they comprise a processor?

16 A. Yes. A computer would have a processor, and
17 it would have a memory to store those instructions.

18 Q. So I can check the processor part of it?

19 A. Yes, sir.

20 Q. I'm going to ask you about this: A memory
21 storing computer-executable instructions, which when
22 executed by the processor cause the apparatus to perform
23 a method for accessing a secure computer network
24 address.

25 Did you find that element met?

1 A. Yes, sir, I did. When the PeerNet interfaces
2 are on a computer, they'll be stored in memory, and they
3 are computer-executable instructions that will cause
4 those steps to be performed.

5 Q. May I check this box?

6 A. Yes, sir.

7 Q. Now, back to our familiar steps.

8 First, did you find receiving a secure domain
9 name?

10 A. Yes, sir, I did, as explained for Claim 1.

11 Q. Did you find sending a query message to a
12 secure domain name service, the query message requesting
13 from the secure domain name service a secure computer
14 network address corresponding to the secure domain name?

15 A. Yes, sir, I did, as explained for Claim 1.

16 Q. Professor, did you find receiving from the
17 secure domain name service a response message containing
18 the secure computer network address corresponding to the
19 secure domain name?

20 A. Yes, sir, I did, for the same reasons as given
21 in Claim 1.

22 Q. And did you find sending an access request
23 message to the secure computer network address using a
24 virtual private network communication link?

25 A. Yes, sir, I did, as explained for Claim 1.

1 Q. Professor Jones, what did you conclude about
2 Claim 33 of the '180 patent?

3 A. I concluded that Microsoft infringes this when
4 they, for example, put the PeerNet interfaces on
5 computers.

6 Q. And finally, Claim 35, the apparatus of that
7 Claim 33, wherein the response message contains
8 provisioning information for the virtual private
9 network.

10 Did you find that claim met?

11 A. Yes, sir, I did, as explained for Claim 4, the
12 same reasons.

13 Q. What did you conclude about Claim 35?

14 A. That Microsoft infringes Claim 35 of the '180
15 patent.

16 Q. All right. Professor Jones, can we see the
17 next slide in your presentation?

18 This is the last -- the last stop on our road
19 map here, how Microsoft infringes the '180 patent
20 directly and indirectly.

21 Does Microsoft use the secure domain name
22 service internally?

23 A. Yes, they do.

24 Q. How do you know?

25 A. I know from deposition testimony from

1 Microsoft employees that they use Windows Meeting Space
2 with grouping, and that uses PNRP.

3 Q. Have you been able to tell -- have you been
4 able to find evidence that Microsoft used it internally?

5 A. Yes, I have, from -- from deposition
6 testimony.

7 Q. Did you find that Microsoft directly infringes
8 the '180 patent in other ways?

9 A. Yes, I did.

10 For example, when they put the updates or
11 essentially put the PeerNet interfaces on computers to
12 allow people to download them, they would infringe the
13 claims of the '180 patent.

14 They would also do so when they sell -- like
15 make, use, sell, or offer to sell these disks that we've
16 been talking about for Windows XP and Microsoft Windows
17 Vista.

18 Q. Now, finally, the computer -- the data
19 processing apparatus claims of 33 and 35, did you find
20 that Microsoft directly infringes those, too?

21 A. Yes, sir. They do that also when they put it
22 on the update servers, for example, put the PeerNet
23 interfaces there and put them on servers and make them
24 available for download.

25 Q. Did you find that Microsoft directly infringes

1 each of the claims of the '180 patent you've gone
2 through today?

3 A. Yes, sir.

4 Q. Now, can we talk about induced infringement?

5 A. Yes, sir.

6 Q. We went through this -- I guess we're actually
7 going to the next slide. We went through this yesterday
8 on induced infringement, inducing infringement by
9 others.

10 First of all, did you find that Microsoft had
11 knowledge of the patents?

12 A. Yes, sir. This patent issued shortly after
13 the lawsuit was initiated, and Microsoft was made aware
14 of the patent at that time.

15 Q. And that's because the '180 patent is the more
16 recently issued of the two, fair?

17 A. Yes, sir.

18 Q. Now, can we check that element?

19 A. Yes, sir.

20 Q. The second element, encouraged or instructed
21 others to perform acts that infringe, did Microsoft --
22 did you find evidence that Microsoft encouraged or
23 instructed others to perform acts that infringed?

24 A. Yes, sir, I did.

25 For example, Microsoft describes how to

1 connect to a group on their -- and how to use the
2 PeerNet APIs on their website.

3 Q. Do they also work with developers to teach
4 them how to use the peer name resolution protocol?

5 A. Yes, sir. They provide example codes showing
6 them how to use the PeerNet resolution protocol, as well
7 as the PeerNet interfaces and make that available for
8 download.

9 Q. What do you mean that they provide example
10 code?

11 A. Well, they have a software development kit
12 that they describe for the PeerNet interfaces.

13 Q. Can we check that element?

14 A. Yes, sir.

15 Q. Did you find evidence that others have
16 infringed?

17 A. Yes, sir, I did.

18 Q. And how -- how -- let's start with the method
19 claims.

20 What is your -- what kind of evidence have you
21 seen that others are performing the methods?

22 A. The evidence I found for that would be, for
23 example, what's called Microsoft -- Microsoft employees
24 describing SQM data. That's short for S-Q-M or a way of
25 saying S-Q-M.

1 That's data that Microsoft collects from
2 users' computers -- selected users' computers that
3 indicates what actions those users are taking.

4 Q. Does Microsoft collect the data from every
5 single copy of Windows that's out there being used?

6 A. No, sir, they don't do that.

7 Q. Is it -- do you know how big of a subset it
8 is?

9 A. I believe it's, according to the deposition
10 testimony, somewhere between 8 and 12 percent perhaps.

11 Q. Now, what about the computer-readable medium
12 claims of 17, 20, and 31 and the system claims of 33 and
13 35? Have you found evidence that others infringe?

14 A. Yes, sir.

15 For example, when Microsoft gives -- or sells
16 those disks to people, and they put them and install
17 them on their computers, they'll be putting them on
18 computer-readable media, and they will also be,
19 obviously, putting them on a computer, which mean the
20 data processing apparatus.

21 Q. Can we check that element, sir?

22 A. Yes, sir.

23 Q. And now, finally, the last element is that
24 Microsoft either knew or should have known that the
25 encouragement or instructions would result in others

1 infringing.

2 What did you find with regard to that piece of
3 the inducement analysis?

4 A. Well, I found that given Microsoft's knowledge
5 of how its own products operate, as well as the fact
6 that they knew about the '180 patent and were notified
7 of it, that one of ordinary skill in the art, examining
8 those products and examining the claims of the '180
9 patent, would have known that they were infringing
10 the -- or encouraging others to infringe the '180
11 patent.

12 MR. CALDWELL: Your Honor, Plaintiff
13 offers Demonstrative Exhibits 6 through 14 into
14 evidence.

15 THE COURT: All right. Any objection?

16 MR. POWERS: No objection as
17 demonstratives.

18 THE COURT: All right. Be admitted.

19 Q. (By Mr. Caldwell) Professor Jones, we are now
20 at the end of our presentation. Will you please turn to
21 the jury and explain to the jury what you have concluded
22 with regard to infringement by Microsoft?

23 A. Yes. I have concluded that Microsoft
24 infringes the claims of the '135 and '180 patent
25 patents.

1 MR. CALDWELL: Pass the witness.

2 THE COURT: Okay. Cross-examination.

3 MR. POWERS: May I approach, Your Honor?

4 THE COURT: Yes, you may.

5 THE WITNESS: Thank you.

6 MR. POWERS: May I proceed, Your Honor?

7 THE COURT: Yes, you may.

8 CROSS-EXAMINATION

9 BY MR. POWERS:

10 Q. Good morning, Dr. Jones.

11 A. Good morning.

12 Q. Now, you're here as an expert in network
13 security, correct?

14 A. Yes, sir.

15 Q. And you've followed developments closely in
16 that field over the last several years, haven't you?

17 A. Yes, sir, I would say so.

18 Q. Probably at least since the late 1990s?

19 A. Yes, sir, at least since then.

20 Q. Now, you testified here that you thought the
21 patents-in-suit were important inventions.

22 Do you recall that?

23 A. Yes, sir. I believe that.

24 Q. In fact, you had never heard of them before
25 this lawsuit; isn't that true?

1 A. I -- yeah, I had not seen these patents before
2 the lawsuit, yes, sir.

3 Q. And never heard of them either.

4 A. That's correct, sir.

5 Q. And you had never heard of any of the work,
6 the underlying work or software or anything else
7 relating to those patents done by Mr. Munger or
8 Dr. Short?

9 A. Yes, sir.

10 Q. Now, you -- you testified a couple of times
11 that Judge Davis issued an order that allowed you to see
12 confidential documents.

13 Do you recall that?

14 A. Yes, sir.

15 Q. Now, you've done this expert witness job
16 enough to know that that's not a special order just for
17 you, right? That's a general order that's applicable in
18 these cases, generally.

19 A. That's my understanding, yes, sir.

20 Q. Okay. Now, let's turn to the '135 patent and
21 start there.

22 In order to infringe the '135 patent, the
23 operating systems alone aren't enough. That's true,
24 isn't it?

25 A. That's correct, sir.

1 Q. You need the applications as well.

2 A. You need an application. And in the case of,
3 say, Windows XP, that could be Microsoft Windows
4 Messenger.

5 Q. Now, the -- let's start with Vista. And let's
6 put up your Slide 5.

7 MR. POWERS: If we could, Chris.

8 Q. (By Mr. Powers) This was your slide that you
9 showed to the jury about the products that you thought
10 infringed the '135 patent, right?

11 A. Yes, sir.

12 Q. Now, starting with Vista, it was your opinion
13 that you needed those interfaces, those APIs, in order
14 to infringe, right?

15 A. Yes, sir.

16 Q. And Vista doesn't come with those APIs, does
17 it?

18 A. Not -- not installed, no, sir.

19 Q. So for every copy of Vista that was shipped
20 out and the APIs were never added to it in some way, all
21 those copies of Vista never infringe, even under your
22 opinion, right?

23 A. Yes, sir.

24 Q. And as far as you know, that's millions and
25 millions and millions of copies of Vista.

1 A. I don't know the numbers, sir.

2 Q. You have no idea?

3 A. That's correct.

4 Q. Now -- so Vista can't infringe any of the
5 claims of the '135 patent as shipped, correct?

6 A. I believe that's correct, sir.

7 Q. Now, with respect to XP, that does ship, as I
8 understand your opinion, with the APIs that you're
9 accusing in this case; is that fair?

10 A. Yes, sir, once those updates are part -- once
11 the updates have been applied.

12 Q. But even XP won't infringe until it's used
13 with one of the applications that you've listed on
14 Slide 5; isn't that true?

15 A. I wouldn't agree with that, sir.

16 Q. XP, I believe you said earlier, has to be used
17 with an application in order to infringe, true?

18 A. I believe I said that for Claim 1, sir.

19 Q. Okay. So let's take Claim 1.

20 Claim 1's a method claim.

21 A. Yes, sir.

22 Q. It's not infringed by anybody until somebody
23 uses that method described in the patent, right?

24 A. That's my understanding.

25 Q. So for every copy of XP shipped by Microsoft,

1 there's zero infringement of Claim 1 of the '135 patent
2 unless somebody actually uses the method.

3 A. Yes, sir.

4 Q. And for them to use the method, they have to
5 use one of the applications that you've listed on
6 Slide 5.

7 A. Or an application they develop themselves, or
8 something like Live Meeting Console, I believe is not
9 listed there.

10 Q. And you have not testified about any
11 applications that someone has developed by themselves,
12 have you?

13 A. That's right, sir.

14 Q. All right. Now -- and for Claim 10 of the
15 '135 patent, XP, as shipped, doesn't infringe that
16 either, does it?

17 A. No, sir, it doesn't.

18 Q. All right. Now, looking at your Slide 5 --

19 MR. POWERS: And, Chris, if we can
20 highlight a couple of these.

21 Q. (By Mr. Powers) -- you've listed as some of
22 the applications that you think infringe the '135 patent
23 Office Communicator 2005 and Live Communications Server
24 2005, correct?

25 A. Yes, sir.

1 Q. Now, you testified that you reviewed a lot of
2 documents and deposition testimony in preparation for
3 your opinions, fair?

4 A. Yes, sir.

5 Q. Did you select all of that information, or was
6 it selected for you by VirnetX's counsel?

7 A. I believe I selected all of it. They may have
8 indicated some of interest, but I was able to search all
9 of those documents myself.

10 Q. So I assume, then, that you read closely the
11 deposition testimony of Kendall Larsen, VirnetX's CEO
12 and Chairman of the Board?

13 A. I believe I read his testimony. I don't think
14 I concentrated on his testimony, no, sir, I didn't.

15 Q. But you think you read it?

16 A. I read parts of it. I don't believe I read
17 every -- every aspect of his testimony, no, sir.

18 Q. Well, did you read the part of it where he
19 said that in 19 -- that in 2006, he was trying -- he
20 spent over a million dollars of VirnetX's very scarce
21 money trying to modify Office Communicator 2005 and Live
22 Communications Server 2005 in order to use the VirnetX
23 patent?

24 A. No, sir, I didn't read that.

25 Q. And that wasn't shown to you by VirnetX's

1 lawyers either, was it?

2 A. I don't believe so, no, sir.

3 Q. So the very same products that you're now here
4 saying do use VirnetX's patents are the same ones that,
5 if I'm right about Kendall Larsen's testimony, are the
6 ones that he was spending a lot of money trying to
7 modify in order to use the patents.

8 They're the same products, right?

9 A. I would really have to look at his testimony.
10 I haven't -- I haven't seen that, so I don't know, sir.

11 Q. Well, okay. Then let's look at it.

12 Did you look -- are you aware of a company
13 called Magenic?

14 A. No, sir. I'm not familiar with them. I've
15 heard that name during this -- the course of this
16 lawsuit.

17 Q. But that's not one of the subjects that you
18 studied when you were coming up with your opinions about
19 infringement.

20 A. I did not study that, sir, that's correct.

21 Q. Were you even aware that Kendall Larsen, the
22 CEO of VirnetX, as one of the first things he did in
23 spending the scarce money he had was hire Magenic in
24 order to modify Office Communicator and Live
25 Communications Server, the two products you now accuse?

1 Are you aware of that?

2 A. No, sir, I'm not aware of that.

3 Q. Let's look at DX3536. It should be in the
4 binder in front of you, but we'll also put it up on the
5 screen.

6 MR. POWERS: Chris, let's just pull up
7 the first half of it or so, if you would, and see if we
8 can make that legible.

9 Q. (By Mr. Powers) Dr. Jones, have you seen this
10 document before?

11 A. Not -- not in my examination, sir. I think
12 it's -- something like this might have been presented in
13 some of the other testimony during the lawsuit.

14 Q. I'm sorry. Let me rephrase the question.

15 A. Yeah.

16 Q. When you were doing your preparations, either
17 using the material that you thought -- that you asked
18 for or the material that VirnetX's lawyers gave you, did
19 you see this document?

20 A. No, sir.

21 Q. All right. This document is a February 23rd,
22 2006, work order between VirnetX and Magenic.

23 Do you see that?

24 A. Yes, sir, I do.

25 Q. And if you turn to the next page --

1 MR. POWERS: And actually, Chris, let's
2 bring up --

3 Q. (By Mr. Powers) It's the page, Dr. Jones, that
4 at the bottom right has .004.

5 A. I have that, sir.

6 Q. And -- I'm sorry. It's Page 002. Wrong page.
7 And there's that section called Project Goal about one
8 third of the way down.

9 Do you see that?

10 A. Yes, sir, I do.

11 MR. POWERS: Let's bring that up, if you
12 would, Chris, from Project Goal all the way down to
13 deliverables before that. Just a little bit more.
14 Right there.

15 All right. That's not going to be easy
16 to read, is it?

17 All right. Now, that helps.

18 Can everybody on the jury read that or
19 not? Okay.

20 Q. (By Mr. Powers) So you see in this February
21 9th, 2006, work order between VirnetX and Magenic -- oh,
22 and by the way, let's go to the back end just so we can
23 see it -- you see that Kendall Larsen is the signatory
24 for VirnetX? The very last page.

25 MR. POWERS: You don't need to go there,

1 Chris. I just want to get that from Dr. Jones.

2 A. Is that on Page 005?

3 Q. (By Mr. Powers) Exactly.

4 A. I see the name. My copy doesn't have the
5 signatures, sir.

6 Q. But you see Kendall Larsen, President and CEO
7 of VirnetX?

8 A. Yes, sir, I do.

9 Q. All right. So let's go back to Page 2 where
10 we were, Project Goal. And I'll just read it to make
11 sure we're all on the same page here.

12 The goal of the project, in short, is to come
13 up with a solution for encrypted secure communication
14 streaming between multiple messaging end points. This
15 will be accomplished by implementing a first phase of a
16 wheel and spoke architecture with VirnetX at the center
17 connecting differing corporate architectures.

18 This needs to be accomplished using as simple
19 a method as possible while utilizing VirnetX's patents,
20 specifically -- and then it goes on to list the '135
21 patent.

22 You see that?

23 A. Yes, sir, I do.

24 Q. All right. Now --

25 MR. POWERS: Chris, if you could bring --

1 let's try to make it bigger. So let's just start at the
2 deliverables and platform target section down below, and
3 bring that -- just that paragraph up to the bullets.
4 That should do it.

5 Can we stretch that out to make it a
6 little more legible?

7 Q. (By Mr. Powers) And you notice that the
8 initial target -- it says, quote, the initial target
9 will be Microsoft Office Communicator 2005, Live
10 Communications Server 2005, SPI.

11 Do you see that?

12 A. Yes, sir, I do.

13 Q. Now, those are the exact same two products
14 that were on your Slide 5 that you said do use the
15 VirnetX patents; is that correct?

16 A. Yes, sir.

17 Q. Now, does that help you recall reading any
18 testimony -- deposition testimony from Kendall Larsen,
19 the CEO of VirnetX?

20 A. No, sir.

21 Q. Do you recall any discussion by Mr. Larsen,
22 the CEO of VirnetX, regarding his attempt to modify
23 those two Microsoft products in order to use the VirnetX
24 patented technology?

25 A. No, sir.

1 Q. Let's see if I can show you some to refresh
2 your recollection.

3 MR. POWERS: Chris, could you please
4 bring up Kendall Larsen's deposition testimony?

5 And, Your Honor, it's from the July 21
6 transcript at Pages -- Page 299, Lines 15 to 19.

7 And let's blow that up so we can all see
8 it.

9 Q. (By Mr. Powers) Question: One of Magenic's
10 objectives -- now, Magenic is that company that this
11 work order is with?

12 A. Yes, sir.

13 Q. One of Magenic's objectives, in attempting to
14 modify Microsoft's products, was the goal of utilizing
15 VirnetX's patented technology in Microsoft products,
16 right?

17 Answer: That's correct.

18 Do you see that testimony from Kendall Larsen,
19 VirnetX's CEO?

20 A. I see that, yes, sir.

21 Q. Had you read that exact deposition, or had you
22 been shown that testimony?

23 A. No, sir.

24 Q. All right. Now, let's talk about the '180
25 products just for a minute at a high level. Let's just

1 switch gears.

2 MR. POWERS: And could we put up, Chris,
3 his slide with the '180 patent, which I believe is the
4 very next slide? Slide 7.

5 Q. (By Mr. Powers) Now, the '180 products that
6 you listed, Dr. Jones, were the two operating systems
7 alone, XP and Windows Vista, true?

8 A. Yes, sir.

9 Q. Now, switching our heads to the '180 patent,
10 away from the '135, Claim 1 of the '180 patent is a
11 method claim just the way Claim 1 of the '135 patent
12 was, right?

13 A. Yes, sir.

14 Q. So, again, shipping Windows Vista or shipping
15 Windows XP doesn't infringe those claims; they have to
16 be used, fair?

17 A. Yes, sir.

18 Q. All right. Now, you testified about Claim 17,
19 which was the storage medium claim.

20 Do you remember that?

21 A. Yes, sir.

22 Q. And you testified that when Microsoft ships or
23 a customer buys a box of either XP or Vista, that's
24 going to have a disk in it that's a storage medium.

25 Do you remember that?

1 A. Yes, sir.

2 Q. Now, you know that a lot of people get XP or
3 Vista by means other than buying a box at Best Buy. You
4 know that, don't you?

5 A. Yes, sir.

6 Q. And you didn't testify about those means, did
7 you?

8 A. I don't believe I did -- I believe I did. I
9 thought I testified that this happens, for example, when
10 Microsoft gives a master disk to a computer
11 manufacturer.

12 Q. So when -- when Microsoft -- when Microsoft
13 software is preloaded on a Dell computer, which I think
14 is one example you talked about, and a consumer buys the
15 Dell computer, Microsoft didn't give that disk to that
16 consumer, did it?

17 A. I -- I think in many of those cases, they do
18 include a disk with that from Microsoft. I believe they
19 do.

20 Q. Have you done any analysis to determine
21 whether that's true and how often?

22 A. I do not know how often it occurs, sir.

23 Q. All right. And in the situation where XP or
24 Vista is downloaded directly off of a website or some
25 other form, in that case, there's no storage medium

1 either, true?

2 A. That's not correct, sir. It would -- on the
3 website, there would be a storage medium to store what's
4 to be downloaded.

5 Q. But in terms of providing XP or Vista to the
6 consumer; it's coming down -- not on a disk but over the
7 wires from the internet. That's true, isn't it?

8 A. Yes, sir.

9 Q. Now, Claim 33 of the '180 patent --

10 MR. POWERS: And, Chris, let's put that
11 up, if we could. I think their copy is PX6.

12 Q. (By Mr. Powers) -- that's a data processing
13 apparatus. Do you recall testifying that that's a
14 computer?

15 A. Yes, sir.

16 Q. Now, Microsoft doesn't sell computers, does
17 it?

18 A. It does sell computers, sir, but I don't think
19 that's what you're referring to here.

20 Q. With -- putting aside the XBOX and things like
21 that, talking about the use of XP and Vista, in that
22 context, Microsoft is selling the software, not the
23 computer, right?

24 A. Yes, sir. They're -- they're -- I don't
25 believe they sell what we're talking about here at all.

1 Q. All right. So in the proper context of what
2 we are talking about, Microsoft does not sell or offer
3 to sell anything that is claimed in Claim 33 as a whole.

4 A. Yes, sir, I believe that's correct.

5 Q. All right. Now, yesterday you testified a bit
6 about the interfaces.

7 Do you recall that?

8 A. Yes, sir.

9 Q. And you called them a couple of names, and I
10 just want to make sure we're all talking about the same
11 thing.

12 MR. POWERS: Chris, could you bring up
13 Slide 17, please?

14 Q. (By Mr. Powers) These are the interfaces that
15 you were referring to in your testimony with regard to
16 the '135 patent?

17 A. Yes, sir.

18 Q. And you were asked whether companies write
19 programs or applications using these interfaces.

20 Do you recall that question?

21 A. Yes, sir.

22 Q. And your answer was that Microsoft has, right?

23 A. Yes, sir.

24 Q. You have no opinion and didn't offer one on
25 direct testimony about whether any third parties, not

1 Microsoft, have written application using these APIs,
2 have you?

3 A. That's correct, sir.

4 MR. POWERS: Now, let's turn back to the
5 '135 patent.

6 And, Chris, could you bring up just Claim
7 1, please?

8 Q. (By Mr. Powers) Dr. Jones, Claim 1 of the '135
9 patent requires a VPN or virtual private network, true?

10 A. Yes, sir.

11 Q. And in fact, every claim of the '135 patent
12 that's at issue in this case requires a virtual private
13 network or VPN.

14 A. Yes, sir.

15 Q. And every claim of the '180 patent requires --
16 that's asserted in this case requires a virtual private
17 network or VPN.

18 A. Yes, sir.

19 Q. Now, you understand that Microsoft can't
20 infringe these claims if even one element is missing of
21 the claims, right?

22 A. Yes, sir.

23 Q. So if -- if the VPN limitation is missing or
24 not satisfied by Microsoft's products, you'd agree with
25 me that Microsoft doesn't infringe.

1 A. Yes, sir.

2 Q. And if even just the VPN limitation is missing
3 from Microsoft's product, in your view, then the jury
4 should find for Microsoft of no infringement.

5 A. Yes, sir.

6 Q. Now, on this particular limitation, the issue
7 of the VPN, you didn't provide any opinion in your
8 direct testimony about whether there's an equivalent to
9 a VPN, did you?

10 A. That's correct, sir.

11 Q. So we're talking about whether one is
12 literally there, and if it isn't, then there's no
13 infringement.

14 Do you agree?

15 A. That's what I testified to, sir. Yes, sir.

16 Q. For all claims?

17 A. Yes, sir.

18 Q. All right. Now, you put up Judge Davis' order
19 construing VPN, and it requires that the communication
20 be private.

21 Do you recall that?

22 A. Yes, sir.

23 Q. And you know that the privacy in Judge Davis'
24 order requires anonymity. You know that, don't you?

25 A. Yes, sir.

1 Q. And as to anonymity, that means that you can't
2 determine the identity of the computers that are talking
3 to each other, either the identity of the computer
4 that's sending the message or the one that's receiving;
5 is that right?

6 A. I would generally agree with that, sir.

7 Q. All right. So let's go to your Slide 24. And
8 it's a little busy, but -- do you see that in front of
9 you, Dr. Jones?

10 A. Yes, sir.

11 Q. This -- do you recall showing this slide to
12 show the jury what you could see in unsecure mode when
13 Microsoft's Office Communicator product is being used
14 using your Wireshark tool?

15 A. Yes, sir.

16 Q. And let's go through what it is you can see
17 and talk about that.

18 The first thing you can see -- and it's -- I
19 know you're not going to be able to see where I'm
20 putting the laser pointer, but I'll try to direct you to
21 it.

22 In the middle of -- of the slide, there's a
23 from and a to, and it says sip:rl@Fabrikam.com, and then
24 to sip:AJ@Fabrikam.com. Do you see that?

25 A. Yes, sir.

1 Q. So in unsecure mode, one of the things you can
2 see, according to your testimony yesterday, was those
3 two -- I believe you called them SIP addresses?

4 A. Yes, sir.

5 Q. And those SIP addresses correspond to those
6 two people at Fabrikam, whoever RL and AJ are.

7 A. Yes, sir.

8 Q. And you can also see -- and this is up at the
9 top. It's labeled source of destination, and then
10 there's these four numbers separated by dots that you
11 called IP addresses, right?

12 A. Yes, sir.

13 Q. And so this -- where it says source, and then
14 it says 192168 -- well, 192.168.0.80, that's the IP
15 address of the computer where RL happens to be sitting
16 at that time.

17 A. That's -- that's my recollection, sir. I
18 believe that's correct.

19 Q. All right. And the destination is the
20 destination of the OC server at that point, which is
21 that 192.168.0.20, right?

22 A. I believe that's correct, sir.

23 Q. And then in unsecure mode, you can also see
24 the actual message: How is your work going?

25 And down here, you've got, at the very, very

1 bottom of the slide --

2 MR. POWERS: And, Your Honor, we're going
3 to label this slide as Defendant's Illustrative Exhibit
4 6 and later ask all these be admitted in the same manner
5 we've done in the past.

6 Q. (By Mr. Powers) You can see all that
7 information. You can see the message; you can see the
8 two SIP addresses and the two IP addresses of source and
9 destination, true?

10 A. Yes, sir.

11 Q. And all of that is in the unsecure mode?

12 A. Yes, sir.

13 Q. All right. Now, let's go, then, to secure
14 mode, which is Slide -- your Slide 25.

15 And this was an animation that you did, and
16 we've got a capture of the things that you were doing in
17 the animation, but you were actually moving it around;
18 is that fair?

19 A. Yes, sir.

20 Q. All right. Now, the secure mode -- this is
21 Office Communicator that's one of the products that
22 you're saying from Microsoft satisfies the requirements
23 of a VPN, correct?

24 A. Yes, sir.

25 Q. And so you're taking the position that it

1 satisfies this anonymity requirement, right?

2 A. Yes, sir.

3 Q. And I take it you believe that Office
4 Communicator is representative of all the other products
5 you accused, but this is really the only one you put up;
6 is that fair?

7 A. Yes, sir.

8 Q. All right. Now, in secure mode, you don't see
9 those two SIP addresses that correspond to RL and AJ,
10 the two people, right?

11 A. That's correct, sir.

12 Q. And you also don't see the content of the
13 message, how's your work going, true?

14 A. Yes, sir.

15 Q. But you do still see, down here at the bottom,
16 the IP addresses of that original computer that RL was
17 at and the OC server that we saw before?

18 A. Yes, sir.

19 Q. Now -- so if -- if the purpose of anonymity is
20 to protect those IP addresses, you'll agree with me that
21 Office Communicator, even in secure mode, doesn't
22 protect them?

23 A. Sir, I wouldn't agree with you that the
24 anonymity is about protecting those outer IP addresses.

25 Q. I understand. But I'm ask -- that's why I put

1 the word if at the front.

2 A. Okay. Sorry.

3 Q. We'll get there, trust me.

4 If the purpose of the anonymity, as required
5 by the Court in every claim, if the purpose of the
6 anonymity is to protect those IP addresses, you'll agree
7 with me that what you've accused doesn't do that.

8 A. Yes, sir.

9 Q. So if the purpose of anonymity, as required by
10 the Court, is to protect those IP addresses, there's no
11 infringement.

12 You would agree with that?

13 A. And we're referring to these outer IP
14 addresses, sir?

15 Q. Yes.

16 A. Yes, sir. Then I'll agree with that.

17 Q. And these outer IP addresses, it's the same
18 address you had before in unsecure mode. That's the
19 address of the computer at which RL was sitting. That's
20 what you just testified to.

21 A. Yes, sir.

22 Q. And the destination was the address of the OC
23 server that RL is sending something to?

24 A. Yes, sir.

25 Q. All right. Now, as I understand your opinion

1 from your testimony yesterday, you thought that as to
2 Office Communicator that the anony -- anonymity
3 requirement of the Court was satisfied because you
4 couldn't see the SIP addresses, right?

5 A. That -- that's -- yes, sir, that's essentially
6 it.

7 Q. All right. And you told us earlier, just a
8 few minutes ago, that those SIP addresses corresponded
9 to the people who were sitting at those machines, RL and
10 AJ.

11 A. Yes, sir.

12 Q. Now, those SIP addresses don't actually
13 identify a machine, do they?

14 A. No, sir, not directly.

15 Q. All right. Now, you will agree that in order
16 to accomplish anonymity with regard to the Court's
17 construction, that it has to be anonymous both as to the
18 people and the machine.

19 You agree with that, don't you?

20 A. Yes, sir, I agree it has to be anonymous with
21 respect to those, and I can explain a bit, if you'd
22 like.

23 Q. Well, let's -- for now, let's just stick with
24 the questions I ask, and we'll move forward.

25 A. Yes, sir.

1 Q. And in your demonstration of how, under your
2 opinion, Office Communicator works in secure mode, the
3 SIP address corresponding to the people is scrambled and
4 secure, true?

5 A. Yes, sir.

6 Q. But the IP address corresponding to the
7 machine is not scrambled and is visible to an
8 eavesdropper, right?

9 A. Yes, sir, it is.

10 Q. In fact, you saw it right here in your
11 Wireshark data.

12 A. Yes, sir.

13 Q. So if I'm an eavesdropper and I'm watching
14 Office Communicator work in what you call secure VPN
15 mode, I can see the IP address of the sending machine.

16 A. Yes, sir, you can.

17 Q. And I can see the IP address of the receiving
18 machine?

19 A. You can see the IP address of the server, but
20 that's not the ultimate destination.

21 Q. I didn't ask about the ultimate destination.
22 I asked about the receiving machine.

23 A. Yes, sir.

24 Q. All right. So it's true that I can see both
25 the IP address of the sending machine and the receiving

1 machine, as shown on Slide 25.

2 A. Yes, sir.

3 Q. All right. Now, I take it you'd agree with me
4 that the CIA wouldn't be too happy with the IP addresses
5 corresponding to its agent sitting somewhere being
6 visible to an eavesdropper.

7 A. I would think, in certain scenarios, they
8 would be unhappy with that, yes, sir.

9 Q. Because you could -- from an IP address, you
10 can learn information about where that machine is and
11 what's going on, can't you?

12 A. Yes, sir.

13 Q. All right. So let's talk about sort of a
14 typical VPN. We're not talking now about anything in
15 relation to this case and exactly how it works, just
16 your understanding, typically, of how a -- many VPNs
17 work.

18 And the way that a -- that a typical VPN would
19 work is that you would have a tunnel created -- not all
20 VPNs -- but a tunnel created between the sending machine
21 and the receiving machine, right?

22 A. Let me make sure I'm clear, sir. Are we
23 talking about a -- like a -- something like a VPN
24 that's -- let me make sure I'm clear. We're not talking
25 about the Court's construction here for a VPN; we're

1 talking about specific technology?

2 Q. That's exactly what I just said, exactly,
3 precisely.

4 A. Okay.

5 Q. And one way of implementing a VPN is to have
6 what's called a tunnel, right?

7 A. Yes, sir.

8 Q. And that tunnel would obscure both the IP
9 address of the source and the destination as you've
10 shown it here on Slide 25, wouldn't it?

11 A. That would depend on the situation, sir.

12 Q. But in a typical tunnel VPN, the IP address of
13 the sending machine is not visible to outside user,
14 because it's wrapped in another IP address, isn't it?

15 A. No, sir. It -- the other IP address would be
16 visible.

17 Q. Of the original sending machine, of RL
18 Fabrikam?

19 A. Yes, sir, in that situation.

20 Q. All right. So let's -- in that case, let's
21 move to Dr. Short's presentation.

22 Are you familiar with Dr. Short's presentation
23 when he showed the typical VPN?

24 A. Yes, sir, I was here for that.

25 Q. You were here for that, and you also saw it

1 outside the courtroom, didn't you?

2 A. I don't think I saw that, no, sir.

3 Q. You never watched it yourself?

4 A. No, sir, I don't believe I've ever seen that
5 typical VPN slide, no.

6 MR. POWERS: Chris, would you bring up
7 Plaintiff's Illustrative Exhibit No. 3?

8 Q. (By Mr. Powers) We just pulled this straight
9 off of Dr. Short's slide that he showed us, I guess,
10 yesterday?

11 A. Yeah, if that's what you are referring to I
12 did see that, yes, sir.

13 Q. Okay. Good. And you recall him describing
14 this as a typical, generic VPN?

15 A. I believe so, yes, sir.

16 Q. All right. And so let's just walk through
17 how that typical, generic VPN would work according to
18 Dr. Short's presentation from yesterday?

19 A. Yes, sir.

20 Q. Now, we had our remote user up in the far
21 left trying to communicate back with somebody at Acme
22 over on the right. Do you recall that?

23 A. Yes, sir.

24 Q. And the person on the left what's called a
25 private source address and a private destination

1 address?

2 A. Yes, sir.

3 Q. And the private source address is the IP
4 address of that user's computer sitting right there?

5 A. It is an IP address of it, sir.

6 Q. Right. And the private destination address
7 is the IP address of the computer he's trying to talk to
8 over at Acme, right?

9 A. Yes, sir.

10 Q. All right. And the message that Dr. Short
11 used was, cut our prices today?

12 A. Yes, sir.

13 Q. And then he demonstrated how a typical,
14 generic VPN would protect that information as it went
15 across the internet, right?

16 A. Yes, sir.

17 Q. All right.

18 MR. POWERS: So, Chris, let's put up
19 Defendant's illustrative Slide 4, please.

20 Q. (By Mr. Powers) And you recall this
21 portion --

22 MR. POWERS: Chris, could you please up
23 the part in the middle left so we can see it a little
24 better? Well, that's a little better.

25 Q. (By Mr. Powers) You recall this portion from

1 Dr. Short's presentation where he showed how that
2 information is protected?

3 A. Yes, sir.

4 Q. And let's just make sure we all understand
5 where we are. This far right -- there's something in
6 yellow in the background -- there's three boxes in the
7 yellow background. Do you see that?

8 A. Yes, sir.

9 Q. Those three boxes correspond exactly to the
10 three boxes that we had in the prior slide.

11 MR. POWERS: Chris, let's go back to that,
12 if we could.

13 Q. (By Mr. Powers) Cut our prices today in the
14 source and destination address?

15 A. Yes, sir.

16 Q. All right. So now let's go back to the next
17 one.

18 MR. POWERS: Bring it up.

19 Q. (By Mr. Powers) So the source destination,
20 which is that IP address of the remote user's computer
21 and the destination address, those are scrambled in the
22 typical, generic VPN that Dr. Short demonstrated,
23 right?

24 A. The private ones are, but the outer two are
25 not, sir.

1 Q. I haven't started talking about those two
2 yet. I'm just talking about the three that were on the
3 prior slide.

4 A. Yes, sir.

5 Q. So the first two boxes in the yellow
6 section, those correspond to the IP address of the
7 remote user's computer and the IP address of the
8 computer he's trying to reach back at Acme, right?

9 A. Yes, sir.

10 Q. And those are scrambled?

11 A. Yes, sir.

12 Q. And the text of the message was also
13 scrambled?

14 A. Yes, sir.

15 Q. Now, on the left, far left in bigger boxes
16 not the in yellow we have something called a source
17 address and a destination address, right?

18 A. Yes, sir.

19 Q. And those are also IP addresses, right?

20 A. Yes, sir.

21 Q. But they're not the IP addresses of either
22 the remote user or Bob over at Acme, are they?

23 A. I wouldn't agree with that, sir.

24 Q. It's the exact same number?

25 A. It's an IP -- the source address would be an

1 IP address for the remote computer.

2 Q. Well, let's ask about the number. There was
3 a number over here in the box that's scrambled, right?

4 A. Yes, sir.

5 Q. That number corresponded to the computer
6 that our remote user was sending it from, right?

7 A. Yes, sir.

8 Q. That number that's scrambled here is not the
9 same number that is sitting here in the source address
10 that is physical is it?

11 A. Generally it wouldn't be.

12 Q. The same with the destination address,
13 that's not the same number, is it?

14 A. Generally not, no, sir.

15 Q. All right. And, in fact, generally those
16 numbers would be the numbers of a router or some other
17 machine in between the computer -- the computer that our
18 remote user was sitting at and the internet, right?

19 A. Not for the source address in this example,
20 sir, it wouldn't be. For the destination address it
21 would be, for example, that computer in the bottom
22 right, acme.com.

23 Q. All right. You're familiar with a book
24 called

25 Internetworking With TCP/IP by a man

1 named Comer, right? In fact, you used that book
2 in your class at the University of Tennessee, didn't
3 you?

4 A. Yes, sir.

5 Q. You used it as the basis for teaching your
6 students?

7 A. I think I used it as a basis for forming the
8 class. I don't usually use a book for class.

9 Q. But you would agree since you used it with
10 the class that it's reliable and accurate, wouldn't
11 you?

12 A. I think it generally is, yes, sir.

13 Q. You're not trying to mislead the engineering
14 students at the University of Tennessee?

15 A. I hope not, sir.

16 Q. All right. Now, it's a large book and I
17 don't want us to go through all of it, but there is a
18 portion of it that I do want to talk about. And you
19 should have DX-3544 in front of you. That's a copy of
20 the book.

21 A. Yes, sir, I have that.

22 Q. Now, if you go to Page 426 of the document,
23 it won't correspond exactly to four -- actually Page
24 425.

25 Sorry.

1 A. I have that, sir.

2 Q. There's a title called "Private Network
3 Interconnection, VPN." Do you see that?

4 A. Yes, sir.

5 Q. And this is the chapter in the book that you
6 used, at least a part with your class at the University
7 of Tennessee about VPNs, the subject of this case?

8 A. Yes, sir.

9 Q. And this book addresses the issue that we
10 were just discussing; i.e., or, in other words, what IP
11 address is visible in a VPN, whether it's the sending
12 machine or some router in between. It does address that
13 issue directly, doesn't it?

14 A. I'm sorry, can you ask that question again?

15 Q. Sure. Let's -- in fact, I will just make it
16 easier.

17 Can you turn to Page 391 of the
18 book. And it's dot 427 at the bottom.

19 MR. POWERS: Chris, let's just bring up
20 the bottom half of that page, if we could.

21 Can everybody read that? It may be tough
22 for a book like this.

23 Q. (By Mr. Powers) Do you have that in front of
24 you, Dr. Jones?

25 A. Yes, I do.

1 Q. Now, this is a description of exactly what
2 we were just talking about, which is which addresses are
3 visible and which ones aren't in a VPN, right?

4 A. I believe it's describing a mechanism called
5 tunneling and generally describes this idea of putting
6 one IP packet within another like we just talked about,
7 yes, sir.

8 Q. Right. And that tunneling is what Dr. Short
9 had described has the sort of typical, generic VPN that
10 we were just describing, right? It is the same
11 encapsulation in a separate tunnel, right?

12 A. Generally, yes, sir.

13 Q. All right. Now, if you go to the last two
14 sentences --

15 MR. POWERS: And, Chris, let's highlight
16 that and bring it up if we could. Maybe we can make
17 that even bigger. It starts with "furthermore."

18 Q. (By Mr. Powers) It says, "Furthermore, even
19 the identity of the original source and destination are
20 hidden because the header of the inner datagram is
21 encrypted, as well."

22 That's describing what we just saw in Dr.
23 Short's figure where the original IP address was
24 encrypted and it was inside this what's called encrypted
25 inner datagram, right?

1 A. No, sir this is describing a different
2 configuration than what Dr. Short was showing us.

3 Q. Let me finish reading. "Even the identity
4 of the original source and destination are hidden
5 because the header of the inner datagram is encrypted as
6 well."

7 You would agree that's an accurate statement
8 as to typical VPNs?

9 A. No, sir. It depends on the configuration.

10 Q. And this is the configuration being
11 described in the VPN chapter of the book you use,
12 true?

13 A. Yes, sir, this is one of them. I haven't
14 looked at rest of it.

15 Q. Now, the next sentence says, "Thus, only
16 addresses in the outer datagram header are visible. The
17 source address is the IP address of the router at one
18 end of the tunnel, and the destination address is the IP
19 address of the router at the other end of the tunnel."

20 That's saying what I just said to you earlier
21 about the routers on either end of the tunnel, right?

22 A. Yes, sir.

23 Q. So now let's go back to this IP address for
24 SIP address.

25 MR. POWERS: Chris, could you bring up --

1 back up, Slide 25.

2 MR. CALDWELL: Your Honor, may we
3 approach?

4 THE COURT: Yes, you may.

5 (Bench conference.)

6 MR. CALDWELL: It seems Mr. Powers is
7 cross-examining the witness and attacking him on what is
8 or isn't a VPN on the grounds of whether it complies
9 with the tunneling taught in this book. Tunneling and
10 encapsulation, they lost that construction on Markman.
11 Then when we argued anonymity in front of Your Honor at
12 the pretrial conference when I raised that again, I
13 said, Your Honor, the problem is I think we are just
14 going to use this to boot back into encapsulation and
15 tunneling. And Mr. Powers stood right there and said,
16 no, sir, that's not what we're going to do, we are not
17 going to argue tunneling. And here they are putting up
18 a book pointing to IP tunneling and saying, hey, now
19 there's no.

20 infringement. You know --

21 MR. POWERS: I am explicitly not doing
22 that. What I said was I'm not talking about the Court's
23 construction. I am just talking about a typical VPN and
24 not all VPNs. And that's specifically what Short said
25 was a typical VPN or generic VPN, and I'm not saying

1 it's required by the Court or anything else. I'm
2 talking about how one could implement it in order to
3 hide it. My point isn't --

4 THE COURT: And what's the relevance of
5 that?

6 MR. POWERS: Well, the relevance of that
7 is that if you want to -- if there is a way to do it, we
8 just don't do it that way.

9 THE COURT: If you don't do it that way,
10 then what's the relevance of talking about it?

11 MR. POWERS: I'm happy to end this part of
12 the discussion.

13 THE COURT: Let's do so.

14 (End of Bench Conference.)

15 (Pause in proceedings.)

16 MR. POWERS: Can we have the lights down,
17 please.

18 Q. (By Mr. Powers) When we broke we were back
19 at Slide 25, which is your slide, Dr. Jones, about what
20 you can see and what you can't see in Office
21 Communicator in secure mode. True?

22 A. Yes, sir.

23 Q. Okay. Now, and just to reorient ourselves,
24 you can see down here the IP address of RL's computer
25 that he sent that message from?

1 A. Yes, sir.

2 Q. And you can see the IP address of the OC
3 server he's sending it to?

4 A. Yes, sir.

5 Q. And what you can't see are those SIP
6 addresses that correspond to the people sitting at those
7 machines?

8 A. Yes, sir.

9 Q. All right. Now, the claims of the '135
10 patent are talking about computers not people, right?

11 A. Yes, sir.

12 Q. And the IP addresses we are talking about
13 here that are visible in Microsoft's products, those
14 correspond to the computers?

15 A. Yes, sir.

16 Q. And the SIP addresses that are hidden, those
17 correspond to the people, right?

18 A. Yes, sir, they do.

19 Q. All right.

20 MR. POWERS: So let's bring up Claim 1,
21 please, Chris, of the '135 patent.

22 Q. (By Mr. Powers) Now, what Claim 1 talks
23 about is the VPN between the client computer and a
24 target computer, right?

25 A. Yes, sir.

1 Q. And that client computer is identified with
2 that IP address that we've already identified, right?

3 A. Yes, sir.

4 Q. And the target computer is identified with
5 that IP address that is visible also, right?

6 A. It's one of the target computers, yes,
7 sir.

8 Q. All right. Now, and if you go down in
9 Section 1 in that communication of the claim, there is a
10 discussion explicitly of IP addresses associated with
11 the target computer, right?

12 A. Yes, sir.

13 Q. It's not talking about SIP addresses
14 anywhere, is it?

15 A. No, sir, it's not.

16 Q. And it's not talking about the people
17 sitting there, is it?

18 A. No, sir.

19 Q. All right. So now let's go to the '135
20 specification.

21 MR. POWERS: Chris, can you bring up
22 Column 1, Lines 25 through 27.

23 Q. (By Mr. Powers) You've read this portion of
24 the specification, Dr. Jones?

25 A. Yes, sir.

1 Q. Probably many, many times?

2 A. Yes, sir.

3 Q. This is a portion that's specifically
4 talking about the anonymity requirement that the Court
5 has held exists. True?

6 A. Let me read it a second.

7 Q. Of course.

8 A. Yes, sir, it's discussing anonymity.

9 Q. And when it is discussing anonymity in this
10 very first column of the patent, it says, "It may be
11 desired to prevent an eavesdropper from discovering that
12 terminal 100 is in communication with terminal 110."

13

14 Right?

15 A. Yes, sir.

16 Q. And that's talking about the sending machine
17 and the machine it's sending it to?

18 A. I -- I believe so. I think that's from --
19 that may be from Figure 1 where that's the sender and
20 the ultimate destination is my recollection.

21 Q. I think it's talking about the sentence
22 immediately above it where it says, "Terminal 100 may
23 transmit secret information to terminal 110 over the
24 internet."

25 A. Yes, sir.

1 Q. So in the actual '135 patent when it's
2 talking about anonymity, it's saying you want to prevent
3 an eavesdropper from knowing that computer is in
4 communication occasion with that computer, correct?

5 A. Yes, sir.

6 Q. And if we go back to your Slide 25 real
7 quick on -- Office Communicator in secure mode, you
8 would agree our eavesdropper, "hacker" as you called
9 him, would know that this computer, which is the
10 computer we are talking about, is in communication with
11 that computer?

12 A. Yes, sir.

13 Q. Now, and you will agree that the '135
14 patent, several places, talks about trying to hide the
15 IP address of the sending machine, right?

16 A. I believe it does so, yes, sir.

17 Q. All right. And the Office Communicator
18 product does not hide that IP address, does it? It's
19 right there in plain view for an eavesdropper?

20 A. I can't see it. Can you show me what you
21 are pointing to?

22 Q. Your Slide 25, it should be up in front of
23 you.

24 A. Yes, sir.

25 Q. And over on the far left it says, Source

1 192, 168, the same one we have already gone through
2 several times.

3 A. Yes, sir.

4 Q. That IP address of that machine is visible
5 to any eavesdropper?

6 A. Yes, sir.

7 Q. Not at all hidden?

8 A. No, sir.

9 Q. So if I'm right that anonymity, as the Court
10 has said is a requirement, requires hiding the IP
11 address of the sending machine, you will agree we don't
12 infringe because it's right there for people to see?

13 A. If we're talking about that outer IP
14 address, yes, sir.

15 Q. And that outer IP address in this case is the
16 actual IP address of our sending machine of, RL
17 Fabrikam's machine?

18 A. Yes. If that's never hidden and you're
19 correct about that, yes, sir.

20 Q. Okay. That is also true of Live
21 Communication Server and the other products that you
22 have listed as accused products here. In all of them
23 this IP address of the sending and receiving machine,
24 the actual IP address is visible, isn't it?

25 A. They operate in the same way as this one for

1 this purpose, yes, sir.

2 Q. Now, let's talk about some marketing
3 materials that you talked about in direct examination.

4 Do you recall being asked by your lawyer that
5 when Office Communicator is being marketed, it's
6 marketed that you don't need an additional VPN because
7 one is already created?

8 A. I think the document doesn't say that
9 explicitly. I think that's my interpretation of that
10 document, yes, sir.

11 Q. So you will agree with me that that document
12 actually doesn't say you don't need an additional VPN?
13 It says you don't need a VPN, correct?

14 A. That is what it's saying, yes, sir.

15 Q. I'm not sure that the record is going to be
16 clear. Which -- which is it saying?

17 A. I said it explicitly -- I believe it says
18 that you don't need a -- to set up a VPN or something
19 along those lines.

20 Q. Now, and let's just -- so there's no magic
21 about it. Let's bring up the actual exhibit.

22 A. Yes.

23 Q. It is DX-3111. It should be in the binder
24 in front of you.

25 MR. POWERS: And, Chris, I think we can

1 bring it up.

2 Q. (By Mr. Powers) This is the document you
3 were testifying about on direct examination, Dr. Jones.

4 A. I believe that's correct.

5 Q. And you were shown, I believe, Page 8,
6 again, referring to the .00s at the bottom.

7 MR. POWERS: Chris, if we can bring up that
8 first bullet in the middle. Nope, first bullet in the
9 middle. There we go.

10 Q. (By Mr. Powers) That's the portion you were
11 testifying about in your direct examination,
12 Dr. Jones?

13 A. Yes, sir.

14 Q. Now, this says you don't need a VPN,
15 right?

16 A. Yes, sir.

17 Q. And the products that you're accusing of
18 being VPNs are specifically saying in their promotional
19 materials that a benefit of them is that you don't need
20 a VPN, right?

21 A. Yes, sir.

22 Q. All right. But you're still saying they're
23 a VPN even though they're saying they're not?

24 A. Yes, sir.

25 Q. Now, there is a lot of other documents --

1 you will agree with me that you reviewed a lot of office
2 communication promotional materials, right?

3 A. Yes, sir.

4 Q. And those materials consistently refer to
5 Office Communicator as not needing any VPN at all and
6 that that's a benefit of them, right?

7 A. I believe so. I think the language is
8 similar to this.

9 Q. That no VPN at all is needed, and that's a
10 benefit. Is that fair?

11 A. I -- like I say, I think that's a fair
12 characterization of what's here, yes, sir.

13 Q. Okay.

14 MR. POWERS: Let's bring up PX-130.

15 Q. (By Mr. Powers) This is one more example.
16 This is one of the exhibits you had actually looked at
17 and had originally listed as something you were going to
18 refer to, wasn't it?

19 A. Yes, sir.

20 MR. POWERS: And could we go to Page 4 of
21 that, Chris.

22 Q. (By Mr. Powers) Do you see, Dr. Jones, on
23 Page 4 in the very first bullet when they're talking
24 about the benefits of it, it is internet access without
25 a VPN connection?

1 A. Yes, sir.

2 Q. And then if you go forward to Page 11,
3 again, using the pages at the bottom. You see at the
4 very bottom it says reduced use the next to the last
5 paragraph, it says, "Reduced use of VPN services reduces
6 hardware, software, and operating costs. More
7 importantly accessing real-time presence information
8 without requiring a VPN provides true real-time
9 indication of availability."

10 A. Yes, sir, I see that.

11 Q. Does that -- those are just other examples
12 where the products you're accusing of being a VPN are
13 saying one of the reasons we're good is we're not a VPN,
14 fair?

15 A. I don't believe that's what they're saying
16 here, sir. I believe they are saying that you don't
17 need an additional VPN software.

18 Q. It doesn't say that, does it? It just says
19 you don't need a VPN?

20 A. Yes, sir.

21 Q. And if you turn to Page 44, finally, in this
22 document, the one that you referred to --

23 MR. POWERS: About two-thirds of the way
24 down, Chris, there is a heading that says, "Remote user
25 access from the Internet with no VPN connections."

1 Q. (By Mr. Powers) That doesn't say no
2 additional VPN connections, right, Dr. Jones?

3 A. That's correct, sir.

4 Q. It says "no VPN connections"?

5 A. Yes, sir.

6 Q. All right. So while we're on this topic,
7 lets just stay here but move to the '180 patent
8 briefly --

9 A. Yes, sir.

10 Q. -- while we're on this concept of anonymity.
11 In the '180 patent, the application that you say is a
12 VPN is the one that's called "Meeting Space"?

13 A. It's an application that uses a VPN that's
14 formed by the PeerNet interfaces.

15 Q. It's that use of Meeting Space that you were
16 testifying about creates the VPN and thus infringes,
17 right?

18 A. Yes, sir, that's an example of it.

19 Q. All right. Now, you did not in your direct
20 testimony provide any evidence regarding whether the use
21 of Windows Meeting Space is or is not anonymous, did
22 you?

23 You didn't discuss that issue?

24 A. I believe I did, sir.

25 Q. Well then, I missed it, so let me ask you

1 user attaches to, those two IP addresses will be visible
2 to a hacker or eavesdropper, won't they?

3 A. Yes, sir.

4 Q. All right. So, again, if I'm right that
5 anonymity requires concealing those IP addresses, you
6 will agree it's not met in Windows Meeting Space
7 either?

8 A. Yes, sir --

9 THE COURT: I am sorry. I couldn't hear
10 your question.

11 Q. (By Mr. Powers) You will agree with me that
12 if anonymity, as required by the Court, applies -- means
13 you can't see those two IP addresses, then, in fact,
14 it's not met in this case?

15 A. Yes, sir.

16 Q. All right. Now, let's turn to another
17 topic.

18 And the topic that you described -- that
19 you addressed at some length in your direct testimony
20 was the issue of website. Do you have that one in mind?

21 A. Yes, sir.

22 Q. And you will agree with me, and I think you
23 testified on direct examination, that everywhere a
24 website appears, Microsoft's products do not literally
25 infringe?

1 A. Yes, sir.

2 Q. All right. So what I'd like to do, if we
3 could bring back up your easel and your slide --

4 MR. POWERS: May I approach, Your Honor?

5 THE COURT: Yes, you may.

6 MR. CALDWELL: Your Honor, Plaintiff has
7 no objection to Mr. Powers showing them, but Plaintiff
8 does object to Mr. Powers marking or otherwise altering
9 the demonstrative exhibits that are in evidence.

10 MR. POWERS: Anticipating that exact
11 objection, I will not mark them up in any way, but I
12 will add to them in a way it doesn't deface them. I
13 have a separate thing that can be can be put on top of
14 them.

15 THE COURT: Okay.

16 MR. POWERS: Can y'all see that?

17 Q. (By Mr. Powers) Can you see that?

18 A. Yes, sir.

19 Q. All right. So just to reorient ourselves --

20 MR. POWERS: May I approach the board,
21 Your Honor?

22 THE COURT: Yes, you may.

23 Q. (By Mr. Powers) You testified that check --
24 you allowed Counsel for VirnetX to put red checks in
25 each of these boxes, and I would like to ask you a

1 slightly different question.

2 If the box meant that there was literal
3 infringement, you wouldn't be able to put red checks in
4 these boxes, would you?

5 A. Not in the second and third one, sir.

6 Q. All right. So for two out of the three
7 limitations or elements of the '135 patent, Claim 1, if
8 the question is whether Microsoft's products, even under
9 your theory infringe literally, the answer would be
10 no?

11 A. That's correct, sir.

12 Q. There wouldn't be check marks in these
13 boxes?

14 A. That's correct, sir.

15 Q. And if we went to Claim 1 of the '180 --
16 well, actually, let's do -- let's stay with the '135 for
17 a minute.

18 Can we go to Claim 10. And if
19 instead of asking you whether to put a red check there I
20 asked you whether there was literal infringement of
21 these limitations, three of the four limitations you
22 would have to say no to, wouldn't you?

23 A. Yes, sir.

24 Q. All right. So now let's talk about your --
25 the reason that you put red checks in those boxes

1 despite the fact there is no literal infringement.

2 Okay?

3 A. Yes, sir.

4 Q. Now, you took the position, as I understand
5 it, that the products you're talking about here with
6 respect to the '135 patent, Office Communicator and the
7 others, even though they don't have a website literally,
8 are equivalent to that?

9 A. Yes, sir.

10 Q. And under what you were describing as the
11 Doctrine of Equivalents, true?

12 A. Yes, sir.

13 Q. Now, let's orient ourselves a little bit.
14 You'll agree that the internet is different from the
15 worldwide web?

16 A. Yes, sir.

17 Q. The worldwide web, which is the subject of
18 the Court's instructions, that's what's required for the
19 claim, right?

20 A. Yes, sir.

21 Q. The internet is much broader and different,
22 isn't it?

23 A. It -- it -- it is much broader than that,
24 yes, sir.

25 Q. In fact, the internet has existed since

1 1969, hasn't it?

2 A. In one way or form or another, yes, sir.

3 Q. It started with ARPANET, right?

4 A. Yes, sir.

5 Q. Okay. Now, the worldwide web didn't really
6 start until about 1993, right?

7 A. I believe that's correct, sir, somewhere in
8 that range.

9 Q. Now, I take it you would agree with me the
10 worldwide web has transformed our world in a meaningful
11 way?

12 A. Yes, sir.

13 Q. In a huge way, hasn't it?

14 A. For many people, yes, sir.

15 Q. Most people, wouldn't you agree with me
16 there?

17 A. In our country, yes, sir.

18 Q. All right. And there are massive companies
19 that exist only on the worldwide web, right?

20 A. Yes, sir.

21 Q. Amazon?

22 A. Yes, sir.

23 Q. Google?

24 A. Yes, sir.

25 Q. eBay?

1 A. Yes, sir.

2 Q. Yahoo!

3 A. Yes, sir.

4 Q. Facebook?

5 A. Yes, sir.

6 Q. America Online?

7 A. Yes, sir.

8 Q. Some of the biggest companies in the world
9 are only on the worldwide web and exist only because of
10 the worldwide web?

11 A. Yes, sir.

12 Q. So the web has had a huge, substantial
13 impact on our lives?

14 A. Yes, sir.

15 Q. And the economy?

16 A. Yes, sir.

17 Q. Different from the internet?

18 A. Yes, sir.

19 Q. All right. Now, the internet can have many
20 devices attached to it that aren't websites. You will
21 agree with that?

22 A. Yes, sir.

23 Q. So I could have a printer sitting right
24 there that has -- is on the internet because it has an
25 IP address, but it is not a website. You'd agree with

1 that?

2 A. It may or may not be, sir.

3 Q. But it may not be?

4 A. Yes, sir.

5 Q. The same with a phone, that could be
6 attached to the internet and not be a website?

7 A. Yes, sir.

8 Q. All right. Now, in your testimony you
9 testified yesterday that you believed the Doctrine of
10 Equivalents was met here because of the application of
11 what you called the function/way/result test; do you
12 recall that?

13 A. Yes, sir.

14 Q. And I'd like to put up on the screen --

15 MR. POWERS: So if we can darken the room,
16 Ms. Ferguson, I would appreciate it.

17 Q. (By Mr. Powers) -- your testimony on that
18 subject and then we talk about it a bit.

19 So, first, function. You were asked yesterday
20 at Page 108, "So were you able to determine if the
21 Microsoft '135 products perform substantially the same
22 function as a secure website?" That was your testimony
23 about the "function" part of function/way/result, right?

24 A. Yes, sir.

25 Q. And your answer was, "Yes, because they use

1 computers to communicate in a VPN." Let's just stop
2 there for a minute.

3 I take it you would agree with me any VPN
4 would meet that requirement. You have computers that
5 have VPN, right?

6 A. Yes, sir, you do.

7 Q. All right. "To present information to
8 clients." Well, that's true in any VPN, isn't it?

9 A. Well, it depends on -- yes and no, sir. I
10 mean there would be situations where you would be and
11 situations where you wouldn't, but that's not what I'm
12 discussing here.

13 Q. The typical VPN you're presenting
14 information to clients across the VPN, you would agree
15 with that?

16 A. Not -- no, sir, I wouldn't.

17 You would agree often in VPNs, that you are
18 presenting information to clients

19 A. I wouldn't agree that the VPN is presenting
20 information to the clients, no, sir.

21 Q. Well, let's talk about a typical use of a
22 VPN.

23 I'm sitting in my hotel room here and I
24 connect via my VPN to my office back at the law firm.

25 A. Yes, sir.

1 Q. And there are resources sitting in my office
2 that are on my network that I can access on my VPN,
3 right?

4 A. Yes, sir.

5 Q. Like things that are not on my laptop, I can
6 have shown -- sent to my laptop from my law firm?

7 A. Yes, sir.

8 Q. In that situation I am using a computer to
9 communicate on a VPN to present information to me, the
10 client. That's true, isn't it?

11 A. No, sir, that doesn't meet what I'm talking
12 about here.

13 Q. Well, I'm presenting information?

14 A. No, sir. Those devices would be presenting
15 information, not the VPN.

16 Q. The devices on the other side of the VPN?

17 A. Yes, sir.

18 Q. Well, of course. That's always what is
19 presenting information, right, some device on the other
20 end of the pipe?

21 A. If they are acting as a server they would
22 be, yes, sir.

23 Q. So any situation where you have a VPN with a
24 client and a server, that server is presenting
25 information to the client across the VPN, true?

1 A. By the server are you referring to the other
2 end of the VPN or a server that's in the virtual private
3 network?

4 Q. I'm talking about a server
5 that's at the other end of the VPN.

6 A. If it's just forming part of the tunnel,
7 then I wouldn't agree with that, sir.

8 Q. That's not what I'm asking. I am connecting
9 to my law firm.

10 A. Okay.

11 Q. I try to get information from my law firm
12 that is not on my laptop. That's coming from servers at
13 my law firm, and it comes back down to me, right?

14 A. Yes, sir.

15 Q. That's a typical use of the VPN, right?

16 A. Yes, sir.

17 Q. And in that typical use of the VPN,
18 I'm having information presented to me across that VPN,
19 true?

20 A. Yes, sir.

21 Q. All right. Now, the next thing you say
22 is to require that clients be authorized to access the
23 servers. That's also typical on VPNs, isn't it?

24 A. Yes, sir.

25 Q. So now let's go to your testimony about

1 substantially the same way.

2 MR. POWERS: Let's bring that up, please,
3 Chris.

4 Q. (By Mr. Powers) The very next question and
5 answer in the transcript. You were asked: "Were you
6 able to determine if the Microsoft '135 products perform
7 in substantially the same way?" And the next answer it
8 was your testimony on that subject, wasn't it?

9 A. Yes, sir.

10 Q. And you said a lot of the same words, "They
11 make use of computers to communicate on the VPN."
12 That's the same as what we just talked about, right?

13 A. Yes.

14 Q. Now, using protocols that's true on any
15 VPN?

16 A. Sir, I think you're misunderstanding what
17 I'm saying.

18 Q. I am asking you a question about it.

19 A. VPNs use protocols, yes, sir.

20 Q. Okay. "They present information to
21 clients." That we've already talked about. Now you
22 say, "through windows." And by "windows" I take it you
23 mean -- you meant capital W meaning our product
24 Windows?

25 A. Sir, I meant the windows in an operating

1 system that you typically see --

2 Q. Okay.

3 A. -- the visible windows.

4 Q. Let's stop on that. The '135 patent doesn't
5 say anything about using Microsoft's Windows operating
6 system, does it?

7 A. No, sir, it doesn't, I don't believe.

8 Q. It is not a requirement in any claim, not
9 discussed anywhere in the patents at all?

10 A. It's certainly not a requirement of the
11 claim. I don't recall if it's somewhere else in the
12 specification.

13 Q. You certainly didn't rely on that, did
14 you?

15 A. No, sir.

16 Q. Now, over the internet -- most VPNs go over
17 the internet, don't they? When I'm sitting in my
18 hotel room here dialing back to my law firm, I'm going
19 over the internet, aren't I?

20 A. Yes, sir.

21 Q. And that's a typical use of the VPN?

22 A. Yes, sir.

23 Q. "In a way in which the clients and servers
24 cooperate." Well, I think we talked about that before.
25 If I'm connecting to my server, they are cooperating,

1 aren't they?

2 A. Yes, sir.

3 Q. That's typical in a VPN, isn't it?

4 A. Yes, sir.

5 Q. "To ensure that the clients are authorized
6 to connect." That's what we've already talked about in
7 the prior slide that I have to log in and say that I'm
8 me, right?

9 A. Yes, sir.

10 Q. And that's also typical?

11 A. Yes, sir.

12 Q. All right. Let's get to the result part,
13 the last part, the very next question and answer in the
14 transcript. "Finally, did you determine whether the
15 Microsoft '135 products achieved substantially the same
16 result as a secure website?" And your answer was, "The
17 result was, well, you communicate with the computers at
18 a VPN." That's the same as we saw in the last two,
19 right?

20 A. It's similar to that, yes, sir.

21 Q. The same language essentially, right?

22 A. Yes, sir.

23 Q. "And over a public network," that's the same
24 as what we have talked about before over the internet?

25 A. Yes, sir.

1 Q. "In a way which only clients that are
2 registered can communicate." We've talked about that
3 with authority, right -- authorization?

4 A. Yes, sir.

5 Q. Okay. Now, with regard to the '135 patent,
6 if the jury were to find that Microsoft's products are
7 not equivalent to a website, you would agree with me
8 that there's no infringement of anything in the '135
9 patent?

10 A. Yes, sir.

11 Q. Let's talk now about indirect infringement.

12 MR. POWERS: And, Chris, could you bring
13 up Slide 42, please.

14 Q. (By Mr. Powers) So Slide 42 was part of your
15 presentation to the jury yesterday, wasn't it,
16 Dr. Jones?

17 A. Yes, sir.

18 Q. And here you were attempting to set out what
19 you understood to be the requirements for proving
20 inducement infringement?

21 A. Yes, sir.

22 Q. I take it you weren't trying to say to the
23 jury that this is the law? You understand that's Judge
24 Davis' role?

25 A. Yes, sir, I understand he will give them

1 directions on that.

2 Q. Okay. Now, on the first issue, the
3 question of the knowledge of the patent, you cited two
4 things, didn't you? One was a Patent Office filing in
5 one of Microsoft patents and one was a letter from
6 SAIC?

7 A. Yes, sir.

8 Q. Let's take the first one first.

9 MR. POWERS: Chris, could you go to Slide
10 43. I think it is the very next slide.

11 Q. (By Mr. Powers) This is the document that
12 you referred to as providing evidence that Microsoft
13 knew about the '135 patent, right?

14 A. Yes, sir.

15 Q. Now, what I didn't hear in your testimony
16 yesterday was what importance should be attached as to
17 who knew about the '135 patent.

18 You didn't testify about that issue, did you?

19 A. No, sir.

20 Q. And so in your view if any person in all of
21 Microsoft's 90,000 employees around the world, if any
22 one of them knew about the '135 patent, that satisfies
23 this requirement?

24 A. No, sir.

25 Q. So it has to be a relevant person; would you

1 agree with that?

2 A. I believe it would have to be someone who
3 was, say, in the legal department and/or a technical
4 person, not -- not someone, say, working in an office.

5 Q. All right. And so it has to be someone with
6 relevant responsibilities about the products that you're
7 talking about here in this case. Is that fair? Or
8 legal responsibilities that relate to those products?

9 A. I'm not sure about relating to those products,
10 sir; but I think if someone in the legal office were
11 made aware, that would constitute knowledge?

12 Q. So if it were a lawyer in Microsoft's
13 Shanghai, China office with no responsibilities relating
14 to any of these products at all that just happened to
15 walk in and be handed a copy of the '135 patent, that
16 would be enough in your mind?

17 A. No, sir, and I don't believe that's what
18 happened here.

19 Q. No, it's not. But I'm trying to test your
20 understanding of the relevant person. And you said you
21 agree it wouldn't be just any employee. And you said,
22 well, somebody in legal. Now, there's a lot of people
23 in legal at large companies. Some of them have
24 responsibilities that are relevant to what we're talking
25 about and some don't.

1 I take it you agree with me
2 that the knowledge that we're talking about for
3 inducement, because inducement is a state of mind by
4 somebody who knows there's going to be infringement, it
5 has to be somebody that's responsible for the right
6 issues, right?

7 A. Sir, I believe if someone were notified
8 under these circumstances, they would understand that
9 this was important to Microsoft.

10 Q. That's an assumption of yours; you don't
11 actually know it?

12 A. Well, it's my belief, sir.

13 Q. Okay. But it's not based on any knowledge
14 you have, is that fair, in terms of what happened
15 actually inside Microsoft or what happens inside large
16 companies like Microsoft? You just don't know?

17 A. I -- I don't know what happened to this
18 letter other than I would assume the patent inventors
19 would have been notified.

20 Q. All right. Let's -- well, let's stop there.
21 You would assume the inventors on the patent -- well,
22 let's be specific so we have good context here.

23 A. Yes.

24 Q. Exhibit PX-401 is the exhibit that you're
25 talking about on Slide 43, right?

1 A. Yes, sir.

2 Q. And that is a Microsoft patent application
3 that was going through the Patent Office at that time?

4 A. Yes, sir.

5 Q. And if we go to your Slide 44. Let's get
6 your position.

7 MR. POWERS: Can you blow it up a little
8 bit bigger.

9 Q. (By Mr. Powers) This is the part you relied,
10 on Dr. Jones?

11 A. Yes, sir.

12 Q. And this is the part when the Examiner was
13 looking at --

14 MR. POWERS: Thanks, Chris, that's much
15 better.

16 Q. (By Mr. Powers) In looking at one of
17 Microsoft's patent's -- patent applications, they said:
18 Wait a minute, that might not be patentable because of
19 Mr. Munger's patent disclosure, right?

20 A. I believe they said it wasn't.

21 Q. Right. At this point.

22 A. Yes, sir.

23 Q. Okay. And when you said that, you would
24 assume that the inventors on this patent would be told
25 about that fact that the Patent Office had said

1 Mr. Munger's application teaches something relevant to
2 your invention. You assumed that.

3 A. I believe that, sir.

4 Q. You don't know that, do you?

5 A. I don't know if they were, sir.

6 Q. You don't know what standard practice inside
7 large corporations is either.

8 A. Not -- not at Microsoft, no, sir.

9 Q. Okay. Now, the inventors on this patent at
10 issue in PX401 are not anybody involved in anything with
11 any of the products in this case, are they, as far as
12 you know?

13 A. As far as I know, sir.

14 Q. The names on this patent application have
15 never come up in this case as far as you know?

16 A. I don't know, sir.

17 Q. In all the information you read, you can't
18 recall ever seeing these names; isn't that fair?

19 A. I don't recall, sir.

20 Q. All right.

21 MR. POWERS: Now, let's bring up actual
22 PX401. Chris, can you bring that up and bring up Page
23 2, please? No, not Page 2. The address -- I'm looking
24 for the addressee line on the very second page. One
25 back. There you go.

1 Q. (By Mr. Powers) Let's look at who it's
2 addressed to, please, Dr. Jones.

3 A. Yes, sir.

4 Q. This was not sent to Microsoft at all, was it?

5 A. No, sir. It's sent to a law firm.

6 Q. So based on the evidence you supplied to the
7 jury, no one at Microsoft, not even a lawyer, saw this
8 document, just based on the document you showed us.

9 A. I have no -- this is what it says, sir.

10 Q. And it says what I said it says, doesn't it?

11 A. Yes, sir.

12 Q. Okay. And you'll agree with me that when
13 we're talking about inducement infringement, it's
14 knowledge that what Microsoft is doing could be an
15 infringement that's relevant, true?

16 A. Yes, sir. They have to have formed that
17 knowledge.

18 Q. And infringement is defined by the claims you
19 earlier testified, not the specification, right?

20 A. Yes, sir.

21 Q. You were very, very clear about that in your
22 direct testimony, that the claims define infringement;
23 the specification doesn't do that at all, right?

24 A. That's correct, sir.

25 Q. Now, in -- let's go back to your Slide 44,

1 please.

2 The portions that you've called out are only
3 discussing the specification, not the claims, right?

4 A. I believe they mention the entire patent, sir.

5 Q. Well, these are the only two parts of the
6 entire exhibit where Munger is mentioned, right?

7 A. I don't recall. I just --

8 Q. Well, let's bring up -- I'm sorry. I didn't
9 mean to cut you off.

10 A. I just focused on these two.

11 Q. All right. Those are, in fact, the only
12 two that you were -- you wouldn't have left one out
13 because you didn't think it was relevant, right? You
14 cited the ones that were there; isn't that fair?

15 A. No, sir. I would have just picked these out
16 on this page as pointing out the knowledge of the
17 patent.

18 MR. POWERS: Let's bring up the actual
19 exhibit then, PX401. And let's go to Page 10 of the
20 document. And let's bring up the two portions that were
21 just described relating to Munger, the first paragraph
22 after obviousness. It's 401.

23 Q. (By Mr. Powers) These are the two portions
24 that you were referring to in your Slide 44, Dr. Jones,
25 aren't they?

1 A. I believe so, yes, sir.

2 Q. And if you look at the second portion, the
3 only part that was actually called out was a portion of
4 the specification, true?

5 A. Yes, sir.

6 Q. And -- and it's the particular lines in the
7 specification at Column 1, Lines 41 to 50.

8 A. I'm sorry. 45 to --

9 Q. 60. I'm sorry. You're right.
10 Now, that doesn't refer to the claims at all,
11 does it?

12 A. No, sir.

13 Q. So -- and, in fact, typically, you're somewhat
14 familiar with how patent prosecution works in the Patent
15 Office, right? You testified about that on direct
16 examination.

17 A. Yes, sir.

18 Q. When a reference is being used against a
19 patent application, typically, what's being referred to
20 is the teaching of the specification, isn't it?

21 A. Yes, sir. The teaching and the specification
22 are often referred to.

23 Q. And typically, not the claims, true?

24 A. More often than not, yes, sir.

25 Q. All right. And that's true in the case of

1 Exhibit 401 that you relied on. What's being referred
2 to is the specification, not the claims.

3 A. Yes, sir. In that excerpt, yes, sir.

4 Q. And -- but it's the claims you have to look at
5 to know whether there's infringement, right?

6 A. Yes, sir.

7 Q. So this document isn't highlighting anything
8 relating to the scope of the claims of the Munger
9 patent, is it?

10 A. At least these excerpts. I'd have to look at
11 the rest, sir.

12 Q. There's nothing you pointed to in your direct
13 testimony that did, did it?

14 A. No, sir.

15 Q. All right. Now, you testified a couple of
16 times on your direct examination that -- that the
17 Microsoft patent was rejected based on Mr. Munger's
18 patent.

19 Do you remember that?

20 A. Yes, sir.

21 Q. Well, in fact, the patent was issued to
22 Microsoft, wasn't it?

23 A. I believe it ultimately was, yes, sir.

24 Q. So the Patent Office decided that this patent
25 was patentable to Microsoft over and in spite of Mr.

1 Munger's '135 patent.

2 A. Ultimately, yes, sir.

3 Q. All right. Now, that -- that was the first
4 bit of evidence that you put up before the jury on
5 knowledge, true?

6 A. Yes, sir.

7 Q. The second was in Slide 45. Let's look at
8 that. This was a letter that SAIC sent to Microsoft in
9 May of 2006, correct?

10 A. Yes, sir.

11 Q. And the portion that you showed the jury just
12 says that -- that the '135 patent would be of interest
13 and valuable to Microsoft. It doesn't say that
14 Microsoft infringed it, did it?

15 A. I don't believe it says that, sir.

16 Q. So this is, as you read it, just an invitation
17 to license, not a statement that Microsoft should look
18 at this and decide if it infringes.

19 A. I -- yes, sir.

20 Q. All right. Now --

21 MR. POWERS: Chris, let's bring up the
22 actual exhibit, PX120.

23 Q. (By Mr. Powers) Now, the middle portion of
24 that, that small paragraph in the middle, you read that
25 portion when you were preparing for your testimony,

1 right?

2 A. I -- I -- I believe I've read this, yes, sir.

3 Q. But this is not part of what you showed the
4 jury on -- on the slide in your presentation.

5 A. No, sir, it's not.

6 Q. Okay. Now, part of that same letter that you
7 did show the jury says that the claims of the patent are
8 quite broad and would cover virtually any internet-based
9 communication implementing RFC 3263.

10 Do you see that?

11 A. Yes, I do.

12 Q. Now, you understand that RFC -- well, let's
13 talk about what an RFC is for a minute.

14 An RFC is a form of internet standard coming
15 out of the IETF, right?

16 A. Yes. Some of them are standard; some of them
17 are other documents, yes, sir.

18 Q. And the IETF is something called the Internet
19 Engineering Task Force?

20 A. Yes, sir.

21 Q. And that's a collection of leading academics
22 and business people and technologists and government
23 people all trying to make the internet work better.

24 A. Yes, sir.

25 Q. And they have a standard-setting process where

1 people submit documents in the form of RFCs, some of
2 which are adopted as standards; some of which are just
3 out there for comment; is that fair?

4 A. Yes, sir.

5 Q. All right. Now -- and you understood that in
6 this letter, PX120, SAIC is saying to Microsoft: Hey,
7 almost anything that implements this RFC will infringe
8 the '135 patent.

9 You understood that, right?

10 A. I believe that's what they're saying.

11 Q. Now, in all of your preparation for this case,
12 you said you read some of the testimony of Kendall
13 Larsen, the CEO of VirnetX, right?

14 A. Yes, sir.

15 Q. Did you read the part where Kendall Larsen
16 said that this statement in Exhibit 120 was wrong?

17 A. I don't recall seeing that, sir.

18 Q. Well, that would be important to you, wouldn't
19 it?

20 A. No, sir.

21 Q. It's not -- you did rely on PX120.

22 A. For knowledge of the patent, yes, sir.

23 Q. And also for knowledge about whether it would
24 be infringement. That's part of your evidence, isn't
25 it?

1 A. No, sir.

2 Q. Okay. So it's irrelevant to you that the
3 statement in the letter that you relied on is wrong?

4 A. Yes, sir. It's not relevant.

5 Q. And that the CEO of VirnetX, the Plaintiff in
6 this case, admitted in his deposition that it's wrong.

7 A. That's not relevant to my analysis, sir.

8 Q. Did you read that testimony from Mr. Larsen?

9 A. I -- I don't recall if I saw that or not, sir.

10 Q. Well, let's show it to you and see if it helps
11 your recollection.

12 MR. POWERS: Chris, could we bring up
13 from his July 21 deposition, at Page 286, Line 25,
14 through 287, Line 4? This is Kendall Larsen, the CEO
15 and chairman of VirnetX.

16 Q. (By Mr. Powers) Question: Is it your belief
17 that any product that has general functions and benefits
18 of what's described in RFC 3263 -- let's stop there for
19 a minute.

20 That's the same RFC that's in the letter you
21 relied on, right?

22 A. I believe so, yes, sir.

23 Q. Right.

24 That any product that has general functions
25 and benefits of what's described in RFC 3263 necessarily

1 comes under the VirnetX patents?

2 Answer: No.

3 Do you remember reading that testimony from
4 Kendall Larsen, the CEO of VirnetX?

5 A. I still don't recall one way or the other,
6 sir.

7 Q. Okay. Well, let's try another excerpt and see
8 if you recall that.

9 MR. POWERS: Chris, could we bring up,
10 from the same transcript, Page 306, Lines 11 to 23.

11 Q. (By Mr. Powers) Question: It's your belief,
12 and was in the summer of 2006, that Microsoft was not
13 actually practicing RFC 3263.

14 That's the same RFC, isn't it, Dr. Jones?

15 A. Yes, sir.

16 Q. All right. Question: Right?

17 Answer from Mr. Larsen: Yes.

18 Question: And when SAIC gave notice to
19 Microsoft that Microsoft was potentially infringing the
20 VirnetX intellectual property, Microsoft was told that
21 if it were practicing RFC 3263, it was potentially
22 infringing, right?

23 Answer: It was a misstatement. Yes, I do
24 remember that. And it was a notice from Pam Bumann, and
25 it was a general indicator that they were practicing

1 3263 and if they were, and Microsoft said we're not.

2 Do you recall that testimony from Mr. Larsen,
3 CEO of VirnetX?

4 A. I still don't recall seeing that one way or
5 the other, sir.

6 Q. Okay. Now, for you to know whether a product
7 would actually infringe a patent claim because of 3263,
8 you would want to see claim charts. That's the typical
9 way that you would look to analyze that question, isn't
10 it?

11 A. No, sir. I would look at the products and
12 compare them to what's in the claims.

13 MR. POWERS: Let's -- your Honor, may I
14 approach and hand the witness his deposition transcript?

15 THE COURT: Yes, you may.

16 THE WITNESS: Thank you.

17 MR. POWERS: Does Your Honor wish a copy?

18 THE COURT: No. That's all right.

19 Let me ask -- let me ask you, Mr. Powers,
20 how much longer are you anticipating with this witness?

21 MR. POWERS: A ways.

22 THE COURT: A ways? All right.

23 I think maybe we'll go ahead and take our
24 lunch hour a little early today because we just had a
25 very short 10-minute break this morning, and y'all have

1 been sitting there very attentively.

2 So let's take an early lunch, and we'll
3 plan to start back at 1:00 o'clock. So we'll be in
4 recess until 1:00 o'clock.

5 COURT SECURITY OFFICER: All rise.

6 (Jury out.)

7 THE COURT: You would probably like me to
8 turn your clock off there, Mr. Powers.

9 (Lunch recess.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/ _____
SUSAN SIMMONS, CSR
Official Court Reporter
State of Texas No.: 267
Expiration Date: 12/31/10

Date

/s/ _____
JUDITH WERLINGER, CSR
Deputy Official Court Reporter
State of Texas No.: 731
Expiration Date: 12/31/10

Date

EXHIBIT F6

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

VIRNETX * Civil Docket No.
* 6:07-CV-80
VS. * Tyler, Texas
*
* March 10, 2010
MICROSOFT CORPORATION * 1:00 P.M.

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE JUDGE LEONARD DAVIS
UNITED STATES DISTRICT JUDGE

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transcript produced on CAT system.)

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* * * * *

P R O C E E D I N G S

COURT SECURITY OFFICER: All rise.
(Jury in.)

THE COURT: Please be seated.

All right. Counsel, you may proceed.

1 MR. POWERS: Thank you, Your Honor.

2 MARK JONES, Ph.D., PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

3 CROSS-EXAMINATION (CONTINUED)

4 BY MR. POWERS:

5 Q. Good afternoon, Dr. Jones.

6 A. Good evening.

7 Q. Before the lunch break, we were talking about
8 your opinions regarding indirect infringement,
9 particularly inducement infringement, and I wanted to
10 get us back to where we were.

11 MR. POWERS: So, Chris, if you could put
12 up Slide 45 from Dr. Jones' presentation, we'll get back
13 to where we were.

14 Q. (By Mr. Powers) You recall, Dr. Jones, that
15 you -- this is one of the pages of your presentation to
16 the jury about why, in your mind, Microsoft knew or
17 should have known about the '135 patent and
18 infringement?

19 A. Yes, sir.

20 Q. Now, this is the letter that SAIC sent to
21 Microsoft in May of 2006, correct?

22 A. Yes, sir.

23 Q. And this is the one that made the allegation
24 that the RFC 3263 would be -- if that's being used, that
25 basically means you're infringing.

1 Do you recall that?

2 A. Something along those lines, yes, sir.

3 Q. And this is the one where Kendall Larsen, the
4 CEO of VirnetX, had said that that was a misstatement.

5 Do you recall that?

6 A. Yes, sir.

7 Q. And your testimony was that the fact that that
8 was a misstatement in the letter on which you're
9 relying, it didn't bother you.

10 Do you recall that?

11 A. Right. It had no bearing on my opinion, sir.

12 Q. Okay. And when we broke, I was asking you
13 that wouldn't you personally expect that if somebody was
14 making an allegation like that, that anybody who uses
15 RFC 3263 is infringing, that you would normally expect
16 to see something like a claim chart that proved that.

17 Do you recall that question?

18 A. I don't think that was the question I
19 answered, sir.

20 Q. Okay. Maybe I -- maybe I rephrased it here.

21 Let me ask it again now. We'll just move from
22 there.

23 Would you expect that someone making an
24 allegation that practicing of RFC 3263 would infringe
25 the '135 patent as was made in this letter?

1 This May of 2006 letter, you would normally
2 expect that such an allegation would have claim charts
3 to back it up, wouldn't you?

4 A. If it were in a legal case, yes, sir.

5 Q. All right. And you personally haven't made an
6 assessment of whether that statement is true, i.e.,
7 whether -- meaning whether practicing 3263 really does
8 infringe.

9 You personally haven't done that?

10 A. I have -- I have not looked to see if there
11 are ways you could practice 3263 with or without
12 infringing. I've not done a detailed analysis.

13 Q. All right. Now, Microsoft answered this
14 letter, didn't they?

15 A. I believe so, yes, sir.

16 Q. And, in fact, one of the things Microsoft
17 said, when it answered, is they disagreed with the
18 statements in the letter, true?

19 A. I'd have to look at it again, sir. I don't
20 recall.

21 Q. Could you look at DX3015?

22 MR. POWERS: And, Chris, could you bring
23 it up, please?

24 Q. (By Mr. Powers) Do you recall in your
25 preparation, Dr. Jones, looking at this letter?

1 It wasn't one used in your opening position to the jury,
2 was it?

3 A. I -- I believe I might have looked at it.

4 I'm -- I don't remember looking at it in
5 detail, though, sir.

6 Q. Do you recall that there were two letters that
7 Microsoft sent back to SAIC about in this back-and-forth
8 chain?

9 A. I -- I remember seeing that in testimony, sir.

10 Q. All right. But you personally didn't study
11 those two, or did you?

12 A. I might have seen them, but I didn't study
13 them in detail, no, sir.

14 Q. All right. So let's look at DX3015. And you
15 do recognize that in this letter, Microsoft disagreed
16 with SAIC's allegation regarding the scope of the patent
17 and infringement?

18 A. Yes, sir. I see where they say they disagree.

19 Q. And in addition to that, Microsoft suggested a
20 meeting, true?

21 Do you see that in the next to the last
22 paragraph?

23 A. Yes, sir.

24 Q. And finally, Microsoft asked for exactly what
25 you would expect to see about a legal case allegation,

1 claim charts, right?

2 A. Yes, I see that they -- they suggested sending
3 claim charts, yes, sir.

4 Q. Let's just make sure everybody knows what
5 you're talking about when you say claim charts.

6 Claim charts are where you have the language
7 of the claims the way you've put up on these big, foam
8 boards, and next to it some evidence which backs up the
9 allegations of infringement, right?

10 A. Yes, sir.

11 Q. Okay. And that's what you would normally
12 expect to see in a lawsuit about infringement, and
13 that's what exactly what Microsoft was asking for,
14 right?

15 A. Yes, sir.

16 Q. Are you aware that Kendall Larsen admitted
17 that no such claim charts were ever sent?

18 A. I'm not aware of that, sir.

19 Q. Have you ever seen any evidence that any claim
20 charts or any information backing up SAIC's allegations
21 were ever sent to Microsoft in response to their
22 request?

23 A. The claim charts, just with respect to the
24 RFC, sir?

25 Q. Or any claim.

1 A. Well --

2 Q. Before the lawsuit was filed.

3 A. Okay. Yes, sir. I'm not aware of any claim
4 charts before the lawsuit.

5 Q. All right. Or, in fact, you're not aware of
6 SAIC or VirnetX sending Microsoft any information
7 backing up any claims of infringement before the
8 lawsuit.

9 That's fair, isn't it?

10 A. I -- yes, sir.

11 Q. And you're aware, aren't you, that SAIC and
12 VirnetX did not meet with Microsoft before the lawsuit?

13 You're aware of that?

14 A. I haven't -- the testimony I heard today --
15 not today -- in the previous days seem to suggest that,
16 but I wouldn't have knowledge, if they met or not, sir.

17 Q. You know of no such meeting.

18 That's fair, isn't it?

19 A. Yes, sir.

20 Q. Okay. Now, let's go back to your opinion.

21 That's Slide 42.

22 MR. POWERS: Let's put that up, please,
23 Chris.

24 Q. (By Mr. Powers) Now, let's focus on the very
25 last requirement that you talked about, which is not

1 only did someone at Microsoft have to know the patent,
2 but they had to know that their users would be
3 infringing that patent.

4 That's essentially what you're saying?

5 A. Yes, sir. They knew or should have known.

6 Q. Knew or should have known that our customers,
7 Microsoft's customers, would be infringing, right?

8 A. That the instruction would result in them
9 infringing, yes, sir.

10 Q. Now, as to the '135 patent, which was what
11 we're talking about here, you've admitted that
12 Microsoft's customers do not literally infringe that
13 patent, because there's no website?

14 A. That's correct, sir.

15 Q. So if Microsoft just looked at that patent and
16 said, well, our customers can't possibly infringe it,
17 because it requires a website, and we all know this
18 isn't a website, that would be true, in your mind?

19 A. If they were looking at it only literal --
20 literal infringement, that's correct, sir.

21 Q. All right. And that's a requirement in two
22 out of the three limitations of Claim 1 of the '135
23 patent?

24 A. Yes, sir.

25 Q. And three out of four of the limitations of

1 Claim 10?

2 A. Yes, sir.

3 Q. And in order for someone at Microsoft to have
4 known or should have known that their customers would be
5 infringing, they would have to have looked at the claims
6 of the '135 patent and studied them, right?

7 A. Yes, sir.

8 Q. And you have no evidence of anyone at
9 Microsoft ever saw these claims or looked at them before
10 the lawsuit, do you?

11 A. No, sir, I don't.

12 Q. All right. Now, let's move to a slightly
13 different subject, and that is contributory
14 infringement.

15 That's another type of infringement that
16 you've testified about in relation to the '135 patent,
17 right?

18 A. Yes, sir.

19 Q. But not the '180 patent?

20 A. That's correct.

21 Q. All right.

22 MR. POWERS: So, let's -- Chris, if you
23 would, please, put up Slide 47 from Dr. Jones'
24 presentation.

25 Q. (By Mr. Powers) Now, this was the page that

1 you presented to the jury to show your opinion as to why
2 you felt that Microsoft was contributing to infringement
3 by others.

4 A. Yes, sir.

5 Q. Now, one requirement -- we've already talked
6 about knowledge. I won't do that again.

7 One requirement is that there has to be no
8 substantial non-infringing uses of what Microsoft sells,
9 right?

10 A. Yes, sir.

11 Q. Now, there are, you will agree, non-infringing
12 uses. You just argue whether they're substantial.

13 We're at least in disagreement there?

14 A. I'd have to look at what was said for non- --
15 for what was stated to be a non-infringing use, sir.

16 Q. I was listening carefully to your testimony,
17 and what I heard you say was, well, as to one use, you
18 don't think it's substantial; as to other uses, you
19 don't think they're actually uses of the invention.

20 Do you recall that testimony?

21 A. Not specifically, sir.

22 Q. Fair enough.

23 A. Sorry.

24 Q. We'll go through it in detail then.

25 A. Okay.

1 Q. All right. Do you recall a discussion about
2 high-security mode?

3 A. Yes, sir.

4 Q. That's one mode in which the actual parts of
5 Microsoft's products that you're talking about as
6 infringing can be used?

7 A. Yes, sir.

8 Q. This isn't in that category of non-use that
9 you described. This is actual use of the products that
10 you're talking about infringing?

11 A. Yes, sir.

12 Q. Okay. And Claim 10 of the '135 patent
13 requires that that DNS proxy server gets a request from
14 a client; true?

15 Would you like to have it up in front of you?

16 A. No, sir. I -- I can -- I can recollect it.

17 Q. Okay.

18 A. It -- it -- well, Claim 10 is a system claim,
19 so it requires that it be capable of such a thing.

20 Q. And Claim 1 requires the same thing as part of
21 the method?

22 A. Claim 1 actually is a method. Claim 10, you
23 have to take those steps.

24 Q. Exactly.

25 And there's a request to look up an IP

1 address.

2 MR. POWERS: Let's just get the claim in
3 front of us. Let's put up Claim 10.

4 Q. (By Mr. Powers) The first requirement of Claim
5 10 is a DNS proxy server that receives a request from
6 the client to look up an IP address.

7 Do you see that?

8 A. Yes, sir.

9 Q. And the DNS proxy server returns the IP
10 address that was requested; true?

11 A. Yes, sir.

12 Q. That's what the claim requires?

13 A. Yes, sir.

14 Q. And in your opinion, when you provided your
15 opinion to the jury of infringement, what you're calling
16 the DNS proxy server in this claim is the OC server,
17 true?

18 A. No, sir.

19 Q. You're calling the OC APIs, actually, on -- as
20 part of Windows?

21 A. The RTC interfaces, sir.

22 Q. The interfaces that you say are part of
23 Windows, right?

24 A. Yes, sir.

25 Q. Okay. And in high-security mode, that

1 particular limitation is not satisfied, right?

2 The DNS -- those RTC interfaces do not return the IP
3 address?

4 A. Maybe if I can clarify a little bit.

5 What you're asking is -- is for the rest of
6 that, if it is determined that access to a non-secured
7 website has been requested?

8 Q. Precisely.

9 A. Okay.

10 Q. So let's take an example where I'm just going
11 to Google.com. You'll agree that's not a secure website
12 or address?

13 A. Not that I know of, sir.

14 Q. Okay. And so if I'm asking for that, what
15 you're calling the DNS proxy server, those RTC
16 interfaces, those don't return that IP address for
17 Google.com, right?

18 A. In high-security mode, they will not return
19 that, sir.

20 Q. So in high-security mode, if it ran -- the
21 products that you're accusing of being used in
22 high-security mode, it would not infringe Claim 10?

23 A. It would infringe Claim 10, sir.

24 Q. Even though it does -- even though it returns?

25 A. It -- Claim 10 is a system claim, so it has

1 the capability that if the software is still there,
2 you've still assembled the system.

3 Q. Well, what I thought the claim requires that
4 where it's not a secure website, it returns the IP
5 address.

6 A. The software still has that capability. This
7 is just a configuration setting we're talking about for
8 high-security mode.

9 Q. Well, but in high-security mode, in fact, the
10 IP address is not returned for a non-secure website,
11 right?

12 A. Yes, sir.

13 Q. And that -- and the claim requires that in --
14 for a non-secure website, it still returns the IP
15 address?

16 A. Yes, sir, it --

17 Q. Okay.

18 A. -- it does.

19 Q. Now -- and you don't know one way or the other
20 how substantial the use is of high-security mode, do
21 you?

22 A. I -- I -- by substantially, you mean how many
23 people are doing it, sir?

24 Q. Sure.

25 A. I -- I do understand that some -- some users

1 are doing that. Yes, sir, I do.

2 Q. You don't know about its usage enough to say
3 whether it's substantial or insubstantial; is that fair?

4 You know it's used?

5 A. I -- I do know it's used, yes, sir.

6 Q. And you don't know enough to know whether or
7 not its use is important to those who use it to make it
8 substantial either, do you?

9 A. I believe high-security mode is important to
10 those who use it, sir.

11 Q. And so it's substantial for them?

12 A. It's substantial. I just don't agree that
13 it's non-infringing.

14 Q. All right. So let's go to Claim 10. We've
15 still got it on the screen.

16 The last requirement --

17 MR. POWERS: And, Chris, let's highlight
18 this.

19 Q. (By Mr. Powers) -- is a gatekeeper computer.
20 Do you see that?

21 A. Yes, sir.

22 Q. Now, as I heard your testimony yesterday, you
23 were saying that a gatekeeper computer can be just
24 software, not an actual computer, right?

25 A. Yes, sir.

1 Q. And you were relying -- as I listened to
2 your -- your reasons for that, you said it's consistent
3 with the Court's construction of DNS proxy server.

4 Do you recall that?

5 A. I -- I said it was consistent with that, yes,
6 sir.

7 Q. All right. So the definition of being a DNS
8 proxy server was that a proxy server could be either a
9 computer or a program, right?

10 A. Yes, sir.

11 Q. And so the Court's construction of proxy
12 server is what distinguished between computers and
13 programs -- or computers and software?

14 A. Yes, sir.

15 Q. And here the term that we're talking about is
16 gatekeeper computer?

17 A. Yes, sir.

18 Q. The Court's never given a construction that
19 says a computer can be just software, has it?

20 A. The Court hasn't construed that term at all,
21 sir.

22 Q. And, in fact, you know computer to be
23 hardware, right?

24 A. Not necessarily, sir.

25 Q. Normal use of a computer isn't a piece of

1 hardware that's setting on a --

2 A. That's certainly one of the normal uses, yes,
3 sir.

4 Q. All right. Now, let's turn back to the '180
5 patent for a moment. And let's put up your Slide 7.

6 This is your page showing what you contended
7 was infringing for the '180 patent, true?

8 A. Yes, sir.

9 Q. Let's take XP first. That's the one on the
10 left.

11 The reason that you contended that XP
12 infringes is that it has in it what you called the
13 PeerNet APIs or interfaces; is that fair?

14 A. Yes, sir.

15 Q. Now, in XP, there's actually no application
16 that uses those interfaces at all, is there?

17 A. That -- that comes with -- that it comes
18 with -- installed with that space?

19 Q. Exactly.

20 A. No, sir, there's not.

21 Q. So if I -- for every copy of XP that's shipped
22 out to anybody, those APIs are setting there, but
23 there's no application that uses them to create a
24 meeting or anything like that, is there?

25 A. Not out of the box, sir. No, sir.

1 Q. All right. Now, for Vista, there's one
2 program and one program only that you referred to, and
3 that's Meeting Space, right?

4 A. Yes, sir.

5 Q. And that's supplied by Microsoft?

6 A. Yes, sir.

7 Q. Now -- and Meeting Space is the only
8 application that you testified about in your testimony
9 to the jury?

10 A. Yes, it is.

11 Q. All right. Now, you testified at length in
12 your direct examination about a technology called PNRP.

13 Do you remember that?

14 A. Yes, sir.

15 Q. As I heard your testimony, you were saying
16 that P -- that when PNRP is used to form the connection
17 that that infringes the '180 patent.

18 Is that fair?

19 A. Yes, sir.

20 Q. There are other ways to form a connection
21 using Windows Meeting Space and Vista, other than PNRP,
22 right?

23 A. You mean to get -- to get the initial address,
24 sir?

25 Q. Absolutely.

1 A. Yes, sir.

2 Q. And you have not given us an opinion that
3 those infringe, true?

4 A. Yes, I have.

5 Q. And they don't infringe, do they?

6 A. I said the use with those with graph
7 maintenance infringes, yes, sir.

8 Q. Well, let's just talk about forming the
9 initial connection, because you're right; you did talk
10 about graph maintenance.

11 MR. POWERS: So let's -- let's bring up
12 Dr. Jones' Slide 56. I think that will help.

13 Q. (By Mr. Powers) This was the page that you
14 used to talk about how Windows Meeting Space could form
15 a connection and create a group meeting, true?

16 A. Yes, sir.

17 Q. All right. And we've got our familiar remote
18 user sitting at home celebrating a birthday with our
19 students diligently working away in the library?

20 A. Yes, sir.

21 Q. All right. Now, one way that that remote user
22 can connect to the Meeting Space -- to the meeting with
23 all the people in the library is for somebody in the
24 library to send them an invitation that has the IP
25 address in it, right?

1 A. Yes, sir.

2 Q. And you understand that's a common way?

3 A. Yes, sir.

4 Q. All right. And it's that way of making the
5 connection, assuming that there's no other changes,
6 that -- let's call the person in the library Bob, and
7 the person over the remote user celebrating the
8 birthday, Bill.

9 Bob will send an invitation to Bill that will
10 have the IP address. Bill accepts and the connection is
11 formed.

12 That's a typical way, right?

13 A. Yes, sir.

14 Q. With that formation of the connection, with no
15 other information yet, nothing else has happened,
16 there's no infringement, right?

17 A. That's correct sir.

18 Q. All right. And if the entire meeting
19 finishes, Bob is over there at the library; stays in the
20 library; doesn't shut his computer; he doesn't leave the
21 meeting in a huff; he stays there; they finish the
22 meeting; no disconnections; no nothing.

23 That entire meeting at that point as to Bill
24 has been non-infringing?

25 A. No. Graph maintenance still may take place to

1 add additional connections, sir.

2 Q. And it may not.

3 A. And it -- if it's fast enough, it won't.

4 You're right, sir.

5 Q. All right. Now, a second way to form that

6 connection, other than this -- what we call the

7 invitation form, is a way called Meetings Near Me.

8 You're aware of that, aren't you?

9 A. Yes, sir.

10 Q. And Meetings Near Me is a way for Bill, over

11 there remotely celebrating the birthday, to look for a

12 meeting near him, right?

13 A. Yes, sir.

14 Q. And if a connection is formed using Meetings

15 Near Me, without anybody leaving or shutting their

16 laptops or any that have, no disconnections, none of

17 that, that formation of the connection is not

18 infringing?

19 A. Yes, sir.

20 Q. All right. A third way of forming that

21 connection is People Near Me. That's a technology built

22 into the product, right?

23 A. Yes, sir.

24 Q. And with all the same assumptions of no

25 laptops closing, no people leaving in a huff,

1 connections formed using People Near Me, this third way,
2 also no infringement?

3 A. Yes, sir.

4 Q. Okay. Now, the only way that there's
5 infringement even under your theory is if PNRP is
6 actually used to make the connection, right?

7 In the initial connection; that's all we're
8 talking about. We'll get to later events later.

9 A. With respect to Claim 1, yes, sir.

10 Q. Okay. Now -- and as I -- and you have no
11 information, do you, about the extent to which PNRP is
12 used to make connections versus the other three ways I
13 just described among people who actually use the
14 product?

15 A. No, sir, I don't.

16 Q. Okay. Now, you testified about what you
17 called graft maintenance. Is that -- that was the term
18 you used?

19 A. Yes, sir.

20 Q. And your testimony was that in graph
21 maintenance, PNRP would be used, right?

22 A. Yes, sir.

23 Q. That's not a means of forming the initial
24 connection, is it?

25 A. No, sir, not -- well, there are situations

1 that it could be, but, generally, no.

2 Q. Generally no. Okay.

3 All right. So let's -- let's switch gears for
4 a minute to a different subject. There's another claim
5 term called a secure computer network address.

6 Do you recall that term?

7 A. Yes, sir.

8 Q. That's in all of the term claims of the '180
9 patent that are accused, right?

10 A. Yes, sir.

11 Q. So if that limitation is not found in the
12 Windows products that you just used, there's no
13 infringement, right?

14 A. Right.

15 Q. And similarly, if VPN is not found, there's no
16 infringement?

17 A. Yes, sir.

18 Q. Only one? It only takes one?

19 A. Yes, sir.

20 Q. All right. Now, with respect to secure
21 computer network address, the example that's given in
22 the patent and that was on some of the slides that you
23 used was .scom.

24 Do you recall that?

25 A. Yes.

1 Q. And the S stood for secure, right?

2 A. Yes, sir.

3 Q. A normal e-mail address would be your name at
4 blank.com only, right?

5 A. Yes, sir.

6 Q. And the point in the patent that you were
7 giving was that it's .scom instead of .com to show that
8 it was secure.

9 That was your point, wasn't it?

10 A. I believe that was an example of a secure
11 domain name, yes, sir.

12 Q. Okay. Now, the -- let's go back to your Slide
13 56, which is our friends in the library and Bill
14 celebrating the birthday.

15 So as I understand your testimony, the secure
16 address is the address of Bill's computer setting over
17 at the UT -- UT-Tyler library.

18 A. Yes, sir.

19 Q. All right. And that address is an IP address,
20 as we've previously discussed?

21 A. Yes, sir.

22 Q. And if Bill stays in his little cubicle in the
23 library; doesn't close it up; he doesn't leave; he stays
24 there.

25 Let's say it's 7:00 o'clock. He's on the

1 internet; he has an IP address at that time?

2 A. Yes, sir.

3 Q. And that IP address is one of those four
4 numbers separated by dots that we've looked at before?

5 A. That's one example, yes.

6 Q. Typically, yeah.

7 And if Bill, who's sitting over there at home,
8 sends Bob an e-mail, that will use that -- Bob's IP
9 address to do so?

10 A. Generally not, sir. No, sir.

11 Q. In order to access Bill's computer,
12 ultimately, that e-mail will arrive using Bob's IP
13 address. That's how it gets to his computer, right?

14 A. Well, the e-mail wouldn't typically be sent
15 directly to his computer from Bill, sir.

16 Q. Of course not. But Bill ultimately receives
17 the computer via a path -- the e-mail via a path that
18 uses his IP address?

19 A. Typically, he would contact a server for that,
20 sir.

21 Q. Exactly.

22 And the contact and the communication between
23 him and his server would be using his IP address?

24 A. Yes, sir.

25 Q. So we'll call his IP address X, so we don't

1 have to use all -- all of the digits.

2 Fair enough?

3 A. Okay.

4 Q. So at -- at 7:00 o'clock, Bob is in the
5 library getting an e-mail from the server, and his
6 e-mail address is X at that time.

7 A. Yes, sir.

8 Q. At that time, X is not a secure address, is
9 it?

10 It doesn't need authorization for access,
11 which is the Court's construction, isn't it?

12 A. It -- it does meet the Court's construction.
13 I'm not sure what you're saying as the access in it at
14 this point.

15 Q. Well, it's -- let me clear. That's a fair
16 point.

17 A. Okay.

18 Q. So Bob over there in the computer -- in the
19 library, he's not on Windows Meeting Space; he's not
20 doing anything; he's on Google; he's surfing the web;
21 he's shopping at Amazon.com; he's doing all sorts of
22 things, trying to delay starting on the project and
23 waiting for the other people to get there.

24 At that point, his IP address is not a secure
25 address, is it? That's not requiring authority for

1 access?

2 A. It does -- there are -- to access it through
3 grouping would require authority -- would require
4 authorization for access, sir.

5 Q. I'm not talking about groups. I'm just
6 talking about what he's doing at 7:00 o'clock at night,
7 waiting for the others to arrive. He's surfing the web;
8 he's going to Google; he's going to Amazon; he's playing
9 a World of Work graph; he's doing whatever he's doing.

10 At that point, he's not in a group; he's not
11 started that at all; it's not a secure address?

12 A. If it's capable of grouping, then there's a
13 secure computer network address, sir.

14 Q. So at that point, even though he's not doing
15 any grouping, his address, because it's capable of
16 grouping, your testimony is, it's secure?

17 A. If his computer is ready to participate in
18 grouping, yes sir.

19 Q. He doesn't have the program open; it's setting
20 there totally dormant; he's just surfing the web;
21 nothing to do with grouping. We're not talking about
22 grouping at all. He hasn't thought about the group. He
23 may not have even stole it yet.

24 A. Okay. If -- if it's not enabled, then I would
25 agree; it's not a secure computer network address, sir.

1 Q. All right. And that's -- his address is X.
2 Now, at 8:00 o'clock, he brings up the grouping program,
3 and he's ready to start.

4 A. Yes, sir.

5 Q. At that point, his address is still X?

6 A. Yes, sir.

7 Q. But now it's secure, under your opinion?

8 A. Yes, sir.

9 Q. Same address not secure at 7:00 o'clock;
10 secure at 8:00 o'clock?

11 A. Yes, sir.

12 Q. And he could be communicating during his
13 grouping session with e-mail servers and Amazon.com; he
14 could be doing all of that at the same time?

15 A. Yes, sir.

16 Q. Exactly what he was doing with an unsecure
17 address at 7:00?

18 A. Yes, sir.

19 Q. But your testimony is that it's still a secure
20 address now?

21 A. Yes, sir.

22 Q. All right. Now, I'd like to go back to the
23 check marks that you made on the various claim charts.

24 MR. POWERS: May I approach, Your Honor?

25 THE COURT: Yes, you may.

1 Q. (By Mr. Powers) Can you see that?

2 A. No.

3 Q. Would it be better if I tilted it a little
4 bit?

5 A. No. That will be fine, sir.

6 MR. POWERS: Can the jury see that?

7 Great.

8 Q. (By Mr. Powers) Now, we talked earlier about
9 the difference between your check marks and what would
10 be checked if it were asking literal infringement. I
11 want to try to make that clearer.

12 So let's put first as to the '135, instead of
13 your check marks, let's ask the question, whether
14 there's literal infringement.

15 And as to '135, Claim 1, you would agree with
16 me as to this second limitation, the answer would be no?

17 A. Yes, sir.

18 Q. And as to this third limitation, the answer
19 would also be no?

20 A. Yes, sir.

21 Q. Now, in addition as to Claim 1 of '135, if VPN
22 limitation is not met, then the claim's not met
23 literally or under the Doctrine of Equivalents, true?

24 A. Yes, sir.

25 Q. So --

1 MR. POWERS: I won't mark on the board; I
2 promise you.

3 Q. (By Mr. Powers) So that would be a no under
4 literal or DoE?

5 A. Yes, sir.

6 Q. That's true with respect to the first part of
7 the claim and the last part of the claim, right?

8 A. Yes, sir.

9 Q. Now, let's go to Claim 10 of the '135 patent.
10 And instead of the check marks, we'll do the same thing.
11 Instead of the check marks that you gave to the question
12 of whether there's literal infringement, the answer
13 would be no on all three of the last three limitations?

14 A. Yes, sir.

15 Q. And in addition to that, whether it's literal
16 or Doctrine of Equivalents, if the answer on virtual
17 private network is no, there's no infringement anyway?

18 A. Yes, sir.

19 Q. That applies to the top part and also the last
20 two limitations as well?

21 A. Yes, sir.

22 Q. Now, those are the only two independent claims
23 of the '135 patent, right?

24 A. I didn't catch the last part, sir.

25 Q. I'm sorry.

1 The two independent claims of the '135 patent?

2 A. Yes. Those are the only two.

3 Q. And so those ones would apply to the dependent
4 claim of the '135?

5 A. Yes, sir.

6 Q. All right. So now let's switch to the '180
7 patent.

8 Now, in the '180 patent, as far as Claim 1,
9 here there's not a question of literal infringement,
10 because there is no Doctrine of Equivalents issue on
11 '180, right?

12 A. That's correct, sir.

13 Q. Okay. We will mark out literal.

14 And with respect to the '180 patent, we have
15 the issue that's a secure computer network address. And
16 if that's not present, then there's no infringement of
17 any of the claims, right?

18 A. Yes, sir.

19 Q. I will just write S-A; is that okay? Secure
20 address?

21 A. Okay. Yes, sir.

22 Q. It's too hard to write in that little spot.

23 A. Yes, sir.

24 Q. And that's true in various parts of the claim,
25 isn't it?

1 A. Yes, sir.

2 Q. And in addition, there's a requirement in the
3 '180 patent of all the claims for VPN?

4 A. Yes, sir.

5 Q. And that's true down here (indicates)?

6 A. Yes, sir.

7 Q. And if that's not present, then there's no
8 infringement of any of these claims either?

9 A. That's correct, sir.

10 Q. And that would be true -- I don't want to take
11 the time, but of all the claims of the '180 patent?

12 A. Yes, sir.

13 MR. POWERS: No further questions, Your
14 Honor. Pass the witness.

15 THE COURT: All right. Redirect?

16 MR. CALDWELL: Your Honor, may I take a
17 minute to review something that my colleague has given
18 me?

19 THE COURT: Yes.

20 (Pause in the proceedings.)

21 REDIRECT EXAMINATION

22 BY MR. CALDWELL:

23 Q. Professor Jones, did you hear Mr. Powers give
24 an example of how he uses his laptop to connect in a
25 virtual private network back to his office in San

1 Francisco?

2 A. Yes, sir.

3 Q. Now, if we took Mr. Powers' laptop and we
4 connected it to the internet --

5 A. Yes, sir.

6 Q. -- and we used the virtual private network
7 that his firm uses to connect its various offices and
8 its various attorneys as they're traveling -- are you
9 with me so far?

10 A. Yes, sir.

11 Q. Would his laptop have an IP address on it?

12 A. Yes, sir, it would.

13 Q. Okay. Would that IP address be assigned,
14 basically, when he connects to the internet?

15 A. Yes, sir.

16 Q. Now, if we were to intercept the
17 communications that Mr. Powers acknowledges are VPN
18 communications being sent across the internet back to
19 his office, what IP addresses would we see?

20 A. We'd see the IP address assigned to that
21 laptop computer and the IP address of the VPN server at
22 the company's offices.

23 Q. We would see the IP address for his computer?

24 A. Yes, sir.

25 Q. And is there any dispute in this case that

1 that would be VPN that his firm uses or that our firm
2 uses?

3 A. In a typical VPN, no, sir. There's no dispute
4 about that.

5 Q. Now, Professor Jones, are there schemes -- I
6 use schemes; it's probably a little techie word here --
7 but are there schemes that you can use in order to help
8 hide the true internet address that's being used out on
9 the internet when you send things across the internet?

10 A. Yes, there are. There are schemes like IP
11 hopping, for example.

12 Q. And you introduced that to us in the -- in
13 your direct testimony, correct?

14 A. Yes, sir, I did.

15 Q. Now, in order to prove infringement, do you
16 have to prove that Microsoft's products use IP hopping
17 in order to mask the public internet address of those
18 messages?

19 A. No, sir. In fact, those are different claims
20 of the patents that aren't asserted.

21 Q. Okay. I put Claim 1 of the '135 patent up on
22 the board.

23 Is there anyplace in this claim where it says
24 you have to have IP hopping and provide a way to hide
25 the public internet address of the computers

1 communicating in the VPN?

2 A. No, sir, there's not.

3 Q. Now, we've referred to Judge Davis'
4 definitions.

5 A. Yes, sir.

6 Q. Have you reviewed those?

7 A. Yes, sir, I have.

8 Q. How many times?

9 A. It's got to be scores at this point.

10 Q. And how many times in reviewing those claim
11 constructions have you found a claim construction that
12 says you need to use IP hopping in order to hide the
13 public internet address?

14 A. Sir, that's not in that construction.

15 Q. Okay.

16 MR. CALDWELL: Now, Mr. Moreno, do you
17 have Plaintiff's Exhibit 1 you can pull up for us?

18 I want you to go to the very, very back
19 and maybe the next to the last page where the claims
20 are.

21 There you go. Can you grab most of that
22 column there on the left that's starting with what is
23 claimed is?

24 I need to refresh my recollection here.

25 Q. (By Mr. Caldwell) Okay. Now --

1 MR. CALDWELL: I tell you what, to make
2 everything a little bit more legible, can you drop that,
3 and can you pull out Claim 1s and then Claim 6,
4 Mr. Moreno?

5 That's Claim 1. Let's pause there for a
6 second.

7 Q. (By Mr. Caldwell) Professor Jones, is that the
8 claim that we have right here on the board?

9 A. Yes.

10 Q. Okay. So I think as long as the jury trusts
11 us on that and the typing was good, we can actually drop
12 that bubble.

13 MR. CALDWELL: And now make Claim 6 as big as
14 you possibly can.

15 Q. (By Mr. Caldwell) Okay. Now, Professor Jones,
16 can you read for us what we see here in Claim 6?

17 A. Yes, sir.

18 The method of Claim 1, wherein Step 3
19 comprises the step of establishing the VPN by creating
20 an IP address hopping scheme between the client computer
21 and the target computer.

22 Q. Is this the scheme you were talking about that
23 would hide the external public address of the
24 communication?

25 A. Yes, I believe it does obscure those, yes,

1 sir.

2 Q. Now, what does it mean when this claim says
3 the method of Claim 1 wherein, additional stuff?

4 A. That means practicing Claim 1, as well as
5 doing this additional thing, of IP address hopping.

6 Q. So is IP address hopping required by Claim 1?

7 A. No, sir, it's not.

8 Q. It's an additional requirement that VirnetX
9 would need to put evidence of -- would need to present
10 evidence for, if VirnetX were asserting Claim 6,
11 correct?

12 A. Yes, sir.

13 Q. Is there any requirement in Claim 1 about IP
14 hopping?

15 A. No, sir, there is not.

16 Q. And have you alleged infringement of Claim 6?

17 A. No, sir, I haven't.

18 Q. Now, are there claims just like this in the
19 '180 patent?

20 A. Yes, sir, I believe there are.

21 Q. Did you understand, when Mr. Powers very
22 briefly had up a page of a book, that he suggested you
23 needed to have one IP address hidden inside, another IP
24 address in order to create a VPN?

25 A. Yes. I did understand what he was saying,

1 sir.

2 Q. Is there a name for that concept?

3 A. IP within IP, or tunneling is another word for
4 that, sir.

5 Q. Is IP tunneling a requirement of the patents?

6 A. No, sir, it's not.

7 Q. Is it a requirement of Claim 1?

8 A. No, it's not.

9 Q. Claim 10?

10 A. No, sir.

11 Q. Claim 12?

12 A. No, sir.

13 Q. If we move to the '180 patent, Claims 1, 4,
14 15, 17, 20, 31, 33, 35?

15 A. Very good.

16 No, sir. It's not a requirement of those
17 either.

18 Q. Okay. Now, in the case of the SIP
19 communications in Office Communicator and Office -- I'm
20 going to start that one over, because that wasn't going
21 anywhere good.

22 In the case of SIP communications in Office
23 Communicator and Office Communications Server, what kind
24 of address is the inner address in the communications?

25 A. That's a SIP address, sir.

1 Q. All right. When those communications, those
2 SIP communications, are in the VPN mode that you
3 identified in your direct testimony, can you see those
4 on the open internet?

5 A. You can't see those inside the VPN on the open
6 internet, sir.

7 Q. Now, did you demonstrate that to us yesterday?

8 A. Yes, sir. I did show that.

9 Q. And what tool did you use to use that?

10 A. Wireshark.

11 Q. Do you believe those communications are
12 anonymous?

13 A. Yes, sir, I do.

14 Q. Do they protect the identity -- do they
15 protect an identity for the people communicating in that
16 VPN?

17 A. Yes, sir. They protect the identities.

18 Q. Now, let's talk about the peer-to-peer
19 communications.

20 Is it your understanding the PeerNet
21 interfaces can create virtual private networks?

22 A. Yes, sir.

23 Q. And that is in the -- what function was it?

24 A. That's when in grouping, sir.

25 Q. Now, in grouping, when folks are participating

1 in a group --

2 MR. CALDWELL: Actually, I'm going to
3 pull up one of the PowerPoints, if we could.

4 I want to PowerPoint with the UT-Tyler
5 library on it.

6 Q. (By Mr. Caldwell) Okay. Is this one of the
7 slides you showed us, Professor Jones?

8 A. Yes, sir, I believe it is.

9 Q. Okay. And my understanding is that these
10 folks right here are participating in what you've
11 identified as the virtual private network?

12 A. Yes, sir.

13 Q. All right. If -- if this person right here
14 (indicates) sends a message into the group --

15 A. Yes, sir, I'm with you.

16 Q. -- and our trusty hacker pops up right here
17 (indicates), is our trusty hacker going to have a clue
18 who sends that message?

19 A. No, sir. They won't be able to determine
20 that.

21 Q. And why is that?

22 A. Well, as that message is -- is sent around the
23 group, the hacker can't determine which computer that
24 originated from.

25 Q. Thank you.

1 Professor Jones, I -- I also recall, while
2 we're on this topic of anonymity, Microsoft's Attorney
3 generally presenting that some sort of surprise that you
4 would see an IP address on a communication on the
5 internet, and yet you would still say this thing is
6 anonymous.

7 Can you send a packet on the internet without
8 having a visible IP address?

9 A. No, sir. You have to see the IP address when
10 things are going over the internet for IP packets.

11 Q. Were you here when Dr. Short gave his
12 presentation?

13 A. Yes, sir.

14 Q. And very early on in that presentation, I
15 think Mr. Cawley asked Dr. Short, we see a cloud up
16 here; what's really going on in the cloud?

17 He clicks a button, and it kind of pops out a
18 whole bunch of computers.

19 A. Yes, sir.

20 Q. The computers that make up all those links in
21 the internet, what were those called again?

22 A. Well, he called those routers, sir.

23 Q. And how does a router work, sir?

24 A. Well, it examines the IP address to determine
25 where to send that packet. So it uses the IP address so

1 it knows where to go. It's an address.

2 Q. Well, how successful would our communications
3 be, sir, if we did not include a visible IP address that
4 those routers could see?

5 A. Well, if the routers have no ability to read
6 the address, they wouldn't know where to send it, sir.

7 Q. And so in your opinion, Dr. Jones, does the
8 fact that you can see an outer identity, an outer
9 identifier like that IP address -- does that negate
10 anonymity or infringement?

11 A. No, sir, it doesn't.

12 Q. Now, Mr. Powers also showed you more of those
13 documents that suggest Office Microsoft Communicator
14 doesn't require a virtual private network.

15 A. Yes, sir, I remember that.

16 Q. This probably goes without saying, but
17 whenever Microsoft wrote those documents, did they have
18 the Court's claim construction?

19 A. I believe in the document that I saw, the 2007
20 document, they did, sir.

21 Q. Well --

22 A. No, actually --

23 Q. I think it was a line of communication
24 servers.

25 A. Yes, sir. Actually, I don't believe they did

1 have it.

2 Q. Okay. Well, what I want to know is, when your
3 Office Communications Server and you use it in the
4 secure mode you identified, is it your opinion that that
5 use provides a virtual private network?

6 A. Yes, sir. That's the opinion I explained,
7 sir.

8 Q. Okay. Well, why would Microsoft be putting in
9 its marketing materials that you don't need a virtual
10 private network for Office Communicator and Office
11 Communications Server?

12 MR. POWERS: Objection, Your Honor. He's
13 calling for speculation about why Microsoft would put
14 something in its materials.

15 THE COURT: Restate your question.

16 Q. (By Mr. Caldwell) Professor Jones, when you
17 read a statement -- with your technical background and
18 you read a statement in Microsoft's product literature
19 indicating this product doesn't need a virtual private
20 network, what does that tell you?

21 A. Sir, that tells me that within the context of
22 that document, that Microsoft is telling us we don't
23 need an additional VPN. In other words, I don't need to
24 set up my own VPN and use that software, because Office
25 Communications -- those products will provide that

1 functionality, provide that VPN for me.

2 Q. And in your opinion, do those -- Office
3 Communications Server and Offense Communicator products,
4 do they provide data security and anonymity for the
5 folks using the product to communicate?

6 A. Yes, sir, as I explained yesterday.

7 Q. Can you move briefly to the issue of website
8 and Doctrine of Equivalents?

9 A. Yes, sir.

10 Q. Now, during the first day of trial, were you
11 here when Judge Davis read instructions to the jury?

12 A. Yes, sir, I was.

13 Q. Did you hear when Judge Davis said there were
14 two ways you can infringe?

15 A. Yes, sir.

16 Q. And what were those two ways?

17 A. You can infringe literally or under the
18 Doctrine of Equivalents.

19 Q. Can you read this little attachment Mr. Powers
20 made for the board?

21 A. Yes, sir, I can.

22 Q. You see it says VPN and no and no.
23 What's the title?

24 A. Literal Infringement, sir.

25 Q. Will you remind the jury whether or not you

1 even asserted literal infringement of Claim 1 of the
2 '135 patent?

3 A. No, sir, I didn't. I said that claim -- that
4 claim was infringed under the Doctrine of Equivalents,
5 sir.

6 Q. That's the second way Judge Davis said a
7 patent can be infringed.

8 A. Yes, sir.

9 Q. What about Claim 10? Did you assert literal
10 infringement of Claim 10?

11 A. No. I asserted that Claim 10 was infringed
12 under the Doctrine of Equivalents, sir.

13 Q. And now, in the questioning on
14 cross-examination, there was a time when you indicated
15 that you would like to explain some of your answers
16 about why you believe the functions of Office
17 Communications Server and Office Communicator are
18 equivalent to a website?

19 A. I'm sorry, sir. I don't recall at this point,
20 but I could explain that, sir.

21 Q. Well, I just remember there was a chance when
22 you said, I could explain, if you wanted me to, but I
23 want to give you that chance now.

24 Will you tell the jury why you believe that
25 the functions provided by OCS and Office Communicator,

1 Live Communications Server, the products you identified,
2 are equivalent to a website?

3 A. Yes, sir. And you're talking about just
4 outside of -- just the general reasons, or are you
5 talking about the specific function-way-result test,
6 sir?

7 Q. Just why you believe it's an equivalent.

8 A. Well, I believe it's an equivalent because I
9 applied that function-way-result test to show that there
10 is -- are insubstantial difference between what's going
11 on in this -- in this Office Communications Server
12 within these claims and what's going on in a website in
13 these claims.

14 And it was my opinion that they -- that both
15 of those entities communicate with a client computer.
16 They do so over protocols and then present that
17 information to clients through Windows.

18 Q. Now, did Mr. Powers' questions, the questions
19 he asked you in cross-examination on whether there is an
20 equivalent to a website in the Microsoft '135 products,
21 did his questions cast any doubt in your mind as to
22 whether there is an equivalent to the website in the
23 Microsoft '135 products?

24 A. No, sir, they didn't.

25 MR. CALDWELL: Can we pull up Plaintiff's

1 Exhibit 401 for a second?

2 Okay. Now, can we flip several pages
3 into this? I think it's probably about Page 10,
4 Mr. Moreno. I'm sorry I didn't give you warning as to
5 which page I was going to. That's it.

6 Q. (By Mr. Caldwell) Now, what we have -- can you
7 see this reasonably well on your screen?

8 A. Yes, sir, I can.

9 Q. Now, I remember you showed us a couple of
10 portions of this -- of this document in the direct
11 testimony, correct?

12 A. Yes, sir.

13 Q. And do you remember Mr. Powers asking you a
14 question saying there were two places in there where it
15 mentions the Munger patent and no more?

16 Do you remember that?

17 A. Yes, sir.

18 Q. Said those are the only two places where this
19 document mentions the Munger patent, did he not?

20 A. I remember something along those lines, sir.

21 Q. And I believe he blew out a couple of big
22 excerpts from this document and kind of moved them
23 towards the middle of the screen so we could read them?

24 A. Yes, sir, or that might have been my -- from
25 my presentation. I don't recall, sir.

1 Q. Okay.

2 MR. CALDWELL: Well, let's look at the
3 very first line up here, Mr. Moreno.

4 Q. (By Mr. Caldwell) That's one you showed us in
5 your direct testimony, right?

6 A. Yes, sir, it is.

7 Q. Okay. That the -- the patent -- the -- the
8 claims Microsoft wanted were rejected as unpatentable in
9 view of a Gunningberg prior art and the Munger prior
10 art, correct?

11 A. Yes, sir.

12 MR. CALDWELL: Can we drop that now,
13 Mr. Moreno?

14 Q. (By Mr. Caldwell) Now, what do we see right
15 here?

16 Now, there was something that Gunningberg,
17 that prior art didn't have, but what does the second
18 sentence say?

19 A. It says: However, Munger teaches instructions
20 executed at an application layer in accordance with an
21 OSI model. See Column 4, Lines 1 through 15.

22 Q. And that's this Munger sitting right here with
23 the red tie, correct?

24 A. Yes, sir, it is.

25 MR. CALDWELL: Can we drop that bubble?

1 Q. (By Mr. Caldwell) Now, what is -- what do we
2 see right here, Mr. Moreno (sic)? What does the first
3 sentence say there?

4 A. It says: It would be obvious for one of
5 ordinary skill in the art at the time of the invention
6 to modify Gunningberg in view of executing the
7 instruction and application layer in accordance with an
8 OSI model as in Munger.

9 Q. And that's our -- still our same Munger, still
10 the same '135 patent, is it not?

11 A. Yes, sir.

12 MR. CALDWELL: Can we drop that bubble,
13 Mr. Moreno?

14 Q. (By Mr. Caldwell) And now what do you see
15 right here? Was this the other portion you showed us in
16 your direct testimony?

17 A. The top two lines are, yes, sir.

18 Q. There's citation after citation to Mr. Munger
19 in here, is there not?

20 A. I believe I see four on this page, sir.

21 MR. CALDWELL: Can we flip to the next
22 page, Mr. Moreno? Actually, maybe two or three more
23 pages. There we go. Right there.

24 Q. (By Mr. Caldwell) Now, I want you to -- what
25 is this page right here? What is this for, Dr. Jones?

1 A. Well, when the Patent Office is communicating
2 with the applicants, it indicates what reference -- the
3 Patent Office indicates what references were cited.

4 MR. CALDWELL: Can you open that bubble
5 up for us there?

6 Q. (By Mr. Caldwell) What's the one patent that
7 they cited in this list of references cited?

8 A. Sir, they cited the '135 patent by Mr. Munger
9 and Dr. Short and the other inventors.

10 Q. Do you recall Mr. Powers asked you a question:
11 Now -- but who does this document have to go to? Would
12 it be okay if it goes to Microsoft's Shanghai office?

13 Do you recall that?

14 A. I do recall that question, sir.

15 MR. CALDWELL: Can we go to the first
16 page?

17 Oh, I'm sorry. I keep tricking you
18 there. Can we go to the next page?

19 Q. (By Mr. Caldwell) All right. Now, we see that
20 it goes to a law firm. Whose lawyers are those?

21 A. Those are lawyers representing Microsoft in
22 prosecuting this patent, sir, is my understanding.

23 Q. Patent lawyers?

24 A. Yes, sir.

25 MR. CALDWELL: Can we look at Plaintiff's

1 Exhibit 120 for a second?

2 I'd like to catch some of these names up
3 here, if you could, Mr. Moreno.

4 Well, actually, I want just the whole
5 width of it. I'm sorry. I know you have a -- I'm
6 probably blocking you with my foam board and pointing at
7 the same time, so I apologize for that.

8 Q. (By Mr. Caldwell) Who all received this
9 letter, if you could read that for us there, Professor
10 Jones?

11 A. Yes, sir.

12 On the left side, it says: Mr. Anoop Gupta,
13 the corporate vice president of Unified Communications
14 Group at Microsoft.

15 Q. Does that -- oh, I'm sorry. I didn't mean to
16 interrupt you.

17 But Mr. Anoop Gupta, the corporate vice
18 president of Unified Communications Group was the
19 original addressee of this letter, correct?

20 A. Yes, sir.

21 Q. Now, Unified Communications Group -- I,
22 candidly, probably should have asked you about that
23 earlier. Can you tell us what the Unified
24 Communications Group is?

25 A. Well, that's the group that would have

1 responsibility for things like Office Communication
2 Server, sir.

3 Q. Was this letter sent to unrelated groups of
4 folks in the Shanghai office?

5 A. It doesn't appear so, sir.

6 Q. Okay. And then when it left Mr. Gupta's
7 possession, where did it go first? I think we want to
8 look over here on the far right.

9 A. That's -- it says Bradford L. Smith in the
10 Microsoft Legal Department.

11 Q. Okay. And it looks like the next day,
12 Mr. Smith forwarded it to somebody else. Who's that?

13 A. That's Mr. Marshall Phelps, sir.

14 Q. Any idea who Marshall Phelps is?

15 A. He's in the Microsoft Legal Department, and
16 when I looked him up, sir, he's -- I believe he's a
17 corporate vice president of intellectual property at
18 Microsoft.

19 MR. CALDWELL: Now, let's scroll down or
20 let's -- let's drop this bubble first.

21 Can we catch all of this -- the last two
22 paragraphs there?

23 Thank you, sir.

24 Q. (By Mr. Dawson) Now, Mr. Powers focused on
25 this first sentence there that said: We believe the

1 claims of this patent are broad -- quite broad and would
2 cover this RFC.

3 Are we in this Court right now talking about
4 an RFC and opening up an RFC and comparing an RFC 3263
5 to these claims?

6 A. No, sir, we're not.

7 Q. Okay.

8 MR. CALDWELL: Well, can we drop that
9 part of it then, Mr. Moreno?

10 Q. (By Mr. Caldwell) What did the owner of the
11 '135 patent tell Microsoft in this paragraph?

12 A. The owner was telling Microsoft that they
13 believe that Microsoft would have an interest in the
14 '135 patent for its Live Communication Server 2005
15 product with Service Pack 1 and with its Microsoft
16 Office Communicator 2005 product.

17 Q. In fact, even in the first sentence, it says:
18 We would like to contact you in the next week or so to
19 discuss the possibility of offering Microsoft a license,
20 correct?

21 A. Yes, sir.

22 Q. And I remember Mr. Powers following up with
23 you about, oh, gee, were there claim charts? Are you
24 familiar with claim charts?

25 A. Yes, sir, I am.

1 Q. Have you prepared claim charts in this case?

2 A. Yes, sir, I have.

3 Q. About how many pages of claim charts would you
4 guess you've prepared in this case?

5 A. Hundreds and hundreds, sir. I don't know if
6 it exceeds a thousand yet or not, but hundreds.

7 Q. I can assure that it's -- I remember one
8 that's 576 to it. So how many hours and hours have you
9 spent doing that?

10 A. Oh, hundreds of hours, sir.

11 Q. Okay. And in order to do that, in order to
12 provide the claim charts that were in your expert
13 report, did you look at Microsoft confidential
14 documents?

15 A. Yes, sir.

16 Q. And how did you get those documents?

17 A. After the lawsuit was filed, the orders are
18 put in place that would allow me to see those documents,
19 sir.

20 Q. I mean, even you, Professor Jones, who has
21 experience in patent litigation matters, could you have
22 possibly prepared these gigantic charts that you've
23 prepared in this case with the information that SAIC
24 had?

25 A. Not the kind of claim charts I would prepare,

1 sir, no, sir.

2 Q. But setting aside claim charts, let's get back
3 to the actual issue on that document.

4 Will you please remind us for what purpose you
5 showed the jury that document?

6 A. I relied upon that document to show that
7 Microsoft had knowledge of the '135 patent, sir.

8 Q. It was received by Mr. Gupta, correct?

9 A. Yes, sir.

10 Q. Forwarded to at least two people in the
11 Litigation Department -- or the Legal Department?

12 A. Yes, sir.

13 Q. Any doubt in your mind Microsoft knew of that
14 patent?

15 A. No, sir.

16 Q. We talked a little bit -- well, let me grab
17 one.

18 You were asked about Claim 10, which is a
19 system claim, fair?

20 A. Yes, sir.

21 Q. Is high-security mode of the Office
22 Communicator Product non-infringing with respect to this
23 claim?

24 A. No, sir, it's not. This is a system claim,
25 and the Microsoft Office Communicator product -- or

1 sorry -- the RTC interfaces still have those
2 capabilities in -- whether it's configured by the user
3 in high-security mode or not.

4 Q. So is high-security mode an option that just
5 allows different flexibility in how you might use it?

6 A. Yes, sir.

7 Q. Is that sort of flexibility in the product
8 significant or important?

9 A. It is useful to have that flexibility, but it
10 doesn't make it non-infringing, sir.

11 Q. Now let's talk about the '180 patent.
12 Mr. Powers asked you some questions about the '180
13 patent, and one of the questions he asked you was he
14 said, let's talk about Windows XP.

15 Do you remember that?

16 A. Yes, sir.

17 Q. And for Windows XP, he said, hey, does Windows
18 XP come with Windows Meeting Space?

19 A. Yes, sir, or something along those lines, sir.

20 Q. And what's the answer to that question?

21 A. Well, it -- Windows XP doesn't come with
22 Windows Meeting Space, sir.

23 Q. Do you need Windows Meeting Space to infringe
24 that claim right there?

25 A. No, sir. That's a computer-readable storage

1 medium claim. That means if you have those instructions
2 on a computer -- I'm sorry -- on a computer-readable
3 storage medium and those instructions being what's
4 represented up there, then you infringe.

5 And that happens with -- when you have them in
6 the PeerNet interfaces, sir.

7 Q. Are those computer-readable instructions in
8 this box (indicates)?

9 A. Yes, sir.

10 Q. That's XP, right?

11 A. Yes, sir.

12 Q. Are those computer-readable instructions in
13 this box (indicates)?

14 A. Yes, sir.

15 Q. Plaintiff's 947, that's XP, isn't it?

16 A. Yes.

17 Q. The previous one was Plaintiff's 830.

18 Now we can jump to Vista.

19 Plaintiff's Exhibit 829, are those
20 computer-readable instructions in this box (indicates)?

21 A. Yes, sir.

22 Q. It just so happens that this box also comes
23 with Windows Meeting Space?

24 A. Yes, sir, it does.

25 Q. So does Microsoft Windows XP Service Pack 2,

1 straight out of the box -- still in the box, infringe
2 that claim right there?

3 A. Yes, sir, it does.

4 Q. Now, do you recall a discussion about Windows
5 Meeting Space and having a meeting at the library?

6 A. Yes, sir, I do.

7 MR. CALDWELL: Will you put that slide
8 back up, Mr. Moreno?

9 Q. (By Mr. Caldwell) So I tried to take pretty
10 good notes on this, and I know I didn't get it verbatim,
11 but there was some questions like, oh, gee if this
12 person, Bob, invites Bill to the meeting, Bob never
13 closes his laptop, so Bob's always there.

14 A. Yes, sir, I remember that.

15 Q. And the invitation sends you the proper
16 address, so you don't need to find the address to make
17 your first connection.

18 Do you recall that?

19 A. Yes, sir.

20 Q. There was a question, I think, put to you
21 like, well, gee, would that still infringe? Would it
22 still use PNRP, the peer name resolution protocol?

23 A. Yes, sir, I recall that.

24 Q. What's the answer to that question?

25 A. Well, sir, it would still infringe. Because

1 graph maintenance would be used, it would infringe
2 Claim 1. But it would infringe Claim 17 and Claim 33
3 anyway.

4 Q. Okay. And I thought one of your answers was,
5 well, if you assume the meeting is short enough, you may
6 not have this graph maintenance.

7 So we -- let's stay we still have our
8 hypothetical -- I'm sorry. Was that correct? I didn't
9 mean to put words in your mouth.

10 A. Yes, sir, that's correct.

11 Q. Now, let's assume we're having our meeting.
12 And what was it they were writing, a term paper?

13 A. I believe that was my example, yes, sir.

14 Q. How quickly do these students have to finish
15 their term paper to avoid without graph maintenance
16 taking place?

17 A. Well, based on Microsoft's documents, it's my
18 understanding that the graph maintenance takes place
19 approximately every three minutes, sir.

20 Q. Is that a fairly quick term paper?

21 A. Yes, sir. And I'm trying to recall whether it
22 was three or five minutes, but it's something in that
23 range.

24 Q. Now, Mr. Powers also asked you, said, hey, you
25 don't use graph maintenance. That's not something you

1 do to form the initial connection.

2 Do you recall that?

3 A. Yes, sir, I do.

4 Q. Is there any requirement in any claim of the
5 '180 patent that you are using the secure domain name
6 service to form the initial connection and only the
7 initial connection?

8 A. No, sir. It's a -- it's a method for
9 accessing a secure computer network address. It doesn't
10 require that for a -- for the initial connection.

11 Q. Okay. And near the end of your
12 cross-examination, you were asked about secure domain
13 names. You were asked in particular, I believe, about
14 secure domain names in the context of the PeerNet
15 interfaces?

16 A. Yes, sir, I recall that.

17 Q. Why do you believe a group member's address is
18 a secure computer network address?

19 A. I believe a group member's address is a secure
20 computer network address because it meets the Court's
21 claim construction of requiring authorization for
22 access, for example. That was the aspect we were
23 talking about.

24 And to access grouping in there that we were
25 talking about, that requires a computer trying to make

1 that connection to present a password or a group
2 membership certificate.

3 Q. And if they can't?

4 A. Then they won't be allowed to join the group,
5 sir.

6 Q. So did Mr. Powers' questions in the entire
7 cross-exam cast any doubt on your opinions in this
8 matter?

9 A. No, sir, they didn't.

10 Q. Will you look at the jury and tell them what
11 you've concluded?

12 A. I've concluded that Microsoft infringes the
13 '135 patent and the '180 patents.

14 Q. Thank you.

15 MR. CALDWELL: Pass the witness.

16 THE COURT: Recross?

17 MR. POWERS: Thank you, Your Honor.

18 RE-CROSS-EXAMINATION

19 BY MR. POWERS:

20 Q. Dr. Jones, I'd like to begin on the subject of
21 anonymity --

22 A. Yes, sir.

23 Q. -- which was the beginning part of the last
24 redirect examination.

25 A. Yes, sir.

1 Q. Now, let's start with first principles.

2 You do agree that anonymity is required under the
3 Court's construction.

4 A. Yes, sir.

5 Q. Okay. And you agreed with me during
6 cross-examination that anonymity includes anonymity as
7 to the person and the machine.

8 Do you recall that?

9 A. Yes, sir.

10 Q. All right. And you recall that the SIP
11 address that is obscured relates to the person?

12 A. Yes, sir.

13 Q. But the IP address in the products that you're
14 accusing of infringement, that relates to the machine.

15 A. Yes, sir.

16 Q. And that's not obscured. It's visible to the
17 eavesdropper, right?

18 A. On the -- in the discussion we were having,
19 yes, sir.

20 Q. All right. Now, there was questions from
21 VirnetX's counsel about IP hopping and tunnels.

22 Do you recall that line of questioning,
23 generally?

24 A. Yes, I do, sir.

25 Q. Those are just two types of -- two different

1 ways of hiding that IP address corresponding to a
2 standard machine, aren't they?

3 A. I believe IP address hopping is tunneling in
4 many configurations, would not hide the outer IP address
5 sir.

6 Q. And in some configurations, it would?

7 A. Yes, sir, it's possible.

8 Q. Okay. So there are ways that -- there are
9 different ways where you can hide that IP address
10 corresponding to the machine?

11 A. Yes, sir, I believe there are.

12 Q. And you understand that Microsoft is not
13 arguing here to this jury that you have to use IP
14 hopping or tunneling or any particular way.

15 You understand that, don't you?

16 A. I -- I'm -- I'm not sure what Microsoft is
17 arguing with respect to that, sir. I don't believe I've
18 heard that yet.

19 Q. All right. Now, you were asked a question as
20 to whether an IP address is needed to send information
21 from one router to another on the internet.

22 Do you recall that line of questions?

23 A. Yes, sir, I do.

24 Q. Now, you need an IP address for that routing,
25 correct?

1 A. Yes, sir, typically.

2 Q. But the IP address that you're sending doesn't
3 necessarily have to be the IP address corresponding to
4 RL Fabrikam's machine in the example that you gave us,
5 correct?

6 A. That's right, yes, sir.

7 Q. So you could achieve anonymity by hiding that
8 address in different ways.

9 A. Yes, sir, you could.

10 Q. But Microsoft does not.

11 A. Yes. There are ways that that address is
12 hidden after that initial link, sir.

13 Q. But Microsoft does not hide it to that
14 eavesdropper, because you showed us it was visible.

15 A. On that link, sir, that's correct.

16 MR. POWERS: No further questions, Your
17 Honor.

18 THE COURT: Okay. Thank you.

19 Anything further?

20 MR. CALDWELL: No, Your Honor.

21 THE COURT: All right. Thank you. You
22 may step down.

23 All right. Who will be your next
24 witness?

25 MR. CASSADY: Your Honor, before we call

1 our next witness, may we approach?

2 THE COURT: Yes, you may.

3 (Discussion at the bench off the record.)

4 THE COURT: All right. Ladies of the
5 Jury, I have a matter I need to take up at this time
6 with the attorneys. So it's a little early, but I think
7 I'm going to go ahead and give you a 20-minute recess
8 until 2:35. And so enjoy your recess, and we'll see you
9 back here at 2:35.

10 COURT SECURITY OFFICER: All rise for the
11 jury.

12 (Jury out.)

13 THE COURT: Please be seated.

14 All right. I think the best way to
15 proceed is, if we can break these into groups and let me
16 just -- have y'all discussed what kind of groups you
17 want to deal with these in?

18 MR. CASSADY: Yes, Your Honor.

19 Generally -- generally, we have.

20 THE COURT: All right. I mean, it looks
21 to me like the first several pages down through the top
22 of Page 6 deal with what is argued as irrelevant
23 financial data. These are basically spreadsheets and
24 financials of Microsoft; is that correct?

25 MR. CASSADY: You're correct, Your Honor.

1 THE COURT: All right. And this would be
2 Exhibits 64, 65, 66, 76, 80, 82, 99, 100, 102, 165, 177,
3 989, 990, 991, 992, 993, 994, 995, 996, 998 through
4 1000, 1004, 1006, -7, -8, -9, 1011, -12, -13, 1015,
5 1029, 1031, 1037, 1038; is that correct?

6 MR. CASSADY: You are correct, Your
7 Honor.

8 THE COURT: All right. And you're
9 going -- you wish to offer those exhibits to use in
10 conjunction with your testimony of Dr. Reed.

11 MR. CASSADY: Yes, Your Honor.

12 THE COURT: And what are Defendant's
13 objections?

14 MR. SAYLES: May it please the Court.
15 We object to those exhibits on the basis that they
16 provide irrelevant financial information and financial
17 data.

18 These exhibits that they intend to use
19 show revenue numbers of Microsoft, and we submit that
20 these figures do not have any tie to the alleged
21 infringing features in the products accused of
22 infringement and that there is no proper economic
23 analysis that would suggest that the patents-in-suit
24 account for the large portion of the revenues that
25 Mr. Reed is proposing to support in his testimony.

1 THE COURT: Okay. Response?

2 MR. CASSADY: Your Honor, these go
3 directly to the revenue related to this case. Mr. Reed
4 has done a Georgia-Pacific analysis that requires him to
5 look at the profit share -- profit, market share, and
6 revenues of the accused products.

7 Now, Mr. Reed, as we discussed with
8 regards to the motion in limines and motion to strike,
9 took an apportionment method in doing his analysis.
10 This data, even if it does include overall sales that
11 Mr. Sayles -- I'm sorry that that kind of works that
12 way, Mr. Sayles and overall sales -- I apologize -- even
13 if it includes overall sales, those overall sales are
14 directly related to --

15 THE COURT: Do y'all sell overalls?

16 MR. CASSADY: -- directly related to
17 Georgia-Pacific Factor -- I believe it's 7 that relates
18 to convoyed sales. I may have my number wrong, but I
19 know it's convoyed sales, Your Honor.

20 And, basically, I would say that these
21 documents should come in simply because of the argument
22 that their motion in limine, their motion to strike
23 failed on this very issue.

24 THE COURT: Okay. All right. Objection
25 to those exhibits is overruled.

1 Okay. What's next? Are these licenses
2 that are next?

3 MR. CASSADY: Your Honor, I believe
4 Mr. Sayles has some specific objections to the next four
5 documents.

6 THE COURT: Next four?

7 MR. CASSADY: Or five.

8 THE COURT: So that would be 602, 666,
9 209, and 646?

10 MR. CASSADY: And 653, Your Honor.

11 THE COURT: And 653. The next five.
12 Okay.

13 MR. SAYLES: Yes, Your Honor.

14 The -- Exhibit 602 is a license agreement
15 that we submit is irrelevant. It's a noncomparable
16 license. And this is one of the licenses that we
17 discussed on the motion in limine, I believe --

18 MR. CASSADY: I believe that's correct.

19 MR. SAYLES: -- at pretrial.

20 But we submit that there's no showing
21 that the patented technology involved in that license is
22 substantially similar or similarly -- similar enough to
23 be relevant in this case, and we object to it on that
24 basis.

25 THE COURT: Okay. Response?

1 MR. CASSADY: Your Honor, just like with
2 the motion in limine and the motion to strike on these
3 licenses, whether or not the licenses are comparable is
4 not the only evidence as to whether or not they come in
5 the case.

6 I believe Mr. Cawley argued during
7 pretrial that it goes to the weight of the evidence.
8 Mr. Sayles can cross Mr. Reed till the cows come home
9 about how comparable these are, but the fact of the
10 matter is, they're relevant to a Georgia-Pacific
11 analysis.

12 I would actually submit to the Court that
13 had we not used these licenses and they had some tidbit
14 in them that the defense liked, they would bring it up
15 and say, Mr. Reed, why didn't you consider these
16 licenses?

17 But -- and I think it's evidenced by the
18 fact that Dr. Ugone is going to rely on 30 lump sum
19 agreements to which there's no evidence of a technical
20 comparison, and he's planning to put those in. I'm
21 pretty sure those will come in during his testimony.

22 Furthermore -- furthermore, Your Honor,
23 again these were subject to the motion in limine. And
24 even if they're not comparable, which I'm not completely
25 agreeing they are -- they aren't, they go to the fact

1 that Microsoft has licensed patents on the reasonable
2 royalty basis.

3 And as Your Honor may know, Microsoft's
4 normal arguments in these cases is, they always agree to
5 a lump sum no matter what, and these go directly against
6 that statement by Microsoft that they don't pay running
7 royalties.

8 MR. SAYLES: May it please the Court,
9 could I add to that?

10 THE COURT: Yes.

11 MR. SAYLES: Your Honor, on that last
12 point that they offered 602 -- and this happens to also
13 apply to 666, which is an the MPEG agreement, they say
14 that they're offering that to show that Microsoft
15 sometimes accepts a running royalty.

16 Microsoft has never denied that it
17 sometimes accepts a running royalty, but has asserted
18 that it has a preference for a lump sum.

19 But even if you accept the premise upon
20 which they purport to offer those, to show that
21 Microsoft has accepted a running royalty in those cases,
22 that doesn't mean that the rate shown in those two
23 agreements should be permitted.

24 And we object to showing the rate in
25 those agreements which is unrelated to the technology at

1 issue.

2 Dolby is the sound that everyone is
3 familiar with, surround sound and other types of sound,
4 and MPEG is a well-known technology involved --
5 involving the transmission of images.

6 And so we submit that even on that last
7 argument, they shouldn't be allowed to present the
8 rates.

9 THE COURT: Okay. Any further response?

10 MR. CASSADY: Your Honor, depending on
11 how Mr. Sayles is using the term rate, we are not going
12 to show a percentage royalty rate related to Dolby and
13 MPEG. We're going to show the per-unit dollar amount
14 that goes to those licenses, again, simply to evidence
15 that they do pay running royalties.

16 But Mr. Reed --

17 THE COURT: Does that solve your problem
18 with regard to --

19 MR. SAYLES: It doesn't, because they
20 actually, in their documents and in the prior reports,
21 have attempted to convert that per-unit royalty into a
22 percentage. So that does not solve it.

23 MR. CASSADY: Your Honor, Mr. Reed is not
24 going to do that conversion during this case. His
25 slides and his testimony --

1 THE COURT: Okay. Well, I'm going to
2 sustain the objection as to the rate or the amount but
3 will allow you to admit them just solely as to the fact
4 that they did take running royalties.

5 MR. CASSADY: And, Your Honor, just so
6 we're clear, I can't refer to overall payments they've
7 made for those licenses or the per-unit rate?

8 THE COURT: Right. Right.

9 MR. CASSADY: All right. Thank you, Your
10 Honor.

11 THE COURT: All right. What's next:
12 209?

13 MR. CASSADY: Mr. Sayles, 209?

14 MR. SAYLES: I'm sorry. Yes. 209.

15 209 is another license agreement that we
16 originally had an objection to 209 on the basis that it
17 wasn't the correct document, but that was -- that was
18 fixed, and the correct document is there.

19 But with the correct document, we still
20 have the objection that it's a protocol license, and the
21 technology has not been linked to the technology in this
22 case and that it should not be permitted.

23 THE COURT: Response?

24 MR. CASSADY: Your Honor, these -- these
25 patent license agreements are structured around

1 PNRP-related technology. I don't know how much more
2 comparable you get than --

3 THE COURT: All right. Objection is
4 overruled.

5 646.

6 MR. SAYLES: 646, Your Honor, I have a
7 copy for the Court so that I can show the specific part
8 of the objection.

9 May I approach on that, Your Honor?

10 THE COURT: Yes.

11 MR. SAYLES: And while I'm at the bench,
12 may I also give 653, which is also a specific objection
13 that I'll be getting to in just a moment?

14 With respect to Exhibit 646, Your Honor,
15 on Page -- let's see -- Page 31, beginning at 31 and
16 going through Page 33, you'll see a note at the bottom
17 of Page 30 that says: Standard patent licensing rates
18 are between 1.5 percent to 2 percent per patent.

19 THE COURT: Wait a minute. You're on
20 Page 30?

21 MR. SAYLES: Yes, sir, of Exhibit 646.

22 THE COURT: Yes.

23 MR. SAYLES: And this is an internal
24 VirnetX presentation. This statement -- and it
25 continues for several pages in Exhibit 646 -- is

1 referring to so-called standard patent licensing rates.
2 We object to that on the grounds that it's hearsay. The
3 source is not identified, and the source is not here and
4 available for cross-examination.

5 THE COURT: Well, it's a -- response?

6 MR. CASSADY: Your Honor, it doesn't go
7 to the truth of the matter. It goes to whether VirnetX
8 and SAIC believed at the time that that was a standard
9 royalty rate.

10 THE COURT: All right. Overruled.

11 What's next?

12 MR. SAYLES: With regard to 653, Your
13 Honor, on Page No. 17, on that page -- again, this is a
14 VirnetX presentation, and within it, there is a standard
15 rate and an incentivized rate, and this is security
16 patent licensing model assumptions taken from another
17 source, and we object to that as hearsay.

18 THE COURT: That goes to the weight as
19 well, and VirnetX is here through their representatives,
20 and you can cross-examine them about it, if you wish to.
21 And it's not offered to prove the truth of the matter
22 asserted.

23 What's next?

24 MR. CASSADY: Your Honor, I believe it's
25 the next group.

1 THE COURT: Be the summaries?

2 MR. CASSADY: The summaries of financial
3 data.

4 THE COURT: All right. And what's the
5 objection to their expert using summaries?

6 MR. SAYLES: Judge, the objection to the
7 summaries is similar to the objection to the exhibits
8 upon which they are based, and that is that they are the
9 irrelevant financial data, and they simply summarize
10 that. There's been no sound economic connection between
11 what is shown there, the claim --

12 THE COURT: All right. My ruling -- my
13 ruling on the summary will be the same as the financial
14 data. That will go to the weight, and that's 430 --
15 well, I'm not going to read them off, beginning on Page
16 6 at 434 and going through Page 8, 1025.

17 Now, what's this at 211? Does this start
18 more licenses?

19 MR. SAYLES: Yes, Your Honor. These are
20 the other protocol licenses and noncomparable licenses
21 that we object to.

22 They are in the pending stipulation,
23 which has not been allowed by the Court yet, so we would
24 ask the Court for a ruling with regard to the
25 admissibility of those objections -- of those exhibits.

1 THE COURT: All right. And what is your
2 objection?

3 MR. SAYLES: The objection is that they
4 are noncomparable licenses; that the technology is not
5 shown to be related to the technology in suit; and that
6 they are irrelevant.

7 THE COURT: All right. Exhibits 211,
8 beginning on the bottom of Page 8 through the end of the
9 Reed exhibit objections list on Page 11, are overruled,
10 and they will be admitted.

11 So you can make your offer when the jury
12 comes in or whenever you'd like to.

13 MR. CASSADY: Thank you, Your Honor.

14 THE COURT: Okay. All right. Anything
15 further?

16 MR. POWERS: Your Honor, there is.

17 We filed on Monday night a brief about
18 the DTPN objections that VirnetX had made to certain
19 exhibits, about the DTPN prior art, and those witnesses
20 are coming tomorrow, so we need to resolve that issue,
21 and I just wanted to inquire from the Court as to when
22 you wish to do so.

23 THE COURT: Now, is that that
24 memorandum --

25 MR. POWERS: Yes, Your Honor.

1 THE COURT: -- that you filed?

2 Was VirnetX going to file a response to
3 that or --

4 MR. McLEROY: Your Honor, we can, if you
5 would like. We have not got around to it yet.

6 THE COURT: Oh. I -- when we get to the
7 end of the day, I'll just hear some argument on that. I
8 don't think it's necessary to file a -- to file a
9 pleading or -- after we have the argument, if I need
10 one, I'll ask for an additional brief.

11 All right.

12 MR. CASSADY: Your Honor, can -- I
13 apologize. Can I have two seconds?

14 THE COURT: Yes.

15 MR. CASSADY: I just wanted to make sure
16 we're following the rules here.

17 What I would like to do is put Reed on
18 the stand, discuss the documents that are in his slides,
19 and then tomorrow morning give you a full list of what's
20 being admitted.

21 Does that work?

22 THE COURT: Is that acceptable to you,
23 Mr. Sayles?

24 MR. SAYLES: Yes.

25 THE COURT: You have the rulings on the

1 record.

2 MR. SAYLES: That's fine.

3 MR. CASSADY: Thank you, Your Honor.

4 THE COURT: Okay. All right. Very good.

5 Okay. What else?

6 MR. SAYLES: One other thing, Your Honor.

7 I want to be very careful about making the objections.

8 I can understand Your Honor's rulings, and I respect the
9 Court's rulings.

10 I would like to renew our Daubert
11 objections to Dr. Reed's testimony, which was Motion
12 256. The essential ground of that is Mr. Reed's
13 methodology does not show a sound economic connection
14 between the claimed invention and the broad proffered
15 royalty base.

16 And we've discussed that in connection
17 with these exhibits. Your Honor has ruled. But to the
18 extent that I should do so, I would ask the Court to
19 grant that and strike the testimony of Mr. Reed.

20 THE COURT: Okay. I've already ruled on
21 that, and my ruling is the same.

22 Okay. Be in recess until they start to
23 come back.

24 COURT SECURITY OFFICER: All rise.

25 (Recess.)

1 COURT SECURITY OFFICER: All rise.

2 (Jury in.)

3 THE COURT: Please be seated.

4 All right. Who will your next witness
5 be?

6 MR. CASSADY: Your Honor, the Plaintiff,
7 VirnetX, calls Mr. Reed.

8 THE COURT: Mr. Reed.

9 MR. CASSADY: Your Honor, would you like
10 a copy of the binders?

11 THE COURT: No. That's all right. Thank
12 you.

13 MR. CASSADY: May it please the Court.

14 THE COURT: Uh-huh.

15 BRETT REED, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

16 DIRECT EXAMINATION

17 BY MR. CASSADY:

18 Q. Could you please introduce yourself to the
19 jury.

20 A. Yes. Good afternoon. My name is Brett Reed.
21 I'm an economist from Los Angeles.

22 Q. And are you married, Mr. Reed?

23 A. Yes, I am.

24 Q. Do you have kids?

25 A. I have three kids, yes.

1 Q. And how old are they?

2 A. Well, they're all in their 20s, and the oldest
3 is 26.

4 Q. So they're all grown up and out of the house?

5 A. Yes, they are.

6 Q. Okay. Now, Mr. Reed, can you please tell the
7 jury why you're here today.

8 A. Well, I'm here to testify about reasonable
9 royalties, and specifically, the reasonable royalties
10 that Microsoft should pay to VirnetX for the
11 infringement of the '135 patent and the '180 patent.

12 Q. Okay. Now, we're going to get to your opinion
13 on that, but first let's talk about your educational
14 background.

15 Where did you go to college?

16 A. Went to college at the University of
17 California Irvine where I got a bachelor's degree in
18 economics, and also I double majored in geography as
19 well.

20 Q. Okay. Did you graduate with honors?

21 A. Yes, I did.

22 Q. Did you receive any other degrees?

23 A. Well, yes, I went to graduate school, and I
24 got a master's degree in economics at UCLA.

25 Q. Okay. And you say a master's degree?

1 A. Yes.

2 Q. Did you get any other education after that?

3 A. Well, I was in the Ph.D. program, and I got a
4 master's degree in the process of that.

5 Q. Okay. Did you complete your coursework in the
6 Ph.D. program?

7 A. All the coursework, except for the
8 dissertation. I'm what's sometimes called ABD or all
9 but dissertation.

10 Q. You said all but dissertation?

11 A. Yes.

12 Q. Okay. And so I assume that means you didn't
13 complete your dissertation?

14 A. That's correct.

15 Q. And why didn't you complete your dissertation?

16 A. Well, the -- my oldest daughter was born in my
17 last year at UCLA, and after that year, I was going to
18 work in the business I'm in now, which is I'm an
19 economic consultant.

20 Q. So that -- that's the -- well, let me ask it
21 differently. That's the work you do today, correct?

22 A. That's correct.

23 Q. Okay. Well, what job or where did you begin
24 that career?

25 A. Back then, I worked for a company called

1 National Economic Research Associates.

2 Q. And do you still work there today?

3 A. No. I worked there about four and a half
4 years, and then I went to work for a couple of other
5 companies, and then six months ago, I co-founded the
6 company I'm currently in.

7 Q. Okay. And what company is that?

8 A. It's Competition Economics.

9 Q. And what does Competition Economics do?

10 A. Well, the firm does economic consulting and
11 research, and we focus on antitrust issues, and in my
12 case, I focus on intellectual property issues, which
13 include patent valuation and patent damages, like the
14 case we're working in -- we're here about today.

15 Q. Okay. And what's your position at Competition
16 Economics?

17 A. I'm one of the co-founders and director, and
18 I'm in charge of the Los Angeles office.

19 Q. Okay. So I know we know you have a Los
20 Angeles office. How many other offices do you have?

21 A. We have another office in California and then
22 an office in Austin.

23 Q. Austin, Texas?

24 A. Yes.

25 Q. Well, how did you end up with an office in

1 Austin, Texas?

2 A. One of our co-founders is a professor of
3 economics at the University of Texas, and he heads that
4 office.

5 Q. So am I correct to assume you've spent your
6 entire career doing economic analysis like what we're
7 about to do in this case?

8 A. Well, putting aside when I was a teaching
9 associate and an assistant at UCLA, yes. Once I started
10 working 25 years ago, I focused on economic analysis,
11 antitrust issues, and then more recently really have
12 focused on patent infringement damages and patent
13 valuation.

14 Q. Now, Mr. Reed, have you consulted for any
15 companies that the jury or myself would be familiar
16 with?

17 A. I think so. I've done work in a variety of
18 high-tech areas, but in the computer area, I've worked
19 for Dell computer and for Hewlett -- I'm sorry, not
20 Hewlett-Packard, but Packard Bell.

21 And the software area, I've worked for a
22 variety of companies, including Novell and Palm.

23 Q. Have you -- have you published articles
24 related to the economic analysis that we're about to
25 show the jury?

1 A. Yes, I have.

2 Q. Okay. Have you been certified by courts, like
3 this one, in the past as an expert in economic analysis?

4 A. Yes, I have.

5 Q. Okay. Now, I know we discussed this a little
6 bit, but could you please tell the jury what it is you
7 were asked to do today.

8 A. Well, I was asked to calculate the amount of
9 reasonable royalties, and in particular, I was asked to
10 evaluate the amount of damages that would be adequate to
11 compensate VirnetX and no less than a reasonable
12 royalty.

13 Q. Now, Mr. Reed, you said no less than a
14 reasonable royalty. Where does that language come from?

15 A. It comes from the patent statute, as I
16 understand it.

17 Q. Okay. And that's the patent statute issued by
18 the United States Congress?

19 A. Yes.

20 Q. Okay. Did you use any court-approved
21 messages -- or sorry -- methods for calculating the
22 reasonable royalty you referenced?

23 A. Yes, I did.

24 Q. Okay. We'll discuss your analysis in detail
25 in a moment, but what was the summation or the

1 conclusion of your analysis?

2 A. Well, I have a chart that shows the summary
3 analysis, and if I can get that chart.

4 Q. I think you have control, Mr. Reed.

5 A. Oh, I do? I just -- so this shows the
6 summary -- and I'll get into more detail later, but what
7 I want to address now is that through the summer of
8 2009 -- that's -- I did the calculations through that
9 time period, and for the '135 patent and '180 patents,
10 the total reasonable royalty, as I determined, would be
11 \$200 -- 242 million.

12 Q. Okay. And, Mr. Reed, let me ask you another
13 question about this slide. At the bottom left, you have
14 two numbers, PX406 and PX417. What are those?

15 A. Well, those are exhibits that show the
16 underlying calculations from -- from, essentially, tabs
17 or exhibits from my report.

18 Q. Okay. And do those tabs or exhibits rely on
19 specific types of data?

20 A. Yes, they do. They rely on a wide range of
21 information that was produced by the parties in this
22 case and other public information that I obtained
23 through my research.

24 Q. Okay. Now, Mr. Reed, can you explain to the
25 jury what work went into the analysis that led to \$242

1 million?

2 A. Well, a substantial amount of work on behalf
3 of myself and the people assisting me in my company.
4 And we reviewed, as I mentioned, a wide range of
5 materials, some of them produced by Microsoft, some
6 produced by VirnetX, public materials. And I have a
7 chart that summarizes some of the materials.

8 Q. Can you generally describe what the jury is
9 seeing here?

10 A. Yes. This is a summary of the various
11 different materials that my research and analysis
12 considered in coming up with my overall calculations and
13 determinations of the reasonable royalty.

14 Q. Okay. Now, Mr. Reed, I see at the bottom
15 left, it says: Interviews with Dr. Jones. Is that the
16 Dr. Jones that the jury just heard about -- or heard
17 from for many hours yesterday and today?

18 A. Absolutely, yes.

19 Q. And why would you need to interview Dr. Jones?

20 A. Well, I'm an economist, and the technical
21 aspects of this case are very important, as you all
22 know, and so I had many conversations with Dr. Jones
23 addressing the importance of the VirnetX technology and
24 the importance of the VirnetX technology to Microsoft.

25 Q. Okay. Now, Mr. Reed, I see on the second

1 column, you have listed sworn testimony of Microsoft
2 employees. What is that referring to?

3 A. Well, that refers to the depositions. In
4 trial, so far, we've heard some about the depositions
5 that were taken in this case, and that material is
6 available to someone like me to read what individuals,
7 in this case, Microsoft employees, say about issues,
8 such as patent license agreements, sales data, the
9 introduction of some of the products that are at issue
10 in this case, and the importance of -- of those
11 products.

12 So that's the kind of information that I was
13 able to evaluate and approximately 25 to 30 depositions
14 of Microsoft individuals.

15 Q. And are those all of the depositions you
16 reviewed or just the ones from Microsoft?

17 A. Those -- those are just the Microsoft.

18 Q. Okay.

19 A. There are additional depositions that are
20 identified on this list as well.

21 Q. Now, Mr. Reed, on the third column, we have
22 SAIC documents. Now, the jury has heard a little bit
23 about SAIC, but I'm curious why those are important to
24 your analysis.

25 A. Well, SAIC was the owner of this technology

1 back in 2003. And 2003 is an important time period that
2 I've analyzed.

3 Q. Okay. Now, Mr. Reed, what products are we
4 here to talk about?

5 A. We're here to talk about the products that
6 Dr. Jones addressed, and here's a list of them.

7 Thank you.

8 Q. No problem.

9 A. So it's the -- the products that are accused
10 under the '135 patent and '180 patent, and they're the
11 same products that you've been hearing about for the
12 last many hours.

13 Q. The last many hours from Dr. Jones?

14 A. Exactly, yes.

15 Q. Okay. Now, I want to focus on your analysis
16 that you conducted in this case.

17 How did you go about determining, the term you
18 used, reasonable royalty?

19 A. Well, as I mentioned a moment ago, I used a
20 well-known court case to analyze certain factors.
21 They're called the Georgia-Pacific Factors.

22 And I analyzed those factors to come up with a
23 reasonable royalty. And I have a chart that shows the
24 listing of the factors.

25 Q. Okay. Well, Mr. Reed, my first question is,

1 where do these factors come from?

2 A. Well, it's listed at the top. That's a court
3 case, a very well-known court case for patent damages,
4 in particular, reasonable royalty analysis. And the
5 case was called Georgia-Pacific Corp versus the United
6 States Plywood Corp.

7 Q. Now, Mr. Reed, was that a case like the one
8 we're sitting in today?

9 A. Yes. It's from several decades ago, but it
10 was a patent infringement case much like this one.

11 Q. Okay. Now, Mr. Reed, what is a
12 Georgia-Pacific analysis?

13 A. Well, it's the analysis of a variety of
14 economic and financial and licensing issues, and it also
15 analyzed within the context of the hypothetical
16 negotiation you see down here, which is a negotiation
17 between a willing licensor and a willing licensee.

18 That's the 15th Georgia-Pacific Factor, and I
19 considered that a framework for analyzing the other
20 factors.

21 Q. Okay. Well, now, we've got another term for
22 the jury. Now it's not an acronym, so maybe they're
23 happy about that, but what is a hypothetical
24 negotiation?

25 A. Well, a hypothetical negotiation is what --

1 what it sounds like or seems like. It's not an actual
2 negotiation that would lead to a license agreement,
3 because in a case such as this, there was not an actual
4 negotiation between the parties, and there was never a
5 license agreement that was entered into.

6 So the hypothetical negotiation is where we
7 assume the parties would have got together back at the
8 time of the first infringement, and they would have sat
9 down and negotiated a reasonable royalty for the use of
10 the technology.

11 And I actually have a slide that just
12 illustrates the concept.

13 Q. Does this illustrate what a hypothetical
14 negotiation would look like in this case?

15 A. Yes, it does, I believe.

16 Q. Okay. And I see at the top, you say early
17 2003. What is that in reference to?

18 A. Well, early 2003 would be the date of this
19 hypothetical negotiation, which would be just before the
20 infringement of the '135 patent. You might recall the
21 '135 patent issued at the very end of year 2002.

22 Q. Well, would this negotiation be for one patent
23 or for two patents?

24 A. Well, I believe it would be for two patents.
25 It would include the '180 patent, even though that

1 patent didn't issue until March of 2007, several years
2 later.

3 Q. Okay. Why would we include a patent that
4 hadn't issued yet in the negotiation in early 2003?

5 A. Well, I think for two reasons.

6 One is it helped simplify the analysis, but
7 also it's a reasonable way to approach it for Microsoft.
8 Because I believe Microsoft would want to make sure it
9 had rights to the patents that were at issue for these
10 products.

11 Q. And is that common in a real-world
12 negotiation?

13 A. Yes. There are different -- different
14 negotiations or different licenses are dealt with in
15 different ways, but certainly, that's one way in which
16 patents that might issue in the future would be taken
17 into account.

18 Q. And the fact that you've included the '180
19 patent in this hypothetical negotiation in early 2003,
20 who does that favor: Microsoft or VirnetX?

21 A. Well, based on my analysis, I believe it's
22 favors Microsoft, because I did a separate analysis of a
23 reasonable royalty for the '180 patent, assuming that
24 there would be a negotiation later in time, and that
25 gave rise to a larger reasonable royalty amount for the

1 '180 patent.

2 Q. And when would that hypothetical negotiation
3 have occurred?

4 A. That would have been right around March of
5 2007 when the '180 patent issued.

6 Q. Okay. And how much more would the '180 have
7 been worth in 2007?

8 A. In the analysis I did, I believe it would --
9 for the '180 patent, it would have increased the amount
10 of reasonable royalties through December 2009 by about
11 \$50 million.

12 Q. Okay. So we know we have the hypothetical
13 negotiation, and we have these two guys sitting here at
14 the table. We've got Microsoft on one side and VirnetX
15 and SAIC on the other side.

16 What are you trying to show the jury here with
17 this picture?

18 A. Well, it sets the stage for this -- this first
19 assumption, which is the parties would get together to
20 determine a reasonable royalty for the -- and that would
21 be the royalty payment in exchange for rights to the
22 patented technology.

23 And so one of the assumptions is that the
24 parties get together and come up with this agreement.

25 Q. Now, Mr. Reed, are there any other assumptions

1 made in the hypothetical negotiation?

2 A. Yes, there are, and I've listed some of them
3 here.

4 Q. Okay. And why are these assumptions
5 important, Mr. Reed?

6 A. Well, they're important because they put in
7 context the issues that have to be analyzed. And the
8 way one would assess the facts associated with those
9 Georgia-Pacific Factors, the licensee and economic and
10 financial issues to evaluate.

11 And one of the important assumptions -- it's
12 the first one that's listed here -- that VirnetX and
13 Microsoft would agree that the patents are valid,
14 infringed, and enforceable.

15 Q. Okay. Well, why is that important, Mr. Reed?

16 A. Well, it's important because it's
17 distinguished somewhat from happens often in real life
18 negotiations that lead to license agreements.

19 Often parties in a -- in a negotiation over a
20 license agreement will disagree. The party taking the
21 license might say the patent may not be valid or it's
22 not valid or argue about the validity.

23 Same with respect to infringement. There may
24 be discussions about, disagreements about whether the
25 products at issue would infringe the patent.

1 And that's a different situation than this
2 hypothetical negotiation, because here both parties
3 understand that the patents are valid, and the patents
4 are infringed, and they have to come to an agreement.

5 Q. Okay. Well, Mr. Reed, were you here during
6 opening statements?

7 A. Yes, I was.

8 Q. And did you hear Mr. Powers tell the jury that
9 Microsoft believed the patents were invalid and
10 uninfringed and not worth a dime?

11 Do you remember that?

12 A. Yes, I do.

13 Q. Okay. So how does that fall into the
14 hypothetical negotiation in this case?

15 A. Well, that reflects what's sometimes the
16 position of a licensee in a real negotiation, and that
17 kind of information is used to argue for paying a lower
18 amount.

19 But here, those types of arguments couldn't be
20 made. The patents are understood to be valid and
21 infringed. And an amount of a reasonable royalty -- or
22 I should say damages adequate to compensate VirnetX at
23 no less than a reasonable royalty is necessary.

24 Q. Okay. Well, let's move on to your second
25 bullet point. VirnetX and Microsoft understand the need

1 to reach an agreement.

2 What does that mean?

3 A. I think it's pretty straightforward. They're
4 sitting at the table. They have to come to an
5 agreement. You can't just walk away from the table
6 without an agreement.

7 Q. Okay. And I'm going to pick on Mr. Powers
8 again.

9 What if he's the guy who goes there for
10 Microsoft to negotiate this deal, and he says exactly
11 what he said to the jury, not valid, not infringed, not
12 worth a dime, and throws his pen down and goes to walk
13 out of the room? What happens?

14 A. Well, I think he would return back to the
15 table and continue to negotiate, and that would happen
16 on both sides of the table.

17 Q. Okay. So everybody's locked in that room;
18 nobody's leaving till there's a deal?

19 A. That's -- that's correct. I think that's the
20 right way to frame this issue.

21 Q. Okay. And then finally, Mr. Reed, you've got
22 relevant future facts would be known in 2003?

23 What does that mean?

24 A. Well, it's related to something that's called
25 the book of wisdom.

1 Now, in this analysis of the Georgia-Pacific
2 Factors and the use of the hypothetical negotiation,
3 we're allowed to consider information that may have
4 occurred after 2003, information that would occur
5 through 2009, for example.

6 Q. What are some examples of what might have
7 occurred after 2003 that the parties at the hypothetical
8 negotiation would be aware of?

9 A. One example I mentioned a moment ago is the
10 issuing of the '180 patent in March of 2007.

11 And another example would be the knowledge
12 that the technology was used in certain Microsoft
13 products, the accused Microsoft products, for the time
14 period beginning in 2003 through December 2009, and, in
15 fact, also the extent of the sales revenues associated
16 with those products.

17 Q. Okay. Now, you said the extent of the sales.
18 What is the extent of the sales of just the Vista and XP
19 products in this case?

20 A. Well, if I go back to the first chart, I can
21 show that -- this is a calculation I did associated with
22 U.S. activity, and that reflects 48 billion in revenue
23 for the time period through December of 2009.

24 And then there's also additional revenue
25 associated with the LCS/OCS Office Communications Server

1 products, and there's 69.1 million associated with those
2 products.

3 Q. Okay. Thank you, Mr. Reed.

4 Now, the next question I have for you is, you
5 mentioned -- well, you've mentioned the hypothetical
6 negotiation, but the word royalty has come up more than
7 a couple of times, and I'm not sure we've defined it, so
8 could you please define that for the jury.

9 A. Sure. A royalty can be of a -- different
10 forms. There can be a lump sum payment. There can be a
11 running royalty. And here I wanted to illustrate a
12 common reasonable royalty structure by using something
13 that's common here in Texas, which is royalties
14 associated with oil and gas.

15 And so what I've done is illustrated the
16 concept of a running royalty and starting with the
17 revenue from the oil production, so you can think about
18 that as a royalty base.

19 And then a certain percentage of that revenue
20 is going to be paid to the landowner. And you can think
21 about that as a royalty rate. It might be 3 percent, 4
22 percent. That's the percentage that would go to the
23 landowner.

24 And then ultimately, the multiplication of the
25 royalty rate and the royalty base gives rise to the

1 total royalties collected, which, ultimately, we can
2 think about as the running royalties or the reasonable
3 royalties.

4 Q. Okay. Now, Mr. Reed, how does -- in your
5 analogy here of the oil and gas revenues, how does a
6 royalty rate get calculated?

7 A. Well, the royalty rate goes back to the
8 analysis of these Georgia-Pacific Factors I mentioned
9 and the evaluation of the different financial and
10 economic and licensing factors to come up with an
11 appropriate reasonable royalty rate and a royalty base
12 to ultimately determine these reasonable royalties.

13 Q. And how does your oil and gas analogy here
14 equate to this case?

15 A. Well, the royalty base would be the revenues
16 associated with the Microsoft APIs. The royalty rate
17 would be the analysis to determine what is a royalty
18 rate that would go with those revenues to generate a
19 reasonable royalty.

20 And so, ultimately, the combination of the
21 royalty base associated with the Microsoft revenues and
22 the royalty rate associated with the Georgia-Pacific
23 analysis can give rise to a reasonable royalty or a
24 running royalty.

25 Q. I think you hinted at it, but I want to go

1 ahead and ask the question. How do we calculate a
2 royalty rate in this case?

3 A. Well, it goes back to those Georgia-Pacific
4 Factors. So it's the -- essentially, the first 13
5 Georgia-Pacific Factors in the context of the 15th
6 factor, which is the hypothetical negotiation.

7 Q. Okay. Now, Mr. Reed, do we need to go through
8 all 15 Georgia-Pacific Factors?

9 A. Well, I did in my reports and in my analysis,
10 but for the purposes here, I've summarized them into
11 three groups.

12 Q. Okay. And do these groups that you're
13 identifying, do they take into account all 15 factors?

14 A. Well, they take into account the first 13, I
15 believe. Those are the economic and licensing and
16 financial factors.

17 The 14th factor deals with expert testimony or
18 expert opinions, probably a better way of stating it.
19 And certainly, I considered the expert opinions of -- of
20 Professor Jones.

21 And then the 15th factor is the framework I
22 mentioned, the hypothetical negotiation between a
23 willing licensor and a willing licensee.

24 Q. Okay. And, Mr. Reed, just so the record is
25 clear, did you take all 15 factors into account in your

1 analysis?

2 A. Yes, I did.

3 Q. Okay. Now, let's start at the beginning, the
4 first group.

5 What is the first group?

6 A. Well, the first group are the factors that
7 address licensing and the royalty rates that come from a
8 variety of sources that would be available from my
9 research.

10 Q. Okay. And why is this group important?

11 A. Well, it's important because, among other
12 things, it can give information, such as a potential
13 benchmark or comparable royalty rate, to take into
14 account to come up with that royalty rate that gets
15 applied in the calculation I mentioned a moment ago.

16 Q. Okay. And are any of these factors part of
17 other groups?

18 A. Well, this is the way I grouped them for
19 purposes here.

20 And the 13th factor is one I've also put into
21 the third group. It's a factor that deals with the
22 portion of profits and how that might be credited to the
23 invention and how it might take into account the
24 relative contributions of both the VirnetX technology
25 and the many contributions of Microsoft.

1 Q. And why would that factor be in both Group 1
2 and Group 3?

3 A. Well, I think that factor is reflected in
4 royalty rates in the real world, generally, the issue of
5 how profits get shared and allocated between licensees
6 and licensors.

7 And then the third group deals with -- with
8 value, profitability, the extent of the use of the
9 technology, and the portion of the profits would relate
10 there as well.

11 Q. Okay. Now, Mr. Reed, are we going to discuss
12 Factor 13 in detail now or in Group 3?

13 A. It's -- it's going to be covered near the end
14 of my -- of my analysis. It's an important factor that
15 will be covered at that point.

16 Q. Now, Mr. Reed, you mentioned this group was
17 important because it gave -- I believe you said
18 benchmarks; is that -- is that correct?

19 A. Yes.

20 Q. What are benchmarks?

21 A. Well, if you think about the oil and gas
22 example, a benchmark might be -- for a landowner, the
23 benchmark might be the neighbor's royalty rate, to the
24 extent they can find that information.

25 They might know that their neighbor got a

1 certain percentage, and they might think, well, my land
2 is better for drilling oil, and I should get a better
3 rate than that. I think I'm going to produce more
4 efficiently here or allow their producers to produce
5 more efficiently.

6 So that benchmark rate can be information that
7 could be assessed to help determine a royalty rate.

8 Q. Okay. And did you find benchmark licenses in
9 this case?

10 A. Well, I found a variety of information, and
11 yes, I found some information that I could consider to
12 help guide my analysis.

13 Q. Okay. And what benchmark licenses did you
14 determine or find in this case?

15 A. Well, I started with agreements from SAIC, and
16 they're listed on this next chart. These are agreements
17 that we've heard about that SAIC has entered into with
18 SafeNet and VirnetX.

19 Q. Now, Mr. Reed, why are these agreements
20 relevant in this case?

21 A. Well, there's -- there's differences that need
22 to be taken into account and that I did take into
23 account, but they're relevant because they cover the
24 patented technology at issue here. They actually relate
25 to the patents and patent applications associated with

1 the '135 patent and '180 patents.

2 Q. Okay. And you mentioned a little bit, but I
3 just want to make sure the jury understands, these are
4 the very same agreements that Mr. Munger testified about
5 on the stand some two days ago?

6 A. That's correct. I believe it was Monday.

7 Q. Okay. Now, didn't Mr. Munger testify that
8 that SafeNet agreement -- the SafeNet agreement was
9 canceled before any royalties were paid?

10 A. Yes, he did, and that's one of the differences
11 that I -- that I note and address.

12 Q. Okay. Well, how can it still be relevant
13 then?

14 A. Well, it's relevant because it still provides
15 guidance as to what two parties were considering were a
16 reasonable amount for the use of the VirnetX technology.

17 Q. Okay. And so what royalty rates were applied
18 in this case -- in those licenses?

19 A. Well, in those licenses, we have the 20
20 percent royalty rate that applied for the SafeNet
21 license agreement. And then in the case of VirnetX,
22 there was a 15 percent running royalty rate.

23 Q. Okay. Now, Mr. Reed, are we done now? I
24 mean, can we just take those two rates and multiply it
25 times the Windows products and save the jury a lot of

1 time?

2 A. No. That wouldn't be appropriate because of
3 the differences that I mentioned. There's significant
4 differences that need to be taken into account and other
5 factors that need to be taken into account as well.

6 Q. Okay. And what are those differences?

7 A. Well, one of the differences is what was just
8 mentioned a moment ago; that SafeNet never paid
9 royalties at that 20 percent royalty rate. In fact,
10 VirnetX doesn't yet have the Gabriel product out, and
11 VirnetX also hasn't paid royalties at the 15 percent
12 royalty rate.

13 And then if you think about the difference
14 compared to the hypothetical negotiation with Microsoft,
15 Microsoft is the leading software producer in the world,
16 and if these products were going to apply, as Dr. Jones
17 says they do, to Windows XP and Windows Vista, those are
18 very large successful products, and that difference
19 needs to be taken into account.

20 Q. Okay. And was there any difference -- or are
21 there any differences with the products in those
22 agreements and the products that would be in this
23 hypothetical negotiation?

24 A. There are, but there's actually a couple of
25 other differences I'd like to mention first, if I could.

1 Q. Go ahead.

2 A. One is the -- these SAIC license agreements to
3 SafeNet and VirnetX included exclusivity aspects,
4 whereas the hypothetical negotiation leading to a
5 license with Microsoft would be a non-exclusive license.
6 That's a Georgia-Pacific Factor I'll address a little
7 later.

8 And then another difference is the agreements
9 with SafeNet and VirnetX provided rights to more than
10 patents. It also provided rights to knowhow and even
11 access to Mr. Munger and Dr. Short and some of the
12 inventors, whereas, again, the hypothetical license with
13 Microsoft would only cover rights to the patents, the
14 '180 and the '135 patents.

15 Q. Okay. Now, are there any other differences
16 you'd like to talk about?

17 A. Well, it gets back to the one you identified
18 up there. There's a difference in the products as well.

19 Q. Okay. Now, Mr. Reed, what are the differences
20 in the products?

21 A. Well, the SAIC agreement -- agreements with
22 SafeNet and VirnetX had in mind a security software
23 product, a product that would be priced at somewhere
24 around \$13.50 to \$27, whereas the license with Microsoft
25 would apply to products like Windows XP and Windows

1 Vista that range in price, depending on the version,
2 from \$50 to above a hundred dollars, and then would also
3 apply to the OCS/LCS products, Office Communications
4 Server, and those products also have a different price
5 structure.

6 Q. Okay. What does it matter that those products
7 are different in the way you described or based on the
8 price?

9 A. Well, it generated different royalty per user,
10 and I think that should be taken into account to kind of
11 adjust these royalty rates, if you will.

12 Q. And how did you take the price difference and
13 the other differences into account?

14 A. I considered the royalty that would be --
15 would have been generated by these 20 percent and 15
16 percent royalty rates applied to the software security
17 product. And that's an amount of approximately 2 to \$5
18 per user.

19 And then I considered that to the price for
20 some of the -- of the base Windows XP and Windows Vista
21 products, and those have prices in the 50 to \$80 range.
22 And so if I make the adjustment, the royalty rates fall
23 in a range of 2.5 percent to 10 percent, and that's an
24 adjustment. That's necessary for one of these several
25 differences that I've noted here.

1 Q. Okay. Now, Mr. Reed, before we get to that
2 rate you've got, how did you go about determining what
3 the expected royalty per user would be when we all know
4 that no product was ever sold under the SafeNet
5 agreement?

6 A. That's right. There wasn't actual information
7 leading to a product, but there was plans and documents
8 from SAIC and VirnetX addressing the expected price
9 range. And I considered that information with the
10 prices that I mentioned earlier, 13.50 to -- up to about
11 \$27. And it depends on how many years the products
12 would be used.

13 Q. And so is that how you arrived at the 2 to \$5
14 you have on the slide here, is multiplied the percentage
15 above times the price of the product you believed would
16 be sold?

17 A. That's correct, yes.

18 Q. Okay. Did you do anything else to confirm
19 that SafeNet and SAIC were on the right track with
20 regards to the price of their security product?

21 A. Well, I certainly looked at that issue and had
22 assistance from Professor Jones, and there were several
23 products relating to VPN security that were sold at
24 prices that range from about \$40 to \$70. So I
25 considered that information.

1 Q. Okay. Now, Mr. Reed, we'll go ahead and skip
2 down now to 2.5 percent to 10 percent. So you say that
3 takes into account the price difference of the products,
4 correct?

5 A. Correct.

6 Q. Okay. So are we done? Do we just take this
7 2.5 percent to 10 percent and multiply that times the
8 Windows products?

9 A. No, we're not done. There are other
10 differences that I took into account, and there are the
11 other Georgia-Pacific Factors as well. So I continue
12 the analysis.

13 Q. Okay. And, Mr. Reed, I want to ask you kind
14 of a -- just a basic question so that the jury
15 understands for the rest of the slides.

16 At the bottom left, you've got PX134, PX647,
17 and PX648. If the jury wants to see any of these
18 documents related to your calculations or to the
19 agreements, can they ask for those documents by those
20 numbers?

21 A. I understand so, yes.

22 Q. Okay. Now, Mr. Reed, did you find any other
23 benchmarks that are relevant to this case?

24 A. Yes, I did. And the next category relates to
25 a Microsoft licensing program.

1 Q. Okay. And what Microsoft licensing program
2 did you find relevant?

3 A. Well, it's called the Work Group Server
4 Protocol program or WSPP. And I found information
5 relating to rates -- royalty rates that Microsoft charge
6 other companies under this program to have an important
7 bearing on the analysis of the reasonable royalty.

8 Q. Okay. And just for a little more background,
9 what is the WSPP licensing program?

10 A. Well, it relates to patents -- Microsoft
11 patents relating to communication protocols that are
12 licensed to other companies.

13 And in particular, it -- the overall program
14 covers different technology areas. And some of the
15 technology areas are authentication and network
16 communications, and some relate to PNRP.

17 And so those are some of the different
18 technology areas, what Microsoft calls scenarios that I
19 was able to explore the royalty rate for them.

20 Q. Okay. And why else are the WSPP licenses
21 relevant to your analysis?

22 A. There's a variety of reasons why they're
23 relevant.

24 One is they're non-exclusive license
25 agreements. And what I mean by that is, it's offered to

1 a variety of different companies. It's not exclusive
2 like, for example, VirnetX's license agreement is with
3 SAIC.

4 Another -- another difference is -- or another
5 important point to consider is that they have
6 patent-only royalty rates. And so that's an important
7 comparison.

8 Before I mentioned that the SAIC covered other
9 types of intellectual property, more than just patents.
10 These particular agreements included rates that apply to
11 patents only.

12 Q. Did you do anything else to determine whether
13 these rates here in this agreement are reasonable?

14 A. Yes, I did. I considered information that was
15 available that addressed other companies entering into
16 these agreements, agreeing to take a license and to --
17 to enter into the license with Microsoft to pay the
18 royal -- these royalty rates.

19 And also I was aware of information that
20 Microsoft believed that they were reasonable rates as
21 well.

22 Q. Excuse me.

23 Now, in this slide, you have two ranges here,
24 and I think you already said it, but -- you described
25 them as patent-only rates, correct?

1 A. Correct.

2 Q. Okay. And you've already told the jury
3 they're important because that's what we have here in
4 this case, is a patent-only license, correct?

5 A. Correct.

6 Q. Okay. Now, what's the first range, .46 to
7 3.87 percent?

8 A. That was the overall range of the different
9 technology areas or scenarios that relate to the
10 percentage royalty rates. And so I considered that.
11 But in some cases, the number of patents that were
12 covered would be in the range of 10 or 12 patents in
13 some of these particular scenarios.

14 But I was able to explore as a subset of these
15 scenarios that only had a few patents; for example, one
16 patent or two or three or four. And for that group, the
17 range of the royalty rates was 0.46 percent to 1.82
18 percent, and that's the group I focused on.

19 Q. Okay. And I'm going to sound like a broken
20 record, but are we just going to take this .46 to 1.82
21 percent and multiply that by the Windows products?

22 A. No. Again, it's part of the consideration of
23 my analysis of the Georgia-Pacific Factors, but there
24 are other factors to analyze, so I continued with the
25 analysis.

1 Q. Okay. Now, Mr. Reed, one more question about
2 these.

3 How did you determine that these were -- or
4 wait. You know what? I think you've already answered
5 this. You said these were related to the PRNP patents,
6 correct?

7 A. Well, the PRNP patents certainly are included
8 as an example of some of the technology area that was
9 part of this program, but more generally, they also
10 covered things like authentication and network
11 communications, which are similar to the types of
12 technologies that -- that we're talking about in this
13 case.

14 Q. Okay. And how else did you go about
15 determining if these were relevant to this case?

16 A. Well, I -- I identified the P -- there were
17 two PNRP patents. That's peer name resolution protocol.
18 And I identified those to Professor Jones, and he
19 indicated that they were in a similar technology area to
20 the patents at issue in this case.

21 Q. And then similar, does that mean comparable?

22 A. Well, it could be, yes.

23 Q. Okay. Now, besides these benchmark licenses,
24 did you take into account any other information in your
25 first group?

1 A. Yes, I did.

2 Q. Okay. And what other information did you take
3 into account?

4 A. I also took into account what's sometimes
5 called Georgia-Pacific Factor 4, which deals with the
6 expectations and the policies regarding patent licensing
7 of the owner of the patents.

8 Q. And why is that important to your analysis,
9 Mr. Reed?

10 A. Well, I think it gives it context for that
11 hypothetical negotiation. What would be the position of
12 SAIC or VirnetX when they were sitting at the table to
13 negotiate a reasonable royalty? What would they have in
14 mind?

15 Q. Okay. And what did you generally find SAIC
16 and VirnetX's expectations to be?

17 A. Well, I think, first, the expectations would
18 be that there would be a running royalty rate. And both
19 SAIC and VirnetX focused on a percentage royalty, like
20 the example I gave with the oil and gas royalty
21 situation.

22 And among other things, I discussed with
23 Mr. Munger the position and approach of SAIC back in
24 2003 when Mr. Munger was there, and Mr. Munger told me
25 that SAIC's approach would be to pursue a running

1 royalty, a percentage royalty.

2 Q. Now, Mr. Reed, where else did you determine --
3 well, actually, what rate did you determine was the
4 interest or needed by VirnetX or SAIC?

5 A. There were different rates discussed in
6 different SAIC and VirnetX documents, but overall, the
7 range was about 1 percent per patent up to 5 percent per
8 patent.

9 Q. Okay. Now, Mr. Reed, where did you get that
10 from?

11 A. It came from a variety of SAIC and VirnetX
12 documents.

13 Q. Okay. And I just want to put up an example.

14 MR. CASSADY: PX653, please, Mr. Moreno.

15 And can you please turn to Page 17?

16 Is this -- oh, thank you.

17 Would you highlight the whole top portion
18 where it says standard rate and incentivized rate,
19 please, the whole -- yeah. Yes. Thank you.

20 Q. (By Mr. Cassady) Is this an example of one of
21 the documents you were referring to?

22 A. Yes. This is a VirnetX document. It's the
23 most recent of the various examples that I -- that I
24 explored. This one is from 2009.

25 Q. And so we have -- I see some large rates, 10

1 to 25 percent, 5 to 10 percent. Why aren't we applying
2 those rates?

3 A. Well, those relate to the entire portfolio of
4 VirnetX patents, and here we're focusing on the '135 and
5 the '180.

6 Q. Okay. So these two here, the 2 to 5 percent
7 and 1 to 2 percent, are those the more relevant?

8 A. Well, certainly, they would be more relevant,
9 and in fact, I focused more on the incentivized rate,
10 the 1 to 2 percent per patent range.

11 And by incentivized rate, that meant, if
12 VirnetX was working to come to an agreement, that would
13 be the type of rate that VirnetX would have in mind at a
14 hypothetical negotiation.

15 Q. Okay. And is this the only presentation you
16 relied on?

17 A. No. There were three or four others, and
18 there was also some information from SAIC regarding its
19 research on security patent royalty rates.

20 Q. Okay. And are a few examples located at
21 PX646, PX690, and PX691?

22 A. I believe those are the PXs and I identified,
23 yes.

24 Q. Okay. Now, again, back to my broken record,
25 do we just take this 1 to 2 or to 2 to 5 percent rates

1 that you found that VirnetX and SAIC believed to be
2 relevant and just apply it to the Microsoft Windows
3 revenue?

4 A. No. That reflects the position of VirnetX,
5 but not -- VirnetX didn't enter into any license
6 agreements specifying those rates. So, again, I
7 continue the analysis.

8 Q. Now, did you determine that any other licenses
9 were relevant in your analysis?

10 A. Yes, I did. There were additional license
11 agreements that Microsoft has entered into where it
12 licensed its patented technology to other companies.
13 And I considered a range of the different programs that
14 Microsoft has entered into, and the royalties that
15 Microsoft receives for those programs.

16 Q. And which licenses did you discover in that
17 group?

18 A. Well, I've listed them. There's several.
19 And the first item here we've already discussed, the
20 WSPP program.

21 There's also a similar program related to the
22 MCPP program. And I think that's Microsoft
23 Communication Protocol Patent -- or Program licenses.
24 You'll note that that included patents and other
25 intellectual property, but it had royalty rates of 1 to

1 5 percent. But these are the examples of other programs
2 and other royalty rates I considered.

3 Q. Okay. And how did these license agreements
4 apply to your analysis?

5 A. Well, I also took into account this
6 information. It relates to Georgia-Pacific Factor 12,
7 which is royalty rates in the industry, and I
8 particularly considered, for example, the licenses
9 related to LCS, Live Communications Server.

10 And I also considered the Interoperability
11 licenses, which dealt with exchange server and Vista.
12 And then also the Microsoft ActiveSync license with --
13 where Microsoft entered into an agreement with Google
14 and Mr. Shank from Microsoft viewed Google as more of a

15 SEALED BY ORDER OF THE COURT
16 rate for a particular Google product, and that's also
17 something I took into account.

18 Q. Okay. Now, Mr. Reed, could you go ahead and
19 take another example off this list to discuss with the
20 jury in more detail?

21 A. I'm sorry. I couldn't hear the last part.

22 Q. Could you pick another example here to
23 describe in detail for the jury?

24 A. Well, the Interoperability license, as I
25 mentioned briefly, but one of the things I would note

1 is, there's a document where Microsoft stated that the
2 patent licenses for patents on open protocols will also
3 be made available at low royalty rates.

4 And the -- the base rate for these programs is
5 a 1 percent royalty rate, but Microsoft has minimum
6 per-unit royalties that go into effect. And so
7 depending on the price of the product of the company
8 that takes the license, the royalty rates could range
9 above 1 percent.

10 And on the analysis I did, I had a range of
11 1.8 to 4.2 percent when you take the minimums into
12 account.

13 Q. Okay. Now, Mr. Reed, did you take any other
14 license agreements into account in your analysis?

15 A. Yes. I also considered license agreements
16 where Microsoft takes a license from other companies'
17 patented technology.

18 Q. Okay. And what agreements are those?

19 A. Well, they're on the next slide.

20 And first, I considered different license
21 agreements that Microsoft entered into with patented
22 technology where a lump sum was paid by Microsoft. And
23 I considered deposition testimony where Microsoft said
24 they prefer paying lump sum amounts.

25 Q. Okay. Well, I don't know that we've used that

1 phrase before. What is a lump sum?

2 A. It would be an example where one payment would
3 be made, usually upfront, and it might be -- in the case
4 of these agreements, a hundred thousand dollars paid,
5 and then Microsoft would have rights to the patented
6 technology for the lives of the patent.

7 Q. So you're saying, that hundred thousand
8 dollars payment on whatever technology that may relate
9 to, if Microsoft sold a hundred billion dollars in
10 product related to that technology, that hundred grand
11 is all they paid?

12 A. That's correct, yes.

13 Q. Okay. And why is that relevant to your
14 analysis?

15 A. Well, it's certainly something I considered,
16 but, in my opinion, this structure would not be
17 acceptable to VirnetX or to SAIC.

18 Q. Okay. And just so we get back to the top of
19 the slide, what -- what did you find relevant about the
20 three agreements -- or I believe there's two agreements
21 listed with the heading Microsoft Pays Running
22 Royalties?

23 A. It's actually three, because this last one is
24 a newer version of the second one.

25 But these are examples where Microsoft does

1 pay running royalties for important technology.

2 Q. And why is that important to your analysis?

3 A. Because it's -- it's a reflection that goes in
4 against, if you will, the position that Microsoft
5 prefers paying lump-sum royalties. There are occasions
6 where Microsoft does pay running royalties.

7 Q. Okay. And, Mr. Reed, I notice that you don't
8 have the royalty rates listed here. And I don't want to
9 ask you what those are. I simply want to understand,
10 are these comparable to the technology in this case?

11 A. No, I don't believe so.

12 Q. And why do you say that?

13 A. Well, the MPEG license agreement covers a
14 portfolio of patents from a variety of companies. It's
15 not just a few patents from one company; it's rights
16 to -- to patents from a number of companies.

17 And it's a large number of patents, and it's
18 in a different technology area. It deals with visual
19 images that would be used on computers and patents
20 related to that.

21 And then also -- the Dolby -- of course, many
22 of you may know the Dolby trademark -- this particular
23 license agreement relates to sound and audio technology.
24 And in addition to rights to patents -- I think there's
25 18 patents -- it also provides rights to the trademarks.

1 Q. Now, Mr. Reed, are we finished with your Group
2 1 part of your analysis?

3 A. Yes, we are.

4 Q. Okay. So we can now move on to the second
5 group?

6 A. Yes.

7 Q. Okay. And generally, what does the second
8 group cover?

9 A. The second group covers information relating
10 to the structure or the scope of the license agreements.
11 And we also included the commercial relationship in this
12 category. And by that, I mean the competitive
13 relationship between the parties, SAIC and VirnetX and
14 Microsoft.

15 Q. Okay. So we'll just start at the top.
16 Factor No. 3 says: Scope of license that would be --
17 would have been negotiated.

18 What is that?

19 A. Well, there's different aspects of this scope.
20 One aspect is, it's a non-exclusive license. I
21 mentioned that before.

22 So Microsoft would have rights to use the
23 patents, but so would VirnetX and so would other
24 companies that VirnetX might choose to license the
25 technology to.

1 So that's one aspect.

2 Q. Okay. What other aspects are there?

3 A. Another aspect would be the coverage, whether
4 it's worldwide or relating to U.S. activity. And this
5 license agreement would be related to U.S. activity, not
6 worldwide activity.

7 Q. Okay. And why would it only apply to the
8 United States activity?

9 A. Because the '180 and the '135 patents are U.S.
10 patents, and they cover the right to make, use, import,
11 sell, or offer to sell the technology in the United
12 States.

13 Q. Well, Mr. Reed, how do you go about
14 determining what was sold or -- or -- I believe you said
15 what was sold, used, manufactured, or offered for sale
16 in the United States. How do you figure that out?

17 A. Well, I went to the Microsoft information
18 relating to sales data, and I considered the summary
19 information that Microsoft provided. And they provided
20 worldwide information, and then they also provided
21 information related to U.S. activity.

22 Q. Okay. Now, Mr. Reed, how did Microsoft
23 determine their United States revenues?

24 A. The way Microsoft did it was, they did it by
25 credited sales area. So it included shipments to the

1 United States, but it also included all the products
2 associated with OEMs that are located or headquartered
3 in the United States.

4 And by OEM, I mean a PC manufacturer such as
5 Dell in Austin or Hewlett-Packard in California.

6 Q. Okay. Well, I guess maybe I'm
7 misunderstanding. How can -- well, I'll ask a different
8 one.

9 Can't Dell sell a computer or make a computer
10 in France and sell it in England, and it will never
11 touch the United States?

12 A. Well, it's more common for Dell to manufacture
13 in Taiwan or China, but it's possible that Dell could
14 manufacture in Taiwan and then ship the product to
15 France.

16 Q. Okay. Well, why then do those sales count
17 under United States activity?

18 A. Well, from one standpoint, it's -- those
19 particular products -- well, let me put it this way:
20 Dell is a U.S. manufacturer, and the way that Microsoft
21 recorded that information or that sale, they credited it
22 to the United States to give the United States sales
23 team or sales organization -- organization of Microsoft
24 a credit for that sale.

25 Q. Okay. So one term would be an offer to sell

1 in the United States, correct?

2 A. That's correct, yes.

3 Q. Okay. Now, what else -- or why else did you
4 believe that method was reasonable?

5 A. Well, it's also the way that Microsoft
6 recorded the information. So I, obviously, took that
7 into account as well.

8 Q. Okay. And what about how Microsoft
9 accumulated that data leads you to believe it's
10 reasonable?

11 A. Well, the other aspect is, there are certain
12 manufacturers of PCs or OEMs that are located overseas,
13 and Microsoft records those particular shipments of
14 Windows and XPs -- Windows XP and Windows Vista as
15 outside the United States, even though companies like
16 Toshiba or Acer or Sony might ship products to the
17 United States with Windows.

18 Q. Okay. Well, didn't Microsoft have another way
19 to break it down?

20 A. Yes, they did. And I considered the
21 deposition testimony of a Microsoft employee,
22 Mr. Jhavar, who was asked the specific question: Are
23 there other ways to try to break down the U.S. revenues
24 so that you would not include the U.S. OEMs, all of the
25 revenue in the United States?

1 And I summarized what Mr. Jhawar said. When
2 asked the question, are there other ways to do this, he
3 said: We don't have a reasonable basis for estimating
4 breakouts of that.

5 Q. And what does that tell you, Mr. Reed?

6 A. Well, that Microsoft didn't believe there was
7 another way that would be superior to the way they
8 treated the credited sales area and how they measured
9 U.S. sales.

10 Q. Okay. Now, Mr. Reed, what about the United
11 States government? Was that included in your
12 calculation?

13 A. No. I took -- in my calculations, I excluded
14 the U.S. government, so all the sales associated with
15 the Windows products to U.S. government entities were
16 not included in my calculation.

17 Q. Okay. And then I think we're done with Factor
18 3, correct?

19 A. No. I believe there's one -- oh, with Factor
20 3, that's correct, yes.

21 Q. Yeah. Sorry. Not Group 2, but Factor 3.

22 A. Yes. I'm sorry.

23 Q. Jigsaw puzzle here.

24 So with regards to Group 5 -- or actually, got
25 me messed up now -- Factor 5, commercial relationship

1 between patent-holder and accused infringer, what does
2 that mean?

3 A. Well, that deals with the competitive
4 relationship between VirnetX and SAIC and Microsoft, and
5 as we heard, Micro -- VirnetX has not yet introduced its
6 Gabriel technology, so as of now, at least from the past
7 through 2009, they're really not competitors, VirnetX
8 and Microsoft are not competitors.

9 But the very large size and scope of Microsoft
10 and the fact that they sell these products that are
11 accused, Windows XP and Windows Vista to the vast
12 majority of customers in the United States is an
13 important competitive consideration that VirnetX would
14 take into account in the negotiation.

15 Q. Okay. And what about Factor 7, remaining life
16 of patent? What is that referring to?

17 A. That refers to the patent life, and the
18 VirnetX patents at issue here, the '135 patent and the
19 '180 patents, they expire in the year 2020.

20 So back in the 2003 hypothetical negotiation,
21 VirnetX would be looking at a very long life with these
22 particular patents and also with the understanding that
23 this technology was going to become more important over
24 time.

25 So this is a very important license agreement

1 for VirnetX to enter into. Microsoft is a very large
2 player. The license agreement entered into with
3 Microsoft would be taken into account by all the other
4 activities that VirnetX would do in the future.

5 Q. Okay. And just so I understand, maybe we give
6 the reverse example. What if you only had two years
7 left on the life of the patent? How would that affect
8 the negotiation?

9 A. Well, one way of thinking about it is, you
10 want to collect as much royalties as you can in that
11 two-year period, so you might be more favorable in the
12 terms that you would offer to a company to take a
13 license. You have less options of what you can do with
14 your technology.

15 Q. Okay. Now, Mr. Reed, are we done with Group 2
16 of your analysis?

17 A. Yes, we are.

18 Q. Okay. Can we go to Group 3 now?

19 A. Sure.

20 Q. Now, what is Group 3?

21 A. Group 3 are the Georgia-Pacific Factors that
22 deal with value, profitability, and the extent of use.

23 Q. Okay. And what did you find, through your
24 review of the documents in this case and the depositions
25 with regards to Group 3?

1 A. Well, first, I started with Dr. Jones,
2 actually, and I discussed with Dr. Jones the importance
3 of the VirnetX technology and the importance of that
4 technology to Microsoft, in particular with the '135
5 patent as it relates to RTC.

6 You might remember RTC APIs, real-time
7 communication interfaces, and then with respect to the
8 '180 patent and the peer-to-peer technologies.

9 So with that framework, I reviewed a large
10 number of documents, including Microsoft documents, and
11 I actually have some of those documents that show what
12 Microsoft was thinking about these technologies, RTC and
13 peer-to-peer over the time period at issue.

14 Q. Okay. Well, you said you had some examples.
15 Let's go ahead and see them.

16 What does this show, Mr. Reed?

17 A. This is a Microsoft document that's
18 copyrighted in 2008, so it's a relatively recent one,
19 and there's an important statement here about the
20 real-time communication technologies.

21 It states: We believe unified communications
22 will transform business in the coming decade in the same
23 way e-mail changed the business landscape in the 1990s.

24 Q. Okay. Well, I'm not sure I understand,
25 Mr. Reed. What is that saying to us?

1 A. Well, unified communications relates to
2 real-time communications, and of course, the '135 patent
3 is accused against that technology.

4 And what it's saying is that from -- I take
5 this as 2008 going out to the next 10 years, unified
6 communications is going to develop as a very important
7 technology, much like we all know how e-mail expanded in
8 the 1990s, and now pretty much everybody has e-mail.

9 So this is a statement of the importance of
10 this technology in Microsoft's mind --

11 Q. Now, Mr. --

12 A. -- going forward.

13 Q. I apologize. I didn't mean to cut you off.
14 Now, Mr. Reed, do you have any other examples, or is
15 this the only document you have?

16 A. No. I have other examples, and these are a
17 few of many.

18 Q. And what are we seeing here, Mr. Reed?

19 A. This is a 2001 document when Microsoft was
20 assessing the new RTC products that were going to be
21 introduced as part of Windows XP. And what is stated
22 is: RTC is one of the top five reasons to buy Windows
23 XP.

24 Q. Okay. And why is that important?

25 A. Again, it reflects Microsoft's view of the

1 importance of the RTC capabilities that were going to be
2 in the platform for Windows.

3 Q. Okay. Now, is that the only document you
4 have?

5 A. No. I have an additional one.

6 Q. Okay. What is this one telling us, Mr. Reed?

7 A. This is from a similar time period. It was a
8 similar statement. It's saying that the RTC information
9 would help drive XP, Windows XP, through the Windows PC
10 experience. So it's a similar one.

11 Q. Okay. And do you have any other examples?

12 A. Yes. This is another document from that time
13 period, and this document generally addressed
14 Microsoft's views of its competition in real-time
15 communications with important competitors, IBM and
16 Cisco.

17 And near the end of the document, Microsoft
18 states: Why we win. And what was stated, among other
19 things, but the most prominent statement was: Let the
20 customer securely communicate when, where, and however
21 they desire.

22 And I think this statement goes to the -- some
23 of the advantages that Dr. Jones associates with the use
24 of the VirnetX technology: Flexibility, secure, ease of
25 connection, that type of information.

1 Q. Okay. And I'll ask again, do you have any
2 more examples of RTC documents?

3 A. I believe I do.

4 Q. What is this, Mr. Reed?

5 A. This document addresses an issue relating to
6 pricing of the RTC APIs. And what it -- what it
7 addresses is that Microsoft considered doing something
8 very unusual. Microsoft considered separately pricing
9 the RTC APIs.

10 Q. And why is that important?

11 A. Well, Microsoft had never done that, as I
12 understand it, and this document addresses that.
13 Microsoft never separately charged for any specific API.
14 So, again, it suggests the relative importance that
15 Microsoft placed on these RTC APIs, because they
16 considered pricing it separately.

17 Q. Okay. Well, they were discussing pricing them
18 here separately from Windows. Did they do that?

19 A. No, they didn't. Ultimately, Microsoft
20 included that as part of -- part of Windows, and
21 Dr. Jones addressed that.

22 And the reason that's stated for that, and
23 it's reflected in other documents as well, is that
24 Microsoft didn't want to limit the ubiquity of
25 getting -- and what I mean by that is make them

1 generally available. They wanted to make the RTC APIs
2 generally available in the entire platform of the
3 Windows XP and Windows Vista products.

4 Q. Okay. So that's what ubiquity means is
5 generally available?

6 A. Well, widely generally available everywhere,
7 essentially.

8 Q. Okay. Now, I think we've discussed the RTC in
9 a lot of detail. Are these the only examples that you
10 looked at to come to your analysis in this case?

11 A. No. There were other examples, and there was
12 also deposition testimony.

13 Q. Okay. Now, what about peer-to-peer?

14 A. I've done a similar thing with peer-to-peer
15 addressing some of the documents.

16 And this first one, Microsoft is stating that
17 for Windows, peer-to-peer is a natural destiny. And it
18 basically says, when the Windows platform is very large,
19 most customers have it, so it's a great platform from
20 peer-to-peer. And then Microsoft states: We've been
21 working on realizing that peer-to-peer destiny.

22 Q. Okay. And why is that important to your
23 analysis, Mr. Reed?

24 A. Well, it's important, again, stating the
25 emphasis that Microsoft was placing on the peer-to-peer

1 technologies.

2 Q. Okay. And do you have any other examples, Mr.
3 Reed?

4 A. Yes.

5 Q. And what are those?

6 A. These are e-mails, and the first one,
7 Microsoft is addressing developing a suite of
8 technologies relating to peer-to-peer that would be a
9 first order feature of the Windows operating system.
10 And this is actually reflected in what other Microsoft
11 documents say a back-of-box application, and that became
12 a key application of the Windows Vista product.

13 Q. You said back-of-box. What does that mean?

14 A. Well, earlier we saw the box that had the
15 Vista -- what Microsoft meant by back-of-box is the
16 application was noted on the back of the box that we
17 would see in the store.

18 Q. Okay. And that's PX829?

19 A. I can't see it.

20 Q. You can't see it. I apologize. That's PX829
21 we talked about earlier.

22 Now, Mr. Reed, I'm looking at the back of the
23 box, and I don't see anything about peer-to-peer on the
24 back.

25 A. Well, this is relating to Windows Meeting

1 Space. Professor Jones addressed Windows Meeting Space
2 as being an application on the -- using the peer-to-peer
3 technologies and accused associated with the '180
4 patent.

5 Q. Okay. So on the back here where it says:
6 Collaborate and share documents with Windows Meeting
7 Space, that's what you're referring to?

8 A. Yes, it is.

9 Q. Okay. And why is it important that Microsoft
10 put it on the box?

11 A. Well, it notes that Microsoft believed that
12 that was going to be a very interesting feature for its
13 customers.

14 Q. Okay. Now, we've talked about the first
15 document. What about the second one here?

16 A. Well, this one is -- is just stating that
17 peer-to-peer would be a game changer for application
18 development.

19 So, again, it's addressing Microsoft's
20 emphasis on this particular technology and how it would
21 be important for the future.

22 Q. All right. I don't know if I understand the
23 term game changer. What does that mean?

24 A. It means that it's going to change the way
25 developers work with APIs and with technologies for

1 developing programs that would run on Windows Vista.

2 Q. Okay. Do you have any other examples of
3 peer-to-peer documents, Mr. Reed?

4 A. Yes.

5 Q. And what are these showing us?

6 A. These documents both address the competition
7 that Microsoft was -- was facing in the earlier period
8 when it was developing the peer-to-peer APIs, and
9 specifically, Microsoft was concerned about SUN, who was
10 also developing peer-to-peer technology.

11 Q. Okay. And I see in the second document -- I'm
12 going to skip ahead a little bit -- it says: SUN
13 Microsystems is training gunfire on one of its oldest
14 enemies, Microsoft.

15 What does that mean?

16 A. That just means that the two parties were
17 competing with one another, and in my review of these
18 documents, it suggests Microsoft was very concerned
19 about enhancing this peer-to-peer technologies to -- and
20 making them widely available.

21 Q. Okay. And were there any other examples,
22 specifically PX698 and 699 that related to the SUN
23 competition?

24 A. Oh, yes, there were. There were a lot of
25 discussions, and I also had public information about the

1 SUN product that was attempting to compete with
2 Microsoft.

3 Q. Okay. Now, Mr. Reed, I think you referred to
4 Meeting Space, and we talked about it on the box. What
5 about Meeting Space is important?

6 A. Well, here's a document that's addressing
7 Meeting Space, and it's stating that -- it's being
8 positioned by marketing as one of the top enterprise
9 features for Vista Client.

10 Q. And why is that important?

11 A. Again, the Marketing Department at Microsoft
12 viewed Meeting Space to be a very interesting product
13 for a corporation's enterprise, companies that would be
14 using this -- this feature or this application in its
15 products.

16 Q. Okay. And is that the Meeting Space that
17 Mr. Jones referred to as being used in the '180 patent?

18 A. Correct.

19 Q. That's the one that Mr. Powers and Dr. Jones
20 went back and forth about whether he was in the San
21 Francisco Office with his laptop at his law firm, and
22 he's talking with his other law firm offices, does that
23 infringe, right?

24 A. I can't recall if Mr. Powers was talking about
25 that, but it also would relate to the law library

1 example or the Tyler library example where the
2 collaboration was going on.

3 Q. Okay. And then what else about Meeting Space
4 did you find out?

5 A. Well, there's one other document relating
6 to Meeting Space. This was an advertisement by Dell
7 that I received in a publication at my office just four
8 or five or six months ago, and Dell put this
9 advertisement in a magazine, and twice in this
10 particular advertisement, Dell talked about the Meeting
11 Space as a reason why corporations should consider using
12 Vista and upgrading to Vista.

13 Q. And why is that important?

14 A. Again, it talks about a major customer of
15 Microsoft, Dell, and Dell's views about the Meeting
16 Space product.

17 Q. Okay. So we have talked about peer-to-peer,
18 we have talked about the RTC and the UCC products. What
19 else is important to Group 2 -- Group 3, I apologize?

20 A. Also, profitability is important. So I
21 considered information on Microsoft's profitability.

22 Q. How profitable is Microsoft?

23 A. Very profitable, but I have a chart that
24 summarizes two of the particular divisions or groups at
25 Microsoft.

1 Q. And before we get into this, why is
2 profitability important to your Georgia-Pacific
3 analysis?

4 A. Generally, profitability is important to
5 consider; but, in particular, here my discussions with
6 Dr. Jones address the importance of Microsoft enhancing
7 its platform. When I say "platform" I mean the Windows
8 Vista and Windows XP operating systems that are
9 provided. And those are available for developers to
10 develop technologies. By enhancing the platform,
11 Microsoft keeps developers interested; and it helps what
12 Microsoft calls the ecosystem, developers and customers
13 and Microsoft all working together to make sure
14 Microsoft stays successful.

15 Okay. And so here you're showing Microsoft's
16 profit margins, correct

17 A. Correct, yes.

18 Q. You have got gross margin and contribution
19 margin. What are those?

20 A. Well, gross margin is the profit after
21 taking into account the cost of manufacturing the
22 product, and here there's not much -- there's a box and
23 there's a DVD.

24 Contribution margin, though, takes into
25 account the other expenses associated with the division.

1 And basically that's the profit before an allocation
2 goes to corporate overhead.

3 And I would note that these
4 particular margins here are for the division that deals
5 with Windows XP and Windows Vista products.

6 Q. Okay. Now, Mr. Reed, are those high profit
7 margins?

8 A. Yes, they are the highest contribution
9 profit margins I have ever seen.

10 Q. Ever seen in your 25 years in the
11 business?

12 A. Yes.

13 Q. Okay. What about the UC or Unified
14 Communications products?

15 A. Unified Communications products include the
16 LCS/OCS, Office-Communication-Server-type products.
17 They also have high margins. There's a difference
18 between these 51 to 58 percent contribution profit
19 margins, and the margins up here show exactly how high
20 the Windows XP and Vista platform profit margins are.

21 Q. Okay. Now, we talked about profitability,
22 we have talked about the importance of the
23 features. What else is important to Group 3?

24 A. I also considered the market share of
25 Microsoft.

1 Q. Okay. And how is the market share of
2 Microsoft relevant?

3 A. Well, it's relevant in a couple of different
4 ways. One is back to this issue of the ecosystem. Why
5 Microsoft is -- it's important to Microsoft to enhance
6 its platforms with interesting and important future APIs
7 like the peer-to-peer APIs and the real-time
8 communication APIs that Dr. Jones informed me about.
9 And that would -- we have also heard some of that from
10 today and yesterday. But it's also important because
11 it reflects on VirnetX and SAIC's concerns when they
12 were licensing their patented technology. Because
13 Microsoft has such a large portion of the overall
14 activities with respect to these types of operating
15 systems that go in personal computers, it would be
16 important for VirnetX to take into account how widely
17 spread its technology could be.

18 Q. Well, Mr. Reed are these high market
19 shares?

20 A. Yes. They're -- they are very high market
21 shares, that's correct.

22 Q. Okay. Again, are these the highest you have
23 ever seen?

24 A. Well, I think there could be some cases at
25 least for a short time period where a company might be a

1 pure monopolist, lift but these -- this is not an
2 example of that, but these are very high market
3 shares.

4 Q. Now, Mr. Reed, my question is if the profit
5 margins are so high and the market share is so high,
6 what does it matter if Microsoft just leaves a feature
7 out of it?

8 A. Well, based on my conversation with
9 Professor Jones, it's important for Microsoft to enhance
10 its features to -- to add these additional future
11 technologies to make sure that it can compete with all
12 the other different companies, Apple, Linux. You saw
13 the example of SUN. So by enhancing with these advanced
14 technologies, Microsoft is able to help maintain its
15 market share.

16 Q. Okay. And, well, again, I'm not sure I
17 understand. If they have such high profit margins and
18 such a high market share, what does it matter if they
19 just lose a couple of points here and there?

20 A. Well, I did an analysis in my report
21 addressing the impact of Apple gaining just a few
22 percentage points. It's actually less than two
23 percentage points in the 2007-2009 time period. And
24 because of the large contribution profit margin, the
25 impact of that gain in market share had a reduction in

1 the contribution margin, profit margin for Microsoft
2 over the three years by about \$656 million. So it has a
3 huge impact on Microsoft's overall performance.

4 Q. Okay. Now, Mr. Reed, have we summarized all
5 the important factors related to Group 3?

6 A. We have, with the exception of Factor 13
7 that I mentioned before.

8 Q. Okay. Before we get to Factor 13, did you
9 come to a preliminary opinion on the royalty rate?

10 A. Well, yes. Based on this analysis and the
11 other analysis of the Georgia-Pacific factors, I started
12 with an assessment of a 1 percent royalty rate per
13 patent relating to the Windows XP and Windows Vista
14 products and a 3 percent royalty rate with respect to
15 the OCS Office Communicator and LCS products.

16 Q. Okay. So do we just apply that rate to the
17 Microsoft Windows products?

18 A. No, no, I believe there were various
19 adjustments and apportionments that needed to be taken
20 into account, so I made those adjustments.

21 Q. Well, this is going to be a long question,
22 and I'm just going to read it. How have you apportioned
23 a reasonable royalty to the value of this invention as
24 it relates to the accused products in line with Factor
25 13 and the George-Pacific factors?

1 A. Well, it's reflected in the next chart that
2 summarizes the various things that I did.

3 Q. And what are we showing here, Mr. Reed?

4 A. Well, for the Windows platform, that is,
5 Windows XP and Windows Vista relating to both the '135
6 patent and the '180 patent, I started with that 1
7 percent base rate I mentioned and then I did a variety
8 of things taking into account other Georgia-Pacific
9 factors and this Factor 13.

10 I started by considering that Microsoft sells
11 different versions of -- of the Windows XP and Windows
12 Vista products that I think we saw earlier with the
13 boxes. There's a home version and there's a
14 professional or a business version.

15 The professional version has a higher price
16 because Microsoft adds additional functions and
17 technology that would be useful to businesses. And I
18 wanted to be sure not to include an additional
19 functionality in the analysis.

20 So, basically, what I did is I
21 applied only the price associated with the base product,
22 the home premium-type products and not the higher prices
23 associated with the professional versions.

24 Q. Okay. And what about the third bullet, the
25 10 percent quantity discount, what is that?

1 A. I took into account -- one way of thinking
2 about it is the contribution of Microsoft because they
3 are a very successful company with lots of features and
4 functionality, and they have a very large level of
5 sales. And I took into account the programs that
6 Microsoft had where it granted quantity discounts to
7 other companies like Cisco and Hitachi, and they had a 5
8 percent 10 percent, it scaled up the discount that was
9 provided. That's what Microsoft provided to these other
10 companies. I applied a 10 percent, the highest discount
11 under that program, to all of the Microsoft sales at
12 issue.

13 Q. Okay. And, finally, you have got this
14 phase-in 1 percent rate. What is that referring to?

15 A. That refers to the fact that I don't start
16 with a 1 percent royalty rate per patent. I recognize
17 that there's a lot of other functionality in these
18 products and that these particular APIs were developing
19 over time. The peer-to-peer technology is still
20 developing relating to something called IPv6, which is a
21 protocol related to the internet.

22 Also, the real-time communications technologies
23 were developing; and even though they came out in 2003,
24 instant messaging for corporations, for example, wasn't
25 expected to become important until 2008. And we saw

1 that document a moment ago talking about the 2008
2 document looking at Unified Communications over the next
3 decade. So clearly this technology is developing.

4 So I started with a royalty rate of 0.33
5 percent per patent. Then I increased that in fiscal
6 year 2008 to 0.66 percent. Then it wouldn't be until
7 fiscal year 2012 for Microsoft that the rate would go to
8 that 1 percent rate.

9 Q. Okay. And now what about the LCS/OCS
10 products?

11 A. Well, it is the 3 percent rate that I
12 mentioned, and then I apply -- I apply it to only
13 certain base products. So sometimes Office Communicator
14 is included in the Microsoft Office Suite. And most of
15 us probably know what that is. Office Suite includes
16 Word, Excel, sometimes other applications as well. In
17 the high-end Office Suites, Microsoft includes Office
18 Communicator.

19 But I only took 4.25 percent of all the
20 revenue for those products, and that's all that I
21 included in the OCS products where I calculated the
22 royalty.

23 Q. That's all you included in the royalty base,
24 correct?

25 A. That's right, yes.

1 Q. That's what you multiplied 3 percent
2 times?

3 A. Correct.

4 Q. Let me ask you about the 3 percent. How
5 come or why is that larger than the 1 percent for the
6 Windows products?

7 A. Well, there are a couple of reasons that I
8 took into account, and two of them specifically that I
9 will address now is one way is the way that Microsoft
10 advertised the LCS/OCS. They advertised it as saying no
11 VPN required. In fact, I talked to Dr. Jones about this
12 before my report probably about a year ago and I said
13 what does Microsoft mean by no VPN required and how does
14 it relate to the technology? He said that's what
15 provides -- the technology at issue here is what
16 provides Microsoft the ability to say that. Because he
17 said they're not using a standard or traditional VPN,
18 they're using technology associated with the patented
19 technology here.

20 Because of that advertising I believe that the
21 royalty rate would be higher as it applies to the
22 LCS/OCS products.

23 Q. Okay. Did you take anything else into
24 account in that rate?

25 A. Yes, I took into account other information

1 as well, including the -- we've heard about Magenic.
2 Magenic was a company that VirnetX had hired in 2006,
3 maybe even hired in 2005 but some of the work was going
4 on in 2006. Magenic was helping VirnetX develop a
5 product that would work with LCS to provide additional
6 security. And so this was a potential product for
7 VirnetX to sale. But in the process of that work I
8 understand that VirnetX came to learn that -- that LCS
9 2005 was a secure product, so they stopped following
10 that research plan.

11 So this reflects to the competitor
12 relationship, and VirnetX and SAIC would be looking for
13 a larger royalty on this particular product for that
14 reason, among others.

15 Q. And that's that Magenic discussions that we
16 had throughout the trial. I think people referred to it
17 as the modification of OCS 2005; is that correct?

18 A. Yes, my understanding is it wasn't a
19 modification based on my conversation with people at
20 VirnetX, again, about a year ago. Magenic was working
21 on a product for VirnetX to work with or maybe you could
22 think about it on top of the LCS 2005 product.

23 Q. And they stopped doing that once they
24 realized that Microsoft had already included the
25 functionality?

1 A. Yes.

2 Q. Okay. Now, I want to talk about Windows
3 again. How did these apportionments affect the result
4 results of your analysis?

5 A. Well, I have two slides that show that. I
6 can go through them pretty quickly. The first one deals
7 with the royalty base. So you can see I start with 48
8 billion in revenue associated with the U.S. activity and
9 Windows XP and Windows Vista. Then I adjust the price
10 to reduce the price to the home versions to take out the
11 additional revenue in the professional and business
12 versions. That reduced the revenue to \$33 billion.

13 Q. What did you do next?

14 A. Then also I applied the 10 percent quantity
15 discount, and that reduced the amount to 30 billion.

16 Q. Okay. So do we just take the 1 percent or
17 the 0.66 percent you calculated and multiply it times
18 that?

19 A. Well, you have got to take into account the
20 royalty rate fees in so -- I've already discussed this,
21 but you start with the -- I start with the 0.33 percent
22 royalty rate per second. Then in fiscal year 2008 --
23 the fiscal year for Microsoft ends in June. Starting
24 fiscal year 2008, it goes to 0.66 percent.

25 Q. Okay. So are we done with our

1 Georgia-Pacific analysis, Mr. Reed?

2 A. Yes, we are.

3 Q. Okay. And what is the result of your
4 analysis?

5 A. Well, the result is the summary that we have
6 already seen and we are back to. The calculation of
7 reasonable royalties based on this methodology through
8 December 2009 for both the patents and for both of these
9 product groups, the total reasonable royalties are \$242
10 million based on my calculations and analysis.

11 Q. Okay. I want to break it down a little bit.
12 For the '135 patent with regards to the Windows XP and
13 Vista programs, how large is the reasonable royalty?

14 A. Well, the reasonable royalties for the '135
15 patent are a hundred -- sorry, that's not working.
16 \$140.1 million.

17 Q. Okay. And how much of that is
18 Vista, and how much of that is XP?

19 A. It's little bit more than 50 percent for
20 Vista.

21 Q. Okay. Now, the second step there, you have
22 got another number underneath that, is that related to
23 the '180 patent?

24 A. Correct.

25 Q. How much is the reasonable royalty for the

1 '180 patent on the Windows XP and Vista products?

2 A. It's 83.6 million. And the reason it's
3 smaller is because the '180 patent doesn't issue until
4 March 2007, and this calculation of reasonable royalties
5 for the '180 does not begin until March 2007 after the
6 '180 patent issued.

7 Q. Okay. And just so we're clear, Mr. Reed, we
8 never applied that 1 percent rate that you found,
9 correct?

10 A. That's correct. That wouldn't occur until
11 fiscal year 2012.

12 Q. Again, that's after this case is over,
13 correct?

14 A. That's correct.

15 Q. And the jury is not being asked to grant
16 those damages here, correct?

17 A. Correct.

18 Q. Okay. Now, the '135 patent on LCS/OCS, how
19 much did you determine was a reasonable royalty?

20 A. Taking the 621 million royalty base times
21 the 3 percent royalty rate, it is 18.6 million.

22 Q. Now, Mr. Reed, a couple more questions.
23 What was the result or what would the result be had you
24 not apportioned the damages the way we just discussed?

25 A. Well, if I applied the 1 percent rate for

1 the entire time period per patent and started for the
2 '180 patent in March of 2007, if I didn't apply the 10
3 percent discount and if I didn't adjust the pricing for
4 the professional and business versions, the total would
5 be \$704 million.

6 Q. Okay. Now, Mr. Reed, are you asking the
7 jury to give \$704 million?

8 A. No, I'm not. My analysis of a reasonable
9 royalty is the \$240 million number through December 2009
10 that I have been addressing throughout my testimony
11 today.

12 Q. And why are you not asking for the \$704
13 million?

14 A. Because I don't believe that appropriately
15 takes into account these various apportionment issues
16 and other adjustments that I think are consistent with
17 the Georgia-Pacific analysis.

18 Q. Now, Mr. Reed, do you understand that
19 Microsoft is contending that a lump sum payment would
20 have been made in this case?

21 A. Yes, I do.

22 Q. And have you done a calculation of what
23 a lump sum payment would have been under your
24 analysis?

25 A. I have, yes. It depends on a variety of

1 assumptions because the patents don't expire until 2020,
2 so in my opinion if you are going to address a lump sum
3 amount, you would have to take into account the
4 royalties through the end of 2009, the 242 million; but
5 then you would also have to take into account the
6 potential royalties over the next 10 years approximately
7 when the patents expired in 2020.

8 I did do a variety of different calculations,
9 and there's quite a range because there is uncertainty
10 about the future. But it could be as much as 942
11 million as a net present value as of the end of 2009.

12 Q. And, Mr. Reed, why is that number so much
13 larger than the 242 million we just discussed?

14 A. Because it includes the past amounts through
15 December 2009, the 242 million; plus it includes
16 discounted amounts for the period January 2010 through
17 April of 2020. And that's a long time period for
18 additional future potential royalties.

19 Q. Mr. Reed, are you asking the jury to give
20 \$942 million dollars in this case?

21 A. No. In part because of the uncertainty
22 about the future. I don't think a lump sum approach
23 makes much sense, plus I don't think it would have been
24 acceptable to SAIC or VirnetX based on my analysis and
25 discussions with people like Mr. Munger.

1 So, I think the running royalty approach
2 through December 2009 makes sense, and that's what I
3 suggest is a reasonable royalty.

4 Q. Just one last question, and it is going to
5 be a little repetitive, what is the result of your
6 analysis in this case as -- as it relates to a
7 reasonable royalty?

8 A. Well, my Georgia-Pacific analysis and my
9 conclusion on a reasonable royalty through December of
10 2009 for both of the patents is \$242 million in
11 reasonable royalties.

12 Q. Thank you, Mr. Reed.

13 MR. CASSADY: I pass the witness, Your
14 Honor.

15 THE COURT: Cross examination.

16 MR. SAYLES: Yes. May it please the
17 Court.

18 CROSS-EXAMINATION.

19 BY MR. SAYLES:

20 Q. Mr. Reed, I'm Dick Sayles. I'm one of the
21 lawyers for Microsoft.

22 A. Hello, Mr. Sayles.

23 Q. You are no stranger to the courtroom, are
24 you, sir?

25 A. Well, I certainly have testified across the

1 country in patent infringement matters, that's true.
2 But this is my tenth time in a patent case in U.S.
3 District Court.

4 Q. And you understand that when you testify
5 that you must face cross-examination to examine your
6 opinions. You know that, don't you?

7 A. Absolutely, that's correct.

8 Q. And you know that as I ask you questions
9 here in the next hour or so, that I mean you no personal
10 disrespect. You understand that, don't you?

11 A. I appreciate that, Mr. Sayles.

12 Q. But you understand that when you come to
13 court and express opinions, they're subject to
14 challenge?

15 A. I understand that, yes.

16 Q. Can I rely on your deposition testimony that
17 you gave in this case?

18 A. I understand that you can, yes.

19 Q. Can I rely on the reports that you have
20 written in this case?

21 A. Yes, sir.

22 Q. Mr. Reed, isn't it true that over the last
23 14 years you have either appeared in court, written
24 reports, or given depositions across the country?

25 A. Yes.

1 Q. You have given depositions, testified in
2 court or written reports in lawsuits in Texas,
3 California, Wisconsin, Pennsylvania, New Jersey,
4 Delaware, Washington, Colorado, New York, Massachusetts,
5 Virginia, Minnesota, Florida, Oregon, Illinois, Maine,
6 Oklahoma, and New Mexico at least, haven't you?

7 A. I haven't provided testimony in all those
8 states.

9 Q. I said you have written a report, appeared
10 in court, or given a deposition in a lawsuit in those
11 states at least, haven't you, sir?

12 A. Yes, I have.

13 Q. You know that I have your resume, right?

14 A. I would expect you to, yes.

15 Q. And in your resume you commonly and you are
16 required to provide information about prior testimonies
17 that you've given; isn't that so?

18 A. Yes.

19 Q. And would it be fair to say that a
20 substantial part -- portion of your consulting work is
21 done with lawyers related to lawsuits?

22 A. Yes.

23 Q. And a substantial part of your living is
24 made from fees that you earn in consulting with lawyers
25 in reports, depositions, and trial testimony. Is that

1 true, sir?

2 A. Yes.

3 Q. You do not have specific licensing
4 experience in the area that is involved in this case, do
5 you? By licensing experience, I mean experience in the
6 industry?

7 A. I disagree with that.

8 Q. Is it correct, sir, that you have no
9 industry experience in the software industry licensing
10 other than as an expert in litigation matters?

11 A. I disagree with that.

12 Q. Would you look at Page 29 and 30 of your?
13 deposition, please? Do you have it up
14 there?

15 A. I'm not sure.

16 Q. I can get you a copy.

17 A. I'm not sure. I don't think I have a
18 copy.

19 Q. We'll get you a copy in just a moment.

20 While we're getting to that,
21 let me just keep moving here. I will come back to that.

22 You have consulted in lawsuits where you have
23 either given a report, a deposition, or testimony in
24 areas involving many technologies other than the
25 software industry; isn't that so?

1 A. I don't think that's so. I have provided
2 reports and analysis relating to the software
3 industry.

4 Q. You have given testimony, depositions and
5 reports in many other technologies, too, haven't you?

6 A. Yes, I do quite a bit of work in the high
7 technology area.

8 Q. Other than computer software; isn't that
9 so?

10 A. Yes, computer hardware and other high-tech
11 technologies as well.

12 Q. You have been involved in lawsuits that
13 involve medical balloon catheters?

14 A. Yes.

15 Q. Plasma TVs?

16 A. Yes.

17 Q. Contact lenses?

18 A. Correct.

19 Q. Learning aids?

20 A. Yes.

21 Q. Mini-mag flashlights?

22 A. That's correct.

23 Q. Canine heartworm diagnostics?

24 A. Yes, but that wasn't a patent case.

25 Q. Math course materials?

1 A. Yes.

2 Q. Grape growing and raisin production?

3 A. Yes.

4 Q. Pet identification and recovery?

5 A. Yes.

6 Q. Water filtration?

7 A. Yes.

8 Q. Poultry processing and marketing?

9 A. That was also -- that was an antitrust case,
10 but, yes.

11 Q. Okay. The list is longer, isn't it?

12 A. Yes. I have worked for 25 years in this
13 industry.

14 Q. Mr. Reed, you testified that in this case
15 that you believe the parties have entered into a running
16 royalty, correct?

17 A. Correct.

18 Q. Now, a lump sum royalty is a common form of
19 royalty in patent licensing, isn't it?

20 A. Yes.

21 Q. There are two competing methods primarily --
22 there are a few others -- but those are the two primary
23 methods; running royalty versus a lump sum. Isn't that
24 right?

25 A. I would say those are the two primary,

1 yes.

2 Q. With a running royalty, whenever you sit at
3 that negotiating table and enter into an agreement,
4 there's really no guarantee of any payment in the future
5 because the party that signs up on the license doesn't
6 have to pay you if they don't use your technology.

7 Isn't that so?

8 A. Yes, that's true.

9 Q. So with a running royalty there's that
10 uncertainty that you will receive money going into the
11 future?

12 A. That's correct.

13 Q. It depends on changes in technology or the
14 decision of the party that has the license; isn't that
15 right?

16 A. Yes.

17 Q. And common sense tells you that if you tie
18 the payment that you receive to usage, that the more a
19 feature is used, the more money you will receive.
20 That's common sense, isn't it?

21 A. Yes.

22 Q. And it's also common sense that the less a
23 feature is used for which you have a license, the less
24 you should receive. Does that make sense?

25 A. It depends on how you measure use.

1 Q. And if you have a running royalty, and let's
2 say in this case VirnetX or any party has a running
3 royalty, there is an administrative cost to just simply
4 keeping up with that. Is that recognized and known?

5 A. That is recognized, yes.

6 Q. Isn't it true that non-exclusive licenses
7 typically command a lower rate than exclusive
8 licenses?

9 A. Yes, that is something I took into
10 account.

11 Q. Isn't it true that in this case had there
12 been a negotiation, it would have been a non-exclusive
13 license?

14 A. Yes.

15 Q. And in the real world, isn't it true that
16 negotiation is a two-way street?

17 A. Absolutely.

18 Q. And here you have come down on the side of a
19 running royalty based on what Mr. Munger told you would
20 be VirnetX's preference. Is that right?

21 A. It's more than Mr. Munger. But, yes, Mr.
22 Munger did tell me that.

23 Q. And that's certainly a large part of the
24 basis for you coming down on the side of a running
25 royalty; isn't it?

1 A. It's a part of it, but there were a lot of
2 documents and materials I considered.

3 Q. I want to look at one of your slides for
4 just a moment. Let's look at Slide 6 that you put up
5 for the jury in your direct examination.

6 In your slide you say that going this way
7 would be patented technology. Do you see where that's
8 in your slide?

9 A. I assume you're moving that way
10 (indicating)?

11 Q. I'm sorry. You're exactly right. I'm above
12 your head. I'm going from VirnetX to the Microsoft
13 side?

14 A. Correct.

15 Q. And actually the truth is that there was no
16 technology that was available in 2003 that had been
17 developed by VirnetX. You know that, don't you?

18 A. Well, I know that they were -- they were
19 developing and working on it. But there wasn't a
20 product.

21 Q. When we say patent rights we're not -- in
22 the hypothetical negotiation that we're talking about
23 here, there's no technology that's going across the
24 table; it's the right to develop that technology. Isn't
25 that so?

1 A. I think that's fair, yes.

2 Q. And that means that if Microsoft had
3 negotiated and entered into a license agreement,
4 Microsoft would have had to have spent the money to
5 develop it, whatever rights were in those patents.
6 Isn't that right?

7 A. They wouldn't be developing the rights, they
8 would be developing the technology.

9 Q. The technology. Because the technology
10 didn't cross at the table like your slide indicates;
11 isn't that so?

12 A. Right. It's the rights to the -- to use the
13 patented technology.

14 Q. Now, one of the things that you told the
15 ladies of the jury is that at a hypothetical negotiation
16 we're even allowed to peek into the future a little bit.
17 Is that right?

18 A. Yes, that's my understanding.

19 Q. But the parties also at a hypothetical
20 negotiation have knowledge of what the facts are at the
21 time, don't they?

22 A. Yes.

23 Q. And in 2003, you know that VirnetX -- SAIC
24 at the time -- we're talking about SAIC, right in
25 2003?

1 A. Correct, and the VirnetX team is the way to
2 think about it.

3 Q. Okay. But SAIC was the company that would
4 be at the table, right?

5 A. Correct, and I would conclude the VirnetX
6 team as part of that.

7 Q. You know that in 2003 at the time of the
8 hypothetical negotiation, and it would have been known
9 to the parties at that table, that SAIC had struck out
10 with the government. Yes; is that right?

11 A. I'm not comfortable saying struck out.

12 Q. Had failed to sell the government on their
13 idea?

14 A. I am aware of the testimony over the last
15 several days in that regard.

16 Q. And you heard that, right?

17 A. I did, yes.

18 Q. At the bargaining table, the parties would
19 have known that SAIC had struck out with venture
20 capitalists who are really investors. That would have
21 been known at that table, wouldn't it?

22 A. Yes.

23 Q. And at that table it would have been known
24 that SAIC had struck out with private businesses that
25 they had tried to sell on this technology. Isn't that

1 right?

2 A. Yes.

3 Q. And the parties at that table would have
4 known that the various governmental agencies that have
5 been talked about here -- and I won't take the time to
6 name them -- had passed on this technology. Isn't that
7 so? They would have known that?

8 A. Yes. But if I pause because Mr. Munger did
9 address other possibilities that he wasn't aware of.

10 Q. Now, you know that in this case what is
11 accused is not Windows XP and Windows Vista as a whole.
12 You know that, don't you?

13 A. Yes.

14 Q. You know that there are literally thousands
15 of features to Windows XP. You're aware of that, aren't
16 you?

17 A. I am, yes.

18 Q. And there are literally thousands of
19 features of Windows Vista, you are aware of that too,
20 aren't you?

21 A. Absolutely.

22 Q. And you're aware that these patents address
23 specific features, aren't you?

24 A. Yes.

25 Q. You're aware that what these patents address

1 is a small part of the thousands of features in Windows
2 XP, aren't you?

3 A. A small part of the number, but there's more
4 to it than that.

5 Q. All right. Well, have you done an economic
6 analysis of the other features that are attractive and
7 useful to people who might use Windows XP?

8 A. Yes, that is something that I did.

9 Q. You realize that there are many features, in
10 fact, hundreds if not thousands, of both Vista and XP
11 that are not accused of infringing these patents, don't
12 you?

13 A. Did you say hundreds or thousands?

14 Q. Yes, I did say that.

15 A. I just want to make sure it wasn't hundreds
16 of thousands.

17 Yes, I do understand that hundreds or
18 thousands.

19 Q. I'm not going to name them all, but do you
20 know one of the non-infringe -- can you -- can you name
21 some? Can you name some features in Windows XP that are
22 non-infringing? Do you know the product well enough to
23 do that?

24 A. Yes.

25 Q. Tell me -- tell me a few?

1 A. Well, there would be print commands, file
2 commands. There would be a variety of different
3 functionalities that we would be aware of even in our
4 everyday use. There would be a large number of APIs,
5 and I address that in my report based on my input from
6 Dr. Jones.

7 Q. Did you analyze the economic value to the
8 overall Windows Vista and XP system of say Photo
9 Gallery just to pick one; did you do that?

10 A. Not that API -- not specific APIs, no.

11 Q. Did you analyze the economic component,
12 aspect, or contribution of shadow copy, a feature of
13 Windows XP and Vista?

14 A. Not individually, no?

15 Q. Do you even know what it is?

16 A. I'm not sure I know exactly what that is.

17 Q. Did you analyze the economic contribution in
18 Windows XP and Windows Vista of the Welcome Center?

19 A. Not specifically, no.

20 Q. Did you analyze and consider the economic
21 contribution to Windows XP and Windows Vista of the
22 feature called Windows calendar?

23 A. Not individually, no.

24 Q. Now, I could go on with a long list, but I
25 want to go and ask you the question that I intended to

1 ask you before.

2 With respect to these hundreds or potentially
3 thousands of non-infringing features, have you tried to
4 do an economic analysis of their value to the XP or
5 Vista product? Have you done that?

6 A. I approached it almost the reverse way to
7 that.

8 Q. I'm going to come to that in a few minutes.
9 But I'm asking you now: Did you take the individualized
10 features and analyze them from an economic standpoint to
11 see what their contribution was to the attractiveness of
12 Windows XP and Windows Vista to persons who might use
13 it?

14 A. I focused on the specific APIs associated
15 with the VirnetX technology, and so it's the reverse
16 side of that.

17 Q. So the answer is, with respect to the
18 hundreds, if not thousands, of non-accused
19 functionalities, you did not do an economic analysis of
20 them individually?

21 A. Not individually, except for the two APIs
22 that we have been discussing here.

23 Q. Now, one of the things that you said you did
24 and I told you I would come to it is you considered the
25 home version of Windows XP and Windows Vista as opposed

1 to the higher-end versions, correct, the more expensive
2 ones?

3 A. Well, in particular the professional and
4 business versions, that's right.

5 Q. And the reason you did that is those business
6 versions had individual features that contributed to the
7 value of the XP and Vista product. Isn't that right?

8 A. Not exactly.

9 Q. Partly?

10 A. Well, it is not so much individual features,
11 but all of the additional features that I could isolate
12 when I compared it to the home versions of the Windows
13 products.

14 Q. But you did not consider the higher cost of
15 the -- the more advanced versions of XP and Vista
16 because they contained additional features. Isn't that
17 right?

18 A. I am confused by the question. I did
19 consider the additional features in the professional
20 versions, and that's why I didn't use the higher
21 price.

22 Q. Right. Because those additional features in
23 the professional versions are additional features that
24 make the product attractive that are not accused in this
25 case. Isn't that right?

1 A. Partly right.

2 Q. But when you got to the home version, you
3 still had hundreds, if not thousands, of features that
4 you did not account for in an economic sense. Isn't
5 that so?

6 A. No. I believe I have taken into account
7 those features, just not individually.

8 Q. Let me take you back to Exhibit No. 6 for
9 just a moment again. I didn't quite finish the thought
10 here.

11 So with the knowledge that I have gone through
12 with you already about what the parties at both ends of
13 the table would have known in 2003, that would also
14 include valuations of the technology that is embodied in
15 those patents. You've seen that, haven't you?

16 A. I have, yes.

17 Q. And those valuations ranged below \$18
18 million in all cases, didn't they?

19 A. Not in all cases, but there certainly were
20 some that were in the range up to 18 million.

21 Q. There were some that were in the range of
22 2.7 million; isn't that so? You saw that?

23 A. I have certainly seen numbers like that. It
24 depends on what group of technologies, though.

25 Q. All right. But except for SAIC's own

1 evaluation of its product with respect to the valuations
2 that were put on by venture capitalists, potential
3 customers and others who were approached, those values
4 were all less than \$15 million. Isn't that right?

5 A. Let me be clear about the question, Mr.
6 Sayles. You're saying except for the studies that were
7 done for SAIC?

8 Q. Yes, SAIC putting its own price on its
9 product that it's out there trying to sell to venture
10 capitalists and others. You saw third-party valuations,
11 didn't you?

12 A. Yes, that's why I'm confused. CSMG, the
13 company that did the research on valuation, they were
14 hired by SAIC. They came up with valuations that
15 approached \$200 million.

16 Q. That's right. But no one accepted that
17 figure; isn't that true?

18 A. I don't know that that's true.

19 Q. All right. I'll talk to you about some
20 documents in just a moment.

21 But are you telling the ladies of the jury
22 that in early 2003 after SAIC had had the difficulties
23 that you've heard in this courtroom with its technology,
24 that Microsoft had offered a lump sum payment of \$5
25 million, that SAIC would have gotten up and left the

1 table. Is that what you're saying?

2 A. Yes, I am.

3 Q. If Microsoft had offered a lump sum payment
4 at that time of \$10 million, are you telling the ladies
5 of the jury that SAIC would have gotten up and left the
6 table?

7 A. Absolutely.

8 Q. And are you telling the ladies of the jury
9 that if \$15 million hit the table in the negotiation,
10 that they would have gotten up and left the table, given
11 the history of their failures of efforts to
12 commercialize their product and get others interested in
13 it?

14 A. Without a question.

15 Q. Now, let's talk about this for a minute.
16 That is your opinion; isn't it?

17 A. I think there's documents that go to that
18 issue, too, but certainly it's part of my opinion.

19 Q. Right. But what happens at a hypothetical
20 negotiation is necessarily a matter of opinion; isn't
21 it?

22 A. In part. Ultimately it becomes the jury's
23 opinion.

24 Q. Right. But your job as an expert witness is
25 to express your opinion after doing your analysis; isn't

1 that right?

2 A. Yes. And that's what I've done today.

3 Q. And that's what you do when you involve
4 yourself in court proceedings is, you express opinions,
5 don't you?

6 A. On some occasions, yes.

7 Q. And sometimes your opinions are accepted,
8 correct?

9 A. Correct.

10 Q. Sometimes they're rejected; isn't that
11 right?

12 A. Yes, that's true.

13 Q. And sometimes your opinion is somewhere in
14 the middle; is that true?

15 A. That's been my experience.

16 Q. All right. And while we're on the subject
17 of testifying, in the testifying experience you do have,
18 you have appeared on both sides of the fence, haven't
19 you?

20 A. I'm not sure what you mean by both sides of
21 the fence.

22 Q. What I mean is in this case you're appearing
23 on behalf of the patent holder, the Plaintiff and you're
24 expressing an opinion on their behalf, aren't you?

25 A. I'm expressing an opinion that's associated

1 with the Plaintiff, yes.

2 Q. Correct. In your experience that you have
3 given in your resume, you indicate that you've been on
4 the other side of the coin; is that right?

5 A. Yes, I have also --

6 Q. The other -- I'm sorry.

7 A. I've also worked with the defendants in
8 patent cases.

9 Q. So you've been on the other side of the
10 fence?

11 A. Sometimes I'm on both sides of the fence in
12 any particular case.

13 Q. But you've been on the other side of the
14 fence, haven't you?

15 A. Yes, as you put it.

16 Q. And, in fact, you do understand that in a
17 court of law where there's a jury, there is nothing
18 unusual about a Defendant, in the position of Microsoft,
19 talking about damages. You know that, don't you?

20 A. Yes, I do.

21 Q. And there's nothing unusual about a party
22 like Microsoft offering damage testimony because you've
23 been in that very same situation for a Defendant; isn't
24 that so?

25 A. That's true, yes.

1 Q. And by doing that, it is in no way an
2 admission or an acknowledgement that there has, indeed,
3 been infringement; isn't that right?

4 A. That's correct.

5 Q. And it's in no way and it's not an admission
6 that the patents are valid, is it?

7 A. That's up for the jury's determination.

8 Q. That's right. And just because we're here
9 having a discussion about damages, that really doesn't
10 have a bearing on those issues, does it?

11 A. I'm not sure what you mean by no bearing,
12 but --

13 Q. Well, let me break it down and ask you a few
14 specific questions. You've told us what you're here to
15 testify about; but you're not here to testify about
16 infringement, are you?

17 A. No.

18 Q. That is not your job and not your role, is
19 it?

20 A. It's not.

21 Q. And with respect to the technical aspects of
22 infringement, you don't have a position that you can
23 express from an informed position, do you? That's not
24 your job?

25 A. Correct.

1 Q. And the same thing is true with respect to
2 validity, that's not your job, right?

3 A. Correct.

4 Q. Isn't it true that with respect to a party
5 that receives a lump sum at the bargaining table, it
6 removes the risk for them. Isn't that right?

7 A. I'm sorry, can I have the question again?

8 Q. For a party that agrees to and accepts a
9 lump sum royalty and walks away from the table with the
10 money that's paid in lump sum, it removes the risk for
11 them, doesn't it?

12 A. It depends on what you mean by risk, but I
13 agree that they certainly walk away with that money
14 without any uncertainty about that.

15 Q. What I mean is in a lump sum royalty, the
16 party that receives it, receives it and gets to keep it
17 regardless of whether the party that pays it uses their
18 technology or not. Right?

19 A. That's correct.

20 Q. And they receive -- they receive and keep
21 the full amount of a lump sum even if the party who took
22 the license uses it for a while and decides not to use
23 it any longer; they get to keep the money, don't they?

24 A. That's correct.

25 Q. And in the high-tech area there is a lot of

1 risk that technologies change and that companies may
2 stop using the technology that once was -- was once
3 prominent that becomes outdated. That's a risk, isn't
4 it?

5 A. Can be, yes, sir.

6 Q. With respect to the patented features that
7 are in the '135 and the '180 patent, you are relying on
8 Professor Jones for that, aren't you, to explain what it
9 is?

10 A. Yes.

11 Q. And you have not performed any type of an
12 economic survey --

13 MR. SAYLES: Let me strike that and start
14 over.

15 Q. (By Mr. Sayles) You haven't performed a
16 survey of any kind to see who is using the accused
17 features of the '135 patent, have you?

18 A. Correct, I haven't performed a survey.

19 Q. And you haven't performed a survey to see
20 who may be using the patented features embodied in the
21 '180 patent either, have you?

22 A. Yes, sir -- I mean, I should be clear. I
23 have not.

24 Q. And isn't it true that in your field of
25 economics, that sometimes something that economists do

1 to determine the extent of a product's use is to do some
2 sort of a survey?

3 A. Yes.

4 Q. In this case you are not expressing any
5 opinion as to any lost profits, are you?

6 A. Correct.

7 Q. That's not in this case, is it?

8 A. Correct.

9 Q. You've mentioned the term "APIs." That's
10 application programming interface?

11 A. That's my understanding --

12 Q. Okay. Your understanding may be better than
13 mine, but isn't it true that an API is simply
14 programming that allows someone to put an application
15 onto that API and it will work, that's what it is?

16 A. That's my understanding, yes.

17 Q. And an API is like a plug in the wall in a
18 way, and that's it is there; but until you plug in the
19 lamp or you plug in the appliance, the plug is just
20 there. That's true of an API; isn't it?

21 A. Yes, but having the plug there can have a
22 lot of value.

23 Q. All right. But in this case in terms of who
24 is plugging in to these APIs in the manner that is
25 accused under the '135 and the '180, you don't really

1 have any economic data on that, did you?

2 A. No, there are -- there are some data.

3 Q. Well, let me ask you specifically. Do you
4 understand that one of the accused features is this
5 thing that's been talked about by Dr. Jones of DNS SRV.
6 Do you remember that?

7 A. On discovery?

8 Q. Yeah. You don't have any knowledge about
9 the extent to which that is used, do you?

10 A. I have important knowledge in that regard.
11 I do.

12 Q. I'm going to refer you to -- if I can find
13 it -- to your deposition, Page 167, Line 11 through 17.

14 MR. SAYLES: May I approach the witness,
15 Your Honor?

16 THE COURT: Yes, you may.

17 THE WITNESS: What were the pages again?

18 MR. CASSADY: Mr. Sayles, would you give
19 me a minute to grab my copy?

20 MR. SAYLES: Oh, did I get your copy?

21 MR. CASSADY: No, I didn't have a copy.

22 Q. (By Mr. Sayles) Page 167, Line 11 through
23 17.

24 Do you see the question -- I'm sorry.

25 Do you see the question that was asked of you at your

1 deposition:

2 And so based upon your research into this,
3 you're similarly unable to quantify the number of users
4 of DNS SRV auto discovery feature; is that true?

5 Your answer was, I think that is true. It's
6 difficult to quantify that. There certainly is within
7 the Office Communications and OCS, but you are asking
8 outside of that.

9 Do you see that?

10 A. You didn't read the "use" in that sentence.
11 There certainly is use within. And that's what I was
12 referring to on the next page of this deposition.

13 Q. All right. You say that you looked at some
14 use of OC/OCS; is that right? That's what -- that's
15 what you say?

16 A. Yes.

17 Q. You did. But even with that, that use that
18 you looked at was some sort of data that you deemed
19 unreliable or unusable. Is that right?

20 A. You may be thinking of different things. I
21 am referring to what was on Page 168 of my deposition,
22 which was important information; what I referred to a
23 moment ago.

24 Q. Is it correct that you don't have any
25 evidence or information about customers purchasing

1 Windows XP or Vista because of DNS SRV auto discovery,
2 one of the accused features here?

3 A. I think that -- well, I -- I'm not aware of
4 that specifically, I think that's correct.

5 Q. And you don't have any evidence based on all
6 of your investigation, of Microsoft retaining or gaining
7 any market share because of its inclusion of any of the
8 accused APIs, do you? Retaining or gaining?

9 A. Not specifically.

10 Q. You would agree that with respect to both
11 the '135 and the '180 that the accused technology, it is
12 fair to say, is not a main driver of sales?

13 A. I did say that in my report, that's true.

14 Q. You stand by that, don't you?

15 A. Yes.

16 Q. And with respect to PNRP plus grouping, we
17 have heard some discussion about Windows Meeting Space
18 earlier, but with respect to third-party developers
19 making use of the PNRP plus grouping feature, you don't
20 know of any third-party developers that have made use of
21 that in Windows XP or Windows Vista, do you?

22 A. Yes, if you are talking about by virtue of a
23 released product.

24 Q. The answer is, yes, you do not have any such
25 information in terms of a released product? And that is

1 what I'm asking you about.

2 A. That would be correct, based on that
3 clarified question, yes.

4 Q. And is it correct that you have no evidence
5 and no economic information about any customers who
6 purchased Windows XP or Windows Vista because of the
7 accused features in those products?

8 A. The question is a little difficult because
9 there is Microsoft deposition testimony addressing
10 Microsoft's belief that these features were going to
11 enhance the Windows platform and help sell additional
12 copies of Windows.

13 Q. But what I want to ask you now is, as a
14 result of your analysis that you've done in this case
15 that you told the ladies of the jury about, have you
16 been able to quantify in any sense how often or what --
17 to what degree PNRP plus grouping combination is used
18 versus the other APIs?

19 A. No.

20 Q. All right. Mr. Reed, you would agree that
21 if Microsoft does not infringe, it shouldn't have to pay
22 any damages, right?

23 A. That's my understanding of the law, there
24 would not be damages.

25 Q. And in doing your analysis, you have to

1 assume, based on the information you've told us you
2 gathered, that every copy of Windows XP and Windows
3 Vista infringe. Isn't that right?

4 A. Yes.

5 Q. And you would apply a 1 percent royalty
6 under the '135 patent to Windows Vista even though
7 Windows Vista doesn't even ship with the accused APIs in
8 it. Is that right?

9 A. That's the -- that's the phased in.

10 Q. Phased in?

11 A. That's correct, phased in.

12 Q. Mr. Reed, you weren't able to identify any
13 developers -- let me stop there and back up.

14 When we talk about developers, we're talking
15 about third-party companies that make applications that
16 they sell that they can then run on something like
17 Microsoft XP or Microsoft Vista. Is that what we're
18 talking about there?

19 A. That's what developers would do, yes.

20 Q. And attraction of developers is important
21 for a product; is that right?

22 A. Yes.

23 Q. And even though a home user might never use
24 that API, they might be able to purchase some product
25 that a third party has made that will work on their

1 computer because the API is there. Is that right?

2 A. Yes.

3 Q. You haven't identified any developers that
4 indicated that they would stop developing applications
5 for Windows XP or Windows Vista if the PeerNet APIs were
6 not available, have you?

7 A. I have not, correct.

8 Q. Let's go back to the hypothetical
9 negotiation?

10 table for just a moment. To reach a --

11 MR. SAYLES: We don't have to put it up
12 for right now. Thank you.

13 Q. (By Mr. Sayles) Conceptually, I want you to
14 think about the hypothetical negotiation in 2003. The
15 hypothetical negotiation must be between a willing
16 licensor and a willing licensee; is that right?

17 A. Yes.

18 Q. It's like the hypothetical negotiation has
19 to be between a willing buyer and a willing seller.
20 That's kind of the way you can say it too, isn't it?

21 A. That's fair, yes.

22 Q. And the parties must reach agreement,
23 right?

24 A. Yes.

25 Q. And Microsoft's preferences would have as

1 much weight in the hypothetical negotiation as SAIC's
2 preferences; isn't that right?

3 A. That's certainly something I took into
4 account.

5 Q. And at a hypothetical negotiation SAIC
6 wouldn't be able to force a running royalty onto
7 Microsoft; they would have to obtain agreement in the
8 hypothetical negotiation?

9 A. I think that's fair, yes.

10 Q. And SAIC's claim to preference that Mr.
11 Munger told you they had for this running royalty would
12 just be one of the factors among many when you sit down
13 to negotiate. Is that right?

14 A. Yes, sir.

15 Q. Isn't it true that in general that when
16 parties are at a negotiation, whether it's real or
17 hypothetical, that if they have the opportunity to
18 design-around the patented features, that less money
19 changes hands, either at a running royalty or lump sum?

20 A. Other things constant, that's true, yes.

21 Q. And when we say design-around, there's
22 nothing improper about a party that takes an approach
23 that doesn't infringe a patent to get around it. Isn't
24 that right?

25 A. Yes.

1 Q. There's nothing wrong with that? It happens
2 all the time, doesn't it?

3 A. It's certainly something that would be
4 evaluated in the hypothetical or the actual
5 negotiation.

6 Q. Right. And that's something that is
7 accepted. There's nothing wrong with it, is what I'm
8 getting at?

9 A. There's nothing wrong with it, that's
10 true.

11 Q. In this case you are aware and have looked
12 at Microsoft licenses that were produced in this case
13 that -- some 20 of them that had a lump sum royalty,
14 didn't you?

15 A. Yes.

16 Q. And in the 20 that you looked at in which
17 Microsoft paid a lump sum royalty, each license involves
18 ten or fewer patents, correct?

19 A. I believe that's true, yes.

20 Q. And here there would be two -- or actually
21 one but another one might be issued in the future. One
22 patent, correct?

23 A. But it's going to be known the second one
24 issues.

25 Q. So we'll call it two. And in the 20

1 Microsoft licenses that are lump sums, you know those
2 patents related to software, don't you?

3 A. I believe that's true.

4 Q. And you know that the time frame of those
5 licenses was between 1997 and 2007, don't you?

6 A. I don't recall the exact dates, but I think
7 that's probably fair.

8 Q. And each license is what we call a bare
9 patent license, is that right, of the 20?

10 A. I can't answer that question.

11 Q. Okay. You cannot? Well, let's tell the
12 ladies of the jury what a bare patent license is. There
13 are some licenses where parties who are discussing
14 software deliver a product as well as the rights to use
15 patented technology. Is that true?

16 A. Yes.

17 Q. And there's some agreements where the
18 parties sit down and they deliver directions and knowhow
19 and books and manuals. Is that true?

20 A. Yes. I can -- I can address the question.
21 I think they're purported to be bare. They are sometime
22 called naked patent licenses. I just can't address the
23 question because I have other information that's
24 confidential that informs me differently.

25 Q. Well, you know in this hypothetical

1 negotiation what Microsoft would be receiving would be
2 no software, correct?

3 A. Correct.

4 Q. No product?

5 A. Correct.

6 Q. No technical documentation?

7 A. Correct.

8 Q. No source code that we've heard about,
9 correct?

10 A. Correct.

11 Q. No computer programs?

12 A. Correct.

13 Q. Mr. Reed, I now want to direct your
14 attention on to the subject of valuations that were made
15 of the SAIC technology. Can we move to that subject?

16 THE COURT: Mr. Sayles, if you are about
17 to change gears, let me ask how much longer you
18 anticipate cross-examination?

19 MR. SAYLES: Your Honor, I think I have
20 probably 45 minutes.

21 THE COURT: I think now it would be a good
22 time for us to go ahead and break for the evening
23 then --

24 MR. SAYLES: All right, sir.

25 THE COURT: -- if you are about to change

1 gears.

2 So, ladies and gentlemen of the jury -- or
3 ladies of the jury, I thank you for your attention
4 today, and you have been very good jurors. I've been
5 watching you closely, and you've been paying attention
6 taking notes. And I know the Court and both parties
7 appreciate that. So enjoy your evening off. We will
8 reconvene at 9:00 o'clock in the morning. Drive
9 carefully and we'll see you then. Remember my
10 instructions.

11 COURT SECURITY OFFICER: All rise for the
12 jury.

13 (Jury out.)

14 THE COURT: All right. Please be seated.

15 All right. Mr. Sayles, you have about 45
16 more minutes of cross, and then do you anticipate a
17 brief redirect, if any?

18 MR. CASSADY: I will be as brief as I can,
19 Your Honor. I'm not sure how brief.

20 THE COURT: Fifteen minutes or so? I'm
21 not going to hold you to it.

22 MR. CAWLEY: I will hold him to it, Judge.

23 THE COURT: He's got the hook.

24 Okay. And then who will Plaintiffs have
25 next after that? Do you know yet?

1 MR. CAWLEY: I believe after that we have
2 some deposition excerpts, and then we intend to rest.

3 THE COURT: Okay. How many deposition
4 excerpts? How long?

5 MR. CAWLEY: Well, in total it is 30
6 minutes.

7 MR. CASSADY: Your Honor, I believe it's
8 about -- well, actually I don't know what Microsoft's
9 portions are. I think our portions were about 30 or 35
10 minutes, and maybe Microsoft had about 10, 15 minutes.

11 THE COURT: Okay. Very good. Well, we
12 should have the Plaintiff rested by well before noon or
13 close to noon. So then Microsoft will be ready to move
14 forward. You have got your witnesses all ready and
15 everything?

16 MR. POWERS: We do, Your Honor.

17 THE COURT: And what are -- that will
18 leave basically half a day Thursday, all day Friday.
19 Probably finish on Monday, you're thinking; or do you
20 think there is a chance on Friday?

21 MR. POWERS: I think Monday.

22 THE COURT: All right. Very good. All
23 right. We will be in recess until 9:00 o'clock in the
24 morning.

25 COURT SECURITY OFFICER: All rise.

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(Court adjourned.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/ _____
SUSAN SIMMONS, CSR
Official Court Reporter
State of Texas No.: 267
Expiration Date: 12/31/10

Date

/s/ _____
JUDITH WERLINGER, CSR
Deputy Official Court Reporter
State of Texas No.: 731
Expiration Date: 12/31/10

Date

EXHIBIT F7

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

VIRNETX * Civil Docket No.
* 6:07-CV-80
VS. * Tyler, Texas
*
* March 11, 2010
MICROSOFT CORPORATION * 9:00 A.M.

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE JUDGE LEONARD DAVIS
UNITED STATES DISTRICT JUDGE

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(Proceedings recorded by mechanical stenography,
transcript produced on CAT system.)

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* * * * *

P R O C E E D I N G S

COURT SECURITY OFFICER: All rise.
(Jury in.)

THE COURT: Please be seated.

Good morning. Everybody ready to go

1 again?

2 Very good.

3 All right. You may proceed, Mr. Sayles.

4 MR. SAYLES: May it please the Court.

5 BRETT L. REED, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

6 CROSS-EXAMINATION (CONTINUED)

7 BY MR. SAYLES:

8 Q. Good morning, Mr. Reed.

9 A. Good morning, Mr. Sayles.

10 Q. Mr. Reed, you understand that Microsoft LCS
11 and OCS is an accused product in this case, don't you?

12 A. Yes, I do.

13 Q. And you understand that that product is a
14 product that is separate from Windows XP and Windows
15 Vista, right?

16 A. Yes.

17 MR. SAYLES: Let's put up Slide 4 from
18 Mr. Reed's presentation yesterday.

19 Q. (By Mr. Sayles) All right. Mr. Reed, this is
20 your slide, and I'm pointing to the group of products,
21 Microsoft LCS/OCS, Office Communicator (OC), OC in
22 Office Bundles, and OCS Microsoft ECAL Suite Bundles.

23 Do you see those?

24 A. Yes.

25 Q. Now, you understand that not only are those

1 products separate products from Windows Vista and
2 Windows XP, these products have hundreds, if not
3 thousands, of features that are not accused of
4 infringing in this case?

5 A. Yes.

6 Q. Can you name five of the features of, say, on
7 Office Communicator that are not accused of infringing
8 in this case?

9 A. I'm not sure I'll have the right terms to all
10 of them, but one of them would be presence; another one
11 would be essentially telephony capability over what's
12 sometimes was a separate client access license or CAL.

13 Q. All right. I -- I would take it that you
14 probably did not do an economic analysis of the
15 hundreds, if not thousands, of features of this group of
16 products that are not accused of infringing, did you?

17 A. Again, not in terms of the separate aspects,
18 but I considered the functionality associated with the
19 SRV auto-discovery capability compared to all the other
20 features.

21 Q. All right. But in making an economic analysis
22 of the contribution of the accused feature of this group
23 of products, you did not analyze the economic value and
24 the contribution of the non-accused features, did you?

25 A. No, I would disagree with that. In

1 particular, I could address the Office Communicator and
2 the Microsoft Office Bundles, if you would like.

3 Q. What economic analysis did you do of the video
4 conferencing feature?

5 A. That was one of the features that -- that was
6 included in the overall product, because it includes all
7 kinds of communication features, phone features, a lot
8 of capability related to unified communication, but I
9 didn't do it individually.

10 Q. All right. Now, I won't go through all of
11 these. If I understand you correctly, if I went through
12 five, ten, a hundred or even more, you would say you did
13 not analyze them individually; is that right?

14 A. Yes. I was focusing on this feature compared
15 to the overall product.

16 Q. All right. Yesterday, you showed some slides
17 that you said that demonstrated Microsoft's focus on RTC
18 and UC.

19 Do you remember that? You talked about that
20 issue?

21 A. I talked about the issue. I'm not sure of
22 what particular slide you had in mind.

23 Q. All right. Well, let's put up Slide 21 and
24 I'll show you one of those.

25 This is one of your slides?

1 A. Yes.

2 Q. And do you see the date on that slide?

3 And I'm going to ask Chris to focus on the date on the
4 left-hand side. Right there.

5 Do you see that?

6 A. Yes.

7 Q. April 10th, 2001, correct?

8 A. Correct.

9 Q. And the accused feature was first released in
10 Windows XP in 2003; isn't that so?

11 A. The testimony I recall was a little uncertain,
12 but my understanding is it wasn't until 2003 that the
13 particular feature was -- was implemented and then
14 released into the -- the development packs and
15 ultimately in XP 2 for Windows XP.

16 Q. All right. My question is very simple, and I
17 want to see if we're there.

18 The accused feature that was added to Windows
19 XP was first released in 2003; is that right?

20 A. I -- I think, yes, it is. But certainly it
21 was not in it in 2001.

22 Q. That's right.

23 In fact, what you have shown the jury and
24 highlighted here are documents that were written when
25 these features were in the planning stages; isn't that

1 right?

2 A. Yes.

3 Q. And there were hopes for them; is that right?

4 A. Very much so, yes.

5 Q. Not experience but hopes, right?

6 A. There was also a customer feedback about
7 interest, but -- but hopes is a fair way of putting it.

8 Q. Let's look at Slide 22.

9 A document of a similar nature; is that right?

10 A. Yes.

11 Q. And can we look at the date on the left-hand
12 side, please?

13 That's a date that is prior to the release of
14 the accused feature, correct?

15 A. Yes.

16 Q. Let's look at Slide 23, the why-we-win slide.
17 And I'm going to ask Chris to focus on the date on the
18 left-hand side.

19 Another 2001 document. This is a discussion
20 of the accused feature some two years before it was
21 included in the Windows XP product, isn't it?

22 A. Putting aside the precise time in 2003, I do
23 agree it was before it, yes.

24 Q. Let's look at No. 24.

25 And I'm going to ask that the date be brought

1 up.

2 July 9th, 2001. The same situation, isn't it?

3 A. Yes.

4 Q. All right. Now, yesterday, you were asked
5 some questions about where you got information for the
6 rates you used, and you said that you got it from
7 various sources.

8 Do you remember that?

9 A. Yes.

10 Q. And I'm going to show you Slide 13 from your
11 presentation.

12 And this is where you were discussing Factor 4
13 of the Georgia-Pacific Factors that you explained to the
14 jury, correct?

15 A. Actually, I don't think this slide was shown.
16 But it is a slide I prepared.

17 Q. Well, do you recall that yesterday in your
18 testimony you discussed Plaintiff's Exhibit 653 that's
19 referenced at the foot of this particular slide?

20 A. Yes.

21 Q. And in doing so, you said that that was a
22 document that you looked at that was an example of rates
23 that you explored in your analysis; is that right?

24 A. I think I was addressing it more from a
25 standpoint of rates that were being evaluated and

1 considered by SAIC, in this case VirnetX.

2 Q. All right. And to -- in order to assess the
3 mental state of SAIC back in 2003 at the time of this
4 hypothetical negotiation would take place?

5 A. No. You can see there's different time
6 periods, and I evaluated all these different documents
7 with these different time periods.

8 Q. Well, you did pull up Page 18 of Exhibit 653
9 and talked about it to the jury, and I have your
10 testimony here where you talked about it.

11 Do you remember talking about Page 18 of
12 Exhibit 653?

13 A. Yes.

14 Q. All right. And as a matter of fact, that page
15 was in some ways supporting or contributing to your
16 opinions that you were explaining to the jury, or you
17 wouldn't have used it as an example; is that right?

18 A. Sure. This is certainly a document that I
19 considered.

20 Q. All right. Well, let's look at the cover
21 page. As you said, this is a presentation that was done
22 in 2009 by VirnetX, right?

23 A. Yes, sir.

24 Q. The Plaintiff in this case, right?

25 A. Yes.

1 Q. After this lawsuit was filed, right?

2 A. Yes.

3 Q. And it's an investor overview, and it's trying
4 to get investors to invest in VirnetX, right?

5 A. Yes. That's what I took into account.

6 Q. And, in fact, the document even discusses the
7 fact that this very litigation was pending in the
8 document; is that right?

9 A. I don't recall that on this document, but I
10 was certainly aware of that being stated in other
11 VirnetX documents.

12 Q. Let's look at Page 16 of this document that
13 you showed the jury yesterday. Right at the top, you
14 can see summary of Microsoft litigation.

15 Do you see that? Do you see it?

16 A. I do, yes.

17 Q. So it is discussed in this document?

18 A. Yes.

19 Q. So, Mr. Reed, do you think that it's
20 appropriate in supporting your opinion to rely on a
21 document that was written after the lawsuit was filed by
22 the company that is the Plaintiff, who is trying to get
23 people to invest in what they're doing?

24 A. I think it's appropriate to consider it as
25 long as you consider it with the right weight.

1 Q. All right. Mr. Reed, in this case, it's
2 already been covered to some extent that the government
3 funded the development of the '135 and '180 through the
4 company called In-Q-Tel.

5 Do you remember that?

6 A. Yes, sir.

7 Q. You are familiar with that, aren't you? You
8 are familiar with the In-Q-Tel contract, aren't you?

9 A. Yes.

10 Q. And the In-Q-Tel contract provided that the
11 government would pay 3.55 million, and among other
12 things, would receive an exclusive license to the
13 patented technology.

14 Is that true?

15 A. I -- I don't know if it was exclusive. I
16 don't recall that, but I do understand that there were
17 rights that would be received.

18 Q. All right. Well, in evaluating license and
19 contracts and agreements that are relevant to a
20 hypothetical negotiation, it's important to know whether
21 they're exclusive or non-exclusive, isn't it?

22 A. Absolutely.

23 Q. Because a non-exclusive license, like
24 Microsoft would be getting, usually commands a lower
25 price; is that right?

1 A. That is. And that's what I took into account.

2 Q. And there's been some testimony by Mr. Munger
3 that I think you may have heard that he doesn't know one
4 way or the other whether the government actually ended
5 up using this technology; is that right?

6 Did you hear that?

7 A. Yes.

8 Q. Let's look at the first page of Exhibit 3122
9 under the Paragraph 3, under contract type and payment.
10 Right there, it says total cost to buyer of 3,552,870.

11 Do you see that?

12 A. Yes.

13 Q. So that's what the government paid for
14 whatever is contained in this contract; is that right?

15 A. Besides other -- other adjustments, that's
16 certainly what's specified in this paragraph.

17 Q. Let's go to Page 20 of this document. And
18 down in Paragraph No. 2 at the bottom of the page, an
19 allocation of principal rights, the second sentence,
20 with respect to.

21 MR. SAYLES: Would you highlight that,
22 Chris?

23 Q. (By Mr. Sayles) It says here that with respect
24 to the subject invention in which the seller retains
25 title, the government shall have a non-exclusive,

1 non-transferable, irrevocable, paid-up license to
2 practice or have practiced for and on behalf of the
3 government the subject invention throughout the world
4 solely for government purposes.

5 Do you see that?

6 A. Yes.

7 Q. So whether the government did or did not use
8 the patented technology, this agreement is a lump sum,
9 paid-up in-full royalty of \$3.55 million to the
10 government; isn't that right?

11 A. I wouldn't agree with that.

12 Q. That's what it says right there, isn't it?

13 A. I think the certain facts you mentioned are
14 correct, but it's not really comparable to a
15 hypothetical license.

16 Q. With respect to the venture capitalists and
17 businesses that were approached, you heard the
18 examination of Mr. Munger in which a long list of
19 businesses looked at this technology and passed.

20 You heard that, didn't you?

21 A. Yes.

22 Q. And where a long list of venture capitalist
23 investors looked at this technology and passed, you
24 heard that, didn't you?

25 A. Yes.

1 Q. And if we look at Exhibit 3136 very quickly,
2 this is an SAIC document that goes through -- and I'm
3 not going to go through in detail -- but it's page
4 after -- you can look in the notebook up there beside
5 you.

6 MR. SAYLES: May I approach the witness
7 to speed this up, Your Honor.

8 THE COURT: Yes, you may.

9 Q. (By Mr. Sayles) Let me show you 30 -- 3166,
10 and I'll will just stay here for just a moment, and then
11 I'll go back.

12 Do you see that on the left-hand column that
13 this document lists page after page of business names,
14 potential partners, venture capitalists? Do you see
15 that?

16 A. Yes. And that the date of September 2000.

17 Q. That's a revision date.

18 Are you -- are you making some significance of
19 this date? Are you saying that back earlier, as we
20 heard yesterday from Mr. Munger, that these businesses
21 weren't contacted?

22 A. No, I'm not saying the businesses weren't
23 contacted. No.

24 Q. And venture capitalists?

25 A. I understand that they were contacted. The

1 date matters, though.

2 Q. And they passed on the technology. You heard
3 all about that yesterday?

4 A. Yes, in that early time period, that's right.

5 Q. And as a matter of fact, you know that SAIC
6 itself decided to pull the plug on the development of
7 this technology in 2001, even though they had a patent
8 application pending with patent claims that would later
9 be issued on this very technology.

10 A. Yes, I understand that.

11 Q. You mentioned yesterday that at one point SAIC
12 indicated that they valued their technology of their
13 company at some \$200 million.

14 Do you recall that? Do you recall mentioning
15 that?

16 A. Yes, but there was a valuation done for SAIC.

17 Q. They were actually convinced that the value of
18 a company that would be formed and would take over this
19 technology would be something more on the order of \$10
20 million, weren't they?

21 A. Certainly aware that there were some
22 considerations of that value range.

23 Q. So you mentioned the 200-million-dollar
24 number, but you know the documents show that SAIC was
25 convinced that the range of value was more like 10

1 million.

2 You know that, don't you?

3 A. I know that there were different ranges
4 discussed at different times.

5 Q. Let's look at Exhibit 3128, and let's start
6 with the cover.

7 This is an In-Q-Tel document in March and
8 April of 2001. Do you see that?

9 A. Yes.

10 Q. All right. Let's go to Page 12. And in the
11 very bottom paragraph, I want to highlight the portion
12 that says SAIC's going-in position was they wanted a
13 hundred to 200 million valuation for their spin-off.

14 Now let me stop right here. Spin-off means
15 that you form a new company and put the technology in
16 it. That's what that means, isn't it?

17 A. Yes.

18 Q. All right. The valuation of their spin-off.
19 And we successful convinced them that a more appropriate
20 valuation for the spin-off would be \$10 million.

21 Do you see that?

22 A. Yes.

23 Q. Let me show you -- as a matter of fact that --
24 that's an In-Q-Tel document. You've seen SAIC documents
25 where they themselves acknowledge a value in the 9- to

1 15-million-dollar range, haven't you?

2 A. Yes.

3 Q. If we look at 3198, you can tell from the
4 cover that this is a document from SAIC's Edward J.
5 Hendrick, Vice President, Business Development and
6 Technological Commercialization.

7 Do you see that?

8 A. Yes.

9 Q. And if we go to the very last page to the last
10 line in the table there, SAIC itself came up with a
11 value of this technology in 2001 of about \$15 million
12 for the whole kit and caboodle; is that right?

13 A. What was the timeframe again? I'm sorry Mr.
14 Sayles.

15 Q. February of 2001.

16 A. Yes. I'm aware of this document.

17 Q. In fact, in 2001, in terms of SAIC being
18 successful in getting anyone interested in this
19 technology was kind of like sitting in a boat for hours
20 and casting out your lure into the weeds and not getting
21 a strike, wasn't it?

22 A. The testimony is that it was difficult to get
23 investors. I acknowledge that.

24 Q. Did I describe it correctly just now in my
25 question?

1 A. I'm not sure about the analogy. How many
2 times would you cast into the weeds?

3 Q. All right. Let me show you Exhibit 3197.

4 Let's go to the top.

5 Do you recognize these names? Edward
6 Hendrick?

7 A. Yes.

8 Q. Mr. Gobien or Gobien (pronouncing)?

9 A. Yes.

10 Q. You understand these are SAIC personnel?

11 A. Yes, I do.

12 Q. Here they're discussing, in 2001, all these
13 efforts they've been making to get interest in
14 investment in their technology, and it says, and I'll
15 quote: Feels a little bit like finally getting a strike
16 after hours of sitting in a boat casting into the weeds.
17 That was SAIC's description of the situation they found
18 themselves in, isn't it?

19 A. Yes.

20 Q. And down at the bottom, they actually made a
21 call for prayer to save this, didn't they?

22 Let me take you down to the sentence before
23 Ed: For those of you who are praying people, now is the
24 time to invoke whomever you normally invoke. Ed.

25 That's Ed, Senior Vice President of SAIC; is

1 that right?

2 A. That's my understanding, yes.

3 Q. So it's fair to say that as of May 2001, after
4 the patent applications were filed, after SAIC
5 supposedly had disclosed its invention, they were down
6 to what this memo says in terms of getting any interest
7 in it; is that right?

8 A. At that time period before the patent issued,
9 yes.

10 Q. But they had a patent application, and it was
11 filed in 2000.

12 You understand that?

13 A. Yes.

14 Q. And you understand that if a patent is issued,
15 the patent holder has priority at least to the date of
16 the filing of the application.

17 You know that much, don't you?

18 A. Yes.

19 Q. You know who Mr. Kendall Larsen is today,
20 don't you?

21 A. Yes, I do.

22 Q. He is the Chief Executive Officer and Chairman
23 of the Board of VirnetX, the Plaintiff in this case; is
24 that right?

25 A. Yes, sir.

1 Q. And back in 2003, VirnetX as a company had not
2 been formed; isn't that right?

3 A. Yes.

4 Q. And Mr. Kendall Larsen was approaching SAIC
5 and was negotiating with SAIC to try to buy the
6 technology at issue; is that right?

7 A. Yes. At that time, associated with other
8 companies, but yes.

9 Q. And so Mr. Kendall Larsen, now the President
10 and CEO of VirnetX, back in the 2003 timeframe was
11 horse-trading with SAIC to try to get this technology,
12 right?

13 A. Yes.

14 Q. Right?

15 A. I'm not sure what you mean by horse-trading,
16 but yes.

17 Q. Okay. Bargaining, negotiating, exchanging,
18 I'll-take/will-you-give-type of information?

19 A. Yes, sir.

20 Q. Let's look at Exhibit 3193.

21 You've seen this document dated April 25th,
22 2004 in your preparation and analysis of this case,
23 haven't you?

24 MR. SAYLES: Let's highlight the date up
25 here. Right there.

1 Q. (By Mr. Sayles) You've seen that, haven't you?

2 A. I believe so, yes.

3 Q. Now, under your theory and your opinions, the
4 hypothetical negotiation that would take place would
5 have been when?

6 A. Right about this time period.

7 Q. Okay. And so we have Mr. Larsen discussing in
8 this document, as you know, various valuations for the
9 technology he was trying to acquire and indeed did
10 acquire; is that right?

11 A. Yes.

12 Q. If you would, would you turn to Page 2, in the
13 third line down, right there, it says Larsen's cap table
14 indicates our proposed ownership, post-funding.

15 Now, that indicates that this is a table
16 prepared by Kendall Larsen, now the CEO and Chairman of
17 the Board of the Plaintiff, correct?

18 A. Yes.

19 Q. And you have seen the table that's on Page 3
20 of this document, haven't you?

21 MR. SAYLES: And let's blow this up and
22 highlight this box right here (indicates).

23 Q. (By Mr. Sayles) Where it says post-money,
24 technology, transfer pre-investment valuation
25 10,384,614, you've seen that, haven't you?

1 A. Yes, I have.

2 Q. And when all the columns are added up,
3 accounting for who gets what in terms of the stock,
4 there is a valuation of a hundred percent of the
5 ownership at 15,384,614, right?

6 A. Yes.

7 Q. For the whole technology, correct? A company
8 that would own it in effect?

9 A. Yes.

10 Q. But you're saying right about this time, SAIC
11 would have gone to the bargaining table and wouldn't
12 have left without a running royalty that would yield
13 \$240 million.

14 Is that your testimony, sir?

15 A. That's correct. Yield that royalty over the
16 time period through 2009.

17 Q. I want to talk briefly about the protocol or
18 license as they're called that you discussed in your
19 direct examination.

20 Do you remember the MCP P license revenue and
21 licenses so forth?

22 A. Yes.

23 Q. Let's go to Exhibit 3182.

24 And you recognize this as a table that was
25 provided and developed in this litigation that

1 summarizes who the companies are, what is licensed, and
2 what the net royalties paid are. And you're familiar
3 with that, aren't you?

4 A. I am, yes.

5 Q. And for the MCPD that you referred to in your
6 analysis, the total amount paid to Microsoft under all
7 these licenses is set forth right there; is that right?
8 6.679 million, correct?

9 A. Yes, after the credits. But that's the total
10 to date.

11 Q. Well, if you're entitled to a credit, you get
12 a credit, don't you?

13 A. Yes.

14 Q. Okay. Let's turn the page to WSPP license
15 revenue. You mentioned WSPP in your analysis, didn't
16 you?

17 A. I did, yes.

18 Q. And the total amount from all of the WSPP
19 licenses that Microsoft has received as of the date of
20 this document is \$120,000; is that right?

21 A. So far, that's correct.

22 Q. Let's look at the exchange server of 2007
23 licenses.

24 You mentioned that, too, didn't you, in your
25 analysis?

1 A. Yes, I did.

2 But this is an old table. There's been an
3 update.

4 Q. Okay. The old table -- the old table says a
5 hundred thousand.

6 Do you remember what the update is?

7 A. Yes. The update has additional royalties now
8 being paid by this company, NitroDesk, but it's still
9 very early in the program. And NitroDesk has started
10 paying royalties above the prepaid royalties.

11 Q. And you mentioned the LCS revenue licenses as
12 some of -- something that Microsoft licensed, and you
13 referred to it and pointed to it in your analysis,
14 didn't you?

15 A. Yes.

16 Q. And isn't it true that the total paid under
17 all of those license, as of the date of this table, was
18 \$610,000?

19 A. Yes.

20 Q. And, in fact, you know that these licenses are
21 not bare patent licenses, but this involves the transfer
22 of instructions and manuals and know-how.

23 You know that, don't you?

24 A. Yes. That's something I took into account.

25 Q. I want to -- you had a slide that you entitled

1 key licenses.

2 Do you remember that?

3 I'll call it up here in just a moment.

4 A. I think there's two slides with that title,
5 but, yes, I do recall that.

6 Q. My system has failed me. Bear with me just a
7 second here.

8 A. Yes, sir.

9 Q. Well, one of the key licenses was the SafeNet
10 license; is that right?

11 A. Yes.

12 Q. And let me ask you -- tell us exactly, in
13 total, how much money has been paid to SAIC under the
14 SafeNet license that you consider one of the key
15 licenses?

16 A. Zero has been paid on that license.

17 Q. Zero?

18 A. Yes.

19 Q. And that's because SafeNet has the right to
20 terminate that license and did so; is that right?

21 A. That's correct.

22 Q. And the contract provided that they had the
23 right to evaluate the viability of the technology first
24 and then decide what to do, didn't they?

25 A. Yes.

1 Q. And so that rate of 20 percent that you put up
2 on your slide, really, can't we say that's meaningless
3 whether a party has a free look and they decide to pass?

4 A. I don't believe it's meaningless, no.

5 Q. Well, they could have agreed to any number,
6 and since SafeNet exercised its rights to bail out, it
7 really didn't yield any money; isn't that true?

8 A. Well, it didn't yield any money, but I don't
9 agree to that number.

10 Q. There was one other SAIC license that you
11 mentioned, and that was the SAIC VirnetX license; is
12 that right?

13 A. Yes.

14 Q. Let me see if I have this straight. First of
15 all, how much has been paid under the SAIC/VirnetX
16 license agreement?

17 A. I believe I testified yesterday that nothing
18 under the 15-percent royalty rate has been paid.

19 Q. There's a rate of 15 percent but zero has been
20 paid, right?

21 A. To date, that's correct.

22 Q. And you're calling a key agreement an
23 agreement -- let me see if I've got this straight --
24 that is between VirnetX on the one hand and SAIC who,
25 under the contracts, has a right to see -- receive some

1 of the proceeds in this litigation, right?

2 A. Yes.

3 Q. Just one more line of questions I want to ask
4 you.

5 Yesterday, you mentioned some products that
6 you looked at that were something, I think you referred
7 to, as proxy products?

8 A. Proxy products?

9 Q. Did you look at some products that Gif Munger
10 told you were in some way comparable to the patented
11 technology in order to assess the value to be placed on
12 it?

13 A. Are you referring to the information from
14 Dr. Jones relating to some security VPN products to --
15 for me to compare the pricing that would exist for the
16 security products?

17 Q. That's right.

18 Can you state the name of those three
19 products?

20 A. Well, I will have to refer to my report to
21 know them, but they are relatively small products.

22 Q. Can you name -- by name the correct name of
23 one of them?

24 A. Not without referring to my report right now.

25 Q. Have -- have you owned one, two, or three of

1 those products that you refer to?

2 A. No.

3 Q. Have you analyzed the capabilities of those
4 products beyond what Dr. Jones told you was similar to
5 the accused technology?

6 A. No.

7 Q. Do you know if there were any extra features
8 in any of those three products over and above the
9 accused features? Do you know?

10 A. I -- I expect that there is, yes. And that's
11 consistent with what I understand from Dr. Jones.

12 Q. All right. And have you done an economic
13 analysis of what the value or the contribution of those
14 features that don't relate to the patented features
15 might be in the price of those products? Have you done
16 that?

17 A. I want to be clear we're talking about --
18 we're talking about the three products that were used to
19 verify the pricing that SAIC and VirnetX had in mind for
20 security products, right?

21 Q. That's right.

22 A. No. For my purposes, that wasn't necessary.

23 MR. SAYLES: I'll pass the witness.

24 THE COURT:

25 THE COURT: All right. Cross --

1 redirect?

2 MR. CASSADY: Your Honor, may I confer
3 with my colleagues real quick?

4 THE COURT: Yes.

5 (Pause.)

6 MR. CASSADY: May it please the Court.

7 REDIRECT EXAMINATION

8 BY MR. CASSADY:

9 Q. Mr. Reed, Mr. Sayles asked you a lot of
10 questions yesterday and today about various documents
11 related to valuations and marketing perspectives. And
12 it sounded like what you wanted to say was I took them
13 into account but, and we never got to hear the but.

14 What is -- what is the but?

15 A. Well, the but is that many of these documents
16 occurred early in the time period before the '135 patent
17 issued in late 2002 and certainly before the '180 patent
18 issued in March of 2007.

19 So they really can't take into account the
20 same framework of the hypothetical negotiation, which is
21 you understand what the patents -- that the patents, in
22 fact, issued; you understand what's covered by the
23 patents; and you understand that Microsoft's products
24 would be infringing those products.

25 Q. Mr. Reed, I apologize for interrupting.

1 Is a patent that has actually issued more
2 valuable than one that is still just an application?

3 A. Yes.

4 Q. Unequivocally yes, correct?

5 A. Yes.

6 Q. Okay. Now, Mr. Reed, Mr. Sayles asked you a
7 couple of questions about the various companies that --
8 I apologize -- that SAIC talked to about the technology.

9 Do you remember that?

10 A. Yes.

11 Q. In fact, he pulled up PX -- or sorry -- I
12 think it's DX3136.

13 Do you remember this?

14 A. 3136?

15 Q. I don't believe it's in your binder, Mr. Reed.
16 It's on the screen.

17 This was a list of parties that SAIC had
18 communicated with regarding the technology, correct?

19 A. Yes.

20 Q. Now, were you here for Mr. Munger's testimony
21 on Monday morning?

22 A. I was, yes.

23 Q. Did Mr. Munger identify a party to which -- or
24 VirnetX is currently negotiating a license with?

25 A. Yes, he did.

1 Q. What party was that?

2 A. VeriSign.

3 Q. Is VeriSign listed as a party in this document
4 to which SAIC was negotiating with?

5 And I'll direct you to Page 4.

6 A. Yes, it is.

7 Q. So VeriSign -- it's the same VeriSign that
8 they are working with right now to have a license is the
9 VeriSign in this very same document that Mr. Sayles
10 showed you as a reason why the technology is not
11 valuable?

12 A. I'm not sure -- can you ask the question
13 again?

14 Q. Okay. This VeriSign here is the same VeriSign
15 that Mr. Munger is negotiating with for a license?

16 A. Absolutely, yes.

17 Q. And this is the same document that Mr. Sayles
18 tried to show you to say that the technology wasn't
19 valuable?

20 A. Yes.

21 Q. Okay. Now, Mr. Reed, there were a lot of
22 questions about your methodology in this case, and I
23 just want to make sure something is very clear.

24 What did you use or what methodology did you
25 use in this case?

1 A. I used the Georgia-Pacific Factor Analysis
2 from the case we mentioned, this famous case where
3 patent damages and reasonable royalty analysis -- the
4 Georgia-Pacific case.

5 Q. Now, Mr. Reed, is that just some case that you
6 picked out of the house?

7 A. No. It's a case from about 30-some-odd years
8 ago that in every case where I evaluate patent -- patent
9 infringement damages or reasonable royalties, I use the
10 factors from that case. And it's true also for other
11 people like me who do damage analysis or reasonable
12 royalty analysis.

13 Q. And in every case you've been in, yourself and
14 the other experts on the other side, use the
15 Georgia-Pacific Analysis?

16 A. Yes.

17 Q. In fact, the expert in this case that
18 Mr. Sayles will likely call later, he used the
19 Georgia-Pacific Analysis, didn't he?

20 A. That's correct.

21 Q. Now, Mr. Sayles also brought up a number, a
22 wide number of technology areas that you had worked in,
23 correct?

24 A. Yes.

25 Q. Okay. Now, did you ever hold yourself out as

1 a technical expert in those fields?

2 A. No. I rely on technical experts like
3 Dr. Jones in this particular matter, but they would have
4 expertise on the particular technologies like water
5 filtration or even grape-growing.

6 Q. And so what is your expertise in these cases?

7 A. I bring the expertise of economic analysis,
8 evaluating license arrangements, evaluating royalty
9 rates, evaluating how to treat the royalty base and
10 calculating the amount of reasonable royalties.

11 Q. Now, Mr. Reed, you were also asked about
12 Windows Vista, and I believe Mr. Sayles asked you a
13 couple of questions about how this doesn't infringe by
14 itself.

15 Do you remember that?

16 A. Yes, I do.

17 Q. But did you hear Dr. Jones' testimony about
18 the PeerNet APIs and whether or not they're included in
19 this box?

20 A. Yes, relating to the '180 patent.

21 Q. And what did Dr. Jones say about Vista in the
22 box with PeerNet APIs?

23 A. That it does infringe.

24 Q. Automatically just by being in the box?

25 A. Yes. With respect to the '180 patent, that's

1 exactly right.

2 Q. Okay. Now, Mr. Reed, you were also asked
3 about the use of DNS auto-discovery.

4 Do you remember that?

5 A. Yes.

6 Q. And I distinctly remember you saying I have
7 information of use.

8 Do you remember that?

9 A. Yes.

10 Q. Okay. What information of use for DNS
11 auto-discovery do you have?

12 A. Well, that was information from the deposition
13 testimony of Microsoft's Mr. Mu Han, who testified that
14 Microsoft itself, Hewlett-Packard, and Intel, those
15 companies were using the DNS SRV auto-discovery when
16 they were running the OCS programs.

17 Q. And are those small companies, sir?

18 A. No. They are very large companies that are
19 experts in this area.

20 Q. Okay. And is the jury going to hear that
21 testimony later today?

22 A. I understand that that's true, yes.

23 Q. Now, Mr. Reed, you also were asked questions
24 about the In-Q-Tel agreement.

25 Do you remember that?

1 A. Yes.

2 Q. And you said that the In-Q-Tel agreement was
3 not comparable to a Georgia-Pacific Analysis; is that
4 correct?

5 A. Correct, yes.

6 Q. What did you mean by that?

7 A. Well, it's not taking place in a negotiation
8 where the patents are issued. You understand what --
9 what the patents cover; you understand that the patents
10 are going to be infringed by the licensee. So it's very
11 different circumstances.

12 Q. And would -- a licensee who paid for a company
13 to develop the technology, to invent new ways to do
14 things, would they pay the kind of monies that Microsoft
15 would pay here for an actual true patented technology?

16 A. No. Usually, when a company is investing at
17 that early stage, they're providing funds and they're
18 given certain rights. And in that case, they got
19 non-exclusive rights relating to the government use.

20 Q. And finally, Mr. Reed, you were asked about
21 the WSPP licenses.

22 Do you remember that?

23 A. Yes, I do.

24 Q. And you said something about it's little early
25 to tell.

1 Is that what you said?

2 A. Yes.

3 Q. Okay. What did you mean by that?

4 A. What I mean by that is a lot of the companies
5 that have entered into those license agreements are
6 starting to introduce their software products, and one
7 example is the NitroDesk that I mentioned. It has a
8 product that it's beginning to pay royalties on.

9 Q. And so why would the low dollar amounts on the
10 documents that Mr. Sayles showed you about the licenses
11 not be relevant in this case?

12 A. Because it's just reflecting an early stage.
13 It would be as if you were looking at the Microsoft
14 payments in 2003 before all the continued sales led to
15 additional royalties -- additional royalty amounts.

16 Q. Okay. Thank you, Mr. Reed.

17 MR. CASSADY: No more questions, Your
18 Honor.

19 THE COURT: Thank you. Any recross?

20 MR. SAYLES: No further questions, Your
21 Honor.

22 THE COURT: Thank you. You may step
23 down.

24 All right. Who will be VirnetX's next
25 witness?

1 MR. CASSADY: Your Honor, I believe we
2 have video depositions at this point. Would you like me
3 to list the five video deponents, or are we going to go
4 one by one?

5 THE COURT: I'm sorry?

6 MR. CASSADY: Would you like me to list
7 them each one out right now, or would you like me to
8 identify them one by one as we have the video?

9 THE COURT: You have five?

10 MR. CASSADY: We have five, and I believe
11 the time is around 20 to 30 minutes.

12 THE COURT: Total.

13 MR. CASSADY: I believe.

14 THE COURT: Okay. Go ahead and identify
15 all of them then.

16 MR. CASSADY: The jury will be seeing the
17 videotape depositions of Microsoft employees Mohamed
18 Khaki, Christian Huitema, Gurdeep Singh-Pall, Henry
19 Sanders, and Mr. Mu Han.

20 THE COURT: Okay.

21 MR. CASSADY: M-U, H-A-N.

22 THE COURT: Those are all Microsoft
23 employees?

24 MR. CASSADY: I believe they're either
25 Microsoft employees or former Microsoft employees.

1 THE COURT: All right. And do you have
2 the times for your portions and the time for
3 Microsoft's?

4 MR. CASSADY: Your Honor, I will get an
5 accounting at the break, and I will bring it to you.

6 THE COURT: All right. Very well.

7 MR. CASSADY: Apologize for that.

8 THE COURT: All right. You may proceed.

9 MR. CASSADY: Mr. Moreno.

10 (Video playing.)

11 QUESTION: Can you please state your name
12 and address for the record.

13 ANSWER: My name is Mohamed Jawad Khaki.
14 My address 901 197th Avenue Southeast, Sammamish
15 Washington 98075.

16 QUESTION: What position do you hold at
17 Microsoft?

18 ANSWER: I'm a corporate vice president
19 with Microsoft.

20 QUESTION: How long have you been in that
21 position?

22 ANSWER: I believe since year 2000, March
23 or April. I can't remember exactly what time.

24 QUESTION: What was the information that
25 was before you when you made the decision to go forward

1 and develop the PeerNet APIs?

2 ANSWER: We -- we saw peer-to-peer
3 applications like Napster and other things like that
4 that were being developed.

5 QUESTION: What other applications?

6 ANSWER: For example, Napster, Newtella.

7 QUESTION: What was --

8 ANSWER: Basically, applications that
9 were sharing information from computer to computer.

10 QUESTION: Sorry. Was the other
11 application that you mentioned Newtella?

12 ANSWER: Yes.

13 QUESTION: Were there any other
14 applications that you were aware of at that time?

15 ANSWER: I can't remember at this time.

16 QUESTION: So if someone said to you,
17 Mr. Khaki, there's this thing called Napster, and it's
18 great, and there's this thing called Newtella, and it's
19 great, too, we should provide support so that other
20 developers can build more applications like this using
21 Windows, is that what was before you when you made the
22 decision?

23 ANSWER: What was before me is the
24 interest of our customers. Because if we really do not
25 have a clean support in the operating system, then there

1 would be uncoordinated development for these
2 applications, which causes many times installation
3 nightmare in our customers' minds, right?

4 So actually, by providing the support as
5 soon as we had the support developed, we helped mitigate
6 potential customer issues that could arise, if these
7 applications assume popularity.

8 QUESTION: So you developed the PeerNet
9 APIs, because you believed that it was the interest --
10 in the interest of your customers?

11 ANSWER: Yes.

12 QUESTION: Was it important from a
13 security point of view to include the PeerNet APIs in
14 the operating system?

15 ANSWER: No.

16 QUESTION: Was it a big decision to go
17 forward with the development of the PeerNet APIs?

18 ANSWER: No.

19 QUESTION: Why not?

20 ANSWER: Because it's a small investment
21 in the relative scheme of things.

22 QUESTION: Why is that?

23 ANSWER: You know, my group was about 6,
24 700 people at that time, right? So this is really not a
25 very big investment.

1 QUESTION: Is the PeerNet API a
2 subsystem?

3 ANSWER: PeerNet API is -- is, you know,
4 a subset of the communications APIs that are in Windows.

5 QUESTION: Are the PeerNet APIs a small
6 subset of the communication APIs in Windows.

7 ANSWER: Yes.

8 QUESTION: When you decided to develop
9 the PeerNet APIs, did you believe that they would be
10 adopted quickly or that it would take a long time for
11 the PeerNet APIs to be adopted?

12 ANSWER: I don't remember what I believed
13 at that time, you know. But we -- I did believe that
14 making PeerNet APIs will help our developers develop
15 applications that will deliver a good experience for our
16 customers.

17 QUESTION: Did you think that this would
18 help developers in the short-term or in the long-term?

19 ANSWER: If I did not really believe that
20 it would help develop in the short-term, there would be
21 no reason to actually make it available out-of-band.
22 I believed firmly that it would help our development in
23 the short-term. This is why we actually make it out
24 available sooner so that our customers can benefit.

25 QUESTION: So you saw that the

1 peer-to-peer application category was taking off, and
2 you decided to develop the PeerNet APIs for that
3 category; is that correct?

4 ANSWER: We decided to develop the
5 PeerNet APIs to make it easier for developers to develop
6 peer-to-peer applications for our customers.

7 QUESTION: Did you have any alternatives
8 to the PeerNet APIs at the time you decided to develop
9 them?

10 ANSWER: I believe I've already
11 answered -- I believe I've already answered this before,
12 Counsel.

13 QUESTION: You can go ahead and tell me
14 again.

15 ANSWER: You can repeat the question.
16 And I remember saying that we recognized this was an
17 important area, and we're innovators, so we innovated,
18 and we did what we did.

19 QUESTION: What alternatives did you
20 consider?

21 ANSWER: What alternatives do you think
22 we should have considered?

23 I mean, I don't know what you are trying
24 to ask me.

25 QUESTION: Did you consider any

1 alternatives to the PeerNet APIs when you considered
2 that proposal?

3 ANSWER: I personally did not consider
4 it.

5 QUESTION: So as far as you were
6 concerned, there were no alternatives to the PeerNet
7 APIs; is that correct?

8 ANSWER: As far as I was concerned, there
9 was a proposal made to develop, and I approved that
10 proposal.

11 QUESTION: That's not my question. My
12 question is: As far as you were concerned, there were
13 no alternatives to the development of the PeerNet APIs;
14 is that correct?

15 ANSWER: As far as I was concerned, there
16 was a proposal made to me of developing PeerNet APIs,
17 and I approved that proposal. And I don't recall any
18 other proposals being made to me for consideration in
19 that area.

20 QUESTION: When you were considering
21 whether to develop the PeerNet APIs, did you not take
22 into account whether Microsoft would be the first
23 company to provide a platform for peer-to-peer
24 applications?

25 ANSWER: As I explained to you before

1 that what was the consideration for us to develop
2 PeerNet APIs, perhaps I should take a couple of minutes
3 to elaborate on what was in mind, if it's still not
4 clear.

5 You know, there were applications being
6 developed. Napster, Newtella, and all these things were
7 coming out. And when you have these disparate
8 applications coming out, they create a variety of
9 support issues, potentially, for our customers, because
10 there are inconsistent ways to implement some functions,
11 not, you know, homogenized way of functionality.

12 So by having a standard set of APIs to
13 support these emerging applications in the operating
14 systems that they could all use, then it results in a
15 good experience for our customers.

16 Our customers then could count on
17 applications developed to a common infrastructure, the
18 PeerNet infrastructure, and not -- and do away with the
19 installation nightmares or version incompatibilities, et
20 cetera, et cetera.

21 So our primary consideration really was
22 to make sure that we have a good support in the
23 operating system that enables third parties to develop
24 applications written to a consistent set of interfaces
25 so they don't create headache for our customers when

1 they use Windows.

2 (End of video clip.)

3 (Video playing.)

4 QUESTION: Can you please state your full
5 name and address for the record.

6 ANSWER: My name is Christian Huitema.
7 My address is 9645 Northeast 42nd Street in Clyde Hill,
8 Washington.

9 QUESTION: What position do you hold at
10 Microsoft?

11 ANSWER: I'm a distinguished engineer at
12 Microsoft, and currently, I'm in charge of a small team
13 that investigates new products.

14 QUESTION: What team are you in charge
15 of?

16 ANSWER: It's -- the team is called
17 the -- it's a part of what we call the Communication
18 Innovation Center.

19 QUESTION: How long have you been the
20 head of this team?

21 ANSWER: I am the head of that team -- I
22 am the head of a small portion of that team for one
23 year.

24 QUESTION: Was it a design goal of
25 Grouping to prevent unauthorized people from

1 participating in group communications?

2 ANSWER: Yes, that only the authorized
3 members can participate in the group.

4 QUESTION: Why is it important that only
5 the authorized members can participate in the group?

6 ANSWER: We are providing a tool to
7 application developers. Application developers make an
8 assessment of whether this kind of provision is
9 important or not for the application.

10 QUESTION: Can you tell by looking at a
11 secure peer name that it must be resolved by PNRP rather
12 than DNS?

13 ANSWER: Oh, yes. They have a very, very
14 different syntax. A PN -- a DNS name will be something
15 like ww.microsoft.com (sic), whereas a peer name -- a
16 secure peer name, in particular, will include a sequence
17 of 32 hexadecimal digits.

18 QUESTION: Is PNRP a nonstandard domain
19 name service?

20 ANSWER: I would not use that term,
21 because to -- we generally think of a non-standard
22 domain name service as something that uses the DNS
23 technology using names that are not standard, while PNRP
24 does not use a DNS technology and does not really -- and
25 does use a different set of names than the names used in

1 the DNS.

2 QUESTION: When you receive a response
3 from a request to resolve a secure peer name by PNRP, do
4 you have a high level of assurance that the response is
5 genuine?

6 ANSWER: The answer is yes.

7 QUESTION: In the scenario where we're
8 talking about a peer who has been invited to join the
9 group, when that peer has received a response to his
10 request to resolve the secure group name, will the peer
11 be able to join the group?

12 ANSWER: The peer will be able to contact
13 a member of the group, present the credential as were
14 present in the invitation, present additional credential
15 that are needed to validate the invitation, and if the
16 verification of those credentials is accepted, if the --
17 if the receiving peer can validate those credentials,
18 then the peer will be accepted, but only then.

19 QUESTION: Once the peer has joined the
20 group, will the peer then send a request to the group
21 member that it contacted in order to join the group for
22 the current set of records for the group?

23 ANSWER: Yes. That's what the protocol
24 does. There is a synchronization protocol at that time
25 to make sure that every member of the group has an

1 up-to-date copy of the records.

2 (End of video clip.)

3 (Video playing.)

4 QUESTION: Can you please state your name
5 and address for the record.

6 ANSWER: Yes. My name is Sandeep Kishan
7 Singhal. My address is 731 16th Avenue West in
8 Kirkland, Washington.

9 QUESTION: So what is your position at
10 Microsoft?

11 ANSWER: I'm currently director of
12 program management for the Windows Networking Group.

13 QUESTION: And why were the PeerNet APIs
14 developed as part of the Advanced Networking Pack for
15 Windows XP?

16 ANSWER: We believed that, at the time,
17 providing new APIs and the functionality that underlies
18 those APIs would create new opportunities to create
19 applications that would excite users and potentially
20 drive deeper penetration and adoption and use of the
21 Windows operating system by end users.

22 QUESTION: So does that mean that
23 Microsoft created PNRP and Grouping so that developers
24 would create applications using PNRP and Grouping, which
25 would in turn cause more users to make use of Windows in

1 order to use those applications?

2 ANSWER: We believe -- the goal was to
3 ensure that -- to provide incremental functionality to
4 the Windows platform so that the developers could use
5 PNRP and Grouping in combination with other technologies
6 and functionality that are part of the Windows platform
7 in order to drive and encourage the use of Windows by --
8 by end users.

9 QUESTION: Who does Microsoft market PNRP
10 and Grouping to?

11 ANSWER: Microsoft does not market PNRP
12 and Grouping as those are not purchasable products that
13 any audience can actually buy as a -- as a standalone
14 product.

15 QUESTION: When Microsoft markets Windows
16 based on PNRP and Grouping, who does Microsoft market
17 to?

18 ANSWER: Microsoft does not market
19 Windows on the basis of PNRP and Grouping as it does
20 not -- as PNRP and Grouping are not features that end
21 users or IT pros, who are the audience for Windows
22 marketing, these are not features that those audiences
23 would use directly.

24 QUESTION: How does Microsoft evangelize
25 PNRP and Grouping?

1 ANSWER: Microsoft makes those APIs
2 available to developers in the operating system
3 through -- by delivery in the operating system, provides
4 sample code and libraries as part of its software
5 development kits, provides a public website and
6 documentation on MSDN and TechNet, and members of my
7 team have spoken at various conferences to developer
8 audiences to discuss the functionality that is provided
9 by the APIs.

10 QUESTION: Does Microsoft make any other
11 efforts to evangelize PNRP and Grouping?

12 ANSWER: Not that I'm aware of.

13 (End of video clip.)

14 (Video playing.)

15 QUESTION: Can you please state your name
16 and address for the record?

17 ANSWER: Yes. I'm Sandeep Kishan
18 Singhal. I live at 731 16th Avenue West in Kirkland,
19 Washington.

20 QUESTION: Throughout the development of
21 Grouping and PNRP, what did Microsoft do to make sure
22 that it wasn't infringing on third-party patents?

23 ANSWER: As a matter of engineering of --
24 of our engineering processes, we do not -- we do not --
25 I'm not aware of any steps that we've taken to design

1 around existing patents.

2 QUESTION: Did you do a review of
3 existing patents to see if you might be infringing on
4 third-party patents?

5 ANSWER: I'm not aware of any such
6 analysis.

7 QUESTION: Is it not part of Microsoft's
8 standard procedure to review third-party patents to make
9 sure that Microsoft doesn't infringe on third-party
10 patent rights?

11 ANSWER: I'm not aware of any procedure
12 that involves the review of third-party patents as part
13 of the engineering process.

14 QUESTION: Were there any efforts that
15 you made during the development of P2P and PNRP to see
16 to it that Microsoft didn't infringe on any third-party
17 patent rights?

18 ANSWER: Could you repeat the question,
19 please?

20 Are you referring to the PeerNet APIs in
21 this question?

22 QUESTION: Yes.

23 ANSWER: And when -- when you are
24 referring to the development, are you referring to the
25 initial development or all development?

1 QUESTION: All development.

2 ANSWER: I can only speak to the time
3 that I have spent with the PeerNet APIs since I have
4 managed the teams that have been doing the design and
5 development of the PeerNet APIs.

6 So in the time that I have managed the
7 team, I am not aware of any analysis -- any such
8 analysis related to the PeerNet APIs.

9 QUESTION: Weren't you concerned about
10 potentially infringing on third-party patents?

11 ANSWER: I'm not aware of any engineering
12 policy that -- that includes performing such research or
13 analysis, and therefore, I adhered to the engineering
14 policies that were in place.

15 QUESTION: Are you happy to let your
16 engineers develop whatever products they're instructed
17 to develop regardless of whether those products infringe
18 on the patents of others?

19 ANSWER: As I'm -- as part of the
20 engineering process, we are not -- there is no step that
21 I'm aware of that involves engineers reviewing
22 third-party patents, and therefore, I do not have any
23 knowledge as to whether or not the features that my
24 engineering team is developing are -- do or do not
25 involve third-party patents.

1 QUESTION: Isn't it part of your duty as
2 the manager of a development team to make sure that your
3 team doesn't develop software that infringes the patents
4 of others?

5 ANSWER: It is my duty as an engineering
6 manager to ensure that my team is delivering features
7 and scenarios that meet the needs of our customers and
8 partners in the ecosystem, to ensure that -- that those
9 features and scenarios are delivered with the
10 appropriate quality, and to ensure those features and --
11 and scenarios are delivered in conformance with our
12 stated schedules and release criteria.

13 QUESTION: Is it outside of your duty as
14 the manager of a development team to make sure that your
15 team does not develop software that infringes the
16 patents of others?

17 ANSWER: I'm not aware of any step in our
18 standard engineering process that includes the
19 engineering team doing reviews of third-party patents.

20 (End of video clip.)

21 (Video playing.)

22 QUESTION: Mr. Sanders, have you ever had
23 your deposition taken before?

24 ANSWER: Yes.

25 QUESTION: What is your current position?

1 ANSWER: I run the development group
2 responsible for the core Windows networking
3 technologies.

4 QUESTION: How long have you had that
5 position?

6 ANSWER: This position I'm in now,
7 approximately since October of 2006.

8 QUESTION: That's at Microsoft
9 Corporation?

10 ANSWER: Yes.

11 QUESTION: At what stage, if at all, in
12 the development process is there any consideration given
13 to whether third-party patent rights might be implicated
14 by your development of --

15 UNIDENTIFIED ATTORNEY: Objection.

16 QUESTION: -- a new product?

17 ANSWER: We don't look at patents as part
18 of our product development. We don't look at
19 third-party patents, I should say. We may file some
20 patents as a result of ours.

21 QUESTION: In that process, from start to
22 product release, is there some step in that process
23 where an assessment is done as to whether the product
24 under development may infringe a third-party's patent
25 rights? And I'm asking just for a yes or no answer.

1 ANSWER: No.

2 (End of video clip.)

3 (Video playing.)

4 QUESTION: Good morning, Mr. Han.

5 ANSWER: Good morning.

6 QUESTION: Do you understand, sir, that
7 you've been designated as a witness to testify on behalf
8 of Microsoft Corporation today?

9 ANSWER: Yes.

10 QUESTION: Okay. Sir, you have said that
11 Microsoft has found that customers are not using the RTC
12 API; is that right?

13 ANSWER: Yes. Very few customers use it.

14 QUESTION: When you say very few, how
15 many?

16 ANSWER: I remember AOL Messenger was
17 using it at one time, and then they moved away from it.

18 QUESTION: And when was that?

19 ANSWER: They used it around 2002, 2003,
20 and after that, I believe they moved away.

21 QUESTION: On what basis do you say that?

22 ANSWER: I know they switched it to a
23 competing library from Global IP Sound. It was around
24 that timeframe, but I cannot remember the exact year.

25 QUESTION: Are you aware of any other

1 customers that have ever used the RTC API?

2 ANSWER: There is one more. The name is
3 Dessault.

4 QUESTION: Are they still using the RTC
5 API?

6 ANSWER: I think they are.

7 QUESTION: Are you aware of any other --
8 any others that are using the RTC API?

9 ANSWER: No.

10 QUESTION: Why aren't many customers
11 using the RTC API, according to Microsoft?

12 ANSWER: Our main guess is that the RTC
13 API requires a back-end system, such like LCS and OCS.
14 Without these back-end systems, it's not very useful.

15 QUESTION: I just want to make sure that
16 I understand. The -- is the RTC API still being made
17 available?

18 ANSWER: Yes.

19 QUESTION: Why?

20 ANSWER: For customers like Dessault.
21 They started using it. We cannot pull the plug under
22 them.

23 QUESTION: Microsoft is still making the
24 RTC API available via download from Microsoft's website,
25 correct?

1 ANSWER: Yes.

2 QUESTION: So why is Microsoft still
3 making the RTC API available via download for other
4 customers?

5 ANSWER: We still hope that other
6 customers may pick it up and then write their
7 applications taking advantage of LCS/OCS back-ends.

8 QUESTION: Why does Microsoft have that
9 hope?

10 ANSWER: Traditionally, Microsoft is a
11 platform company. We always want to offer platforms for
12 other customers to either fill holes in our offering for
13 things we do not do or to improve the integration with
14 their existing systems.

15 QUESTION: It's Microsoft's hope that
16 customers will, in the future, write applications to
17 make use of the RTC API?

18 ANSWER: Yes, with -- if LCS and OCS get
19 more popular in enterprise space, we're hoping that more
20 developers may use it.

21 QUESTION: And how does customer use of
22 the RTC API help Microsoft?

23 ANSWER: If they use this API to have
24 better integration of their line of business
25 applications with OCS or LCS, it benefits the final

1 customer, and customer satisfaction will benefit
2 Microsoft.

3 QUESTION: How?

4 ANSWER: How? Satisfied customers will
5 always come back to ask for more.

6 QUESTION: So is it Microsoft's belief
7 that customer use of the RTC API will improve sales by
8 Microsoft?

9 ANSWER: That's a hope.

10 QUESTION: So earlier you testified about
11 the best immediate goal for the functionality in the RTC
12 API, which is now in the UCC API. Do you remember that?
13 You used the phrase best immediate goal?

14 ANSWER: Could you clarify best of media?

15 QUESTION: Best immediate goal. Do you
16 remember testifying --

17 ANSWER: Oh, best immediate goal. Yes, I
18 remember that.

19 QUESTION: So what is the long-term goal
20 at Microsoft for the functionality of the RTC API that
21 is now migrated into the UCC API?

22 ANSWER: Microsoft, as I -- as I said, is
23 a platform company. We always want to have a portfolio
24 of platforms to please our developer community.

25 Overall, that brings goodwill to us and

1 also better business for us.

2 QUESTION: How about AOL? Do you know
3 whether AOL made use of the DNS SRV capability in the
4 RTC API?

5 ANSWER: I know they don't.

6 QUESTION: Do you know when Microsoft
7 began working on using DNS SRV requests in the RTC API
8 to automatically provision clients?

9 ANSWER: The first time I can remember is
10 LCS 2003.

11 QUESTION: Can you be more specific than
12 that?

13 ANSWER: So in LCS 2003, we allowed the
14 Admins to both do manual provisioning and auto
15 provisioning of the client. And that involves using the
16 SRV record for auto provisioning.

17 QUESTION: And when did that develop and
18 begin?

19 ANSWER: That development began in around
20 2001.

21 QUESTION: Can you describe why TLS is
22 the default setting for server-to-server communications?

23 ANSWER: Because we believe the product
24 should be secure by default. That's why we chose TLS as
25 the default setting for server-to-server communication.

1 QUESTION: Why do you believe, as a
2 company, Microsoft, that the -- the communications
3 should be secure by default?

4 ANSWER: Overall, Microsoft is trying to
5 develop applications that people can securely
6 communicate with each other, because we recognize
7 security is a customer demand. That's why we want to
8 design our software to be secure by default.

9 QUESTION: Has customer demand for secure
10 communications driven Microsoft's development of
11 products making use of TLS in these OCS and LCS server
12 scenarios?

13 ANSWER: Security is actually a big
14 topic. We know customers demand security. We have done
15 a lot of work to make sure our software is secure, both
16 from authentication and encryption, and also robust from
17 attack point of view.

18 We did a lot of work to make sure we ship
19 secure product out of the gate. TLS is only one of the
20 tools we use to meet that goal.

21 QUESTION: Focusing just on the use of
22 the DNS SRV records capability, from the user's
23 perspective, okay, when Communicator or Messenger is
24 communicating with OCS or LCS servers, are TLS
25 connections transparently created in response to DNS SRV

1 requests?

2 ANSWER: From the user's perspective, all
3 the four roles I mentioned earlier, this operation is
4 transparent.

5 (End of video clip.)

6 MR. CASSADY: Your Honor, we have an odd
7 scenario. We've got six depositions that were actually
8 not videotaped. So with your permission, I'd like to
9 put Mr. Caldwell on the stand --

10 THE COURT: All right.

11 MR. CASSADY: -- to read the answers, and
12 I'll read the questions to them.

13 THE COURT: All right. Very well.

14 MR. CASSADY: May I explain to the jury
15 that process?

16 THE COURT: Yes, you may, but first, do
17 you have your times for your videos?

18 MR. CASSADY: One moment, Your Honor.
19 May I confer with my colleagues?

20 THE COURT: Yes, uh-huh.

21 (Counsel confer.)

22 MR. CASSADY: Your Honor, 22 minutes for
23 VirnetX, and 8 minutes for Microsoft.

24 THE COURT: All right. Thank you.

25 MR. CASSADY: And, Your Honor, for the

1 reading of the depositions, we'd like to wait for the
2 transcript to determine the time to split up for
3 Microsoft and VirnetX --

4 THE COURT: Okay.

5 MR. CASSADY: -- with your permission.

6 THE COURT: All right.

7 MR. CASSADY: Ladies of the Jury, this is
8 a little bit of an odd situation. Most of the time, we
9 try to videotape our depositions, but a few of the
10 depositions in this case were not videotaped.

11 So you don't know how long I've wanted to
12 do this with Mr. Caldwell, but I've got him on the
13 stand, and he's going to read the answers to the
14 questions I ask him.

15 MR. CALDWELL: It's on Microsoft
16 employees.

17 MR. CASSADY: Yes.

18 So Mr. Caldwell is various Microsoft
19 employees. From the transcript, I think you'll
20 understand.

21 (Deposition of Ryan Kim.)

22 QUESTION: Please state your name and
23 address for the record.

24 ANSWER: Ryan Kim, 1149 268th Way
25 Southeast, Sammamish, Washington, 98075.

1 QUESTION: What position do you hold at
2 Microsoft?

3 ANSWER: Software design engineer.

4 QUESTION: How long have you been in that
5 position?

6 ANSWER: In current position, I think
7 with the current team, about two years.

8 QUESTION: When you were developing
9 Windows Meeting Space, were you required to examine
10 patents of third parties to make sure that your product
11 wasn't infringing on those patents?

12 ANSWER: We were actually told
13 expressly -- excuse me.

14 We were actually expressly told not to
15 look at patents.

16 QUESTION: You were told not to look at
17 patents during the --

18 ANSWER: Development of Meeting Space.

19 QUESTION: Is that correct?

20 ANSWER: Yes.

21 QUESTION: Who told you not to look at
22 patents during the development of Meeting Space?

23 ANSWER: It's a pretty well-known
24 practice inside Microsoft for developers.

25 QUESTION: Is there a handbook or a --

1 some other document that states that developers are not
2 supposed to look at patents?

3 ANSWER: I'm sure it's written down
4 somewhere. I can't remember where that could be. I
5 remember -- I just remember being told verbally that
6 should be the case.

7 MR. CASSADY: This is the second
8 deposition.

9 (Deposition of Mu Han.)

10 QUESTION: Can you please state your name
11 and address for the record?

12 ANSWER: My name is Mu Han; first name
13 M-U; last name, H-A-N. My home address is 7204 153rd
14 Avenue Northeast, Redmond, Washington, 98052.

15 QUESTION: Do you understand that the
16 testimony you give today is on behalf of Microsoft and
17 that you speak for Microsoft?

18 ANSWER: Yes.

19 QUESTION: What was the earliest version
20 of the RTC API to use DNS service records for creating
21 TLS connection?

22 ANSWER: So first, we do not use SRV
23 records to create TLS connections. We use SRV records
24 to discover the servers.

25 The first version of RTC API, it will be

1 the API we shipped together with LCS 2003.

2 QUESTION: How is it that the use of DNS
3 server records makes customers happy?

4 ANSWER: So say if we do not use SRV
5 record at all, the client can query a record in the
6 certain format. The format we use SIP.domain.

7 If the admin configures the server in
8 this way, if the name of a server is -- for example,
9 SIP.Intel.com, the OC and OCS will just perform just as
10 well.

11 However, if admin feels like it's too
12 limiting to name their server as SIP.domain, they have
13 two choices -- three choices.

14 One choice is that they can tell the --
15 every user to say: You need to manually configure the
16 server name; for example, SIP.NorthAmerica.Intel.com.
17 Then every user needs to type in the server name in the
18 UI in order to connect.

19 Or the admin may have to push registry
20 file to every client so that the user does not have to
21 input this name, but the client will remember this name.
22 And the third option is that they can ask us to support
23 DNS record. So if we do not offer this option, they
24 have to go through some configuration on the client to
25 make this thing happen.

1 QUESTION: Does Microsoft itself use the
2 OCS products?

3 ANSWER: Yes.

4 QUESTION: When Microsoft employs OCS,
5 does Microsoft make use of the DNS service records
6 functionality?

7 ANSWER: Yes.

8 QUESTION: Does Microsoft recommend to
9 customers that they also use the DNS service record
10 functionality as Microsoft does?

11 ANSWER: It's a feature we spent time to
12 enable in the product. We definitely want people to use
13 it. Yes, I -- we would recommend it -- excuse me -- we
14 would recommend people to use it.

15 QUESTION: Did Microsoft always use the
16 OCS products with the DNS service record functionality
17 for initiating SI -- SIP connections?

18 ANSWER: We always used the DNS record to
19 discover the servers.

20 QUESTION: Did Microsoft use LCS 2005
21 with the DNS service records functionality?

22 ANSWER: Yes.

23 QUESTION: Last time when we deposed you
24 for your 30(b)(6), you said that at any given time,
25 Microsoft has about 50,000 people actively using LCS

1 clients; is that correct?

2 ANSWER: There might be more now using
3 OC.

4 QUESTION: How many more would you expect
5 there to be?

6 ANSWER: I don't know. I have to
7 double-check the latest usage report. Maybe around 80K
8 or even more.

9 QUESTION: By 80K, do you mean 80,000 or
10 more?

11 ANSWER: Yes.

12 QUESTION: Who are Microsoft's biggest
13 customers, as far as OCS products are concerned?

14 ANSWER: There are many big customers. I
15 don't know who would be the biggest.

16 QUESTION: Who are the many big customers
17 that you are referring to?

18 ANSWER: For example, HP is a big
19 customer. Intel is a big one. The U.S. Government is a
20 big one. Merrill Lynch, UBS, Shell. There are many
21 others.

22 QUESTION: Can you name some of the
23 others?

24 ANSWER: Lionbridge, Deloitte & Touche,
25 Boeing, Global Crossing, Sprint, Swisston. I don't

1 remember others, but I can think of them up.

2 QUESTION: Right. But it happens that
3 using DNS service records is the way that Microsoft
4 does -- does use to discover its service, right?

5 ANSWER: That's correct.

6 QUESTION: And do Microsoft customers
7 also use the DNS service records to discover their
8 servers?

9 ANSWER: I know some of them do --

10 QUESTION: Which ones -- I apologize.

11 ANSWER: -- but I don't know how many of
12 them will use it.

13 QUESTION: Which ones do?

14 ANSWER: I know HP uses it. I know Intel
15 does. I have not checked with any others.

16 MR. CASSADY: And just for the record,
17 we're starting the third deposition. And this --

18 MR. CALDWELL: Also Mu Han.

19 MR. CASSADY: Also Mu Han.

20 (Deposition of Mu Han.)

21 QUESTION: Let me direct your attention
22 to topic 31 of the Seventh Notice. For the record,
23 topic 31 states: Any analysis by Microsoft relating to
24 modifications to Office Communicator that have been
25 consider or implemented relating to design-arounds for

1 any of the asserted patents.

2 What analysis has Microsoft done relating
3 to modifying Office -- OCS products as design-arounds
4 for the asserted patents?

5 ANSWER: Excuse me. Are you asking about
6 No. 7?

7 QUESTION: No. 31.

8 ANSWER: Oh, 31. I'm sorry.

9 So I don't know exactly what the asserted
10 patents are, so it would not be possible for me to
11 answer this question.

12 QUESTION: So what did you do to prepare
13 on topic 31?

14 ANSWER: I just -- based on my knowledge
15 in this area specifically, because through all this
16 reading the document, I know you are focusing on SRV
17 record. I know in this space, we have not done anything
18 regarding any patents.

19 QUESTION: Did you do anything else?

20 ANSWER: So based on our knowledge at
21 that time, there are already other products using SRV
22 record, and SRV mechanism has been out there for awhile,
23 so we didn't bother.

24 MR. CASSADY: And this is the next
25 deposition of Rajesh Jhavar.

1 (Deposition of Rajesh Jhawar.)

2 QUESTION: Good morning, sir. If I could
3 have you state your name for the record, please.

4 ANSWER: Sure. Rajesh Jhawar.

5 QUESTION: Could you spell that.

6 ANSWER: R-A-J-E-S-H is the first name,
7 and the last name is J-H-A-W-A-R.

8 QUESTION: What's your current title?

9 ANSWER: It's director of finance.

10 QUESTION: What does Exhibit 22 reflect
11 relating to the ship to and ship from locations?

12 ANSWER: This would represent all the
13 licenses which were billed in the United States.
14 Different channels would be treated differently.

15 For the FPP, it would be all the units that are sold in
16 the United States.

17 For the VL, it would be all the licenses
18 that are -- all the customers that are located in the
19 United States and the portion of licenses that are
20 attributed to their employees in the United States when
21 the contract with them was set.

22 So when the contract with the VL customer
23 is signed, you identify how many of their employees are
24 based out of the United States. So it represents those
25 numbers of licenses for the VL customers.

1 For the OEM system builder and named
2 customers, it would be the number of licenses that they
3 purchased in the United States.

4 For MNA, which is where a majority of
5 other covered accounts -- I'm sorry -- which is where
6 the majority of the difference comes in, it is the
7 location of the -- of the OEM that is being billed.
8 So all the Dell licenses, the Hewlett-Packard licenses
9 would show up in the United States regardless of where
10 that license actually was used. Dell could buy an
11 authorized -- Dell could buy from an authorized
12 replicator in China, but that would still show up as a
13 license shipped out of the United States in this
14 schedule.

15 QUESTION: And the covered OEM products,
16 how are those handled with respect to Exhibit 22?

17 ANSWER: It's essentially the same. It
18 is where the OEM is billed, covered OEM. The biggest
19 difference is, they have locations all across the world,
20 and so the computer may end up landing anywhere in the
21 world.

22 You would see a much larger number in the
23 U.S. or in Japan, which is where a number of other
24 covered OEMs that -- are based or maybe China, which is
25 where another is based. You would see a tendency to see

1 more licenses showing up in the geographies where there
2 is a presence of large OEMs.

3 QUESTION: Let me have you take a note --
4 a look at the last page of Exhibit 22.

5 There's a few notes, and I want to direct
6 you to the third note that says: In schedules with U.S.
7 in the title, U.S. revenue and licenses are defined by
8 the attributes credited worldwide area in MS sales.

9 Do you see that?

10 ANSWER: I do.

11 QUESTION: What is the attribute credited
12 worldwide area in MS sales?

13 ANSWER: So the attribute credited area
14 would indicate where the revenue is credited in our MS
15 sales revenue database.

16 And as I -- excuse me -- and as I had
17 mentioned before, in the case of covered OEMs, largely,
18 and to a certain extent, named, but primarily covered,
19 what is credited for the United States is not
20 necessarily what is produced, consumed, or shipped in
21 the United States.

22 QUESTION: How would you be able to break
23 that down? Where would you look?

24 ANSWER: We -- we don't have a reasonable
25 basis for estimating breakouts of that.

1 MR. CASSADY: And this is the next
2 deposition.

3 (Deposition of Vadim Eydelman.)

4 QUESTION: Can you please state your name
5 and address for the record.

6 ANSWER: My name is Vadim Eydelman, and
7 my address is 1628 West Lake Sammamish Parkway
8 Northwest, Bellview, Washington, 98008.

9 QUESTION: Are you familiar with DNS
10 service records?

11 ANSWER: Yes, I am.

12 QUESTION: Are those -- those also called
13 DNS SRV records?

14 ANSWER: Yes, they are.

15 QUESTION: Does LCS make use of DNS SRV
16 records?

17 ANSWER: Yes.

18 QUESTION: What does it use DNS SRV
19 records for?

20 ANSWER: DNS SRV record used to discover
21 the service -- a server. Sorry.

22 QUESTION: Does LCS 2003 make use of DNS
23 SRV records?

24 ANSWER: LCS server does not make use of
25 the records; it's the client it communicates to, LCS

1 2003 server. Yeah, it was making use of server records.

2 QUESTION: Do clients connecting to LCS
3 2005 also make use of DNS SRV records?

4 ANSWER: Yes.

5 QUESTION: Do clients connecting to LCS
6 2005 SP1 make use of DNS SRV records?

7 ANSWER: Yes.

8 QUESTION: Do clients connecting to OCS
9 2007 make use of DNS SRV records?

10 ANSWER: Yes.

11 QUESTION: Do clients connecting to OCS
12 2007 R2 make use of DNS SRV records?

13 ANSWER: Yes.

14 QUESTION: Are all of the clients that
15 are connecting to the various LCS and OCS servers using
16 DNS SRV records in the same way?

17 ANSWER: Oh, all the clients that I know
18 about do. There may be -- other clients that I don't
19 know about may be using some other methods and also is
20 one of the methods may be server can be discovered.
21 There are other methods do the same.

22 QUESTION: So Windows Messenger would use
23 DNS SRV records to connect to an LCS 2003 server in the
24 way that you described?

25 ANSWER: It can use DNS SRV records, but

1 it can use other means of doing the same.

2 QUESTION: Is there any change in the way
3 that Windows Messenger would use DNS SRV records to
4 connect to an LCS 2003 server and an LCS 2005 server?

5 ANSWER: At some point in time, we
6 introduce new records. We use separate records for
7 internal connections and separate records for external
8 connections, and that would be the difference.

9 I don't remember whether we introduced
10 this new record in LCS 2005 SP1 or OCS 2007 R2. So that
11 was the change.

12 QUESTION: Does that change the -- the
13 functionality that DNS SRV records perform?

14 ANSWER: No, it does not change the major
15 function, the ability to discover the server.

16 MR. CASSADY: And this is the next
17 deposition.

18 (Deposition of Matt Rossmeissl.)

19 QUESTION: Good morning. If I could
20 first have you state your name for the record.

21 ANSWER: Matt Rossmeissl.

22 QUESTION: Any reason why you can't
23 testify fully today?

24 ANSWER: No.

25 QUESTION: Okay. And we'll get into the

1 specifics a little bit later of what is meant by accused
2 Microsoft software, but, generally, you do have
3 knowledge of production, importation, exportation, and
4 distribution channels related to some Microsoft
5 software; fair to say?

6 ANSWER: Yes, that's fair to say.

7 QUESTION: So, presumably, at some point,
8 Microsoft sales force is talking directly with a
9 customer, and they reach some sort of agreement. Is
10 that how it works?

11 ANSWER: Yes.

12 QUESTION: Then what happens? Are they
13 still -- are there still steps that are taken before
14 your organization becomes involved in the transaction?

15 ANSWER: At the time that a customer
16 decides to do the purchase, they will -- for the
17 Enterprise Agreement Program that we're speaking about,
18 there will be an agreement and order form which the
19 customer and sales team work on together, and they will
20 involve the operations team sometimes while they're in
21 the process of creating that -- before it's finalized
22 and executed by the customer.

23 And in all cases, after it has been
24 executed by the customer, and then -- then sent to the
25 regional operating center for -- for processing.

1 QUESTION: What does the regional
2 operating center do once it receives -- once it receives
3 that completed agreement? And I'm talking still about
4 the Enterprise Agreement Program.

5 ANSWER: There are many things that we
6 do. We will check the agreement for completeness, make
7 sure that it has all of the fields that we need in order
8 to enter it into the systems and record it.

9 If there has been any level of what we
10 call field empowerment, which is the flexibility that
11 the field has to make deals in order to meet the needs
12 of a customer, we ensure that those have the appropriate
13 level of authorization and sign off internally, and we
14 will then enter it into our licensing and billing system
15 to record the contract and the transaction and make the
16 software available to the customer and bill the
17 customer.

18 QUESTION: You testified that you make
19 the software available to the customer after you've
20 entered the order into the licensing and billing system.

21 How is the software made available to the
22 customer? And, again, I'm still talking with respect to
23 the Enterprise Agreement Program.

24 ANSWER: The software is made available
25 to the customer in the Enterprise Agreement Program by

1 put -- by making the software available on download
2 sites. And depending on what the customer has elected
3 with physical CD and DVD-based software, that is shipped
4 to them.

5 QUESTION: Do customers sometimes elect
6 not to get the physical CDs or DVDs and opt only to
7 download the software?

8 ANSWER: Yes. Sometimes customers in the
9 Enterprise Agreement Program elect to do that.

10 QUESTION: How many regional operating
11 centers or ROCs are there currently within your
12 organization?

13 ANSWER: The three main regional
14 operating centers in my organization are -- was the
15 question how many there are?

16 QUESTION: Yes.

17 ANSWER: There's three.

18 QUESTION: Where are they located?

19 ANSWER: In Dublin, Ireland, Nevada, and
20 Singapore. There are other entities that we call
21 regional operating centers in some other places where we
22 will do processing, but those are the -- those are the
23 three main ones.

24 QUESTION: How do you determine which of
25 the three main centers that you have just identified

1 receive the executed customer agreements?

2 ANSWER: We don't decide that. The
3 customer decides that.

4 QUESTION: So the customer places the
5 order with one of the operating centers, and then the
6 operating center takes it from there with the steps you
7 have described?

8 ANSWER: For the Enterprise Agreement
9 Program, customers will decide where they want to do the
10 purchasing activity in -- through which of the three
11 regions that I mentioned, and they will then send the
12 agreement to that regional operating center.

13 QUESTION: What about with respect to the
14 media that is ordered through the ROC in Nevada? Where
15 is that manufactured and shipped from?

16 ANSWER: For the Enterprise Agreement
17 Program, orders that are placed with the Americas
18 Operations Center in Nevada.

19 That software is manufactured in Puerto
20 Rico and fulfilled from there. It's fulfilled from
21 there to a disk -- to a separate -- a second
22 distribution and manufacturing center, which is a vendor
23 facility in the United States, and then distributed to
24 the customer.

25 QUESTION: When you say it's fulfilled in

1 Puerto Rico, what do you mean by that?

2 ANSWER: It's the -- for the enterprise
3 agreement program, orders that go through the Americas
4 Operations Center, the software itself for physical
5 product distribution, that physical product is
6 distributed on CD or DVD media, and that media is
7 replicated in Puerto Rico.

8 QUESTION: And once it's replicated in
9 Puerto Rico -- so replicated in Puerto Rico, you mean
10 it's actually physically put onto the CDs or DVDs,
11 right?

12 ANSWER: That's correct. The software
13 bits themselves are put on the CDs and DVDs in Puerto
14 Rico.

15 QUESTION: Okay. And what happens with
16 those CDs and DVDs from the Puerto Rico state?

17 ANSWER: For the Enterprise Agreement
18 Program, orders that are received through the Americas
19 Operations Center, the media is replicated in Puerto
20 Rico and then distributed to a vendor in the United
21 States that assembles what we call the licensing kits
22 themselves, puts the CDs and DVDs into boxes and
23 wrappers and things like that and then ships them to the
24 end customer.

25 QUESTION: Mr. Roscizewski, I'd like to

1 hand you what has been marked as Rossmeissl Exhibit 5.
2 This is a document that is Bates stamped MSFSTVX 585545
3 through 547. And if I could have you take a look at it
4 when you receive it.

5 MR. CALDWELL: Witness reviews exhibit.

6 ANSWER: I have received it, yes.

7 QUESTION: And underneath this title,
8 Objective of Project -- Project Columbus, the first
9 sentence states: The high-level object of Columbus is
10 to enable manufacturing of a hundred percent of
11 commercial media for the Americas region in Puerto Rico
12 by July 2006.

13 Do you see that?

14 ANSWER: I do see that, yes.

15 QUESTION: Do you believe that that
16 objective has been obtained as of this time, as of the
17 time we're sitting at February 2009?

18 ANSWER: Yes. I believe that -- that
19 today a hundred percent of the commercial media for the
20 Americas region, as it's described here in this
21 document, comes from Puerto Rico.

22 QUESTION: And what is meant by a hundred
23 percent of commercial media for the Americas region?
24 Does that mean that of the commercial media that are
25 ordered out of the AOC, the Americas Operations Center,

1 a hundred percent of that would be manufactured in
2 Puerto Rico?

3 ANSWER: For the commer -- for what we
4 call the commercial product or program offerings,
5 which -- which go through the Americas and which
6 physical media is requested by the customer, yes, a
7 hundred percent of that comes from the Puerto Rico
8 manufacturing center.

9 MR. CASSADY: That concludes our
10 depositions, Your Honor.

11 THE COURT: And you'll get me the times
12 on those?

13 MR. CASSADY: I will, Your Honor.
14 Immediately, I'll get you the time.

15 THE COURT: All right. Thank you.
16 All right. Who will be your next
17 witness?

18 MR. CAWLEY: Your Honor, at this time,
19 VirnetX rests its case in chief.

20 THE COURT: All right. Very well. Thank
21 you.

22 All right, Ladies of the Jury. I have
23 a -- I'm going to go ahead and give you your morning
24 break at this time. I'm going to give you 20 minutes.

25 So we'll be in recess until 11:10.

1 COURT SECURITY OFFICER: All rise.

2 (Recess.)

3 COURT SECURITY OFFICER: All rise.

4 (Jury in.)

5 THE COURT: Please be seated.

6 MR. CASSADY: Your Honor, before the
7 Defense calls its next witness, we would like to go
8 ahead and officially enter exhibits into the record.

9 THE COURT: All right. Uh-huh.

10 MR. CASSADY: We're going to enter the
11 exhibits from yesterday. I believe a list has already
12 been presented last night to the Defendants.

13 MR. SAYLES: Yes.

14 MR. CASSADY: We enter this as the next
15 set of exhibits.

16 THE COURT: All right. I believe that
17 will be Plaintiff's Exhibit List No. 3.

18 Be admitted.

19 MR. CASSADY: And then, Your Honor, we
20 would like to admit demonstrative exhibit -- Plaintiff's
21 Demonstrative Exhibit 15 and 16. These are two slides
22 from Mr. Reed's presentation.

23 THE COURT: All right. Any objection?

24 MR. SAYLES: Yes. The objections are the
25 same as those previously made.

1 THE COURT: Okay. Overruled.

2 MR. SAYLES: And that the Court has
3 considered.

4 THE COURT: All right. Those will be
5 admitted.

6 MR. CASSADY: Thank you, Your Honor.

7 THE COURT: Okay. Defendants have any
8 evidence they wish to offer?

9 MR. POWERS: We do, Your Honor.

10 We have a similar list for yesterday, and
11 one exhibit, I think, was not technically moved in
12 yesterday, which is DX3544, which are the excerpts from
13 the book we used with Dr. Jones.

14 THE COURT: Any objection to that
15 exhibit?

16 MR. CALDWELL: May we approach, Your
17 Honor, just for a moment?

18 THE COURT: Yes, you may.

19 (Bench conference.)

20 MR. CALDWELL: This is the book that was
21 on the screen when we approached yesterday and moved off
22 the topic of tunneling. I mean, I guess we don't really
23 necessarily object to the book coming in, but I think we
24 object to if there's going to be any sort of use of it
25 for that use of tunneling and what-not in argument or

1 anything of that nature.

2 MR. POWERS: Well, if it's in, it's in.
3 But what he testified to is that's just one of several
4 ways that the IP addresses -- one, it's totally
5 appropriate. It's not at all inconsistent with Your
6 Honor's instructions.

7 THE COURT: Okay.

8 MR. CALDWELL: Okay. The book can come
9 in.

10 THE COURT: All right.

11 (Bench conference concluded.)

12 THE COURT: All right. Is there any
13 objection to 3544?

14 MR. CALDWELL: No, Your Honor.

15 THE COURT: All right. Be admitted.

16 MR. POWERS: Thank you, Your Honor.
17 And similarly, Defendant's Illustrative Exhibits 1
18 through 7, which were those charts I used with Dr. Jones
19 as well, we would move as illustrative exhibits as well.

20 THE COURT: Any objection?

21 MR. CALDWELL: No, Your Honor, not as
22 illustrative exhibits.

23 THE COURT: All right. Be admitted.

24 MR. POWERS: We have a similar list to
25 hand up.

1 THE COURT: Defendant's Exhibit List
2 No. 3, you may tender that to the Clerk.

3 Any objection to those exhibits being
4 admitted?

5 MR. McLEROY: No, Your Honor.

6 THE COURT: All right. Be admitted.

7 All right. Who will be your first
8 witness?

9 MR. SAYLES: May it please the Court, at
10 this time, Microsoft calls Gurdeep Pall.

11 THE COURT: All right. Mr. Pall, let me
12 inquire, before we begin the testimony, did you get the
13 times for those depositions that were read in yet?

14 MR. CASSADY: Your Honor, we are
15 attempting to divvy them up. I don't think we have
16 them.

17 THE COURT: All right.

18 MR. CASSADY: I apologize. One second,
19 Your Honor.

20 Your Honor, we don't have it calculated
21 just yet. I will get it to you at the next break.

22 THE COURT: Let me have that after lunch.
23 And, Mr. Sayles, we will go till about 12:00 o'clock, so
24 whenever you get to a stopping place, somewhere close to
25 that.

1 MR. SAYLES: Yes, Your Honor.

2 May it please the Court.

3 THE COURT: Proceed.

4 GURDEEP SINGH-PALL, DEFENDANT'S WITNESS, PREVIOUSLY

5 SWORN

6 DIRECT EXAMINATION

7 BY MR. SAYLES:

8 Q. Good morning, sir.

9 A. Good morning, sir.

10 Q. Would you tell the ladies of the jury your
11 name, please?

12 A. My name is Gurdeep Singh-Pall.

13 Q. And where do you live?

14 A. I live in Medina, Washington.

15 Q. And what is your current position with
16 Microsoft?

17 A. I am Corporate Vice President at Microsoft.

18 Q. And what group do you have responsibility for
19 as Corporate Vice President?

20 A. I am responsible for Unified Communications
21 and Speech at Microsoft Group.

22 Q. Now, I know that you wouldn't just tell us
23 this about yourself, but we're in Court and it's
24 important for the jury to know about your background and
25 your responsibilities, so I want to ask you.

1 How many people are on the team that you
2 supervise?

3 A. Approximately 1200 people.

4 Q. And who is the current Chief Executive Officer
5 of Microsoft?

6 A. The current Chief -- Chief Executive Officer
7 is Mr. Steve Ballmer.

8 Q. How many people are there between you and
9 Mr. Ballmer in the reporting process at Microsoft?

10 A. Two people.

11 Q. Don't get too close. Try that again.

12 A. Two people.

13 Q. And you said that you were Corporate Vice
14 President, and we've heard that Microsoft has more than
15 80,000 employees around the world.

16 How many persons are there at the Corporate VP
17 level?

18 A. 100.

19 Q. What do you do within the Unified
20 Communications Group?

21 A. I am responsible for setting the product
22 direction, the strategy. I talk to customers, and I
23 overall manage these efforts at Microsoft.

24 Q. Would you tell us just briefly about your
25 family, please?

1 A. Yes, sir. I am married. I have two children,
2 a five-year old and an eight-year-old boy.

3 Q. And where were you born?

4 A. I was born in India.

5 Q. And where were you educated?

6 A. I did my high school and undergraduate work in
7 computer engineering in India.

8 Q. And then where did you go to college?

9 A. I finished my undergraduate degree in India,
10 and then I came to the United States to attend the
11 master's program at the University of Oregon.

12 Q. Before we get to that, what university did you
13 go to in India?

14 A. The university is called BIT or Birla
15 Institute of Technology.

16 Q. And within India, is that a well-known school?

17 A. Yes, sir. It's a well-known school in
18 engineering.

19 Q. And you told the ladies and gentlemen of the
20 jury that you came to the U.S. and went to the
21 University of Oregon.

22 When was that?

23 A. I came to the United States in August of 1987.

24 Q. And did you receive a degree from the
25 University of Oregon?

1 A. Yes, sir. I received a master's in computer
2 and information sciences in December of 1989.

3 Q. Did you have to do a master's thesis?

4 A. Yes, sir.

5 Q. And what was it on?

6 A. My master's thesis was a topic called
7 distributed real-time systems.

8 Q. And when did you join Microsoft for permanent
9 employment?

10 A. I joined Microsoft on January 8th, 1990.

11 Q. And when you joined in 1990, what was your
12 position?

13 A. I basically joined as a computer programmer.
14 The official title at the time was Software Design
15 Engineer.

16 Q. Did you end up working in the Microsoft
17 networking technologies area?

18 A. Yes, sir. I started working on networking
19 area pretty much soon after that.

20 Q. And from what period of time did you work on
21 the Microsoft networking technologies?

22 A. From just about after I joined to 2002, I
23 worked on Windows networking technologies.

24 Q. And did you develop any technologies when you
25 were working in the Windows networking area?

1 A. Yes, sir. I worked on several technologies
2 like remote access, or what sometimes people might
3 remember as dial-up networking, the ability to dial up
4 to the internet.

5 I worked on VPN technologies. I worked on
6 technologies like TCP/IP, which is the language spoken
7 on the internet, and I worked on Wi-Fi, which is
8 wireless technology being used today.

9 Q. Did you have the opportunity early in your
10 career to work on these various technologies you've
11 described?

12 A. Yes, sir. I worked on many of these
13 technologies quite early in my career.

14 Q. Again, I want to ask you about some of your
15 honors and awards, and it's necessary to do this.
16 Were you named by Information Week as one of the 15
17 innovators and influencers who will make a difference in
18 2008?

19 A. Yes, I was.

20 Q. What is Information Week?

21 A. Information Week is one of the top
22 publications in the computer industry.

23 Q. Have you authored or co-authored any papers
24 that were presented in any esteemed or important forums?

25 A. Yes, sir. Last year, I authored a paper,

1 which -- I co-authored a paper, which was published by
2 Harvard Business Review in the breakthrough ideas of
3 2009.

4 Q. And where was that presented, sir?

5 A. That paper was selected -- of the other ideas,
6 only three were selected, and this paper was presented
7 at World Economic Forum in Davos, Switzerland.

8 Q. The ladies have heard a little bit about
9 internet standards.

10 And would you remind us what the IETF is?

11 A. Sure. IETF stands for the Internet
12 Engineering Task Force, and the role of this
13 organization, which was founded by the U.S. Government
14 in the 1980s, is to make sure that all the computers on
15 the internet are speaking a common language so that they
16 can talk to each other.

17 Given that there are more than a billion
18 computers on the internet today, it is very important
19 that the language and the rules that are obeyed by all
20 the computers are standardized. And this group is
21 responsible for standardization of these languages.

22 Q. During periods in your career, have you been
23 active with the IETF?

24 A. Yes, sir. I was very active in the IETF from
25 about 1994 to about 1998, and I represented Microsoft in

1 specific areas for that.

2 Q. Have you authored or co-authored any matters
3 that have become standards of the IETF?

4 A. Yes, sir. I've got five standards in the
5 IETF, which I have co-authored or authored. I think
6 four of them are what they call informational standards
7 or de facto standards. And one of them, which is a VPN
8 standard was an industry standard.

9 Q. Was the industry standard you just mentioned
10 the first VPN protocol industry standard?

11 A. Actually, that was the second one. The first
12 one was PPTP, which was even before the industry
13 standard.

14 Q. All right. Now, we're going to get to PPTP in
15 more detail in a few minutes, but is that something that
16 you had involvement with in the development?

17 A. Yes, sir. I was one of the co-authors of that
18 standard as well.

19 Q. Microsoft has been discussed by the lawyers in
20 the case, but we need to tell the ladies of the jury in
21 the form of evidence about Microsoft.

22 When was Microsoft founded?

23 A. Microsoft was founded in 1975.

24 Q. And by whom was it founded?

25 A. It was founded by Bill Gates and Paul Allen.

1 Q. And what was the vision or reason for the
2 formation of Microsoft?

3 A. In the early '70s, Intel Corporation designed
4 a computer chip which is very small, and when Bill Gates
5 and Paul Allen saw that computer chip, they realized
6 that a whole new set of capabilities would be for
7 computers and what are going to become pervasive in our
8 society.

9 And they decided that they were going to
10 create a business on how to create software on top of
11 this computer chip to benefit everyday people.

12 Q. Based on your 20 years of experience at
13 Microsoft and your knowledge of Microsoft's history,
14 would you say it's been a successful company?

15 A. Microsoft has been an amazing American success
16 story.

17 Q. And -- and by what measure would you say that
18 it's been successful?

19 A. Today, more than a billion people around the
20 world use computers for everything from social to
21 business, entertainment. And I think Microsoft has
22 played a part in that resolution.

23 And I think by that measure, Microsoft has
24 been a very successful and impactful company.

25 Q. And what has been Microsoft's focus on its

1 customers?

2 A. I think customer focus or empowering our
3 customers, making them more powerful, allowing them to
4 do more things with their computers, allowing them to
5 make the computers easily -- to use their computers
6 easily, and allowing them to trust their computers for a
7 lot of important things they do in their lives, I think
8 has been a core company value right from the beginning,
9 and certainly when I joined Microsoft.

10 And we take customer focus very, very
11 importantly. When you give us feedback from customers
12 on things that are not working well, we work hard to
13 improve those things. And it's an ongoing cycle.

14 Q. We are here about certain security measures
15 with regard to computer software. I'd like to direct
16 your attention to the -- to the issue of security.

17 A. Yes, sir.

18 Q. Is security important at Microsoft?

19 A. Security is very, very important at Microsoft,
20 and I assume, in this context, security of the computers
21 and the software that we use every day. That is very
22 important to Microsoft.

23 Q. And could you explain to us what security
24 means in the context of computer software?

25 A. Sure.

1 Security is a very broad term. You know, in
2 the same way -- you know, we all live in homes. When we
3 think about the security of our home, we have to think
4 about many things. We have to make sure that there is a
5 latch on the windows. We have to make sure there's a
6 lock on the door. We have to make sure that the keys to
7 the lock are given to people we trust.

8 We need to make sure sometimes that there is a
9 burglar alarm in the house. Sometimes to make sure that
10 there is a smoke detector in the house.

11 In the same way, security in computers is a
12 very broad term which includes many, many important
13 pieces. It includes things like the password you type
14 in. It includes permission on who can look at what
15 information. It includes making sure that when the --
16 when the communications are happening across the
17 internet, you know, in many cases, they need to be
18 secure.

19 Security is about making sure that you don't
20 have these computer viruses which come into your
21 computer and then take out information from your
22 computer and send it to the bad guys.

23 It's about making sure sometimes that you
24 don't get spam e-mail, which sometimes all of us get.
25 So security is a very broad term.

1 Q. And in your time at Microsoft, from 1990
2 forward, has security been important in these particular
3 regards?

4 A. Yes, sir.

5 Security has been important pretty much
6 throughout, certainly in my career at Microsoft. And
7 we've always taken it very seriously.

8 And I will also say that, you know, security
9 is something which is important in the past; it's
10 important today; and it will be important tomorrow. And
11 the problem of security keeps changing, because the bad
12 guys keep evolving and becoming, you know, more and more
13 sophisticated in the bad things they do.

14 So as a result of it, when we are building
15 computer programs and software, we have to keep up with
16 the bad guys. So it's been important in the past, and I
17 think it's going to be important in the future as well.

18 Q. Can you give an example of some of your
19 personal work in the area of computer software security?

20 A. Yes, sir. When I was involved in the IETF
21 from 1994 to 1998 or so, during that time, I wrote an
22 informational RFC called Microsoft Point-to-Point
23 Encryption, which was about scrambling the information
24 when it was going across either full networks or across
25 the internet so that the bad guys couldn't get hold of

1 it.

2 Q. I'd like to now direct your attention to
3 Plaintiff's Exhibit 233, and it's in the book beside
4 you, and we're going to call it up on the screen.

5 First, let's start at the top with the title.
6 Are you familiar with this document by Bill Gates in
7 January of 2002, entitled, Trustworthy Computing?

8 A. Yes, sir. I'm familiar with this document.

9 Q. And were you aware of it at the time it was
10 released?

11 A. Yes. I read this document when Bill Gates
12 sent it out in 2002.

13 Q. Now, I would like you, if you would, to put a
14 context of how this trustworthy computing document came
15 up.

16 What was going on at the time?

17 A. In 2002, we were seeing the increase of
18 computers, lots of people starting to use computers.
19 The internet really starting to have lots more people on
20 it, and, you know, at that time, Bill Gates, you know,
21 who was already an inspiring and already demanding
22 leader, wanted to make sure that our focus on the area
23 of security was maintained.

24 And in this particular case, he wrote a
25 document which went out to all the Microsoft employees.

1 And I believe it was -- it was published outside of
2 Microsoft as well.

3 But the document really said that so far,
4 we've been talking about security of software in
5 computers. He said it is time now to elevate the
6 conversation from security to conversation about trust.
7 He says if our users are using these computers for
8 everything from banking to healthcare to communicating
9 with their children, communicating with teachers, we
10 have to have our users trust their computers so they can
11 use these things as much as they want without worrying
12 about these things.

13 And I think that was a -- that was the key
14 point of trustworthy computing.

15 Q. I want to call your attention to the first
16 sentence where it says: As I've talked with customers
17 over the last year, from individual consumers to big
18 enterprise customers, it's clear that everyone
19 recognizes that computers play an increasingly important
20 and useful role in our lives.

21 Is that what was going on in 2002?

22 A. Yes, sir. That was going on.

23 And, specifically, one of the things he was
24 referring to was, we saw a rise in computer viruses
25 where the bad guys were writing programs which would

1 come on to a computer and then extract information and
2 actually use our computer to do bad things with other
3 computers.

4 And I think that was one of the specific
5 points that Bill Gates was referring to.

6 Q. Let me bring you down to the second paragraph
7 where it begins six months ago.

8 It says right here: Six months ago, I sent a
9 call-to-action to Microsoft's 50,000 employees,
10 outlining what I believe is the highest priority for the
11 company and for our industry over the next decade.

12 Now, can you put that in context for us?

13 A. Yes. You know, this was Bill Gates reminding
14 us again how important the area of security is,
15 informing us that we have to now think about trust with
16 our customers, and -- and also saying that this is not
17 just a Microsoft problem.

18 This is a problem -- the trust and making sure
19 that we can establish trust is something which is for
20 the entire industry, the software industry, the computer
21 industry, the networking industry. Those were the
22 industries, which I think were also in the scope for
23 this -- for this document.

24 Q. Now, Mr. Pall, I'd like to shift your
25 attention to the subject of PPTP.

1 First of all, we've had a lot of letters and
2 initials here. Remind us what that stands for.

3 A. Yes. PPTP stands for point-to-point tunneling
4 protocol.

5 Q. And is that something that you worked on?

6 A. Yes. I co-authored the PPTP standard in the
7 IETF.

8 Q. Did the PPTP become a commercial product?

9 A. Yes. PPTP became a commercial product as part
10 of Windows NT 4.0, which was a version of Windows
11 software which shipped in August of 1996.

12 Q. Is a VPN -- well, just tell us, what is a VPN?

13 A. Yes. Virtual private network.

14 There have been lots of descriptions. I
15 thought I would try a description of my own.

16 Let's say, you know, we have a home on a
17 street, and down the street is a school. Now, we know
18 our home is safe and, you know, the school is safe.
19 Let's say your children -- now, the street you live on,
20 there are people who you don't know are on that street
21 coming and going whenever they want to. There are
22 people driving fast on the street.

23 What if you could create a secret passage from
24 your home to the school, which is like a tunnel, where
25 nobody could see when the children are going or coming

1 from the school, and nobody could hear what they are
2 saying.

3 That really was the idea of PPTP. How do you
4 create a secret passage across the public internet from
5 where you are to where the computers that you need to
6 use are.

7 Q. Would you tell the ladies what circumstances
8 caused you to become interested and involved in this
9 development?

10 A. Yes. One of the first assignments I worked on
11 at Microsoft was a product called remote access service.

12 Now, I thought I would give you a little bit
13 of a story around that.

14 When I joined Microsoft, I noticed a very
15 strange thing I had not seen before. I noticed that
16 regardless of what time of the day, whether it was 11:00
17 p.m., sometimes 2:00 a.m., 7:00 p.m., whatever time of
18 the day you came in, the parking lots were always full.
19 And part of the reason was that the kind of people who
20 join Microsoft really like to work all the time, and I
21 think they had no social life outside of work.

22 But another very important part was that there
23 was no technology which allowed people to work from
24 home. So if they wanted to work, the only option for
25 them was to drive into work, park their cars, go to

1 their offices, sit in front of the computers and work.

2 The very first product I worked on which was
3 released to customers in December of 1991, was a product
4 called remote access service, which allowed people from
5 their homes, using their phone lines with a modem, they
6 could connect to their work networks and work from home.
7 That was end of 1991.

8 And over the next three or four years, we saw
9 that the parking lot started to becoming empty, and a
10 lot of people were now working from home. It was the
11 same idea that led to the PPTP invention.

12 Q. Go ahead.

13 A. What we saw in 1995 or so was the type of
14 company mission was a high-speed internet connection,
15 which is now very common in our home. Many homes now
16 you can see that.

17 What we saw was that was a very fast
18 connection. We saw that is a fast connection to the
19 internet instead of a phone line. What if we allow the
20 people at home to connect across the internet to their
21 working network and come to work as if they were at
22 work.

23 And this was the fundamental idea that allowed
24 us to work on PPTP.

25 Q. Now, before we get into how it worked, let me

1 just asked you, you said it was a commercial product.
2 What was the first release date to the public of this
3 PPTP VPN?

4 A. It was in August of 1996.

5 Q. Some three and a half years before the patent
6 applications in this case?

7 A. As of the proceedings of this case, that is
8 correct, sir.

9 Q. And tell the ladies of the jury what Windows
10 NT 4.0 is, just so we can get a little context here.

11 A. Windows NT 4.0 is just a version of Windows.
12 I think you're familiar with Windows 95, Windows 98,
13 Windows XP. So Windows NT 4 was a version of Windows
14 which shipped or was commercially available to our
15 customers in August of 1996.

16 Q. And was PPTP included in any other versions of
17 Windows besides NT 4.0?

18 A. Yes. After we first shipped it in -- Windows
19 NT 4.0, it shipped as part of Windows 98, which as the
20 name suggests, was in 1998. It shipped in NT 5 Beta 1.
21 Beta is the test copy of the software. It shipped in NT
22 5 Beta 2.

23 At that point, the marketing people changed
24 the name of NT 5 to Windows 2000. It shipped in Windows
25 2000 Beta 3. And then of course, it shipped in Windows

1 2000 and products after that, like XP.

2 Q. Up to 2000, can you give the ladies a sense of
3 approximately how many copies of various versions of
4 Windows were sold that included PPTP?

5 A. Sir, I -- it's been a long time. I don't have
6 any exact numbers on that. I could tell you
7 approximately.

8 Windows NT 4.0 delivered millions of copies of
9 that software. Windows 98, which was our more popular
10 version of Windows, there were tens of millions of
11 Windows 98 software copies available for customers, but
12 I cannot be more precise than that, sir.

13 Q. Now, you have told us about working from home
14 to the office. Could PPTP be used in any other settings
15 or context?

16 A. Yes, sir. There were three ways that PPTP
17 could be used, and we considered all those three ways
18 when we designed PPTP standard.

19 The first way is that you have a computer at
20 home, and you have a high-speed connection, and you just
21 connect from that computer easily and securely to your
22 work network.

23 The second way it could be used is, if you
24 have a branch office of a company, and you have their
25 main office, those two networks in those offices could

1 be connected over a PPTP VPN as well.

2 And then the last way it could be used is that
3 if you were still using a modem to connect to your ISB,
4 like AT&T, AT&T would create a virtual private network
5 to the company that you worked for.

6 So you dial into the modem, and they would
7 automatically take all the communications, put them over
8 the VPN, and connect you to your corporate network.

9 Q. Let me ask you to take a look at Exhibit 3290
10 that's in your book, and we'll put it up on the screen
11 here.

12 Let's look at the title. First, just tell the
13 ladies of the jury what the nature of this document is.

14 A. This is a document from Microsoft which
15 describes the virtual private networking capabilities in
16 Windows NT 4.0 product.

17 Q. Now, since it references Windows NT 4.0, would
18 that take us back to 1996, in terms of what's being
19 described?

20 A. Yes, sir. This document refers to the product
21 which shipped in August of 1996.

22 Q. Now, does Microsoft carry on its website
23 informational documents such as this?

24 A. Yes. You can go back many years later, 10
25 years later, and still find these documents on the

1 microsoft.com website.

2 Q. I want you to look right down here in the
3 right-hand corner. There's a date of February 1, 2008.
4 Does that mean that it's describing technology that was
5 invented in 2008, or what is the significance of that
6 date?

7 A. I think this date probably represents when
8 this document was downloaded from the Microsoft website.
9 This is not a document which describes when this was
10 written, because NT 4, the product shipped in August of
11 1996.

12 Q. Now, I'm going to ask you to explain to the
13 ladies of the jury how the PPTP VPN worked. Would the
14 diagram on Page 5 of the document be helpful in doing
15 that?

16 A. Sure, sir.

17 Q. I'm talking about the diagram that is the
18 second one right here (indicates).

19 A. Sure. This describes one of the three ways I
20 said PPTP can be used.

21 In this diagram, I think an easy way to think
22 of it, let's say this is the Microsoft corporate hub or
23 our corporate network in Washington. And let's say
24 Microsoft has -- not let's just say -- Microsoft has a
25 big office in Dallas, and let's say that is the branch

1 office.

2 What this diagram is showing is that users
3 working in Dallas, in the Dallas office, through a
4 secure connection, can communicate with any user in
5 Redmond who's sitting on Microsoft's private network.
6 And of course, the other way around as well.

7 Now, what is, I guess, particularly
8 interesting about this particular connection is that if
9 there was a bad guy on the internet, which is
10 represented as this cloud, if there was a bad guy
11 looking at all the packets that are going back and
12 forth, when they look at -- I'm sorry. I didn't realize
13 it's actually tracing the red marks. I was touching the
14 screen. I apologize for that.

15 If the bad guy comes in and starts looking
16 at -- I wonder if there is a way to remove that?

17 Yes. So if a bad guy comes in on the
18 internet, which is the cloud, they will not be able to
19 see which person is sitting on a computer in the Dallas
20 branch office who is communicating with which user
21 sitting in Redmond. They will not be able to see that.
22 All the packets going back and forth are going to be
23 scrambled, and the IP addresses, which are belonging to
24 the user sitting in Dallas on the private network will
25 not be visible to any bad guy on the internet.

1 Q. Did the PPTP that you've just described for us
2 provide what we've been calling data security?

3 A. Yes, it did, because it scrambled all the
4 communications.

5 Q. And what is data security? Is that the
6 message?

7 A. Data security is really how the packets which
8 are going on the internet and all the information they
9 contain, how that is scrambled so that if a bad guy can
10 look at that information, they will not be able to tell
11 what is it that I'm -- what is being sent, communicated
12 across that particular connection.

13 Q. And were the IP addresses on the computers in
14 the branch office and the IP addresses at the corporate
15 hub, were they visible or hidden?

16 A. They were always hidden.

17 Q. Did PPTP, the server, put any restrictions on
18 who could access it?

19 A. Yes, sir. PPTP --

20 Q. Would you describe what you mean by that,
21 please.

22 A. I'm sorry, sir.

23 PPTP servers only allowed authenticated and
24 permitted users to connect.

25 Q. Could you tell us the significance of PPTP at

1 the time it was introduced in 1996?

2 A. PPTP was a very important invention in 1996.
3 It really allowed people to work effectively and
4 securely from home.

5 Because previously, the only thing they could
6 do was use the phone line with a modem, and these modems
7 were these things which made these operatic sounds when
8 they connected, but they were very slow.

9 And with PPTP, you could connect with the
10 speed of the high-speed internet, if you had that. And
11 so it was a very important development.

12 Q. And was PPTP designed to allow a user to only
13 use it with specific programs?

14 A. No. PPTP was designed so that wherever you
15 were, whatever program you were using on your computer,
16 you would be able to use it just as if you were sitting
17 on your computer at work. That means any program which
18 was running, which needed to connect to other computers
19 could work all the time.

20 Q. Did you file for any patents on PPTP?

21 A. No, sir. We did not file for any patent.

22 Q. Why not?

23 A. Sir, in the mid-1990s, it was a very important
24 time in the industry. The internet was just starting to
25 take off, and there was a lot of excitement in the ITF

1 on creating standards which allowed lots of users to use
2 the internet.

3 And when I was working in the ITF on
4 standards, I decided that it was more important for
5 Microsoft to contribute towards the establishment of
6 standards, that anybody in the industry could use rather
7 than patent these technologies.

8 And that approach really worked out because we
9 saw many, many companies build products which were now
10 were being used on the internet with PPTP.

11 Q. And was -- that almost answers the next
12 question. Was PPTP successful?

13 A. PPTP was very successful, both in terms of
14 users using the product and these capabilities and also
15 in terms of the number of companies that started
16 supporting the standard in '96, '97, '98 and so on.

17 Q. Was PPTP easy to use for the user that might
18 wish to do so?

19 A. PPTP, for a user who uses this product on a
20 daily basis, was a very, very easy VPN to set up.

21 Q. I'd like to call your attention now to
22 Defendant's Exhibit 3121, and let's take a look at the
23 cover of that.

24 Can you tell the ladies of the jury just what
25 the document is?

1 A. Yes, sir. This is a document called Microsoft
2 Windows NT Server, and it's what we call a White Paper,
3 which means it describes the Microsoft virtual private
4 networking capabilities.

5 And it says: Using Point-to-Point Tunneling
6 Protocol for Low-Cost, Secure, Remote Access to the
7 Internet.

8 Q. And what were these White Papers for?

9 A. They were there for our customers to read, to
10 understand these capabilities, and then start thinking
11 about how they will deploy these capabilities in their
12 networks.

13 Q. Let's turn the page and look at the copyright
14 date.

15 MR. SAYLES: It's very small print at the
16 top line. Can you pull up the top line and make it big?

17 Q. (By Mr. Sayles) Copyright 1996.

18 A. Yes, sir. It's showing that this document is
19 copyrighted in 1996, which would be -- I'm sorry --
20 which would be accurate, given that Windows NT server
21 shipped in 1996.

22 Q. All right. I want to turn to Page 3 of the
23 document. And the last sentence there, I'd like to
24 highlight that and have you read it, the last sentence
25 of the paragraph.

1 A. Yes, sir.

2 This -- basically, this sentence says that VPN
3 technology gives users an economical and
4 easy-to-implement solution for creating secure and
5 encrypted communications across the internet.

6 Q. And was that an accurate description that was
7 in this White Paper?

8 A. That -- that was a very accurate description
9 of the product.

10 Q. Let's turn to Page No. 6.

11 And when we get there, I will take you to the
12 last sentence of the middle paragraph, right here
13 (indicates).

14 Would you tell us what this says?

15 A. Yes, sir.

16 Q. Or read it.

17 A. Yes. This sentence is: All of this makes
18 Microsoft's multi-protocol VPN the easiest way for
19 businesses to securely and economically extend their
20 private networks across the internet to remote users.

21 It's basically reasserting that this VPN is
22 secure, it is easy, and can be deployed very easily.

23 Q. All right. Let's go to the next page, Page
24 No. 7. And I want to point to the providing for easy
25 implementation and that first paragraph before the first

1 bullet point.

2 A. Yes, sir.

3 This paragraph says: Providing for easy
4 implementation. Microsoft virtual private networks have
5 been designed to make their implementation easy for
6 network administrators. Benefits of using a VPN include
7 the following.

8 Q. Now, you were in the courtroom when Dr. Short
9 described for the jury in some detail the instructions
10 for creating an IP SEC tunnel.

11 Do you recall that?

12 A. Yes.

13 Q. First, is a PPTP the same thing as a IP SEC
14 tunnel that he was going through the instructions for?

15 A. No, sir, it is not.

16 Q. Is a PPTP easier to set up than what he went
17 through here in Court?

18 A. Definitely.

19 Q. And is the technology the same?

20 A. No. It's a different technology. And I'd
21 like to say one more thing on that.

22 Q. Would you explain that, please?

23 A. Yes. I think a lot of the documents which
24 were shown to you are the documents that a car mechanic
25 would use for repairing your car. Those are not the

1 documents that if you drive a car every day, you would
2 need to read if you drive a car.

3 End users who use these products are like --
4 like me, who just sits in the car and drives it and
5 takes it anywhere. I don't even change my oil myself.
6 That's why we have mechanics who do those things. And
7 those documents are really written for the mechanics,
8 not for the end users.

9 For the end users, it was really, really easy
10 and relatively easy for the mechanics as well. And any
11 VPN will need to have mechanics who set it up and make
12 it -- try and make it easy for users who drive the car.

13 Q. All right. Let's turn to Page 11 of this
14 document where it says: Making PPTP Easy to Use. And
15 let's look at that whole paragraph there.

16 It says: Microsoft's multi-protocol VPN
17 enabled by point-to-point tunneling protocol, PPTP, is
18 the easiest way for businesses to securely and
19 economically extend their private networks across the
20 internet to remote users.

21 Ease of use has been built into VPN from its
22 inception for both the server and client personal
23 computer. For network administrators faced with rolling
24 out new technologies, ease of use means rapid and
25 effective adoption.

1 Could you explain that just in short and in
2 laymen's words?

3 A. Yes, sir.

4 You know, this is really the same point, that
5 PPTP VPN was really easy to install and much, much
6 easier to use. And, you know, this is from my own
7 experience using the product, the experience of
8 customers that I met, people I've talked to who use the
9 product.

10 So it's just reinforcing the point that -- how
11 easily this VPN can be created by any user and used on a
12 daily basis, just like getting in your car and driving
13 it.

14 Q. I want to refer you to Page No. 20 of this
15 document, while we're on it, to the bullet point that is
16 entitled AutoDial.

17 MR. SAYLES: Would you block that
18 paragraph for me?

19 Q. (By Mr. Sayles) Read that.

20 A. AutoDial makes it easier and faster for remote
21 users to connect to their corporate networks.

22 Q. Okay. We have a new word here. Tell us what
23 AutoDial is.

24 A. AutoDial literally stands for automatically
25 dial. And the idea was, how you can automatically

1 connect your modem or your VPN when you start using your
2 computer.

3 Q. And did you personally have a role in
4 developing AutoDial?

5 A. Yes, sir. I came up with the idea of AutoDial
6 when, you know, discussing things with my colleagues. I
7 don't remember the exact date, but it was early 1995.
8 And of course, you know, they said, "If you think that's
9 a really nice idea, why don't you go build it and show
10 us."

11 And I built the first prototype of AutoDial.
12 And when I showed it to them, they said, great, let's
13 make it part of the product. So that's when we made it
14 part of the product.

15 Q. And did AutoDial ship with NT 4.0 in August of
16 1996?

17 A. Yes, sir. AutoDial feature shipped with
18 Windows NT 4.0 in August of 1996.

19 Q. And so this was also a technology actually
20 sold to customers?

21 A. Yes, sir. This was a technology sold to
22 customers from that point on.

23 Q. And what was the main benefit or use of
24 AutoDial?

25 A. The main benefit was that prior to AutoDial,

1 users would first have to dial their modem or make their
2 VPN connection and then start using their applications,
3 like e-mail or start the browser or other applications.

4 With AutoDial, we were able to -- for most
5 cases, we were able to make the connection into a single
6 step. The user would just have to start their browser
7 or their e-mail, and automatically, the VPN would get
8 established securely without them having to even go make
9 the connection first.

10 So two steps reduced to one step, which made
11 it even easier to use.

12 Q. Did PPTP win any awards?

13 A. Yes, sir. PPTP won an industry award.

14 Q. I'm going to show you Exhibit 3270, and do you
15 recognize this magazine?

16 A. Yes, sir. When we got the award, I remember
17 seeing the cover of this magazine in color, and I think
18 it looked a lot better back then. But, yes, the PPTP
19 was recognized with an award of PC magazine.

20 Q. Was PC magazine an important magazine in your
21 industry at the time?

22 A. It was one of the leading publications in
23 computers in the '90s.

24 Q. And let me show you the date at the top. It's
25 December the 17th. We can't see it until it's pulled

1 up. And that's when this was published, right?

2 A. Yes, sir. This award was given out by this
3 magazine on December 17, 1996.

4 THE COURT: Mr. Sayles?

5 Q. All right. And let's go --

6 THE COURT: Mr. Sayles, it's a little
7 after 12:00.

8 MR. SAYLES: Oh.

9 THE COURT: Would this be a good time to
10 stop?

11 MR. SAYLES: It would, Your Honor. I can
12 come back to this after lunch. No problem.

13 THE COURT: Very well.

14 Ladies of the Jury, we'll take our recess
15 at this time. Please remember my instructions, and we
16 will see you back here at 1:30 today. 1:30.

17 COURT SECURITY OFFICER: All rise.

18 (Jury out.)

19 (Lunch recess.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/ _____
SUSAN SIMMONS, CSR
Official Court Reporter
State of Texas No.: 267
Expiration Date: 12/31/10

Date

/s/ _____
JUDITH WERLINGER, CSR
Deputy Official Court Reporter
State of Texas No.: 731
Expiration Date: 12/31/10

Date

EXHIBIT F8

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

1			
2			
3	VIRNETX	*	Civil Docket No.
4		*	6:07-CV-80
5	VS.	*	Tyler, Texas
6		*	March 11, 2010
7		*	1:30 P.M.
8	MICROSOFT CORPORATION		

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE JUDGE LEONARD DAVIS
UNITED STATES DISTRICT JUDGE

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(Proceedings recorded by mechanical stenography,
transcript produced on CAT system.)

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* * * * *

P R O C E E D I N G S

COURT SECURITY OFFICER: All rise.

(Jury in.)

THE COURT: Please be seated.

MR. CASSADY: Your Honor, I have those

1 times for you.

2 THE COURT: All right. Very well.

3 MR. CASSADY: The read depositions were
4 22 minutes for VirnetX.

5 THE COURT: Okay.

6 MR. CASSADY: And three minutes for
7 Microsoft.

8 THE COURT: Great. Thank you.

9 All right. Mr. Sayles, you may proceed.

10 GURDEEP SINGH-PALL, DEFENDANT'S WITNESS, PREVIOUSLY

11 SWORN

12 DIRECT EXAMINATION (CONTINUED)

13 BY MR. SAYLES:

14 Q. Mr. Pall, just before we took our lunch break,
15 we were about to talk about Exhibit 3270, which is the
16 award in PC Magazine. Let's take a look at that.

17 First of all, let's go to Page 23. And at the
18 top here is: Winner, point-to-point tunneling protocol.
19 Is that what you've been describing to the jury, the
20 invention that we've been through, to some extent?

21 A. Yes, sir.

22 Q. Right here, I see a couple of names. Who are
23 these people that are named here?

24 A. Bill Verthein, who's the first name, was one
25 of the co-inventors with me for this protocol. Tom

1 Stoner and Tim Mortsof worked for U.S. Robotics,
2 actually at that time, Bill Verthein, Tom, and Tim
3 worked for U.S. Robotics.

4 Q. I don't see your name on there. Could you
5 explain that for us, please?

6 A. Yes, sir.

7 When the magazine told us that we were going
8 to get this award, they asked for the names of people at
9 Microsoft who had worked on these technologies, and
10 because there were several of us, we decided not to take
11 any one name, but instead call it the PPTP Development
12 Team, which is the team I managed who developed this
13 technology.

14 Q. All right. Now, let's take a look at what the
15 award says, starting in the first column with the line
16 that begins the point-to-point tunneling protocol.

17 A. Yes, sir.

18 It says the point-to-point tunneling protocol,
19 PPTP, jointly developed by Microsoft and U.S. Robotics,
20 is a new protocol specification that enables secure
21 remote access to corporate networks across the public
22 internet.

23 Q. In one sentence, is this a pretty good
24 description?

25 A. It's a pretty good description. I would add

1 easy to it.

2 Q. Let's go down this same column to the sentence
3 beginning with in effect.

4 A. Yes.

5 It says: In effect, PPTP makes the internet a
6 part of your intranet, and with excellent security.

7 Q. All right. And then let's go across to the
8 third column towards the bottom, right before the
9 acknowledgement to Microsoft, beginning with using PPTP.

10 A. Using PPTP, network administrators can extend
11 a virtual private network from their Windows NT server
12 throughout the internet while locking out unauthorized
13 users.

14 Q. Is this a way of saying that there's VPN
15 security?

16 A. Yes, sir.

17 Q. Now, if you would, I -- I want to bring the
18 page out. I notice there are a couple of finalists
19 here, and one of them is Windows Microsoft NT 4.0. It's
20 right there.

21 A. That's a funny story, sir.

22 Q. Could you tell the ladies of the jury what
23 that is and how it came about?

24 A. When PC Magazine was looking at all the
25 products and saying which products deserved the award,

1 they actually gave the award to PPTP. The product that
2 actually included PPTP was the finalist, and it did not
3 get the award. So it's kind of like the supporting
4 actor wins the Best Actor Award, what happened in this
5 case.

6 I certainly, you know, had some fun with
7 people on my team, because I worked inside the Windows
8 NT Development Team at the time.

9 Q. So you were on both teams?

10 A. I was on both teams, yes.

11 Q. And here in the runner-up portion, there's a
12 sentence that begins NT Server 4.0.

13 A. Yes. And it starts off by saying: Important
14 new enhancements, such as point-to-point tunneling
15 protocol.

16 Q. All right. Now that we have talked about PPTP
17 and how it worked, I want to ask you about one other
18 subject, and then after that, we're going to show the
19 ladies of the jury how it all works, all right?

20 A. Yes, sir.

21 Q. But first, let me ask you about L2TP, another
22 set of letters.

23 Could you tell us what that is?

24 A. Yes, sir.

25 When people working on PPTP most of 1995, we

1 got the work done and we presented it to the IETF early,
2 either March or April of 1996. And we presented it to
3 the IETF and invited everybody to participate in the
4 formalization of that standard.

5 And at that time, one of Microsoft's
6 competitors also was working on a VPN protocol called
7 L2F or Layer Two Framing. So the area directors for the
8 IETF told me and the person from Cisco to say the only
9 way we're going to standardize either one of your
10 protocols is if you work together on a combined
11 standard.

12 And we took PPTP and L2F and we started
13 working on a new VPN standard called L2TP. You can
14 almost add those two names together to get L2TP, which
15 stands for Layer Two Tunneling Protocol.

16 Q. And this was a VPN, also?

17 A. Yes, sir.

18 Q. Was it adopted as a standard?

19 A. That was adopted as a standard in the IETF and
20 is broadly used in the industry.

21 Q. I want to show you Exhibit 3066, if I could.
22 And this is discussing -- the title is: Securing L2TP
23 using IP SEC.

24 Do you see that?

25 A. Yes, sir.

1 Q. Now, the important part I want to refer you to
2 is on Page 21.

3 Would you turn to Page 21 and reference --
4 Paragraph 6 references Footnote 1.

5 A. Yes, sir.

6 Q. Tell us what we've got here.

7 A. What you see is the first reference -- in this
8 internet standard document is a reference to the Layer
9 Two Tunneling Protocol, L2TP, RFC 2661, which is the
10 internet standard for L2TP. And it shows that this
11 document was written and published in August of 1999.

12 And the G. Pall you see there is Gurdeep Pall,
13 myself.

14 Q. Okay. Now, have you prepared a demonstration
15 to show the ladies of the jury how the PPTP would be
16 implemented using AutoDial?

17 A. Yes, sir. I have prepared a demonstration to
18 show, as I was saying earlier, driving the car using the
19 VPN. So I'm prepared to show that, sir.

20 MR. SAYLES: May I ask Mr. Pall to step
21 down, Your Honor, and explain what the setup is that's
22 going to be the demonstration?

23 THE COURT: Yes, you may.

24 Q. (By Mr. Sayles) Mr. Pall, would you come
25 around, and the first thing I'm going to ask you to do

1 is describe what we have set up here.

2 A. Yes. In order to demonstrate this for you
3 today, we have created a VPN network right inside the
4 courthouse.

5 What we have here are these three computers,
6 which would be like the computers you would have in your
7 workplace. And this is a separate network, what would
8 be your work network. And this network is connected to
9 the internet and is connected through this router.

10 What we have here across the room is a --
11 pretty much the internet. So the cloud you saw, it
12 lives somewhere here on this wire.

13 Q. Is this a simulation of it to demonstrate?

14 A. Yes, sir. This is a simulation, and this is a
15 very common practice that we do when we meet customers,
16 and we show them how they can use our products. So this
17 is a very, very common way that is used for selling
18 Microsoft products.

19 We have a customer in the room, we set this
20 up, and we let them experience the product themselves so
21 they can decide if want to buy it. So this
22 configuration really simulates when actually we deploy
23 the product on the internet.

24 So this black line is the internet. And let's
25 say that the internet comes to the connection in your

1 house, and this computer represents the computer in your
2 house. And you're sitting on a desk at home, and you
3 say I want to connect to my workplace, can I do it over
4 a VPN?

5 So what I'm going to show you is this
6 computer, which is running NT 4.0. It's particularly
7 special to me, because I have a lot of nostalgia around
8 1996 when we built this technology. To be frank with
9 you, we had to go find special computers which could run
10 this software, and we found them. We set it up. This
11 software is not even supported by Microsoft, but we
12 thought it was important for you to see in August of
13 1996 how easy it was for you to set up a VPN connection
14 and use it from the home.

15 So what I'm going to do here -- and I think we
16 are going to project it on the screen -- if you don't
17 mind, I'm going to sit here with my back to you, and I'm
18 going to show you the system working.

19 MR. SAYLES: Your Honor, may I step from
20 behind the podium for a moment?

21 THE COURT: Yes, you may.

22 A. The first thing I'd like to do -- Dr. Short,
23 in his demonstration, showed you that using this ping
24 command, you can see if the VPN is actually working or
25 not. So first, I will show you a case where the VPN is

1 not working to prove to you that I do not have a
2 connection, a virtual connection, from this computer to
3 my work network.

4 Q. Tell us what you just typed in before you hit
5 enter.

6 A. I just tried to ping a computer on my work
7 network. And ping basically sends a message, and you
8 get the echo back from that computer that are reachable.

9 And what you're seeing here is the computer
10 telling me destination host unreachable. It means that
11 the computer that you are trying to contact is actually
12 not reachable right now.

13 Now, I'm going to show you how easy it is for
14 you to make a VPN connection. Again, I'm not telling
15 you that I'm a car mechanic and for you to go fix the
16 car. I'm showing you every day, if you are sitting at
17 home, what you would need to do to make a VPN connection
18 to your workplace.

19 I'm going to click on this little icon, and
20 I'm going to say dial, and that is it. That is all you
21 had to do to make the VPN connection. It goes by really
22 fast. And I will say that on the internet, it may take
23 two or three or four seconds more, but still, it's very
24 fast.

25 In fact, when we started working on it, it

1 happened so fast that we put in the beep sound to tell
2 you that you are now connected. That's the beep sound
3 you just heard.

4 Now that the VPN is set up, I can try to ping
5 the server at my work network. And you will see this
6 time around, it's not destination host unreachable. You
7 are actually getting a reply back from that computer,
8 which proves to you that the connection to your
9 workplace is now established.

10 So that's it. You saw me click -- right click
11 on that icon and select, and that's it. The VPN
12 connection was established.

13 Now that I'm connected, I can also connect to
14 the worldwide web or the server, which is on my work
15 network, and I can see that website.

16 So all this has happened without auto-dialing
17 it. I will show you AutoDial and how that can make it
18 even easier. But you notice I had to do two things. I
19 had to first connect, and then I started the browser or
20 I started the window and typed in ping.

21 So this is basically how easy it is to make a
22 VPN connection with PPTP back in August of 1996. This
23 is a secure connection. Nobody can just connect to that
24 server.

25 And here I disconnected the VPN. Let me try

1 it one more time to show you how easy it is.

2 I'm connected. And it shows you who you're
3 connected to and the line speed -- the speed at which
4 you are connected.

5 Now, I'm going to show you how AutoDial works.
6 Just to prove to you again that I don't have a
7 connection now, because I disconnected it, you can see I
8 cannot see the network again.

9 With AutoDial, all I have to do is simply
10 connect. I'm on the browser, and I'm trying to see a
11 website which is at work.

12 I was not connected. I connected to the
13 website, and in the process of connecting to the
14 website, under the covers, the computer, using AutoDial,
15 made a VPN connection to my workplace and allowed me to
16 see the web page at my workplace.

17 So AutoDial took those two steps and made them
18 into one step.

19 To me, either one of those two ways is very,
20 very easy. It's an extremely simple way, and this is
21 about driving the car. This is what a user would do
22 every day to connect to their workplace. This is not
23 about an oil change. This is not about repairing the
24 car.

25 It is about design for users who will use it

1 without knowing anything about the technology, but they
2 can do it easily and safely. That really is my
3 demonstration.

4 Q. All right. Would you please retake the
5 witness stand?

6 A. (Complies.)

7 Q. Mr. Pall, I now want to change the subject for
8 a few minutes. Now that we've talked about TTPP (sic),
9 and we've seen how it works, I want to shift your
10 attention to real-time communications and unified
11 communications.

12 Can you tell us what that is, please?

13 A. Real-time communications and unified
14 communications, they are both -- they are two terms
15 which refer to the same thing.

16 It's the ability -- it's a technology which
17 allows you to make phone calls over the internet to
18 connect with video conferencing with people who are in
19 other places. You can do chat or instant messaging.

20 These set of technologies which allow you to
21 communicate in what we call real-time, which means
22 instant -- instantaneously with another person across
23 the network is what we call real-time communications, or
24 more recently, unified communications.

25 Q. Now, I'm going to ask you some questions about

1 API-associated real-time communications, but before we
2 do that, tell us what an API is, please.

3 A. Yes.

4 API stands for application programming
5 interface, and, you know, one way to think about APIs,
6 it's kind of like, you know, if your software was like a
7 tool shed. I have a friend who is really into -- he's
8 got a workshop and he likes to work on it.

9 He's built a really big tool shed, and inside
10 his tool shed, he's got lots and lots and lots of tools.
11 He's got tools he uses all the time like a hammer, and
12 he's got tools which are tucked away in a drawer, which
13 I don't even think he knows about.

14 So an operating system, similarly, has a lot
15 of tools in it, thousands and thousands of tools. And
16 an API is a very simple way to think of -- you know,
17 tool is a very simple way to think about what an API
18 would be. Tools help you build things. APIs help you
19 build applications.

20 Q. Are there literally thousands of APIs in
21 Windows XP and Windows Vista?

22 A. There are thousands and thousands of APIs.

23 Q. Now, with respect to real-time communications,
24 did Microsoft create any APIs associated with that?

25 A. Yes. We created what we call RTC APIs with

1 that capability.

2 Q. And what are they used for?

3 A. They are really used by programs who can use
4 these tools to build applications like chat, phone calls
5 over the internet, et cetera.

6 Q. And when were these first shipped?

7 A. The first RTC APIs shipped in Windows XP in
8 August of 2001.

9 Q. To your knowledge, did any third-party
10 developers create any applications that used the RTC
11 APIs?

12 A. Yes. There were a few that I can recall now.
13 I know there weren't many. There were a few. I
14 remember Dassault the sole systems which was making
15 design software. I remember -- I guess AOL used it. I
16 had forgotten about it. I learned -- it reminded me
17 today during the Court.

18 And the third was Reuter's also built an
19 application on RTC APIs.

20 Q. Were RTC APIs that were included in Windows
21 Vista?

22 A. No. RTC APIs were not included in Windows
23 Vista.

24 Q. Why not?

25 A. What we found was that people who were --

1 sorry -- developers who were writing programs on top of
2 RTC APIs were really using them with Live Communications
3 Server or Office Communications Server. So we realized
4 there is no value in having RTC APIs in Windows XP,
5 frankly, anymore.

6 So when the next version of Windows Vista --
7 Windows, which was Windows Vista, was released, we took
8 those APIs out of Windows, and we made them part of
9 Office Communications Server and Live Communications
10 Server.

11 Q. And what were they called?

12 A. They were called UCC APIs, Unified
13 Communications Client APIs.

14 Q. And is OCS a different piece of software from
15 Windows Vista?

16 A. Yes, sir. It is a completely different
17 product than Windows Vista.

18 Q. Now, let's talk about another product. Let's
19 talk about Office Communicator and Office Communications
20 Server.

21 Do you have knowledge of those?

22 A. Yes, sir. Those are the products that I'm
23 currently managing that are being developed by my team.

24 Q. And what is Office Communications Server?

25 A. Office Communications Server, along with

1 Office Communicator, allows users, wherever they are, to
2 make phone calls over the internet, to do video
3 conferencing with their colleagues, to share their
4 stream with their colleagues, do instant messaging,
5 check whether their colleagues are online or not.
6 So the Office Communicator application works together
7 with Office Communications Server to enable this
8 capability for users.

9 Q. Can you give us some examples of the types of
10 things Office Communicator can do, and have you prepared
11 a graphic that helps with that?

12 A. Yes, I have, sir.

13 MR. SAYLES: I'm going to ask for 2.1.

14 A. Yes. I don't have the clicker, so I will have
15 to count on somebody clicking for me.

16 Q. All right. Let's --

17 A. So this is a user who is sitting either on the
18 desk at work, or they could be sitting at home in front
19 of their computer. And let's say they want to do some
20 work.

21 You can see on the computer there's an
22 application which we've drawn. That application is
23 Office Communicator. And now this user can -- could you
24 click, please?

25 They can do video conferences with the people

1 sitting at work or people that want to communicate with
2 who actually may be sitting in their own homes as well.

3 So here they can chat, do video conferencing
4 with that person. They can make phone calls over the
5 internet, and they can also do instant messaging or chat
6 from the computer.

7 And then last, they can also share their
8 screen or the computer that they have with the other
9 person that they are communicating with, because
10 sometimes, you know, when you're talking to somebody,
11 you want to point to things and say, you know, take a
12 look at this, and why don't you change that. And if you
13 have screen-sharing, you can do those things.

14 Q. All right. This is Office Communicator.

15 Can you tell us what Office Communications
16 Server allows you to do?

17 A. Office Communications Server is really the
18 server, which, of course, as an end user you never see,
19 but it's what the Office Communicator program connects
20 to, to actually enable this capability.

21 Q. And let's look at Graphic 2.2.

22 Is this Office Communications Server?

23 A. Yes, sir.

24 What you see here is a user's computer running
25 Office Communicator, and let's say that the user is Sue

1 who works at Chevron. And what you see across the
2 internet cloud is the Office Communications Server, and
3 you see the IP addresses for both those computers here.

4 Q. All right. Now, you've heard -- you've been
5 in the courtroom and you've heard that part of what the
6 VirnetX party is complaining about here is a way in
7 which Office Communicator connects to Office
8 Communications Server.

9 You're aware that they make that claim?

10 A. Yes, sir.

11 Q. How does Office Communicator connect to Office
12 Communications Server?

13 A. Yes, sir.

14 Could you please advance the slide?

15 Yes. So let's say Sue is sitting at home and
16 wants to -- starts up the computer, start up Office
17 Communicator. And when the computer -- when the
18 application Office Communicator stops on Sue's machine,
19 the Office Communicator tries to find Office
20 Communications Server across the internet.

21 And now Sue has typed in the name
22 sue@chevron.com. So Office Communicator is trying to
23 find the Office Communications Server for Chevron, the
24 company Chevron.

25 And the way it does that is really in four

1 different ways. The reason we have four ways is because
2 we want to give options to our new customers on
3 different ways that they can do things. So these are
4 four ways that the Office Communicator will try.

5 The first one is the manual entry of server
6 name or address, which means that Sue can go in to
7 Office Communicator and type in the name of the server.

8 For example, they could type in
9 server1.chevron.com.

10 So Sue could always do that. And what I'm
11 showing you actually is the order in which these
12 different options applied by the Office Communicator
13 software.

14 So it first goes in and says, did the user
15 type in a name for the server?

16 No. If the answer is no, then it's going to
17 go to the next option.

18 Did the IT manager or IT administrator, which
19 I like to call here, the car mechanic. The car mechanic
20 actually automatically adds a name to Office
21 Communicator so that Office Communicator knows which
22 server to talk to. That is the second option that the
23 software tries.

24 If those two options don't work, then we try
25 something called DNS SRV requests, which is basically

1 Sue's computer, our Office Communicator on Sue's
2 computer, is talking to the DNS server on the internet
3 to say, I need to connect to an Office Communications
4 Server for chevron.com. Please tell me what is the
5 server for chevron.com.

6 And DNS server would send back a name and say
7 that is the name that you need to connect to. And then
8 the Office Communicator will connect again to the DNS
9 server and say, well, thank you for giving me the name,
10 but I really need the IP address, because that's the
11 only way I can talk over the internet.

12 And then it gets that IP address and makes the
13 connection.

14 If that scheme also does not work, so one
15 didn't work; two didn't work; three didn't work, then
16 Office Communicator automatically assumes a name. It
17 says, you know, one didn't work; two didn't work; three
18 didn't work. Let me try a name which has chevron.com,
19 and it adds a standard, well-known name to chevron.com,
20 and it tries to connect to that server.

21 So that's how those four different options
22 that Office Communicator uses are used.

23 Q. Now, you've been in the courtroom, and you
24 understand that the focus of VirnetX is only on the
25 third way to find a server?

1 A. Yes, sir. The discussion and the focus in
2 this case is on the third way. Of the four ways, the
3 third way of how Office Communicator finds Office
4 Communications Server.

5 Q. But you're saying there are these three other
6 ways that are not even accused in this case?

7 A. Yes, sir, that's what I'm saying.

8 Q. And how long have you been aware of DNS SRV?

9 A. Yes, sir.

10 DNS SRV requests have been part of internet
11 standards in the IETF since the mid-'90s. In fact, the
12 standard for DNS SRV requests was written sometime in
13 October of 1996.

14 So I just want to be very clear that DNS SRV
15 requests -- requests are not invented in any way here.
16 They were invented in the IETF by some people who were
17 doing work for and contributing to the internet.

18 So these have been around for a long time.
19 Again, almost 14 years, DNS SRV requests have been used
20 by products from Microsoft and other companies, so they
21 have been around a long time.

22 Q. All right. We've been talking about sending
23 requests.

24 Can you explain what secure requests are and
25 unsecure requests?

1 A. Yes, sir.

2 After the first way doesn't work, the second
3 way doesn't work, and you get to the third way, Office
4 Communicator asks for four different names from the DNS
5 server.

6 The first name -- and the reason it's four is
7 there are two names which are available on the internet,
8 and two names that are available inside the work
9 network, because you could be starting Office
10 Communicator either inside your work or outside your
11 work. And so there's two inside and outside.

12 And then you have secure and unsecure. So
13 when you do two times two, you end up with four names
14 that Office Communicator asks for from the DNS server.

15 Q. Have we shown that graphically?

16 A. Yes.

17 So, basically, there are four different DNS
18 SRV requests that are sent out by Office Communicator to
19 the DNS server.

20 Q. Is it important to send both secure and
21 unsecure requests?

22 A. Certainly, they are part of the product, but
23 I'm not aware of any customer who uses the unsecure
24 requests anymore.

25 Q. And would you have been able to take out a

1 not-send request for unsecure connections?

2 A. Yes, sir. You can easily take out -- if you
3 could build the slide, please.

4 You could easily take out the unsecure name
5 request from the product, and, you know, this thing
6 would just work as well.

7 Q. And does Microsoft make any recommendations as
8 to how customers should deploy OCS?

9 A. Yes. Our recommendations are the customer
10 should only use secure methods for connecting between
11 Office Communicator and Office Communications Server.

12 Q. All right. Would you tell the ladies of the
13 jury what is it about OCS -- OC/OCS that makes it a
14 useful and valuable product to a user?

15 A. Yes, sir.

16 Office Communicator has become a very
17 important application in today's workplace. You know,
18 as we see increasingly, people are working from home;
19 people are traveling on business; people are working
20 with other companies across the country; people are
21 having meetings without needing to travel there with the
22 audio-conferences, et cetera.

23 Office Communicator is designed to make people
24 as connected with each other, even if they're not
25 physically in the same place.

1 So that's a very -- that's a tall order, but
2 that is something that is very important in today's
3 times and something that, you know, this product does
4 really, really well. That is the value of Office
5 Communicator.

6 Q. Let me show you Exhibit 3111. 3111. Let's
7 start with the cover.

8 Just tell us what this is, please.

9 A. Yes, sir.

10 This is a marketing material of documents that
11 describes the Microsoft Office Communicator 2007
12 product.

13 Q. And if we just turn to the second page, the
14 table of contents, and go down the list, let's say on
15 Page 11, contact; tagging; below that, present status.
16 And the list goes on.

17 MR. SAYLES: Can you blow that up just a
18 little bit?

19 Q. (By Mr. Sayles) Does this describe some of the
20 uses and benefits?

21 A. Yes, sir. It goes into, you know, what are
22 the capabilities of Office Communicator, which our users
23 can use when they're using the product.

24 Q. And then over on the second page, there's
25 working together in real-time and office on the road.

1 It's actually Page 3.

2 A. That is correct, sir. That is a very
3 important part of our Office Communicator.

4 Q. Now, I want to turn to Page 8, and the jury
5 has seen this before in the case, and I want to refer
6 you to the paragraph that says anywhere access.

7 Do you see that?

8 A. Yes, sir.

9 Q. It says anywhere access lets you work remotely
10 without the need for a virtual private network, (VPN),
11 to connect to your corporate network.

12 Do you see that?

13 A. Yes, sir.

14 Q. What does that mean?

15 A. What that means, sir, is that Office
16 Communicator can connect to Office Communications Server
17 without a VPN. It connects directly across the internet
18 securely, but does not need a VPN.

19 Q. Is there a VPN utilized in this product?

20 A. No, sir.

21 As a company which invented the first -- one
22 of the first VPNs and has done more VPN work after that,
23 we have a lot of VPN technology within the company.

24 If you wanted a VPN, we could have printed a VPN. This
25 is not a VPN. This is just a direct connection, sir.

1 Q. And why isn't a VPN needed in this situation?

2 A. In our configuration, we thought that you
3 simply need to connect from Office Communicator and just
4 communicate with the people that you want to, and you do
5 not need a VPN for that particular connection.

6 We were not trying to hide IP addresses. We
7 were not trying to do any of that. So whenever we are
8 building products, we don't use things that we don't
9 need. And we decided that we could build a product
10 which can be used without VPNs. It won't require all
11 the extra servers. It would be cheaper for our
12 customers. So we did not use a VPN. We did not need a
13 VPN.

14 Q. All right. Were you -- you were in the
15 courtroom when Dr. Jones testified that what this
16 document is saying is that you don't need to use a
17 separate VPN product like PPTP, because this product is
18 forming a VPN that will provide the security that you
19 need.

20 Did you hear him give that interpretation?

21 A. I heard him give that interpretation, sir.

22 Q. Is that at all accurate?

23 A. Respectfully, sir, I completely disagree. For
24 someone who has worked on these products right from the
25 beginning, that was the first time I've heard an

1 interpretation of that comment.

2 Q. Now, one final area, just a couple of
3 questions.

4 Now, you heard Mr. Munger testify about his
5 company's policy with regard to third-party patents, and
6 you were in the courtroom when various Microsoft
7 personnel were asked about third-party patents, right?

8 A. Yes, sir.

9 Q. I want to ask you, what is your personal
10 practice with regard to third-party patents?

11 A. Sir, my personal practice is that we -- we are
12 in the business of innovating and creating software. We
13 work ethically. We work -- we respect intellectual
14 property, which is patents and technology from other
15 people.

16 When we work, we are creating, innovating,
17 writing new software, which comes out of the minds of
18 our engineers, and that is how we work on a day-to-day
19 basis.

20 As the people in the testimony were stating,
21 we do not actively go out and look out for patents.
22 It's kind of like, if you write songs, when you write a
23 song, you don't go out and see has anybody else written
24 a song like this before I send it out?

25 In the same way, we create an environment for

1 people that are innovating. They are innovating in a
2 way they're not borrowing or stealing ideas. We have
3 focused on innovating, creating products, and -- and,
4 therefore, we build the products and we ship those
5 products.

6 There are times when we find out, when we are
7 building the products or even before we build the
8 products, that some company has some intellectual
9 property, like patents or software, that is in the area
10 that we are going to build products in.

11 In those cases, we will proactively reach out
12 to those companies and license that technology for use
13 in our products. I have done that myself. There's a
14 company called Scitechnics in 2006, we needed some
15 important technology. We negotiated with them. We got
16 the rights to license that technology, and that is part
17 of Office Communicator today.

18 Now, when you are building products in this
19 way, every now and then somebody will come to us, maybe
20 after we've shipped a product, and say that it seems
21 that the products that you have may be covering some
22 area that is -- that is something that we may have a
23 patent on.

24 At that point, we give consideration to that
25 patent. In some cases, when it is relevant, we will

1 license that patent, or we will put up -- we will change
2 the product to not use that patent. If we cannot
3 negotiate with that, and, you know, that's sort of how
4 we work.

5 If -- of course, if somebody comes and tells
6 us that here's the patent, why don't you take a look at
7 it, we will ask them to show us where the patent is --
8 is -- our product is using it. And if they cannot
9 convince us, or we are not convinced, then we keep
10 shipping the product the way it is.

11 So, you know, it's really -- the business of
12 software is really like song-writing. You're writing
13 songs; you do your best; you create those songs; and you
14 share them with the public.

15 Of course, somebody could come back four years
16 later and say, hey, it's like your song is similar to my
17 song. At that point, we have practices where we
18 negotiate with them, really find if there is we infringe
19 or not, and then take the appropriate steps.

20 Q. All right. Thank you, Mr. Pall.

21 MR. SAYLES: I pass the witness.

22 THE WITNESS: Thank you, sir.

23 THE COURT: Cross-examination.

24 MR. CAWLEY: May I approach, Your Honor?

25 THE COURT: Yes, you may.

1 CROSS-EXAMINATION

2 BY MR. CAWLEY:

3 Q. Afternoon, Mr. Pall.

4 Let me start by asking you a few questions
5 about the demonstration you showed us.

6 A. Yes, sir.

7 Q. I notice that for the first time today, some
8 of these beige computers came to the courtroom.

9 Why did you bring those kind of computers
10 here?

11 A. The main reason we got those computers was
12 that this software that we demonstrated today was built
13 in 1996, and, frankly, the software that was written in
14 1996 doesn't work very well on computers that are
15 available today. So these computers were -- we needed
16 to go find these computers.

17 Q. So you wanted to show the jury the state of
18 affairs for your product in 1996?

19 A. In case of PPTP, yes, sir.

20 Q. And did you run software on the computers that
21 shows the jury how the system would have worked around
22 1996?

23 A. Yes, sir.

24 Q. Well, let me draw something on the pad here
25 from that time going forward.

1 Do you happen to remember when the patents in
2 this case were filed, the first one?

3 A. I believe it was in 2000, sir.

4 Q. I think the evidence is pretty clear that it
5 was February the 15th of the year 2000. So that's what
6 that line is going to represent.

7 A. Sir, I cannot see the line.

8 Q. I know. Actually, I'm about to ask you or ask
9 the Judge if he would let you step back down to this
10 computer.

11 A. Sure.

12 Q. And you might as well, I guess, have a seat,
13 because I'm going to ask you --

14 MR. CAWLEY: First of all, can we get the
15 screen that has the computer back on the projector?

16 Thank you.

17 Q. (By Mr. Cawley) This is one of the computers
18 you bought -- you brought -- excuse me -- to the
19 courtroom that has software on it that you want to
20 demonstrate to the jury how your product would have
21 operated around 1996.

22 A. Yes, sir.

23 Q. In any event, that's well before the patent
24 was filed in February of 2000.

25 A. Yes, sir.

1 Q. All right. What is a BIOS?

2 A. BIOS is -- I think it's called Basic I/O
3 System.

4 Q. Basic Input/Output System?

5 A. Yes, Basic Input/Output System.

6 Q. That's a basic component of a computer, isn't
7 it?

8 A. Yes.

9 Q. If you don't have the BIOS on this computer,
10 it wouldn't work, right?

11 A. It wouldn't work.

12 Q. It would be useless, correct?

13 A. It would be useless.

14 Q. Would you click the start button, please?

15 A. Yes, sir.

16 Q. Select programs.

17 A. (Complies.)

18 Q. Select administrator tools.

19 A. (Complies.)

20 Q. Select Windows NT diagnostics.

21 A. Yes, sir.

22 Q. What does that screen tell you?

23 A. Well, the screen shows me that, you know, this
24 is Version 4.0 with 3081 of Microsoft Windows NT
25 workstation.

1 Q. And where is the date of this BIOS?

2 A. The date of the BIOS is -- actually, I don't
3 see it, sir. Is it here somewhere?

4 Q. System -- click the system tab, please.

5 A. There you go.

6 Q. What's the date of the BIOS on the computer
7 that you were using to demonstrate to the jury how
8 things worked in 1996?

9 A. The date says July 12th, 2000.

10 Q. July, 2000.

11 That's after the patent was filed, wasn't it,
12 Mr. Pall?

13 A. Sir, all that shows is --

14 Q. Sir, I'm sorry. My question to you was, July
15 is after the patent was filed, correct?

16 A. July is definitely after the patent was filed.

17 Q. All right, sir. And your system could not
18 have even been built; this system with this version of
19 BIOS before the patents were filed?

20 A. For this version of the BIOS, that is correct.

21 Q. All right, sir. Now let me ask you another
22 question.

23 MR. CAWLEY: May I move over to this part
24 of the courtroom, Your Honor?

25 THE COURT: Yes, you may.

1 Q. (By Mr. Cawley) We have three different
2 computers here, right?

3 A. Yes, sir.

4 Q. And this -- these things with screens on them
5 are actually monitors, correct?

6 A. That is correct, sir.

7 Q. And the computers are actually these things
8 (indicates), one, two, three that are usually called
9 towers.

10 A. Yes, sir.

11 Q. That's what I've heard them called anyway.
12 So we have these three towers, and in front of you, I
13 see the monitor and a keyboard, but I don't see a tower.

14 Where is the computer?

15 A. It's down here, sir.

16 Q. Oh, well, is there a reason that you set these
17 three computers up on the table and put that one under
18 the table where I don't think the jury can see it?

19 A. Yes, sir. I thought that putting it on the
20 table would obstruct the view.

21 Q. I see.

22 A. And the reason I put those there is because
23 I'm trying to simulate that this is the home.

24 Q. Excuse me for interrupting you, sir.

25 A. Yes, sir.

1 Q. Really, what I asked you was, the reason you
2 put this one down here, and you say it's so you won't
3 obstruct the view.

4 A. Yes, sir.

5 Q. Is that right?

6 Okay. Let me ask --

7 MR. CAWLEY: If I may approach this part
8 of the courtroom, Your Honor?

9 THE COURT: You may.

10 MR. CAWLEY: And I'm going to have to ask
11 some people to do some kind of unusual things here.

12 First of all, if I could ask Ms.
13 Weiswasser to move to another chair temporarily; it will
14 give me better access to the computer that's down on the
15 floor.

16 MS. WEISWASSER: Your Honor, may I move.

17 THE COURT: Yes you may.

18 MR. CAWLEY: And can we move your purse
19 or bag as well?

20 Thank you.

21 Q. (By Mr. Cawley) I apologize for the
22 inconvenience, but not nearly as much as I am going to
23 apologize to you, Mr. Pall, because I have a flashlight
24 to help us here.

25 A. Sure.

1 Q. I am going to ask you to do something, and I
2 say this sincerely, sir. I mean you no disrespect by
3 this --

4 A. Sure.

5 Q. But I'm going to ask you to read a tag. And
6 to show you that I'm not disrespecting you, I'm going to
7 get down here with you.

8 A. Okay.

9 Q. You will have to get all the way down here.

10 A. Yes, sir.

11 Q. I'm going to ask you to read the tag, the top
12 of the tag that's on the side of that computer.

13 A. Yes. Windows 2000 Professional 12 CPU.

14 Q. Windows 2000, is that right, sir?

15 A. Yes, sir.

16 Q. And isn't it true, you know, don't you, that
17 the Windows 2000 product came out February 17th, 2000?

18 A. I disagree with that, sir.

19 Q. Well, I'll put a question mark by it, so we
20 can have some testimony about it and some evidence.
21 2/17/2000, question mark.

22 If there's evidence that that's the right
23 date, that date is also after the patent was filed,
24 isn't it, sir?

25 A. It's two days after, sir.

1 Q. Two days after, not 1996 for sure.

2 A. Not 1996.

3 Q. No, sir.

4 So you would agree with me that that computer
5 that you were using to explain and demonstrate to the
6 jury how your software existed in 1996 has a sticker on
7 it that says Windows 2000, correct?

8 Correct, sir?

9 A. I disagree, sir.

10 Q. You disagree that the sticker is there?

11 A. No, I dis -- I agree that the sticker is
12 there.

13 Q. Thank you, sir. That was my --

14 A. All I'm saying is that the software, which is
15 running on the computer, was built in 1996 --

16 Q. My question --

17 A. -- in the software.

18 Q. I'm sorry. Maybe my question wasn't clear.

19 You agree, don't you, sir, that the computer
20 that you used purporting to show the jury how this
21 system would work in 1996 has a sticker on it that says
22 2000, correct?

23 A. The hardware that I used has a sticker on it
24 that says 2000.

25 Q. Yes, sir. Thank you.

1 Let me ask you some questions about AutoDial.

2 MR. CAWLEY: And, Your Honor, I've got a
3 few questions here that have nothing to do with the
4 demonstration, but then a few more that do. So if I
5 could just ask Mr. Pall from where he sits now, it might
6 save a little wear and tear on the carpet.

7 THE COURT: All right.

8 Q. (By Mr. Cawley) Now, Mr. Pall, you told us
9 that you wrote AutoDial.

10 A. No, sir.

11 Q. Maybe I misunderstood.

12 In fact, you wrote a prototype for AutoDial,
13 but other people actually implemented the code, correct?

14 A. I had a team of people working for me who
15 actually implemented the AutoDial code.

16 Q. All right, sir. That's what I asked you.
17 And you haven't looked at the AutoDial technical
18 documents since 1995 or 1996, correct?

19 A. Probably not after 1996.

20 Q. Okay. You know a man named Anthony Discolo?

21 A. Yes, sir. He was one of the developers in my
22 team who, for a while, worked on AutoDial.

23 Q. He actually was one of the people who
24 implemented AutoDial, wasn't he?

25 A. He was one of the programmers who worked on

1 AutoDial.

2 Q. And you know that his deposition was taken in
3 this case?

4 A. I think I'm aware of that, sir.

5 Q. And that deposition will be played, part of
6 it, for the jury probably on Monday.

7 And are you aware that Mr. Discolo testified
8 in his deposition that AutoDial does not connect
9 automatically. It only reconnects when the connection
10 has been dropped.

11 Are you aware that he testified to that?

12 A. I'm aware of that, sir.

13 Q. Okay. And you are aware that he also
14 testified that AutoDial's only function is to reconnect.

15 Are you aware of that?

16 A. I didn't read the whole deposition, but -- so
17 I'm not aware of that completely.

18 Q. It doesn't sound like it surprises you, does
19 it?

20 A. I am completely surprised, because AutoDial
21 has nothing to do with that.

22 Q. You already told us Mr. Discolo was one of the
23 people who wrote it, correct?

24 A. Yes, sir.

25 Q. Okay.

1 A. I was responsible for the feature.

2 Q. You were responsible for the idea, but he was
3 the man that actually sat down and wrote it out,
4 correct?

5 A. He was responsible for link failures.

6 Q. So this will be clear, you had the idea, but
7 he was one of the people who actually -- who implemented
8 it, right?

9 A. In my supervision --

10 Q. He was one of the people that actually
11 implemented it, correct?

12 A. In my supervision, yes.

13 Q. Thank you, sir.

14 Now, let me move on to another subject. Get
15 the easel out.

16 MR. CAWLEY: And that first board, if you
17 could hand it to me.

18 Q. (By Mr. Cawley) Have you read the patents in
19 this case, Mr. Pall?

20 A. I have not read the whole patents, sir.

21 Q. After all this time, you still have not even
22 read the patents?

23 A. No, sir.

24 Q. Okay. But you have been in Court, and you've
25 seen some of them, some of the claims, correct?

1 A. Yes, sir.

2 Q. And you've seen this claim, for example?

3 A. Yes, sir.

4 Q. Claim 1 of the '135 patent.

5 A. Yes, sir.

6 Q. And this part of the claim says that one of
7 the things it describes is determining whether the DNS
8 request transmitted in Step 1 is requesting access to a
9 secure website.

10 A. Yes, sir.

11 Q. See that?

12 And 3 says: In response to determining that
13 the DNS request in Step 2 is requesting access to a
14 secure website automatically initiating VPN.

15 Do you see that?

16 A. Yes, sir.

17 Q. So you see that one of the features of Claim 1
18 of the '135 patent is this determining feature.

19 MR. SAYLES: Excuse me.

20 Your Honor, I'm going to object to
21 calling for a legal conclusion as to what one of the
22 features of the patent is. He's a fact witness.

23 THE COURT: Overruled.

24 Q. (By Mr. Cawley) Do you need me to repeat my
25 question?

1 A. Yes, sir.

2 Q. You see that some of the steps in Claim 1 of
3 the '135 patent call for the system to determine whether
4 a secure website is to be accessed to determine whether
5 it's going to be a secure connection.

6 A. That's what it reads like.

7 Q. Okay. Sure. Now, let's go back to your
8 system.

9 A. Yes, sir.

10 Q. Can you go ahead and reconnect the VPN if it's
11 not connected?

12 A. (Complies.)

13 Q. And we heard that beep. Does that mean that
14 the VPN is connected?

15 A. The second beep said it's connected, sir.

16 Q. Okay. Good.

17 Could you test it with the ping to be sure?

18 A. It's connected.

19 Q. Okay. Now, would you please disconnect the
20 VPN.

21 A. (Complies.)

22 Q. And go ahead and close the ping window.

23 A. (Complies.)

24 Q. And close and open Internet Explorer.

25 A. (Complies.)

1 Q. Is that newly opened? I didn't see before.

2 A. I just opened it.

3 Q. Okay.

4 A. But I'll open it again.

5 Q. Okay. Now, instead of this time looking for
6 your secure website -- you're familiar with eBay, right?

7 A. Yes, sir.

8 Q. And connecting to ebay.com is not a secure
9 website, is it?

10 A. Connecting to ebay.com, if you're not
11 connecting with https, it's not.

12 Q. Right. Okay. So type in your browser
13 www.ebay.com.

14 A. (Complies.)

15 Q. And push yes to connect.

16 A. (Complies.) It's connected.

17 Q. Do we have a VPN?

18 A. You have a VPN, sir.

19 Q. We do have a VPN?

20 A. You have a VPN.

21 Q. Can you test it and show us?

22 A. The VPN is up, so -- but that page which
23 you're trying to connect to actually doesn't exist
24 there.

25 Q. Well, I know it doesn't exist there because

1 you have chosen not to set your system up -- hook your
2 system up to the internet, right?

3 A. Yes, sir.

4 Q. Okay. But my question is, the first time you
5 demonstrated this to the jury --

6 A. Yes.

7 Q. -- you connected to a secure website and got a
8 VPN.

9 A. No, sir.

10 Q. You didn't get a VPN?

11 A. No. That was not the first time.

12 Q. Well, maybe not the first time, but you showed
13 us typing in a secure website and getting a VPN,
14 correct?

15 A. The second time, I typed in a website, and I
16 got a VPN.

17 Q. And this time you've typed in eBay, which is
18 not a secure website, and you still got a VPN, didn't
19 you?

20 A. Yes, sir.

21 Q. In fact, if you close -- disconnect the VPN.

22 A. (Complies.)

23 Q. And open and close Internet Explorer. I
24 should say close and open again.

25 A. (Complies.)

1 Q. It doesn't matter what you type in, does it?

2 You're still going to get the VPN.

3 A. I think it depends on the configuration.

4 Q. Well, let's try it.

5 Please type in www -- type in

6 www.thisisnotasecurewebsite.

7 A. (Complies.)

8 Q. Then connect.

9 A. (Complies.) It's not found.

10 Q. What?

11 A. It said it's not found.

12 Q. Not found? Do we get a VPN?

13 A. Yep.

14 Q. We still get a VPN.

15 So isn't it true, don't you agree, Mr. Pall,
16 that the system you're demonstrating is not determining
17 whether the VPN DNS request transmitted is requesting
18 access to a secure website?

19 A. The system is not determining that
20 specifically, sir.

21 Q. Yes, sir. Thank you.

22 I think I'm through with this demonstration,
23 if you'd like to take the witness stand again.

24 A. Sure. (Complies.)

25 Q. Put this down so it won't be in the way.

1 MR. CAWLEY: Mr. Moreno, what do I need
2 to push here to get back to your...

3 MR. MORENO: Right at the bottom.

4 MR. CAWLEY: Thank you.

5 Q. (By Mr. Cawley) Let me show you a document
6 that we saw yesterday. It's Plaintiff's Exhibit 148.
7 And you remember this document, don't you, sir? You saw
8 it yesterday when Mr. Jones was testifying?

9 A. I think it -- yeah. It definitely was shown
10 on the screen.

11 Q. He said that before the lawsuit was filed, he
12 went to Microsoft's website and saw this section talking
13 about serverless DNS technology.

14 Do you remember that?

15 A. Yes, I think I remember that.

16 Q. And then he testified that after the lawsuit
17 was filed, this was changed and now appears as -- in
18 Plaintiff's Exhibit 507 so that DNS was taken out, and
19 serverless name resolution was put in.

20 You remember that?

21 A. I remember him talking about it.

22 Q. My question to you, Mr. Pall, is, were you
23 responsible for this change?

24 A. No, sir. I --

25 Q. Do you know who was?

1 A. I have no idea, sir. It's not in my group.

2 Q. All right, sir. Thank you very much.

3 A. That is not an area that I work on.

4 Q. Let me move on to a different document that I
5 think maybe you will be familiar with. It's Plaintiff's
6 Exhibit 227.

7 Do you recognize this document?

8 MR. CAWLEY: Let's go to the next page of
9 it.

10 A. I think maybe if I see the next page, maybe I
11 will.

12 Q. (By Mr. Cawley) Yeah. Let's look at the next
13 page.

14 A. I think I'm familiar with this document.

15 Q. It looks as though it's a presentation that, I
16 guess, you presented, right?

17 A. I'm -- definitely, sir.

18 Q. And it's -- looks like the copyright date is
19 2005. Is that about accurate?

20 A. Should be.

21 Q. And, in fact, you think this is some slides or
22 graphs that you used in a presentation probably around
23 August of 2005?

24 A. That would be about right. I don't remember
25 the exact dates or timeframe.

1 Q. Okay. Let's go to the next portion of this
2 document. Up at the top there, you indicated to your
3 audience -- and who attended this presentation?

4 A. I don't specifically remember who attended --

5 Q. I don't mean their names; I mean what kind of
6 people?

7 A. Is it Tech -- was it Tech Ready? Do you mind
8 if -- what is the numbers, and I'll take a look at it,
9 and I'll be able to tell you better.

10 Q. Sorry. It's 227.

11 A. 227.

12 Tech Ready is a present -- is a meeting that
13 Microsoft has, I think, twice or thrice a year, and it
14 is for what the Microsoft sales force -- where they come
15 to Redmond or some other place and people present to
16 them.

17 Q. Okay. And one of the things you told your
18 audience back in August of 2005 was that RTC has high
19 TDM and BDM value.

20 That's a little -- sounds like a little bit of
21 code. Maybe you can help with us (sic). What's RTC
22 again?

23 A. Real-time communications.

24 Q. All right. And that's one of the products we
25 were talking about that's being accused in this lawsuit,

1 right?

2 A. You mean RTC API, sir?

3 Q. Yes, sir.

4 A. Yes. RTC doesn't necessarily mean RTC API,
5 so...

6 Q. Okay. But let me ask you, what is TDM?

7 A. TDM means technical decision-maker.

8 Q. And why did you tell your audience that RTC
9 has a high-technical decision-maker value?

10 A. This is an audience, which is the Microsoft
11 sales force. So you have to -- you tell them that when
12 you are talking to customers who are making decisions on
13 products, you know, which we refer to as technical
14 decision-makers, you know, this is the kind of stuff you
15 should be talking about.

16 Q. Okay. And then you talked about BDM value.
17 What's BDM?

18 A. I apologize for all these acronyms, but a BDM
19 means business decision-maker.

20 Q. Okay. So why did you tell your audience that
21 RTC has high business decision-maker value?

22 A. Because a typical -- let's say that you're
23 working at Chevron, and Chevron has a sales force. The
24 sales force is working in many different cities and
25 perhaps even around the world.

1 The head of sales for Chevron would be the
2 business decision-maker here. And they are really
3 interested in making sure that their sales force can
4 talk to each other and have the best software for
5 communicating. So that would be BDM value.

6 Q. So RTC has value both for customers who have
7 got technical decisions to make and customers who have
8 business decisions to make, fair?

9 A. Yeah. That -- the way you articulated it
10 sounds a little -- not how I would use it, but --

11 Q. You don't disagree with me, though, do you?

12 A. So I -- I think it's -- it's -- the way the
13 sentence is constructed is just a little different than
14 I would --

15 Q. I see. You don't like the way I constructed
16 the sentence, and you'd rather construct it some other
17 way. Is that what you're saying?

18 A. Sir, respectfully, I just want to make sure I
19 understand what you're saying, and I didn't totally
20 understand it.

21 Q. Okay. Then let me repeat it. And if I ask
22 you any question that you don't understand, please --
23 please -- we'll probably move faster if you would just
24 say, I don't understand, and I'll be glad to repeat the
25 question.

1 So you've told us that RTC has high value for
2 people who are technical decision-makers, correct?

3 A. Yes, sir.

4 Q. And it also has high value for people who are
5 business decision-makers, correct?

6 A. Yes --

7 Q. Okay.

8 A. -- sir.

9 Q. And now a little below that, there's more
10 highlighted language where you indicate that office RTC
11 will do \$150 million as a group next year, correct?

12 A. Yes, sir.

13 Q. And then you say it's one of the fastest
14 growth areas in the company. I guess the company is
15 Microsoft, right?

16 A. Yes, sir.

17 Q. And that it's growing nearly 80 percent --
18 what is Y/Y?

19 A. Year over year.

20 Q. Year over year. Okay.

21 So this area, not only were you going to do
22 \$150 million as a group next year, but it was going to
23 grow 80 percent year over year, correct?

24 A. Yes, sir.

25 Q. And you told the group that you have 900

1 people in the office RTC team representing one of the
2 larger investments for IW, right?

3 A. Yes.

4 Q. IW is?

5 A. Information worker.

6 Q. Let's look at another document. This is
7 another one I think you wrote, Mr. Pall, or at least
8 used. It's Plaintiff's Exhibit 228. It's in the book
9 in front of you, if you'd like to see it on paper.

10 A. Yeah, I recognize this document.

11 Q. Okay. Did you write this document?

12 A. Yes. I was one of the main authors of this
13 document, sir.

14 Q. Okay. It says Gurdeep Singh-Pall. That's
15 you, right?

16 A. Yes.

17 Q. And company, I guess that's other people who
18 worked with you?

19 A. There are a few people who authored the
20 document, and that's the short form of --

21 Q. Okay.

22 A. -- the way you're putting that.

23 Q. Well, I don't want to read it all, but let's
24 go down to some of the highlighted language here.

25 Who was the audience for this -- this paper or

1 presentation?

2 A. The audience was my whole organization. This
3 is a document that I'm writing to tell them about how we
4 can think about the next versions of our products.

5 Q. And you wrote this document in 2008, correct?

6 A. One second.

7 Q. I think there's a --

8 A. I'm sorry. What's the number again?

9 Q. Yeah. I'm sorry. It's Plaintiff's
10 Exhibit 228.

11 A. I guess I've written it -- I can't tell the
12 exact time, but that's -- it would be either 2007 or
13 2008.

14 Q. Okay. And you were projecting in the language
15 we're about to read some goals that are relevant to
16 where you wanted to be by fiscal year 2010, correct?

17 A. Yes, sir.

18 Q. And one goal you list is that the UC
19 business -- and remind us what that is.

20 A. The unified communications products business.

21 Q. The unified communications product is a \$3.4
22 billion business.

23 Is that -- did I read that right?

24 A. You read that right, sir.

25 Q. Okay. And what -- what's the next highlighted

1 portion, MOC 700 million?

2 A. MOC stands for Microsoft Office Communicator.

3 Q. Okay. That's one of the products accused in
4 this case, correct?

5 A. Yes, sir.

6 Q. And you say that that alone is 700 million,
7 right?

8 A. In the document, it says that, sir.

9 Q. Okay. And these numbers don't include your
10 projections, if you even have any projections, for what
11 might happen with Windows, do they?

12 A. No, sir. That's not my responsibility.

13 Q. Okay. So you weren't even including the
14 Windows products in these projections.

15 A. No, sir. This is only about Office
16 Communication Server and Microsoft Office Communicator.

17 Q. All right, sir. And isn't it true, Mr. Pall,
18 that back in 2005, that you had about 300 people on the
19 Live Communications Server team?

20 A. Yes, sir.

21 Q. And that at least at the time your deposition
22 was taken, you had about 700 people on that team?

23 A. Yes, sir.

24 Q. And that the projected revenue for Office
25 Communication Server for 2009 was \$422 million; is that

1 right?

2 A. Sounds about right.

3 Q. Okay. You also showed us some sections that
4 we've seen before in the trial from Defendant's 3111.

5 Do you remember that?

6 Let's pull that up so you can be sure of the
7 document we're talking about. Do you see 3111? Do you
8 recognize that?

9 A. I recognize it, sir.

10 Q. And to save us all some time, it was in this
11 document that we saw a few or maybe several references
12 saying you can communicate securely with this product
13 without the need for a VPN.

14 A. That is correct, sir.

15 Q. And this is the document about which Dr. Jones
16 said he interpreted that to mean, you don't need to go
17 out and buy a VPN product because you get it with this
18 product, and you said that that wasn't what you think it
19 means, correct?

20 A. I heard him say that, sir.

21 Q. Okay. Well, let me ask you this: When your
22 deposition was taken, you told us that a VPN allows one
23 machine to connect to a network that has many machines
24 or may allow one network with many machines to connect
25 to another network with many machines so that any

1 machine on either network can communicate with each
2 other.

3 Do you remember that?

4 A. I don't remember the exact words, but it
5 sounds right, sir, something --

6 Q. It's kind of a mouthful, but --

7 A. -- something -- what I would say, yeah.

8 Q. You didn't hear anything in there you
9 disagreed with, right?

10 A. No.

11 Q. And you agree that, therefore, a VPN is more
12 than just a point-to-point connection?

13 A. Yes, sir.

14 Q. Okay. And does this product that was being
15 described in Defendant's Exhibit 3111 allow one machine
16 to connect to a network that has many machines?

17 A. Yes, it does.

18 Q. Does it allow -- may it allow -- I don't mean
19 it necessarily does, but can it allow one network with
20 many machines to connect to another network with many
21 machines?

22 A. Office Communicator does not, sir.

23 Q. Okay. You have other products that do?

24 A. Not in this context.

25 Q. Okay.

1 A. But Office Communicator does not.

2 Q. Now, in this document, we've seen several
3 references that we talked about a minute ago saying that
4 you can use this product without a VPN.

5 And it's your contention, is it not, that
6 Microsoft Office Communicator 2007 does not use or
7 create a VPN?

8 A. Sir, it's not my contention; it's what I
9 designed the product to do.

10 Q. Well, I think we're about to get into some
11 definitions here, but my question to you is, do you or
12 do you not contend that Microsoft Office Communicator
13 2007 does not set up a VPN?

14 A. Office Communicator 2007 does not set up a
15 VPN.

16 Q. Okay. Thank you, sir.

17 Now, you remember that in your deposition, you
18 were asked to list all the reasons why what Microsoft
19 Office Communicator 2007 does is not a VPN.

20 Do you remember that?

21 A. I don't remember exactly, but if you would
22 show it, I would --

23 Q. Would you like to read it in your deposition?

24 A. Sure.

25 MR. CAWLEY: I'm sorry, Your Honor. May

1 I approach, since I'm already here?

2 THE COURT: Yes, you may.

3 Q. (By Mr. Cawley) You told us, sir, that you
4 don't create a VPN because there's no tunneling, no
5 encapsulation, and no applications other than Office
6 Communication can access connection when connected to
7 Office Communication Server.

8 A. Could you tell me the page number, sir?

9 Q. Well, I didn't write it down in my notes.
10 Let's -- let me see if I can find it.

11 MR. CAWLEY: I'm sorry, Your Honor. I
12 thought I had written the page number down.

13 (Pause in proceedings.)

14 Q. (By Mr. Cawley) All right. Start -- take a
15 look at your deposition, beginning on Page 97.

16 A. Yes, sir.

17 Q. You see that?

18 And you might just want to glance over that
19 down through Page 100.

20 A. Yes, sir.

21 Q. So do you see generally what you said there in
22 your deposition about why you believe you don't use a
23 VPN?

24 A. Yes, sir.

25 Q. And you did mention three things, didn't you?

1 A. Which three things specifically are you
2 talking about, sir?

3 Q. You mentioned tunneling, right?

4 A. Yes.

5 Q. You mentioned encapsulation, right?

6 A. Yes.

7 Q. And you mentioned that no other applications,
8 other than Office Communication can access the
9 connection when the connection is connected to Office
10 Communication Server?

11 A. Yes, sir.

12 Q. Okay. And you said that those are the only
13 three things that you knew of.

14 A. And Office Communications may include all
15 applications written on UCC APIs, which I consider part
16 of Office Communicator.

17 Q. All right, sir. But you were asked in your
18 deposition under oath the reasons you could think of why
19 you say your product doesn't create a VPN, and those are
20 the three reasons you gave.

21 A. Yes, sir.

22 Q. Okay. That's all I'm trying to establish.
23 Now, I understand, Mr. Pall, that you have a definition
24 of what a VPN is, and I guess Microsoft has a deposition
25 on -- a definition. Maybe your definition is

1 Microsoft's deposition -- definition. I don't know.

2 But right now, I'd like you to look at Judge
3 Davis' definition of what a VPN is. And here it is.

4 Could you read that, sir? You don't have to
5 read it out loud. I think we've heard it before.

6 A. (Complies.) Yes, sir.

7 Q. All right. Now, let me ask you this: Your
8 three reasons.

9 First reason, no tunneling.

10 Do you see any reference to tunneling in Judge
11 Davis' definition?

12 It's not there, is it?

13 A. I can read it in there, sir.

14 Q. Well, I'm not asking if you can read it in
15 there. I think Judge Davis is probably pretty capable
16 of saying what he means.

17 Do you see the word tunneling in there?

18 A. I don't see the word tunneling in there.

19 Q. All right, sir. Do you see the word, second
20 reason, encapsulation? Do you see that in there?

21 A. I do not see encapsulation.

22 Q. And do you see any reference that multiple
23 applications must be able to access over the
24 communications link?

25 A. No, sir.

1 Q. All right, sir. Now, you remember you showed
2 us a slide -- and in the interest of time, I won't
3 bother to get it out, but it showed four different
4 communications protocols or choices.

5 Remember what I'm talking about?

6 A. I think --

7 Q. Relating to the DNS SRV?

8 A. There were two fours there, sir.

9 The first four was how Office Communicator --
10 the four ways that it can find a server, and then within
11 the third way, there were four names that it looked for.

12 Q. All right, sir. But as far as the four ways
13 that it could find a server goes, you were sitting in
14 the courtroom, weren't you, during -- when Mr. Mu Han's
15 deposition was read?

16 A. Yes, sir.

17 Q. And do you remember him saying that Microsoft
18 always uses way three, the DNS RSV request?

19 A. I heard him say that, sir.

20 Q. Do you remember him testifying -- he didn't
21 just say it; he testified -- that that's also true for
22 Hewlett-Packard and Intel?

23 A. I believe that's what he said, that's right.

24 Q. And didn't you say in your deposition, sir,
25 that the DNS RSV is the default?

1 A. I -- can you please show me that, sir? I'm
2 not sure.

3 Q. Well, I don't know if it's worth the time, but
4 isn't it true that it is the default, sir?

5 A. It's not the default.

6 Q. You don't disagree with that, do you?

7 A. Well, it's not the default.

8 Q. You think that it's not the default?

9 A. Well, the default way, if -- of the four ways
10 that are there, if one doesn't work, two doesn't work,
11 three doesn't work, the fourth is the default where it
12 will assume a name and connect to that, sir.

13 Q. All right, sir. Let's -- let's go on to the
14 last subject that I want to ask you about. And let's
15 start discussing it by taking a look at Defendant's
16 Exhibit 3066.

17 Do you have that in front of you, or can you
18 see it on the screen?

19 A. Yes, sir.

20 Q. Tell us what this is again.

21 A. This is a document which talks about how to
22 secure L2TP using IP SEC.

23 Q. Okay. And who prepared this document?

24 A. As in other IETF documents, the name of the
25 authors are kept at the top right corner --

1 Q. Okay. Let's --

2 A. -- of the document.

3 Q. Let's go to that. Top right corner.

4 Someone from Intel, couple of people from
5 Microsoft, someone from Cisco Systems, right?

6 A. Yes, sir.

7 Q. And tell us again the body that put this paper
8 out?

9 A. IETF.

10 Q. And that stands for?

11 A. Internet Engineering Task Force.

12 Q. Okay. And this is the group of people you
13 talked about that are working on the internet on a
14 pretty constant basis, right?

15 A. Which group of people are you referring to,
16 sir?

17 Q. Well, I thought you testified earlier that
18 this is a group of people who is trying to make the
19 internet work better.

20 A. Are you talking about these specific people in
21 the document or --

22 Q. No, no, no. I'm talking about the
23 organization.

24 A. Oh, the organization is focused on making
25 internet standards to be right, yes, sir.

1 Q. So let's take a look at a piece of this
2 document that we haven't seen, Page 28. Up at the top
3 there -- not the first paragraph, but the second, I'm
4 going to read you some language and ask you if you've
5 read this before.

6 A. I can't --

7 Q. IETF invites any interested party to bring to
8 its attention any copyrights, patents, or patent
9 applications or other proprietary rights which may cover
10 technology that may be required to practice this
11 standard. Please address the information to the IETF
12 executive director.

13 Do you see that sir?

14 A. Yes, sir.

15 Q. So you recognize, don't you, that this
16 organization, the IETF, actively invites people to let
17 them know if there may be patents.

18 A. In 2001, they were doing that, sir.

19 Q. Yes, sir. Okay.

20 That's in the document --

21 A. Yeah.

22 Q. -- that's in evidence, right?

23 A. Yes, sir.

24 Q. Okay. So now let's look at a document we've
25 seen several times, Plaintiff's Exhibit -- I don't

1 know -- 2 -- 120.

2 This is a letter from SAIC to Microsoft.

3 And let's start in the upper left. It was
4 addressed to Mr. Anoop Gupta, Corporate Vice President,
5 Unified Communications Group.

6 Do you know Mr. Gupta?

7 A. I know Mr. Gupta, sir.

8 Q. And Mr. Gupta, he was -- was he in the Unified
9 Communications Group when you knew him?

10 A. Yes, sir. He was my boss.

11 Q. He was your boss. Okay.

12 Mr. Gupta -- we don't actually know what
13 Mr. Gupta did with this letter, but what we do know is
14 over to the right-hand side, if we go to the far right,
15 it appears, would you agree, that this was received on
16 May 2nd, 2006, by Mr. Bradford Smith in the Microsoft
17 Legal Department.

18 A. I trust that happened, sir.

19 Q. Do you know Mr. Smith?

20 A. I -- he's a distant colleague.

21 Q. Distant colleague.

22 A. I don't work with him closely.

23 Q. And then below that, it shows -- just below
24 that -- where we were looking at, it says: From
25 Bradford Smith to, and then by handwriting, it's written

1 in Marshall Phelps.

2 Do you know Mr. Phelps?

3 A. Yes, as, again, a distant colleague.

4 Q. Okay. At this time, May of 2006, he was the
5 lead intellectual property lawyer for Microsoft, right?

6 A. I don't remember his exact title, but he was a
7 pretty senior person.

8 Q. And he was in the Legal Department.

9 A. Yeah, I would think so. I --

10 Q. He was responsible for intellectual property
11 matters, things like patents, correct?

12 A. I knew he was involved with that, that's
13 correct.

14 Q. Okay. And then finally, we see just to the
15 left of that, apparently, the inner office mail was
16 working okay, because the next day, we see, received by
17 Marshall Phelps on May 3rd.

18 Do you see that?

19 A. Yes, sir, I see that.

20 Q. Now, the letter, I'll remind you --

21 MR. CAWLEY: If we can go down into the
22 body of it, in the first line or two --

23 Q. (By Mr. Cawley) -- offered an opportunity to
24 enter into a mutually beneficial business arrangement.

25 And then below that, it identified by number the '135

1 patent.

2 Do you see that?

3 A. Yes, sir.

4 Q. And then near the end of the letter, it
5 offered to license the letter.

6 A. License the letter, sir?

7 Q. License the letter. I guess that wouldn't get
8 very far.

9 It offered to license the patent?

10 A. -- could you highlight that so that --

11 Q. Sure.

12 A. Yes.

13 Q. First of all, before -- just to make it short,
14 before we get there, apparently, it enclosed a copy of
15 the patent.

16 Do you see that?

17 A. Yes. I do see the highlighted part.

18 MR. CAWLEY: And let's go down further,
19 and here we go.

20 Q. (By Mr. Cawley) We believe the '135 patent
21 would be of interest to your company in connection with
22 its Live Communications Server product with Server
23 Pack 1 and in connection with its Microsoft Office
24 Communicator 2005 product. In our view, a license to
25 the '135 patent could offer unique opportunities to

1 Microsoft.

2 Do you see that language?

3 A. Yes, sir, I see that.

4 Q. Now, did you see this letter?

5 A. I don't recall seeing this letter, sir.

6 Q. Now, remind us, what was your position in

7 2005?

8 A. In 2005, I was a corporate vice president
9 focused on Office Communicator and Office Communications
10 Server.

11 Q. And those products are mentioned in this
12 letter, right?

13 A. Yes, they are, sir.

14 Q. And yet you're not sure whether you saw this
15 letter or not.

16 A. Yes, sir. I'm not sure.

17 Q. Is that your testimony?

18 A. I'm not sure.

19 Q. Did Microsoft, after receiving this letter,
20 take any steps to avoid infringing the '135 patent?

21 A. I do not know of taking any steps. I know
22 there was follow-up to the letter, but I do not know of
23 any steps we would take on infringing the letter.

24 Q. Now you said it.

25 A. I said it. On infringing the patents.

1 Q. Thank you. Okay. We're even, I guess.
2 Isn't it true, Mr. Pall, that the way you operate your
3 team is that you don't focus on what intellectual
4 property or patents that other people may own or things
5 like that that are going on in the industry?

6 A. I disagree, sir.

7 Q. Well, isn't that what you said in your
8 deposition?

9 Let's take a look at your deposition.
10 Page 77.

11 Do you have Page 77?

12 A. Yes, sir.

13 MR. CAWLEY: Let's highlight this
14 language that begins with the witness, all the way down
15 to the next -- there you go. Stop.

16 Q. (By Mr. Cawley) You said: I cannot comment
17 for Microsoft and how broadly Microsoft operates in this
18 area. I can tell you how I guide my team. And the way
19 we operate is, my team is focused on innovation, and we
20 believe that we have the forefront of technology.

21 We can innovate for any problem that comes in
22 our way, and we do not focus on what intellectual
23 property or patents or other things which are going on
24 in the industry. We just focus on what -- innovation
25 ourselves.

1 Is that what you testified in your deposition,
2 sir?

3 A. That's what I said, sir.

4 Q. Yes, sir.

5 Do you know Henry Sanders?

6 A. I know Henry Sanders, sir.

7 Q. Did you see him testify this morning?

8 A. Yes, I saw him testify.

9 Q. And you saw and heard him testify that as far
10 as he knows, he's a -- he's a -- in 2008, and ran the
11 development group that was responsible for Windows
12 networking technology, didn't he?

13 A. Yes, sir.

14 Q. And he testified this morning by deposition
15 that there is no step where Microsoft checks whether
16 someone's patent will be infringed.

17 Do you remember that testimony?

18 A. Yes, sir.

19 Q. Do you know Mr. Ryan Kim?

20 A. I don't know him, sir.

21 Q. You don't know Mr. Kim. Well, he's probably a
22 little far down the chain. He's a Microsoft developer,
23 isn't he? Do you remember testifying to that testimony
24 this morning?

25 A. I saw his testimony being -- part of his

1 testimony being read out, but I don't know him, sir.

2 Q. What's a developer?

3 A. A developer is a programmer.

4 Q. A programmer. He's a guy who sits in front of
5 some computer and types away programming, right?

6 A. Yes, sir.

7 Q. And you heard him testify this morning, didn't
8 you, that Microsoft developers are told by Microsoft not
9 to look at patents.

10 Did you hear that?

11 A. Yeah, I heard him say that, sir.

12 Q. Yes, sir. Thank you, Mr. Pall.

13 MR. CAWLEY: I'll pass the witness.

14 THE WITNESS: Thank you, sir.

15 THE COURT: Redirect?

16 MR. SAYLES: May it please the Court.

17 REDIRECT EXAMINATION

18 BY MR. SAYLES:

19 Q. Mr. Pall, just a couple of things.

20 Mr. Cawley asked you about your deposition on
21 Page 77 where you explained that your group focused on
22 innovation.

23 A. Yes, sir.

24 Q. Are you in any way trying to say anything
25 differently today?

1 A. The only -- it's the same -- the same
2 operating model that we have at Microsoft is pretty well
3 reflected there.

4 If -- as I said earlier, if somebody comes --
5 approaches us with some intellectual property and shows
6 that we are actually using that intellectual property,
7 then we take the appropriate steps.

8 Q. All right. And I -- I think that you may have
9 already answered this, but I just want to make sure.
10 Mr. Cawley asked you about one of the letters that was
11 sent on behalf of VirnetX.

12 Do you recall that just a minute ago?

13 A. Yes, I saw that, sir.

14 Q. And were you in Court when the replies were
15 shown asking for information -- Microsoft asking VirnetX
16 for information?

17 A. Yes, sir. I was in Court when I saw the
18 letter from Microsoft back to SAIC/VirnetX. Yeah, I saw
19 that letter, sir.

20 Q. With regard to the exhibits that you were
21 shown earlier, 227, 228, several that you authored where
22 you were writing to your group about RTC, do you
23 remember those documents?

24 A. Yes, sir.

25 Q. Tell the ladies of the jury what you're

1 addressing when you address RTC as a whole?

2 A. I'm talking about products like Office
3 Communications Server, Office Communicator, the
4 application that allows you to make phone calls over the
5 internet, do video, do instant messaging.

6 I'm talking about all those capabilities as
7 delivered by those products.

8 Q. He also brought out with you that that group
9 has a number of employees and has a fairly large budget
10 by most of our standards.

11 Do you remember that?

12 A. Yes, sir.

13 Q. Now, are those people and that budget all
14 directed to the accused feature in this case involving
15 RTC?

16 A. No, sir, not at all.

17 Q. A few minutes ago, with regard to the
18 demonstration that you performed, VirnetX's attorney
19 asked you to type in www.ebay.com.

20 Do you remember that?

21 A. Yes, sir.

22 Q. And VirnetX's attorney suggested that this
23 demo was somehow invalid, I think would be fair, because
24 typing in www.ebay.com caused a VPN connection to be
25 established.

1 Do you remember that?

2 A. I remember that, sir.

3 Q. Were you surprised when the VPN was created?

4 A. I was not surprised when the VPN was created.

5 Q. Why not?

6 A. The main reason I wasn't surprised is, the way
7 the software is written and configured, it's designed to
8 make the VPN connection for a name that is typed in.

9 Q. Now, AutoDial -- and why is that important?
10 Would you explain that?

11 A. It's very important.

12 When you're -- you know, when you're sitting
13 at home, let's say, and you are -- most of the time, you
14 know, you're on eBay or Amazon or looking at Facebook or
15 applications like that, it's not every time that you
16 want to make a connection securely to your workplace.
17 You only want to make a secure connection when you are,
18 you know, connecting to your workplace to access a
19 computer on the net.

20 So depending on the configuration, the
21 software can allow you to do many things.

22 Q. Do you recall when Mr. Cawley focused your
23 attention on the fact that the BIOS had a 2000 version
24 in it? Do you recall that?

25 A. Yes, sir, I saw that.

1 Q. Would this demonstration have worked any
2 differently if you had a 1996 version?

3 A. No, sir.

4 Q. Can you explain that, please.

5 A. Yes, sir. You can buy a computer in 2000,
6 2001. What you saw when you use that computer is not
7 the hardware; it is only the programs that are running
8 on that computer.

9 So it was -- it was really strange when he
10 pointed to the hardware and said, you know, that this is
11 a 2001 computer. What you saw was exactly what you
12 would see in 1996.

13 Q. So why use a 2005 BIOS?

14 A. So as these computers were being put together
15 to do the demonstration, we had to go find some very old
16 computers, because this software, which was written in
17 1996, doesn't run on computers that you can buy today.
18 So we -- I think we found went and found the oldest
19 computers that we do get our hands on and put the
20 software on those computers.

21 Q. Just a couple more things.

22 Do you remember getting down on your knees
23 with Mr. Cawley and looking under the table, and there
24 was a sticker on the side of the box down there?

25 A. Yes, sir.

1 Q. Is that of any significance at all with
2 respect to the demonstration that you did?

3 A. No, sir, not at all.

4 Q. Would you explain that, please.

5 A. Yes, sir. That sticker shows when the
6 hardware was made. It does not show when the software
7 was made. When you're using -- when you were seeing the
8 screen and you were making the connection, you were
9 using the software.

10 I could have put that software on a computer
11 made in 1995, '96, '97, '98, '99, 2000, 2001, 2002,
12 probably after that -- I don't know if the hardware
13 would support software from 1996.

14 So it is really of not any significance for
15 this particular demonstration, sir.

16 Q. And one final thing, Mr. Pall, have you ever
17 appeared in Court and testified as a witness before?

18 A. No, sir. This is my first time.

19 MR. SAYLES: I'll pass the witness.

20 MR. CAWLEY: No further questions, Your
21 Honor.

22 At this time, I would like to move into
23 evidence as a demonstrative exhibit Plaintiff's
24 Demonstrative 17, the timeline that I drew.

25 THE COURT: Any objection?

1 MR. SAYLES: As a demonstrative, there's
2 no objection.

3 THE COURT: All right. Be admitted.
4 All right. You may step down, Mr. Pall.
5 Thank you.

6 All right. Ladies of the Jury, we're
7 going to take our afternoon break at this time, and we
8 will be in recess until 3:25.

9 COURT SECURITY OFFICER: All rise.
10 (Jury out.)
11 (Recess.)

12 COURT SECURITY OFFICER: All rise.
13 (Jury in.)

14 THE COURT: Please be seated.
15 All right. Who will Microsoft's next
16 witness be?

17 MS. WEISWASSER: Your Honor, Microsoft
18 calls Tyler Barton.

19 THE COURT: Tyler Barton.
20 All right. You have been sworn, haven't
21 you, Mr. Barton?

22 THE WITNESS: Yes, I have.

23 TYLER BARTON, DEFENDANT'S WITNESS, PREVIOUSLY SWORN

24 DIRECT EXAMINATION

25 BY MS. WEISWASSER:

1 Q. Good afternoon.

2 A. Good afternoon.

3 Q. Please introduce yourself to the jury.

4 A. My name is Tyler Barton.

5 Q. Mr. Barton, who is your employer?

6 A. I work for Microsoft.

7 Q. Have you had involvement in the area of
8 peer-to-peer technologies at Microsoft?

9 A. Yes, I have. I've had extensive involvement
10 in that area. I was a program manager in the
11 peer-to-peer group for three years, from the summer of
12 2006 until the summer of 2009.

13 Q. Have you also been involved in Windows Meeting
14 Space?

15 A. Yes, I have. I've worked on the PeerNet APIs
16 and on Windows Meeting Space.

17 Q. We're going to talk about your work in the
18 peer-to-peer area later, but first let's talk a bit
19 about your background.

20 Did you go to college?

21 A. Yes, I did. I received my bachelor of
22 software engineering degree from the University of
23 Waterloo in 2006.

24 Q. Where is the University of Waterloo?

25 A. It's a short drive from Toronto, Canada.

1 Q. Did you come to work directly for Microsoft
2 after college?

3 A. I did. But I actually started working for
4 Microsoft while I was still in college. The University
5 of Waterloo has a co-op program where you have the
6 opportunity to switch between school and work in
7 industry every four months.

8 I did a total of six co-op placements, the
9 last two of which were for Microsoft.

10 Q. Please tell us a little bit about the work you
11 did for Microsoft on your internships while in college?

12 A. My first time at Microsoft, I worked on a
13 technology called Windows Presentation Foundation. Its
14 a graphics technology. And then I came back to work on
15 the peer-to-peer team where I worked on Windows Meeting
16 Space and the PeerNet APIs, and I later joined the
17 peer-to-peer team full-time.

18 Q. You said that you joined Microsoft after
19 graduating from college in 2006.

20 A. That's right.

21 Q. What were your responsibilities when you
22 joined Microsoft at that time?

23 A. I joined as a program manager in the
24 peer-to-peer group. My responsibilities included the
25 design and development of peer-to-peer features with

1 help of software development and test engineering teams.
2 I worked on Windows Meeting Space, and I worked on the
3 PeerNet APIs.

4 Q. Mr. Barton, I know you haven't had a chance to
5 be in the courtroom over the past few days, but the jury
6 has heard quite a bit about some of these technologies.
7 But let's go through some background.

8 What are peer-to-peer technologies?

9 A. Peer-to-peer is a broad term. A peer-to-peer
10 system is one where client computers work directly
11 together without using any kind of a third-party server.
12 The opposite of peer-to-peer is what we call client
13 server. In client server, your computers do make use of
14 a server or an intermediary when they communicate.

15 E-mail is great example of a client server
16 technology that you might actually think is
17 peer-to-peer. When you send an e-mail to your friend,
18 your computer doesn't send that e-mail directly to hers.
19 It actually sends that e-mail to an e-mail server.
20 And that server is responsible for holding onto the
21 message and making sure that it gets where it's supposed
22 to go.

23 So with client server, you do use a server or
24 intermediary. And with peer-to-peer, your computers
25 work together directly.

1 Q. Now, you mentioned the PeerNet APIs. Let me
2 ask you first, what is an API?

3 A. An API stands for application programming
4 interface, and it's kind of like a tool that we put in
5 Windows that's there for applications to make use of.
6 It makes it easier for developers to build applications
7 that work on Windows.

8 Now, an API isn't something that you would use
9 directly yourself. It lies dormant until an application
10 comes along that makes use of it.

11 Q. Let's just be clear on our terminology. When
12 you say an application, what are you referring to?

13 A. An application is something that you use to do
14 something on your computer. If your word processing,
15 you might use Microsoft Word as an example of an
16 application. You use an application when you send
17 e-mail, when you look at photographs. You might use an
18 application like Quicken or QuickBooks for management of
19 business or managing money.

20 So an application is something that you use to
21 do something on your computer.

22 Q. So let's return back to the PeerNet APIs.
23 What are the PeerNet APIs?

24 A. PeerNet APIs are tools that we put in Windows
25 that are there for -- to help developers build

1 peer-to-peer applications.

2 Q. Do the PeerNet APIs have use to someone
3 sitting at their computer, if there is no peer-to-peer
4 application?

5 A. No. As I said, APIs aren't something that you
6 use directly. They're used by applications. So if
7 there's no application that uses the API, it kind of
8 lies dormant.

9 Q. How many PeerNet APIs are there?

10 A. There are three technologies in the PeerNet
11 APIs. They are called PNRP, grouping, and graphing.

12 Q. Do Windows XP and Windows Vista have APIs
13 other than the PeerNet APIs?

14 A. Yes. Windows has thousands of APIs. Windows
15 Vista and XP have thousands of APIs. And the PeerNet
16 APIs are a few of these thousands.

17 Q. Now, if I were to buy Windows XP in a box, say
18 at Best Buy, would that box actually contain that
19 PeerNet APIs?

20 A. Yes. The APIs would be in the box, yes.

21 Q. And would that box contain any peer-to-peer
22 applications based on the PeerNet APIs?

23 A. No. No, there are no applications that use
24 PeerNet APIs in XP.

25 Q. Let me ask you the same question about Windows

1 Vista.

2 So if I buy a box containing Windows Vista,
3 does that box contains the PeerNet APIs?

4 A. Yes, it does.

5 Q. Would it contain any peer-to-peer applications
6 based on the PeerNet APIs?

7 A. There's one. It's called Windows Meeting
8 Space, and it's available in Windows Vista.

9 Q. So there's one application in Windows Vista
10 that is called Windows Meeting Space?

11 A. That's right. Yes.

12 Q. Have you worked on Windows Meeting Space?

13 A. I have, yes.

14 Q. I'd like to ask you a few questions about it
15 and how it works.

16 Are you aware that VirnetX says that Windows
17 Meeting Space is somehow using its patents?

18 A. Yes.

19 Q. And you've worked on that application?

20 A. I've worked on Windows Meeting Space, yes.

21 Q. So let's just start by talking about, what is
22 Windows Meeting Space, what does it do?

23 A. Windows Meeting Space is an application that
24 you can use when you're having a meeting and everybody
25 in that meeting has got a laptop. You can use it to

1 share files between the computers in the meeting. You
2 can use it to share your screen so that everybody in the
3 meeting can look at the same picture on their own
4 computer.

5 Q. Now, you mentioned in a meeting. Is Windows
6 Meeting Space typically used in face-to-face meetings,
7 or is it used over the internet?

8 A. Windows Meeting Space is designed for what we
9 call face-to-face meetings. So it's designed for the
10 situation when everybody is in the same room. It's not
11 designed for use over the internet.

12 Q. I'd like to talk about a few subjects relating
13 to how Windows Meeting Space works. Now, I know you've
14 not been in Court for the testimony of this week,
15 because of Judge Davis' order excluding fact witnesses.
16 But I would like to bring up an example that has been
17 used, which is a library.

18 But since you said that Windows Meeting Space
19 is not designed for remote use over the internet, why
20 don't we take a library example where a group of
21 students are, say, having say a study session in a
22 particular room.

23 Let's go through how Windows Meeting Space is
24 used that they might share files on their computers in
25 that room, and then let's talk about how others might

1 get invited into that Windows Meeting Space session.

2 A. Okay. This is where it would help if I could
3 use the easel.

4 MS. WEISWASSER: Your Honor, may the
5 witness approach the easel?

6 THE COURT: Yes, he may.

7 MS. WEISWASSER: Your Honor, may I
8 approach the witness?

9 THE COURT: Yes, you may.

10 MS. WEISWASSER: Can y'all see okay?

11 THE COURT: Yes. Do we have the
12 microphone?

13 THE WITNESS: Thank you.

14 Q. (By Ms. Weiswasser) So let's start with our
15 library sample and students are in a study session in a
16 room at the library and they'd like to use the Windows
17 Meeting Space application to share some files with each
18 other.

19 How would that work?

20 A. Okay. Let's say we have three people. Let's
21 say Bill, Ted, and Anne. I'll try to draw this so
22 that's it large. Let's say the three of them get
23 together in the library, and each one of them pulls out
24 their Windows Vista laptop, and they connect these
25 laptops to the wireless network there.

1 Now, one of the first things these computers
2 have to do is get what's called an IP address.

3 Q. What is an IP address?

4 A. An IP address is a number that a computer uses
5 to identify itself when communicating with other
6 computers on a network.

7 So you see I'm drawing these IP addresses here
8 underneath the computers. They look similar, but the
9 numbers are, in fact, different.

10 Okay. So the three of them have started up
11 their computers. They've connected to the network, and
12 they're now able to connect using Windows Meeting Space.
13 And they're able to say share their screens or share
14 their files, two things that might be useful when
15 studying together.

16 Q. Okay. So now let's say that someone named
17 Kay -- that Kay has some files that might be helpful to
18 the session, and she's also in the library. They'd like
19 to invite Kay to join their Windows Meeting Space
20 session.

21 How would Kay get invited to that meeting?
22 And if there are a number of ways, why don't we just go
23 through them.

24 A. Okay. I'll use a different marker now so that
25 we can see the new stuff.

1 Let's say that Kay arrives late, and the three
2 of them are already participating in a meeting. So
3 she's got to join the meeting, connect up her computer
4 to theirs. So Kay will come and she'll open up her
5 Windows Vista laptop, and she'll get an IP address,
6 which, again, is one of those numbers that she can use
7 to communicate. Here's Kay.

8 And now the computers here have to learn each
9 other's IP addresses so that they're able to talk to
10 each other or communicate with each other, and that
11 is -- that's really what's necessary when a new computer
12 is getting invited into a Meeting Space session.

13 Q. So just to make sure we're clear, are you
14 saying that the Windows Meeting Space session, the
15 people in that, need to find out Kay's IP address in
16 order to include her in the session?

17 A. That's right. Yes.

18 Q. Okay. So how would they go about doing that
19 in getting her involved?

20 A. There are three ways that this can happen with
21 Windows Meeting Space. The first is using a technology
22 called People Near Me. So with People Near Me -- I
23 realize this is probably a little tough to see.

24 But with People Near Me, Ted's computer will
25 kind of shout out on the network and ask, hey, are there

1 any other people here that I might invite into a Windows
2 Meeting Space session? So his computer will shout out;
3 it will find Kay's computer; and he can invite her to
4 come in and join the meeting.

5 Q. With this People Near Me method for inviting
6 Kay, is the PNRP technology used?

7 A. No. This is a different technology. People
8 Near me is not -- is unrelated.

9 Q. Okay.

10 A. Okay. There's a second technique that Windows
11 Meeting Space can use, and it's using something called
12 Meetings Near Me. So with Meetings Near Me, it's Kay's
13 computer that shouts out Meetings Near Me.

14 So Kay's computer shouts out and asks, are
15 there any meetings going on near me here? And she will
16 find Ted, Bill, and Anne's computers, and she'll learn
17 their IP addresses, and she'll be able to connect up to
18 the Meeting Space session that way.

19 Q. Okay. So if Kay has shouted out with Meetings
20 Near Me, has the PNRP technology been used?

21 A. No. This is also different. Meetings Near Me
22 is a different technology.

23 Okay. There's a third way that Kay can get
24 involved in the meeting, and that's using an e-mail
25 invitation. So this is a little clunkier. In this

1 case, Bill or Ted, one of these people, has to decide
2 that they want to invite Kay using e-mail. They use
3 Windows Meeting Space, and it creates what's called an
4 invitation file. This is a file that they can send by
5 e-mail to Kay's computer.

6 And it will contain the IP addresses of the
7 machines involved in the meeting so that she can use
8 them and connect them.

9 Q. So let me ask you a question about that.

10 Are you saying that the e-mail invitation will
11 actually contain an IP address in it?

12 A. That's right. Yes.

13 Q. So is the PNRP technology used in that
14 situation?

15 A. No. It's not used in this situation.

16 Q. Mr. Barton, then, is there any way in which
17 PNRP could be used to invite Kay to join the meeting?

18 A. Yes. There's a very specific sequence of
19 events that has to happen, and they have to happen in
20 order, if PNRP is going to be involved when inviting
21 somebody to join a meeting.

22 Q. Why don't you walk the jury through the
23 various events that would have to happen for PNRP to be
24 used.

25 A. Okay. I'm going to use another piece of

1 paper.

2 Okay. So it's a difficult sequence, and it's
3 a very specific sequence, as I said.

4 It starts with Ted arriving early. So Ted has
5 got to get there before the other participants or the
6 other people in his study group arrive. But Ted is
7 there and he's early.

8 Okay. Next, Ted's got to decide to use an
9 e-mail invitation to invite the other people, even
10 though they haven't arrived yet. So Ted's got to use an
11 e-mail invitation.

12 Q. Now, this is -- let's just make sure we're
13 clear here. This is -- this is the third way of
14 inviting someone that e-mail invitation would actually
15 contain the IP address?

16 A. Yes. The e-mail invitation includes Ted's IP
17 address or that number that his computer uses to
18 communicate.

19 Here I'll draw Ted's laptop.

20 Okay. So Ted has gotten there early. He's
21 created an e-mail invitation, and he sent the e-mail to
22 the other people that are going to join him in the study
23 group.

24 Okay. Now let's say that Kay -- Kay arrives
25 and she fires up her laptop, and Tom arrives and he

1 fires up his laptop. This is a little -- slightly
2 different study group, different people. But two of
3 them arrive and they decide that they want to join this
4 meeting, and Ted is here.

5 So they connect up, and Meeting Space is
6 connected, and these three people are able to use it to
7 share their screen and files and all that stuff. So the
8 three of them are there.

9 Now, PNRP hasn't been used yet. There's still
10 a few more steps to this. So --

11 Q. I'm sorry to interrupt you. I just want to
12 make sure we're clear here.

13 In other words, if Ted was still available and
14 online at the time that Kay and Tom accepted his e-mail
15 invitation, there would be no need to use PNRP?

16 A. Yes, that's right.

17 Q. Okay.

18 A. Okay. So the next step -- and this is
19 important -- is Ted has got to decide to leave the
20 meeting for some reason. He's got to take off. Maybe
21 he's sick; maybe he forgot some other appointment, but
22 Ted -- he's got to go. If his computer sticks around,
23 PNRP won't be used. But it's important that he leaves
24 at this time.

25 Ted takes off, and now let's say that fourth

1 person arrives late. Tom is late. And he's going to
2 arrive after Ted has already left, and Tom has to decide
3 to use that e-mail invitation to join the meeting. He
4 can't use those other technologies I talked about. He
5 can't use People Near Me or Meetings Near Me. He has to
6 decide to use the e-mail invitation. And he must arrive
7 after Ted has already left.

8 So this is the situation with the set of steps
9 that have got to happen if PNRP is going to be involved
10 in joining the meeting. You can see it's a fairly
11 complex sequence that's got to happen before PNRP is
12 involved.

13 Q. I just want to make sure we're clear.

14 Are you saying that Tom could have come in
15 after Ted had already left and closed his laptop, and he
16 still could have used People Near Me or Meetings Near
17 Me?

18 A. Yes, that's right. Those would have been
19 options.

20 Q. In those cases, PNRP would not be used?

21 A. That's right. His computer would have instead
22 just kind of shouted out and found these computers
23 instead of using PNRP.

24 Q. Okay. So does that explain, then, the only
25 situation in which PNRP would be used to have a new

1 person join a Windows Meeting Space session?

2 A. Yes. This is the situation in which PRNP is
3 used to join.

4 Q. Okay. Mr. Barton, if I could just ask you to
5 sit down now. I think we can continue from there.

6 A. (Complies.)

7 MS. WEISWASSER: Your Honor, I would like
8 to mark Mr. Barton's two drawings as Defendant's
9 Demonstrative Exhibits 8 and 9.

10 THE COURT: All right. So marked.
11 Any objection?

12 MR. McLEROY: No objection, Your Honor.

13 THE COURT: Be admitted.

14 MS. WEISWASSER: Thank you.

15 Q. (By Ms. Weiswasser) Now, have we covered every
16 way that PRNP could have been involved in joining
17 Windows Meeting Space session?

18 A. Yes. Certainly in joining a Windows Meeting
19 Space session, yes, we have.

20 Q. Okay. So I'd like to switch topics, still
21 relating to PNRP, and ask you about something called
22 graph maintenance.

23 A. Okay.

24 Q. And, again, I know you weren't here to hear
25 this. But yesterday, VirnetX's expert talked about

1 something called graph maintenance and the involvement
2 of PNRP.

3 A. Okay.

4 Q. So I'd like to ask you about that topic.

5 First of all, what is graph maintenance in
6 Windows Meeting Space?

7 A. Okay. Well, you see how I drew the computers
8 connected to each other. This is in what we call a
9 graph, a connection between a bunch of computers.
10 Every so often, Windows Meeting Space does a little
11 maintenance, kind of like an oil change or fixing up the
12 house. It's pretty typical for software applications to
13 run maintenance to make sure everything is healthy. And
14 Meeting Space is no exception.

15 So every couple of minutes, the graphing
16 technology will kind of do a check to make sure
17 everything is healthy. And this is what we call graph
18 maintenance.

19 Q. Are you saying that this is a standard sort of
20 housekeeping process that computer applications
21 generally do?

22 A. It -- it -- this is not uncommon in software
23 to have a maintenance -- maintenance like this.

24 Q. So is -- is PNRP the only way that this
25 routine graph maintenance process can be done?

1 A. In -- a lot of things happen in graph
2 maintenance, and it's like there are a bunch of
3 different chores that are taken care of. PNRP is used
4 in a very specific chore in Meeting Space or in the
5 graph.

6 It's used in something that we call long-term
7 partition repair. There's also short-term partition
8 repair, and that -- that doesn't involve PNRP.

9 So partition repair is -- is a case where some
10 of the computers get separated off in their own little
11 collection and can't connect back to the larger group.
12 That's what we call a partition. And it can happen if
13 your network breaks down, if one of the wires goes out,
14 or your wireless goes out or something like that. And
15 PNRP is used in one of the ways that you can heal or
16 bring the computers back together.

17 Q. Are you saying that there are a number of
18 other chores, though, involved in this graphing
19 maintenance that do not involve PNRP?

20 A. Yes, there are other chores that don't involve
21 PNRP.

22 Q. I have one more topic that I'd like to ask you
23 about with Windows Meeting Space, and that's the
24 following: If we could just go back and think about our
25 study session that involves Ted, Kay, and Tom having a

1 Windows Meeting Space session. And they are connected
2 securely to each other, and their communications with
3 each other are secure; is that correct?

4 A. Yes. Their documents are screened that they
5 share. That's secure; nobody else can see that.

6 Q. Right.

7 Now, let's think about someone totally on the
8 outside. Say that Kay has a good friend and who lives
9 somewhere else and finds a really great website.

10 A. Okay.

11 Q. And she wants to send it to Kay by e-mail.
12 She wants to send her a link, and she wants to do that
13 over the internet.

14 Is there anything about Kay's IP address,
15 while she's connected to a Windows Meeting Space
16 session, that somehow prevents her from getting this
17 e-mail from Anne over the internet that somehow requires
18 some special authorization for access?

19 A. No. Meeting Space won't stop you from doing
20 anything else on your computer. You can still get
21 e-mail, still browse the internet when you're using
22 Windows Meeting Space.

23 Q. So just to make sure we're clear on this,
24 you're saying that Kay does not -- there's no special
25 authorization for access that would be required to her

1 computer simply because she's part of the Windows
2 Meeting Space session?

3 A. No.

4 Q. Mr. Barton, I appreciate your time. Thank
5 you.

6 MS. WEISWASSER: I pass the witness.

7 THE COURT: All right. Cross-exam.

8 MR. McLEROY: Yes, Your Honor.

9 May I approach, Your Honor?

10 THE COURT: Yes, you may.

11 MR. McLEROY: May it please the Court.

12 THE COURT: Okay.

13 CROSS-EXAMINATION

14 BY MR. MCLEROY:

15 Q. Good morning -- or good afternoon, Mr. Barton.

16 A. Good afternoon.

17 Q. My name is Luke McLeroy, and I'm one of the
18 attorneys here for VirnetX, of course.

19 Now, in your direct examination, you focused
20 mainly on how often PNRP was used, correct?

21 A. Yes. We talked a great deal about that.

22 Q. Now, you agree that it is used by Meeting
23 Space application, right?

24 A. Yeah. There's a situation where PNRP is used.

25 Q. But you didn't talk about very much how PNRP

1 actually works, did you?

2 A. No, we didn't.

3 Q. You didn't talk about the features that it
4 provides; is that right?

5 A. No. We didn't talk about that.

6 Q. Now, you understand that Microsoft contends
7 that the PNRP APIs do not infringe any of VirnetX's
8 patents; is that right?

9 A. Yes. I believe so, yes.

10 Q. And you were here for opening statements?

11 A. I was, yes.

12 Q. So you understand that Microsoft contends that
13 its PeerNet APIs do not infringe, because they do not
14 have anonymity; is that right?

15 MS. WEISWASSER: I'm going to object,
16 Your Honor. That's a legal term, and this is a fact
17 witness. He's --

18 THE COURT: Restate your question,
19 please.

20 MR. McLEROY: Yes, Your Honor.

21 Q. (By Mr. McLeroy) You understand that in this
22 lawsuit, Microsoft's products contend that its PeerNet
23 APIs do not have anonymity; is that right?

24 MS. WEISWASSER: Again, I'm going to
25 object on the same ground that anonymity is a legal

1 issue, and this is a fact witness. It's also beyond the
2 scope of my direct.

3 THE COURT: Restate your question.

4 Q. (By Mr. McLeroy) Do PeerNet APIs provide
5 anonymity?

6 MS. WEISWASSER: Again, Your Honor, it's
7 beyond the scope of my direct.

8 THE COURT: Well, if the witness
9 understands what you mean by anonymity.

10 A. I think it would be helpful if you would
11 clarify anonymity.

12 Q. (By Mr. McLeroy) Can -- in the PeerNet APIs,
13 could a hacker see the identity of the individuals using
14 the PeerNet APIs to set up a meeting like you drew on
15 the board here?

16 A. They'll be able to see the IP addresses of the
17 computers involved.

18 Q. And would you say that it's not anonymous?

19 MS. WEISWASSER: Your Honor, I have the
20 same objection.

21 THE COURT: Overruled.

22 A. Seeing the IP addresses reveals information
23 about who is participating in the meeting, so no.

24 Q. (By Mr. McLeroy) So, no, it's not anonymous?

25 A. The IP addresses are revealed.

1 Q. Do you know Mr. Sandeep Singhal?

2 A. Yes, I do.

3 Q. You'd agree with me that he is one of the most
4 knowledgeable people at Microsoft regarding the PeerNet
5 APIs; is that right?

6 A. He's a very knowledgeable person about them,
7 yes.

8 Q. And although you weren't here earlier today,
9 we saw a video of his deposition earlier.

10 MR. McLEROY: Now, can we look at
11 Plaintiff's Exhibit 245?

12 I think this is big enough for us to see.

13 Q. (By Mr. McLeroy) This appears to be a
14 presentation that Mr. Singhal authored, right?

15 A. Yes.

16 Q. And if you look at the bottom right corner,
17 there is a date there. It says 2006, Microsoft
18 Corporation.

19 Do you see that?

20 A. I do, yes.

21 Q. At that time, I guess Dr. Singhal, was he the
22 Product Unit Manager for Windows P2P and Collaboration
23 Technologies?

24 A. That was his title.

25 Q. And based on the title of this document, is it

1 safe to assume that this presentation relates to the
2 PeerNet APIs or peer-to-peer platform in Windows; is
3 that right?

4 A. Yes, I think that's fair.

5 Q. Now, can we turn to the page -- there aren't
6 page numbers other than the long string of number in the
7 bottom right-hand corner -- the page that ends in 612.

8 Do you see the two dark blocks on this page?

9 A. Yes, I do.

10 Q. In the top block, there are three words.
11 Could you read them?

12 A. I see the words. It's a little harder now,
13 but I know what they are. Distributed, anonymous, and
14 mobile.

15 That is a lot harder now.

16 Q. Would you agree that the adjective distributed
17 describes the PeerNet APIs?

18 A. I don't know if it describes the APIs, but it
19 would be a fair thing to say about some of our
20 technologies, yes.

21 Q. How about the peer-to-peer platform, would you
22 say the peer-to-peer platform is distributed?

23 A. I have the same comment. I mean, there's a
24 reason why I don't think it would be fair to say that
25 the platform is distributed, but the technologies work

1 in a distributed way.

2 Q. Well, I guess in your direct examination you
3 did discuss the difference between a client server
4 approach to computing versus a peer-to-peer approach
5 computing.

6 A. Yes, we talked about that.

7 Q. And you would agree with me that the
8 peer-to-peer approach is a more distributed approach,
9 right?

10 A. I think that's fair, yeah.

11 Q. And then also, the third word here is mobile.
12 Do you see that?

13 A. I do.

14 Q. And I guess we've talked a little bit here
15 about how users can move around with their laptops; is
16 that right?

17 A. I suppose so, yeah.

18 Q. And used the Meeting Space application?

19 A. I'm sorry. Could you repeat?

20 Q. And used the Meeting Space application and
21 move around with their laptops, right?

22 A. Yes.

23 Q. All right. So you'd agree that mobile
24 describes the PeerNet APIs; it's a feature they provide?

25 A. Yes. I suppose so, yes.

1 Q. Do you believe, after reading this document,
2 that Dr. Singhal thought that the PeerNet APIs were
3 anonymous, also?

4 A. I think that Mr. Singhal had specific
5 definition of anonymous in mind.

6 Q. And he used the word anonymous here, right?

7 A. Yes, he did.

8 Q. In this a presentation he prepared?

9 A. Yes.

10 Q. One other topic I would like to talk with you
11 about, Mr. Barton, and I want to focus on PNRP; is that
12 okay?

13 A. Yes, of course.

14 Q. Bless you.

15 A. Thank you.

16 Q. PRNP, like you said, is one part of the
17 PeerNet APIs; is that right?

18 A. Oh, yes. That's right.

19 Q. And the PeerNet APIs just in general, they're
20 usable by a computer? A computer running the Windows
21 operating system?

22 A. Yes. Well, they're usable by -- by an
23 application.

24 Q. Right. And the application runs on a
25 computer?

1 A. Yes.

2 Q. Now, are you aware that Microsoft seems to
3 have two different positions regarding whether or not
4 PNRP is a DNS technology?

5 A. I don't believe that that's correct.

6 Q. You don't think they have two different
7 positions?

8 A. I don't think so, no.

9 Q. All right.

10 MR. McLEROY: Well, can we bring up
11 Plaintiff's Exhibit 148?

12 Q. (By Mr. McLeroy) This is a printout from
13 Microsoft's website, isn't it?

14 A. Yep. It looks like it's from MSDN, which is
15 part of the Microsoft website, yes.

16 Q. Okay. And then if we look at the highlighted
17 portion a little bit further down, just the one line
18 that's the date, it's dated October 1st, 2007; is that
19 right?

20 A. I see that, yes.

21 MR. McLEROY: Now, if we could go back up
22 to the top.

23 Q. (By Mr. McLeroy) We'll see this document is
24 called about PNRP; is that right?

25 A. Yes, that's right.

1 Q. And the first line under about PNRP reads:
2 The peer name resolution protocol (PNRP) name space
3 provider (NSP) is a serverless DNS technology.

4 Do you see that?

5 A. I do.

6 Q. Okay. I'd like to compare that to another
7 exhibit.

8 MR. McLEROY: Can you bring up
9 Plaintiff's Exhibit 507?

10 Q. (By Mr. McLeroy) And before we look at this
11 one, have you been told one way or another whether or
12 not VirnetX contends that the PNRP is a secure DNS in
13 this lawsuit?

14 A. I -- I don't -- I don't recall a secure --
15 whether or not --

16 Q. You don't remember that from the opening
17 statements, that PNRP is a secure DNS?

18 A. I think that I might have heard that, yes.

19 Q. Okay. Now, let's look at this page now.

20 MR. McLEROY: Can we pull up the date on
21 this one? It's down toward the bottom.

22 Q. (By Mr. McLeroy) This page is dated April 9th,
23 2009.

24 A. Uh-huh.

25 Q. And that's after this lawsuit had been pending

1 for a while; is that right?

2 A. I suppose so, yes.

3 Q. I think by this point, you had already given a
4 deposition in this lawsuit?

5 A. Yes. That's right.

6 Q. Now, if we go back up to the top, this is the
7 same about PNRP page, isn't it, on the website?

8 A. Yes. I see that, yes.

9 Q. All right. And here it says: The peer name
10 resolution protocol, name space provider (NSP). So so
11 far, it's the same as the last page we looked at, right?

12 A. Yeah. That's right, yes.

13 Q. All right. It says: Is a serverless name
14 resolution technology.

15 Did I read that right?

16 A. Yeah, that's right.

17 Q. So you would agree there is a change in this
18 page on Microsoft's website from 2007 until 2009?

19 A. Yes. There has been a change, yes.

20 Q. Did you have any responsibility for making
21 this change?

22 A. No, I did not make this change.

23 Q. Mr. Cawley asked Mr. Pall earlier, he said it
24 wasn't his group responsible for making the change.

25 Was anyone in your group responsible for

1 making this change?

2 A. My group is an engineering group, and there is
3 a collection of writers that are responsible for this
4 documentation. So they are not my group, no.

5 Q. So you probably don't know who made this
6 change, do you?

7 A. In this case, I don't, no.

8 MR. McLEROY: Pass the witness.

9 THE COURT: Cross?

10 MS. WEISWASSER: I have no further
11 questions, Your Honor.

12 THE COURT: Thank you. You may step
13 down.

14 THE WITNESS: Thank you.

15 THE COURT: All right. Who will be your
16 next witness?

17 MR. POWERS: Your Honor, we have a third
18 party, Mr. Saydjari, who's here from out of town. We
19 think our direct of him is probably about half an hour.

20 If we can get him on and off today, he
21 would vastly appreciate it.

22 THE COURT: Certainly.

23 MR. POWERS: I assume their cross can be
24 done or maybe we could stay just a few minutes late, if
25 we needed to, but it would be really good if we could

1 get him.

2 THE COURT: We will do the best we can.

3 We'll try.

4 MR. POWERS: Very well. Thank you, Your
5 Honor.

6 MS. WEISWASSER: Thank you, Your Honor.

7 Then in that case, Microsoft calls Mr. Sami Saydjari.

8 THE COURT: All right.

9 MS. WEISWASSER: I'm going to get him
10 outside, and Mr. Saydjari has not been sworn yet.

11 THE COURT: All right. If you would come
12 forward, raise your right hand and be sworn.

13 (Witness sworn.)

14 MS. WEISWASSER: Your Honor, may I
15 approach?

16 THE COURT: Yes, you may.

17 SAMI SAYDJARI, DEFENDANT'S WITNESS, SWORN

18 DIRECT EXAMINATION

19 BY MS. WEISWASSER:

20 Q. Good afternoon.

21 A. Good afternoon.

22 Q. Please introduce yourself to the jury.

23 A. My name is Sami Saydjari, and I am the CEO of
24 the Cyber Defense Agency.

25 Q. What is the Cyber Defense Agency?

1 A. We provide strategic consulting to the United
2 States government, the military, on how to secure
3 computers against the most sophisticated attacks from
4 foreign countries.

5 Q. Who founded the Cyber Defense Agency?

6 A. I did in the year 2002.

7 Q. Where is your company located, Mr. Saydjari?

8 A. We're located in Wisconsin, Rapids, Wisconsin.

9 Q. Do you also live in Wisconsin, Rapids?

10 A. Yes, I do.

11 Q. Have you had to take time away from running
12 your business in order to travel here to Tyler, Texas,
13 to testify in this case?

14 A. Yes, ma'am.

15 Q. Is Microsoft compensating you for your time
16 lost in your business as a result of coming to this
17 trial?

18 A. Yes, ma'am.

19 Q. How much are you being compensated?

20 A. My commercial rate.

21 Q. What is that, Mr. Saydjari?

22 A. That's \$475 per hour.

23 Q. Let's get started with your background.

24 Did you go to college?

25 A. Yes, ma'am. I went to college at Rice

1 University in Houston, Texas, where I earned my
2 bachelor's of computer science and electrical
3 engineering, and my master's at Purdue University in
4 Indiana.

5 Q. Was your master's degree also in computer
6 science?

7 A. Yes, ma'am.

8 Q. What did you do after college?

9 A. I joined directly the Department of Defense.

10 Q. Is that the United States Department of
11 Defense?

12 A. Yes, ma'am.

13 Q. And at the United States Department of
14 Defense, were you working in the Washington, D.C., area?

15 A. Yes, ma'am, I was.

16 Q. And did you join the Department of Defense in
17 1983?

18 A. Yes, ma'am.

19 Q. How many years did you spend at the United
20 States Department of Defense?

21 A. From 1983 to the year 2000.

22 Q. So what did you do for the Department of
23 Defense over the 17 years that you were working with
24 them?

25 A. I did research into securing computers against

1 foreign attackers for the entire 17 years.

2 Q. So were you focused on issues involving
3 computer security?

4 A. Yes, ma'am. Computer security, network
5 security, the entire range.

6 Q. Did that also involve internet security?

7 A. Yes, ma'am, internet security was definitely
8 included.

9 Q. Now, is computer and internet security
10 important to the Department of Defense?

11 A. Yes, ma'am. It's absolutely vital to the
12 security of the Defense Department to protect the
13 secrets that are contained on the computers that are
14 basically -- DOD uses to fight war.

15 Q. Was there a particular group within the
16 Department of Defense that you worked for from 1997 to
17 2000?

18 A. Yes, ma'am. That would be the Defense Advance
19 Research Projects Agency also known as DARPA.

20 Q. What does DARPA do?

21 A. DARPA has a very simple mission. It's to
22 avoid technological surprise. And so the job of DARPA
23 is to keep the military on the very leading edge of
24 technology, to develop the best of the best technology
25 to give our troops the advantage in securing the -- for

1 national security.

2 Q. We're going to talk more about DARPA and your
3 work with DARPA in a bit, but let me just complete your
4 background.

5 What did you do after you completed your work
6 at DARPA in the Department of Defense in 2000?

7 A. After that, I briefly joined a non-profit
8 organization called Stanford Research Institute, and
9 then I went on to found my own company.

10 Q. Have you given congressional testimony in the
11 area of internet security?

12 A. Yes, ma'am, I have.

13 Q. What year was that?

14 A. That was April of 2007.

15 Q. Who did you provide that testimony to?

16 A. That would be to the United States Congress,
17 the House Committee on Homeland Security, the
18 Subcommittee on Emerging Threat.

19 Q. So other than the invitation to testify before
20 Congress, have you received any other honors for your
21 work on internet security?

22 A. Yes, ma'am, a number of them, including
23 Meritorious Service Award from the Secretary of Defense
24 for my service at DARPA; a fellowship from a major DOD
25 agency; and many, many other awards such as those.

1 Q. Let's turn back to your work for DARPA.

2 You said that you were at DARPA from 1997 to
3 2000.

4 A. Yes, ma'am.

5 Q. What was your role at DARPA?

6 A. I was the program manager for a program called
7 Information Assurance.

8 Q. You said Information Assurance.

9 What does the Information Program -- Assurance
10 Program at DARPA do?

11 A. It's basically a programming in computer and
12 network security to figure out how to defend the
13 military systems against the next generation of threats.

14 Q. Does that focus on internet security?

15 A. Yes, ma'am, computer and internet security.

16 Q. Is this a prestigious position?

17 A. Yes, ma'am. I would estimate less than 1 in
18 10,000 professionals in the field would get chosen to go
19 to DARPA. It's highly prestigious.

20 Q. Okay. So I understand from that answer that
21 it's a selective position.

22 A. Yes, ma'am.

23 Q. How were you selected to become the program
24 manager for the Information Assurance Program at DARPA?

25 A. I was recommended by two different program

1 managers of DARPA, and then hand-approved by the
2 Director of DARPA himself.

3 Q. So what were your responsibilities as the head
4 of Information Assurance from 1997 to 2000?

5 A. My job was to formulate a vision about how to
6 dramatically improve security of the military's computer
7 systems and to make that vision known and understood by
8 the director of the agency. And once we agreed on that,
9 to make that vision come true by the investment of a
10 significant budget in technologies that would realize
11 that vision.

12 Q. Now, was this budget provided by the
13 Department of Defense?

14 A. Yes, ma'am.

15 Q. And what was the amount of your budget?

16 A. It was \$30 million every three years.

17 Q. So that was a budget, then, that you were able
18 to use to invest in technologies?

19 A. Yes, ma'am.

20 Q. And would those be technologies that would
21 further your vision?

22 A. Yes, ma'am.

23 Q. So what was the vision that you selected as
24 head of Information Assurance at DARPA?

25 A. My -- my interest was in putting together the

1 technologies that were out there and new technologies to
2 provide a systematic defense, to weave the technologies
3 together in a way that would make it very, very
4 difficult for our potential adversaries to break into
5 our computer systems.

6 Q. I'd like to ask you, Mr. Saydjari, about one
7 of the first technologies that you funded --

8 A. Yes, ma'am.

9 Q. -- in your role as head of Information
10 Assurance.

11 Are you familiar with the system called
12 Dynamic Virtual Private Network?

13 A. Yes, ma'am.

14 Q. Does that also, by the way, go by the name of
15 Dynamic VPN or DVPN?

16 A. Yes, ma'am.

17 Q. Is that one of the first programs you funded
18 while you were at DARPA?

19 A. Yes, ma'am, it was.

20 Q. So why did you choose to fund the Dynamic VPN
21 system or program?

22 A. The DVPN program was one of the most worked on
23 and urgent, important problems to the Defense Department
24 known as the coalition problem.

25 Q. What is the coalition problem?

1 A. A coalition problem is, the United States was
2 increasingly fighting wars with partners in
3 battlefields, and so the United States doesn't go in
4 alone. It goes with other countries.

5 And so when we do that, there is -- there
6 needs to be communication between each of the coalition
7 members, and that communication has to be secure,
8 because we're passing around our war plans.

9 And, obviously, our war plans have to be kept
10 secret from the adversary, because if they know where
11 we're going to be and when we're going to be there, they
12 can kill people.

13 And so protecting those communication paths
14 was a matter of life and death and highly urgent to do
15 it quickly and easily.

16 Q. Now, let's just make sure we have our timeline
17 set here.

18 What year did you fund the Dynamic VPN
19 project?

20 A. That would have been in late 1997.

21 Q. So let's turn back to the coalition problem.

22 Are you saying that it was important that the
23 systems that would be set up be fast?

24 A. Yes. It would have to be fast to set it up,
25 and it would have to be fast to change it, because

1 coalition partners come and go due to politics of the
2 situation.

3 So one country may come in and become a member
4 of the coalition at one point, and then they may leave
5 the coalition at another point. So it has to be fast to
6 set it up and fast to reconfigure it.

7 Q. Would it be important that the setup be
8 automatic?

9 A. Yes, ma'am, quickly. It had to be automatic.

10 Q. And how about ease of use? Would that have
11 been important?

12 A. Absolutely. It would have been critical. In
13 order to set it up fast and quickly, it would have to be
14 easy to use. That was one of the military criteria for
15 the technology that we were working on.

16 Q. Uh-huh. So who did you hire as the technology
17 developer for the Dynamic VPN project?

18 A. That would be Trusted Information Systems,
19 also known as TIS.

20 Q. What is TIS or Trusted Information Systems?

21 A. They were one of the premier research and
22 development firms in computer security at the time.

23 Q. Do you recall who at Trusted Information
24 Systems you worked with on the Dynamic VPN project?

25 A. Yes, ma'am. That would be Dan Sterne.

1 Q. Had you worked with Mr. Sterne before?

2 A. Yes, I had.

3 Q. And what did you think of his work on internet
4 security?

5 A. I found he was an outstanding researcher.

6 Q. So was Trusted Information Systems able to
7 build a prototypes of the Dynamic VPN system?

8 A. Yes, they were.

9 Q. And did the Dynamic VPN system solve this
10 coalition problem that you talked about earlier?

11 A. Yes, ma'am. It did create secure pipes
12 quickly and easily between the coalition partners.

13 Q. Now, I'd like to talk about the subject of
14 whether the Dynamic VPN project generally was a
15 classified or secret project in any way.

16 Was it?

17 A. No, ma'am. Quite the opposite. It was
18 intended to be an open project, openly available, widely
19 distributed.

20 Q. And why was it intended to be an open and
21 widely distributed project?

22 A. The United States military preferred to
23 consume its technology as commercial product. And so it
24 was very, very important to let people know about the
25 existence of the technology so that we could have one or

1 more vendors produce it.

2 And the reason why it's important to be a
3 commercial product is because it's cheaper, faster,
4 easier for the military to consume commercial products
5 than it is government-specialized developed products.
6 In addition, it's really very important to the
7 government to make the technology available to secure
8 the rest of society, because DARPA, even though it's
9 focused on military security, is very interested in the
10 security over the rest of the nation and our critical
11 portion of our companies.

12 Q. So was the Dynamic VPN system ever
13 demonstrated?

14 A. Yes, ma'am, it was. In March of 1998, as a
15 part of a technology demonstration series that we did
16 called integrated feasibility demonstrations.

17 Q. So let's just make sure we're clear on a
18 couple of things, and then we'll turn to some documents.
19 You said that the Dynamic VPN system was demonstrated in
20 March of 1998?

21 A. Yes, ma'am.

22 Q. And you said that it was demonstrated at
23 something called the integrated feasibility
24 demonstration?

25 A. Yes, ma'am.

1 Q. Now, that's a mouthful, so let's just explain
2 to the jury, what is an integrated feasibility
3 demonstration?

4 A. Yes. If we -- if we take the words
5 individually, feasibility means that we are
6 demonstrating the capabilities of the technology. So we
7 show it's possible by building one to show that, in
8 fact, it's technically possible to do it.

9 And demonstration means that we're showing it
10 in a context, in this case, of a military environment
11 problem.

12 So we would show that the technology works.
13 We would show it works with other security technology,
14 and we would show that it works in the context of a
15 military problem so that when we showed it to military
16 people, they could understand how it worked with respect
17 to their problem.

18 Q. Are integrated feasibility demonstrations
19 generally -- and let's actually focus specifically on
20 the integrated feasibility demonstration in March of
21 1998.

22 Was that classified or secret in any way?

23 A. No, ma'am. That would be against the goals of
24 having it openly distributed and trying to produce
25 commercial off-the-shelf products.

1 Q. All right. We'll talk a little bit more about
2 that in some detail.

3 What I'd like to do is -- actually, let me
4 just ask you before we turn to a document, was DVPN --
5 was the Dynamic VPN system successfully demonstrated at
6 the integrated feasibility demonstration in March of
7 1998?

8 A. Yes, ma'am. It was an unqualified success.

9 Q. Okay. Well, I'd like to turn to Defendant's
10 Exhibit 3009. It would be in the binder in front of
11 you.

12 MS. WEISWASSER: And, Chris, if we can
13 just look at that first beginning part there.

14 Q. (By Ms. Weiswasser) So, Mr. Saydjari, are you
15 familiar with this document?

16 A. Yes, ma'am, I am.

17 Q. What is this document?

18 A. This is our plan for our first integrated
19 feasibility demonstration in March of '98.

20 Q. And does this indicate that this document is
21 from March 10th of 1998?

22 A. Yes, ma'am, it does.

23 Q. Now let's just go down a little bit on this
24 page, and this says it was prepared for DARPA
25 Information Systems Office.

1 Now, is that your program?

2 A. It was the office in which my program resided,
3 yes, ma'am.

4 Q. Okay. And it says that it was prepared by GTE
5 Internet Working and BBN Technologies.

6 A. Yes, ma'am.

7 Q. What was their role in this integrated
8 feasibility demonstration project?

9 A. BBN was the technology integrator, so their
10 job was to put the technologies together, to weave them
11 together in sort of a fence-like structure in the
12 context of a military problem and also to orchestrate
13 the demonstration.

14 Q. So let's turn to some of these descriptions of
15 Dynamic VPN in this document. Why don't we start on
16 Page 2, which is 3009.006.

17 MS. WEISWASSER: And, Chris, if you can
18 highlight from the three major objectives down through
19 Dynamic Virtual Private Networks.

20 No. Actually, a little bit up.

21 Okay. That's fine. And then maybe we
22 can highlight Dynamic Virtual Private Networks under
23 Prevent. And let's also highlight above that, three
24 major objectives have been established for IFD 1.1.

25 Q. (By Ms. Weiswasser) The primary objective is

1 to successfully stand up and demonstrate the
2 capabilities and/or technologies listed below.

3 So, Mr. Saydjari, what does this mean?

4 A. It means what I had indicated before. The
5 purpose of -- of the feasibility demonstration was to
6 show that the capabilities of the -- show the
7 capabilities of each of the technologies individually,
8 that they work, but also to show them in a context of
9 the other technologies that they work together hand in
10 hand and then to show that they work together hand in
11 hand against a military-style problem that would be used
12 for the military to understand.

13 Q. Okay. Why don't we turn to Page 8 of this
14 document, which is the 3009.012.

15 MS. WEISWASSER: And, again, Chris, if
16 you can focus on 2.2.1.1 Dynamic Virtual Private
17 Networks.

18 And actually, you can pull it down and
19 highlight the full three paragraphs with that topic.
20 And why don't we highlight Dynamic Virtual Private
21 Networks.

22 And then why don't we highlight Virtual
23 Private Network Technology in the -- right there.

24 That's good.

25 And then why don't we highlight Dynamic

1 Security Perimeter Technology and DNS SEC.

2 Q. (By Ms. Weiswasser) So, Mr. Saydjari, Dynamic
3 Security Perimeter, is that the same thing as Dynamic
4 VPN?

5 A. Yes, ma'am, it is.

6 Q. Okay. So in this paragraph, is this
7 describing the dynamic virtual private network system
8 that was demonstrated in March of 1998?

9 A. Yes. It's given a bit more detail on how it
10 worked.

11 Q. And is this an accurate reflection of how it
12 worked?

13 A. Yes, ma'am, it is.

14 Q. Now, what does DNS SEC mean?

15 A. DNS SEC is a secure version of the domain name
16 system, which associates a network address with the name
17 that we like to use like www.microsoft.com. We, as
18 human beings, would use those, but networks use an IP
19 address, and the security of that is what DNS SEC is
20 about.

21 Q. And the dynamic virtual private network
22 system, did that use DNS SEC technology?

23 A. Yes, ma'am, it did.

24 Q. Okay. Why don't we turn to 3009.021, which is
25 also a discussion of the dynamic virtual private network

1 system.

2 MS. WEISWASSER: If you could just
3 highlight, Chris, 3.2.1.1. You can highlight that whole
4 section.

5 And let's -- let's make sure we
6 understand. We're talking about the dynamic virtual
7 private networks here, and I'd like you to highlight,
8 actually, the first and the third bullet points.

9 And I also -- why don't you highlight
10 Initial Evaluation Criteria for Dynamic VPN Includes.

11 Q. (By Ms. Weiswasser) So, Mr. Saydjari, what is
12 this telling us about the dynamic virtual private
13 network system that was demonstrated in March of 1998?

14 A. Well, when we do a demonstration, we wanted to
15 set up what the success criteria was, what it would mean
16 for the program to be successful. And so these are set
17 up as the evaluation criteria, the success criteria, by
18 which we judge the demonstration.

19 Q. And I see in the first bullet, it says
20 transparency within the VPN.

21 What does that mean?

22 A. That means it needs to be -- it's basically
23 invisible to the user. So the military users who are
24 used to using certain computer programs to communicate
25 across the web, across the internet need to be able to

1 use the same applications without having to do anything
2 different, without having to click anything else
3 different.

4 They basically just use it and automatically a
5 secure pipe is set up, if they're talking to a coalition
6 partner, because the firewall is basically this big, if
7 they're talking to a coalition partner, and they would
8 secure that channel, a secure pipe, with the other --
9 with the other firewall.

10 Q. So the third bullet references ease of setup
11 and use.

12 What does that mean?

13 A. Well, before DVPN, what has to happen,
14 whenever you set something up is, every different
15 computer has to have the same key, and somebody would
16 have to go around and manually put that key in
17 potentially hundreds of computers. And that would take
18 a very long time and was prone to error.

19 And so what this means is it has to be doable
20 in one place. So we had centralized this function to
21 one server called the centralized manager. And all he
22 has to do is basically click on adding one country or
23 another country and their address for that -- for their
24 local area network.

25 And then once he did that, either added

1 somebody or deleted somebody, it was automatic that all
2 of the coalition partners were then added who were on
3 the list, and those who were not on the list were
4 subtracted and could no longer read the communication
5 between the members.

6 Q. Were transparency and ease of setup and use
7 important to the success of the Dynamic VPN system that
8 was demonstrated in March of 1998?

9 A. Absolutely. You'll notice in the first three
10 of the list, so they were absolutely critical to us.

11 Q. And did the dynamic virtual private network
12 system satisfy those criteria?

13 A. Yes, ma'am. That was a great success that
14 way.

15 Q. Okay. Well, let's -- let's talk a bit about
16 who attended the integrated feasibility demonstration in
17 March of 1998, when the Dynamic virtual private network
18 system was demonstrated.

19 Who -- who attended?

20 A. All of the integrators who were involved would
21 have attended. DARPA and its staff would have attended
22 as well as those who DARPA believed would be interested
23 in the technology either as a consumer.

24 So, for example, military leaders would attend
25 the demonstration to see how it worked as well as

1 potential producers, military contractors and companies
2 who might be interested in creating that technology to
3 that the DOD can then consume it.

4 Q. So about how many people attended this March
5 of 1998 demonstration of Dynamic VPN?

6 A. About 30.

7 Q. Now, you mentioned earlier that this March of
8 1998 demonstration of Dynamic VPN was not classified or
9 secret in any way, and I felt we could just turn to a
10 couple of pages in this document and ask you about that.

11 Why don't we first look at 3009.09.

12 MS. WEISWASSER: Chris, if you can look
13 at the end of -- the beginning of the second paragraph.

14 It says: IFD 1.1 is being conducted at
15 the DARPA DIS, a joint project office, unclassified
16 integration environment.

17 And if we could put in green, perhaps,
18 unclassified integration environment.

19 Q. (By Ms. Weiswasser) What does that mean?

20 A. Unclassified means that it was an open
21 environment where people did not require a special
22 clearance in order to get into that facility.

23 Q. Now, I have another exhibit, 3008.

24 MS. WEISWASSER: Don't put that up on the
25 screen.

1 Your Honor, this is one of the subjects
2 of the pending motion.

3 THE COURT: Okay.

4 MS. WEISWASSER: So I will just have the
5 witness testify about it but not put it up on the screen
6 and not reveal any sustains.

7 Is that how I should proceed?

8 THE COURT: All right. Okay.

9 MS. WEISWASSER: Okay.

10 THE COURT: What exhibit number is it?

11 MS. WEISWASSER: It's DX3008.

12 Q. (By Ms. Weiswasser) Mr. Saydjari, if you could
13 turn to 3008 in your binder. I -- I guess what I should
14 ask you is just whether this is a document that you're
15 familiar with and whether this is a copy of what was
16 presented at the Dynamic VPN demonstration in March of
17 1998.

18 A. Yes, ma'am.

19 In addition to the demonstration, we also
20 would have a presentation about how it works, and this
21 would be the kind of presentation that we would have at
22 that -- at that meeting.

23 MS. WEISWASSER: So, Your Honor, I'd like
24 to offer Defendant's Exhibit 3008 as an exhibit.

25 THE COURT: All right. Any objection?

1 MR. CAWLEY: The objection is hearsay,
2 Your Honor.

3 THE COURT: Response?

4 MS. WEISWASSER: We have a pending motion
5 on this issue. We don't believe it's hearsay because
6 we're not offering it for the truth of what's asserted
7 in the document, but just to show actually what was
8 presented at the demonstration that Mr. Saydjari has
9 been testifying about. We just want to be able to
10 actually say this is a copy of what was presented.

11 THE COURT: All right. Be admitted.

12 MS. WEISWASSER: Okay. So in that case,
13 why don't we put 3008 up on the screen.

14 Q. (By Ms. Weiswasser) Do you have that in front
15 of you, Mr. Saydjari?

16 A. Yes, ma'am, I do.

17 Q. Okay. So, Mr. Saydjari, what is this
18 document?

19 A. This would be the document that was presented
20 at the integrated feasibility demonstration about how
21 DVPN works.

22 Q. Okay.

23 MS. WEISWASSER: Why don't we look at
24 Page 2 of this demonstration. And what I'd like to
25 highlight is from rapid automated VPN reconfiguration

1 through the end DARPA IA program.

2 And why don't you actually highlight
3 rapid automated VPN reconfiguration.

4 Q. (By Ms. Weiswasser) What does this mean?

5 A. Rapid reconfiguration means, basically, to be
6 able to set the network up and change it in minutes as
7 opposed to days when it was done by hand where everybody
8 went around to every computer with a new code.

9 This is -- this means it has to be done in one
10 place in minutes.

11 Q. So is that an accurate description of the
12 Dynamic VPN system that was demonstrated in March of
13 1998?

14 A. Yes, ma'am, it is.

15 MS. WEISWASSER: Why don't we just
16 highlight also in the next part DNS SEC.

17 Q. (By Ms. Weiswasser) What does that mean here?
18 I know you testified earlier what it means, but does
19 this indicate that DNS SEC was also a part of this
20 system?

21 A. Yes, ma'am, without a doubt.

22 Q. Okay.

23 MS. WEISWASSER: Why don't we turn to
24 Slide 8 -- actually, before we do that, I have one
25 question about Slide 4. And I'd like to highlight the

1 first bullet point: Membership verified by DNS SEC
2 query to coalition domain; e.g., what is IP address of
3 enclave?

4 Q. (By Ms. Weiswasser) What does that mean?

5 A. That means that in order to figure out who is
6 in the enclave, the DNS SEC server, the computer that
7 handles the DNS SEC request would have a list of
8 everybody who was in and not in the coalition, and that
9 list would include both names and addresses of the
10 computers that are associated with memberships of --
11 members of the coalition.

12 Q. And is that an accurate description of how the
13 March 1998 dynamic virtual private network system works?

14 A. Yes, ma'am.

15 Q. Okay. Why don't we look at Slide 8. And my
16 first question for you on this slide is, dynamic
17 security perimeter. Does that mean dynamic -- the
18 dynamic virtual private network system we've been
19 talking about?

20 A. Yes, ma'am. The names were interchangeable.

21 Q. Okay. And what does this slide show?

22 A. It shows how a VPN would be established
23 between two members of a coalition; in this case, Red
24 Cross and FEMA, kind of representing a disaster relief
25 operation that the military often is involved in.

1 Q. Okay. So is this an accurate depiction of the
2 dynamic virtual private network system demonstrated in
3 March of 1998?

4 A. Yes, ma'am. It shows how it goes to the DNS
5 SEC to find the addresses, and then it shows how it sets
6 up the pipeline between the two members.

7 Q. Okay. I have one final question for you about
8 this document.

9 MS. WEISWASSER: Chris, if you can just
10 go back to the first page of it. And in the bottom, it
11 references two dates, December 18th, 1997, and March
12 9th, 1998.

13 Q. (By Ms. Weiswasser) Now, my first question for
14 you is, why are there two dates on here?

15 A. It would not be unusual for our contractors to
16 reuse slides from one presentation to another.

17 So it's highly likely that this was given to
18 me as a status report in December of 1997 by the
19 contractors to what was going on in the contract, and
20 then that they reused those slides and perhaps slightly
21 update it when they presented it at the integrated
22 feasibility demonstration in March, three months later.

23 Q. And do you actually have a recollection of
24 seeing these slides prior to the integrated feasibility
25 demonstration?

1 A. Yes, ma'am. I would have seen them.

2 Q. And who would have shown you these slides?

3 A. That would have been Dan Sterne.

4 Q. And who do you think, by the way, would have
5 presented these slides at the integrated feasibility
6 demonstration in March of 1998?

7 A. The principal investigator would have been
8 required to present those slides, so I'm almost certain
9 it was Dan Sterne.

10 Q. Okay. All right. Finally, let's look at 3046
11 in your binder.

12 THE COURT: Counsel, let me -- before you
13 go on, just point out that you have used 30 minutes, and
14 I know it's your desire to leave time to cross so that
15 the witness can leave by this evening. So I'm not
16 trying to rush you, but I'm just pointing out where we
17 are.

18 MS. WEISWASSER: Thank you, Your Honor.
19 I think I can finish in two to three minutes --

20 THE COURT: Okay.

21 MS. WEISWASSER: -- okay?

22 Chris, if we can just pull up the title
23 of this document and then the first section under
24 progress with the bullet points.

25 Why don't we highlight 16, March, 1998 at

1 the top to 30, April, 1998 at the top, and why don't we
2 highlight the word progress, and why don't we highlight
3 the second bullet, provided dynamic security VPN demo at
4 IFD 1.1.

5 Q. (By Ms. Weiswasser) Mr. Saydjari, what is this
6 document?

7 A. This is a status report from the contractor to
8 me on what's going on in the contract.

9 Q. And what does that tell you about the
10 demonstration of the dynamic VPN system?

11 A. It clearly confirms that it did happen.

12 Q. Does it confirm that it happened sometime
13 between March 16th and April 30th of 1998?

14 A. Yes, ma'am.

15 Q. Okay. One final subject for you. Are you
16 familiar with a company called SAIC?

17 A. Yes, ma'am.

18 Q. And how about a gentleman named Mr. Gif
19 Munger?

20 A. Yes, ma'am.

21 Q. And how are you familiar with SAIC and
22 Mr. Munger?

23 A. Mr. Munger came in to pitch an idea to be
24 funded under my program.

25 Q. And do you recall what time period he would

1 have sought the funding?

2 A. Yes, ma'am. After reviewing e-mails, it
3 looked like it was between August of 1998 and March of
4 1999.

5 Q. And do you recall the technology that
6 Mr. Munger and SAIC were presenting to you?

7 A. Yes, ma'am. It was a VPN-based technology.

8 Q. And was this in your role as head of
9 Information Assurance --

10 A. Yes, ma'am.

11 Q. -- Program at DARPA?

12 A. Yes, ma'am.

13 Q. And did DARPA fund the SAIC and Mr. Munger's
14 VPN invention?

15 A. No, DARPA did not.

16 Q. Why did DARPA choose not to fund the
17 invention?

18 A. In the evaluation of the proposal, it was
19 DARPA's opinion and my opinion as well that the
20 technology did not represent enough of a distinction
21 from the -- the dynamic virtual private network, the
22 DVPN technology, that we had already funded. It was a
23 duplicate of what we had already created.

24 Q. Okay. Now, did SAIC actually formally apply
25 for funding after that?

1 A. Yes, ma'am, through one of our solicitations.

2 Q. And were they awarded that funding?

3 A. No, ma'am, for the very same reasons.

4 Q. Okay. Thank you.

5 MS. WEISWASSER: I pass the witness.

6 THE COURT: Cross?

7 CROSS-EXAMINATION

8 BY MR. CAWLEY:

9 Q. Mr. Saydjari, I have to start asking you
10 questions about the elephant in the room. It went by
11 very quickly at the beginning of your examination, but
12 did you say you're being paid by Microsoft?

13 A. I said I was being compensated for lost time,
14 yes.

15 Q. For lost time.

16 Now, just -- let's get that straight. We've
17 seen some expert witnesses in this case. I guess you
18 haven't, but we have. Dr. Jones and Mr. Reed and I
19 guess tomorrow we're going to see some expert witnesses
20 for Microsoft.

21 But you're not an expert witness here, are
22 you?

23 A. That's correct. I'm a factual --

24 Q. You weren't paid to study anything in this
25 case and express an opinion, right?

1 A. That's correct. I'm a fact witness.

2 Q. You're a fact witness.

3 A. Yes, sir.

4 Q. Now, you say that Microsoft has agreed to
5 compensate you for your lost time.

6 A. That's correct.

7 Q. Okay. Let's talk about that.

8 What is the rate that you charge for technical
9 consulting?

10 A. For commercial clients, it's \$475 per hour.

11 Q. I see.

12 And how long has that been the case?

13 A. Oh, I'm not exactly sure. Probably at least a
14 couple of years, maybe a year and a half.

15 Q. Do you remember when your deposition was taken
16 in this case?

17 A. Approximately. Within the last six to nine
18 months.

19 Q. Let me give you a copy of your deposition.

20 MR. CAWLEY: Are we able to pull this up
21 on the screen?

22 Q. (By Ms. Cawley) Let's go to Page 85.

23 MS. WEISWASSER: Mr. Cawley, should I
24 pull out my own copy?

25 MR. CAWLEY: Do we have another copy?

1 I have it. I have it.

2 MS. WEISWASSER: Okay. I mean, I may
3 have brought my copy with me, so let me get that out.
4 Okay. I've got it.

5 MR. CAWLEY: Okay.

6 Q. (By Mr. Cawley) Actually, let's start at Page
7 83 of your deposition, because this is important, and I
8 want to make sure we understand it.

9 When was your deposition taken?

10 A. You asked me to look at the document.

11 Q. Do you remember when it was taken?

12 A. No, I don't have a specific remembrance of
13 what date it was.

14 Q. Well, let me see if I can find the date.
15 Does July 23rd of 2009 sound about right?

16 A. Yeah, it sounds about right.

17 MR. CAWLEY: Do you need a copy of the
18 deposition, ma'am?

19 MS. WEISWASSER: No. I have -- I brought
20 my own.

21 MR. CAWLEY: All right.

22 Q. (By Mr. Cawley) So let's take a look at
23 Page 83 starting at Line 23. And let me get on the same
24 page.

25 Are you with me?

1 A. Yes.

2 Q. Page 83, Line 23, you were asked a question:

3 Are you being paid for your time here today?

4 You answered: I am.

5 Question: How much are you being paid?

6 Answer: Actually, I don't recall

7 specifically.

8 Question: Is it an hourly rate?

9 Answer: Yes.

10 Question: Is it your standard hourly rate?

11 Answer: It is -- well, that's hard to answer,

12 because I have different rates for different things that

13 I do. So it's standard for this type of work, but it's

14 not standard for the technical consulting that I do.

15 Have I read that correctly so far?

16 A. Yes, you have.

17 Q. Next question: When you say this type of

18 work, are you talking about litigation consulting?

19 A. No, sir. I'm talking about --

20 Q. I'm sorry. I'm reading from your deposition

21 still.

22 A. Oh.

23 Q. Yes.

24 A. I apologize.

25 Q. The question was -- I'm sorry for not making

1 it clear.

2 Question: When you say this type of work, are
3 you talking about litigation consulting?

4 And you answered: Yes, correct?

5 Did I read that correctly?

6 A. You read that correctly, yes.

7 Q. All right. But then you were asked the
8 question: Have you consulted on other litigations in
9 the past?

10 And you said: I have not.

11 Question: This is your first time?

12 Answer: Yes.

13 Is that still true?

14 A. Yes, sir.

15 Q. So you testified that you have a standard rate
16 for litigation consulting, but the fact of the matter
17 is, you've got one client for litigation consulting, and
18 that's Microsoft, correct?

19 A. I don't have a litigation client at all,
20 because this is not a litigation consultation.

21 Q. Oh, I see.

22 A. It's a commercial consultation.

23 Q. Well, didn't you just testify in your
24 deposition here that you were -- that this was standard
25 for litigation consulting?

1 A. No. I think it said that it was a standard
2 rate for this type of work, and I was referring to
3 commercial work, not litigation work.

4 Q. Well, let's read on then.

5 You were asked the question, Page 84, Line 19:
6 What is your technical consulting rate?

7 And you answered: Honestly, I don't remember.
8 I'm being totally frank, because my accountant takes
9 care of all that. So I don't remember the number
10 specifically.

11 Question: Can you give me a range that you
12 think -- that you feel confident it would be within?

13 Your answer: I can't, because we just
14 recently changed that rate. I would say it's somewhere
15 between 300 and \$420 an hour. I don't know where
16 exactly it is in that range right now.

17 Do you remember giving that testimony?

18 A. I do.

19 Q. Okay. And then going down to Page 85,
20 Line 10, Question: And you said you just recently
21 raised the rate.

22 And you answer: I actually recently dropped
23 the rate.

24 Do you see that?

25 A. I do.

1 Q. And then you were asked: What were the rates
2 before you dropped them; do you remember?

3 And your answer was: It was in the sort of
4 middle 400 range, but I don't know specifically what the
5 number was.

6 Did you answer that question?

7 A. Yes.

8 Q. And then you were asked the question on
9 Line 23: What's the best ballpark that you can give me
10 on the rate that you are charging Microsoft for your
11 time here today?

12 And you answer: I don't want to speculate,
13 but, again, my accountant would know that, too. My
14 guess is, it's upper 400s, something like that, but,
15 again, I don't remember.

16 Do you remember giving that testimony?

17 A. Yes, sir.

18 Q. So didn't you testify, sir, in your
19 deposition, not that your standard commercial rate for
20 technical consulting was 475 but that you had dropped
21 it, and it was in the middle 400s before you dropped it?

22 A. Well, I don't think I -- no, I don't think
23 that's what that says.

24 Q. Isn't that exactly what you said, sir?

25 A. I don't think so. I think you're inferring

1 something.

2 Q. Didn't you say, Page 85, Line 4, that it's
3 somewhere between 300 and 420 an hour?

4 A. Yes. So I was in error.

5 Q. And, in fact -- well, that was -- you gave
6 that testimony under oath, just like you're under oath
7 now, didn't you?

8 A. Right. And I also said that I didn't know
9 exactly and that I thought it was about that range. And
10 so under oath -- I was, in fact, under that oath.

11 Q. You didn't know what you were making.

12 A. I'm sorry. Did you ask me a question?

13 Q. You testified that you didn't know what you
14 were making, but you thought it was somewhere between
15 300 and \$420 an hour, correct?

16 A. That is correct. That's what I testified.

17 Q. And now you're telling us that Microsoft is
18 paying you 475 an hour, right?

19 A. That is correct.

20 Q. And isn't it true, sir, that that's higher
21 than the rate you charge other clients?

22 A. No, it's not.

23 Q. You charge all your other clients 425?

24 A. No.

25 Q. 475?

1 A. Not all of my clients. I have different rates
2 for different kinds of work.

3 Q. What rates do you have for what you're doing
4 for Microsoft?

5 A. It's my standard commercial rate, which is
6 \$475 an hour.

7 Q. And how many commercial clients do you have?

8 A. About three or four.

9 Q. Three or four? Who are they?

10 A. I can't name them.

11 Q. Oh, you can't name them or don't want to name
12 them?

13 A. I have contracts -- obligations not to name
14 these -- these people in a public forum.

15 Q. Okay.

16 MS. WEISWASSER: Your Honor, Mr. Saydjari
17 does a lot of confidential work. He should not be
18 required to reveal the names of his other clients in
19 this public courtroom.

20 THE COURT: Proceed.

21 Q. (By Mr. Cawley) So you testified to the jury
22 on your direct examination, when this quick line of
23 questioning went by, that Microsoft was compensating
24 you, making it up to you for your lost wages.

25 The fact of the matter is, this is just a

1 paying job for you, isn't it?

2 A. Negative. No, it's not a paying job. It's
3 making up for lost time.

4 Q. You have commercial clients, right?

5 A. Yes.

6 Q. And you're charging Microsoft just like a
7 commercial client.

8 A. I am losing wages that I would have been paid
9 during this time that I am testifying for Microsoft, and
10 they are compensating me at my commercial rate for my
11 lost time.

12 Q. Do you bill this money yourself personally, or
13 do you have a company that gets it?

14 A. I'm not sure what you're asking me.

15 Q. Well, you say your lost wages. Do you -- do
16 you -- have you -- are you losing wages?

17 A. Yes. By being here, I'm not earning wages,
18 that's correct.

19 Q. Okay. How -- do you -- do you have a salary?

20 A. I have a partial salary, and I'm also
21 partially reimbursed on an hourly rate, depending on
22 what we're doing.

23 Q. Okay. So is your salary docked because you're
24 here?

25 A. My hourly rate certainly would be docked, yes.

1 Q. No, not your hourly rate, your salary.

2 A. My salary is not, but it's way less than that.

3 Q. Your salary is not docked. Your hourly rate
4 is made up of hourly work you charge clients, right?

5 A. Right, which I can't do while I'm here.

6 Q. Well, you're doing it, aren't you?

7 A. No. I'm here to testify about the facts, and
8 I'm losing the wages that I would have been making
9 during this time.

10 Q. Is it your testimony under oath that if you
11 were not here testifying in front of this jury about the
12 facts in this case, you would be doing work for some
13 other client at the rate of \$475 an hour?

14 A. I can't say that for a fact, but that was the
15 potential, yes.

16 Q. Thanks. All right.

17 Well, let's talk about some of those facts
18 that you've been paid to come here and testify about.

19 MS. WEISWASSER: Your Honor -- Your
20 Honor, I object to that statement.

21 THE COURT: Overruled.

22 MS. WEISWASSER: That implies that --
23 okay.

24 MR. CAWLEY: May I proceed, Your Honor?

25 THE COURT: Yes, you may.

1 Q. (By Mr. Cawley) As a program manager, you are
2 responsible for identifying a vision of what technology
3 DARPA could develop, correct?

4 A. That is correct.

5 Q. And one of the requirements of your
6 Information Assistance (sic) Program was that the
7 security technology be easy to use --

8 A. That is correct.

9 Q. -- true?

10 And wouldn't you agree that this was
11 because -- that the technology needed to be used by the
12 military personnel, soldiers, and they may or may not
13 have much computer experience?

14 A. That's correct.

15 Q. And you believed, therefore, that it was
16 appropriate to make that kind of security easier to use.

17 A. Yes.

18 Q. You agree with me?

19 A. Yes.

20 Q. And, in fact, you knew of some specific
21 examples back in the time we're talking about where the
22 complexity of using computer security became a problem
23 for the military.

24 A. Yes, sir, that's correct.

25 Q. And specifically, you thought back in this

1 time period, that easy-to-use automatic virtual private
2 networks were needed.

3 A. Yes, sir.

4 Q. Now, you've testified about a project called
5 DVPN, right? We heard about that.

6 A. Yes.

7 Q. And that was a project that you funded in your
8 Information Assurance Program, correct?

9 A. That is correct.

10 Q. And you selected Dynamic DVPN -- excuse me --
11 Dynamic VPN as an early target, because it was, in your
12 words, a very hot problem.

13 A. That is correct.

14 Q. I believe it was an urgent problem, in fact,
15 right?

16 A. That is correct.

17 Q. And now, we're talking about a project that
18 happened more than 10 years ago, right?

19 A. Yes.

20 Q. And you have never looked at the source code,
21 the computer code, for DVPN, true?

22 A. I don't specifically recall looking at the
23 source code.

24 Q. Well, have you looked at it or not?

25 A. I don't recall looking at it. It would not

1 have been normally part of my job to look at the source
2 code.

3 Q. Let's look at your deposition. Do you still
4 have it in front of you?

5 A. Yes.

6 Q. Turn to Page 192, Line 25.

7 Question: Do you recall even seeing the
8 source code?

9 Answer: I recall specifically not seeing the
10 source code.

11 Does that refresh your recollection?

12 A. Yeah. It sounds right.

13 Q. Okay. Now, the DVPN project was managed by
14 the Trusted Information Systems; is that right?

15 A. That is correct.

16 Q. But it's also true that you don't remember any
17 of your interactions with them on this project, right?

18 A. No, that wouldn't be correct. I don't have
19 a --

20 Q. Okay.

21 A. -- specific day-by-day --

22 Q. Look at your deposition, Page 163 at Line 9.

23 Question: What's the first interaction with
24 TIS you recall in the context of the DVPN program?

25 Answer: Actually, I don't recall any of the

1 interactions, just because there was so much going on.

2 Do you recall that now, sir?

3 A. I do.

4 Q. Okay. And you don't recall how many times the
5 DVPN prototype was demonstrated, do you?

6 A. I do recall it was at least once.

7 Q. But you don't recall how many times. You
8 recall once; you don't know if there were more.

9 A. Right. Directly recalling out of my memory,
10 that's correct.

11 Q. And you testified about some of the kinds of
12 people who attended the demonstration, but you don't
13 remember any of the specifics of who those people were,
14 do you?

15 A. Well, I remember some specifics, and others I
16 don't remember. I couldn't give you a list of 30 names,
17 if that's what you're asking me.

18 Q. Okay. How many names could you give me a list
19 of?

20 A. I don't know. I haven't been asked to do
21 that, so I imagine I can give you a list of about four
22 or five people.

23 Q. Okay. But beyond that, you don't remember?

24 A. Not off the top of my head, no.

25 Q. And you don't recall asking anyone to attend

1 the demonstration, correct?

2 A. I don't specifically recall inviting a
3 particular person, but I would recall, yes, asking
4 people to attend.

5 Q. Okay. So you recall that, generally, you
6 asked people to attend, but you don't remember which
7 people, accurate?

8 A. Not by name and not all of them, but some of
9 them.

10 Q. Okay. And, in fact, isn't it true,
11 Mr. Saydjari, you don't remember the details of the DVPN
12 demonstration?

13 A. Do you mean the technical details of how it
14 worked?

15 Q. Well, I mean, what you were asked in your
16 deposition when you were asked, do you remember the
17 details of the demonstration demonstrating -- do you
18 remember what you saw there? And you said you didn't
19 remember; isn't that right?

20 A. I don't know. I'm not looking at that at the
21 moment. But it would be correct to say that I don't
22 remember the technical details of the project and how it
23 worked. I would remember that it was -- that it worked
24 and that it was demonstrated.

25 Q. Okay. Fair enough. Now, remember Defendant's

1 Exhibit 3008?

2 MR. CAWLEY: Should we see that again?

3 Q. (By Mr. Cawley) I think it's in your binder.

4 Yeah, the document with two dates on it.

5 A. Yes.

6 Q. What's your best recollection, sir, of when
7 this demonstration actually occurred?

8 A. It was in March of 1998, and that's as
9 refreshed by the documentation that I've seen.

10 Q. Early or late March?

11 A. I would not recall independently of when the
12 documentation was given. The documentation indicates
13 around the middle of March. I think it was the 16th, if
14 I recall the documentation correctly.

15 Q. Now, Mr. Saydjari, in your experience, isn't
16 it typical to simplify the operation of a system for a
17 demonstration?

18 A. Can be.

19 Q. For example, it might be desirable to do that,
20 to focus on a particular aspect of that system in the
21 demonstration.

22 A. It's theoretically possible, yes.

23 Q. And you've seen that happen, haven't you?

24 A. I have.

25 Q. But you don't recall whether the DVPN was

1 simplified, do you?

2 A. I don't recall specifically, no.

3 Q. Okay. And you don't recall the specific
4 equipment that was used in the DVPN demonstration,
5 correct?

6 A. If you mean the exact configuration of the
7 computer down to the bits, I absolutely do not remember
8 that.

9 Q. And in fact, let's get to this point
10 specifically: You don't have a specific recollection of
11 how the DVPN technology triggered the VPN, correct?

12 A. That is correct.

13 Q. Okay. And furthermore, even though you don't
14 remember it exactly, you would doubt that it used a DNS
15 call as a trigger, correct?

16 A. I don't know whether I -- I don't really know
17 for sure. In fact, in point of fact, I wouldn't
18 remember the technical details independent of the
19 documentation that was there. That really wasn't my job
20 to understand that level of detail.

21 Q. Take a look at Page 75 of your sworn
22 deposition. I'm going to start reading the question at
23 Line 22: Do you have any recollection of whether the
24 DVPN system used the DNS request to trigger a VPN?

25 Your answer: I don't have specific

1 recollection, but given my recollection of the coalition
2 manager, the CM, being centrally involved, I would doubt
3 that they would use the DNS call to trigger, because my
4 recollection is that the VPN was set up through the
5 coalition manager prior to the VPN starting up.

6 Does that refresh what you -- your
7 recollection of what you said in your deposition?

8 A. Yes.

9 Q. Have you met with Microsoft's lawyers before
10 this testimony?

11 A. Yes.

12 Q. How many times?

13 A. I would estimate, oh, maybe three or four.

14 Q. When's the last time?

15 A. Let's see. Probably today.

16 Q. Today? Probably today?

17 A. Yes.

18 Q. Any doubt about that, sir?

19 A. Well, no. I'm sorry. It was today.

20 Q. Aah, it was today.

21 A. It's a bit of a blur over the last few days.

22 I apologize.

23 Q. You're not aware of any products that were
24 developed out of the DVPN technology, are you, sir?

25 A. That is correct.

1 Q. You're not aware of any government agencies
2 who use the DPN -- DVPN technology?

3 A. I don't know whether they did or didn't.

4 Q. And you're not aware of any return on that
5 investment, other than the prototype that was
6 demonstrated in one of your meetings?

7 A. That's correct.

8 Q. Okay. You also testified about some
9 interactions that you had with Mr. Munger and others at
10 SAIC. Let me ask you a few questions about that.

11 A. Sure.

12 Q. Before Microsoft's lawyers contacted you, you
13 didn't remember anything about the SAIC proposal, did
14 you?

15 A. I don't know that it's fair to say anything,
16 but I certainly had very little recollection of it.

17 Q. Okay. And when you -- you do recall, though,
18 that when you met with Mr. Munger and his team, what you
19 discussed with them was his idea -- or their idea for
20 using IP hopping to defeat a denial of service attack,
21 correct?

22 A. Yes. That was an aspect.

23 Q. And IP hopping is a type of VPN, correct?

24 A. It can be implemented with VPN, that's
25 correct.

1 Q. IP hopping involves, in simplified terms, the
2 constant switching of IP addresses to make it harder to
3 track them.

4 A. That's correct.

5 Q. And you don't recall any discussion with
6 Mr. Munger or SAIC regarding how VPNs should be set up,
7 true?

8 A. That's true.

9 Q. All you remember evaluating was -- with
10 Mr. Munger and SAIC was their IP-hopping ideas.

11 A. Directly remembering off the top of my head 12
12 years later, that is correct.

13 Q. And you don't recall discussing or evaluating
14 SAIC's ideas regarding DNS-triggered VPNs?

15 A. That is not correct. I did, in fact, review
16 the evaluation after the fact. My documentation
17 refreshed my memory that I reviewed the entire proposal,
18 not just the IP-hopping idea.

19 Q. That's not what you said in your deposition,
20 is it?

21 A. I don't know. You would have to show me, and
22 I'll have to read it.

23 Q. I'd be glad to. Page 144, Line 8. You with
24 me?

25 Question: You don't recall them explaining to

1 you that they were proposing to set up VPNs using DNS
2 triggers?

3 Your answer: I don't specifically recall
4 that, no.

5 A. That is --

6 Q. Is that the testimony that you gave, sir?

7 A. Yes, but I think that's different than the
8 question you just asked me.

9 Q. Well, is that the testimony that you gave?

10 A. That is the testimony that I gave, yes.

11 Q. One of the reasons that you decided not to
12 fund SAIC's project was your feeling that it was too
13 close to the DVPN project, correct?

14 A. One of them, yes.

15 Q. And at the time you met with Mr. Munger, you
16 had already started funding DVPN.

17 A. That is correct.

18 Q. In fact, you had been working on DVPN for at
19 least the previous year, right?

20 A. Since December of 1997, so approximately a
21 year.

22 Q. Okay.

23 A. Not quite.

24 Q. And in fact, you believed that you may have
25 even finished the DVPN project at the time you were

1 meeting with SAIC; isn't that right?

2 A. Yeah, that's correct.

3 Q. And you didn't believe it was prudent to make
4 two investments in that small aspect of your program,
5 correct?

6 A. That is correct.

7 Q. All right. Now, finally, sir, it's not
8 unusual, is it, that due to the state of the economy,
9 political issues, political events, terroristic events,
10 that the priority of government funding may change.

11 You agree with that?

12 A. I agree with that.

13 Q. And, in fact, you've experienced that at
14 DARPA, haven't you, when you've experienced at times
15 decreases in your funding and at times increases?

16 A. My funding at DARPA was consistently high,
17 actually, during the entire time I was there. It
18 actually reached a peak while I was there.

19 Q. Well, I'm not saying that it was ever high or
20 low. All I'm saying is that the availability of money
21 varies, doesn't it?

22 A. Certainly, it's finite, yes.

23 Q. And, in fact, in 2008, 2009, DARPA and other
24 government agencies' funding for computer security
25 research decreased, didn't it?

1 A. Yes.

2 Q. And you noticed a similar change in funding --
3 not decrease, but in some ways increase, for example,
4 after 9/11?

5 A. In computer security, I don't know that I
6 would -- I would say that that's a true statement.

7 Q. And it's not a true statement because, in
8 fact, priorities shifted to antiterrorism activities,
9 correct?

10 A. I really can't speak for the government's
11 priorities and how the funds shifted. I'm not an expert
12 on the budget.

13 Q. You were in that business, sir, though, and
14 you would agree with me, wouldn't you, that after 9/11,
15 when everyone was focused, and properly so, on defeating
16 terrorism, it left less money to go to things like
17 computer security.

18 A. It's -- it's possible. I just don't recall
19 specifically during that year.

20 Q. Thank you, sir.

21 MR. CAWLEY: Pass the witness.

22 THE COURT: Redirect?

23 MS. WEISWASSER: Your Honor, just a few
24 questions, please.

25 THE COURT: All right.

1 REDIRECT EXAMINATION

2 BY MS. WEISWASSER:

3 Q. Mr. Saydjari, VirnetX's lawyer spent most of
4 his time asking about your hourly rate.

5 Do you recall that?

6 A. I do.

7 Q. After an almost 20-year career in the United
8 States Department of Defense, responsible for the
9 nation's computer security, is your testimony today,
10 which has been under oath, affected in any way by the
11 payment that Microsoft has made to you?

12 A. No, ma'am, in no way. That's not who I am.

13 Q. Wouldn't your credibility, Mr. Saydjari, be
14 worth more to you than that?

15 A. Absolutely.

16 Q. So what was your reaction to VirnetX's
17 lawyer's suggestion that somehow your testimony today
18 has been affected by you being compensated for your lost
19 time?

20 A. Honestly, I found it somewhat offensive.

21 MS. WEISWASSER: No further questions,
22 Your Honor.

23 THE COURT: Thank you. Any further
24 recross?

25 MR. CAWLEY: No, Your Honor.

1 THE COURT: All right. You may step
2 down.

3 May this witness be finally excused? Any
4 objection?

5 MR. CAWLEY: No objection.

6 MS. WEISWASSER: No objection, Your
7 Honor.

8 THE COURT: All right. Thank you. You
9 are excused.

10 All right, Ladies of the Jury. That
11 concludes our testimony for today. Let me give you kind
12 of an update as to where we are.

13 The attorneys are on a time schedule, and
14 as best I can determine, if they take all of their time,
15 which I'm sure we're all hopeful, including them, that
16 they don't, but if they do take all of their time, we've
17 got about eight more hours of testimony to go.

18 And we're getting in five to six hours,
19 so my best guess at this point is we'll -- we could get
20 through with the testimony tomorrow. In all
21 probability, we'll come back Monday morning and finish
22 the testimony and then hear closing arguments and get
23 the case to you Monday afternoon.

24 But that's just to give you an idea of
25 planning. It could go over into Tuesday, but for your

1 planning purposes, I just wanted to let you know where
2 we are in the process.

3 Thank you again for your attention. It's
4 been a long day. You've worked very hard, all of the
5 lawyers have, and it's very much appreciated. Drive
6 careful going home.

7 Remember my instructions. Please still
8 don't discuss this case with anyone else or among
9 yourselves or do any kind of investigation or anything
10 of that nature. Follow my instructions, and we'll see
11 you back here in the morning at 9:00 o'clock.

12 The jury is excused.

13 COURT SECURITY OFFICER: All rise for the
14 jury.

15 (Jury out.)

16 THE COURT: Please be seated.

17 All right. What can we expect tomorrow,
18 Mr. Powers, as far as witnesses?

19 MR. POWERS: Well, at the beginning, we
20 have three depositions.

21 THE COURT: Okay.

22 MR. POWERS: The first two will be
23 further DVPN depositions following up on -- they'll be
24 Mr. Sterne, who was referenced by Mr. Saydjari, and then
25 Mr. Kindred, who is also DVPN as well.

1 Then Mr. Hopen by deposition. He's
2 Aventail. And I believe the next witness would be
3 Dr. Johnson, a technical expert on non-infringement.

4 THE COURT: Okay. And will that conclude
5 Microsoft's case?

6 MR. POWERS: There may be another
7 deposition or two after that. It sort of depends on
8 when Mr. Johnson is going for Friday. Obviously,
9 Mr. Wicker will be testifying, as well as an expert on
10 validity, which is another long examination.

11 There's a couple more depositions that
12 depending on when -- where we are, that's where we -- I
13 expect it to go into Monday morning.

14 THE COURT: Into Monday.

15 MR. POWERS: Yes.

16 THE COURT: All right.

17 MR. CAWLEY: So just so I can sleep well
18 tonight, Judge, or as well as possible, can we have the
19 agreement or the understanding that we're not going to
20 do closing argument tomorrow?

21 THE COURT: We don't -- I think that's
22 safe.

23 MR. CAWLEY: Okay. It would really be
24 nice if we could finish the evidence tomorrow, and then
25 everybody could focus on their closing arguments.

1 We could bring in the jury when they're
2 fresh and charge and do arguments and get it to them by
3 noon on Monday, but if not, we'll get it to them Monday
4 afternoon.

5 MR. POWERS: If it can be done, we will,
6 Your Honor. I don't think it's possible.

7 THE COURT: Okay. All right. Very well.
8 Just for the parties' information, the Plaintiff has
9 used 10 hours and 50 minutes, and the Defendant has used
10 8 hours and 48 minutes.

11 MR. POWERS: Your Honor, there is one
12 matter that it would help to resolve before tonight, and
13 that is there are three object -- exhibits that are
14 directly discussed by the next two deposition witnesses,
15 Sterne and Kindred, the DVPN exhibits that are the
16 subject of our brief.

17 The rulings by Your Honor on those
18 exhibits affect the cuts in the video depositions that
19 we're doing. So if we can have a ruling on those, it
20 would help the parties with getting the video
21 depositions properly done tonight.

22 THE COURT: All right. Well, let's take
23 those up right now then.

24 All right. What's your first one, and
25 what's the testimony with regard to it? And you need to

1 summarize or put it on. What's your preference?

2 MR. POWERS: 3061, Your Honor.

3 THE COURT: Excuse me. 3061?

4 MR. POWERS: 3061 is the source code.

5 The only objection is authentication. Mr. Kindred
6 testifies about that authentication and authenticates
7 the source code.

8 He was -- he was the person -- he wasn't
9 the person who wrote the source code, but he was the
10 person who got the handoff of the source code and
11 testified -- and was working with it on a regular basis,
12 and he'll testify, yes, that's the source code that I
13 had.

14 THE COURT: And who is Mr. Kindred?

15 MR. POWERS: He was an employee of --

16 THE COURT: TIS.

17 MR. POWERS: -- of TIS and its successor
18 entity as well. So they changed names at some point in
19 there, but it's the same entity.

20 THE COURT: And what -- do you have his
21 deposition testimony, what he says about the source
22 code?

23 MR. POWERS: We do, yes. It's at Pages
24 12 and 16 of Exhibit F.

25 THE COURT: Okay. If you will, hand it

1 up to me. If I can...

2 And this is where he authenticates it?

3 MR. POWERS: Yes, Your Honor.

4 THE COURT: Okay. What's the Plaintiff's
5 objection, authentication?

6 MR. McLEROY: That, Your Honor,
7 Mr. Kindred joined the company in September of 1999,
8 about 18 months after this presentation was given.
9 He doesn't have the personal knowledge necessary to
10 authenticate this source code as the source code that
11 was used in this March 1998 presentation. All he
12 testifies to -- and I believe you'll see this when you
13 read it -- is that this source code was waiting for me
14 or given to me when I arrived, and I modified it to
15 those future versions of DVPN.

16 MR. POWERS: And, Your Honor, the second
17 relevant point, of course, is that the source code, like
18 all source code, is dated as to when it was created and
19 last modified. And he testifies about that convention,
20 and the source code itself is really
21 self-authenticating.

22 As Your Honor knows, when you read the
23 source code, you look at the comments, it tells you what
24 was done when. And so he's saying, yes, this is the
25 source code I received when I started; yes, this is

1 appropriate; yes, this is authentic; this is what he
2 looked like; and this is how it worked then.

3 THE COURT: Let me see the testimony.
4 Did you prove it up by business records with him as
5 well?

6 MR. POWERS: It's clearly a business
7 record. It's source code, Your Honor. That's not the
8 issue. The issue is only authentication. It's not a
9 hearsay issue.

10 (Pause in proceedings.)

11 THE COURT: Okay. Any further response?

12 MR. McLEROY: Yes. One additional point,
13 Your Honor. There's a software engineer who used to
14 work at this Trusted Information Systems. His name is
15 Mr. Domenic Turchi. He was actually the engineer who
16 wrote the code and demonstrated the code at this March
17 1998 meeting. That's what the testimony will show.
18 And he lives in Maryland. We're not aware of any reason
19 why he could not have been deposed in this case, but
20 Microsoft made the strategic decision not to subpoena
21 him, not to have his testimony here.

22 THE COURT: All right. 3061 will be
23 admitted.

24 What else?

25 MR. POWERS: The next exhibit, Your

1 Honor, is Exhibit 3040.

2 THE COURT: That's the e-mail from Turchi
3 to Sterne?

4 MR. POWERS: Exactly, Your Honor. And
5 the objection is hearsay. And obviously, it's like
6 every other document that's been admitted of exactly
7 this type, despite the hearsay objection, by agreement.
8 This is a standard business record, and the same would
9 really apply to 3041 and 3045.

10 THE COURT: And where did you get this
11 e-mail?

12 MR. POWERS: This was -- well, let me
13 figure out the answer to that.

14 (Counsel confer.)

15 MR. POWERS: My understanding, Your
16 Honor, it was produced by Mr. Sterne.

17 THE COURT: Okay. And what did
18 Mr. Sterne testify about this e-mail?

19 MR. POWERS: He testifies that it is what
20 it appears to be and that it's --

21 THE COURT: And that he received this
22 e-mail from Turchi? Does he testify to that?

23 MR. POWERS: Yes, Your Honor.

24 THE COURT: All right. Response?

25 MR. McLEROY: Yes, Your Honor. We don't

1 believe this has been proved up as a business record,
2 and if you review the testimony, what we would like you
3 to focus on is whether or not it has been shown that it
4 was prepared at or near the time of the events in
5 question, that being this March 1998 presentation.

6 What the evidence shows is that DVPN
7 rapidly changed from its inception, as Mr. Saydjari
8 testified, in mid to late 1997 through March of 2000
9 where, in fact, there was a second demonstration of
10 DVPN, which Microsoft does not contend invalidates any
11 of the VirnetX patents.

12 So there are a lot of changes made to the
13 source code. That's why we believe at or near the time
14 of the event is very critical here, and that has not
15 been proved up with respect to any of the remaining
16 documents.

17 THE COURT: It's dated, though, isn't it?

18 MR. McLEROY: It is dated, Your Honor.

19 THE COURT: All right. 3040 will be
20 admitted.

21 MR. POWERS: The next one, Your Honor, is
22 3041, which is an overview document that's created to
23 describe the DVPN.

24 Again, it's established clearly as a
25 business record. It's also to establish what the

1 document was used for. And this, as I understand it,
2 was actually used as part of --

3 THE COURT: Now, that doesn't have any
4 authors, I notice.

5 MR. POWERS: It's not listed as
6 authored.

7 THE COURT: All right. And who is your
8 sponsoring witness that says where they got this and
9 what it is?

10 MR. POWERS: Mr. Sterne, Your Honor.

11 THE COURT: What does he say?

12 MR. POWERS: I'll grab the testimony for
13 you.

14 THE COURT: Response?

15 MR. McLEROY: Your Honor, this document,
16 unlike the e-mail, is undated, and we don't believe
17 there's any evidence in the record that shows that it
18 was prepared at or near the time of this demonstration,
19 which is exactly what they're offering it to prove.

20 THE COURT: What does Mr. Sterne say
21 about it?

22 MR. POWERS: Your Honor, the testimony is
23 at Page 28, Line 22 through 25; also 17 -- it's
24 summarized at Page 7 of our brief. I could hand that up
25 for you as a road map.

1 THE COURT: I'd like to see the
2 testimony, if you have it there.

3 MR. POWERS: I do, Your Honor.

4 THE COURT: What page is it?

5 MR. POWERS: Well, the first page, Your
6 Honor, for 3041 is Page 28.

7 THE COURT: Line?

8 MR. POWERS: 22 to 25 is the first
9 excerpt that discusses the team, which is, of course,
10 relevant to that.

11 Page 29, Lines 3 through 12 is discussing
12 the issue directly in terms of its creation in the
13 ordinary course of the business.

14 Really, if you started at Page 28,
15 Line 9, and go through 29, Line 12, that's the bulk of
16 it.

17 THE COURT: That's where I am.

18 (Pause in proceedings.)

19 THE COURT: Okay. What's your objection?

20 MR. McLEROY: It's hearsay, Your Honor,
21 and that it hasn't been proved to have been prepared at
22 or near the time of the IFD 1.1.

23 THE COURT: All right. I'm going to
24 sustain the objection as to 3041.

25 Which one is next?

1 MR. POWERS: The last one, Your Honor, is
2 3045. And the relevant pages from Mr. Sterne's
3 deposition are 61 to 62.

4 THE COURT: And this is a diagram of the
5 VPN demonstration; is that correct?

6 MR. POWERS: Exactly, Your Honor.

7 THE COURT: But it's not dated and does
8 not have an author, right?

9 MR. POWERS: It's undated on its face and
10 doesn't have an author on its face, but Mr. Sterne
11 supplies that.

12 THE COURT: Okay. That's Sterne on --

13 MR. POWERS: Actually, there is a date,
14 Your Honor. It's March -- the date is March 21 of 1998.

15 THE COURT: All right. And where is
16 Sterne's testimony, what page? 61?

17 MR. POWERS: 61 and 62, Your Honor.

18 THE COURT: Beginning on Line -- that's
19 Exhibit 7?

20 MR. POWERS: Yes, Your Honor. Beginning
21 at Line 21, I think, on 61, but perhaps a little bit
22 before that, through about the middle of Page 62.

23 THE COURT: Who's BBN?

24 MR. POWERS: I'm sorry? Do what, Your
25 Honor?

1 THE COURT: Oh, that's the -- he said it
2 was probably produced by BBN.

3 MR. POWERS: BBN is that contractor that
4 Mr. Saydjari just testified about, who was the
5 integrator, who's the one that was participating in the
6 March conference.

7 (Pause in proceedings.)

8 THE COURT: Okay. Objection?

9 MR. McLEROY: Yes, Your Honor.

10 This is hearsay. Unlike the other
11 documents, this one did not come from Trusted
12 Information Systems. It came from a separate company,
13 BBN.

14 And no BBN representative was deposed,
15 and I don't believe, in Mr. Sterne's deposition, that
16 any effort was made to prove this document up as a
17 business record.

18 MR. POWERS: May I respond, Your Honor?

19 THE COURT: Yes, you may.

20 MR. POWERS: Trusted Information Systems
21 was working with BBN. Mr. Saydjari just testified to
22 that. The document is dated, and they were working
23 together as part of that exact demonstration.

24 The title is Virtual Private Network
25 Demonstration, and Mr. Sterne's testimony, I think,

1 gives all the information we need.

2 THE COURT: Let me see the document, if
3 you would.

4 (Pause in proceedings.)

5 THE COURT: Now, where is the date on the
6 document?

7 MR. POWERS: Very first page, bottom
8 right.

9 THE COURT: All right. Be admitted.
10 All right. What else?

11 MR. POWERS: That's it from Microsoft,
12 Your Honor.

13 THE COURT: All right. Anything else
14 from the Plaintiff?

15 MR. CAWLEY: Your Honor, may we have
16 permission to use the camera in the courtroom to
17 photograph the demonstrative in the computers?

18 THE COURT: Yes, that's fine.

19 MR. CAWLEY: Thank you, Your Honor.

20 THE COURT: Both sides may do so.

21 All right. Very well. We will see you
22 in the morning.

23 COURT SECURITY OFFICER: All rise.

24 (Court adjourned.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/ _____
SUSAN SIMMONS, CSR
Official Court Reporter
State of Texas No.: 267
Expiration Date: 12/31/10

Date

/s/ _____
JUDITH WERLINGER, CSR
Deputy Official Court Reporter
State of Texas No.: 731
Expiration Date: 12/31/10

Date

EXHIBIT F9

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

1			
2			
3	VIRNETX	*	Civil Docket No.
4		*	6:07-CV-80
5	VS.	*	Tyler, Texas
6		*	March 12, 2010
7		*	9:00 A.M.
8	MICROSOFT CORPORATION		

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE JUDGE LEONARD DAVIS
UNITED STATES DISTRICT JUDGE

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12	FOR THE PLAINTIFFS:	MR. DOUGLAS CAWLEY
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(Proceedings recorded by mechanical stenography,
transcript produced on CAT system.)

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APPEARANCES CONTINUED:

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* * * * *

P R O C E E D I N G S

(Jury out.)

COURT SECURITY OFFICER: All rise.

THE COURT: Please be seated.

All right. Is there a matter before we

1 bring the jury in?

2 MR. CASSADY: Your Honor, just one small
3 housekeeping matter. Exhibit 732 was inadvertently left
4 off of our list yesterday. It's an MCP -- MCPP license.
5 It might be other licenses that were let into evidence,
6 and I wanted to give Mr. Sayles a chance to object
7 outside the presence of the jury.

8 THE COURT: Are you offering it?

9 MR. CASSADY: I'm offering that and 277
10 and 228 from yesterday.

11 THE COURT: All right. Any objection?

12 MR. SAYLES: I object to the first
13 numbered exhibit --

14 MR. CASSADY: 732.

15 MR. SAYLES: -- 732 on the grounds that
16 it's an irrelevant, non-comparable license agreement and
17 should not be permitted to go to the jury.

18 THE COURT: Okay. Admitted.

19 Thank you.

20 All right. Anything else before we bring
21 the jury in?

22 MR. CASSADY: No, Your Honor.

23 THE COURT: All right. Bring the jury
24 in.

25 COURT SECURITY OFFICER: All rise.

1 (Jury in.)

2 THE COURT: Please be seated.

3 All right. Good morning. It's Friday.

4 All right. We're about to begin our

5 fifth day of trial, and we will have a full day of

6 evidence today, probably a little bit of evidence on

7 Monday morning.

8 So with that, if you would like to call

9 your next witness.

10 MR. BOBROW: Thank you very much, Your

11 Honor.

12 At this time, Microsoft calls David

13 Johnson.

14 THE COURT: Okay. David Johnson.

15 I believe Mr. Johnson has been sworn,

16 hasn't he?

17 MR. BOBROW: Yes, he has, Your Honor.

18 DAVID JOHNSON, DEFENDANT'S WITNESS, PREVIOUSLY SWORN

19 DIRECT EXAMINATION

20 BY MR. BOBROW:

21 Q. Good morning, sir.

22 A. Good morning, sir.

23 Q. Can you please introduce yourself to the jury?

24 A. Yes. My name is David Johnson.

25 Q. Where do you live Mr. Johnson?

1 A. In Houston, Texas.

2 Q. How long have you lived there?

3 A. I've been in Houston now a total of 19 years.

4 Q. And --

5 A. I'm sorry. 29 years. Excuse me.

6 Q. What do you do for a living in Houston?

7 A. I'm a tenured full professor of computer
8 science and in electrical and computer engineering at
9 Rice University.

10 Q. How long have you been a professor there?

11 A. Ten years.

12 Q. Were you a professor before that?

13 A. Yes. I was at the Carnegie Mellon University
14 in Pittsburgh for eight years.

15 Q. So when did you start as a professor at
16 Carnegie Mellon?

17 A. In 1992.

18 Q. When did you start as a professor at Rice?

19 A. 2000.

20 Q. And what has been the focus of your research
21 and your work at Carnegie Mellon University and at Rice?

22 A. Focus on my research has been in the area of
23 network protocols and internet and operating systems and
24 allowing those computers to communicate with each other,
25 including issues such as efficiency, reliability, and

1 security.

2 Q. Now, would you please tell us why you're here
3 today?

4 A. I've been asked to give my opinion as to
5 whether Microsoft infringes the asserted VirnetX's
6 patents.

7 Q. Have you formed opinions on that subject?

8 A. Yes, sir, I have.

9 Q. What opinions have you formed?

10 A. Microsoft does not infringe the patents.

11 Q. All right. Now, before we get into the
12 details of that and the work that you did in your
13 forming those opinions, what I would like to do, first
14 of all, is get a little bit more of your background out
15 and talk about some of the work that you've done both at
16 Carnegie Mellon and at Rice.

17 So if we could begin, please, even before
18 that, if you could give us a sketch of your educational
19 background since high school.

20 A. Yes, sir.

21 I attended high school at Spring High School
22 in Spring, Texas, near Houston, and graduated there in
23 1978. I went from Spring High School to Rice University
24 and received my bachelor's there in computer science and
25 in mathematical sciences in 1982.

1 In 1985, I received my master's in computer
2 science also from Rice University, and in 2000 -- excuse
3 me -- in 1990, I received my Ph.D. in computer science
4 at Rice University.

5 Q. All right. Now, Professor Johnson, as a
6 professor at Carnegie Mellon and at Rice, have you
7 taught courses in the field of networks and the
8 internet?

9 A. Yes, sir, I have. I've taught courses at both
10 the graduate and undergraduate level in networks and
11 operating systems. Primarily my teaching is graduate
12 courses in mobile and wireless network protocols and
13 undergraduate courses in operating systems. And I teach
14 those courses every year.

15 Q. Do you also teach courses outside of the
16 university setting?

17 A. Yes, sir, I have. I've taught more than a
18 dozen short courses, one-day courses typically, at
19 computer science conferences.

20 Q. Okay. And does any of the teaching you do
21 involve network security?

22 A. Yes, sir, it does. In both of the classes
23 that I mentioned, the graduate mobile and wireless
24 networking course and undergraduate operating systems
25 course, I teach network security or cover that in both

1 of those classes, including issues such as encryption,
2 authentication, denial of service attack prevention.
3 Virtual private networks, prevention of viruses, issues
4 such as that.

5 Q. All right. Now, I think a couple of times you
6 mentioned to us that some of your work involves mobile
7 networks, mobile IP and wireless.

8 Can you give us a very brief description of
9 what that's about?

10 A. Sure. A mobile network is one in which the
11 computers can move around and connect to the network at
12 different places, and, in fact, can move around while
13 they're even in use.

14 And wireless networking is the most common
15 example of a mobile network.

16 Q. And does the mobility of those devices that
17 you've described create any particular problems?

18 A. Yes, sir, it does.

19 In a typical -- in a traditional stationary
20 network, the network address of a computer essentially
21 defines the location of that computer and allows the
22 routers in a network, such as the internet, to be able
23 to route packets to that location.

24 When the mobile -- the computers become
25 mobile, that association between the address of the

1 computer and the location on the computer breaks, so
2 routing becomes much -- much more difficult.

3 Q. Now in that last answer, you talked about
4 hackers and the word hack.

5 Can you please tell us what you mean by that?

6 A. The way computers communicate with each other
7 is through packets, such as in the internet, the
8 protocols call IP, or the internet protocol, so
9 you've -- you know, many of the witnesses have mentioned
10 IP packets.

11 That's just the basic unit of communication
12 that computers use over networks to communicate with
13 each other.

14 Q. Okay. Thank you.

15 Now, let me ask you -- you mentioned that
16 you've done work in networks and the internet. Have you
17 authored any standards relating to networks and the
18 internet?

19 A. Yes, sir, I have.

20 I've -- I was active for more than 10 years in
21 the IETF, or Internet Engineering Task Force, and there
22 have authored five different RFCs. One of those RFCs is
23 related to parts of how the internet itself work and the
24 rest deal with aspects of mobile networking.

25 Q. Now, you mentioned in your last answer RFC.

1 Can you remind us, please, what that stands
2 for?

3 A. Yes. Thank you.

4 RFC is the name of the documents that -- that
5 specify all the different standards that make now the
6 internet works.

7 Q. Thank you.

8 Now, you mentioned some of the standards work
9 you've done in the mobile area. Are there any the
10 particular security issues that come up in that context?

11 A. Yes, sir, there are.

12 When computers move from place to place, the
13 computer has to send a sort of what you might think of
14 as a location update packet to let others know the new
15 location of -- of the mobile computer.

16 And the danger then comes in or the security
17 problem then comes in is, it would then be possible for
18 hackers to essentially fake those location update
19 packets, or possibly modify those location update
20 packets, and trick others into thinking the mobile
21 computer is someplace that it's not or perhaps someplace
22 that it was, say, last week.

23 So it would then be possible for the attacker
24 to essentially highjack arbitrary communication between
25 any different computers on the internet.

1 Q. Thank you.

2 Now, you mentioned this mobile IP standard.
3 How widely is that standard used, sir?

4 A. It's very widely used. It turns out the most
5 widely used aspect of it is in the cellular telephone
6 industry, and from the latest statistics from the cell
7 phone industry, there are over a billion users of the
8 mobile IP standard worldwide.

9 Q. Okay. Now, shifting from some of your
10 standards work, have you done any work on the issues of
11 networking or the internet for the United States
12 government?

13 A. Yes, sir, I have.

14 I have received seven grants from the National
15 Science Foundation, two grants from DARPA, the Defense
16 Advanced Research Products Agency, and one grant from
17 NASA all in the areas of -- of networking.

18 Q. Did any of that work that you just described
19 for the United States government involve issues of
20 network security?

21 A. Yes, sir.

22 In particular, one of those National Science
23 Foundation grants was specifically directed to
24 developing new techniques for network security, the
25 grant from the Trusted Computing program of the National

1 Science Foundation.

2 Q. Now, sir, as a professor at Carnegie Mellon
3 and at Rice University, have you authored any papers or
4 books or articles on the subject of networks or the
5 internet?

6 A. Yes, sir, I have.

7 I have published over 100 papers in conference
8 proceedings and in journals, in book chapters, technical
9 reports, internet standards documents, most of which
10 deal with net -- computer networking and many of which
11 deal directly with different aspects of -- of computer
12 network security, particularly mobile network security.

13 Q. Okay. Now, before your work on this case,
14 have you ever worked as an expert in any other cases?

15 A. Yes, sir, I have. This is the --

16 Q. Have you -- I apologize, sir. Go ahead.

17 A. I was just going to say, yes, this is the
18 twelfth case that I've been retained as an expert
19 witness for.

20 Q. Have you ever been hired by the party that
21 owns the patent, sometimes the Plaintiff?

22 A. Yes, sir, I have.

23 Q. And you've been hired, I take it then, for
24 work on behalf of defendants, the parties that have been
25 sued for infringement; is that right?

1 A. Yes, sir, that's correct.

2 Q. Okay. Now, earlier you told us your opinions
3 that Microsoft does not infringe the two patents of
4 VirnetX that are at issue in this lawsuit. And I wanted
5 to first find out about the work that you did leading up
6 to your opinions.

7 Now, I understand, sir, that you have prepared
8 some slides or overheads to assist in your presentation;
9 is that right?

10 A. Yes, sir, that's correct.

11 Q. All right. So the first thing I'd like you to
12 do is to please describe for us the work that you did
13 before forming your opinion that Microsoft does not
14 infringe the '135 patent or the '180 patents?

15 A. All right. I studied the patents at issue in
16 this case. I studied their prosecution histories before
17 the Patent Office. I studied, of course, Judge Davis'
18 claim construction in this case. I studied a large
19 number of Microsoft technical documents as well as the
20 source code of the products at issue in this case, the
21 deposition transcripts in this case.

22 I've used both the -- the different pieces of
23 software accused in this case. Studied Dr. Jones'
24 reports, including the Wireshark data that he collected
25 and presented earlier this week in this case. And I

1 prepared reports in this case to describe my findings in
2 this case.

3 Q. All right. Now, what I'd like to begin with,
4 since we have two patents and we have two sets of
5 products, let's start, if we may, with the '135 patent
6 and the products of Microsoft that are involved there,
7 okay?

8 A. Yes, sir.

9 Q. So what I'd like to first do is make sure
10 we're all on the same page and we know what software it
11 is that you looked at and formed your opinions on.

12 So if you would, please, let us know what that
13 is.

14 A. All right, sir. I've prepared on this next
15 slide a list just to summarize the different pieces of
16 software. So one of those was Windows XP, and another
17 one was Windows Vista.

18 Q. All right. And what else have you looked at?

19 A. All right. So in the case of Windows XP, it
20 was only versions of XP that included the RTC or
21 real-time communications APIs Version 1.2 or later.
22 In the case of Windows Vista, it was only those that
23 included the UCC APIs which meant that only after a user
24 had either downloaded those APIs from the web or
25 installed them into that version of Windows Vista, when

1 installed some product that was using those APIs.

2 And the other piece of software were Windows
3 Messenger Version 5, Office Communicator, Live Meeting
4 Console, Live Communications Server, and Office
5 Communications Server.

6 Q. All right. Now, that's quite -- quite a
7 mouthful there. What I'd like to do, if I may, is
8 simply refer to all of that software that's at issue
9 here as the RTC, real-time communication, software.

10 Is that all right with you?

11 A. That's great. Thank you.

12 Q. Okay. Now, let's go back and let me ask you,
13 have you formed an opinion on whether this RTC software
14 that you've just described infringes any of the claims
15 of the '135 patent?

16 A. Yes, sir, I have.

17 Q. Tell us what your opinion is.

18 A. That Microsoft does not infringe any of the
19 asserted claims with the RTC software.

20 Q. Tell us, please, how you arrived at that
21 opinion.

22 A. I have summarized on -- I'm sorry. I forgot
23 which slide I was on.

24 What I did was compared the asserted claims
25 given Judge Davis' claim constructions, to the accused

1 software and determined that at least three elements of
2 those claims are missing in the accused products.

3 Q. Okay. Three elements?

4 A. Yes.

5 Q. All right. Now, before I ask you to go
6 through those --

7 MR. BOBROW: May I ask the Court to
8 please dim the lights so that the slide is a bit more
9 viewable for ladies of the jury?

10 THE COURT: Just a minute. We're having
11 a little technical difficult.

12 There we go.

13 MR. BOBROW: Thank you very much.

14 Q. (By Mr. Bobrow) All right. So you had
15 mentioned that you had found that three elements of the
16 claims of the '135 patent were missing.

17 Can you please explain that for us?

18 A. Yes, sir.

19 So in this next slide I've listed, shown Claim
20 1, just to illustrate the three elements that are
21 missing. In this claim, there are two of those elements
22 that are missing: The VPN element and the website
23 element.

24 So here I've highlighted where those elements
25 appear in Claim 1, and I found that both the VPN element

1 and the website element are missing. So what I've done
2 here is crossed out the different portions of the claim
3 in which those two elements appear, leaving in this
4 case, only the first step of the method not crossed out.
5 So the only -- these other elements of the method are
6 not met by the RTC software.

7 Q. All right. And did you perform the same
8 evaluation for Claims 10 and 12 of the '135 patent?

9 A. Yes, sir, I did.

10 Q. Can you show us what you did?

11 A. Sure.

12 In my next slide, I've shown the text of
13 Claims 10 and 12. And in this case, I found not only
14 the VPN element and the website element missing, but
15 also the gatekeeper computer element is missing. So
16 I've highlighted again here those three elements appear
17 in these two claims. And, again, I've crossed out the
18 elements, the portions of these two claims in which
19 those elements appear.

20 And in this case, the entire body of both
21 Claims 10 and 12 are crossed out, because those elements
22 appear in -- across the entire claims.

23 Q. All right. So why don't we break this up into
24 pieces, and what I'd like to do first is ask you some
25 questions about your opinion that the RTC software

1 doesn't use or include a virtual private network or a
2 VPN, okay?

3 A. Yes, sir.

4 Q. All right. So, first of all, can you please
5 remind us what a VPN is?

6 A. Certainly.

7 The Court here has given us a construction for
8 a VPN, and that is a network of computers which
9 privately communicate with each other by encrypting
10 traffic on insecure communication paths between the
11 computers.

12 Q. Okay. Now, is it your understanding that
13 Judge Davis' construction requires both data security
14 and anonymity?

15 A. Yes, sir, that's correct.

16 Q. All right. Can you begin, then, by telling us
17 what data security is?

18 A. Data security in the context of the patents
19 means encryption. And I have highlighted here just two
20 paragraphs of the -- of the patent in which, in fact,
21 both the data security and the anonymity requirements
22 are discussed.

23 Q. All right. And can you tell us, then, what
24 the patent says there about data security?

25 A. Yes. Data security involves keeping the

1 information secret. And so the patent here describes,
2 for example, data security is usually tackled using some
3 form of data encryption.

4 Q. Now, you had mentioned anonymity.

5 Can you tell us what anonymity is?

6 A. Yes, sir.

7 Anonymity involves keeping the identities of
8 the computers that are communicating secret so that an
9 attacker who may eavesdrop on the communication is
10 unable to determine which computers are communicating.
11 I've highlighted here a sentence from the patents that
12 describes that where they say: Also, it may be desired
13 to prevent an eavesdropper from discovering that
14 Terminal 100 is in communication with Terminal 110.
15 And the language of the patents, Terminal 100 and
16 Terminal 110, simply identify two computers that they
17 are talking about in these two paragraphs that are
18 communicating with each other.

19 Q. And if I've got this right, the portion of the
20 patent that you were referring to when you were talking
21 about data security and anonymity is at Column 1, Lines
22 14 through 45; is that correct?

23 A. That's correct, sir.

24 Q. All right. Now, I'd like to shift from the
25 patent and, please, I'd like you to explain for us how

1 it is that a typical VPN, virtual private network,
2 provides anonymity.

3 Would you do that for us, please?

4 A. All right, sir.

5 So I have prepared an animation to help
6 explain how a typical VPN works and provides anonymity.
7 So I've shown here on the left side a source computer
8 and on the right side a destination computer.

9 And for simplicity, I'll simply refer to the
10 IP addresses that I've shown here as basically the one
11 whose address begins with the 204 sending it -- a packet
12 to the one whose destination -- whose IP address begins
13 with 122.

14 I've shown also in this picture the internet
15 in the middle of the -- of the picture, and then a
16 computer at the edge of the internet on each side, which
17 would serve as a VPN gateway.

18 So the source computer may want to send some
19 information to a colleague on the destination computer,
20 for example, information about new tax laws. And the
21 source computer takes that information, puts it into an
22 IP packet that is addressed from the source computer's
23 IP address -- this 204 IP address -- to the destination
24 computer's IP address -- this 122 IP address.

25 That computer then sends the packet on its way

1 towards the destination. On its way out into the
2 internet from this original source network, it goes
3 through that VPN gateway, which then takes that packet
4 and encrypts the entire packet, including not only the
5 contents of the packet but also the header of the packet
6 in which those original IP addresses were located.

7 So those IP addresses of the source computer,
8 this 204 address, and the destination, the 122 address,
9 are private IP addresses, are not going to be visible
10 across the internet.

11 The VPN gateway then puts that now encrypted,
12 entire, original packet into a new packet addressed from
13 the VPN gateway itself to the VPN gateway on the other
14 side. So it's from the 105 IP address to this 115 IP
15 address.

16 If there's some hacker somewhere in the
17 network that's able to eavesdrop on the communication
18 across the public network of the internet, all that's
19 visible in the packet is these two public IP addresses,
20 the 105 address and the 115 address.

21 So if this hacker is able to grab a copy of
22 the packet and try to inspect it, if the hacker looks
23 inside to try to find out actually which computer sent
24 that packet originally and which computer is the
25 destination of the packet, all the hacker is going to be

1 able to see is that encrypted contents that includes the
2 encrypted original IP addresses.

3 So the hacker is going to be unable to
4 determine which two computers, the 204 computer and the
5 112 computer, are actually in communication with each
6 other.

7 Q. All right. Thank you, Professor Johnson.

8 What I'd like to do now is shift from that to
9 talking about Office Communicator and Office
10 Communications Server, which are two of Microsoft
11 products that were discussed just a bit earlier.

12 And first of all, I wanted to make sure that
13 as we talk about Office Communicator and Office
14 Communicator Server -- Communications Server, now is it
15 your understanding that those, Office Communicator and
16 Office Communications Server, are representative of the
17 other products that you listed on that slide earlier?

18 A. Yes, sir, they are.

19 Q. All right. Now, let me, first of all, ask you
20 about how an Office Communicator computer communicates
21 with the Office Communications Server, okay?

22 A. All right.

23 Q. So the first question that I have for you is
24 that when those two computers communicate with each
25 other, in what form do they send information?

1 A. They send that information in IP packets.
2 That's the only way to communicate between computers in
3 the internet.

4 Q. Now, what is in an Office Communicator to
5 Office Communications Server IP packet? What are the
6 contents of it?

7 A. I've prepared another graphic here to help
8 explain that.

9 There's basically three major components to
10 the contents of an IP packet going from Office
11 Communicator to Office Communications Server.

12 The first portion of the IP packet is what is
13 known as the IP header, and that's where the source IP
14 address of the sending computer and the destination IP
15 address of the receiving computer are located.

16 The next portion of the packet is the -- what
17 is known as the TCP header, or transmission control
18 protocol. That's just another of the protocols that
19 these two computers are using to communicate with each
20 other and to carry in the IP packet, which is, of
21 course, how they actually communicate between each
22 other.

23 And the PCP header is a number of things, but
24 most significantly is the -- what's known as the
25 destination port number that identifies the particular

1 application on that destination computer.

2 So the IP packet sends it to that destination
3 computer, and the destination port number identifies the
4 actual program on that destination computer that's
5 supposed to receive the packet.

6 And finally, the other large portion of the
7 packet is the message itself that's going to be sent
8 from that source computer to that destination computer.

9 Q. All right. So let me break this up just a
10 bit, and I'm going to flash with a laser over here to
11 make sure -- I know you can't see that above your
12 head -- but I'm circling with this pointer this blue
13 header that says source IP address and destination IP
14 address.

15 Now, in an OC/OCS IP packet, are those IP
16 addresses encrypted?

17 A. No, sir, they're not.

18 Q. All right. In the next layer that you've
19 shown here, this TCP layer, is the source or destination
20 or port information encrypted?

21 A. No, sir. None of it is encrypted.

22 Q. All right. And what about in the -- in the
23 data, is that encrypted?

24 A. It may be or it may not be.

25 In this example, it is -- it would be

1 encrypted. I haven't shown that here, so the text is
2 still readable, but this is a -- the port number
3 identifies that this is going to -- over an encrypted
4 connection, but it would be only the data portion, the
5 bottom portion that would be encrypted.

6 Q. Okay. Now, in this OC/OCS IP packet that
7 you've illustrated here, is there any private IP address
8 and private IP address in that packet?

9 A. No, sir, there's not.

10 There are the IP addresses that are in the
11 header of the packet, and they are plainly visible.
12 There are no other IP addresses that would be private IP
13 addresses.

14 Q. All right. Now, when an OC or Office
15 Communicator computer communicates with an Office
16 Communications Server, are the Office Communicator
17 computer and the Office Communications Server computer
18 anonymous?

19 A. No, they're not.

20 Q. Why not?

21 A. Because, again, the IP addresses are plainly
22 visible in the header of the packet. This source IP
23 address clearly identifies the sending computer. The
24 destination IP address clearly identifies the
25 destination computer.

1 And so an attacker who would eavesdrop on this
2 packet would easily be able to tell which two computers
3 are in communication with each other.

4 Q. Now, I understand that you've prepared an
5 animation to illustrate that.

6 Would you share that with us, please?

7 A. Yes. I have.

8 So this is similar to the VPN animation that I
9 showed in one sense, but it's actually quite different.
10 I've shown on the left the Office Communicator computer
11 and on the right the computer running the Office
12 Communications Server.

13 And, again, showing the IP addresses of the
14 two, which I will, for simplicity, refer to the 204
15 address and the 112 IP address.

16 So the Office Communicator running on this
17 computer with the 204 IP address wants to send again
18 this information about new tax laws to -- to some
19 colleague, and -- for example, in an instant messenger
20 going over Office Communicator.

21 To do that, the message is encrypted, but now
22 it's just the data of the message that's encrypted.
23 There is no IP header yet. Only the data is encrypted,
24 and then that encrypted message -- my clicker didn't
25 work. There it goes.

1 The encrypted message is then put into an IP
2 packet that is addressed from the computer running
3 Office Communicator directly to the computer that is
4 running Office Communications Server. And that message
5 is sent across the internet.

6 And, again, if we have our hacker who might be
7 trying to eavesdrop on communications across the
8 internet and if that hacker is able to, you know, grab a
9 copy of that packet and try to learn something
10 interesting from it, it's clearly able to see the IP
11 address of that source computer and the IP address of
12 the destination computer, allowing the hacker to easily
13 know which two computers are in communication with each
14 other.

15 Q. All right. Now, were you in Court the other
16 day when Dr. Jones explained why he believed that
17 communication between Office Communicator and the Office
18 Communications Server?

19 A. Yes, I was here.

20 Q. And what did he say about anonymity?

21 A. He said it was his opinion that the
22 communication is still anonymous, because what's known
23 as the SIP address is -- of the source-sending person
24 and the SIP address of the destination person are
25 encrypted; they would be inside that encrypted part of

1 the message.

2 Q. All right. Now, let's pause there, because
3 we've got so many initials and letters going on.

4 So you said a SIP address. Is that SIP?

5 A. Yes. SIP is the session initiation protocol,
6 sir.

7 Q. Okay. So the IP in SIP, that means something
8 different than the IP in IP packet?

9 A. That's correct.

10 The I in IP is the internet protocol, which,
11 again, is this basic unit of communication that all
12 computers on the internet use as the only way to
13 communicate with each other.

14 And the I in SIP is the session initiation
15 protocol, which is essentially how you -- how, using
16 this Office Communicator/Office Communications system,
17 that a connection to be able to send this instant
18 message from me to my colleague is initiated.

19 Q. Now, tell us if you would, please, what a SIP
20 address is and what it does.

21 A. A SIP address is essentially like a person's
22 name. Say my name is David and a SIP address is -- is
23 basically like that. It is not useful for figuring out
24 where the destination is. It simply identifies the
25 destination person.

1 Q. All right. And do you agree with Dr. Jones'
2 opinion that by encrypting SIP addresses that that
3 provides anonymity?

4 A. No, it does not provide anonymity.

5 The anonymity that's required is preventing
6 this hacker from being able to determine which two
7 computers are in communication with each other.

8 The SIP address does not in any way identify a
9 computer. A SIP address is the name of a person, again,
10 such as like David. But the computers are identified by
11 the IP address.

12 A person might log into one computer at, you
13 know, one day using their SIP name and log into a
14 different computer the another day or later the same
15 day. Or, in fact, a person may log into multiple
16 computers at the same time using the same SIP address --
17 SIP name.

18 And so the name does not in any way identify a
19 particular computer.

20 Q. Now, is a SIP address a network address?

21 A. No, it is not.

22 A network address is like -- the address of
23 this courthouse, if I remember correctly, is 211 West
24 Ferguson Street. That's an address. That allows you to
25 locate the building. And if you were trying to route a

1 packet or yourself in a car to the courthouse, you could
2 use 211 West Ferguson Street to actually find this
3 location.

4 Whereas a SIP address is sometimes called a
5 SIP address. It's technically a SIP uniform resource
6 identifier, which is another mouthful. So it's commonly
7 called a SIP address, but it's not really an address.
8 A SIP address is like a name like David. It doesn't
9 tell you where anything is. 211 West Ferguson Street or
10 an IP address tells you where something is.

11 Q. All right. What I'd like you to do, please,
12 is put up on the overhead Figure 1 from the '135 patent.

13 Can you do that, sir?

14 A. Yes, sir, here it is.

15 Q. Now, as I understand it from what you said,
16 what's depicted here is a picture of the internet; is
17 that right?

18 A. Yes, sir. This is a picture that comes from
19 the '135 patent and shows a diagram of the internet in
20 which -- as I mentioned earlier, this so-called Terminal
21 100 computer is in communication with this Terminal 110
22 computer, like I've shown at the top and the bottom of
23 the figure, respectively.

24 Q. All right. Now, to get information or
25 communication from that originating terminal, 100, down

1 to this destination terminal, 110, what kind of address
2 do I need?

3 A. The only way to get the packet from this 100
4 computer to the 110 computer is by sending IP packets,
5 which are addressed using IP addresses. That's the only
6 thing that IP routers can use to know how to forward a
7 packet through these -- these different hops that I've
8 shown here in yellow from the diagram in the patent.
9 The packet has to be forwarded from a router to another
10 IP router to another IP router. An IP router is used,
11 IP addresses, to know how to forward the packet towards
12 the destination.

13 Q. Just to be clear, if I use a SIP address, an
14 S-I-P address, can I get a communication or a packet
15 from this originating Terminal 100 over the internet to
16 this destination Terminal 110?

17 A. No, sir, you can't. The IP routers, first of
18 all, only know what IP addresses mean, not what SIP
19 names mean. But even if they did understand exactly
20 what a SIP name means, those routers would not have any
21 idea how to forward a packet, hop by hop, and reach a
22 SIP name such as -- such as David.

23 They know how to reach a location that's
24 identified by an IP address but not a person by just
25 using that person's name or the equivalent of that

1 person's name, which is what a SIP address is.

2 Q. All right. So in your view, does -- the RTC
3 software that we discussed earlier, does that use or
4 include a VPN?

5 A. No, sir, it does not include a VPN or use a
6 VPN.

7 Q. All right. Let's turn to the second element
8 that you said was missing from the '135 patent and that
9 was website, okay?

10 Now, I'd like to start by reminding everyone
11 what a website is.

12 A. All right. The Court again, Judge Davis, has
13 given us a construction of what a website is. And that
14 is one or more related web pages at a location on the
15 worldwide web.

16 Q. All right. So let's break that up and let me
17 ask you, first of all, to tell us briefly what the
18 worldwide web is.

19 A. The worldwide web is the interconnected
20 collection of all the public websites in the world, and
21 I've just shown here examples of some, you know, very
22 common, popular websites.

23 The links from one web page to another allows
24 users to, you know, click on a little piece of text or a
25 little picture, and when you click on that with your

1 mouse in your browser, it takes you from one page to
2 another page, and you can follow through this collection
3 of related web pages that make up one website, or, in
4 fact, follow links from one website to another website
5 across this sort of web of information, which is what
6 the web really is.

7 Q. All right. Now, you were here in Court when
8 Dr. Jones testified that the RTC software does not
9 literally include a website.

10 Were you here for that?

11 A. Yes, sir, I was.

12 Q. Do you agree with that view?

13 A. I agree it does not include a website
14 literally.

15 Q. All right. Now, have you evaluated whether an
16 OCS, or Office Communications Server, is equivalent to a
17 website?

18 A. Yes, I have done that evaluation, also.

19 Q. What did you conclude?

20 A. That it's certainly not equivalent to a
21 website.

22 Q. How did you go about evaluating whether a
23 website on the one hand is equivalent to an Office
24 Communications Server on the other?

25 A. So what I've shown in this next slide here is

1 a chart where I looked at some of the core attributes of
2 really what is a website, and tried to evaluate in what
3 way does the website have those attributes and then in
4 what way does OCS possibly have any of those attributes.

5 So the first attribute that I've listed here
6 is that a website is hosted on a web server. So, for
7 example, a web server is a computer which might look
8 something like this. Could be any computer typically in
9 a machine room. And on that computer are located these
10 web pages.

11 The Court's construction is a collection of
12 related web pages at a location on the worldwide web.
13 Those web pages are housed, if you will, on this web
14 server, and when someone in their browser requests a web
15 page, that web page is sent from this web server
16 computer to the user's browser so the user can view that
17 web page.

18 So on my chart here, I've checked off, yes,
19 that a website does have this attribute.

20 The second attribute I've listed here is the
21 web pages are viewable through a web browser. So, for
22 example, if I wanted to go shopping at Wal-Mart on the
23 web, I could go to www.wal-mart.com in my browser, and I
24 would see something like this (indicates).

25 The web is designed to collect this related

1 information together and to be able to present it to
2 users. The web was created -- the first version was
3 released by the inventor of the web, Tim Berners-Lee, in
4 1991, and from his very first proposal in even 1989, the
5 purpose of the web is to collect this information
6 together, link it together, and make it viewable.
7 He was working with physicists who had a lot of data
8 that they wanted to be able to find again and view again
9 the related data.

10 So on my chart of core attributes, I have
11 checked off that, yes, web pages and a website are
12 viewable through a web browser.

13 The final attribute I've listed here is that
14 web pages in a website support what are known as
15 hyperlinks. So if I'm shopping again at Wal-Mart.com
16 and say I wanted to buy some piece of electronics, like
17 a television set or a computer, with my mouse, if I move
18 the mouse over and click on the word computers, my web
19 browser will go to the web server and download a new web
20 page.

21 A hyperlink is the relationship between that
22 piece of the text, the word computers, and the idea that
23 when you click on that piece of text, you're supposed to
24 then be able to view this second web page, which here
25 lists the kinds of electronics that Wal-Mart has for

1 sale.

2 So on my list of core attributes of a website,
3 I've checked, yes, that websites do have this attribute
4 of supporting hyperlinks. That is what makes the web a
5 web. That's what links the pieces of the web together
6 from one page to another related web page.

7 Q. All right. Now, did you perform this analysis
8 on whether or not an Office Communications Server has
9 any of those attributes?

10 A. Yes, sir, I did.

11 Q. And can you briefly tell us what you
12 concluded?

13 A. Certainly.

14 An Office Communications Server has none of
15 those attributes. An Office Communications Server does
16 not host any information that is, you know, stored on
17 the Office Communications Server and downloaded when a
18 user wants to view that information. You can't request
19 a piece of information that's stored on Office
20 Communications Server.

21 So I've marked, no, that OCS does not host --
22 does not host on a web server; does not have information
23 hosted on a web server.

24 The information that OCS may have is not
25 viewable through a web browser. You can't plug anything

1 into your browser and see any information that's stored
2 on this OCS server. In fact, the information on the OCS
3 server is -- that instant message I showed earlier, for
4 example, is not stored on the server. It goes from
5 client to client.

6 The information that's stored on a server is
7 purely controlled information, purely information that's
8 internal to the operation of the server, not intended to
9 be viewed by humans in any way through a browser or
10 otherwise.

11 So I've marked off, no, that the Office
12 Communications Server does not have information that is
13 viewable through a web browser.

14 Finally, the information does not support
15 hyperlinks. I can't follow from a piece of text that
16 has this sort of hidden link information that when I
17 click on that piece of text takes me to another page.
18 There's no such kind of -- of link of anything like that
19 in any information that's stored on a Office
20 Communications Server.

21 So, again, I've marked off, no, that it does
22 not have that attribute also.

23 Q. Now, in your view, Professor Johnson, are
24 these differences that you've described between a
25 website on the one hand and an Office Communications

1 Server on the other, are those differences substantial?

2 A. They are quite substantial. Basically, it has
3 none of the attributes. You can't do any of the things
4 with an OCS server that you can do with a website. They
5 have really nothing in common.

6 Q. So let me ask you, then, to put it a little
7 bit of a different way, do websites perform
8 substantially the same function and work substantially
9 the same way and achieve substantially the same results
10 as an Office Communications Server?

11 A. No. The function is completely different.
12 A website is a collection of related information that's
13 intended to be viewable by, you know, people through
14 their web browser. Again, the OCS -- the function of an
15 OCS is to help a client be able to find another client,
16 given these SIP names, which are like, you know, David.
17 It's the OCS server that helps the first client find the
18 second client.

19 The way in which it does this on a website is
20 by returning web pages that are hosted on the website,
21 returning those web pages when requested by a yours with
22 their browser. The way in which OCS does this is by,
23 you know, allowing the first client to register and
24 forwarding the request from one to the other.

25 I mean, it's just completely different in the

1 way in which they work, and the results are completely
2 different.

3 The result of a website is to host those pages
4 and to allow those pages to be viewable by viewers,
5 humans.

6 And the result of a website is that the -- I'm
7 sorry -- of the OCS server is that the first client can,
8 in fact, find the second client. When I start with just
9 their SIP name, I'm able to, you know, send an instant
10 message to that second -- that client.

11 Q. Now, would a person in this field consider a
12 website on the one hand to be interchangeable with an
13 Office Communications Server on the other?

14 A. They're not in any way interchangeable. As
15 I've have described, they don't do anything common with
16 what each other does.

17 Interchangeability would be, for example, if I
18 was building this -- this table, desk, whatever I'm
19 sitting at here -- if I was going to assemble the parts
20 of it using nails, I could hold the different pieces of
21 lumber together that way, or I could use all the pieces
22 of it together with screws.

23 Screws and nails in this context are roughly
24 interchangeable with each other. They would both hold
25 the different boards together.

1 OCS versus a website, there's nothing like
2 that. They simply are not interchangeable in any way.

3 Q. So in your view, does the RTC software use or
4 include a website or the equivalent of a website?

5 A. No, it does not.

6 Q. All right. Now, let's turn to the third
7 element that was discussed earlier. This one pertains
8 to Claims 10 and 12 of the '135 patent. And that's this
9 element called a gatekeeper computer, all right?

10 A. Yes, sir.

11 Q. So, first of all -- and I don't know. Do you
12 have the text of the --

13 A. Yes, I've prepared that.

14 Q. Thank you.

15 So, first of all, we can see in Claim 10, it
16 requires a gatekeeper computer, and also discusses a
17 gatekeeper computer in Claim 12.

18 Can you tell us what such a computer is?

19 A. Yes, sir.

20 In the context of the '135 patent, a
21 gatekeeper computer is a computer that helps set up the
22 VPN connection.

23 Q. Okay. Now, does the RTC software include the
24 gatekeeper computer?

25 A. No, it certainly does not.

1 A gatekeeper computer is a kind of computer.
2 There's a lot of computers around the courtroom. A
3 computer is a piece of hardware; it has a processor; it
4 has memory; it typically has a disk drive in it; often
5 has a display; has a lot of wires in it. A computer is
6 a piece of hardware.

7 The RTC software is -- is software. It's just
8 information. It's instructions that could be executed
9 by a computer, but the RTC software itself is not a
10 computer. It's just software and doesn't do anything
11 until you load that on to some computer and try to
12 execute it.

13 Q. All right. So in your view, does the RTC
14 software use or include a gatekeeper computer?

15 A. No, sir, it does not.

16 So in the same way as I've done earlier, I've
17 checked off, marked off, the two portions the -- I've
18 only shown here the last portion of Claim 10 that
19 includes the gatekeeper computer, and then all of
20 Claim 12, I've also, again, marked off as not being met
21 by the RTC software.

22 Q. All right. Now, let's shift gears, still
23 talking about the '135 patent and the RTC software,
24 though.

25 And I wanted to ask you whether you were here

1 in Court when Dr. Jones talked about what he referred to
2 as the automatic connection feature of the RTC
3 interface.

4 Were you here then?

5 A. Yes, sir, I was.

6 Q. All right. Now, do you recall his testimony
7 on that subject generally, first of all?

8 A. Yes, I do.

9 Q. All right. Now, let me ask you, whether in
10 the RTC software there are anyways of forming a
11 connection that don't use the automatic connection
12 feature; that is, to form a connection between an Office
13 Communicator client on the one hand and an Office
14 Communications Server on the other?

15 A. Yes, sir.

16 In my next slide, I've actually prepared a
17 list of -- there are, in fact, three ways of finding
18 that Office Communications Server and thus being able to
19 connect from the Office Communicator client to that
20 server.

21 The three ways are -- the first one I've
22 listed here is the user could manually enter either the
23 IP address or the host name of the Office Communications
24 Server.

25 So, for example, I've shown here on this next

1 slide a screen shot of how that would be done in the
2 Office Communicator client. The user would simply be
3 able to enter either the IP address for the host name
4 into -- into the box here and click on okay. That would
5 have to be done once when you set up that computer for
6 the first time.

7 The other way -- the second way I've listed
8 here is the user's IT administrator, say, of their
9 company, could automatically provide that information by
10 preconfiguring the user's client to essentially answer
11 those same questions to plug into that client the IP
12 address or host name of the server that this company is
13 using.

14 And then the last way I've listed here is what
15 I refer to as default server naming. It is a very
16 commonly used, wide-spread custom. In Office
17 Communicator/Office Communications Server, the protocol
18 they use that's carried inside the IP packets that they
19 use to talk to each other, the protocol that they use
20 inside that is a SIP, or this session initiation
21 protocol.

22 So if I was going to name the SIP server for
23 Rice University, it would be very natural and very
24 common to name that SIP.rice.edu, and the Office
25 Communicator client program understands and knows about

1 that common custom of how SIP servers are named. And so
2 the client program can simply assume that, hey, maybe
3 the SIP server, the Office Communications Server program
4 for Rice University would be at a machine named
5 SIP.rice.edu.

6 Q. All right. Now, in that last answer, you said
7 something like to edu.

8 A. I'm sorry.

9 Q. That would be dot, E-D-U, sort of like dot.
10 Com or dot.bill. Is that what you meant?

11 A. Yes. We not only speak in too many acronyms
12 in this field. We often pronounce our acronyms.
13 So I meant E-D-U, which is just the three-letter
14 abbreviation for an educational institutional
15 organization, such as Rice University.

16 Q. Now, in your view, do any of these three
17 alternative ways of forming a connection infringe the
18 '135 patent?

19 A. No, sir. None of them infringe it.

20 Q. All right. And in your view, are these
21 alternative ways of forming a connection to the
22 automatic connection feature -- are these three ways
23 substantial, in your view?

24 A. Quite substantial. They are easily used.
25 They are available already in the product. They don't

1 really diminish the usability of the process in any way.
2 The first two would only have to be done once when
3 the -- you know, a user's new computer is being
4 configured. The first one is fairly painless for the
5 user.

6 The second one could be automatically done by
7 the IT administrator, and, in fact, could be done
8 essentially bulk, automatically across all the computers
9 in the company. The IT administrator could just push
10 out an update that would set the name or IP address of
11 the server.

12 And the last one is simply a matter of naming
13 your server in a very natural and easy-to-do way, and
14 then from that point on, from the point of view of the
15 client, the actual user, it's purely automatic.

16 Q. All right. Now, I think that finishes up on
17 the '135 patent, RTC software. So now what I'd like to
18 do is again shift gears, and this time focus on the
19 second group of software at issue and the second patent
20 at issue.

21 So now what I'd like to do is ask you some
22 questions about the '180 patent and what has been
23 referred to sometimes in this Court as the PeerNet --
24 the PeerNet software, okay?

25 A. All right, sir.

1 Q. All right. So, first of all, I understand you
2 have a slide that lists the software that you
3 considered.

4 Now, let me just ask you, sir, as I understand
5 it, the software you looked at included the Windows XP
6 operating system, but only the versions with and after
7 the Advanced Networking Pack; is that right?

8 A. Yes, sir, that's correct.

9 Q. And for Windows Vista, you looked at all
10 the -- all of Windows Vista; is that right?

11 A. Yes, that's correct, also.

12 Q. All right. Now, would you please tell us --
13 and if I understand the prior testimony here, are there,
14 in your understanding, any applications for Windows XP
15 that use the PeerNet software?

16 A. I'm not aware of any applications that use the
17 PeerNet software in Windows XP.

18 Q. Now, for Windows Vista, are you aware of any
19 applications that, in your understanding, use the
20 PeerNet software?

21 A. I am aware there of only one application, and
22 that is the Windows Meeting Space application.

23 Q. So what I'd like to do, then, as we did for
24 the prior patent and set of software, I'm going to, if I
25 may, simply shorthand this and talk about the software

1 as the PeerNet software, if that's all right with you.

2 A. That will be fine, yes.

3 Q. All right. Now, do you have an opinion on
4 whether the PeerNet software infringes the '180 patent?

5 A. Yes, I do.

6 Q. What's your opinion?

7 A. That Microsoft software, the PeerNet software,
8 does not infringe the '180 patent.

9 Q. Tell us, please, how you arrived at your
10 opinion.

11 A. I studied the asserted claims of the '180
12 patent in light of Judge Davis' claim constructions in
13 this case and compared those claims to the
14 functionality, the features of the PeerNet software, and
15 determined that the PeerNet software does not infringe
16 any of the asserted claims of the '180 patent either
17 literally or under the Doctrine of Equivalents.

18 Q. And did you determine whether there were any
19 elements of the claims of the '180 patent that were
20 missing from the PeerNet software?

21 A. Yes, sir, I did. I've prepared another slide
22 similar to what we did on the '135 patent where I've
23 listed here Claims 1, 4, and 15.

24 And what I determined in my analysis is that
25 there's at least two elements or features of the claims

1 that are missing from the PeerNet software, and those
2 are the -- again, the VPN limitation of the claims, as
3 well as here the secure computer network address feature
4 of the claims.

5 So, again, what I've done is crossed out all
6 the portions of the claims that include or depend from
7 those limitations, and here the only thing that is left
8 not crossed out is the first small portion of Claim 1 of
9 receiving a secure domain name. All of the other
10 portions of these claims require those developments.

11 Claim 15 requires them because it's a
12 dependent claim.

13 Q. All right. Now, I noticed that you did not
14 put up a slide on Claim 17 and 20 and 31 of this patent
15 or Claims 33 and 35. And I simply wanted to ask you
16 whether these elements that you've listed here, virtual
17 private network and secure computer network address, are
18 also missing from those claims.

19 A. Yes. The analysis on those in this sense is
20 the same, and they are missing both of these elements as
21 well.

22 Q. All right. Now, let's briefly talk about
23 Windows Meeting Space, which is the one application
24 you've identified that's used with Windows Vista.
25 And the question I had for you is this: When computers

1 using Windows Meeting Space communicate with each other,
2 what do they use to communicate?

3 A. They use IP packets to communicate. So,
4 again, IP packets are the only way that computers on the
5 internet can possibly speak to each other. You cannot
6 send anything from one computer to another computer
7 without sending that information in an IP packet from
8 that first computer to the second computer.

9 Q. Okay. Let's now turn to the element that
10 you've described as being missing here of virtual
11 private network, and I wanted to ask you: Does the
12 PeerNet software use or include a VPN?

13 A. No, it does not use or include a VPN.

14 Q. Okay. Can you tell us why not?

15 A. Certainly. I've prepared an animation here to
16 illustrate why I believe it's not -- does not include a
17 VPN, and the reason for that is that it does not provide
18 anonymity.

19 What I've shown here is a group that would be
20 using the PeerNet software, and imagine that my computer
21 on the left here that has -- in this case, I'll just
22 focus on the last digit of the IP addresses.

23 The computer IP address ends in 7 is sending a
24 packet to another computer in the -- in the -- in the
25 group. This IP packet has an IP source address that is

1 the first computer on the left's IP address, the one
2 ending in 7, and the destination IP address is the one
3 on the, I guess, upper right here, the IP address that
4 ends in 44.

5 And, again, if we have our hacker in the
6 network who's trying to eavesdrop on this IP packet
7 that's going between this first and second computer and
8 that IP -- and that hacker may be able to capture a copy
9 of the packet and look at it, the hacker is clearly able
10 to see the source address of the first computer, its IP
11 address, the one ending in 7, and the destination
12 address ending in 44 and is thus able to tell clearly
13 which two computers are in communication with each other
14 across the network using this packet.

15 The same feature was, in fact, shown both
16 here -- and I didn't mention this in our analysis, the
17 '135 patent discussion of that, but the same feature of
18 these IP addresses being visible was shown in Dr. Jones'
19 Wireshark files that he presented in his testimony here
20 earlier this week.

21 The IP addresses are clearly visible, there
22 are no private IP addresses, and the hacker can tell
23 which two computers are in communication with each
24 other.

25 Q. Okay. Now, in a group, as you've shown here,

1 using Windows Meeting Space, using the PeerNet APIs,
2 when one computer in that group sends a packet to
3 another, is there any private IP address inside the
4 packet?

5 A. No, there is not.

6 Q. Is there any encrypted IP address in a packet
7 going from one computer using PeerNet software to
8 another computer using the PeerNet software?

9 A. No, there is not. There's simply the public
10 unencrypted IP addresses in the -- in the header of the
11 packet that are plainly visible.

12 Q. Now, you heard Dr. Jones here in court express
13 his view that there was anonymity in communications from
14 one group member computer to another group member
15 computer.

16 Do you recall that?

17 A. Yes, I do.

18 Q. Do you agree with his view?

19 A. No, I do not.

20 Q. Can you explain why you disagree with him.

21 A. What matters is -- I mean, in the -- in the --
22 in the patent, anonymity is preventing the attacker from
23 discovering which two computers are in communication
24 with each other.

25 These IP addresses clearly identify, in this

1 case, the computer that has the IP address ending in 7
2 and the computer that has the IP address ending in 44 as
3 being those two computers that are in communication with
4 each other.

5 Dr. Jones instead focused on the contents, the
6 message, inside the packet and talked about a record
7 going from one computer possibly to another computer.
8 But the IP packet, irregardless of the contents of the
9 packet, the message, the IP packet itself, the IP header
10 itself, clearly identifies which two computers are in
11 communication with each other, and so there is no
12 anonymity.

13 Q. Okay. Let's turn to the second element then
14 that you said was missing from the PeerNet software, and
15 that was the secure computer network address, okay? So
16 this is now the second element missing from the PeerNet
17 software.

18 And can you first tell us what a secure
19 computer network address is?

20 A. Yes, sir.

21 Again, Judge Davis has given us a construction
22 of this -- of this term. A secure computer network
23 address is defined as a network address that requires
24 authorization for access and is associated with a
25 computer capable of virtual private network

1 communications.

2 Q. All right. Now, can you please illustrate for
3 us how it is that a typical VPN provides such a secure
4 computer network address?

5 A. Certainly.

6 So this is, basically, the same picture of a
7 VPN that we looked at earlier, and I'm focusing here on
8 the destination computer on the right, the one that I've
9 highlighted, in this case, the one whose IP address
10 begins with 122.

11 If someone on the internet, maybe the source
12 computer or -- from anywhere wants to send a packet to
13 that destination computer, it has to go through what I
14 described earlier as the VPN gateway.

15 And if you don't have authorization for
16 access, the VPN gateway stops the packet from going
17 through its -- through the gateway to try to reach that
18 destination computer.

19 So here I've shown a case in which the sender
20 did not have authorization to access the IP address
21 here, 122.12.64.24.

22 The other -- other users may have
23 authorization for access, and sometimes the VPN
24 gateway -- if you're authorized, the VPN gateway will
25 allow the packet through to reach that computer.

1 So in the first case I showed, you did not
2 have authorization for accessing the IP address, the 122
3 here IP address. In the second case, you did have
4 authorization for accessing that 122 IP address.

5 Q. All right. So in Windows Meeting Space for
6 computers that are part of the group, do the group
7 member computers have a secure computer network address?

8 A. No, they do not.

9 Q. Can you please tell us why that's so?

10 A. Certainly.

11 What I've illustrated here on the next picture
12 is just a big picture of a computer, and I want to just
13 focus on the screen in the next couple of -- of graphics
14 that I'll show to illustrate sort of what's running on
15 that computer, but I also want to focus on the IP
16 address of the computer.

17 That IP address is what Dr. Jones has
18 identified as being what, in his opinion, is the secure
19 computer network address of a computer running a
20 grouping application -- a PeerNet application.

21 So here I've shown an IP address of this
22 computer, and, supposedly, the user of this computer is
23 reading their e-mail using Outlook Express.

24 The packet -- IP packets that carry the e-mail
25 messages to this computer reach the computer by being

1 addressed to this IP address as the destination address
2 of those IP packets, and they're easily able to reach
3 the computer as intended.

4 If I run a grouping application on the
5 computer, at the same time as I'm running the Outlook
6 Express application, still reading my e-mail while I'm
7 participating in some, you know, PeerNet application,
8 the packets there are associated with the e-mail
9 application are still able to easily reach the computer
10 using the computer's IP address here, 182.48.17.35.

11 But packets associated with the grouping
12 application, the group is enforcing a requirement of
13 authorization for access to the group to that one
14 application program on the computer.

15 Whatever the group is enforcing, in terms of
16 that authorization-for-access requirement only applies
17 to the group program, that one application program
18 running on the computer. It does not in any way affect
19 access to the computer's IP address as a whole.

20 And so the e-mail application still works,
21 whereas, if you don't have authorization for access, you
22 can't actually join the group or access the records in
23 the group. You can still read your e-mail.

24 And I've just used e-mail and Outlook Express
25 as one application, one example. There are hundreds,

1 perhaps thousands or more applications that could be
2 running on that computer.

3 And there are even things that run on the
4 computer in the background that are part of how the
5 computer operates internally that users don't typically
6 see but still require IP packets to be able to reach the
7 computer.

8 None of that is affected by having a grouping
9 application running on a computer. It only affects the
10 access to the one application on that computer, not the
11 rest of the computer itself or the computer's IP address
12 itself.

13 Q. So do computers that are running this PeerNet
14 software use or include a secure computer network
15 address?

16 A. They certainly do not, no.

17 Q. All right. Thank you, Professor Johnson.

18 MR. BOBROW: I pass the witness, Your
19 Honor.

20 MR. CALDWELL: Your Honor, may we
21 approach?

22 THE COURT: Yes, you may.

23 (Bench conference.)

24 MR. CALDWELL: We're back again on the
25 same issues, because Mr. Bobrow asked twice if it's --

1 inside the IP has to be a visible or a hidden IP
2 address. He's still arguing IP tunneling is part of
3 this, and he's just using different words to do it.

4 So I object to the Markman. They were
5 told not to do it at the pretrial conference, and they
6 still did it.

7 MR. BOBROW: Your Honor, all we were
8 doing was describing typical examples of VPN. He
9 described how IP works, and he described how the VPNs
10 work. He didn't reconstrue the claim in any way
11 whatsoever.

12 He applied your construction, the
13 instruction that you said -- yes. And he applied the
14 construction that you ordered him to apply. He applied
15 that from the claim construction. And he used some
16 examples of VPN to illustrate his points. There was no
17 reconstruction or different construction offered.

18 THE COURT: Okay. Well, let's try to
19 steer as clear from that as possible, okay?

20 MR. CALDWELL: Your Honor, may I -- may I
21 point out with the witness that they went for a
22 construction of IP inside IP, and that was rejected?

23 THE COURT: Yes.

24 MR. CALDWELL: Okay.

25 MR. BOBROW: Well, Your Honor, I would

1 object to that. I don't think that there is any reason
2 to bring in -- I think that there was an agreement that
3 the parties would not go back and put in what the
4 parties had argued leading to the claim construction.
5 All that's happened here is that he's applied your
6 construction, and he's given examples of how it works.
7 And it would be highly prejudicial to allow counsel for
8 VirnetX to try to come forward and say, gee, this is
9 what -- this is what Microsoft argued, and it was
10 rejected. I think that that's improper, and certainly,
11 it would stand from that as well.

12 THE COURT: Okay. Lower your voice.

13 MR. BOBROW: I'm sorry, Your Honor.

14 THE COURT: This is supposed to be a
15 bench conference.

16 MR. BOBROW: I understand. I misheard
17 your clerk because I thought she said to keep my voice
18 up, so I apologize.

19 THE COURT: Well, keep it up and down at
20 the same time.

21 MR. BOBROW: Thank you, Your Honor.

22 THE COURT: All right. I don't want
23 you -- I don't want you cross-examining him about what
24 the claim construction -- what they argued in claim
25 construction, but I think it is fair game, since he's

1 raised this, for you to get him to admit that that type
2 of IP tunneling is not part of the claim -- my claim
3 construction.

4 MR. BOBROW: If -- if he were asked
5 whether tunneling is a requirement of the claim, that's
6 fine. I don't -- you know, I think that's fine. I just
7 understood that he was going to argue about what we
8 argued.

9 THE COURT: You decide whether you want
10 to go into it or just leave it alone.

11 MR. CALDWELL: Well, it just seems like
12 it's the third conference we've had, and it just keeps
13 coming up over and over again, and they keep doing it.

14 THE COURT: Please try to avoid that.

15 MR. BOBROW: Okay.

16 MR. CALDWELL: And, Your Honor, one last
17 question, just so I don't have to repeat -- don't have
18 to come back up here.

19 If Dr. Johnson directly contradicts his
20 straight statement that Mr. Powers made directly to the
21 Court in the Markman -- in the Markman argument and won
22 a construction based on that argument, may I impeach him
23 with that statement made to the Court?

24 THE COURT: Now, what is that now?

25 MR. CALDWELL: It's -- there's a

1 statement that Mr. Powers made to the Court arguing the
2 construction of website where he said, what makes a
3 website a website is that it uses http.

4 And I just want to ask the witness, is
5 that what makes a website a website, and if he
6 disagrees, I want to know if I can present that.

7 MR. BOBROW: Well, again, Your Honor,
8 what we're doing is we're bringing in arguments that
9 were made before claim construction. Your Honor
10 construed the claims, and he shouldn't be allowed to
11 impeach with attorney argument.

12 I think it would be fair for him to ask
13 is http part of a website, or is html part of a website,
14 but it would be unfair for him to use an argument that
15 counsel made pre-claim construction to impeach the
16 witness.

17 MR. CALDWELL: Well --

18 MR. BOBROW: He can certainly argue what
19 is and is not a website but to use counsel's argument
20 would be prejudicial and unfair.

21 MR. CALDWELL: I think what's unfair is
22 to win a claim construction by telling Your Honor
23 something very clearly and then come back and run from
24 it at trial. That's --

25 THE COURT: I'll allow the

1 cross-examination.

2 MR. CALDWELL: You will?

3 THE COURT: I will.

4 (Bench conference concluded.)

5 THE COURT: How long do you anticipate
6 your cross-exam will be, Counsel?

7 MR. CALDWELL: I expect it will be
8 probably about 40 minutes.

9 THE COURT: All right. Well, it's
10 10:30 -- almost 10:30. Why don't we go ahead and take
11 our morning break at this time, Ladies and Gentlemen of
12 the Jury and -- or Ladies of the Jury. Excuse me again.

13 We'll be in recess then until -- let's
14 say 10:40.

15 MR. CALDWELL: Your Honor?

16 COURT SECURITY OFFICER: All rise.

17 MR. CALDWELL: Your Honor, may I ask a
18 quick question?

19 THE COURT: Uh-huh.

20 Go ahead.

21 (Jury out.)

22 MR. CALDWELL: I'm very sorry about the
23 extra delay.

24 THE COURT: Uh-huh.

25 MR. CALDWELL: Being that I just went

1 open kimono on my argument there, can I have an
2 instruction that counsel for Microsoft not confer with
3 Dr. Johnson during this break right here ahead of his
4 cross to warn him about what I just told counsel?

5 THE COURT: I will so instruct him.

6 MR. CALDWELL: Thank you, Your Honor.

7 COURT SECURITY OFFICER: All rise.

8 (Recess.)

9 COURT SECURITY OFFICER: All rise.

10 (Jury in.)

11 THE COURT: Please be seated.

12 All right, Counsel. You may proceed.

13 MR. CALDWELL: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. CALDWELL:

16 Q. Good morning, Dr. Johnson.

17 A. Good morning.

18 Q. I'm Brad Caldwell, one of the attorneys for
19 VirnetX. You and I have met, correct?

20 A. Yes, sir.

21 Q. Now, before we start going through some of the
22 questions I have, can we rely on the deposition that I
23 took of you a few months ago?

24 A. Yes.

25 Q. Can we also rely on the reliability or the

1 accuracy of the slides that you've presented?

2 A. Yes.

3 Q. And were you involved in helping prepare
4 Mr. Pall's slides that he presented?

5 A. No, sir.

6 Q. Did you -- did you view those slides when they
7 were presented in the courtroom?

8 A. Yes, I did, sir.

9 Q. And is it your opinion that we can rely on
10 those as well?

11 A. Yes, I believe so, yes.

12 Q. Professor Johnson, did you understand, from
13 the first minute that you were contacted about this
14 matter, that you would be required to conclude that
15 there was no infringement?

16 A. Not at all, no, sir.

17 Q. Well, did Microsoft hire you because virtual
18 private networks are the focus of your research or
19 teaching?

20 A. I have no way to know what was in Microsoft's
21 mind. I imagine it was simply my expertise in
22 networking more generally.

23 Q. Well, in the past, have you been a go-to
24 expert for Microsoft when they need assistance for a
25 non-infringement opinion?

1 A. No, sir.

2 Q. This is the third time you've worked for
3 Microsoft in a patent case, correct?

4 A. That's correct, sir.

5 Q. You've never concluded that Microsoft
6 infringed a patent, fair?

7 A. That's correct.

8 Q. Now, Professor Johnson, in your direct
9 examination, I recall you saying that you had worked on
10 about 12 other cases?

11 A. That's correct.

12 Q. Do you recall telling me in your deposition
13 that you had been named as a testifying expert in 14
14 patent infringement cases?

15 A. I do recall saying that, and I also recall
16 saying that I was having a difficult time actually
17 counting them the way they're formatted on my resume,
18 and --

19 Q. Fair enough.

20 A. -- I slightly miscounted.

21 Q. Fair enough. Okay.

22 And you had your resume in front of you when I
23 asked you that question.

24 A. Yes. And as I said, the way they're
25 formatted, it was difficult to count them all.

1 Q. Okay. Is it fair --

2 A. I made sure before my testimony here that I
3 did refresh myself and make an accurate count.

4 Q. And is it fair to say that you've prepared a
5 good number of expert reports in connection with patent
6 infringement?

7 A. That's correct, yes.

8 Q. And it's correct, isn't it, that in the 14 or
9 12 cases, you have never -- excuse me.

10 It's correct, isn't it, that in the 14 or 12
11 cases where you have been named as a testifying expert,
12 you have never prepared a report concluding that anyone
13 infringed a patent?

14 A. That's correct.

15 Q. And in all those cases where you prepared a
16 report, have you ever testified that anyone infringed a
17 patent?

18 A. No, sir.

19 Q. Are you just of the mind that no patent is
20 ever infringed?

21 A. Certainly not, no, sir.

22 Q. Professor Johnson, do you know what the odds
23 are of flipping a coin 12 times and having it always
24 land on tails?

25 A. Yes.

1 Q. What are they?

2 A. I can't do math in my head this morning, but
3 they're not very high.

4 Q. I noticed that in your direct presentation,
5 you mentioned, at least in passing, the Court's
6 construction of virtual private network.

7 Do you recall that?

8 A. Yes, I did.

9 Q. And then after that, you left the topic of the
10 Court's construction of virtual private networks and
11 referred to what you called a typical VPN.

12 Do you recall that?

13 A. I did describe what I called a typical VPN,
14 that's correct, sir.

15 Q. And now, did you want the jury to believe that
16 your definition of a so-called typical VPN is the
17 definition that's at issue in this case after Judge
18 Davis' claim construction?

19 A. No. My intention was simply to describe
20 exactly what I said it was, a typical VPN. I clearly
21 described the Court's construction, and that's exactly
22 what I used in my analysis.

23 But to illustrate sort of the features or the
24 concepts of a VPN, it's easier to talk about them in a
25 particular example.

1 Q. And when you described a typical VPN, sir,
2 didn't you describe having a set of IP addresses inside
3 another set of IP addresses?

4 A. That's correct, sir.

5 Q. That has a name, doesn't it?

6 A. Yes, it does.

7 Q. What is that name?

8 A. It's generally referred to either as
9 encapsulation, or the particular use of encapsulation
10 here is what's called tunneling.

11 Q. Is tunneling a requirement of Judge Davis'
12 construction of virtual private network?

13 A. No, it's not.

14 Q. Is encapsulation a requirement of Judge Davis'
15 construction of virtual private network?

16 A. No, sir.

17 Q. Now, when we go through your cross-examination
18 or your direct, do we need to take into account any
19 Wireshark files that you created or any captures of that
20 kind of IP traffic from tests that you ran?

21 A. No, you don't. I relied on Dr. Jones'
22 Wireshark files, which clearly showed --

23 Q. Professor --

24 A. -- the VPN products.

25 Q. -- is the answer, no, we don't?

1 A. I'm sorry. Did not.

2 Q. You didn't prepare any Wireshark, did you?

3 A. No.

4 MR. CALDWELL: Now, could we look at the
5 graphic that Mr. Powers used in opening and then
6 Mr. Singh-Pall used in his direct? I believe it's
7 probably my Slide No. 1.

8 Q. (By Mr. Caldwell) Do you recognize this slide?

9 A. Yes, I do.

10 Q. Did you use this slide as well?

11 A. I used a very similar slide. We're all using
12 the same graphics people to help us prepare slides --

13 Q. Okay.

14 A. -- so that, you know, the graphical elements,
15 the clip art is similar, yes.

16 Q. That's what I was looking for, yes, sir. You
17 used a similar slide, fair?

18 A. Certainly, yes.

19 Q. Okay. Now, we see a computer on the left and
20 a computer on the right. One says Sue. Is that an
21 alliteration to the fact that this is a lawsuit, sir?

22 A. I have no idea. I didn't use this slide or
23 prepare this slide and certainly had no input into the
24 decision of the name there.

25 Q. Okay. Well, you see a computer on the left

1 and a computer on the right, fair?

2 A. Yes.

3 Q. And the one on the left has an IP address of
4 204.11.52.127, correct?

5 A. That's correct, sir.

6 Q. And the one on the right has an IP address of
7 122.12.164.24, correct?

8 A. That's correct, also, yes.

9 Q. Are those public internet addresses of those
10 two machines?

11 A. Yes, sir.

12 Q. And that's how the traffic is going to go
13 across the internet, fair?

14 A. That's correct, yes.

15 Q. Now, I assume that since we're talking about
16 Office Communications Server and Office Communicator,
17 the computers that are represented in this slide are at
18 least reasonably modern computers, fair?

19 A. These are just typical-looking computers.
20 They're not intended to represent anything particular
21 about model of computer or a date of manufacture. They
22 could be any computers.

23 Q. Okay. Well, I mean, they've got to be running
24 Office Communicator and Office Communicator (sic) Server
25 at least, fair?

1 A. Yes.

2 Q. Now, are you familiar with the kind of VPNs
3 that Mr. Singh-Pall talked about yesterday?

4 A. Yes, I am.

5 Q. PPTP?

6 A. Yes, sir.

7 Q. Those are VPNs, are they not?

8 A. Yes, they are.

9 Q. You don't disagree about that fact?

10 A. They are VPNs.

11 Q. Could you set up a PPTP VPN between two
12 computers if I stole a couple of laptops from my
13 colleagues?

14 A. I believe I could, yes.

15 Q. Now, if we had those two computers -- we can
16 just use the ones on your slide -- and we went to those
17 two computers and set up a PPTP VPN between those two
18 computers --

19 A. Okay.

20 Q. -- what IP addresses would be used across the
21 internet?

22 A. PPTP means -- we talked before about
23 encapsulation. PPTP --

24 Q. Dr. Johnson, I want to know what IP addresses
25 would be used across the internet with those same

1 computers that are right there.

2 A. There would be a public IP address and a
3 private IP address.

4 Q. And the public IP address used to navigate
5 across the internet would be the same two IP addresses
6 we see on the slide, correct?

7 A. Yes.

8 Q. So the fact -- and the hacker could see those,
9 correct?

10 A. That's correct. That's correct.

11 Q. But you just told us that PPTP is a VPN.

12 A. That's correct, yes.

13 Q. So the fact that you can see 204.11.52.127 and
14 122.12.164.24, that fact does not negate that those two
15 machines can be in a VPN.

16 A. That's correct. But an attacker still will
17 not see which two --

18 Q. Dr. Johnson?

19 A. I'm sorry.

20 Q. The same exact two machines would be
21 identified by the same exact two IP addresses, correct?

22 A. As the outer IP addresses in the encapsulation
23 used by PPTP, that is correct.

24 Q. So if Mr. Powers or Mr. Fall in opening or in
25 direct left the wrong impression with the jury that

1 seeing 204.11.52.127 and 122.12.164.24 negated
2 anonymity, that would be incorrect, fair?

3 A. I disagree with you.

4 The private IP addresses are still hidden, and
5 you still have anonymity. The attacker can still not
6 tell which two computers are in communication with each
7 other. The attacker has no way to even know that these
8 two computers we see on the picture here are the only
9 two computers.

10 Q. Okay. Doctor, did you understand my question?

11 A. On, I'm sorry. I believe I did.

12 Q. I asked you, if the jury was left with the
13 impression that seeing the two IP addresses right there
14 in that envelope negated anonymity, that would be
15 incorrect; isn't that true?

16 A. If there were no other IP addresses -- I mean,
17 there's multiple IP addresses in the packet. You can
18 see two of the IP addresses, and you can't see the two
19 other.

20 Q. Dr. Johnson, I asked you about the two IP
21 addresses we see right there in that envelope. I've
22 read them a number of times, and I'm starting to feel
23 sorry for Ms. Judy over there having to retype them, so
24 I'm not going to do it again.

25 If the hacker can see those two IP addresses

1 on that envelope, that does not negate anonymity, does
2 it?

3 A. In the case of PPTP, it does not negate
4 anonymity.

5 Q. Okay. And if the jury was left with the
6 impression that seeing those two IP addresses negated
7 anonymity necessarily, that's the wrong impression,
8 correct?

9 A. If the jury had that impression in an example
10 of using PPTP, that would be the wrong impression.

11 Q. Is part of the point you're trying to make
12 that Office Communicator doesn't have some other IP
13 address besides those?

14 A. I'm sorry. Can you repeat that?

15 Q. Yes, sir.

16 Is part of the point you try to make when you
17 keep interjecting into these answers, that Office
18 Communicator does not have some other IP address besides
19 those?

20 A. Office Communicator does not have other IP
21 addresses, and that is important.

22 Q. You say it's important, because -- precisely
23 which claim term or precisely which claim construction
24 or element of the claim requires another set of IP
25 addresses that would be in the transmission?

1 A. The construction of privately communicate,
2 which is part of the construction of virtual private
3 network, requires that the attacker not be able to
4 identify which two computers are in communication.
5 Hiding those private IP addresses, having those private
6 IP addresses and thus hiding them is important.

7 Q. So now, in order to protect -- in order to
8 provide privacy, you have to have a private set of IP
9 addresses inside the public set of IP addresses and hide
10 them?

11 A. That's not the only way to meet the Court's
12 construction, but as I described in my, you know,
13 typical VPN example, that's that typical way that it's
14 done.

15 Q. And, Dr. Johnson, didn't we just agree that
16 the typical VPN example you gave was IP tunneling, which
17 is not a requirement of the claims or the claim
18 construction?

19 A. That's correct.

20 Q. Okay. Now, since you've prepared your report
21 and you gave a deposition, have you changed your mind on
22 what anonymity means?

23 A. No, I have not.

24 Q. You will agree with me, sir, won't you, that
25 the simple English meaning of anonymity requires an

1 identity that remains hidden?

2 A. Yes. I mean, it requires (pause) --

3 Q. I just want to know if --

4 A. Yes. Yes.

5 Q. Okay. An identity that remains hidden. And
6 my memory is not all that good, so I'm going to write
7 that down nor is my handwriting. So sorry.

8 That's what I've written down, okay?

9 A. All right.

10 Q. So, for instance, Dr. Johnson, if you have
11 sender anonymity, that would be anonymity, correct?

12 A. Could you clarify what you mean by sender?

13 Q. Sure. If you can't tell who sent the original
14 message, that would be anonymity.

15 A. And I'm sorry. Also, can you clarify, are we
16 talking about your English definition of anonymity, or
17 are you talking about the definition of anonymity in
18 this case as described in the patents?

19 Q. Oh, okay. So now you're retreating from this
20 definition right here in the context of the patents; is
21 that fair?

22 A. I'm -- I don't believe I'm retreating from
23 anything. I just want to be clear what we're talking
24 about.

25 Q. Well, I want to know if this definition right

1 here, an identity that remains hidden, is fair and
2 applicable to anonymity in these patents.

3 A. No, it's not.

4 Q. Okay.

5 A. I mean, the --

6 MR. CALDWELL: Well, Mr. Moreno, can you
7 pull up Dr. Johnson's deposition at 113, Lines 22
8 through 7 of the next page? His 2009 deposition.

9 And let me give a copy to you.

10 May I approach, Your Honor?

11 Page 113.

12 THE COURT: Yes, you may.

13 MR. CALDWELL: Now, do you see where it
14 starts at Line 22, Mr. Moreno? I want to get that, and
15 I want to get the next -- the next page whenever we can.

16 So will you blow out that question and
17 answer and then...

18 Q. (By Mr. Caldwell) In your deposition, I asked
19 you: And if you see somebody's outer address without
20 knowing their inner address, does that not defeat
21 anonymity?

22 Your answer: If you see someone's outer
23 address without knowing their inner address, does it not
24 defeat anonymity?

25 It preserves anonymity, because, as you said

1 in the question, you don't know the inner address.
2 Anonymity requires -- I mean, just the simple English
3 meaning of anonymity requires an identity that remains
4 hidden.

5 That's what you said in this answer, is it
6 not?

7 A. That is correct, yes, sir.

8 Q. Were you and I just generally talking about
9 anonymity outside of the context in that deposition?

10 A. I think I'm clear here that I'm talking about
11 the simple English meaning. I was -- as I recall our
12 discussion at this point in the deposition, I was trying
13 to clarify, you know, what anonymity is.

14 And after talking about it in the context of
15 the patent multiple times in your questions during the
16 deposition, I was simply trying to, you know, ground the
17 idea of anonymity in -- in something that would be very
18 familiar to all of us.

19 Q. Okay. Well, do you -- do you agree that
20 sender anonymity is a type of anonymity?

21 A. I'm still not sure, sir, what you mean by
22 sender.

23 Q. Okay. Well, we'll get back to that in a
24 minute.

25 A. Okay.

1 Q. And I'm sure the jury has heard a lot about
2 senders and receivers and -- of messages, so...

3 Do you agree that receiver anonymity is a type
4 of anonymity?

5 A. I'm still also not sure. I mean, receiver is
6 a fairly broad, vague word.

7 Q. Okay. Are there different degrees of
8 anonymity, Dr. Johnson?

9 A. No, there are not.

10 Q. Is there no such thing as degrees of
11 anonymity?

12 A. If you're referring to sort of slightly
13 anonymous, you know, mostly anonymous, almost fully
14 anonymous, no, there's no such thing as degrees of
15 anonymity.

16 Q. Is that even remotely legible?

17 A. Not to me, sir.

18 Q. Okay. Sorry. I just wrote down: No such
19 thing as degrees of anonymity.

20 A. Okay. Thank you.

21 Q. Have you read the patents in this case?

22 A. Yes, I have.

23 Q. Did you read their file history?

24 A. Yes.

25 Q. Is that important, to read the file history?

1 A. Yes, it is.

2 Q. Did you read them completely?

3 A. I certainly looked at all of it. Some parts
4 of it I read certainly in much more detail than other
5 parts, but I've read the whole thing and -- yes.

6 Q. Well, one of the reasons you do that is to
7 help understand words that are pertinent to the
8 technology or pertinent to the patent, fair?

9 A. That's fair, yes, sir.

10 Q. And surely you consulted the file history in
11 order to find out what the meaning of anonymity is,
12 correct?

13 A. I'm sure I did. I don't recall specifically
14 that issue versus other issues that I read in the file
15 history.

16 Q. I see.

17 Well, I mean, you saw when Dr. Jones presented
18 the fact that there's the patent and the first and
19 second page, and they list all the references that have
20 been considered by the Patent Office.

21 A. Yes, sir.

22 Q. Do you recall skimming those to see, hey, are
23 there any references there that relate to anonymity?

24 A. I recall there are -- I don't remember -- two,
25 three. More than one.

1 MR. CALDWELL: Can we show Slide 4,
2 Mr. Moreno?

3 Q. (By Mr. Caldwell) All right. Now -- so here's
4 the first page of the patent. And on the second page, I
5 want to show you an article.

6 There's an article there titled, Crowds:
7 Anonymity for Web Transactions.

8 Do you see that?

9 A. Yes, sir.

10 Q. That would be fairly pertinent to the meaning
11 of anonymity for web transactions, correct?

12 A. I don't know about fairly pertinent. It's a
13 reference that was before the Examiner in the Patent
14 Office in reviewing this application.

15 Q. The Examiner considered it and -- in
16 understanding what the state of the art is, right?

17 A. Yes, sir.

18 Q. Okay.

19 MR. CALDWELL: Mr. Moreno, could we pull
20 up Plaintiff's Exhibit 2, which is the file history of
21 the '135 patent?

22 And now, can we go to the first page of that
23 Crowds article?

24 Q. (By Mr. Caldwell) So this is the article we
25 talked about just a second ago. Crowds: Anonymity for

1 Web Transactions.

2 MR. CALDWELL: But what I'd really like
3 to do now is go to the -- skip two more pages. Go to
4 the third page of this article.

5 Now, Mr. Moreno, can you zoom in on the
6 top couple of inches of that right there? More down
7 the -- there you go.

8 Q. (By Mr. Caldwell) Now, what do we see here as
9 this scale that's shown on the screen in the Anonymity
10 of Web Transactions article in the file history?

11 A. We see a scale describing what, in the context
12 of this particular reference, is described as degrees of
13 anonymity.

14 Q. I thought there was no such thing as degrees
15 of anonymity.

16 A. Not in the context of the patent. There's
17 nothing in the specification that suggests degrees of
18 anonymity in the context of the patent.

19 Q. It's very plainly represented in the intrinsic
20 record, the file history that the Patent Office
21 considered, right?

22 A. I don't believe the Patent Office considered
23 this as a -- as a source of a definition of anonymity.
24 The bulk of the specification in the patent relates to
25 this technology that's been mentioned a few times here

1 this week of IP address hopping.

2 And the Crowds article -- the technology
3 described in this Crowds article directly relates to
4 this IP address hopping mechanism. It doesn't relate to
5 the claims at issue in this case, for example, other
6 than the general context that it has the word anonymity
7 in it.

8 Q. I see.

9 And did you find that in the Patent Office's
10 record, that, oh, Crowds doesn't relate to the claims of
11 this patent that we're citing the Crowds article in; it
12 only relates to this other part of the patent on IP
13 hopping?

14 A. I considered the technical content of this
15 Crowds article --

16 Q. Did you find that in the Patent Office's
17 record?

18 A. No, sir, I did not.

19 Q. Okay.

20 MR. CALDWELL: Can we go to Slide 3 of my
21 slides there, Mr. Moreno?

22 Q. (By Mr. Caldwell) Now, you recall this slide.
23 We've seen it before, fair?

24 A. Yes, sir.

25 Q. Now, did you help design this slide? I think

1 I might have asked you that.

2 A. You asked me that, and my answer was no, I did
3 not.

4 Q. Now, who is the user, Sue, sending a message
5 to here?

6 A. Some other Office Communicator user.

7 Q. That's kind of what I figured. She's probably
8 not asking the server to go to lunch or something like
9 that, fair?

10 A. Presumably not, no, sir.

11 Q. All right. So, I mean, it's not very
12 practical to think a company is going to buy Office
13 Communications Server and install it for one user to
14 send messages to themselves, fair?

15 A. That's correct, yes, sir.

16 Q. All right. So let's go ahead and -- you don't
17 mind if I make this a little bit more realistic, do you?

18 A. Certainly. Well, I'm not sure I agree with
19 your characterization of realistic. You're making it
20 more complete.

21 Q. Okay. Well, let's make it more complete.
22 I've added more users.

23 Do you see that?

24 A. Yes, sir.

25 Q. That's more complete, isn't it?

1 A. Yes, sir.

2 Q. It's more similar to what Dr. Jones presented
3 for Microsoft Office Communicator, correct?

4 A. Yes, sir.

5 Q. Okay. Now, if we add these other users, there
6 has to be a way to get messages to these other users,
7 correct?

8 A. Yes, sir, that's correct.

9 Q. So the other Office Communicator clients here
10 on the screen, they have SIP addresses, fair?

11 A. Presumably. I don't know whether, you know,
12 these other users are using Office Communicator. It's
13 not shown in the slide, but I'll assume they are.

14 Q. We'll assume they are. So they'll have a SIP
15 address, fair?

16 A. All right.

17 Q. Now, let's be frank. How long have you been
18 studying Office Communicator and Office Communicator
19 (sic) Server for this litigation ahead of both your
20 deposition that I took and the testimony today in Court?

21 A. I've been working on this case for, basically,
22 a year and a half, and throughout that time, in various
23 ways studying Office Communicator and Office
24 Communications Server.

25 Q. And you talked a lot in your direct about

1 these SIP addresses that Dr. Jones had talked about and
2 Mr. Powers had cross-examined Dr. Jones about, fair?

3 A. That's correct, yes.

4 Q. All right. Now, do you even know if the
5 Office Communicator clients have SIP addresses,
6 Dr. Johnson?

7 A. The technical term for what they have is SIP
8 uniform resource identifiers.

9 Q. I just want to know, do you even know if
10 Office Communicator clients have SIP addresses?

11 A. It is sometimes expressed that way, yes, that
12 they do. And for --

13 Q. Let's take a look at what --

14 A. -- simplicity, I have used that terminology,
15 because everyone else here this week has been using that
16 terminology.

17 Q. Okay.

18 MR. CALDWELL: Well, let's take a look at
19 Dr. Johnson's deposition at Page 236, Line 22, that
20 question and answer.

21 Q. (By Mr. Caldwell) Now, this deposition I took
22 of you around Thanksgiving, right, not too long ago?

23 A. Somewhere in that timeframe. I don't
24 remember.

25 Q. Do you recall that I asked you: Do Office

1 Communicator clients have SIP addresses?

2 And your response was: I'm not sure,
3 actually.

4 A. I was -- that is exactly what I said, yes,
5 sir.

6 Q. Okay. And then I was a little bit surprised
7 by that.

8 MR. CALDWELL: I think if we go to the
9 next page, Mr. Moreno, I might have double-checked.

10 Can you -- can you get the -- starting
11 with -- right there, down through the answer.

12 Q. (By Mr. Caldwell) I followed up there
13 saying -- I started to talk over you at one point, and I
14 said: I'm sorry. I didn't mean to interrupt you.

15 My question was: Do OC clients have SIP
16 addresses?

17 And your response was: And I said I'm not
18 sure, correct?

19 A. That is correct. That's what I said, yes,
20 sir.

21 Q. But today you're telling us they're commonly
22 called SIP addresses. Have you studied up on that since
23 your deposition?

24 A. I've studied up only in one respect. As I
25 said, the technical name, the name that's used in the

1 standard specification, the RFC, is SIP uniform resource
2 identifiers.

3 Q. I see.

4 Well, Dr. Johnson --

5 A. And I was not sure whether the term SIP
6 address, which is not the way I would normally refer to
7 them, say, in talking to colleagues -- I was not sure
8 whether the term SIP address was really an appropriate
9 term and what -- you know, what you meant by SIP
10 address, because, you know, I just think about it in the
11 technical term.

12 I had sort of forgotten the colloquial term
13 that -- the simplified term that is certainly to talk
14 about here today.

15 Q. Okay. Professor Johnson, the protocol that's
16 used to send instant messages and presence information
17 on the Office Communicator network is the SIP protocol,
18 correct?

19 A. That is correct.

20 Q. All right. The SIP protocol carries data,
21 doesn't it?

22 A. Yes, it does.

23 Q. Now, if these -- if the Office Communicator
24 network is in the secure mode using TLS, our hacker
25 cannot see those SIP addresses as messages are sent

1 across the internet, can he?

2 A. That's correct.

3 Q. You agree with Dr. Jones on that, don't you?

4 A. I agree that the hacker cannot see the SIP
5 addresses, that's correct.

6 Q. And you didn't show that part of the story to
7 the jury in your presentation, did you?

8 A. No, I didn't. It's not relevant to the
9 definition of anonymity.

10 Q. Dr. Johnson, did you show that part of the
11 story to the jury?

12 A. No, I did not.

13 Q. I want to talk a little bit about the meaning
14 of the word website. I'm going to play court reporter
15 for just a second here, and I'm going to take down a
16 couple of notes. You tell me if I misunderstood this
17 from your direct.

18 Website and OC, quote, have nothing in common.
19 Did I hear that correctly?

20 A. I'm not sure it's a direct quote, and in fact,
21 in one way, it's certainly not, because I believe I said
22 OCS, not OC.

23 Q. Okay. Well, I'll change that OCS.

24 A. The second half, I can't read where your
25 quotation marks are, if you have any.

1 Q. And I'll make this OCS. Is that better?

2 A. All right. Yes.

3 Q. Does that reasonably represent your testimony?

4 A. It's a good paraphrase at least.

5 Q. Okay. Well, another two words I know I got
6 right were completely different.

7 Do you recall saying that?

8 A. Yes, I do.

9 Q. Let me write that one down.

10 A. Or I believe I said something very similar.

11 Q. SIP is a protocol, correct?

12 A. Yes, that's correct.

13 Q. You know lots and lots of protocols, don't
14 you, Dr. Johnson?

15 A. Yes, sir.

16 Q. You listed several for me in the deposition.
17 I didn't count, but probably in the order of 15-ish we
18 talked about?

19 A. A large number, yes, sir.

20 Q. Okay. But, I mean, how many protocols have
21 you heard of?

22 A. I have no idea.

23 Q. Ballpark, wild guess. Dozens? A hundred?

24 A. Many dozens, probably well over a hundred, but
25 I wouldn't know.

1 Q. Okay. I'm just asking for a ballpark. That's
2 fine.

3 One of the protocols you've heard of and are
4 familiar with is http, right?

5 A. That's correct, sir.

6 Q. Http is used for websites, isn't it?

7 A. Yes, sir.

8 Q. Now, will you agree with me that what makes a
9 website a website is that it is running the http
10 protocol?

11 A. Websites -- well, web servers and web clients
12 run the http protocol. Website's sort of implicitly do,
13 but that's not a full --

14 Q. I just want to very specifically --

15 A. That's not a definition, though.

16 Q. Okay. I want to know very, very specifically,
17 do you agree that what makes a website a website is that
18 it is running the http protocol?

19 A. That's not a complete definition, no, sir.

20 Q. Okay.

21 MR. CALDWELL: Now, Mr. Moreno, can you
22 do me a favor and pull up that one portion of the
23 transcript that I identified for you?

24 Q. (By Mr. Caldwell) You're familiar with the
25 concept of claim construction, fair?

1 A. Yes, sir.

2 Q. And what's known amongst the patent lawyers as
3 a Markman hearing where issues are argued and terms are
4 construed?

5 A. That's correct, sir.

6 Q. Okay. I'm asking Mr. Moreno to focus in on
7 two lines. This is part of the transcript of the
8 Markman hearing. This is an argument that Mr. Powers
9 made to Judge Davis, okay?

10 A. I'll take your representation for that. I
11 have not actually read the transcript of the Markman
12 hearing, no.

13 Q. You have not?

14 A. Of the transcript, no.

15 Q. You can read this portion right here, can't
16 you? What does it say in the highlights?

17 A. It says what you just said, what makes a
18 website a website is that it is running the http
19 protocol.

20 Q. Okay. So now we've heard that what makes a
21 website a website is that it's running the http
22 protocol, and then we've also heard that that's not
23 correct.

24 Which one is it?

25 A. I did not say that's not correct. I said

1 that's not a complete definition.

2 Q. Okay. So Mr. Powers' presentation to the
3 Court was an incomplete definition. Is that what you're
4 saying?

5 A. I -- you've shown me two lines of what I
6 assume is a very long transcript. I don't know the
7 context of this. But I would assume this is in the
8 context of -- I mean, I see at the beginning of the
9 second line here an FTP server dot, dot, dot.

10 What differentiates a website from a FTP
11 server --

12 Q. I never asked you what differentiates a web
13 server from an FTP server. I'm just asking you about
14 this sentence.

15 And what -- and let's just short circuit this
16 a little bit. That sentence is pretty darn clear that
17 what makes a website a website is that it is running the
18 http protocol, fair?

19 A. I don't think that's fair. I think that
20 sentence is simply contrasting a website versus an FTP
21 server.

22 Q. Okay. Well, you will agree that an equivalent
23 of a website would use a protocol substantially similar
24 to http, right?

25 A. Yes, sir.

1 Q. Okay. Is Microsoft a fairly sophisticated
2 company?

3 A. They would seem to be, yes. They make some
4 sophisticated products.

5 Q. In your estimation, do they know a lot of
6 protocols?

7 A. I imagine they do.

8 Q. Didn't we hear them take credit yesterday, or
9 the day before maybe, for a whole bunch of virtual
10 private network protocols?

11 A. They described a number of them, and some of
12 which were invented by Microsoft, yes, sir.

13 Q. Okay. Dr. Johnson, if you, knowing lots and
14 lots of protocols, probably north of a hundred, had to
15 pick one protocol to compare Office Communicator SIP to,
16 you would pick the http website protocol, wouldn't you?

17 A. If I was going to be focusing on the protocols
18 spoken by an ht -- http or a web server versus the
19 protocol spoken by Office Communicator, I would
20 certainly focus on http.

21 Q. Okay. Now, Microsoft, same thing. Knowing
22 lots and lots about protocols and having invented
23 several themselves, if they had to pick one protocol to
24 compare Office Communicator's SIP protocol to, they
25 would pick the http website protocol, wouldn't they?

1 A. If you're looking at protocols and comparing
2 one type of server versus another type of server, of
3 course, you're going to focus on the protocols spoken by
4 both, and in the case of a web server, that is http.

5 That seems very natural.

6 Q. Pretty darn similar to SIP, isn't it?

7 A. I'm sorry?

8 Q. It's going to be really similar to SIP, isn't
9 it, http?

10 A. Http is going to be similar to SIP? No, I
11 don't agree with that.

12 Q. Okay. Well, let's see what the documents say,
13 Dr. Johnson.

14 MR. CALDWELL: Can we pull up Plaintiff's
15 Exhibit 972?

16 Q. (By Mr. Caldwell) Now, have you seen this
17 document before, Dr. Johnson, Windows XP Entering a New
18 Era of Real-Time Communications?

19 A. It looks familiar, yes.

20 Q. Real-time communications, that's the area of
21 the business that has OC and OCS, fair?

22 A. That's correct, yes, sir.

23 Q. All right.

24 MR. CALDWELL: Mr. Moreno, can I have you
25 go to Page 6?

1 Q. (By Mr. Caldwell) Now, I was not fair to you,
2 sir, but would you do me a favor and grab that --

3 MR. CALDWELL: You know what? I may have
4 actually told you the wrong page. So would you do me a
5 favor and go to the next page?

6 Was that Page 6 of the PDF? Oh, that's
7 it. That's the paragraph. I'm sorry. I just can't
8 read.

9 Will you highlight the last sentence,
10 which starts right here (indicates)?

11 Q. (By Mr. Caldwell) This is a Microsoft
12 technical document talking about the real-time
13 communications industry, the very industry, the very
14 part of their business that has the accused OC products.
15 And I'm going to read along, and you tell me if I make a
16 mistake.

17 It says: SIP, which is similar to the
18 hypertext transfer protocol, http, is well suited for
19 multimodal communications and is rapidly being adopted
20 across the industry.

21 It says that, correct?

22 A. That seems to be a correct reading.

23 Q. Okay.

24 MR. CALDWELL: Can we go to Page 11 of
25 the PDF, sir?

1 Now, can we get this -- there you go --
2 that blown up. Will you do me a favor and highlight the
3 first sentence there, Mr. Moreno?

4 Q. (By Mr. Caldwell) Just so we're convinced that
5 first mention isn't a fluke, we'll -- I'm going to read
6 the first sentence here (indicates).

7 SIP has a number of inherent advantages over
8 other protocols because it is much like http and other
9 IP-based protocols.

10 That's what it says, isn't it?

11 A. Yes. It says it's similar to not only http
12 but some number of other IP-based protocols, and I don't
13 know what --

14 Q. I'm asking if it's similar to http, right?

15 A. You read it correctly, yes, sir.

16 Q. All right. Had you seen that document before?

17 A. I believe I haven't seen this one.

18 Q. Have you read that paragraph before?

19 A. I believe I have.

20 Q. Okay. Do you think it's just a fluke that
21 this old document says that?

22 A. Well, I don't know what you mean by fluke. I
23 don't think there's any surprise in the way this
24 document is written.

25 MR. CALDWELL: Can we pull up Plaintiff's

1 Exhibit 973 and go to the second page?

2 I'm sorry. Let's go the first page just
3 so Dr. Johnson can see what it is.

4 Q. (By Mr. Caldwell) This is off Microsoft's
5 website, the Microsoft real-time communications
6 protocols and technologies page.

7 Do you see that?

8 A. Yes.

9 Q. It says last updated in 1993, although I'll
10 note I printed this in February of 2010, okay?

11 A. Okay. I'll take your representation, that's
12 fine.

13 MR. CALDWELL: Can we go to the second
14 page, Mr. Moreno?

15 Q. (By Mr. Caldwell) Now, do you see where it
16 says: Session Initiation Protocol, the big heading?

17 A. I can read that barely on the monitor.

18 Q. All right.

19 MR. CALDWELL: Let's pull it up.

20 Q. (By Mr. Caldwell) This document, which is
21 still available on Microsoft's website to this very day,
22 says: Session initiation protocol, which is similar to
23 the http protocol is a text-based application-layer
24 signaling and call control protocol, correct?

25 A. Again, you've read it correctly. I don't

1 agree with your apparent conclusion from it, but you've
2 read it correctly, yes.

3 Q. Well, you will agree with me that we pretty
4 much have established that the SIP and http protocols,
5 SIP used for OC and http used for websites, it's
6 definitely not true they have nothing in common,
7 correct?

8 A. If you take that quote out of the context of
9 the rest of my testimony, I would agree that that's not
10 a correct interpretation of that quote.

11 Q. Okay. And now also -- it's also not correct
12 that http and SIP are completely different, is it, sir?

13 A. And again, if you take that quote out of
14 context of the rest of my testimony, I would agree that
15 interpretation is not correct.

16 Q. Can we look at your PeerNet slide?

17 MR. CALDWELL: I believe it might have
18 been Slide 28 of Dr. Johnson's presentation.

19 Given our time limitations, I'm going to
20 get the stink eye shortly, so let me try and move along
21 here.

22 Q. (By Mr. Caldwell) You moved -- you showed us
23 this slide about the PeerNet software, correct?

24 A. This looks like one of my slides, yes.

25 Q. Now -- and you're claiming that this slide

1 shows -- or helps you demonstrate why there's no
2 anonymity in the PeerNet environment, correct?

3 A. That's correct, yes.

4 Q. Now, I know you can't see me pointing over
5 your head, but do you see the computer that ends in 55
6 over here?

7 A. Yes, sir.

8 Q. Why does that thing have to have multiple
9 links? What's going on there?

10 A. That's -- earlier this week -- I forget which
11 day -- there was -- I guess this was yesterday -- there
12 was a description of the three elements of the PeerNet
13 software, the PNRP, graphing, and grouping.

14 That is an illustration of the graph that is
15 formed as part of using the PeerNet software.

16 Q. Okay. Well -- and part of graphing was this
17 graph maintenance where you find additional addresses,
18 and you establish different connect -- additional or
19 supplemental connections, correct?

20 A. Yes, sir. Once you establish the first
21 connection, then you can find additional multiple
22 connections, yes, sir.

23 Q. Okay. That's all I'm asking, because I just
24 want to -- I want to modify your slide here, if I did
25 this right, which maybe I didn't.

1 MR. CALDWELL: Do I have a -- oh, it's in
2 my presentation. I'm sorry. I steered you -- I steered
3 you wrong, Mr. Moreno. Right there, it's going to be
4 No. 5.

5 Q. (By Mr. Caldwell) Okay. Now I'm going to
6 modify your slide. That was just a joke earlier,
7 apparently.

8 A. Okay. All right.

9 Q. And now we've added additional links for our
10 computer on the far left, because this can happen,
11 right?

12 A. Yes, sir.

13 Q. All right. And now, this is a little bit
14 tough to identify the computers, so I'm going to put
15 labels on them; is that fair?

16 A. All right. Yes, sir.

17 Q. We've got the PeerNet group up here, and we
18 see computer A, B, C, and D. But we see your one
19 message that's going from B to D, don't we?

20 A. That's correct, yes, sir.

21 Q. If our hacker looks at that message, does our
22 hacker know which one of the computers initially sent
23 that message?

24 A. You're using the word message, and I used the
25 word packet, so I'm not entirely sure what you're

1 asking.

2 Q. Okay. Let me ask that a little bit
3 differently.

4 There is -- there's payload inside that
5 particular packet, fair?

6 A. There is data, which is technically commonly
7 called payload.

8 Q. And in a group, it's going to be encrypted, is
9 it not?

10 A. That's correct.

11 Q. Okay. So some -- somebody might be publishing
12 their desktop so that the others can look at the desktop
13 and they can work collaboratively as a group, fair?

14 A. All right.

15 Q. Is that fair?

16 A. Yes, sir.

17 Q. I just -- I mean, I want to make sure that
18 we're at least on the same page here, that that is one
19 of the key purposes of grouping, fair?

20 A. Yes, sir.

21 Q. Now, if the hacker looks at the message from B
22 to D, can the hacker tell who's publishing their desktop
23 to the rest of the group?

24 A. No. The hacker can't tell that. I don't
25 think that changes anything about what I said about

1 anonymity.

2 Q. I --

3 A. I'm sorry.

4 Q. -- I didn't ask you if that changes anything,
5 Dr. Johnson.

6 A. Excuse me.

7 Q. I just asked you, can they tell who is
8 publishing their desktop?

9 A. No, they cannot.

10 Q. If the hacker intercepts that message, can
11 they tell which one of those users is actually running
12 an application listening to that message?

13 A. No, they cannot.

14 Q. So if I understand correctly, Dr. Johnson, you
15 can see evidence, of course, that there's a sent message
16 from B to D, fair?

17 A. Yes, sir.

18 Q. And that's sent from B to D, correct?

19 A. That's correct.

20 Q. All right. But, Dr. Johnson, that Sender B is
21 really no more likely to be the originator of that
22 message than any other potential sender in the graph,
23 correct?

24 A. That's correct. My slide simply illustrates
25 IP packet.

1 Q. It's -- it's correct that you can see evidence
2 of a sent message, and the sender appears no more likely
3 to be the originator of that message than any other
4 potential sender in the system, correct?

5 A. No, that's not correct.

6 Q. Oh, I thought you told me yes to both of those
7 questions the first time.

8 A. You rephrased it when you summarized it, or
9 you added an element when you summarized it.

10 Q. In what way?

11 A. You can't see evidence of a sent message. You
12 don't know what's inside that packet.

13 Q. Oh, fair enough. I mean, so it's even -- it's
14 even more anonymous than what I just pitched in my
15 question then. You can't even see evidence of a sent
16 message?

17 A. I don't know what you mean by more anonymous.
18 You can still identify the two computers that are in
19 communication with each other --

20 Q. Okay. Dr. Johnson --

21 A. -- in B and D here.

22 Q. -- you can see that there is a sent message
23 from B to D?

24 A. You can see there's a sent IP packet from B to
25 D.

1 Q. Okay. And that's -- that's carrying a message
2 in grouping, fair, of some sort? It's carrying records
3 of something?

4 A. Carrying some grouping information, yes.

5 Q. And then the Sender B appears no more likely
6 to be the originator of message than any other potential
7 sender in the system.

8 We've agreed to that, right?

9 A. The payload contents --

10 Q. Yes. The payload contents, okay.

11 MR. CALDWELL: Now, Mr. Moreno --

12 MR. BOBROW: Your Honor, may the witness
13 please be allowed to finish his answer? He was
14 interrupted there.

15 THE COURT: Fine. Did you have something
16 else to say?

17 A. I was simply going to say the payload contents
18 is -- is encrypted, and -- and our hacker can't tell who
19 the source of that payload contents is, but the IP
20 packet is all I was illustrating here.

21 MR. CALDWELL: I apologize for that, Your
22 Honor, because I had thought we had actually answered
23 the question and then retreated, and we were going back
24 to it again.

25 So I apologize, Your Honor.

1 Q. (By Mr. Caldwell) You will agree with me that
2 in terms of the content of the message, B is no more
3 likely to have been the sender of that message than,
4 say, A in this layout?

5 A. In terms of the payload of the message, the --
6 the send -- the author, if you will, of the payload
7 could have been any of these computers. The IP packet
8 is what I was focusing on.

9 Q. Okay. Well, I was asking about the message,
10 though. Understood?

11 MR. CALDWELL: Now, Mr. Moreno, can you
12 pull up Plaintiff's Exhibit 2?

13 Now go back to that Crowds article for us
14 and go to Page 3 of it. That's the one right there.

15 Now, do you see there's sort of an inset
16 block of text about two-thirds of the way down?

17 Would you grab the first centimeter of
18 that and blow that up real big for us?

19 Q. (By Mr. Caldwell) Here's a level, one of those
20 degrees of anonymity, that the Crowds article that's in
21 the file history says -- I'll read along; you correct me
22 if I'm wrong, sir.

23 A sender's anonymity is beyond suspicion, if
24 though the attacker can see evidence of a sent message,
25 the sender appears no more likely to be the originator

1 of that message than any other potential sender in the
2 system.

3 Do you see that, sir?

4 A. Yes, I do.

5 Q. Now, were you here for the whole trial?

6 A. Almost all of it, yes.

7 Q. You were here early on when our -- when
8 Mr. Munger and Dr. Short were on the stand, correct?

9 A. Yes, I was. That's correct.

10 Q. Did you hear that they were cross-examined for
11 a while on the fact they were having trouble getting
12 funding?

13 A. Yes, I did hear that.

14 Q. Now, let's just make this clear. You yourself
15 have lost funding when the dot-com bubble burst in the
16 early 2000 timeframe, 2000/2001 timeframe, correct?

17 A. That's correct, yes, sir.

18 Q. That's not an uncommon phenomenon, is it?

19 A. No, it's not. I recall our discussion of that
20 in my deposition. I had funding for my research from
21 Caterpillar Corporation, and they make large mining
22 construction equipment. And the economy changed and
23 they redirected their resources to their primary
24 business.

25 MR. CALDWELL: Can you pull up the

1 patent, PX4, actually, and go to Figure 35?

2 It's not going to be PDX35. Go back just
3 a few pages. One more, two more.

4 There you go. Perfect. Thank you.

5 Q. (By Mr. Caldwell) Now, Dr. Johnson, right here
6 we see in Figure 33 -- I'm sorry -- you're familiar with
7 this figure, are you not?

8 A. Yes.

9 Q. And this is representing -- it's the block
10 diagram that goes along with the '180 invention, isn't
11 it?

12 A. Yes, sir.

13 Q. Okay. So what we see over here is this notion
14 of having an scom, which I've done a really poor job
15 again of pointing out, and dot-com right here, correct?

16 A. Yes, sir.

17 Q. Now, the dot-com, that's the unsecure
18 connection, fair?

19 A. In this figure, that's correct, yes.

20 Q. And the dot-scom, that's the secure
21 connection, fair?

22 A. Really, that's not quite accurate. It's the
23 insecure domain name, yes.

24 Q. Okay. But that's -- it's represented in this
25 patent figure as the -- where you're going to go connect

1 for the secure information or unsecure information?

2 A. Yes, sir, that's correct.

3 Q. All right. Well, let me clear this just a
4 little bit.

5 And we see that coming into the secure side
6 right here is one connection, so that's one IP address
7 into the secure side, right?

8 A. Yes, sir.

9 Q. Because the circle is the internet, your
10 connection to the internet, right?

11 A. That's correct.

12 Q. Now, we see right here one connection into the
13 unsecure side.

14 A. Yes, sir.

15 Q. Now, that's sort of the point you made when
16 you were talking about a secure computer network
17 address. You would have to have a separate address in
18 order to send the secure traffic versus an address where
19 you would send the unsecure traffic, right?

20 A. That's not actually what I said, no.

21 Q. Well, it's very similar to what you said. I
22 didn't write it down verbatim, so I apologize if I got
23 it wrong.

24 A. May -- I described two scenarios with a secure
25 computer network address, one that I described as being

1 in a typical VPN setup, and then I discussed, you know,
2 what the equivalent would be or what it would look like
3 in a, you know, PeerNet application where there is no
4 secure network address.

5 Q. Okay. Well, Dr. Johnson, I just want to
6 direct you to another part of this figure right here.
7 We didn't really talk about this in your direct, did we,
8 this section that's -- excuse me. I cannot draw.

9 This section right there where both the secure
10 connection -- the secure address and the unsecure one
11 are combined at the same address on the internet.
12 That's in the very figure of the patent that describes
13 the '180 patent invention, isn't it?

14 A. I don't recall what the text explaining
15 this -- this figure actually describes as -- as that
16 element of the figure.

17 Q. Okay. Now --

18 MR. CALDWELL: All right. Thank you, Mr.
19 Moreno.

20 Q. (By Mr. Caldwell) Let's move on to my -- my
21 last topic here. I want to talk a little bit about
22 Windows Meeting Space.

23 You were here when Mr. Tyler Barton testified
24 yesterday, right?

25 A. Yes, sir, I was.

1 Q. I've never actually met Mr. Barton personally.
2 He seems like a nice young man.

3 Now, do you think everything he told the jury
4 about the PeerNet APIs and Windows Meeting Space is all
5 correct?

6 A. From my understanding, yes, it was all
7 correct.

8 Q. Well, did you think that everything Professor
9 Jones said about the PeerNet APIs and Windows Meeting
10 Space was correct?

11 A. I don't recall his -- exactly what he said in
12 his testimony here versus what he had said in his
13 earlier reports, so I'm not sure I could separate that
14 in my mind as whether everything he said here was
15 correct or not.

16 Q. But you're not identifying for me anything in
17 particular that Dr. Jones said about Windows Meeting
18 Space or the PeerNet APIs that was incorrect, correct?

19 A. At this point, what he actually said in the
20 room here is -- is not clear versus, as I said, what he
21 said in his report. So I'm not identifying something he
22 said in the room right now, no.

23 Q. Okay. Well, let's talk about one place I
24 understand that you guys disagree.

25 Dr. Johnson, isn't it correct, that you

1 contend that Windows Meeting Space does not work over
2 the internet?

3 A. It -- it does not work over what we use or
4 think of as the internet today in a normal way at least.
5 It's designed to use what's called a version of IP
6 called IP Version 6, which is not deployed in the -- in
7 the internet, except in limited cases.

8 It's designed to work in a local network, and
9 it can -- if you try hard, can be configured and set up
10 to work on the internet, yes.

11 Q. So -- okay. All right. Well, let's see what
12 you said in your report on that issue.

13 MR. CALDWELL: Can you pull up
14 Dr. Johnson's non-infringement report on Page 76?
15 -- oh, Page 62. I'm sorry.

16 No, that's not it. It must be Page --
17 no, that's not it. I'm looking -- I'm looking for his
18 Paragraph 112 out of his report.

19 I'm sorry, Paragraph 116. Can you go to
20 the next page of that? I wrote down the wrong number.

21 I'm sorry.

22 That's it. Can you blow up that top
23 paragraph for us there?

24 Q. (By Mr. Caldwell) Now, Dr. Johnson, I'm
25 starting about halfway through that column right there.

1 It says the word moreover.

2 Do you see that?

3 A. Yes, sir.

4 Q. Okay. I'm going to read along. It says:
5 Moreover, since Windows Meeting Space is only supported
6 for link local networks -- that's saying Windows Meeting
7 Space is not supported for connections over the
8 internet.

9 Isn't that what that statement is saying?

10 A. That's what it's saying, which is different
11 than the way you were characterizing things before you
12 pulled up this part of my report.

13 Q. Well, I apologize then, if that's true.
14 But what we're looking at right now says: Windows
15 Meeting Space is only supported for link local networks,
16 i.e., it's not supported for connections over the
17 internet; fair?

18 A. That's what it says, whereas before you talked
19 about whether it works or doesn't work.

20 Q. Okay. Now, Dr. Johnson, yesterday when
21 Mr. Barton was here, Mr. Barton testified:

22 Question: Now, you mentioned in a meeting.
23 Is Windows Meeting Space typically used in face-to-face
24 meetings, or is it used over the internet?

25 Answer: Windows Meeting Space is designed for

1 what we call face-to-face meetings. So it's designed
2 for the situation when everybody is in the same room.
3 It's not designed for use on the internet.

4 Did you hear that testimony?

5 A. I did hear that testimony. That sounds
6 probably like a direct quote. I will assume it is.

7 Q. It is, and I'll be happy to show you the
8 transcript.

9 A. I don't question that.

10 Q. Now, do you still believe in the accuracy of
11 that statement?

12 A. Yes, I do.

13 Q. You know your way around the Microsoft website
14 fairly well, sir?

15 A. Reasonably well. It's a very large website.

16 MR. CALDWELL: Can we pull up Plaintiff's
17 Exhibit 800?

18 Now, in Plaintiff's Exhibit 800 on Page
19 1, I would like to pull out both this area right here,
20 Mr. Moreno?

21 Q. (By Mr. Caldwell) We're looking at the Windows
22 Vista Meeting Space step-by-step guide, fair?

23 A. Appears to be.

24 Q. The third bullet says you can include local
25 and remote attendees, doesn't it?

1 A. Yes.

2 Q. All right.

3 MR. CALDWELL: Now, can we lose that
4 call-out, sir, and now, Mr. Moreno, can we grab down
5 here?

6 There you go.

7 Q. (By Mr. Caldwell) Windows Meeting Space
8 focuses on helping information workers and addresses
9 their needs by providing a collaborative application
10 focused on sessions that work in topologies.

11 Topologies in this instance means like is it
12 linked local? Is it remote on the internet and things
13 like that, correct?

14 A. Yes.

15 Q. It's focused on sessions that work in all
16 topologies, isn't it?

17 A. I'm not -- I don't completely agree with the
18 use of the word focused here. I understand that's the
19 word they used here.

20 Q. That's Microsoft's words, right?

21 A. Yes.

22 Q. Okay. And they say you can use a computer to
23 computer, an ad hoc network. You can use at home and
24 manage your corporate network, right?

25 A. Yes.

1 Q. And then, fourth, it says you can use Windows
2 Meeting Space on the internet. That's one of the
3 topologies it's supported for, correct?

4 A. All right. Yes, sir.

5 MR. CALDWELL: Can we go Page 11 of this
6 document, Mr. Moreno?

7 Now, classically, I have forgotten to
8 highlight for myself what I wanted to pull out. Can you
9 scroll -- can you scroll the other direction?

10 There you go. Scroll down for me.
11 Scroll down -- all the way down.

12 Q. (By Mr. Caldwell) All right. Now, this is
13 what I was looking for, this middle paragraph right
14 here.

15 MR. CALDWELL: Thank you, Mr. Moreno, for
16 being so patient with me. The middle of those
17 paragraphs, can you focus on that?

18 Q. (By Mr. Caldwell) Windows Meeting Space -- do
19 you see where I'm reading along, Windows Meeting Space
20 allows you?

21 A. The bottom paragraph?

22 Q. Yes, sir.

23 A. Yes, sir.

24 Q. Windows Meeting Space allows you to
25 collaborate with individuals nearby and with individuals

1 who are remote.

2 That's what it says, isn't it?

3 A. Yes, sir.

4 Q. Okay. And, again, and remote, it's talking
5 about across the internet, fair?

6 A. I don't know the context, but from the limited
7 portion of this document you've shown me, I would assume
8 that's what they're talking about. I don't believe
9 I've --

10 Q. Let --

11 A. -- seen this whole document, and I'm actually
12 noticing this document was only published less than --
13 you know, like six weeks ago on the Microsoft website.

14 Q. It was published by Microsoft.

15 A. It is published by Microsoft in the end of
16 January of 2010, after I submitted my report in this
17 case. I have not reviewed this document before.

18 Q. I see.

19 So your report may just be flat wrong on
20 whether or not Windows Meeting Space is supported for
21 the internet, correct?

22 A. It appears that at least this document is --
23 is, you know, telling someone that you can use it in the
24 internet.

25 Q. And that's the environment that Dr. Jones

1 showed the jury, correct, where the Windows Meeting
2 Space was used across the internet?

3 Do you recall that?

4 A. I recall that, yes, sir.

5 Q. Now, were you and Mr. Barton suggesting that
6 Windows Meeting Space couldn't be used across the
7 internet to leave the impression that Dr. Jones'
8 graphics using the internet were inaccurate or
9 misleading?

10 A. I don't -- that was certainly not my
11 intention. I believe we both described accurately and
12 fairly the way in the case of Mr. Barton was designed
13 for, in the case of the section of my report what -- at
14 the time I wrote my report, what Microsoft was
15 supporting it for.

16 Q. Dr. Johnson, would you agree with me right now
17 that I could show you probably three more documents just
18 off of the ones that are in my notes that would say
19 Windows Meeting Space works on the internet?

20 A. I don't know if you could or not.

21 Q. Okay.

22 MR. CALDWELL: Pass the witness.

23 THE COURT: All right. Redirect?

24 MR. CALDWELL: Your Honor, may I mark my
25 flip charts as a demonstrative exhibits, and we'll get

1 the numbers --

2 THE COURT: You may.

3 MR. CALDWELL: -- whenever?

4 REDIRECT EXAMINATION

5 BY MR. BOBROW:

6 Q. Mr. Johnson, I have a few follow-up questions
7 for you. What I would like to start with a
8 demonstrative that you used, which is No. 11.

9 MR. BOBROW: And if we can put that up on
10 the screen and dim the lights, please, I would
11 appreciate that. Thank you.

12 Q. (By Mr. Bobrow) Now, Professor Johnson, what
13 you showed here earlier was a setup for communication
14 between on the one hand an Office Communicator computer
15 and on the other hand Office Communications Server; is
16 that right?

17 A. That's correct sir.

18 Q. You've shown two computers; one on the left
19 side as the source and one the destination on the right;
20 is that right?

21 A. That's correct.

22 Q. This is a two-computer model as you've shown
23 it, correct?

24 A. Yes, sir.

25 Q. And as I understood your testimony, both on

1 direct examination and on cross-examination, there is no
2 anonymity in this scenario, because the IP addresses of
3 the source and the destination are visible to a hacker;
4 is that right?

5 A. That's correct. And thus, an eavesdropper
6 would easily know that these two computers are in
7 communication with each other.

8 Q. Now, on cross-examination, Mr. Caldwell
9 posited for you a scenario where you had two computers
10 like this, and instead of having an OC/OCS connection,
11 forget about that. Instead you create a PPTP VPN
12 connection between those computers.

13 Do you remember that question -- those set of
14 questions, sir?

15 A. Yes, sir, I do.

16 Q. Now, when you set up a PPTP VPN between those
17 two computers, is there or is there not anonymity for
18 the source computer and the destination computer?

19 A. There certainly is anonymity --

20 Q. Now --

21 A. -- if an attacker --

22 Q. -- let me -- let me ask you.

23 A. Okay.

24 Q. Why is that? Why is there anonymity when you
25 have a VPN between those two computers but not when you

1 have an OC/OCS connection?

2 A. In the case of PPTP, you have the encrypted
3 private IP addresses that are hidden inside the packet.
4 So the possible eavesdropper who's looking at that
5 packet only can see the outside IP addresses, the public
6 IP addresses.

7 The inside IP addresses identify the real
8 source computer and the real destination computer. So
9 even though this picture shows only two computers
10 connected together through the internet, the attacker
11 actually has no way to know whether there might be only
12 one computer on the left side or maybe there's a second
13 computer or a hundred or a million computers on the left
14 side, and the same thing on the right side.

15 Observing that packet in the middle of the
16 network as -- if the computer on the left in the case of
17 PPTP is using this PPTP VPN and it is serving as a VPN
18 gateway and the computer shown here on the right is also
19 serving as a VPN gateway, the attacker who's
20 eavesdropping in the middle of the network can only see
21 that it's -- the public IP addresses and cannot identify
22 which of the possibly a million computers on the left
23 side was actually the source of that packet, or same
24 thing on the right side.

25 In the case of Office Communications (sic) and

1 Office Communications Server, it's -- it's different.
2 There's only the public IP addresses. There are no
3 private IP addresses. The attacker actually can even
4 tell from the packet that there are no private IP
5 addresses.

6 Remember, I talked about the -- the port
7 number. That port number identifies this packet as
8 belonging to Office Communicator/Office Communications
9 Server communications. And from that port number, we
10 know -- because the format of the packets are not a
11 secret, we know that the packet contains what it
12 contains.

13 The attacker knows that there's no private IP
14 addresses hidden inside the packet. The attacker knows
15 the only thing that's in there is encrypted data.

16 There's no private IP addresses. The two
17 computers that are in communication with each other are
18 clearly identified by the public IP addresses in the IP
19 packet's header.

20 Q. Let me switch subjects.

21 Mr. Caldwell also asked you some questions
22 about SIP, the SIP protocol, and the http protocol.

23 Do you recall those questions?

24 A. Yes, I do.

25 Q. Now, first of all, let me ask you this just

1 straight out: Does the OC and OCS Server, which
2 protocol is used on the OC Server?

3 A. SIP.

4 Q. Does it use http protocol? Is that the
5 protocol it uses?

6 A. No, it does not use http at all.

7 Q. All right. Now, there were some statements
8 about how SIP may be similar in some ways to http.

9 Do you recall that?

10 A. Yes, I do.

11 Q. Does that change your view and opinion in any
12 way that an OCS Server is not a website?

13 A. It does not change my opinion in any way.

14 Q. Why not?

15 A. The similarities are -- are superficial to
16 the -- if I can make an analogy, I guess I would say, if
17 we write English, we punctuate it with commas and
18 periods. And we do that whether we're writing in -- I
19 don't know -- English or French or I think it was on the
20 first day of the trial, there was one page of the
21 Microsoft source code that was shown on the screen up
22 here that was probably very hard to read.

23 Similar punctuation marks are used there.
24 There's similarities between languages that makes -- I
25 guess in the case of languages, it makes printing --

1 typing the languages easier.

2 But that's really where the similarities end
3 in the case of SIP versus http. You know, there's some
4 of the formatting of how the protocol is -- is -- the
5 language is formatted are similar. But the
6 functionality, what it does and even the pattern of
7 communication is -- is -- is very different.

8 In http, the web browser requests a web page,
9 and the web server sends the web page back.

10 In SIP, the client sends an instant message,
11 and it doesn't come back to the client. It goes through
12 the SIP server -- the OCS Server to the other client.
13 This structure of the protocol, the way the protocols
14 work is very different.

15 Q. All right. Third topic, very briefly.

16 MR. BOBROW: Can we pull up Plaintiff's
17 Exhibit 800, please?

18 Q. (By Mr. Bobrow) You were asked some questions
19 about this towards the end of your cross-examination
20 about Windows Meeting Space.

21 Do you recall looking at least portions of
22 this document?

23 A. Yes, sir.

24 MR. BOBROW: Please turn to, I believe
25 it's Page 11, and if you can go to the bottom and

1 highlight the paragraph that starts IPv6.

2 Q. (By Mr. Bobrow) Do you see that, sir?

3 A. Yes, I do.

4 Q. All right. Now, here towards the bottom, it's
5 talking about Windows Meeting Space and IPv6, which I
6 think you said is sort of the future version of the IP
7 protocols; is that right?

8 A. Yes, sir. IPv6 is sometimes called IP next
9 generation. It's what the internet will become when
10 they finally someday finish changing the internet to be
11 that protocol.

12 Q. Now, in the bottom paragraph, it refers to
13 several ways of obtaining IPv6 hardware. Then it says:
14 The simplest way is to set up a ISATAP Server.

15 Now, very briefly can you just tell us what
16 that's talking about?

17 A. It's talking about ways of being able to carry
18 IPv6 packets over the -- IPv6 is a version number of IP;
19 the current version is IP is IP Version 4, so if I use
20 the numbers 4 and 6, which I'm sure I will accidentally
21 do -- it's a way of carrying IP Version 6 packets over
22 the IP Version 4 internet.

23 Q. All right. So is it fair to say from the
24 portions of this article that you looked at that for
25 Windows Meeting Space operating over the internet, you

1 need to take special steps to set up special servers and
2 have special hardware for that to work?

3 A. That's correct.

4 Q. All right. I have one last topic, and that
5 has to do with the PeerNet software.

6 You have been talking, when you were asked
7 questions, about IP packets going from one peer computer
8 to another peer computer.

9 Do you recall using that word, IP packet?

10 A. Yes, I do, sir.

11 Q. On cross-examination, Mr. Caldwell kept asking
12 you over and over about messages from one peer to
13 another peer.

14 Do you recall that?

15 A. I do recall that, yes, sir.

16 Q. Tell us, if you would, whether there's any
17 difference between IP packet on the one hand and a
18 message on the other?

19 A. Yeah, there's -- there's definitely
20 differences.

21 An IP packet, again as I've already said,
22 really is the basic unit of communication between
23 computers and the internet. Without an IP packet, two
24 computers simply cannot communicate.

25 A message is, you know, a piece of information

1 from an application program. It's data. It's not -- it
2 exists disembodied from a network protocol. It's just a
3 piece of information.

4 To carry that piece of information from one
5 computer to another computer, you have to put that into
6 an IP packet and transmit that IP packet from the source
7 computer to the destination computer.

8 Q. And if you can see the IP packet, when one
9 peer computer is sending a message -- sending an IP
10 packet to another computer, what happens then? If you
11 intercept that packet, what can you see?

12 A. If you intercept that packet, you can plainly
13 see the IP address of the source computer and the IP
14 address of the destination computer. Those are public
15 IP addresses. They're plainly visible.

16 And they plainly tell you that that source
17 computer is in communication with that destination
18 computer. And so it simply means there's no anonymity.

19 Q. Thank you.

20 MR. BOBROW: Pass the witness.

21 THE COURT: Any further recross?

22 MR. CALDWELL: Just very, very briefly
23 Your Honor.

24 (Discussion between Mr. Moreno and
25 Mr. Caldwell.)

RECROSS-EXAMINATION

1
2 BY MR. CALDWELL:

3 Q. Do you remember talking about this slide, Dr.
4 Johnson?

5 A. I'm not sure if it's the same slide. I think
6 it may be. I certainly prepared a similar slide, yes.

7 Q. I asked you about PPTP, which is Mr. Pall's
8 VPN, correct?

9 A. Yes, sir.

10 Q. And you can set that up between a computer and
11 the computer on the other side, can't you?

12 A. Between those two computers, yes.

13 Q. And you see the very same addresses, correct?

14 A. Yes, sir.

15 Q. That we would have seen in Office
16 Communicator?

17 A. That's correct.

18 Q. Now, Dr. Johnson, does PC Magazine need to
19 take back that award they gave Mr. Pall, because he
20 actually didn't invent the VPN?

21 A. No. I think we've covered this already. It's
22 still a VPN, because there are private IP addresses that
23 are hidden. The attacker cannot tell the identity of
24 the source computer -- you know, which computer is in
25 communication with which other computer.

1 Q. Dr. Johnson, will you look at the jury and
2 tell them whether or not it is a requirement of the
3 patent or the claims that there be a private IP address
4 that is hidden?

5 A. It is not a requirement of the claims as was
6 just now stated.

7 Q. Is it a requirement of Judge Davis' claim
8 construction? Tell the jury that, if you would.

9 A. It is not part of Judge Davis' construction as
10 just now stated.

11 Q. And did you understand Mr. Bobrow to say that
12 in order the use Windows Meeting Space on the internet,
13 you had to buy special hardware?

14 A. I did hear him say that, yes.

15 Q. That's not true, is it?

16 A. You either need special hardware as was
17 described in the passage there, or special software.

18 Q. But that special software is -- I don't want
19 to get too technical here -- it's something like
20 Terrado, T-E-R-R-A-D-O, correct?

21 A. That's correct.

22 Q. That's built right in to Windows Vista, isn't
23 it?

24 A. And -- yes, sir. It has to be set up and
25 configured. And we've all heard lots about setting up

1 and configuring software.

2 Q. Okay. So you don't have to actually go buy
3 separate hardware as Mr. Bobrow suggested, correct?

4 A. That's correct. There was only a limited time
5 period that document -- that it talked about overhead
6 and efficiency a little bit, I noticed. And that
7 affects that.

8 Q. And, Dr. Johnson, if you use Windows Meeting
9 Space even in a link local network, like on this table
10 right here, you use an IPv6 address then, don't you?

11 A. Yes, I certainly do.

12 Q. So that's not part of the criteria of using
13 Windows Meeting Space just on the internet, right?

14 A. I'm not sure of your point. I can use IPv6 in
15 this room, because we're all connected to the same local
16 area network.

17 Q. Dr. Johnson, my point is, it's not -- you
18 don't have to use IPv6 because you're going to use the
19 internet. It's just the way Windows Meeting Space is
20 configured. It always uses IPv6, correct?

21 A. That's correct. That was not the point of
22 talking about IPv6.

23 Q. Well, I think it was the point. Mr. Bobrow
24 suggested you had to go buy special hardware to use
25 Windows Meeting Space over the internet, didn't he?

1 A. The issue with using IPv6 is not whether I can
2 use it in this room or -- the issue is whether it can go
3 across the internet and whether internet routers support
4 forwarding those packets.

5 Q. Every bit of the software you need -- I'm
6 sorry. You don't need to go buy this ISATAP hardware,
7 correct?

8 A. You don't need to.

9 Q. The software -- the software, Windows Vista,
10 can provide everything you need for the IPv6, correct?

11 A. You have to set up and configure that
12 software, and it consumes memory and CPU cycles. It can
13 be done.

14 Q. Dr. Johnson, is that, yes, Windows Vista
15 provides it all?

16 A. Yes.

17 Q. All right.

18 MR. CALDWELL: Pass the witness.

19 THE COURT: Any redirect?

20 MR. BOBROW: No, Your Honor.

21 THE COURT: All right. Ladies of the
22 Jury, I believe we're going to take our noon recess at
23 this time. I'll ask you to be in recess -- be back here
24 and ready to go by, let's say, 1:15 today.

25 That will give you an hour and 20

1 minutes. See if you can get your lunch in in that time.
2 Remember my instructions, and we'll see you back at
3 1:15.

4 Be in recess.

5 COURT SECURITY OFFICER: All rise.

6 (Lunch recess.)

7 * * * *

8

9 CERTIFICATION

10

11 I HEREBY CERTIFY that the foregoing is a
12 true and correct transcript from the stenographic notes
13 of the proceedings in the above-entitled matter to the
14 best of my ability.

15

16

17

18 /s/ _____ Date _____
SUSAN SIMMONS, CSR
19 Official Court Reporter
State of Texas No.: 267
20 Expiration Date: 12/31/10

21

22

23 /s/ _____ Date _____
JUDITH WERLINGER, CSR
24 Deputy Official Court Reporter
State of Texas No.: 731
25 Expiration Date: 12/31/10

EXHIBIT F10

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

1			
2			
3	VIRNETX	*	Civil Docket No.
4		*	6:07-CV-80
5	VS.	*	Tyler, Texas
6		*	March 12, 2010
7	MICROSOFT CORPORATION	*	1:15 P.M.

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE JUDGE LEONARD DAVIS
UNITED STATES DISTRICT JUDGE

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(Proceedings recorded by mechanical stenography,
transcript produced on CAT system.)

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* * * * *

P R O C E E D I N G S

COURT SECURITY OFFICER: All rise.

(Jury in.)

THE COURT: Please be seated.

MR. POWERS: Your Honor, before we begin,

1 can we submit our list of exhibits that were admitted
2 yesterday?

3 THE COURT: That would be great.

4 MR. CALDWELL: Your Honor, for the
5 record, we've marked as demonstratives now our numbers.
6 So just for the record, I would like to move into
7 evidence Plaintiff's Demonstrative Exhibits 18, 19, 20.

8 THE COURT: Be admitted.

9 MR. BOBROW: I was going to say as
10 demonstratives.

11 THE COURT: Right. Uh-huh.

12 Okay. Anything else?

13 MR. BOBROW: Microsoft would simply ask
14 to call its next witness, Your Honor.

15 THE COURT: All right. That will be
16 fine.

17 MR. BOBROW: So our next witness is
18 Stephen Wicker.

19 THE COURT: All right.

20 STEPHEN WICKER, Ph.D., DEFENDANT'S WITNESS, PREVIOUSLY

21 SWORN

22 DIRECT EXAMINATION

23 BY MR. BOBROW:

24 Q. Good afternoon.

25 A. Good afternoon.

1 Q. Would you please introduce yourself to the
2 jury, please?

3 A. My name is Steve Wicker.

4 Q. And, Mr. Wicker, where do you live?

5 A. I live in Ithaca, New York.

6 Q. What do you do there?

7 A. I'm a professor of electrical and computer
8 engineering at Cornell University.

9 Q. Okay. And how long have you been a professor
10 at Cornell University?

11 A. Fourteen years.

12 Q. So taking us back, then, to about 1996?

13 A. Yes.

14 Q. All right. And what about before that, were
15 you a professor before that?

16 A. I was a professor in electrical and computer
17 engineering at Georgia Tech in Atlanta.

18 Q. All right. Now, could you please tell us,
19 sir, what the focus of your work has been at both
20 Georgia Tech and at Cornell?

21 A. I have conducted research and I've taught in
22 the area of computer networks, communication networks.
23 I have focused on security, reliability, and privacy in
24 those networks.

25 Q. All right. Now, I wanted to ask you, sir,

1 before we get into a lot of the details in this
2 afternoon, if you could just give us a brief explanation
3 of why you're here today.

4 A. Okay. I'm here to talk about the validity of
5 VirnetX's patents, and in particular, the claims that
6 are asserted in this case.

7 Q. Okay. Now, before we get into your specific
8 opinions on the validity of the two patents involved
9 here, let me go ahead and ask you some more questions
10 about your background and experience, if I may.

11 And I'd like to ask you to please explain for
12 the jury your education since high school.

13 A. Okay. I received a bachelor's degree in
14 electrical engineering from the University of Virginia.
15 I received a master's degree in electrical engineering
16 from Purdue University, and I have a Ph.D. also in
17 electrical engineering from the University of Southern
18 California.

19 Q. And while you were getting your Ph.D., did you
20 work at the same time?

21 A. Yes, I did.

22 Q. Where did you work?

23 A. I was an engineer for the Space and
24 Communications Group of the Hughes Aircraft Company in
25 Los Angeles.

1 Q. What kind of projects were you working on at
2 Hughes Aircraft?

3 A. I designed communication payloads for
4 satellites and for deep-space probes. It's the part of
5 the satellite that actually talks.

6 Q. Okay. Now, let's jump forward to your time as
7 a professor, and I wanted to ask you specifically what
8 kind of courses you teach as a professor in electrical
9 engineering and computer science.

10 A. Well I, teach courses in computer networks,
11 communication networks. I've taught courses in
12 cryptography. Next semester, I'll be teaching a
13 freshman course on both security and privacy in
14 information networks. So, basically, networking of
15 various types.

16 Q. Have you taught any courses where that course
17 work has involved virtual private networks or VPNs?

18 A. Yes. In fact, in both my graduate and
19 undergraduate courses on computer networks, I do talk
20 about VPNs.

21 Q. Now, have you published any books or articles
22 or conference papers on networks and network security
23 and privacy?

24 A. Yes. I've published five books and a number
25 of journal articles and conference papers that deal with

1 various aspects of networks and communication links that
2 form those networks.

3 And a great deal or a significant amount of
4 that work deals with reliability and security in those
5 networks.

6 Q. All right. In connection with your work as a
7 professor, have you done any work for the United States
8 government in the areas of networks and network security
9 and privacy?

10 A. Yes, I have.

11 Q. Can you please describe that for us?

12 A. Okay. Most of the work I've done for the
13 government was for DARPA. Now, that's the Defense
14 Advanced Research Projects Agency. I think it's been
15 mentioned several times over the course of the past
16 week.

17 A lot of the work I did for them focused on
18 sensor networks. I was very interested in creating
19 networks that could detect different kinds of attacks;
20 primarily, germ warfare and chemical warfare. The
21 design of these networks was intended to protect troops
22 against attacks, but it's also, since 9/11, been
23 considered for use in protecting cities.

24 Q. Okay.

25 A. And what-not, water supplies in particular.

1 Q. All right. Have you done any work for any
2 agencies of the federal government other than DARPA?

3 A. Yes.

4 Q. Can you tell us about that work, please?

5 A. Well, throughout my career, I've worked for
6 the National Science Foundation. That's a part of the
7 government that funds faculty and students to do
8 research of various types.

9 Q. Okay. And what technologies have you
10 developed in your work for the National Science
11 Foundation?

12 A. Well, actually quite a few. I've been doing
13 work for the NSF since the very beginning, but probably
14 the biggest thing I've worked on most recently has been
15 for a science and technology center called Trust. It's
16 a large consortium of different universities, and our
17 main goal is to protect critical infrastructure, to
18 protect the power grid, to protect the transportation
19 system, large objects like dams, and things that make
20 the economy go.

21 Q. So what work have you done for Trust in the
22 area of networks and network security and the like?

23 A. Once again, my emphasis was on sensor
24 networks. And for Trust, I've looked at using these
25 sensor networks to protect the power grid in particular,

1 what delivers electricity to our homes.

2 I've looked at ways of using sensors to both
3 control the power grid as well as to protect it against
4 hackers and actual physical attack as well.

5 Q. And has any of your work on networks involved
6 any medical applications?

7 A. Yes. One of the more recent applications
8 we've looked at has been sensor networking for patients
9 at home. The basic idea is to get information about the
10 patient's status, you know, well-being. We can monitor
11 heart rate, blood glucose, all kinds of stuff so that
12 someone can stay home instead of having to stay in
13 intermediate care facility of some kind.

14 Q. All right. Now, in addition to your work for
15 the government, have you done work in private industry
16 on networks and network security?

17 A. Yes, I have.

18 Q. Can you tell us about that?

19 A. Okay. I've done work for some large companies
20 like Motorola, a lot for Texas Instruments, Lockheed
21 Sanders. And I've also worked for some smaller
22 companies and even some startups over the years.

23 Q. All right. What I'd like to do now with that
24 background about you is I would like to shift gears and
25 ask you about the work that you did in studying and

1 evaluating the question presented to you of whether the
2 VirnetX patents at issue here are valid or not.

3 And what I would like you to do, please, is
4 describe for us the work that you did in preparing to
5 give your opinion.

6 A. Okay. The first thing I did was to actually
7 read the patents. I went through them several times,
8 and I read the claims. That's the part that tells you
9 what's actually claimed.

10 I studied the file histories. That's the
11 history of everything that happened in the Patent Office
12 during the prosecution of the application.

13 I studied the Court's claim construction so
14 that I would understand what the Court had determined
15 certain terms in the claims meant.

16 I also studied the various prior art documents
17 that were cited in that file history as well as a number
18 of prior art documents, systems, software that was not
19 cited in the file history.

20 Q. All right. Well, that's what I was going to
21 ask you was whether, in the course of your preparation
22 to give opinions here today, did you study any prior art
23 that the Patent Office did not consider when it granted
24 the '135 patent and the '180 patent?

25 A. Yes, I did.

1 Q. What prior art did you study that the Patent
2 Office did not?

3 A. Well, actually, I looked at a variety of
4 things, quite a few systems, articles, et cetera. But
5 the three main things that I focused on recently were
6 the Aventail system, which I think has been discussed;
7 DVPN, dynamic virtual private network; and the third one
8 was Windows NT 4 with AutoDial and PPTP.

9 Q. All right. Now, can you tell us, please, how
10 you know that that prior art -- the Aventail, the DVPN,
11 and Microsoft NT 4.0 with PPTP and AutoDial -- how is it
12 that you know that the Patent Office didn't consider
13 that when it granted the two patents to VirnetX?

14 A. Well, if you look on the front of one of the
15 patents, either one, there will be a list of everything
16 that the Patent Office looked at. It says references
17 cited or something like that.

18 But basically, it's a listing of everything
19 that the Patent Office considered. The things that I
20 just mentioned -- Aventail, Windows NT with AutoDial,
21 and DVPN -- were not listed. So that's how I know that
22 they weren't considered by the Patent Office.

23 Q. Okay. And in terms of how close -- the DVPN
24 system and the Aventail system and NT 4 in terms of how
25 close those are to the patents that VirnetX got and are

1 involved here in this lawsuit -- can you compare
2 Aventail and DVPN and the NT 4 system in terms of their
3 relevance or closeness to the patent to the prior art
4 that the Patent Office did consider?

5 A. Okay. In my studies, I found the three
6 systems that he just listed -- Aventail, DVPN, and the
7 Windows NT system -- they were actually closer to what
8 was claimed.

9 When I studied these systems, I found that I
10 could actually read the claims that were asserted in
11 this case on to these prior art systems. So that told
12 me that they were very relevant. Extremely relevant.

13 Q. All right. Now, one thing that you've
14 mentioned here and that I think we've seen over the
15 course of the week is that Aventail and DVPN and the
16 Microsoft NT 4 system, those are not patents, right?

17 A. That's right.

18 Q. Okay. Now, in your understanding, can things
19 other than patents be prior art and considered for the
20 validity of other patents?

21 A. That's my understanding. You can look at
22 things other than older patents.

23 Q. All right. Now, after the description of your
24 work that you just gave us, what I'd like you to do is
25 to tell me whether you have formed opinions on whether

1 the claims of the '135 patent and the '180 patent that
2 VirnetX is asserting here, whether or not those claims
3 are valid or invalid in light of the prior art?

4 A. Through my studies, I found that they were
5 invalid in light of the prior art. They were both
6 anticipated and obvious in light of DVPN and Aventail
7 and the Windows NT system with AutoDial and PPTP.

8 Q. All right. In your last answer, you used the
9 word anticipated, and I'd like you to tell us what that
10 means from your point of view from your understanding?

11 A. Okay. Well, it's my understanding that
12 anticipation means that you can read the claims on to
13 the system or the device or the document. And by that,
14 I mean the system or the document, the prior art, has to
15 have every single element of the claims. Nothing can be
16 missing.

17 Q. Okay. And when you said that you found the
18 claim of the '135 patent and the '180 patent to have
19 been anticipated, what does that mean?

20 A. That's what I just described. Anticipation is
21 where you can find every single element of the claims in
22 one system, one document, one patent.

23 Q. All right. And did you so find that here in
24 this matter?

25 A. Yes.

1 Q. All right. And you also mentioned that you
2 found the claims of the VirnetX patents to be obvious
3 and therefore invalid.

4 Can you tell us what you meant by that?

5 A. Okay. Obviousness is different. In the case
6 of obviousness, the first thing I had to do was think
7 like a person of skill in the art at the time of the
8 invention, and just try and figure out what that person
9 would have known.

10 I then asked myself whether this person would
11 have found what was claimed obvious in light of one or
12 more references, references like Aventail, and the ones
13 that we've listed several times.

14 Q. All right. And after doing that, and putting
15 yourself in the position of ordinary skill, what did you
16 conclude?

17 A. I concluded that what's been asserted in this
18 case, the asserted claims would have been obvious to a
19 person of skill at the time of the invention.

20 Q. All right. Well, since we were talking just
21 then about the state of the art at the time of the
22 invention, at the time these patents were filed, let's
23 go back to that time period, February of 2000, and I'd
24 like you to tell us, generally speaking, if you could,
25 what the patents that are at issue here are about.

1 In other words, what are the problems that
2 they're directed to? What are they about?

3 A. Well, put -- put simply, the problem that was
4 being addressed was the problem of finding a way to
5 communicate securely over an unsecure network, such as
6 the internet.

7 Q. Now, after you read these patents, was it your
8 view that these patents were claiming always and all
9 technologies for securing the internet or another
10 unsecure network?

11 A. No. No. What was being claimed was actually
12 quite narrow in terms of how that security was going to
13 be obtained.

14 Q. All right. Now, Professor Wicker, I
15 understand that you have prepared some slides to assist
16 in your testimony here today; is that right?

17 A. That's correct.

18 Q. And assist in your explanations?

19 A. Yes.

20 Q. All right. What I'd like to do now is ask you
21 to please help describe for us what the state of the art
22 was back in the year 2000, when these patents were
23 filed, and explain generally for us what kinds of
24 technologies were already known in the field.

25 A. Okay. And it looks like my first slide is up.

1 What I've done here is I've listed five key technologies
2 that were -- were available or were well-known at the
3 time the VirnetX patents were applied for in 2000.

4 The first of these you've heard about many
5 times over the past week, the domain name system. Just
6 to remind you, the domain name system is like a phone
7 book. You provide a -- a domain name, like Amazon.com,
8 and what you get back is an IP address, an address that
9 will let you route packets through the internet.

10 We can remember Amazon.com, but we can't
11 remember those numbers, and so that's what the DNS does
12 for us.

13 The second technology is encryption.

14 Oh, by the way, I should mention, DNS was
15 around at the time the patents were applied for. In
16 fact, it had been around for a long time. DNS, as we
17 have it now, was standardized in 1982. There have been
18 variations since then, but, essentially, DNS, as we know
19 it, came about in 1982.

20 Encryption, we've also discussed over the past
21 week. Encryption is the process of taking something
22 like this slide and rearranging things and confusing
23 things so that we can't tell what it says anymore.
24 Basically, encryption makes sure that an unauthorized
25 person can't read, for example, this slide because it's

1 been encrypted.

2 Encryption has been around for thousands of
3 years. There were literally Egyptian hieroglyphics that
4 were encrypted, but more relevant to us, since the very
5 beginning of the internet and its predecessor networks,
6 encryption's been used. So I would say the earliest
7 examples are probably from the late '60s, 1960s.

8 Authentication is the process by which you
9 prove to a computer that you are who you say you are.

10 So let's suppose that you want to check your
11 e-mail. You'll type in your user name, and then you'll
12 provide a password.

13 Well, what you're doing is authenticating
14 yourself to the mail servers so you can read your mail.
15 Authentication has been around for a long time, too.
16 But authentication, as we have it in standard computer
17 networks, goes back to at least 1975.

18 Https, I think that's been discussed. First,
19 there's two pieces. The first part is the http. That's
20 the hypertext transfer protocol. That's how your web
21 browser gets web pages.

22 The S on the end stands for secure. Https is
23 a combination of http and an encryption technology,
24 originally something called SSL, that allows you to
25 securely go to web sites and buy things like books or

1 shoes or whatever; whatever you're buying, airline
2 tickets for that matter.

3 Https, again, is two parts. The first part
4 has been around since 1991, essentially. It was
5 invented a little before that, but the S part was
6 invented by Netscape around 1995. So that's been around
7 for some time.

8 Then finally, VPNs we've discussed those a lot
9 over the past week. VPNs have been around for some time
10 as well. And, in fact, prominent examples at the time
11 the VirnetX patents were applied for included Aventail,
12 DVPN, and Windows NT using PPTP and AutoDial.

13 Q. All right. Now, when you described https back
14 before these patents were filed in 2000, was it easy for
15 a user to get a secure connection using https?

16 A. Yes, it was. And, in fact it was a big deal
17 that it was easy, because it enabled all the e-commerce.
18 You know, all those dot-coms that are now such a big
19 part of our shopping experience, like Amazon, it made it
20 possible.

21 Q. And for VPNs back before 2000, was it easy for
22 a user of a VPN to obtain a VPN connection?

23 A. Yes, it was. In fact, several of the examples
24 I'll talk about will show you that a user could have one
25 set up automatically.

1 Q. All right. What I'd like to do now, after
2 discussing the state of the art as of 2000, is shift and
3 ask you some questions about the patents themselves.

4 MR. BOBROW: And, Your Honor, with your
5 permission, may I ask the witness to approach the easel?

6 THE COURT: Yes, sir.

7 MR. BOBROW: Thank you, Your Honor.

8 THE WITNESS: Thank you, sir.

9 Q. (By Mr. Bobrow) So, Professor Wicker, what I
10 wanted to ask you was, could you please describe for the
11 jury some of the core concepts, core principles that are
12 involved, first of all, in the '135 patent of VirnetX?

13 A. All right. Well, the '135 patent -- I will
14 have to come around. I'm left-handed.

15 The '135 patent has three key concepts, and
16 they're concepts that have been discussed quite a bit
17 already in Court.

18 The first of the concept of a domain name
19 request.

20 So I'll write domain name request.

21 And, again, domain name request is part of our
22 desire to take a name, like Amazon, and turn that into
23 an address that can actually be used throughout the
24 packets, something we can't remember, but we can get
25 through the DNS system.

1 The second piece that I want to point to is
2 this idea of determination. It's determining that
3 what's been requested corresponds to a secure website.
4 So I'll write determine secure website. I won't use
5 perfect grammar. There's not much room up here.

6 Now, the third part, once a domain name has
7 been requested and it's been determined that that name
8 is associated with a secure website, the third part is
9 the automatic creation of a virtual private network.

10 So I'll write automatic VPN.

11 Those are the three elements, the three key
12 elements of the '135 patent.

13 Q. Okay. Now, could I ask you to do the same for
14 the '180 patent and explain for the jury some of the
15 core concepts, the core principles underlying the '180
16 patent.

17 A. Sure.

18 For the '180 patent, once again, there are
19 three key concepts. The first is the idea of a secure
20 computer network address.

21 Now, a secure computer network address is an
22 address that's associated with a computer that requires
23 that you have authorization before you can access it.

24 The second key element is a secure DNS, a
25 secure domain name service. This is a domain name

1 service that associates secure computer network
2 addresses with secure domain names.

3 And the final piece, the third piece is, once
4 again, the virtual private network or VPN.

5 Q. All right. Thank you, Professor Wicker.

6 What I would like to do, then, is actually
7 shift gears -- now that we have some of those core
8 concepts in place and shift gears and have you answer
9 some questions about the Aventail software guide and the
10 Aventail software.

11 So perhaps you could resume the witness stand,
12 please.

13 A. (Complies.)

14 Q. Now, if you -- if you may, as I understand it,
15 you may have a slide that shows at least some of this
16 Aventail software guide that we've discussed.

17 A. Yes. And I think this clicker will -- yes.

18 MR. BOBROW: Perhaps the lights could be
19 dimmed, if I may.

20 Thank you.

21 Q. (By Mr. Bobrow) So to begin, on the Aventail
22 Connect software guide, can you please tell us who it
23 was that developed this software and the accompanying
24 guide.

25 A. Okay. So this software is developed by a

1 company called Aventail. They were based in Seattle,
2 Washington, and they did this development of Aventail
3 from roughly 1996. And we'll talk about the time period
4 up through 1999.

5 Q. Okay. What problem did the Aventail Connect
6 software address?

7 A. Well, the problem that they addressed is the
8 same that the VirnetX patents addressed; namely, finding
9 a way to communicate securely over an unsecure network,
10 like the internet.

11 Q. How was the Aventail software used?

12 A. It was used both by road warriors, folks who
13 were away from home, away from their home office, and
14 wanted to dial in and have a secure connection so they
15 could access their files at their main office.

16 It was also used by companies who had branch
17 offices. You'd literally have two offices that wanted
18 to communicate using the internet, and so they'd use
19 Aventail to make that connection secure.

20 Q. Now, in forming your opinion that the Aventail
21 software guide disclosed all the requirements and all
22 the limitations of these patents, I'd like you to tell
23 us, please, what materials you reviewed and studied to
24 form your opinion.

25 A. Okay. My primary reference was this guide,

1 and that's what I'll be pointing to throughout my
2 discussion of this material.

3 But I did look at some other references to
4 make sure I knew what was going on. So that I knew more
5 about Aventail, basically as much as I could find out.
6 And as you can see, there are administrator's guides.
7 I've already mentioned that one. But there's also some
8 material regarding the ExtraNet Center, a PC Week
9 article, an InfoWorld article, and an RFC.

10 This RFC -- it's second from the bottom -- is
11 a request for comments. That's an internet standard.
12 And this is for SOCKS. SOCKS is an acronym, and it
13 refers to a secure server. Aventail implements SOCKS.
14 And then finally, the transcript of Mr. Chris Hopen, who
15 was familiar with Aventail.

16 Q. All right. Now, is it your understanding that
17 the Aventail user guide had been distributed in the
18 United States prior to September of 1999?

19 A. Yes, that's correct.

20 Q. Can you please tell us what your understanding
21 of that is based on?

22 A. Well, my understanding is that this
23 administrator's guide was distributed with the software.
24 And, again, that understanding is based on Mr. Hopen's
25 testimony.

1 Q. All right. So with that background on
2 Aventail, what I'd like you to do for the ladies of the
3 jury is to explain how Aventail works and how it created
4 connections across the internet.

5 MR. BOBROW: And, Your Honor, to do that,
6 I would like to ask the witness to have permission to
7 approach an exhibit on the large board.

8 THE COURT: All right.

9 MR. BOBROW: Thank you.

10 THE WITNESS: Thank you, Your Honor.

11 Q. (By Mr. Bobrow) Okay. So using -- using this
12 illustrative exhibit of Aventail, first of all, what I
13 would like you to do is what you have depicted here, and
14 then show us how the Aventail software worked prior to
15 the year 2000.

16 A. All right. There are a couple of pieces to
17 this. I want to start by noting the client, okay?

18 This is someone who's working perhaps in an
19 office, and they want to make a secure connection
20 through the internet to a secure website on this end.
21 And so they're going to use Aventail to do this.
22 And Aventail is going to support this process through
23 software on the client, a SOCKS server. Again, Aventail
24 is basically an implementation of SOCKS.

25 And over on the far end, there will be another

1 SOCKS server.

2 So what's going to happen here is the Aventail
3 client will try to make a connection to that secure
4 website, and the first thing we're going to see is a DNS
5 request.

6 Hard to write on a moving board.

7 But anyway, so this DNS request happens to be
8 a secure DNS request, because we're trying to get
9 through to that secure website.

10 Now, at this point, the SOCKS server will
11 determine that that is, in fact, a secure DNS request.
12 So we can write determination right here.

13 And in response to that determination, the
14 SOCKS server will send a response -- and by the way, I
15 should explain this part here.

16 This configuration tool is what the SOCKS
17 server uses to determine that this request is, in fact,
18 for a secure website. It's got its own phone book, and
19 it's going to look up what's been requested, and it will
20 see that, oh, wait a second, I need to divert this to a
21 SOCKS server on the other end of the cloud so that I can
22 create a secure connection.

23 So that determination is done through a
24 lookup. There is, then, a response that goes back in
25 this direction. And at the same time, this server will

1 create a connection, an encrypted tunnel, through the
2 internet -- see if I can't do a little bit better than
3 that; there we go -- between those two.

4 So we know we're going to be using the
5 unsecure resources of the internet for secure
6 communication. And then on the other end, this SOCKS
7 server will make a connection to this secure website.
8 And so now we have a complete connection from the client
9 all the way to this secure website so that this client
10 can securely access that secure website.

11 Q. And in describing that connection across the
12 internet, would you describe that as a VPN?

13 A. Yes.

14 In fact, this is definitely a VPN. In the
15 references that I'll show, primarily the administrative
16 guide, will show that it's called a VPN.

17 Q. Okay. Now, once you have created that
18 connection across the internet, once you've done that,
19 do you have a network of computers?

20 A. Yes, you do.

21 As you can see right here, there are both
22 client computers, servers, and all the computers in the
23 internet. So there's definitely a network of computers
24 involved in creating this connection from the client to
25 the secure web address.

1 Q. Thank you.

2 Now, with that background on how the Aventail
3 software works --

4 MR. BOBROW: And, again, with Your
5 Honor's permission -- sorry, Professor Wicker. I'm
6 going to ask you to stand up again.

7 I would like Professor Wicker to again
8 approach an easel that has simply a board that sets out
9 the claim.

10 THE COURT: All right.

11 MR. BOBROW: Thank you, Your Honor.

12 Q. (By Mr. Bobrow) Now, first of all, Professor
13 Wicker, in your opinion, does the Aventail software
14 guide describe all of the elements of Claim 1 of the
15 '135 patent?

16 A. Yes, it does.

17 Q. All right. Now, can you please explain why
18 that's using the materials you've described?

19 A. Okay. What I'm going to do is, I'm going to
20 show how each of these can be found in the admin guide
21 by showing you excerpts from the guide so you can match
22 up the language in the claim to the guide itself.

23 So the first requirement -- it's a little
24 bright.

25 MR. BOBROW: May I ask the Court to dim

1 the lights, please?

2 A. This is a diagram that actually comes from the
3 administrator's guide. And you can see it's basically
4 what I've -- it's trying to draw -- actually, it's hard
5 to see with the ink on the board.

6 But what I tried to do was recreate this
7 drawing for you.

8 You see the client communicating with the
9 server. The server is connected to another server using
10 this authenticated and encrypted tunnel. You see the
11 language down there.

12 So we're getting both the privacy and the
13 security that's required for VPN. So that's a VPN right
14 there. And then we've got additional connection to the
15 destination server. So the client talks to the
16 destination server through a VPN.

17 So we know we're in the right ballpark.

18 The next requirement, the next -- the first
19 element of the claim is for generating from the client
20 computer a DNS request.

21 Now, there's some more language here which
22 I'll get to, but the first thing I want to do is focus
23 on that part that says generating from the client
24 computer a DNS request.

25 Now, what I did was I went through the

1 administrator's guide, and I found lots of language like
2 this. The application does a DNS lookup to convert the
3 host name to an IP address.

4 So clearly, we have the client computer
5 generating a DNS request.

6 Well, the next step is to determine whether or
7 not it's associated with a secure website. So we look
8 at this language and it says determining whether or not
9 the connection needs to be redirected to an Aventail
10 ExtraNet server and/or encrypted in SSL.

11 So the second element of the claim requires
12 determination. And here we see that very language. And
13 this is from the administrator's guide. Determines
14 whether or not the connection needs to be redirected to
15 an ExtraNet server and/or encrypted in SSL.

16 All right. Then finally, there's one more.

17 Actually -- excuse me -- there's another
18 piece. I forgot.

19 It has to be with a secure website. A secure
20 website is part of the claim. So I need to address that
21 part. And if I look in the administrator's guide, I see
22 there's explicit reference to websites that can be
23 accessed through a SOCKS server through an Aventail
24 server or to get around an Aventail server.

25 So what this language here tells me is that

1 Aventail has explicitly considered web pages, both
2 secure web pages and web pages that aren't secure.

3 And so one more step: Automatically
4 initiating the VPN.

5 Well, what we see here is that Aventail is
6 designed to run transparently. And down here, we see
7 the language that says Aventail Connect does not require
8 administrators to manually establish an encrypted
9 tunnel. Aventail Connect can establish an encrypted
10 tunnel automatically.

11 So here we see the language calling for
12 automatic creation of a VPN.

13 So -- I've too much stuff in my hands. Let me
14 see. Here we go. Excuse me.

15 So what I can do now is I can check off
16 everything that I've found in the Aventail reference,
17 and I've shown you there's language that clearly shows
18 that each and every one of these elements can be found
19 in that one administrator's guide.

20 Q. (By Mr. Bobrow) So in your opinion, then, the
21 Aventail guide anticipates Claim 1 of the '135 patent?

22 A. Yes, sir; that's correct.

23 Q. All right. While you're up, I would like you
24 to now turn to the other claim of the '135 patent, which
25 are Claims 10 and 12, and compare those claims to the

1 Aventail guide and give us your opinion on whether those
2 claims are also disclosed by the Aventail guide.

3 A. Okay. What this shows is Claim 10. And Claim
4 10 has a lot of similar language, but it does require
5 some definite differences.

6 Claim 10 calls for a DNS proxy server that
7 does a lot of the things we've already talked about and
8 shown. So the question, then, is does this
9 administrator's guide show a DNS proxy server. And I
10 found that it did. In fact, I've already pointed it
11 out.

12 This server is acting in this configuration as
13 a DNS proxy for this client. So it can resolve DNS
14 requests through that client.

15 The next question is dealing with the language
16 further on down this particular claim element.

17 Does it return the IP address if access to a
18 non-secure website is requested?

19 So the question is -- here, is it only for
20 secure websites, or can it deal with websites that are
21 not secure?

22 Well, what I found was that when Aventail
23 receives a host name that is not associated with a
24 secure website that does not match a redirection rule,
25 Aventail lets it just go through the stack as if

1 Aventail wasn't there.

2 The TCP/IP stack performs the lookup as if
3 Aventail Connect were not running. So it treats
4 Amazon.com just as your system would at home. It just
5 goes ahead and connects you to Amazon.com without
6 redirecting you to a server.

7 Q. All right. And so with that and with that
8 description, did you form an opinion about whether
9 Claims 10 and 12 of the '135 patent are anticipated by
10 the Aventail patent?

11 A. Well, there was one more piece here that I did
12 not cover, so maybe I should mention the rest of what I
13 did.

14 There's a requirement for a gatekeeper
15 computer that allocates resources of the VPN. This has
16 to somehow provide what's needed to establish a VPN.

17 Well, as I've shown you already, this server
18 helps establish this authenticated and encrypted tunnel.

19 Now, there's been a lot of talk about tunnels
20 and what-not. This is a VPN, because it provides both
21 privacy and security as the Court determined was
22 necessary for a VPN. And it's this server that helps to
23 create it.

24 And so that server does satisfy this
25 gatekeeper language.

1 Let's see. Then, I had one more for 12. 12
2 is a dependent claim that requires everything that's in
3 this earlier claim, but it's got an added limitation.
4 The gatekeeper computer also has to determine whether
5 there are sufficient security privileges, whether the
6 person who's talking to it is on the list allowed
7 access.

8 And what Aventail does is it provides user
9 authentication before allowing access. So that
10 gatekeeper computer I pointed out, which is a SOCKS
11 server, does provide authentication services. It
12 determines whether or not you're allowed to go to that
13 website or whatever the case may be.

14 And then there's a lot more detail here as to
15 the kinds of authentication that can be provided.

16 So that box needs to be checked as well.

17 So, again, using the guide, I've shown you
18 that this element is present; this element is present
19 (indicates). And that's Claim 10.

20 And since Claim 10 is covered, I just have to
21 have this extra part here. And that takes care of Claim
22 12.

23 So I've read Claims 10 and 12 on the Aventail.

24 Q. And you reviewed the Aventail administrator's
25 guide, Claims 10 and 12 of the '135 patent?

1 A. Yes.

2 Q. Now, the final set of claims at issue are from
3 the '180 patent. And what I'd like you to do is to
4 please walk us through those claims and compare them to
5 the Aventail guide.

6 A. All right. I just remembered before they take
7 this away, I should write Aventail on it.

8 Okay. So this is -- these are Claims 1, 4,
9 and 15 of the '180 patent, and as you can see here,
10 Claim 1 requires a method for accessing a secure
11 computer network address.

12 Well, as we've seen, the administrator's guide
13 talks about accessing sites that require user
14 authentication before allowing access. So that's how
15 the Court defined a secure computer network -- secure
16 computer, one that requires authorization before you can
17 get to it.

18 Well, there's the discussion of the
19 authorization or authentication before you can get
20 access.

21 And once again, there are the various means by
22 which those authentication protocols have been
23 implemented by SOCKS servers.

24 Now, these next two parts I've combined.
25 We've got sending a query message to a secure domain

1 name service, and then receiving from a secure domain
2 service a response message containing the secure
3 computer network address.

4 Okay. So receiving and sending, I've already
5 shown that if the destination host name matches a
6 redirection rule, there's a redirection of that request.
7 So the secure computer network address is received here,
8 recognized as requiring a secure connection, and then
9 right here we see that the Aventail Connect forwards the
10 host name to the SOCKS server.

11 So we have receipt, processing, and
12 forwarding, receiving, and sending a secure domain name.

13 The next requirement for receiving was
14 receiving a response message. So what's required here
15 is receiving a response message containing the secure
16 network address.

17 All right. So what happens here is that
18 Aventail sends the domain name. That's what that
19 means -- fully qualified host name; that's another way
20 we talk about domain name -- to the SOCKS server with
21 the SOCKS connection request.

22 Now, I've highlighted the SOCKS connection
23 request, because that is an official standardized
24 request. And so to know what the response is, we simply
25 have to know what the standard says. And the standard

1 says in reply to a connect, we send a response that
2 includes the associated IP address.

3 So that associated IP address right there is
4 exactly the address that's being called for right here,
5 okay?

6 And then finally, the last piece is sending an
7 access request message. Sending an access request
8 message using a VPN.

9 Here, you see that you can use Aventail
10 Connect as a simple proxy client for managed outbound
11 access.

12 So there is the access we're talking about in
13 this claim limitation. And that access, outbound
14 access, is through an encrypted tunnel. Aventail
15 Connect can establish an encrypted tunnel automatically.

16 So all the pieces are there for Claim 1.

17 Q. And what about for Claims 4 and 15?

18 A. Well, we go to Claim 4 and, once again, it's a
19 dependent claim. So it's saying we got to have some
20 other stuff other than what's in Claim 1.

21 Claim 1 has to be satisfied, but we also have
22 to have this added piece wherein the response message
23 contains provisioning information. So there's got to be
24 something else besides just that IP address.

25 Well, the SOCKS standard tells us that not

1 only does the response include the IP address, but it
2 includes a port number.

3 Okay. A port number is basically an
4 identifier. It says when you receive this packet, you
5 should pass it on to this particular software process.
6 It's additional information besides the IP address that
7 tells you what to do with the packet.

8 So it's additional information for
9 provisioning the virtual private network that's created
10 as you can -- well, you might be able to see over there.
11 It faded on me.

12 All right. Then finally, Claim 15, the method
13 of Claim 1, while I've shown you that all of Claim 1 is
14 satisfied, performed by a client computer.

15 All right. So once again, we look at this
16 proxy chaining implementation, and I want you to note
17 that Server 1 appears as a user to Server 2. So what
18 this is saying is that Server 1 is a client to Server 2.
19 And so Server 1 is acting as a client with respect to
20 Server 2, when it's performing those steps.

21 And so I can check off that box, too.

22 Q. All right. And would you do so, please?

23 A. All right. So I showed in the Aventail guide
24 that that element is satisfied. That element is
25 satisfied (indicates), receiving, sending.

1 All of Claim 1, the provisioning information
2 for Claim 4, and the client computer requirement for
3 Claim 15.

4 Once again, I'll try to write Aventail on
5 this, if I can.

6 Q. So in your view, Professor Wicker, does the
7 Aventail guide disclose all of the elements of Claims 1,
8 4, and 15 of the '180 patent and anticipate it?

9 A. Yes, it does.

10 Q. All right. Now, we know from the week's
11 proceedings that there are other claims involved with
12 the '180 patent. Those would be Claims 17, 20, 31, 33,
13 and 35.

14 Now, can you please walk us through those
15 claims and give us your opinion on whether they, too,
16 are anticipated by Aventail?

17 A. Yes.

18 Claim -- Claims 17, 20, and 31 are associated
19 with a computer readable storage medium.

20 Well, when I looked in the admin guide, I
21 found a discussion of delivering the software on CD ROMs
22 and loading that software on to a computer. Well, once
23 it's on the computer, it's stored on a hard disk, and
24 that hard disk is certainly a computer-readable storage
25 medium, because it's the hard disk in your computer that

1 stores all of your programs. It has to be readable or
2 you couldn't open your web browsers or open your Word
3 documents or whatever.

4 Q. Now, do you need to go through and show the
5 jury all the remaining language there in Claim 17, 20,
6 and 31 after the discussion you've already had?

7 A. No, because if you look at all of this claim
8 language, it's exactly what we've covered before. It's
9 very much like Claim 1. It's simply -- instead of a
10 series of steps, it's associated with this
11 computer-readable storage medium.

12 And similarly, Claim 20 looks like Claim 4,
13 and Claim 31 looks like Claim 10.

14 Q. So in your opinion, does the Aventail guide
15 disclose all the elements of Claims 17, 20, and 31 of
16 the '180 patent and anticipate them?

17 A. Yes, it does.

18 Q. Now, please turn to Claims 33 and 35. And
19 please explain for us whether Aventail anticipates these
20 claims.

21 A. Okay. Well, these are, again, a different
22 type of claim, different flavor.

23 What's being called for here is a data
24 processing apparatus, and then there's a lot of steps
25 required of that apparatus. It has to have memory

1 storing executable instructions and so forth.

2 Well, reading all that, basically what it's
3 calling for is a computer. It's saying, well, you need
4 a computer that does these things. And, of course,
5 that's exactly what the Aventail admin guide describes.

6 Servers, as we see here, that when loaded with
7 the software do these things as well as the client's
8 here and here.

9 So Claim 33 is satisfied, because we have
10 computers that are doing steps from Claim 1.

11 And then 35 has the additional requirement
12 that it contain provisioning information. We talked
13 about that. 35 is simply a version of Claim 4, except
14 that it's to run on a computer. It's not just a step.

15 Q. So in your opinion, does the Aventail guide
16 disclose all of those elements of Claims 33 and 35 and
17 therefore anticipate them?

18 A. Yes.

19 Q. All right. Professor Wicker, at this point,
20 why don't I ask you to take the stand again, because I
21 want to shift from Aventail to the DVPN, or Dynamic VPN,
22 demonstration that's been talked about some already this
23 week.

24 A. (Complies.) Thank you.

25 Q. So if I may ask you, Professor Wicker, to show

1 a picture, and I believe you may have one, of some
2 information about DVPN.

3 Now, who was it that developed DVPN?

4 A. DVPN was developed by TIS, Trusted Network --
5 Trusted Information Systems. You can see that right
6 there, sort of.

7 It's a company that was in Glenwood, Maryland,
8 outside of D.C.

9 Q. And who was it that was funding the
10 development by TIS of DVPN?

11 A. DARPA.

12 Q. What was it that DVPN was designed to do?

13 A. It was designed to provide secure access over
14 an unsecure network, like the internet.

15 Q. And can you provide for us some scenarios that
16 were envisioned for DVPN to provide those connections?

17 A. Yes. In fact, it would be the same scenarios
18 we talked about with regard to Aventail.

19 For example, the road warrior, the person
20 who's on the road, needs to connect to the office, and
21 the situation in which you have two offices that want to
22 connect with each other.

23 Q. Now, in the development of DVPN, was DARPA
24 interested in applications for DVPN that involves
25 something that is sometimes called crisis management?

1 A. Yes. One of the specific concerns for DARPA
2 was being able -- and for DVPN and Trusted Information
3 Systems, was being able to link the various crisis
4 management organizations, like the Red Cross and FEMA,
5 for example, so that, for example, folks in the Red
6 Cross could access the FEMA databases and websites and
7 be able to determine things that they needed quickly to
8 deal with a crisis.

9 Q. All right. Now, from the materials that you
10 reviewed, perhaps we can take a look at those first.
11 Did you have a chance to read some materials about DVPN
12 in forming your opinion?

13 A. I did. There were quite a number of things I
14 looked at.

15 One I focused on in this analysis was an
16 actual demonstration of DVPN. Basically, DARPA had a
17 number of people together, but the folks at TIS
18 demonstrated DVPN for DARPA. And that was my main
19 focus.

20 And in learning about that demonstration, I
21 looked at a number of different things.

22 First, we have the presentation that described
23 the demo, and then there were several e-mails. There
24 was another description of the demonstration, a
25 contractor's progress report. I was able to see the

1 source code that actually showed how it worked.

2 And I also studied the deposition transcripts
3 of three people who were involved in DVPN.

4 Q. And from your review of that material, when
5 was it that DVPN was demonstrated for DARPA?

6 A. It was demonstrated for DARPA in March of
7 1998.

8 Q. All right. Thank you.

9 Now, similar to what you did for Aventail,
10 what I would ask you to do, using an illustrative
11 exhibit of this type, is to explain for the jury how the
12 DVPN demonstration worked back in 1998.

13 THE WITNESS: May I leave the stand?

14 MR. BOBROW: Your Honor, may I please ask
15 permission for the witness to approach?

16 THE COURT: All right.

17 MR. BOBROW: Thank you.

18 THE WITNESS: Thank you, Your Honor.

19 Q. (By Mr. Bobrow) Okay. Professor Wicker, if
20 you could, explain for us how the DVPN system worked
21 back in 1998.

22 A. Okay. DVPN, once more, means Dynamic VPN.
23 And the DVPN developers assumed a situation in which
24 someone, for example, on the Red Cross that were working
25 on the Red Cross local area network wanted to talk to

1 someone or communicate with a database or see a secure
2 website on the FEMA local area network.

3 Just to remind you, FEMA is the Federal
4 Emergency Management Agency. They are the folks that
5 respond to disasters, along with the Red Cross and
6 others.

7 So DVPN assumed that the Red Cross would be
8 behind a firewall as we see here, and that FEMA would be
9 behind a firewall. And so we have several different
10 elements that are going to interconnect to allow for
11 secure communication over the internet.

12 So the first thing that happens, let's suppose
13 the Red Cross client computer wants to see a secure FEMA
14 website. A DNS request -- a secure DNS request will be
15 sent to the firewall.

16 The firewall will then send a message to a
17 coalition manager to determine whether or not this
18 connection request is involved with something called a
19 secure association, whether or not it requires a secure
20 VPN.

21 So that request will go like this down here.
22 And then the coalition manager will respond with, yes,
23 this does require a secure connection. At that point, a
24 response will be sent to the client, and this firewall
25 will set up a secure VPN with this firewall through the

1 internet.

2 So let's see if I -- as you see there.

3 And then the connection will be completed on
4 the far side of the firewall with the FEMA secure
5 website.

6 And so now the Red Cross client can speak with
7 or view the secure website at FEMA.

8 Q. All right. Now, a couple of questions for
9 you.

10 First, you've drawn this thick arrow, as it
11 were, through the internet. What do you intend to
12 depict with that thick arrow?

13 A. This is the VPN; it's a secure connection.

14 Q. All right. Now, on the board and in your
15 testimony, you refer to a firewall.

16 Do you see a firewall for Red Cross and a
17 firewall for FEMA? I know what a firewall is in my
18 house, but can you please explain for us in this context
19 what a firewall is?

20 A. Okay. The name firewall actually comes from
21 cars. You've got a firewall that protects the passenger
22 and the driver from the heat of the engine and anything
23 bad that could happen with that engine -- most anything
24 bad.

25 So the firewall in this case is something that

1 protects the people on the Red Cross network from
2 hackers who might be coming in over the internet.

3 So it's a firewall that's designed to protect
4 them. Basically, a firewall limits traffic in both
5 directions. Only authorized traffic can come through
6 this way or go through that way.

7 Q. Okay. Now, sir, earlier, you had testified
8 that the DVPN system demonstrated in 1998 anticipated
9 claims of the patents at issue here.

10 What I'd like you to do, as you did with
11 Aventail, to walk through and describe for the jury how
12 it is a DVPN discloses the elements of the '135 and '180
13 patents.

14 MR. BOBROW: Your Honor, may the witness
15 approach the other easel?

16 THE COURT: Yes, he may.

17 MR. BOBROW: Thank you.

18 A. Okay. So, once again, going through the
19 claims, Claim 1, as you can see, requires a method for
20 transparently creating a VPN.

21 Now, this diagram, what we're going to see a
22 fair number of times, that's actually what I tried to
23 reproduce over here, although it's not as clear over
24 here as it is up here.

25 This diagram shows establishing a VPN. Okay.

1 This is a diagram that's from the literature I looked at
2 that describes the demonstration from March of 1998.

3 Okay. So looking into the actual claim
4 elements, the first claim element requires generating
5 from the client computer a DNS request.

6 Well, when I looked at the documents, I found
7 that the firewall, F-W, for the Red Cross system, the
8 Red Cross firewall performs a lookup of the host name on
9 the FEMA network and receives the IP address. That's a
10 description of the DNS lookup in the response.

11 The next element, determining whether the DNS
12 request is for a secure website.

13 Well, one of the things that I found in the
14 literature was that after that lookup request is
15 received, the system determines whether the site itself
16 are members of same coalition.

17 Coalition is a secure association, whether
18 you're part of a group, that can only communicate over a
19 secure VPN.

20 The reference to a website, I determined that
21 websites were accessible through this system through the
22 testimony of Mr. Kindred. Mr. Kindred was involved with
23 VPN -- DVPN -- excuse me -- and he talked a lot about
24 web browsers and so forth.

25 Finally, the automatic initiation of a VPN,

1 well, that was referenced in a number of places. I'll
2 simply point to this one as part of this demonstration,
3 they showed the automatic activation of a VPN link.

4 So all the elements were there.

5 Q. (By Mr. Bobrow) So in your opinion, were all
6 elements of Claim 1 through -- I'm sorry -- Claim 1 of
7 the '135 patent matched by VPN and therefore
8 anticipated?

9 A. They were. I showed the generation of a
10 domain name request. I showed the determination of
11 whether or not that request is associated with a secure
12 website. And I showed a response on which VPN is
13 automatically created.

14 Q. I think you have written Aventail on the top
15 of that board.

16 A. Yes, that's a mistake. Of course, I'm
17 referring to -- whoops, it's not coming off either. So
18 let me get this correct. I'm sorry. I've, obviously,
19 been referring to DVPN throughout. I was trying to
20 write it neatly and forgot what I was writing. There we
21 go.

22 Q. All right. Well, thank you, Professor Wicker.

23 Let's turn to the next set of claims in the
24 '135 patent. That's Claims 10 and 12. And I'd like you
25 to explain for us how it is that DVPN describes all of

1 these elements of those two claims.

2 A. Okay. Once again, there's a lot of the
3 material here, but a lot of it we've already discussed.
4 So when we come to Claim 10, the first thing to look at
5 or look for that's different from Claim 1 is the
6 presence of a proxy server, one that provides the DNS
7 lookups as a proxy.

8 And that's actually what the firewall does.
9 It sends a DNS request as you can see here.

10 Does that proxy return an IP address, if
11 access to a non-secure website is requested?

12 This is code -- actual code from the DVPN
13 system, and it's a little hard to see, but right here --

14 THE WITNESS: Can we blow it up a teeny
15 bit? Is that possible? Maybe not.

16 A. But I'll read it to you. It says: Send back
17 the response to the computer.

18 That's the -- that's the piece of code that
19 returns that IP address if it's a non-secure address.

20 THE WITNESS: Thank you.

21 A. Yeah. Now you can see it very nicely. Send
22 back the response to the requester.

23 THE WITNESS: Thanks.

24 A. Okay. Claim 10 also requires a gatekeeper
25 computer. The gatekeeper computer allocates resources

1 for setting up the VPN. That's what the firewall's
2 doing here. It's establishing a VPN between this
3 firewall and this firewall (indicates).

4 And this is a little hard to see, but it says
5 encrypted traffic, if I remember correctly.

6 All right. So then, finally, for Claim 12,
7 the gatekeeper has to determine whether there are
8 sufficient security privileges.

9 Well, once again, I showed you that a DVPN,
10 that firewall, acts as a gatekeeper by determining
11 whether the site itself are members of the same
12 coalition, whether you and the site you're trying to
13 access are part of a secure association.

14 And so that claim element is met as well.

15 Q. (By Mr. Bobrow) Okay. So, Professor Wicker,
16 would you then -- in your opinion, does the DVPN system
17 disclose all the elements of Claims 10 and 12 of the
18 '135 patent and thus anticipate it?

19 A. Yes. And I showed the DNS proxy server,
20 discussed all these other issues when talking about
21 Claim 1, and I've discussed the gatekeeper, and then I
22 showed how the gatekeeper determines sufficient security
23 privileges.

24 And this time I'll get it right.

25 Q. Let's now turn to the '180 patent and go

1 through, to begin with, Claims 1, 4, and 15 of that
2 patent.

3 And would you please compare those claims to
4 the DVPN demonstration and tell us your opinion about
5 whether the demonstration discloses all of these
6 elements.

7 A. Okay. So now for the '180 patent, again, a
8 method for accessing a secure computer network address.
9 As you can see here, the attempt is to access a secure
10 computer network address on this FEMA LAN. And we see a
11 method embodied in all of these various steps that
12 result in the establishment of a VPN.

13 So we know we're talking about the right sort
14 of thing.

15 Now, when we go to the actual claim elements,
16 the first is, receiving a secure domain name and then
17 the sending.

18 Now, once again, I've combined the two, so you
19 can see them on one slide. Here we have causing a DNS
20 query by the host on Red Cross network.

21 So there is the transmission of a DNS query.
22 It's received by the firewall, and then the firewall
23 resolves it, as we've discussed here, returning an IP
24 address.

25 The firewall, FW, performs a lookup and

1 receives the IP address as a response. So the firewall
2 receives it, sends it, and obtains the response.

3 And a little more detail here. Sending a
4 query message to a secure domain name service and
5 receiving a response.

6 Well, the secure domain name service in this
7 instance is the coalition manager that's resolving the
8 request sent down by the firewall.

9 So the firewall has received the domain name.
10 It attempts to resolve it by sending it down to this
11 secure DNS.

12 Now, how do I know it's a secure DNS? Well,
13 it associates domain names with addresses that require
14 secure connections.

15 Then finally, sending an access request
16 message using a VPN. Well, as I've already noted,
17 there's rapid automated VPN, and it provides special
18 access rights for community members.

19 So there's the access that's being talked
20 about in Claim 1 through that automated VPN.

21 Q. Then what about Claims 4 and 15?

22 A. All right. Well, Claim 4, once again,
23 requires provisioning information.

24 Now, at least for my eyes, this is a little
25 hard to see, but the provisioning information you can

1 see down here (indicates).

2 THE WITNESS: Can you blow that up right
3 there? Well, I can tell you what it says. I've seen it
4 before. There we go.

5 A. It says: Key or certificate. Actually, it's
6 still kind of hard to read, but basically what that is,
7 that's information.

8 Those are keys or something like keys that
9 allow us to create an encrypted connection between the
10 firewalls. So key or certificate, basically secret keys
11 that can be used in encryption and decryption.

12 And that's part of the response that comes
13 back up to the firewall. And the firewall can then
14 establish an encrypted connection with the other
15 firewall.

16 And then finally, Claim 15 calls for all of
17 this to be done by a client computer. Well, again, this
18 firewall is acting as a client both to the coalition
19 manager and to this firewall. And I've shown that it
20 has executed all the steps that are required here.

21 Q. (By Mr. Bobrow) All right. Now, why don't we
22 turn to the remaining claims of the '180 patent, Claims
23 17 and 21 and -- I'm sorry -- 20 and 31 and also 30 and
24 35.

25 A. Okay.

1 Q. And I think you may have a slide on that.

2 A. Let's get my checkmarks in.

3 And then I do have slides for the remaining
4 claims.

5 This particular set of claims, 17, 20, and 31,
6 once again, deals with computer-readable storage medium.
7 And this, once again, would be the hard disk and the
8 demonstration that contain the code that caused all
9 these things to happen.

10 And, again, 17 is like 1; 20 is like 4; and 31
11 is like 10 with the exception that instead of steps, we
12 are dealing with the computer-readable storage medium.
13 And so these would be anticipated as well by the
14 demonstration.

15 Q. And what about Claims 33 and 35?

16 A. Okay. And 33 and 35 -- lost my pointer --
17 once again, a data processing apparatus containing all
18 these things. It's a computer or a set of computers
19 that do the things -- the steps in Claim 1.

20 And of course, the DVPN demonstration involved
21 a lot of computers that were talking to each other to
22 create this secure connection.

23 Claim 35, again, simply requires the
24 provisioning information like Claim 4.

25 Q. All right. So in your opinion, Professor

1 Wicker, does the DVPN demonstration from 1998 disclose
2 all of the elements of the claims of the '180 patent and
3 thus anticipate them?

4 A. All the asserted claims of the '180 and the
5 '135, yes.

6 Q. All right. Thank you.

7 Now, if I can ask you to return to the stand,
8 I would like to now show you the third and the last
9 reference that we're going to go through, the last piece
10 of prior art, which is the NT 4 system with PPTP and
11 AutoDial.

12 A. (Complies.)

13 Q. Now, can you please begin by telling us what
14 the NT 4 software was.

15 A. Okay. NT 4 was an operating system. It was
16 sold by Microsoft in the '90s.

17 Q. All right. And was the NT 4 system broadly
18 available in the United States before 1998?

19 A. Yes. NT 4 system was made for sale, sold from
20 1996 through the '90s and was widely available.

21 Q. Did the NT 4 operating system include
22 networking software?

23 A. Yes, it did.

24 Q. What networking software did it include that
25 pertains to VPNs?

1 A. Well, as has been discussed, it included
2 AutoDial and the point-to-point tunneling protocol.

3 Q. All right. And tell us, please, what PPTP
4 was, and essentially, what it did.

5 A. Okay. PPTP, again, is the point-to-point
6 tunneling protocol. What it did was provide a secure
7 encrypted tunnel between two points.

8 And in many configurations, it would provide
9 what we're calling a VPN in the sense that it provided
10 both anonymity and security.

11 Q. All right. And what about AutoDial that was
12 in NT 4? Can you tell us, please, what AutoDial did in
13 the NT 4 system back in the 1990s? I think you said
14 1996 and forward.

15 A. That's correct.

16 What AutoDial was, it was a way of getting
17 automatic connections. In the really olden days, you
18 had to actually tell your modem to connect.

19 Well, AutoDial made that automatic, and it
20 also made automatic connections to other kinds of
21 networks besides modem connections.

22 Q. Now, I know that you've had a chance to review
23 some materials about NT 4 and PPTP and AutoDial. Can
24 you briefly tell the jury what materials you had a
25 chance to review?

1 A. Sure. I made a list, and there's actually a
2 fair amount.

3 I looked at the software, and I also looked at
4 a number of documents that told me how it worked,
5 focusing on AutoDial and PPTP.

6 So you see a technical support for hands-on,
7 self-paced training server, virtual private networking,
8 Microsoft Windows NT server, installing, configuring,
9 and using PPTP. I spent some time with that one.

10 There's a server administrator's guide, a
11 server virtual private networking guide, and then
12 finally, the deposition testimony of Mr. Anthony
13 Discolo.

14 Q. All right. Now, with the Court's permission,
15 I'd ask you to, again, approach the easel, and using a
16 board to please walk through how it was that the NT 4
17 system with PPTP and AutoDial worked.

18 MR. BOBROW: Your Honor, may the witness
19 approach?

20 THE COURT: Yes, he may.

21 MR. BOBROW: Thank you very much.

22 A. (Complies.) Okay. So this is, again,
23 Microsoft NT 4 operating system point-to-point tunneling
24 protocol, VPN, with AutoDial.

25 All right. So, once again, we'll start with

1 our client. And the client wants to obtain access to a
2 secure website. So the client will send a DNS request
3 to a tunnel client in this case -- excuse me. I skipped
4 a step.

5 Let's start with the client simply assuming
6 he's connected. And so the first thing the client will
7 do is attempt to contact a DNS server, okay, with a DNS
8 request.

9 I want to assume that that didn't work, so
10 there was an attempt to contact a DNS server down here,
11 and it didn't work.

12 So what happens in NT 4 is that when things
13 don't work, it keeps looking for other solutions,
14 looking for other ways to connect.

15 So the next step in my scenario here would be
16 to send that DNS request -- and I'm assuming it's
17 secure -- send that DNS request to this server here
18 (indicates). It's a tunnel client that's running NT 4.
19 Well, that tunnel client is going to determine that this
20 request is associated with a secure website.

21 It will then respond to the client, providing
22 the information necessary, and it's then going to create
23 a tunnel through the internet to another server, and
24 then this tunnel server will provide the access to the
25 secured website.

1 So what we'll then have is a connection from
2 the client to the tunnel server, a tunnel through the
3 internet, a tunnel that constitutes a VPN, because it
4 provides anonymity, and it provides security.

5 At the other end, the tunnel server will pass
6 on the traffic, the request for information, to this
7 secure website, and this secure website can then respond
8 with a web page to the client through the VPN.

9 Q. (By Mr. Bobrow) All right. Now, in the -- a
10 couple of questions for you.

11 First of all, you said that when the client
12 initially sends out a DNS request, it failed. How might
13 that happen?

14 A. There are a number of ways that can happen.
15 One of the most common ways it can happen is, there is
16 no connection.

17 In other words, suppose we've got a system
18 that's not yet hooked up to the internet. What happens
19 then is, when the client tries to resolve a DNS -- a
20 domain name through a DNS request, it can't get there.
21 So this failure could be because there's no connection.
22 Other reasons as well, but that's one that's common.

23 Q. All right. Now, in the upper left portion,
24 there seems to be a window or a representation of a
25 window that a user of a computer might use, and

1 underneath -- and above it, it says AutoDial.

2 Could you please tell us what is depicted in
3 that portion of this illustrative exhibit?

4 A. Okay. Well, this is a page from the phone
5 book. In fact, it literally -- I don't think you can
6 read it from this far away, but it says: Edit phone
7 book entry.

8 And what this is, is an entry in a table that
9 in this scenario, the tunnel client's going to use to
10 determine how to make the connection.

11 And so what happens in this case is the tunnel
12 client's looking up this secure DNS request, and the
13 tunnel client finds it. This entry name is
14 PPTPserver.mycompany.com, okay?

15 The tunnel client finds that name and then
16 uses this information to see how it's supposed to
17 connect.

18 Well, in this case, it says, you have to
19 connect using an adapter that's called RAS/PPTP/M. So
20 that PPTP means it's going to be a tunneling VPN
21 connection to this particular website.

22 Q. All right. Thank you.

23 Now, what I'd like you to do is what you've
24 done before for the two other references, is to walk us
25 through the claims of the '135 patent and the '180

1 patents and explain for us how -- explain for us your
2 opinion about NT 4 PPTP with AutoDial and whether it
3 discloses all of the elements of these asserted claims.

4 MR. McLEROY: Your Honor, may we
5 approach?

6 THE COURT: Yes, you may.

7 (Bench conference.)

8 MR. McLEROY: This isn't in his
9 description, Windows NT 4 and AutoDial. His report was
10 like Mr. Pall's deposition -- or excuse me -- Mr. Pall's
11 demonstration where there are four computers.

12 Dr. Wicker has never disclosed a system
13 that has the five computers that are demonstrated on
14 this graphic here.

15 We would, I assume, have made our
16 objections earlier, and we just got those demonstratives
17 late this morning, and I didn't notice it until just
18 now.

19 MR. BOBROW: Well, that's not correct,
20 Your Honor. In his report, there is a picture that has
21 these four computers with the internet in between, and
22 we'd be happy to provide you and show you what that
23 picture looks like, but that is in his report.

24 THE COURT: Get that, if you would, and
25 let me see it.

1 MR. BOBROW: Okay. Thank you.

2 MR. McLEROY: May I grab a copy of the
3 report, also?

4 (Bench conference concluded.)

5 THE COURT: Ladies of the Jury, this is
6 going to take just a minute, so I think we'll go ahead
7 and the take our afternoon break at this time, give you
8 a chance to refresh yourselves a little bit.

9 We'll be in break until 3:00 o'clock.

10 COURT SECURITY OFFICER: All rise for the
11 jury.

12 (Jury out.)

13 THE COURT: You may be seated.

14 All right. Y'all find what you need.
15 I'll be back in shortly before the recess.

16 COURT SECURITY OFFICER: All rise.

17 (Recess.)

18 (Jury out.)

19 COURT SECURITY OFFICER: All rise.

20 THE COURT: Please be seated.

21 All right. Now, what's our objection?

22 MR. McLEROY: The objection, Your Honor,
23 is that the testimony of Dr. Wicker is about to go into
24 exceeds the scope of his report.

25 THE COURT: Uh-huh.

1 MR. McLEROY: And we have two specific
2 problems with the --

3 THE COURT: Can you turn that a little
4 more to where I can see it?

5 MR. McLEROY: Yes, Your Honor.

6 THE COURT: Okay. That's good. Thank
7 you.

8 MR. McLEROY: I think we can identify two
9 specific problems we have with this description of the
10 Microsoft NT 4 prior art.

11 First is that any embodiment of this
12 Windows prior art with a tunnel client and a tunnel
13 server, it was only disclosed once in Dr. Wicker's
14 expert report, and that was in the context of Claim 12
15 of the patent.

16 It appears that Dr. Wicker is about to
17 show how this embodiment invalidates Claim 1, and I
18 presume he's going to do every claim of the '135 patent
19 and '180 patents like he's done for the past prior art.

20 THE COURT: It's only addressed to
21 Claim 12.

22 MR. McLEROY: Yes.

23 And the second issue we have, Your Honor,
24 is that there's nothing in the report that ever says
25 that AutoDial works with the tunnel client/tunnel server

1 description of the prior art, which is actually referred
2 to, I believe, as the ISP/FEP tunnel arrangement. It's
3 a separate internet service provider I don't believe
4 that's even part of Windows.

5 THE COURT: Okay. Response?

6 MR. BOBROW: Yes, Your Honor.

7 So, first of all, what Dr. Wicker is
8 doing right now with this board is essentially
9 describing the basic functionality of it. It was not
10 intended to be a specific implementation but an overview
11 of how the technology works.

12 Secondly, we did disclose in here a
13 figure that shows client and what's called a tunnel
14 client, and then the internet and a tunnel server on the
15 other side, and that is disclosed.

16 The third thing is, is that Dr. Wicker, I
17 think, was explaining, this tunnel client, as it's
18 called there, can live, as it were, in many different
19 places. It can live, for example, in the client and be
20 part of the client.

21 So sometimes these -- when you're
22 depicting these things rapidly, you can depict them as
23 boxes or monitors or whatever, but the point is that
24 it's software, and that software functionality is
25 described.

1 Dr. Wicker disclosed in his report, and I
2 just put Post-It notes on the places in his report where
3 he went through this system and talked about AutoDial
4 and talked about how it works, and this is simply one
5 way to do it.

6 It would be very difficult to have the
7 expert disclose and describe every, every single way
8 that it works. It was simply as an overview of the
9 technology.

10 And what he's going to do is what he did
11 before, which is walk through the claims, citing
12 specific pieces of evidence, and compare those to -- to
13 the claims that have been asserted.

14 MR. McLEROY: I guess two points, Your
15 Honor.

16 First of all, I didn't hear him disagree
17 that this tunnel client/tunnel server was only disclosed
18 in the context of Claim 12, which I believe to be the
19 case.

20 And I can't remember what the second
21 point I was going to make, Your Honor, but I will stick
22 with that one.

23 THE COURT: Okay.

24 MR. BOBROW: Your Honor, if I may.

25 Even if it were only for Claim 12, he can still

1 illustrate this point. Again, he's not saying that, all
2 right, this is something that is the only way to do
3 something. He's giving an example of how AutoDial and
4 the NT 4 system worked.

5 That's all he's doing. He will show
6 specific evidence for specific claims.

7 THE COURT: Well, can he do it without
8 using that chart?

9 MR. BOBROW: Well, I think that he can.
10 We would certainly want to have it marked as an
11 illustrative, but -- but even without that, he can
12 certainly walk through the evidence that he presented in
13 his report and do that on a claim-by-claim basis as he
14 did the last time. And he's certainly prepared to do
15 that.

16 THE COURT: What's your objection to
17 that?

18 MR. McLEROY: Well, Your Honor, just that
19 his report does not disclose AutoDial being used with
20 the tunnel client/tunnel server embodiment that's shown
21 there.

22 THE COURT: And you say it does?

23 MR. BOBROW: I do say that it does.

24 THE COURT: All right. Bring it up and
25 let me see where it's at.

1 MR. McLEROY: Your Honor, I remember my
2 other point, if you're still interested.

3 THE COURT: All right.

4 MR. BOBROW: I'm sorry, Your Honor. I
5 thought you asked to approach.

6 THE COURT: All right. Let's see.
7 Okay. What is your response to this?

8 MR. McLEROY: Your Honor, that -- let me
9 show you the page before, Your Honor.

10 May I approach?

11 THE COURT: Yes.

12 MR. McLEROY: So, Your Honor, this is the
13 entire discussion of Claim 12 of the '135 patent. This
14 is the only place in Dr. Wicker's report where a
15 discussion of a tunnel client and tunnel server appears.
16 And the word AutoDial -- the context of AutoDial is not
17 mentioned anywhere in that section.

18 MR. BOBROW: But it is mentioned, Your
19 Honor, in the preceding claim, Claim 10, and the
20 discussion of Claim 12, of course, is dependent on 10.
21 And he talks about AutoDial expressly in Claim 10.

22 THE COURT: Okay. Objection's overruled.

23 MR. BOBROW: Thank you, Your Honor.

24 THE COURT: Bring the jury in.

25 COURT SECURITY OFFICER: All rise for the

1 jury.

2 (Jury in.)

3 THE COURT: Please be seated.

4 All right. Counsel, you may proceed.

5 MR. BOBROW: Thank you, Your Honor.

6 Q. (By Mr. Bobrow) I believe before the break,
7 where we had left off was, Professor Wicker, I was about
8 to ask you to help to explain for us the NT 4 system
9 with PPTP and AutoDial and to walk through the claims of
10 the '135 patent, starting with Claim 1, and describe for
11 us what your opinion is on whether or not the NT 4
12 system with AutoDial and PPTP discloses the elements of
13 Claim 1 of the '135 patent?

14 THE COURT: Mr. Wicker, if you'd get the
15 microphone, please.

16 THE WITNESS: I'm sorry.

17 COURT SECURITY OFFICER: Right there,
18 sir.

19 THE WITNESS: Thank you, Your Honor.

20 A. All right. So back to Claim 1 of the '135, a
21 method for transparently creating a VPN.

22 And what we can see here, this is one of the
23 many guides that I looked at for Microsoft NT 4. The
24 Windows NT technical support, and it talks about
25 including point-to-point tunneling protocol as you see

1 there. So it does indeed provide for the creation of a
2 VPN.

3 Now, diving into the claim elements, the
4 first element involves generating from a client a DNS
5 request. Well, what I've got here is an AutoDial
6 segment from one of the references.

7 It talks about how AutoDial maps and maintains
8 network addresses to phone book entries. It keeps a
9 phone book. It's got a way of mapping names to
10 addresses or phone numbers.

11 But for our point of view, for our interest,
12 it maps IP -- excuse me -- it maps domain names like
13 Microsoft.com to IP addresses. So not only does it map
14 domain names, but it also maps web page addresses as
15 well.

16 Determining whether the DNS request is for a
17 secure website. Well, this is one of those phone book
18 entries, and I think here -- by the way, this is
19 precisely -- this is one entry in the phone book, and
20 that's a little hard to read, but it's a particular
21 secure website name.

22 Now, what this phone book entry tells AutoDial
23 is that we have to connect using this adapter. Now that
24 adapter is highlighted. I think you can see it right
25 here. It says RAS, remote access server, PPTP.

1 So what this phone book entry says is, if
2 you're trying to resolve this name, you connect through
3 this IP address, and you have to create a VPN that's
4 secure.

5 And so that is the determination that that DNS
6 request is for a secure website.

7 How do we know that websites are involved?

8 Well, here's an example: `Www.microsoft.com`.
9 That happens to be an unsecure website. But this does
10 show us that websites, secure and unsecure, can be
11 included in that phone book.

12 Here's an example, by the way, of an unsecured
13 connection.

14 In the previous case, we had a secure
15 connection, and it said, okay, connect through PPTP.
16 We can also have phone book entries that are unsecure.
17 Connect using a simple modem at this phone number.

18 Finally, automatically initiating the VPN in
19 response to that determination.

20 Well, here it talks about AutoDial
21 automatically reconnecting clients. AutoDial makes
22 connecting automatic. Automatically reconnects. We saw
23 that automatic in the demo that was done in the
24 courtroom yesterday.

25 And that's Claim 1.

1 Q. (By Mr. Bobrow) So, in your opinion, does a
2 Windows NT 4 system with PPTP and AutoDial disclose all
3 of the claims of the '135 patent and, therefore, it
4 anticipates?

5 A. Yes, it does.

6 So I'll write NT 4 up here. I'm not going to
7 write PPTP above, though.

8 I talked about generating the DNS request,
9 determining that it was secure and the automatic
10 reconnects and showed that it was --

11 Q. Let's turn then to Claim 10 and 12 of the '135
12 patent.

13 Would you please walk through that claim and
14 tell us whether NT 4 is PPTP and AutoDial anticipates
15 these claims?

16 A. Okay. Claim 10. Once again, it's got a lot
17 of the elements that we've already talked about. What I
18 want to focus on is the DNS proxy server.

19 Well, once again, AutoDial allows us to create
20 phone book entries, phone book entries that can include
21 domain names. And associated with each address and the
22 AutoDial database is a set of one or more entries.

23 So that shows us that AutoDial's database can
24 be acting as a DNS proxy. It can take in domain names
25 and return an IP address.

1 Here's an example. This is a phone book
2 entry, domain name, and there's the IP address that's
3 returned.

4 And I note down here, it says example phone
5 book entry for PPTP server and a VPN device.

6 Continuing on, returns the IP address of
7 access to a non-secure website as requested.

8 Well, here's an example of a non-secure
9 website, www.microsoft.com. And it says the database
10 can include IP addresses, and there is one for unsecure
11 websites as well.

12 And then finally the gatekeeper computer
13 portion of 10. This is a diagram that shows connecting
14 through a tunnel client running NT 4 to a tunnel server,
15 and that tunnel client is acting as the gatekeeper for
16 information coming into the dial-up client as well as
17 information going out.

18 And then, finally, the gatekeeper must
19 determine sufficient security privileges. That's a
20 little hard to read. But what it's talking about here
21 is user authentication must verify the user's -- I'm
22 having trouble reading that. Thank you very much --
23 must verify the user's identity and restrict VPN access
24 to authorized user's only.

25 And so that's Claim 10.

1 Q. All right. So in your opinion, Professor
2 Wicker, does NT 4 with PPTP and AutoDial disclose all of
3 the elements of Claims 10 and 12 of the '135 patent and,
4 therefore, anticipate those claims?

5 A. Yes.

6 And, once again, I'll write NT 4 up here.

7 All right. We've got the DNS proxy server,
8 the gatekeeper.

9 And then for Claim 12, the gatekeeper
10 determines whether there's sufficient privileges. And
11 that's what I showed on the previous slide. That slide
12 says Claim 10; it should say Claim 12. So I'll just
13 note that so that we won't be confused.

14 But the sufficient security privileges is
15 associated with Claim 12.

16 Q. All right. Let's now turn the '180 patent
17 and, again, Claims 1, 4, and 15.

18 Please walk us through this claim and let us
19 know whether NT 4 with PPTP and AutoDial anticipates
20 these claims.

21 A. Okay. So Claim 1 of the '180 patent, we've
22 got a method for accessing a secure computer network
23 address. We've seen it a few times. And, of course,
24 what we can see here -- I'm holding too many things.
25 What we can see here is that it is indeed a method for

1 accessing a secure computer network address. It talks
2 about PPTP, uses Microsoft's implementation of RAS and a
3 point-to-point tunneling protocol to establish
4 connections. It's a method for accessing secure
5 addresses.

6 Getting into the claim elements, receiving a
7 secure domain name, I've talked about how the phone book
8 acts as a proxy or acts as a DNS server to determine IP
9 addresses associated with domain names.

10 Well, in this particular instance, this domain
11 name is associated with a secure adapter, the PPTP
12 adapter. So this is a secure domain name, because it
13 requires the use of a secure connection in order to get
14 to it.

15 So this is a secure domain name according to
16 the Court's construction.

17 Sending a query message to a secure domain
18 name service. Well, we've talked about that. The
19 AutoDial maps various kinds of things, including domain
20 names, to IP addresses. So when AutoDial is invoked and
21 it receives that domain name, it's being sent a query
22 message to a secure DNS.

23 And then finally, receiving from the security
24 domain name service a response message. Well, what's
25 provided is, in this case, an IP address. And that's

1 the response from AutoDial. It's saying this is how
2 you're going to connect.

3 And then sending an access request message.
4 What we see here is if dial-up networking is configured
5 to use data encryption, the data sent by means of PPTP
6 is encrypted when sent.

7 So that access request message will go out
8 encrypted, if it's associated with that secure domain
9 name access. So it's using a VPN.

10 And that's Claim 1.

11 Claim 4 calls for provisioning information.
12 In this case, the provisioning information is the PPTP
13 adapter. It's saying, all right, this is the secure
14 domain name that you've sent me. Here's the associated
15 IP address, and here's the additional information with
16 which you will build a virtual private network. And
17 that's the PPTP adapter.

18 Then finally Claim 15 calls for this to be
19 performed by a client computer. NT 4 can reside in a
20 client with AutoDial and PPTP. This is just a drawing
21 that shows our road warrior calling in and receiving
22 secure access.

23 Q. Okay. So does the NT 4 system with PPTP and
24 AutoDial disclose all the elements of Claims 1, 4, and
25 15 of the '180 patent and therefore anticipate?

1 A. Yes, it does.

2 So, once again, NT 4.

3 And I just demonstrated of Claim 1 as well as
4 the provisioning information for 4 and the fact that the
5 client computer can do this in Claim 15.

6 Q. Now, in a similar fashion to the fashion
7 you've used before, could you please walk us through the
8 remaining claims of the '180 patent, and whether or not
9 the NT 4 system with PPTP and AutoDial anticipates those
10 claims as well.

11 A. Sure.

12 The remaining claims for the '180 patent are
13 17, 20, and 31. And, once again, they are a lot like 1,
14 4, and 10. So the same analysis will apply.

15 The difference being the computer-readable
16 storage medium. We actually saw that here in Court.
17 There were computers that had on their hard drives
18 copies of NT 4. And, of course, the hard drive is a
19 computer-readable storage medium, because that's how you
20 can run programs on your computer. The computer reads
21 what's on your hard disk.

22 Continuing on, Claims 33 and 35 require data
23 processing apparatus, and as we've talked about already,
24 that's a computer. It's a computer running NT 4 and,
25 again, you saw that yesterday as well.

1 Q. Okay. So in your opinion, does NT 4 with PPTP
2 and AutoDial anticipate all of the asserted claims of
3 the '180 patent?

4 A. Yes, it does.

5 Q. All right. Thank you.

6 Now, if I could ask you please to resume the
7 stand.

8 A. (Complies.)

9 Q. I just have a few more questions on this topic
10 and then one final topic to cover.

11 Professor Wicker, were you here in Court the
12 other day when Mr. Pall did a demonstration of the PPTP
13 and AutoDial and NT 4? Were you here for that?

14 A. Yes, I was.

15 Q. And did you watch the demonstration as it was
16 being conducted?

17 A. Yes, I did.

18 Q. And in your review, does that demonstration
19 support your opinion that NT 4 with PPTP and AutoDial
20 anticipates the asserted claims?

21 A. Yes, it does.

22 Q. Can you explain how?

23 A. Sure.

24 Well, what we saw was Mr. Pall trying to
25 access a secure website. And so he typed in the secure

1 domain name. I believe it was -- I can't remember the
2 name, but it was something like secure domain name.com,
3 and the system went to the phone book, found the entry
4 in the phone book, thus performing the determination
5 step. And in response to that determination, set up a
6 VPN automatically.

7 Q. All right. And did you also watch the
8 demonstration when Mr. Cawley asked that a different
9 domain name be entered? I believe it was eBay.com.

10 Do you recall that?

11 A. Yes.

12 Q. And were you watching the demonstration when
13 that occurred?

14 A. Yes, I was.

15 Q. And did that demonstration change any of your
16 opinions about whether NT 4 with PPTP and AutoDial
17 anticipates the claim of these asserted -- I'm sorry --
18 the asserted claims of these patents?

19 A. No, it didn't change my opinion.

20 Q. Can you explain why not?

21 A. Okay. So what would happen in that case, and
22 I think as it was described -- I couldn't see it too
23 well from the back -- but there were some wires in the
24 middle of the courtroom, and that was acting as the
25 internet.

1 But there really wasn't an internet
2 connection. So there was no access to an outside domain
3 name service.

4 So when eBay.com, I think it was, was entered,
5 the system couldn't find it. It couldn't resolve that
6 domain name, because there was no access to a DNS
7 server. And so what the system kept doing was trying
8 everything it could to get through, as I've mentioned
9 before.

10 Eventually, it tried the one connection it had
11 left, the VPN. It tried the VPN and that failed. I
12 don't know if you saw it, but a little square came up on
13 the screen when he tried to contact eBay. That little
14 square said something like our attempt to contact
15 failed. So there was no connection to eBay at all.
16 And what we saw was really the system doing everything
17 it could to try and get there, and it couldn't, because
18 there was no external connection from the courtroom.

19 Q. All right. Now, let me shift gears. We've
20 been talking about whether the claims that are in-suit
21 here have been anticipated, and you've given us your
22 opinions on that subject.

23 What I'd like to do now is get to the subject
24 of obviousness and ask you some questions about whether
25 the asserted claims would have been obvious to a person

1 of ordinary skill in the field in light of the prior
2 art.

3 So if we could begin, then, with -- and I
4 believe earlier you had expressed the opinion that the
5 asserted claims are obvious; is that right?

6 A. That's correct.

7 Q. So can you please tell us what work you did
8 and what you did in forming your opinions on
9 obviousness?

10 A. Yes. And I wrote it down on a slide. I think
11 it -- yes, here it is.

12 Okay. There were a couple of steps to what I
13 did. As I mentioned, obviousness is different from
14 anticipation.

15 What I did was first to determine the scope
16 and content of the prior art, to figure out what was in
17 the prior art when the VirnetX folks came up with their
18 invention.

19 The next step was to determine the differences
20 between the prior art and the claims at issue. Well, as
21 I've already showed you, there were no differences.

22 There were several things in the prior art
23 like Aventail, like Windows NT 4, and like DVPN that
24 already had those claims, that already encompassed that
25 invention.

1 So there was no difference there.

2 And then finally, I determined the level of
3 ordinary skill in the relevant art -- shouldn't say
4 finally -- but I did determine, you know, the person
5 that I thought that these patents were targeted at, and
6 I concluded that it was someone with a bachelor's degree
7 in computer engineering or computer science and two or
8 three years of experience in data networks.

9 And then finally, I considered something
10 called objective considerations. These are
11 considerations that indicate to me or would have
12 indicated to me that it actually wasn't obviousness, the
13 things that I have to consider that would move me
14 towards non-obvious.

15 Q. Now, one thing I wanted to ask you had to do
16 with the level of ordinary skill. I believe that we've
17 heard from Dr. Jones that the level of ordinary skill
18 would have been a bit higher than what you just
19 described, and that of typically or ordinarily skilled
20 person would have to have a master's degree rather than,
21 I think, a bachelor's degree as you described.

22 Does that view that Dr. Jones expressed --
23 first of all, does that level of ordinary skill in the
24 art change your opinions at all and where you do apply
25 it?

1 A. Well, as you mentioned, it is a slight -- it's
2 another degree, basically more course work. It actually
3 doesn't change my opinions.

4 I think to someone with a little more course
5 work and a little more experience, the claims would have
6 been more obvious. But simply with the experience that
7 I'm relying on, as my person of skill, the claims are
8 still obvious.

9 Q. And when you say that the claims would have
10 been obvious to a person of ordinary skill, what is the
11 date that you're applying there? Is that the date that
12 the patent applications were filed?

13 A. That's correct.

14 Q. So back in that 1999/2000 timeframe, right in
15 there?

16 A. That's exactly right.

17 Q. All right. Now, let's shift to your actual
18 opinion, and let me ask you, was -- or were, I should
19 say, the asserted claims of the '135 patent and '180
20 patents, would those have been obvious to a person of
21 ordinary skill back in 1999 or 2000, in light of the
22 Aventail guide, the software guide that we looked at?

23 A. Yes, they would have been.

24 Q. And can you explain why, please?

25 A. Yes.

1 Basically, as I've already shown, the Aventail
2 guide describes everything that's in the claims. But if
3 we were thinking about obviousness, we could not only
4 look at the Aventail guide, we could also consider, for
5 example, the standard that it embodies, the SOCKS
6 standard, consider all the other things that I looked at
7 describing Aventail.

8 And a person of skill, knowing these things,
9 would have combined them to realize that, you know, the
10 asserted claims in this case were obvious, you know, in
11 light of what Aventail was already doing.

12 Q. Why would a person of ordinary skill have
13 reason to combine the SOCKS protocol standard with
14 Aventail?

15 A. Well, the SOCKS protocol is embedded in
16 Aventail. If you look through, in fact, just the
17 excerpts that we saw here in Court, there are references
18 to SOCKS all over the place. Aventail is basically a
19 system for implementing SOCKS.

20 Q. Now, have you formed an opinion on whether the
21 asserted claims in this case would have been obvious in
22 light of the Microsoft NT 4 system with PPTP and
23 AutoDial?

24 A. Yes. And, again, it would be the same answer.
25 A person of skill being aware of Windows NT 4 with PPTP

1 and AutoDial would have realized that these asserted
2 claims are obvious.

3 Q. Now, you've described in the course of your
4 testimony a number of different references, and I think
5 you walked through some of those on that PowerPoint
6 slide. There was an installer's guide and some other
7 different materials like that.

8 Would a person of ordinary skill back in 1999
9 or 2000 have been motivated to combine all of those
10 different papers about NT 4 together?

11 A. Yes.

12 Q. Why?

13 A. Because they're all about NT 4. They all
14 literally have NT 4 in the title, or at least I think
15 most of them do.

16 So a person of skill would have known they
17 were all talking about NT 4. In fact, some of them are
18 explicitly talking about AutoDial and PPTP, so they
19 would have known that, you know, we're all talking about
20 the same subject, and so they would have combined these
21 and then realized that, well, what's been asserted here
22 in Court, these claims of the VirnetX patents, are
23 obvious -- or were obvious at the time of the
24 application of the patents.

25 Q. Now, let me ask you about DVPN.

1 Would the asserted claims have been obvious to
2 a person of ordinary skill back in 1999 or 2000 in light
3 of DVPN?

4 A. Yes.

5 Q. Tell us why.

6 A. Well, the same answer, basically.

7 I focused for the anticipation analysis on the
8 demonstration, but there was more than the
9 demonstration. There was code. There were e-mails.
10 There were descriptions of the demonstration.

11 A person of skill would have combined them
12 all, because they all talked about DVPN, and in
13 particular about the demonstration, and they would have
14 realized that the VirnetX asserted claims are obvious --
15 or were obvious, again, at the time the application was
16 filed.

17 Q. All right. Let me ask you now about what
18 you've called objective considerations on this slide and
19 just ask you some questions about that.

20 What objective considerations did you evaluate
21 in determining whether the asserted claims in this case
22 would have been obvious or not obvious to a person of
23 ordinary skill back in 1999 or 2000?

24 A. Okay. Well, I made a slide that had a list,
25 because it's a fairly long list.

1 Basically, it's a list of things that I'm
2 supposed to consider that would move me away from a
3 conclusion of obviousness. And they include things like
4 as you see here: Long-felt need, commercial success,
5 et cetera.

6 Q. All right. So working your way through the
7 list, could you please explain for us how you evaluated
8 those different criteria and tell us what impact that
9 had on your obviousness opinion?

10 A. Okay. Well, I start with long-felt need. The
11 question that I was to consider was, when this invention
12 was brought to light, did it satisfy a long-felt need?
13 Did people say, oh, my gosh, we've been looking for this
14 for a long time. This satisfies something we've needed
15 for a while.

16 And I'd say the answer is clearly no, because
17 they had a lot of trouble getting financing. In fact,
18 as I understand it, everywhere they went, they were
19 turned down.

20 Q. Commercial success?

21 A. That sort of ties in. They had no commercial
22 success. I'm not aware that they were ever able to sell
23 a product. So I would say no to that as well.

24 Q. Failure by others?

25 A. Okay. Failure by others. The consideration

1 here is, did other people try and come up with a means
2 for doing what the VirnetX claims say, and failed. And
3 I'd say that's clearly not the case, because, as I
4 showed you, both Aventail and DVPN as well as Windows
5 NT 4 with PPTP and AutoDial, they were able to do it.
6 So they didn't fail. And a number of others didn't fail
7 as well. So I'd say no for that.

8 Praise for the invention, that's another
9 indication that it might not have been obvious if
10 someone -- when it comes out, if people start telling
11 you how great your invention is. I'd say it's more the
12 opposite. The market certainly said what it thought.
13 And I had seen several indications that others thought
14 it was actually more complex than they expected,
15 something about complexity being moved around. I did
16 not see praise for the invention.

17 Contrary to accepted wisdom. Now, in this
18 element, what I'm supposed to consider is, did they do
19 something that was different from what everyone else was
20 doing and sort of go against the wisdom to achieve a
21 really good result?

22 And I'd say the answer's no. People knew how
23 to do this, and what is claimed in the VirnetX patent in
24 the asserted claims was just right in line with what
25 others were doing. So it was not contrary.

1 Unexpected results. Did they get a unique
2 result, something unexpected, by combining various
3 things like the DNS server and creation of a VPN?

4 No. No. They combined some things that were
5 known in the art, and they got a result that people
6 would have expected.

7 So I'd say no to that as well.

8 Skepticism. I don't think anyone expressed
9 skepticism as to whether their system would work or not.
10 I think that critiques were more in line with whether it
11 was new and whether it was -- whether they were just
12 moving the complexity around.

13 And the final one is lack of simultaneous
14 invention. At least I think that's the final one.

15 Basically, the question here is, did no one
16 else come up with this at about the same time? Was
17 there no simultaneous group of people all coming up with
18 this invention independently?

19 If that happened, if they were the only ones,
20 that would tend to indicate that it wasn't obvious, to
21 me. Of course, that wasn't the case, because we've seen
22 DVPN, AutoDial with PPTP and NT 4 and Aventail all came
23 up with it not exactly at the same time, but awfully
24 close, 1996 to 1999.

25 Q. All right. So in light of all of those

1 objective considerations and all the other
2 considerations that you've described here today, in your
3 opinion, would a person having ordinary skill, back in
4 1999 or 2000, considered all the asserted claims of the
5 '180 patent and the '135 patents obvious?

6 A. Yes.

7 Q. Thank you, Professor Wicker.

8 MR. BOBROW: Pass the witness.

9 THE COURT: All right.

10 Cross-examination.

11 MR. BOBROW: Your Honor, if I may, before
12 that happens, I would simply ask that as the practice of
13 the parties that we be allowed to mark these
14 illustratives as illustrative exhibits.

15 THE COURT: All right.

16 MR. BOBROW: Thank you.

17 MR. McLEROY: May I approach, Your Honor?

18 THE COURT: Yes, you may.

19 MR. McLEROY: May it please the Court.

20 CROSS-EXAMINATION

21 BY MR. McLEROY:

22 Q. Good afternoon, Dr. Wicker.

23 A. Good afternoon.

24 Q. One thing I'd like to cover right off the bat,
25 like the other experts in this case, you have testified

1 in a patent infringement case before, haven't you?

2 A. Yes, sir, I have.

3 Q. Approximately how many times have you
4 testified?

5 A. I actually testified in court -- I think it's
6 on the order of 10 times, 12 times.

7 Q. And approximately how many times have you
8 given a deposition?

9 A. I don't know the exact number, but I'd say
10 it's 25 to 30.

11 Q. All right. Now, I believe you started
12 testifying at about 1:15 this afternoon after a lunch
13 break; is that right?

14 A. Yes, I think that's right.

15 Q. And we just finished up a couple of minutes
16 ago, and there was a 20-minute break involved, right?

17 A. I believe so.

18 Q. So about two hours of testimony?

19 A. I think it was a little less, but that's --
20 that sounds right.

21 Q. Pretty close.

22 During that two hours -- let me make sure I
23 checked this list off right -- you explained how
24 Aventail relates and invalidates the '135 patent.

25 A. Yes.

1 Q. You compared Aventail to the '180 patent.

2 A. Yes.

3 Q. DVPN to the '135 patent.

4 A. Yes.

5 Q. DVPN to the '180 patent.

6 A. Yes.

7 Q. Windows to the '135 patent. That's Windows NT
8 4.

9 A. Yes.

10 Q. And Windows NT 4, you compared that to the
11 '180 patent; is that right?

12 A. Yes.

13 Q. If you divide the two hours by the six
14 different combinations we just talked about, that's
15 about 20 minutes per combination; is that right?

16 A. Sounds right.

17 Q. Now, you were in the courtroom when Dr. Jones
18 testified about the infringement of the VirnetX patents,
19 weren't you?

20 A. Yes, I was.

21 Q. And he testified, I think, for more than three
22 hours. Does that sound about right?

23 A. Yeah, I think so.

24 Q. It felt like it lasted forever at times,
25 didn't it?

1 A. Well, I won't answer that.

2 Q. Now, he proved that the RTC APIs -- or excuse
3 me.

4 He explained, in his opinion, how the RTC APIs
5 infringe the '135 patent, right?

6 A. Yes, that's right.

7 Q. And he explained how the PeerNet APIs -- it's
8 his opinion they infringe the '180 patent; is that
9 right?

10 A. Yes, I think that's right.

11 Q. So if you split three hours in half, that's
12 about an hour and a half combination, isn't it?

13 A. Yes. That sounds right.

14 Q. So you covered a lot more information in your
15 direct testimony than Dr. Jones did, right?

16 A. I think so.

17 Q. Now, to get all that information covered, you
18 had to skip a few things that Dr. Jones did; isn't that
19 right?

20 A. Well, I wouldn't say I skipped a few things
21 that he did. We did different things. It's my
22 understanding, from what I heard, that he was talking
23 about infringement.

24 That's a particular kind of analysis, and he
25 was looking at a rather detailed system indicating where

1 things were within that system.

2 I was pointing to references and
3 demonstrations simply showing that in three specific
4 instances, the asserted claims were already being
5 practiced or had already been discussed before the
6 patents were applied for.

7 Q. You covered the same claims, didn't you?

8 A. We did.

9 Q. And -- and you -- for both infringement or
10 validity, you have to show that either the prior art or
11 the accused product meets every element of those claims,
12 right?

13 A. That's right.

14 Q. And so of the things you didn't do, you didn't
15 show any of the Court's claim constructions during your
16 presentation, did you?

17 A. I didn't show them. I did reference them many
18 times.

19 Q. You didn't show any of the Court's claim
20 constructions, did you?

21 A. I didn't put them on the screen, no.

22 Q. And when you checked off the boxes on your
23 charts, you checked off the boxes for one claim or two
24 or more claims all at the same time, didn't you?

25 A. Yeah. I probably could have checked them off

1 as we discussed each element, but then I would have been
2 going back and forth between my PowerPoints and the
3 charts, and so I just did it as efficiently as I could
4 to not take up the Court's time.

5 Q. Dr. Wicker, you checked them off one, two,
6 three, four, in rapid fire, didn't you?

7 A. Yes.

8 Q. Dr. Jones, on the other hand, went through,
9 checked the box after a thorough explanation of that
10 element, didn't he?

11 A. He did check off one box at a time, if that's
12 what you mean.

13 In other words, he would go to explanation to
14 box.

15 Q. Now, let's talk about the legal standards that
16 are involved in this case and talk about what happens
17 when a Patent Office -- when the Patent Office grants a
18 patent.

19 Were you in the courtroom -- I believe you
20 were -- when Judge Davis gave his opening instructions
21 to the jury?

22 A. Yes, I was.

23 Q. All right. And he discussed the legal
24 standards for evaluating the validity of a patent,
25 didn't he?

1 A. Yes, he did.

2 MR. McLEROY: Would you put up Slide 3?

3 Q. (By Mr. McLeroy) He told us a couple of times,
4 actually, that the granting of a patent by the U.S.
5 Patent & Trademark Office, however, carries with it the
6 presumption that the patent is valid.

7 Do you see that?

8 A. Yes, I do.

9 Q. And then a little bit later on, he said that
10 same thing again, didn't he?

11 A. Yes.

12 Q. All right. He also told us --

13 MR. McLEROY: If we could go to the next
14 slide.

15 Q. (By Mr. McLeroy) -- that Microsoft has the
16 burden of proving some of its invalidity defenses by a
17 heavier burden called the clear and convincing evidence
18 standard.

19 Do you see that?

20 A. Yes, I do.

21 Q. Did you reference the clear and convincing
22 evidence standard in your direct testimony?

23 A. I did in my analysis. I don't think I
24 mentioned it in my testimony.

25 Q. You didn't mention it to the jury, did you?

1 A. No, I didn't.

2 Q. All right. Did you apply the clear and
3 convincing evidence standard?

4 A. Yes, I did.

5 Q. Okay. Just making sure.

6 And the clear and convincing evidence standard
7 applies to every invalidity argument that you just made;
8 is that right?

9 A. Yes. Yes. It's for both anticipation and
10 obviousness.

11 Q. And Judge Davis --

12 MR. McLEROY: If we look at the next
13 slide.

14 Q. (By Mr. McLeroy) -- also explained exactly
15 what the clear and convincing evidence standard meant,
16 didn't he?

17 A. Yes, he did.

18 Q. He said, when a party has a burden of proof by
19 clear and convincing evidence, it means that the
20 evidence must produce in your minds a firm belief or
21 conviction as to the matter sought to be established.

22 Did I read that right?

23 A. Yes, that's exactly right.

24 Q. Now, that's a higher burden of proof than
25 preponderance of the evidence, isn't it?

1 A. That's right.

2 Q. Preponderance of the evidence is what the jury
3 will be asked to apply when they evaluate Dr. Jones'
4 opinions on infringement; is that right?

5 A. That's correct.

6 Q. And clear and convincing evidence, which is
7 what the jury will need to apply when they evaluate your
8 invalidity opinions, is a higher burden of proof; isn't
9 that right?

10 A. That's right.

11 Q. And despite your higher burden of proof, you
12 spent approximately 20 minutes talking about each
13 reference, whereas Dr. Jones spent about an hour and a
14 half talking about each accused product; isn't that
15 right?

16 A. The timing you mentioned is correct.

17 Q. Now, one thing you said in your direct
18 examination really, really caught my attention.

19 You said that -- towards the end when you were
20 talking about the PPTP AutoDial demonstration that Mr.
21 Pall gave during his testimony yesterday -- do you
22 remember that?

23 A. Yes, I do.

24 Q. You testified -- and then, I guess, you talked
25 about the sequence of steps that Mr. Cawley asked

1 Mr. Pall to take with the system, right?

2 A. Yes.

3 Q. And you referenced the time that Mr. Cawley
4 asked Mr. Pall to type in www.ebay.com into the browser.

5 Do you remember that?

6 A. That's correct, yes.

7 Q. And when Mr. Cawley typed www.ebay.com into
8 his browser, the VPN wasn't connected, was it?

9 A. No, it was not.

10 Q. And do you recall --

11 MR. McLEROY: Actually, Your Honor, do
12 you mind if I approach the easel?

13 THE COURT: You may.

14 Q. (By Mr. McLeroy) Can you see this, Mr. Wicker?

15 A. Yes, that's fine.

16 MR. McLEROY: Can the jury see it?
17 Is that better?

18 Q. (By Mr. McLeroy) Mr. Pall, he told us three
19 things to look for when a VPN connection was
20 established.

21 Do you remember that?

22 A. Yes, I do.

23 Q. The first thing he told us to look for, if I
24 remember correctly, was that you would hear a beep,
25 right?

1 A. I can't remember the order, but I know that a
2 beep was involved, yes.

3 Q. The second thing he told us to look for would
4 be the ICON of a telephone down at the bottom right
5 corner of the screen next to the time display.

6 Do you remember that?

7 A. Yes, I do.

8 Q. And the third thing he told us to look for, if
9 I remember correctly, was he told us to look for the
10 ping connection that he tried.

11 Do you remember that?

12 A. Yes.

13 Q. He didn't tell us to look for a box on the
14 screen, did he?

15 A. No. The box are for --

16 Q. He didn't tell us to look for a box on the
17 screen, did he?

18 A. Oh, no.

19 Q. And when Mr. Pall typed in -- and I believe
20 the address he typed in, domain name, was
21 www.securewebsite.test.com.

22 Does that sound familiar?

23 A. It sounds right.

24 Q. Okay. And when he typed that in, you heard a
25 beep, didn't you?

1 A. I did.

2 Q. You were -- how far back in the gallery were
3 you; do you remember?

4 A. I think I was on the second row, but I was
5 back there a ways.

6 Q. So close enough to hear the beep?

7 A. I did hear the beep, yes.

8 Q. And did you have a decent view of the screen?

9 A. I did.

10 Q. Okay. So you heard a beep. You saw the ICON
11 show up in the bottom right corner of the screen, didn't
12 you?

13 A. Yes, I did.

14 Q. Okay. And then finally, you saw him when he
15 pulled up the new window that had the ping command in
16 it.

17 Do you recall that?

18 A. Yes.

19 Q. He typed in ping, and after that, I believe it
20 showed where the echo response was received, right?

21 A. That's right.

22 Q. And he told us that that echo response would
23 be an indication that a VPN had been established.

24 A. That's correct.

25 Q. Okay. Then if you recall, I think on

1 cross-examination, Mr. Cawley asked Mr. Pall to
2 disconnect the VPN again.

3 A. That's right.

4 Q. So it was disconnected. And then he asked him
5 to type in www.ebay.com; is that right?

6 A. That's correct.

7 Q. eBay.com is not a secure website, is it?

8 A. No, it's not.

9 Q. When he typed it in, you heard a beep, didn't
10 you?

11 A. That's right, yes.

12 Q. And I believe Mr. Cawley asked Mr. Pall to
13 point out where in the bottom right corner of the screen
14 there was a telephone ICON.

15 Did you see the telephone ICON?

16 A. No. But I'm pretty sure it did come on.

17 Q. Were you too far in the back to see the
18 telephone ICON?

19 A. No. I just don't recall. I did hear the
20 beep, and I think he did ask him to ping it as well.

21 Q. And he asked him to ping, right?

22 A. Yes.

23 Q. And echo responses were received, right?

24 A. That's correct.

25 Q. And that's the indication Mr. Pall told us to

1 look for to see if the VPN connection had been
2 established.

3 A. That's correct.

4 Q. I believe after that, Mr. Pall disconnected
5 the VPN again; is that right?

6 A. Yes. I think that's right.

7 Q. And this time Mr. Cawley asked him to type in
8 `www.thisisnotasecurewebsite.com`.

9 Do you recall that?

10 A. Yes, I do remember that.

11 Q. Okay. And we heard the beep again, didn't we?

12 A. We did.

13 Q. All right. We saw the ICON again, didn't we?

14 A. I'll assume it came on since we did beep and
15 ping. I don't recall seeing the ICON.

16 Q. So we did the ping, also?

17 A. Yes.

18 Q. Okay. After that happened, do you recall the
19 question that Mr. Cawley asked Mr. Pall?

20 A. No. You'd have to remind me.

21 MR. McLEROY: Could you put up Slide 14,
22 please, my slide?

23 Q. (By Mr. McLeroy) This is the testimony from in
24 the courtroom yesterday, and we took it from the Court's
25 transcript.

1 He asked him: So isn't it true -- don't you
2 agree, Mr. Pall, that the system you're demonstrating is
3 not determining whether the VPN DNS request transmitted
4 is requesting access to a secure website?

5 Do you see that?

6 A. Yes, I do.

7 MR. McLEROY: Your Honor, do you mind if
8 I pull up one of Dr. Wicker's boards that he was using
9 earlier?

10 THE COURT: Yes, you may.

11 MR. McLEROY: Hopefully, I don't knock
12 this one over.

13 Q. (By Mr. McLeroy) The question tracks the
14 language -- I'm not sure you can see this.

15 A. I can see it. Thank you.

16 Q. -- of the second step of Claim 1 of the '135
17 patent, doesn't it?

18 A. It does.

19 Q. Mr. Pall's answer was: The system is not
20 determining that specifically, sir.

21 Do you see that?

22 A. That's correct.

23 Q. Mr. Pall admitted that his demonstration did
24 not meet this claim element of the '135 patent that you
25 checked off; isn't that right?

1 A. That's incorrect, no.

2 Q. He said no, didn't he?

3 A. He said no, that the demonstration involving
4 eBay and this is not a secure website --

5 Q. Dr. Wicker, he said no --

6 MR. BOBROW: Excuse me, Your Honor. May
7 the witness please be allowed to answer the question?

8 He was right in the middle of answering
9 the question.

10 THE COURT: All right. Restate the
11 question.

12 Q. (By Mr. McLeroy) Did you need to finish your
13 answer, Dr. Wicker?

14 A. Yes, I would like to finish my answer.
15 The demonstration to the first secure
16 website --

17 THE COURT: Excuse me, Doctor.
18 Re-ask the question, if you would.

19 MR. MCLEROY: Oh, I'm sorry, Your Honor.

20 Q. (By Mr. McLeroy) Dr. Wicker, Mr. Pall
21 testified that his demonstration system did not
22 determine when the VPN DNS request transmitted is
23 requesting access to a secure website; isn't that right?

24 A. I don't agree with that for the following
25 reason. First --

1 Q. Dr. Wicker, was that his testimony? That's
2 all the question is.

3 A. He's saying the system is not determining that
4 specifically, sir.

5 Q. Okay. Now, on your direct examination -- and
6 this is the point that I wanted to get to originally
7 that really surprised me -- you said a VPN connection
8 was not initiated -- or actually, no. Let me get this
9 right. I don't mess this up.

10 You said a VPN connection failed when he typed
11 in eBay.com; isn't that right?

12 A. I believe what I said was that he was unable
13 to contact eBay.com through a VPN connection --

14 Q. Dr. Wicker --

15 A. -- because eBay.com could not be reached
16 through what was here in the Court.

17 Q. Well, I'm sure the jury heard your testimony.
18 Did you or did you not say that the VPN connection
19 failed --

20 A. Yes.

21 Q. -- when Dr. -- when Mr. Pall typed in
22 eBay.com?

23 A. It failed to reach eBay, absolutely.

24 Q. Dr. Wicker, my question is, did you or did you
25 not say that the VPN connection failed when Mr. Pall

1 typed in www.eBay.come?

2 A. I can't tell you exactly what I said. I can
3 tell you what I meant. There was a VPN connection to
4 the server. There was no connection to eBay. You can't
5 reach eBay just through wires in this courtroom. You
6 have to have access to the internet.

7 Q. Dr. Wicker, we'll be able to see the
8 transcript. I'm sure we'll see it in closing arguments.

9 Is it your testimony right now that that VPN
10 connection failed?

11 A. The VPN connection to the server was
12 successful. It did not fail. The attempt to connect to
13 eBay did fail.

14 Q. Sounds like a different answer than you gave
15 earlier, Dr. Wicker. I guess we'll figure out what the
16 transcript has to say.

17 You agree with me now, though, that the VPN
18 connection did not fail.

19 A. It was successful in reaching a server, yes.

20 Q. Dr. Wicker, yes or no. Did the VPN connection
21 fail?

22 A. It did not fail in reaching the server.

23 Q. Dr. Wicker, please answer the question asked,
24 and give me a yes or no answer. Did the VPN connection
25 fail?

1 A. No.

2 Q. There's one other housekeeping item that I'd
3 like to cover with that demonstration.

4 Do you remember when Mr. Cawley and Mr. Pall
5 crawled under the counsel table to look at the sticker
6 on the computer?

7 A. Yes.

8 Q. They had their flashlight out, Mr. Cawley's
9 flashlight?

10 A. Yes.

11 Q. Okay. And the sticker -- it said Windows 2000
12 Professional, didn't it?

13 A. That's correct.

14 Q. Okay.

15 MR. McLEROY: Can you bring up Slide 1?

16 Q. (By Mr. McLeroy) Did you get a chance to look
17 at that demonstration and --

18 MR. McLEROY: Can we dim the lights,
19 please?

20 Q. (By Mr. McLeroy) Did you get a chance to go
21 look at the sticker on the side of that computer after
22 we finished in Court yesterday?

23 A. Actually, I didn't. But this does look like
24 the Windows 2000 sticker.

25 Q. And I don't think the jury had a chance to see

1 it either. This is the sticker. It says Windows 2000
2 Professional, doesn't it?

3 A. Yes, it does.

4 Q. And then after we -- well, after we -- after
5 Mr. Cawley and Mr. Pall went down underneath the table
6 to look at the sticker, there was some confusion about
7 the date that Windows 2000 Professional was released.

8 Do you remember that?

9 A. I don't remember confusion. There was a
10 discussion -- I think it was betas versus the regular
11 release. I don't remember the details, no.

12 Q. Let me see if I can refresh your recollection.

13 MR. McLEROY: Your Honor, could I
14 approach the easel and find the timeline from yesterday?

15 THE COURT: Yes, you may.

16 Q. (By Mr. McLeroy) Dr. Wicker, do you remember
17 seeing this timeline?

18 A. Yes, I do.

19 Q. All right. And I think the February 15th,
20 2000 date, that reflects the filing date of the '135
21 patent; is that right?

22 A. That's correct.

23 Q. Okay. Then there was the July 2000 date, and
24 I think that was the date that we found for the BIOS
25 software inside the client computer; is that right?

1 A. That's correct.

2 Q. Now, then there's this other date here,
3 February 17, 2000, with a question mark.

4 Do you remember when Mr. Cawley put that up on
5 the board?

6 A. Yes. Now I do recall that.

7 Q. Okay. And I believe the issue was, Mr. Cawley
8 thought that Windows 2000 Professional had been released
9 on February 17th; is that right?

10 A. I -- I believe that's what he believed.

11 Q. And -- and two days after, that's two days
12 after the patent was filed; is that right?

13 A. That's right.

14 Q. Now, Mr. Pall disagreed with him; is that
15 right?

16 A. I think there was a question as to whether
17 that was the actual release date.

18 Q. Mr. Pall didn't agree that that was the
19 release date, right?

20 A. Yes.

21 Q. Okay.

22 MR. McLEROY: Would you put up the next
23 slide, please?

24 And if we can dim the lights again.

25 Q. (By Mr. McLeroy) I searched on the internet

1 last night, and I wanted to find an answer to our
2 question. This was a press release from the Microsoft
3 website.

4 Do you see that? It's pretty small, but I've
5 blown up part of it.

6 A. It's got it on my screen so I can see it.

7 Q. The title of this is: Gates ushers in next
8 generation of PC computing with launch of Windows 2000.

9 Do you see that?

10 A. Yes, I do.

11 Q. All right. And then the very first sentence
12 in this press release says: Microsoft chairman and
13 chief software architect, Bill Gates, officially
14 announced today the worldwide availability of the
15 Windows 2000 Professional, and he listed some other
16 operating systems.

17 Do you see that?

18 A. Yes, I do.

19 Q. This press release is dated February 17th,
20 2000, right?

21 A. Yes, it is.

22 Q. You would trust Mr. Bill Gates on things
23 related to Microsoft, wouldn't you?

24 A. Yes, I would.

25 Q. So you think it's pretty safe to say we can

1 take away that question mark now?

2 A. Yes, that was the official release date.

3 Q. Thank you.

4 All right. You covered three prior art
5 references during your direct examination, right?

6 A. That's correct.

7 Q. All right. I'd like to talk a little bit more
8 about Windows, and hopefully, if time permits, we'll get
9 to talk about the other two.

10 To be clear, it is your opinion that Windows
11 NT 4 anticipates -- you used the word anticipates
12 there -- anticipates all of the claims at issue in this
13 case; is that right?

14 A. That's correct.

15 Q. And you understand, Dr. Wicker, that the law
16 doesn't allow you to combine two or more items of prior
17 art to make out an anticipation; is that right?

18 A. That's correct.

19 Q. And actually, the Judge gave us an instruction
20 on this point the first day of trial, also.

21 MR. McLEROY: Could you pull up Slide 6?

22 Q. (By Mr. McLeroy) He said: To prove that a
23 claim is anticipated by the prior art, Microsoft must
24 prove by clear and convincing evidence that each and
25 every limitation of the claim was present in a single

1 item of prior art.

2 Do you see that?

3 A. Yes, I do.

4 Q. So to make out an anticipation with respect to
5 Windows NT 4, you need to show that all of the elements
6 of the VirnetX's patents can be found in that version of
7 Windows; is that right?

8 A. That's correct.

9 Q. You can't combine that version of Windows
10 with, say, a later version of Windows to make out an
11 anticipation, can you?

12 A. No. You have to focus on a single version of
13 Windows.

14 Q. And in light of that, it's still your opinion
15 that Windows NT 4 anticipates VirnetX's patents; is that
16 right?

17 A. That's correct.

18 Q. Now, to arrive at that conclusion, one thing
19 you reviewed was the source code for the Windows
20 software system; is that right?

21 A. That's correct.

22 Q. And actually, I'd like you --

23 MR. McLEROY: And if you could bring up
24 Plaintiff's Exhibit 864.

25 Q. (By Mr. McLeroy) And, Dr. Wicker, I believe

1 there's a copy of that in your binder.

2 A. Yes, I've got it.

3 MR. McLEROY: And if you could pull down
4 to the bold text, the first two or three paragraphs.

5 Perfect. That's good right there.

6 Q. (By Mr. McLeroy) This is a document you
7 prepared, isn't it?

8 A. Yes, it is.

9 Q. This is a document you prepared and attached
10 to one of the expert reports that you submitted in this
11 case; is that right?

12 A. That's correct, yes.

13 Q. And although the jury cannot tell from the
14 screen -- I'm going to hold it up -- it's 245 pages.
15 This exhibit contains the source code that you believe
16 shows the Windows NT 4 system anticipates the
17 patents-in-suit; is that right?

18 A. Yes. It's exemplary samples from the source
19 code. The source code is actually --

20 Q. That's right. This isn't all the source code,
21 is it?

22 A. No, it's not.

23 Q. No.

24 And what you did was you sort of picked and
25 choosed (sic) the portions of the source code you

1 thought were important to your analysis; is that right?

2 A. Yes. Well, I chose selections that were
3 exemplary of what I was saying how the system worked.

4 Q. And you prepared this?

5 A. Actually, I had some help preparing it, but I
6 directed what I wanted in it.

7 Q. Okay. So you directed the content of this.

8 A. That's correct.

9 Q. The files -- every file that's in here, you
10 selected to put in there, right?

11 A. Yes.

12 Q. Okay. And at the very top here, you explain
13 exactly what this is. It's what we've been talking
14 about. This exhibit contains key source code relating
15 to Microsoft Windows NT 4 VPN functionality and
16 AutoDial.

17 Do you see that?

18 A. Yes, I do.

19 Q. All right. And then it really jumps pretty
20 quick into the source code itself.

21 As you can see, there's a -- sort of an
22 annotation or a brief summary you've described for each
23 file that introduces what its purpose is in the AutoDial
24 system, right?

25 A. Yes.

1 Q. And then if you look here, there's -- do you
2 see the line that says from colon?

3 A. Yes, I did.

4 Q. Okay. And below that is sort of the location
5 where you found this file in the source code files; is
6 that right?

7 A. That's right.

8 Q. All right. And this one -- the part I want
9 you to focus in, do you see about halfway into the first
10 line, it says winNT_4.0_build.

11 Do you see that?

12 A. Yes, I do.

13 Q. And so that indicated to you that this came
14 from the Windows NT 4 system; is that right?

15 A. That's correct.

16 Q. Now, Dr. Wicker, I'd like you to turn to Page
17 174 of this document to see the file that you selected
18 to include on that page.

19 MR. McLEROY: And if you could, blow up
20 the bolded part right in the middle.

21 Q. (By Mr. McLeroy) Do you see this, Dr. Wicker?

22 A. Yes, I do.

23 Q. All right. You see here there's a location
24 for the file that begins on this page. I think it's --
25 you said it was Page 174.

1 Do you see that?

2 A. Yes, I do.

3 Q. All right. It doesn't say that this file came
4 from Windows NT 4 like the other one did, does it?

5 A. No. This is beta 3 --

6 Q. It doesn't say it, does it?

7 A. This is beta 3 for Windows 2000. You can see
8 that right here.

9 THE REPORTER: Can you pull the
10 microphone down?

11 THE WITNESS: Yes, ma'am. I'm sorry.

12 A. As you can see right here, it says Windows
13 2000 beta 3. It's an early version of Windows 2000.

14 Q. (By Mr. McLeroy) It is. Windows 2000 -- let's
15 be clear on this -- in the beta 3, that was released in
16 1999; is that right?

17 A. If you'll look at the copyright right here, if
18 I can get it an arrow to appear.

19 THE WITNESS: Can you bring it down a
20 little bit and expand this copyright date for me?

21 A. I think you'll find it says 1997.

22 Q. (By Mr. McLeroy) Dr. Wicker, that wasn't my
23 question. Windows 2000 beta 3 was released in April
24 1999, right?

25 A. Yes, I think that's correct.

1 Q. And even if we can't agree on the date, you
2 will agree with me that Windows 2000 beta 3 is a
3 different version of Windows than Windows NT 4, right?

4 A. That's right.

5 Q. Yeah. Windows beta 3 was a test version,
6 right? It wasn't the final version of Windows 2000.

7 A. That's right. It was an earlier version.

8 Q. It had functionality and features that Windows
9 NT 4 did not have; is that right?

10 A. Yes, that's correct.

11 Q. Okay. Now, Dr. Wicker, what you would find,
12 if you would really study -- if you really study this
13 exhibit is, from Page 174 to the end of this document,
14 Page 245, this portion of the document, a substantial
15 portion of the document, the last 70 pages, all comes
16 from Windows 2000 beta 3.

17 A. That's right.

18 Q. Do you have any reason to disagree with that?

19 A. No. No. That's correct.

20 Q. Dr. Wicker, I thought you just told me that to
21 make out anticipation, you had to use a single prior art
22 reference; isn't that right?

23 A. Yes, it is right.

24 Q. But what you did is, you mixed and matched
25 source code from different versions of Windows; isn't

1 that right?

2 A. No, that's not true.

3 Q. Dr. Wicker, this exhibit -- in this exhibit,
4 you mixed and matched source code from different
5 versions of Windows, right?

6 A. This exhibit does contain source code from
7 different versions of Windows.

8 MR. McLEROY: And if we could go back to
9 the first page.

10 Q. (By Mr. McLeroy) You say: This exhibit
11 contains key source code relating to Microsoft Windows
12 NT 4 VPN functionality and AutoDial.

13 Do you see that?

14 A. Yes.

15 Q. You didn't say it contains key source code
16 relating to Windows NT 4 and Windows 2000 beta 3, did
17 you?

18 A. Well, it does that, too, but, no, I didn't say
19 that at the beginning of the --

20 Q. You didn't say that here in the introduction
21 to this document, did you?

22 A. No.

23 Q. You prepared this document, didn't you?

24 A. Yes, I did.

25 Q. You selected and oversaw the content that was

1 put into this content -- into this document, didn't you?

2 A. Yes.

3 Q. But the last 71 pages are from a different
4 version of Windows other than Windows NT 4; isn't that
5 right?

6 A. That's correct.

7 Q. The next thing I'd like to talk about is
8 regarding AutoDial.

9 AutoDial only reconnects a user. Do you agree
10 with that?

11 A. Reconnect -- yes. I would say it reconnects
12 in the sense that you have to have connected once before
13 at some point in time.

14 Q. And its only function is to reconnect to a
15 user, right?

16 A. Yes, that's correct.

17 Q. And you remember there was some disagreement
18 yesterday between Mr. Pall and Mr. Cawley about whether
19 AutoDial's only function was to reconnect a user.

20 Do you remember that discussion?

21 A. Yes.

22 Q. And I think it centered around the testimony
23 of a Microsoft engineer named Mr. Discolo?

24 A. Yes. Now I recall what you're talking about.

25 Q. Now, it sounds like you agree with

1 Mr. Discolo, right, that AutoDial only reconnects the
2 user, right?

3 A. Okay. I have to be careful and make sure I
4 understand your question.

5 When you talk about reconnecting, I am
6 assuming that you mean I went to Amazon yesterday
7 morning, and when I go today, I'm reconnecting.

8 If you're referring to a link failure in the
9 middle of a session, that's a different thing.

10 Q. No, no. Dr. Wicker, I'm referring to what you
11 referred to earlier, which is --

12 A. Okay.

13 Q. -- you can't make the connection for the first
14 time, right? It can only reconnect a user.

15 A. Okay. So when -- I understood --

16 Q. Those were your words, weren't they?

17 A. What I just said about the Amazon example --
18 the reconnection means I've been there once before, and
19 now I'm going to go there again. That's what I thought
20 you meant by reconnection.

21 Q. And I'll stick with that definition.

22 A. Auto -- you want to stick with that? Okay.

23 Q. I'll stick with that definition. You've been
24 there once before, and if you want to do it for a second
25 or third or fourth time, that's a reconnection.

1 A. Yes. That's fine.

2 Q. So you agree with Mr. Discolo and Mr. Pall
3 that that -- and that definition of reconnection is the
4 only use of AutoDial, right?

5 A. I wouldn't say it's the only use. It's
6 certainly a predominant use.

7 Q. All right. Not the only use.

8 MR. McLEROY: Could you go to Slide 7?

9 Q. (By Mr. McLeroy) All right. This is some of
10 Mr. Discolo's testimony. You reviewed his deposition to
11 prepare your opinions, didn't you?

12 A. Yes, I did.

13 Q. And you found him to be a credible source of
14 information on Windows AutoDial?

15 A. For the most part, yes.

16 Q. For the most part. Well, I mean, let's see.
17 The question was asked: What prior art VPN
18 functionality in Windows do you have knowledge of?

19 Do you see that?

20 A. Yes, I do.

21 Q. He said: I implemented the AutoDial feature
22 for Windows NT 4 shell release.

23 Do you see that?

24 A. Yes, I do.

25 Q. All right.

1 MR. McLEROY: Could you go to the next
2 slide?

3 Q. (By Mr. McLeroy) He said: Do you know of
4 anybody else at Microsoft with as much knowledge about
5 AutoDial as you have?

6 Do you see that?

7 A. Yes, I do.

8 Q. His answer was: No.

9 A. Yes, that's right.

10 Q. And then finally, he said -- was asked on the
11 next slide: Would you say that you have full knowledge
12 of how AutoDial works and functions?

13 Do you see that?

14 A. Yes.

15 Q. And the answer was: Yes.

16 A. That's correct.

17 MR. McLEROY: Now, let's go to the
18 next -- go to the next slide, please.

19 Q. (By Mr. McLeroy) Here he was asked about what
20 the functions for the AutoDial were, and he was
21 asked: And AutoDial stores this database of connections
22 in order to be able to reconnect a user if he becomes
23 disconnected; is that correct?

24 His answer was: Yes.

25 A. That's correct.

1 Q. Next question: Is that the only purpose that
2 AutoDial serves?

3 Do you see that?

4 A. Yes.

5 Q. Answer: That was the purpose that -- my
6 implementation, that was the purpose.

7 Do you see that?

8 A. Yes, I do.

9 Q. All right.

10 MR. McLEROY: Now, if you go to the next
11 slide.

12 Q. (By Mr. McLeroy) We followed up on this. We
13 asked him: Mr. Discolo, do you know if any -- or excuse
14 me -- do you know if AutoDial has any other
15 functionality apart from reconnecting a user that has
16 become disconnected?

17 Do you see that?

18 A. Yes, I do.

19 Q. He said: Not that I'm aware of.

20 A. That's right.

21 Q. And that's coming from the guy who actually
22 designed AutoDial in Windows NT 4; is that right?

23 A. That's right.

24 Q. Now, if AutoDial only reconnects a user, that
25 means that the first time the connection is made, it has

1 to be created another way, right?

2 A. Yes. In that scenario, that's true.

3 Q. Did you hear Mr. Pall explain exactly what
4 steps he had to do to create the VPN connection for the
5 first time in his demonstration?

6 A. When I saw the demonstration, he simply was
7 able to connect automatically right away. I --

8 Q. That was the reconnection, right?

9 A. There was no link failure, but he had
10 connected once before.

11 Q. And he didn't tell you what he had to do to
12 connect the first time, did he? He didn't explain that
13 in Court yesterday in Court, did he?

14 A. I don't believe he was asked.

15 Q. He wasn't asked by his own attorney, was he?

16 A. He wasn't asked by anybody.

17 Q. He wasn't asked -- he wasn't asked by his own
18 attorney.

19 A. No, he was not.

20 Q. So we don't have any idea what had to happen
21 to connect -- make that connection the first time; is
22 that right?

23 A. We don't know how the first connection was
24 made.

25 Q. Can you tell us how the first connection was

1 made?

2 A. Actually, I don't know. I presume that the
3 configuration table was set up for demonstration, and
4 the first connection was made to test the configuration,
5 and then we're done.

6 Q. Dr. Wicker, the claim language over here in
7 the '135 patent says: Automatically initiating the VPN,
8 right?

9 A. That's correct.

10 Q. We don't know how that VPN was initiated for
11 the first time, do we?

12 A. No.

13 Q. All right. We're on a time limit, so let's
14 move on to DVPN, okay?

15 With the legal standards we've discussed and
16 have in mind, it's your opinion that DVPN anticipates
17 the VirnetX patents; is that right?

18 A. Yes, that's correct.

19 Q. And with respect to DVPN, what we're really
20 talking about is a March 1998 demonstration of the DVPN
21 project; is that right?

22 A. That's correct.

23 Q. What Mr. Saydjari testified about in Court
24 yesterday?

25 A. Yes.

1 Q. Okay. Now, do you believe with absolute
2 certainty that you know what was demonstrated 12 years
3 ago, March of 1998, at that DARPA meeting?

4 A. Well, I think the evidence is clear and
5 convincing as to what was presented.

6 Q. All right. So not absolute certainty, but you
7 do believe it meets the clear and convincing evidence
8 standard.

9 A. Yes, it certainly does.

10 Q. You didn't attend those meetings, did you?

11 A. Oh, that's -- that's why I can't be absolutely
12 certain. I wasn't there. I didn't see it and take
13 notes, but I've seen other people's notes, other
14 people's testimony; I've read e-mail.

15 Q. We'll talk about that.

16 A. I saw a lot of evidence.

17 Q. We'll talk about that.

18 So you used the DVPN software, I assume, to
19 figure out what was shown at that demonstration?

20 A. I didn't use it. I did study it.

21 Q. You didn't use it.

22 Well, I guess you said you're relying on the
23 testimony of some of the guys who actually created DVPN?

24 A. That's correct.

25 Q. All right. One of those guys was a Dan

1 Sterne; is that right?

2 A. That's correct.

3 Q. He was the team leader of the DVPN project?

4 A. I can't remember his exact title, but I think
5 you're right.

6 Q. Okay. But he admitted that he didn't remember
7 the details of that demonstration very well; isn't that
8 right?

9 A. That's correct.

10 Q. And he told us that he didn't do the
11 programming for that DVPN product, right?

12 A. That's correct.

13 Q. But -- but that's why you talked to
14 Mr. Kindred; is that right?

15 A. One of the people that I referenced, yes.

16 Q. You talked to Mr. Kindred.

17 But Mr. Kindred -- do you remember when he
18 started working at Trusted Information Systems, the
19 company that did that DVPN technology?

20 A. I believe it was actually after the
21 demonstration.

22 Q. It was a year and a half afterwards, wasn't
23 it?

24 A. That's right.

25 Q. Now, he wasn't even one working at the company

1 when that demonstration was done, right?

2 A. That's correct.

3 Q. And he didn't attend that demonstration
4 either, did he?

5 A. No.

6 Q. And finally, I believe you're also relying,
7 you said on your slide, on the testimony of Mr. Sami
8 Saydjari, who was in the courtroom yesterday?

9 A. Yes.

10 Q. And he's the witness that Microsoft is paying
11 \$475 per hour to compensate him for his lost time?

12 A. I believe that's right.

13 Q. Now, was there anyone else that you would have
14 liked to speak with to understand how that DVPN system
15 worked?

16 A. No. It's always nice to talk to more people,
17 to get more details, but, no, I felt I had sufficient
18 evidence to pass the clear and convincing evidence
19 standard.

20 Q. Dr. Wicker, there's one person in particular
21 I'm thinking of. Is there anyone you can remember
22 reading these deposition transcripts and you think, hey,
23 it would have really been a good idea to talk to that
24 guy?

25 A. I don't know who you're thinking of.

1 Q. Well, does the name Domenic Turchi ring a
2 bell?

3 A. Yes. He read several e-mails that I did read
4 that provided detailed technical information.

5 Q. He didn't just write e-mails, though, right?

6 A. I believe he had some responsibilities with
7 regard to the code and the demonstration itself.

8 Q. I mean, Domenic Turchi was the only guy who
9 wrote the source code for that project, right?

10 A. I recall that he was the main source code
11 writer. I'm not sure he was the only one. But he
12 certainly was --

13 Q. Let's look at the deposition, and we'll see
14 what it says.

15 MR. McLEROY: Could you go to Slide 18,
16 please?

17 Q. (By Mr. McLeroy) This is Mr. Sterne's
18 testimony. He said: Who was the individual, to the
19 best of your recollection --

20 MR. McLEROY: Or actually, Slide 19. I'm
21 sorry.

22 Q. (By Mr. McLeroy) This is question of
23 Mr. Kindred.

24 He said: Mr. Kindred, do you have an
25 understanding of who -- of who wrote that code, that

1 Dynamic VPN code?

2 Do you see that?

3 A. Yes.

4 Q. Answer: My understanding was that Domenic
5 Turchi had written most, if not all, of the code that
6 existed at that time point that I was given.

7 Do you see that?

8 A. Right. That's what I was refer --

9 Q. No one testified that anyone else, other than
10 Mr. Turchi, ever wrote that code; is that right?

11 A. No.

12 Q. Now, who actually conducted the demonstration
13 at that March 1998 meeting?

14 A. I believe it was Mr. Turchi.

15 Q. That's right.

16 Now, you didn't speak to Mr. Turchi at any
17 point in the two years this lawsuit has been pending; is
18 that right?

19 A. I didn't know that he was available or I would
20 have.

21 Q. Did you ever try to look?

22 A. Personally, me? No.

23 Q. Do you know if your attorneys -- or excuse
24 me -- Microsoft attorneys ever tried to look?

25 A. It's my understanding that they did.

1 Q. They didn't find him?

2 A. Apparently not.

3 Q. Well, Dr. Wicker, did you ever think to look
4 him up on Google?

5 A. Nope. I didn't try that.

6 Q. You've found people using the internet before,
7 haven't you?

8 A. Yes, I have.

9 Q. You use the internet and computers in your
10 office, right?

11 A. Yes.

12 Q. And you've used Google before, right?

13 A. Yes.

14 Q. All right. Do you remember from the
15 deposition transcripts that you read that Trusted
16 Information Systems was located in Maryland?

17 A. Yes, that's correct.

18 Q. Okay.

19 MR. McLEROY: If you could go to Slide 20
20 now.

21 Q. (By Mr. McLeroy) This is actually a Google
22 search I did just a couple of days ago. His name -- his
23 full name is Domenic Turchi, Jr., in Maryland; is that
24 right?

25 A. Yes, that is his name.

1 Q. And look, Google has a neat feature that gives
2 you phone book results for Domenic Turchi, Jr., in
3 Maryland.

4 Do you see that?

5 A. Yes, I do.

6 Q. His phone number is right up there?

7 A. Yes.

8 Q. His address is right there?

9 A. Yes, it is.

10 Q. The city?

11 A. Well, we assume it's him, but yes.

12 Q. And we'll assume it's him. I mean, let's talk
13 about that.

14 Domenic Turchi, Jr.

15 A. You wouldn't expect a lot of them in Maryland,
16 that's true.

17 Q. All right. You never did this search, did
18 you?

19 A. No, I didn't.

20 Q. You know what I also thought to do -- do you
21 use Facebook?

22 A. Yes, I do.

23 Q. Do you have an account?

24 A. Yes, I do.

25 Q. So you know how that works.

1 Facebook is another way to find people, right?

2 A. Yes, it is.

3 Q. I ran a search through Facebook, and you know
4 what? He's got a page. Did you think to do that?

5 A. No. I wasn't searching for people to talk to.

6 Q. You didn't search for the person to talk to
7 that actually wrote the code and actually demonstrated
8 DVPN at this March 1998 meeting?

9 A. There was a lot of evidence to go through
10 already.

11 Q. But wouldn't that have been the best evidence,
12 the guy who actually wrote it and demonstrated it?

13 A. I don't know. I don't know.

14 Q. Because you didn't talk to him, right?

15 A. I did not talk to him, so I have no idea.

16 Q. Now, another piece of evidence you relied
17 on -- so we've talked about the people you talked to.

18 You did rely on the source code, right?

19 A. Yes, I did.

20 Q. But there were multiple versions of the code
21 that were produced in this case; isn't that right?

22 A. That's correct.

23 Q. And that's because the operation and the
24 functionality and the way DVPN worked changed over time;
25 is that right?