

1 A. The primary functionality did not change.

2 There were variations and additional --

3 Q. Doctor, it changed over time.

4 A. It did change, yes.

5 Q. And, in fact, there was a second demonstration  
6 of DVPN; isn't that right?

7 A. I believe that's correct.

8 Q. I think it was in March of 2000?

9 A. That sounds correct.

10 Q. So that's -- March of 2000 is at least a month  
11 before the '180 patent was filed, right?

12 A. That's correct, yes.

13 Q. But you haven't offered any opinions that the  
14 DVPN technology from that meeting invalidates any claim  
15 of any VirnetX patents; isn't that right?

16 A. That's correct. I focused on the earlier  
17 demonstration.

18 Q. And that's because the later demonstration  
19 doesn't invalidate any claim of the VirnetX patents;  
20 isn't that right?

21 A. I don't know.

22 Q. Your attorney has not asked you to look at  
23 that one?

24 A. I didn't look at it, and I don't believe  
25 anyone asked me to.

1 Q. Now, back to the source code, we talked about  
2 how there were multiple codes in this case, right?

3 A. That's right.

4 Q. There was a Defendant's 3353?

5 A. I can't see it.

6 Q. Take my word for it. It's some source code.  
7 Defendant's Exhibit 3062, some more source code.

8 A. Okay.

9 Q. Can't really see it. I think there were  
10 multiple versions of the DVPN code on this one.

11 You looked at all of this code, right?

12 A. Yes, I did.

13 Q. And it had different dates?

14 A. That's correct.

15 Q. Some from 1998; some from '99; some from 2000;  
16 some from '97?

17 A. Exactly.

18 Q. All right. But then you chose Defendant's  
19 Exhibit 3061. That's the one you relied on, right?

20 A. That sounds correct, yes.

21 Q. You relied on your attorney's guidance.  
22 They're the ones that helped you identify the right  
23 source code to look at, right?

24 A. I did look at all the source code. I did have  
25 some guidance as to which was older and which was

1 younger, et cetera.

2 Q. Your attorneys helped you identify Defendant's  
3 Exhibit 3061 to look at; isn't that right?

4 A. Again, no. They provided me with all the  
5 source code.

6 Q. They told you to look at this one for your  
7 opinions in this case, didn't they?

8 A. I don't recall that being the case.

9 Q. Look at your deposition.

10 MR. McLEROY: Would you pull up Page 249  
11 of your deposition?

12 THE WITNESS: Do I have that in front of  
13 me?

14 MR. McLEROY: Oh, I don't think I've  
15 given it to you yet.

16 THE WITNESS: Thank you.

17 MR. McLEROY: If you could, Mr. Moreno,  
18 blow up the portion starting at Line 11 of Page 249.

19 Q. (By Mr. McLeroy) You remember when I took your  
20 deposition, Dr. Wicker?

21 A. Yes, I do.

22 Q. It was, I think, in New York City, right, when  
23 I came up to New York to visit you?

24 A. Yes, that's right.

25 Q. It was at your law firm's office there in

1 downtown Manhattan, right?

2 A. Yes, it was.

3 Q. And you were under oath then just like you're  
4 under oath today?

5 A. Yes.

6 Q. And I think the first question in this  
7 sequence that I asked you was: Now, was there only one  
8 version of the DVPN source code provided?

9 ANSWER: The one I looked at -- actually, I  
10 take that back. I think I saw several. But I did see  
11 the one that was associated with the public  
12 demonstration.

13 And I asked you: Well, how were you able to  
14 determine that it was associated with the public  
15 demonstration?

16 And your answer was, at that time at least:  
17 That would have been through the deposition testimony.

18 Do you see that?

19 A. Yes.

20 Q. And I followed up, skipping down a little bit.

21 Question: Whose deposition; do you remember?

22 You said: Actually, I don't. I don't  
23 remember specifically.

24 I said: Well, let me see if I can refresh  
25 your recollection. There are two guys, Sterne and

1 Kindred, from Sparta?

2           You said: That's right.

3           I said: Was it one of those two guys?

4           Your answer was: Frankly, sitting here at  
5 this late hour, I can't remember how I knew which  
6 version was actually demonstrated. It may have simply  
7 been represented to me that that was a fact.

8           Do you see that?

9           A. Yes, I do.

10          Q. And I asked you: Represented to you by the  
11 lawyers?

12          You said: Well, they're not my lawyers, but  
13 yes.

14          And I clarified: By Microsoft's lawyers?

15          And you said: Yes, that's correct.

16          Do you see that?

17          A. Yes, I do.

18          Q. That testimony is still truthful, right? You  
19 were telling the truth at the time?

20          A. Yes. I didn't know then, and I'm not sure  
21 now.

22          Q. Now, Dr. Wicker, let's assume that you and  
23 Microsoft lawyers are correct, and you actually did  
24 identify the right version of code that was used at that  
25 March 1998 demonstration.

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