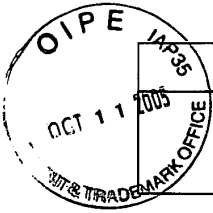


ORACLE EXHIBIT 1024

PART 1

Re-exam



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF SERVICE UNDER
37 C.F.R. 1.248

Atty. Docket No.
CROSS1120-14

Applicant Geoffrey B. Hoese, et al.	
Reexamination Control No. 90/007,123	Date Filed 07/19/2004
Title Storage Router and Method for Providing Virtual Local Storage	
Group Art Unit 2182	Examiner Chen, Alan S.
Confirmation Number: 2293	

Applicant hereby serves the Comments on Statement of Reasons for Patentability and/or Confirmation in the above referenced case to:

Larry E. Severin
Wang, Hartmann & Gibbs, PC
1301 Dove Street, #1050
Newport Beach, CA 92660

As per 35 U.S.C. §1.248 service is made via first class mail, certified, R.R.R. on
October 7, 2005

Respectfully submitted,

Sprinkle IP Law Group


John L. Adair
Reg. No. 48,828

Dated: October 7, 2005

1301 W. 25th Street, Suite 408
Austin, Texas 78705
Tel. (512) 637-9223
Fax. (512) 371-9088

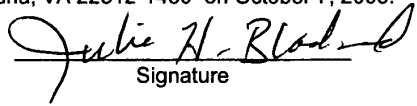
Enclosures



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE	
Comments On Statement of Reasons for Patentability and/or Confirmation	Atty. Docket No. CROSS1120-14
Applicants Goeffrey B. Hoese, et al.	
Reexamination Control No. 90/007,123	Date Filed 07/19/2004
Title Storage Router and Method for Providing Virtual Local Storage	
Group Art Unit 2182	Examiner Chen, Alan S.

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

<u>Certificate of Mailing Under 37 C.F.R. §1.8</u>
I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22312-1450 on October 7, 2005.
 Signature
Julie H. Blackard Printed Name

Applicants appreciate the Examiner's allowance of or confirmation of Claims 1-14 of United States Patent No. 5,941,972. Applicants submit the record as a whole makes evident the reasons for allowance and that there are additional reasons for patentability not enumerated by the Examiner. While Applicants agree with the Examiner's reasons for patentability to the extent such reasons are consistent with the record as a whole (as Applicants understand them to be), Applicants do not acquiesce or agree to any characterization of the claims that place unwarranted limitations or interpretations upon the claims, especially to the extent such limitations or interpretations are inconsistent with the claim language, specification or prior prosecution history in this case.

Attorney Docket No.
CROSS1120-14

Customer ID: 44654
90/007,123

2

These "Comments on Statement of Reasons for Patentability and/or Confirmation" was served via First Class Mail, Certified, R.R.R. on October 7, 2005 to Larry E. Severin of Wang, Hartmann & Gibbs, PC, 1301 Dove Street, #1050, Newport Beach, CA 92660.

The Director of the U.S. Patent and Trademark Office is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 50-3183 of Sprinkle IP Law Group.

Respectfully submitted,

Sprinkle IP Law Group
Attorneys for Applicant



John L. Adair
Reg. No. 48,828

Date: October 7, 2005

1301 W. 25th Street, Suite 408
Austin, TX 78705
Tel. (512) 637-9223
Fax. (512) 371-9088



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/007,123	07/19/2004	5941972	1006-8900	2293

44654 7590 09/23/2005
SPRINKLE IP LAW GROUP
1301 W. 25TH STREET
SUITE 408
AUSTIN, TX 78705

EXAMINER

CHEN, ALAN

ART UNIT PAPER NUMBER

2182

DATE MAILED: 09/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address: ASSISTANT COMMISSIONER FOR PATENTS
Washington, D.C. 20231

APPLICATION NO/ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
90/007,123	07/19/2004	5941972	1006-8900

Larry E. Severin
Wang, Hartman & Gibbs, PC
1301 Dove Street
Suite 1050
Newport Beach, CA 92660

EXAMINER

CHEN, ALAN

ART UNIT	PAPER
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2182

DATE MAILED 9-23-05

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

CC: SPRINKLE IP LAW GROUP
1301 W. 25th Street
Suite 408
Austin, TX 78705

Notice of Intent to Issue Ex Parte Reexamination Certificate	Control No. 90/007,123	Patent Under Reexamination 5941972	
	Examiner Alan S. Chen	Art Unit 2182	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. Prosecution on the merits is (or remains) closed in this *ex parte* reexamination proceeding. This proceeding is subject to reopening at the initiative of the Office or upon petition. Cf. 37 CFR 1.313(a). A Certificate will be issued in view of
 - (a) Patent owner's communication(s) filed: 22 July 2005.
 - (b) Patent owner's late response filed: _____.
 - (c) Patent owner's failure to file an appropriate response to the Office action mailed: _____.
 - (d) Patent owner's failure to timely file an Appeal Brief (37 CFR 41.31).
 - (e) Other: _____.

Status of *Ex Parte* Reexamination:

 - (f) Change in the Specification: Yes No
 - (g) Change in the Drawing(s): Yes No
 - (h) Status of the Claim(s):
 - (1) Patent claim(s) confirmed: 1-14.
 - (2) Patent claim(s) amended (including dependent on amended claim(s)): _____
 - (3) Patent claim(s) cancelled: _____.
 - (4) Newly presented claim(s) patentable: _____.
 - (5) Newly presented cancelled claims: _____.
2. Note the attached statement of reasons for patentability and/or confirmation. Any comments considered necessary by patent owner regarding reasons for patentability and/or confirmation must be submitted promptly to avoid processing delays. Such submission(s) should be labeled: "Comments On Statement of Reasons for Patentability and/or Confirmation."
3. Note attached NOTICE OF REFERENCES CITED (PTO-892).
4. Note attached LIST OF REFERENCES CITED (PTO-1449 or PTO/SB/08).
5. The drawing correction request filed on _____ is: approved disapproved.
6. Acknowledgment is made of the priority claim under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some* c) None of the certified copies have
 - been received.
 - not been received.
 - been filed in Application No. _____.
 - been filed in reexamination Control No. _____.
 - been received by the International Bureau in PCT Application No. _____.

* Certified copies not received: _____.
7. Note attached Examiner's Amendment.
8. Note attached Interview Summary (PTO-474).
9. Other: _____.

cc: Requester (if third party requester)

U.S. Patent and Trademark Office
PTOL-469 (Rev.9-04)

Notice of Intent to Issue Ex Parte Reexamination Certificate

Part of Paper No 09162005

REEXAMINATION
REASONS FOR PATENTABILITY / CONFIRMATION

Reexamination Control No. 90/007,123

Attachment to Paper No. 09162005.

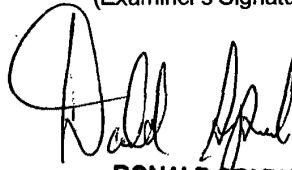
Art Unit 2182.


ASC
Claims 1-14 are ~~allowed~~ ^{confirmed}.

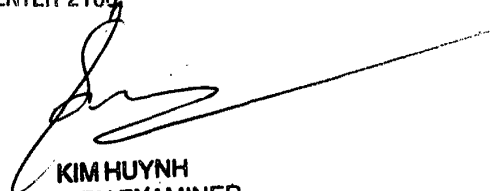
The prior art disclosed by the patent owner and cited by the Examiner fail to teach or suggest, alone or in combination, all the limitations of the independent claims (claims 1, 7 and 11), particularly the map/mapping feature which is a one-to-one correspondence, as given in a simple table, the map physically resident on a router, whereby the router forms the connection between two separate entities over different transport mediums, such that neither entity determines where data is to be sent, but rather, the router solely dictates where the data will be sent; also the "NLLBP" feature referring to a fundamental low level protocol defined by a specification/standard that is well known to one of ordinary skill in the art, where the NLLBP is used at the router for communications with both the first and second transport medium. The SCSI protocol/standard is considered a NLLBP. TCP/IP, e.g., used in Ethernet communications, however, is not considered to be a NLLBP.


PTOL-476 (Rev. 03-98)


(Examiner's Signature)


DONALD SPARKS
SUPERVISORY PATENT EXAMINER


DOV POPOVICI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100



KIM HUYNH
PRIMARY EXAMINER

Reexamination 	Application/Control No. 90/007,123	Applicant(s)/Patent Under Reexamination 5941972
	Certificate Date	Certificate Number

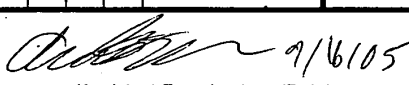

Requester Correspondence Address: <input type="checkbox"/> Patent Owner <input type="checkbox"/> Third Party

LITIGATION REVIEW <input checked="" type="checkbox"/>	<i>ASC</i> (examiner initials)	<i>9/19/05</i> (date)
Case Name		Director Initials
Crossroads Systems, (Texas), Inc. v. Chaparral Network Storage, Inc., Western District of Texas (00-CA-217) <i>09/04/01 final decision</i>		
Crossroads Systems, (Texas), Inc., v. Pathlight Technology, Inc., Western District of Texas (00-CA-248)		
Crossroads Systems, (Texas), Inc v. Dot Hill Systems Western District of Texas (03-CV-754)		

COPENDING OFFICE PROCEEDINGS	
TYPE OF PROCEEDING	NUMBER
1.	
2.	
3.	
4.	

Issue Classification 	Application/Control No. 90/007,123	Applicant(s)/Patent under Reexamination 5941972	
	Examiner Alan S. Chen	Art Unit 2182	

ISSUE CLASSIFICATION										
ORIGINAL				CROSS REFERENCE(S)						
CLASS	SUBCLASS			CLASS	SUBCLASS (ONE SUBCLASS PER BLOCK)					
710	315			710	2	8	36	105	305	308
INTERNATIONAL CLASSIFICATION				711	112					
G	0	6	F	13/00						
				/						
				/						
				/						
				/						

 (Assistant Examiner) (Date) 9/16/05	 DOV POPOVICI SUPERVISORY PATENT EXAMINER TECHNOLOGY CENTER 2100 (Primary Examiner) (Date) 9/21/05	Total Claims Allowed: 14 <table border="1" style="width: 100%;"> <tr> <td>O.G. Print Claim(s)</td> <td>O.G. Print Fig.</td> </tr> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">5</td> </tr> </table>	O.G. Print Claim(s)	O.G. Print Fig.	1	5
O.G. Print Claim(s)	O.G. Print Fig.					
1	5					
(Legal Instruments Examiner) (Date)	(Primary Examiner) (Date)					

<input type="checkbox"/> Claims renumbered in the same order as presented by applicant		<input type="checkbox"/> CPA		<input type="checkbox"/> T.D.		<input type="checkbox"/> R.1.47	
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Index of Claims



Application No.

90/007,123

Examiner

Fritz M Fleming

Applicant(s)

5941972

Art Unit

2182

✓	Rejected
=	Allowed

-	(Through numeral) Cancelled
+	Restricted

N	Non-Elected
I	Interference

A	Appeal
O	Objected

Claim		Date	
Final	Original		
1	1		
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Claim		Date	
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Claim		Date	
Final	Original		
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149	149		
150	150		

Search Notes



Application No.

90/007,123

Examiner

Fritz M Fleming

Applicant(s)

5941972

Art Unit

2182

SEARCHED

Class	Subclass	Date	Examiner
710	H2, 100-101	1/21/05	PUF
711	305-316, 100, 112, 113	}	}
updated done 5/20/05 PUF			
updated		9/16/05	ASC

SEARCH NOTES (INCLUDING SEARCH STRATEGY)

	DATE	EXMR
EAST SEARCH NOTES	4/1/05	PUF
WPL SEARCH: SCSI, FC, Fibre channel, Storage, block level, native ATM	}	}
EAST SCSI ARRAY DMA FIFO	5/20/05	PUF
updated IEEE Xplore, Google Scholar Fibre channel, native, SCSI	9/16/05	ASC

INTERFERENCE SEARCHED

Class	Subclass	Date	Examiner
updated see search history printouts			
		9/16/05	ASC

Ref #	Hits	Search Query	DBs	Default Operator	Plurals	Time Stamp
S1	3	@ad<"20010927" and (fibre adj channel near router) same SCSI	US-PGPUB; USPAT; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2005/08/22 08:44
S2	0	@ad<"19971231" and (fibre adj channel near router) same SCSI	US-PGPUB; USPAT; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2005/08/22 08:44
S3	111	@ad<"19971231" and fibre adj channel same SCSI	US-PGPUB; USPAT; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2005/08/22 08:45
S4	35	@ad<"19971231" and fibre adj channel near SCSI	US-PGPUB; USPAT; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2005/08/22 08:46
S5	1	S4 and router	US-PGPUB; USPAT; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2005/08/22 08:45
S6	7	@ad<"19971231" and fibre adj channel adj SCSI	US-PGPUB; USPAT; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2005/08/22 09:02
S7	0	@ad<"19971231" and "fibre channel protocol for SCSI"	US-PGPUB; USPAT; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2005/08/22 09:02
S8	14	@ad<"19971231" and FCP and SCSI and fibre adj channel	US-PGPUB; USPAT; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2005/08/22 09:07
S10	1	S8 and router	US-PGPUB; USPAT; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2005/08/22 09:03

S11	3	S8 and RAID	US-PGPUB; USPAT; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2005/08/22 09:18
S13	39	@ad<"20010927" and network adj attached adj storage and Fibre adj channel near scsi	US-PGPUB; USPAT; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2005/08/22 09:19
S14	19	S13 and router	US-PGPUB; USPAT; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2005/08/22 09:19
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S16	1	@ad<"19971231" and Fibre adj channel same scsi same router	US-PGPUB; USPAT; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2005/08/22 09:58
S18	8	@ad<"19971231" and ancor.asn.	US-PGPUB; USPAT; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2005/08/22 09:59
S19	0	@ad<"19971231" and ancor.asn. and SCSI	US-PGPUB; USPAT; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2005/08/22 09:59
S20	0	@ad<"19971231" and ancor.asn. and Fibre	US-PGPUB; USPAT; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2005/08/22 09:59
S21	0	@ad<"19971231" and emerson near steven.inv.	US-PGPUB; USPAT; EPO; JPO;	OR	OFF	2005/08/22 10:05
S22	4	@ad<"19971231" and SCSI near2 FCP	DERWENT; IBM_TDB US-PGPUB; USPAT; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2005/08/30 14:19

S23	139	@ad<"19971231" and fibre adj channel and SCSI	US-PGPUB; USPAT; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2005/08/30 14:48
S24	58	S23 and map\$5	US-PGPUB; USPAT; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2005/08/30 14:21
S25	14	S23 and LUN	US-PGPUB; USPAT; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2005/08/30 14:21
S26	11	S24 and LUN	US-PGPUB; USPAT; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2005/08/30 14:23
S27	0	S24 and virtual near local near storage	US-PGPUB; USPAT; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2005/08/30 14:22
S28	0	S23 and virtual near local near storage	US-PGPUB; USPAT; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2005/08/30 14:22
S29	8	S23 and router	US-PGPUB; USPAT; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2005/08/30 14:23
S30	0	@ad<"19971231" and virtual adj local adj storage and SCSI and remote	US-PGPUB; USPAT; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2005/08/30 14:49
S31	0	@ad<"19971231" and virtual adj local adj storage and SCSI	US-PGPUB; USPAT; EPO; JPO;	OR	OFF	2005/08/30 14:49
S32	70	@ad<"19971231" and virtual near storage and SCSI	DERWENT; IBM_TDB US-PGPUB; USPAT; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2005/08/30 14:49

S33	8	S32 and remote	US-PGPUB; USPAT; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2005/08/30 14:49
S34	5	@ad<"19971231" and router same fiber adj channel	US-PGPUB; USPAT; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2005/09/05 12:11
S35	1	"6425035".pn. and remote and map	US-PGPUB; USPAT; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2005/09/05 18:18
S36	1	"6425035".pn. and remote and map and maps and mapping	US-PGPUB; USPAT; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2005/09/05 18:55
S37	1	"6425035".pn. and remote and map and maps and mapping and native	US-PGPUB; USPAT; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2005/09/05 18:55

Access DB#

166174

SEARCH REQUEST FORM

Scientific and Technical Information Center

Requester's Full Name Pinchus Laufer Examiner #: 73139 Date: 09/19/05
Art Unit: NONE Phone Number 2-3599 Serial Number None
Mail Box Location: Results Format Preferred (circle): PAPER DISK E-MAIL

If more than one search is submitted, please prioritize searches in order of need.

Please provide a detailed statement of the search topic, and describe as specifically as possible the subject matter to be searched. Include the elected species or structures, keywords, synonyms, acronyms, and registry numbers, and combine with the concept or utility of the invention. Define any terms that may have a special meaning. Give examples or relevant citations, authors, etc, if known. Please attach a copy of the cover sheet, pertinent claims, and abstract.

Title of Invention: _____

Inventors (please provide full names): _____

Earliest Priority Filing Date: _____

**For Sequence Searches Only* Please include all pertinent information (parent, child, divisional, or issued patent numbers) along with the appropriate serial number.*

5941972

STAFF USE ONLY

	Type of Search	Vendors and cost where applicable
Searcher: <u>Shirelle Green</u>	Sequence (#) _____	<u>STN</u> _____
Searcher Phone #: <u>272-3487</u>	AA Sequence (#) _____	Dialog _____
Searcher Location: <u>4B28</u>	Structure (#) _____	<u>Questel/Orbit 38.50</u> _____
Date Searcher Picked Up: <u>9/19</u>	Bibliographic _____	WEST _____
Date Completed: <u>9/19</u>	Litigation <input checked="" type="checkbox"/>	<u>Lexis/Nexis</u> _____
Searcher Prep & Review Time: _____	Fulltext _____	Sequence Systems _____
Clerical Prep Time: _____	Patent Family _____	<u>WWW/Internet</u> _____
Online Time: <u>20</u>	Other _____	Other (specify) <u>Cowthink 48,000</u>

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1 of 1 DOCUMENT

UNITED STATES PATENT AND TRADEMARK OFFICE GRANTED PATENT

5941972

[Link to Claims Section](#)

August 24, 1999

Storage router and method for providing virtual local storage

REEXAM-LITIGATE: July 19, 2004 - Reexamination requested by Natu J. Patel, Wang & Patel, Reexamination No. 90/007,123 (O.G. August 31, 2004) Ex. Gp: 2111

NOTICE OF LITIGATION

NOTICE OF LITIGATION Crossroads Systems, (Texas), Inc., a Texas corporation v. Pathlight Technology Inc., a Delaware corporation, Filed Apr. 14, 2000, D. C. W.D. Texas, Doc. No. A-00-CA-248-JN 6/13/01 Consent Judgment

NOTICE OF LITIGATION

Crossroads Systems (Texas), Inc., a Texas Corporation v. Dot Hill Systems Corporation, a Delaware corporation, Filed October 17, 2003, D.C. W.D. Texas, Doc. No. A-03-CA-754-55

INVENTOR: Hoesel, Geoffrey B. - Austin, Texas, United States (US); Russell, Jeffrey T. - Cibola, Texas, United States (US)

APPL-NO: 001799 (09)

FILED-DATE: December 31, 1997

GRANTED-DATE: August 24, 1999

ASSIGNEE-AT-ISSUE: Crossroads Systems, Inc., Austin, Texas, United States (US), 02

ASSIGNEE-AFTER-ISSUE: December 31, 1997 - ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS), CROSSROADS SYSTEMS, INC. 9390 RESEARCH BLVD., SUITE II-300 AUSTIN TEXAS 78759, Reel and Frame Number: 08929/0290
November 16, 2000 - SECURITY AGREEMENT, SILICON VALLEY BANK LOAN DOCUMENTATION HG150 3003 TASMAN DR SANTA CLARA CALIFORNIA 95054, Reel and Frame Number: 11284/0218
April 3, 2002 - RELEASE; CROSSWORLDS SOFTWARE 577 AIRPORT BOULEVARD, SUITE 300 BURLINGAME CALIFORNIA 94010, Reel and Frame Number: 12785/0083

ENGLISH-ABST:

A storage router (56) and storage network (50) provide virtual local storage on remote SCSI storage devices (60, 62, 64) to Fiber Channel devices. A plurality of Fiber Channel devices, such as workstations (58), are connected to a Fiber Channel transport medium (52), and a plurality of SCSI storage devices (60, 62, 64) are connected to a SCSI bus transport medium (54). The storage router (56) interfaces between the Fiber Channel transport medium (52) and the SCSI bus transport medium (54). The storage router (56) maps between the workstations (58) and the SCSI storage devices (60, 62, 64) and implements access controls for storage space on the SCSI storage devices (60, 62, 64).

storage router (56) then allows access from the workstations (58) to the SCSI storage devices (60, 62, 64) using native low level, block protocol in accordance with the mapping and the access controls.

LEXIS-NEXIS
Library: PATENTS
File: ALL

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No documents were found for your search terms
"5941972 or 5,941,972"

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LEXIS-NEXIS
Library: PATENTS
File: CASES

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LEXIS-NEXIS
Library: PATENTS
File: JNLS

1 of 9 DOCUMENTS

Copyright 2003 Business Wire, Inc.
Business Wire

December 2, 2003 Tuesday

DISTRIBUTION: High-Tech Writers; Business Editors

LENGTH: 765 words

HEADLINE: Hitachi and Crossroads License Technology

DATELINE: AUSTIN, Texas, Dec. 2, 2003

BODY:

...Ltd., a global leader in the storage market, today announced a cross-licensing arrangement covering access control technology.

Crossroads owns several patents, including U.S. Patent No. 5,941,972 and U.S. Patent No. 6,423,035, and Hitachi owns several patents, including U.S. Patent No. 6,484,245. Both parties' patents cover the ability to control access from hosts to storage devices using a ...

LEXIS-NEXIS
Library: PATENTS
File: CURNEWS

2 of 9 DOCUMENTS

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October 22, 2003 Wednesday

LENGTH: 74 words

HEADLINE: CRDS Files Patent Infringement Suit Against HILL

DATELINE: Ridgeland, MS

BODY:

...by Crossroads Systems Inc. (CRDS) on October 17, 2003. Dot Hill has not been served with the Complaint. The suit alleges patent infringement by Dot Hill of United States Patent Nos. 5,941,972 and 6,425,035, relating to storage routers and methods for providing virtual local storage.

3 of 9 DOCUMENTS

Copyright 2003 PR Newswire Association, Inc.
PR Newswire

October 22, 2003 Wednesday

SECTION: FINANCIAL NEWS

LENGTH: 446 words

HEADLINE: Dot Hill Systems Announces Complaint Filed By Crossroads Systems

DATELINE: CARLSBAD, Calif. Oct. 22

BODY:

...Austin, Texas by Crossroads Systems on October 17, 2003. Dot Hill has not been served with the Complaint. The suit alleges patent infringement by Dot Hill of United States Patent Nos. 5,941,972 and 6,425,035, relating to storage routers and methods for providing virtual local storage.

4 of 9 DOCUMENTS

Copyright 2003 Business Wire, Inc.
Business Wire

August 21, 2003, Thursday

DISTRIBUTION: Business Editors/High-Tech Writers

LENGTH: 873 words

HEADLINE: XIOtech Licenses Crossroads Technology for Storage Networking Solutions

DATELINE: AUSTIN, Texas, Aug. 21, 2003

BODY:

...XIOtech has become the most recent licensee of Crossroads' patented access controls technology for utilization in XIOtech's Magnitude product family.

Crossroads is the owner of several patents, including U.S. Patent No. 5,941,972 and U.S. Patent No. 6,423,035, covering the ability to control access from hosts to storage devices using a variety of protocols. The Crossroads technology further enables XIOtech's Magnitude product family to protect data ...

5 of 9 DOCUMENTS

Copyright 2003 Canada NewsWire Ltd.
Canada NewsWire

April 17, 2003, Thursday

SECTION: FINANCIAL NEWS

DISTRIBUTION: Attention Business Editors

LENGTH: 2765 words

HEADLINE: Nexia Reports Second Quarter 2003 Results and Provides Programs Update

DATELINE: MONTREAL, April 17

BODY:

...1,066,659				
Administrative	489,595	512,565	888,815	885,812
Amortization	44,140	39,556	87,538	76,516
Interest on long-term debt	14,357	20,931	30,300	41,861
Total expenses	3,057,192	3,335,439	5,862,729	5,941,972
Net Loss	2,899,242	3,119,738	5,548,571	5,364,516
Deficit, beginning of period	31,916,618	20,292,150	29,267,289	18,047,372
Deficit, end of period	34,815,860	23,411,888	34,815,860	23,411,888
Basic and diluted loss per share	...			

6 of 9 DOCUMENTS

Copyright 2001 Business Wire, Inc.
Business Wire

October 17, 2001, Wednesday

DISTRIBUTION: Business Editors & High-Tech Writers

LENGTH: 769 words

HEADLINE: Chaparral Network Storage Ordered to Stop Shipping Products That Infringe On Crossroads Patent

DATELINE: AUSTIN, Texas, Oct. 17, 2001

BODY:

...Oct. 11, 2001, a judge has issued an injunction against Chaparral Network Storage Inc.'s RAID and router products that use access controls or LUN zoning because they willfully infringe the Crossroads 5,941,972 ("972") patent, as found earlier by a jury on Sept. 12, 2001.

Those infringing products are Fibre Channel-to-Ultra2 SCSI storage router models FS 1220 and FS 2620; the G- ...

7 of 9 DOCUMENTS

Copyright 2001 Business Wire, Inc.
Business Wire

September 17, 2001, Monday

DISTRIBUTION: Business Editors & Technology Writers

LENGTH: 761 words

HEADLINE: Crossroads Systems Wins Patent Infringement Lawsuit Against Chaparral Network Storage

DATELINE: AUSTIN, Texas, Sept. 17, 2001

BODY:

...global provider of connectivity for storage networking solutions, announced that a jury found Chaparral Network Storage, Inc.'s RAID and router products using LUN zoning willfully infringe the Crossroads 5,941,972 ("972") patent.

The jury has awarded damages with a royalty amount of 5% for Chaparral's router product line and 3% for their RAID product line. Crossroads will be pursuing an injunction based ...

8 of 9 DOCUMENTS

Copyright 2001 Omega Communications, Inc.
Intellectual Property Today

September, 2001

SECTION: REC EXPRESS TM; Recently Decided Patent Cases; Pg. 35

LENGTH: 740 words

BODY:

...990915

CATALINA LIGHTING

vs.

LAMPS PLUS, INC. & PACIFIC COAST LIGHTING

5,221,141-362/250; 353,904-D26/63

00-248 -- Filed:000414

CROSSROADS SYSTEMS

vs.

PATHLIGHT TECHNOLOGY INC.

5,941,972-710/129

97-2601 -- Filed:970714

DCNL INC. & SABRINA S. DENEBEIM

vs.

CONAIR CORP.

365,685-D4/128; 366,152-D4/128; 5,515,874-132/226

01-4291 -- ...

9 of 9 DOCUMENTS

Copyright 1999 The Austin American-Statesman
Austin American-Statesman (Texas)

August 30, 1999, Monday

SECTION: Business; Pg. D7

LENGTH: 517 words

HEADLINE: AUSTIN PATENTS

BODY:

...model; Gary Randall Horn, Mohan Sharma, Leo Yue Tak Yeung.

* No. 5,939,869; low-power interconnection using magnetoresistive elements; Uttam Shamalindu Ghoshal.

Crossroads Systems Inc.

* No. 5,941,972; storage router and method for providing virtual local storage; Geoffrey B. Hoese.

Dell USA

* No. 5,943,029; method and apparatus to provide non-DDC monitor characteristics to system software; Steven ...

?us5941972/pn

** SS 1: Results 1

Search statement 2

?prt full nonstop legalall

1/1 PLUSPAT - (C) QUESTEL-ORBIT- image
PN - US5941972 A 19990824 [US5941972]
TI - (A) Storage router and method for providing virtual local storage
PA - (A) CROSSROADS SYS INC (US)
PAO - Crossroads Systems, Inc., Austin TX [US]
IN - (A) HOESE GEOFFREY B (US); RUSSELL JEFFRY T (US)
AP - US179997 19971231 [1997US-0001799]
PR - US179997 19971231 [1997US-0001799]
IC - (A) G06F-013/00
EC - G06F-013/40D2
PCL - ORIGINAL (O) : 710315000; CROSS-REFERENCE (X) : 710002000
DT - Corresponding document
CT - US5748924; US5768623; US5809328; US5812754; US5835496; US5848251
STG - (A) United States patent
AB - A storage router (56) and storage network (50) provide virtual local storage on remote SCSI storage devices (60, 62, 64) to Fiber Channel devices. A plurality of Fiber Channel devices, such as workstations (58), are connected to a Fiber Channel transport medium (52), and a plurality of SCSI storage devices (60, 62, 64) are connected to a SCSI bus transport medium (54). The storage router (56) interfaces between the Fiber Channel transport medium (52) and the SCSI bus transport medium (54). The storage router (56) maps between the workstations (58) and the SCSI storage devices (60, 62, 64) and implements access controls for storage space on the SCSI storage devices (60, 62, 64). The storage router (56) then allows access from the workstations (58) to the SCSI storage devices (60, 62, 64) using native low level, block protocol in accordance with the mapping and the access controls.

1/1 LGST - (C) EPO
PN - US5941972 A 19990824 [US5941972]
AP - US179997 19971231 [1997US-0001799]
ACT - 20001116 US/AS-A
ASSIGNMENT
OWNER: SILICON VALLEY BANK LOAN DOCUMENTATION HG150 3003; EFFECTIVE DATE: 20000630
SECURITY AGREEMENT;ASSIGNOR:CROSSWORLDS SOFTWARE, INC.;REEL/FRAME:011284/0218
- 20020403 US/AS-A
ASSIGNMENT
OWNER: CROSSWORLDS SOFTWARE 577 AIRPORT BOULEVARD, SUITE; EFFECTIVE DATE: 20020320
RELEASE;ASSIGNOR:SILICON VALLEY BANK;REEL/FRAME:012785/0083
- 20040831 US/RR-A [+]
REQUEST FOR REEXAMINATION FILED
EFFECTIVE DATE: 20040719
UP - 2004-44

1/1 CRXX - (C) CLAIMS/RRX
PN - 5,941,972 A 19990824 [US5941972]
PA - Crossroads Systems Inc
ACT - 20001116 REASSIGNED
SECURITY AGREEMENT

Assignor: CROSSWORLDS SOFTWARE, INC. DATE SIGNED: 06/30/2000

Assignee: SILICON VALLEY BANK LOAN DOCUMENTATION HG150 3003 TASMAN DR
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Reel 011284/Frame 0218

Contact: SILICON VALLEY BANK JACQUELYN LE LOAN DOCUMENTATION HG150
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- 20020403 REASSIGNED
RELEASE

Assignor: SILICON VALLEY BANK DATE SIGNED: 03/20/2002

Assignee: CROSSWORLDS SOFTWARE 577 AIRPORT BOULEVARD, SUITE 300
BURLINGAME CALIFORNIA 94010

Reel 012785/Frame 0083

Contact: SILICON VALLEY BANK MICHELLE GIANNINI LOAN DOCUMENTATION
HA155 3003 TASMAN DR. SANTA CLARA, CALIFORNIA 95054

- 20040719 REEXAMINATION REQUESTED
ISSUE DATE OF O.G.: 20040831
REEXAMINATION REQUEST NUMBER: 90/007123
Natu J. Patel, Wang & Patel, Newport Beach, CA

1/2 LITA - (C) Thomson Derwent

AN - P2001-26-10
XR - P2000-19-12
FS - PATENT (P)
PN - US5941972 19990824 (Utility)
PF - Crossroads Systems Incorporated
DF - Pathlight Technology Incorporated
CT - TX, Western Dist.
DN - A-00-CA-248-JN
FD - 2000-04-14
AD - 2001-06-13
ACT - Consent judgment entered.

2/2 LITA - (C) Thomson Derwent

AN - P2000-19-12
FS - PATENT (P)
PN - US5941972 19990824 (Utility)
PF - Crossroads Systems Incorporated
DF - Pathlight Technology Incorporated
CT - TX, Western Dist.
DN - A-00-CA-248-JN
FD - 2000-04-14
ACT - A complaint was filed.

US District Court Civil Docket**U.S. District - Texas Western
(Austin)****1:03cv754****Crossroads Systems (v. Dot Hill Systems Cor****This case was retrieved from the court on Monday, September 19, 2005**

Date Filed: 10/17/2003	Class Code: PATTRD
Assigned To: Honorable Sam Sparks	Closed: no
Referred To:	Statute: 28:1338
Nature of suit: Patent (830)	Jury Demand: Both
Cause: Patent Infringement	Demand Amount: \$0
Lead Docket: None	NOS Description: Patent
Other Docket: None	
Jurisdiction: Federal Question	

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Date	#	Proceeding Text
10/17/2003	--	Case assigned to Honorable Sam Sparks (sh) [Entry date 10/20/03]
10/17/2003	1	Complaint filed. Filing Fee: \$ 150.00 Receipt # 357883 (Pages: 5) (sh) [Entry date 10/20/03]
10/17/2003	--	Court file forwarded to Judge Sparks (gr) [Entry date 10/21/03]
10/17/2003	--	Notified Commissioner of Patents and Trademarks of filing complaint for patent infringement (gr) [Entry date 10/21/03]
10/17/2003	--	AO 120 forwarded to the Commissioner of Patents and Trademarks. (mc2) [Entry date 03/23/04]
10/23/2003	--	Summons issued for Dot Hill Systems Cor (gr) [Entry date 10/23/03]
10/23/2003	--	Summons issued for Dot Hill Systems Cor (gr) [Entry date 10/24/03]
11/03/2003	2	Return of service executed as to Dot Hill Systems Cor on 10/27/03 (td) [Entry date 11/04/03]
12/01/2003	3	Motion by Dot Hill Systems Cor for atty. Daniel S. Mount to appear pro hac vice (gr) [Entry date 12/02/03]
12/01/2003	4	Motion by Dot Hill Systems Cor for atty, Lara J. Hodgson to appear pro hac vice (gr) [Entry date 12/02/03]
12/01/2003	5	Motion by Dot Hill Systems Cor for atty, Alfredo A. Bismonte to appear pro hac vice (gr) [Entry date 12/02/03]
12/01/2003	6	Motion by Crossroads Systems (, Dot Hill Systems Cor to extend time to answer or otherwise respond, including motions under Rule 12 of the Fed. R (gr) [Entry date 12/02/03]
12/03/2003	7	Order granting motion for atty. Daniel S. Mount to appear pro hac vice [3-1] signed by Honorable Sam Sparks (gr) [Entry date 12/03/03]
12/03/2003	8	Order granting motion for atty, Lara J. Hodgson to appear pro hac vice [4-1] signed by Honorable Sam Sparks (gr) [Entry date 12/03/03]
12/03/2003	9	Order granting motion for atty, Alfredo A. Bismonte to appear pro hac vice [5-1] signed by Honorable Sam Sparks (gr) [Entry date 12/03/03]
12/04/2003	10	Order granting motion to extend time to answer or otherwise respond, including motions under Rule 12 of the Fed. R; until 12/17/03 [6-1] signed by Honorable Sam Sparks (gr) [Entry date 12/04/03]
12/15/2003	11	Motion by Crossroads Systems (for atty. John E. Giust to appear pro hac vice (gr) [Entry date 12/16/03]
12/15/2003	12	Motion by Crossroads Systems (for atty. Matthew C. Bernstein to appear pro hac vice (gr) [Entry date 12/16/03]
12/15/2003	13	Motion by Crossroads Systems (for atty John Allcock to appear pro hac vice (gr) [Entry date

		12/16/03]
12/16/2003	17	Answer to complaint and counterclaim by Dot Hill Systems Cor against Crossroads Systems (gr) [Entry date 12/17/03]
12/17/2003	14	Order granting motion for atty John Allcock to appear pro hac vice [13-1] signed by Honorable Sam Sparks (gr) [Entry date 12/17/03]
12/17/2003	15	Order granting motion for atty. John E. Giust to appear pro hac vice [11-1] signed by Honorable Sam Sparks (gr) [Entry date 12/17/03]
12/17/2003	16	Order granting motion for atty. Matthew C. Bernstein to appear pro hac vice [12-1] signed by Honorable Sam Sparks (gr) [Entry date 12/17/03]
01/05/2004	18	Reply by Crossroads Systems to Dot Hill Systems Corp counterclaim [17-2] (gr) [Entry date 01/06/04]
01/09/2004	19	Motion by Dot Hill Systems Cor for atty, John F. Sweeney to appear pro hac vice (gr) [Entry date 01/12/04]
01/09/2004	20	Motion by Dot Hill Systems Cor for atty, Kurt E. Richter to appear pro hac vice (gr) [Entry date 01/12/04]
01/09/2004	21	Motion by Dot Hill Systems Cor for atty. William S. Feiler to appear pro hac vice (gr) [Entry date 01/12/04]
01/13/2004	22	Order granting motion for atty. William S. Feiler to appear pro hac vice [21-1] signed by Honorable Sam Sparks (gr) [Entry date 01/13/04]
01/13/2004	23	Order granting motion for atty, Kurt E. Richter to appear pro hac vice [20-1] signed by Honorable Sam Sparks (gr) [Entry date 01/13/04]
01/13/2004	24	Order granting motion for atty, John F. Sweeney to appear pro hac vice [19-1] signed by Honorable Sam Sparks (gr) [Entry date 01/13/04]
01/29/2004	25	Motion by Dot Hill Systems Cor for atty Natu J. Patel to appear pro hac vice (gr) [Entry date 01/29/04]
01/29/2004	26	Motion by Dot Hill Systems Cor for atty. Jason B. Witten to appear pro hac vice (gr) [Entry date 01/29/04]
01/29/2004	27	Order granting motion for atty Natu J. Patel to appear pro hac vice [25-1] signed by Honorable Sam Sparks (gr) [Entry date 01/30/04]
01/29/2004	28	Order granting motion for atty. Jason B. Witten to appear pro hac vice [26-1] signed by Honorable Sam Sparks (gr) [Entry date 01/30/04]
01/30/2004	29	Amended Certificate of service to James B. Witten's Application to Appear Pro Hac Vice for Dot Hill Systems Cor (gr) [Entry date 02/02/04]
01/30/2004	30	Amended Certificate of service to Patel's Application to Appear Pro Hac Vice for Dot Hill Systems Cor (gr) [Entry date 02/02/04]
02/02/2004	--	Pro hac vice fee paid by John F. Sweeney with Amount: \$ 25.00 Receipt # 359220 (gr) [Entry date 02/09/04]
02/02/2004	--	Pro hac vice fee paid by William S. Feiler with Amount: \$ 25.00 Receipt # 359221 (gr) [Entry date 02/09/04]
02/02/2004	--	Pro hac vice fee paid by Kurt E. Richter with Amount: \$ 25.00 Receipt # 359222 (gr) [Entry date 02/09/04]
02/03/2004	--	Pro hac vice fee paid by Natu J. Patel with Amount: \$ 25.00 Receipt # 359298 (gr) [Entry date 02/09/04]
02/03/2004	--	Pro hac vice fee paid by Jason Brian Witten with Amount: \$ 25.00 Receipt # 359299 (gr) [Entry date 02/09/04]
02/09/2004	31	Order set scheduling conf. hearing for 2:00 2/18/04 in Courtroom 2, 1st floor signed by Honorable Sam Sparks (gr) [Entry date 02/09/04]
02/17/2004	32	Notice of attorney appearance for Dot Hill Systems Cor - notice of substitution of attorneys (Natu J. Patel, Jason B. Witten and local counsel, Travis Barton, in place of Daniel S. Mount (mc2) [Entry date 02/17/04]
02/17/2004	33	Joint Pretrial disclosures filed by Crossroads Systems (, Dot Hill Systems Cor (mc2) [Entry date 02/19/04]
02/18/2004	34	Minutes of proceedings for hearing on all pending matters conducted on 2/18/04 by Judge Sparks. Court Reporter: Lily Reznik. (mc2) [Entry date 02/19/04]
02/18/2004	--	Miscellaneous hearing on all pending matters held; parties agree to Karl Bayer as special master. (mc2) [Entry date 02/19/04] [Edit date 02/19/04]
02/18/2004	--	Oral order by Honorable Sam Sparks , setting miscellaneous hearing - Markman hearing before special master, Karl Bayer, - for 7/2/04 (mc2) [Entry date 02/19/04]
02/20/2004	35	Advisory to the court filed by Crossroads Systems (, Dot Hill Systems Cor - notice of nonopposition to

appointment of Karl Bayer as special master. (mc2) [Entry date 02/23/04]
 02/23/2004 -- Case referred to Karl Bayer as special master (mc2) [Entry date 02/24/04]
 02/23/2004 36 Order referring case to Karl Bayer, Special Master..., signed by Honorable Sam Sparks (mc2) [Entry date 02/24/04]
 02/23/2004 37 Order setting miscellaneous hearing - Markman Hearing - for 9:00 7/2/04..., signed by Honorable Sam Sparks (mc2) [Entry date 02/24/04]
 02/24/2004 38 Motion by Dot Hill Systems Cor for Franklin E. Gibbs to appear pro hac vice (mc2) [Entry date 02/26/04]
 02/24/2004 39 Amended Certificate of service by Dot Hill Systems Cor re application to appear pro hac vice of Franklin Gibbs. (mc2) [Entry date 02/26/04]
 02/25/2004 40 Order granting motion for Franklin E. Gibbs to appear pro hac vice [38-1] signed by Honorable Sam Sparks (mc2) [Entry date 02/26/04]
 03/02/2004 41 Joint motion by Crossroads Systems (, Dot Hill Systems Cor for protective order (mc2) [Entry date 03/05/04]
 03/08/2004 42 Order granting joint motion for protective order [41-1]. Agreed Protective Order filed & signed by Honorable Sam Sparks (td) [Entry date 03/09/04]
 03/08/2004 43 Order regarding sealed documents signed by Honorable Sam Sparks (td) [Entry date 03/09/04]
 03/08/2004 44 Motion by Crossroads Systems for leave to file first amended cmp (cmp attached to motion) (td) [Entry date 03/09/04]
 03/22/2004 45 Motion by Dot Hill Systems Cor to substitute attorney - Natu Patel and Jason Witten in place of the law firm of Mount & Stoelker (mc2) [Entry date 03/23/04]
 03/22/2004 46 Response by Dot Hill Systems Cor in opposition to motion for leave to file first amended cmp [44-1] (mc2) [Entry date 03/23/04]
 03/24/2004 47 Notice of filing by Crossroads Systems - concise statement of alleged infringement. (mc2) [Entry date 03/25/04]
 03/24/2004 48 Order granting motion for leave to file first amended cmp [44-1] signed by Honorable Sam Sparks (mc2) [Entry date 03/25/04]
 03/24/2004 49 Amended complaint by Crossroads Systems, amending complaint [1-1] (Pages: 7) (mc2) [Entry date 03/25/04]
 04/05/2004 50 Order granting motion to substitute attorney - Natu Patel and Jason Witten in place of the law firm of Mount & Stoelker [45-1] Natu J. Patel, Jason Brian Witten added signed by Honorable Sam Sparks (mm1) [Entry date 04/05/04]
 04/07/2004 51 Supplemental Concise Statements of Alleged Infringement filed by Crossroads Systems (Re: file notice [47-1] (rg1) [Entry date 04/08/04]
 04/07/2004 52 Stipulation filed by Crossroads Systems (, Dot Hill Systems Cor for leave for Dot Hill Systems Corp. to file a third party complaint against Falconstor. (mc2) [Entry date 04/08/04]
 04/08/2004 53 Notice of filing Concise Statement of why the Accused Products Do Not Infringe by Dot Hill Systems Cor (rg) [Entry date 04/12/04]
 04/12/2004 54 Order re opposition response [46-1], that defendants may object in motion for partial summary judgment..., signed by Honorable Sam Sparks (mc2) [Entry date 04/13/04]
 04/12/2004 -- Pro hac vice fee paid by Franklin E. Gibbs with Amount: \$ 25.00, Receipt # 359723. (mc2) [Entry date 04/13/04]
 04/13/2004 55 Answer by Dot Hill Systems Cor to amended complaint; jury demand (rg) [Entry date 04/14/04]
 04/13/2004 55 Amended counterclaim by Dot Hill Systems Cor: counterclaim [17-2] (rg) [Entry date 04/14/04]
 04/20/2004 56 Supplement filed by Dot Hill Systems Cor Re: file notice [53-1] (mc2) [Entry date 04/21/04]
 04/23/2004 57 First Amended Answer by Dot Hill Systems Cor to amended complaint; jury demand and counterclaim against plaintiff. (mc2) [Entry date 04/23/04] [Edit date 04/23/04]
 04/29/2004 58 Motion by Dot Hill Systems Cor for Larry E. Severin to appear pro hac vice (sm) [Entry date 04/29/04]
 04/30/2004 59 Amended answer by Crossroads Systems (to counterclaim [17-2] (td) [Entry date 04/30/04]
 04/30/2004 -- Letter/Correspondence by attorney for FalconStor, George B. Butts, regarding: stipulation for leave for Dot Hill Systems Corp. to file a third party complaint against FalconStor. Copy to Court 4/30/04. (mc2) [Entry date 05/03/04]
 05/03/2004 60 Order granting motion for Larry E. Severin to appear pro hac vice [58-1] signed by Honorable Sam Sparks (mc2) [Entry date 05/03/04]
 05/03/2004 61 Order granting stipulation [52-1], that Dot Hill Systems Corp. is granted leave to file a third party complaint against FalconStor, signed by Honorable Sam Sparks (mc2) [Entry date 05/03/04]

05/03/2004	62	Transcript filed for date of 2/18/04 (Proceedings Transcribed: scheduling conference) (Court Reporter: Lily Reznik.) (mc2) [Entry date 05/03/04]
05/05/2004	63	Minutes of proceedings for telephone conference conducted on 5/5/04 by Judge Sparks. Court Reporter: Lily Reznik. (mc2) [Entry date 05/06/04]
05/05/2004	--	Tele-conference held in chambers; Court resets Markman hearing to 8/30, 31, 2004, referred to Special Master for conference call and appropriate rescheduling of tutorial and briefing. (mc2) [Entry date 05/06/04]
05/05/2004	--	Miscellaneous hearing - Markman hearing - resetting on 8/30/04 (order on scheduling to follow by Special Master). (mc2) [Entry date 05/06/04]
05/06/2004	64	Order resetting Markmak hearing for 9:00 8/30/04, ..., signed by Honorable Sam Sparks (mc2) [Entry date 05/06/04]
05/06/2004	65	Third-party complaint by Dot Hill Systems Cor against FalconStor Software (mc2) [Entry date 05/07/04]
05/06/2004	66	Notice of filing by Dot Hill Systems Cor - corporate disclosure. (mc2) [Entry date 05/07/04]
05/06/2004	--	Summons issued for FalconStor Software (mc2) [Entry date 05/07/04]
05/07/2004	67	Return of service executed as to FalconStor Software on 5/6/04 (mc2) [Entry date 05/10/04]
05/25/2004	68	Answer by FalconStor Software to third-party complaint [65-1] (mc2) [Entry date 05/26/04]
05/25/2004	68	Crossclaim by FalconStor Software against Crossroads Systems (mc2) [Entry date 05/26/04]
05/26/2004	--	Sent letter to attorneys for Falconstor, Elliott and Stiefel, re bar status. (mc2) [Entry date 05/26/04]
05/26/2004	69	Motion by Crossroads Systems to halt Dod Hill's spoliation of evidence, and to compel production of Dot Hill's emails (with attached declaration of Tracy L. McCreight submitted and maintained under seal). (mc2) [Entry date 05/26/04] [Edit date 05/26/04]
05/26/2004	70	Motion by Crossroads Systems (to seal declaration of Tracy L. McCreight in support of plaintiff's motion to halt Dot Hill's spoliation of evidence and to compel production of Dot Hill's emails (mc2) [Entry date 05/26/04]
05/27/2004	71	Motion by FalconStor Software for Aaron Stiefel to appear pro hac vice (mc2) [Entry date 05/27/04]
05/27/2004	72	Motion by FalconStor Software for Mark J. Schildkraut to appear pro hac vice (mc2) [Entry date 05/27/04]
05/27/2004	73	Motion by FalconStor Software for Stephen J. Elliott to appear pro hac vice (mc2) [Entry date 05/27/04]
05/28/2004	74	Order granting motion for Aaron Stiefel to appear pro hac vice [71-1] signed by Honorable Sam Sparks (mc2) [Entry date 06/01/04]
05/28/2004	75	Order granting motion for Mark J. Schildkraut to appear pro hac vice [72-1] signed by Honorable Sam Sparks (mc2) [Entry date 06/01/04]
05/28/2004	76	Order granting motion for Stephen J. Elliott to appear pro hac vice [73-1] signed by Honorable Sam Sparks (mc2) [Entry date 06/01/04]
06/04/2004	77	Advisory to the court filed by Crossroads Systems (- notice of withdrawal of its motion to halt Dot Hill's spoliation of evidence and to compel production of Dod Hill's emails (mc2) [Entry date 06/07/04]
06/04/2004	--	Withdrawal motion to halt Dod Hill's spoliation of evidence [69-1], motion to compel production of Dot Hill's emails [69-2] (mc2) [Entry date 06/07/04]
06/07/2004	--	Pro hac vice fee paid by Aaron Stiefel, Stephen J. Elliott, Mark J. Schildkraut with Amount: \$ 75.00, Receipt # 360516. (mc2) [Entry date 06/09/04]
06/08/2004	--	Pro hac vice fee paid by Larry E Severin with Amount: \$ 25.00, Receipt # 360528. (mc2) [Entry date 06/09/04]
06/10/2004	78	Motion by Crossroads Systems (to extend time to answer or otherwise respond (to FalconStor's Rule 14 claims) (mc2) [Entry date 06/10/04]
06/10/2004	79	Order granting motion to extend time to answer or otherwise respond (to FalconStor's Rule 14 claims) [78-1] until 6/28/04, signed by Honorable Sam Sparks (mc2) [Entry date 06/14/04]
06/16/2004	80	Order granting motion to seal declaration of Tracy L. McCreight in support of plaintiff's motion to halt Dot Hill's spoliation of evidence and to compel production of Dot Hill's emails [70-1] signed by Honorable Sam Sparks (mc2) [Entry date 06/16/04]
06/16/2004	81	Order mootng motion to compel production of Dot Hill's emails [69-2] signed by Honorable Sam Sparks (mc2) [Entry date 06/16/04]
06/18/2004	82	Order granting motion to extend time to answer or otherwise respond (to FalconStor's Rule 14 claims) [78-1] until 6/28/04, signed by Honorable Sam Sparks (mc2) [Entry date 06/21/04]
06/28/2004	87	Answer by Crossroads Systems (to crossclaim [68-1] (mc2) [Entry date 06/29/04]

06/28/2004	87	Counterclaim by Crossroads Systems against FalconStor Software (mc2) [Entry date 06/29/04]
06/29/2004	83	Motion by Dot Hill Systems Cor for leave to file - to exceed page limit in motion for summary judgment... (mc2) [Entry date 06/29/04]
06/29/2004	84	Unopposed Motion by Dot Hill Systems Cor to seal exhibits 14 and 17 accompanying Dot Hill's motion for summary judgment... (mc2) [Entry date 06/29/04]
06/29/2004	85	Motion by Dot Hill Systems Cor for summary judgment that U.S. Patent No. 6,425,035 and U.S. Patent No. 5,941,972 are invalid pursuant to 35 USC Sec. 102 and/or 103 in view of prior development of Digital Equipment Corp HSZ70 controller (with attached exhibits 14 and 17 submitted and maintained under seal) (mc2) [Entry date 06/29/04]
06/29/2004	86	Motion by Dot Hill Systems Cor request for judicial notice in support of its motion for summary judgment... (mc2) [Entry date 06/29/04]
06/30/2004	88	Order granting motion for leave to file - to exceed page limit in motion for summary judgment... [83-1] signed by Honorable Sam Sparks (mc2) [Entry date 06/30/04]
06/30/2004	89	Motion by Crossroads Systems for Joseph P. Reid to appear pro hac vice (mc2) [Entry date 07/01/04]
06/30/2004	90	Motion by Dot Hill Systems Cor for leave to file - to supplement documents filed in support of its motion for summary judgment that U.S. Patent No. 6,425,035 and U.S. Patent No. 5,941,972 are invalid (with attached Exhibit A to Exhibit 4 of Dot Hill's summary judgment motion submitted and maintained under seal) (mc2) [Entry date 07/01/04] [Edit date 07/01/04]
06/30/2004	91	Unopposed Motion by Dot Hill Systems Cor to seal Exhibit A to Exhibit 4 accompanying Dot Hill's motion for summary judgment that U.S. Patent No. 6,425,035 and U.S. Patent No. 5,941,972 are invalid... (mc2) [Entry date 07/01/04]
07/01/2004	92	Order granting motion to seal exhibits 14 and 17 accompanying Dot Hill's motion for summary judgment... [84-1] signed by Honorable Sam Sparks (mc2) [Entry date 07/01/04]
07/02/2004	93	Motion by Crossroads Systems to extend time to respond to DOT Hill Systems Corp's msj (td) [Entry date 07/06/04]
07/06/2004	94	Order granting motion for Joseph P. Reid to appear pro hac vice [89-1] signed by Honorable Sam Sparks (mc2) [Entry date 07/07/04]
07/07/2004	95	Order granting motion to seal Exhibit A to Exhibit 4 accompanying Dot Hill's motion for summary judgment that U.S. Patent No. 6,425,035 and U.S. Patent No. 5,941,972 are invalid... [91-1] signed by Honorable Sam Sparks (mc2) [Entry date 07/07/04]
07/09/2004	96	Order granting motion to extend time to respond to DOT Hill Systems Corp's msj [93-1] until 11 days after last of depositions of Ellen Lary, Richard Lary, and Diana Hsuesh-Ying Shen is completed, signed by Honorable Sam Sparks (mc2) [Entry date 07/09/04]
07/09/2004	--	Pro hac vice fee paid by Joseph P. Reid with Amount: \$ 25.00, Receipt # 360959. (mc2) [Entry date 07/12/04]
07/16/2004	97	Notice of filing of Joint Submission of Preliminary Claim Chart by Crossroads Systems, Dot Hill Systems Cor, FalconStor Software (dm) [Entry date 07/20/04]
07/19/2004	98	Answer by FalconStor Software to counterclaim [87-1] (mc2) [Entry date 07/21/04]
07/19/2004	98	Counterclaim by FalconStor Software against Crossroads Systems (mc2) [Entry date 07/21/04]
07/21/2004	99	Order that Dot Hill Systems retrieve from chambers posthaste boxes of reexamination petition delivered on 7/21/04, signed by Honorable Sam Sparks (mc2) [Entry date 07/21/04]
07/28/2004	100	Answer by Crossroads Systems to counterclaim [98-1] (mc2) [Entry date 07/29/04]
07/28/2004	101	Opening claim construction Brief by Dot Hill Systems Cor, FalconStor Software (mc2) [Entry date 07/29/04]
07/28/2004	102	Joint motion by Crossroads Systems, Dot Hill Systems Cor, FalconStor Software for leave to file Markman briefs in excess of page limit (mc2) [Entry date 07/29/04]
07/28/2004	103	Markman Brief by Crossroads Systems (mc2) [Entry date 07/29/04]
07/30/2004	104	Order granting joint motion for leave to file Markman briefs in excess of page limit [102-1] signed by Honorable Sam Sparks (mc2) [Entry date 08/02/04]
08/03/2004	105	Motion by Crossroads Systems to compel production of documents from Dot Hill (with attached declaration of Matthew Bernstein in support of motion filed under seal) (mc2) [Entry date 08/04/04]
08/03/2004	106	Unopposed Motion by Crossroads Systems to seal declaration of Matthew C. Bernstein in support of its motion to compel production of documents (mc2) [Entry date 08/04/04]
08/03/2004	107	Unopposed Motion by Crossroads Systems for leave to file motion to compel in excess of page limit (mc2) [Entry date 08/04/04]
08/04/2004	108	Advisory to the court filed by Dot Hill Systems Cor - notice of change of firm name; new name: Wang, Hartmann & Gibbs, P.C. (mc2) [Entry date 08/05/04]

08/04/2004	109	Order granting motion for leave to file motion to compel in excess of page limit [107-1] signed by Honorable Sam (mc2) [Entry date 08/05/04]
08/10/2004	110	Motion by Crossroads Systems (for (Barry K. Shelton) to appear pro hac vice (dm) [Entry date 08/12/04]
08/11/2004	111	Order granting motion for (Barry K. Shelton) to appear pro hac vice [110-1] signed by Honorable Sam Sparks (dm) [Entry date 08/12/04]
08/11/2004	112	Responsive Claim Construction Brief of Dot Hill Systems Cor, FalconStor Software (dm) [Entry date 08/12/04]
08/11/2004	113	Exhibits in support of the responsive claim construction brief of Dot Hill Systems Cor, FalconStor Software (dm) [Entry date 08/12/04]
08/11/2004	114	Joint motion by Crossroads Systems (, Dot Hill Systems Cor for leave to file responsive Markman brief in excess of page limit (dm) [Entry date 08/13/04]
08/11/2004	115	Response by Crossroads Systems (to Dot Hill Systems Corporation's Claim Construction brief [112-1] (dm) [Entry date 08/13/04]
08/16/2004	116	Opposition of Dot Hill Systems Corporation to Crossroads' motion to compel production of documents (with attached declaration of Matthew Bernstein in support of motion filed under seal) [105-1] (dm) [Entry date 08/17/04]
08/16/2004	117	Order granting motion to seal declaration of Matthew C. Bernstein in support of its motion to compel production of documents [106-1] signed by Honorable Sam Sparks (dm) [Entry date 08/17/04]
08/17/2004	--	Pro hac vice fee paid by Barry K. Shelton with Amount: \$ 25.00 Receipt # 361508 (dm) [Entry date 08/25/04]
08/18/2004	118	Order granting joint motion for leave to file responsive Markman brief in excess of page limit [114-1] signed by Honorable Sam Sparks (dm) [Entry date 08/18/04]
08/23/2004	119	Order granting motion for leave to file - to supplement documents filed in support of its motion for summary judgment that U.S. Patent No. 6,425,035 and U.S. Patent No. 5,941,972 are invalid [90-1] signed by Honorable Sam Sparks (dm) [Entry date 08/24/04]
08/24/2004	120	Motion by Crossroads Systems (for leave to file second amended complaint (dm) [Entry date 08/25/04]
08/24/2004	--	Received Stipulation and Order of Dismissal of Claims between Crossroads Systems (Texas), Inc. and Falconstor Software, inc. (dm) [Entry date 08/25/04]
08/27/2004	121	Order Motion hearing on motion to compel production of documents from Dot Hill (with attached declaration of Matthew Bernstein in support of motion filed under seal) [105-1] for 9:00 9/9/04 signed by Honorable Sam Sparks (dm) [Entry date 08/30/04]
08/27/2004	123	Order granting motion for leave to file second amended complaint [120-1], therefore ordered that plaintiff Crossroads Systems second amended complaint for patent infringement shall be deemed filed, served and effective as of the date below... signed by Honorable Sam Sparks (dm) [Entry date 08/30/04]
08/27/2004	124	Unopposed Motion by Crossroads Systems (for leave to file reply brief in support of motion to compel in excess of page limit (dm) [Entry date 08/30/04]
08/27/2004	125	Crossroads Systems Inc's Reply brief in support of its Motion to Compel the Production of Documents . (dm) [Entry date 08/30/04]
08/27/2004	126	Motion by Crossroads Systems (to seal declaration of Tracy L. McCreight in support of Crossroads Systems Inc.'s reply brief in support of its motion to compel the production of documents (dm) [Entry date 08/30/04]
08/27/2004	127	Sealed document, declaration of Tracy L. McCreight in support of Crossroads systems Inc.'s reply brief in support of its motion to compel the production of documents, placed in vault (dm) [Entry date 08/30/04]
08/27/2004	122	Stipulation an Order of Dismissal of Claims between Crossroads Systems Inc. and Falconstor Software, Inc. signed by Honorable Sam Sparks (dm) [Entry date 08/30/04]
08/30/2004	128	Minutes of proceedings for Markman Hearing conducted on August 30, 2004 by Judge Sparks. Court Reporter: Lily Reznik (dm) [Entry date 09/01/04] [Edit date 09/02/04]
08/30/2004	--	Miscellaneous hearing (Markman Hearing) held, parties announce ready, statements and arguments of counsel heard, testimony heard on behalf on plaintiff/defendant, witnesses sworn, evidence submitted on behalf of plaintiff/defendant, court exhibit filed, parties rest, closing argument heard, recommendations, special master will review evidence and submit draft to parties, invite briefs and submit final recommendation prior to December, parties to provide Ms. Sims with prosecution history when it becomes available. (dm) [Entry date 09/01/04]
08/30/2004	129	Minutes of proceedings for miscellaneous hearing conducted on August 30, 2004 by Judge Bayer. Court Reporter: no transcript made (dm) [Entry date 09/01/04] [Edit date 09/02/04]

08/30/2004 -- Miscellaneous hearing held, tutorial held in courtroom in absence of record (dm) [Entry date 09/01/04]

08/30/2004 130 Combined Witness and Exhibit List by Crossroads Systems (, Dot Hill Systems Cor (dm) [Entry date 09/01/04] [Edit date 09/02/04]

08/30/2004 -- Exhibits by Dot Hill Systems Cor (dm) [Entry date 09/20/04]

08/30/2004 -- Exhibits by Crossroads Systems (, Dot Hill Systems Cor (dm) [Entry date 09/20/04]

08/31/2004 131 Stipulated definitions of claim terms filed by Crossroads Systems (, Dot Hill Systems Cor (dm) [Entry date 09/01/04] [Edit date 09/02/04]

09/03/2004 132 Motion by Dot Hill Systems Cor for (Richard Frankklin Cauley) to appear pro hac vice (dm) [Entry date 09/07/04]

09/03/2004 133 Notice of Stipulation regarding Dot Hill Systems Corp.'s Axis Storage Manager and RAIDarPS Products filed by Crossroads Systems (, Dot Hill Systems Cor (dm) [Entry date 09/07/04]

09/03/2004 -- Pro hac vice fee paid byRichard Franklin Cauley with Amount: \$ 25.00 receipt #361713 (mc1) [Entry date 09/13/04]

09/07/2004 134 Order granting motion to seal declaration of Tracy L. McCreight in support of Crossroads Systems Inc.'s reply brief in support of its motion to compel the production of documents [126-1] signed by Honorable Sam Sparks (mc2) [Entry date 09/07/04]

09/07/2004 135 Order granting motion for leave to file reply brief in support of motion to compel in excess of page limit [124-1] signed by Honorable Sam Sparks (mc2) [Entry date 09/07/04]

09/09/2004 136 Minutes of proceedings for Motion hearing conducted on September 9, 2004 by Judge Sparks. Court Reporter: Lily Reznik (dm) [Entry date 09/09/04]

09/09/2004 -- Motion hearing held on following motion: Crossroads Systems Motion to Compel #105, parties announce ready, pro hac motion granted for Richard F. Cauley, statements and arguments of counsel heard, motions granted in part, supplemental briefs due by 5:00pm on October 1, responses due by 5:00pm on Oct. 15, written order forthcoming, court permits deposition of Ms. Greenburg (dm) [Entry date 09/10/04]

09/10/2004 137 Order granting motion for (Richard Frankklin Cauley) to appear pro hac vice [132-1] signed by Honorable Sam Sparks (dm) [Entry date 09/10/04]

09/10/2004 138 Transcript filed for dates of 8/30/04 (Proceedings Transcribed: Markman Hearing before Special Master Karl Bayer) (Court Reporter: L. Reznik) (mc1) [Entry date 09/13/04]

09/13/2004 139 Answer by Dot Hill Systems Cor to amended complaint; jury demand (mc1) [Entry date 09/14/04]

09/13/2004 140 Amended counterclaim by Dot Hill Systems Cor : counterclaim [17-2] (mc1) [Entry date 09/14/04]

09/14/2004 141 Transcript filed for date of 9/9/04 (Proceedings Transcribed: motion to compel hearing) (Court Reporter: Lily Reznik.) (mc2) [Entry date 09/14/04]

09/14/2004 142 Order granting in part, denying in part motion to compel production of documents from Dot Hill [105-1], and that the parties have until 5:00 p.m. on 10/1/04 to file any post-Markman hearing briefs, and they have until 5:00 p.m. on 10/15/04 to file any responses thereto, signed by Honorable Sam Sparks (mc2) [Entry date 09/14/04]

09/14/2004 143 Stipulation and Order regarding Dot Hill Systems Corporation's Axis Storage Manager and RAIDarPS Products, signed by Honorable Sam Sparks (mc2) [Entry date 09/14/04]

09/15/2004 -- Received Stipulation of Dismissal of Dot Hill System Corporation's Claims against Falconstor Software, inc. (dm) [Entry date 09/16/04]

09/17/2004 144 Stipulation of dismissal of Dot Hill System Corporation's claims against Falconstor Software, Inc. (dm) [Entry date 09/20/04]

09/17/2004 145 Motion and order by Crossroads Systems and Dot Hill Systems (regarding Crossroad's response deadline and Dot Hill Systems Cor reply deadline with respect to Dot Hill's pending motion for summary judgment (dm) [Entry date 09/20/04]

09/20/2004 146 Motion by Crossroads Systems (to compel the testimony of Diana Shen, Ellen Lary, and Richard Lary (dm) [Entry date 09/21/04]

09/20/2004 147 Motion by Crossroads Systems (to seal declaration of Barry K. Shelton in support of Crossroads Systems (Texas) Inc.'s motion to compel the testimony of Diana Shen, Ellen Lary, and Richard Lary (dm) [Entry date 09/21/04]

09/20/2004 148 Sealed document (Declaration of Barry K. Shelton in Support of Crossroads Systems (Texas), Inc.'s motion to compel the testimony of Diana Shen, Ellen Lary, and Richard Lary), placed in vault (dm) [Entry date 09/21/04]

09/23/2004 149 Order granting motion re: Crossroads' response deadline and Dot Hill's reply deadline with respect to Dot Hill's pending motion for summary judgment [145-1] signed by Honorable Sam Sparks (dm) [Entry date 09/23/04]

- 09/23/2004 150 Order granting motion to seal declaration of Barry K. Shelton in support of Crossroads Systems (Texas) Inc.'s motion to compel the testimony of Diana Shen, Ellen Lary, and Richard Lary [147-1] signed by Honorable Sam Sparks (dm) [Entry date 09/23/04]
- 09/27/2004 151 Motion by Dot Hill Systems Cor to exceed page limits for its motion for bifurcation of liability and damages/willfulness issues and brief in support thereof (dm) [Entry date 09/28/04]
- 09/27/2004 152 Motion by Dot Hill Systems Cor for bifurcation of liability and damages/willfulness issues, and brief in support thereof (dm) [Entry date 09/28/04]
- 09/27/2004 153 Response by Crossroads Systems (in opposition to motion for summary judgment that U.S. Patent No. 6,425,035 and U.S. Patent No. 5,941,972 are invalid pursuant to 35 USC Sec. 102 and/or 103 in view of prior development of Digital Equipment Corp HSZ70 controller (with attached exhibits 14 and 17 submitted and maintained under seal) [85-1] (dm) [Entry date 09/28/04]
- 09/27/2004 154 Motion by Crossroads Systems (for leave to file opposition to Dot Hill's motion for summary judgment that U.S. patent no. 6,425,035 and U.S. patent no. 5,941,972 are invalid pursuant to U.S. C. 102 and/or 103 in view of the prior development of the digital equipment corporation HSZ70 controller in excess of page limit (dm) [Entry date 09/28/04]
- 09/27/2004 155 Unopposed Motion by Crossroads Systems (to seal: Declaration of Barry K. Shelton in support of Crossroads Systems' opposition to Dot Hill's motion for summary judgment that U.S. patent no. 6,425,035 and U.S. patent no. 5,941,972 are invalid pursuant to U.S. C. 102 and/or 103 in view of the prior development of the digital equipment corporation HSZ70 controller (dm) [Entry date 09/28/04]
- 09/27/2004 156 Sealed document, Declaration of Barry K. Shelton in support of Crossroads Systems' opposition to Dot Hill's motion for summary judgment that U.S. patent no. 6,425,035 and U.S. patent no. 5,941,972 are invalid pursuant to U.S.C. 102 and/or 103 in view of the prior development of the digital equipment corporation HSZ70 controller, placed in vault (dm) [Entry date 09/28/04]
- 09/28/2004 157 Advisory to the court of certification of the Greenberg law firm, filed by Dot Hill Systems Cor (dm) [Entry date 09/29/04]
- 09/28/2004 158 Advisory to the court of certification of Morgan & Finnegan LLP, filed by Dot Hill Systems Cor (dm) [Entry date 09/29/04]
- 09/29/2004 159 Order granting motion to exceed page limits for its motion for bifurcation of liability and damages/willfulness issues and brief in support thereof [151-1] signed by Honorable Sam Sparks (dm) [Entry date 09/29/04]
- 09/29/2004 160 Motion by Dot Hill Systems Cor for (Natu J. Patel) to withdraw as attorney for defendant Dot Hill Systems Corporation (dm) [Entry date 10/01/04]
- 09/30/2004 161 Response by Dot Hill Systems Cor in opposition to motion to compel the testimony of Diana Shen, Ellen Lary, and Richard Lary [146-1] (dm) [Entry date 10/01/04]
- 09/30/2004 162 Motion by Dot Hill Systems Cor to file under seal: declaration of Jason B. Witten in support of Dot Hills' opposition to crossroads' motion to compel the testimony of Diana Shen, Ellen Lary and Richard Lary (dm) [Entry date 10/01/04]
- 09/30/2004 163 Motion by Dot Hill Systems Cor for leave to file opposition to motion to compel the testimony of Diana Shen, Ellen Lary, and Richard Lary in excess of page limit (dm) [Entry date 10/01/04]
- 09/30/2004 176 Sealed document, declaration of Jason B. Witten in support of Dot Hills' Opposition to Crossroads' motion to compel the testimony of Diana Shen, Ellen Lary and Richard Lary, placed in vault (dm) [Entry date 10/05/04]
- 10/01/2004 164 Response by Crossroads Systems (to amended counterclaim for declaratory judgment of noninfringement, invalidity and inequitable conduct [140-1] (dm) [Entry date 10/05/04]
- 10/01/2004 165 Motion by Dot Hill Systems Cor for leave to file Post Markman hearing claim construction brief of Dot Hill Systems Corporation in excess of page limit (dm) [Entry date 10/05/04]
- 10/01/2004 166 Motion by Dot Hill Systems Cor for leave to file under seal: declaration of Jason B. Witten in support of post markman hearing claim construction brief of Dot Hill Systems (dm) [Entry date 10/05/04]
- 10/01/2004 167 Sealed document, declaration of Jason B. Witten in support of post markman hearing claim construction brief of Dot Hill Systems corporation, placed in vault (dm) [Entry date 10/05/04]
- 10/01/2004 168 Post-Hearing Markman Brief by Crossroads Systems (dm) [Entry date 10/05/04]
- 10/01/2004 169 Declaration of Barry K. Shelton in support of Crossroads Systems' post-hearing Markman Brief (doc. #176) (dm) [Entry date 10/05/04]
- 10/01/2004 170 Unopposed Motion by Crossroads Systems (for leave to file Crossroads Systems Inc.'s corrected opposition to Dot Hill Systems Corp's motion for summary judgment for invalidity of U.S. patent nos. 6,423,035 and 5,941,972 (dm) [Entry date 10/05/04]
- 10/01/2004 171 Motion by Crossroads Systems (for leave to file corrected opposition to Dot Hill's motion for summary judgment... (dm) [Entry date 10/05/04]
- 10/01/2004 172 Motion by Crossroads Systems (to file under seal: declaration of Barry K. Shelton in support of Crossroads systems' corrected opposition to Dot Hill's motion for summary judgment... (dm) [Entry

		date 10/05/04]
10/01/2004	173	Motion by Crossroads Systems (for leave to file declaration of Barry K. Shelton in support of Crossroads Systems Inc.'s corrected opposition to Dot Hill Systems Corporation's motion for summary judgment for invalidity of U.S. patent nos. 6,423,035 and 5,941,972 (dm) [Entry date 10/05/04]
10/01/2004	174	Declaration of Barry K. Shelton (in support of motion to file under seal: declaration of Barry K. Shelton in support of Crossroads systems' corrected opposition to Dot Hill's motion for summary judgment... [172-1] (dm) [Entry date 10/05/04]
10/01/2004	175	Post Markman Hearing Claim Construction Brief by Dot Hill Systems Cor (dm) [Entry date 10/05/04]
10/04/2004	177	Order granting motion for leave to file opposition to motion to compel the testimony of Diana Shen, Ellen Lary, and Richard Lary in excess of page limit [163-1] signed by Honorable Sam Sparks (dm) [Entry date 10/05/04]
10/05/2004	178	Order granting motion for leave to file Post Markman hearing claim construction brief of Dot Hill Systems Corporation in excess of page limit [165-1] signed by Honorable Sam Sparks (dm) [Entry date 10/06/04]
10/05/2004	179	Order granting motion for leave to file corrected opposition to Dot Hill's motion for summary judgment... [171-1] signed by Honorable Sam Sparks (dm) [Entry date 10/06/04]
10/05/2004	180	Order granting motion for (Natu J. Patel) to withdraw as attorney [160-1] (Terminated attorney Natu J. Patel for Dot Hill Systems Cor, attorney Natu J. Patel for Dot Hill Systems Cor, attorney Natu J. Patel for Dot Hill Systems Cor signed by Honorable Sam Sparks (dm) [Entry date 10/06/04]
10/05/2004	181	Order granting motion to file under seal: declaration of Jason B. Witten in support of Dot Hills' opposition to crossroads' motion to compel the testimony of Diana Shen, Ellen Lary and Richard Lary [162-1] signed by Honorable Sam Sparks (dm) [Entry date 10/06/04]
10/05/2004	182	Order granting filing of declaration of Barry K. Shelton in support of Crossroads Systems corrected opposition... [174-1] signed by Honorable Sam Sparks (dm) [Entry date 10/06/04]
10/05/2004	183	Order granting motion for leave to file Crossroads Systems Inc.'s corrected opposition to Dot Hill Systems Corp's motion for summary judgment for invalidity of U.S. patent nos. 6,423,035 and 5,941,972 [170-1] signed by Honorable Sam Sparks (dm) [Entry date 10/06/04]
10/05/2004	184	Order granting motion for leave to file declaration of Barry K. Shelton in support of Crossroads Systems Inc.'s corrected opposition to Dot Hill Systems Corporation's motion for summary judgment for invalidity of U.S. patent nos. 6,423,035 and 5,941,972 [173-1] signed by Honorable Sam Sparks (dm) [Entry date 10/06/04]
10/05/2004	185	Order granting motion for leave to file under seal: declaration of Jason B. Witten in support of post markman hearing claim construction brief of Dot Hill Systems [166-1] signed by Honorable Sam Sparks (dm) [Entry date 10/06/04]
10/05/2004	186	Response by Crossroads Systems (in opposition to motion for summary judgment that U.S. Patent No. 6,425,035 and U.S. Patent No. 5,941,972 are invalid pursuant to 35 USC Sec. 102 and/or 103 in view of prior development of Digital Equipment Corp HSZ70 controller (with attached exhibits 14 and 17 submitted and maintained under seal) [85-1] (dm) [Entry date 10/06/04]
10/05/2004	--	Mooted motions motion to file under seal: declaration of Barry K. Shelton in support of Crossroads systems' corrected opposition to Dot Hill's motion for summary judgment... [172-1], motion granted in order (doc. #184) (dm) [Entry date 01/28/05]
10/08/2004	187	Motion by Crossroads Systems (for leave to file its opposition to Dot Hill's motion for bifurcation of liability and damages/willfulness issues in excess of page limit (dm) [Entry date 10/12/04]
10/08/2004	188	Response by Crossroads Systems (in opposition to motion for bifurcation of liability and damages/willfulness issues, and brief in support thereof [152-1] (dm) [Entry date 10/12/04]
10/12/2004	189	Motion by Dot Hill Systems Cor for leave to file motion to stay in excess of page limit (dm) [Entry date 10/12/04]
10/12/2004	190	Motion by Dot Hill Systems Cor to stay (dm) [Entry date 10/12/04]
10/12/2004	191	Declaration of Jason B. Witten by Dot Hill Systems Cor in support of motion to stay or administratively terminate [190-1] (dm) [Entry date 10/12/04]
10/12/2004	192	Order granting motion for leave to file opposition to Dot Hill's motion for summary judgment that U.S. patent no. 6,425,035 and U.S. patent no. 5,941,972 are invalid pursuant to U.S. C. 102 and/or 103 in view of the prior development of the digital equipment corporation HSZ70 controller in excess of page limit [154-1] signed by Honorable Sam Sparks (dm) [Entry date 10/12/04]
10/12/2004	193	Order granting motion to seal: Declaration of Barry K. Shelton in support of Crossroads Systems' opposition to Dot Hill's motion for summary judgment that U.S. patent no. 6,425,035 and U.S. patent no. 5,941,972 are invalid pursuant to U.S. C. 102 and/or 103 in view of the prior development of the digital equipment corporation HSZ70 controller [155-1] signed by Honorable Sam Sparks (dm) [Entry date 10/13/04]
10/12/2004	194	Response by Crossroads Systems (in support of motion to compel the testimony of Diana Shen, Ellen

		Lary, and Richard Lary [146-1] (dm) [Entry date 10/13/04]
10/12/2004	195	Declaration of Barry K. Shelton by Crossroads Systems (in support of reply in support of its motion to compel... [194-1] (dm) [Entry date 10/13/04]
10/12/2004	196	Motion by Crossroads Systems (for leave to file its reply in support of its motion to compel the testimony of Diana Shen, Ellen Lary, and Richard Lary in excess of page limit (dm) [Entry date 10/13/04]
10/13/2004	197	Emergency Motion by Dot Hill Systems Cor to compel testimony of Crossroads' expert Paul Hodges (dm) [Entry date 10/13/04]
10/13/2004	198	Motion by Dot Hill Systems Cor for leave to appear by telephone at hearing on Dot Hill's emergency motion to compel testimony of Crossroads' expert Paul Hodges (dm) [Entry date 10/13/04]
10/13/2004	199	Amended emergency motion by Dot Hill Systems Cor : to compel amending motion to compel testimony of Crossroads' expert Paul Hodges [197-1] (dm) [Entry date 10/14/04]
10/13/2004	200	Order granting motion for leave to file motion to stay in excess of page limit [189-1] signed by Honorable Sam Sparks (dm) [Entry date 10/14/04]
10/13/2004	201	Order granting motion for leave to file its opposition to Dot Hill's motion for bifurcation of liability and damages/willfulness issues in excess of page limit [187-1] signed by Honorable Sam Sparks (dm) [Entry date 10/14/04]
10/13/2004	202	Order set miscellaneous hearing on all pending matters at 1:30 10/15/04 signed by Honorable Sam Sparks (dm) [Entry date 10/14/04]
10/14/2004	203	Order granting motion for leave to file its reply in support of its motion to compel the testimony of Diana Shen, Ellen Lary, and Richard Lary in excess of page limit [196-1] signed by Honorable Sam Sparks (dm) [Entry date 10/14/04]
10/14/2004	204	Response by Crossroads Systems (in opposition to motion to compel testimony of Crossroads' expert Paul Hodges [197-1], amended motion to compel [199-1] (dm) [Entry date 10/15/04]
10/14/2004	205	Declaration of Barry K. Shelton by Crossroads Systems (in support of opposition to Dot Hill's emergency motion to compel testimony of Crossroads' expert Paul Hodges [204-1] (dm) [Entry date 10/15/04]
10/14/2004	206	Response by Dot Hill Systems Cor in support of motion for bifurcation of liability and damages/willfulness issues, and brief in support thereof [152-1] (dm) [Entry date 10/15/04]
10/14/2004	207	Order granting motion for leave to appear by telephone at hearing on Dot Hill's emergency motion to compel testimony of Crossroads' expert Paul Hodges [198-1] signed by Honorable Sam Sparks (dm) [Entry date 10/15/04]
10/15/2004	208	Reply by Dot Hill Systems Cor to response to motion to compel testimony of Crossroads' expert Paul Hodges [197-1], amended motion to compel [199-1] (dm) [Entry date 10/15/04]
10/15/2004	209	Motion by Dot Hill Systems Cor for leave to file responsive brief to Crossroads' post-hearing markman brief in excess of page limit (dm) [Entry date 10/15/04]
10/15/2004	210	Responsive Brief by Dot Hill Systems Cor regarding: Crossroads' post-hearing markman brief [168-1] (dm) [Entry date 10/15/04]
10/15/2004	211	Minutes of proceedings for misc. hearing conducted on 10/15/04 by Judge Sparks. Court Reporter: Lily Reznik (dm) [Entry date 10/18/04]
10/15/2004	--	Miscellaneous hearing (on all pending matters) held, parties announce ready, statements and arguments of counsel heard, motion granted #146, motion denied #190, 152, and 199, written order forthcoming (dm) [Entry date 10/18/04]
10/15/2004	212	Motion by Crossroads Systems (for leave to file its reply to post markman hearing claim construction brief of Dot Hill Systems Corporation in excess of page limit (dm) [Entry date 10/18/04]
10/15/2004	213	Motion by Crossroads Systems (to file under seal: reply to post markman hearing claim construction brief of Dot Hill Systems Corporation (dm) [Entry date 10/18/04]
10/15/2004	214	Sealed document, Crossroads Systems Inc.'s reply to post markman hearing claim construction brief of Dot Hill Systems, placed in vault (dm) [Entry date 10/18/04]
10/15/2004	215	Motion by Crossroads Systems (to seal declaration of Barry K. Shelton in support of Crossroads Systems Inc.'s reply to post markman hearing claim construction brief of Dot Hill Systems Corporation (dm) [Entry date 10/18/04]
10/15/2004	216	Sealed document, declaration of Barry K. Shelton in support of Crossroads Systems Inc.'s reply to post markman hearing claim construction brief of Dot Hill Systems Corporation, placed in vault (dm) [Entry date 10/18/04]
10/18/2004	217	Order granting motion for leave to file its reply to post markman hearing claim construction brief of Dot Hill Systems Corporation in excess of page limit [212-1] signed by Honorable Sam Sparks (dm) [Entry date 10/19/04]
10/18/2004	218	Order granting motion for leave to file responsive brief to Crossroads' post-hearing markman brief in

excess of page limit [209-1] signed by Honorable Sam Sparks (dm) [Entry date 10/19/04]

10/18/2004 219 Order denying amended motion to compel [199-1] denying motion for bifurcation of liability and damages/willfulness issues, and brief in support thereof [152-1] denying motion to stay [190-1] granting motion to compel the testimony of Diana Shen, Ellen Lary, and Richard Lary [146-1] signed by Honorable Sam Sparks (dm) [Entry date 10/19/04]

10/18/2004 -- Mooted motions motion to compel testimony of Crossroads' expert Paul Hodges [197-1] (dm) [Entry date 10/19/04]

10/19/2004 220 Motion by Crossroads Systems (for (J. Eric Elliff) to appear pro hac vice (dm) [Entry date 10/20/04]

10/20/2004 221 Order granting motion for (J. Eric Elliff) to appear pro hac vice [220-1] signed by Honorable Sam Sparks (td) [Entry date 10/21/04]

10/20/2004 222 Order granting motion to seal declaration of Barry K. Shelton in support of Crossroads Systems Inc.'s reply to post markman hearing claim construction brief of Dot Hill Systems Corporation [215-1] signed by Honorable Sam Sparks (td) [Entry date 10/21/04]

10/20/2004 223 Order granting motion to file under seal: reply to post markman hearing claim construction brief of Dot Hill Systems Corporation [213-1] signed by Honorable Sam Sparks (td) [Entry date 10/21/04]

10/25/2004 -- Pro hac vice fee paid byJ. Eric Elliff with Amount: \$ 25.00 Receipt # 362493 (dm) [Entry date 11/03/04]

11/09/2004 224 Motion by Dot Hill Systems Cor for leave to file reply to opposition to motion for summary judgment that U.S. patent no. 6,425,035 and U.S. patent no. 5,941,972 are invalid.. (dm) [Entry date 11/15/04]

11/09/2004 225 Motion by Dot Hill Systems Cor to seal declaration of Jason B. Witten in support of Dot Hill's reply to opposition to motion for summary judgment that U.S. patent no. 6,425,035 and U.S. patent no. 5,941,972 are invalid.. (dm) [Entry date 11/15/04]

11/09/2004 226 Reply Brief by Dot Hill Systems Cor regarding: motion for summary judgment that U.S. Patent No. 6,425,035 and U.S. Patent No. 5,941,972 are invalid pursuant to 35 USC Sec. 102 and/or 103 in view of prior development of Digital Equipment Corp HSZ70 controller (with attached exhibits 14 and 17 submitted and maintained under seal) [85-1] (dm) [Entry date 11/15/04]

11/09/2004 227 Declaration of Jason B. Witten by Dot Hill Systems Cor in support of motion for summary judgment that U.S. Patent No. 6,425,035 and U.S. Patent No. 5,941,972 are invalid pursuant to 35 USC Sec. 102 and/or 103 in view of prior development of Digital Equipment Corp HSZ70 controller (with attached exhibits 14 and 17 submitted and maintained under seal) [85-1] (dm) [Entry date 11/15/04]

11/10/2004 228 Order granting motion for leave to file reply to opposition to motion for summary judgment that U.S. patent no. 6,425,035 and U.S. patent no. 5,941,972 are invalid.. [224-1] signed by Honorable Sam Sparks (dm) [Entry date 11/15/04]

11/12/2004 229 Motion by Dot Hill Systems Cor for leave to file corrected reply brief in support of Dot Hill's motion for summary judgment that U.S. patent no. 6,425,035 and U.S. patent no. 5,941,972 are invalid... (dm) [Entry date 11/15/04]

11/15/2004 230 Order granting motion to seal declaration of Jason B. Witten in support of Dot Hill's reply to opposition to motion for summary judgment that U.S. patent no. 6,425,035 and U.S. patent no. 5,941,972 are invalid.. [225-1] signed by Honorable Sam Sparks (dm) [Entry date 11/16/04]

11/16/2004 231 Order granting motion for leave to file corrected reply brief in support of Dot Hill's motion for summary judgment that U.S. patent no. 6,425,035 and U.S. patent no. 5,941,972 are invalid... [229-1] signed by Honorable Sam Sparks (dm) [Entry date 11/16/04]

11/24/2004 232 Motion by Crossroads Systems (for leave to file a surreply in opposition to DOT Hill Systems Corp.'s motion for summary judgment for invalidity of U.S. Patent # 6,423,035 and 5,941,972 (received Surreply and declaration) (mc1) [Entry date 11/29/04]

11/30/2004 233 Order granting motion for leave to file a surreply in opposition to DOT Hill Systems Corp.'s motion for summary judgment for invalidity of U.S. Patent # 6,423,035 and 5,941,972 [232-1] signed by Honorable Sam Sparks (mc2) [Entry date 11/30/04]

11/30/2004 234 Surreply - Response by Crossroads Systems (to motion for summary judgment that U.S. Patent No. 6,425,035 and U.S. Patent No. 5,941,972 are invalid pursuant to 35 USC Sec. 102 and/or in view of prior development of Digital Equipment Corp controller [85-1] (mc2) [Entry date 11/30/04]

12/02/2004 235 Motion by Dot Hill Systems Cor for leave to file Dot Hill's response to Crossroads' surreply in support of Dot Hill's motion for summary judgment (dm) [Entry date 12/06/04]

12/02/2004 236 Motion by Dot Hill Systems Cor for leave to file Dot Hill's response to Crossroads' surreply in support of Dot Hill's motion for summary judgment (dm) [Entry date 12/06/04]

12/02/2004 237 Response by Dot Hill Systems Cor to Crossroads' surreply in support of Dot Hill's motion for summary judgment [234-1] (dm) [Entry date 12/06/04]

12/10/2004 238 Order granting motion for leave to file Dot Hill's response to Crossroads' surreply in support of Dot Hill's motion for summary judgment [236-1] signed by Honorable Sam Sparks (dm) [Entry date

		12/13/04]
12/10/2004	239	Order granting motion for leave to file Dot Hill's response to Crossroads' surreply in support of Dot Hill's motion for summary judgment [235-1] signed by Honorable Sam Sparks (dm) [Entry date 12/13/04]
01/05/2005	240	Notice of attorney appearance for Crossroads Systems (, by John Michael Guaragna (mc2) [Entry date 01/06/05] [Edit date 01/06/05]
01/05/2005	242	Motion by Crossroads Systems (for Raymond W. Mort, III to appear pro hac vice (mc2) [Entry date 01/06/05]
01/06/2005	241	Advisory to the court filed by Crossroads Systems (- notice of change of firm name and removal of counsel for plaintiff. (mc2) [Entry date 01/06/05]
01/07/2005	243	Order granting motion for Raymond W. Mort, III to appear pro hac vice [242-1] signed by Honorable Sam Sparks (dm) [Entry date 01/10/05]
01/13/2005	--	Pro hac vice fee paid byRaymond W. Mort with Amount: \$ 25.00 Receipt # 363826 (dm) [Entry date 01/18/05]
01/19/2005	244	Motion by Crossroads Systems (for Darius C. Gambino to appear pro hac vice (dm) [Entry date 01/20/05]
01/21/2005	245	Report and recommendation of Special Master Karl Bayer regarding United States Patent Nos. 5,941,972 and 6,425,035 B2 (dm) [Entry date 01/24/05]
01/25/2005	246	Order granting motion for Darius C. Gambino to appear pro hac vice [244-1] signed by Honorable Sam Sparks (dm) [Entry date 01/25/05]
01/26/2005	--	Acknowledgment receipt by Alan Albright magistrate report and recommendations (dm) [Entry date 01/26/05]
01/26/2005	--	Acknowledgment receipt by Raymond Mort, John Guaragna, Barry Shelton & Tacy McCreight magistrate report and recommendations (dm) [Entry date 01/26/05]
01/27/2005	--	Acknowledgment receipt of Dot Hill Systems Cor magistrate report and recommendations (td) [Entry date 01/28/05]
01/27/2005	--	Pro hac vice fee paid byDarius C. Gambino with Amount: \$ 25.00 Receipt # 364027 (dm) [Entry date 02/07/05]
01/28/2005	--	Acknowledgment receipt of Dot Hill Systems Cor magistrate report and recommendations (Morgan & Finnegan) (td) [Entry date 01/28/05]
01/31/2005	247	Stipulation and Order regarding the deadline to file objections to special master's report and recommendation regarding the construction of claims in U.S. patent ... filed by Crossroads Systems (, Dot Hill Systems Cor (dm) [Entry date 02/02/05]
01/31/2005	--	Acknowledgment receipt by J. Eric Elliff magistrate report and recommendations (dm) [Entry date 02/08/05]
01/31/2005	--	Acknowledgment receipt by Franklin Gibbs, Jason Witten, Larry Severin & Richard Cauley, magistrate report and recommendations (dm) [Entry date 02/08/05]
01/31/2005	--	Acknowledgment receipt by Valerie Greenberg, magistrate report and recommendations (dm) [Entry date 02/08/05]
01/31/2005	--	Acknowledgment receipt by Joseph Reid, Matthew Bernstein, John Guist & John Allcock, magistrate report and recommendations (dm) [Entry date 02/08/05]
02/04/2005	248	Ordered that the deadline to file and serve objections to the Special Master's Report and Recommendation is Monday, February 14, 2005 and it is further ordered that the parties' Stipulation and Order regarding the deadline to file objections to the Special Mater's Report and Recommendation [#247], which the Court construes as a motion to amend the Markman scheduling order is Denied in all other respects... signed by Honorable Sam Sparks (dm) [Entry date 02/04/05]
02/04/2005	--	Acknowledgment receipt of Darius Gambino magistrate report and recommendations (dm) [Entry date 02/08/05]
02/14/2005	249	Joint Stipulation regarding deposition limits filed by Crossroads Systems (, Dot Hill Systems Cor (mc2) [Entry date 02/14/05]
02/14/2005	250	Unopposed Motion by Dot Hill Systems Cor for leave to file Dot Hill's objections to Special Master's Report and Recommendation in excess of page limit (mc2) [Entry date 02/14/05]
02/14/2005	251	Objections to report and recommendations [245-1] by Dot Hill Systems Cor (mc2) [Entry date 02/14/05]
02/17/2005	252	Motion by Dot Hill Systems Cor for Peter O. Huang to appear pro hac vice (dm) [Entry date 02/22/05]
02/22/2005	253	Response by Crossroads Systems (to report & recommendation objection [251-1] (dm) [Entry date 02/23/05]
02/22/2005	254	Order granting motion for leave to file Dot Hill's objections to Special Master's Report and

		Recommendation in excess of page limit [250-1] signed by Honorable Sam Sparks (dm) [Entry date 02/23/05]
03/03/2005	255	Motion by Crossroads Systems (for Alan D. Albright, Barry K. Shelton, John E. Guist, Matthew C. Bernstein, Joseph Reid, and Tracy L. McCreight to withdraw as attorney (dm) [Entry date 03/04/05]
03/03/2005	256	Motion by Dot Hill Systems Cor for a limited six month abatement (dm) [Entry date 03/07/05]
03/04/2005	257	Order striking motion for Peter O. Huang to appear pro hac vice [252-1] signed by Honorable Sam Sparks (dm) [Entry date 03/07/05]
03/07/2005	258	Motion by Dot Hill Systems Cor for Peter O. Huang to appear pro hac vice (dm) [Entry date 03/08/05]
03/08/2005	259	Order granting motion for Alan D. Albright, Barry K. Shelton, John E. Guist, Matthew C. Bernstein, Joseph Reid, and Tracy L. McCreight to withdraw as attorney [255-1] (Terminated attorney Alan D Albright for Crossroads Systems (, attorney John E. Giust for Crossroads Systems (, attorney Matthew C. Bernstein for Crossroads Systems (, attorney Joseph P. Reid for Crossroads Systems (, attorney Joseph P. Reid for Crossroads Systems (, attorney Alan D Albright for Crossroads Systems (, attorney Tracy L. McCreight for Crossroads Systems (, attorney John E. Giust for Crossroads Systems (, attorney Matthew C. Bernstein for Crossroads Systems (, attorney Joseph P. Reid for Crossroads Systems (, attorney Alan D Albright for Crossroads Systems (, attorney Tracy L. McCreight for Crossroads Systems (, attorney John E. Giust for Crossroads Systems (, attorney Matthew C. Bernstein for Crossroads Systems (, attorney Joseph P. Reid for Crossroads Systems (, attorney Alan D Albright for Crossroads Systems (, attorney Tracy L. McCreight for Crossroads Systems (, attorney John E. Giust for Crossroads Systems (, attorney Matthew C. Bernstein for Crossroads Systems (, attorney Barry K. Shelton for Crossroads Systems (, attorney Joseph P. Reid for Crossroads Systems (, attorney Matthew C. Bernstein for Crossroads Systems (, attorney John E. Giust for Crossroads Systems (, attorney Alan D Albright for Crossroads Systems (signed by Honorable Sam Sparks (dm) [Entry date 03/08/05]
03/09/2005	260	Order granting motion for Peter O. Huang to appear pro hac vice [258-1] signed by Honorable Sam Sparks (dm) [Entry date 03/09/05]
03/11/2005	261	Order Motion hearing motion for a limited six month abatement [256-1] for 2:00 3/17/05, motion request for judicial notice in support of its motion for summary judgment... [86-1] for 2:00 3/17/05, motion for summary judgment that U.S. Patent No. 6,425,035 and U.S. Patent No. 5,941,972 are invalid pursuant to 35 USC Sec. 102 and/or 103 in view of prior development of Digital Equipment Corp HSZ70 controller (with attached exhibits 14 and 17 submitted and maintained under seal) [85-1] for 2:00 3/17/05 signed by Honorable Sam Sparks (dm) [Entry date 03/14/05]
03/11/2005	--	Pro hac vice fee paid by Peter O. Huang with Amount: \$ 25.00 Receipt # 379646 (dm) [Entry date 03/17/05]
03/14/2005	262	Response by Crossroads Systems (in opposition to motion for a limited six month abatement [256-1] (dm) [Entry date 03/16/05]
03/14/2005	263	Motion by Dot Hill Systems Cor for leave to supplement its motion for a limited six month abatement (dm) [Entry date 03/16/05]
03/14/2005	264	Declaration of John M. Guaragna by Crossroads Systems (in support of in opposition response [262-1] (dm) [Entry date 03/16/05]
03/15/2005	265	Transcript filed for dates of October 15, 2004 (Proceedings Transcribed: all pending matters) (Court Reporter: Lily Reznik) (dm) [Entry date 03/16/05]
03/17/2005	--	Miscellaneous hearing on all pending matters held, case will be stayed for 90 days after April 7, 2005, plaintiff to copy the patent office, at the end of 90 day period parties will proceed with discovery, etc. (dm) [Entry date 03/18/05]
03/17/2005	266	Minutes of proceedings for motions hearing conducted on March 17, 2005 by Judge Sparks. Court Reporter: Lily Reznik (dm) [Entry date 03/18/05]
03/22/2005	267	Order granting motion for leave to supplement its motion for a limited six month abatement [263-1], granting in part, denying in part motion for a limited six month abatement [256-1], dismissing motion request for judicial notice in support of its motion for summary judgment... [86-1], dismissing motion for summary judgment that U.S. Patent No. 6,425,035 and U.S. Patent No. 5,941,972 are invalid pursuant to 35 USC Sec. 102 and/or 103 in view of prior development of Digital Equipment Corp HSZ70 controller (with attached exhibits 14 and 17 submitted and maintained under seal) [85-1] signed by Honorable Sam Sparks (dm) [Entry date 03/23/05].
03/28/2005	268	Transcript filed for dates of March 17, 2005 (Proceedings Transcribed: All Pending Matters) (Court Reporter: Lily Reznik) (dm) [Entry date 03/29/05]
04/12/2005	269	Letter/Correspondence submitted by Crossroads Systems (regarding: compliance with Court's March 22, 2005 order requesting that plaintiff file a copy of that order in the reexamination proceedings involving the patents-in-suit. (dm) [Entry date 04/13/05]
06/20/2005	270	Motion by Dot Hill Systems Cor for continued limited abatement (dm) [Entry date 06/21/05]
06/20/2005	271	Declaration of Richard F. Cauley in support of Dot Hill Systems Corporation's motion for continued limited abatement [270-1] (dm) [Entry date 06/21/05]

07/01/2005	272	Response by Crossroads Systems (in opposition to motion for continued limited abatement [270-1] (dm) [Entry date 07/05/05]
07/01/2005	273	Declaration of John M. Guaragna by Crossroads Systems (in support of opposition response [272-1] (dm) [Entry date 07/05/05]
07/07/2005	274	Response by Dot Hill Systems Cor in support of motion for continued limited abatement [270-1] (dm) [Entry date 07/08/05]
07/13/2005	275	Order set hearing on all pending matters at 2:00 7/21/05 signed by Honorable Sam Sparks (dm) [Entry date 07/14/05]
07/21/2005	--	Motion hearing held for the following motions: [270-1], announcements made, statements of counsel heard. After consideration, the Court agrees to continue the stay for 60 days. (dm) [Entry date 07/22/05]
07/21/2005	276	Minutes of proceedings for motions hearing conducted on July 21, 2005 by Judge Sparks. Court Reporter: Lily Reznik (dm) [Entry date 07/22/05]
07/26/2005	277	Order granting in part, denying in part motion for continued limited abatement [270-1], this case is stayed for an additional 60 days from the date of this order to afford the USPTO an opportunity to issue a final determination on the status of the claims of the patents-in-suit... signed by Honorable Sam Sparks (dm) [Entry date 07/26/05]
07/27/2005	278	Transcript filed for dates of July 21, 2005 (Proceedings Transcribed: Hearing on pending matters) (Court Reporter: Lily Reznik) (dm) [Entry date 07/28/05]

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US District Court Civil Docket

**U.S. District - Texas Western
(Austin)**

1:00cv248

Crossroads Systems v. Pathlight Technology

This case was retrieved from the court on Monday, September 19, 2005

Date Filed: 04/14/2000	Class Code: CLOSED
Assigned To: Honorable Sam Sparks	Closed: yes
Referred To:	Statute: 35:145
Nature of suit: Patent (830)	Jury Demand: Plaintiff
Cause: Patent Infringement	Demand Amount: \$0
Lead Docket: None	NOS Description: Patent
Other Docket: Dkt # in W/D Austin, TX : is A-00-CA-217-JN	
Jurisdiction: Federal Question	

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Date	#	Proceeding Text
04/14/2000	--	Case assigned to Honorable James R. Nowlin (td) [Entry date 04/17/00]
04/14/2000	1	Complaint filed. Filing Fee: \$ 150.00 Receipt # 498573 (Pages: 16) (td) [Entry date 04/17/00]
04/14/2000	--	Summons issued for Pathlight Technology (td) [Entry date 04/17/00]
04/17/2000	--	Court file forwarded to Judge Nowlin. (td) [Entry date 04/17/00]
04/17/2000	--	Notice mailed to Commissioner of Patents and Trademarks (td) [Entry date 04/17/00]
04/17/2000	2	Return of service executed as to Pathlight Technology on 4/14/00 (td) [Entry date 04/18/00]
05/03/2000	3	Return of service executed as to Pathlight Technology on 4/24/00 (td) [Entry date 05/03/00]
05/12/2000	4	Answer to complaint and counterclaim by Pathlight Technology against Crossroads Systems (td) [Entry date 05/12/00]
05/30/2000	5	Answer by Crossroads Systems to counterclaim [4-2] (td) [Entry date 05/31/00]
06/01/2000	6	Ordered that the above entitled cause of action be REASSIGNED to the docket of Judge Sam Sparks of the Austin Division. ntc 6/1/00 (td) [Entry date 06/01/00]
06/01/2000	--	Case reassigned from Honorable James R. Nowlin to Honorable Sam Sparks (td) [Entry date 06/09/00]
06/02/2000	7	Order set miscellaneous (Markman) hearing for 9:00 7/28/00, scheduling order deadlines: joining of parties, amended pleadings on 8/18/00 Discovery deadline on 12/27/00 for filing of all motions by 12/27/00, set docket call for 11:00 3/30/01 and trial in the month of April 2001 (td) [Entry date 06/02/00]

06/16/2000	8	Motion by Crossroads Systems, Pathlight Technology to amend scheduling order (td) [Entry date 06/16/00]
06/19/2000	9	Crossroads Systems (Texas), Inc's Concise Statement of Alleged Infringement (td) [Entry date 06/20/00]
06/19/2000	10	Pathlight's Preliminary Statement (td) [Entry date 06/20/00]
06/21/2000	11	Order denying motion to amend scheduling order [8-1]. ntc 6/21/00 (td) [Entry date 06/21/00]
06/30/2000	12	Order reset Markman hearing to 9:00 7/25/00 ntc 6/30/00 (td) [Entry date 06/30/00]
06/30/2000	13	Joint motion by Crossroads Systems, Pathlight Technology for protective order (td) [Entry date 06/30/00]
07/06/2000	14	Order granting joint motion for protective order [13-1]. Agreed Protective Order filed. ntc 7/6/00 (td) [Entry date 07/06/00]
07/06/2000	15	Order Regarding Documents Filed Under Seal. ntc 7/6/00 (td) [Entry date 07/06/00]
07/10/2000	16	Motion by Crossroads Systems for Matthew C. Bernstein to appear pro hac vice (td) [Entry date 07/11/00]
07/11/2000	17	Order granting motion for Matthew C. Bernstein to appear pro hac vice [16-1]. ntc 7/11/00 (td) [Entry date 07/11/00]
07/11/2000	18	Markman brief by Crossroads Systems (td) [Entry date 07/12/00]
07/11/2000	19	Brief of Defendant Pathlight Technology, Inc. on The Construction of The Claims of The '972 Patent filed (td) [Entry date 07/12/00]
07/11/2000	20	Brief of Defendnt Chaparral Network Storage, Inc. On The Construction of The Claims of The '972 Patent filed (this pleading was mistakenly filed in this case should be filed in A-00-CA-248-SS, therefore this document number does not exist in this case) (This brief is document no. 33 in case no. A:00-CV-217 SS) (td) [Entry date 07/12/00] [Edit date 11/08/04]
07/12/2000	21	Motion by Crossroads Systems for leave to exceed page limit (td) [Entry date 07/13/00]
07/13/2000	22	Order granting motion for leave to exceed page limit [21-1]. ntc 7/13/00 (td) [Entry date 07/13/00]
07/25/2000	--	Miscellaneous hearing (Markman hearing) held. Parties announce ready. Statements and arguments from attorneys heard. Hearing concluded - written order forthcoming. (td) [Entry date 07/25/00]
07/27/2000	23	Ordered that the attached construction of the patent claims will be incorporated into any jury instructions given in this cause and will be applied by the Court in ruling on the issues in summary judgment. ntc 7/27/00 (td) [Entry date 07/27/00]
07/27/2000	24	Joint Stipulation Of Claim Construction filed by Crossroads Systems, Pathlight Technology (td) [Entry date 07/28/00]
08/16/2000	25	Transcript filed for dates of 7/25/00 - Markman hearing (ct. rpt. Lily Reznik) (td) [Entry date 08/17/00]
09/15/2000	26	Motion by Crossroads Systems for leave to file first amended complaint (rec'd amd cmp) (td) [Entry date 09/18/00]
09/18/2000	27	Order granting motion for leave to file first amended complaint [26-1]. ntc 9/19/00 (td) [Entry date 09/19/00]
09/18/2000	28	Amended complaint by Crossroads Systems , amending complaint [1-1] (Pages: 14) (td) [Entry date 09/19/00]
10/02/2000	29	Answer by Pathlight Technology to First amended complaint (lc) [Entry date 10/03/00]
10/02/2000	29	Counterclaim by Pathlight Technology against Crossroads Systems to First Amended Complaint (lc) [Entry date 10/03/00]
10/24/2000	30	Motion by Crossroads Systems for John Allcock to appear pro hac vice (td) [Entry date 10/25/00]
10/24/2000	31	Motion by Crossroads Systems for Alexander H. Rogers to appear pro hac vice (td) [Entry date 10/25/00]
10/24/2000	32	Motion by Crossroads Systems for John E. Giust to appear pro hac vice (td) [Entry date 10/25/00]
10/25/2000	33	Order granting motion for John E. Giust to appear pro hac vice [32-1]. ntc 10/25/00 (td) [Entry date 10/25/00]
10/25/2000	34	Order granting motion for Alexander H. Rogers to appear pro hac vice [31-1]. ntc 10/25/00 (td) [Entry date 10/25/00]
10/25/2000	35	Order granting motion for John Allcock to appear pro hac vice [30-1]. ntc 10/25/00 (td) [Entry date 10/25/00]
11/03/2000	36	Order set status conference for 4:30 12/1/00 (ll) [Entry date 11/03/00]
12/01/2000	--	Status conference held in chambers. (td) [Entry date 12/04/00]

12/05/2000 37 Order motion filing deadline 4/6/01, reset docket call to 11:00 5/11/01 and jury trial beginning the week of June 11, 2001 ntc 12/5/00 (td) [Entry date 12/05/00] [Edit date 12/05/00]

12/05/2000 -- Jury trial set at 6/11/01 (td) [Entry date 12/05/00]

02/06/2001 38 Motion by Crossroads Systems to compel discovery (ll) [Entry date 02/06/01]

02/06/2001 39 Declaration of John Guist by Crossroads Systems in support of motion to compel discovery [38-1] (w/ exhibits D-J under seal) (ll) [Entry date 02/06/01]

02/06/2001 40 Motion by Crossroads Systems to seal Confidential documents (exhibits D-J) relating to its mtn to compel (ll) [Entry date 02/06/01]

02/06/2001 41 Motion by Crossroads Systems for leave to file pla's mtn to compel discovery in excess of the page limit (ll) [Entry date 02/06/01]

02/07/2001 42 Order granting motion for leave to file pla's mtn to compel discovery in excess of the page limit [41-1] (rm) [Entry date 02/08/01]

02/08/2001 43 Order Motion hearing motion to compel discovery [38-1] for 2:00 2/26/01 (rm) [Entry date 02/08/01]

02/09/2001 44 Order granting motion to seal Confidential documents (exhibits D-J) relating to its mtn to compel [40-1] (rm) [Entry date 02/09/01]

02/15/2001 -- Status conference held in chambers (court reporter: L. Reznik) (rm) [Entry date 02/15/01]

02/16/2001 45 Opposition by Pathlight Technology to motion to compel discovery [38-1] (rm) [Entry date 02/20/01]

02/16/2001 46 Motion by Pathlight Technology for leave to file exhibit two to its opposition to plaintiff's motion to compel discovery under seal (rm) [Entry date 02/20/01]

02/16/2001 47 SEALED Exhibit 2 to defendant pathlight technology inc's opposition to plaintiff's motion to compel by Pathlight Technology (rm) [Entry date 02/20/01] [Edit date 02/20/01]

02/23/2001 49 Reply by Crossroads Systems to defendant's miscellaneous objection [45-1] (rm) [Entry date 02/26/01]

02/26/2001 48 Order granting motion for leave to file exhibit two to its opposition to plaintiff's motion to compel discovery under seal [46-1] (rm) [Entry date 02/26/01]

02/26/2001 -- Motion hearing held for the following motions: [38-1]; statements and arguments of counsel heard; motion to compel granted in part; written order forthcoming (rm) [Entry date 02/28/01]

02/27/2001 50 Order granting motion to compel discovery [38-1]; order specifies documents to be produced; deadline to produce records is 3/6/01 (rm) [Entry date 02/27/01]

03/06/2001 51 Letter submitted by Pathlight Technology regarding the submission of documents for in camera inspection by a court-appointed expert pursuant to the request of Judge Sparks during the 2/26/01 hearing; one set of documents submitted and forwarded to Judge Sparks; (rm) [Entry date 03/07/01]

03/06/2001 52 Amended Order granting motion to compel discovery [38-1]; GRANTED to the extent that Pathlight Technology must produce documents specified in paragraph 1 & 2 by 3/6/01; and produce documents specified in paragraph 3 to the Court by 5:00 on 3/6/01 for in camera inspection (rm) [Entry date 03/07/01]

03/09/2001 53 Motion by Pathlight Technology to seal its motion to compel (nf) [Entry date 03/12/01]

03/09/2001 54 Sealed document placed in vault (nf) [Entry date 03/12/01]

03/12/2001 55 Transcript of hearing on motion to compel filed for dates of 2/26/01 (court reporter: L. Reznik) (rm) [Entry date 03/13/01]

03/12/2001 56 Notice of filing of change of address by Crossroads Systems (rm) [Entry date 03/13/01]

03/16/2001 -- Received In Camera Documents (one set only), forwarded to Judge Sparks (td) [Entry date 03/16/01]

03/19/2001 57 Notice of filing undertakings of Richard L. Mattson, Kenneth Flamm, Gary R. Stephens and Brian A. Berg by Pathlight Technology (td) [Entry date 03/19/01]

03/26/2001 58 Order granting motion to seal its motion to compel [53-1] FURTHER ORDERED that Defendant's Motion to Compel [#54] is DISMISSED AS MOOT. ntc 3/26/01 (td) [Entry date 03/26/01]

04/02/2001 59 Notice of filing Undertakings of Kenneth E. Kuffner, Paul Hodges, D. Paul Regan, Colin Johns, Jed K. Greene by Crossroads Systems (td) [Entry date 04/03/01]

04/06/2001 60 Motion by Pathlight Technology to file under seal msj (td) [Entry date 04/09/01]

04/06/2001 61 Motion by Pathlight Technology for leave to exceed page limitation re: msj (td) [Entry date 04/09/01]

04/06/2001 62 SEALED Motion by Pathlight Technology for summary judgment of invalidity (td) [Entry date 04/09/01]

04/17/2001 63 Motion by Crossroads Systems to extend time to file opposition to motion for summary judgment (td) [Entry date 04/18/01]

04/20/2001 64 Order granting motion to extend time to file opposition to motion for summary judgment [63-1] due

4/30/01. ntc 4/20/01 (td) [Entry date 04/20/01]

04/27/2001 65 SECOND Motion by Crossroads Systems to extend time to file an opposition to Pathlight's motion for summary judgment (td) [Entry date 04/30/01]

04/30/2001 66 Motion by Crossroads Systems to file under seal opposition to defendant's motion for summary judgment (td) [Entry date 05/01/01]

04/30/2001 67 Motion by Crossroads Systems for leave to file opposition to motion for summary judgment in excess of page limit (td) [Entry date 05/01/01]

04/30/2001 68 SEALED Response by Crossroads Systems in opposition to motion for summary judgment of invalidity [62-1] (td) [Entry date 05/01/01]

05/02/2001 69 Notice of filing Undertaking of Ramsey Alsalam by Pathlight Technology (td) [Entry date 05/02/01]

05/07/2001 70 Order granting motion to extend time to file an opposition to Pathlight's motion for summary judgment [65-1]. ntc 5/7/01 (td) [Entry date 05/07/01]

05/07/2001 71 Order granting motion to file under seal opposition to defendant's motion for summary judgment [66-1]. ntc 5/7/01 (td) [Entry date 05/07/01]

05/07/2001 72 Order granting motion for leave to file opposition to motion for summary judgment in excess of page limit [67-1] ntc 5/7/01 (td) [Entry date 05/07/01]

05/07/2001 73 Motion by Pathlight Technology for leave to file reply to crossroads' opposition in excess of page limit (td) [Entry date 05/08/01]

05/07/2001 74 Motion by Pathlight Technology to file under seal reply to crossroads's opposition (td) [Entry date 05/08/01]

05/07/2001 75 SEALED Reply by Pathlight Technology to response to motion for summary judgment of invalidity [62-1] (td) [Entry date 05/08/01]

05/08/2001 76 Order granting motion for leave to file reply to crossroads' opposition in excess of page limit [73-1]. ntc 5/8/01 (td) [Entry date 05/08/01]

05/10/2001 77 Order granting motion for leave to exceed page limitation re: msj [61-1]. ntc 5/10/01 (td) [Entry date 05/10/01]

05/10/2001 78 Order granting motion to file under seal reply to crossroads's opposition [74-1]. ntc 5/10/01 (td) [Entry date 05/10/01]

05/10/2001 79 Order granting motion to file under seal msj [60-1]. ntc 5/10/01 (td) [Entry date 05/10/01]

05/11/2001 80 Notice of filing Submission of Pre-Trial Documents by Pathlight Technology (td) [Entry date 05/11/01]

05/11/2001 81 Motion by Pathlight Technology for leave to exceed page limitation regarding motions in limine (td) [Entry date 05/11/01]

05/11/2001 82 Motion by Pathlight Technology to file under seal motions in limine (td) [Entry date 05/11/01]

05/11/2001 83 SEALED Motion by Pathlight Technology in limine (td) [Entry date 05/11/01]

05/11/2001 -- Docket call held. Parties announce ready for trial. Jury trial remains set for 6/11. Court hears arguments on motion for summary judgment. Court takes motion under advisement. Hearing concluded. (td) [Entry date 05/11/01]

05/11/2001 84 Witness List by Crossroads Systems (td) [Entry date 05/14/01]

05/11/2001 85 Exhibit list by Crossroads Systems (td) [Entry date 05/14/01]

05/11/2001 86 Notice of filing Jury Charge by Crossroads Systems (td) [Entry date 05/14/01]

05/11/2001 87 Jury instructions by Crossroads Systems (td) [Entry date 05/14/01]

05/11/2001 88 Motion by Crossroads Systems in limine to preclude testimony of Gary R. Stephens and Brian A. Berg, and to preclude the introduction of evidence on related matters (td) [Entry date 05/14/01]

05/11/2001 89 Motion by Crossroads Systems in limine (td) [Entry date 05/14/01]

05/11/2001 90 Notice of filing Short Statement of Case by Crossroads Systems (td) [Entry date 05/14/01]

05/11/2001 91 Notice of filing Verdict Form by Crossroads Systems (td) [Entry date 05/14/01]

05/11/2001 92 Motion by Crossroads Systems to file under seal motion in limine to preclude certain portions of the expert testimony of Dr. Kenneth Flamm (td) [Entry date 05/14/01]

05/11/2001 93 SEALED Motion by Crossroads Systems in limine to preclude certain portions of the expert testimony of Dr. Kenneth Flamm (td) [Entry date 05/14/01]

05/11/2001 94 Affidavit of John Giust by Crossroads Systems in support of motion in limine to preclude certain portions of the expert testimony of Dr. Kenneth Flamm [93-1], motion in limine [89-1], in limine to preclude testimony of Gary R. Stephens and Brian A. Berg [88-1] (td) [Entry date 05/14/01]

05/14/2001 95 Order granting motion for leave to exceed page limitation regarding motions in limine [81-1]. ntc 5/14/01 (td) [Entry date 05/14/01]

05/14/2001	96	Order granting motion to file under seal motions in limine [82-1]. ntc 5/14/01 (td) [Entry date 05/14/01]
05/14/2001	97	Order granting motion to file under seal motion in limine to preclude certain portions of the expert testimony of Dr. Kenneth Flamm [92-1]. ntc 5/15/01 (td) [Entry date 05/15/01]
05/14/2001	98	Order denying motion for summary judgment of invalidity [62-1]. ntc 5/15/01 (td) [Entry date 05/15/01]
05/21/2001	99	Order set Jury selection for 9:00 6/4/01 ntc 5/21/01 (td) [Entry date 05/21/01]
05/22/2001	100	Response by Pathlight Technology in opposition to motion in limine [89-1] (td) [Entry date 05/22/01]
05/22/2001	101	Response by Pathlight Technology in opposition to motion in limine to preclude testimony of Gary R. Stephens and Brian A. Berg [88-1], motion to preclude the introduction of evidence on related matters [88-2] (td) [Entry date 05/22/01]
05/22/2001	102	Motion by Pathlight Technology for leave to exceed page limitation regarding response in opposition to preclude certain portions of the expert testimony of Pathlight expert D.r Kenneth Flamm (td) [Entry date 05/22/01]
05/22/2001	103	Motion by Pathlight Technology to file under seal opposition to motion to preclude certain portions of testimony of Dr. Kenneth Flamm under seal (td) [Entry date 05/22/01]
05/22/2001	104	SEALED Response by Pathlight Technology in opposition to motion in limine to preclude certain portions of the expert testimony of Dr. Kenneth Flamm [93-1] (td) [Entry date 05/22/01]
05/23/2001	105	Order granting motion for leave to exceed page limitation regarding response in opposition to preclude certain portions of the expert testimony of Pathlight expert D.r Kenneth Flamm [102-1] (nf) [Entry date 05/23/01]
05/23/2001	106	Supplement filed by Crossroads Systems Re: affidavit [94-1] (td) [Entry date 05/24/01]
05/23/2001	107	Amended motion by Crossroads Systems: in limine amending motion in limine to preclude testimony of Gary R. Stephens and Brian A. Berg [88-1], motion to preclude the introduction of evidence on related matters [88-2] (td) [Entry date 05/24/01]
05/24/2001	108	CORRECTED Exhibit list by Pathlight Technology (td) [Entry date 05/25/01]
05/25/2001	109	Motion by Crossroads Systems for leave to file late motion in limine (rec'd m/in limine) (td) [Entry date 05/29/01] [Edit date 05/29/01]
05/25/2001	110	Motion by Crossroads Systems for leave to file revised proposed jury instructions (rec'd jury instr.) (td) [Entry date 05/29/01]
05/25/2001	111	Motion by Crossroads Systems to file under seal opposition to motion in limine (td) [Entry date 05/29/01]
05/25/2001	112	Motion by Crossroads Systems for leave to file opposition to defendant's motion in limine in excess of ten pages (td) [Entry date 05/29/01]
05/25/2001	113	SEALED Response by Crossroads Systems in opposition to motion in limine [83-1] (td) [Entry date 05/29/01]
05/25/2001	114	Motion by Pathlight Technology to file under seal motion in limine regarding the denial of its summary judgment motion (td) [Entry date 05/29/01]
05/25/2001	115	Motion by Pathlight Technology for leave to file motion in limine regarding the denial of its summary judgment motion (rec'd motion) (td) [Entry date 05/29/01]
05/29/2001	116	Order granting motion for leave to file opposition to defendant's motion in limine in excess of ten pages [112-1] ntc 5/29/01 (td) [Entry date 05/29/01]
05/29/2001	117	Motion by Pathlight Technology to file under seal opposition to Crossroads' motion in limine to exclude expert .. (td) [Entry date 05/31/01]
05/29/2001	118	SEALED Response by Pathlight Technology in opposition to motion in limine to exclude expert and other opinion testimony that reserve meets the "access controls" limitation (m/in limine rec'd on 5/25/01) (td) [Entry date 05/31/01] [Edit date 05/31/01]
05/29/2001	119	Motion by Crossroads Systems to file under seal replies (3) to motions in limine and declaration of Alan D Albright (td) [Entry date 05/31/01]
05/29/2001	120	SEALED Reply by Crossroads Systems to response to motion in limine [89-1] (td) [Entry date 05/31/01]
05/29/2001	121	SEALED Reply by Crossroads Systems to response to motion in limine to preclude certain portions of the expert testimony of Dr. Kenneth Flamm [93-1] (td) [Entry date 05/31/01]
05/29/2001	122	SEALED Reply by Pathlight Technology to response to motion in limine to preclude testimony of Gary R. Stephens and Brian A. Berg [88-1], motion to preclude the introduction of evidence on related matters [88-2] (td) [Entry date 05/31/01]
05/29/2001	123	SEALED Declaration of Alan D Albright by Crossroads Systems in support of responses [122-1], [121-1], [120-1] (td) [Entry date 05/31/01]

05/30/2001	124	REVISED Exhibit list by Crossroads Systems (td) [Entry date 05/31/01]
06/01/2001	125	SEALED Response by Crossroads Systems in opposition to defendant's motion in limine re: "Reserve" management (rec'd 5/25); and reply to its motion in limine to exclude expert and other opinion testimony that reserve meets the "Access controls" limitation (rec'd 5/25) (td) [Entry date 06/04/01] [Edit date 06/04/01]
06/01/2001	126	Response by Pathlight Technology in support of motion in limine [83-1] (td) [Entry date 06/04/01]
06/01/2001	127	Supplement filed by Pathlight Technology, Re: exhibits list [108-1] (td) [Entry date 06/04/01]
06/01/2001	128	Motion by Pathlight Technology for leave to file revised proposed jury charge and jury verdict forms (rec'd revised pleadings) (td) [Entry date 06/04/01]
06/04/2001	129	Order granting motion to file under seal opposition to motion to preclude certain portions of testimony of Dr. Kenneth Flamm under seal [103-1]. ntc 6/4/01 (td) [Entry date 06/04/01]
06/04/2001	130	Order granting motion for leave to file motion in limine regarding the denial of its summary judgment motion [115-1] ntc 6/4/01 (td) [Entry date 06/04/01]
06/04/2001	131	SEALED Motion by Pathlight Technology in limine regarding the denial of its summary judgment motion (td) [Entry date 06/04/01]
06/04/2001	132	Order granting motion for leave to file late motion in limine [109-1]. ntc 6/4/01 (td) [Entry date 06/04/01]
06/04/2001	133	Motion by Crossroads Systems in limine to exclude expert and other opinion testimony that the reserve command meets the "access controls" limitation (td) [Entry date 06/04/01]
06/04/2001	134	Motion by Crossroads Systems to file under seal opposition to defendant's motion in limine re "reserve" management (doc #125) (td) [Entry date 06/04/01]
06/04/2001	135	Second Supplement filed by Pathlight Technology, Re: exhibits list [108-1] (td) [Entry date 06/04/01]
06/04/2001	--	SEALED COURT Exhibits placed in vault (td) [Entry date 06/05/01]
06/04/2001	--	Jury selection held. Jurors not sworn. (td) [Entry date 06/05/01]
06/04/2001	--	Jury trial held. Parties announce ready. Motions in limine addressed outside presence of jury. Court orders parties to file sealed motions in compliance with rules. Court resets jury trial to 6/6/01 @ 8:30 a.m. (td) [Entry date 06/05/01]
06/04/2001	136	Peremptory challenges by Crossroads Systems (td) [Entry date 06/05/01]
06/04/2001	137	Peremptory challenges by Pathlight Technology (td) [Entry date 06/05/01]
06/04/2001	138	Jury roster filed (td) [Entry date 06/05/01]
06/04/2001	139	Jury seating arrangement filed (td) [Entry date 06/05/01]
06/04/2001	140	Court Exhibit list (td) [Entry date 06/05/01]
06/05/2001	141	Notice of filing trial deposition counter-designations by Pathlight Technology (td) [Entry date 06/05/01]
06/05/2001	142	Objections by Pathlight Technology to Crossroads' deposition designations (td) [Entry date 06/05/01]
06/05/2001	143	Order granting motion in limine to exclude expert and other opinion testimony that the reserve command meets the "access controls" limitation [133-1], granting motion in limine regarding the denial of its summary judgment motion [131-1], denying amended motion in limine [107-1], denying motion in limine to preclude certain portions of the expert testimony of Dr. Kenneth Flamm [93-1], denying motion in limine [89-1], denying motion in limine to preclude testimony of Gary R. Stephens and Brian A. Berg [88-1], denying motion to preclude the introduction of evidence on related matters [88-2], denying motion in limine [83-1]. FINALLY ORDERED that trial for this case is RESET for 8:30 a.m. on 6/6/01. (td) [Entry date 06/05/01] [Edit date 06/05/01]
06/05/2001	--	Jury trial resetting to 8:30 6/6/01 (td) [Entry date 06/05/01]
06/05/2001	144	Objections by Pathlight Technology to exhibits list [124-1] (td) [Entry date 06/05/01]
06/05/2001	145	Third Supplement filed by Pathlight Technology Re: exhibits list [108-1] (td) [Entry date 06/05/01]
06/06/2001	--	Jury trial begun. Jurors sworn. Opening statements of counsel for parties heard. Rule invoked. Testimony heard on behalf of plaintiff. Evidence submitted on behalf of plaintiff. Testimony continued on behalf of plaintiff. Court recesses until 6/7/01 @ 8:45 a.m. (td) [Entry date 06/07/01]
06/07/2001	--	Jury trial held. Parties announce ready. Testimony heard on behalf of plaintiff. Witnesses sworn. Evidence submitted on behalf of plaintiff. Testimony continued on behalf of plaintiff. Court recesses until 6/11/01 @ 8:45 a.m. (td) [Entry date 06/07/01]
06/11/2001	--	Jury trial held. Parties announce ready. Testimony heard on behalf of parties. Witnesses sworn. Evidence submitted on behalf of parties. Plaintiff rests. Testimony continued on behalf of defendant. Oral motion for judgment by defendant - taken under advisement. Court recesses until 6/12/01 @ 8:45 a.m. (td) [Entry date 06/14/01]
06/11/2001	148	Rule 50 Motion by Pathlight Technology for judgment of non-infringement of the '972 Patent as a

matter of law (td) [Entry date 06/14/01]

06/11/2001 149 Rule 50 Motion by Pathlight Technology for judgment of no willful infringement of the '972 patent as a matter of law (td) [Entry date 06/14/01]

06/11/2001 150 Memorandum by Crossroads Systems in support of motion for judgment of no willful infringement of the '972 patent as a matter of law [149-1], motion for judgment of non-infringement of the '972 Patent as a matter of law [148-1] (td) [Entry date 06/14/01]

06/12/2001 146 Transcript filed for dates of 6/4/01 (Proceedings Transcribed: Pretrial hearing) (Court Reporter: Lily I. Reznik) (td) [Entry date 06/12/01]

06/12/2001 147 Transcript filed for dates of 6/5/01 (Proceedings Transcribed: Telephonic Conference) (Court Reporter: Lily I. Reznik) (td) [Entry date 06/12/01]

06/12/2001 -- Jury trial held. Parties announced ready. Testimony heard on behalf of defendant. Evidence submitted on behalf of defendant. Testimony continued on behalf of defendant. Oral motion for judgment by defendant - denied. Rebuttal testimony heard. Parties close. Court recesses until 6/13/01 @ 8: 45 a.m. (SS - ct rpts Lily Reznik) (td) [Entry date 06/14/01]

06/12/2001 151 Motion by Pathlight Technology for Ramsey M. Al-Salam to appear pro hac vice (td) [Entry date 06/14/01]

06/12/2001 152 Rule 50 Motion by Pathlight Technology for judgment of invalidity and unenforceability of the '972 patent as a matter of law (td) [Entry date 06/14/01]

06/12/2001 153 Memorandum by Crossroads Systems in support of motion for judgment as a matter of law on Pathlight's defenses of anticipation, obviousness, indefiniteness, inequitable conduct and willful infringement claim (td) [Entry date 06/14/01]

06/12/2001 154 Order granting motion for Ramsey M. Al-Salam to appear pro hac vice [151-1]. ntc 6/14/01 (td) [Entry date 06/14/01]

06/13/2001 -- Jury trial held. Parties announced ready. Court exhibits filed; Charge conference not held; Parties announce case has settled. (td) [Entry date 06/14/01]

06/13/2001 155 Combined Witness and Exhibit List by Crossroads Systems, Pathlight Technology (td) [Entry date 06/14/01]

06/13/2001 156 Consent Judgment filed (Pages: 5) (td) [Entry date 06/14/01]

06/13/2001 -- Case closed (td) [Entry date 06/14/01]

06/13/2001 -- Jury trial concluded (td) [Entry date 07/05/01]

06/14/2001 -- Copy of Conselt Judgment mailed to Commissioner of Patents & Trademarks (td) [Entry date 06/14/01]

06/19/2001 157 Joint motion by Crossroads Systems, Pathlight Technology to withdraw defendant's and plaintiff's admitted trial exhibits (td) [Entry date 06/19/01]

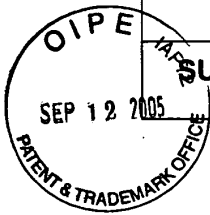
08/01/2001 158 Order granting joint motion to withdraw defendant's and plaintiff's admitted trial exhibits [157-1] (td) [Entry date 08/02/01]

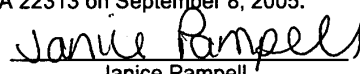
08/15/2001 159 Exhibit receipt (all trial exhibits) signed by Mark A. Pickett w/Fulbright & Jaworski by Pathlight Technology (td) [Entry date 08/16/01]

08/22/2001 160 Transcript filed for dates of 5/11/01 (Proceedings Transcribed: Docket Call) (Court Reporter: Lily I. Reznik) (td) [Entry date 08/22/01]

08/29/2001 161 Transcript filed for dates of 6/4/01 (Proceedings Transcribed: Jury Voir Dire) (Court Reporter: Lily I. Reznik) (td) [Entry date 08/29/01]

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE	
SUBMISSION OF REFERENCES TO COMPLETE RECORD BY APPLICANTS	
Atty. Docket No. (Opt.) CROSS1120-14	
Applicant Geoffrey B. Hoese, et al.	
Application Number 90/007,123	Date Filed 07/19/2004
Title STORAGE ROUTER AND METHOD FOR PROVIDING VIRTUAL LOCAL STORAGE	
Group Art Unit 2182	Examiner Alan Chen
Confirmation Number: 2293	
<u>Certification Under 37 C.F.R. §1.8</u>	
I hereby certify that this document is being deposited with the United States Postal Service as First Class Mail in a box addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313 on September 8, 2005.	
 Janice Pampell	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

To complete the record, Applicants respectfully submit hard copies of references previously submitted on CD-ROM with an IDS dated March 24, 2005 (the "March 24 IDS"). This submission is made simply to complete the file record and is not a new IDS as the references were already provided on CD-ROM and reviewed by Examiner Fritz Fleming (a copy of the March 24 IDS was initialed by Examiner Fleming indicating that he reviewed the references).

Respectfully submitted,

Sprinkle IP Law Group
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C52

09/06/2001 Chaparral Trial - Day 3

1 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF TEXA
2 WESTERN DIVISION
3 CROSSROADS SYSTEMS,) Docket No. A 00-CA-217 SS (TEXAS), INC., A TE
4 CORPORATION))
5 vs.) Austin, Texas)
6 CHAPARRAL NETWORK) STORAGE, INC., A)
7 DELAWARE CORPORATION) September 6, 2001
8 TRANSCRIPT OF TRIAL ON THE MERITS
9 BEFORE THE HONORABLE SAM SPARKS Volume 3 of 6

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Proceedings recorded by mechanical stenography, transcript produced by c

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1 THE COURT: All right, counsel. Anything before we
2 bring in the jury?

3 MR. ALBRIGHT: Not from plaintiff, your Honor.

4 MR. BAHLER: Nothing from defendant, your Honor.

5 THE COURT: All right. Bring them in.

6 (Jury present.)

7 THE COURT: About ten minutes after I let you go, the
8 sun came out. It was sunny and shiny. Just shows you that
9 judges aren't always right. Since we last met, has anybody
10 attempted to talk to you about this case?

11 THE JURORS: No.

12 THE COURT: Have you talked to anybody about the case?

13 THE JURORS: No.

14 THE COURT: And have you learned anything at all about
15 the case outside the presence of one another and this
16 courtroom?

17 THE JURORS: No.

18 THE COURT: All right. Thank you. Show negative
19 responses to all questions by all jurors. You may call your
20 next witness.

21 MR. ALBRIGHT: Thank you, sir. Plaintiffs would call
22 Mr. Ken Kuffner.

23 (Witness was sworn.)

24 THE COURT: If you'll come around, please, sir, and
25 have a seat. Tell us your full name and spell your last,

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1 please.

2 THE WITNESS: Kenneth Edwin Kuffner, K-U-F-F-N-E-R.

3 KENNETH E. KUFFNER, called by the Plaintiff, duly sworn.

4 DIRECT EXAMINATION

5 BY MR. ALBRIGHT:

6 Q. Mr. Kuffner, would you introduce yourself to the jury,
7 please, sir?

8 A. Good morning, ladies and gentlemen of the jury. I'm Ken
9 Kuffner. I've been practicing patent law in Houston for 30
10 years.

11 Q. Do you also have a technical background as an engineer,
12 sir?

13 A. I have an engineering degree.

14 Q. And what flavor of engineer are you?

15 A. Chemical engineering.

16 Q. Okay. Did you ever work in the Patent Office?

17 A. Yes, sir, I did.

18 Q. For how many years?

19 A. I worked two years for the Patent Office and two years for
20 the court of appeals that handles appeals from the Patent
21 Office.

22 Q. And if during the course of your questioning and answer
23 you refer to the PTO, what will you be talking about?

24 A. PTO is the term I use for the Patent and Trademark Office,
25 and they're really two separate offices, the Patent Office and

1 the Trademark Office.

2 Q. Have you ever prosecuted a patent application?

3 A. I have prosecuted many patent applications. I've been
4 doing it for the last many years supervisory work, and so,
5 I've been involved in prosecution of a number of applications.
6 I would estimate about a thousand.

7 Q. And tell the jury what a patent application is.

8 A. Patent application is an application for the grant of a
9 patent, and it's pretty much defined by rules and regulations
10 and the statute, includes what we call the specification. The
11 specification is a technical disclosure of the invention that
12 they're seeking to get patented.

13 A joins, if they're appropriate, and claims. Claims
14 are the paragraphs at the top of the specification that define
15 the invention that is to be patented. It's kind of like a
16 legal description of property. You might hear the term meets
17 and bounds in describing real property limits. Well, this is
18 kind of the meets and bounds in patent law.

19 Q. The jury's also heard a good deal about the fact that
20 there is a -- an opinion from patent counsel in this case with
21 respect to validity and infringement. Could you explain to
22 the jury what a letter like that is?

23 A. In the statutory context, patent lawyers practice in --
24 there's a duty. Anybody who knows of a patent has a duty to
25 take good care to avoid infringing that patent, and the

1 statute provides that if they're found to infringe the patent,
2 then that's willful. If it's willful infringement, then they
3 can get their damages multiplied.

4 And so, one of the defenses that is built up over the
5 years is that --

6 Q. Mr. Kuffner, I just wanted a brief -- a very brief
7 explanation of what --

8 A. An opinion is. So it has been a defense to a charge of
9 willful infringement that the accused infringer later found to
10 be an infringer had an opinion of counsel.

11 Q. And, Mr. Kuffner, as an attorney, have you ever prepared
12 any opinions of counsel for clients?

13 A. I have done so.

14 Q. Would you give the jury just a guesstimation of how many
15 you've done?

16 A. In the neighborhood of 100, maybe more.

17 Q. Your Honor, I would offer Mr. Kuffner as an expert.

18 THE COURT: What field?

19 MR. ALBRIGHT: In the field of -- basically, he's
20 going to explain to the jury how one obtains a patent. He's
21 going to explain basically what one does when he finds out
22 about a patent to avoid a finding of willfulness. And, also,
23 with respect to the issue of conception.

24 THE COURT: Any questions?

25 MR. DELLETT: With respect to conception, your Honor.

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1 THE COURT: Well, I don't know what's going to be
2 asked. Any voir dire questions at this time?

3 MR. DELLETT: No, not at this time.

4 THE COURT: All right. You may proceed.

5 Q. (BY MR. ALBRIGHT) Mr. Kuffner, we've retained you to come
6 testify to this jury, have we not, sir?

7 A. Yes.

8 Q. And are we paying you for your time?

9 A. You're paying my law firm.

10 Q. Okay. And how much are we paying your law firm, sir?

11 A. They charge \$350 an hour for my time.

12 Q. Would you estimate how many hours you've put in on this
13 case preparing to come and testify before this jury?

14 A. I would guess in the neighborhood of 90 to 100 hours.

15 Q. Okay. Your Honor, I've shown a demonstrative exhibit that
16 I've discussed with counsel yesterday.

17 Mr. Kuffner, if you'd be so kind as to walk over to
18 the exhibit that's up on the board, and basically, if you
19 would just go through and explain to the jury the patent
20 process.

21 A. It starts here. This is the technical disclosure usually
22 to a patent attorney. And between the patent attorney and the
23 inventors, they draft up what we call the specification which
24 is the necessary technical disclosure. It has to be a
25 complete disclosure, complete enough to teach how to make and

1 how to use the invention that they want patented.

2 The preparation of a patent application includes a
3 number of other documents besides the technical disclosure,
4 but mostly -- the most important ones are the technical
5 disclosure and the claims. The application is filed in the
6 Patent Office, which is right outside of Washington, D.C., and
7 it's processed there.

8 There are, maybe, 3,000 patent examiners, each of whom
9 has their own little cubbyhole of technology that they
10 examine. And so, when a patent application comes in, it's
11 inspected to find out what technology the invention would be
12 in, and it's sent up to a unit of patent examiners for
13 examination.

14 The examiner who's responsible for the application
15 generally has some experience either in the technology or in
16 the actual application of the technology and has been there
17 for a while, and he is examining inventions in that area.

18 Q. Mr. Kuffner, let me interrupt you for just a second. Say,
19 for example, in a case like this one, dealing with storage
20 routers, what type of person in the Patent Office would
21 perceive a patent, asking for a patent in this field?

22 A. They would send that to examiners who have computer
23 technology background and who examine computer technology.

24 Q. Thank you, sir. If you would continue, please.

25 A. All right. The PTO examination, specifically by the

1 patent examiners, are generally involves measuring whether or
2 not the invention that's claimed is understandable and passes
3 certain statutory standards, the most important of which is
4 it's got to be new, it's got to be useful in a patent law
5 context, and it's got to be one that has not been obvious to a
6 person of ordinary skill in the art. And you'll hear more
7 about that.

8 But basically, the initial examination of that
9 question is in the hands of the patent examiner.

10 Q. Mr. Kuffner, what happens next?

11 A. An action is issued. The examiner makes this
12 determination and either allows the claims or he doesn't allow
13 the claims. And the claims being the definition of the
14 invention that's to be patented.

15 Q. Thank you, sir.

16 A. And sometimes it's half and half, and so, the law provides
17 that the applicant is entitled to a response. Sometimes
18 there's a question as to the interpretation of the claim
19 language. Sometimes there's a question of an interpretation
20 of a reference that's been cited. Sometimes there's just an
21 argument about you're not right. There's a give-and-take
22 negotiation here.

23 Sometimes the examiner allows the claims without any
24 questions. Sometimes after the amendments and the agreements
25 on interpretation and discussion, then there might be more

1 claims allowed. But that's an office action. Ultimately, the
2 allowance is issued, and then, the patent process is
3 completed, the patent is granted.

4 Q. Okay. Thank you, sir. Mr. Kuffner, one of the things
5 that you mentioned was that to get a patent, the invention has
6 to be novel; is that correct?

7 A. That's correct.

8 Q. Are there ever instances, though, where it's appropriate
9 to patent something that is a combination of things that are
10 already in existence?

11 A. One of the things we have to deal with, as almost every
12 invention, is a combination of things that by themselves are
13 not new. The invention itself is the combination of those
14 elements, some of which are old, some of which are modified,
15 but in totality, the combination is new. So many times, the
16 arguments before the examiner will be in pointing out the ways
17 and the distinctions, the new stuff that's been added to what
18 appears to be old.

19 Q. Could you give an example of something where a combination
20 of things that were old was novel in the method they were
21 combined?

22 A. One thing that I think makes it clear is the concept of
23 intermittent windshield wipers which we've all had an
24 opportunity to use this week. That involves basic windshield
25 wipers, the motors, and then, a little device that enables the

1 intermittent operation, speeding them up, slowing them down,
2 making them stop and then, start again.

3 That was a new concept in combination when it was
4 first developed, and the Patent Office gave a patent on
5 intermittent windshield wipers, even though windshield wipers
6 had been old for many years and the motors that moved them and
7 even the device that helped with the intermittent operation
8 all were old. They were a prior art, but the combination was
9 new.

10 Q. Mr. Kuffner, we've heard some discussion during the course
11 of the trial about different devices or different information
12 that Crossroads might have provided to the Patent Office to
13 help them determine whether or not there was what's known as
14 prior art.

15 A. Yes.

16 Q. In as brief an explanation as you can give, would you just
17 give the jury an idea what prior art is?

18 A. Prior art, in simple terms, means art that is pertinent to
19 the subject matter being claimed that is prior to the
20 applicants. It could be -- it's defined in the statute, but
21 that's basically it. It's something that is not their
22 invention, it's something that's prior.

23 Q. Is the patent applicant, for example, in this case,
24 Crossroads, are they supposed to give every possible piece of
25 paper that might have anything to do with prior art to the

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1 Patent Office? Is that what they're supposed to do?

2 A. No. There's an obligation on the part of patent
3 applicants to provide what they're aware of and, specifically,
4 what is the closest prior art that they're aware of that would
5 help the examiner make the distinctions and determinations of
6 what's new and not obvious.

7 Q. What happens if they were to just flood the Patent Office
8 with information that's not necessarily the closest to the
9 invention?

10 A. Well, the whole system would bog down. It wouldn't work.

11 Q. Okay. Your Honor, I'm going to turn to Plaintiff's
12 Exhibit 23. Mr. Kuffner, would you identify what that is,
13 please, sir?

14 A. Yes, it's a letter that Chaparral's patent counsel sent to
15 their auditing CPAs.

16 Q. Okay. And what is the date on that, sir?

17 A. April 13th, 2000.

18 Q. I'd like to back up -- sort of a reference point. That's
19 the first letter that Chaparral receives, correct --

20 A. Yes --

21 Q. -- about this?

22 A. -- from their attorney.

23 Q. Putting that date sort of a milestone context of April
24 when they received the first letter, you understand that
25 Chaparral actually learned of the patent back in early

1 February, correct?

2 A. Yes, I understand that and that's what Mr. Walker said
3 yesterday.

4 Q. Okay. And what they did was they retained Mr. Zinger,
5 patent attorney, to provide an opinion for them, correct?

6 A. Among other things.

7 Q. Early on, they asked him to address the LUN zoning
8 feature, correct?

9 A. It's apparent from what I read that that's true, and the
10 testimony of Mr. Walker confirmed that.

11 Q. And they discovered -- they actually discovered the patent
12 before suit had been brought, correct?

13 A. Yes.

14 Q. Now, we filed suit in March, correct?

15 A. I believe so.

16 Q. Now, going back to this letter, have you reviewed this
17 letter, sir?

18 A. Yes, it was one of many that I reviewed.

19 Q. Okay. Do you believe that this is the type of opinion
20 that would give sufficient -- a sufficient safe harbor to
21 someone with respect to whether or not there is infringement
22 or is not infringement?

23 A. No.

24 Q. And would you explain to the jury why this opinion would
25 be insufficient?

1 A. This is not the kind of opinion that patent attorneys
2 understand in the context of the load we work in would be the
3 kind of thing that would be an excuse against willful
4 infringement. It doesn't have an analysis of the claims. It
5 doesn't have an analysis of the standards for patentability.
6 It doesn't go into any of the details at all.

7 And it must be, on its face, within the four corners
8 enough to provide a good faith sense that it would be okay to
9 proceed. And all it is is conclusory.

10 Q. How long is this letter?

11 A. This letter is -- what you're showing me is one page.
12 There's another page, I believe.

13 Q. Okay. And if I were to tell you that Mr. Zinger spent
14 less than an hour preparing this, would you think that would
15 be adequate to do a full opinion letter?

16 A. There's no way that could be done --

17 Q. Okay.

18 A. -- in that time.

19 Q. Now, we learned yesterday from Mr. Walker that Chaparral
20 pulled the LUN zoning in or about May of 2000, correct?

21 A. I heard that.

22 Q. Your Honor, I'm going to show Plaintiff's Exhibit 27.

23 We move ahead shortly after Chaparral has removed the
24 LUN zoning to June. Have you reviewed this draft opinion from
25 Mr. Zinger?

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1 A. Yes, I have.

2 Q. And would you pay particular attention to that language.

3 What is Mr. Zinger referencing there?

4 A. Specifically, he's referencing the presently marketed
5 products of Chaparral including its data routers.

6 Q. Okay. And do those routers contain LUN zoning?

7 A. No. It's been made clear through the testimony that those
8 routers that were marketed at that time did not contain LUN
9 zoning.

10 Q. So does this opinion cover LUN zoning?

11 A. This opinion does not cover LUN zoning.

12 Q. Would this letter provide any kind of safe harbor with
13 respect to the issue of whether or not LUN zoning infringes or
14 does not infringe the 972 patent?

15 A. None whatsoever.

16 Q. Does this letter even address the concept of whether the
17 patent's a valid or invalid?

18 A. No, it does not.

19 Q. Your Honor, next, I'm going to move to Plaintiff's Exhibit
20 32.

21 This is the final opinion that Mr. Zinger wrote, is it
22 not, sir?

23 A. Yes, it is.

24 Q. And it's dated November 20th, 2000?

25 A. Right.

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1 Q. When they say that is it -- or Mr. Zinger's judgment that
2 the products of Chaparral that are the subject of this lawsuit
3 with Crossroads do not infringe, do those products include LUN
4 zoning?

5 A. Later on in the opinion, he makes it clear that they do
6 not.

7 Q. So does this opinion offer any opinion with respect to
8 whether or not the LUN zoning feature that's accused in this
9 case is or is not infringing?

10 A. I agreed with what Mr. Walker said yesterday, that this
11 has nothing to do with LUN zoning.

12 Q. Would this opinion that's dated November 20th, 2000, which
13 is the final opinion that Mr. Zinger wrote, would this letter
14 provide anyone a safe harbor with respect to the issue of
15 whether or not the LUN zoning feature infringes?

16 A. Not at all.

17 Q. Do you know whether or not Chaparral ever obtained any
18 opinion of counsel with respect to LUN zoning prior to
19 shipping products that contain LUN zoning in January of 2000
20 -- 2001?

21 A. It's pretty clear from everything that I read and what I
22 heard that they did not.

23 Q. Okay. Is it your opinion that they should have obtained
24 such an opinion of counsel?

25 A. Yes, it is my opinion.

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1 Q. And why should Chaparral have received an opinion of
2 counsel from Mr. Zinger, or some other qualified patent
3 counsel, with respect to the issue of whether or not the LUN
4 zoning feature infringed the 972 patent?

5 A. They were clearly put on notice that their products were
6 subject to this patent, and they had a duty to exercise good
7 faith in going forward, and part of that good faith is getting
8 advice of counsel. And what they did do was they got advice
9 of counsel, but he specifically avoided the LUN zoning issue.

10 To me it's a signal that they shouldn't do it.

11 Q. Well, do you have any reason to believe that Mr. Zinger
12 knew about the LUN zoning issue?

13 A. There's several instances of his time records were
14 available in the documents that I -- and I also read his
15 testimony, and he said that his opinion didn't apply to LUN
16 zoning.

17 Q. But I'm saying what -- why should the jury believe that
18 Mr. Zinger ever considered the LUN zoning?

19 A. I believe that Mr. Walker mentioned that and Mr. Gluck
20 also mentioned that, and it's in the deposition testimony of
21 Mr. Zinger, and in his time records.

22 Q. And what is it that is in Mr. Zinger's time records?

23 A. That they -- there were a number of analyses and questions
24 considered about LUN zoning as a feature in the Chaparral
25 products.

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1 Q. So Mr. Zinger did consider the issue of -- whether LUN
2 zoning infringed?

3 A. In my judgment, it's clear that he did.

4 Q. But he never put anything about whether or not it did in
5 his opinion letters?

6 A. That's right and that's very telling.

7 Q. Do you know whether Mr. Zinger -- strike that. Do you
8 have an opinion whether Mr. Zinger knew that there was LUN
9 zoning in the products in 2001, whether he would have believed
10 another letter was necessary?

11 A. In my judgment, it's clear from the opinion that he issued
12 in November of 2000 and it's also clear from what he said at
13 his deposition.

14 Q. And tell the jury what it is he said at his deposition
15 that leads you to this belief?

16 A. As I recall, he basically said that if he had known that
17 the products contained LUN zoning, they would have required
18 another opinion.

19 Q. During the course of 2000, prior to the implementation of
20 LUN zoning in products that Chaparral started shipping in
21 January, in your opinion, did Chaparral take any steps,
22 reasonable steps that would have provided it a safe harbor
23 with respect to the issue of whether or not LUN zoning
24 infringes?

25 A. They did what I considered to be the right thing early on

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1 by getting counsel and advice on whether or not their products
2 infringed. Ultimately, they seemed to ignore that on the LUN
3 zoning issue, so it wasn't reasonable.

4 Q. Your Honor, may we approach?

5 THE COURT: Yeah.

6 (At the Bench, on the record.)

7 THE COURT: Yes, sir.

8 MR. ALBRIGHT: Your Honor, at this time, we'll have
9 Mr. Kuffner offer testimony with respect to the Pathlight
10 settlement. I wanted to ask him the question, basically you
11 heard the testimony from Mr. Gluck yesterday in which
12 Pathlight introduced -- I have a copy of that for the Court.

13 THE COURT: I can remember what happened yesterday.

14 MR. ALBRIGHT: Sir? I was just going to put it in the
15 record.

16 THE COURT: It's in the record. You just got a copy
17 of it.

18 MR. ALBRIGHT: I apologize, your Honor. But we
19 believe that the purpose of having the testimony introduced by
20 Pathlight was to give the jury an indication that Pathlight
21 had acted in good faith by consulting with other people in
22 attempting to find prior art that would invalidate, and in
23 consulting with as many companies as they could, they put that
24 evidence into the record.

25 I believe it's fair to allow Mr. Kuffner to explain to

1 the jury whether or not it was objectively reasonable for them
2 to continue to rely on anything that they had discussion with
3 Pathlight about given the fact that Pathlight would settle for
4 \$15 million in this case and that they admitted that the
5 patent was valid and that they admitted that they infringed.

6 The inference that the jury has right now is
7 completely to the contrary based on the record from the
8 testimony that Mr. Gluck introduced.

9 MR. BAHLER: Your Honor, this is a Rule 408 issue,
10 clearly is.

11 THE COURT: No, it's not. You deliberately put into
12 the record that Mr. Kameni or whatever --

13 MR. ALBRIGHT: Rahmani.

14 THE COURT: -- of Pathlight cooperated and worked with
15 your client and agreed. You deliberately put into the record
16 that they agreed that the patent was invalid. And your
17 client, notwithstanding the admission by the party that agreed
18 with you on invalidity, agreed to the settlement, agreed to
19 the injunction, and paid an awful lot of money.

20 Notwithstanding that, your client thereafter allegedly
21 infringed the patent.

22 And the problem is you gave inference to the jury that
23 these other people had the same conclusion when at the time of
24 the infringement, you knew they didn't. So I don't know that
25 this witness is the appropriate one to do. Half his testimony

1 has been inadmissible, but there hasn't been a single
2 objection.

3 But you are entitled to show that as of the date of
4 the agreement by Pathlight that they settled and agreed that
5 the injunction -- agreed to the validity of the patent and
6 paid damages. That's all I'm going to let you do. That that
7 was a date. You can show that that was a fact because of the
8 defendants placed in evidence the precursor of that that they
9 talked with Pathlight and Pathlight agreed it was invalid.

10 All the issue of notice at the time they alleged
11 infringement, I don't know that this is the expert witness who
12 can testify to that. I don't know what his proffered
13 testimony was to the other side.

14 MR. ALLCOCK: May I interject? I think the
15 introduction here would be on the consent judgment, which is
16 lateral to the record, and the fact that they obviously had
17 knowledge of the agreement.

18 THE COURT: Well, the fact that it's a public record
19 does not make it relevant. It only becomes relevant on the
20 issue of notice because the defendant has placed that as part
21 of its defense. Now, I don't know how you're going to
22 approach it. I don't give a sense of teaching anymore.

23 I'm just going to rule on objections as you proceed,
24 but I'm giving notice to all parties that because the
25 defendants placed that into evidence yesterday on the issue of

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1 notice and willfulness, it's certainly admissible.

2 MR. ALBRIGHT: Your Honor, may I just -- ten seconds
3 to check?

4 THE COURT: You may.

5 MR. ALBRIGHT: Your Honor, I believe that the correct
6 way of putting the evidence in would be to have Mr. Walker
7 recalled because he's the person who would be able to testify
8 about what occurred and then, just in terms of sequence and
9 then, call Mr. Kuffner back to the stand because then, the
10 evidence would be in the record and he could consider it. I
11 believe that would be the cleanest way of complying with what
12 your Honor said.

13 MR. BAHLER: Your Honor --

14 THE COURT: I'm not giving any instructions on how
15 anybody tries the case. The issue came up and that's how the
16 situation is as it was. That's the way you proceed. Do you
17 have any objection to that?

18 MR. BAHLER: Your Honor, the consent judgment was
19 known to everybody, public record. So Mr. Kuffner could have
20 -- could have included it in his report, and there's nothing
21 in it.

22 THE COURT: Well, I don't think he had any idea that
23 you would be silly enough to put in the evidence that you did.
24 No lawyer that I know of would have. You can proceed how you
25 wish.

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1 MR. ALBRIGHT: Okay.

2 Q. (BY MR. ALBRIGHT) Mr. Kuffner, would you turn, please,
3 sir, in your book to Plaintiff's Exhibit 34, please, sir?

4 A. I have it.

5 Q. Would you tell the jury what that -- what Exhibit 34 is,
6 please, sir?

7 MR. DELLETT: Objection. This is outside the scope of
8 Mr. Kuffner's report. His report doesn't mention anything
9 about this particular document nor does he have any opinions
10 in his report about this document.

11 THE COURT: Of course, I have no idea what 34 is.
12 Could anyone show me what 34 is?

13 MR. ALBRIGHT: Your Honor, this witness was proffered
14 on this specific topic, and we believe that Exhibit 34 in the
15 companion Exhibit 117, that I would introduce in a second, go
16 directly to his opinions. And I believe certainly from the
17 opinions that he's offered, counsel's on notice with respect
18 to the issues that he says about -- I don't believe they are
19 prejudiced by the fact that these two particular exhibits will
20 not be in his report.

21 THE COURT: Well, they weren't in his report, it's not
22 in his report, they are not -- if they're being tendered at
23 this time. The objection is sustained. The literal reading
24 of the documents are not relevant.

25 MR. ALBRIGHT: Okay. Thank you, your Honor.

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1 Q. (BY MR. ALBRIGHT) Would you turn, then, Mr. Kuffner, to
2 Exhibit 7, please, sir?

3 A. I have it.

4 Q. Have you seen that document before, sir?

5 A. Yes, I have.

6 Q. And would you tell the jury what it is or, at least,
7 remind them, please, sir?

8 A. This is the document about which the inventors, Mr. Hoese,
9 particularly, testified to regarding his first concept and
10 disclosure to the patent attorneys.

11 Q. Now, there is a term of art in patent law that is
12 conception. Would you explain to the jury what conception
13 means?

14 A. In patent practice, conception is the mental or the active
15 invention. There's the first, the mental part, conceiving of
16 the idea, and then, the second part is actually putting it
17 into practice.

18 Q. Okay. And with respect to just the concept of conception,
19 because that's all I want you to proffer an opinion on with
20 respect to this issue, but just with respect to conception, do
21 you have an opinion as to when conception took place in this
22 case?

23 MR. DELLETT: Objection, your Honor. No foundation
24 for this witness having any knowledge other than a legal
25 opinion about this issue. This is a bald legal opinion. It

1 is not --

2 THE COURT: If it's a bald opinion, I'm not so sure
3 that it's a legal opinion at all. A legal question,
4 conception is a factual question. It is this gentleman's
5 opinion, and I will sustain the objection. The jury will make
6 up its own mind, and I will instruct the jury as to what
7 conception is.

8 Notwithstanding the fact there was no objection,
9 members of the jury, I'll instruct you what the law is, not
10 this witness.

11 MR. ALBRIGHT: Your Honor, that's all we have. Pass
12 the witness.

13 CROSS-EXAMINATION

14 BY MR. DELLETT:

15 Q. Morning, Mr. Kuffner.

16 A. Good morning.

17 Q. Ladies and gentlemen, my name is Steve Dellett. I haven't
18 introduced myself to you before.

19 Mr. Kuffner, here's a notebook of exhibits. Now, Mr.
20 Kuffner, are you an expert in computer storage?

21 A. I don't think so.

22 Q. Do you have any experience in computer storage?

23 A. Not in the sense I think you're asking. Of course, I use
24 my computer quite a bit.

25 Q. Have you ever worked on a patent application for computer

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1 storage?

2 A. I have not.

3 Q. Are you an expert in electrical engineering?

4 A. I am not.

5 Q. Are you an expert at software engineering?

6 A. No, I am not.

7 Q. Now, you were in the Patent Office some time ago. Was
8 that in the early 1960s?

9 A. Late 1960s.

10 Q. And when you were in the Patent Office, you examined
11 chemical-related patents?

12 A. It was polymer technology, yes.

13 Q. Not a single computer software patent?

14 A. No.

15 Q. Not a single electrical engineering patent?

16 A. No.

17 Q. Not a single patent related to computer storage?

18 A. No.

19 Q. Now, have you ever met Mr. Zinger?

20 A. I don't believe I have.

21 Q. Okay. Did you know that Mr. Zinger has written over 100
22 patent applications in computer technology?

23 A. I did not.

24 Q. Do you know -- do you have any idea how many patent
25 applications Mr. Zinger's written in computer storage?

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1 A. No.

2 Q. Do you know anything about Mr. Zinger's reputation?

3 A. I know he's a senior partner in a good firm in Denver.

4 Q. Do you know anything about his competence?

5 A. Not specifically.

6 Q. As far as you know, does he have a good reputation amongst
7 patent attorneys?

8 A. Yes.

9 Q. Is he registered to practice before the United States
10 Patent Office?

11 A. I checked that out. He is.

12 Q. Now, do you think Chaparral should have gotten a chemical
13 patent attorney like yourself instead of Mr. Zinger?

14 A. Why? To do what?

15 Q. To write the opinion.

16 A. To advise them?

17 Q. Yes.

18 A. If I had advised them or a chemical patent attorney would
19 have advised them, it would have been a patent practice, and
20 it would have been with the help of technical people.

21 Q. You wouldn't have felt competent to write an opinion about
22 the 972 patent yourself?

23 MR. ALBRIGHT: Your Honor, all this is irrelevant.

24 We've made no challenge ever to Mr. Zinger's confidence to
25 draft any of the opinions.

1 THE COURT: Okay. The objection's noted and
2 overruled. You may answer the question.

3 A. State the question again, please.

4 Q. (BY MR. DELLETT) Would you have felt competent to write an
5 opinion about infringement or validity of the 972 patent?

6 A. Not by myself. I would have gotten an assistant.

7 Q. Somebody that knew more about computer technology than
8 yourself?

9 A. Who could have answered my questions about the technical
10 aspects, yes.

11 Q. Now, to determine whether or not a patent is valid or not,
12 one approach is to look for prior art, correct?

13 A. The statutory standards are measuring the patent claims
14 against the prior art.

15 Q. And it's important to look for prior art that the Patent
16 Office hasn't seen, right?

17 A. If I were in your shoes defending an accused infringer,
18 that's one of the things I would do.

19 Q. That's perfectly ethical to do that, correct?

20 A. Absolutely.

21 Q. And that's what you advised clients to do who are accused
22 of infringing patents, look for prior art?

23 A. Yes.

24 Q. Now, when Chaparral -- Chaparral got sued by Crossroads in
25 March 2000, correct? March 31st?

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1 A. I believe that's right.

2 Q. Right. And they filed what is called a complaint,
3 correct?

4 A. Yes.

5 Q. And that's why we're here, right?

6 A. Yes.

7 Q. And you've reviewed that complaint?

8 A. I did.

9 Q. And do you believe Mr. Zinger also saw that complaint?

10 A. I don't know for sure.

11 Q. Well, you read his deposition, right?

12 A. Yes.

13 Q. And he mentioned that he saw it only three days after it
14 was filed? Does that sound about right?

15 A. If you say so. I don't remember that.

16 Q. Do you recognize exhibit -- Plaintiff's Exhibit 141 as the
17 complaint that's filed?

18 A. Yes, I do.

19 Q. And, in fact, you included this complaint in your report
20 on the chronology of events?

21 A. That's one of the things I considered, yes, sir.

22 Q. Let's include that in the chronology here. That was March
23 31st. That's when Crossroads sued Chaparral, right?

24 A. That's when this complaint was filed, yes, sir.

25 Q. And if you turn to the sixth page of the complaint, you'll

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1 see it was signed by Mr. Albright, correct?

2 A. Yes.

3 Q. And he was also on the complaint listed are the Gray Cary
4 attorneys representing Crossroads, right?

5 A. Yes.

6 Q. And on the third page of the complaint, do you see where
7 Crossroads alleged that the devices alleged to infringe
8 include, but not limited to, the FS-1310B, FS-1310C, and
9 FS-1310R storage routers, do you see that?

10 A. I do.

11 Q. And so, at this time, Mr. Zinger would have known that
12 Crossroads was alleging infringement of the FS-1310B, 1310C
13 and 1310R storage routers?

14 A. Among others, that's right.

15 Q. Does it list any others?

16 A. It doesn't have to.

17 Q. Did you read the complaint yourself?

18 A. As a matter of fact, a complaint doesn't have to list
19 specific ones.

20 Q. But it did list these --

21 A. It did list -- it said included but not limited to.

22 Q. And it didn't list any other, did it, Mr. Kuffner?

23 A. Not listed any others, you're right.

24 Q. Now, so in March 2000, accused FS-1310. Now, let's move
25 ahead to May of 2000. You understand that's when Chaparral

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1 decided not to put LUN zoning in its products?

2 A. I understand that.

3 Q. Now, as of May 2000, do you think Mr. Zinger had any
4 information about what Crossroads was showing to the public at
5 Comdex 1996?

6 A. I don't know that.

7 Q. You haven't seen any information that Mr. Zinger would
8 have known that that took place in Comdex '96?

9 A. It was one of the circumstances I considered that
10 Chaparral was showing devices that -- and featuring this LUN
11 zoning at the time, and if they had Mr. Zinger as their
12 counsel, it would have been appropriate for them to actually
13 ask him about that.

14 Q. Those 4100 and 4400 data sheets were in Crossroads'
15 possession, right?

16 A. At what time?

17 Q. In May of 2000?

18 A. I don't know.

19 Q. Do you think that Chaparral had that information in May of
20 2000?

21 A. Had what information?

22 Q. Information that Crossroads was showing the 4100 and 4400
23 to the public in 1996?

24 A. I don't know.

25 Q. You don't know? Now, let's move ahead to September 15th,

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1 2000. Did you know that Crossroads filed an amended complaint
2 in September 2000?

3 A. I'm aware of that.

4 Q. And have you seen that complaint?

5 A. Yes, I believe so.

6 Q. Okay. Let's put that on the time line. Crossroads files
7 amended complaint. And this is the first page is a motion for
8 leave to file a first amended complaint. And here is the
9 first amended complaint itself. And it's your -- is it your
10 understanding that this Alan Albright and the Gray Cary
11 attorneys are the same attorneys representing Crossroads here?

12 A. Yes.

13 Q. And that's signed by Mr. Albright?

14 A. Yes.

15 Q. Now, did you look at this first amended complaint to see
16 what Crossroads was alleging to infringe?

17 A. I looked at this complaint generally to inform me of the
18 issues in the case.

19 Q. And do you see what Crossroads is alleging that the
20 FS-1310B, FS-1310C and FS-1310R storage router infringe?

21 A. It's the same language from the earlier one.

22 Q. So in September 2000, Crossroads was still alleging that
23 the 1310R storage router -- excuse me, in September 2000,
24 Crossroads was still alleging that the FS-1310 storage routers
25 infringe the 972 patent, correct?

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1 A. Yes, among other devices.

2 Q. Did Crossroads list any other devices in its first amended
3 complaint?

4 A. They didn't have to.

5 Q. Did they?

6 A. No.

7 Q. No. Now, let's move ahead to -- well, first of all, Mr.
8 Kuffner, do you know what type of access controls, if any,
9 were in the FS-1310R storage routers that Crossroads -- excuse
10 me, that Chaparral sold in 2000?

11 A. I have a general understanding that it's been determined
12 that as the Court has interpreted the access controls in this
13 patent, it's not in those devices.

14 Q. And those are the devices -- the FS-1310 devices are the
15 ones that reserve and release, right?

16 A. That's my understanding.

17 Q. Now, let's move ahead to November 2000. As of November
18 2000, had Crossroads dropped its infringement allegations
19 against FS-1310 storage routers?

20 A. I don't know.

21 Q. You don't know? Now, November 2000 is when Mr. Zinger
22 wrote the opinion, right?

23 A. When he completed and finished his final opinion, November
24 20th.

25 Q. Zinger completed opinion. You read Mr. Zinger's opinion,

1 correct?

2 A. Yes, I did.

3 Q. And do you remember approximately how long it was?

4 A. About how long the opinion was?

5 Q. Yes.

6 A. Many pages.

7 Q. Many pages? And did it go through each claim of the 972
8 patent?

9 A. It's my understanding that it did.

10 Q. And did it reach any conclusion on whether the 972 patent
11 was valid or not?

12 A. Yes, it did.

13 Q. And do you recall what that conclusion was?

14 A. That it was valid except if it were construed to cover
15 certain devices.

16 Q. Well, let's look at the opinion more carefully so we have
17 the exact language. Do you see Plaintiff's Exhibit 32 on your
18 screen?

19 A. Yes, I have it.

20 Q. And this is Mr. Zinger's opinion that you referred to?

21 A. The November 20th opinion, correct.

22 Q. And it's addressed to Mr. Walker?

23 A. Yes, it is.

24 Q. And you read this carefully?

25 A. I believe I did.

1 Q. Okay. Well, I'm going to refer you to the 24th page here.
2 I've got that on the screen. It's the page that at the top,
3 it says disclosures and prior art not considered by the United
4 States patent examiner when the 972 patent was examined. Are
5 you with me?

6 A. I am.

7 Q. Okay. Why would Mr. Zinger include this in his opinion?

8 A. I could tell you generally why something like that is
9 included in an opinion.

10 Q. Why?

11 A. Because it is important in an analysis in which you're
12 giving an opinion of how the patent may be construed to say
13 that if it's -- if it's construed to read on the prior art, it
14 would be invalid, and so you have to have certain prior art
15 that you're talking about.

16 Q. And, in fact, Mr. Zinger reached a conclusion in this
17 opinion the patent was invalid, right?

18 A. He limited his conclusions specifically to only if it was
19 construed to read on the reserve release features.

20 Q. And that's exactly what Crossroads was alleging the patent
21 read on, correct?

22 A. Among others.

23 Q. And that's the reserve release was exactly what Crossroads
24 was putting its patent number on at that time, wasn't it?

25 A. I believe that's so. I'm not sure.

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1 Q. And at the time Mr. Zinger wrote his opinion, Crossroads
2 had not stopped doing that?
3 A. Doing what?
4 Q. Putting the patent number on products with reserve
5 release?
6 A. I think that Crossroads people yesterday testified that
7 they didn't do it -- they didn't realize what they were doing
8 until their deposition.
9 Q. Well, the Gray Cary attorneys here realized what they were
10 doing, didn't they, when they alleged that products with
11 reserve release infringed the 972 patent? Did they know what
12 they were doing?
13 A. Yes --
14 Q. And --
15 A. -- in March of 2000.
16 Q. -- and when you read this opinion from Mr. Zinger, did you
17 think that Crossroads better stop alleging that products with
18 reserve release infringed the 972 patent? Did you think that?
19 A. I wasn't asked to give any opinion on that.
20 Q. And if you were asked today, would you tell them they
21 should stop alleging that products with reserve release
22 infringed the 972 patent?
23 A. If I were asked today, I would have to ask a lot of
24 questions and find out a lot of information.
25 Q. Pretty questionable thing to do, allege products that are

1 in the prior art infringe the 972 patent?

2 A. It's questionable? I believe that we're here to decide
3 what in fringes and what doesn't.

4 Q. At the time Mr. Zinger wrote his opinion, though,
5 Crossroads was still alleging products with reserve release
6 infringed the 972 patent. Are we clear on that?

7 A. I believe so.

8 Q. Okay. And, in fact, that was Mr. Zinger's, part of his
9 conclusion, wasn't it?

10 A. On page 32, Mr. Zinger says it should be understood that
11 no conclusions are being drawn and no opinions are being
12 provided concerning invalidity of patent claims in the case in
13 which the relevant claim language is found not to read on the
14 reserve release command.

15 Q. And at that time when he wrote his opinion, Crossroads was
16 alleging that the patent -- that the claims of the patent read
17 on the reserve release command, right?

18 A. I think technically, that's true.

19 Q. Okay. And I have highlighted here --

20 A. It isn't true anymore.

21 Q. It wasn't true anymore, okay. Precisely. When did
22 Crossroads stop alleging that products with reserve release
23 infringed the 972 patent?

24 A. I'm not really sure the dates, but I'm pretty confident
25 that it was after the Judge's construction of the patent.

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1 Q. Was it in May of this year, May of 2001?
2 A. I don't know.
3 Q. You don't know. Now, let's go to where you can come in.
4 Were you working on this case at all in November 2000?
5 A. No, sir, I don't believe so.
6 Q. When did you start working on this case?
7 A. Sometime earlier this year.
8 Q. Did you start working on after Mr. Allcock called you?
9 A. Yes, pretty soon after that.
10 Q. Okay. Do you remember when he called you?
11 A. It was very early.
12 Q. Early this year?
13 A. Early this year.
14 Q. Okay. January? February?
15 A. Probably was around that time.
16 Q. So in January-February 2001, Mr. Allcock called you and
17 said, we'd like you to work on this case, right?
18 A. Well, he didn't say it that way.
19 Q. What did he say?
20 A. He said, we have a need for a patent expert in Texas and
21 we'd like to hire you if you have no conflicts.
22 Q. Okay. And then, you wrote an opinion about Mr. Zinger's
23 opinion, right?
24 A. I have ultimately written a report giving my opinions.
25 That was many months later.

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- 1 Q. That was many months later, right? That was in, what,
2 August, just a month ago?
- 3 A. I believe so.
- 4 Q. So you're kind of being an armchair quarterback here about
5 Mr. Zinger, right?
- 6 A. I wouldn't call it that.
- 7 Q. What would you call it?
- 8 A. I would call it being a patent expert to come in and help
9 the Court and the jury on some issues of patent practice.
- 10 Q. And by the time you wrote your opinion, had Crossroads
11 changed its mind about whether or not devices with reserve
12 release infringe the 972 patent?
- 13 A. By the time I wrote my opinion, there had been a number of
14 issues decided. I don't know exactly when it was determined
15 not to accuse the reserve release feature.
- 16 Q. Had they decided not to accuse the reserve release feature
17 in November 2000?
- 18 A. I don't know, Mr. Dellett.
- 19 Q. Okay. But they certainly decided by August 2001?
- 20 A. Yes, they had.
- 21 Q. Let's start the second page. Sometime between November
22 2000, when Zinger completed his opinion, and August 2001, when
23 you wrote your opinion, Crossroads dropped its allegations
24 against the FS-1310 routers, correct?
- 25 A. I believe it's more accurate to say they focused their

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1 allegations on the devices that had the LUN zoning feature.

2 Q. Crossroads' sales of 1310 routers aren't at issue here
3 today, are they?

4 A. I don't believe so.

5 Q. They're not still alleging that Crossroads' sales of 1310
6 routers are infringing, are they?

7 A. Crossroads doesn't sell those.

8 Q. Excuse me. Crossroads is still not alleging that
9 Chaparral sales of FS-1310 routers are infringing, they're not
10 alleging that today anymore?

11 A. I don't believe so.

12 Q. Okay. Now, do you know how Chaparral found out that
13 Crossroads was not alleging infringement of the FS-1310
14 routers?

15 A. No.

16 Q. Have you seen the interrogatory answers where Crossroads
17 decided to limit its allegations to LUN zoning? Have you seen
18 those?

19 A. I have seen some interrogatory responses.

20 Q. And do you remember that the first time that Crossroads
21 dropped the FS-1310 from its infringement allegations was in
22 May of this year? Do you remember that?

23 A. I don't believe I was aware of that.

24 Q. Do you remember when Crossroads stopped putting the patent
25 number on its products that had reserve release?

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1 A. I believe that Crossroads' witnesses yesterday said they
2 did it shortly after they were informed about it in their
3 depositions.

4 Q. That was after Mr. Zinger's opinion, right?

5 A. I'm pretty sure it was.

6 Q. Okay. Now, Mr. Kuffner, let me ask you a little bit more
7 about the Patent Office. When you were working at the Patent
8 Office, did the Patent Office have a web site?

9 A. No.

10 Q. No. It wasn't such a thing in those days?

11 A. I don't believe so.

12 Q. Are you aware that the Patent Office has a web site today?

13 A. I am.

14 Q. Okay. And is that something you use?

15 A. It's a huge government web site with many aspects. There
16 is some data banks that you can get access through to that web
17 site, and I use those data banks.

18 Q. Okay. And from that web site, can you get information
19 about what patent examiners do?

20 A. I don't specifically know that. There's a lot of
21 government information on that web site that I don't even look
22 at.

23 Q. And so you -- well, let me ask it this way: Are you aware
24 that patent examiners -- a patent examiner spends, on average,
25 approximately ten to 15 hours on each patent application?

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1 MR. ALBRIGHT: Objection, your Honor. It lacks
2 foundation. This expert gave no opinion in direct nor does it
3 call for this issue.

4 MR. DELLETT: Mr. Kuffner talked for some time in
5 response to Mr. Albright's question about what happens inside
6 the Patent Office. This is cross-examination into details,
7 more specifically, the details of what patent examiners do.

8 THE COURT: If you can back it up with the statements,
9 I'll permit it. If you're not going to back it up, I'll tell
10 the jury to ignore it.

11 MR. DELLETT: Okay.

12 THE COURT: You may answer the question.

13 Q. (BY MR. DELLETT) Ten to 15 hours per patent application,
14 does that sound about right to you?

15 A. On average, it does.

16 Q. And on average, does the examiner grant on average about
17 81 patent applications a year? Does that sound about right?

18 A. It sounds on average about right.

19 Q. And there are a lot of clerical functions that take place
20 in the Patent Office that the patent examiner is not involved
21 with, correct?

22 A. That's true.

23 Q. Okay. And that's one of the reasons why it takes a year
24 and a half for a patent to go from application to finally
25 being granted, correct?

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1 A. Most of the time is really taken between the examiner and
2 the attorney, that early administrative stuff is usually over
3 in six to nine months.

4 Q. Okay. And in this case, the patent took about a year and
5 a half between the time it was filed and the time it was
6 granted, correct?

7 A. Yes.

8 Q. And is that typical for a patent?

9 A. It's not unusual.

10 Q. Okay. But you're not saying the examiner spent a year and
11 a half looking at it, are you?

12 A. No. There's a back and forth with mail and time limits
13 given, things like that.

14 Q. The examiner himself probably spent only ten to 15 hours
15 on it?

16 A. I have no specific knowledge on that.

17 Q. But that would be about average?

18 A. But that is the average.

19 Q. Now, when you advised clients about filing patent
20 applications, you advised them about their duty of disclosure?

21 A. Yes, I do.

22 Q. And if you were talking about the Patent Office
23 procedures, it's -- it would be incomplete not to talk about
24 the duty of disclosure, correct?

25 A. The duty of disclosure is an important part of practice

1 before the Patent Office.

2 Q. And it's your ethical obligation as a patent lawyer to
3 tell clients about the duty of disclosure, correct?

4 A. I believe so.

5 Q. And one of the things that you tell applicants that
6 they're obligated to inform the Patent Office is information
7 that is on sale or in public use more than one year before a
8 patent application is filed, correct?

9 MR. ALBRIGHT: Your Honor, again, this is outside the
10 scope of direct.

11 THE COURT: It is outside the scope. I sustain the
12 objection.

13 Q. (BY MR. DELLETT) Now, in your testimony about procedures
14 before the Patent Office, you didn't mention the duty of --
15 did you mention the duty of disclosure?

16 A. Just now.

17 Q. Do you have an opinion about whether or not Crossroads met
18 the duty of disclosure?

19 MR. ALBRIGHT: Your Honor, that's outside the scope of
20 direct. He's not been proffered with respect to any of these
21 opinions.

22 THE COURT: All right. That's certainly true. I
23 don't know why he asked the question, but it is outside the
24 scope and I sustain the objection.

25 MR. DELLETT: Your Honor --

1 THE COURT: The objection is sustained.

2 Q. (BY MR. DELLETT) Now, Mr. Kuffner, if you would, for a
3 minute, look at the last page of Mr. Zinger's opinion, you can
4 see a signature there.

5 A. Are you talking about the November 20th opinion?

6 Q. Yes.

7 A. Yes, I see it.

8 Q. And after that signature, there are a number of
9 attachments included in the patent, the 972 patent and the
10 file history. This is the first page of the file history. Do
11 you see that?

12 A. Yes.

13 Q. And did you review all those materials?

14 A. I believe I looked at all of them.

15 Q. And based on a review of all those materials, did you
16 reach any opinion yourself as to whether the 972 patent was
17 valid or not?

18 MR. ALBRIGHT: Your Honor, outside the scope of
19 direct. It's not an issue that's we've proffered.

20 THE COURT: He has no opinion, and I sustain the
21 objection.

22 Q. (BY MR. DELLETT) Have you come to any opinion as to
23 whether or not the 972 patent is infringed or not?

24 MR. ALBRIGHT: Your Honor, that's --

25 THE COURT: Are you hard of hearing?

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1 MR. DELLETT: No, your Honor.

2 THE COURT: All right.

3 MR. DELLETT: No further questions.

4 RE-DIRECT EXAMINATION

5 BY MR. ALBRIGHT:

6 Q. Mr. Kuffner, are you challenging in any way Mr. Zinger's
7 competence?

8 A. No, not at all.

9 Q. Are you challenging in any way the competence of his
10 opinions?

11 A. Not at all.

12 Q. And with respect to what those opinions actually cover and
13 discuss, are you challenging the issue of whether or not he
14 properly analyzed the products and whether or not those
15 products without LUN zoning were infringing?

16 A. I support the way that he did his opinion thoroughly. It
17 was a solid job, particularly the way he left out the LUN
18 zoning.

19 Q. Would you tell the jury what is meant by the term offer
20 for sale with respect to if a product is infringing?

21 THE COURT: What's good for the goose is good for the
22 gander. The objection that was to be made is sustained.

23 MR. ALBRIGHT: Okay.

24 Q. (BY MR. ALBRIGHT) I'd like to fill in a couple of extra
25 dates with you here, Mr. Kuffner. Prior to March 31st, when

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1 we filed this suit accusing the FS-1310 -- and we accused
2 other infringing products, as well, correct?

3 A. That's correct.

4 Q. Prior to this date, we would have to go back to February
5 to see when Chaparral actually learned of concerns about the
6 972 patent, correct?

7 A. Yes, that's correct.

8 Q. Well before Crossroads ever filed the suit?

9 A. Sure.

10 Q. And prior to Crossroads ever filing its suit, identifying
11 any products, did Chaparral express any concern over whether
12 or not any of its features infringed?

13 A. I think the record's clear that they did and specifically
14 mention LUN zoning.

15 Q. So before they ever received a complaint, whether it was
16 the original complaint or the complaint -- amended complaint
17 in September, prior to that date, they had a concern about LUN
18 zoning?

19 A. That's right.

20 Q. And what did they do to address that concern of LUN
21 zoning?

22 A. They hired Mr. Zinger and another expert, Mr. Selinger, to
23 advise them on that.

24 Q. And is that what they should have done?

25 A. It is what they should have done.

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1 Q. But -- well, we do have a final date here, August of 2001.
2 Or let's make it September now as between February, when they
3 were concerned that the LUN zoning feature infringed, and
4 today, September 6th, have they ever gotten an opinion that
5 discusses LUN zoning?

6 A. They've never received any written advice on the issue of
7 LUN zoning infringing this patent.

8 Q. Regardless of what's in any of these complaints?

9 A. That's right.

10 Q. And do you know what it is that Crossroads is alleging
11 infringes which feature Chaparral's is that infringes the 972
12 patent?

13 A. My understanding is the devices that have a feature of LUN
14 zoning.

15 Q. Your Honor, I pass the witness.

16 THE COURT: Any follow-up?

17 MR. DELLETT: No follow-up.

18 THE COURT: You may step down, sir. Members of the
19 jury, I'll give you your morning break, 15 minutes. Please be
20 ready and come back in 15 minutes and follow my instructions.

21 (Recess.)

22 THE COURT: The one thing that I'm going to limit on,
23 you will not ask about the same lawyers.

24 MR. ALLCOCK: Okay.

25 THE COURT: All right?

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1 MR. ALLCOCK: That's fine.

2 THE COURT: Well, it's not fine. It's the way it's
3 going to be. Bring them in.

4 MR. BAHLER: Your Honor, as long as you're going to
5 limit.

6 MR. ALLCOCK: Your Honor, with that comment --

7 THE COURT: Let me rephrase. You won't go into the
8 fact that these two separate entities that were communicating
9 and giving each other opinions have the same lawyers unless
10 you approach and tell me the reason for it. Of course, in
11 that particular instance, I just -- I think that that is more
12 prejudicial than at this point in time in the record and
13 relevant.

14 MR. ALLCOCK: I understand, your Honor. In that case,
15 we should remove the second to the last page of Exhibit 34
16 from the exhibit, which is the one that has the signature
17 pages of the lawyers, and I'll have that done.

18 THE COURT: I'm not so certain that the literal words
19 of those exhibits are relevant. It's only the notice to Mr.
20 Walker and his folks over there at Chaparral that's going to
21 be -- and the timing. You wanted to say something.

22 MR. BAHLER: I have no problem with removing that
23 page, and I would just like to confirm that this isn't going
24 to be in their closing.

25 THE COURT: I'm sorry.

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1 MR. BAHLER: It's not going to come up during closing
2 either?

3 THE COURT: The same lawyer?

4 MR. BAHLER: Yes, sir.

5 THE COURT: Unless they approach and I change my mind,
6 or you approach. I don't want either side mentioning the
7 lawyer issue until you approach, then I'll make a ruling.

8 MR. BAHLER: Your Honor, I'd also seek a limiting
9 instruction that this is only relevant to anything that
10 happened after June 13th, 2001. And it is not evidence of
11 validity and it's not evidence of infringement.

12 THE COURT: I think you're entitled to that, and I
13 will make that upon an appropriate objection and request. I
14 don't know that I will say -- I will say that I'm admitting
15 this evidence solely on the issue of notice on the willfulness
16 question and that it is not evidence of any infringement in
17 this trial.

18 MR. BAHLER: Or validity.

19 THE COURT: Or validity. All right. That's fair
20 enough.

21 (Jury present.)

22 THE COURT: You may sit down in the courtroom. And
23 you may call your next witness.

24 MR. ALLCOCK: Yes, your Honor. We would recall Mr.
25 Walker to the stand.

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1 THE COURT: Mr. Walker, come forward, and you're still
2 under oath, sir.

3 THE WITNESS: Yes, sir.

4 RE-DIRECT EXAMINATION

5 BY MR. ALLCOCK:

6 Q. From June until now, Chaparral has continued to sell
7 products including the LUN zoning feature; is that right, sir?

8 A. That's correct.

9 Q. And you heard yesterday Mr. Gluck's testimony on video
10 that he talked with a Mr. Rahmani from a company called
11 Pathlight, and that they agreed that the patent was invalid.
12 Did you hear that testimony?

13 A. I heard that testimony, yes.

14 Q. And I'm placing before you -- let me show you a page 408
15 one and two of Exhibit 39 that I don't have the bar-coded
16 version of it handy. Is that a page of your lab notebook
17 indicating that you talked to Mr. Levy, the patent lawyer for
18 Pathlight?

19 A. No, it is not. It's a page indicating that Mr. Zinger had
20 talked to Mr. Levy.

21 Q. Okay. So there was communication between the patent
22 lawyer for Chaparral and the patent lawyer from Pathlight?

23 A. Yes, that was during the process of us trying to learn
24 everything we could.

25 Q. So you were on notice that Pathlight was also accused of

1 infringement of the same patent?

2 A. At what point in time are we talking about?

3 Q. In the year 2000?

4 A. Yes.

5 Q. And you were on notice that there was a lawsuit brought by
6 Crossroads against Pathlight and its parent company, ADIC for
7 infringement of the same patent?

8 A. Yes.

9 Q. And you were on notice that they resolved that dispute in
10 June of 2001?

11 A. Yes. I knew it had been resolved in 2001, yes.

12 Q. And you were on notice that it was resolved at the very
13 end of trial because you attended the trial, didn't you, sir?

14 A. Yes, I did.

15 Q. You sat through every day of it?

16 A. I did.

17 Q. And if you look at Exhibit 34, it's there in front of you
18 loose. I'm sorry.

19 A. Oh, this one here.

20 Q. Let me take that book from you.

21 A. Please.

22 Q. You were on notice that that case was resolved by a
23 consent judgment; is that right, sir?

24 A. I had not heard the term consent judgment.

25 Q. You were on notice that the case was resolved where ADIC

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1 acknowledged and agreed and Pathlight acknowledged and
2 agreed --

3 MR. BAHLER: Objection, your Honor. He's going to
4 articulate contents of an exhibit that's not in evidence.

5 THE COURT: Do you want it in?

6 MR. BAHLER: I don't want it in evidence.

7 THE COURT: Well --

8 MR. BAHLER: So I object.

9 THE COURT: You object that it's not in evidence.

10 MR. BAHLER: I object that it's not yet in evidence,
11 exactly.

12 THE COURT: Overrule the objection. You may proceed.

13 Q. (BY MR. ALLCOCK) You were on notice that Pathlight and
14 ADIC acknowledged and agreed that their products infringed the
15 Crossroads patent?

16 A. What I knew was what was publicly disclosed.

17 Q. Okay. And Exhibit 34 was a public document at that time?

18 A. I don't know. This is the first time I've seen this
19 document.

20 Q. Your Honor, I'd like to -- the Court to take judicial
21 notice of the consent judgment and offer it into evidence.

22 THE COURT: In light of the testimony, does the
23 exhibit show a file date?

24 MR. ALLCOCK: It does of June 13th, '01.

25 THE COURT: All right. 34 is admitted over objection.

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1 MR. BAHLER: Your Honor, may we have a ruling on the
2 instruction?

3 THE COURT: I will and I'll give it at one time.

4 MR. BAHLER: Thank you.

5 MR. BAHLER: This is admitted over objection, right?

6 THE COURT: That's what I said.

7 MR. BAHLER: Thank you.

8 Q. (BY MR. ALLCOCK) I'm going to first direct your attention
9 to paragraph 3 of the consent judgment. Now, whether or not
10 you saw this particular language that ADIC acknowledges and
11 agrees that it's made, used, sold, offered for sale and/or
12 imported products that infringe the claims of the 972 patent.
13 In June, you knew, in substance, that Pathlight admitted that
14 their products infringed, didn't you, sir?

15 A. I knew that they settled the case in June.

16 Q. And you knew that they settled in substance agreeing that
17 their products infringed?

18 A. I don't recall what I saw of the settlement was, what I
19 saw in a web site, and I don't remember exactly what the words
20 were. I had never seen the consent decree or these words. So
21 I don't know the details of how that settlement --

22 Q. This was the substance of what you understood?

23 A. Like I say, I don't recall the words. I read what was put
24 out on the web site by ADIC and Crossroads, and whatever.
25 That was the extent of my knowledge at the time.

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1 Q. Okay. You were in the courtroom the day that this
2 document was handed up to the Court and signed, weren't you?

3 A. Not to my knowledge. I don't know what day it was. I
4 knew nothing about this document.

5 Q. Okay. In paragraph 4 says, the 972 patent is presumed to
6 be valid and enforceable under 35 U.S.C. 282. ADIC hereby
7 acknowledges and agrees that the claims of the 972 patent are
8 valid and enforceable.

9 You understood that when the case was resolved, ADIC
10 agreed in substance to this.

11 A. I believe I remember words to the effect of ADIC validates
12 the patent or something in the web site. I don't remember the
13 exact wording.

14 Q. And you say that you saw this information on the
15 Crossroads web site?

16 A. I don't remember whose web site. I pulled it off of news
17 on somebody's web site. I don't remember whose it was, and I
18 don't remember what the words said.

19 Q. Okay. Let me show you Defendant's Exhibit 242, and look
20 at page 2 of the document. Do you see that?

21 A. Yes, I see this.

22 Q. And what is the first item on the top there -- oh, offer
23 Exhibit 242, your Honor, Defendant's Exhibit.

24 A. Ask the question again, please.

25 Q. I'm not going to ask it again.

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1 THE COURT: Well, received without objection.

2 Q. (BY MR. ALLCOCK) What is the top item there?

3 A. It says Pathlight Technology admits infringement and
4 settles lawsuit with Crossroads Systems.

5 Q. Now, if you look at Exhibit 117 before you, sir.

6 A. Yes.

7 Q. Have you ever seen that before?

8 A. No, I have not.

9 Q. Okay. If you would take a look at the top of page 2 of
10 the exhibit.

11 A. Yes.

12 Q. Do you see that? Now, regardless of whether you saw this
13 document, you were informed of the amount that Pathlight and
14 ADIC paid --

15 MR. BÄHLER: Objection. Relevance.

16 THE COURT: That objection is overruled. You can
17 answer "Yes" or "No" whether you were informed or not of the
18 amount paid.

19 A. I was not informed. Any amount that I remember seeing
20 was, again, what I saw on a news posting on a web site.

21 Q. (BY MR. ALLCOCK) Okay. But so, you learned about the
22 amount that Pathlight and ADIC paid Crossroads to settle that
23 case?

24 A. Yes, what was on the news.

25 Q. And is what you recall consistent with what is on the top

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1 of Exhibit 117?

2 A. I recall the sum of \$15 million total. I didn't know how
3 it was broken down.

4 Q. Offer Exhibit 117, your Honor.

5 MR. BAHLER: Objection, your Honor. Relevance.

6 THE COURT: May I see the --

7 MR. ALLCOCK: Oh, I'm sorry, your Honor.

8 THE COURT: I sustain the objection. 117 is not going
9 in.

10 Q. (BY MR. ALLCOCK) Now, you saw the defenses presented in
11 the course of that Pathlight/ADIC trial with respect to
12 invalidity, right?

13 A. Yes.

14 Q. And there in substance the same defenses that are
15 presented here, aren't they, sir?

16 A. I don't think so. We have different products, had
17 different features. I don't recall whether they were the same
18 defenses. I'd be very surprised if they were the same
19 defenses.

20 Q. Do you remember the Adaptec prior art being relied on in
21 that case?

22 A. Yes.

23 Q. Do you remember the -- I have no further questions of the
24 witness at this time, your Honor.

25 THE COURT: Members of the jury, I'm admitting this

1 evidence of Mr. Walker on his recall solely on the issue that
2 you will determine on notice, information to this gentleman
3 regarding the issue of willfulness as to whether or not there
4 was a willful infringement in the event you find any
5 infringement in this case.

6 But Mr. Walker's evidence today, as you recall, is not
7 to be considered by you in any way as evidence that the
8 defendant's products infringed or as evidence that the patent
9 is valid. You will make the determination of those issues but
10 on other evidence and not let Mr. Walker's testimony influence
11 you on that.

12 You can consider Mr. Walker's testimony only on what
13 he knew as he has testified that he made the decision to
14 release the products with the LUN zoning at the times that he
15 has testified he did, and that's the only issue that you may
16 consider in that testimony.

17 Now, do you have any further questions?

18 MR. BAHLER: I have some cross, your Honor.

19 THE COURT: All right.

20 RE-CROSS EXAMINATION

21 BY MR. BAHLER:

22 Q. Mr. Walker, do you know why ADIC settled that suit?

23 A. I don't know why. I have my own theory, but I don't know
24 why. I wasn't there.

25 Q. Do you know what was in ADIC's mind when they settled that

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1 suit?

2 THE COURT: I'd better have counsel up here.

3 (At the Bench, on the record.)

4 THE COURT: I don't know where we're going because I'm
5 not bright enough to follow you, but I just thought I ought to
6 warn you that the wrong question and the wrong answer or, in
7 this case, of the opposing side, the wrong question and the
8 right answer might have to make me withdraw the limiting
9 instruction.

10 MR. BAHLER: All right, your Honor.

11 THE COURT: So be very careful.

12 MR. BAHLER: Thank you, your Honor. I'll withdraw
13 that question, your Honor.

14 Q. (BY MR. BAHLER) Does Chaparral make the same products as
15 Pathlight?

16 A. No.

17 Q. Mr. Walker, as you sit here today, do you believe the 972
18 patent is valid?

19 A. No.

20 Q. As you sit here today, do you believe that any product
21 ever made by Chaparral infringes the 972 patent?

22 A. No.

23 Q. Pass the witness, your Honor.

24 THE COURT: Any further questions?

25 MR. ALLCOCK: No further questions of the witness,

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1 your Honor.

2 THE COURT: You may step down, sir. You may call your
3 next witness.

4 MR. ALLCOCK: I will call Dr. Paul Hodges.

5 THE COURT: Be sworn, please.

6 (Witness was sworn.)

7 THE COURT: Take your seat, please, sir. Tell us your
8 full name, please, sir, and spell your last.

9 THE WITNESS: Paul Hodges, H-O-D-G-E-S.

10 PAUL HODGES, called by the Plaintiff, duly sworn.

11 DIRECT EXAMINATION

12 BY MR. ALLCOCK:

13 Q. Dr. Hodges, could you tell the ladies and gentlemen of the
14 jury your work background?

15 A. Yes. I worked for IBM for 39 years. The last 33 of those
16 years, I was working in storage architecture -- there are
17 various areas of storage -- primarily storage architecture,
18 and I voluntarily retired in 1999.

19 Q. Could you just describe for us what you mean by storage
20 architecture?

21 A. Architecture is the business of defining how things --
22 elements of a system are designed and how they go together and
23 work together so that the system actually works. That can
24 have various levels of things. For example, some of the block
25 diagrams that you saw earlier were -- would describe the

1 architecture of the router that is the various elements of it,
2 but it could include higher level things, too, for example, a
3 network.

4 It covers a lot of different things, but it's
5 basically the -- the art of putting things together so that
6 they work properly.

7 Q. In the course of your years at IBM, did you receive any
8 awards from IBM?

9 A. Yes, I did. I received several company awards, and I
10 received some peer recognition by election to the IBM Academy
11 of Technology.

12 Q. What is the IBM Academy of Technology?

13 A. IBM Academy of Technology is a group of high-level
14 engineers, approximately 300 of them, which is constituted to
15 facilitate communication among different divisions and to
16 advise senior manager -- management on various technical
17 issues.

18 Q. How do you get into this IBM academy?

19 A. There's two ways: One is you could become an IBM fellow,
20 or you could be elected by your peers. I was elected by my
21 peers for my work in storage sub systems.

22 Q. And you said there's 300 members of this IBM academy. How
23 many engineers work at IBM?

24 A. I'm not sure how many, but tens of thousands.

25 Q. Did your work at IBM involve patents?

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1 A. Yes, it did.

2 Q. How?

3 A. Well, I filed 16 patents in my career, so I've worked with
4 patents in that way. I did an evaluation of patents for -- by
5 other people for IBM's interest in licensing them. I did
6 evaluation of other people's patent disclosures to decide
7 whether we should file them, and I advised our patent
8 attorneys several times on litigation issues.

9 Q. What area do your patents involve?

10 A. My patents involve storage in various areas. Primarily
11 storage architecture.

12 Q. Okay. What is your educational background?

13 A. I have a Bachelor of Arts and Bachelor of Science from
14 Rice University, Master of Science in Electrical Engineering
15 from Stanford University, and Ph.D. in Electrical Engineering
16 from Stanford University. Ph.D. was awarded in 1967.

17 Q. Now, we've heard a lot about SCSI standards and SCSI
18 devices. Do you have any experience in that area, sir?

19 A. Yes, I have. I've done some work with SCSI devices, and I
20 have attended standards meetings for about approximately two
21 years, SCSI standards meeting, and I've done -- I've studied
22 the SCSI standards.

23 Q. And do you have -- we've heard about Fibre Channel
24 devices. Do you have any experience with Fibre Channel
25 devices or standards?

1 A. Yes, I'm well-acquainted with the Fibre Channel standard.
2 And, in fact, I led a task force within IBM to decide on
3 whether we should emphasize the Fibre Channel or some other
4 interface an early point in the Fibre Channel development.

5 Q. Okay. Now, you've read and analyzed the 972 patent. How
6 does the technical area of that patent square up with your
7 technical background?

8 A. Well, obviously, it involves the interfaces of Fibre
9 Channel and SCSI, but, more importantly, it involves storage
10 architecture. It's primarily just in the patent describing
11 how this router goes together and what its functions are.

12 Q. And, in fact, you testified about that same patent in an
13 earlier case that was referred to you?

14 A. Yes, I did.

15 Q. Okay. I would like to offer Dr. Hodges as an expert in
16 storage architecture.

17 THE COURT: Do you have any questions?

18 MR. BAHLER: No objection, your Honor.

19 THE COURT: Members of the jury, when you're qualified
20 by education, experience, you are allowed in federal court to
21 give opinions. This gentleman has been so qualified. You
22 will evaluate his testimony as you would any other. If you
23 would like to accept or reject the testimony or accept parts
24 of it, however you wish, but people who are not qualified by
25 education or experience can't give opinions. They have to

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1 testify as to facts and that's the reason for this.

2 So you may proceed.

3 MR. ALLCOCK: Thank you, your Honor. Let me move this
4 so that you can look at the screen or see it, anyways.

5 Q. (BY MR. ALLCOCK) Let's start with a little background, Dr.
6 Hodges. Let me show you Exhibit 537, which we've seen a
7 couple of times, and I want to ask you just a little bit more
8 detail about it.

9 What generally is Exhibit 537 showing?

10 A. Generally it is showing a Fibre Channel network with three
11 workstations attached to it. May be an application. There's
12 some others, but we'll consider the three. There's a network
13 server that the Fibre Channel attaches to. The network server
14 has also attached to it on a SCSI bus three storage devices
15 which are represented as disk files.

16 Q. Okay. Now, what is the -- in a medium technical
17 description, what is the difference between the Fibre Channel
18 language and the SCSI language that causes this problem that
19 we've heard about?

20 A. As we've shown here, the Fibre Channel is carrying network
21 requests which are high-level requests for data, and the SCSI
22 channel is carrying a low-level request, that is, looking for
23 a particular block of data at a particular physical location.

24 Q. And showing you Exhibit 567, what problem does that cause?

25 A. Coming across the network, the high-level requests have

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1 various things added to them to make sure that the network
2 transmission is correct. So you have a small request that's
3 wrapped into somewhat larger network requests. The network
4 sever has to unwrap this and check it to be sure it's correct,
5 interpret the request, find out where the physical location of
6 the data is, and generate a request on the SCSI side.

7 Q. Okay. You said it takes a long time to create this. Let
8 me show you Exhibit 540. And we're not going to go into
9 detail of each of these steps, but generally speaking, what is
10 Exhibit 540 showing?

11 A. Generally Exhibit 540 shows the steps that one goes
12 through to create a network from a workstation. It starts
13 with looking for a particular piece of data. In this case,
14 one named budget 12 and you determine if that's either on the
15 network or local. In this case, it would be on the network.
16 You create the network requests in several steps and send it
17 across the network to the network server.

18 Q. So does this take some time?

19 A. This takes some time.

20 Q. And now, let's look at Exhibit 544. Once that network
21 request gets to the server, what needs to happen?

22 A. It needs to be checked and unwrapped and a low-level
23 physical request, which we've described as the native
24 low-level block protocol -- that is the native language that
25 the disks speak -- has to be created and sent across the SCSI

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1 bus.

2 Q. And so, does this take some time?

3 A. This takes some time. And, in fact, you're duplicating
4 some effort because you're going to have to look in the
5 network server and find out where that data is, which you
6 already did in the workstation.

7 Q. So have you prepared an animation that kind of shows in a
8 general way what the problem is?

9 A. Yes.

10 Q. Let me show animation 465. What is this depicting?

11 A. This is depicting network requests arriving at a faster
12 rate than the network server can interpret them and send out
13 low-level block requests. This is really the problem that you
14 have with the network server and easily get overloaded.

15 Q. So turning to Exhibit 545, how is one of these routers
16 different from a server?

17 A. The difference here is not obvious from the picture
18 because one sees a -- workstations attached to a Fibre Channel
19 and something in between and a SCSI channel. In this case,
20 the Fibre Channel is a means of carrying data, and it can be
21 used in a number of different ways. Previously, we talked
22 about network requests.

23 In this case, the Fibre Channel is being used to
24 encapsulate SCSI requests so that all that's happening here is
25 that the workstation is just sending out a SCSI request for a

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1 data in a physical location. The router is translating that
2 from Fibre Channel to the SCSI bus sending the same request
3 off to the disk.

4 Q. Okay. So let's just step back and say what is the basic
5 difference between this router and the server?

6 A. The router is using the low-level block protocol all the
7 way through.

8 Q. Now, you said that term a couple of times, low-level block
9 protocol. What is that in relation to the language that these
10 remote storage devices speak?

11 A. That's the native language of the remote storage device.

12 Q. So, in analogy, that could be Greek?

13 A. That could be Greek.

14 Q. And does the router kind of do away with having a
15 translation?

16 A. Yes, it does.

17 Q. Okay. Let's see how that works. Showing Exhibit 543, how
18 does that differ from the way a server operates?

19 A. Well, we saw before that the server would get the request
20 for a file budget 12 and would have to deal with this network
21 protocol and then, would have to find, like, a server end
22 wherein budget 12 was physically.

23 In this case, the workstation knows exactly what
24 physical address budget 12 is at. It says block 597. So he
25 sends out a request to the disk file. It says go get address

1 597 and read it. That would be done whether or not there's a
2 router in between the workstation and the disk. In other
3 words, whether it was local or whether it was remote.

4 Q. So what's the advantage of this over a server?

5 A. It's faster, it doesn't get overloaded as easily, and it's
6 cheaper.

7 Q. Okay. Going back to Exhibit 545, we've heard a lot about
8 access controls. What does access controls add to Exhibit
9 545?

10 A. Access controls adds the capability to restrict the access
11 of a -- some workstation to a particular subset of the storage
12 devices or a particular section of a single storage device.

13 Q. Okay. Showing you Exhibit 546 --

14 MR. BAHLER: Objection, your Honor. This is leading.
15 He's showing the exhibits before Mr. -- Dr. Hodges even
16 testifies.

17 THE COURT: Are these admitted?

18 MR. ALLCOCK: All of them are unobjected to, your
19 Honor.

20 THE COURT: Okay. Well, they're in evidence.

21 Q. (BY MR. ALLCOCK) Could you step down and first explain
22 access controls and, also, explain the advantage of them using
23 Exhibit 546?

24 A. What is shown here in Exhibit 546 is two workstations for
25 simplicity, rather, router, three disk drives. We've assumed

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1 that computer A has personnel files on it and that -- I mean,
2 that, excuse me, disk file one has personnel files on it. But
3 computer A belongs to the personnel department, for example.

4 Assume that computer B belongs to the tax department,
5 disk file 2 contains the tax records. We'd like not for the
6 tax people to have access to personnel files. We'd like not
7 for the personnel people not to have access to the tax
8 records. So you restrict their access.

9 You say that disk file one has access only by computer
10 A, not by computer B. And, likewise, disk file two has access
11 only by computer B but not by computer A. Now, the third one
12 over there has essentially public information and you'd like
13 for everybody to get to it, so you'll have both of these
14 workstations to get to that third disk.

15 Q. Okay. Could you stay there just for a second. Have you
16 prepared an animation that shows the advantage and difference
17 of this over the router situation?

18 A. Yes, I have.

19 Q. Okay. It's animation 4465. Hold on, I'm going to stop
20 it. I'm going to try to stop it. There we go. Can you
21 return it to the beginning? There we go. Okay.

22 So, first, can you explain to the ladies and gentlemen
23 of the jury basically what you're seeing here?

24 A. What you're seeing is a representation of this same
25 diagram you just saw with two workstations and three disks,

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1 and some restrictive access. We've got the router in the
2 middle, and we're showing little sleds here to carry that,
3 you'll see, will carry requests for data.

4 Q. Okay. Could you start the animation?

5 A. Here, A is carrying a request --

6 Q. Now stop.

7 A. All right. A has a request that's carrying, you'll see
8 it's got the little red ball in there. This is a request for
9 data from storage unit 1. And you could see the sled here
10 coming across Fibre Channel is going to transfer that request
11 unchanged into this -- the sled that goes out to storage unit
12 1, and you'll see that happening with others, as well.

13 Q. Now, hold on. I notice one difference between this and
14 the server animation. We don't have those big balls.

15 A. That's right.

16 Q. Now, why is that?

17 A. There's no interpretation required here of what the
18 request is. This is a SCSI request that's being generated
19 here. It's only being translated from the Fibre Channel
20 transport mechanism to the SCSI bus transport mechanism.

21 Q. When you say this is a Fibre Channel request that's
22 represented by that little red ball?

23 A. Little red ball represents that.

24 Q. Okay. And so, are what we are seeing here, with the A
25 going into the 1, is that this mapping that we've been talking

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1 about?

2 A. This is mapping.

3 Q. Okay. Could you continue?

4 A. We have an address that A sees that's -- that it sends
5 this request to the router translates that address, maps that
6 address to disk 1.

7 Q. And so, the router knows which storage device goes with
8 that?

9 A. It knows which storage devices goes with which address on
10 the other side.

11 Q. Okay. Could you run it?

12 A. And you see he's allowed to go to one or three. And B is
13 allowed to go to two or three.

14 Q. Okay. Perhaps you could run it again, and as you run it,
15 could you explain how this shows access controls.

16 A. This is showing access permissions and, actually, because
17 it shows the disk, the sleds carrying the requests to the ones
18 from A to the discs -- A is allowed access to and from B to
19 the disk that B is allowed access to. We don't have an
20 animation here that -- of this thing crashing because the
21 access is denied.

22 For example, if A were to try to send something to
23 disk 2, he wouldn't be allowed to do that.

24 Q. Okay. You can have a seat. And I'm going to place before
25 you -- whoops. I'm going to place before you Exhibit 591,

1 which is figure 3 of the patent, and how does that show access
2 controls?

3 A. This is actually derived from figure 3 on the patent. It
4 has some additions to the -- added some icons to make the
5 workstations look like workstations and some color. Here
6 we've shown workstation A in blue, having access permission to
7 the segment of storage device 62 that is marked in the
8 gray-blue.

9 And workstation B, similarly, workstation E, having
10 access to the -- to storage device 64, the color corresponds
11 to access permission.

12 Q. Okay. Now, in this figure, we see the storage router.
13 What -- how does the storage router know which computers to
14 give access to which remote storage devices?

15 A. There has to be a way to establish the configuration that
16 not only shows the mapping but shows the access permissions,
17 and that's done through the management station, which is shown
18 here connected either directly to the router or indirectly
19 through one of the interfaces.

20 Q. Now, does the --

21 A. Or both of them direct, but --

22 Q. Does the patent describe a number of different kind of
23 management stations?

24 A. Yes, it does.

25 Q. What are some examples of things that you could use to

1 configure this router?

2 A. Well, you could use any computer, basically. Could be
3 another workstation. It's in this case, could be connected
4 separately to the router by a dedicated connection, or it
5 could be on the -- on one of the interfaces either the Fibre
6 Channel or SCSI bus.

7 Q. So there's a number of ways this can be programmed?

8 A. Yes.

9 Q. The router can be programmed?

10 A. Yes.

11 Q. Okay. Why would you want access controls?

12 A. Well, we've showed one example a little earlier. You want
13 -- particularly, you don't want to give users access to data
14 that they have no business looking at. But at the same time,
15 you'd like to be able to centralize your storage for
16 management purposes.

17 Q. In all your experience in storage architecture, have you
18 ever seen a storage router, seen or read about a storage
19 router with access controls?

20 A. Not before I saw this patent.

21 Q. What were you asked to do in this case in connection with
22 your analysis?

23 A. I was asked to analyze the patent and the products put out
24 by Chaparral for infringement, and to look at the prior art
25 that was brought up by Chaparral to see whether it wore on the

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1 patent.

2 Q. Okay. I'm not going to ask any questions about the prior
3 art today. We'll maybe discuss that next week, after we hear
4 from the Chaparral witnesses. But what did you do to come to
5 your opinion on infringement of the 972 patent?

6 A. I examined the patent itself, of course, and the patent
7 filing history, a court's definitions of the claimed elements.
8 I read considerable number of documents, my users guides,
9 hardware descriptions. I read depositions. I actually
10 obtained a representative physical product and tested it,
11 maybe some other things, I can't remember. It was a lot of
12 work involved.

13 Q. About how many hours do you estimate that you've spent on
14 this analysis?

15 A. Somewhere around 200 hours.

16 Q. What types of products did you look at?

17 A. I looked at Pathlight's -- sorry, Chaparral's -- I knew
18 I'd do that. I looked at Chaparral's router products, and I
19 looked at Chaparral's RAID products.

20 Q. Okay. If you look at Exhibit -- graphics Exhibit 607,
21 could you explain to the ladies and gentlemen of the jury what
22 that's showing?

23 A. This is a -- the thing on the left is a page from the
24 Chaparral web site that shows a very high level overview of
25 the products, that is, shows that they have router products

1 and that they have RAID controller products.

2 Q. Okay. What is a router product?

3 A. A router is a product that connects -- allows connection
4 between two different -- what's the word -- between devices on
5 two different interfaces. And in this particular, we're
6 talking about computers around workstations on the Fibre
7 Channel interface connecting to storage devices on the SCSI
8 interface.

9 Q. And what is a RAID product?

10 A. A RAID product is essentially the same thing but has some
11 additional function which is not significant to the case here.

12 Q. So for our purposes here, is there any difference between
13 the RAID products and the router products?

14 A. No, there are not.

15 Q. Show you graphics Exhibit 533, and what does that depict?

16 A. This is, again, for the web pages, it's showing several
17 excerpts from the web pages that describe different packages
18 that these products come in. There's the rack mount, which is
19 essentially a self-contained product which could be put on a
20 desk top or mounted on a rack with other equipment.

21 There's the canister version which is designed to slip
22 into a standard slot like the -- in your PC. And there is a
23 board version, which is just a card which would be plugged
24 into somebody else's equipment as a part of that equipment.

25 Q. Now, for our purposes, the purposes of the patent, is

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1 there any material distinction between these different
2 versions of the product?

3 A. No, they all have the same structure internally and they
4 all operate the same.

5 Q. Now, what materials did you consider to determine how
6 these devices operate?

7 A. I looked at the users guides, the hardware descriptions
8 that were provided on Chaparral, I looked at some marketing
9 information that had some descriptions on it, and I actually
10 tested the hardware that I obtained.

11 Q. Okay. Let me place before you two books, and I promise
12 you, we're not going to go through every exhibit in these two
13 books. But for the record, your Honor, the books contain
14 Exhibits 187 through 190, and that's one category of exhibits
15 which we'll deal with. Actually, through 192. And then, it
16 includes Exhibits 220 through 243 consecutively.

17 And, Dr. Hodges, you can confirm this, but for the
18 record, 220 to 243 are exhibits to which there is no
19 objection, and are users guides, marketing materials and other
20 technical materials on the routers and RAID products in
21 question.

22 So let me ask you -- you don't need to look at every
23 one, Dr. Hodges, but as 220 to 243, some of the technical
24 documentation that you've analyzed in the case.

25 A. Yes, it is.

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1 Q. Okay. Now, let me address the beginning documents, so if
2 you'll look at Exhibit 187, which I believe there's an
3 objection to.

4 MR. GARRETT: I think we don't have any problem with
5 you using it as a demonstrative. That's fine.

6 MR. ALLCOCK: Well, I want these in evidence, your
7 Honor, so I don't know what that means.

8 THE COURT: Well, I can't find 187.

9 MR. ALLCOCK: We'll do it real quick.

10 THE COURT: All right.

11 Q. (BY MR. ALLCOCK) What is Exhibit 187?

12 A. 187 is a series of photographs I took of the hardware that
13 I tested.

14 Q. And these are accurate photos that you took of the
15 hardware you tested?

16 A. Yes, they are.

17 Q. All right. Offer Exhibit 187 into evidence, your Honor.

18 THE COURT: What hardware was that? Did you go down
19 to Green's and just buy some, or did it have anything to do
20 with this case?

21 THE WITNESS: This was a Chaparral case 7413.

22 THE COURT: All right. Objection overruled. 187 is
23 admitted.

24 Q. (BY MR. ALLCOCK) Okay. Now, Exhibit 188, 189, 191 --
25 Exhibit 188 and 189, what are those, sir?

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1 A. These are copies of the computer screens that I made while
2 I was testing the case 7413 product.

3 Q. So ask you to describe how these were created.

4 A. These were created by in this case of 189, I need to look
5 at all of them to be sure that this is -- 189 particularly,
6 these were running my lab top as an administrative terminal,
7 and I was running through the menus that were available,
8 implemented on the case 7413 for configuration and for RAID
9 control.

10 Q. So these are -- what is a screen shot?

11 A. This was a -- what appeared on my computer screen is not
12 the entire screen that one can hit an appropriate control
13 alternate -- and I can't remember which -- screen and capture
14 the window, and I did so, and stored them and later printed
15 them out.

16 Q. So these record what was appeared on your computer screen
17 as you performed your testing?

18 A. Yes, they were.

19 Q. Offer Exhibit -- and is 188 the same type of document?

20 A. There is no 188.

21 Q. I'm sorry. Yeah, there is, 188.

22 A. Yeah, I thought that's what we were just addressing. Yes,
23 it was.

24 Q. Okay. So 188 and 189 are screen shots that you took as
25 you performed the tests?

1 A. Yes, they are. 189 includes some screen shots from the
2 attached workstations, as well.

3 Q. Okay. So we offer Exhibits 188 and 189 into evidence,
4 your Honor.

5 MR. GARRETT: No objection.

6 MR. BAHLER: No objection.

7 THE COURT: All right. Received.

8 Q. (BY MR. ALLCOCK) And Exhibit 190, is that the same type of
9 screen shots?

10 A. Yes, it is.

11 Q. Offer into evidence, your Honor.

12 MR. BAHLER: No objection.

13 THE COURT: Admitted.

14 Q. (BY MR. ALLCOCK) And Exhibits 191 and 192, what are those?

15 A. Exhibits 191 and 192 were some additional -- slightly
16 different. 191 was a test that I made of trying to -- in
17 course of doing the these tests, using the menu to reboot the
18 system, reboot the router, and this is, again, a screen shot.
19 I believe it's -- I don't believe it's been edited at all. A
20 screen shot of the result of that as that played out on my
21 screen as I -- as it was rebooting, and that was preserved and
22 taken in the same way.

23 Q. Offer 191.

24 MR. BAHLER: No objection.

25 Q. (BY MR. ALLCOCK) And is 192 the same sort of document?

1 A. 192 is slightly different in that it came from one of the
2 attached workstations and was used -- was a -- the result of
3 an exerciser sending SCSI commands to the attached storage
4 devices -- devices attached to the router. But it's, again, a
5 screen shot of the result of that operation.

6 Q. Okay.

7 THE COURT: Any objection to 192?

8 MR. BAHLER: No, your Honor.

9 THE COURT: All right. 191 and 192.

10 Q. (BY MR. ALLCOCK) Okay. Let's turn to Exhibit 532.

11 A. Yes.

12 Q. Before we do that, we've talked about this product. Let
13 me hand you a box that says on it, Chaparral network storage
14 KS010113 on the bottom. Could you tell us what that is?

15 A. This is the K7513 -- 7413 device that I obtained to -- for
16 testing. It has -- you can see that it's approximately -- if
17 you're familiar with five-and-a-quarter-inch disk files, it's
18 approximately that size. It would fit into a computer case.
19 You can take the cover off, and it's got the various
20 electronics inside.

21 And it has two cables attached to it which are a
22 little hard to see, but one of these is the Fibre Channel
23 cable, and the other is a cable that attaches to the serial
24 port on the computer. Or, in this case, on -- yes, on the
25 computer.

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1 And I have, also, photographs of much of this so
2 you'll be able to see more of what they look like.

3 Q. And that's the product you tested?

4 A. This is the specific piece of hardware that I tested.

5 Q. Okay. Take that from you. Okay. Now, back to Exhibit
6 532, is that a chart that you participated in preparing?

7 A. Yes.

8 Q. What does it show?

9 A. It shows a list of the accused products that Chaparral --
10 there are six RAID controllers and two routers that all of
11 which are implemented LUN zoning. It shows some of the
12 hardware that goes with each of these -- the buffer, presence
13 of the buffer, kind of SCSI controller, the kind of Fibre
14 Channel controller, and the kind of microprocessor that goes
15 into it.

16 Q. For purposes of your analysis, were the differences in the
17 hardware of any importance?

18 A. No, they were not. For example, all buffers say yes, the
19 SCSI controllers are all Adaptec SCSI controllers with similar
20 structure, the Fibre Channel controllers were all JNI, Fibre
21 Channel controllers with similar structure, processors were
22 all common processors used in the industry.

23 Q. And did you review the hardware materials in those two
24 books in front of you to ascertain whether or not there were
25 any material differences whatsoever between these products in

1 either hardware or software in terms of your analysis?

2 A. Yes, I did, and -- I didn't find any material differences.

3 Q. So what is your summary opinion with respect to

4 infringement as to the products shown on Exhibit 532?

5 A. Summary is that each of these products infringes the

6 patent, the 972 patent in all of the claims.

7 Q. I'm not sure if this is already in, your Honor, but just

8 to make sure, I'll offer 532 at this time.

9 MR. GARRETT: No objection.

10 THE COURT: All right. 532 is received.

11 Q. (BY MR. ALLCOCK) Now, I want to ask you about this LUN

12 zoning for a minute. If you look at page 530 -- I mean,

13 Exhibit 230, it's the K5412/K7413 Users Guide for this RAID

14 controller, and I want to direct your attention to page 7-12.

15 MR. GARRETT: What exhibit?

16 MR. ALLCOCK: 230. It's not objected to, and it's in

17 the book.

18 MR. BAHLER: What page is that again, counsel?

19 MR. ALLCOCK: 7-12 and it's for the record, your Honor

20 CFS-185698.

21 MR. BAHLER: Okay.

22 Q. (BY MR. ALLCOCK) Now, let me ask you: Is the description

23 here on page 7-12 of Exhibit 230 essentially the way all of

24 the products operate?

25 A. Yes, it is.

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1 Q. Can you come down and explain it for us?

2 A. Certainly. This is a picture that -- this is an example
3 that seems it shows up in various places and the different
4 users manuals. Shows some workstations up here which is not a
5 very good copy.

6 Q. The workstations are on the top. They're all labeled
7 host?

8 A. Yes. It shows a number of discs around the periphery
9 here. Some of them are raised, some of them single discs. It
10 shows a controller in the middle, and that's been attested to
11 by various representatives in the depositions as being
12 representative of the RAID controller or the router.

13 Q. Any of the products?

14 A. Any of the products.

15 Q. And these devices that are on the bottom array E, array D,
16 array F, and so on, are those remote storage?

17 A. They are remote storage, yes.

18 Q. Okay.

19 A. The connections here from the Fibre -- from the
20 workstations are intended to be Fibre Channel connections to
21 all of this storage devices are intended to be SCSI. It
22 doesn't look very much like that, but that's been tested in
23 the depositions.

24 Q. Now, does this setup provide for access controls?

25 A. Yes, it does.

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1 Q. Can you explain how?

2 A. Yes. This setup, in fact, shows array A here, you can't
3 read it very well, but it says accessed by host 2. Array B
4 here says, access by host 1. And array C, which is just a
5 single disk, says access by hosts 2 and 3. We've seen that
6 diagram before. And it continues on around with the others
7 showing what accesses are available to each of the three hosts
8 there.

9 Q. Have a seat.

10 A. I think I need to plug my screen in so I can see again.

11 Q. Your Honor, we've been going for a while and the next
12 phase of the examination is going to involve a lot of
13 materials. It would go quicker if we could -- I could get
14 them all put together.

15 THE COURT: What does that mean? You want a recess?

16 MR. ALLCOCK: If we could take, like, five or ten
17 minutes.

18 THE COURT: I don't think the jury will object. All
19 right. Take a short break.

20 (Jury not present.)

21 THE COURT: We are now in reorganization.

22 MR. ALLCOCK: Yeah.

23 (Recess.)

24 THE COURT: Dr. Hodges, you're still under oath, sir.

25 THE WITNESS: Thank you, yes, sir.

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1 Q. (BY MR. ALLCOCK) You mentioned that you got one of these
2 products and you created a test setup. Is the test setup you
3 created similar to the one shown on page 7-12 of Exhibit 230?

4 A. Yes, not quite as complex as that, but similar.

5 Q. Okay. Let me show you Exhibit 507. What does that show?

6 A. This shows the test setup that I used. I took the storage
7 router and the Fibre Channel side, connected two workstations
8 which because of their position on my work bench that were
9 labeled left and right, I connected three disk drives to the
10 SCSI bus side with addresses 1, 2 and 3 set, and I connected a
11 lap top to the serial port on the storage router as a managing
12 station.

13 Q. Okay. And did you run a test?

14 A. Yes, I did.

15 Q. Did you set access controls with the management station?

16 A. Yes, I was able to do that and did several experiments
17 with access controls.

18 Q. How did you set the access controls?

19 A. Management station connects to the serial port using a
20 standard Windows function called hyper-terminal. And within
21 the router itself, there is a program that responds to that
22 and gives you a menu for controlling the access control, among
23 other things.

24 Q. Okay. And turning to -- I've marked an Exhibit 507A.

25 Could you turn to the Elmo? This is one of the fancier

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1 graphics, exhibits you'll see. Does this help to describe how
2 you actually set the access controls?

3 A. Yes, it does. The storage device -- one connected to the
4 storage router, this is -- this piece was actually a array
5 controller, so it sees things as array. So later, you'll see
6 things that refer to this as array, and array stands for array
7 of independent discs. You'll see this storage device one
8 referred to as array one. But at the Windows level on the
9 work stations, you don't see those numbers, so there is a
10 label that's written on the disk so we can be sure we know
11 which one we're actually looking at.

12 So maybe having been influenced a bit by the Olympics,
13 I labelled device one as gold, device two as silver, and three
14 as bronze.

15 Q. So you set it up so that the left workstation had access
16 to which?

17 A. The left workstation would have -- was set up to have
18 access to storage device one, array one, and to storage device
19 three, that is, array three.

20 Q. Okay.

21 A. The gold and bronze and the right workstation similarly
22 was set up to have access to device two, the silver, and
23 device three, the bronze.

24 Q. Okay.

25 A. And it did not have access to the ones -- had access only

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1 to those.

2 Q. Okay. And so, do you actually use the management station
3 to set those?

4 A. Yes, I did.

5 Q. Okay. Let me show you Exhibit -- this is Exhibit 189,
6 page 1.

7 A. Yes.

8 Q. Now, this is kind of a complicated picture, but what is it
9 generally showing?

10 A. This is a screen shot of the menus that are represented to
11 the management station by the controller, by the router.

12 Q. Okay. Now, does this describe how you set the left
13 computer?

14 A. This describes how the left -- how I had set the access to
15 array one. There are several ways you could do access control
16 in this device. One is to list the devices that are included
17 as available, and that was the one that I chose to use. You
18 could also list the devices that you would exclude instead.

19 Q. Okay. So if you could flip back to Exhibit 507A, what
20 we've just seen is you put -- include device one for the left
21 workstation?

22 A. That's correct.

23 Q. Okay. Could we flip back to the other screen?

24 A. It really should be phrased the other way. I included the
25 left workstation with device one.

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1 Q. Okay. Now let's take a look at the next screen. It's
2 Exhibit 189, the lower half of it, and what is that showing,
3 Dr. Hodges?

4 A. This is showing the similar include list for array two or
5 device two where it's showing the right system. These show up
6 as with those labels because I labeled the -- I gave those
7 systems that name so I would be a little mnemonic about it.

8 Q. Okay. If you could flip back to 507. So what we just saw
9 is the right workstation being associated with device two?

10 A. That's correct.

11 Q. Okay. And now, if we look at the next screen on Exhibit
12 189, what is this showing?

13 A. This is showing device three, array three, and the
14 workstations that are included for access to that one. It's
15 both left and right.

16 Q. Okay. So if we flip back to 507 that shows device three,
17 which you've labeled bronze, has both workstations?

18 A. That's correct.

19 Q. Have access. Okay. Now, how did you test out whether or
20 not these access controls actually work?

21 A. Well, first thing I did was to look at the workstations
22 and see what devices they could actually see.

23 Q. Okay. With respect to the left workstation, can you
24 describe what you did?

25 A. I looked at the left workstation, having rescanned the

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1 disk so that I could be sure that I knew that it was -- had
2 determined what discs were available to it. I then opened up
3 the Windows Explorer and could see what storage devices were
4 available to that workstation.

5 Q. And what ones are we going to see here when -- reference
6 to Exhibit 507A?

7 A. You're going to see on the left workstation that the
8 golden-bronze devices are visible.

9 Q. Okay. So now showing 189 -- Exhibit 189, page 2, what are
10 we seeing here, again, sir?

11 A. This is the Windows Explorer, which shows what devices are
12 available to the system. It shows golden-bronze down at the
13 -- available. It does not show the silver because the system
14 cannot see that. The other things here are things that are
15 internal to the -- this particular system.

16 Q. Okay. If you could flip back to 507A. So then, the left
17 station couldn't even see the silver device much less get
18 access to it?

19 A. That's correct.

20 Q. Okay. Now, what happens if we look at the right
21 workstation?

22 A. Basically the same thing except that we'll see that the
23 right workstation can see the silver and bronze devices and
24 not see the gold.

25 Q. Okay. And so now, I'm placing before you Exhibit 189,

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1 page 4, the top view. What does this show?

2 A. This is the Windows Explorer on the right-hand system, and
3 it shows silver and bronze available just as we set up in the
4 menu, and it has no access to the gold device.

5 Q. So, Dr. Hodges, is there any question whatsoever in your
6 mind that the Chaparral products have access controls
7 according to the 972 patent?

8 A. None at all.

9 Q. Do all the products that operate in this same basic
10 fashion?

11 A. All of those products operate in the same basic fashion.

12 Q. And with respect to the test setup, the test setup on the
13 left-hand side was Fibre Channel?

14 A. Yes.

15 Q. And on the right hand was?

16 A. SCSI.

17 Q. So now, did you go through the claims of the patent and
18 compare them to the accused devices?

19 A. Yes, I did.

20 Q. Okay. Let's take a look at Exhibit 508. Where do you
21 start?

22 A. I started by disassembling or taking pictures of the
23 accused device so that we could make a record of what I had
24 looked at and disassembling it to see what components were in
25 it.

1 Q. Okay. And then, looking at Exhibit 509, what does Exhibit
2 509 depict? Is that a number of things?

3 A. Yes, that's several different things. The item on the
4 left is the block diagram which shows how the major components
5 of a representative device -- representative Chaparral device
6 are connected and what they are. This is actually the diagram
7 of the K7413 that I tested and the right-hand side, upper
8 right-hand side shows the menu for configuration. That is
9 implemented within the device. There was no -- on my
10 management system, there was no Chaparral software running.

11 And finally, the Windows Explorer, window from the
12 workstation showing that it actually effectively did implement
13 access.

14 Q. Okay. And on that last point, let me show you Exhibit
15 530. Can you explain to us what Exhibit 530 is?

16 A. Exhibit 530 is a composite of several of the screens that
17 we saw before, and it's showing the three disks access lists
18 and the corresponding Windows Explorer. Ours show the
19 correspondence between the include lists there and the things
20 that were actually shown on the windows.

21 Q. Offer Exhibit 508, 509 and 530 into evidence, your Honor.

22 MR. BAHLER: Your Honor, we don't have an objection
23 for demonstrative purposes, but they shouldn't be admitted.

24 THE COURT: These are allegedly the results of the
25 testing, and I will admit them for all purposes. 508, 509 and

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1 530.

2 MR. ALLCOCK: Excuse me, your Honor, 530.

3 THE COURT: 508, 509 and 530.

4 MR. ALLCOCK: Okay. I didn't hear you. Okay.

5 Q. (BY MR. ALLCOCK) Now, let's turn to Exhibit 510, and I'm
6 going to ask you to walk down here, Dr. Hodges, and I want to
7 go through this element by element. So what is basically
8 exhibit -- why don't you stand on the other side of the
9 screen.

10 A. Okay. Over here?

11 Q. Yeah. What is Exhibit 510, the one on the screen?

12 A. The one on the screen is a pull from the first claim of
13 the patent, the preamble to the patent, and it shows some of
14 the evidence that these things are here. Would you like to go
15 further here?

16 Q. Yes. Let me just ask a couple of more questions. Did you
17 create or participate in creating Exhibit 510?

18 A. Yes, I did.

19 Q. Did you select the images?

20 A. Yes, I did.

21 Q. And those images are the portions of the Chaparral device
22 that meet the elements of the claim?

23 A. Well, yes. The photograph over here is -- it shows the
24 meeting of the claim.

25 Q. And what does the photograph show?

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1 A. The photograph is the back end of the device, the K-7413.

2 We're talking here about a router providing virtual local

3 storage on remote SCSI devices to Fibre Channel devices.

4 We'll come back to the virtual local storage a little later.

5 Q. Okay. So does it have the preamble of Claim 1?

6 A. It does. The -- we have the SCSI storage devices, and

7 here are SCSI plugs coming out the back. Here is a diagram

8 from one of the -- from a presentation made numerous times by

9 Pathlight -- Chaparral, boy, showing devices on the SCSI side

10 of the controller. Here is a Fibre Channel connector.

11 Q. Okay. So does it have the first element?

12 A. It has the first element.

13 Q. Could you check that off?

14 A. Okay.

15 Q. Okay. I'm moving on to Exhibit 511. What does that show?

16 A. The second phrase in the claim here, the second element is

17 that as a buffer that provides memory work space for the

18 storage router.

19 Q. And does it have that?

20 A. It does have that. It shows up here in the block diagram

21 as a cache, and this is a picture of the buffer memory 16

22 megabytes, removed from the device over here.

23 Q. Okay. Can you check that off? I show you Exhibit 512.

24 What does that depict?

25 A. This depicts the Fibre Channel controller, that is the

1 third element of the claim. This is a Fibre Channel
2 controller. It's labeled AEC-7010, although you can't read it
3 from that. And this is the photograph of the daughterboard
4 that was removed from the device here, and there's the 7010
5 chip.

6 Q. Okay. Could you check off that element? Moving to
7 Exhibit 513. What does that show?

8 A. Now we need a SCSI controller that's operable to connect
9 to the SCSI bus. There are two SCSI controllers in this
10 particular device and they are -- they have been -- they are
11 both Adaptec models, and here are the pictures of them that
12 are from that actual box.

13 Q. Okay. So does it have that element?

14 A. It has that element.

15 Q. I show you Exhibit 514. What does that depict?

16 A. Now we have the next element is the supervisor unit. Now,
17 there's -- you've got to be a little careful about the
18 supervising unit. The supervising unit is not just a
19 microprocessor, it's the microprocessor program to do the
20 functions that are required. So we have -- what we have here
21 is a microprocessor and can demonstrate -- demonstrated that
22 the programs do what was required.

23 Here is the microprocessor in the block diagram. And
24 I wasn't able to remove the fan. It's under that fan. The
25 fan was bonded to the microprocessor, and I was afraid I'd

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1 damage the machine if I tried to remove it.

2 Q. So does it have the supervisor element?

3 A. It has the supervisor unit in it.

4 Q. And then, showing you Exhibit 515.

5 A. Is the supervisor unit --

6 MR. BAHLER: Objection, your Honor, this is all very
7 leading. He's showing him exhibits before Dr. Hodges even
8 testifies about these things.

9 MR. ALLCOCK: He said demonstratives to which there's
10 been no objection, your Honor, and it's the only reasonable
11 way --

12 THE COURT: I overrule the objection. You may
13 proceed.

14 MR. BAHLER: Thank you, your Honor.

15 Q. (BY MR. ALLCOCK) What does Exhibit 515 show?

16 A. 515 is, again, taking the next element, the supervising
17 unit is required to be able to maintain a configuration of --
18 for this devices on both sides.

19 Q. And I notice this clause says implements access controls.
20 Do you see that?

21 A. Yes.

22 Q. Is the access control feature an element of every single
23 claim of the patent?

24 A. Yes, it is.

25 Q. Okay. And what does this describe with respect to

1 implement access controls?

2 A. This describes the -- it shows the same diagrams that we
3 showed before, a little bit different form setting up the
4 access controls with -- through the management station, which
5 means that I was able to actually change the configuration,
6 and it shows the access that resulted from setting those
7 access controls.

8 Q. So these are other screen shots similar to the ones that
9 we showed earlier?

10 A. Yes, they are. They are actually the same screen shots
11 but slightly different excerpts from what we showed before.

12 Q. Okay. So does it have that element?

13 A. Yes, it does.

14 Q. And finally, I'm showing you Exhibit 516. To process data
15 in the buffer using native low-level block protocols, does it
16 have that element?

17 A. Yes, it does. And this -- at least three ways that we can
18 demonstrate that. One is when I set up the system, I
19 programmed the Fibre Channel adapters in the workstations to
20 emulate, carry the SCSI commands across rather than as a
21 network command.

22 The Permut deposition, he describes using something
23 called FCP Fibre Channel protocol which is part of the SCSI
24 standard that describes how one carries SCSI commands across
25 the Fibre Channel.

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1 Q. Okay. So does it have the last element?

2 A. It has the last element. This is actually a
3 demonstration of doing that from the workstations.

4 Q. Now, just to show you -- but I won't ask you about it --
5 Exhibit 517. What is Exhibit 517 depicting?

6 A. It's a summary of what we just went through with all of
7 the claim elements and a little reminder of each one of the
8 slides that we showed with them.

9 Q. Okay. Now, does analysis that you just went through apply
10 to each and every Chaparral product?

11 A. Yes, it does.

12 Q. Now, you said that we were going to go back to virtual
13 local storage. Let me show you Exhibit 531. What does that
14 show?

15 A. 531 is the similar Windows Explorer screen that we saw
16 before. This one has silver and bronze, so it's the white
17 workstation. I'm not sure that appears there. But the point
18 here is we clicked on the silver work -- silver storage device
19 here, and it shows up as being recognized as a local disk by
20 the operating system and the workstation.

21 Q. So it shows that it's a local disk even though in your
22 test setup, where was it?

23 A. It was remote. It was from the Fibre Channel through the
24 router.

25 Q. Let's move on to Claim 7. I think we can do this a little

1 quicker. What does Claim 7 generally concern?

2 A. Claim 7 generally concerns a storage network, and this
3 device over here is not a network clearly, but it is designed
4 to go into a network and it is the part of this claim.

5 Q. Okay. So let me show you Exhibit 518, which has a lot of
6 stuff on it, but what is this depicting?

7 A. This is depicting the first part of Claim 7. We see the
8 diagram here we saw before. It's a little bit unclear, but I
9 think you can -- this was the Fibre Channel storage area
10 network with various work stations on it, the router and some
11 disks. And we see here in the previous slide, if we can have
12 that back, that there is in here a Fibre Channel transport
13 medium right here.

14 There's a SCSI bus transport medium right here. There
15 are workstations, and there is a plurality of SCSI storage
16 devices. So this is -- this network meets that claim, the
17 element.

18 Q. Let me ask you, the document that is incorporated into
19 Exhibit 518, that's a Chaparral document?

20 A. This is a Chaparral document as part of a presentation
21 that was made to customers.

22 Q. And is this the only reasonable way these products can be
23 used?

24 A. Yes, it is.

25 Q. Within the network? Okay. So what elements does that

1 show on Exhibit -- does 518 show Claim 7?

2 A. Well, it does show a network. It shows Fibre Channel SCSI
3 bus, plurality of workstations, plurality of SCSI storage
4 devices and a storage router, and we've already gone through
5 what this storage router does. It maps addresses, it
6 implements access controls, and it allows access from the
7 workstations to storage devices according to that map and
8 access controls.

9 Q. Okay. Now we're going to move on to Claim 11, and what's
10 Claim 11?

11 A. Claim 11 doesn't involve any hardware description. It
12 just describes a method of doing these things. Now, when you
13 go through this thing, you recognize a lot of the same frames
14 because it's the same terms, because it's just the same
15 elements put into a method claim.

16 So, again, we have -- if you look at this diagram --

17 Q. Let me show you Exhibit 520.

18 A. Okay.

19 Q. Before I leave that, does your analysis with respect to
20 Claim 7 apply to all the products?

21 A. Yes, it does.

22 Q. Okay. Now, what is Exhibit 520 showing?

23 A. Exhibit 520, again, is showing that there is a method of
24 doing this on providing virtual local storage on SCSI devices,
25 Fibre Channel devices again. The presentation showing Fibre

1 Channel devices up here, remote storage devices up here, a
2 piece of hardware which has, indeed, that method.

3 And it actually shows down here the SCSI interfaces,
4 the Fibre Channel interface, and so all of this -- we have the
5 various interfaces required, and, again, this router that we
6 have been talking about does all of these things that are down
7 here in the remaining parts of that claim.

8 Q. Is there any other reasonable use for this router other
9 than operating according to this method?

10 A. No, there's not.

11 Q. Okay. Now, let's briefly go through the balance of the
12 claims that are the dependent claims. What is a dependent
13 claim?

14 A. An independent claim is one that has a complete
15 description of what the claim has in it. A dependent claim is
16 one that adds to one of the independent claims. So you'll
17 find, for example, in this one, dependent -- Claim 2 is a
18 dependent claim. It says take the storage router that's in
19 Claim 1 and add something to it.

20 Q. Okay. And let me show you Exhibit 522. Does the
21 Chaparral products have the elements of Claims 2, 3, 4, 5 and
22 6?

23 A. Yes, it does. I'm not sure -- yeah. We really are
24 looking at Claims 2, 8 and 12 on this slide.

25 Q. But just cover all the claims, if you would.

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1 A. Okay. Claim 2 says that the configuration that we're
2 talking about, which has the mapping and the access controls,
3 includes an allocation of subsets of storage associated Fibre
4 Channel devices. It's really only one device that -- or one
5 -- each subset -- yeah, only one workstation has access to a
6 particular device.

7 Now, we showed this before where the right computer
8 has access to the array two, the left computer has access to
9 array one. And the left and right had access to array three.
10 Well, all I have to do if I wanted to remove one of the right
11 computers from this list, I would have one workstation that
12 had access to each of these devices.

13 Q. Okay. So does it have Claim 2?

14 A. So it has Claim 2.

15 Q. And how about the balance of the claims? Have we already
16 essentially covered those?

17 A. We've talked a lot about workstations, and they are shown
18 all through the Chaparral documentation and depositions.
19 We've talked about the hard disk drives. In fact, the RAID
20 devices will only work with hard disk drives. We've talked
21 about the existence of a Fibre Channel protocol unit. We
22 actually haven't talked about what's in those, but if you look
23 at -- I looked at the descriptions for these commercially
24 available Fibre Channel controllers, and they do have first
25 in, first out cues and direct memory access in them. That's

1 also been validated by depositions.

2 Q. Could you check the appropriate boxes, then?

3 A. And finally, you have the same thing is true of the SCSI
4 controllers. They're commercially available, and you look at
5 the documentation and see they are what's described in there.

6 I guess I should check off each of these.

7 Q. They have the sub elements of the dependent claims?

8 A. They have the sub elements of the claims.

9 Q. Okay. And now, I think we've already covered most of
10 this, Dr. Hodges. Do they have the elements of dependent
11 Claims 8, 9 and 10?

12 A. Dependent Claim 8 is really exactly the same as Claim 2.
13 It just applies to the network rather than just to the router
14 only. So we've already talked about that essentially. Claim
15 9 requires that you have hard disk drives. We've talked about
16 that. Claim 10 then goes into more detail on the router,
17 which we've talked about before, a buffer, the Fibre Channel
18 controller, the SCSI controller, the supervising unit, which
19 maintains this configuration of mapping and access controls,
20 and that allows low-level block protocol.

21 Q. And so it has Claim 10?

22 A. And so it has Claim 10.

23 Q. Okay. And then, finally, just the dependent Claims 12, 13
24 and 14 off of 11.

25 A. All right. We started out Claim 11 is the method claim,

1 you'll recall. We take the claim of the method of Claim 11
2 and say can we allocate storage so that there's only one
3 storage -- one Fibre Channel device that has access to it.
4 And we certainly can do that.

5 Claim 13 says we add workstations to the -- as the
6 Fibre Channel devices and the disk drives and the SCSI
7 devices. These are all covered, as well.

8 Q. And does your analysis of those dependent claims apply to
9 all the products?

10 A. Yes, it does.

11 Q. Okay. You can have a seat. Just a few more questions for
12 you, sir.

13 Have you analyzed something called a CAPI command or
14 CAPI function in the Chaparral products?

15 A. Yes, I have.

16 Q. First of all, let me ask you: Does this CAPI have any
17 impact on your infringement analysis?

18 A. None.

19 Q. Is this something that was provided in addition to this
20 LUN zoning feature?

21 A. Yes.

22 Q. What does one need to do to get this CAPI function?

23 A. One doesn't get the CAPI with the device. A CAPI is a set
24 of programs that allow you to do some -- allows you to enhance
25 your management of the access control and other things. One

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1 has to go to Chaparral and get them to give you as a customer,
2 as the purchaser of some device of theirs, to give you a user
3 ID and a password so that you can go to their web site and get
4 the CAPI information, download the CAPI programs.

5 I tried to do this as a non-purchaser and was
6 rejected, and, in fact, I did not know who the purchaser was
7 for this particular device. So I was not able to get in on
8 that basis.

9 Q. So does this CAPI function come with the product?

10 A. No, it does not.

11 Q. Does the product operate just fine without it?

12 A. Yes, it does.

13 Q. And the LUN zoning features work as you've described
14 without it?

15 A. Yes.

16 Q. What if CAPI is used? What does it do?

17 A. CAPI has essentially all of the functions in it. It's
18 called an application programming interface. It's a -- it's a
19 definition that describes a bunch of commands that one can
20 call with a program, and these commands are, in turn,
21 programmed so that -- to give some users specific commands to
22 -- or Chaparral specific commands to the controller, but by
23 doing that, you can automate some of the things that you would
24 do manually otherwise.

25 Q. So does it have any impact on your infringement claim

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1 whatsoever?

2 A: No, it doesn't.

3 Q. Your Honor, at this time, I'd offer Exhibits 510, 511,
4 512, 513, 514, 515, 517, 531, 518, 519 and 520.

5 MR. BAHLER: Same objections, your Honor. No
6 objection to demonstrative purposes, but they shouldn't be in
7 evidence.

8 THE COURT: All right. I'm going to admit these
9 exhibits: 510, 11, 12, 13, 14, 15, 16, 17, 531, 518, 519 and
10 520 as demonstrative exhibits only because they include
11 testimony.

12 MR. ALLCOCK: Very well, your Honor. I have no
13 further questions of the witness at this time.

14 THE COURT: Members of the jury, I'm going to let you
15 eat lunch. Remember the instructions. Please be back about
16 1:25.

17 (Jury not present.)

18 THE COURT: Okay. What have we got on
19 cross-examination this afternoon, right?

20 MR. BAHLER: Yes.

21 THE COURT: And then, who will be the next witness,
22 counsel?

23 MR. ALBRIGHT: Our next witness and, most likely,
24 final one, will be Paul Regan, your Honor, damage expert.

25 THE COURT: All right. 1:25.

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1 (Lunch recess.)

2 THE COURT: Anything before we bring in the jury,
3 counsel?

4 MR. BAHLER: Nothing from defendant, your Honor.

5 THE COURT: All right. Bring them in.

6 (Jury present.)

7 THE COURT: Members of the jury, during the noon hour,
8 did anyone attempt to talk to you about this case?

9 THE JURORS: No.

10 THE COURT: Did you talk to anybody about the case?

11 THE JURORS: No.

12 THE COURT: And did you learn anything at all about
13 the case outside the presence of each other and this
14 courtroom?

15 THE JURORS: No.

16 THE COURT: Show negative responses to all questions
17 by all jurors. Sir, you remain under oath. Do you understand
18 that?

19 THE WITNESS: Yes, sir.

20 THE COURT: Mr. Bahler.

21 MR. BAHLER: Thank you, your Honor.

22 CROSS-EXAMINATION

23 BY MR. BAHLER:

24 Q. Dr. Hodges, you were present yesterday during Mr. Hoese's
25 deposition -- or testimony, right, sir?

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1 A. Yes, I was.

2 Q. And you heard him testify about figure 2 of this patent
3 that I have up at Defendant's Exhibit 1, and you heard him say
4 that that's not his invention, right?

5 A. Yes, I did.

6 Q. And you believe that?

7 A. Yes, I do.

8 Q. Okay. Now, when you were talking with Mr. Allcock about
9 the background, you talked about -- you had a video of kind of
10 a Ferris wheel thing and you had lots of big balls coming in
11 and lots of small balls coming out, do you remember that?

12 A. Yes.

13 Q. And you were trying to show there the concept of server
14 protocols, right?

15 A. Yes.

16 Q. And in contrast, that was to contrast with something
17 called native low-level block protocols, right?

18 A. Yes.

19 Q. Okay. And then, you also had some exhibits that you
20 talked about mapping, right?

21 A. Yes.

22 Q. Now, native low-level block protocols and mapping aren't
23 part of this invention, are they, sir?

24 A. They are a part of the invention.

25 Q. That's not what Mr. Hoese told the Patent Office, was it;

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1 sir?

2 A. Yes, it is.

3 Q. Well, let's take a look. Please look at figure 2, if you
4 would, that you said wasn't his invention, right?

5 A. I just said.

6 Q. Column 3, lines 45 through 51, if you will. Do you have
7 it, sir?

8 A. Yes, I see it.

9 Q. And in there, he's describing figure 2, right?

10 A. I don't know. I can't see the rest of the document.

11 Q. Okay.

12 A. Might help if I had a copy of it. Do I have one here?

13 Q. I don't know. When you testified about infringement in
14 the 472 patent, did you have a copy of it here, sir?

15 A. I was testifying about infringement. You're asking me
16 about the specifics of the patent.

17 Q. Hang on. Column three, sir, all right? And I've actually
18 moved up a little bit to about line 23 where it starts, figure
19 2 is a block diagram, et cetera. Do you see that?

20 A. Yes, I see that.

21 Q. And it says storage network indicated generally at 30,
22 right? Thirty, right?

23 A. Yes.

24 Q. Okay. Now, let's get back to what I was talking about.
25 Column 3, line 45 to about 51. All right, sir? Now, there

1 the patent describes in storage network 30, now that's figure
2 2, right?

3 A. Appears to be a continuation of the discussion in figure
4 2.

5 Q. Right. Actually, storage network 30 we just talked about
6 is what's shown in figure 2, right, sir?

7 A. Yes.

8 Q. And that's something that Mr. Hoese said was not his
9 invention, right, sir?

10 A. That is true.

11 Q. Pardon?

12 A. That is true.

13 Q. That is true. And it says in storage network 30, any
14 workstation can access or any storage device through native
15 low-level block protocols, right?

16 A. Yes.

17 Q. So the patent describes native low-level block protocols
18 used in something that Mr. Hoese says is not his invention,
19 right, sir?

20 A. That is true.

21 Q. All right. And it continues in the bottom. It says,
22 storage router 44 uses tables to map devices from one medium
23 to the other and distributes requests. Do you see that, sir?

24 A. Yes, I see that.

25 Q. And that mapping is in connection, also, in connection

1 with figure 2 which Mr. Hoese said is not his invention,
2 right?

3 A. That's what he said.

4 Q. All right. And, in fact, when you were going down through
5 the list and checking boxes, you checked SCSI controller,
6 Fibre Channel controller, supervisor unit and buffer, right?

7 A. Yes.

8 Q. In fact, all those things have occurred for years in this
9 technology, right?

10 A. No, sir.

11 Q. All right. You're familiar with the Adaptec Coronado,
12 right?

13 A. Yes.

14 Q. It has all that stuff, right?

15 A. No.

16 MR. ALLCOCK: Your Honor, this is beyond the scope of
17 direct. I intentionally avoided getting into any invalidity
18 questions because it's their burden. So I think it's
19 appropriate that they put on their evidence on invalidity
20 before they question my witness on the subject.

21 MR. BAHLER: This is not questioning about invalidity,
22 your Honor.

23 THE COURT: What is it?

24 MR. BAHLER: It's a question about the scope of the
25 patent about in his opinion, what about the real invention is

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1 because he just testified about infringement.

2 THE COURT: All right. I'll let you do it for a
3 while. Stay on that plane.

4 MR. BAHLER: Thank you, your Honor.

5 Q. (BY MR. BAHLER) And, in fact, the Adaptec Coronado has the
6 Adaptec controller?

7 A. Yes, it does.

8 Q. And SCSI controller?

9 A. Yes.

10 Q. Buffer, right?

11 A. Yes.

12 Q. Has a microprocessor?

13 A. The microprocessor is not the supervisor unit.

14 Q. Okay. We'll cover that later. Let me put back up on the
15 screen a copy of Plaintiff's Exhibit 507A, and that's an
16 exhibit that you and Mr. Allcock discussed, correct, sir?

17 A. Yes.

18 Q. And you used this to -- as to formulate part of your basis
19 for your conclusion of infringement, right, sir?

20 A. Yes, I did.

21 Q. And you showed two workstations there, right?

22 A. Yes.

23 Q. And you show storage devices there, right?

24 A. Yes.

25 Q. And from that -- and from that and based upon some of the

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1 other discussions you had, do you conclude that there was
2 infringement, right?

3 A. In this diagram, no.

4 Q. Well, from that and the other things that you and Mr.
5 Allcock discussed, you concluded that there was infringement?

6 A. A great deal of the stuff.

7 Q. All right. And you mentioned CAPI.

8 A. Yes.

9 Q. Did you -- you actually got a copy of CAPI, right, sir?

10 A. I was able to get a copy very late in the process.

11 Q. All right, sir. And you never tested CAPI, right?

12 A. I did not test CAPI.

13 Q. And you also got a copy of the pass-through commands,
14 right?

15 A. I got a copy of documentation on the password commands.

16 Q. And you never tested those, did you, sir?

17 A. No. I thought that the documentation spoke for itself.

18 Q. Okay. You never tested it, did you, sir?

19 A. I did not test it.

20 Q. Okay. You still came to your conclusion of infringement,
21 even though you didn't test either of those programs, right?

22 A. That is true.

23 Q. Now, first of all, Dr. Hodges, you tested a 7413 RAID
24 controller, right, sir?

25 A. That's correct.

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1 Q. Please take a look at Defendant's Exhibit 268. I'm having
2 some technical difficulty, so I'll just put it on the
3 projector. Let me show you what was marked as Defendant's
4 Exhibit 268, and this is a handout for the K series 7413 Fibre
5 Channel controller, right, sir?

6 A. It appears to be.

7 Q. And that's the thing that you tested, right, sir?

8 A. Yes.

9 Q. Okay. And the lower right-hand corner of that document,
10 there's a statement, and this is the last sentence in that
11 right-hand column. It says -- well, first of all, that's in a
12 section called simple management, right, sir?

13 A. Yes.

14 Q. And down in the right-hand corner, it says support is also
15 provided over the SCSI and Fibre Channel host channel for
16 third-party implementation of GUI utilities by applying
17 Chaparral's configuration application programming interface
18 CAPI developer's kit, right?

19 A. That's what it says.

20 Q. And that's the thing that you got, right?

21 A. Yes.

22 Q. You got everything, right?

23 A. I actually did not download an updated version because it
24 was so late in the process, I didn't have time to test it.

25 Q. Okay.

1 A. I had a very early version.

2 Q. All right. And you didn't test that, right?

3 A. I did not test it.

4 Q. But you didn't have to test it because you conclude that
5 you didn't have to test it because you knew that there was
6 infringement, even though you didn't test it, right?

7 A. Maybe you could repeat that question.

8 Q. So the fact that you didn't test it has not only affected
9 your ability to testify here today, in front of these members
10 of the jury, that the Chaparral products infringed, right?

11 A. I think I got adequate testimony from various depositions
12 and from the --

13 Q. Dr. Hodges --

14 A. Yes.

15 Q. -- you didn't think you had to test it to come to -- reach
16 your conclusion?

17 A. I did not think I had to test it. I had other evidence on
18 it.

19 Q. Dr. Hodges, I would like to propose for you a hypothetical
20 network, and I would like to take you through much more
21 shortly or quickly an infringement analysis of this
22 hypothetical network that was done by Mr. Allcock, all right,
23 sir, for the purposes of determining whether or not you think
24 this thing infringes, all right?

25 A. I will perhaps be able to come to a conclusion and perhaps

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1 not.

2 Q. Okay. Let's take a look at this. I've put up on the
3 screen Defendant's Demonstrative Exhibit 545, all right, sir?

4 A. Yeah.

5 MR. ALLCOCK: Your Honor, this is a defendant's
6 demonstrative.

7 THE COURT: It is. I sustain the objection. It's
8 beyond the scope of any direct. You're in the invalidity
9 area.

10 MR. BAHLER: I'm asking infringement questions, your
11 Honor.

12 THE COURT: Well, you're asking infringement questions
13 about invalidity.

14 MR. BAHLER: All right. Pass the witness.

15 RE-DIRECT EXAMINATION

16 BY MR. ALLCOCK:

17 Q. You were asked some questions about CAPI and pass-through.
18 Why do they have absolutely no impact on your infringement
19 opinion?

20 A. Our CAPI and pass-through are programs that are not
21 shipped with the device. They're vendor-unique commands that
22 are not generally known. One would have to be the purchaser
23 of the device to obtain those. And, in fact, in a case of
24 pass-through, even a purchaser wouldn't know that it existed.

25 Q. Now, does the patent speak about vendor-specific

1 functions?

2 A. Yes, it does.

3 Q. What does the patent say about vendor-specific functions?

4 A. It describes the vendor-specific management commands as
5 being one way of accomplishing the management of access
6 control.

7 Q. So even if someone gets CAPI and pass-through, does it
8 have any difference --

9 A. No, it does not.

10 Q. -- to your opinion? Why not?

11 A. Because of that -- that's covered by the patent.

12 Q. No further questions, your Honor.

13 RE-CROSS EXAMINATION

14 BY MR. BAHLER:

15 Q. Back to Exhibit 270, all right, this is a sales brochure
16 for the -- this is a sales brochure for another one of
17 Chaparral's products, right? And this is one --

18 A. What is it?

19 Q. It's a 7313.

20 A. All right.

21 Q. And you opined about the 7313, right?

22 A. Yes.

23 Q. And down here, there's language similar to the one we just
24 looked at, it says easy management, right?

25 A. Yes.

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1 Q. And the same language support is also provided for
2 third-party implementation of GUI utilities with Chaparral's
3 configuration application programming interface CAPI. Do you
4 see that?

5 A. Yes.

6 Q. So Chaparral doesn't keep this from customers, does it,
7 sir?

8 A. Doesn't what?

9 Q. Doesn't keep this from its customers, does it, sir?

10 A. It keeps it close to the buyer requiring the customer
11 contact Chaparral to obtain a password and a user ID and does
12 not distribute this to anyone who does not have a password and
13 user ID. That would mean the ordinary user could not -- the
14 ordinary user, as opposed to the administrator and owner of
15 this device, would not have access to this.

16 Q. So if you own one, you could get access, right?

17 A. If you own one, you can get access and you could choose to
18 use this in a way that's not infringing, but that doesn't mean
19 that that would not necessarily be the case otherwise.

20 Q. How could it be used so that it's not infringing?

21 A. You could use it in ways that would be, say, providing
22 every workstation with the ability to do its own access
23 control.

24 Q. All right, sir. And that would be noninfringing in your
25 opinion?

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1 A. That would be a non-infringing use of an infringing
2 product.

3 Q. Okay. You mentioned in response to some of Mr. Allcock's
4 questions that the Chaparral products had no substantial
5 non-infringing use, right, sir?

6 A. That is true.

7 Q. And that's flat wrong in light of what you just said,
8 right, sir?

9 A. No, sir.

10 Q. It could be programmed through CAPI so it doesn't
11 infringe, right?

12 A. It can be programmed. I don't think that is a substantial
13 use of it. It's very unlikely that one would do that.

14 Q. It's possible, though, isn't it?

15 A. It's always possible.

16 Q. In fact, you don't know whether or not anybody's actually
17 programmed it in the way you've just suggested, right, sir?

18 A. I do not know that. I think they would be very unlikely.

19 Q. Have you talked to any of Chaparral's customers?

20 A. I have not.

21 Q. Have you -- do you know, in any way, how Chaparral's
22 customers use this product?

23 A. I have heard that they -- a few things but not anything
24 that I -- in detail.

25 Q. All right, sir. Pass the witness.

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1 MR. ALLCOCK: No further questions, your Honor.

2 THE COURT: You may step down, sir. You may call your
3 next witness.

4 MR. ALBRIGHT: Your Honor, we would call Paul Regan.

5 THE COURT: If you'll be sworn, please, sir.

6 (Witness was sworn.)

7 THE COURT: If you'll tell us your full name, please,
8 sir, and spell your last.

9 THE WITNESS: Paul Regan, R-E-G-A-N.

10 PAUL REGAN, called by the Plaintiff, duly sworn.

11 DIRECT EXAMINATION

12 BY MR. ALBRIGHT:

13 Q. Mr. Regan, would you be so kind as to introduce yourself
14 to the jury?

15 A. My name is Paul Regan. I'm a CPA. I work for a CPA firm.
16 I'm president of that firm and chairman of the board of that
17 firm.

18 Q. Okay. Would you give the jury your educational background
19 briefly, please, sir?

20 A. I have an undergraduate, Bachelor of Science, and a
21 Master's in Accounting that I -- my undergraduate was in 1968,
22 my master's was in 1979.

23 Q. And, as you've told the jury, you are a CPA?

24 A. Yes, I'm a Certified Public Accountant and a Certified
25 Fraud Examiner.

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1 Q. Okay. With relationship to the -- would you tell the jury
2 what the AICPA is?

3 A. AICPA is an acronym stands for American Institute of
4 Certified Public Accountants. It establishes national
5 standards on which CPAs practice in the United States.

6 Q. And how many CPAs are a member of that organization?

7 A. 330,000.

8 Q. And are you on any boards of that -- or any committees of
9 that organization?

10 A. Until July of this year, I was -- I served on its
11 nine-person litigation and Dispute Resolution Services
12 Committee, which provided guidance to CPAs for forensic
13 accounting work.

14 Q. I don't know if the jury's -- I'm sorry. I don't know if
15 the jury's ever heard of forensic accounting. Would you tell
16 them what that is, please, sir?

17 A. Forensic accounting is the process in which CPAs analyze
18 data, financial and otherwise, for the purpose of assisting
19 for the resolution of a dispute in court, or an arbitration,
20 or in mediation.

21 Q. And is this the first time you've ever performed this
22 service in litigation?

23 A. No. I started this work in 1970, and I probably worked on
24 something more than 500 cases around the world since 1970.

25 Q. Uh -- I'm sorry, sir.

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1 A. You asked earlier about working with the AICPA. The other
2 task I had was chairman of its National Damages Subcommittee.

3 Q. And as chairman of that subcommittee, briefly tell the
4 jury what your duties were, please.

5 A. We established a body of knowledge with respect to how the
6 damages are to be calculated and presented in disputes that
7 are to be resolved in a court of law.

8 Q. And recently, just because I think it sounds neat, what
9 was it you did out at Quantico?

10 A. In July of this year, the FBI asked me to teach a -- their
11 agents a course at their national training academy in
12 Quantico, Virginia on determination of damages and
13 intellectual property disputes. Federal Sentencing Guidelines
14 are influenced by how much property was taken on damage, and
15 it's important for the FBI to be able to make those
16 determinations.

17 Q. Okay. And, of course, this is an intel -- this litigation
18 involves intellectual property, correct?

19 A. Yes.

20 Q. Your Honor, I would proffer Mr. Regan as an expert in
21 damages.

22 THE COURT: Any voir dire questions?

23 MR. DELLETT: No, your Honor.

24 THE COURT: You may proceed.

25 Q. (BY MR. ALBRIGHT) Mr. Regan, we've retained you to appear

1 here today, have we not, sir?

2 A. Yes.

3 Q. And in preparation, how many hours would you say you or
4 your firm have put in in preparation for you to be here
5 testifying in front of this jury?

6 A. On this case, my firm has invested about 435 hours of
7 which I have spent about 65.

8 Q. Okay. And what is your fee for -- per hour for doing
9 that?

10 A. My firm bills \$410 an hour for my time.

11 Q. Okay. Now, in this case, Crossroads is not seeking lost
12 profits, correct?

13 A. That's correct.

14 Q. We're not seeking the profits that might have been made
15 but for sales that Chaparral made, correct?

16 A. That's correct.

17 Q. Okay. Instead, we're seeking a reasonable royalty; is
18 that correct?

19 A. That's correct.

20 Q. Would you tell the jury what a reasonable royalty is?

21 A. A reasonable royalty is a determination of what is an
22 appropriate amount that a willing licensor, that's somebody
23 that owns the technology, the patent. It's like the landlord
24 of a building -- how much would be charged to the person that
25 wants to use that technology, like a tenant in a building, for

1 the right to use that technology, and that's called a license.

2 And in this instance, we have Crossroads assuming
3 there is an infringement, as the owner of that property, and
4 Chaparral as someone that would like to use that property, and
5 for that right, there is a need to determine what set of
6 reasonable charge for Chaparral's use of that product.

7 Q. And we're looking backwards, right, because the use --
8 assuming the use is infringing, the use is already taking
9 place, correct?

10 A. That's correct. So what's called for in this instance is
11 a hypothetical negotiation of what would have been arrived at
12 had there been a negotiation just before the initial
13 infringement.

14 Q. So there would have been a hypothetical, not it can't take
15 place now because it's in the past, but the hypothetical
16 negotiation would have taken place in this case, for example,
17 between Crossroads, the licensor, and Chaparral, the licensee?

18 A. That's correct, sometime prior to the first infringement.

19 Q. And with respect to this hypothetical negotiation, when do
20 you believe it would have -- strike -- let me ask it this way:
21 When do you believe it could have taken place between the two
22 parties?

23 A. Sometime between early 2000 and the -- and early 2001.

24 Q. I'm going to show you Plaintiff's Exhibit No. 12, which is
25 already in evidence. What is the date on that, sir?

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1 A. The date of the presentation as indicated would be
2 February 18 in the year 2000.

3 Q. And the jury's already seen this. This is a presentation
4 that Chaparral made of a product -- Mr. Walker testified about
5 it -- of a product that contained LUN zoning; is that correct,
6 sir?

7 A. That's correct.

8 Q. Okay. I'm next going to show you Exhibit 35. Would you
9 tell the jury what S-35 -- Plaintiff's 35 is, please, sir?

10 A. 35 is an S-1 that's filed by Chaparral with the Securities
11 and Exchange Commission, which is a national governmental
12 entity that supervises the exchange of shares on various
13 public exchanges, and this is a document which Chaparral is
14 filing in connection with that.

15 Q. Would you tell the jury the date that Chaparral filed this
16 with the SEC?

17 A. I don't think I could read it, but it was in terms of the
18 day, but it was early -- looks like March of 2000.

19 Q. And I have turned for the record, your Honor, I've turned
20 to page CNS 007564 of that document. And can you see within
21 S-1 what Chaparral's telling the SEC is in its products?

22 A. Yes. I think --

23 MR. DELLETT: Objection. Your Honor, this is outside
24 the scope of Mr. Regan's report. It's not relevant to his
25 testimony for today. Mr. Regan proffered a report, and this

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1 subject Mr. Albright's going into now is not in it.

2 THE COURT: Well, he's trying to establish a date in
3 which he's going to measure, and so I'll overrule the
4 objection at this point in time. This exhibit's already in
5 evidence and speaks for itself. But you may proceed.

6 MR. ALBRIGHT: Thank you, your Honor.

7 A. This is taken from page 40 of the S-1, and it refers, as
8 Mr. Walker testified to yesterday, to the LUN zoning feature.

9 Q. (BY MR. ALBRIGHT) Okay. And you recall seeing other
10 presentations that Chaparral made to other customers such as
11 Dell and IBM in, roughly, the spring of 2000, correct?

12 A. Yes, sir.

13 Q. I'm going to show Plaintiff's Exhibit 118, your Honor,
14 which is already in evidence.

15 Would you tell the jury, please, sir, what Plaintiff's
16 Exhibit 118 is?

17 A. This is a Chaparral press release, dated November 8th,
18 year 2000, issued from Longmont, Colorado, which is the
19 location of Chaparral.

20 Q. While we're looking at this document, would you tell the
21 jury what that fourth full paragraph states about the
22 importance of LUN zoning?

23 A. This is talking about a product which is Chaparral's A8526
24 product, and it indicates in the second sentence LUN zoning
25 and array partitioning provide a cost-effective solution for

1 sharing disk arrays. For these mission critical applications,
2 the A8526 provides a high availability solution for its dual
3 controller/active failover capability.

4 Q. And Chaparral published that when, sir?

5 A. November 8th of the year 2000.

6 Q. And then, in January of 2001, Chaparral made the first
7 shipment products, correct, that contain LUN zoning?

8 A. Yes, there were shipments of product containing LUN zoning
9 that were made for sale.

10 Q. Now, with respect to the damage calculations that you've
11 made, and that the jury will see in a few minutes, does it
12 make any difference for just the purpose of that calculation
13 whether it would have been performed in February of 2000, when
14 we saw the EMC document, or November, when they did the press
15 release, or in January, when they made the first shipment with
16 LUN zoning?

17 A. As I indicated on page 5 of my report, it didn't make any
18 difference to my calculation because I am doing a reasonable
19 royalty calculation, and that's based upon actual sales. And
20 the first sale did not take place to a customer until January
21 of the year 2000. So from a damages perspective, it made no
22 difference to me.

23 It would have made a difference had I calculated the
24 lost profits calculation. It's possible it may have made a
25 difference.

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1 Q. But in this case it made no difference?

2 A. No.

3 Q. Now, to come up with this hypothetical negotiations, the
4 courts have basically come up with factors for you to
5 consider; is that fair?

6 A. Yes, sir.

7 Q. And would you tell the jury what those factors are known
8 as?

9 A. They're known as the Georgia Pacific factors. They arise
10 as a result of a dispute that took place a number of years ago
11 and they --

12 Q. Your Honor --

13 A. -- and that trial basically established factors that you
14 could look to to determine reasonable royalties.

15 Q. And, your Honor, without opposition from counsel, I'm
16 showing a demonstrative that shows Georgia Pacific factors.

17 Mr. Regan, if you could walk over to the screen,
18 please. Since we're under some limitation of time with
19 respect to the evidence in this case, would you point out to
20 the jury the issues -- the factors -- I know you considered
21 all of them, but the factors that you believe are most
22 important coming up with your damage calculations, please,
23 sir.

24 A. This is a listing of the 15 factors that come from the
25 case. I focused on 2, 4 and the commercial relationship, No.

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1 5.

2 Q. Okay.

3 A. Also, 8.

4 Q. Okay. Let's look at No. 2, first. I'm sorry, No. 4,
5 first. Would you tell the jury what your understanding is of
6 Crossroads' willingness to license its intellectual property?

7 A. It has a reluctance. It has issued one license in its
8 existence, and it has been reluctant to license any other
9 technology.

10 Q. And who is that license to, sir?

11 A. Hewlett Packard.

12 Q. Okay. We'll get back to that in a second. If you would
13 address No. 5, which is the commercial relationship between
14 Crossroads and Chaparral. What is that commercial
15 relationship, Mr. Regan?

16 A. The commercial relationship between Crossroads and
17 Chaparral is a competitive relationship.

18 Q. And what do you base your opinion that it is a competitive
19 relationship on?

20 A. The testimony that we saw here yesterday, Michael Gluck,
21 who was the president and COO, which is Chief Operating
22 Officer, of Chaparral. In addition, there was testimony by
23 Mr. Walker, there's statements in the S-1 that indicate that
24 the relationship is a competitive one, also, Mr. Smith
25 testified about the competitive relationship. So they compete.

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1 in a marketplace against each other for sales.

2 Q. And I don't -- I'm not certain I recall. Did Mr. Gluck
3 make any comments about what he believes would be appropriate
4 with respect to licensing something between competitors that
5 you consider in formulating your opinion?

6 A. I did.

7 Q. And what is it that Mr. Gluck, who we heard from in the
8 deposition yesterday, the former COO, say that you utilized in
9 coming up with your opinion?

10 MR. DELLETT: Objection. Mr. Regan's repetition of
11 what Mr. Gluck said. It's not admissible.

12 THE COURT: What he said yesterday certainly is not.
13 And I assume this gentleman had a report and opinion in print
14 with all the lawyers before he heard testimony yesterday, so
15 they questioned --

16 MR. ALBRIGHT: No, sir.

17 THE COURT: So with the question asked, the objection
18 is sustained.

19 MR. ALBRIGHT: Your Honor, he had the deposition --
20 yesterday's testimony was out of the deposition. Mr. Regan
21 had the deposition.

22 THE COURT: I do not know what the next question will
23 be, Mr. Albright. All I know was what the last question was,
24 and the objection to the last question is sustained.

25 MR. ALBRIGHT: Okay. Thank you, your Honor.

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1 Q. (BY MR. ALBRIGHT) Would you turn to No. 2 and explain to
2 the jury why No. 2's important?

3 A. No. 2 provides a reality base to this hypothetical that
4 did not happen. In the instance of Crossroads, it has
5 licensed products to Hewlett Packard for a router, its 4100,
6 technology related to its 4100, and so that gave me a basis on
7 which to see what types of royalties were paid to Crossroads
8 for similar technology.

9 Q. Mr. Regan, if you are discussing -- if you form the
10 opinion with respect to what a competitor would want to charge
11 another competitor for use of its license, would it be fair --
12 why is it important that they are competitors?

13 A. Well, there are a lot of licenses that are in place in the
14 United States, and some licenses, a lot of licenses are
15 between entities that are cooperating and working with each
16 other. For example, Microsoft issues licenses, to Dell, to
17 Hewlett Packard, to other entities, and they work together.
18 It's a way in which they can partner together to both achieve
19 a win-win situation.

20 And in those types of licenses, they can be very good
21 for both companies, and that's a different kind of license, a
22 different kind of rate and result than in a competitive
23 situation where a competitor is compelled to issue a license
24 which may enable that competitor to eat into their market
25 share, take away some of their customers, take away some of

1 their success that they hope to achieve with the -- something
2 they invent and they own.

3 Q. Mr. Regan, when Crossroads licensed -- gave a license to
4 Hewlett Packard, were Hewlett Packard and Crossroads
5 competitors?

6 A. No.

7 Q. Your Honor, I'm going to show the final demonstrative,
8 which is not opposed by counsel.

9 Mr. Regan, if you would explain to the jury how you
10 came to the calculation and what the appropriate royalties
11 would be in this case.

12 A. Well, first, I identified the Chaparral sales of
13 infringing product. Now, as we heard earlier, the first sales
14 did not begin until January of year 2001. Some of the
15 products didn't begin to shift until later in 2001.

16 But I've identified the sales revenues from those
17 products, and it was -- Dr. Hodges listed those products
18 earlier this morning, and identified what the revenue was to
19 Chaparral on those products. I sorted them into router
20 products and to RAID products.

21 And we have a number of \$167,247 and a \$1,371,693. I
22 looked to a determination of a reasonable royalty rate, and in
23 a determination of a reasonable royalty rate, I sorted them
24 into two categories, the first was for router products, which
25 directly competes with Crossroads.

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1 I looked to the profitability, which is one of the
2 factors. And if it's all right, I'm going to grab an easel.
3 I looked to the profitability to Chaparral of the products
4 that it was selling, and I looked to the gross profit. Do you
5 have a pen? And the gross profit is often called gross margin
6 or contribution margin.

7 If you look at sales and I'll use as an example a
8 thousand dollars of sales, and then, there's costs of goods
9 sold, which is materials, labor, manufacturing overhead, which
10 is the lights, the rent, the supervisors, the rags, the
11 supplies, and whatever.

12 And in Chaparral's instance, they tend to add up to
13 about 5 or \$500 -- excuse me, 50 percent of the selling price.
14 Now, in this instance, that \$500, that gross profit or gross
15 margin or often called contribution margin is \$500, which is
16 contributing toward covering costs, like, the officer's
17 salaries, R & D, expenses which need to be covered by the
18 contribution margin.

19 And in this instance, when you're trying to decide
20 will Chaparral be given the ability to achieve additional
21 sales by selling a product which is essential, what I'm doing
22 here is sharing 50/50. And in Mr. Gluck's deposition, which
23 occurred in the year 2000 that I read prior to my report, he
24 indicated that if he were going to license to a competitor,
25 he'd want all of the profit.

1 But I think in a hypothetical negotiation, it's
2 appropriate and I've seen it in other cases, used it in other
3 cases. I divide the gross profit so that the owner and the
4 user share in that gross profit 50/50.

5 I brought the RAID product down to the license -- the
6 royalty rate that's in place within my calculation on the HP
7 agreement for Chaparral's routers that are shipped to HP --
8 used by HP.

9 Q. Chaparral's RAID products?

10 A. Yes.

11 Q. Crossroads' products are shipped to HP?

12 A. Shipped to HP as looking to a similar product. Now,
13 Chaparral has a friendly relationship with HP.

14 Q. Crossroads does?

15 A. Yes. Crossroads has a friendly relationship with HP. And
16 I believe it would be unlikely that the rate would be this
17 low, but I've used it.

18 Q. And just so it's in the record because the rate won't
19 reflect what's being shown in the demonstrative, would you
20 tell the jury, even though they can read it, but can you just
21 -- maybe it's in the record -- what you believe the
22 appropriate royalty amounts would be in this case, sir?

23 A. For router products 25 percent, for RAID products 17. And
24 when you apply those to the applicable amount of sales which
25 have occurred -- this is through July 11th of this year -- the

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1 royalty is approximately \$275,000.

2 Q. And that's broken up as between slightly over \$41,000 for
3 the router products and \$233,000 for the RAID products?

4 A. Yes.

5 Q. Thank you, sir.

6 CROSS-EXAMINATION

7 BY MR. DELLETT:

8 Q. Good afternoon, Mr. Regan.

9 A. Good afternoon, Mr. Dellett.

10 Q. While he's getting that set up, I'm going to give you a
11 notebook.

12 A. All right.

13 Q. Mr. Regan, do you live in California?

14 A. I do.

15 Q. And where in California?

16 A. I live in a town called Hillsboro, California.

17 Q. That's in the San Francisco Bay area?

18 A. Yes, about 18 miles outside of San Francisco.

19 Q. And are you licensed as a CPA in California?

20 A. Yes.

21 Q. And are you licensed as a CPA in Texas?

22 A. No.

23 Q. Is it correct for the last ten years that you have spent
24 most of your time on litigation?

25 A. That's correct.

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1 Q. That means testifying as a witness?

2 A. Well, eventually, many of the cases lead to testimony.
3 Testimony time tends to be a very small percentage. It's
4 preparation time that really consumes my time.

5 Q. During that time, you're not doing other accounting
6 functions, like, auditing financial statements or publishing
7 financial statements?

8 A. No. My company has about 75 people, and about 85 percent
9 of our firm is involved in forensic accounting.

10 Q. Litigation?

11 A. Yes.

12 Q. Okay. Now, during those -- the last ten years, since
13 1990, have you ever negotiated a license agreement for a
14 patent yourself?

15 A. No, no, sir, not a patent. I negotiated licenses for
16 software I wrote, but that didn't contain any patented
17 technology.

18 Q. And before you were hired by Crossroads' attorneys here,
19 had you ever negotiated a license for Crossroads?

20 A. No.

21 Q. Had you ever negotiated a license agreement for patents
22 for Hewlett Packard?

23 A. No. I've worked on hypothetical negotiations for Hewlett
24 Packard, but I have not -- I assume you're talking about an
25 actual negotiation.

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- 1 Q. Right, actual negotiations.
- 2 A. Only hypothetical negotiations for Hewlett Packard.
- 3 Q. Not real ones?
- 4 A. Yes.
- 5 Q. Right. Okay. But you have seen surveys on royalty rates
- 6 for patents in the computer industry?
- 7 A. I have seen surveys and I have seen license agreements.
- 8 Q. And storage routers are a subset of the computer industry,
- 9 correct?
- 10 A. Yes.
- 11 Q. And did you even look at those surveys on royalty rates in
- 12 the computer industry before you prepared your report that
- 13 you're testifying about?
- 14 A. I've looked at surveys over the years. I don't recall
- 15 seeing any survey that related to storage technology of the
- 16 type of technology that this is.
- 17 Q. And storage technology is a subset of the computer
- 18 industry?
- 19 A. Yes.
- 20 Q. How did you determine that?
- 21 A. Primarily reading the documents that have been produced in
- 22 this case which include press releases, research material.
- 23 The S-1, for example, contains a significant discussion about
- 24 the industry and storage technology, in particular.
- 25 Q. From the surveys you have seen on royalty rates in the

1 computer industry, is it correct that almost always royalty
2 rates in the industry are below five percent?

3 A. Royalty rates vary, certainly a great many of them are
4 below five percent. Many products in the computer industry,
5 for example, Hewlett Packard, its printer contain hundreds of
6 patents, and many of those are very small.

7 Q. Now, I understand you relied on the license agreement that
8 Hewlett Packard entered with Crossroads to come up with your
9 opinion here; is that right?

10 A. Yes, it's part of the information I considered.

11 Q. Well, let's be sure we know which one we're talking about.
12 Is that called the CP 4200 license agreement, correct? I
13 believe that's in your notebook as Exhibit 66?

14 A. Yes, I read this. I collected it, and then, I considered
15 this.

16 Q. And it's what you relied on to come up with the 17 percent
17 figure, right?

18 A. It's part of how I came up with the -- yes, it's how I got
19 the 17 percent calculation, yes.

20 Q. In fact, it was 17.23 percent that you calculated?

21 A. I don't recall.

22 Q. Let me be sure that I've got the exact number that you
23 calculated. You said in your report it was 17.23 percent, and
24 that's on Exhibit D to your report, which is in the notebook,
25 at tab 63.

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1 A. Yes, sir, I see that.

2 Q. Now, you didn't rely on the HP agreement with Crossroads
3 because that agreement was for the 972 patent, did you?

4 A. No, sir.

5 Q. In fact, none of what HP paid Crossroads was for the 972
6 patent, right?

7 A. I believe that's true.

8 Q. Now, let's see what the -- what it is that HP paid for.
9 Do you recognize what's on the screen as the first page of
10 Exhibit 66, which is the CP 4200 license agreement?

11 A. Yes, that's page 1.

12 Q. All right. And if you would, please, turn to the 14th
13 page. I think that page is --

14 A. I have it.

15 Q. All right. And that is entitled Exhibit C license fees,
16 right?

17 A. Yes.

18 Q. And you see the first subheading is code and hardware
19 fees, right?

20 A. Yes.

21 Q. All right. And let's see if we could make this a little
22 easier to see. And the first line is binary code, \$195,000.
23 Does the 972 patent have any binary code in it?

24 A. That's not a determination -- that's a technical
25 determination. That's not one that I've made. It may have it

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1 in it, but I don't know.

2 Q. You've read the 972 patent, right?

3 A. Yes, I have read the 972 patent.

4 Q. Did you find any binary code in it?

5 A. I didn't read it for that purpose, and I think that
6 determination to what extent a hypothetical negotiation would
7 call for binary code or source code or hardware design, that's
8 a technical determination.

9 Q. So you haven't reached any opinion yourself as to whether
10 Chaparral would need binary code or source code or hardware
11 design from Crossroads, have you?

12 A. I have an expectation that the hypothetical negotiation
13 would enable Crossroads to be able to use the product, and it
14 would enter into that negotiation so as to maximize its use.

15 Q. And as far as you know, Crossroads isn't alleging that
16 Chaparral took binary code or source code or hardware design,
17 is it?

18 A. This is not an action involving theft of a code. It's a
19 patent infringement action or claim.

20 Q. And you don't know --

21 A. But it's an action which is basically -- substitutes for
22 you'll have the benefit of my property. You were infringing
23 on my property.

24 Q. And that property is a patent. It's not the binary code
25 or the source code or the hardware design, correct?

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1 A. That property is a patent, and my expectation that in
2 order for it to function, you will need things like binary
3 code, source code to make it function. That would be the
4 typical expectation of people in a hypothetical negotiation.

5 Q. Chaparral didn't need to get binary code or source code
6 from Crossroads, did it?

7 A. We're talking about a hypothetical negotiation where you
8 have a licensor and a licensee. Chaparral has -- is not in
9 that situation.

10 Q. And in January of 2001, did Chaparral already have the
11 binary code and the source code and the hardware design? It
12 didn't need that from Crossroads, did it?

13 A. All it needed was a license to the patent.

14 Q. According to you, right?

15 A. In terms of what the law requires, the law requires that
16 there have been a hypothetical negotiation prior to the first
17 infringement, which may have been, for example, just prior to
18 the EMC presentation in February of the year 2000. And had
19 that hypothetical negotiation taken place, I can't tell you
20 what Chaparral's -- what the specifics of what it would have
21 wanted. It would have wanted to use this technology.

22 Q. And do you think that in order to use the technology,
23 Chaparral would have to get binary code or source code from
24 Crossroads? Is that what you're saying?

25 A. I am not going to get -- as indicated in my deposition,

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1 I'm not going to get into the specifics of what it would have
2 priced, what it would have acquired as a result of those
3 negotiations, but as I also mentioned, I have worked with
4 Hewlett Packard.

5 This is a Hewlett Packard agreement. Hewlett Packard
6 likes to stick in fixed amounts up front, early on in the
7 agreement so that it will know how much it's going to cost.
8 And if it assigns these values to particular pieces, I don't
9 believe that a hypothetical negotiation would need to get this
10 specific.

11 Q. But we do know that what HP got for this amount was not
12 the 972 patent, correct?

13 A. Yes. I don't see any indication that the 972 is included.

14 Q. Okay. And did HP ever pay this \$395,000 listed as the
15 code and hardware fee for source code?

16 A. I think the amount was defined up front. It was to be
17 paid later, and I think there's been an amendment that may
18 have impacted the amount to be paid.

19 Q. As far as you November, HP hasn't paid it, correct?

20 A. I don't think it is due until the end of the agreement.

21 Q. And who told you that?

22 A. I think it was Jennifer Walsh at Crossroads.

23 Q. You didn't ask anybody at HP whether they really were
24 going to pay \$395,000 for source code?

25 A. Other than looking at the signed contract?

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1 Q. Isn't it correct that the 4200 product, this license
2 agreement covers at the end of life right now?

3 A. It's nearing its end of life.

4 Q. And is it your understanding that after the end of the
5 life of the product, HP is going to pay for source code on a
6 product that it's discontinuing? Is that your understanding?

7 A. My recollection, I don't have that -- those documents with
8 me as I sit here today, but my recollection is that the
9 agreement is that that would be paid at the end of the
10 agreement.

11 Q. Well, let's turn back to Exhibit D of your report. And
12 there's a footnote that says HP plans the end of life the 4200
13 products. And you think HP is going to pay \$395,000 for
14 source code after the product has reached its end of life?

15 MR. ALBRIGHT: Your Honor, first, it's been asked and
16 answered. Second, it calls for speculation on the part of the
17 witness without any foundation.

18 MR. DELLETT: Mr. Regan has relied on this
19 agreement --

20 THE COURT: He's relied on the written agreement. I
21 don't know that he knows if Hewlett Packard is going to pay,
22 get sued, throw it up in the air, or anything. I sustain the
23 objection. The question asked is for speculation.

24 Q. (BY MR. DELLETT) You would be speculating, too, as to
25 whether or not HP is really going to pay \$395,000 for source

1 code?

2 MR. ALBRIGHT: Your Honor, I object. It calls for
3 speculation. I don't think it cures it by saying -- it would
4 be speculating. I think the question's improper.

5 THE COURT: Do you have any evidence that this is a
6 fraudulent contract?

7 MR. DELLETT: Mr. Regan has a footnote in his report
8 in which he relies on somebody that says that HP's going to
9 pay it, and the \$395,000 is an element of his methodology of
10 getting to this 17 percent figure. And I'm entitled to test
11 the basis for that assumption.

12 Here it is, directly in his report that HP's going to
13 discontinue the product which, apparently, Crossroads told him
14 they're going to pay for.

15 THE COURT: Well --

16 MR. ALBRIGHT: Your Honor, he also testified that he
17 believes he's read amendments that show that it's going to be
18 paid at the end of life which is not consistent --

19 THE COURT: Members of the jury, I'm going to give you
20 a little break. If you'll go to the jury room for a minute.

21 (Jury not present.)

22 THE COURT: All right. I've got a contract and it
23 states what is going to be paid, and there's a footnote in
24 this gentleman's report that indicates what?

25 MR. DELLETT: Indicates that HP plans to end of life

1 the 4200 products and replace with some other products and it
2 says that --

3 THE COURT: So the contract may not be renewed, but
4 during the period of time, this liability it means is
5 established by the contract. Now, do you have any --

6 MR. DELLETT: No. I apologize, your Honor. I think
7 there was one other feature that I probably need to lay
8 foundation with.

9 THE COURT: Well, tell me what's going on because I'm
10 missing something.

11 MR. DELLETT: I'm sorry. This is a provision in the
12 agreement that says that this \$395,000 for source code is an
13 option, it's not something that HP is obligated to pay unless
14 it's used to pay -- I'm sorry. That's fact --

15 THE COURT: Okay. Well, you're entitled to show that.
16 All right. Bring the jury back in.

17 (Jury present.)

18 THE COURT: All right. Members of the jury, I think
19 we're ready now. You may proceed.

20 Q. (BY MR. DELLETT) Mr. Regan, is it correct that HP only
21 will pay the source code agreement -- excuse me. Let me start
22 again. Is it correct that under this agreement that HP is
23 obligated to pay the \$395,000 for source code only if HP
24 requests that?

25 A. My recollection is that there is some language in the

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1 agreement that discusses that point. Have you got it?

2 Q. It's on page 2 of the CP 4200 agreement.

3 A. Do you have a subparagraph? There's a lot of them.

4 Q. Page 2 of Exhibit 66.

5 A. Yes, I see it in paragraph 2B.

6 Q. And as far as you know, has HP made a written request?

7 A. In my recollection, as I talked to Jennifer Walsh at
8 Crossroads and it was her expectation that with respect to
9 this aspect of the agreement that the amount was due and
10 payable by HP, that the parties had agreed that the payment
11 would be made at the end of the agreement.

12 Q. As far as you know, HP has not made that request?

13 A. And I believe there was a subsequent modification which I
14 believe it was in June of this year that amended the
15 agreement. But in terms of this particular agreement, this is
16 an agreement that was in place, and the expectations between
17 the parties were that these were the amounts that would be due
18 as a result of this license; and this preceded the
19 hypothetical negotiation dates that I have talked about in
20 this case.

21 This is an agreement that was in place on April 15,
22 1998.

23 Q. So it's correct that an accounting person from Crossroads
24 told you that HP would pay the \$395,000. As far as you know,
25 HP has never requested the source code that would obligate it.

- 1 to pay that?
- 2 A. I didn't inquire as to what would trigger the \$395,000,
3 but what I did inquire was -- is the \$395,000 payable. And
4 that conversation occurred before June 23rd of the year 2000,
5 as I recall.
- 6 Q. Let me ask you about the royalties in the first CP 4200
7 board. Isn't it correct that the CP 4200 board does not
8 include the 972 patent?
- 9 A. Yes.
- 10 Q. And none of the royalties listed here are for the 972
11 patent, correct?
- 12 A. No. CP 4200 board was, as I recall, a Fibre Channel to
13 SCSI board.
- 14 Q. Okay. And it had reserve release, not what you contend is
15 access controls or not what Crossroads contends is access
16 controls?
- 17 A. In terms of that type of expertise, I'd have to listen to
18 others to tell me whether it had reserve release. I have an
19 expectation, but that's not my expertise.
- 20 Q. Now, of all the information on this schedule, are any of
21 these amounts that HP has agreed to pay for the 972 patent?
- 22 A. No. As I said, this is for comparable technology. This
23 is a router. The CP 4200 is a router. I didn't say it was
24 for the 972 patent.
- 25 Q. And you didn't make any analysis yourself as to whether it

1 was comparable, correct?

2 A. Well, it's similar technology, and it involves a router,
3 it involves Crossroads, it involves Fibre Channel-to-SCSI
4 technology. It's similar technology.

5 Q. And you said it was similar technology because it was a
6 router and because it was Crossroads. Any other reasons?

7 A. When I read through the description of the technology, it
8 impressed upon me that it was similar technology, and it is a
9 real document which is in place. It's the only document that
10 is real in terms of a license between Crossroads and anyone,
11 and it seemed to provide me with a good starting place from
12 which to build a royalty rate on a hypothetical negotiation.
13 It was likely to take -- or was required to take place
14 sometime in the year 2000 or early 2001.

15 Q. You don't have any expertise in this technology, right?

16 A. No. I think my firm uses -- you know, we have a network
17 and we've got storage arrays, and I don't have any other than
18 lay technology.

19 Q. So isn't it right that the only people that told you that
20 this was similar technology to the 972 patent were people from
21 Crossroads?

22 A. People from Crossroads and my reading of documents.

23 Q. And when your deposition was taken, you said that the only
24 people that told you similar technology were people from
25 Crossroads, right?

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1 A. I don't recall.

2 Q. Now, do you remember being asked -- do you remember being
3 deposed on August 16th of this year?

4 A. Yes.

5 Q. Does this -- what I've handed you, does that look like a
6 copy of your deposition?

7 A. No. This is my deposition in another case on April of the
8 year 2001. It's Crossroads versus Pathlight.

9 Q. Let me hand you a marked version of your deposition there.
10 Let me put it up on the screen. It might be easier.

11 MR. ALBRIGHT: Your Honor, I would object to any -- if
12 Mr. Dellett is going to project the testimony on screen, I
13 would object to that.

14 MR. DELLETT: We'll move on.

15 Q. (BY MR. DELLETT) Mr. Regan, when did Crossroads' attorneys
16 hire you to work on the litigation against Chaparral?

17 A. I think it was sometime in the spring, early summer of the
18 year 2000.

19 Q. All right. And at that time, do you remember that the
20 product Crossroads accused was the FS-1310 router?

21 A. I think there was a general statement about products, and
22 it named some of the 1310 products.

23 Q. And that was in the complaint that you got?

24 A. Yes.

25 Q. And so, what your firm was going to start working on was

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1 damages for Chaparral sales of the 1310 routers, right?

2 A. Well, we didn't start working on the case and making
3 damage calculations at that time, so I don't know what we
4 would have done. We would have elected documents and as the
5 case progressed, made those kind of determinations.

6 Q. And as far as you knew at that time, the only storage
7 router that was being accused of infringement was the 1310,
8 right?

9 MR. ALBRIGHT: Your Honor, he just said he didn't
10 know.

11 THE COURT: He's offered no evidence on it. Let's
12 move on.

13 MR. DELLETT: All right.

14 Q. (BY MR. DELLETT) Now, your conclusion was that the
15 hypothetical negotiation would be sometime in January of 2001,
16 correct?

17 A. For purposes of the damage calculation itself, I have
18 assumed it would be at the time or just prior to the first
19 sale because I use a reasonable royalty calculation.

20 Q. And was your assumption that the parties at the
21 hypothetical negotiation would know that Chaparral could
22 design around the patent and sell products with reserve
23 release instead of LUN zoning, right?

24 A. I don't understand your question because --

25 MR. ALBRIGHT: Your Honor, there's been no evidence

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1 that there was such a design around that is acceptable. And
2 if Mr. Dellett wants to go into what purposed him for design
3 around, I suggest we approach the bench because I don't
4 believe he's laid any foundation for that question.

5 THE COURT: Well, he hasn't had any time to present.
6 You may ask the witness if it could have been designed around,
7 whether that influences his opinion in any way, shape or form.
8 So the gentleman may inquire, but there is no evidence that
9 there was any design around yet.

10 MR. DELLETT: Okay.

11 Q. (BY MR. DELLETT) Would you agree that at the hypothetical
12 negotiation, one of the issues would be how expensive or how
13 long Chaparral would take to design around the 972 patent?

14 A. I know that in hypothetical negotiations that the
15 feasibility of a design around, whether it would be
16 successful, how much it would cost are among the factors to be
17 considered.

18 Q. Okay. And have you done that in this case?

19 A. I have not seen any evidence that design around is a
20 practical solution that is -- that offsets this reasonable
21 royalty calculation.

22 Q. Now, did you use the term gross profit when you testified
23 earlier?

24 A. Earlier here today?

25 Q. Yes.

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1 A. I talked about gross profit, I talked about contribution
2 margin, but I did use the word "gross profit."

3 Q. Okay. And gross profit, that's not the bottom line of
4 financial statements, right?

5 A. That correct.

6 Q. Operating profit, net operating profit is the bottom line?

7 A. I'd say it's net income typically is the bottom line.

8 Q. And gross profit is what you have before you pay sales and
9 marketing costs?

10 A. Yes.

11 Q. Net profit or excuse me, gross profit is what you have
12 before you pay any of your research and development?

13 A. It varies by company. Some companies charge research and
14 development in their gross profits, some of them allocate it
15 in their manufacturing overhead, and some companies show it
16 below the line.

17 Q. Chaparral's gross profit is what it has before it pays any
18 research and development?

19 A. Chaparral's income appears as if it is, indeed, below the
20 line or below gross margin.

21 Q. And gross profits is what Chaparral has before it pays any
22 of its general and administrative costs?

23 A. Yes.

24 Q. And isn't it correct that after Chaparral pays all the
25 sales and marketing, general and administrative and research

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1 and development costs, Chaparral operates at a net loss?

2 A. When you look at Chaparral as an entity and what its --
3 for all of its transactions, for all of its purposes, it
4 reports a net loss.

5 Q. And is it correct that Crossroads has reported a net loss,
6 as well, in every quarter of its existence?

7 A. I believe so, yes.

8 Q. Now, you also testified earlier, I believe, about
9 competitive relationship between Crossroads and Chaparral?

10 A. Yes.

11 Q. That means they were competing to try and get sales?

12 A. It means a lot of things, and I testified that the
13 documents refer to the competitive relationship, and that can
14 mean a number of things including what you described.

15 Q. Have you done any analysis or have you reached any opinion
16 that Chaparral actually took any sales away from Crossroads?

17 A. If I were to do a lost profits analysis, it would call for
18 that, and I have not done that.

19 Q. Okay. And have you done any analysis or reached any
20 opinion indicating that Crossroads lost market share to
21 Chaparral?

22 A. Again, if I would have done a lost profits calculation,
23 that would be a piece of the analysis. I have not done that.

24 Q. You haven't done that here?

25 A. No.

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1 Q. Pass the witness.

2 RE-DIRECT EXAMINATION

3 BY MR. ALBRIGHT:

4 Q. Mr. Regan, I'm going to put up what's already been
5 admitted as Plaintiff's Exhibit 132. Would you identify what
6 that is for the jury, please, sir?

7 A. That's a business plan of Chaparral.

8 Q. Okay.

9 A. It's copy No. 50.

10 Q. Yes, sir. Who prepared that business plan, sir?

11 A. Chaparral Technologies.

12 Q. So this is a document they created?

13 A. Yes.

14 Q. Okay. Mr. Dellett just asked you some questions about
15 whether or not you consider Crossroads and Chaparral to be
16 competitors?

17 A. Yes.

18 Q. I'm going to turn to what is for the record 029868, which
19 is page 14 of that report.

20 A. I see it.

21 Q. Could you read the first line that Chaparral put in its
22 business report, please, sir?

23 A. The only major current intelligent router competitor is
24 Crossroads Systems, a privately held company, located in
25 Austin, Texas.

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1 Q. Thank you, sir. Just a couple of quick follow-up
2 questions, Mr. Regan.

3 Did you pick the Hewlett Packard Crossroads licensing
4 agreement because it had the 972 patent in it?

5 A. No.

6 Q. Why did you pick that license agreement as part of your
7 determination of what an appropriate reasonable royalty rate
8 would be?

9 A. It was a real agreement. It was -- involved Crossroads.
10 It involved a router.

11 Q. Did Crossroads have any other license agreements for you
12 to look at?

13 A. No.

14 Q. Would you anticipate that Crossroads would license its
15 intellectual property to Chaparral at the same rate that it
16 would license it to Hewlett Packard?

17 A. No.

18 Q. Why not?

19 A. Hewlett Packard is a stockholder. Hewlett Packard is a --
20 is an extraordinary brand. It has great market penetration.
21 It has a great reputation. It's also sells in great volume,
22 has a massive marketing distribution network. I would become
23 familiar with all of those things because I've worked on a
24 number of matters for Hewlett Packard.

25 Q. Finally, Mr. Regan, with respect to the questions that Mr.

1 Dellett asked you about the need for the binary code or source
2 code, or an amount had been paid or is going to be paid, would
3 it make any difference in your calculation of what the
4 appropriate reasonable royalty rate ought to be as between
5 Crossroads and Chaparral if the payment were not made or were
6 made by Hewlett Packard for the source code?

7 A. No, sir, because this is an agreement that was in place in
8 1998 between reputable companies where I believe that these
9 companies thought I'm going to deliver this and Hewlett
10 Packard's going to deliver that, and Hewlett Packard is a
11 reputable, solid company. If they later make amendments and
12 make changes, those would be things to consider later.

13 But in determining what a reasonable royalty is for
14 those kind of technology rights, I think it's fair to look at
15 the agreement.

16 Q. Thank you, sir. Pass the witness.

17 RE-CROSS EXAMINATION

18 BY MR. DELLETT:

19 Q. When you read from Exhibit 132, it indicated that
20 Crossroads was a competitor for router products? Did I have
21 that right?

22 A. I believe that's what the technology or what the wording
23 of the document is.

24 Q. Most Chaparral products accused in this case are RAID
25 products, correct, not routers that you calculated damages?

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1 A. In looking at the sales that have occurred to date, most
2 of those sales are RAID products.

3 Q. Well over 90 percent of the sales that you calculated
4 damages for are RAID products, right? Or, excuse me, it was
5 about 85 to 90 percent?

6 A. Yes, I notice the router product there are -- one of them
7 was released July 6th, so there was only a few days worth of
8 sales on that product. So in terms of the sales to date, it's
9 in that range. The sales relationship between router sales
10 and RAID sales within Chaparral is, my recollection, is much
11 closer.

12 Q. As far as you know, has Crossroads ever built and sold a
13 RAID product?

14 A. I'm not aware of that.

15 Q. Nothing else.

16 MR. ALBRIGHT: May I follow-up with one or two
17 questions, your Honor?

18 THE COURT: You may.

19 RE-DIRECT EXAMINATION

20 BY MR. ALBRIGHT:

21 Q. Mr. Regan, I'm going back to the last exhibit that the
22 jury saw when you were on your original direct. Did you take
23 into consideration the fact that Chaparral's RAID products are
24 not compet -- that Crossroads is not in the RAID market?

25 A. Yes.

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1 Q. And would you explain to the jury, very briefly, how you
2 took into consideration the fact that Crossroads and Chaparral
3 are competitive in the router products but not in the RAID
4 products?

5 A. I reduced the royalty on the RAID products from 25 to 17
6 percent equally that HP --

7 Q. So you took into consideration the lack of competition
8 with respect to the RAID products?

9 A. Yes.

10 Q. That's all I have, your Honor.

11 THE COURT: You may step down.

12 THE WITNESS: Thank you, your Honor.

13 THE COURT: Members of the jury, y'all have had a
14 break, but we haven't. I'll give you a 15-minute break,
15 stretch, do whatever you want. Be ready to come back, and
16 please remember the instructions.

17 (Recess.)

18 THE COURT: You may call your next witness.

19 MR. ALLCOCK: We rest, your Honor.

20 THE COURT: Members of the jury, I'm going to put you
21 back in the jury room. It's good exercise. Remember my
22 instructions.

23 (Jury not present.)

24 THE COURT: Mr. Bahler, you have the lectern.

25 MR. BAHLER: Your Honor, we have several motions for

1 JMOL.

2 THE COURT: Several?

3 MR. BAHLER: No. Sorry. We have one.

4 THE COURT: Good.

5 MR. BAHLER: That has a couple of parts. I'm
6 learning. I have the original and one for the Court. Your
7 Honor, the defendant moves for a judgment of a matter of law
8 on two issues: One is infringement and one is willfulness.

9 THE COURT: Let me wait for the Clerk. All right, Mr.
10 Bahler, I've read the motion. You may proceed.

11 MR. BAHLER: Thank you, your Honor. As I mentioned,
12 there are two facets: One is a motion for noninfringement,
13 and the other is a motion for willfulness. I'll take those in
14 order.

15 Your Honor, there has been insufficient evidence as a
16 matter of law to show infringement in this case. In
17 particular, there has been no evidence that there is -- with
18 respect to the unmodified system, first, there's no evidence
19 that all hosts could not access any storage at any time, and
20 that's a requirement of this access controls.

21 In fact, Dr. Hodges didn't address that issue at all.
22 The CAPI issue, he said he hadn't even tested it. There's
23 insufficient evidence to show that with CAPI which is, of
24 course, the way this thing is marketed and sold and anybody
25 can get it. With CAPI, indeed, the system can be a system

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1 exists such as all hosts can access access control at any
2 time, and in that sense, it's exactly like the reserve issue
3 and it's -- it is -- there's not infringement as a matter of
4 law.

5 In addition, your Honor, there was no mention of the
6 modified product where the -- where there's no -- absolutely
7 no possibility of even two modes of operation, and the router
8 is always susceptible of receiving CAPI commands from any host
9 at any time. They can affect the -- that enables any hosts at
10 any time to modify access. And, your Honor, that is the
11 antithesis of access control. So as a matter of law, there
12 can be no infringement.

13 With respect to willfulness, your Honor, what did come
14 out, at least a little bit this morning, was the true facts of
15 exactly what kind of notice Chaparral had in this thing.
16 First of all, the product which Crossroads now contends did
17 not include the invention was marked with a patent.

18 We were sued on March 31st, identify products which
19 include the SCSI reserve command which are no longer contended
20 to infringe in September of the year 2000 --

21 THE COURT: What do you do about the advertising
22 propaganda in 2000 that displayed the alleged infringing parts
23 and the sales? I mean --

24 MR. BAHLER: Your Honor, there's no -- that falls
25 vastly short of any offer for sale that would be required to

1 show infringement. There was no quantities, there was no
2 price, there was no delivery time, all of which are earmarks
3 of offers for sale.

4 Indeed, in every instance, if you take a look at those
5 exhibits -- there were three of them -- the LUN zoning feature
6 was articulated as a prospective. It doesn't even exhibit yet
7 it's coming, it's not there. You can't offer for sale
8 something that you don't even have.

9 THE COURT: Well, the exhibits speak for themselves.
10 And Mr. Walker indicated that they went on sale in January,
11 February and March of this year, and the damages are limited
12 to those sales. So there's evidence of sales, at least
13 circumstantially by the expert witnesses who've taken the
14 sales and wrote a percentage of them on the alleged infringing
15 product.

16 I understand your argument, though.

17 MR. BAHLER: Your Honor, just to clarify here. The
18 routers that were sold in the year 2000 were not the 1310.
19 We're still selling the 1310, and there's no damages
20 calculated for the 1310. And, your Honor, just for -- if I
21 could just say one last thing, this September amended
22 complaint still identified the only pro --

23 (Jury present.)

24 THE COURT: Mr. Bahler, you may call your next
25 witness.

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1 MR. BAHLER: Your Honor, the defendant calls Jerry
2 Walker:

3 THE COURT: Mr. Walker, you're still sworn, sir.

4 THE WITNESS: Yes, sir.

5 DIRECT EXAMINATION

6 BY MR. BAHLER:

7 Q. Mr. Walker, was there a time when you worked for
8 Chaparral?

9 A. Yes, there was.

10 Q. And what do you do now?

11 A. I'm retired.

12 Q. When did you retire, sir?

13 A. I retired June -- July 29th this year.

14 Q. All right, sir. While you were working for Chaparral,
15 what were your responsibilities?

16 A. I was Executive Vice-president of Operations. I had the
17 product development, the engineering organization, product
18 manufacturing, manufacturing organization, customer support
19 and product test.

20 Q. Now, were you one of the founders of Chaparral?

21 A. Yes, I was.

22 Q. Could you tell us how Chaparral went about being formed?

23 A. Chaparral was formed primarily of a relationship between
24 our principal founder, Mr. Gary Allison, and the then Chairman
25 of the Board and CEO of Adaptec Corporation. They had known

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1 each other for 20 years or so. Mr. Allison became aware of
2 some technology that Adaptec was developing, the so-called
3 RAID controllers that you've heard so much about today.

4 He also became aware from the then CEO, Mr. Sevier, of
5 Adaptec that Adaptec had also explored the possibility of
6 these RAID controllers being modified to be used as a router,
7 the kind of routers that we've been talking about today.

8 Adaptec didn't have the resources or the skills
9 necessary, especially in the tape background, to do that, but
10 primarily, it just didn't have the engineering staff to do it.
11 So they came up with a concept of let's form a new company,
12 Adaptec will contribute the technology, we'll invest in this
13 new company, which we subsequently called Chaparral.

14 Mr. Allison called myself, called Mr. Gluck, and we
15 formed the company, incorporated it in January of 1998.

16 Q. Have you known Mr. Allison before that day?

17 A. I had.

18 Q. And how is it that you knew him?

19 A. I had employed Mr. Allison's previous company to do
20 consulting work for me when I was Vice-president of
21 Engineering at a Boulder, Colorado-based company called
22 Exobyte Corporation. That's where I first met him.

23 Q. All right, sir. Now, what were Chaparral's first
24 products?

25 A. The first product that we introduced were RAID products

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1 that came out before we introduced our router product.

2 Q. Now, just so we're clear, what is a RAID product?

3 A. RAID product, the R-A-I-D stands for redundant array of
4 inexpensive disks, and the concept behind it is employing
5 multiple disk drives in a redundant fashion so that if any one
6 of those disk drives fails, the data can still be recovered
7 from the remaining good drives, even with a single drive
8 completely dead.

9 So it provides a high availability, high redundancy
10 environment for very valuable computer data.

11 Q. All right, sir. When was Chaparral formed, specifically?

12 A. January of '98.

13 Q. Okay. And what was -- when did Chaparral sell its first
14 product?

15 A. I believe it was around the first quarter of '99 would be
16 my guess.

17 Q. And this is the RAID product that you spoke of?

18 A. This was the RAID product.

19 Q. Okay. Mr. Walker, do you have a college degree, sir?

20 A. I do.

21 Q. Could you just explain to the members of the jury your
22 educational background?

23 A. I have a Bachelor of Science Degree in Electrical
24 Engineering from the University of Houston, down the road,
25 and, also, a Master of Science Degree in Electrical

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1 Engineering from the University of Houston.

2 Q. When did you receive that master's degree, sir?

3 A. In 1971.

4 Q. Now, did you start working right out of college?

5 A. Yes, I did.

6 Q. Could you just describe briefly your educational history
7 leading up to the formation of -- I'm sorry, your employment
8 history leading up to your --

9 A. It seems like everyone else who has testified. I started
10 my career at IBM in 1971 in Boulder, Colorado, and I went
11 there as an electronics design engineer, and basically
12 designed circuitry for IBM. Until 1978, I moved from IBM to a
13 company called Storage Technology Corporation, where I also
14 was an electronics engineer, ultimately moved into management,
15 left storage technology in 1984 to join a San Diego-based
16 company called Cipher Data Products and was initially director
17 of technology, promoted to Vice-president of Engineering
18 there.

19 Q. Let me stop you there just for a second.

20 A. Yes.

21 Q. When you were Director of Technology, did you have people
22 working for you?

23 A. Yes, I did.

24 Q. How many?

25 A. I had about 30 people, as I recall.

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1 Q. All right, sir. And then, you were promoted to
2 Vice-president of Engineering there?

3 A. Yes.

4 Q. And this was Cipher?

5 A. This was Cipher Data Products.

6 Q. And how many people reported to you as Vice-president of
7 Engineering?

8 A. I recall it was about 125 people.

9 Q. Okay. And let's take us to your next job, please.

10 A. My next job, I moved back from San Diego, back to Colorado
11 to work for the company I mentioned earlier, Exobyte
12 Corporation as Vice-president of Engineering.

13 Q. And that's where you got acquainted with Mr. Allison?

14 A. That's where I met Mr. Allison for the first time.

15 Q. And he was a consultant to Exobyte.

16 A. Yes.

17 Q. What did you do at Exobyte?

18 A. Exobyte Corporation developed what are called magnetic
19 tape storage devices, tape drives themselves and tape library
20 products that hold multiple cartridges for very large amounts
21 of tape storage.

22 Q. All right, sir. How many people reported to you while you
23 were working at Exobyte?

24 A. I had about 200 people working for me there, including 70
25 people in Germany at that time.

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1 Q. All right, sir. What did you do after Exobyte?

2 A. I tested retirement for the first time, and retired for a
3 very short time until Mr. Allison got me involved in
4 considering Chaparral and then, we formed that.

5 Q. All right, sir. How long have you been working in the
6 storage -- computer storage industry?

7 A. My whole career, from the time I started work in 1971, has
8 been in the data storage industry.

9 Q. So nearly 30 years?

10 A. Thirty years.

11 Q. All right. How long have you worked with SCSI, S-C-S-I?

12 A. I think my first exposure was probably at Cipher Data
13 Products; so that was 1984 to 1990. So it's been certainly, I
14 would say, a dozen years, 12 to 15 years.

15 Q. And how long have you been working with Fibre Channel?

16 A. My first involvement with Fibre Channel was when we got
17 involved with Chaparral, so that would be probably approaching
18 four years or so now.

19 Q. Now, you mentioned RAID earlier. How long have you been
20 working with RAID technology?

21 A. Again, my involvement with RAID was all at Chaparral, so
22 about four years.

23 Q. Okay. Now, Mr. Walker, when did Chaparral first start
24 doing any work on LUN zoning?

25 A. My recollection is we started to think about it and do

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1 concept work in the last quarter of '99 and then, began
2 development in earnest in the first quarter of 2000.

3 Q. All right. At that time, had Chaparral seen the 972
4 patent?

5 A. No.

6 Q. All right. And did Chaparral use any information from
7 Crossroads in developing the LUN zoning technology?

8 A. No, sir.

9 Q. All right. Is that -- that was true when it started?

10 A. Yes.

11 Q. Is it true today?

12 A. Absolutely.

13 Q. Okay. Did Chaparral use any information from the
14 Crossroads 972 patent in coming up with LUN zoning?

15 A. No.

16 Q. Is that true when the development started?

17 A. Yes.

18 Q. Is that true today?

19 A. Yes.

20 Q. Now, Mr. Walker, did Chaparral ever buy a storage router,
21 a Crossroads storage router?

22 A. Yes, we have.

23 Q. Okay. Did any of those have patent markings on them?

24 A. Yes, at least one of them had the patent label on it.

25 Q. And what was that product, sir?

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1 A. It was a product that we bought, I believe, in March of
2 2000. I think it was the 42XX of some variety.

3 Q. And was the 972 patent, the patent in this case, was it on
4 that label?

5 A. The patent was mentioned on the label, yes.

6 Q. All right, sir. Let me show you the complaint that was
7 filed in this case. All right, sir. Do you recognize that as
8 the complaint -- this is Exhibit 251, Defendant's Exhibit 251.

9 A. Yes, sir.

10 Q. Do you recognize that as a complaint in this case, sir?

11 A. Yes.

12 Q. Okay. Let's turn to a couple of pages.

13 MR. ALLCOCK: Your Honor, I'd like a little more
14 foundation as to when the witness actually first looked at
15 that.

16 THE COURT: First looked at the complaint?

17 Q. (BY MR. BAHLER) When did you first look at the complaint?

18 A. My recollection the first time I saw the complaint was
19 shortly after we received it. I think it was filed on the
20 31st of March, and I think I saw it, maybe, two or three days
21 later. I'm trying to remember. I know we did not get it, to
22 my recollection, on the day it was filed, and I remember us
23 talking about that.

24 Q. All right, sir. Please take a look at paragraph 10 of the
25 complaint which I've highlighted, and you understand that that

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1 paragraph identifies Chaparral products which at least at the
2 time Crossroads contended it infringed the 972 patent?

3 A. Yes, sir.

4 Q. Okay. And specifically identified there are a series of
5 1310 routers, right?

6 A. Yes.

7 Q. At that time, was there -- did any of those products have
8 LUN zoning?

9 A. No, sir.

10 Q. At that time, had Chaparral offered any of those -- any
11 products with LUN zoning for sale?

12 A. No, sir.

13 Q. At that time, was there any form of -- any mechanism that
14 those products that would limit access between Fibre Channel
15 hosts and SCSI channel devices?

16 A. The only one that could limit access would have been the
17 SCSI reserve command.

18 Q. Other than use of the SCSI reserve command, was there any
19 other form of access control in the 1310 routers at that time?

20 A. No, sir, not that I'm aware of.

21 Q. All right. Let's take us forward to the amended
22 complaint. This is Defendant's Exhibit 252. Okay. Have you
23 seen that before, sir?

24 A. No, sir, I have not seen the amended complaint.

25 Q. You knew that Crossroads had filed an amended complaint,

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1 though, in this case?

2 A. Yes, counsel had informed me that an amended complaint had
3 been filed.

4 Q. Okay. Let's turn to paragraph 10 of that --

5 MR. ALLCOCK: Objection, your Honor. I think this
6 lacks foundation, may be beyond the Court's order.

7 THE COURT: I don't know what order you're talking
8 about, but it's in evidence.

9 MR. ALLCOCK: I believe, then, it's irrelevant if he
10 didn't know about it at this time except through counsel
11 telling him, which is, I believe, beyond the Court's order.

12 THE COURT: Well, I'm not so sure what the next
13 question will be, but I know where we are. Thanks.

14 Q. (BY MR. BAHLER) Paragraph 10 of that complaint, Mr.
15 Walker, specifically identified our -- the series, the same
16 series of 1310 routers, right, sir?

17 A. Yes, sir, it's the same products.

18 Q. All right, sir. Did you know -- were you aware in
19 September 19 -- or 2000 that Crossroads was continuing to
20 contend that the 1310 routers infringe?

21 A. Yes, sir, as far as I knew, nothing had changed.

22 Q. At this time, September of 2000, was LUN zoning in the
23 1310 routers?

24 A. No, sir, it was not.

25 Q. Was there any form of controlling access between Fibre

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1 Channel hosts and SCSI storage device in the 1310 routers?

2 A. Just the SCSI reserve command.

3 Q. All right, sir. Now, given that you saw a patent label on
4 4250 -- first of all, do you know whether there was any form
5 of access control in the Crossroads 4250 router that you had?

6 A. It has -- supports the SCSI reserve command, as well.

7 Q. Any other form of access control that you know about?

8 A. None that I'm aware of.

9 Q. Okay. Now, Mr. Walker, given that you saw one of
10 Crossroads' products with a patent label on it with the number
11 on it, with the patent from this case on it, you were sued
12 specifically identifying the 1310 routers including reserve,
13 and the Crossroads amended the complaint and continued to
14 allege that the 1310 routers infringed in September of 2000.
15 What did you think they thought it infringed?

16 MR. ALLCOCK: Objection, your Honor. Leading and it
17 gets into the Court's earlier order.

18 THE COURT: All right. Members of the jury, I'm going
19 to put you back in the jury room for a minute.

20 (Jury not present.)

21 THE COURT: As far as the leading part, it was
22 certainly leading.

23 MR. ALLCOCK: Your Honor, the witness has testified
24 that he didn't read the complaint, and the only reason he knew
25 what was in the lawsuit or out of the lawsuit was by advice of

1 counsel. The Court has ruled that the only advice of counsel
2 that they can rely on is the Zinger letter.

3 THE COURT: True.

4 MR. ALLCOCK: And so, this whole business about what
5 they knew about what was in the lawsuit or out of the lawsuit
6 is -- all comes through counsel, and we were blocked from
7 inquiring into any of that information in the deposition.

8 MR. BAHLER: Your Honor, the advice of counsel is
9 advice that you don't infringe. It's not -- simply not
10 conveyance of something that's of public record. That's not
11 even advice. I was a messenger, or we were a messenger.

12 THE COURT: You raised the attorney-client privilege
13 and advised during discovery, stated in the record that you
14 did, you aren't waiving it. It is incredible to me that with
15 an allegation that these products among others infringe, the
16 fact that lawyers knew or suspected that those may not
17 infringe, you're representing a client that was coming out
18 with an alleged infringing product, as far as the allegations
19 are concerned, and did come out with -- the jury's going to
20 have to guess at what the lawyers said, I guess, but you can't
21 use that as a sword in this -- what this witness thinks about
22 it.

23 I don't -- I'll have to think about it. But you can't
24 use the fact that Fulbright & Jaworski gave any advice to Mr.
25 Walker or anybody at Chaparral because you've blocked that in

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1 discovery, as you had a right to do.

2 MR. BAHLER: Your Honor, this isn't advice. This is
3 simply conveyance of a fact. That's not advice.

4 THE COURT: Your firm was controlling this litigation.

5 MR. BAHLER: Your Honor, if I handed them the
6 complaint, that wouldn't be advice.

7 THE COURT: Well, you didn't. He never saw it. He
8 just testified. He didn't see it. He didn't read it. He
9 hadn't seen it. That's his own testimony.

10 MR. BAHLER: Your Honor, if I send a letter to a
11 client and I say, attached is a copy of X, that's not
12 privilege. That's simply conveying the fact that that's --
13 that's that communication, attorney-client privilege granted,
14 but it's not privilege. It's simply conveyance of a fact.
15 It's not properly withheld or anything.

16 And, your Honor, all that happened here was the fact
17 was conveyed. It's not advice. It's simply conveyance of a
18 fact.

19 THE COURT: What did you convey to him? He's never
20 seen it.

21 MR. BAHLER: The next question is, were you aware that
22 in September 1996, they were still contending this? And the
23 contention is a fact --

24 THE COURT: That's in evidence. It's been in evidence
25 twice. You've put it in evidence in the exhibits in evidence.

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1 You can make an argument along those lines.

2 MR. BAHLER: His knowledge of it isn't.

3 THE COURT: What?

4 MR. BAHLER: His knowledge of it isn't, and Mr.
5 Walker's intent is squarely at issue in this case.

6 THE COURT: What are you going to do on cross? Mr.
7 Walker, I'm going to excuse you. If you'll please go out in
8 the hall. Not like a child, but just --

9 THE WITNESS: All right. I haven't been bad, I hope.

10 THE COURT: Okay. That's right. Mr. Bahler, what are
11 you going to do on cross-examination when counsel comes up and
12 says, did your lawyers who represented technology and paid \$15
13 million in a lawsuit where they said that they weren't going
14 to have -- that the patent wasn't any good and then, yielded
15 and said that it's a good patent, we infringed and paid \$15
16 million and allowed an injunction, same lawyers, did your
17 lawyers tell you that you would go ahead and release that
18 product that was alleged to be infringing in January, February
19 and March of 2001? Are you going to sit there --

20 MR. BAHLER: It's not this question, your Honor. That
21 would not be in the scope of direct examination, no way.

22 THE COURT: I'm telling you that it's not only in the
23 scope, it's the first question I would think of as a lawyer,
24 and I'm just a little old farm-to-Midland lawyer. I'm not a
25 big patents lawyer. There's no question that is why he is

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1 getting up that's why he's standing there objecting. He's
2 doing you a favor.

3 I'm going to let you take five minutes and decide what
4 to do. If you proceed on that, they're going to be wide open
5 on asking if they proceeded in January with your advice rather
6 than Zinger's advice. Five minutes. Five minutes only.
7 Then, they're going to be able to show that you objected to it
8 for over a year.

9 (Recess.)

10 THE COURT: Mr. Bahler, what do you wish? Do you want
11 to go ahead and try this lawsuit, or do you want to start
12 trying what the lawyers told the client?

13 MR. BAHLER: I don't have any more questions, your
14 Honor.

15 THE COURT: Well, let's give you a little time if you
16 want to go speak with Mr. Walker.

17 MR. BAHLER: Thank you.

18 THE COURT: Then, we'll bring the jury in. I'm just
19 going to recess, counsel. And everything you want to bring
20 tonight?

21 MR. BAHLER: For the day, you're going to recess?

22 THE COURT: Well, it's ten till 4:00. If you have
23 another witness and you're ready, we'll proceed.

24 MR. BAHLER: No. We could we recess if that's what
25 you want to do. All right.

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1 MR. ALLCOCK: Before cross, your Honor?

2 THE COURT: Before cross. Well, I don't know if
3 that's right.

4 MR. ALLCOCK: I just asked. That doesn't matter to me
5 at all, your Honor. I just asked.

6 THE COURT: Well, I just think it's unfair to have the
7 weekend to prepare the cross on this witness who's been here
8 three times. I'll let you cross if you're through.

9 MR. BAHLER: I have just a few more questions, and I'm
10 not going to go anywhere near what you're talking about. I
11 don't think you're right, but I'm not going to do it, okay?

12 THE COURT: Well, I mean --

13 MR. BAHLER: I can disagree, but I'm not going to test
14 it.

15 THE COURT: I understand, but I think it's important
16 that you understand, you're asking him about his knowledge.

17 MR. BAHLER: Yes, sir.

18 THE COURT: And I have a hunch that y'all are sending
19 him bills every month and paying for advice, and he's got to
20 say, well, we did it without Zinger and he did it without you,
21 or he did it with Zinger, he did it with you. I don't know
22 what he's going to say, but I know that it's going down a path
23 that --

24 MR. BAHLER: I understand.

25 THE COURT: -- that doesn't help resolve the issues..

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1 MR. BAHLER: I understand.

2 THE COURT: All right. Bring the witness back. Yes,
3 sir. Mr. Walker, come on back.

4 (Jury present.)

5 THE COURT: Mr. Bahler, you may continue, sir.

6 Q. (BY MR. BAHLER) Mr. Walker, in September 2000, were any --
7 did any Chaparral products have LUN zoning?

8 A. No, sir.

9 Q. Did the 1310 series of products have LUN zoning?

10 A. No, sir, they did not.

11 Q. Did the 1310 products have any form of access control that
12 would control access between Fibre Channel hosts and SCSI
13 storage devices in September of 2000?

14 A. The SCSI reserve command.

15 Q. Any others?

16 A. That's all.

17 Q. Pass the witness, your Honor.

18 CROSS-EXAMINATION

19 BY MR. ALLCOCK:

20 Q. Good afternoon, Mr. Walker.

21 A. Good afternoon.

22 Q. If Adaptec started the company that you talked about, in
23 some ways, the Chaparral product is based on that Adaptec
24 technology?

25 A. That's correct.

1 Q. But Chaparral added a lot to the Adaptec technology,
2 didn't they?

3 A. Yes.

4 Q. They further developed the technology?

5 A. Yes, sir.

6 Q. And in the first product that you sold, I believe you said
7 that was in 1999, that was with a lot of additional technology
8 developed by Chaparral. Wasn't just the retread of the
9 Adaptec technology; is that right?

10 A. The first product in 1999 had been mostly developed by
11 Adaptec prior to Chaparral acquiring the technology and the
12 engineers from Adaptec in, I believe, November of '98.

13 Q. Okay. But then, this LUN zoning function, that wasn't
14 even started to be developed until late 1999; is that right?

15 A. That's my recollection, yes, sir.

16 Q. So it had nothing to do with the Adaptec stuff?

17 A. No.

18 Q. Now, you mentioned having a Crossroads product in-house,
19 the 4200; is that right?

20 A. It's 42-something. I don't know if it's a 4200 or 4250,
21 or what. I think we maybe have more than one.

22 Q. Okay. Let me show you page 1 of Exhibit 58, which is
23 already in evidence, that talks about a test.

24 MR. BAHLER: Is that Plaintiff's Exhibit?

25 MR. ALLCOCK: Yes, Plaintiff's Exhibit.

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1 Q. (BY MR. ALLCOCK) It talks about the test of this 4200
2 product; is that right?

3 A. Yes.

4 Q. Is that the product that you were referring to earlier?

5 A. I don't think so because the product I'm referring to I
6 believe we bought in March of 2000, so it couldn't have been
7 this product, I don't believe.

8 Q. And you actually remember seeing the patent marking on
9 that when you bought it and you remember that today?

10 A. Me personally, no.

11 Q. So somebody told you about it?

12 A. Yes.

13 Q. They didn't tell you about it back in March, did they, of
14 2000?

15 A. No.

16 Q. They told you about it more recently?

17 A. Yes.

18 Q. Who was that person?

19 A. That was Mr. Lavan, the VP of Engineering.

20 Q. Okay. Now, you got this complaint sometime in late March,
21 and this language has been gone over a little bit, but it says
22 such devices, those of -- accused devices include, but are not
23 limited to, and then, it lists other numbers. You understood
24 that to being exactly what it says, includes but not limited
25 to; is that right?

1 A. That's what the language says, yes.

2 Q. And that's how you understood it because after this is
3 when you ordered LUN zoning pulled out of the development
4 work; is that right?

5 A. Yes.

6 Q. It was after you got the complaint?

7 A. Yes.

8 Q. And we've already established that one of the reasons you
9 pulled it out is because of a concern of infringement?

10 A. I think what I actually said was I pulled it out because
11 we didn't know what the situation was at that time. It was
12 only a matter of a few weeks from the time we got the
13 complaint to the time we needed to make that decision.

14 Q. Well, you certainly didn't read this as limiting the scope
15 so that you didn't have to pull it out of your products?

16 A. Read what --

17 Q. The complaint?

18 A. In its scope?

19 Q. The complaint. After you read this scope, you still
20 pulled LUN zoning out of the 1310 product?

21 MR. BAHLER: Objection, your Honor. Mischaracterizes
22 his testimony. It was never in the 1310 product. It was in
23 development.

24 THE COURT: Well, rephrase your question.

25 Q. (BY MR. ALLCOCK) It was in development for the 1310

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1 product?

2 A. It was in development for the 1310 product. It was never
3 in a product.

4 Q. Right. But it was after this complaint that you stopped
5 that development?

6 A. Yes.

7 Q. You mentioned that you left in July. Whose responsibility
8 was it for deciding whether or not to continue to sell these
9 LUN zoning-contained products after you left?

10 A. I don't know who it is after I left.

11 Q. Well, who replaced you in your job?

12 A. Actually, no one has replaced me in my job.

13 Q. So whatever the situation is, there's some human being at
14 Chaparral today who was responsible for the inclusion of LUN
15 zoning in the products that are still being sold at this
16 moment?

17 A. I would assume so.

18 Q. And we don't know who that is?

19 A. I don't know who that is. I don't work there anymore.

20 Q. Now, I show you Exhibit 39, which was your lab notebook,
21 and I just want to show you the last page of that. Actually,
22 I'll show you the second to the last page.

23 MR. BAHLER: Objection, your Honor. Beyond the scope
24 of direct examination.

25 MR. ALLCOCK: I'll tie it up if I'll be permitted a

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1 couple of questions, your Honor.

2 THE COURT: All right. Well, what portion of the
3 direct exam does this go to, counsel?

4 MR. ALLCOCK: The state of mind during the time period
5 when he was at the company and shortly thereafter.

6 THE COURT: All right.

7 Q. (BY MR. ALLCOCK) The last date on this is, I believe, June
8 6th of 2000. Do you see that?

9 A. I see that.

10 Q. Now, did you continue to keep a lab notebook for the
11 balance of the time you were at the company?

12 A. Yes.

13 Q. Do you have any idea where that lab notebook is?

14 A. I left in -- okay. I left at the end of July of 2001,
15 yes, and I did continue to take notes from -- this is June of
16 2000, certainly I continued to keep a notebook.

17 Q. And when you left the company, you left the notebook
18 there?

19 A. I left everything there.

20 Q. So if the notebook hasn't been produced in discovery, you
21 have no explanation for it?

22 A. I would have no explanation for that.

23 Q. Someone else at the company that's still now there would
24 have to explain that?

25 A. Yes. I would have no explanation for that.

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1 Q. No further questions, your Honor.

2 THE COURT: Any further questions?

3 MR. BAHLER: No questions, your Honor.

4 THE COURT: You may step down. Let me have counsel up
5 here, please.

6 (At the Bench, on the record.)

7 THE COURT: What's your druther? Do you want to call
8 another witness?

9 MR. BAHLER: No. We can break.

10 THE COURT: All right. Members of the jury, we have
11 used over half the allotted time for the trial, so I'm going
12 to let you break and clear the downtown area, hopefully before
13 it is terrible with traffic. But let me emphasize the
14 instructions.

15 You're going to go now Friday, do whatever you wish.
16 Saturday, you have to pull for the Longhorns except for those
17 of you who are from North Carolina. Sunday, you relax.
18 Monday you come back. Please be willing to and ready to
19 answer the questions that you haven't talked to anybody or let
20 anybody talk to you about the case.

21 Don't run down tomorrow, on your day off, to the
22 library and try to look up SCSI or any of this stuff. These
23 lawyers are going to give you plenty of information on how to
24 resolve the questions that we will do next week.

25 Have a nice weekend. Follow my instructions and

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1 you're excused until Monday morning at 8:25.

2 (Jury not present.)

3 THE COURT: All right. Some housekeeping matters.
4 Counsel, I want you to do your best to clean up, and then, I'm
5 going to seal this courtroom. So you don't have to take
6 anything out. You leave everything. I suggest you leave
7 things in the corner. I'll use Judge Nowlin's courtroom
8 tomorrow for all the criminal cases.

9 But when I seal it, I'm not going to let cleaning
10 people in it, so unless you like to sit around in dirt, try
11 your best to clean it up. Secondly, we've already had now the
12 resting, and I have a hunch that y'all know pretty much what
13 the evidence is going to be.

14 So if there are any more specific issues that you wish
15 to have me consider in the instructions or in the verdict
16 form, I want those first thing Monday morning. I'll give you
17 Friday and the weekend to do all of that.

18 Now, with that said, anything further from the
19 plaintiff, counsel?

20 MR. ALLCOCK: Not from us.

21 THE COURT: How about y'all?

22 MR. BAHLER: Nothing further.

23 THE COURT: All right. See y'all Monday morning.

24 (Proceedings adjourned.)

25

CS1

06/07/2001 Pathlite Trial, Day 2

1 REALTIME UNEDITED TRANSCRIPT DISCLAIMER IN THE MATTER OF
2 CIVIL ACTION NO. A 00-CA-248 SSCROSSROADS SYSTEMS, (TEXAS), INC., A TEX.
3 VS.

4 PATHLIGHT TECHNOLOGY, INC., A DELAWARE CORPORATION

5 The following transcript(s) of proceedings, or any portion
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19 _____
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Signature of Official Reporter

_____ Date

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23

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1 THE COURT: All right, counsel. Anything before we
2 bring in the jury?

3 MR. ALBRIGHT: Yes, sir, I believe we're going to
4 address the issue of A-D-I-C or ADIC's purchase because that
5 will be part of one of the first depositions.

6 MR. BAHLER: Your Honor, this was the subject matter
7 of one of Pathlight's motions in limine. I'd just like to
8 re-urge it now on the record. This deals with the financial
9 transaction that occurred when ADIC bought Pathlight,
10 particularly the number of shares, the fact that there's an
11 escrow account, and that sort of stuff. We think that that's
12 irrelevant and that it would only inflame the jury somewhat
13 equivalent to an insurance policy, your Honor. The evidence
14 will go to the financial conversation of ADIC and their
15 ability to pay any judgment, and that simply is not relevant
16 to any issue that's in this case.

17 ADIC is the parent corporation of Pathlight.
18 Pathlight is still an independent corporation, has a board of
19 directors, has stock.

20 THE COURT: At the time that we're talking about in
21 litigation in '99 and 2000, was it connected to ADIC?

22 MR. BAHLER: No, sir.

23 THE COURT: So it was an independent corporation?

24 MR. BAHLER: Completely.

25 THE COURT: All right.

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1 THE COURT: Why do you want to inflame this jury, Mr.
2 Albright?

3 MR. ALBRIGHT: Well, we don't want to do anything that
4 Pathlight hasn't seen fit to do in their part of the case.
5 First off, your Honor, I think you'll recall the first
6 question that Mr. Bahler asked Brian Smith was how much stock
7 do you own in the company, not below but how much stock.
8 Obviously, it's relevant because bias of the witness.

9 THE COURT: Well, it wasn't relevant then -- you
10 didn't object to it -- it's not relevant now. He's now
11 objecting to it. He's saying I want my cake and eat it, too,
12 I guess. But y'all provided that. How much stock these folks
13 -- what may be interesting cross-examination --

14 MR. ALBRIGHT: In this case, there's actually an
15 escrow account in which there's stock in which these gentleman
16 own that is based on the outcome of this litigation. The way
17 that the purchase was done, there was a set of stock that was
18 set aside in the event a judgment was entered in this case.

19 THE COURT: When you say these gentlemen, who are you
20 talking about?

21 MR. ALBRIGHT: For example, Mr. Rahmani as a
22 shareholder of Pathlight. When the purchase was made of
23 Pathlight, not only did these gentlemen who owned Pathlight
24 because it was a privately held company -- not only did they
25 receive shares of ADIC and stocks but there was a ten percent

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1 escrow account made in which these shares were held aside
2 depending on how the judgment came out.

3 So it's not like we are going after, as Mr. Bahler
4 said, the insurance policy. This is directly relevant to the
5 testimony because they are directly affected by the outcome of
6 it.

7 THE COURT: Well, they would have been affected by the
8 outcome of it in the original without a purchase because they
9 have their shares. I mean, it's their shares that's in
10 escrow. The testimony would be admissible on any
11 representative of ADIC on interest. You can inquire as to
12 these witnesses how much shares -- how many shares they have
13 in Pathlight. I don't see why their shares in escrow have any
14 -- anything to do with it.

15 Simply because, you know, they're interested persons
16 in the outcome of it. They lose the lawsuit, their shares and
17 stock are not going to be as valuable as it will be if they
18 win.

19 MR. ALBRIGHT: So we will be permitted to ask them how
20 many shares they own in Pathlight?

21 THE COURT: What's good for the goose is good for the
22 gander.

23 MR. ALBRIGHT: I was going to use that as my first
24 argument.

25 THE COURT: Well, you're a little slow.

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1 MR. ALBRIGHT: Second, your Honor, Pathlight raised
2 the issue that Crossroads has never made a profit and --

3 THE COURT: It didn't.

4 MR. ALBRIGHT: -- and, I'm sorry. Let me make sure I
5 said it right. That Crossroads has never had a profit. What
6 we want to show in our damages case with respect to ADIC, our
7 theory of damages is, in part, that during the relevant period
8 of time, in 1998 and 1999 and 2000, that Pathlight was
9 attempting to do whatever they could to secure revenues.

10 As a result of their securing revenues through the
11 sale of infringing products, they were able to sell their
12 company to ADIC for \$260 million. In the same way that
13 Pathlight was obviously making the argument yesterday to the
14 jury, the only reason that Crossroads has brought this lawsuit
15 is because they've never turned a profit.

16 Our argument, which I believe is admissible and they
17 could cross-examine our economist on it, but our argument is
18 going to be that the reason that they are willing to take the
19 gamble and continue to sell these products after they were
20 aware of the patent was to do whatever they could to maintain
21 and acquire revenues and then, either go public or get bought
22 out.

23 And what we have here is the proof in the history that
24 they did get bought out. You saw from the opening argument
25 that what effect -- at least what our argument is that the VPS

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1 had on their sales and on generating revenues and we should be
2 entitled to allow our expert to testify to that effect.

3 THE COURT: Well, what is the relevance other than to
4 generate income on sale of alleged infringing products? What
5 is the relevance that overshadow the, of course, admitted bias
6 of all of that money on the purchase?

7 MR. ALBRIGHT: Your Honor, we have an argument of
8 willfulness, an explanation for why this company would
9 willfully continue to sell this product during this period of
10 time. That's the entire argument. They can certainly go
11 after and cross-examine --

12 THE COURT: Well, what evidence do you have other than
13 the fact of the sale that that is what they were doing? Any
14 evidence by any employee or any broker or any officer that
15 that's what they were doing?

16 MR. ALBRIGHT: Your Honor, I think the evidence that
17 we'll be able to establish is that to some extent, Pathlight
18 was a one-trick pony. They have one very substantial
19 customer, that was IBM. We will be able to establish that the
20 sales of products to IBM, probably 80 to 90 percent of the
21 sales of Pathlight, the relationship between putting the
22 infringing product, the VPS --

23 THE COURT: So far it is ten percent. I thought the
24 evidence is ten percent.

25 MR. ALBRIGHT: Ten percent of what, your Honor?

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1 percent.

2 MR. ALBRIGHT: 80 or 90 percent of Pathlight's sales
3 were to one company, were to IBM, and what we'll be able to
4 establish is that the sales to IBM were a direct result of
5 having the infringing product put into the Pathlight gateway,
6 and therefore, it follows from there, without that infringing
7 product being --

8 THE COURT: Well, if the jury buys that and buys your
9 royalty evidence, your client's going to be compensated.

10 MR. ALBRIGHT: Yes, sir, all I want to make certain of
11 is we are allowed to put in the fact that they gained these
12 revenues in an effort during this period of time to either go
13 public or to be bought, which is ultimately what happened.
14 It's part of the damages theory, your Honor.

15 THE COURT: Well, when you say it's part of the
16 damages theory, you limited your damages to royalty.

17 MR. ALBRIGHT: Yes, sir.

18 THE COURT: And the royalty's going to be based on the
19 sale of products. Doesn't make any difference if they went
20 under, they were bought out, or they shipped off to Japan.
21 There doesn't make any difference.

22 MR. ALBRIGHT: Your Honor, the reasonableness of the
23
24
25

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1 royalty is going to be shown in what Pathlight ultimately
2 achieved, which was the sale of their company for \$260
3 million.

4 THE COURT: So you want part of that?

5 MR. ALBRIGHT: No, sir. We want to be able to show --

6 THE COURT: It's not relevant. I would not permit it.

7 MR. ALBRIGHT: And finally, your Honor, I think what
8 we're taking up this morning is the fact that ADIC is
9 continuing to sell the Pathlight products that contain the
10 infringing product, therefore, I believe that that is
11 certainly relevant because it's an ongoing --

12 THE COURT: It's certainly admissible on willfulness.

13 MR. ALBRIGHT: Okay.

14 THE COURT: Anybody want to object on that?

15 MR. BAHLER: Your Honor, the continued sale by ADIC, I
16 think what we're talking about here is potential for
17 injunction at the end of this case and that certainly would be
18 crafted against the party that's in the case, Pathlight, and
19 any parent subsidiaries so that would be established. I'm not
20 sure whether this sales by ADIC has anything to do with it.

21 The injunction in place would be effective against it.

22 THE COURT: It's your product, you can be enjoined by
23 it, but I have a hunch if you were looking at a verdict that
24 you could have stopped those sales at any time, shape or form
25 if you wanted to. That evidence is admissible on the issue of

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1 willfulness, if nothing else.

2 MR. ALBRIGHT: Thank you, your Honor.

3 MR. BAHLER: Thank you, your Honor.

4 THE COURT: All right. Anything else?

5 MR. ALBRIGHT: No, sir. With respect to your ruling,
6 may we have an extra five minutes? We had some evidence that
7 was going to go into the record that we'll take out at this
8 point.

9 THE COURT: And the other part of the ruling is you'll
10 be able to show on the cross-examination of any employee of
11 Pathlight their stock holdings and how they would be affected,
12 that is, interest on the amounts of stock and what their stock
13 -- they're not a public company, so just shares of stock, I
14 guess.

15 MR. ALBRIGHT: Shares of stock of ADIC, your Honor?
16 That's what they received.

17 THE COURT: Well, that had something to do with the
18 sale. You haven't convinced me that their holdings and ADIC's
19 are relevant. If anybody from ADIC --

20 MR. ALBRIGHT: The problem I'm having a problem with
21 is only because Pathlight was a privately held company.

22 THE COURT: Well, I understand that.

23 MR. ALBRIGHT: They have no shares of stock. The only
24 way to represent to the jury what they -- in other words, they
25 no longer have an interest in Pathlight. They now only have

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1 an interest in ADIC shares of stock that were swapped for
2 Pathlight. That would be the only way to do it.

3 For example, Mr. Hood, who is -- we're going to read
4 by deposition, received 700 somewhat shares of ADIC stock.
5 There would be no parallel way to explain what he used to own
6 in Pathlight. Pathlight to that extent doesn't exist anymore.

7 MR. BAHLER: It would be simple to do. Just ask him.

8 MR. ALBRIGHT: Mr. Hood won't be here.

9 THE COURT: So you're going to put on a witness and
10 then cross-examine him on interest?

11 MR. ALBRIGHT: Well, your Honor, I think we have the
12 right to put on an adverse witness and show that he had --

13 THE COURT: You've got every right to put an adverse
14 witness on.

15 MR. BAHLER: Your Honor, I really have no problem. I
16 mean, in light of the Court's ruling, I have no problem with
17 any of my witnesses explaining their interest in Pathlight
18 before the purchase. I think that's fine. It's not relevant
19 as your Honor observed, but I opened the door so I'll live
20 with it. But this purchase and the financial transaction is
21 simply not relevant to any issue including the escrow.

22 THE COURT: Well, how much stock did a Pathlight
23 employee, agent, or director have is relevant on interest on
24 cross-examination just like it was yesterday with regard to
25 Crossroads. And I note that counsel utilized a percentage of

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1 capital rather than the stock market to -- probably
2 intentionally, but simply the fact that these employees owned
3 thousands of shares of Pathlight, the jury will get the idea.
4 I'm not going to go into the sale in any way, shape or form
5 here. Unless you think it's been opened, the door, or had a
6 better theory, then approach the bench and I'll listen to you.

7 MR. BAHLER: Yes, your Honor. Thank you, your Honor.

8 THE COURT: Give you five minutes.

9 (Recess.)

10 THE COURT: Are you ready, Mr. Bahler?

11 MR. BAHLER: I think so.

12 (Jury present.)

13 THE COURT: Members of the jury, since we met
14 yesterday, has anyone attempted to talk to you about this
15 case?

16 THE JUROR: No.

17 THE COURT: See how good you're getting? Have you
18 talked to anybody about the case?

19 THE JUROR: No.

20 THE COURT: And have you learned anything at all about
21 the case outside the presence of each other and this
22 courtroom?

23 THE JUROR: No.

24 THE COURT: All right. Show negative responses to all
25 questions. Y'all have been practicing back there. All right.

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1 Counsel, you may call your next witness.

2 MR. ALBRIGHT: Thank you, your Honor. We are going to
3 call by deposition Mr. DeWilde.

4 THE COURT: Members of the jury, a deposition is a
5 procedure in the courts where a witness is called before a
6 certified court reporter, sworn just like you have seen the
7 witnesses sworn in this courtroom, and then, the lawyers ask
8 questions. And the court reporter types up the questions and
9 the answers under oath, certifies that it is correct, it's
10 filed and it's just like testimony.

11 You are to evaluate this testimony just as you would
12 any other witness. You may proceed.

13 MR. ALBRIGHT: Thank you, your Honor. Your Honor, for
14 purposes of the record, we are calling Mr. Mark DeWilde,
15 capital D E capital W I L D E. On page No. 4, line 7 through
16 page 4, line 8.

17 Q. Would you state your full name for the record, please?

18 A. Mark Andrew DeWilde.

19 Q. With respect to page 6, line 13 through 6, line 16.

20 You're currently an employee of Pathlight?

21 A. Right.

22 Q. What's your position at Pathlight?

23 A. Current title is chief technologist.

24 Q. Page 14, line 13, page 14, line 19. Do you recall the
25 circumstances under which you discovered the 972 patent?

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1 A. I routinely do searches for prior art when we work on
2 things.

3 Q. Was that uncovered during one of those routine searches
4 for prior art?

5 A. Yep.

6 Q. Page 15, line 1 through 15, line 7. Did you discover a
7 full text version of the patent or was it an image?

8 A. Full.

9 Q. Did you present out the image of the patent?

10 A. Yes.

11 Q. Did you read the printout?

12 A. Yes.

13 Q. Page 15, line 17 through page 16, line 10.

14 Sure, do you have any understanding as to what the
15 purpose of a patent is.

16 A. Sure.

17 Q. What is that understanding that you have?

18 A. It's to essentially protect the inventor of a novel
19 technology from others essentially selling that technology,
20 selling that invention.

21 Q. Do you have an understanding as to the different sections
22 within a patent?

23 A. Sure.

24 Q. Do you have an understanding as to the claims patent?

25 A. Yes.

1 Q. What's your understanding as to the claims?

2 A. The claims define what it is you're actually patenting.
3 The discussion before that explains how it is that you can
4 accomplish doing what you're claiming, which is why when I
5 first read the patent, I thought it was, yet, another junk
6 patent.

7 Q. Page 17, line 6 through page 17, line 18?

8 THE COURT: I'm going to ask you to read just a little
9 slower for the court reporter.

10 Q. (BY MR. ALBRIGHT) When you came to that realization, did
11 you have concern that -- may I start over? When you came to
12 that realization, did you have concern that they may be
13 construed to corner devices made by Pathlight?

14 A. I felt that every vendor of RAID technology, every vendor
15 of virtually any storage technology, host bus adapters almost
16 anything having to do with storage in the computer industry
17 was at risk if anyone took it seriously.

18 Q. Does that include products manufactured by Pathlight?

19 A. Yeah.

20 Q. Page 17, line 19 through line 23.

21 Your concerns, would they have been related to the San
22 gateway and San router products.

23 A. Those are our products.

24 Q. Page 19, line 3, through page 20, line 1.

25 After you discovered the 972 patent, did you send a

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1 copy pie of it to anyone within Pathlight.

2 A. Yes.

3 Q. Who did you send a copy to?

4 A. Again, you probably have that e-mail through discovery. I
5 don't remember the addresses -- the addressee list. It
6 certainly was Said. It probably included other members of the
7 engineering team. I don't remember the exact list.

8 Q. Do you know whether it included Mr. Keller?

9 A. I think I already answered that question. I know I sent
10 it to Said. I'm not sure what other members of the team I
11 sent it to. Again, you got the e-mail through discovery.

12 Q. You said that you created an e-mail in or about the same
13 day that you discovered the patent?

14 A. The same day.

15 Q. The same day -- I'm sorry. Why did you send the e-mail
16 with a copy of the patent attached?

17 A. I wanted everyone to review it.

18 Q. As far as you know, did everyone review it?

19 A. I was going to say, I couldn't begin to tell you if
20 everyone read it or not.

21 Q. Finally, your Honor, page 49 line 19 through line 23. Do
22 you know who else gave documents to Mr. Levy within Pathlight?

23 A. I'm sure Said did, I'm sure Terry Keller did. I think I'm
24 not sure but I think Greg Prestus may have, as well.

25 Q. Pass the witness, your Honor.

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1 THE COURT: What's happening, members of the jury, is
2 now they're going to offer out of the same testimony other
3 portions of the deposition. So this gentleman to my left and
4 to your right actually is the same person who just walked off.
5 We learn this in the second year of law school.

6 MR. GARRETT: Your Honor, reading from page 4, line 21
7 through page 5, line 4.

8 Q. Mr. DeWilde, could you just quickly give me a synopsis of
9 your background starting with undergraduate college, if you
10 attended?

11 A. Undergraduate college was Hampton Sidney college in
12 Virginia.

13 Q. What was your degree in?

14 A. Physics.

15 Q. When did you receive that?

16 A. 1975.

17 Q. Turning next to page 16, line 11 through page 17, line 6.
18 Why did you think it was a junk patent when you first read it?

19 A. Because it screamed so loudly of products that were
20 already on the marketplace and made claims that told you
21 absolutely nothing about how you would ever begin to do it.

22 Q. Do you have your own patents?

23 A. Yes, I do.

24 Q. How many patents are you issued with your name?

25

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1 A. I forget the exact number, three or four.

2 Q. When you read the claims of the 972 patent, did you have
3 any opinion as to whether they were narrow or broad?

4 A. Am I supposed to answer? I thought they were incredibly
5 vague.

6 Q. Did you --

7 A. Could be interpreted so many different ways that you could
8 literally say they applied to anything.

9 Q. Next reading from page 17, line 24, through page 18, line
10 16.

11 Would your concerns have been relevant to the VPS
12 products by Pathlight.

13 A. At the time, I felt they really -- again, I didn't feel
14 that they had any real impact because they were so vague that
15 there was nothing, that there was nothing there that you could
16 say applied to any particular technology. There was not
17 enough substance there.

18 Q. When you say there's not enough substance, are you
19 referring to the description of the patent or the claims?

20 A. Both. Probably the description far more than the claims
21 because that's where the -- that's where it tells you how it
22 is that you're supposed to do it.

23 Q. So you would have preferred to see more detail in the
24 description?

25 A. At least enough to -- at least enough for someone who

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1 Did you have any discussion with anybody about this
2 patent.
3 A. I had discussions with Said.
4 Q. What was the information that was discussed?
5 A. Again, vagueness of the patent.
6 Q. Did Said agree with you that the patent was vague?
7 A. Yes.
8 Q. Did he have any other concerns about the patent that he
9 expressed to you?
10 A. Well, we needed to figure out what to do next.
11 Q. Did you and Said have discussions about what to do next?
12 A. Yes.
13 Q. Did you have a number of options that you were
14 considering?
15 A. The obvious option which was to seek legal counsel.
16 Q. Were there any other options?
17 A. Well, of course you could ignore it because it was so
18 ridiculous.
19 Q. Was there an additional option other than that one?
20 A. No.
21 Q. Did you consider the option of stopping the shipment of
22 Pathlight's products?
23 A. Since there was no belief whatsoever that the patent could
24
25

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1 There came a time when you supplement written
2 materials to Mr. Levy; is that right?

3 A. Yes.

4 Q. Did you supply Mr. Levy with written materials concerning
5 the operation of Pathlight's San gateway and San router?

6 A. Could you be a bit more specific?

7 Q. Sure. Did you provide Mr. Levy with --

8 A. What I provided him with, I believe, is listed in these
9 exhibits.

10 Q. Did you provide him with any additional documents
11 concerning the San gateway or the San router?

12 A. I might have. There was a great deal of document
13 gathering and they were sifting through it and deciding what
14 they needed and what they didn't. I don't remember the exact
15 title stuff question did.

16 Q. Next page 32 line 12 through 15. In terms of physical
17 volume, do you know if he was given a box of documents or
18 binders or how were the documents delivered to them?

19 A. Some paper, some electronic.

20 Q. That's all, your Honor.

21 THE COURT: Any further questions?

22 MR. ALBRIGHT: No, sir.

23

24

25

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1 THE COURT: All right. Call the next witness.

2 MR. ALBRIGHT: Your Honor, the next witness I'm going
3 to call is Mr. Randy hood. So this is no longer Mr. DeWilde.
4 It's now Mr. Hood. Your Honor, we have several depositions,
5 so I'll note the date of the ones I'm speaking from. This
6 first deposition was taken September 7th in the year 2000.
7 And I think that's the only one that we took on that date.

8 Page 9, line 6 through line 9.

9 Q. Morning, Mr. Hood. My name is Alex Rogers. I'm an
10 attorney for the plaintiff, Crossroads. You understand that
11 you are under oath?

12 A. Yes.

13 Q. Page 9, line -- can I check something, your Honor? I
14 think I'm looking at the time on the side. I want to make
15 sure I'm giving the right page citation on page 8, line 6 and
16 line 7?

17 What's your current position with Pathlight?

18 A. President and CEO.

19 Q. Page 10 lines 2 through 17 -- through 16?

20 Okay. Let me show you what has been marked as exhibit
21 1 to your deposition. Go ahead and take a look at that, sir.
22 For the record, exhibit 1 is a complaint, Crossroads vs.
23 Pathlight in the United States district court for the western
24 district of Texas, Austin division, attaching a patent which I
25 will refer to as the 972 patent. Have you had a chance to

- 1 look it, sir?
- 2 A. I've glanced at it, yeah.
- 3 Q. Have you seen this complaint before?
- 4 A. I have.
- 5 Q. Have you seen this patent before?
- 6 A. I have.
- 7 Q. Line 22 of the same page through line 25?
- 8 When was the first time you reviewed this complaint.
- 9 A. When it was mailed to me.
- 10 Q. Can you -- do you recall the date, approximately?
- 11 A. First quarter of this year.
- 12 Q. And, your Honor, those answers were on page 11, lines 1
- 13 and 2. On page 12, lines 4 through 7?
- 14 What did he tell you.
- 15 A. He said that he had uncovered a Crossroads patent as part
- 16 of his on going efforts and research on the filing of our own
- 17 patents.
- 18 Q. At line 18 of the same page?
- 19 Did he tell you what he understood to be the claims of
- 20 the 972 patent.
- 21 A. Just in very, very general terms.
- 22 Q. What did he say?
- 23 A. That it was a patent on a router, kind of a very
- 24 broad-based, general patent covering a router product line.
- 25 Q. On page 39, line 21 through page 41, line 13, your Honor.

06/07/2001 Pathlite Trial, Day 2

1 Who are Pathlight's competitors.

2 A. Oh, Chaparral, Gadzooks, ado, San solutions, Crossroads,

3 CNT, Compaq, Brokade, Vixel.

4 Q. Reporter asks, what was the last one?

5 A. Vixel, V I X E L, encore, generally speaking, that's the

6 -- that's group.

7 Q. All right. If you had to define the market that you're in

8 what -- how would you define it?

9 A. This market that we sell to or the market that we operate

10 in because it's kind of different. That market right there

11 that group of companies is the same infrastructure market.

12 They provide San infrastructure pieces so I don't know if

13 that's your question or if the question is something else.

14 Q. What's the narcotic that you operate in?

15 A. I'll say that market.

16 Q. Okay. The San infrastructure pieces?

17 A. Yeah.

18 Q. What's the market that you sell to?

19 A. We sell to the server and storage market.

20 Q. Within a market that described relating to San

21 infrastructure pieces who within that market sells products

22 that you regard as competitive to your San router or San

23 gateway products? All of them?

24 A. All of them. That's why I put them in there, yeah.

25 Q. Okay. Who within that market sells routers?

06/07/2001 Pathlite Trial, Day 2

1 A. Ado, San solutions, Gadzooks, Crossroads, and depending
2 how you define a router, CNT and Compaq.

3 Q. What do you mean by that, quote, depending on how you
4 define a router, close quote?

5 A. Well, the Pathlight has gateways and routers.

6 Q. What's the difference between generally speaking, what's
7 the difference between Pathlight's gateway products and its
8 router products?

9 A. Their performance, the intercon activity and the
10 functionality.

11 Q. Page 47, your Honor, line 23 through page 49, line 3.

12 As part of to understand competition, has Pathlight
13 ever expected a competitor's product.

14 A. Yes.

15 Q. Do you know if the lab at Pathlight has any competitor's
16 product in it right now?

17 A. Oh, yeah.

18 Q. What products?

19 A. We've got switches for many of the switch vendors,
20 Brocade, Vixel, Gadzooks. I think we have representative
21 products from all of them, not necessarily for the purpose of
22 inspecting from a competitive standpoint, from the perspective
23 of having nor compatibility testing.

24 Q. What about Crossroads does Pathlight's labs have any
25 Crossroads products in it?

06/07/2001 Pathlite Trial, Day 2

1 A. I'm not certain on that.

2 Q. Do you know if it has ever had any Crossroads products in
3 it?

4 A. Yes.

5 Q. Which products?

6 A. It was one of the 4,000 series router products.

7 Q. A 4100 or 4200?

8 A. Yeah, one of those, yeah.

9 Q. What was the purpose of having it?

10 A. The purpose was to understand what its performance was.

11 Q. Any other purposes?

12 A. No.

13 Q. Your Honor, page 62, line 8 through page 63, line 22.

14 At any time between late '99 and April 2000, did any
15 attorney provide you with any opinion as to whether or not any
16 Pathlight product infringes the 972 patent.

17 A. No.

18 Q. Let me modify the question. And to ask if any attorney
19 during that time frame between late '99 and April 2000, did
20 any attorney provide you with any opinion either verbally or
21 in writing, as to whether or not any Pathlight product
22 infringes the 972 patent?

23 A. I don't believe so.

24 Q. Did you ever request that? By you I mean Pathlight. Did
25 you ever request such an opinion from any attorney prior to

06/07/2001 Pathlite Trial, Day 2

1 being sued in April 2000?

2 A. I'm not aware of that.

3 Q. Prior to April 2000, has any attorney provided you with

4 any opinion either verbally or in writing, as to whether or

5 not the 972 patent is valid?

6 A. Yes.

7 Q. When did that occur?

8 A. When did we get the letter?

9 Q. Yes, sir.

10 A. The opinion letter?

11 Q. Yes.

12 A. Finalized?

13 Q. Yes.

14 A. It was just before we received the complaint from

15 Crossroads.

16 Q. And it's your understanding that the letter only addresses

17 validity, not infringement?

18 A. That's my recollection.

19 Q. Which attorneys wrote that letter?

20 A. Mark Levy.

21 Q. Since being sued, has any attorney provided you with any

22 attorney as to whether or not any Pathlight products infringed

23 the 972 patent?

24 A. No.

25 Q. Have you requested such an opinion?

06/07/2001 Pathlite Trial, Day 2

1 Okay. Other than Chaparral, ado and Crossroads, does
2 Pathlight have a competitor for router sales.
3 A. Well, yes.
4 Q. Who?
5 A. The same ones I listed before.
6 Q. Nor router sales?
7 A. Certainly.
8 Q. Previously, you listed Chaparral, Gadzooks, Ado, San
9 solutions, Crossroads, CNT, Compaq, Brocade, Vixel?
10 A. That's right.
11 Q. All of those companies sell routers?
12 A. No.
13 Q. Okay. Maybe I -- let me ask it a different way. Other
14 than Chaparral, Crossroads and Ado, is there another
15 competitor which sells routers that competes against
16 Pathlight?
17 A. There are other products. I don't know if they are really
18 -- if somebody calls them routers or not, but there are other
19 products, other companies with products that are very similar
20 in nature to routers, whether they call them routers or not,
21 you know, is a separate issue.
22 Q. Based on your understanding of what a router is, is there
23 any other competitor out there other than those three that
24
25

06/07/2001 Pathlite Trial, Day 2

1 compete with Pathlight in their sales of routers?

2 A. Yes.

3 Q. Which are those?

4 A. Gadzooks, San solutions to name two.

5 Q. And you can't --

6 A. Others.

7 Q. And you can't think of any others?

8 A. Other than the ones I've already listed, yeah.

9 Q. Well, putting aside that list, again, my question is, are
10 there competitors which sell routers other than Chaparral,
11 Crossroads, Ado, Gadzooks and San solutions, can you think of
12 any other competitors which would sell routers?

13 A. No.

14 Q. Your Honoring turning to page 133, line 16 through 134,
15 line 23.

16 Do you know what the subjects are of any of the
17 Pathlight patent applications.

18 A. I do. Some of them, yeah.

19 Q. What are they?

20 A. One is the VPS software. One is the direct data flow
21 memory architecture and the product. One is a kind of broad
22 overall architectural approach and the fourth one, I don't
23 recall.

24 Q. Do you know if any of the applications involved with
25 Pathlight refers to in its publications regarding its products

06/07/2001 Pathlite Trial, Day 2

1 as, quote, access controls?

2 A. That would be a VPS.

3 Q. When Mr. DeWilde came to you and told you that in the
4 course of doing his work-related to patent applications, he
5 came across the 972 patent. Was that in relation to his work
6 on the VPS application?

7 A. Specifically, I'm not sure if it was that or just in
8 general, you know, in general terms. I don't know.

9 Q. Was the VPS application one of the first applications that
10 he was working on?

11 A. It was in the first round, yes.

12 Q. In 1999?

13 A. Yes.

14 Q. So the timing of his discussion with you relating to the
15 972 patent would have been coincident with his working on the
16 VPS application?

17 A. I'm sorry. State that again.

18 Q. When he came to you, talked to you about the 972 patent,
19 it was about the same time that he was working on the VPS
20 application, correct?

21 A. It would have been during that time.

22 Q. Your Honor, we've got a handful of depositions. Do you
23 want me to get them all out of the way before we switch?

24 THE COURT: I think that would be the best way to
25 proceed.

06/07/2001 Pathlite Trial, Day 2

1 MR. ALBRIGHT: Will --

2 THE COURT: On the same witness?

3 MR. ALBRIGHT: Yes, sir, all the same witness.

4 THE COURT: You can just proceed.

5 MR. ALBRIGHT: Thank you, your Honor. If you would
6 turn to the deposition of the same gentleman, Mr. Randy hood,
7 dated Tuesday, December 12th, 2000, and, your Honor, I'll be
8 reading from volume 1. I'm on page 52, line 23 and I'm going
9 to read through page 54, line 7.

10 Q. Is the VPS option just above what we discussed earlier the
11 VPS software?

12 A. It is.

13 Q. And at least as of May 2000, are you identifying that the
14 price for the VPS option would be \$1,650?

15 A. That is a created list price.

16 Q. And what is a created list price?

17 A. We've not sold any VPS software for that price.

18 Q. What price have you sold it for?

19 A. Well, we sell it to IBM for 285 a shot.

20 Q. Have you sold it to anyone else?

21 A. Yes, we have.

22 Q. Who else have you sold it to?

23 A. Oh, I'd have to do research that.

24 Q. For about the same amount that you're selling to IBM?

25 A. Again, for accuracy purposes, I'd have to research that;

06/07/2001 Pathlite Trial, Day 2

1 but correct.

2 Q. And when you say OEM price list, is this the price that
3 Pathlight is going to sell it to the OEM for or is it the
4 price list that you're recommending that the OEM sell it at?

5 A. No. This is our pricing to the OEM for negotiating
6 purposes. This is what we use.

7 Q. And when you say for negotiating purposes, does that mean
8 that this is sort of Pathlight's starting offer of what they'd
9 like to get?

10 A. Sometimes it's the price, sometimes it end up being the
11 ultimate price that we sell it to an OEM customer for and
12 sometimes it's the guideline that ends up being negotiated
13 from.

14 Q. Turning, your Honor, to page 66, line 13 through page 68,
15 line 5.

16 Looking at the second page of exhibit 8, 49713 at the
17 bottom of the page, there's a statement from N J D L at IBM.
18 Do you know who that is.

19 A. I believe that is Nathan dick er man.

20 Q. And he states to you, quote, on behalf of IBM, I would
21 like to request a quotation for the following items: One, a,
22 quote, use license for the source code which is referenced in
23 the below description. Is that the software we were talking
24 about earlier?

25 A. It is.

06/07/2001 Pathlite Trial, Day 2

1 Q. And this is just reflection of discussions that were going
2 on between you and IBM about that VPS software.

3 A. This is IBM's -- this is their official request for a
4 quotation for that use license of the VPS software.

5 Q. And if you look at the top of the document, it says April
6 25th, 2000. Does that put it in the right time frame for you?
7 Does that sound accurate to when these discussions were going
8 on?

9 A. Well, there's actually dates here on e-mails and things,
10 so that's -- must be. It's the date on here.

11 Q. If you'd turn to page 49718, please.

12 A. Okay.

13 Q. And who is January white?

14 A. January white is an IBM employee in the procurement of
15 IBM.

16 Q. When you said earlier in the quotation IBM is roughly \$2
17 million is that made up of the two figures in the second
18 paragraph here?

19 A. It is.

20 Q. Then at the bottom of the page, it says, quote, not
21 revealed to IBM, close quote. What does that mean?

22 A. Those notes, those notes down there are my private notes
23 as to how the number was arrived at, and they did not -- those
24 were not attached to this document for IBM.

25 Q. Turning, your Honor, to page 81, line 2 through same page,

1 patent.

2 A. No, we didn't feel it was required.

3 Q. I understand. I'm not necessarily interested in what you
4 felt, I'm just need a yes or no. After you received the
5 opinion letter from Mr. Levy, did Pathlight take any other
6 action?

7 A. Not that I'm aware of.

8 Q. So between the time Mr. Levy produced his opinion and when
9 Pathlight was sued by Crossroads and you obtained notice of
10 the lawsuit, during that entire period of time, Pathlight took
11 no action with respect to the 972 patent; is that correct?

12 A. That's what I just said. I don't think we did.

13 Q. Your Honor, page 85, line 13 through line 20.

14 Other than getting it and I don't mean to retread this
15 ground. I just want to make sure. The only step that
16 Pathlight took between the discovery of the 972 patent and
17 receiving the papers that were filed in this lawsuit was you
18 got Mr. Levy to provide an opinion of counsel, correct, that's
19 the only formal step that Pathlight took.

20 A. Yes.

21 Q. Page 92, line 17 through 23.

22

23

24

25

06/07/2001 Pathlite Trial, Day 2

1 Was there ever any debate inside of Pathlight over
2 whether or not to continue to sell its San products.

3 A. In what period of time was this?

4 Q. After you had been sued and after Fulbright and Jaworski
5 had begun its defense of you?

6 A. No.

7 Q. Page 96, line 3, through page 96, 21.

8 I mean, you've testified in one of your depositions
9 that you believe Mr. DeWilde found the 972 patent in November.

10 A. Right.

11 Q. Of 1999?

12 A. That's correct.

13 Q. And Mr. Levy didn't get his been done, was it February of
14 2000?

15 A. February, March time frame, that's the kind of time frame.

16 Q. So whatever that time frame is is whatever it is. Are you
17 with me? I mean, between when Mr. DeWilde discovered the 972
18 patent and you got the Levy opinion, we know that sometime
19 between November and the date of his opinion, correct?

20 A. Whatever it is it is, yes.

21 Q. During that period of time, did Pathlight ever consider
22 terminating the sale of its San products?

23 A. No.

24 Q. Page 104, line 20 through page 109, line 8.

25 Now, between November of 1999 and March of 2000,

06/07/2001 Pathlite Trial, Day 2

1 Pathlight had no formal written opinion from anybody with
2 respect to the validity or invalidity of the 972 patent; is
3 that correct or is that not correct.

4 A. Written opinion, no.

5 Q. And you had no formal opinion, written or unwritten, from
6 anybody until March of 2000? Any opinion from anybody?

7 A. That is not correct.

8 Q. And who had given you an opinion before March of 2000?

9 A. Or assessment internally in the company.

10 Q. My question, Mr. Road hood, was who had given you an
11 opinion with respect to the 972 patent prior to March of 2000,
12 that request that you give me a name?

13 A. Mark DeWilde and Said Rahmani.

14 Q. And what did Mark DeWilde do to determine whether or not
15 there was infringement of the 972 patent prior to March of
16 2000?

17 A. He reviewed the 972 patent claims with respect to the
18 Pathlight product.

19 Q. Anything else?

20 A. Well, and I recall his belief was that many of the claims
21 in the patent existed in the prior art and other products,
22 also.

23 Q. What other steps did he take besides what you just told
24 us?

25 A. What other step for what?

06/07/2001 Pathlite Trial, Day 2

1 Q. To provide you with an opinion?

2 A. We engaged Mark Levy to get an official opinion from
3 counsel.

4 Q. I've heard that.

5 A. That's what we did.

6 Q. What else did Mr. DeWilde do prior to March of 2000?

7 A. I don't know. You'd have to ask him.

8 Q. What else did Mr. Rahmani do?

9 A. I don't know. You'd have to ask him.

10 Q. Besides Mr. Rahmani will know. That's not right. You've
11 told us -- you've just told us that Mr. DeWilde and Mr.
12 Rahmani give you their opinions that there's no infringement
13 prior to March of 2000. How do you know that if you don't
14 know what Mr. Rahmani did?

15 A. There were discussions. Do you want me to answer this?

16 Q. I wouldn't have asked if I didn't.

17 A. All right. There were discussions internally regarding
18 the 972 patent and, specifically, our product, Pathlight
19 product, and in those discussions they were stitched in and
20 woven in those discussions statements of belief that the
21 claims in the 972 patent were likely invalid due to those
22 individual's knowledge of product not the narcotic that
23 contained features and technology relating to the claims.

24 Q. Other than that, did Mr. Rahmani or Mr. DeWilde do any
25 other investigation to form their opinions?

06/07/2001 Pathlite Trial, Day 2

- 1 A. I don't know. You would have to ask them that question.
- 2 Q. And so you have no independent opinion with respect to
- 3 invalidity of the patent other than what you've been told
- 4 during that period of time between -- by Mr. Levy, Mr. Rahmani
- 5 and Mr. DeWilde; is that correct?
- 6 A. Other than Mark Levy, I'm sorry.
- 7 Q. Rahmani and DeWilde?
- 8 A. Did I have any other independent --
- 9 Q. Reason to believe the 972 patent was invalid?
- 10 A. I felt that there was very sufficient work that we were
- 11 supposed to be doing. Those were the responsible steps for us
- 12 to take.
- 13 Q. So the answer to my question is no?
- 14 A. And your question again is?
- 15 Q. If you'll just listen to the question the first time. The
- 16 question is, other than Mr. Rahmani, Mr. Levy and Mr. DeWilde,
- 17 did you have any other information or basis to believe one way
- 18 or the other whether that the 972 patent was valid or invalid?
- 19 Mr. Bahler asked prior to March 2000, I said prior to March of
- 20 2000 and the witness said --
- 21 A. No.
- 22 Q. Line 109, question begins on line 3 through line 8?
- 23 Prior to the time of being sued by Crossroads, did
- 24 that change.
- 25 A. No.

06/07/2001 Pathlite Trial, Day 2

1 Q. Prior to the time of retaining Fulbright and Jaworski, did
2 that change?

3 A. No.

4 Q. Page 122, lines 8 through 25. Has Pathlight ever done any
5 kind of competitive analysis that analyzed or included
6 Crossroads?

7 A. Yes.

8 Q. And who would have done that on behalf of Pathlight?

9 A. There may have been a number of people.

10 Q. Okay.

11 A. That at various times we might have discussions about
12 companies that have products similar to gateways and routers
13 and bridges and so the answer is yes.

14 Q. You never personally had conversations with Chaparral,
15 correct, about the infringement of the '972 patent?

16 A. No.

17 Q. Your Honor, I would now turn to the deposition, dated
18 December 12th, 2000, volume 2.. Page 147, line 4?

19 Okay. Were you involved at all with respect to the
20 relationship between Pathlight and IBM and Pathlight's San
21 products? Were you involved in the negotiations.

22 A. Yes.

23 Q. When did those negotiations begin?

24 A. 1998.

25 Q. Who on behalf of Pathlight was involved?

06/07/2001 Pathlite Trial, Day 2

- 1 A. What do you mean involved?
- 2 Q. Who on behalf of Pathlight was involved in the
3 negotiations with IBM with respect to the Pathlight San
4 products?
- 5 A. I would say that the three primary people would be Said
6 Rahmani, Hank Watson and myself.
- 7 Q. Your Honor, turning to page 150, line 18 through 151, line
8 17. With respect to 1998, what portion of 1998 are we talking
9 about? Early or late?
- 10 A. With regard to what?
- 11 Q. With regard to the negotiations between Pathlight and IBM?
- 12 A. I believe the first visit that we made to IBM regarding
13 this product that ultimately became part of the contract was
14 in April.
- 15 Q. Did Pathlight submit any offers or proposals to IBM with
16 respect to Pathlight San products?
- 17 A. Yes.
- 18 Q. And when did that take place?
- 19 A. 1998.
- 20 Q. When in 1998?
- 21 A. It would have been between April and the end of the year.
- 22 Q. Do you know any more narrowly than that?
- 23 A. No.
- 24 Q. When did you close the deal with IBM?
- 25 A. With regard to San products?

06/07/2001 Pathlite Trial, Day 2

- 1 Q. Yes, sir.
- 2 A. January.
- 3 Q. Of what?
- 4 A. 1999.
- 5 Q. Page 155, line 10 through line 6 of page 156.
- 6 Okay. What were the terms of Pathlight's proposal to
- 7 IBM with respect to the San products.
- 8 A. What were the terms?
- 9 Q. Yes, sir, what was the price?
- 10 A. The price was—that was one term. There were a number of
- 11 terms.
- 12 Q. The term I'm asking about now is what was the price that
- 13 you quoted to IBM?
- 14 A. Oh, I can't recollect the precise number.
- 15 Q. What was in the ballpark?
- 16 A. \$6,700.
- 17 Q. Are you still selling products to IBM, San products?
- 18 A. Yes.
- 19 Q. What is the current price of those products?
- 20 A. I can't recollect off the top of my head the price.
- 21 Q. Any general idea?
- 22 A. Yes.
- 23 Q. I'll take it.
- 24 A. It's a little over \$7,000.
- 25 Q. Page 191, your Honor, line 24 through line 2, on page 195.

06/07/2001 Pathlite Trial, Day 2

1 And has there been any negotiations with any third
2 party with respect to the third party wanting to license any
3 of that intellectual property from Pathlight.

4 A. Yes.

5 Q. When did those negotiations take place?

6 A. This year.

7 Q. And on behalf of Pathlight -- I'm sorry. And who on
8 behalf of Pathlight entered those negotiations?

9 A. Well, I did, for one.

10 Q. What was that one?

11 A. That was a VPS. Virtual private San license.

12 Q. And who was the third entity or I guess in your case it
13 would be a second. I apologize. Who was the other entity?

14 A. IBM.

15 Q. And not to get distracted but with respect to that
16 particular product, what does that product, so the jury
17 understands, have to do with the San products that you sell to
18 IBM?

19 A. It's a software option for the San gateway and San router.

20 Q. Is it fair to say that Pathlight thinks they have a
21 proprietary interest in that soft wear?

22 A. Proprietary?

23 Q. Did Pathlight design the software itself?

24 A. Yes.

25 Q. Did they create the software?

06/07/2001 Pathlite Trial, Day 2

1 A. Yes.

2 Q. Are you attempting to get a patent on the software?

3 A. Yes.

4 Q. That's what I mean by proprietary. What does it do with
5 respect to the products that IBM purchases, the San products
6 that IBM purchases from Pathlight?

7 A. It provides access control.

8 Q. What do you mean by access control?

9 A. It provides a capability to control access to particular
10 parts of the storage device that are attached to our product.

11 Q. Has IBM purchased that product from you? I believe you
12 called it a VPS product?

13 A. Yes.

14 Q. Has they purchased that product from you, the software?

15 A. Yes.

16 Q. You haven't licensed it to them?

17 A. No.

18 Q. How is it that you sell that product to IBM?

19 A. I'm sorry. What do you mean how is it?

20 Q. For example, when you sell your router to them, is it part
21 of the operating system or software that's on a product that
22 you sell to IBM now?

23 A. It's not part of the router.

24 Q. Okay. So I'm asking how it is. Do you sell it as a
25 separate software package with the router?

06/07/2001 Pathlite Trial, Day 2

1 A. No, it's not part of the router product that IBM purchased
2 from us.

3 Q. So it's a completely separate product?

4 A. It's a software option.

5 Q. How does IBM buy that from you?

6 A. It's part of the gateway product that they buy from us.

7 Q. And how much is it for this software in round figures?

8 A. \$285.

9 Q. And all I'm saying is this isn't a licensed agreement with
10 IBM that they can use this software; this is a straight sale
11 of the software to IBM, correct?

12 A. That's correct.

13 Q. And you intend to get, if possible, a patent on that
14 software?

15 A. That's correct.

16 Q. Your Honor, I begin again on page 195, line 25, through
17 page -- I'm sorry, through page 196, line 15?

18 When did you first offer for sale VPS software just
19 ballparking what year.

20 A. 2000.

21 Q. With respect to any intellectual property that we've been
22 talking about have you attempted to license any of it or has
23 it all been straight for sale?

24 A. There was a request from one customer to receive pricing
25 for a license.

06/07/2001 Pathlite Trial, Day 2

- 1 Q. What was the product that they requested?
- 2 A. VPS. That's what I was talking about before.
- 3 Q. And who was that customer?
- 4 A. IBM.
- 5 Q. Page 201, your Honor, line 10 through 21.
- 6 Do you know whether Crossroads products would meet
- 7 nose new specifications.
- 8 A. I'm sorry I would.
- 9 Q. Only sorry I coughed do you think it would not?
- 10 A. That's correct.
- 11 Q. What is your basis for thinking they would not?
- 12 A. For one they and the products again to my knowledge have
- 13 not displayed the access control characteristic that IBM now
- 14 has included in their approved configuration.
- 15 Q. Your Honor, page 207, line 5 through 23.
- 16 Mr. Hood, just so you know, if I have to go to the
- 17 Court, I'm giving you an opportunity. The question is do you
- 18 know or do you not know whether any Crossroads's current
- 19 product, San products that are on the market meet IBM
- 20 specifications.
- 21 A. I don't believe they do.
- 22 Q. And what is your basis for making that statement?
- 23 A. My basis is my understanding of the specifications.
- 24 Q. And which specific any cases does Crossroads not meet?
- 25 A. They're not a qualified product in the configuration that

06/07/2001 Pathlite Trial, Day 2

1 IBM is supporting. I don't believe they have the same depth
2 of San management capability that is part of the IBM
3 requirement and I don't believe they have specific access
4 control features that are part of the specification.

5 Q. Your Honor, page 209, line 13 through page 211, line 21.

6 Well, that was the thrust of my last question when you
7 said you told me that earlier, so let's make sure wear clear.
8 When we're talking earlier about IBM and your negotiation for
9 the sale of VPS software, that was in conjunction with the
10 sale also of path light's hardware, correct.

11 A. Would you like me to take a stab at that time clarifying
12 the situation for you?

13 Q. I would be just delighted.

14 A. Okay. I was waiting for you to ask me a question. We
15 sold the original IBM configuration without the VPS option
16 because the VPS option didn't exist. We started selling that
17 to them at the end of quarter 1 this year.

18 Q. Just to make clear, you started selling the VPS software?

19 A. Software to IBM. It became qualified as part of their
20 configuration.

21 Q. I hate to keep interrupting you but just to make sure I
22 understand what you're saying, Q 1 of this year?

23 A. That's January, February, March, that's Q 1.

24 Q. Okay.

25 A. Sometime this year IBM started inquiring about the

06/07/2001 Pathlite Trial, Day 2

1 possibility of licensing all or part of the VPS software from
2 Pathlight completely separate from our hardware platform and
3 we had some dialogue and even provided the quotation for that.

4 Q. And what was the quotation?

5 A. The quotation was for license of the VPS of a portion of
6 the VPS software to IBM.

7 Q. I apologize. My question was intended to be what was the
8 amount of the quote?

9 A. Slightly over two million.

10 Q. And would that have given IBM the right to use the VPS
11 software for as much as they wanted?

12 A. For a period of time.

13 Q. What was the period of time?

14 A. One year.

15 Q. Did IBM counter that?

16 A. No.

17 Q. Did they accept it?

18 A. No.

19 Q. Are there still negotiations concerning the matter?

20 A. No.

21 Q. During what time period month more or less of 2000 did
22 these negotiations take place?

23 A. Well, it popped up a couple of times beginning the quarter
24
25

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1 Q. Does it seem to you that it's a dead issue as of December
2 of 2000?

3 A. It appears so.

4 Q. Page 213, lines 3 through 22?

5 I want to come flow up on a couple of things so make
6 sure I got your answer. Negotiations with IBM with respect to
7 the VPS software took place somewhere between the second
8 quarter and the third quarter of the year 2000 and that's with
9 respect to the \$2 million license agreement.

10 A. That's correct.

11 Q. And there's been no other negotiations with any other
12 third party besides IBM with respect to that software?

13 A. That's correct.

14 Q. And I understand in fairness to you that you've told us
15 that you discussed the sale of the product along with the
16 hardware to basically all of your customers, correct?

17 A. That's correct.

18 Q. But with respect to just a separate, distinct sale or
19 license of the VPS software, IBM is the only third party,
20 correct?

21 A. That's correct.

22 Q. Your Honor, I'm turning to the deposition of Mr. Hood,
23 taken February 21st of 2000, page 7, line 24 through page 8,
24 line 3.

25 When did Pathlight begin to market VPS.

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1 A. Q 1, 2000.

2 Q. Did the marketing on the sales begin at the same time?

3 A. Yes.

4 Q. Page 10, line 1 through page 13, line 13.

5 Is the VPS software, then, on every single product,
6 Pathlight product that's sold and it's just the decision is
7 made whether or not someone is going to try and get a license
8 or not.

9 A. The components for the VPS software are there, but they
10 don't work. They are not activated until you buy it, receive
11 the license key to activate it.

12 Q. So every product, every router and gateway product that's
13 been sold since Q 1 of 2000 had the VPS software on it?

14 A. You mean the VPS, the components of the VPS software.

15 Q. Yes, sir. The components?

16 A. On it? Well, those products that were shipped with the
17 necessary version of the San director that included that, yes.

18 Q. When you look at the documents tomorrow, we'd be able to
19 point out which ones have the San director on it?

20 A. That's the document. Which ones have the San director on
21 it, I don't know what your question is.

22 Q. I believe you just told me that all of the products that
23 had San director on it had the VPS software could be enabled
24 if someone gave to you the serial number and you gave them the
25 software key?

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1 A. Okay. So your question is.

2 Q. So my question is, Mr. Garrett said earlier, he believed
3 that tomorrow when I have the documents with me that you would
4 be able to quickly point out to me which products have VPS
5 software on them?

6 A. Yes, those are the documents that you have.

7 Q. Okay. And you said something, though, about the San
8 director in your answer, and that's what I was following up
9 on.

10 A. So what's your question?

11 Q. Let's try it again.

12 A. Yes, let's.

13 Q. Mr. Hood, you forgive me for apparently misunderstanding
14 what you were trying to tell me earlier. Why don't you
15 explain to the jury what San director is.

16 A. San director is our overall San management product,
17 provides the user with variety of management tools to discover
18 and manage the various things that are connected in a San.

19 Q. And when you say San just following up so maybe the jury
20 will understand what it is we're talking about, when you say
21 it allows it to manage things, what do you mean?

22 A. It allows you to see what version of firm wear is
23 associated with the specific host adapter card in a server.
24 For example, or see that a switch or what kind of switch is a
25 San or a hub, to see which kind of storage devices are

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1 connected to the server as part of the San.

2 Q. And the sales of San routers and San gateways is Q 1 of
3 2000, have they all contained the San director that we
4 discussed?

5 A. I believe so. It's a very, very high percentage, if not
6 all.

7 Q. And what that means is that the San director has been on a
8 high percentage of them, if not all, is that basically the VPS
9 software is on the product that's waiting to be enabled until
10 someone gives Pathlight the serial number so that they can
11 provide them with what I'm calling the software key so the
12 user and customer can enable the VPS software. Is that
13 correct?

14 A. That's correct. That's our chosen way of delivering
15 software options versus sending them a C D or something like
16 that.

17 Q. Just again to try and help the jury out here, the jury has
18 all probably bought a lap top or personal computer, so what
19 you have done is install the VPS software along with other
20 things, the same way that someone might install a program on
21 to a computer, the hardware that they sell, that the buyer
22 can't use the software till they provide Pathlight with a
23 serial number and then you all give them a code number so that
24 they can enable the software and use it, correct?

25 A. That is correct.

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1 through page 22, line 19?

2 Does Pathlight also sell San routers to IBM.

3 A. Yes.

4 Q. I'm going to go backwards through this, just make certain
5 I understand. If one wanted to find out with IBM with respect
6 to the IBM routers which ones have the San director on them,
7 those would be in other documents, correct?

8 A. I can tell you that all IBM San routers have San director
9 on them.

10 Q. And do all IBM San routers have the VPS already activated
11 on them or with respect to the routers, do they have to go
12 through the same process of giving Pathlight the serial number
13 and then having the VPS activated?

14 A. What you said is correct.

15 Q. The latter?

16 A. They have to go through the process of providing serial
17 numbers and activating the VPS software.

18 Q. When one gives you the serial number and you activate the
19 VPS software, is that an additional expense?

20 A. It could be.

21 Q. With respect to -- I'm leaving out the IBM gateways. With
22 respect for example to the IBM routers of OEM when would it be
23 an additional expense for a customer who bought an IBM OEM

24

25

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1 router to activate the VPS software?

2 A. Likely every time.

3 Q. Would it be fair to say the vast majority?

4 A. Yes.

5 Q. Page 26, line 21. Through page 27, line 5, your Honor?

6 Question. Do you know approximately how much each San
7 gateway unit you sold to IBM from March of 2000 to present had
8 a VPS activated on it, what the total cost of that -- what the
9 total cost of that gate way was with the sales price of the
10 gateway was to IBM per unit.

11 A. With VPS?

12 Q. My understanding is that they all have VPS?

13 A. Yes, from March on.

14 Q. Yes, sir.

15 A. \$6,775.

16 Q. Page 37, line 16 through page 38, line 5.

17 All the Pathlight products, though, contain the San
18 director, correct?

19 A. All gateways and routers. All gateways do and the vast
20 majority of the routers do.

21 Q. Let me just rephrase that. You said it well. Let me just
22 make sure all San gateways have the San director on it,
23 correct?

24 A. Yes.

25 Q. The vast majority of the San routers manufactured by

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1 Pathlight have the San director on it, correct?

2 A. Yes.

3 Q. And these documents will allow which company who purchased
4 either gate which or router activate the VPS software,
5 correct?

6 A. Yes.

7 Q. And just using the first page of exhibit 120, Mr. Hood,
8 how would you go from one of the earlier exhibits we looked at
9 and go to this document on the invoice and find whether or not
10 or find how much the VPS license key had cost, what column
11 would that be in?

12 A. This is -- this particular invoice is a -- let me back up.
13 This particular unit is being shipped as an Eval. It says
14 that right down here which means this invoice represents a
15 product that may or may not actually be purchased by Plasman.
16 It may be returned after a period of time after the evaluation
17 period expires. The product actually may come back to
18 Pathlight.

19 Q. Okay.

20 A. So what I'm saying, this isn't really a sale. This is not
21 a -- this is not booked as revenue of Pathlight. This is the
22 method we use to ship and evaluation unit to a company and
23 establish if they lose it or decide to keep it for some
24 reason, we then establish a price and so forth for it.

25 Q. A couple of things on that.

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- 1 A. What you are saying is this isn't really necessary.
- 2 Q. When it's an evaluation unit, it's not truly a sale?
- 3 A. Correct.
- 4 Q. You are simply providing this product, the San gateway to
5 Plasman to evaluate?
- 6 A. Correct.
- 7 Q. And for booking purposes, for accounting purposes, you
8 have to have some value to put on it, correct? I mean, you
9 have to have some dollar amount to put on it because they
10 might destroy it or keep it and not send it back to you,
11 correct?
- 12 A. Right.
- 13 Q. What are we looking at under the unit price here isn't
14 really the sales price because you are not necessarily selling
15 it to them. It's a price they're going to be charged if they
16 don't return it to you, correct?
- 17 A. That is correct.
- 18 Q. And that's pretty typical that that happens in your
19 business, I mean, this way for sending units for evaluation
20 that aren't really sold.
- 21 A. Your question was I truly don't understand your question.
22 You said in your business, which implies, like, in this
23 marketing segment or something. I don't know. This is what
24 Pathlight does.
- 25 Q. That's what I really meant.

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1 A. Okay.

2 Q. I'm asking you if Pathlight's business, it's a standard
3 operating procedure, correct, to send out evaluation units
4 that aren't really for sale, have been booked out at a certain
5 price if they are not returned, but they are not really being
6 sold, correct, that's a standard procedure?

7 A. Yes.

8 Q. Your Honor, page 44, line 22 through page 45, line 10.

9 Would it be fair to say Pathlight also doesn't
10 consider any product that has this nomenclature on it to be a
11 sale either.

12 A. That's correct.

13 Q. You have a unit price down there, but that's basically
14 just a price that Pathlight has put down that's going to be
15 charged if the evaluation unit is destroyed or not returned,
16 correct?

17 A. That is correct.

18 Q. And would that be true with all of the invoices that have
19 that nomenclature? For example, there's one about three pages
20 later with regard to the S N I A technology center?

21 A. That is correct.

22 Q. Your Honor, page 50, line 1 through page 52, line 22, and
23 this is our final designation.

24 Question, Mr. Hood, I have handed you a document that
25 was introduced at your first deposition or at least I believe

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1 it was the first deposition. The deposition where it was
2 marked as exhibit No. 5. The second entry from the bottom, it
3 says, quote, VPS option and then has a number of prices.

4 Can you tell the jury what those prices represent,
5 please, sir.

6 A. Those prices, as all prices on this sheet, are general
7 guidelines for negotiating with our OEM customers, their final
8 configuration and price of that.

9 Q. Has Pathlight ever gotten 1,650 dollar for VPS software?

10 A. No.

11 Q. What is the most that Pathlight has ever received for
12 activating the VPS software?

13 A. I don't know for certain.

14 Q. Would it be more than a thousand dollars?

15 A. No.

16 Q. Would it be more than \$500?

17 A. I doubt it.

18 Q. In the ballpark we know with IBM currently on gateways
19 it's \$285. Would that be about the ballpark everyone else is
20 in for their activation, as well?

21 A. It's difficult to say because these all end up being
22 negotiated. Final negotiated numbers so it's actually very
23 difficult to make a generalized statement about the price of
24 the VPS.

25 Q. You don't believe it was ever higher than \$500?

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1 A. We have not sold -- if we have sold an option for greater
2 than \$500, it's the very rare occurrence.

3 Q. Again, we can go to the purchase orders and see what the
4 actual sales price was, correct?

5 A. That's right.

6 Q. Do you know who it was at Pathlight that came up with this
7 as an OEM price, suggested price, the \$1,650?

8 A. It was several people in sales and marketing.

9 Q. Do you know coming up with a figure that was that high?
10 Let me try that again. I didn't mean to --

11 A. I do. We wanted to place as what list price, we want to
12 place a very high value to allow us to through the
13 negotiations process retain as much of the value as possible
14 for VPS. And that same philosophy was applied to every other
15 price list -- of every other price, list price on here.

16 Q. But in fact, if you were to, for example, get -- I'm just
17 saying hypothetical if you were to get a high enough price from
18 IBM for example, and the purchase of your gateway and San
19 director on it, that's all negotiable. The fact that the VPS
20 was \$285 is all taken up part and parcel of what the total
21 price of the IBM was for the gateways, correct?

22 A. I am not sure what you mean.

23 Q. It was more important for you to come to an agreement with
24 IBM for the total sales price of the gateway product than with
25 everything on it including the San director than it was to

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1 attempt to come to some meeting of the minds with the price
2 just with regard to the IBM?

3 A. No.

4 Q. When you negotiated from example with IBM for the ways
5 that they had the VPS activated as part of the contract, was
6 the VPS price negotiated?

7 A. Yes.

8 Q. Who negotiated on behalf of Pathlight?

9 A. I did.

10 Q. That's all we have, your Honor.

11 MR. GARRETT: Your Honor, this is from the first
12 deposition dated September 7th, 2000. Page 13, line 16, page
13 14, line 3.

14 MR. ALBRIGHT: Your Honor, as housekeeping, could I
15 move to admit the exhibits that we talked about in the
16 deposition?

17 THE COURT: You may.

18 MR. GARRETT: No objection, journal all exhibit 8 and
19 exhibit 152, your Honor.

20 THE COURT: Plaintiff's 8 and plaintiff's 152 are
21 admitted without objection. All right.

22 MR. GARRETT:

23 Q. What router product line?

24 A. Crossroads's.

25 Q. Did he make any comments about whether or not it covered

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1 Pathlight's router product line?

2 A. No.

3 Q. So you had a conversation with him, he told you it was a
4 broad-based patent, and you had no discussion at all as to
5 whether or not it was -- as to whether or not it covered any
6 Pathlight products?

7 A. Well, it's a Crossroads patent, so by definition it did
8 not cover -- it's not a patent on a Pathlight product. The
9 patent was on Crossroads's product.

10 Q. Next, turning to page 18, at line 10 through line 20.

11 Now, between the time that he told you about the 972
12 patent and the time you gave him any instruction relative to
13 the 972 patent, did Pathlight consult with an attorney on the
14 972 patent?

15 A. We were in constant communications and we had an ongoing
16 relationship with the patent attorney. And anything that came
17 up relative to patents either mark's words or any other
18 engineer's words, researching or working on the patents and so
19 forth was done through that attorney which we had developed a
20 relationship with, you know, earlier in 1999.

21 Q. Turning to page 41, lines 14 to 20.

22 Do you include -- have you heard of the term bridge in
23 your industry.

24 A. I have.

25 Q. Do you include a bridge within the definition of router or

1 is that a different product?

2 A. That would fall within the definition of a router.

3 Q. Next, your Honor, turning to the deposition on December
4 12th, 2000, page 88, line 25 through page 89, line 12.

5 Did you personally have any substantive discussions
6 with Mr. Levy that gave you personally an opinion one way or
7 another as to his professional abilities?

8 A. There were people in the company I believe who had worked
9 with Mark Levy previously and had a good experience and felt
10 good about working with him, had confidence in him. Believed
11 he was the kind of attorney we needed to work with to help
12 file our patents, therefore, we developed the relationship
13 with him to do that. That's the basis upon the relationship.

14 Q. Next, page 96, line 22 to page 97, line 20.

15 Did anyone at Pathlight during that period of time
16 express an opinion that they believe that the Pathlight
17 products did not infringe the 972 patent, and I'm talking
18 about price prior to the time when you got the Levy letter.

19 A. Yes.

20 Q. And who would those people have been at Pathlight?

21 A. Mark DeWilde and I'll leave it at Mark DeWilde.

22 Q. Do you remember what it was that Mark DeWilde told you why
23 he believed there was no infringement?

24 A. He believed that our products did everything referenced in
25 the patent prior to the time period of the patent.

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1 Q. And he thought that that --

2 A. That our product was part of the body of prior art that
3 may exist in the market.

4 Q. And what was the product number of that product?

5 A. Well, it was not a number, it had a name.

6 Q. Well, what was that name?

7 A. Image agent.

8 Q. Next, on page 98, line 23 to page 99, line 4.

9 How long did you all have that for sale.

10 A. I'm thinking.

11 Q. And if you could, tell me when you began to sell it and
12 when you stopped selling it?

13 A. It's on the order of a year, you know, something like '96
14 to '97 kind of time frame.

15 Q. Next, at page 115, lines 12 through 17.

16 You do have an opinion, though, as to whether the 972
17 patent is valid or invalid, correct.

18 A. Yes.

19 Q. And that opinion is that it is invalid, correct?

20 A. That's correct.

21 Q. Next, your Honor, turning to the deposition on December
22 12th, 2000. At page 191, lines 19 to 23.

23 Does Pathlight have any products that they consider to
24 be intellectual property.

25 A. We have a number of patent applications that have been

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1 We've established that you understand how your San
2 products operate, correct.

3 A. Yes.

4 Q. We've established that you understand how Crossroads's San
5 products work, correct?

6 A. Yes.

7 Q. Given that you have that understanding, if Pathlight had
8 not sold the San products to IBM in terms of functionality,
9 would IBM have been able to purchase Crossroads's products?

10 A. I don't believe so.

11 Q. And why not?

12 A. I don't believe the performance met the specification that
13 was being asked for.

14 Q. In what regard?

15 A. Through put, bandwidth, mega bites per second.

16 Q. Let's start with drew put. What was there about through
17 put where Crossroads did not meet the specification?

18 A. Crossroads was on the order of path of what IBM was asking
19 for in terms of bandwidth.

20 Q. Is bandwidth and through put the same thing?

21 A. As I'm referring to it, yes.

22 Q. Next, on page 200, beginning at line 6 through page 201,

23

24

25

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1 Other than with respect to through put, bandwidth and
2 mega bites per second, were there other specifications that
3 the Crossroads products would not have metaphor IBM.

4 A. I believe so.

5 Q. And what were those?

6 A. The San management capabilities of the product to my
7 understanding.

8 Q. And what do you mean by San management capabilities?

9 A. The ability to discover, configure and receive reports
10 back, discover the San environment, configure the San
11 environment and receive information back on the health of the
12 San environment.

13 Q. And it's your position that Crossroads's products were not
14 capable of doing that up to IBM's specifications?

15 A. That's correct.

16 Q. Was that true at the time that the deal went through in,
17 say, January of '99?

18 A. That's correct.

19 Q. Do you know whether that would still be true today?

20 A. The environment has changed today.

21 Q. The environment of the Crossroads product or what IBM is
22 specifying?

23 A. Of what IBM is requiring and has approved for inclusion
24 into their systems.

25

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1 And the approximate cost of the total amount that IBM
2 was paying Pathlight for each -- for each gateway that they
3 purchased from Pathlight was approximately \$285 for the VPS
4 software, correct.

5 A. Yes.

6 Q. And finally, page 44, lines 10 to 21. If you would turn
7 to page 169893, please, sir.

8 A. Okay.

9 Q. As opposed to saying that it's being shipped for
10 evaluation purposes, you have something that's stated a little
11 bit differently. It says that all the shipped materials are
12 owned by Pathlight technology and alone four 09 days. Is that
13 also an evaluation there.

14 A. This one is slightly different because Convolt is a
15 customer who did some development work who stitched their
16 product together with ours so that's what this represents.
17 It's almost a development system.

18 MR. GARRETT: That is all.

19 THE COURT: Any further questions?

20 MR. ALBRIGHT: No, sir, your Honor.

21 THE COURT: Members of the jury, y'all haven't been
22 working since 9:00, but my court reporter has. So we're going
23 to take a 15 minutes, stretch, go outside see if it rained but
24

25

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1 MR. ALBRIGHT: Yes, sir.
2 THE COURT: So 8 is not in?
3 MR. ALBRIGHT: Yes, sir, that's correct.
4 THE COURT: You have 12 minutes left.
5 (Recess.)
6 THE COURT: Anything before we bring in the jury?
7 MR. ALCOCK: No, your Honor.
8 MR. BAHLER: No, your Honor.
9 THE COURT: You may call your next witness.
10 MR. ALCOCK: Yes, your Honor. We call as an adverse
11 witness Mr. Said Rahmani.
12 THE COURT: Come up and be sworn, please.
13 (Witness was sworn.)
14 MR. BAHLER: Your Honor, may I request an instruction
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1 to the jury regarding what an adverse witness is?

2 THE COURT: Well, members of the jury, an adverse
3 witness is a determination that generally the Court will make.
4 It just means that the witness is on the other side of the
5 case. The only real difference between the witnesses who
6 designated as adverse or any other witness is that the lawyers
7 who questioning has a little bit leeway to ask what we call
8 leading questions.

9 In my court, that's very little leeway, but still some
10 what more leeway. But adverse is not anything directed to Mr.
11 Rahmani. 's just a legal term meaning that I'm notifying
12 everybody that I don't think that Mr. Rahmani is going to be
13 on my side of the case.

14 MR. ALCOCK: Thank you, your Honor.

15 THE COURT: But I need to ask you my questions. State
16 your full name, please, and spell your last.

17 THE WITNESS: Sure. Said Rahmani Khezri, R A H M A N I
18 hyphen, K H E Z R I.

19 THE COURT: You may proceed.

20 DIRECT EXAMINATION

21 BY MR. ALCOCK:

22 Q. Where do you work, sir?

23 A. Pathlight technology.

24 Q. You presently also an employee of ADIC?

25 A. Yes, sir.

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1 Q. And what is your position at ADIC?

2 A. I'm in charge of the research and product development.

3 Q. What is ADIC?

4 A. Could you be more specific?

5 Q. What is it? What does the company do so, sir?

6 A. It is a company in the storage, library, business.

7 Q. Okay. Just so the jury is clear, essentially what happens
8 is Pathlight was a company and it's now merged into ADIC so
9 now you work for ADIC instead of path liability; is that
10 right?

11 A. Sorry. I missed that question. I was trying to fix this.

12 Q. I'm just trying to get terminology square.

13 THE COURT: I tell you what. Mr. Mace, come up here
14 and work this: It's kind of like a trained animal.

15 THE WITNESS: I'm not used to this.

16 THE COURT: That's all right T more you work with it
17 the worse it's going to get. All right. If the jurors cannot
18 hear you, all you have to do is raise your hand and we'll
19 adjust.

20 MR. ALCOCK:

21 Q. I was just trying to make sure everybody is on the same
22 page. Pathlight was merged or bought by ADIC, so you were an
23 employee of Pathlight and now you're now an employee of ADIC.
24 Is that basically how it worked?

25 A. Yes.

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1 Q. Okay. So you were with Pathlight from the very beginning;
2 is that right, sir?

3 A. Yes, I was one of the founders of Pathlight technology.

4 Q. Okay. When Pathlight started out, it didn't make the San
5 gateway or the San router that everyone's heard so much about;
6 is that right?

7 A. Not when it started, no, sir.

8 Q. Right. It was in something called SSA, serial storage
9 architecture; is that right? You were making products in that
10 area, correct?

11 A. The SSA technology also is available, would be available
12 in San gate and San router. So the technology that we used at
13 the beginning of this product have no relationship with each
14 other in a sense.

15 Q. I'm not getting that complicated. I'm just saying that
16 the beginning you were making products under this SSA
17 technology, is that right?

18 A. To start with, we used SSA technology, yes.

19 Q. Okay. And then, later on, you worked on Fibre Channel
20 products; is that right?

21 A. Yes.

22 Q. And you discontinued all your SSA products around about
23 1999; is that right?

24 A. Yes, that's -- I think 1999, actually it was probably
25 about 2000.

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1 Q. Okay. A couple of housekeeping items, Mr. Rahmani.
2 You'll see before you the first two documents in a stack,
3 exhibits 22 and 23. I don't believe there's any objection to
4 these. Are these the San gateway installation and users guide
5 and the San router installation and users guide?

6 A. Yes, they are.

7 Q. Okay. I'll take those away from you so that you're not
8 burdened with paper. Next housekeeping item is in front of
9 you is exhibit 227. I believe there's no objection to that
10 either. That is financial records of Pathlight. Could you
11 just take a look, if you peel back the top page.

12 A. Just the first page?

13 Q. Yes. Is that what they appear to be, sir?

14 A. Yes, they appear to be financial statements.

15 Q. Okay, your Honor, at this point, we'd offer exhibit 22,
16 223 and 227 into?

17 MR. BAHLER: In objection to 22, 23 let me take a look
18 at 227.

19 MR. ALCOCK: Yes, sir.

20 MR. BAHLER: No objection to 227, your Honor.

21 THE COURT: All right. 22, 23 and 227 are admitted.

22 MR. BAHLER: That's 227, right?

23 MR. ALCOCK: Yes.

24 THE COURT: 227, yes excuse me.

25 MR. ALCOCK:

1 Q. Okay. Now, let me place before you exhibits 136 first and
2 exhibit 24 second. Now, I'm going to ask you questions about
3 those in just a couple of moments. Now, ADIC, ADIC currently
4 sells the San gateway; is that correct?

5 A. I am not sure.

6 Q. Could you take a look at the front page of exhibit 136?

7 A. I wouldn't be surprised if they do.

8 Q. Okay. Take a look at the front page of 136. Is that the
9 ADIC web site?

10 A. Sure, yes.

11 Q. Okay. Could you take a look at a page about a few pages
12 in. It's 64422. Offer 136 into evidence, your Honor.

13 MR. BAHLER: 136, right?

14 MR. ALCOCK: Yes.

15 MR. BAHLER: Okay. No objection.

16 THE COURT: It's received.

17 A. What page? I'm sorry.

18 MR. ALCOCK:

19 Q. On the bottom it says 64422?

20 A. Yes.

21 Q. And is there a discussion there of the San gateway?

22 A. Can I take a look?

23 Q. Yes. You can look at the screen if you want.

24 A. Sure, yes.

25 Q. And it says the San gateway supports exclusive

1 technologies including virtual private San, VPS, and virtual
2 private map. Powerful access security control services that
3 provide protected connections between multiple hetero genius
4 hosts and multiple hetero genius storage. Is that correct?
5 A. It is a correct marketing statement.
6 Q. Okay. Well, is it a correct statement of what the
7 products do?
8 A. I wouldn't argue it is incorrect.
9 Q. Okay. And so, the purpose of this VPS software is to
10 provide secure access between work stations and between remote
11 storage devices; is that right?
12 A. That's one of the functions that VPS can provide, but
13 that's not the purpose of VPS, the system.
14 Q. And without VPS, the San gateway does not allow secured
15 access of storage to a host; is that right?
16 A. That's not necessarily correct, no.
17 Q. Let me hand you your deposition, and I'd like you to take
18 a look at page 44. It's the volume 1, 9-28, 2000, lines 1
19 through 9. Tab at page 44, lines 1 through 9.
20 A. Page 44?
21 Q. Page 44, I've tabbed it for you.
22 A. There are a few tabs ahead of it.
23 Q. And it's lines 2 through 9. Questions but if we're just
24 talking about a storage network with a San gateway in it,
25 without running the VPS software, does the San gateway allow

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1 secure access of storage to a host? Answer, without VPS.
2 Question, right, without VPS. Answer, I don't believe so.
3 A. Right.
4 Q. The VPS term was not the first term -- a VPS originated
5 with Pathlight, not with ADIC; is that right?
6 A. Yes.
7 Q. But the first term that you used for VPS technically at
8 Pathlight wasn't VPS. VPS is the name that came later; is
9 that right?
10 A. Yes, that's correct.
11 Q. The first name that you used was access controls, right?
12 A. It is correct, yes.
13 Q. So the name access controls was the first thing you called
14 it at Pathlight; is that right?
15 A. Yes.
16 Q. Now, let's take a look -- do you have exhibit 24 before
17 you? And I'm only interested -- offer exhibit 24 in evidence,
18 your Honor. It's the Pathlight -- it's the Pathlight web
19 site.
20 MR. BAHLER: This is the condition an one we talked
21 about?
22 MR. ALCOCK: Yes.
23 MR. BAHLER: Your Honor, counsel and I have an
24 agreement about the conditionally using this and I'll let you
25 know fully on Monday morning but I have no problem with what

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1 he's going to do with it.

2 MR. ALCOCK: Essentially, your Honor, we've discussed
3 the pages I'm going to refer to today. Counsel will check
4 over the other pages to see there's a problem.

5 THE COURT: All right.

6 MR. ALCOCK:

7 Q. And I'm going to direct your attention to page 91, which I
8 believe I've tabbed for you there.

9 A. Exhibit 24?

10 Q. Yes.

11 A. Page?

12 Q. 91 of tab 4, I believe.

13 A. There is no page number.

14 Q. Here, let me help you.

15 A. It should be the first page there.

16 Q. Right. There you go.

17 A. Thanks.

18 Q. There you go. So this is the Pathlight web site, and this
19 also discusses the VPS in connection with the San gateway; is
20 that right, sir?

21 A. Yes, that's right.

22 Q. Now, I notice here that it mentions that access control is
23 an absolute necessity for multi-host San solutions. Is that
24 an accurate statement?

25 A. If we're resource sharing in a network, sure.

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1 Q. Okay. Now, the way these products are sold, you sell the
2 hardware, the gateway product. Without software, does that
3 run?

4 A. No computer runs without software.

5 Q. Right. So you have to bundle the hardware with some
6 software in order for the product to run; is that right?

7 A. Yes. You have to have software.

8 Q. Right. And so here, if somebody wanted to buy a San
9 gateway with access controls, they'd pay whatever the San
10 gateway costs and then, they'd pay whatever the VPS cost was
11 together to get the access control; is that right?

12 A. No.

13 Q. What's wrong with that statement?

14 A. They don't pay for the VPS when they buy San gateway or
15 San router or M H S or any of our previous products. They
16 don't pay for VPS software.

17 Q. They don't pay for the software?

18 A. They can pay for it separately. They can buy that
19 capability as a separate option, software option like you
20 would buy a application separately if you pie your PC, you can
21 buy an application to do other things with your PC.

22 Q. Right, but it also can come bundled with the San gateway
23 product, right?

24 A. Only if -- see, if you have a class of customers like OEMs
25 that they go through negotiations and they say that this is a

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1 product they wanted and they said the software they can
2 install on it, they can install on it for them to make it easy
3 like, you know, you buy a bundle PC sometimes with certain
4 softwares. We don't do that generically. We don't bundle.

5 Q. Okay. And isn't that the situation that Pathlight had
6 with IBM, certainly as of the early part of 2000?

7 A. As of after the first quarter of 2000, that was the
8 situation with IBM they wanted that to be there. They
9 couldn't -- they didn't know how to handle license fees, that
10 was too complicated. They wanted to make it simple.

11 Q. So with IBM, the gateway, the price for the VPS kind of
12 was bundled into the price for the gateways; is that right?

13 A. As you heard in the previous depositions, that is correct
14 at that point.

15 Q. Okay. Let's turn to IBM. Let me hand you exhibit 49.

16 MR. BAHLER: What exhibit number, counsel?

17 MR. ALCOCK: Exhibit 49. I've got a copy for you,
18 counsel.

19 MR. BAHLER: Oh, great. Thank you.

20 MR. ALCOCK:

21 Q. Who is Mr. -- Mr. Hood was the president of Pathlight; is
22 that right?

23 A. CEO and president, yes.

24 Q. Okay. And he handled some of these negotiations with IBM
25 for these San gate way products?

1 A. He liked to handle the pricing stuff.

2 Q. Okay. Offer exhibit -- and exhibit 49 is a fax from Mr.
3 Hood to Hank Watson and then attached to that is a fax from
4 Mr. Hood to someone at IBM; is that right?

5 A. Yes.

6 Q. Offer exhibit 49 into evidence, your Honor.

7 MR. BAHLER: No objection, your Honor.

8 THE COURT: Received.

9 MR. ALCOCK:

10 Q. And looking at exhibit -- the second page of exhibit 49,
11 there's a message to this person at IBM, and I want to ask you
12 a couple of questions about that.

13 A. Sure.

14 Q. This is November 24th of 1999. Had you already closed a
15 contract with IBM as of this point?

16 A. Yeah, we competed in 1998 to win that business.

17 Q. Okay.

18 A. And we had already had the business for a year almost.

19 Q. Okay. And IBM, in order to execute on that contract, gave
20 you purchase orders to buy products; is that right?

21 A. Yes, like any other company, they have to issue purchase
22 orders, yes.

23 Q. Right. And here, in November of 1999, you were trying to
24 get IBM to accelerate, that is, to send you more purchase
25 orders; is that right?

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1 A. Were we?

2 Q. Yes.

3 A. I don't know. I mean, I really don't see that from this.

4 Q. Okay. Let me ask you on your recollection. Your
5 recollection was -- is your recollection that in the latter
6 part of 1999, the early part of 2000, you were making an
7 effort at IBM to get them to order more of these San gateway
8 products?

9 A. I don't know if there was a specifically to that period of
10 the time in our life. I mean, any company you work with, you
11 try to increase your purchase order, you increase your
12 revenue, so I'm sure we were doing that for the last six and a
13 half years that I've worked at Pathlight. So I cannot say
14 that's wrong in that period of time, I'm sure we were doing
15 the same.

16 Q. Very good. And so around that time, the VPS option
17 started to -- you started to finish developing the VPS option;
18 is that right?

19 A. Around this time yeah, we had finished.

20 Q. And here, do you remember discussions with IBM where you
21 were telling them that this VPS option that provided access
22 controls was a competitive necessity for them in selling their
23 product?

24 A. I remember a lot of times during this time, I was trying
25 to climb inside IBM, the people at IBM I was in contact with,

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1 it was a good thing for them, and they kept -- you know, it
2 was pretty tough one to do because, you know, we obvious lie
3 like to increase our value, you know, have a new option sold
4 to tour existing customers. And I remember they had -- I had
5 a pretty tough job convincing them because they continuously
6 thought that they don't need it. I continuously tried to
7 convince them it's a good thing to have because of X Y Z
8 reasons.

9 And I remember this discussion still went on for a
10 while. I still haven't succeeded through today.

11 Q. Okay. So you and others at Pathlight were pushing this
12 VPS option with access controls to increase your sales to them
13 here around the ends of 1999, fair to say?

14 A. Not only that, a number of other software options that we
15 had developed which we thought to sell to IBM. It's good to
16 have software option to increase your revenue, so we tried to
17 do -- push those, as well. So I had continuous, you know,
18 every few months meetings with IBM to do that.

19 Q. Okay. The date on this is November 24th of 1999. When
20 did you learn about the Crossroads patent that brings us here
21 today?

22 A. Do you want me to be exact?

23 Q. What's your best recollection?

24 A. It was 18 November 1999.

25 Q. Okay. Let me hand you a series of exhibits. For the

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1 A. All of that.

2 Q. It will go pretty quick.

3 A. Okay.

4 Q. Let's start with exhibit 68. This is an e-mail from Mr.
5 DeWilde to, among other people, you, dated November 15th,
6 1999; is that right, sir?

7 A. Yes.

8 Q. Offer exhibit in evidence, your Honor.

9 MR. BAHLER: No objection, your Honor.

10 THE COURT: Received.

11 MR. ALCOCK:

12 Q. So on November 15th, Mr. DeWilde sent you a e-mail that
13 contained a zip file with images of the patent. Hold on one
14 second. There we go. Thanks. Now, did you -- when you say
15 images of the patent, that meant the pages of the patent so
16 you could review and analyze them, is that right?

17 A. Yes.

18 Q. Okay. Now, the first thing that he says is that it
19 impacts heavily, it impacts P T 109 and P T 107 heavily as
20 well as P T I-106. Those are patent applications that
21 Pathlight was working on for this VPS software, weren't they?

22 A. No, sir.

23 Q. They were patent applications, were they not?

24 A. They were patent applications, but none of them had
25

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1 anything to do with VPS. That's right.

2 Q. Okay. And then, it goes on to saying other things about
3 the Crossroads patent being an obvious derivative of the
4 market product. Now, what did you do with this information?

5 A. Well, that's a good question. As soon as I saw that
6 e-mail, I noticed that the addressee and the e-mail, the copy
7 list, there is a patent, one says patents if you look at this
8 evidence or exhibit. So patents right there is the e-mail
9 address to our patent lawyers.

10 So when I saw that, I realized that Mr. DeWilde had
11 done the right thing, not only did he immediately inform me,
12 also, he informed our patent lawyers at the same time.

13 Q. Okay. Can I move to exhibit 69, which is the next exhibit
14 in order? And this is an e-mail --

15 A: Sure.

16 Q. From you to a number of folks. Offer exhibit 69, your
17 Honor?

18 MR. BAHLER: No objection, your Honor.

19 THE COURT: Received.

20 MR. ALCOCK:

21 Q. And this exhibit is a letter to mark. Is that Mark Levy,
22 the company patent attorney?

23 A. Yes, Salzman and Levy, Mark Levy is the main partner.

24 Q. Okay. And, in addition, so you want them to do two things
25 in this e-mail. You want them to know -- you want them to

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1 advise you on this letter and that matter is the Crossroads
2 972 patent; is that right?

3 A. Absolutely, yes, sir.

4 Q. Okay. And then, the second is to clarify current patents
5 and make sure they are valid and enforceable. What was the
6 relationship between the Crossroads 972 patent and your own
7 patents?

8 A. Oh, as you can see my depositions when I was asked what do
9 I think about what was my first reaction to 972 patent, I
10 thought it was invalid as a person, as somebody who has some
11 experience in this field. And we at Pathlight, they're very
12 careful about spending money. I had to really discuss patent
13 stuff with my --

14 Q. Excuse me, Mr. Rahmani. My question was very simple. My
15 question --

16 A. I apologize.

17 Q. What was the relationship between the 972 patent?

18 A. Right.

19 Q. And the current Pathlight --

20 A. I understand your question. I apologize for going off for
21 a while. I didn't want to spend our money, 10, \$15,000 and
22 get a patent which somebody else will find invalid or
23 unenforceable. That was my mind at realizing our patent
24 lawyers or my technical staff which were copied on it that
25 please do not waste our money trying to get an invalid or

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1 unenforceable patent.

2 That was my advice to the team. So I was asking for
3 their opinion about the patent, the 972 patent, what should we
4 do about it and, also, giving them direction not to do
5 anything, any patent like that.

6 Q. Very good. So did you then met with Mr. Levy sometime in
7 the latter part of December of 1999; is that right?

8 A. Pardon?

9 Q. You met with Mr. Levy sometime in the latter part of
10 December of 1999?

11 A. Yes, actually, in my e-mail, I encouraged him to attend to
12 this as soon as he can. I think we met towards the end of,
13 you know, that year.

14 Q. Okay. And at that meeting, he agreed to analyze the
15 situation and provide you something in writing; is that right?

16 A. Honestly it was the first time I had come across this
17 situation. I asked our patent lawyer what we should do and he
18 said that he should investigate this and inform us in writing.

19 Q. Okay.

20 A. What he thinks.

21 Q. So the answer to my question is yes, at that meeting, he
22 agreed to investigate the situation and send you a letter on
23 the subject; is that right?

24 A. Yes.

25 Q. Okay. So that's late December 1999. Did you get a letter

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1 in January?

2 A. I don't think so.

3 Q. Did you get a letter in February?

4 A. I don't remember when was the exact time that I actually
5 got a written opinion from him. I was in regular contact with
6 him, trying to make sure that that progressed.

7 Q. Okay. Could you take a look at exhibit 75. Offer in
8 evidence, your Honor. This is an e-mail to mark and Dave from
9 you.

10 MR. GARRETT: No objection, your Honor.

11 THE COURT: It's received.

12 MR. ALCOCK:

13 Q. So this is an e-mail from you on February 25th, 2000 at
14 2:40 a.m. in the morning to you mentioned earlier that that
15 patents group included Mr. Levy; is that right?

16 A. Yes, patent, yes.

17 Q. So this was an e-mail to Mr. Levy as well as others at
18 Pathlight; isn't that right?

19 A. It's Mark DeWilde and Dave.

20 Q. Right. And what had happened is mark had put together a
21 bunch of information for Mr. Levy to look at; is that right?

22 A. Yes, sir.

23 Q. And if you look at the bottom of this e-mail, there's an
24 indication that Mr. DeWilde had sent that to him on February
25 24th at 6:02 in the afternoon; is that right?

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- 1 A. Yes.
- 2 Q. Okay. So on February 24th, some information went to Mr.
3 Levy and on February 25th at 2:45 a.m., you were asking from
4 Mr. Levy when he could complete the report based upon the
5 information that he had just got; is that right?
- 6 A. Do you want me to read my e-mail to answer that question?
- 7 Q. Yes, sir.
- 8 A. Sorry.
- 9 Q. Okay. So you met in December 23rd -- in December of 1999,
10 he was sent some information on February 24th of 2000, and now
11 you're asking him when his report can be completed; is that
12 correct?
- 13 A. That is correct as long as it's not exclusive to the
14 statement that we did send a lot of information within those
15 two dates.
- 16 Q. Okay. And we'll be talking with Mr. Levy next week to see
17 exactly what that was.
- 18 A. Sure.
- 19 Q. On the bottom of the e-mail, you also indicate that Greg,
20 who's that Greg Prestus?
- 21 A. Greg Prestus, yeah.
- 22 Q. Right. He's trying to complete his write-up on the VPS
23 patent. Is the VPS patent the patent that was going to cover
24 the VPS software?
- 25 A. Yes.

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1 Q. Okay. And so, Mr. Levy at the same time as he was
2 analyzing the 972 patent was also working on a write-up of the
3 VPS patent; is that right?

4 A. Well, I really don't know if he was doing it at the same
5 time or different people as they were doing their jobs. I
6 really can't comment.

7 Q. Okay. But at least from the point of view, you, the
8 client, you're telling him to work on those two things, and
9 you're telling him that there is some business urgency to
10 getting that VPS patent application done; is that right?

11 A. Yeah, we had a number of patents that salesman and Levy
12 was working as applications to complete, and yes, I said that
13 there is, you know, there is business urgency.

14 Q. Very good. Now, do you have exhibit 70 up there, sir?
15 Should be the last one in the package. It's the letter from
16 Mr. Levy, dated April 4th, 2000.

17 A. 7?

18 Q. 70. The last one in the package, sir. Right.

19 A. It has two numbers, 70 and 81.

20 Q. Right. Deposition exhibit. Offer exhibit 70 into
21 evidence, your Honor?

22 MR. BAHLER: No objection.

23 THE COURT: It's received.

24 MR. ALCOCK:

25 Q. So here is the letter that you got from Mr. Levy and it's

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1 dated April 10th of 2000; is that right?

2 A. This whole document, yeah we got from them.

3 Q. Okay. And this is the letter that you said you relied on
4 to keep selling the San gateway San router and VPS router; is
5 that right?

6 A. It was the whole opinion I was waiting for, not just the
7 cover letter.

8 Q. I understand, but obvious/-I didn't mean just the first
9 page but the whole letter; is that right?

10 A. Yes, the whole opinion.

11 Q. Okay. Now, Mr. Levy's letter doesn't say that the
12 Pathlight products lack any elements of the claims of the 972
13 patent; is that right?

14 A. I really can read the conclusion for the jury if you want
15 me to read it instead of interpreting what it says. It does
16 not say.

17 Q. Well, forget about the document for a moment. You had
18 talked over with Mr. Levy on multiple occasions between
19 December and April of what to do with this 972 patent; is that
20 right?

21 A. Yes.

22 Q. Okay. And at the end of the day, his opinion letter deals
23 with invalidity and invalidity only. It doesn't say that the
24 products don't infringe; is that right?

25 A. He based his opinion on anticipation and obviousness. I

1 think that they're prior arts. There's so many prior arts
2 during this part. So that was his opinion.

3 Q. Right. Not that your products didn't have the elements of
4 the claims?

5 A. No. I think he concentrated on the obviousness and
6 anticipation of the prior arts.

7 Q. Okay. And so one of the things that he determined was
8 that this access control feature was old, not new, and it was
9 found in the prior art; is that right?

10 A. Yes.

11 Q. Okay. And if you could take a look at, for example, it's
12 page 18 of the letter. I'll put it up on the screen for you.
13 There's a chart at the end that kind of compares top patent to
14 pieces of the prior art, and Mr. Levy is setting forth where
15 in the prior art various elements of the claims are found; is
16 that right?

17 A. I believe that was the intention, yes.

18 Q. Right. And so here, Mr. Levy is telling you that there
19 are one, two, three different pieces of prior art that have
20 this access control feature, that is, Crossroads didn't invent
21 it, that this was old. At least by these pieces of prior art;
22 is that right?

23 A. Not exactly.

24 Q. Okay. What's your understanding?

25 A. On the left, it says to maintain a configuration for the

1 SCSI storage devices that maps between Fibre Channel and SCSI
2 storage devices. We never felt this was our opinion and our
3 patent lawyer's opinion that that had anything to do with
4 access control, for example. And our products like the SSA
5 SCSI, image agent one in 1996, '97, they're always doing that.

6 So that part has a reference by itself and the access
7 control which is the next sentence that implements access
8 controls for storage space, that has another reference.

9 Q. That's what I was getting to that the implement access
10 controls feature of the Crossroads device Mr. Levy is telling
11 you is old based upon these references; is that right?

12 A. Yes.

13 Q. And you believe that and it was on the basis of that
14 belief that you went forward?

15 A. I went forward on the basis of this hole opinion and what
16 our legal attorney said, not just that statement.

17 Q. I understand. But you don't disagree with this statement?

18 A. No, I don't.

19 Q. In fact, Mr. Rahmani, three days before you got this
20 letter, you filed a patent application that stated that access
21 controls were an invention and they were your invention; isn't
22 that right?

23 A. No, sir.

24 Q. Let me hand you exhibit 231 and 232. Could you identify
25 exhibit 231, sir?

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- 1 A. It's a letter from Salzman and Levy to Mark DeWilde.
- 2 Q. And it's dated February 8, 2000?
- 3 A. February 8, 2001.
- 4 Q. And it reference es -- I'm sorry. And it references a
- 5 docket No. P T I-108?
- 6 A. Yes.
- 7 Q. And it says the above identified patent application was
- 8 filed on April 7th, 2000. Do you see that?
- 9 A. Yes, April 7th, 2000.
- 10 Q. Okay. Now, if you could turn to exhibit 232, there's a
- 11 cover letter from Mark Levy to Mark DeWilde dated October 4,
- 12 2000?
- 13 A. Yeah.
- 14 Q. And if you turn the page, there's a application for United
- 15 States letters patent, and it has a docket No. P T I-108 on
- 16 it, do you see that, sir?
- 17 A. Yes.
- 18 Q. Okay. Offer exhibits 231 and 232 into evidence, your
- 19 Honor.
- 20 MR. BAHLER: No objection, your Honor.
- 21 MR. ALCOCK:
- 22 Q. And if you look down, there are inventors listed there?
- 23 A. Yes.
- 24 Q. And you're one of the inventors, right?
- 25 A. Yes.

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1 Q. And when you file one of these patent applications, you
2 have to sign an oath saying that what's in the application is
3 true and correct; is that right?

4 A. Yes.

5 Q. Could you take a look at page 20 and I'm going to direct
6 your attention to around about lines 9 through 15. Do you see
7 that, sir?

8 A. Yes.

9 Q. End to end access control. That's access control between
10 a work station and a remote storage devices; is that right?

11 A. Yes.

12 Q. And you're saying to the Patent Office that this is one of
13 the most significant advantages realized by the instant
14 invention. This is the patent application on the VPS
15 software, right?

16 A. No, sir.

17 Q. This patent application has nothing to do with the VPS
18 software?

19 A. Do you want me to explain this to the jury?

20 THE COURT: Just answer the question.

21 A. So what is the answer -- question, sir?

22 MR. ALCOCK:

23 Q. The question is whether or not this patent application
24 covers the VPS software or at least some aspects of it?

25 A. Some aspects of it?

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1 Q. Yes, sir.

2 A. Absolutely does implementation of the VPS access as you
3 refer here, it says complete end to end across control with no
4 performance degradation. It's an implementation matter. It is
5 implementing access control without degradation. That is not
6 access control itself.

7 Q. I have no further questions, your Honor.

8 A. Sure.

9 MR. BAHLER: Your Honor, subject to calling Mr.
10 Rahmani in our case, I have no questions at this time.

11 THE COURT: All right. You may step down, sir. You
12 may call your next witness.

13 MR. ALBRIGHT: May we approach the bench?

14 THE COURT: Sure.

15 (At the bench, on the record.)

16 MR. ALBRIGHT: Your Honor, our next witness we'd offer
17 is a gentleman named Kenneth Kuffner, who's the patent
18 attorney, and we would call him to testify about a couple of
19 things. We'd like him to do a tutorial and that the Patent
20 Office does. We think that that was called into question by
21 the opening argument. We will also have him testify with
22 respect to what the standard and care Mark Levy used in
23 preparing his invalidity opinion. We're not going to have him
24 do any definitions. We're not going to have him tell the jury
25 for example what access control is or whether these products

1 infringed that. We simply want him to let the jury know the
2 standard of care that the patent office uses and the standard
3 of care with respect to what a patent attorney does in giving
4 an opinion.

5 They're going to be allowed to call Mr. Levy to tell
6 the jury what he did, we ought to be able to put that into
7 proper context for the jury.

8 MR. GILLETTE: We have several different problems with
9 that. Three of those problems are raised in the motion in
10 limine that your Honor denied that I'll address those first.
11 But we've also got some separate and apart from those. There
12 are three problems: Number one, Mr. Kuffner's report has an
13 extensive, extensive, maybe half of it, at least, is
14 discussing what case law should be applied.

15 MR. ALCOCK: We're not going into that.

16 THE COURT: That's hearsay.

17 MR. GILLETTE: Not his report, but I'm concerned that
18 they're going to ask Mr. Kuffner why he think Mr. Levy's
19 opinion's bad and he's going to cite a case. I can't
20 cross-examine Mr. Kuffner by saying, well, here's what the
21 Circuit decided last week and the Circuit decided this week.

22 THE COURT: We'll cut him off at the least on that.

23 MR. GILLETTE: Number two problem --

24 THE COURT: As long as you can stand up and object
25 like a lawyer, you're not going to have a problem with those

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1 things. What's your number two?

2 MR. GILLETTE: Number two is this is based on what we
3 found in Mr. Kuffner's report. He has got a lot of statements
4 that hearsay testimony --

5 THE COURT: He's not going to --

6 MR. GILLETTE: I understand that, but we filed a
7 motion in limine to prevent Mr. Kuffner --

8 THE COURT: Y'all filed over as close to I figure
9 2,000 pages of motions in limine and I overruled them because
10 I'm not going to read them. Now --

11 MR. BAHLER: I think with respect to -- I don't think
12 we're going to have a problem with that at all. I think if
13 Mr. Albright stays within bounds that he's represented and the
14 stuff that was in our motion in limine, we don't want him
15 talking about what he thinks about what they say.

16 THE COURT: I don't know what he's going to say. I
17 don't know what he's going to be asked. He's not going to
18 give any legal opinions.

19 MR. GILLETTE: That's fine. There's one more issue at
20 the risk of going too far. Number three --

21 THE COURT: Three strikes and you're out, so let's go
22 on.

23 MR. GILLETTE: We're concerned that again, that Mr.
24 Kuffner will talk about what was argued with respect to claim
25 interpretation.

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1 MR. ALBRIGHT: We're not --

2 MR. GILLETTE: You're not going to do that. That's
3 fine.

4 THE COURT: See, it's so easy. All right.

5 MR. ALBRIGHT: Your Honor, we could call Mr. Kenneth
6 Kuffner.

7 THE COURT: Come forward, please, sir, and be sworn.
8 Just stand right there.

9 (Witness was sworn.)

10 THE COURT: If you'll have a seat, please. Tell us
11 your full name, please, sir, and spell your last.

12 THE WITNESS: Kenneth Edwin Kuffner, K U F F N E R.

13 DIRECT EXAMINATION

14 BY MR. ALBRIGHT:

15 Q. Mr. Kuffner, would you tell the jury what your
16 professional background is, please?

17 A. Yes, I'm a patent attorney.

18 Q. And what does that mean?

19 A. It means that I have been -- I'm an attorney and I have
20 been registered, also, to practice before the patent and
21 trademark office in patent matters.

22 Q. Okay, sir. Just flush that out for a minute or two. Tell
23 the jury a little bit about your back grounds and expertise in
24 having prosecuted patents.

25 A. It starts out with a technical degree. I had an

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1 engineering degree and worked in industry as an engineer for
2 several years. Then, I decided to go to law school. I went
3 to law school in Washington, D.C. and while I was going to law
4 school, worked at the patent and trademark office as an
5 examiner.

6 When I received my degree, I was appointed to work at
7 the court of appeals that hears appeals in patent matters from
8 the patent and trademark office, and I worked there for two
9 years. Following that, I came to Texas. I'd been practicing
10 in Houston for the last 30 years as a practicing patent
11 attorney.

12 Q. Have you ever prosecuted a patent?

13 A. I have.

14 Q. Have you ever prepared a patent application?

15 A. I have prepared many.

16 Q. Have you ever prepared any opinions with regard to
17 invalidity or non infringement?

18 A. I have prepared many. I have done that as a regular part
19 of my work for over 30 years.

20 Q. As a matter of fact, you used to be in the same law firm
21 for a little while with some of the folks that are in this law
22 firm right here, correct?

23 A. Yes, I say to them sometimes I taught them everything they
24 know.

25 MR. BAHLER: Objection. Move to strike.

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1 A. I'll withdraw.

2 Q. (BY MR. ALBRIGHT) Your Honor, I apologize. I would offer
3 him as an expert with respect to the matters of patent
4 practices and procedure.

5 THE COURT: Any questions?

6 MR. GILLETTE: No, your Honor.

7 THE COURT: All right.

8 MR. ALBRIGHT: Thank you, sir.

9 THE COURT: Members of the jury, an expert witness is
10 merely a person who by experience, training or education is
11 permitted to give opinions, and the fact that this gentleman
12 is an expert and I will allow him to testify as an expert
13 doesn't mean anything out of the ordinary. You will evaluate
14 his testimony as you would any other.

15 MR. ALBRIGHT: Thank you, sir.

16 Q. (BY MR. ALBRIGHT) And we're paying for your time here
17 today, are you not?

18 A. Yes, you are.

19 Q. How many hours have you worked on this case?

20 A. I've billed approximately 90 hours in this case since I
21 was first hired.

22 Q. And briefly what have you done in those 90 hours?

23 A. It started out with an evaluation of an awful lot of
24 documents. They were deposition transcripts, they were
25 technical documents, nay were patent documents and there was

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1 the, of course, the patent itself that's at issue here and the
2 application and the opinion of Mr. Levy.

3 Q. Mr. Kuffner, how much do you charge per hour?

4 A. I charge for this case my regular hourly rate for
5 consultation of this type is \$350 an hour.

6 Q. Thank you, sir. Now, turning to what happens at the
7 Patent Office, you've got a patent, the invention has to be
8 new, correct?

9 A. That's right.

10 Q. But sometimes this is a combination of things that are
11 old; is that fair?

12 A. Just about every invention that you could think of is a
13 combination of elements. If it's a method invention, it's a
14 combination of steps. But most of the elements are already
15 from the prior art. They're old.

16 Q. Could you give us an example, for example, could you think
17 of an example to give the jury?

18 A. Oh, maybe a good example would be the intermittent
19 windshield wipers that are in most cars today. That's a
20 patented invention, and at the time that that was patented,
21 windshield wipers were old and mechanisms to control them were
22 old, and motors that could be used to intermittently move
23 something were old.

24 But this was the first time that it was all put
25 together in a combination, and so the Patent Office issued a

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1 patent on the combination of windshield wipers with an
2 intermittent motor to enable them to be stopped, started and
3 moved at different speeds.

4 Q. And so, basically, if you're going to file a patent
5 application, it requires a technical disclosure, right?

6 A. That's right.

7 Q. Specifications, drawing claimed, correct?

8 A. Yes. Patent attorneys sometimes refer to the
9 specification -- it includes the technical disclosure part of
10 the application. It includes the claims, includes the
11 drawings.

12 Q. Okay.

13 A. Sometimes we call the specification the technical
14 disclosure part.

15 Q. It's filed with the P T O or the patent office, correct?

16 A. Yes.

17 Q. Now, who works at a Patent Office? Who looks at these
18 applications when they come in?

19 A. Every application for a patent is examined to determine
20 whether or not it meets certain standards. There are, I
21 heard, asserted and I confirm it that there are over 100,000
22 applications filed every year, but all of the technology, as
23 best they can do it, is broken down into thousands of
24 categories, classes and sub classes of technology.

25 And there are technically trained people, only with

1 lots of experience, some also who are lawyers or who are going 2
2 technology that they're in charge of. There's over 3,000, I
3 believe, at this time in the patent and trademark office, and
4 they're called patent examiners and they're the ones who are
5 responsible principally for an application and for issuing
6 patents.

7 Q. And do each one of those 3,000 examiners have, in essence,
8 sort of cubby hole of expertise?

9 A. That's right. It's a good word. They're kind of -- I
10 think the 3,000 of them are maybe broken down into over 100
11 units called art units where all of the electrical stuff is in
12 one place, all of the chemical stuff is in another place. And
13 even in those art units, the examiners each have their own
14 little cubby hole specialty.

15 When I was a patent examiner, my little cubby hole
16 specialty was plastics made of foam, made with foam. And I
17 did all the applications in that area.

18 Q. Hard to understand why rude give that up to go to law
19 school?

20 A. It's hard to understand.

21 Q. Now, Mr. Kuffner --

22 THE COURT: Counsel, that's twice. Let's just ask
23 questions and let's get answers.

24 MR. ALBRIGHT: Yes, sir.

25

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1 THE COURT: If you want humor, we'll turn the
2 television on.

3 MR. ALBRIGHT: Yes, sir.

4 Q. (BY MR. ALBRIGHT) Mr. Kuffner, with respect to the
5 patent, the 972 patent, the technology that's involved in
6 that, or for example, with the VPS patent that Pathlight has
7 applied for?

8 A. Yes.

9 Q. That wouldn't go to someone for example at the Patent
10 Office that had a zoology background, correct?

11 A. No. When an application comes in, the subject matter of
12 the claims is analyzed and categorized in these different
13 areas of technology and they're sent to examining groups that
14 examine those particular areas of technology.

15 Q. Okay. If I could have slide exhibit -- demonstrative
16 exhibit 587, please. If you'd step down, Mr. Kuffner, and
17 quickly run for the jury what these different steps are.

18 A. This represents what happens in the Patent Office and
19 actually, up here, the technical disclosure is put into the
20 patent application along with claims. Claims are the
21 description of the invention that we're seeking to be
22 patented. If you can envision it in a property sense, they're
23 kind of like the meets and bounds of the property. They're
24 the -- the word description of the subject matter that we're
25 seeking to get patented.

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1 And that's --

2 Q. There Kuffner, can you could just point out the different
3 parts to jury and I'm going to move on to another slide.

4 A. All right. The application is filed, as I said, it's
5 going to an examiner in a particular technology, and then, the
6 examiner does his examination and issues his ruling. If in
7 his ruling claims are allowed, he issues a notice of
8 allowance, and then you Fey the issue fee and get the patent.

9 If the claims are not allowed, he issues his reasons
10 for not allowing them, and there's an opportunity to respond
11 and either amend the claims or give arguments to show
12 technically why he may be didn't interpret the claims right or
13 --

14 Q. Okay. Mr. Kuffner, I'm going to move on to the next.

15 A. I'm ready.

16 Q. Okay. If you'd explain basically how claims work to the
17 jury, sir.

18 A. In this figure, we've --

19 Q. That's demonstrative exhibit 588.

20 A. We chosen as a simple example the screwdriver that if
21 you'll remember Mr. Alcock talked about that at the beginning.
22 Here's a description that might be applied to a screwdriver.
23 It's the technical disclosure part, if you will. A tool to
24 turn a fastener through the application of force. The tool
25 consists of a handle, preferably made of plastic. It's giving

1 the kind of references that the inventors want.

2 For gripping and a shaft, the tip of which engages a
3 fastener such as a screw or bolt. The lawyers typically would
4 take that technical description and write something that is a
5 little bit more formal, called a claim, and they would
6 typically refer to a drawing, give it numbers.

7 This is the handle portion, the shaft portion, this is
8 the tip portion. So the claim might read something like a
9 screwdriver consisting of a handle, a shaft, attached to the
10 handle, and that shaft having a tip portion, which engages the
11 screw. That's what a claim would be.

12 Q. Thank you, Mr. Kuffner. Let me move very quickly to the
13 topic of product art that are asked to show to the Patent
14 Office.

15 A. Yes.

16 Q. Does the Patent Office expect the person applying for an
17 application to give them every single piece of paper that
18 might possibly relate?

19 A. No. There are rules around what must be disclosed. The
20 examiner certainly does his own serve, but expects any
21 applicant to provide copies of what the applicants consider to
22 be the closest prior art, and/or discuss the closest prior art
23 so the examination process is actually done on what everybody
24 agrees is the closest prior art.

25 Q. And Mr. Kuffner, we're going to move to the subject of the

1 letter that Mr. Levy prepared. You've reviewed the letter,
2 the April 10th letter that Mr. Levy prepared, have you not?

3 A. I have.

4 Q. Okay. Did you review the prior art that he reviewed, sir?

5 A. Yes, I reviewed the prior art that was attached to Mr.
6 Levy's letter.

7 Q. Mr. Levy found the 972 patent was invalid, correct?

8 MR. GILLETTE: Objection, leading.

9 A. That's right.

10 THE COURT: It is leading.

11 Q. (BY MR. ALBRIGHT) Okay. Would you tell the jury what he
12 based -- what prior art he based his decision on?

13 A. Mr. Levy made an opinion that the 972 patent was invalid
14 for obviousness. He cited a series --

15 Q. Let me stop you. I don't know if the jury's ever heard of
16 obviousness before. Would you tell the jury what obviousness
17 means?

18 A. I mentioned before that there were standards against which
19 an invention has to be measured to be sure that it's
20 patentable and anticipation is one of them. Obviousness is
21 another one. Obviousness comes from the statute basically the
22 invention to be a patentable invention has to meet the
23 standard that at the time of the invention it would not have
24 been obvious to a person having ordinary skill in the
25 pertinent art.

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1 Q. What is a person of ordinary skill in the pertinent art?

2 A. It's an imaginary person, kind of like the reasonably
3 prudent man in other instances. It's a factor that has to be
4 taken into account by the Patent Office and any evaluation of
5 a patent.

6 Q. And Mr. Kuffner, Mr. Rahmani this morning stated that the
7 letter contained an anticipation basis for invalidity. Did
8 Mr. Levy's opinion, in fact, contain anything about
9 anticipation?

10 A. No. In my analysis of it, it clearly limited only to an
11 obviousness conclusion.

12 Q. Did Mr. Levy dispute whether or not the product infringed
13 the 972 patent?

14 A. There's no discussion at all in the Levy letter about
15 infringement or whether or not any of the claims meet any
16 product.

17 Q. Do you believe that the Levy opinion was competition?

18 A. No. Under the practices I have done it and as I
19 understand it, it wasn't what would be considered a competent
20 opinion that should be relied upon to avoid any charge of
21 willful infringement.

22 Q. Was it done objectively?

23 A. Where it needs to be it's subjective rather than
24 objective. Where it needs to be --

25 Q. Mr. Kuffner, what do you mean where it ought to be

1 objected it's subjective?

2 A. In the analysis of the references in the analysis of the
3 claims, there are certain assertions by Mr. Levy that aren't
4 really backed up, and this is where it needs to be more
5 objective to be that competent opinion, but instead, we get
6 Mr. Levy's -- either it's his or that which he was given by
7 the engineers, the opinion.

8 Q. What do you mean he was given by the engineer? What
9 engineers gave him the information he considered to make his
10 opinion?

11 A. Well, it's clear from the evidence that I saw it in the
12 deposition, it was the engineers from Pathlight who provided
13 him with certain documentation that was internal Pathlight
14 documentation about certain Pathlight products that they said
15 had been on sale.

16 Q. Okay. How critical is it that an opinion like Mr. Levy's
17 opinion be done in an independent objective manner?

18 A. It's absolutely essential. It must be shown that it isn't
19 simply a rubber stamp or an internal opinion. It has to be
20 shown that it was objectively independent of any
21 considerations of who was paying him or why. And it seems
22 like, for example, he took the pieces, the technical
23 documentation and there's no indication in the opinion whether
24 he even considered that they were internal documents, and how
25 they qualify as prior art under the statute wasn't even

1 discussed.

2 So --

3 Q. Did he do an analysis of access controls?

4 A. I wouldn't call it an analysis. He did it -- he did break
5 down the claims and mentioned that there was one of the
6 elements, the element that mentions access controls was
7 inherent in a particular piece of technology.

8 Q. That was what we just had Mr. Alcock show the jury?

9 A. Yes, and for me, that's what I mean when I say it's not
10 independent, it's subjective when it should be objective. It
11 merely asserts that it was inherent. It doesn't explain why.

12 Q. Do you believe, Mr. Kuffner, that he spent sufficient time
13 in the preparation of his opinion?

14 A. Well, I read his deposition and, also, the documents that
15 were attached to his deposition, one of which was the invoices
16 that he presented for this work. And I was amazed at how
17 little time he had spent on analysis like this --

18 Q. Mr. Kuffner, how much time would you ordinarily expect to
19 prepare an opinion on validity or non infringement?

20 A. On a technical application like this, particularly where
21 the references were technical references that hadn't been
22 considered by the patent and trademark office and they're
23 required to be certain amounts of investigation done, I would
24 say anywhere from 25 to 50 hours.

25 Q. Do you know how many Mr. Levy spent?

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1 Q. Did he do a claim construction?

2 A. He did no claim construction.

3 Q. How critical would it have been to do a claim
4 construction?

5 A. At least for the last several years, every patent attorney
6 knows that before a validity or an infringement of a patent
7 can be considered, the claims have to be interpreted. So that
8 would be the first thing that would go into an opinion such as
9 this. And he didn't do that.

10 Q. So the first thing you would expect was absent?

11 A. Yes.

12 Q. To summarize, Mr. Kuffner, do you have an opinion as to
13 whether or not Mr. Levy's opinion was reliable?

14 A. It was not reliable in my opinion. It was not competent
15 and doesn't deserve to be relied upon for the purposes that
16 it's presented.

17 Q. Thank you. Pass the witness.

18 CROSS-EXAMINATION

19 BY MR. GILLETTE:

20 Q. Good morning.

21 A. Hi.

22 Q. Now, Mr. Kuffner, you said that Mr. Levy's opinion wasn't
23 competent because he relied on what Pathlight provided him,
24 correct?

25

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- 1 A. That was one of the reasons I gave, yes.
- 2 Q. Now, would Mr. Levy had been better off if he had
3 information about prior art that Crossroads knew about instead
4 of what Pathlight provided him?
- 5 A. Better off in what sense?
- 6 Q. Better off than what his opinion actually contained?
- 7 A. The point wasn't so much as to where he got them but,
8 rather, what they represented, were they prior art, how were
9 they prior art, and what they showed.
- 10 Q. What do you think Mr. Levy's opinion would be more
11 competent if he had the information that Pathlight knew about
12 or the information that Crossroads knew about?
- 13 A. If you want me to give an opinion off the top of my head
14 right now? Is that what you're asking?
- 15 Q. That's what I'm asking.
- 16 A. I don't think it would matter.
- 17 Q. Now, is Mr. Levy registered to practice before the Patent
18 Office?
- 19 A. I understand that.
- 20 Q. Okay.
- 21 A. This is not about Mr. Levy, it's about the opinion.
- 22 Q. Just -- okay. Mr. Kuffner, was Mr. Levy experienced in
23 computer storage?
- 24 A. I don't know that. I assumed that from the fact that he
25 was working on several applications.

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- 1 Q. Are you an expert in computer storage?
- 2 A. Not at all.
- 3 Q. Are you an expert in electrical engineering?
- 4 A. Not at all.
- 5 Q. Are you an expert in software engineering?
- 6 A. No.
- 7 Q. Do you have any experience in computer storage?
- 8 A. You mean other than knowing what it is, I have never
- 9 designed any or written any applications on that kind of
- 10 thing.
- 11 Q. And when you were in the Patent Office, you examined
- 12 chemical-related patents?
- 13 A. Polymer technology.
- 14 Q. Not a single computer soft waiver patent?
- 15 A. That's right.
- 16 Q. Not a single electrical engineering patent?
- 17 A. That's right.
- 18 Q. And have you ever worked as a patent attorney for a
- 19 company that makes computer -- let me back up. Do you know
- 20 what companies Mr. Levy has worked for as a patent attorney?
- 21 A. No.
- 22 Q. Do you know that he's worked for IBM as a patent attorney?
- 23 A. I didn't --
- 24 Q. You didn't know that?
- 25 A. I don't recall that I was given that information.

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1 Q. Did you know --
2 A. Might have been in his deposition.
3 Q. Did you know that Mr. Levy has written over 50 patent
4 applications for IBM?
5 A. I wouldn't be surprised.
6 Q. Did you know that he has written hardware and software
7 manuals for Hewlett Packard and digital equipment corporation?
8 A. Is that in his deposition?
9 Q. Did you know that Mr. --
10 A. If it is in his deposition, I learned it.
11 Q. Did you know that Mr. Levy had worked for Pitney-Bowes as
12 a patent attorney?
13 A. Same answer, if it was in his deposition, I learned it.
14 Q. Now, when you were hired by gray -- the gray carry folks
15 here to work on this case, had you ever done any work on
16 storage routers before?
17 A. No, sir.
18 Q. This was your very first exposure to Fibre Channel to SCSI
19 storage routers?
20 A. I had never done any work on Fibre Channel to SCSI
21 routers.
22 Q. And so it would take you a lot longer to write an opinion
23 about patents on those products than Mr. Levy, wouldn't it?
24 A. If I were asked to write an opinion on a patent to those
25 products I would get one of my partners or associates would be

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1 appropriate technical background to do that.
2 Q. You wouldn't do it yourself?
3 A. I wouldn't do it myself.
4 Q. And you didn't do it yourself, did you?
5 A. Didn't do what?
6 Q. Did you write any opinion about whether or not this 972
7 patent was valid?
8 A. No.
9 Q. You didn't compare the claims of the 972 patent to any
10 prior art. You didn't do that yourself?
11 A. No, I didn't.
12 Q. Do you have any opinion here whatsoever as to whether or
13 not the 972 patent is valid?
14 A. Yes.
15 Q. What is your opinion on that?
16 A. I believe it's presumptively valid because it's an issued
17 patent.
18 Q. Have you done any analysis comparing the claims of the 972
19 patent the prior art?
20 A. No, I haven't.
21 Q. None whatsoever?
22 A. Only to compare what Mr. Levy had done.
23 Q. You didn't look at the prior art and compare element by
24 element with the claims?
25 A. No, I didn't.

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1 Q. Now, does Pathlight have any in-house patent lawyers?
2 A. I don't know that.
3 Q. You don't know one way or another?
4 A. I assumed from what I read that Mr. Levy operated
5 essentially as in-house along with his associate.
6 Q. You assume that?
7 A. Because he was the only one that they ever talked to about
8 patent matters.
9 Q. Mr. Levy was busy preparing patent applications for IBM as
10 well as his other claims?
11 A. Was he? I don't know that.
12 Q. You don't know? Now, the opinion that Mr. Levy wrote was
13 addressed to Mr. Rahmani over here, wasn't it?
14 A. Yes.
15 Q. And is Mr. Rahmani a patent lawyer?
16 A. If he was, I think I would have heard that this morning.
17 Q. Now, was there anybody at Pathlight that could look at Mr.
18 Levy's opinion and say, this opinion is incompetent?
19 A. I think that's the point, Mr. Gillette. The opinion has
20 to be at least sufficiently explainable and objectively and
21 authoritatively written so that those at the client who were
22 responsible could make the determination whether or not they
23 should continue whatever it is they're doing.
24 Q. My question was who at Pathlight would look at this
25

1 and say, this opinion is incompetent?

2 A. I can't answer that.

3 Q. You don't know who?

4 A. I can't answer that.

5 Q. Do you know if anybody at Pathlight that would look at

6 this opinion and say, this opinion is unreliable and

7 incompetent?

8 A. I can't answer that because I don't know if anybody knows

9 what that means. That's an objective determination words that

10 I've used.

11 Q. Do you think Pathlight should have gotten a chemical

12 engineer like yourself to look at Mr. Levy's opinion and

13 decide whether it was competent?

14 A. I think Pathlight ought to have gotten an independent

15 analysis.

16 Q. Do you think they should have hired a second patent lawyer

17 to look over what Mr. Levy did?

18 A. There's no need to do that.

19 Q. No need to do that, okay. Should Pathlight have gotten a

20 another type of lawyer other than Mr. Levy, for example, a

21 lawyer that specialized in something else?

22 A. Mr. Gillette, this is not about Mr. Levy. This is about

23 the opinion that he gave on April 10th, 2000.

24 Q. So you think --

25 A. That opinion is not competent.

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1 Q. You don't have any dispute whatsoever as to whether or not
2 Pathlight found the right person to write the opinion?

3 A. I have never been asked to make such a conclusion and
4 wouldn't.

5 Q. Now, when you worked as an examiner in the Patent Office,
6 approximately when was that?

7 A. It was in the '60s.

8 Q. In the '60s. In the early '60s?

9 A. In the late '60s. I started law school in '65.

10 Q. And at that time, did the Patent Office have a web site?

11 A. No.

12 Q. No. There wasn't such thing in those days?

13 A. No, there wasn't.

14 Q. And are you aware that the Patent Office has a web site
15 today?

16 A. I use it almost every day.

17 Q. You use it every day. And from that web site, you can get
18 some information about what patent examiners do, right?

19 A. I have never looked at that part of it because I think I
20 already know what patent examiners do.

21 Q. And are you aware that the average time that a patent
22 examiner spends on a patent application is approximately ten
23 to 15 hours?

24 A. That sounds about right to me, given the number of
25 examiners and the number of applications. That's one of the

1 reasons why they give applications to those who are focused in
2 the area of technology.

3 Q. And each examiner grants on the average 81 patent
4 applications a year. Does that sound about right?

5 A. That sounds about right.

6 Q. And so the period of time that this 972 patent was pending
7 in the Patent Office was approximately a year and a half.

8 What was it doing there for a year and a half if it takes the
9 examiner only ten to 15 hours to look at it and decide?

10 A. You want me to explain that to the jury?

11 Q. Yes. Go ahead.

12 A. There's an awful lot that goes with an application before
13 it even gets to an examiner. It is first checked for whether
14 or not it has the right paperwork, fees and things like that,
15 and it also is checked to see what technology it's in. And
16 then, it is classified and then sent up to the particular art
17 unit. That, maybe, takes six weeks to three months.

18 And it's then assigned to a docket of a particular
19 examiner who is given the responsibility of examining
20 applications in that technical area. Sometimes an examiner
21 won't get to it because they're considering ones that were
22 earlier filed for maybe six months to a year.

23 Q. So the examiner doesn't even get to look at it while these
24 clerical functions are going on?

25 A. Correct.

1 Q. Now, is that about average for how long a patent takes
2 between the time it's applied for and the time it's granted,
3 about a year and a half?

4 A. That's on the low side.

5 Q. That's on the low side. Usually they take a little
6 longer?

7 A. In my experience, they take two and a half, three, three
8 and a half years, something like that.

9 Q. Why do they take so long?

10 A. It depends on the technology. Sometimes there's a longer
11 wait before the examiner actually gets the look at it. Many
12 times once an examiner does get to look at it, there are
13 preliminaries like dividing it out, restricting it to claims
14 in one area than another. All of that takes time.

15 Q. One of the reasons -- is it correct, Mr. Kuffner, one of
16 the reasons it takes so long is the examiner's just don't have
17 enough time to look at everything as quickly as they would
18 like?

19 A. I think that's built into the system, Mr. Gillette.

20 Q. Okay. And you've seen statistics from the Patent Office
21 web site that says that 72 percent of Patent Office employees
22 feel their work load is unreasonable?

23 MR. ALBRIGHT: Your Honor, I apologize.

24 A. I have not seep those.

25 MR. GILLETTE:

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1 Q. You haven't seen those statistics?

2 THE COURT: Hold on. We've got an objection.

3 MR. ALBRIGHT: If Mr. Gillette wants to show this
4 witness the web site and show it's accurate, please believe
5 that's the appropriate way to do this. I object there's no
6 foundation for his question.

7 THE COURT: He's asking him as an expert if he's aware
8 of these things. He's either aware of them or he's not.

9 MR. GILLETTE:

10 Q. You're not aware of that?

11 A. I have not seen those statistics.

12 Q. Are you aware that 73 percent of Patent Office employees
13 report that the current system does not allow them enough time
14 to produce quality patents? Does that sound right to you?

15 A. Where is that from?

16 Q. That's from the patent office web site.

17 A. I have not seen those statistics.

18 Q. Are you aware that 46 percent of patents are held invalid?

19 MR. ALBRIGHT: Your Honor, objection. This is one of
20 the matters that Mr. Gillette raised up in front of you in
21 terms of the consequences of case law. He's basically asking
22 with him to what happens -- I'm assuming he means on appeal
23 after --

24 THE COURT: I don't know what he means, but let's move
25 on. This witness had no opinions with regard to the validity

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1 or invalidity or rejection or acceptance of patents.

2 MR. GILLETTE: All right.

3 MR. GILLETTE:

4 Q. Now, did anyone other than the gray carry attorneys take
5 part in the patent application process for the 972 patent?

6 A. You mean --

7 Q. Any third party allowed to --

8 A. Not counting the examiner or the inventors.

9 Q. Okay. Examiner, the inventors and the gray carry
10 attorneys, that's all?

11 A. As far as I know, that's right.

12 Q. Why couldn't anyone from Pathlight take part?

13 A. I didn't say that they couldn't.

14 Q. Well, between December 31st, 1997 and August 24th, 1999,
15 when the 972 patent issued, could anybody from Pathlight take
16 part in the application process?

17 A. Oh, applications for patent are kept secret. They're kept
18 confidential from the time that they're filed until they issue
19 as a patent at least during the time that this patent was
20 pending.

21 Q. So phone from Pathlight could possibly take pat in the
22 application process for the 972 patent?

23 A. Members of the public are not allowed to see a patent
24 application while it's pending.

25 Q. And you've looked at the patent application that

1 Crossroads filed, haven't you?
2 A. The 972?
3 Q. Yes.
4 A. Yes.
5 Q. And could you tell from that whether the Patent Office had
6 any information whatsoever about products that were shown to
7 the public or on sale at Comdex 1996?
8 A. Specifically about Comdex 1996, I can't, but I could tell
9 -- I could tell that they were given information about earlier
10 products.
11 Q. Okay. What earlier products was the Patent Office
12 informed about?
13 A. This was explained a little bit yesterday, I think, by Mr.
14 Hoese. The figures in the application describe what was, in
15 effect, prior art, admitted to be prior art, and this was how
16 he distinguished what his invention was.
17 Q. Now, when you wrote a patent applications, did you still
18 write patent applications, Mr. Kuffner?
19 A. Do I still now?
20 Q. Yes.
21 A. What I do now is supervise others who write them.
22 Q. And is it your practice, Mr. Kuffner, to include
23 discussions of prior art in the pack grounds section of the
24 patent application or the detailed description of the
25 invention?

1 A. It can be done both ways, Mr. Gillette, and I have
2 actually done it both ways and seen it done both ways.

3 Q. And was it your practice typically to tell clients that
4 they were under a duty to disclose everything they knew about
5 that was material to the invention?

6 A. Yes. That's my practice and it's also the -- one of the
7 paragraphs in the oath that the inventors sign.

8 Q. And you did that because you, as the patent attorney,
9 didn't typically have all the knowledge about prior art?

10 A. That's correct.

11 Q. Okay. And did Crossroads do that?

12 A. I don't know. Crossroads certainly must have because they
13 -- the inventors signed the declaration to that effect.

14 Q. Have you seen any documents whatsoever that shows that
15 Crossroads's attorneys told Crossroads that they were under a
16 duty to tell the Patent Office about information that was on
17 sale in public use more than one year before they filed for
18 the patent?

19 MR. ALBRIGHT: Your Honor, I believe this is out of
20 the scope of anything --

21 THE COURT: Only about 96 miles and a rock throw. Do
22 you have any more questions about the direct examination?

23 MR. GILLETTE:

24 Q. All right. Now, Mr. Kuffner, your view of Mr. Levy's
25 opinion is that -- you don't have any dispute about whether or

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1 not Mr. Levy's conclusions are wrong, do you?

2 A. I'm not speaking -- you mean the conclusion of invalidity?

3 Q. Yes.

4 A. I'm not speaking to that.

5 Q. So you have no opinion whatsoever whether Mr. Levy's
6 conclusion of invalidity is wrong or not?

7 A. I could say this. To me, it doesn't satisfy the
8 presumption of validity, it doesn't satisfy any indication
9 that that presumption should be avoided.

10 Q. Now, did you do any analysis yourself as to whether or not
11 Pathlight infringes the 972 patent?

12 A. No, I did not.

13 Q. Did you do any analysis yourself as to whether the 972
14 patent is valid or invalid?

15 A. Only to the extent that I mentioned already.

16 Q. No further questions.

17 MR. ALBRIGHT: Just quick recap, your Honor.

18 RE-DIRECT EXAMINATION

19 BY MR. ALBRIGHT:

20 Q. We've heard what Mr. Gillette said Mr. Levy's background
21 was.

22 A. Yes.

23 Q. With the experience he had. Would you expect an attorney,
24 patent attorney who had Mr. Levy's back grounds as Mr.
25 Gillette has described it to perform the claim construction in

1 this letter?

2 A. I would absolutely in any opinion that they wanted to hold
3 up in court and provide the basis for clients to rely on, that
4 would be done.

5 Q. Would you expect him to have spent adequate time in doing
6 the opinion?

7 A. Yes, I would.

8 Q. And would you expected him to have been objective and done
9 more than Mr. Levy did with respect to the consideration of
10 the prior art?

11 A. Yes, I would.

12 Q. Pass the witness, your Honor.

13 MR. GILLETTE: No nor questions.

14 THE COURT: Counsel, may this witness be excused?

15 MR. ALBRIGHT: Yes, sir, he may.

16 MR. GILLETTE: Yes, sir.

17 THE COURT: Counsel, you may step down. Members of
18 the jury, I'm going to give you your lunch break. I'd like to
19 start promptly at 1:30 --

20 THE COURT: Judge, can we approach?

21 (At the bench, on the record.)

22 MR. ALCOCK: We're done. All we have left is two
23 technical experts -- well, a technical expert.

24 THE COURT: We could talk about that. These are
25 evidence for today?

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1 MR. ALCOCK: Yes, your Honor.

2 THE COURT: Do you have anything you want to do today
3 other than --

4 MR. BAHLER: No. I don't want to open another case,
5 your Honor.

6 THE COURT: I want you back Monday at 9:00. The
7 parties have presented evidence so that you might know, this
8 case was originally set to begin next Monday, but because of
9 the different scheduling problems in the federal court, the
10 lawyers were kind enough to start the case this week so that,
11 one, among other things, you would be finished next week.

12 So that's all the evidence they have available at this
13 juncture. They will pick up Monday at 9:00. Please remember
14 over the weekend, those three instructions, don't talk about
15 the case, let anybody talk to you about the case. Don't run
16 out to the library tomorrow and start looking up things about
17 storage devices.

18 Have a nice weekend. Please be back at least shortly
19 before 9:00 on Monday.

20 (Jury not present.)

21 THE COURT: Okay. Now you were going to tell me about
22 the remaining testimony so we'll know -- do you think that you
23 will complete in the morning, early afternoon?

24 MR. ALBRIGHT: Depending on the amount of
25 cross-examination, your Honor. We've got to witnesses left,

1 minutes to an hour and a half.

2 MR. BAHLER: For both?

3 MR. ALCOCK: On direct, yes.

4 THE COURT: Okay. We'll see. You still have plenty
5 of time. But anyway, that gives you an idea as to how you can
6 direct your testimony to begin.

7 MR. ALCOCK: Your Honor, I should point out that at
8 least at the moment, with respect to the validity issues in
9 the case, we're not quite sure what they're going to present
10 on validity, it's their burden. We may end up not putting
11 anything on on Monday on validity issues and then, respond to
12 whatever they present in our -- what one might call rebuttal
13 case but really, in this instance, it would be a case
14 responsive to their invalidity presentation.

15 THE COURT: I understand. Just be sure and save a
16 little time.

17 MR. ALLCOCK: That's kind of what I was saying.

18 THE COURT: I note in the requested instructions,
19 counsel, that the defendant has provided instructions on
20 contributory infringement and inducement infringement, but
21 that the plaintiff did not supply any instructions. I suspect
22 the defendant will waive those if you -- do you anticipate
23 having those?

24

25

1 MR. ALLCOCK: Your Honor, I wanted to see how the
2 evidence played out, and I think now we will want instructions
3 on inducement and contrib.

4 THE COURT: All right. We'll have them ready Monday
5 morning.

6 MR. ALCOCK: We will, journal all we will.

7 THE COURT: All right. Anything further from
8 plaintiff?

9 MR. ALBRIGHT: In, sir, your Honor.

10 THE COURT: Anything?

11 MR. BAHLER: Not from the defendant, your Honor.

12 THE COURT: All right. I think probably you need to
13 clean up a little bit, but whatever you want in boxes, y'all
14 divide up a little bit on the courtroom. I am not going to
15 have anybody working in this courtroom, but I will have it
16 cleaned. So let's put as much of the boxes over in a corner
17 as -- y'all get this corner, y'all get that corner, and that
18 way I can have it cleaned and then, we'll be ready to go and
19 I'll handle all of the materials I'm going to handle this
20 afternoon upstairs and tomorrow upstairs.

21 (Proceedings adjourned.)

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REALTIME UNEDITED TRANSCRIPT DISCLAIMER IN THE MATTER OF
CIVIL ACTION NO. A 00-CA-248 SSCROSSROADS SYSTEMS, (TEXAS), INC., A TEX.
VS.

PATHLIGHT TECHNOLOGY, INC., A DELAWARE CORPORATION

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1 THE COURT: Counsel, anything before we bring in the
2 jury?

3 MR. ALCOCK: Your Honor, just briefly, a housekeeping
4 matter. Exhibit 153, we've agreed on which page it should be
5 admissible, and I've got a copy of it here.

6 MR. BAHLER: No objection to admissibility of that
7 thing as modified.

8 THE COURT: 153, okay. How many pages are there, do
9 you know?

10 MR. ALCOCK: Multiple.

11 THE COURT: Okay. 153 as modified -- anything
12 further?

13 MR. ALCOCK: No, your Honor.

14 MR. BAHLER: I have two things I'd like to raise.
15 First is a motion to admit pro hac vice Mr. Ramsey Al-Salam.
16 He's a member of good standing at the state bar of Washington
17 and a partner with the Perkins & Coie, which is a firm in
18 Seattle. And I find him to be a reputable attorney and
19 recommend his admission for practition before this court. We
20 plan to use Mr. Al-Salam to take a witness today.

21 MR. ALCOCK: No objection, your Honor.

22 THE COURT: I'll be glad to let him participate in
23 this case.

24 MR. BAHLER: Thank you.

25 MR. DELLETT: Thank you, your Honor.

1 MR. BAHLER: The other issue, your Honor, is in
2 respect of the motion in limine that your Honor granted with
3 respect to expert testimony dealing with a reserve issue, we
4 had a telephone conversation about that very topic and then,
5 the order of the court came after that, and I don't know --
6 just make sure I don't overstep the bounds here -- was unclear
7 to me as a result of that telephone conversation whether there
8 had been, in fact, any modification to this order or not with
9 respect to eliciting expert testimony with regard to the
10 reserve command and whether or not it meets the access control
11 limitation.

12 Your Honor, I would note that it seems to me that
13 perhaps the conversation that we had would be enough, but it
14 seems to me, also, that Mr. Alcock opened this door during
15 opening he said, quote, they're going to try to convince you
16 that something called reserve management, an old technology,
17 is the same as what Geoff Hoese and bill Russell came up with
18 and your going to evaluate that testimony technically and
19 we're confident it will become obvious to you that it isn't
20 invalidated.

21 It seems to me, your Honor, that if they're going to
22 tell the jury that we're going to elicit testimony in that
23 respect, they shouldn't be allowed -- they shouldn't be heard
24 to preclude it.

25 THE COURT: It's a stretch of logic that may be

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1 interesting to look at. They say that they may have
2 detrimental evidence and you wish to.

3 MR. BAHLER: Introduce it.

4 THE COURT: The ruling is basically this: The Markman
5 order and the modification of -- are going to stand. Any
6 attempt to change that, I will sustain an objection to. On
7 the other hand, Mr. Bahler, I don't know what your witness is
8 going to say.

9 MR. BAHLER: Right.

10 THE COURT: I know basically what a reserve command
11 is, but I don't know in light of all the evidence what is
12 expert thinks it is or what he says it is or what he says it's
13 equivalent to.

14 MR. BAHLER: Right.

15 THE COURT: So that's the closest I can get to you.

16 MR. BAHLER: Okay.

17 THE COURT: Because y'all, of course, know and have
18 gone through the testimony of the expert, but I don't have any
19 idea, you know, and I may even stay awake for this particular
20 witness.

21 MR. BAHLER: I just want to make sure that you weren't
22 going to throw me in jail.

23 THE COURT: I'm not going to throw you in jail. I may
24 sustain an objection, but that's as far as I'm going with you.

25 MR. BAHLER: Thank you, your Honor.

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1 THE COURT: All right. Ready for the jury? All
2 right. Bring the jury in.

3 (Jury present.)

4 THE COURT: Members of the jury, since we met
5 yesterday evening, has anybody attempted to talk to you about
6 this case?

7 THE JURORS: No.

8 THE COURT: Have you talked to anybody about the case?

9 THE JURORS: No.

10 THE COURT: And have you learned anything at all about
11 the case outside the presence of each other and this
12 courtroom?

13 THE JURORS: No.

14 THE COURT: Next time, let's have a little lighter.
15 Please show negative responses to all questions by all jurors.
16 You are in the deposition phase.

17 MR. DELLETT: Yes, sir. Pathlight will continue and
18 finish the deposition, the reading of Mr. Ron Englebrecht.

19 Q. Okay. And just for clarity, you and Mr. Barrett talked
20 about the SCSI reserve function. Was that supported on the
21 3701 that was being demonstrated at Comdex 1996?

22 A. Yes, it was.

23 Q. Okay. All right. Please refer back to exhibit 3, which
24 was discussed briefly with Mr. Barrett in your first
25 deposition. Just let me know when you have it.

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1 A. I have it.

2 Q. Okay. Just so we have a context for this series of
3 questions, what is exhibit 3 again, sir?

4 A. Exhibit 3 is the hardware functional specification for the
5 3701 Fibre Channel disk RAID controller.

6 Q. And does it accurately describe the 3701 that was being
7 demonstrated at Comdex 1996?

8 A. Yes, it does.

9 Q. Okay. Are you familiar with the guts of the Symbios
10 controller?

11 A. In a general sense.

12 Q. Was there a buffer memory on this controller chips?

13 A. A small buffer memory.

14 Q. Okay. Was it a FIFO buffer?

15 A. Yes.

16 Q. Okay. All right. It had -- what it had I suppose, right?

17 Could you take me through the transfer of data from a SCSI
18 storage device to a Fibre Channel host with reference to block
19 diagram shown in figure 1.1 on page 4?

20 A. In a general sense, yes.

21 Q. That would be fine.

22 A. Okay. At the point in time that we got a read command
23 from a host and this read command would have come in over the
24 Fibre Channel and the command would be interpreted by firm
25 wear code the processor would then extract the logical address

1 from this command and translate it into a physical address out
2 on the disk drives.

3 A command would be sent, then, from the micro
4 processor logic through the 5875s that are shown on the left
5 out to five disk drives with specific address information and
6 read command. Those drives would then do their seek
7 operations and start returning data asynchronously through
8 these SCSI chips and the SCSI chips already have pointers
9 established into the buffer memory.

10 So as data starts to flow in off these five buses in
11 an A sin crow mouse fashion it's all going to be moved through
12 this RPA chip and into the memory, the buffer memory.

13 Q. Let me interrupt you just for a second there before you
14 continue. What, if anything, does DMA have to do with that
15 data transfer?

16 A. Well, it's done generally under a DMA consent, a direct
17 memory access concept. So the RPA has been already set up.
18 It functions among other things as a DMA controller for this
19 buffer memory so as the data flows in it's done in a DMA
20 fashion into the even and odd banks of the buffer memory.

21 Q. Okay. From the SCSI controllers to the buffer memory?

22 A. Right.

23 Q. Okay. Now, please continue.

24 A. Right. So at some point, then, all these five independent
25 operations, read operations have completed. The SCSI chips

1 all signal successful completion back to the microprocessor in
2 the firm wear and at that point, we know that we're ready
3 actually to do some parity checking. We look at the data here
4 to make sure that the parity that was previously store idea
5 the disk, on the disk still matching and that we've got, in
6 effect, good data that's been recovered.

7 Microprocessor then sets up for the transfer out to if
8 host. So he sets up the 81 E card and also sets up a read DMA
9 operation through the RPA chip and then data will begin
10 flowing out of buffer memory through the RPA chip with
11 continuous read operation on to this PCI bus that's shown and
12 out through the Fibre Channel interface board on to the finer
13 channel link and to the host.

14 And at some point that should complete successfully
15 and a microprocessor gets signals from both the RPA that its
16 DMA has down counted successfully and that the fiber channel
17 interface has transferred all the data out and the firm wear
18 basically goes into a good status completion mode.

19 If one of those fails, the firm wear is given a status
20 that gives it some detail as to what has failed, and it would
21 then typically go into multiple re-tries to get this data to
22 successfully transfer out of the buffer memory and on to the
23 fiber link.

24 Q. All right, sir. And what, if anything, does the
25 description that you've given me have to do the way the 3701

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1 was operating at Comdex 1996?

2 A. Well, in a general sense, that's the way it was operating
3 at Comdex 1996.

4 Q. Okay. That's November 1996?

5 A. Yes.

6 Q. Okay. And do you remember what the Fibre Channel protocol
7 was that was being used on the Fibre Channel host?

8 A. Well, we were using it in root mode in this demonstration.

9 Q. Okay, it was it FCP?

10 A. I'm not sure.

11 Q. Okay. It was whatever the Tachyon was used to dealing
12 with, I guess, correct?

13 A. Right.

14 Q. All right. I understand that there's mechanical
15 differences between the packaging between the 3701 and 3702.

16 Were there any functional differences?

17 A. There were no functional differences. We upgraded the
18 micro processor as I recall from 33 megahertz to 66 megahertz
19 but it actually used the same 81 dollar part for upgrade
20 between SCSI to fiber for host connections as did the 3620 and
21 3701 combination.

22 Q. Okay. And just for clarity, it was the 3701 that was at
23 the Comdex in November 1996, not the 3702?

24 A. That's right.

25 Q. Is a SCSI bus reset a normal or abnormal occurrence?

1 A. It's an abnormal occurrence.

2 Q. And why do you say it's an abnormal occurrence?

3 A. Because it causes a reinitialization of all the devices on
4 the bus when it occurs and so it -- you know, it's only issued
5 if there's a really catastrophic kind of situation associated
6 with that SCSI bus such that everything needs to be cleared
7 and restarted.

8 Q. How often do such catastrophic situations occur in the
9 systems employing this 3701?

10 A. I don't have a good way to say, but it's a relatively rare
11 occurrence.

12 Q. Okay. Mr. Albright also mentioned Fibre Channel reset.
13 Is that an abnormal or a normal occurrence?

14 A. It's abnormal, as well.

15 Q. Just a few more questions. Mr. Englebrecht, earlier, you
16 gave your personal understanding of what you understood access
17 control to mean?

18 A. Yes.

19 Q. Remember that?

20 A. Yes.

21 Q. And you said something about making it so that a host
22 couldn't read what another host was writing or something like
23 that. Remember that?

24 A. Yes.

25 Q. Okay. Is the SCSI reserve access control in accordance

1 with your personal understanding of that term?

2 A. Yes, it is one means that you can use to enforce access
3 controls.

4 Q. Pass the witness.

5 MR. ALBRIGHT: Thank you, your Honor. First reading
6 from the November 30th deposition, your Honor.

7 Q. And did this RAID manager software always shift with the
8 3621 product?

9 A. It depended. It depended upon the OEM so the answer is
10 no, not always. Some OEMs did their own management software.

11 Q. Were there any user manuals or installation guides for the
12 RAID manager five software?

13 A. Yes.

14 Q. Do you remember when you first started hearing the term
15 LUN zoning and mass asking?

16 A. Oh, probably around 1998, during 1998.

17 Q. So this --

18 A. And I would have to say that in the point in time 1995, we
19 were not -- with we were not filling supporting the loop mode.
20 We were limited to point to point in that time frame.

21 Q. When did the loop modes work start?

22 A. In, actually, that wasn't fully working until the 4766
23 implementation which is 1998 time frame. We were still
24 limited to point to point.

25 Q. Now, the point to point mode, you -- can you still have

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1 multiple Fibre Channel hosts connected to the controller?

2 A. Not directly. You need an intervening device of either a
3 switch or a hub to be able to do that.

4 Q. Okay.

5 A. And in that time frame, I don't recall any switches or
6 hubs being available physically to make that happen.

7 Q. When you remember those coming about?

8 A. The first hubs that were -- that we tested were in -- I
9 would estimate 1997. Might have been a little bit earlier but
10 during 1997, we were testing with some Gadzooks hubs.

11 Q. So before these hubs came about, are you saying it was
12 only possible to hook up one Fibre Channel host to one style
13 of control?

14 A. Right. The customers that we were working with were
15 basically just doing very simple point to point connections
16 between one host and one controller at that point and SCSI
17 mode or in Fibre Channel mode.

18 Q. This microprocessor we mentioned working with controller,
19 did it also work in conjunction with the RAID manager file
20 software?

21 A. No.

22 Q. Okay. So the RAID manager file, it resided on the hosts
23 themselves, correct?

24 A. Yes, right.

25 Q. Okay. We were talking about possibly hooking up the Fibre

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1 Channel host, the hubs or switches. Do you remember the first
2 time you heard of a customer doing that?

3 A. No, I mean, I don't remember precisely when that was.

4 Q. And under on page 2 no 9 this as arbitration loop. Does
5 that mean this version of the software did support the
6 arbitrated loop feature?

7 A. By my recollection at this point in time it did not
8 support arbitrated loop. This -- some of this terminology
9 here is written as a statement of intention. And we had a
10 great deal of difficulty actually getting arbitrated loop to
11 work reliably. So in reaction, that was actually what was
12 actually being offered in the time frame was point to point.

13 Q. Do you remember when you got -- you got it working?

14 A. It probably took us another year so late, late -- yeah,
15 late in '90, during '98 or late '98 I would say it was working
16 reliably.

17 Q. Okay. Isn't it true that there was no demonstration of
18 the reserve release at either the '95 or '96 Comdex?

19 A. That's true.

20 Q. Isn't it true that there is no literature passed out that
21 described reserve release at either the '95 or '96 Comdex?

22 A. I don't recall specifically whether the literature passed
23 out included that information or not.

24 Q. Where do you work right now -- oh, I'm sorry. I
25 apologize, your Honor. Your Honor, the Englebrecht deposition

1 for March 5th of this year?

2 What would happen if you turned off the RAID router
3 and then turned it back on.

4 A. The question is would it persist through a power out
5 damage?

6 Q. Yes, sir, with respect to the SCSI reserve:

7 A. I can't say for sure.

8 Q. So the SCSI reserve release when you said reinitialize
9 would cause the reserve to be lost or dropped, correct?

10 A. Yes.

11 Q. What would occur with respect to the SCSI reserve on the
12 product that we've been talking about if a Fibre Channel reset
13 was transmitted to the RAID router?

14 A. The Fibre Channel, a directed reset to this controller
15 would also cause it to go through the initialization sequence.

16 Q. And following that up, what would that -- following that
17 up, what that means is that the reserve command, the reserve
18 would be lost, correct?

19 A. Yes.

20 Q. Could you explain to the jury what LUN zoning is?

21 A. Some mechanism, again, for preventing access to specified
22 areas of storage and it's terminology that's used to day by
23 often switches or routers and even controller toss set a
24 specified access regions for different hosts.

25 Q. Would it be fair to say that LUN zoning under your

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1 definition would be a form of access control?

2 A. Yes.

3 Q. To either the LSI or Symbios Logic routers have LUN
4 zoning?

5 A. Our RAID controllers today do support LUN zoning, yes.

6 Q. And when did they first sport LUN zoning?

7 A. Beginning with a release that occurred in October of 1999.

8 Q. So prior to 1999, none of the products either LSI or
9 Symbios Logic had that form of access control, correct?

10 A. That's correct.

11 Q. Pass the witness.

12 THE COURT: You may call your next witness.

13 MR. DELLETT: Call Mark Levy, your Honor.

14 THE COURT: Come forward, please, sir. Right there is
15 fine and be sworn.

16 (Witness was sworn.)

17 THE COURT: Walk around this column and have a seat,
18 please, sir. If you'd state your full name and spell your
19 last, please.

20 THE WITNESS: Mark Levy, L E V Y.

21 DIRECT EXAMINATION

22 BY MR. AL-SALAM:

23 Q. Good morning, Mr. Levy, as you know I'm Ramsey Al-Salam,
24 counsel for Pathlight. I have few questions for you. First
25 of all, have you the patent lawyer that offered the

1 Defendant's Exhibit 275?

2 A. Yes, I am.

3 Q. And what is exhibit 275?

4 A. It's a legal opinion that goes to the invalidity of the
5 U.S. patent issued to Crossroads.

6 Q. And what was your conclusion in the opinion?

7 A. The patent is not valid.

8 Q. Let's -- before we get into that a little more, let's talk
9 a little bit about your background. Do you have any technical
10 background and education?

11 A. Yes, I do. I have an undergraduate degree in physics, a
12 bachelor of science degree, and a law degree from New York law
13 school.

14 Q. And since graduating from law school, what's been the
15 nature of your practice?

16 A. Well, what I do is write patent applications, draft them,
17 get them through the Patent Office. I write opinions relating
18 to patentability, infringement, validity, and I file patent
19 applications both in the United States and in foreign
20 countries.

21 Q. Have your patent applications or your practice been
22 directed in any manner to computers or computer technology?

23 A. Yes, they have, specialize in both computers, computer
24 technology, electronics, hardware and software.

25 Q. And are you admitted to practice before the patent and

1 trademark office?

2 A. Yes, I am.

3 Q. Well, can any lawyer practice before the patent and
4 trademark office?

5 A. No. In order to practice before the P T O, you have to be
6 not only an attorney but, also, a patent attorney which means
7 you'd take the patent bar exam and in order to qualify for
8 that, you need an undergraduate degree in science or
9 engineering.

10 Q. And how many years have you been admitted to practice
11 before the patent and trademark office?

12 A. I believe it's 24.

13 Q. And in your practice, could you name some examples of
14 clients you've worked for in the past, performed patent work
15 for?

16 A. Well, we have major fortune 500 corporations including
17 IBM, locally, we worked on some cases for AMD, here in Austin,
18 and Schlumberger in Houston, so we've got some contacts with
19 the state of Texas.

20 Q. And you now are in private practice, correct?

21 A. That's correct.

22 Q. And prior to being in private practice, did you work as a
23 patent lawyer for any companies?

24 A. Yes, I did. I worked for Pitney-Bowes, General Electric
25 and IBM.

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1 Q. And as of now, what percentage of your work,
2 approximately, is for Pathlight? Are they a big client?

3 A. No. I don't believe it's more than two percent.

4 Q. And how many patents have you written related to computers
5 or computer technology?

6 A. Well over 100, maybe closer to 200.

7 Q. And have you written opinion letters concerning patents
8 relating to computers or computer technology?

9 A. Yes.

10 Q. Now, let's talk about the specific opinion you wrote for
11 Pathlight, Defendant's Exhibit 275. Now, you wrote this at
12 the request of Mr. Rahmani; is that correct?

13 A. That's correct.

14 Q. Well, would Mr. Rahmani -- when Mr. Rahmani asked you to
15 prepare this opinion, did he give you or did he suggest to you
16 what the outcome should be of your opinion?

17 A. No, he didn't.

18 Q. Did you approach it objectively or did you have a
19 preconceived notion of what the results should be?

20 A. Absolutely no preconceived notion. I wanted to evaluate
21 the evidence and come up with an objective, accurate opinion.

22 Q. Well, do you think you spent enough time researching it
23 prior to developing your opinion?

24 A. Yes, I did.

25 Q. Now, in determining whether or not a patent is valid or

1 invalid, how do you go about doing that?

2 A. Well, the first step is to order the file history. That's
3 the history of the transactions between the applicant and the
4 Patent Office, and you study that, you take a look at the
5 actual specification of the patent, the claims, and any prior
6 art that you can find that bears on the patent.

7 Q. And in doing that analysis, did you have to interpret the
8 claims?

9 A. Certainly.

10 Q. What did you do to interpret the claims?

11 A. We read the claim, read the language, anything that has
12 meaning, whether it does or doesn't, you want to check the
13 specification to make sure that the meanings to the claims,
14 the words in the claims are shown in the specification of the
15 patent.

16 Q. And then, you compared the claim to the prior art; is
17 that correct?

18 A. Yes.

19 Q. And the prior art you considered, did you compare it to
20 the prior art that was considered by the examiner of the
21 patent application?

22 A. Yes, we did.

23 Q. And do you have an opinion as to whether or not the prior
24 art you relied on was more or less relevant than the prior art
25 the examiner considered?

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1 A. I believe that the prior art we relied on was more
2 relevant than what the patent examiner had in front of him.

3 Q. And what was the basis for your opinion that the patent
4 was invalid or is invalid?

5 A. Well, you know, we analyzed every element of every claim
6 and we found each element in the prior art, and then, I
7 concluded that the -- some reasonable computer engineer would
8 have found it obvious to combine the elements the way that
9 Crossroads did.

10 Q. Well, now, there's a difference between this SSA and Fibre
11 Channel, right?

12 A. Yes.

13 Q. And isn't it true that the prior art you relied on was an
14 example of a storage network using SSA instead of Fibre
15 Channel? Did you consider that difference to be significant?

16 MR. ALCOCK: Objection. Leading.

17 THE COURT: Very.

18 MR. AL-SALAM:

19 Q. Let me tell you. What was the difference? What was the
20 element that was lacking in the prior art you found as
21 compared to the patent claims?

22 A. The point that we thought -- when I say we, I had an
23 assistant electrical engineer help me with this, also, but
24 when we analyzed the references and tried to figure out what
25 the difference was between Fibre Channel and SSA, the bottom

1 line was that both of them worked in the same environment and
2 accomplished the same purpose.

3 So as a practical matter, there was very little
4 difference and we felt that they were really equivalent.

5 Q. Was there any other claim element you found lacking in the
6 prior art?

7 A. Well, the way we analyzed it, that was the only -- that
8 was the difference that we thought was most significant.

9 Q. Did the prior art have access controls as you understood
10 access controls?

11 A. Yes.

12 Q. Do you believe your opinion was correct?

13 A. Yes, I do.

14 Q. Have you had an opportunity, since writing your opinion,
15 to look at the Court's Markman ruling regarding the meaning of
16 the claims?

17 A. Yes, I did.

18 Q. Has that affected --

19 MR. ALCOCK: Objection, your Honor, may we approach?

20 THE COURT: You may.

21 (At the bench, on the record.)

22 MR. ALCOCK: Your Honor, the objection would be --

23 THE COURT: You need to speak louder.

24 MR. ALCOCK: The objection would be to elicit proper
25 expert opinion. They haven't designated him as an expert.

1 When he rendered this opinion, he hadn't looked at the Markman
2 ruling. The Markman ruling came out three months after his
3 opinion. I took his deposition some number of months later,
4 he testified that although he was aware of the Markman
5 opinion, no one had asked him to reconsider his opinion in
6 light of the Markman ruling.

7 And that folks at Pathlight didn't think it was
8 necessary that that be done. That was the state of the
9 discovery record going into --

10 THE COURT: Did he do any supplemental reports that he
11 had?

12 MR. ALCOCK: He has never issued an expert report.
13 That's what I'm saying. He has not been designated as an
14 expert. I've allowed testimony on his opinion because it's a
15 fact that Mr. Levy relied upon it. We had no -- I had no idea
16 that he had considered the Markman ruling until Mr. Al-Salam
17 just asked that question.

18 So from here on now, what he's eliciting is improper
19 expert opinion.

20 MR. AL-SALAM: Your Honor, they have attacked the
21 competence of his opinion. They have specifically said the
22 opinion was incompetent. They have also asserted that he did
23 not perform a proper claim construction suggesting that if he
24 had, his claim construction would be different than the
25 Court's claim construction.

1 He -- we're simply trying to establish that his claim
2 construction was consistent with the Court's claim
3 construction and would not have affected his opinion.

4 THE COURT: If you intend to put an expert opinion
5 with regard to the claim construction and his opinion meaning
6 an expert opinion, you should have supplemented your
7 discovery. I sustain the objection. He will not make any
8 analogy or equivalency to the Markman order simply because it
9 had not been disclosed.

10 I have a proffer that the testimony in deposition that
11 he had not done so and had not been asked to do so, and I will
12 not permit any testimony that he has done so now and no notice
13 has been given. If objection is sustained.

14 MR. AL-SALAM: Thank you, your Honor.

15 MR. AL-SALAM:

16 Q. Mr. Levy, as you sit here today, do you still believe that
17 your opinion was correct?

18 A. Yes, I do.

19 Q. And you've written a lot of opinions in the past -- or
20 have you written opinions in the past that a patent is
21 invalid?

22 A. Yes.

23 Q. And has the Court or any jury ever found that one of your
24 opinions that a patent was invalid was wrong?

25 A. No.

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1 Q. And prior to this case, has anybody ever asserted that one
2 of your opinions concerning a patent's validity or invalidity
3 was incompetent?

4 A. No. As a matter of fact, I was --

5 THE COURT: He's answered the question. Ask your next
6 question.

7 MR. AL-SALAM:

8 Q. And how did you react when you heard that they had
9 asserted, when Mr. Kuffner had asserted your opinion was
10 incompetent?

11 MR. ALCOCK: Objection. Irrelevant.

12 THE COURT: It is not relevant. I sustain the
13 objection.

14 MR. AL-SALAM: Those are all my questions. I pass the
15 witness.

16 MR. ALCOCK: Here's a notebook of some documents I
17 might ask you about, Mr. Levy.

18 CROSS-EXAMINATION

19 BY MR. ALCOCK:

20 Q. First of all, good morning.

21 A. Good morning.

22 Q. We met before. First of all, I'm looking at exhibit --
23 Defendant's Exhibit 275. Do you have that in front of you,
24 sir?

25 A. Yes, I do.

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1 Q. And it was said a few moment as ago that this was your
2 opinion letter, is that correct?

3 A. That's correct.

4 Q. Isn't this two copies of your opinion letter? I think it
5 starts at 165433, and then, if you look through 165524, you'll
6 see I believe it's the second copy. 165433 is the April 10th,
7 2000 letter, and 165524 is also the April 10th, 2000 letter?

8 A. That appears to be correct.

9 Q. Okay. So if I can keep this straight, I'm just going to
10 put these two separated like that. Now, I want to just go
11 back through a little bit the chronology of events here that
12 led up to that letter. You had been representing Pathlight
13 since when, 1988, sir?

14 A. No. I started private practice in 1988. I was
15 representing path light for about the last four, maybe five
16 years. I'm not exactly sure.

17 Q. Okay. Very good. And prior to writing this attorney
18 opinion letter, you had done a number of patent applications
19 for them?

20 A. Yes.

21 Q. And just to get a sense of the chronology here, sir, you
22 were first contacted by them on November 18th of 1999; is that
23 right?

24 A. I believe that's true.

25 Q. And that was by an e-mail from Mr. Rahmani?

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1 A. I'm not sure if there was a telephone call before or after
2 it, but there was some kind of communication.

3 Q. Okay. If you'd take a look at exhibit -- it would be
4 exhibit 69, sir. It's the second exhibit in your book.

5 A. I see it.

6 Q. Excuse me. I just want to put it up. And so this is the
7 e-mail that was the first time -- you can see it up on the
8 screen there. That was the first contact you had with
9 Pathlight with respect to this product -- this patent, I mean,
10 the 972 patent, or it could have been a little earlier?

11 A. It was approximately the first time, yes.

12 Q. Fair enough. Now, just to help us along in the
13 chronology, could you turn to exhibit 56 for a moment.
14 Exhibit 56 is the bills that you sent to Pathlight in this
15 case?

16 A. That's correct.

17 Q. Okay. And the way that you did your bills is you put a
18 time entry next to each -- time next to each entry?

19 A. That's right.

20 Q. And that date that you put next to each entry referred to
21 the amount that you were billing as of that date; is that
22 right?

23 A. That's correct.

24 Q. So, in other words, if you had done a number of activities
25 over the course of a month, the bill for that would have a

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1 single date at the end of the month, or at the end of the time
2 period that you bill?

3 A. Yes, at the end of the time period.

4 Q. So your bills aren't the kind that every -- it has a
5 little date for every day that you worked. You accumulate the
6 time and then, they all go out whenever they go out?

7 A. That's correct.

8 Q. Okay. Offer exhibit -- oh, and these are the bills that
9 you sent to Pathlight?

10 A. Yes.

11 Q. Offer exhibit 56, your Honor.

12 MR. DELLETT: No objection, your Honor.

13 THE COURT: Received.

14 MR. ALCOCK:

15 Q. Okay. So moving on in the chronology, could you turn to
16 exhibit 57. Exhibit 57 are handwritten notes of yours?

17 A. Yes, they are.

18 Q. Offer exhibit 57, your Honor?

19 MR. DELLETT: In objection, your Honor.

20 THE COURT: They're received.

21 MR. ALCOCK:

22 Q. And these relate to a meeting you had on December 23rd of
23 1999; is that right?

24 A. That's correct.

25 Q. And that was a meeting at Pathlight?

1 A. Yes.

2 Q. And it was a meeting with Mr. Rahmani?

3 A. Yes, it was.

4 Q. And it was a meeting with some of the other engineers
5 there?

6 A. Yes.

7 Q. And what was discussed at that meeting was your writing an
8 invalidity opinion; is that right?

9 A. That was part of the discussion.

10 Q. Right and you were to write this after reviewing P T I,
11 that's Pathlight's, yes?

12 A. Correct.

13 Q. After reviewing the publications and mark, would that be
14 Mark DeWilde?

15 A. No. That would be me, Mark Levy.

16 Q. Okay. So they were going to provide you some information
17 and then, you were going to annotate the claims?

18 A. That's correct.

19 Q. Okay. Now, you were familiar with company's overall
20 technology; is that right?

21 A. Yes.

22 Q. There's no reference here to writing a non infringement
23 opinion, is there?

24 A. No.

25 Q. That was quickly dismissed, wasn't it?

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1 A. I'm not sure that we spent enough time discussing it. We
2 really talked about whether the patent was valid and what
3 opinion, what steps I could take to handle that.

4 Q. Right. And that's because the engineers, Mr. DeWilde,
5 told you that the SAN gateway and SAN router products were
6 very similar to the patent?

7 A. That's correct.

8 Q. So now, let's look back at the time entry for -- oh,
9 wasn't there somebody else at the meeting, this December 23rd
10 meeting from your side?

11 A. Yes.

12 Q. And that was a Mr. Banner?

13 A. That's correct.

14 Q. And Mr. Banner is a patent agent, is he?

15 A. He's a patent agent and electrical engineer.

16 Q. Okay. And so he was working with you on this product?

17 A. Correct.

18 Q. Okay. So now -- so let's look at your time entry. The
19 time entry is for December 29th. So this is for the time that
20 you worked between your start of this project and December
21 29th; is that right?

22 A. That's correct.

23 Q. So that would include this December 23rd meeting and any
24 other work you did before or after that meeting through to
25 December 29th?

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1 A. That's correct.

2 Q. And the amount of time was 2.3 hours; is that right?

3 A. Yes.

4 Q. Now, that amount of time was not just your time; is that
5 right, sir?

6 A. That's correct.

7 Q. The way you bill is that all billing professionals at your
8 office combine their time and when a bill is sent out that
9 bill is for the total amount of time of all billing
10 professionals?

11 A. Correct.

12 Q. So this would be the amount of time total amount of time
13 that you and Mr. Banner had spent on the project through to --
14 through and including December 29th?

15 A. Correct.

16 Q. Okay. And the bill says that you agreed to render an
17 opinion upon receipt of additional information from Pathlight
18 personnel. So at this time, you hadn't gotten documentation
19 from the Pathlight people; is that fair to say?

20 A. Yes, I believe that's true.

21 Q. Okay. And so what you were going to do is they were going
22 to give you some documentation that you were going to analyze
23 and then, write an opinion on?

24 A. That was going to be part of the -- part of the materials
25 I used to write the opinion, yes.

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1 Q. Okay. Very good let's fast-forward, Mr. Levy, to February
2 9th of 2000. And so this is -- this is the next billing entry
3 on exhibit 56?

4 A. Yes.

5 Q. And so here it is, the month of January went by and now
6 it's the beginning part of February and you were drafting this
7 patentability opinion and you faxed it to Mr. Khezri. That's
8 Mr. Rahmani; is it not?

9 A. Yes, it is.

10 Q. Okay. For review by engineers and for that, the total time
11 billed was 9.8, and so if we add that to the 2.3, it's 11.1
12 hours is the total time billed to this project?

13 A. It's 12.1.

14 Q. I was a philosophy major. The total amount of time as of
15 that date was now 12.1. Now, there's no reference in this
16 bill to analysis of documentation, is there?

17 A. There's no reference in the bill, that's correct.

18 Q. Okay. And this 13-page fax that's referred to on the
19 bottom there, do you see that?

20 A. Yes, I do.

21 Q. Is that the patentability opinion?

22 A. Yes.

23 Q. Okay. So we know that on February 9th, 2000, you've sent
24 a 13-page fax that this bill refers to as a patentability
25 opinion; is that fair to say?

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1 A. Yes, it is.

2 Q. Now, that document doesn't exist anymore, does it?

3 A. I don't believe so. It was a preliminary draft.

4 Q. Okay. And let's take a look just for a moment. I've
5 placed in your folder exhibit 70, which is Plaintiff's Exhibit
6 70, which is the -- your opinion letter; is that right?

7 A. Yes, it is.

8 Q. Okay. I want to just briefly go through the first twelve
9 pages of really quickly. The first page is just an
10 introductory page. It discusses the patent?

11 A. Correct.

12 Q. And the second page is a table of contents page?

13 A. Correct.

14 Q. And the third page is a brief reference to the disclosed
15 technology. That's drawn from the abstract of the patent?

16 A. Yes, it is.

17 Q. And then, the claims of the patent are set forth on that
18 page. The next page, the next page, the next page, and the
19 next page, and so now, we're up to page 7; is that right?

20 A. Yes.

21 Q. Okay. And then, there's a discussion, a brief discussion,
22 to paragraphs of the prosecution history, which brings us up
23 to page 8?

24 A. Yes.

25 Q. Then there's a discussion of the law of patent validity on

1 page 8, 9 and 10; is that right?

2 A. That's correct.

3 Q. That's a general legal discussion. That's general law
4 applicable to invalidity generally?

5 A. Correct.

6 Q. You've written these letters many times before, and you
7 probably drew some of this from some of those other letters?

8 A. I probably have written 50 letters in the electronic area
9 for invalidity.

10 Q. Okay. So that gets us up to page 10. Page 11 is a list
11 of the prior art; is that right?

12 A. That's correct.

13 Q. So up to page 11, there's been no analysis, yet. Is that
14 fair to say?

15 A. I did spend a little time on page 3 discussing a number of
16 claims in which ones are independent, but beyond that, no
17 significant analysis.

18 Q. Okay. And then, page 12 is a excerpt from a particular
19 reference; is that right?

20 A. Yes.

21 Q. And then, page 13 starts the actual analysis of the claims
22 and matching them to the prior art; isn't that right?

23 A. Correct.

24 Q. Okay. Now, going back to our chronology, could you take a
25 look at exhibit 74. Let me just write down here 13-page fax

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1 because I'm going to come back to that.

2 A. If I could, I'd like to clear up the question of what was
3 faxed.

4 THE COURT: I'm sure you're going to be asked
5 questions by the other side. Just answer the question.

6 MR. ALCOCK:

7 Q. So let me turn to exhibit 74, and this is an e-mail from
8 Mark DeWilde, dated February 24, 2000 to Mark and David,
9 that's you and Mr. Banner; is that right?

10 A. That's correct.

11 Q. And he's attached a zip file containing a word document
12 with the supporting information. He's addressed each of the
13 Crossroads claims with references to the documents that
14 predate their application by more than one year. I've
15 included all documents mentioned in the analysis, and then,
16 down in the lower left-hand corner is that little thing called
17 a zip, and that means that the -- a number of documents were
18 attached, electronically; is that right, sir?

19 A. That's correct.

20 Q. Okay. And if you take a look at those documents that you
21 received on February 24, it's the prior art that you rely upon
22 in your April 10 analysis; isn't it right? You mentioned SSA.
23 The first thing there's an SSA SCSI tape controller.

24 A. I don't see reference No. 10, United States patent
25 5586291.

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1 Q. Okay. Let me stop you right there. The 291 patent is the
2 only reference in your entire opinion letter that came from
3 your office, everything else came from Pathlight?

4 A. True.

5 Q. Okay. So that's not in Mr. DeWilde's 2-24 e-mail?

6 A. The answer to your previous question is no, not all of the
7 references were provided by Pathlight.

8 Q. Right. All except for one; is that right?

9 A. Yes, all references that were cited in my opinion letter
10 except for one.

11 Q. How many pages? It starts at 814 and goes to 858. So
12 I've messed this up once, but I think that's -- is that 44
13 pages?

14 A. Yes, 45, actually.

15 Q. Okay. Your Honor, at this time, I'd like to offer Exhibit
16 74. And if I haven't yet, offer 56 and 69.

17 MR. DELLETT: No objection, your Honor.

18 THE COURT: All right. 74 is received. 56 is in.
19 What is 59?

20 MR. ALCOCK: Sorry. Did I say 59?

21 THE COURT: Yeah. You mean 70?

22 MR. ALCOCK: I mean 75.

23 MR. DELLETT: No objection, your Honor.

24 THE COURT: 70 is received.

25 MR. ALCOCK:

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1 Q. All right. So that gets us up to February 24. Now, let's
2 turn to February 25 and see an e-mail that I think we've seen
3 a few times before. On February 25, Mr. Rahmani writes -- and
4 this one says 2:40 a.m., but I believe exhibit 59 says 2:39
5 a.m. Mr. Rahmani wanted to have your invalidity report,
6 didn't he?

7 A. Yes.

8 Q. And it wasn't done?

9 A. That's correct.

10 Q. And he indicated that there was some business urgency to
11 having this accomplished, didn't he?

12 A. Yes, he did.

13 Q. Did he call you around this time, Mr. Levy?

14 A. I don't recall.

15 Q. I mean, you had first met with him on December 23rd and
16 talked about getting him this letter, and here, it's now
17 February 25th, and he hadn't gotten it. Do you remember him
18 calling you and expressing any displeasure with this series of
19 events?

20 A. I don't.

21 Q. So then, the letter is sent on April 10th. Let's go back
22 and look to exhibit 56, and that's the day that you sent the
23 letter; is that right?

24 A. April 10th is -- yes.

25 Q. And that's the day you billed them?

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1 A. Correct.

2 Q. And so, for the total time -- the last time that you had
3 billed them was February 9th; is that right?

4 A. That's correct.

5 Q. Okay. So now, on February 10th, you bill them one hour --

6 A. Well, excuse me. There was an April 4th bill right above
7 this April 10th.

8 Q. Right. But this bill didn't have to do with this patent.

9 A. That's correct.

10 Q. That had to do with another Crossroads patent.

11 A. Right.

12 Q. We're not going to talk about that here. So the total
13 time including the one hour spent between February 9th and
14 April 10th was 13.1 hours; is that right?

15 A. Yes.

16 Q. Now, three days before you sent that opinion letter, you
17 completed another project for Pathlight, didn't you, sir?

18 A. I'm not sure.

19 Q. Okay. Let me show you exhibit 232. This is an
20 application for a patent. Do you recognize that?

21 A. Yes, I do.

22 Q. And that was the so-called VPS patent?

23 A. Yes.

24 Q. I mean, that's what Mr. Rahmani called it and that's what
25 you all referred to it as when you were having discussions

1 about it?

2 A. Correct.

3 Q. Okay. I'm going to get back to that in a minute. Could
4 you look at exhibit 234, if you would, sir, and I just have a
5 couple of general questions about this. This is a letter
6 dated August 22nd of 2000 from Mr. Banner to Mr. DeWilde?

7 A. Yes.

8 Q. And this is the result of that search that you all did to
9 try to find prior art; is that right?

10 A. Correct.

11 Q. And then, on the second page of the search, you report the
12 results of that search; is that right?

13 A. That's correct.

14 Q. And you had found a number of U.S. patents that according
15 to Mr. Banner was of possible relevance to the disclosure; is
16 that right?

17 A. That's correct.

18 Q. And then, you were telling them, each of these patents
19 teaches some aspect of providing a bringing function between
20 devices on diverse interfaces. However, none of them appears
21 to teach your exact method; is that right?

22 A. That's correct.

23 Q. That's what you were telling them. And so, you enclosed
24 copies of the patents for their review?

25 A. Yes.

1 Q. And you were asking them to determine whether or not any
2 of these pieces of prior art were relevant to the disclosure;
3 is that right?

4 A. That's correct.

5 Q. And is that commonly what you do?

6 A. Very often, we do that if the expertise of the client is
7 at least as great as ours, it would make sense to have two or
8 more heads looking at them.

9 Q. Right. Every single piece of prior art doesn't need to be
10 disclosed to the Patent Office, right?

11 A. That's correct.

12 Q. I mean, here, you found quite a number of patents that you
13 considered of possible relevance, but in consultation with the
14 client, if some of those end up not being relevant, they don't
15 need to be submitted?

16 A. Correct.

17 Q. Okay. Now, going back to exhibit 232, you were asked some
18 questions earlier on direct concerning access controls. Do
19 you remember those questions?

20 A. Yes.

21 Q. And you considered that issue in connection with the
22 invalidity opinion; is that right?

23 A. That's correct.

24 Q. And the reason you did is because you few access controls
25 were part of the claims in the 972 patent?

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1 A. Yes.

2 Q. Okay. And if you look at page 20 of exhibit 232, there's
3 a reference there to end to end access control; is that right?

4 A. Yes.

5 Q. And that's access control between a work station on the
6 one end and a remote storage device on the other with a
7 storage router in between?

8 A. That's correct.

9 Q. And did you write this application?

10 A. Yes.

11 Q. And in your opinion, at least in part, access control was
12 one of the most significant advantages realized by this
13 invention?

14 A. Well, I believe that the inventive architecture is what I
15 was really talking about.

16 Q. Okay.

17 A. And it happened to include access control, but the whole
18 idea of going from one end to another made sense in the way it
19 was done here was novel.

20 Q. Okay. And so this application was filed, I believe, April
21 7th of the year 2000?

22 A. I believe that's true.

23 Q. Now, did you disclose to the Patent Office the 972 patent
24 in this patent application?

25 A. No.

1 Q. Did you have a discussion with the Pathlight people like
2 that earlier letter on that subject?

3 A. I don't believe specifically on that subject. We looked
4 at the most relevant references and decided to cite those to
5 the Patent Office.

6 Q. I have no further questions of the witness at this time.
7 I would pass the witness.

8 RE-DIRECT EXAMINATION

9 BY MR. AL-SALAM:

10 Q. You were asked a lot about the time you spent on your
11 invalidity opinion. Are you satisfied in retrospect or do you
12 have an opinion as to whether you spent sufficient time?

13 A. Yes, I have an opinion. We did a thorough job and that's
14 all the time that we needed to take.

15 Q. And there were some questions there about where you got
16 some of the prior art. You got it from Pathlight, right? Is
17 that true?

18 A. That's correct.

19 Q. And is where you get the prior art, whether you get it
20 from your client or not, does it impact whether or not it's
21 prior art?

22 A. No. Of course not.

23 Q. You also mentioned you wanted to clear up something about
24 the facts, the 13-page fax. What was it you wanted to clear
25 up there?

1 A. Well, when we first started working on this, we did not
2 have the file history. It takes a while to obtain that, and
3 when we finally got it, we were able to complete the opinion.
4 So I just wanted to explain what some of the -- what looks
5 like a delay between the time we got our marching or orders
6 and the time we actually made the opinion, we had to Marshall
7 all of the materials including the file history and the prior
8 art.

9 Q. You were asked a little bit about the length of the
10 opinion. Your opinion letter, is that long enough, do you
11 feel, to adequately express your opinions?

12 A. I certainly think that it was an adequate opinion. It was
13 long enough to discuss all of the claims, all of the elements,
14 and where each element was found in the prior art.

15 Q. And --

16 A. That's all that's required.

17 Q. Sorry. And you were also asked some questions about
18 exhibit 232, the patent application you filed on behalf of
19 Pathlight. Do you recall that?

20 A. Yes.

21 Q. And there was a question about a reference to access
22 controls and whether you disclosed the 972 patent. Did you
23 disclose anything about prior art access controls in exhibit
24 232?

25 A. We included a discussion of access controls in the

1 background section of the patent application. That's the
2 first section that talks about prior art. So that was
3 mentioned, for example, on the top of page 3. I believe
4 another place, bottom of page 5. They're both in the
5 background section of the application.

6 Q. Do you understand exhibit 232, the Pathlight patent
7 application to be an application on access controls?

8 MR. ALCOCK: Objection, your Honor. Calls for expert
9 testimony.

10 MR. AL-SALAM: Your Honor, he ask asking --

11 THE COURT: No. That objection's overruled. You may
12 answer that.

13 A. What we claimed in this patent application was a very
14 precise method of having end to end communications, and we
15 specifically recite the fact that the host initiator generates
16 commands to a virtual connection architecture so all of that,
17 it's hard to look at a whole patent claim and find two words
18 and say that's what the claim does in the whole environment,
19 we have the specific way of actually connecting from one point
20 to another.

21 Q. Do you regard there being anything inconsistent about your
22 filing of that application and your opinion of invalidity on
23 the 972 patent?

24 A. No, not at all. This is a much more specific application
25 of the technology than the 972 patent which was fairly broad

1 and not detailed.

2 Q. Your Honor, we'd offer Defendant's Exhibit 275, Mr. Levy's
3 opinion.

4 MR. ALCOCK: We have no objection, your Honor.

5 Actually it's already in.

6 MR. AL-SALAM: Pass the witness.

7 MR. ALCOCK: We have no further questions of the
8 witness your Honor.

9 THE COURT: May the witness be excused, counsel?

10 MR. ALCOCK: He may.

11 THE COURT: You may be excused. Call your next
12 witness.

13 MR. DELLETT: Pathlight calls Robert Sims by
14 deposition. This was a deposition taken on September 14th,
15 2000.

16 Q. Mr. Sims, you've probably given the background information
17 before, but will you, again, state your name for the record?

18 A. Robert Sims.

19 Q. And what is your position at Crossroads?

20 A. Vice-president of operations.

21 Q. Now we're going to move into kind of the bulk of the
22 questioning. Does Crossroads mark any product with the patent
23 number 35941972 and for your benefit, that's the patent that's
24 involved in this case?

25 A: Yes.

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1 Q. Okay. Just so that I can get some dates or make sure I
2 have the dates correct, do you know when this label
3 modification process started, approximately?

4 A. In November 1999.

5 Q. Do you know, approximately, when it then went to the
6 engineering change process?

7 A. I would say most likely in December.

8 Q. And then, would it be safe to assume that around the
9 December time frame, also, it went to the art work stage?

10 A. It may or may not, yeah.

11 Q. And then, it was a fixed and probably shipped the first
12 time you said, somewhere in January 2000?

13 A. Yes, the engineering change for that label had an
14 implementation date of January of 2000, and that ties closely
15 to the ship time frame.

16 Q. Please explain to me how it was determined that products
17 were marked with the 972 patent number?

18 A. Could you restate that again?

19 Q. Yes. Please explain to me how it was determined at
20 Crossroads to mark products with the 972 patent number?

21 A. By advice of our outside counsel.

22 Q. Does Crossroads have any general policies on marking its
23 products?

24 A. It's generated by outside counsel.

25 Q. Do you know if it's product by product or if it's in

1 accordance with the general policy?

2 A. No, I don't.

3 Q. Would anyone other than the outside counsel have a role in
4 determining whether or not to mark a product?

5 A. I'm not -- I don't know.

6 Q. Do you know if any engineers assist in making that
7 determination?

8 A. In determining whether or not to mark the product?

9 Q. Correct.

10 A. The engineers. Define assist, I guess, I guess what you
11 mean by that.

12 Q. Sure. Do you know if any engineers or employees would
13 give advice to the outside counsel to help them determine
14 whether or not a patent number should be marked on a patent?

15 A. Yes, if I understand your question right.

16 Q. Okay. Do you know if those engineers or the outside
17 counsel reviewed the patent claims were making the
18 determination?

19 A. Review the patent claims?

20 Q. Yes. So, for instance, in deciding whether or not to mark
21 the 4100 with the 972 patent number, do you know of anyone at
22 Crossroads who reviewed the claims of that patent?

23 A. Yes.

24 Q. And who is that?

25 A. That would be John middle ton or Geoff Hoese.

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1 Q. I know Geoff Hoese is the inventor. Who is the other
2 gentleman?

3 A. John middle ton is the vice-president of engineers.

4 Q. Just so the record is clear, so once Crossroads started
5 marking those products with the 972 patent number, it has
6 continued to do so continuously?

7 A. Yes.

8 Q. Until today?

9 A. Yes.

10 Q. Pass the witness.

11 Q. (BY MR. ALBRIGHT) And it has no labels on it?

12 A. It has some labels. Let me explain. You're required to
13 have a regulatory label when you have power. When you're
14 supplying a stand alone power product, that has to have safety
15 agency labels on it and those kind of activities. So the
16 patent language was added to the regulatory label and its
17 product doesn't require a regulatory label.

18 Q. Okay.

19 A. At this time I mean.

20 Q. So that product does not list the patent number on it?

21 A. Not to my knowledge.

22 Q. On the products Crossroads marked the 972 patent number do
23 you know if anyone prior to the marking determined whether
24 those products implement access controls as recited by the
25 patent?

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1 A. I don't know.

2 MR. ALBRIGHT: That's it.

3 THE COURT: You may call your next witness.

4 MR. BAHLER: Pathlight calls Ian Davies.

5 THE COURT: Just come forward right here, please, sir.

6 This is Mrs. Sims. She's going to administer an oath to you.

7 (Witness was sworn.)

8 THE COURT: You need to walk around this column up
9 here and have a seat in this blue chair. If you'll tell us
10 your full name, please, sir and spell your last.

11 THE WITNESS: Ian Robert Davis, D A V I E S

12 DIRECT EXAMINATION

13 BY MR. BAHLER:

14 Q. Morning, Mr. Davies. Where do you work, sir?

15 A. Chaparral Network Storage.

16 Q. Have you ever worked for a company called Adaptec?

17 A. Yes.

18 Q. When was that?

19 A. February '96 till September '98.

20 Q. All right, sir. I'd like to take a look in your notebook
21 at Defendant's Exhibit 131 -- well, before you do that, did
22 you at any time while you were at Adaptec work on a project
23 called Coronado?

24 A. Yes, I do.

25 Q. Would you please take a look at Defendant's Exhibit 131 in

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1 your note book.

2 A. Okay.

3 Q. And particularly at page 178642 within that document. Do
4 you know what that is, sir?

5 A. Yes. That is a block diagram of Coronado.

6 Q. Is that accurate, a block diagram of the Coronado product
7 as it existed on the date indicated, December 6th, 1996?

8 A. Yes, it is.

9 Q. Your Honor, I move 131 into evidence.

10 MR. ALBRIGHT: No objection, your Honor.

11 THE COURT: It's received.

12 Q. (BY MR. BAHLER) With respect to the block diagram that's
13 up here on the screen from -- within that exhibit, Mr. Davies,
14 what part did you work on specifically?

15 A. I worked on the software ran on the block marked AMD five
16 by 86, top left-hand corner.

17 Q. Would you please take a look at exhibits 149, defendant's
18 149 and 150, 152 and 153. Could you tell us beginning with
19 149, what is that, sir?

20 A. 149 is a data book for the SCSI controller chip used on
21 Coronado.

22 Q. Okay. Does that show up on this block diagram?

23 A. Yes, it does. It's lower right. It's labelled AIC 7895,
24 Excalibur.

25 Q. All right, sir. Exhibit D-150.

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1 A. That is a data book for the Fibre Channel controller chip,
2 also used on Coronado.

3 Q. Is that shown on the block diagram, sir?

4 A. We.

5 Q. Where is it?

6 A. Bottom left, labeled AIC 1160, Emerald.

7 Q. All right, sir. Please take a look at exhibit 152 and
8 153. What are those?

9 A. This is a copy of the SCSI command handling software used
10 on Coronado.

11 Q. All right, sir. Your Honor, I move Defendant's Exhibit
12 149, 150, 152 and 153 into evidence.

13 MR. ALBRIGHT: No objection.

14 THE COURT: All right. They're received.

15 MR. BAHLER:

16 Q. Mr. Davies, first of all, with respect to the block
17 diagram here, what I'd like to do is have you just run through
18 the various components. Your Honor, with your permission,
19 could he step down?

20 THE COURT: He may.

21 Q. (BY MR. BAHLER) Please approach the screen, Mr. Davies.
22 Could you just tell us -- first of all, this is called the F
23 C-F C S high bridge. What does that mean?

24 A. Bridges between Fibre Channel interface here and a SCSI
25 interface on the right side.

1 Q. All right, sir. And could you just identify the
2 components on that block diagram for us?

3 A. Sure. This is the Fibre Channel interface chip, the
4 Emerald. This is the SCSI interface chip, two SCSI channels.
5 This is data cache, 16 mega bit of cache, this is a
6 controlling microprocessor, the AMD five by eighty six and
7 local storage for that processor.

8 Q. All right, sir. Could you just run through us very briefly
9 the transfer of data -- first of all, the fiber channel, were
10 there hosts connected to that?

11 A. Yes, hosts would be connected to this port.

12 Q. All right. And the same question for the SCSI side.
13 What's connected to that?

14 A. Just devices on that side, SCSI disk devices.

15 Q. All right, sir. Could you just run us through a
16 communication from a host to a SCSI device briefly with
17 reference to that figure?

18 A. Sure. The host system would send a command, a reader
19 write request for example to the Emerald, to the controller
20 that would be accepted by the Emerald chip. That would enter
21 up the AMD processor which would allocate data space in the
22 cache. The Emerald would then transfer data from Fibre
23 Channel to the data cache through a DMA process. The AMD chip
24 would then command the Excalibur SCSI chip through DMA data
25 from the data cache to the storage devices.

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1 Q. What does DMA mean?

2 A. Direct memory access.

3 Q. Okay. Now, was there a mechanism within Coronado that's
4 limited access between hosts and SCSI storage devices?

5 A. Yes.

6 MR. ALBRIGHT: Object. Two grounds, your Honor, with
7 that kind of testimony, would be relevance based on the
8 discussion we've had previously with your Honor as well as any
9 opinion testimony from this gentleman who has not been
10 designated as an expert. Up to this point, he's simply been
11 telling the jury what these were and there's obviously no
12 objection. But I believe that particular question calls for
13 an opinion on this witness.

14 MR. BAHLER: Your Honor, he wrote the program that --

15 THE COURT: You have not designated him as an expert.
16 He's giving expert opinion. The objection is sustained.

17 Q. (BY MR. BAHLER) Mr. Davies, does the Coronado bridge have
18 a table in it?

19 A. Yes, it does. It has a table stored in the DRAM.

20 Q. What is the purpose of that table?

21 A. One of the particular tables maintains a less describing
22 host computer systems and storage units called LUNs and
23 maintains a table describing whether or not the host have
24 access to those LUNs or not.

25 Q. Okay. Now, how did that work exactly when a host was

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1 trying to communicate with a SCSI storage device when your
2 program is running?

3 A. Well, every command that comes into the controller, of
4 course, interrupts the AMD processor. That would consult its
5 tables and the DRAM table for every command, look up the host
6 and determine if that host had access or not.

7 Q. And what happened at the table to determine that it did
8 not?

9 A. If it did not, then the command would be completed with a
10 -- it would be completed with an error status.

11 Q. And what happened -- what would happen if it did have
12 access?

13 A. The command would be completed successfully.

14 Q. Okay. Does that mean when you say completed successfully,
15 if it were a read, for example, what would happen?

16 A. Data would be read from the discs.

17 Q. Okay. For write?

18 A. It would be written into the discs.

19 Q. Okay. Would was that table modifiable?

20 A. Yes.

21 Q. How so?

22 A. Through the reserve and release commands.

23 Q. Okay. Could you just-' all right. Was there any other
24 way to modify?

25 A. Oh, yeah. Power cycle and SCSI bus reset would also clear

1 the tables.

2 Q. Okay. Other ways to modify it as resetting power cycle?

3 A. There's different kinds of SCSI reset, but basically,
4 reset in and the power cycle are the reserve release commands.

5 Q. Mr. Davies, are you familiar with the SCSI inquiry
6 command?

7 A. Yes.

8 Q. Was that -- how was that handled, if at all, by
9 the-Coronado?

10 A. That was handled by the -- all able just couldn't hear the
11 end of the question, your Honor.

12 MR. BAHLER: By the Coronado.

13 A. That was handled by the M D processor. It would return
14 information describing the controller, things like model
15 number, manufacturer.

16 MR. BAHLER:

17 Q. All right, sir. Were inquiry commands ever passed from
18 the hosts to -- all the way through to the storage device
19 within the Coronado bridge?

20 A. No, they weren't.

21 Q. Does that have anything to do with the table?

22 A. Inquiry commands by pass that table.

23 Q. Okay.

24 A. In other words, they were permitted even if a reservation
25 is in place.

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1 Q. All right. But they were never -- were they ever passed
2 through all the way to the storage device?

3 A. No.

4 Q. Okay. How were inquiry -- inquiry requests to the storage
5 devices handled by Coronado?

6 A. Coronado didn't directly present the storage devices. It
7 presented what's called logical units that represent groups of
8 storage devices.

9 Q. Okay. How did Coronado handle inquiries to the logical
10 units?

11 A. It would -- it had a table in memory, again, and it would
12 return that table data to the host when the host asked for the
13 inquiry data.

14 Q. Were other than -- inquiries are not the only command.
15 Were any commands, whatsoever, ever passed from the hosts to
16 the SCSI storage devices in the Coronado?

17 A. Not directly.

18 Q. Okay. You know Mr. Calvis, correct?

19 A. Yes.

20 Q. And Mr. Collan?

21 A. Yes.

22 Q. Where were they working -- were they working on the
23 Coronado bridge, too?

24 A. Yes, they were.

25 Q. And where were those gentlemen working?

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1 A. Irving, California.

2 Q. Okay. Now, Mr. Davis, in this time frame, December 1996,
3 continuing into early '97, were there any other fiber channel
4 to SCSI bridges that Adaptec was making other than the
5 Coronado?

6 A. No.

7 Q. Pass the witness.

8 MR. ALBRIGHT: May I have just five seconds, your
9 Honor?

10 THE COURT: You may.

11 MR. ALBRIGHT: No questions.

12 THE COURT: Counsel, I'm going to give the jury a
13 break. Members of the jury, 15 minutes. Remember the
14 instructions.

15 (Jury not present.)

16 MR. ALCOCK: I neglected to offer exhibit 234 into
17 evidence. I wanted to do that before we --

18 THE COURT: 232, 234. Any objection to 234?

19 MR. BAHLER: No, your Honor.

20 THE COURT: It's received. All right.

21 (Recess.)

22 THE COURT: Anything before we bring in the jury?

23 MR. BAHLER: No, your Honor.

24 (Jury present.)

25 THE COURT: You may call your next witness.

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1 MR. DELLETT: At this time, Pathlight calls Mr.
2 Stanton Michael Manzanares from his deposition, dated February
3 28th, 2001. And Manzanares is spelled, M A N Z A N A R E S.

4 THE COURT: You may proceed.

5 MR. DELLETT:

6 Q. Good morning, Mr. Manzanares, would you please state your
7 full name?

8 A. Stanton Michael Manzanares.

9 Q. How long did you work for Adaptec?

10 A. About two and a half years.

11 Q. Can you give me a starting date and end date, if you
12 remember?

13 A. I believe -- let's see. I believe it was probably about
14 1995 through probably November of '98.

15 Q. Did there come a time when you got involved with a product
16 called Coronado?

17 A. Yes.

18 Q. Okay. What was your responsibility in connection with
19 those products?

20 A. Again, product management and marketing which would have
21 required the development of market requirements in addition to
22 working with sales, sales support to bring products to mark,
23 work with manufacturing and engineering. So life cycle
24 planning for the product.

25 Q. At this time, beginning of April 1996, how important was

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1 the Coronado project to Adaptec?

2 A. It was extremely important. As the technology was
3 evolving in the industry and we looked at it as an
4 introduction point in our ability to get into the marketplace
5 at the time that there was a significant change in the
6 marketplace.

7 Q. Did Adaptec dedicate resources to the Coronado project
8 from that time?

9 A. Yes.

10 Q. Where was the Coronado display at Comdex '96, fall of
11 Comdex '96?

12 A. In F C I A and actually, I think it was the FCLC, Fibre
13 Channel boot community, which is an industry association that
14 promotes the technologies. Had a force base in which fiber
15 chance natural related companies would gather and talk about
16 the technology in a product supporting those technologies.
17 One of our potential client customers was unisis and unisis
18 had a static display of Coronado that they showed to some of
19 their customers.

20 Q. Was that display of Coronado in connection with unisis in
21 the Fibre Channel loop community room? Was that a private
22 room or a public room?

23 A. Public.

24 Q. Any of the attendees from Comdex '97 could go in there?

25 A. Yes.

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- 1 Q. Did you attend Comdex fall 1996?
- 2 A. Yes.
- 3 Q. Let me show you what was marked at Mr. Levy's deposition
4 as defendant's trial exhibit 131. Do you know what that is?
- 5 A. It's an org chart. It is marketing slides discussing a
6 bridge product.
- 7 Q. Specifically, turn to page 178642. What's what a block
8 diagram of?
- 9 A. Et cetera it is a block diagram of Coronado.
- 10 Q. Did you create that block diagram?
- 11 A. Yes.
- 12 Q. Based upon what?
- 13 A. Based upon the engineering concepts of Coronado.
- 14 Q. Was this document including that figure shown to
15 prospective Adaptec customers?
- 16 A. Yes.
- 17 Q. How many?
- 18 A. A lot, ten to 20.
- 19 Q. During what time? At what time?
- 20 A. Well, the date on this is December of '96, so in or about,
21 you know, before and after that time.
- 22 Q. Who was involved in those customer presentations on behalf
23 of Adaptec?
- 24 A. It would have been primarily me, Jim come stock or John
25 hark man.

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1 Q. Do you specifically recall such customer demonstrations
2 before the end of 1996?

3 A. Yes.

4 Q. Using these materials?

5 A. Yes.

6 Q. Let me show you what was marked at Mr. Call vet's
7 deposition as defendant's trial exhibit D.156. Do you know
8 what that is?

9 A. Yes.

10 Q. What is it?

11 A. A product brief.

12 Q. Do you know who prepared that?

13 A. I prepared it.

14 Q. Do you know the date that it was prepared?

15 A. Boy, doesn't have a date on here, but I would say that
16 this would be probably in October. Well, I think what I did
17 is I had it available for Comdex so it would be October, early
18 November of '96.

19 Q. Did you actually distribute this product to prospective
20 customers of Adaptec?

21 A. Yes.

22 Q. Was that distribution done by the end of 1996?

23 A. Yes.

24 Q. Do you recall specifically whether or not this document,
25 Defendant's Exhibit 156, was available for distribution to

- 1 customers at the Comdex fall show?
- 2 A. Yes, it would have. More or less under MDA, though.
- 3 Q. Exhibit D 143, do you know what that is?
- 4 A. Yes.
- 5 Q. What is it?
- 6 A. It's a press release for announcing the fiber to SCSI
- 7 channel migration.
- 8 Q. Who prepared this?
- 9 A. I would have prepared it in conjunction with Adaptec's
- 10 corporate marketing organization.
- 11 Q. And specifically, what product did this deal with, this
- 12 May 6th, 1997 press release?
- 13 A. It announced the 7312 A which is the fiber to SCSI one
- 14 host to device channel product incorporating an Emerald chip
- 15 set.
- 16 Q. What does it have to do with Coronado?
- 17 A. That is the Coronado.
- 18 Q. Do you know when that Las Vegas show was?
- 19 A. Yeah, I think it was May of '97.
- 20 Q. Was the Coronado present at that show?
- 21 A. Yes.
- 22 Q. Why did you take Coronado to the net world conference in
- 23 May of '97?
- 24 A. To create public awareness and to get potential customers.
- 25 Q. Did you have Coronado at fall Comdex '97?

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1 A. I'm sure we did.

2 Q. Why are you sure that you did?

3 A. Because that would have been a very key and strategic demo
4 for us and, again, would have been demoed in the -- in our
5 suite.

6 Q. Was the Coronado product A K A 7312 ever released for sale
7 to customers?

8 A. It was released. There were some people designing it in
9 and I think when Adaptec pulled the plug, it probably was
10 never completed.

11 Q. Was it ever offered for sale, not actually sold, but ever
12 offered for sale?

13 A. Yes, I'm sure we sold some.

14 Q. When was that? This is Coronado?

15 A. Yes.

16 Q. Do you know when that was?

17 A. It would have been quarter four of 1997.

18 Q. Pathlight technology offers Defendant's Exhibit 156 and
19 defendant's 143 into evidence.

20 MR. ALBRIGHT: No objection, your Honor.

21 THE COURT: They're received.

22 MR. DELLETT: Pass the witness.

23 MR. ALBRIGHT: No questions.

24 MR. DELLETT: Pathlight would next call Mr. George

25 Alexander Kalwitz by deposition again. This is dated February

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1 22nd, 2001. And Kalwitz is K A L W I T Z.

2 MR. DELLETT:

3 Q. Good morning, Mr. Kalwitz. Would you please state your
4 full name?

5 A. George Alexander Kalwitz.

6 Q. How long did you work for Adaptec?

7 A. I worked there for almost three years starting in November
8 of '95.

9 Q. Did you work for Adaptec continuously from November of
10 1995 until you made the transition over to Chaparral in
11 September 1998?

12 A. Yes, I did.

13 Q. Did there come a time when you became involved within a
14 project in Adaptec called the Coronado project?

15 A. Yes. As a matter of fact, that's really what I was
16 involved in was Coronado.

17 Q. Now, as a result of the April 1996 meeting, what
18 specifically were you told to do?

19 A. I was to continue evaluating the feasibility of writing
20 the software that would interface with the Emerald chip inside
21 the Coronado sub system.

22 Q. Was the Emerald chip intended to be connected to multiple
23 Fibre Channel hosts?

24 A. Absolutely.

25 Q. Is that how you used the Emerald chip in the Coronado thaw

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1 doe product?

2 A. Yes, absolutely.

3 Q. Please take a look within Defendant's Exhibit 131, at the
4 fourth page which bears production number 178642?

5 A. Re.

6 Q. Do you know what that is?

7 A. Yes, that's a block diagram of the Coronado controller
8 that we did.

9 Q. Does that accurately depict the -- at least from block
10 diagram view, the Coronado product as it existed in December
11 6th, 1996?

12 A. Yes.

13 Q. Mr. Kalwitz, let me hand you what was marked in Mr. Levy's
14 deposition as defendant's trial exhibit 134.

15 A. Yes.

16 Q. Do you know what that is?

17 A. Yes, this is the Coronado product.

18 Q. When was that product built?

19 A. We assembled this in December of 1996.

20 Q. Pathlight technology offers defendant's trial exhibit 134.

21 MR. ALBRIGHT: No objection, your Honor.

22 THE COURT: Received.

23 MR. DELLETT:

24 Q. Is that's what's being referred to in this page, 178651 in
25 exhibit -- defendant's 131 as daughter card completed?

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1 A. Yes.

2 Q. Mr. Kalwitz, with reference to defendant's trial exhibit
3 158, do you know what that is?

4 A. Yes. These are status reports from my partner fill to our
5 boss, Mark O'Dell.

6 Q. Each one of these pages is an e-mail to MO, that's Mark
7 O'Dell?

8 A. Yes.

9 Q. What was the working relationship between you and Mr.
10 Collan at the time?

11 A. He was a fairly junior software engineer, so he was
12 working as a peer, but really under me, taking my direction on
13 this project.

14 Q. Were you familiar with the things that he was doing at
15 this time?

16 A. Absolutely.

17 Q. Was he familiar with the things that you were doing at
18 this time?

19 A. Yes.

20 Q. Please turn to page 182510. This is a status report dated
21 March 24th, 1997, and it covers the period from March 17th to
22 March 21. Is that 1997?

23 A. Yes.

24 Q. What if any significance did this event shown on this page
25 have to do with the development of the Coronado product?

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1 A. It seemed we were making significant progress and we were
2 alive and talking with the initiator. We were receiving his
3 commands and we were as Brooklyn bridge code would try to
4 respond to that command. That's where we are plugging at this
5 point.

6 Q. Please turn to the next page, production No. 182511.

7 A. Yes.

8 Q. And once again, this -- is an e-mail from Mr. Collin to
9 Mark O'Dell, right?

10 A. Yes.

11 Q. Dated March 31st, '97, right?

12 A. Yes.

13 Q. And it covers the period March 21st, 1997 to March 28th,
14 '97, right?

15 A. Yes.

16 Q. Okay. In that e-mail, the second sentence says we have
17 successfully completed one block IOs to the target and are now
18 working on larger IOs, what does that mean?

19 A. It means we debugged that indication path. We have dealt
20 with a number of different commands including inquiry,
21 recapacity and a variety. I don't remember the details but a
22 variety of other commands from the initiator. He learned all
23 about us, what our capabilities were and was happy in that he
24 was sending us real IOs and was getting data back.

25 Q. What, if anything, did this event tell you with respect to

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1 the ability of the Coronado to properly handle a reserve
2 command from a host?

3 A. At this point, we were able to do everything. This was a
4 major mile stone in our development. It showed that we were
5 working. We could process any of the SCSI commands.

6 Q. Including reserve?

7 A. Absolutely.

8 Q. Was there any doubt in your mind about that?

9 A. None.

10 Q. At that event -- and that event occurred sometime within
11 the week of March 24th to March 28th?

12 A. Yes.

13 Q. 1997?

14 A. Yes.

15 MR. DELLETT: Pathlight offers Defendant's Exhibit
16 158.

17 MR. ALBRIGHT: No objection, your Honor.

18 THE COURT: Received.

19 MR. DELLETT: Pass the witness.

20 MR. ALBRIGHT: No questions, your Honor.

21 MR. GARRETT: Your Honor, Pathlight calls Gary
22 Stephens as the next witness.

23 THE COURT: Just stand right there, please, sir, and
24 be sworn.

25 (Witness was sworn.)

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1 THE COURT: Tell us your full name and spell your
2 last, please.

3 THE WITNESS: My name is Gary Raymond Stephens. S T E
4 P H E N S

5 DIRECT EXAMINATION

6 BY MR. GARRETT:

7 Q. Good morning, Mr. Stephens.

8 A. Morning.

9 Q. How are you?

10 A. I'm fine this morning.

11 Q. Good. Is this your first time to testify as an expert
12 witness?

13 A. Yes, it is.

14 Q. Mr. Stephens, can you explain to the jury what you do for
15 a living?

16 A. I own FSI consulting services in Tucson, Arizona.

17 Q. And have you been retained by the law firm of Fulbright
18 and Jaworski in connection with this case?

19 A. Yes, I have.

20 Q. Can you explain to the jury what you've been asked to do?

21 A. I was hired as an independent consultant to evaluate the
22 validity of the claims of the 972 patent, and, also, to look
23 into some technical issues related to infringement.

24 Q. Now, have you been asked, Mr. Stephens, to look at the
25 relevance of any of some prior art that the Patent Office did

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1 not consider in connection with their examination of the 972
2 patent but that Crossroads knew about?

3 A. Yes, I have.

4 Q. And have you been asked to evaluate the technical merits
5 of Mr. Levy's opinion?

6 A. Yes, I was asked to look at just the technical merits of
7 Mr. Levy's opinion.

8 Q. Mr. Stephens, I'm going to dump some exhibits on you for
9 just a moment. It's going to get a little bulky, but it will
10 pass quickly. Mr. Stephens, I've given you defendant's trial
11 exhibits 2, 73, 124, 125, 129, 130, 151, 156, 199, 201, 281,
12 282, 283 and Crossroads trial exhibit No. 2.

13 Have you relied on these materials in formulating your
14 opinions about the matters you just talked about?

15 A. Yes, I have.

16 Q. Your Honor, Pathlight technology moves for the entry of
17 these exhibits into evidence.

18 MR. ALCOCK: No objection, your Honor.

19 THE COURT: All right. They're received.

20 MR. GARRETT:

21 Q. Tell you what, just for ease of testifying, I'll take
22 these back down. Thanks. Now, Mr. Stephens, before we get
23 into the substance of your opinion, I'd like to cover a little
24 background information about you. Can you explain to the jury
25 what FSI does?

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1 A. Yes, I can. FSI consulting services provides three
2 services to corporations. We consult with corporate
3 management and their architects to decide what features and
4 functions should we put into their Fibre Channel to SCSI
5 products. We train their engineers, programmers and
6 technicians about SCSI and Fibre Channel, and then, we help
7 them learn how to use that in the products itself.

8 Q. Now --

9 A. Finally, we provide a test system to determine whether the
10 final product meets their requirements of the specification
11 itself.

12 Q. What does FSI stand for, Mr. Stephens?

13 A. FSI stands for Fibre Channel and SCSI interfaces.

14 Q. How long have you owned FSI?

15 A. FSI was formed in late 1993.

16 Q. And what did you do before that time?

17 A. I worked for IBM corporation.

18 Q. And can you give the jury kind of a brief understanding or
19 a brief explanation of what it is you did at IBM.

20 A. I have various positions at IBM, but during the final
21 seven years, I was an architect for storage products, and I
22 helped to define the features and functions that went into IBM
23 storage products including tape drive, tape lie priors and
24 disk sub systems.

25 Q. Now, Mr. Stephens as you know, this case is about a patent

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1 that involves storage router and I believe that yesterday, we
2 heard Dr. Hodges, Crossroads's expert testify that in his
3 opinion, the relevant art pertains to storage architecture.

4 Were you present during that testimony.

5 A. Yes, I was.

6 Q. Do you agree with his statement?

7 A. Yes.

8 Q. Now, can you explain how, if at all, your experience
9 relates to the technology of storage architecture?

10 A. Well, IBM, as I said, my job was to help define the
11 architecture of storage and sub systems related to it, and I
12 was the I B P representative for both the SCSI and Fibre
13 Channel committees at that time, and so I was able to make the
14 standards relevant to the products that we were building at
15 the time.

16 Q. I see. Do you have experience in any other areas or any
17 other organizations that would bear on storage architecture?

18 A. Yes. Starting in 1986 at IBM and continuing at FSI, I've
19 been an active member of the Fibre Channel and SCSI committees
20 that are operated by the American national standards
21 institute. And these two committees have representatives have
22 various corporations develop the requirements for and specify
23 the behavior of SCSI and Fibre Channel products.

24 Q. Now, have you received any accolades in connection to
25 those committees?

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1 A. I was recently nominated for SCSI architect for the 20th
2 anniversary of SCSI itself.

3 Q. What is SCSI architect in what does what mean, can you
4 tell the jury?

5 A. I thought it was a good reason to have a party for the
6 20th anniversary.

7 Q. I see. Were you successful in your --

8 A. No, I was not.

9 Q. Okay. Now, Mr. Stephens, you expressed earlier that you
10 have been retained to evaluate the validity of the 972 patent.
11 Have you reached a conclusion about that issue?

12 A. Yes, I have.

13 Q. Can you explain to the jury what your opinion is?

14 A. It's my opinion that the 972 patent is invalid.

15 Q. Now, have you prepared any visual aids that will assist
16 the jury in understanding your analysis?

17 A. Yes, I have.

18 Q. Your Honor, if -- with your permission, can Mr. Stephens
19 step down and discuss some demonstrative exhibits?

20 THE COURT: You may. Keep your voice up.

21 THE WITNESS: Yes, sir.

22 MR. GARRETT: Your Honor, Pathlight offers Gary
23 Stephens as an expert in the area of storage architecture.

24 MR. ALCOCK: No objection, your Honor.

25 MR. GARRETT:

1 Q. Okay. Mr. Stephens, I apologize. Step down, please.
2 Counsel, we'll be discussing demonstrative exhibits 512
3 through 529 and 532 through 548 at this time. Mr. Stephens
4 can you explain to us what we're seeing here on this first
5 line?

6 A. This is just the cover slide for the demonstration.

7 Q. Okay. Turning to the next line, what are we seeing on
8 this line, Mr. Stephens?

9 A. In performing this analysis of the invalidity argument, I
10 looked at the 972 patent itself, I had to look at the file
11 history which includes all of the prior art a was specified in
12 their specification of the patent itself, and then I looked at
13 some prior art products that the Patent Office did not
14 consider in reaching its conclusion. In particular, the
15 publicly displayed 3701 product that you heard about and the
16 earlier invented Adaptec Coronado product which you've also
17 just heard about.

18 Q. Now, Mr. Stephens, you say that the Patent Office did not
19 consider those last two pieces of prior art. How do you know
20 that?

21 A. It's my understanding that every item of prior art that
22 the Patent Office considers is listed on the front of the
23 patent itself and these two did not appear.

24 Q. I see. Could we turn to the next slide, please? Mr.
25 Stephens, what are we seeing in this slide?

1 A. This is just a brief summary that the patent does have 14
2 claims, and of those 14 claims there are three independent
3 groups of claims to deal with. Claims 1 to 6 are directed to
4 the actual storage router itself. Claim 7 to 10 are directed
5 to the network that has a storage router in it. And claims 11
6 to 14 is what I call a series of steps in patent terminology
7 is a method that you can use to operate the device.

8 Q. Now, is it your opinion that all 14 of these claims are
9 invalid?

10 A. Yes, it is.

11 Q. And is that based both on the Symbios 3701 product that
12 you referred to and the Adaptec Coronado product?

13 A. That's correct.

14 Q. Now, standing on its own, does the Symbios 3701 product
15 invalidate these claims?

16 A. Yes, it does all by itself.

17 Q. And is that true as well for the Adaptec Coronado opinion?

18 A. That is my opinion.

19 Q. So if there two different pieces here why are we -- why
20 have you analyzed two different pieces of prior art?

21 A. It's my understanding that to make a patent invalid, if
22 you can find at least one piece of prior art that that was
23 enough to deem the patent invalid. In this case, we have two.

24 Q. I see. Now, turning to the next slide, what are we seeing
25 here?

1 A. If you look at the claims, the 14 claims of the patent
2 itself, you can break it down into just four big parts, one is
3 access controls which you've heard a lot about. There's some
4 additional functions beyond access controls in the patent
5 itself. There's some specific router hardware that's required
6 in the router itself, and then, in the storage network,
7 there's some things that it must operate.

8 So what we're going to do is to show that both the
9 Symbios 3701 and the Adaptec Coronado all have those claim
10 elements present in those devices.

11 Q. So the next -- are the next slides going to relate to the
12 access controls what you mentioned?

13 A. Right. We're going to go through this in four parts and
14 check off these boxes as we go.

15 Q. Could we see the next slide, please? What are we seeing
16 here, Mr. Stephens?

17 A. This is the beginning topic on access controls itself
18 which appears in claim 1 through 6 and 10 to 14 and the patent
19 terminology says maintaining a configuration of implements
20 access controls and as the court has interpreted you can read
21 it here, keeping a modifiable setting of information that
22 provides controls which limit access to specific subset of
23 storage devices or sections of a single device. So this is
24 the definition that the Court has given us to use.

25 Q. And what is the next slide showing?

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1 A. This one shows that in the prior case was the supervisor
2 unit which we've heard and separate part, it just says that
3 the storage router must provide those controls. So the court
4 has given us, again, a second definition to work with, but the
5 storage router will provide controls similar which limit
6 access.

7 Q. What do we is have in the next slide, Mr. Stephens?

8 A. It's my opinion that both the Symbios and the Adaptec
9 Coronado products use tables to implement those access
10 controls.

11 Q. Can you explain just briefly how the tables work?

12 A. A table is a multi-column set of entries, and in this
13 particular case on the left side, they have the name of the
14 host and on the right-hand side, they have the path where the
15 name of the device that is, in fact, related to that logical
16 unit. So you have at least three entries in there. You have
17 the logical unit, the name of the host that owns that logical
18 unit at the time, and the path to it on the other side of the
19 router itself.

20 Q. I see. Could we see the next slide? And so what are we
21 seeing here, Mr. Stephens?

22 A. This diagram on the left is taken from the LSI materials
23 that I also reviewed that are in those big books, and in
24 particular, it has the supervisor unit here which the Court
25 has defined to be a microprocessor that is program Todd do

1 that and the documentation also states that there is a table
2 in that product and that table has the work station in the
3 disk drive and the third component being the --

4 Q. Is this the table that is providing the controls that you
5 described a few slides back?

6 A. Yes. This is the reference that allows the path.

7 Q. Okay. Can we see the next slide, please? Now, are we
8 seeing -- this is Adaptec Coronado product?

9 A. Yes. This is the diagram again taken from the Adaptec
10 Coronado product itself and their documentation also provides
11 that there is a microprocessor, supervisor unit, and they also
12 have in their documentation that they also have a table that
13 provides those access controls.

14 Q. Could we see the next slide, please? And what are we
15 seeing here, Mr. Stephens?

16 A. There's a table again. There's the prior art product
17 being the Symbios 3701 and Adaptec Coronado, and in each of
18 those there's a table and what we've just seen in the
19 animation as this table is filled in, it associates red or
20 blue or green to one of these three storage de -- here's a
21 whole storage device and here's a subset of a storage device.

22 Q. Now, I notice there's a statement up in the kind of
23 upper-left-hand corner of this slide. Can you read what that
24 is?

25 A. It says each allocated disk drive or subset of allocated

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1 subset of storage on a disk drive is only accessible by the
2 associated work station.

3 Q. So one work station to one piece of storage, not shared
4 there how is that relevant to your analysis?

5 A. Well, this is an additional dependent claim that further
6 defines what access controls are to do. So once you have
7 access controls, you have the additionally provide a mechanism
8 to make one association between a piece of storage and a
9 particular host.

10 Q. And in your opinion, do the two pieces of prior art that
11 you're discussing do that?

12 A. Yes, they do.

13 Q. Okay. Now, Mr. Stephens, I notice that this is some what
14 similar. I'm going to put this up on the board here -- to
15 figure 3 of the patent. Is that accurate?

16 A. Yes, it's very similar.

17 Q. What are the differences, if any, between the two?

18 A. Well, in this particular case, the disk drive labeled 62
19 over here, the storage device, has four partitions. This one
20 only has two, but multiple is all that's required and that's
21 two or more. We have the global data at the top. And we have
22 the work stations. There's a different number of work
23 stations. And what's missing here is the management station.

24 Q. Now, are any of those differences that you identified
25 relevant for the purposes of your analysis?

1 A. No, sir, they're not.

2 Q. And why is that?

3 A. The patent only requires that there be a table to maintain
4 and process those controls for these pieces of storage, and it
5 doesn't really tell you how to maintain those tables.

6 Q. So is there a limitation on the way you can modify the
7 table according to the claims in your opinion?

8 A. No, there's no method specified.

9 Q. Could we see the next slide, please? Okay. Can you
10 explain to us what we're seeing here, Mr. Stephens?

11 A. Well, if you take the previous picture, which had the
12 table filled in, if red work station red makes an attempt to
13 be the prior art product, again, the product looks at the
14 table and it looks at 2 A and he says, oh, that's only
15 accessible by green and then he's going to deny that access.

16 Q. Now, can you explain to the jury what write is?

17 A. Right is the name of a command and, also, a process, it
18 causes information or data stored in the work station to be
19 transferred if it's successful, onto the disk itself. So
20 writing is to save a file on your PC.

21 Q. I see. So what are we seeing in the next slide, if you
22 will, please?

23 A. Okay. The opposite of the write is to read, and so,
24 again, red is attempting to read through the prior art product
25 and he looks in the table for 2 B and he sees that blue has

1 access. But not red and so, again, we're going to get an
2 access denied response.

3 Q. So the red work station is trying to get to 2 B, but the
4 table sees that that's associated with blue?

5 A. Yes.

6 Q. I see. What are we seeing in the next slide, Mr.
7 Stephens?

8 A. The left side of this is the patent claims themselves. I
9 think you've probably seen that quite a few times. Each of
10 these highlighted areas here are portions of that set of
11 claims that apply to access controls. Just kinds of scattered
12 around all over there.

13 But if you take these together, you will -- that's all
14 of the elements that cover access controls itself.

15 Q. So at this point, what you've shown the jury is that these
16 limitations have been met by the prior art products; is that
17 right?

18 MR. ALCOCK: Objection, your Honor. I believe it's
19 contrary to our discussion earlier.

20 THE COURT: Well, it's a general leading question.
21 I'll let you rephrase your question.

22 MR. GARRETT:

23 Q. Mr. Stephens, you've highlighted certain limitations that
24 appear in the claims.

25 A. Yes.

1 Q. What are you showing by doing that?

2 A. Well, we just --

3 MR. ALCOCK: Objection, your Honor. I believe it
4 lacks foundation.

5 MR. GARRETT: Your Honor, I think we've just
6 established the foundation going through this whole process.

7 THE COURT: I'll overrule the objection. He may
8 answer the question.

9 MR. GARRETT:

10 Q. The question is what are you illustrating by high lighting
11 those particular limitation on this?

12 A. Again, the access controls elements of the claims
13 themselves have been highlighted here and that's just what
14 we've just been talking about if you look at all of the charts
15 that we've just gone through. Under the topic of implements
16 access controls, provides control. And so these are the
17 element -- claim elements, and this would provide an
18 opportunity to check off the first box in that table before.

19 Q. And is that what we're going to see in the next slide, Mr.
20 Stephens?

21 A. Yes. Both the Symbios 3701 and the Adaptec product both
22 have all of those elements of access controls present in them.

23 MR. ALCOCK: Same objection as previously stated, your
24 Honor. Lacks foundation.

25 THE COURT: Well, I'm not sure I understand when you

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1 say lacks foundation, what you're referring to. The Court is
2 going to instruct the jury on what the Markman order is and
3 was and is present, and they'll be able to evaluate this
4 testimony and you'll be able to cross-examine on it. So the
5 objection is overruled. Proceed.

6 MR. ALCOCK: Very well.

7 MR. GARRETT:

8 Q. Mr. Stephens, explain to the jury what we're going to see
9 next.

10 A. We've just checked off the access controls box. We have
11 three more to go. And in addition to this access controls
12 function, which is part of the patent, there are three other
13 functions, one includes mapping, one includes virtual local
14 storage and the third one is the native low level block
15 protocol. So we're going to see that in the next section.

16 Q. Turning to the next slide, tell us what we're seeing here.

17 A. In operation, these products are fairly fast and we saw an
18 FCP command from red directed to 3 and when you look at the
19 table, it provides the access control, red the allowed to
20 access 3. So the command as it arrives at this device, it is
21 looked up in the table for permission to access the device,
22 and then, it's converted to the SCSI bus and sent on a
23 different set of wires that you've seen earlier diagrams. And
24 sent to the SCSI device to respond to.

25 Q. Now, Mr. Stephens, I see the words virtual local storage

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1 in the heading of this slide. Is that a limitation of any of
2 the claims in your opinion?

3 A. In my opinion, it is not a limitation of the claims.

4 Q. Well, if it's not a limitation, why aren't we seeing it in
5 this slide?

6 A. Well, it's my opinion but should the Court decide that
7 this is a limitation than what we're seeing is that this
8 device still provides virtual local storage.

9 Q. I see. Now, explain what the reference to native low
10 level block protocols is, Mr. Stephens?

11 A. Well, we have to interfaces or sets of cables here, and we
12 have two devices that can't talk to each other but want to.

13 And so the protocol, the commands of this one's right to
14 cruise is the SCSI command set itself. The Fibre Channel
15 protocol we've heard about carries those commands to the prior
16 art product.

17 Then, the SCSI parallel bus protocol carries those
18 commands and data to and from the storage device itself. So
19 this product converts between these two protocols but not to
20 command itself.

21 Q. Is this the English to Greek we've been hearing about in
22 the past?

23 A. That would work.

24 Q. What are we seeing in the next slide?

25 A. This is just the response coming back from 3. 3 has

1 received the command. The response again goes in the opposite
2 direction. Starts out on the SCSI parallel bus it had to be
3 converted in the prior art product itself and put on to the
4 FCP but the information that's transferred here is identical
5 to what would be seen if it were on this device were on this
6 side in the prior art product. That's the virtual local
7 storage is that this host has been talking and attempting to
8 talk to this device, would talk to it in the same manner as it
9 would if it were on this side. It's just that it's remote.
10 It's on other side of the router itself.

11 Q. If we could see the next two slides quickly, I think, what
12 is happening in these next two?

13 A. Well, this is the same process only in green is attempting
14 to talk to 2 A. Again, we have the access control to green
15 and 2 A to talk to one another and we have the communication
16 converted by the prior art product in the middle itself.

17 Q. I see. So what are we going to see -- what are we seeing
18 in the next slide if you will, please?

19 A. Well, just as before, there are three topics, mapping,
20 allowing access using the native low level block protocols,
21 and virtual local storage and you see those marked in brown.
22 So we're just trying to nick sure we're covering everything
23 with this analysis.

24 Q. I see. What are we seeing in the next slide?

25 A. Well, we just talked about those three additional

1 functions, mapping virtual local storage and native low level
2 block protocol in each of these products, again, had evidence
3 that it did use those. And the next one thing is the router
4 hardware.

5 Q. Just briefly, can you explain to the jury what router
6 hardware is?

7 A. Yes. In particular, the patent claims call out certain
8 chips that you might see in there, and so we have to show that
9 those functions, in fact, and those pieces of hardware, in
10 fact, existed in these devices themselves.

11 Q. Is that what we were seeing when we saw the board up here
12 on the Elmo here?

13 A. Yes, the little green card. The little chips attached to
14 that green card are what we're talking about.

15 Q. If we could turn to the next slide, please. So what are
16 we seeing here?

17 A. Well, there are four components that appear in two
18 different places in the patent claims itself. There's a
19 buffer, a controller and a supervising unit. The first of
20 which is the buffer and it occurs in two places and you just
21 heard testimony that this odd and even bank or memory over
22 here is the buffer for this Symbios 3701 product.

23 Q. I see. What does the next slide show, Mr. Stephens?

24 A. The second element is that there must be Fibre Channel
25 controller, again, it's specified in two places and then, down

1 here in claim 5, this claim tells you what has to be in the
2 controller itself. So it's another level of information
3 that's required. And we had testimony that the Fibre Channel
4 controller, in fact, is an element.

5 Q. So does that Fibre Channel controller have those extra
6 elements that you spoke of in claim 5?

7 A. Yes. This is the same -- the back down chip that you've
8 heard multiple times has these protocol unit, FIFO and DMA or
9 direct memory access.

10 Q. What is in the next slide, Mr. Stephens?

11 A. Well, on the other side of the device, there's a SCSI
12 controller that would talk to the SCSI bus itself. Again, its
13 appears in two places as a SCSI controller and again in claim
14 6, we have for detail about what must appear inside of that
15 component itself. And over here on this Symbios 3701, it's
16 required to have one, this product had six of those particular
17 chips in it.

18 Q. Okay. Just so the jury is clear about this, is that a
19 page from a Symbios manual of some kind that we're seeing on
20 the right?

21 A. It's my document -- it's my understanding it is, yes.

22 Q. What's in the next slide, Mr. Stephens?

23 A. Well, the last element is a supervisor unit which we have
24 been instructed is a microprocessor and on this diagram right
25 here, you'll see that there's a microprocessor that's already

1 been referred to.

2 Q. Do the next group of slides show this for the Adaptec
3 Coronado product?

4 A. Yes, the same thing would be shown for the Adaptec.

5 Q. If we could run through those slides. Is this the buffer?

6 A. Again, we have the buff ever and we just heard testimony
7 that this is the buffer on that particular Adaptec device.
8 This is the Coronado, the Adaptec provided dock it that shows
9 the hardware components again of the product itself. The main
10 one starting here would be the buffer.

11 Q. And in the next slide we've seen the Fibre Channel
12 controller?

13 A. Yes, we still have the same three elements and this chip
14 here is different. This is an Adaptec developed chip called
15 the Emerald as opposed to the Tachyon chip that they perform
16 the same function and they have the same three internal
17 elements the Tachyon chip.

18 Q. What does the next slide show?

19 A. Again we have the SCSI controller. Talk to the SCSI side,
20 the parallel side of this. We have two references to the
21 controller and, again, the break down of what must be inside
22 of that, and over here, we have the Adaptec produced
23 controller instead of the Symbios chip, we have a complete
24 think different chip and again, its performs the same function
25 and it has the same sub components.

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1 Q. Okay. What is the next slide showing?

2 A. Well, we're back to the supervisor unit again and here we
3 have the supervisor unit and we've just talked about A P D 586
4 micro processor that's in this product.

5 Q. I see. So what does the next slide show?

6 A. This is, again, trying to look at all of the claim
7 elements so we have yellow, green, color and we're just
8 showing that these four elements here, four elements here and
9 these two big elements here are all met by those prior art
10 products, Symbios 3701 and the Adaptec.

11 Q. Is it then time the check off a box?

12 A. Absolutely.

13 Q. Okay. What's next?

14 A. So beyond the router hardware that was just checked off,
15 when the storage router is in the storage network it must
16 operate with certain other components. So we're going the
17 look at those. There's two of them work stations.

18 Q. Could we see the next slide, please. And what are we
19 seeing here?

20 A. This is the picture that we've seen before that the access
21 controls and we have work stations on the left, work stations
22 sometimes you might think of as your PC would be an equivalent
23 device for that and those are called work stations here. And
24 on the right-hand side, we have the disk drives and storage
25 devices which you'll see in there, and those have been equated

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1 to hard disk drives. So we have those two elements, as well.

2 Q. Now, Mr. Stephens, there's an unlabeled line that connects
3 those work stations on the left to the prior art product.

4 What is that?

5 A. Here.

6 Q. Yes.

7 A. That's the Fibre Channel transport medium.

8 Q. What about on the right? There's that same kind of
9 unlabeled line there.

10 A. This would be the SCSI bus transport medium when you read
11 the claims.

12 Q. So what are we going to see in the next slide here if you
13 would, please?

14 A. We'll, we're going to finish. When we add those two
15 elements to it, we've now covered all the claim elements in
16 the patent. We've just shown that all those elements existed
17 in both the 3701 and from Symbios and the Adaptec Coronado
18 product.

19 Q. Is that conclusion reflected there your next slide?

20 A. Yes, it is. After question check off the box then we can
21 go --

22 Q. Go to the final slide?

23 A. Please.

24 Q. And what are you saying here?

25 A. So these two prior art products, the Symbios 3701 which

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1 you've heard about, and the Adaptec Coronado, which you've
2 heard about, have all the claim elements of the 972 patent.
3 They all exist in there and they preexisted the patent.

4 Q. And so what conclusion does that lead you to?

5 A. Well, the rule is that if you have a prior art product and
6 it has all the claim elements, then the patent would be
7 invalid. So here, we have two, very well.

8 Q. Mr. Stephens, you can step back up.

9 A. Thank you.

10 Q. We're going to cover a few more issues. Mr. Stephens, you
11 mentioned that you were asked to look at the technical merits
12 of Mr. Levy's opinion to Pathlight?

13 A. That's correct.

14 Q. Do you have an opinion about that matter?

15 MR. ALCOCK: Objection, your Honor. Beyond the scope
16 of expert report and deposition.

17 MR. GARRETT: Judge, it was not beyond the scope of
18 his expert report. In his rebuttal report he testified or --

19 THE COURT: He didn't testify to anything. Let me
20 see.

21 MR. GARRETT: I misspoke, your Honor.

22 THE COURT: Let me see the report.

23 MR. GARRETT: Your Honor, I will.

24 (At the bench, on the record).

25 MR. ALCOCK: Your Honor, this is all we have. This is

1 what he said on it so the testimony -- that last paragraph.
2 So if that's involved and they're prepared to elicit, I have
3 no objection, but if they're going to go into a detailed blow
4 by blow on the opinion letter, I would object as being beyond
5 the scope.

6 MR. GARRETT: They didn't depose him about this
7 matter.

8 THE COURT: It's immaterial. They don't have to
9 depose him unless you disclose an opinion with a basis of the
10 opinion that they failed to justify to take a deposition.
11 That's the whole point of disclosures.

12 MR. GARRETT: I understand, your Honor. I think his
13 testimony is going to simply rely on the economical merits
14 which would come to the conclusion as I did which concluded
15 that it was --

16 MR. ALCOCK: But that opens up the whole exhibit.

17 THE COURT: So the record is correct, as I understand
18 this paragraph, it says, quote, I am prepared to testify as
19 needed about the technical merit of Mr. Levy's opinion letter
20 based, at least, upon my understanding of the references he
21 cites. And upon my general knowledge, background and
22 experience.

23 There's just nothing broken down on that other than a
24 general question. I sustain the objection.

25 MR. GARRETT:

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1 Q. Mr. Stephens, you've been asked to evaluate the relevance
2 of some of the references that the Patent Office didn't
3 consider, but that Crossroads knew about; is that right?

4 A. That's correct.

5 Q. And what references do you evaluate in this regard?

6 A. The first one was the Adaptec Coronado product which we
7 just saw. The second one was a product called the -- by
8 Hewlett Packard called the HP Mux and the third one was the
9 Crossroads 4100 product.

10 Q. Was that the product that was displayed at Comdex 1996?

11 A. Yes, that is.

12 Q. Can you explain to the jury what your relevance analysis
13 consisted of?

14 A. We just saw. We went through the product literature and
15 the information we had on the Adaptec Coronado product and
16 were able to establish that that particular product had more
17 of the claim elements present in it. In fact, all of them,
18 than did any of the six prior art patents that were given to
19 the product to the Patent Office to look at.

20 And so it's more relevant, more material than the --
21 is more material than any of the six than the patent office
22 looked at. The HP Mux, again, we took a look at the
23 documentation we were provided and we were able to determine,
24 again, that that one particular product had more of those 14
25 claim elements present than any of the six prior art products

1 that the Patent Office looked at.

2 And finally, Crossroads demonstrated its own product.
3 I believe it was in a prototype, that they demonstrated that
4 at Comdex '96, more than a year before they filed the patent.
5 And that product itself has more of the claim elements than
6 does any of the six prior art products submitted to the Patent
7 Office.

8 Q. Now, Mr. Stephens, you spoke about claims 5 and 6 having,
9 I believe claim 5 had a fiber channel controller, broken down
10 into sub elements; is that right?

11 A. That's correct.

12 Q. Did any of the prior art references that were cited on the
13 face of the patent that the Patent Office got to consider, did
14 any of those meet those sub elements in claim 5?

15 A. None of those patents had any of those elements in them.

16 Q. And did any of the three references that you just
17 described that you considered for relevance, did they have
18 those elements?

19 A. Yes, each one of them was a fiber channel to SCSI bridge
20 type device.

21 Q. And I have this same question for claim No. 6. I believe
22 it was a SCSI controller broken down into sub elements; is
23 that correct?

24 A. Yes. The sub elements were not listed in any of those.

25 Q. In any of what?

1 A. In any of the prior art, six prior art patents.

2 Q. The ones that the patent office had considered?

3 A. Yes.

4 Q. Did they exist in the reference as you mention had the
5 Patent Office did not consider?

6 A. Yes, we just saw.

7 Q. Now, Mr. Stephens, are you familiar with the feature of
8 Pathlight's SAN gate way and SAN router products called
9 channel zoning?

10 A. Yes.

11 Q. How did you come to be familiar with that?

12 A. Looked at the documentation for both the gateway, SAN gate
13 way and the SAN router and the phrase channel zoning and
14 description was in those documents.

15 Q. And have you come to a conclusion about whether that
16 feature on Pathlight's products in fringes any of the claims
17 of the 972 patent?

18 MR. ALCOCK: Objection, your Honor, beyond the scope
19 of the expert report.

20 MR. GARRETT: May we approach, your Honor?

21 THE COURT: You may.

22 (At the bench, on the record.)

23 THE COURT: He's using this if that's it, but you look
24 and tell me what you are relying on.

25 MR. GARRETT: We're going to rely on 11 -- well, I

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1 believe 12 speaks to it, as well, you but I'm just trying to
2 get my bearings for a second.

3 THE COURT: Take your time.

4 MR. GARRETT: No, your Honor. I would submit that 11
5 along with Mr. Stephens' deposition testimony in this case is
6 sufficient to support this opinion.

7 THE COURT: I, of course, do not have Mr. Stephens'
8 deposition, but it does read I am prepared to testify about my
9 understanding of the design, operation and functionality of
10 channel zoning and Pathlight products. I am prepared to
11 testify that Dr. Hodges has not established that channel
12 zoning either literally or equivalently constitutes access
13 controls as recited in the claims of the 972 patent and as
14 construed by the Markman order, end quote.

15 I just love these experts. He could be prepared to
16 testify about Jack and Jill going up the hill, but it doesn't
17 say he's going to, and he doesn't give any details.

18 MR. GARRETT: Your Honor, this testimony -- he's going
19 to focus on access control.

20 THE COURT: I believe this gives enough notice. I
21 don't know what deposition -- this was given to you before the
22 deposition?

23 MR. ALCOCK: Yes, but the problem is in all of this,
24 he never said I had an opinion that they don't infringe. All
25 he said was, well, Hodges didn't do this test right or that

1 test right, and his report is defective in this fashion or
2 that fashion. Now he's got the guy teed up to say --

3 THE COURT: There's no reference in here that he's
4 going to give an opinion on infringement.

5 MR. GARRETT: Well, it's our opinion, your Honor, that
6 the evaluation of Dr. Hodges' arguments on infringement is an
7 opinion on infringement.

8 MR. BAHLER: It's good rebuttal, your Honor.

9 THE COURT: It's not rebuttal. This is your expert
10 testimony on infringement, and he's given his expertise on
11 prior art, and he's rebutting Dr. Hodges -- it doesn't say
12 that. It says he doesn't believe Dr. Hodges established
13 channel zoning constitutes access controls. Now, I'll permit
14 that because he says that.

15 But the other -- unless it's in the deposition and
16 covered on infringement, I'm not going to permit it.

17 MR. GARRETT: Just so we're clear on what I can do,
18 can I bring up that Dr. Hodges' opinion --

19 THE COURT: You need to put it up here if you want it
20 on the record.

21 MR. GARRETT: I'm sorry. Can I say that Dr. Hodges
22 has alleged that channel zoning does infringe the claims in
23 the 972 patent? Do you agree with that?

24 MR. ALCOCK: That's just a way around it. All we were
25 able -- we inquired about, all he said in his deposition was

1 were the reports defective in this way and defective in that
2 way. And then we asked, well, did you ever do your own
3 analysis to see if that was what was really going on in the
4 products.

5 MR. BAHLER: He actually gives that in his deposition.

6 MR. ALCOCK: That's not what they say.

7 THE COURT: Well, that's not what this says, but I
8 don't have his deposition. And I hate -- what else do you
9 plan on this witness testifying about?

10 MR. GARRETT: That's all we have. Actually, I don't
11 want a misstatement. I wanted to bring up again, okay, his
12 analysis is based -- his opinion on invalidity is based on
13 access, then I will --

14 THE COURT: Well, the description does state enough to
15 where I'm going to take a break and let him review his
16 deposition. If you can find it where it's covered in the
17 deposition, then I'll permit the testimony. Otherwise, I'll
18 sustain the objection.

19 THE COURT: Members of the jury, I'm going to give you
20 lunch now. Please be available at 1:15.

21 (Lunch recess.)

22 THE COURT: Counsel, have you had time to review the
23 deposition?

24 MR. GARRETT: Yes, your Honor.

25 THE COURT: Do you have any part you want to tender?

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1 MR. GARRETT: I do, sir.

2 THE COURT: Be glad to look at it.

3 MR. ALCOCK: Your Honor, I've also taken a look at it.

4 THE COURT: Okay. How long is it?

5 MR. GARRETT: There are eight pages, your Honor.

6 MR. ALCOCK: We just printed out the excerpts that I
7 think are relevant, sir. We've kind of bracketed them or
8 highlighted them.

9 THE COURT: For the record, I have the deposition of
10 Gary Stephens, taken on April 20, 2001, 28 pages. All right.
11 I'm also reviewing Mr. Stephens' deposition on April 20, 2001,
12 pages 168 and 169. I've also reviewed pages 43 to 45, and
13 pages 20 to 28 twice now.

14 All right. I'll hear arguments.

15 MR. GARRETT: Your Honor, I think page 20 Mr. Hodges
16 was asked the following question: Do both of those establish
17 that Mr. Stephens had an opinion about whether or not channel
18 zoning was a feature that infringed the claims of the patent.
19 I think that's clear from the fact that he said -- I apologize
20 for not having it in front of me, but he used the conjunctive
21 term in the second answer that I highlighted.

22 I think if you'll review that sentence, you'll
23 understand what I'm saying.

24 THE COURT: When he testifies in the same deposition
25 that he did not give an opinion on infringement, he did not

1 look at it for every element of every claim, that he only was
2 instructed to, and he only looked at Dr. Hodges' report to see
3 if Dr. Hodges had proven that they infringed.

4 MR. GARRETT: Well, your Honor, I think, at the very
5 least, that's inconsistent with what appears on page 20.

6 THE COURT: Well, there's no question that it's
7 inconsistent. He clearly says that the channel zoning as
8 specified in the Pathlight documents and as tested by Dr.
9 Hodges does not meet the claim element of the patent.

10 MR. ALCOCK: Your Honor, that was kind of my point at
11 sidebar earlier. If the testimony is that he looked at
12 Hodges' report and he thought the report was insufficient, I
13 believe that is covered by the expert report in the
14 deposition. When I jumped up initially was when I heard the
15 testimony about his analysis, the design and operation of
16 these devices.

17 THE COURT: All right. Well, counsel, of course, I
18 don't know what this opens because I don't know all of the
19 testimony that may be available by Mr. Stephens, but his
20 opinion that the channel zoning specified in the Pathlight
21 documents and as tested by Dr. Hodges in his opinion does not
22 meet the claimed elements of the patent is admissible.

23 But his admissions later on that he didn't do an
24 infringement analysis and that he didn't look to every element
25 of the claim, although I pretty much heard that he did through

1 the prior art, he clearly states pages 43, 45 and 168, answers
2 were -- I wasn't impressed any more in the deposition when
3 they disclaimed they hadn't done it.

4 So you certainly can ask him about his opinion with
5 regard to Dr. Hodges' report with regard to channel zoning,
6 but I will sustain the objection on the remainder.

7 MR. ALCOCK: Your Honor, there are couple of graphics
8 that they want to use that talk about the operation of the
9 device. I assume that -- those wouldn't be permissible under
10 your ruling?

11 THE COURT: Well --

12 MR. ALCOCK: I directed to Dr. Hodges' report there
13 directed to the global issue.

14 THE COURT: That would be prepared subsequent to the
15 deposition?

16 MR. ALCOCK: Yes.

17 MR. GARRETT: May I present at least one argument in
18 that regard, your Honor?

19 THE COURT: Sure.

20 MR. GARRETT: In his answer, he specified that as
21 specified in the Pathlight product documents and as Dr. Hodges
22 testified about them, as he had written in his expert report,
23 he does not believe that channel zoning meets the limitations
24 of the claims. In his explanatory testimony, I would like to
25 elicit why that is and that will come across as an explanation

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1 of what the product features are versus what the claims
2 require.

3 THE COURT: Well, doesn't he just say it's because
4 they had only one connection?

5 MR. GARRETT: It is, your Honor, and my point in all
6 this is that these slides do nothing more than to illustrate
7 what it is he's testified about.

8 THE COURT: Well, put them on. Let's see.

9 MR. GARRETT: I can give your Honor a copy.

10 THE COURT: I don't see any problem with these.

11 MR. GARRETT: Okay. Thank you, your Honor.

12 THE COURT: They're limited to that one question.

13 MR. GARRETT: Okay.

14 THE COURT: Here, gentlemen, y'all have got me with
15 enough paper. I'll be glad to give you these back. All
16 right. Anything further before we bring in the jury?

17 MR. ALCOCK: Not from us, your Honor.

18 MR. GARRETT: No, your Honor.

19 THE COURT: All right.

20 (Jury present.)

21 THE COURT: During your long lunch period, did anybody
22 about tempt to talk to you about this case?

23 THE JURORS: No.

24 THE COURT: Did you talk to anybody about the case?

25 THE JURORS: No.

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1 THE COURT: And did you learn anything at all about
2 the case outside the presence of each other and this
3 courtroom?

4 THE JURORS: No.

5 THE COURT: And did you see any rain?

6 THE JURORS: No.

7 THE COURT: Show negative responses to all questions
8 by all jurors. The witness will come forward, please. Mr.
9 Stephens, you're still under oath, do you understand that, sir
10 in.

11 THE WITNESS: Yes, sir, I do.

12 THE COURT: All right. You may proceed.

13 MR. GARRETT:

14 Q. Mr. Stephens, the question that was pending before we
15 broke was whether you had an opinion about whether Pathlight's
16 products using only channel zoning infringes claims of the
17 patent. Now, what I would like to do is to withdraw that
18 question and ask you another one. Did you listen to Dr.
19 Hodges's testimony that channel zoning, that feature being the
20 only feature resident on Pathlight's products infringes the
21 claims of the 972 patent?

22 A. Yes, I did.

23 Q. And so did you hear his conclusion that channel zoning is
24 applied to the SAN router with VPS not enabled in fringes the
25 claims of the 972 patent?

1 A. Yes, I remember that.

2 Q. You agree with his conclusion?

3 A. No, I do not.

4 Q. Can you explain to the jury why?

5 A. In the pictures that we had before lunch, we showed one
6 Fibre Channel and the workstations we showed one SCSI bus and
7 the work stations and the SCSI devices and the clear
8 requirements of the patent are in all of its claims that there
9 must be controls provided to limit access for a computer to a
10 subset of the devices on a single SCSI bus.

11 What Dr. Hodges showed and had to do and to his test
12 system is he had to reconfigure the test system to put each
13 host on a different channel and with two and three devices on
14 different channels, and it doesn't show anything because he
15 only had one host on each of those and so he could not
16 allocate subsets to the storage on those devices between the
17 two hosts. He had two hosts on different two cables and so it
18 wasn't -- didn't meet the claims.

19 Q. Now, you also heard Dr. Hodges's testimony that on the SAN
20 gateway product of Pathlight with only channel zoning but
21 without VPS in fringes every claim of the 972 patent. Do you
22 recall that?

23 A. Yes.

24 Q. Do you agree with that conclusion?

25 A. I do not.

1 Q. Ask you explain to the jury why?

2 A. I think we went through part of that, but the -- the all
3 the patent requires and all claims all 14 we looked at earlier
4 is that you must provide controls to limit a computer's access
5 to a subset of storage on a single SCSI bus and Hodges just
6 did not prove that.

7 Q. Do you have any visual aids that you prepared that would
8 assist the jury in understanding what you've just explained?

9 A. Yes, I do.

10 Q. Could we call those up, please? Mr. Stephens, what is
11 this first slide?

12 A. This first slide is -- it only takes two rules to
13 determine whether this is going to work or not and in this
14 picture you can see work stations as we saw before and the
15 devices on the SCSI bus on the right as we saw before. And
16 what channel zoning does is it makes all of the hosts on the
17 left able to see all of the data on the right.

18 And so with channel zoning in effect and no other
19 additional controls provided in any way, there's no way to
20 restrict red's access to some subset of that device. It's an
21 all or none.

22 Q. And what is the next slide show, Mr. Stephens?

23 A. The previous slide shows if one gets it, all get it. This
24 one shows that if channel zoning is enabled and the SCSI bus
25 is not authorized on here channel zoning. That if none get

1 it, if one doesn't get it, none of them get it. It's very
2 simple. So it's if any, all, if none, if one can't have
3 access, then none can have access to it. That does not meet
4 the requirements of the claims.

5 Q. Thank you, Mr. Stephens. I'd like to wrap up with
6 understanding what your overall conclusion with respect to the
7 validity of the 972 patent claims is with respect to the
8 Symbios 3701 product. If you could explain that to the jury,
9 please.

10 A. Yes. It's my opinion and on the analysis that we went
11 through this morning that all of the claims are met and are
12 anticipated by, very special word, anticipated by the Symbios
13 3701 device.

14 Q. And can you explain to the jury whether any differences
15 that were present with respect to the Symbios 3701 product and
16 the claim requirements would have been obvious?

17 MR. ALCOCK: Objection, your Honor, beyond the scope
18 of his expert report.

19 MR. GARRETT: May we approach, your Honor?

20 THE COURT: Yes.

21 (At the bench, on the record.)

22 MR. ALCOCK: It's anticipation only.

23 THE COURT: I haven't heard anything on direct on
24 obviousness.

25 MR. GARRETT: Your Honor, we have anticipation --

1 anticipation is in the expert report. And I will not
2 represent that there's obviousness. But my point is that for
3 anticipation to be present, if there are any differences
4 they're alleging exists, this must be obvious.

5 MR. ALCOCK: We haven't had testimony on that.

6 THE COURT: You may believe that people all over the
7 country that study this may believe that, but I've got a jury
8 and I've got to figure out what's admissible and if it's not
9 done, it's not done. I heard nothing on direct. I will
10 sustain the objection.

11 MR. GARRETT: I would like to elicit from him now is
12 his testimony about his overall conclusion.

13 MR. ALCOCK: That's fine, as long as it's
14 anticipation, I don't care.

15 MR. GARRETT: It will be anticipation with respect to
16 1 through 6 but obviousness with respect to the others.

17 MR. ALCOCK: There's no evidence of that. There's
18 nothing on the report on the -- nothing.

19 MR. GARRETT: He has -- your Honor, when we submitted
20 summary judgment briefs, he explained that it was a prior
21 invention. We are not claiming that the prior system of claim
22 7 through 10 was invented by Adaptec nor the method of
23 exercising that storage router was invented by Adaptec. But
24 those were obvious derivations, and we put that in the summary
25 judgment motion.

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1 THE COURT: Well, I understand, counsel, but what goes
2 in the summary judgment motion is not the criterion on putting
3 somebody on notice, summary judgments come in after discovery.
4 Summary judgments come in usually 29 days and 23 hours before
5 jury selection. And it's just not sufficient to have
6 admissibility.

7 Now, I have not heard anything on anticipation with
8 this witness, and so --

9 MR. GARRETT: Obviousness.

10 THE COURT: I mean, excuse me. See, even the Judge
11 gets confused with these magical words from Washington. And
12 so a summary on it when it hadn't be there, I just can't
13 allow.

14 MR. GARRETT: I understand, thank you. Mr. Stephens,
15 thank you very much. Pass the witness.

16 CROSS-EXAMINATION

17 BY MR. ALCOCK:

18 Q. Good afternoon.

19 A. Afternoon.

20 Q. I'm going to place before you your expert report in this
21 case. Your Honor, for the record, it's exhibit 97. When were
22 you first hired by the Fulbright law firm?

23 A. It was in early August of 2000.

24 Q. Okay. And you prepared, then, this expert report. It's
25 close to 200 pages; is that right, sir?

1 A. That's correct.

2 Q. And, approximately, how many hours did you work in order
3 to prepare this expert report?

4 A. About 250 hours.

5 Q. About 250 hours?

6 A. To get to March.

7 Q. Okay. And now, I notice, if you look at page 19 of your
8 expert report, there's a section on the LSI's 3701 product.
9 Do you see that?

10 A. Yes, sir.

11 Q. And that's the same product that you've been talking about
12 here today. Maybe you referred it today as the Symbios
13 product; is that right?

14 A. That's the same thing.

15 Q. Okay. And you did a careful element by element analysis
16 on this product to establish its -- it shows invalidity over
17 the 972 patent; is that right?

18 A. I did prepare the claim chart.

19 Q. Okay. And I'm interested in the claim chart at the bottom
20 of page 21 that talks about a term that I heard you say
21 multiple times during your direct examination implements
22 access controls; is that right?

23 A. That's the phrase, yes.

24 Q. And what you were doing here is matching up the claims of
25 the patent with the technical elements that you found in these

1 various documents that you were reviewing; is that right?

2 A. That's correct.

3 Q. And that's pretty much what you did here for us today; is
4 that right?

5 A. Yes.

6 Q. Okay. Now, if you look at the continuation of that
7 match-up, there's a reference to something called a reserve
8 and release command. Do you see that?

9 A. Yes, sir.

10 Q. And if you go further down on the page, down on the
11 bottom, there's a section there discussing claim 2. Do you
12 see that?

13 A. Yes, I see it.

14 Q. And there's also a discussion there of this reserve
15 command. Do you see that?

16 A. Yes.

17 Q. And if you look through, for example, if you look at page
18 46 of your expert report, that's the section of the expert
19 report on the Coronado product that we heard a lot about?

20 A. That's correct.

21 Q. And if we look at page 49 where there's a further
22 discussion of that Coronado product, there's kind of a lengthy
23 discussion of this SCSI reserve/release command; is that
24 right?

25 A. Yes.

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1 Q. In fact, if we went through this whole 200-page expert
2 report, next to every access control limitation in every
3 claim, there would be a discussion of SCSI reserve commands,
4 wouldn't there?

5 A. Yes, there are.

6 Q. Now, before you made that presentation that you made
7 today, you -- it took some time to prepare that power point
8 presentation, I bet, didn't it?

9 A. Always takes time to prepare presentations.

10 Q. Right. And so you spent some time figuring out exactly
11 what you were going to include in this presentation today,
12 didn't you, sir?

13 A. Of course.

14 Q. Was it an accident that the words reserve release were
15 never uttered, not a single time, in your entire direct
16 examination?

17 A. Was it -- repeat your question, please.

18 Q. Was it an accident that the words reserve release, SCSI
19 reserve release were not uttered a single time in your entire
20 direct examination?

21 MR. GARRETT: Objection, your Honor. I don't
22 understand what accident is.

23 THE COURT: Accident means it's not intentional,
24 counsel. You may answer the question.

25 A. The requirement for access controls does not require the

1 reserve release command, and so to show that the patent
2 requires reserve release is a way to request the tables to be
3 modified, but it's not a requirement of the router itself.

4 Q. Did you come to that notion after the 250 hours you spent
5 preparing this expert report?

6 A. No.

7 Q. Now, you also were presenting -- could you shift the --
8 this is defendant's 523. You prepared a number of these
9 graphics and you went through them. This one just says prior
10 art products, plural, use of table?

11 A. Right.

12 Q. Now, the two products that were at issue in your testimony
13 are the Coronado report -- I mean, the Coronado product and
14 the -- you call it the Symbios product. Is that how you refer
15 to it?

16 A. 3701 Symbios.

17 Q. I'll call it Symbios. Now, this diagram looks, as I think
18 it was pointed out on direct, remarkably like figure 3 of the
19 patent?

20 A. That's correct.

21 Q. Now, there's no diagram in the documentation for these
22 products that looks like this, is there?

23 A. There was in the testimony that was in the depositions.

24 Q. Right. But if I show you Exhibit 131, Defendant's Exhibit
25 131, and that's -- and turn to page 178643, that's a block

1 diagram on this Coronado piece of prior art that you talked
2 about?

3 A. Yes, that's a hardware data.

4 Q. So what you needed to do to make up exhibit D 523 and the
5 others like it is to abstract from this diagram and in
6 addition to add testimony to make up the diagram of D-523; is
7 that right?

8 A. This doesn't show the software either, so yes, you'd have
9 to do that.

10 Q. Okay. And similarly, I notice some of your graphics
11 exhibits were drawn from exhibit D-74. Let me show you page
12 1670 of D-74. Is that a hardware diagram only or is that a
13 hardware and software diagram?

14 A. That's a hardware diagram only.

15 Q. Okay. So what you needed to do to come up with the
16 documents that look like D-523 is take this diagram, analyze
17 testimony from other people, and generate the diagrams that
18 you testified from; is that correct?

19 A. They also have the Court's ruling on what access control
20 means.

21 Q. Right. No. I'm more interested in the products that you
22 looked at.

23 A. Right. That would be that the products lined up with that
24 definition. It implements access controls, right?

25 Q. I understand that's your opinion. Right now I'm talking

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1 about the documents. I'm trying to talk about the documents.
2 This is what you used to draw that diagram along with the
3 testimony of some other witnesses?

4 A. Yes.

5 Q. Now, did you also read portions of the documents to
6 enlighten yourself as to the features they offered?

7 A. Yes.

8 Q. Okay. Flipping back to exhibit 131, page 178644, do you
9 see that, sir?

10 A. Yes, I do.

11 Q. Do you see anywhere in there -- and this is on the
12 Coronado product -- where it refers to an access control
13 feature?

14 A. No.

15 Q. And, in fact, if you look through this entire document,
16 you wouldn't find reference to an access control feature?

17 A. No, you will not.

18 Q. And, in fact, if you'll look through the entire stack of
19 documents, on the Symbios product, you wouldn't find reference
20 to an access control feature?

21 A. That's also correct.

22 Q. Now, did you make any screen shots of the operation of
23 this Coronado device to determine whether or not it had an
24 access control feature?

25 A. I did not look at the hardware itself.

1 Q. Excuse me?

2 A. I did not look at the hardware itself.

3 Q. So have you even seen the Coronado hardware?

4 A. I saw it this morning.

5 Q. For the first time?

6 A. I think that's the first time I saw the physical thing.

7 I'm not sure whether I saw a picture or not.

8 Q. Uh-huh, and so you never operated it?

9 A. Absolutely not.

10 Q. And with respect to the Symbios product, would it be the
11 same? I mean, did you create any screen shots of that?

12 A. No.

13 Q. Didn't operate the product?

14 A. No.

15 Q. Have you ever seen one?

16 A. I'm not sure whether I've seen the 3701 or the 3702 but

17 I've seen one very similar to what's described and operated
18 it.

19 Q. Now, with respect to your discussion just at the end here
20 on this channel zoning, first of all, you have no opinion on
21 the VPS software; is that right?

22 A. That's correct.

23 Q. Okay. And now, with respect to channel zoning, as I
24 understand it's your testimony that the channel zoning does
25 not prevent access from one work station to one remote storage

1 device; is that right?

2 A. Not when you have multiple on both sides.

3 Q. Okay.

4 A. As required by the patent.

5 Q. Now, let me show you exhibit 153, and I'm going to refer
6 you to just a few pages of it, sir. First, I'm going to
7 direct your attention to page 109, and these are pages, one of
8 which we've seen, out of the Pathlight web site, and it
9 indicates -- have you seen this before, sir?

10 A. I believe I have.

11 Q. Uh-huh. And have you seen the user manuals for it?

12 A. Yes.

13 Q. Okay. And it refers here to two types or two levels of
14 access control. One is channel access control and that's the
15 channel zoning that you were talking about on your direct
16 examination; is that right?

17 A. Yes.

18 Q. Okay. And then, if you look at the next page, exhibit --
19 of exhibit 153, page 110, there's a discussion of
20 configuration of SAN zoning. Do you see that?

21 A. Yes.

22 Q. Have you seen this page before?

23 A. I believe so.

24 Q. And here, it says the administrator indicates with
25 checkmarks in an access control dialogue box that connections

1 are to be enabled. Simply stated, when a box is left
2 unchecked, Pathlight's access control channel access control
3 inhibits devices from knowing that the storage channel exists.
4 Do you see that?

5 A. Is this discussion about channel zoning still? There's a
6 difference between the phrase SAN zoning and channel zoning.
7 I believe this is talking about SAN zoning.

8 Q. Well, it says Pathlight's channel access control. I think
9 that's the channel access control that Dr. Hodges testified
10 about on his direct examination. You've never seen what
11 before, have you, sir?

12 A. I remember looking at the page, but I don't remember the
13 text today, so I'd like to take a chance to read it.

14 Q. Go ahead.

15 A. All right.

16 Q. Now, have you been to Pathlight's offices?

17 A. No, sir.

18 Q. How many hours have you spent on this case to date with
19 respect to -- we've established about 250 hours before your
20 expert report. How about now?

21 A. Approaching 350.

22 Q. Okay. Now, you haven't operated a Pathlight device to see
23 whether or not when you do that operation, it achieves access
24 control?

25 A. Well, this operation here is in the SAN director.

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1 Q. My question was simple. Have you operated a Pathlight
2 device in order to determine whether or not access control is
3 achieved with channel zoning?

4 A. No, I have not operated it.

5 Q. I have no further questions of the witness, your Honor.

6 RE-DIRECT EXAMINATION

7 BY MR. GARRETT:

8 Q. Mr. Stephens, I just have a few brief follow-up questions
9 based on your discussion with Mr. Alcock.

10 Mr. Alcock has taken issue with the fact that there
11 are a lot of references to the word reserve and release in
12 your expert report.

13 A. That's correct.

14 Q. What relationship does reserve have to the tables that you
15 discuss in your direct testimony?

16 A. Well, first of all, the documentation for these products
17 don't necessarily have to call out reserve and release because
18 it is a requirement of the standard that they attempt to
19 follow. That they implement reserve and release any way. So
20 the lack of documentation does not mean that the reserve and
21 release function is not there and not required.

22 So that part of it says that the fact that it doesn't
23 show in a documentation isn't material to this discussion
24 because it would be there because you wouldn't sell it without
25 it. So the question now about --

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1 Q. That's okay. That's fine. I also want to bring up
2 something in your expert report for the sake of completeness
3 to follow up on what Mr. Alcock asked you about. Now, for the
4 record, I'm showing you page 22 of your expert report which is
5 in the LSI section, the Symbios section that you and Mr.
6 Alcock discussed.

7 A. That's correct.

8 Q. And do you see the sentence that I've got highlighted,
9 could you read that for the jury, please?

10 A. The micro processor maintains a table that is aware of
11 which sub LUNs have been reserved by host devices.

12 Q. Is that consistent, is that statement consistent with the
13 testimony you gave earlier?

14 A. Yes, it is. There's a table in the device.

15 Q. Now, the next thing I'm going to show you, Mr. Stephens,
16 is page 44 of your expert report.

17 A. 44 or 49?

18 Q. 49, pardon me. And first, I'd like to point out
19 that the section that we're dealing with is the one that talks
20 about implementing access controls for storage space on the
21 SCSI storage devices. Do you see that?

22 A. Yes.

23 Q. Okay. Now, you'll notice that to the right, you have made
24 a statement that conflicts would be detected by comparing with
25 the configuration table. Do you see that?

1 A. Yes.

2 Q. Is that consistent with the testimony you gave earlier?

3 A. That is correct.

4 Q. How does the reserve command operate with that table?

5 A. The reserve command itself is a request to the device, the
6 controller device, to establish some control in its own space.
7 And so, the reserve command says please, if you can, establish
8 a reserve in your table so that if they come back later, it's
9 my storage.

10 Q. Is the reserve command used to modify the information in
11 the table?

12 A. Absolutely.

13 Q. Is that permissible according to the patent claims?

14 A. Yes.

15 MR. ALCOCK: Objection, your Honor. That's beyond the
16 scope of the Court's order.

17 MR. GARRETT: Your Honor, I don't think it is.

18 THE COURT: Well, what direct is this -- what cross
19 examination is this referring to?

20 MR. GARRETT: Well, Mr. Alcock took issue with the
21 words reserve and release throughout his report, and I'm
22 explaining why the use of those words is consistent with the
23 other explanations in his report.

24 THE COURT: All right. Your objection's overruled.

25 A. Would you repeat the question?

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1 (Read back.)

2 A. Yes, it is.

3 MR. GARRETT:

4 Q. Now, Mr. Stephens, Mr. Alcock also seemed to belittle your
5 reliance on documents and testimony to figure out how
6 something works. Do you feel that your approach was
7 reasonable?

8 A. I believe it was. These are the documents that would be
9 available to the public or that you would determine from the
10 employees who were working with the products. We would
11 believe that they were telling the truth, especially under
12 oath.

13 Q. Is this a method that you've used in analyzing products?

14 A. In my consulting, we have to rely on what people tell us
15 because you can't see the software and the documents that they
16 produce.

17 Q. Thank you. I pass the witness.

18 THE COURT: Any further questions?

19 MR. ALCOCK: No, your Honor.

20 THE COURT: May this witness be excused, counsel?

21 MR. GARRETT: He may, your Honor.

22 MR. ALCOCK: He may.

23 THE COURT: You may be excused.

24 MR. DELLETT: Pathlight calls Dr. Ken Flamm.

25 THE COURT: Come forward and be sworn, please.

1 (Witness was sworn.)

2 THE COURT: Tell us, please, sir, your full name and
3 spell your last.

4 THE WITNESS: My name is Kenneth Flamm, F L A.M. M

5 DIRECT EXAMINATION

6 BY MR. DELLETT:

7 Q. Could you tell the jury what you do for a living?

8 A. I'm a professor at the university of Texas at Austin.

9 Q. What do you teach?

10 A. I teach economics, intermediate micro economics. I
11 specialize in the economics of high technology industries in
12 general in the computer communications and computer chip
13 industries in particular.

14 Q. Are you affiliated with any other academic or research
15 institutions?

16 A. I'm a senior fellow at if brooking institution in
17 Washington D.C.

18 Q. Have you worked for any other as an employee for any other
19 organizations or research institutions?

20 A. From 1993 to 1995, I was a principal deputy assistant
21 secretary of defense at the U.S. department of defense where I
22 was a -- in charge of what they call dual use technology
23 programs, programs that address both commercial and military
24 technology like computers, semiconductors, communication
25 systems.

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1 I was also in charge of the -- my office was in charge
2 of the department of defense's technology agreements with
3 foreign companies and foreign countries.

4 Q. While you were at the department of defense, did you do
5 any patent licensing?

6 A. I personally didn't do the patent licensing. I supervised
7 individuals in the department of defense who negotiated and
8 represented department of defense in negotiations about
9 licenses and patents.

10 Q. What is your education?

11 A. I am a Ph.D. in economics from M I T. My B A degree is
12 also in economics from Stanford university.

13 Q. What did you do to support yourself during your college
14 and graduate school career?

15 A. I worked as a computer programmer and systems analyst.

16 Q. And have you published anything on the economics of
17 computer technology?

18 A. I've published five books and approximately 31, 32
19 articles on computer communications technology or computer
20 communications industries.

21 Q. Are you on the editorial boards of any publications
22 regarding the computer industry?

23 A. I'm on the board of -- I was on the editorial board of the
24 economics of new innovation and technology which was a
25 professional journal on that subject.

1 Q. Have you also done consulting work for computer
2 manufacturers?

3 A. I've consulted for IBM, A T and T, digital equipment
4 corporation, Fujitsu, a Japanese manufacturer of super
5 computers.

6 Q. Have you done -- excuse me.

7 A. I was going to say there's also a consortium call computer
8 systems product of computer manufacturers I've done work for.

9 Q. Have you done any consulting regarding the impact of
10 computer technology for the federal government?

11 A. Yes, I've been a consultant to the department of defense,
12 the national academy -- actually, not the federal government,
13 the U.S. Congress's office of technology assessment, central
14 intelligence agency, the -- I've served on the federal
15 networking advisory committee. I also served on the expert
16 working group and high performance computers stands
17 communications of the organization for economic cooperation
18 development.

19 I testified before the U.S. international trade
20 commission on the impact of computer technology.

21 Q. Are you finished? Have you testified on computer
22 technology issues before the United States Congress?

23 A. Before four committees and sub committees.

24 Q. As your work as an economist concerning computer
25 technology, to what extent have you studied the actual

1 hardware or software inside computers?

2 A. I do detailed studies of the impact of computer
3 technology. It's real impossible to do that without a good
4 understanding of the basic technology and technological change
5 in computers.

6 Q. And before you got involved in this case, were you
7 familiar at all with Fibre Channel or SCSI technology?

8 A. Yes.

9 Q. How did you become familiar with that?

10 A. Well, I've tracked the technology as part of my
11 professional job. And in addition to that, I've configured,
12 installed storage systems, particularly SCSI storage systems
13 at the university of Texas and at the Brookings Institution.

14 Q. Can you tell us about any examples you have of economic
15 studies regarding the impact of computer technology?

16 A. This summer, I'm working with several graduate students in
17 the organization called semi tech here in Austin, semi
18 conductor manufacturing technology consortium, looking at the
19 impact of changes in manufacturing technology and the future
20 of prices and costs of manufacturing computer chips.

21 Q. Let me show you what's been marked as Defendant's Exhibit
22 212. Can you tell the jury what this document is?

23 A. This appears to be a version of my C V.

24 Q. Pathlight offers exhibit D-212.

25 MR. ALBRIGHT: In objection, your Honor.

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1 THE COURT: It's received.

2 MR. DELLETT: We offer Dr. Flamm as an expert witness
3 who is an economist on computer technology.

4 MR. ALBRIGHT: No objection.

5 THE COURT: All right.

6 MR. DELLETT:

7 Q. What have you done in this case?

8 A. I've arrived at a conclusion concerning what a reasonable
9 royalty would be in the negotiation between Pathlight and
10 Crossroads over the 972 patent.

11 Q. Just because you've determined a reasonable royalty, does
12 that mean you believe Pathlight did anything wrong?

13 A. No, absolutely not.

14 Q. Okay. Have you calculated damages this way in other
15 patent cases before?

16 A. Yes, I have.

17 Q. Okay. Why did you pick a reasonable royalty?

18 A. In this particular case, a reasonable -- in particular,
19 Crossroads essentially has no lost profits, no lost sales, and
20 therefore, a reasonable royalty is the correct way to deal
21 with the issue of damages.

22 Q. What information did you use in coming to your opinion?

23 A. I relied on documents that were produced as part of this
24 case of which there were many. I did my own independent
25 research and secured documents on my own. I relied on my

1 background and experience in analyzing computer technology in
2 the computer industry, and I talked to engineers and technical
3 people at Pathlight.

4 Q. And in general, what methodology did you use to come up
5 with the reasonable royalty?

6 A. I did an economic analysis of the advantages of the
7 accused VPS software compared with techniques which Crossroads
8 says are not covered by the 972 patent.

9 Q. Is that a methodology that you have used before?

10 A. Yes.

11 Q. Is that a methodology that you have seen other economists
12 use?

13 A. It's a methodology that's widely used. It's been
14 published as papers on it, articles and that sort of thing.

15 Q. And did you prepare any demonstrative exhibits showing how
16 you use that method?

17 A. Yes, I have.

18 Q. Could you please put up the first slide? Why don't you
19 step down and explain what's in the first slide here which is
20 defendant's 502?

21 A. Okay. It's kind of hard to see here. The place to start
22 is with the facts, and what I've done here is I basically have
23 the basic facts on Pathlight sales, SAN gate ways and routers.
24 The total SAN gateways and routers sold over the period from
25 1999 through April of 2001 is 4,120 units. There were sales

1 of VPS software you've heard described in court, 3,107 units
2 were sold for use of those 4,120 routers.

3 Q. All right. What did you do next?

4 A. I then calculated what the total revenues that Pathlight
5 received from sales of this VPS feature were. They amounted
6 to 1,024,000 -- I'm sorry \$1,024,720.

7 Q. What information did you use the call cue late this
8 \$1,024,720?

9 A. I looked at actual Pathlight invoices for sales of VPS , I
10 looked at a price list that I had published for VPS, I looked
11 at the actual negotiating correspondence between IBM and
12 Pathlight in their negotiations over bundling VPS and making
13 VPS available to IBM customers.

14 Q. What typically was the list price of the VPS feature?

15 A. Almost all these units were sold at a price of \$285, the
16 VPS software.

17 Q. Were they always sold as a separately priced feature or
18 were they included as part of the total package price?

19 A. In the sales to IBM of the gateways, not the routers, they
20 were bundled into the sale, but they were priced at \$285, so
21 there was sometimes bundling on occasion.

22 Q. What did you do next in your methodology?

23 A. The next step basically was to essentially go through the
24 process of thinking through what royalty rate would be decided
25 in a hypothetical negotiation between Pathlight and

1 Crossroads.

2 Q. And were you requested to determine --

3 MR. ALBRIGHT: Your Honor, may we approach the bench?

4 THE COURT: Yes, sir.

5 (At the bench, on the record.)

6 MR. ALBRIGHT: A couple of things, your Honor.

7 Originally, we filed a Dalbert motion with respect to this
8 gentleman being qualified to testify with respect to whether
9 or not there being an adequate rewrite of the VPS software,
10 number one. It would have the same functionality, and two, it
11 would be noninfringing. That's what they're going to have
12 this gentleman say is that they could have -- a rewrite of
13 this VPS and that it would be non-infringing as an
14 alternative.

15 Number one, there's not going to be any evidence in
16 the record that they could have done the rewrite for the
17 amount he's saying. He's going to testify, I talked to some
18 folks at Pathlight, but there's not going to be any evidence
19 that they said it.

20 And yesterday, they had the gentlemen who were here
21 and had the conversations with them, they could have put on
22 that testimony. They had Prestas, they had Kelleher, they had
23 Rahmani. There will be no methods -- for example, the slide
24 he just put up that it cost -- actual cost of the VPS code,
25 there's not going to be any evidence of that.

1 There's not going to be any evidence on the record
2 that what it would cost to rewrite the VPS code other than him
3 saying I've talked to some folks and this is what they told
4 me. And when we get into the actual functionality of it,
5 there's not going to be any evidence this gentleman should not
6 be permitted to say that the design around would have the same
7 functionality as the VPS.

8 They had Mr. Stephens on the stand as a technical
9 expert. He could have said there were other alternatives that
10 could have been used that had the same functionality, but they
11 didn't. They want to have an economist do that.

12 And finally, he's going to testify -- and I don't
13 believe this is -- I think he's already testified in his
14 deposition that he's performed no evaluation of whether or
15 not --

16 MR. DELLETT: No what?

17 MR. ALBRIGHT: No evaluation of whether or not this
18 infringes under the doctrine of equivalence. Now, I don't
19 know how you just ignore that as a possibility. He's going to
20 be saying that this isn't an equivalent alternative as the
21 same functionality that is not infringing. But he's never
22 even addressed the issue of whether or not it does infringe
23 under the doctrine of equivalence. He shouldn't be permitted
24 to put this testimony on.

25 MR. DELLETT: The very alternatives he's testifying

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1 about are the ones that we've said anticipate the patent.
2 Crossroads itself says these don't infringe, they don't
3 anticipate. It is the very stuff that Crossroads has in its
4 storage router. That's the SCSI reserve routers and the SCSI
5 reserve and release.

6 It does not anticipate -- if it's not covered by the
7 patent, surely as an alternative others have used. That's
8 exactly what Dr. Flamm's opinion's always been. Next, with
9 respect to the issue --

10 THE COURT: Y'all are going to sit here to argue for a
11 long time. I'm not going to be able to rule till I hear his
12 testimony and is this your last witness?

13 MR. DELLETT: Yes, it is.

14 THE COURT: All right. Members of the jury, I'm going
15 to put you in the jury room for a while.

16 (Jury not present.)

17 MR. DELLETT: Your Honor, may I raise one concern? We
18 are limited in time, and I am -- I am concerned that
19 Crossroads' objection here is doing nothing but preventing us
20 from having enough time to finish our case.

21 THE COURT: Mrs. Sims will take down the time, and if
22 the Dalbert objection is overruled, the time is theirs. If it
23 is sustained, the time will be yours. That's been the rule
24 and that's the rule I told you about and that's where we're
25 going to be.

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1 Now, my suggestion is if we get on with it.

2 MR. DELLETT: All right.

3 THE COURT: And that we go to the heart of what he's
4 -- as I understand, I think I'll have Dr. Flamm step outside
5 for a moment.

6 THE WITNESS: Okay.

7 THE COURT: The first objection, as I understand it,
8 is that he's going to say that the \$40,000, quote, actual, end
9 quote, cost to write the VPS code is determined by his
10 discussions with people?

11 MR. DELLETT: He talked to the people at Pathlight and
12 he also analyzed it based on his experience as to whether that
13 was an appropriate figure for the cost of writing
14 approximately, I believe it was 3 to 5,000.

15 MR. ALBRIGHT: Your Honor, those witnesses were here
16 yesterday and they didn't put --

17 THE COURT: I'm not worried about what witnesses
18 didn't say. I'm trying to figure out in my simple mind
19 whether or not that the type of testimony in this gentleman's
20 background that he would have the ability to talk to different
21 -- I have no idea if it's going to be \$40,000. The jury has
22 no idea it's going to be \$40,000.

23 And he was simply told it was going to be \$40,000 by
24 the party proffering the evidence without any independent
25 study other than his own experience. That's the objection.

1 Now, you want to speak to that.

2 MR. DELLETT: Yes, I can, your Honor. Dr. Flamm did
3 more than just discuss it and use information he got from
4 Pathlight. He talked to -- he has experienced in the field of
5 computer technology as he testified at length about. He knows
6 how much computer programmers cost. He knows what the timing
7 is for writing computer programs.

8 He knows the economics of it. This is basically what
9 Dr. Flamm has spent his career doing, studying the economics
10 of hardware and software development. He has adequate basis
11 to come to the \$40,000 figure. And I also -- there's really
12 no difficulty getting there. It's not something that requires
13 a tremendous amount of math.

14 What it is is based on how long it takes to write code
15 and what the cost of computer programmer is.

16 THE COURT: Well, you also at the end of the rewriting
17 have a new code, and what -- and his expertise is that the new
18 code no longer infringes? So he is now an expert on
19 infringement as well?

20 MR. DELLETT: No. The code that we're talking about
21 here is the very code that Crossroads alleges does not
22 infringe. That is code implementing SCSI reserve and release.

23 THE COURT: Well, there's no -- in other words, the
24 code -- the new code would simply be the reserve and release,
25 so you're admitting that that is not an infringement?

1 MR. DELLETT: No. We're saying --

2 THE COURT: Well, then, you can't play with tennis and
3 be on both sides of the net.

4 MR. DELLETT: Exactly. And I think that the problem
5 here is that Crossroads has alleged that what Pathlight does
6 infringes, and they say what they have in their own products,
7 the SCSI reserve and release does not infringe. We say that
8 the patent is invalid because SCSI reserve and release
9 anticipate it.

10 But we sill have to put on a damages case, your Honor.
11 So Dr. Flamm has to assume that we haven't proven invalidity.
12 What is left if we haven't proven invalidity? Then the SCSI
13 reserve and release must not be covered by the patent and
14 that's what Crossroads has claimed since March of this year.

15 They have told us in their interrogatory answers that
16 SCSI reserve and release is not access controls. Do we agree
17 with them? No. But Dr. Flamm has to take the position that
18 if it's not invalidating -- it's an alternative.

19 THE COURT: He would take the position of any
20 professional expert who is going to get an evaluation on
21 royalties with regard to damages. I have heard my fill of
22 them in my lifetime. Probably in one case, but I've had more
23 than that. But here, you're asking about -- I mean, he's not
24 coming in just to tell you what his determination of a
25 negotiated royalty would be under the circumstances. He's

1 starting to put in evidence of what the actual cost to write
2 the code would be to conform with whatever you're saying the
3 plaintiff would be happy with, or at least wouldn't be
4 criticized. And he's going to add another 50 percent for I
5 guess kicks, I don't know. I mean, I guess we're going to
6 have to hear advertise testimony and you're right, you might
7 well run out of time, but you've had enough time to know how
8 much time you had.

9 All right, so that's the first thing I need to look at
10 is whether or not there is sufficient evidence in this record
11 to allow that actual cost to write the code and then add 50
12 percent on it. I haven't heard the testimony so I don't know
13 about it. All right.

14 MR. ALBRIGHT: Your Honor, the second point would be
15 precisely what you just asked counsel. The problem we have
16 with Dr. Flamm who is an economist is coming in to court and
17 having him say that we could have undone the VPS. We could
18 have taken it off. We could have done a rewrite that we've
19 had only SCSI reserve and it would have still had the same
20 functionality as the VPS performs in terms of access controls.

21 Again, they're asking an economist to proffer
22 testimony -- expert testimony that the functionality would be
23 identical even though they'd be taking the VPS out and even
24 though that is the \$64,000 question in this case is whether or
25 not the access control performed by VPS is performed by

1 reserve release.

2 And this gentleman is not qualified to proffer an
3 opinion that the VPS using reserve release only would be the
4 equivalent terms of performance of the access control under
5 the VPS.

6 MR. DELLETT: Your Honor, I don't plan to ask that
7 exact question on direct. I feel that Mr. Albright has
8 certainly entitled to ask it on cross, though.

9 THE COURT: Well, as long as we're being clever,
10 fellas, you remember, I don't understand a damn thing y'all
11 are saying. I don't know what the direct testimony's going to
12 be. I don't know what the cross-examination is going to be.
13 I'm not that smart. I don't know what y'all are going to ask
14 the gentleman. I'm trying to figure out what the issues are
15 that I need to determine before I simply exclude it.

16 Now, the difference between his talking about the
17 actual cost to rewrite the code where there is no infringement
18 puts him in an expert on infringement, it seems to me. But I
19 don't see the difference between the elimination of the VPS.
20 That's just rewriting the code, isn't it?

21 MR. ALBRIGHT: It would not be just rewriting the
22 codes, your Honor. What it would be doing is allowing a
23 non-technical, in other words, non-computer witness to testify
24 that if they were to take the VPS out, that they could then
25 have the same functionality in terms of access control that is

1 performed by the VPS, and that's something that there is no
2 evidence of.

3 That would take an expert, like Dr. Stephens, who they
4 had available, or Dr. Kuffner because what we are obviously
5 arguing is that the VPS performs access control in a manner
6 that cannot be performed by the reserve release. And I do not
7 believe that Pathlight has put on any evidence, any technical
8 evidence that Mr. -- that Dr. Flamm can -- found his opinion
9 on.

10 THE COURT: All right. What is the -- are those the
11 only two issues, or there's no --

12 MR. ALBRIGHT: Thirds, your Honor, would be if he were
13 to testify, that it is a non-infringing alternative. If his
14 position is that it's only going to be the reserve release,
15 it's identical to what we use, then I don't think we have no
16 issue that it would be -- that it would not infringe.

17 We would agree that if they were to use the reserve
18 release methodology that we use, that that would be a
19 non-infringing methods as long as it did not have VPS, as long
20 as it did not have channel zoning in it. If all they wanted
21 it to have was the same type of reserve release functionality
22 that we have, then we would not have a problem with him saying
23 that that would not infringe.

24 MR. DELLETT: That's exactly what Dr. Flamm is going
25 to say. So I don't think we have a dispute on that issue.

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1 THE COURT: I'm not so sure I understand that y'all
2 are going to agree. It will be the first agreement since this
3 lawsuit has been filed. It's time for one, but it is the
4 first one.

5 Okay. Now, explain to me, again, this gentleman's
6 expertise to testify as to the actual cost to rewrite the
7 code. And I take it that we're talking about the VPS code.
8 That's what the screen says. And then, he's going to, what,
9 have a cost for the reduction down to the reserve release
10 control?

11 MR. DELLETT: That's right. He's going to analyze --

12 THE COURT: Is that a reduction of the hardware or of
13 the software still?

14 MR. DELLETT: No. Purely software.

15 THE COURT: All right. Those are separate items?

16 MR. DELLETT: I'm sorry. Did you say the hardware and
17 the software subject?

18 THE COURT: No. When you rewrite the code on the VPS,
19 wouldn't that rewriting, wouldn't you be able to eliminate
20 down to the reserve release control?

21 MR. DELLETT: Yes, we would.

22 THE COURT: Okay. So we're talking about one
23 function. All right. Then, tell me how -- what is he going
24 to extrapolate a reasonable royalty when he gets all of this
25 imaginary reconstruction of your product?

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1 MR. DELLETT: He's going to testify that in his
2 experience, in his opinion that a hypothetical negotiation
3 involves the parties agreeing what is the next best
4 alternative to what is alleged to infringement that's based on
5 his own personal experience. It's based on the law. There's
6 a recent case called grain processing from the federal circuit
7 --

8 THE COURT: I thought the whole point of reasonable
9 royalty was on the day before infringement to obtain a
10 reasonable royalty, not assuming infringement.

11 MR. DELLETT: That's right. You know you have to
12 assume on the day first infringement what you have going
13 forward is going to infringe the patent. What Dr. Flamm is
14 postulating is that on that day the parties would know that
15 rather than pay a 30 percent or some royalty like that,
16 Pathlight would simply say, we'll eliminate that function
17 rather than pay that high royalty.

18 And that is on all fours with the federal circuit's
19 opinions and any opinions what have come before that the next
20 best alternative, the cost to go to the next best alternative
21 is paramount in that evaluation. We're not creating any new
22 law here, your Honor. This is exactly what's in the Georgia
23 Pacific factors is one of the issues. This is exactly what's
24 in the grain processing decision.

25 Dr. Flamm is not coming up with some new method here.

1 THE COURT: Well, you give me your best citation,
2 because I'm going to go read that case and then I'll make a
3 determination.

4 MR. DELLETT: I don't have the exact --

5 THE COURT: Well, you better come up with one quick
6 because I'm about ready to exclude your witness in five.

7 MR. DELLETT: Why don't I start with the Georgia
8 Pacific case.

9 THE COURT: Well, I, of course, read the Georgia
10 Pacific case time and time again.

11 MR. DELLETT: One of those factors. I believe it's
12 factor number --

13 THE COURT: I'm looking for some legal authority that
14 says in lieu of infringing where the only cause of action is a
15 reasonable royalty that you can establish by the cost of
16 revamping your product to show that it would not infringe
17 would be the measure of recovery. I mean, I don't --

18 MR. DELLETT: What that means, your Honor, is that
19 would be a negotiating point.

20 THE COURT: Well, that's right. I can understand
21 that. But where are you going to go after you get a
22 negotiation point?

23 MR. DELLETT: We're going to look at the factors and
24 we're going the look at some dispute over how much would
25 Pathlight have to give up all of its VPS revenue, some of it.

1 -- all of its VPS revenue or none of its VPS revenue. That's
2 basically what Dr. Flamm's going to say.

3 It is an important factor because Pathlight's not
4 going to just Neil, you know, buckle down and say, you know,
5 wear going to -- we're not going to sell any more storage
6 routers at all. I mean, I believe that's Crossroads's
7 position.

8 It is reasonable in a hypothetical negotiation for
9 Pathlight to say rather than pay a 30 percent royalty, what
10 can we do? And the federal circuit recognize had in grain
11 processing and there's other cases, too. Grain processing I
12 have a citation here.

13 THE COURT: All right. I'm listening.

14 MR. DELLETT: It is 185 F 3rd, 1341, federal circuit
15 case from 1999. Your Honor, I'd be happy to give you some
16 more citations on that particular issue.

17 THE COURT: Well, I don't know -- I want to keep you
18 happy but I asked you for one.

19 MR. ALBRIGHT: May I make two quick points?

20 THE COURT: You may.

21 MR. ALBRIGHT: The first is when you're reviewing this
22 case is basically what Pathlight is saying is that at the
23 reasonable royalty negotiation, we should -- we should be
24 affected despite the fact that they've sold millions of
25 dollars worth of products by the knowledge that they could

1 have crust taken the infringing product out and that would be
2 a factor.

3 But what that rolls into is they would have to be able
4 to say that the reason that would be acceptable to us is
5 because if they took the infringing products out, the VPS and
6 the channel zoning that their product would have been able to
7 have the same functionality, and that's what's critical in
8 terms of your analysis of whether or not it's appropriate --
9 that their analysis that this design around.

10 Because if you were to permit this type of testimony,
11 then it would allow every party that infringes to come in and
12 say, Crossroads has to understand that for just \$60,000, we
13 could have stopped doing that, done something else, and no
14 party would ever recover any reasonable royalty. Our
15 royalties would be capped after two years of what's occurred
16 to our damage at what it would have cost them on the date to
17 do it some other way.

18 That simply can't be the law.

19 THE COURT: No. He's -- as I understand he's
20 tending to say that if Dr. Flamm is going to negotiate this
21 royalty on behalf of the defendant that the people at
22 Pathlight would tell them how much it would cost to revamp the
23 product to where there was no infringement. And he would use
24 that information in his negotiation of the royalty.

25 I don't see any problem with that. I'm a little

1 concerned that it gets into particularly the new rules of
2 evidence, which states that while an expert can rely on
3 inadmissible evidence that the evidence itself is not
4 admissible. And all of a sudden, out of the blue comes this
5 actual cost to write the VPS code at 40 to \$60,000 when I've
6 heard no evidence of it.

7 Since this is the last witness, I am not going to hear
8 any evidence of it. It reminds me of just going to an apple
9 tree and picking up an apple. I have no idea. The jury's
10 going to have no idea if that's anything reasonable. However,
11 it would be information given to a negotiator.

12 MR. ALBRIGHT: May I present you one case at the same
13 time? I'll present it to you. It's the Right Hide case which
14 specifically states that when an infringer would prefer to pay
15 is not the test for damages. The purpose of the patent law is
16 to make us whole. I'll provide you this case because I think
17 it does go to the question of whether or not Pathlight can
18 take the position that it would be reasonable for them to go
19 into negotiation after two years have passed.

20 THE COURT: If I allow this testimony, I'm going to
21 allow it only on under the instructions to the jury that this
22 is information that would have been given to a negotiator and
23 has nothing to do with the determination of a reasonable
24 royalty other than information to the negotiator on how to
25 negotiate the royalty.

1 And that they can evaluate that only as evidence from
2 Pathlight to a negotiator saying we could get out of this for
3 X.

4 MR. ALBRIGHT: And, your Honor, we would ask that you
5 prohibit the witness from being able to testify or even imply
6 that the VPS that the alternative reserve release control
7 command would be identical or even similar in functionality
8 because our argument to the jury is obviously going to be
9 based on everything you've heard that the reason that IBM
10 bought these products was at least in part, we got evidence in
11 the record, because the VPS.

12 This gentleman shouldn't be allowed to imply to the
13 jury that IBM or anyone else would have accepted the
14 alternative.

15 MR. DELLETT: Dr. Flamm is not going to testify and
16 repeat what Mr. Stephens just said on the stand about
17 similarities between VPS and the SCSI reserve and release.

18 THE COURT: Well, he's also not going to testify that
19 the actual cost in the elimination of the VPS would, in
20 effect, make it a non-infringing product.

21 MR. DELLETT: He's going to say --

22 THE COURT: He's not going to testify to that in my
23 courtroom, I can tell you, because that's testimony that you
24 don't have. And you've not brought it by any other expert who
25 is -- who's got a sufficient basis and research to get it.

1 And you can't get that in through an economist simply on
2 information to the economist.

3 MR. DELLETT: What we ask, your Honor, is Dr. Flamm be
4 able to testify that the SCSI reserve and release has not been
5 accused of infringement. In fact, Crossroads said in
6 interrogatory answer that the SCSI reserve and release command
7 is implemented in its own devices does not infringe the
8 patent. That is all Dr. Flamm is relying on for that
9 proposition.

10 If Crossroads doesn't accuse it of infringement unless
11 it anticipates the patent or makes the patent obvious, then it
12 must be an alternative. That is the basis of his conclusion.

13 THE COURT: If it's so easy, I don't know why you
14 couldn't get an expert to testify. I'm already advised by my
15 law clerk that that is a lost profits only case. Do you have
16 a royalty case?

17 MR. DELLETT: That case has a footnote that said that
18 in view of that alternative, the royalty is properly set based
19 on the cost of that alternative. I recognize it's a denied
20 lost profits because the alternative was available, but that
21 the Court said, therefore, the district court's decision that
22 a three percent royalty was correct.

23 (Recess.)

24 THE COURT: Now, I have reviewed now the Grain Process
25 Incorporation vs. American Managed Products case. I know

1 specifically authoritative and the circumstances of this case
2 are anything majorly helpful. The circumstance in that case
3 is just totally different.

4 I'm having trouble and I'll hear arguments. I'm
5 afraid I'm just going to have to hear the testimony. But not
6 anything wrong with it. I do that every day. But what's
7 going through my mind is the defendant now says what one of
8 the negotiating factors would be in the establishment of a
9 reasonable royalty would be with the knowledge we now know
10 today that we didn't know until a couple of weeks ago, when we
11 were trying to get a summary judgment that the SCSI release
12 and reserve function would not make this patent invalid as a
13 matter of law.

14 We can assume that the reserve and release function,
15 as a matter of fact, way back when we would negotiate this
16 reasonable royalty, if we could take the product down to that
17 on access control that there would be no infringement. That
18 does ignore all other functions of this patent, and this
19 witness simply does not have the background or the expertise
20 to testify to all of that or as an economist.

21 And I don't see that he can. Plus the fact I have
22 heard no evidence that simply by removing all access control
23 down to the SCSI release and reserve as a matter of law would
24 make this a non-infringing product. As I stated in the
25 record, I decline to find as a matter of law it made the

1 patent invalid.

2 And I still intend to allow y'all to argue that to the
3 jury on the factual determination, but I don't know how this
4 witness can do that. But let's hear his testimony. Bring him
5 in and let's go through the testimony as efficiently as we
6 can.

7 Just come on up here, sir. What this is, so you'll
8 know, is I'm going to listen to the testimony proposed so I
9 can make a determination as to what I'm going to admit to be
10 shown to the jury. So just kind of pretend like the jury's
11 there and give the answers as you would be under any normal
12 circumstance.

13 The lawyers may be jumping up and down, but that's
14 normal, too, so just listen to the question and answer the
15 question.

16 THE WITNESS: Okay. I see.

17 THE COURT: But you're still under oath.

18 THE WITNESS: I understand, sir.

19 MR. DELLETT:

20 Q. Dr. Flamm, did you do an economic analysis of a reasonable
21 royalty?

22 A. Yes, I did.

23 Q. Could you describe how you did that?

24 A. Should I get up --

25 Q. Just briefly, could you summarize?

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1 A. The sketchy version? I essentially analyzed what the
2 result of the hypothetical negotiation between Crossroads and
3 Pathlight with respect to the 972 patent would be.

4 Q. And what economic factors did you consider in that
5 hypothetical negotiation?

6 A. I considered the economic advantages of the accused VPS
7 software compared with alternatives which Crossroads says are
8 not covered by the 972 patent.

9 Q. Okay. And what alternatives are you aware of that
10 Crossroads claims are not covered by the 972 patent?

11 A. The use of the SCSI reserve and release technique and
12 other techniques that have been described in court.

13 Q. And are you aware of any companies that use those
14 techniques in commercial storage routers?

15 A. Yes, Crossroads does.

16 Q. Any others?

17 A. Yes, we've heard some examples in court today.

18 Additionally, there are other companies.

19 Q. And is that an alternative to the access controls that
20 Crossroads claims in fringed the 972 patent?

21 A. Yes, they could provide the functionality in question as
22 one of the possible methods.

23 Q. Now, have you seen any other alternatives to VPS in your
24 research?

25 A. Yes.

1 Q. Okay. Now, let's start with your economic analysis.
2 First of all, why don't you go ahead and -- maybe you can see
3 from this screen right there. I think that's fine?

4 THE COURT: You can step down if you're more
5 comfortable.

6 THE WITNESS: Yes.

7 MR. DELLETT:

8 Q. All right.

9 A. The very first issue is to start with -- I'm sorry, I've
10 just lost the train of where we were when I started this. The
11 very first issues to start with -- let's say I already went
12 through the basic facts. Whatever alternative is going to be
13 used as an alternative to a license to the 972 patent using
14 the accused VPS software, you're going to have to do some
15 alteration of the VPS software or code.

16 Q. What experience do you have yourself in your career as an
17 economist in the computer industry concerning the cost of
18 writing code?

19 A. I have studied the computer industry including the
20 software industry. I've done studies for other organizations.
21 The cost of technical and scientific manpower. There, in
22 fact, there are even some documents in the independent
23 research I did concerning the cost of technical and scientific
24 manpower. I've also worked as a computer programmer and
25 software analyst.

1 Q. What was the study you had concerning the cost of writing
2 computer code?

3 A. In the independent research I did, there was information
4 from the United States census, the last census year in 1997 on
5 the cost of manpower. But I primarily relied on my discussions
6 with Pathlight about their particular cost of a programmer.

7 Q. And did you test what you learned from Pathlight to
8 determine whether or not that was accurate or not?

9 A. Yes. I looked at the information I received from
10 Pathlight and I compared it with my experience and
11 understanding from following the industry, from looking at
12 other outside numbers and it was consistent.

13 Q. And what information from Pathlight specifically did you
14 cruise to come to the 40,000 figure?

15 A. They told me that it took approximately -- it took four
16 man months to write the code, and that their cost fully --

17 THE COURT: It took four what?

18 THE WITNESS: Man months. I'm sorry.

19 A. That their annual cost, fully loaded for a programmer was
20 about \$120,000, which would make a quarter -- I'm sorry, a
21 third of 120, maybe \$40,000.

22 MR. DELLETT:

23 Q. Do you recall who it was at Pathlight that did the VPS
24 code?

25 A. Yes. I talked to -- it was Greg Prestas. I talked to him

1 -- you're not asking me who I talked to. I'm sorry.

2 Q. And now, let's explain why you put 50 percent on there,
3 please.

4 A. I was trying to be extremely conservative about the
5 maximum cost to rewrite the VPS code was.

6 Q. And what did you do next?

7 A. Can I have the next slide, please? I then computed what
8 the minimum royalty would be. The minimum royalty is
9 calculated by essentially noting that it would take \$60,000
10 would be the maximum cost to rewrite the VPS code. If you
11 take that \$60,000 and you spread it across 4,120 router and
12 gateway units and take into account the time value money, you
13 get \$17 per unit.

14 Q. And do you believe that would be something that would be
15 discussed by the negotiators at a hypothetical negotiation?

16 A. Absolutely. This is the change in Pathlight's net profit
17 were it to pursue the alternative of rewriting the VPS code
18 while maintaining -- using techniques which are not accused of
19 infringing from under the 972 patent while maintaining the
20 functionality of the VPS software.

21 Q. Okay. What did you do next?

22 A. Can I have the next slide? Yes.

23 MR. ALBRIGHT: Your Honor, I know that what was the
24 precise statement that we think is inappropriate, while
25 maintaining the functionality of the VPS. There's no evidence

1 -- that goes to the heart of our objection was that particular
2 answer.

3 MR. DELLETT: May I continue?

4 THE COURT: Yes.

5 MR. DELLETT:

6 Q. All right. Now, can you describe what is shown in this
7 slide?

8 A. Right. Pathlight was likely to take the position that it
9 could rewrite the VPS code and maintain the functionality.

10 The other extreme would be to simply rewrite write I believe
11 would be Crossroads's position is simply to say you're not
12 going to be able to maintain the VPS functionality. In that
13 case, I calculated the impact on Pathlight's net profits of
14 essentially removing revenues from VPS software and to get
15 that figure, I note that we start with initial VPS revenues
16 loss of \$1,024,720. There are costs in making those sales
17 that have to be taken into account, in particular, sales
18 general administrative and technical support costs supporting
19 the sales and software based on data from Pathlight, I
20 calculated those numbers. That accounts for \$205,969. The
21 impact on VPS's revenues take into account the support cost is
22 therefore going to be minus \$878,751.

23 In addition, they're going to have to rewrite the VPS
24 code to make it noninfringing if we adopt the Crossroads
25 interpretation. Factor in that cost, the total is \$878,751

1 and spread across 4,120 units taking into account the time
2 value of money, that works out to 214 per unit.

3 Q. Did you include those minimum and maximum royalties as a
4 factor that the parties would consider in a hypothetical
5 negotiation?

6 A. Yes, I did.

7 Q. Okay. Let's look at the Georgia Pacific factors now. Are
8 these your conclusions regarding each of the Georgia Pacific
9 factors?

10 A. Yes, they are.

11 Q. Okay. Would you go through these, please?

12 A. Factor one, Crossroads has never received any royalties.
13 It's received zero royalties for the 972 patent. Factor No.
14 2. If you look at Pathlight's actual payments on software
15 licenses for use of software, they range from 25 to \$45 per
16 unit. In factor three, it would be nonexclusive license.
17 Factor four, Crossroads clearly has no policy against
18 licensing. It has licensed other technology the past. Factor
19 five, Crossroads and Pathlight sell to different market
20 niches. Factor six, there are no convoyed sales. Factor
21 seven, duration of the patent is not an issue in this
22 negotiation.

23 Next slides, please. Factors eight nineteen 11 and 13
24 all relate to any economic analysis.

25 MR. ALBRIGHT: Your Honor, if you would pay particular

1 attention, factor No. 8 is commercial success and
2 profitability. And he, again, I anticipate, is going to say
3 that Pathlight would have enjoyed the same commercial success
4 and profitability even had they not had the VPS.

5 There's -- all the evidence is to the contrary and our
6 position is that this gentleman doesn't have, even though he's
7 an economist, he doesn't have the technical background to say
8 that they would have had the same success -- economic success
9 because he will not be able to link it back and say that the
10 functionality without the VPS would have been the same and IBM
11 would have bought as many products.

12 Factor No. 8 goes to the heart of what our argument
13 is. Your Honor, that's commercial success and profitability.

14 MR. DELLETT: I think we're at a stage, your Honor,
15 where Mr. Albright is anticipating questions that I didn't
16 plan to ask.

17 MR. ALBRIGHT: But, your Honor, that's one -- the
18 jury's already heard from our expert and seeing what the
19 factors are. You've got to assume that they know what factor
20 No. 8 is. In addition, we've put on testimony in this case
21 about the commercial success of the two companies.

22 So you can't just pretend No. 8 doesn't exist now.
23 That's what they're trying to do. They're trying to pretend
24 that if they took the VPS and channel zoning out that the jury
25 can just assume they would have had the same volume of sales

1 because while we just would have lost the sales value of the
2 VPS. There is no evidence that IBM would have continued to
3 purchase those products. All of the evidence is to the
4 contrary.

5 MR. DELLETT: That goes to the weight, your Honor.
6 Mr. Regan got up and testified essentially that Pathlight
7 would have been belly-up without using this patent. Mr. Flamm
8 --

9 THE COURT: They simply used your client's own
10 documents and showing that. But let's finish with Dr. Flamm,
11 first.

12 THE WITNESS: I have opinions on these matters if
13 you're interested, your Honor.

14 THE COURT: No, I'm not in the least.

15 MR. ALBRIGHT: Exactly my point.

16 THE WITNESS: No. I mean there are other facts is
17 what I tend to say, but I'd be happy to share with the court
18 if you'd like.

19 THE COURT: I'm trying to figure out what we're going
20 to do. So let's finish up with Dr. Flamm and let him go out
21 and think about his opinion.

22 MR. DELLETT:

23 Q. All right. Now, in factors 8, 9, 10, 11 and 13, could you
24 describe what your analysis was?

25 A. Yes. The purpose of this analysis was to look at the

1 impact on Pathlight's net profits and -- I'm sorry. To look
2 at these four fact -- five factors, I did the analysis of VPS
3 unit sales, VPS revenue, cost of programming VPS and the
4 maximum minimum royalty range I derived from the analysis I
5 described.

6 Factor 12, I've read literally hundreds of computer
7 and semiconductor licensing agreements and I'm familiar with
8 the academic literature on this subject. Computer royalties
9 in the computer industry, over five percent. The hardware
10 products are extremely rare. Expert opinion factor 14 is what
11 we are currently discussing. Factor 15, the outcome of a
12 hypothetical negotiation resulted in negotiating --

13 Q. What does the next slide show?

14 A. Whoops, we skipped -- go ahead. We're out of sequence.
15 Sorry. I don't know how that happens.

16 Q. What is does sh slide show?

17 A. Well, as I pointed out a moment ago, there there's a
18 negotiating range, one is the cost of Pathlight of removing
19 all VPS functionality that we're discussing is potentially
20 infringing from the router and the maximum royalties is \$214
21 per unit, minimum royalty is \$17 per unit. That's negotiating
22 range.

23 In my opinion, Pathlight would be inclined to simply
24 argue that it could replace that functionality and seek the
25 most economically attractive alternative which was worth no

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1 more than \$17 per unit. But in order to be conservative, I've
2 taken a midpoint in the range of \$116 per unit.

3 Q. To what extent did you use the Georgia Pacific factors in
4 coming to a point between the minimum and the maximum?

5 A. I considered the Georgia Pacific factors and that was the
6 analysis I just went through.

7 Q. Next slide, please. What does this show?

8 A. So the total reasonable royalty for the 972 patent, I take
9 my conservative estimate of \$116 per unit, I multiply by the
10 total units sold from 1999 through April of 2001, and I get a
11 number of \$477,920.

12 Q. Thank you, Dr. Flamm.

13 A. Thank you.

14 THE COURT: Any cross that you'd like to put in the
15 record at this time?

16 MR. ALBRIGHT: Not at this time, your Honor. I mean,
17 I assume I'd be permitted to if he's permitted to testify in
18 front of the jury to cross him at that point.

19 THE COURT: Oh, well, yes.

20 MR. ALBRIGHT: I think I've made whatever I would say
21 on the record with regard to my statements. I don't believe I
22 need to add anything to that with cross. Thank you, your
23 Honor.

24 THE COURT: Dr. Flamm, the rewriting of the VPS and
25 the elimination of the access controls of VPS down to only the

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1 SCSI reserve release controller, do you intend to
2 substantively testify that, then, the VPS will maintain its
3 functionability?

4 THE WITNESS: I would only testify that Pathlight
5 would take the position that by using the --

6 THE COURT: That they told you.

7 THE WITNESS: Yes.

8 THE COURT: And they told you that only.

9 THE WITNESS: Yes. I do believe it but that's my
10 personal opinion.

11 THE COURT: Okay, sir. Back to the hall. All right.
12 Mr. Albright, you're up one more time. I want you to
13 concentrate your argument. This gentleman is not going to
14 testify that the elimination of the access control and the
15 rewriting of the VPS would make this, one, noninfringing.
16 He's not going to testify to that. He's not going to testify
17 that the rewriting of the code and the elimination of all
18 access controls would maintain the functionality of the VPS.

19 He can testify that that's represented to him by his
20 client subject to your cross-examination. Cross-examination
21 with regard to the amount of sales and would they have made
22 the same sales with those assumptions, well, we all know what
23 he's going to say. He's going to say yes when he clearly
24 doesn't know because he doesn't know for a fact that the
25 functionality of VPS would be maintained or that it would be

1 non-infringing.

2 MR. ALBRIGHT: And I would add to that, your Honor,
3 the testimony that Dr. Flamm if it were consistent with his
4 deposition would be that he's made no inquiry with IBM to
5 verify anything with respect to whether sales would have
6 continued or not. He made no -- I'm adding the end. He has
7 had no contact with IBM at all.

8 THE COURT: All right. Anything else that you want to
9 put in?

10 MR. ALBRIGHT: Your Honor, I think you have our
11 position.

12 THE COURT: All right.

13 MR. DELLETT: Your Honor, I am perfectly happy and
14 will tell Dr. Flamm that I will not ask and he will not answer
15 on direct that the alternatives, specifically, the SCSI
16 reserve and release that Crossroads does, he hasn't determined
17 himself that they're noninfringing. I would like to ask him
18 and have him testify that Crossroads in his own responses to
19 interrogatories that Dr. Flamm has seen, asserts, and in fact,
20 they've done it in open court repeatedly asserts that the SCSI
21 reserve and release is not infringing.

22 Dr. Flamm has to rely on that F SCSI reserve and
23 release as covered by the patent --

24 THE COURT: Well, he couldn't possibly know that at
25 the time of negotiations of the royalty unless he's a lot

1 smarter, he could have been head of the national security
2 instead of just working for the state department.

3 MR. DELLETT: Your Honor, there is some law precisely
4 on that point and that is that at the hypothetical
5 negotiators, both sides can look forward to evidence that they
6 don't know then and that is the exact type of evidence that --

7 THE COURT: We don't know it as we stand here now.

8 MR. DELLETT: The only way Dr. Flamm's testimony has
9 any relevance at all is if the jury and your Honor find the
10 patent to be valid and infringed so if it's not found to be
11 valid and infringed --

12 THE COURT: Well, he's taking it out of infringement.

13 MR. DELLETT: Right. Secondly, I'd like to also be
14 able to talk to Dr. Flamm before he gets up on the stand again
15 so that I don't risk him testifying in response to my direct
16 in regard to Mr. Albright's concerns.

17 I do, however, think Dr. Flamm, if Mr. Albright raises
18 these issues on cross --

19 THE COURT: He can't help but to raise them.

20 MR. ALBRIGHT: That's the point, your Honor.

21 THE COURT: And if he raises them, for example, and he
22 has a personal opinion that IBM sales would have been the
23 same, I'll have to instruct the jury, members of the jury,
24 this witness has absolutely no idea of that and you're to
25 disregard it. And that's not going to make him look very

1 credible. And he's obviously a credible witness as far as
2 economics are concerned.

3 But you know what you're doing is putting a loaded,
4 what we used to call cherry bomb is lit and you're going to
5 have your direct in about 15 seconds and then, let the thing
6 go off and then, Mr. Albright comes up on cross. Sometimes
7 that's fair, but in this particular case, you're asking him to
8 make certain assumptions.

9 And when he crosses him, he's going to say that he's
10 got opinions on matters that are inadmissible. Now, how do we
11 -- it's not admissible that the VPS will maintain its
12 functionality down to the SCSI protection. And it's not
13 admissible that there would be no -- from his testimony and
14 the --

15 MR. DELLETT: No, Dr. Stephens has already testified
16 about that. I don't plan to do that. But as your Honor --

17 MR. ALBRIGHT: Your Honor, he did not testify.

18 THE COURT: One at a time.

19 MR. ALBRIGHT: I'm sorry.

20 MR. DELLETT: As your Honor probably surmises, Dr.
21 Flamm definitely does have some opinions on these issues and
22 considerable depth of knowledge in these issues so if Mr.
23 Albright wants to ask Dr. Flamm, would it have the same
24 functionality, Dr. Flamm just can't shrug his shoulders. In
25 fact, he has vast experience in the field.

1 THE COURT: That's if point.

2 MR. DELLETT: And he knows about this stuff.

3 MR. ALBRIGHT: Your Honor, we raised this in a Dalbert
4 motion and specifically what we raised was that he could rely
5 as an economist on someone like Dr. Stephens. And they chose
6 not to. That's the entire point is it would have been fair
7 for Dr. Steven to get on the witness stand with his
8 background and testify that the elimination of VPS would or
9 wouldn't have the same functionality as the reserve release
10 and then, have Dr. Flamm come in and say based on that I can
11 say this.

12 They elected not to have Dr. Stephens lay the ground
13 work for that testimony, so what they want to do now is have
14 Dr. -- we've warned them of that since we took the deposition.
15 We filed a Dalbert motion. They knew all this was out there.
16 They came into court with eyes wide open and now they want to
17 have a witness put on testimony that for \$17 a unit, they
18 could have fixed the problem and allow me to step up there and
19 figure out what I can ask that he has an admissible opinion
20 on.

21 We gave them full warning that this was the position
22 we are going to take, and they elected to wait until their
23 last witness to put -- an economist to put this evidence on.

24 MR. DELLETT: Boiled down, Crossroads' argument is
25 Crossroads and everybody on that side of the table can say

1 that SCSI reserve and release is not covered by the 972
2 patent, but Dr. Flamm can't. That's the problem.

3 THE COURT: Well, he's tendered as an economic expert
4 and the basis of his opinion is that by rewriting the VPS code
5 and eliminating all access controls down to the reserve
6 release control would make this a non-infringing patent, a
7 non-infringing product which you have already argued much to
8 the opposite throughout this trial on invalidity.

9 And then, to indicate that he is on cross-examination
10 would say that functionality with VPS on a commercial basis
11 for the product would remain the same with the same sales to
12 IBM or anybody else. That bridge is just not there. I'm
13 going to exclude his testimony. You have your objection.

14 Take a few minutes if you wish to tender him as an
15 economic expert with statements of -- that assumptions that
16 he's made, made by Pathlight technology people and that those
17 assumptions -- or that would have been no further infringing,
18 then I'll still consider him as an economic expert.. But he's
19 just not Superman and the record doesn't do it. So I'll give
20 you ten minutes to decide what you're going to do.

21 (Recess.)

22 THE COURT: What's your --

23 MR. DELLETT: Your Honor, we would ask that we can
24 call Dr. Flamm back to the stand, and he will not say anything
25 about noninfringing and he will not say anything about

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1 functionality of these alternatives. Essentially, what Dr.
2 Flamm -- we want Dr. Flamm to testify is that there is a range
3 as to whether they lose all the VPS revenue or they lose none
4 of the VPS revenue.

5 That will be an important part of the hypothetical
6 negotiation. It is one factor.

7 THE COURT: Well, here is my dilemma with regard to
8 Dr. Flamm. His theory is based upon -- he's tendered as an
9 economic witness to give a reasonable royalty, but his theory
10 of his calculation is based upon not just what has been told
11 and where he's making an assumption. But on cross-examination
12 because he's a highly educated person and obviously
13 experienced.

14 He is going to inject his personal opinions of
15 expertise with regard to liability, not the economics of the
16 factor but to the liability including an issue that the jury
17 is going to end up resolving and that is whether the SCSI --
18 he would be, in effect, assuming that the SCSI protection
19 makes it infringing. Then, the jury's going to make that
20 determination.

21 Plus the fact all he is going to testify as an expert,
22 not as an economic expert that the VPS, stripped down with a
23 new code written, what the new code is, nobody knows, and down
24 to the protection of the SCSI as the only control device would
25 maintain its functionality, which there is no evidence -- I

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1 don't know of any evidence of that.

2 MR. DELLETT: I will not ask him anything about that.
3 All I'm asking -- all I want to ask Dr. Flamm is if you lose
4 all the VPS revenue, what would that be per unit? If you keep
5 all the VPS revenue, what would what be per unit. And whether
6 or not that particular alternative they go to is not asking
7 Dr. Flamm -- we expect to have him testify about on the stand.

8 I mean, you were correct, sir, that Dr. Flamm does
9 have opinions about which alternative would be best for
10 Pathlight and, in fact, he relies on evidence, commercial
11 evidence about what is in the marketplace. And his personal
12 opinions, whether those are expert or not, are based on some
13 very, very extensive work he's done on this case in studying
14 what's commercially available.

15 Now, the real -- to me, the real frosting on the cake
16 there is that Crossroads itself says that the SCSI reserve and
17 release is not covered by the patent. Does that mean Dr.
18 Flamm has to go back in himself and analyze whether that's
19 infringing or not? Well, we didn't think so.

20 We thought that they were estopped from rebutting that
21 allegation if Dr. Flamm can't rely on that.

22 THE COURT: Well, that position is that the SCSI
23 release and reserve or reserve and release does not invalidate
24 the patent. That's what their position has been and I have so
25 held as a matter of law that it didn't invalidate the patent.

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1 Now,, you know, it's going to be fair game, I guess, to argue
2 whatever you want to argue based on the evidence to the jury,
3 but that's all they have.

4 I don't even have any problems as an economic witness
5 if Dr. Flamm wants to admit that these are assumptions given
6 him by Pathlight and that he based his opinion on those
7 assumptions. But on cross, I can't let come a liability
8 expert, an electrical engineer when he puts in -- and you
9 know, it's hard to harness a stallion if you've ever tried.

10 But that you can -- you know, he's qualified as an
11 economist. You can ask him those questions, and I guess you
12 can object to them as they come in.

13 MR. ALBRIGHT: And, your Honor, to lay the ground
14 work, the problem is implicit in his testimony of just doing
15 away with the VPS is an assumption that those products would
16 have still been sold and he's done no analysis of that.

17 THE COURT: Well, I understand that. I understand
18 that.

19 MR. ALBRIGHT: So --

20 THE COURT: And you can ask him that. Actually, what
21 he's going to testify to is if you took all the revenue out,
22 it would be zero. And if you keep the revenue in, it's a
23 higher figure.

24 MR. ALBRIGHT: But what he's not done, your Honor, is
25 done any determination of what he is saying is if we just took

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1 the VPS out, we would have just lost the value of the VPS.
2 That's like saying Chrysler would have sold as many cars if
3 they would have taken a steering wheel out. Probably they
4 wouldn't have sold any cars at all.

5 That's been our argument from the very beginning, and
6 he's done no analysis of that. So to put me to the test on
7 cross basically allows him to have that -- allows Pathlight to
8 have to put someone on the stand that implicitly is saying
9 that they could do away with VPS, have the same functionality
10 and have the same sales.

11 THE COURT: Just depends on how it's asked.

12 MR. ALBRIGHT: Thank you, your Honor.

13 THE COURT: But you're right. Could be a problem
14 there, but you can object as you see fit.

15 MR. ALBRIGHT: Thank you, your Honor.

16 THE COURT: All right. Bring the witness in if
17 you're going to put him on and bring the jury back.

18 MR. ALBRIGHT: Your Honor, I would ask Mr. Dellett to
19 let me know before a demonstrative exhibit's put up, what it's
20 going to be.

21 THE COURT: Show him the screens before they're
22 displayed to the jury.

23 (Jury present.)

24 MR. DELLETT:

25 Q. Dr. Flamm, can you describe your analysis of the Georgia

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1 Pacific factors to come up with your opinion as to reasonable
2 royalty in this case?

3 A. Yes.

4 Q. Okay?

5 A. Can I put up my slide? Yes. Factor one, Crossroads has
6 never received any royalties for the 972 patent; zero
7 royalties have been received. Factor No. 2, software licenses
8 is actually paid by Pathlight for software it has used with
9 its products typically in the range of 25 to \$45 per unit
10 range.

11 Factor No. 3, license would be nonexclusive. Factor
12 No. 4, Crossroads has no policy against licensing. Factor No.
13 5, Crossroads and Pathlight sell to different market niches.
14 Factor No. 6, there would be no convoyed sales in this case.
15 Factor No. 7, the duration of a license has no effect. Next
16 slide, please.

17 MR. ALBRIGHT: Your Honor, before they show the next
18 slide, it basically has Dr. Flamm's sort of summary of what it
19 is. I have -- which I'll be happy for them to use the actual
20 Georgia Pacific factors. And Mr. Dellett wants to go through
21 what they actually are under the law. I won't object to him
22 having Dr. Flamm go through them, but I would object to the
23 format that he has.

24 Your Honor, I can put it on the screen for them.

25 MR. DELLETT: Let's finish up this and then, we'll

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1 look at those, okay?

2 MR. ALBRIGHT: I'm saying, your Honor, beyond No. 7, I
3 don't want -- I make an objection based on what we did outside
4 the jury's presence to their summary.

5 THE COURT: Are you using page one of two? He's
6 objecting to two.

7 MR. DELLETT: I think so.

8 THE COURT: Okay. So let me look at two for a second.

9 MR. ALBRIGHT: And, your Honor, here is what we have
10 if he wants to use this.

11 THE COURT: Yeah, I'm not going to permit that. You
12 can just ask that.

13 MR. DELLETT:

14 Q. Dr. Flamm, let's go through those first seven factors
15 again, royalties receive, rates received for the patent
16 itself, what was your conclusion on that?

17 A. This patent never received any royalties.

18 Q. And then, the second factor?

19 A. Essentially, Pathlight has paid software license fees in
20 the range of 25 to \$45.

21 Q. And the third factor?

22 A. Third factor, this will be an exclusive -- excuse me,
23 nonexclusive license. That would not be issued in
24 negotiation.

25 Q. Fourth factor?

1 A. The Crossroads has no policy against licensing.

2 Q. Okay. Fifth factor?

3 A. Crossroads and Pathlight sell to different market niches.

4 Q. Sixth factor?

5 A. Would be no convoyed sales.

6 Q. And seventh factor?

7 A. The duration of the patent in them of license would not be
8 an issue in negotiation.

9 Q. Eighth factor?

10 A. Commercial success and profitability suggests that
11 Pathlight indeed could come up --

12 MR. ALBRIGHT: Objection, your Honor.

13 THE COURT: Well, that's --

14 MR. ALBRIGHT: I mean, if he wants -- I apologize. I
15 have no objection to him telling the jury what the 15 are, but
16 I anticipate what he was about the say would fall into the
17 category of what we just discussed.

18 THE COURT: All right. Counsel and the witness, y'all
19 come over here.

20 (At the bench, on the record.)

21 THE COURT: I take it your answer is going to be that
22 they would have commercial success?

23 THE WITNESS: Actually, I was -- what I was going to
24 say is something to the -- I'm sorry.

25 THE COURT: It's all right. Everything is recorded.

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1 here.

2 THE WITNESS: Oh, okay, I'm sorry. I would have said
3 something to the effect that Pathlight would have argued that
4 it could have sold some products.

5 THE COURT: I think you can do that. Let's stay away
6 from specifics. You can also say, you know, if it is your
7 opinion that you think that -- well, it could have sold
8 products.

9 THE WITNESS: It could have been commercially
10 successful.

11 THE COURT: What is your objection?

12 MR. ALBRIGHT: Your Honor, I don't believe there is
13 any evidence. There's a difference between saying, even with
14 this background, that they might have been able to sell some
15 products versus being able to make the argument those products
16 would have been commercially successful on the basis of all
17 the evidence to date from Pathlight's web sites which describe
18 VPS, and the documents to take from IBM which show the
19 importance to IBM that it would have been a commercial
20 success.

21 THE COURT: They sold some products. He may avoid the
22 VPS, so there's no problem with that.

23 MR. ALBRIGHT: I'm not implying he is saying --
24 there's a light line saying between it could have commercial
25 success.

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1 THE COURT: If he continues to do that, you can object
2 to it. I'll have to rule on it. But right now, that answer's
3 fine. Ms. Reznik, would you read back the last question.

4 (Read back.)

5 A. Eighth factor, it's my opinion that Pathlight could have
6 been commercially successful selling its own product.

7 MR. DELLETT:

8 Q. Have you made any calculation of the commercial dollar
9 volume that Pathlight made from VPS?

10 A. Yes, as I pointed out earlier, they had approximately one
11 million -- I'm sorry I'm going from memory here, \$720,000 was
12 it? I'm sorry. I don't have my --

13 Q. Let me put it up on the screen, please?

14 A. Little impromptu. \$1,024,720 from sales from VPS.

15 Q. And is that a measure of the commercial success of the VPS
16 that's alleged to infringe here?

17 A. Yes, it is.

18 Q. And have you made any determination of factor No. 9?

19 A. Yes, I've looked at the utility and advantage of the
20 accused VPS software versus other non-accused alternatives
21 that would have been available to Pathlight.

22 Q. And what alternatives are you aware of that are not
23 accused?

24 A. Some of them have been discussed in this trial, Crossroads

25 --

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1 MR. ALBRIGHT: Objection, your Honor, this goes into
2 the subject we discussed during the bring.

3 THE COURT: Well.

4 MR. ALBRIGHT: And I apologize, your Honor.
5 Obviously, I don't mean to object if you meant for him to be
6 allowed to do this.

7 THE COURT: No. You may bring the jury's attention to
8 which has been discussed in this trial in your presence
9 without personal opinion.

10 THE WITNESS: Yes.

11 THE COURT: All right.

12 MR. DELLETT:

13 Q. I guess the question was -- maybe I'll withdraw the last
14 question and start again. What alternatives have you heard
15 testimony about in this courtroom that Crossroads does not
16 accuse of in fringing the 972 patent?

17 A. Crossroads's own routers, I understand, do not -- are said
18 not to by Crossroads not to in fringe the 972 -- retain the
19 technologies covered by the 972 patent.

20 Q. Do they contain the SCSI reserve and release?

21 A. Yes, they do.

22 Q. Okay. Now, are you aware of whether or not Crossroads
23 says that its own routers include any other type of access
24 controls?

25 A. As far as I know, no.

1 Q. Would you go on to factor No. 10, please?

2 A. Yes. Factor 10 is utility and advantage over other modes.

3 Q. I'm sorry, factor ten is nature?

4 A. I'm sorry. Excuse me. Factor 10, the nature of the
5 invention and benefits to users. I considered in my analysis,
6 I did an economic analysis of the potential value of the 972
7 patent to Crossroads, and I did consider that and performed an
8 economic analysis.

9 Q. And what was the result of your economic analysis?

10 A. My economic analysis was that Crossroads would take the
11 position that would -- it could successfully do business and
12 it would pay no more than \$17 per unit --

13 MR. ALBRIGHT: Your Honor, that wasn't -- I apologize.
14 The last part of the question wasn't responsive and it
15 violates what the Court's order was. And it's certainly --

16 THE COURT: Members of the jury, I'm going to instruct
17 you not to consider the last statement of the witness for any
18 purpose. I'm going to allow you to restate your question,
19 counsel.

20 MR. DELLETT:

21 Q. Did you make any analysis as to the range, the negotiating
22 range between Crossroads and Pathlight for reasonable royalty?

23 A. Yes, I did.

24 Q. And what was that range that you came up with?

25 A. The reasonable royalty range was between \$17 --

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1 MR. ALBRIGHT: Your Honor, I object. This is the same
2 question. In fact, this is the objectionable part of the
3 answer.

4 THE COURT: I'm going to permit this range based upon
5 the assumptions that this gentleman was given by Pathlight
6 Technology.

7 MR. ALBRIGHT: Thank you, your Honor.

8 MR. DELLETT:

9 Q. What was the range that you came up with what would be the
10 negotiating range for a reasonable royalty for the 972 patent?

11 A. I believe it was between \$17 and \$214 so the high and the
12 low ends.

13 Q. And what was the next factor No. 11 there?

14 A. The value of use figured in my calculation of the
15 negotiating range.

16 Q. Okay. And then, factor No. 12, what does that mean?

17 A. It's the customary profit or revenue split. In terms of
18 royalties as a percent of sales for license of a patent, I've
19 read literally hundreds of computer and semiconductor and
20 computer chip patents, and it's very rare to find more than
21 five percent royalty.

22 Q. And then, the next factor No. 13?

23 A. Share of profits attributable to the invention. Again,
24 this was factor in the calculation of the royalty range.

25 Q. And did you determine what share of Pathlight's profits

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1 are attributable to what -- to the VPS?

2 A. I'm sorry. I'm just thinking for a moment about the
3 parameters I'm supposed to answer within your --

4 THE COURT: Any time you wish, you can come over here.
5 You have the same rights as a lawyer.

6 THE WITNESS: I do. That's a novel twist, sir.

7 (At the bench, on the record.)

8 THE WITNESS: I'm confused about what I can say and
9 what I can't say.

10 MR. DELLETT: I'd like to ask Dr. Flamm to talk about
11 the lost -- we're not going to talk about the maximum cost.
12 We're just going to talk about how much revenue would be lost
13 if it was taken out. That's it.

14 THE COURT: The only thing about taking into
15 consideration the revenue, of course, is I'm not going to
16 permit him to testify that but for the VPS, they would have
17 had the same revenue as the evidence in this case is not
18 consistent with that plus the fact he's not been tendered as
19 an expert in that area. He can take -- he can say that he
20 made his calculations based on an assumption of information
21 given him by his client, but he's going to still have to live
22 or die with the assumption, not the facts.

23 MR. ALBRIGHT: And, your Honor, in addition, like you
24 said, that just lights the bomb if you allow them to put on
25 this evidence, that lights the bomb, lets him sit down and

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1 have me do all the cross-examination.

2 THE COURT: You have this million, 24,000 in without
3 objection. Now what he's going to say is there's a cost
4 factor that is estimated on this for net, but that's
5 mathematics. You can argue the way you want to to the jury
6 one way or the other.

7 MR. DELLETT: Your Honor, I am very concerned that Dr.
8 Flamm is kind of to drift not knowing what he can and can't
9 say on cross-examination. I have a pretty good idea, at least
10 I hope, what he's going to say in response to my questions on
11 direct. But it really puts him in a bind if Mr. Albright can
12 go all over the map and Dr. Flamm can't say what he has done
13 and what he has analyzed and what his opinions.

14 I believe Dr. Flamm has a lot of expertise to talk
15 about these things, and if his hands are tied in response to
16 Mr. Albright's cross, really --

17 THE COURT: Well, Dr. Flamm is here because you've
18 hired him. Dr. Flamm's testimony is limited because of the
19 disclosures you've made with regard to signing him as an
20 economic expert, not a liability expert. And any hands that
21 are tied have been tied by a rope that you have put on or
22 somebody in your camp, not necessarily you.

23 But I am not going to have him testifying as an
24 electrical engineer expert on evidence that is in contest and
25 that he hadn't been tendered for. It's that simple. Now, I'm

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1 going to allow him to testify as an economic expert. Clearly
2 he's been tendered as an economic expert. Clearly he is an
3 economic expert. He may be an expert in many fields but not
4 in this case.

5 And he is going to have to testify in the case with
6 regard to his calculations that he made on the assumptions of
7 information by Pathlight, otherwise, I shouldn't have let him
8 testify at all.

9 MR. DELLETT: I don't want him to talk about these
10 alternatives. All I want him to say is how much revenue would
11 be lost if they threw VPS out. That's it. How many dollars
12 would be lost if they threw VPS out.

13 THE COURT: St. Peter is the only one that can answer
14 that question and he's occupied.

15 MR. DELLETT:

16 Q. Dr. Flamm, have you reached any conclusions as to the
17 share of profits attributable to what is claimed by Crossroads
18 to infringe the 972 patent?

19 A. Yes, I have.

20 Q. And approximately how much do you believe is the share of
21 Pathlight's profits attributable to VPS?

22 MR. ALBRIGHT: Your Honor, I object.

23 THE COURT: I sustain the objection. The question is
24 -- you asked about Crossroads.

25 MR. DELLETT:

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1 Q. Excuse me. Have you calculated approximately what share
2 of Pathlight's profits, Pathlight's net no fits are
3 attributable to the VPS that is asserted by Crossroads to
4 infringe?

5 A. Yes.

6 THE COURT: And I sustain the objection. He's not
7 going to give that opinion. Move to your next question.

8 MR. DELLETT:

9 Q. Okay. Now, finally, do you have an opinion as to what
10 would be the outcome of the hypothetical negotiation?

11 A. Yes, I do.

12 Q. And how much would the royalty rate be based on all these
13 factors that you considered?

14 A. I estimated-

15 MR. ALBRIGHT: Your Honor, I just want to make my
16 objection based on what was done before. I'm a little blind
17 here, too, just so I don't wave an objection.

18 THE COURT: We've done a lot of things before.

19 MR. ALBRIGHT: Your Honor, I would prefer that I have
20 some idea of what this answer's going to be to know whether
21 it's within the parameters of what the Court's going to think.

22 THE COURT: How about objecting to speculation?

23 MR. ALBRIGHT: I would object to speculation.

24 THE COURT: I sustain it. Rephrase your question.

25 MR. DELLETT:

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1 Q. Have you, Dr. Flamm, completely and thoroughly analyzed
2 the 15 Georgia Pacific factors in this case?

3 A. Yes, I believe I have.

4 Q. And have you used your skill and experience as an
5 economist in the computer technology field to come up with
6 your opinion in this case?

7 A. Yes, I have.

8 Q. And have you, in your economic career, had other occasions
9 to calculate a reasonable royalty for patents?

10 A. Yes, I have.

11 Q. And did you use that experience and training in the
12 economic field in this case?

13 A. Yes, I did.

14 Q. Okay. And as a result of your training, experience, your
15 analysis of all the Pathlight documents, the Crossroads
16 documents, your an all -- your incident research and your
17 analysis of the Georgia pacific factors, come up with what you
18 believe is a reasonable royalty for the 972 patent?

19 A. Yes, I did.

20 Q. Okay. And what is that reasonable royalty?

21 MR. ALBRIGHT: Your Honor, I object on the basis of
22 speculation as well as the other matters that we've taken up.

23 THE COURT: Opinion on reasonable royalty. I wouldn't
24 allow an opinion on outcome of negotiations. You may answer.

25 MR. DELLETT:

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1 Q. What is your opinion as to the reasonable royalty for the
2 972 patent?

3 A. I'm sorry if I have to ask a question but I'm just trying
4 to follow your guideline, sir. Is it per unit, total number
5 --

6 MR. DELLETT:

7 Q. Per unit. What is your opinion per unit for a reasonable
8 royalty for the 972 patent?

9 A. \$116 per unit.

10 Q. Okay. And is this a slide that you did yourself?

11 A. Yes, I did, okay.

12 Q. Can you describe what it shows?

13 A. It shows the per unit royalty times the total number of
14 routers and gateways sold by Pathlight, adds up to a total
15 reasonable royalty of \$477,920.

16 Q. Pass the witness.

17 MR. ALBRIGHT: Based on what's happened, can I have
18 ten seconds to figure out --

19 THE COURT: You may.

20 MR. ALBRIGHT: We have no questions, your Honor.

21 THE COURT: May this witness be excused, counsel?

22 MR. ALBRIGHT: Yes, sir.

23 THE COURT: Your may be excused.

24 MR. DELLETT: Your Honor, before plaintiff rests, I
25 have one final matter.

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1 MR. ALBRIGHT: Before defendant.

2 MR. BAHLER: Before defendant rests and that is the
3 reading of an interrogatory response. This is plaintiff
4 counter defendant Crossroads systems Texas Inc.'s.

5 THE COURT: Wait. An interrogatory, members of the
6 jury, is what we call a question that each party is allowed to
7 ask the other and is responded to by an appropriate official
8 of the other party under oath. So it's kind of like a
9 deposition. You can ask a formal question, in this particular
10 case, I think Pathlight technology asked an interrogatory
11 question of Crossroads, and he's going to read the question
12 and the answer. That's what an interrogatory is.

13 MR. BAHLER: All right. I'm going to read three
14 interrogatories. The first is plaintiff's counter defendant
15 Crossroads systems Texas, Inc.'s responses to defendant's
16 counter plaintiff Pathlight technology, Inc.'s first set of
17 interrogatories 1 through 6 and, specifically, it's
18 interrogatory 6.

19 This was verified by Reagan Sakai, chief financial
20 officer of Crossroads on July 26th, 2000. Interrogatory No.
21 6, for each claim of the 972 patent, identified by name and
22 model number each device, manufactured, offered for sale or
23 sold at any time including prior to the issue date by
24 Crossroads that embodies one or more of the claims of the 972
25 patent including for each such device a statement of which

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1 claim or claims of the 972 claim it embodies, the date when
2 Crossroads began selling my such products the quantity of
3 manufacturer of such devices, and Crossroads's sales in units
4 and dollar prices -- and prices per such devices.

5 Response to interrogatory No. 6, Crossroads objects to
6 interrogatory No. 6 on the grounds that it seeks information
7 protected by the attorney-client privilege and that work
8 product doctrine. Crossroads also objects to this
9 interrogatory on the ground that it is premature. Crossroads
10 has not yet had time to investigate the information sought.

11 Crossroads also objects on the ground that this
12 interrogatory is overlybroad and seeks information beyond the
13 scope permitted by the federal rules of civil procedure and
14 the local rules --

15 MR. ALBRIGHT: Don't believe it's appropriate to read
16 the objections.

17 THE COURT: It is. I sustain the objection. If you
18 have an answer, read the answer.

19 MR. BAHLER: Answer is subject to and without waiving
20 its objections Crossroads answers as follows: Crossroads is
21 still investigating its sales of products which incorporate
22 the inventions of the 972 patent, dated July 26th, 2000.

23 Also, I'll read the response to interrogatory No. 15,
24 which is included --

25 MR. ALBRIGHT: Your Honor, all we would ask is that

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1 these interrogatories were supplemented, and so I believe Mr.
2 Bahler's going to read in the original answer. He should read
3 in the supplemental, as well. As long as he's going to do
4 that, we have no objection.

5 MR. BAHLER: That's what I'm doing. Unfortunately,
6 the supplementation for that one incorporated by reference,
7 you have a third one. Interrogatory No. -- the
8 supplementation for interrogatory No. 6, dated May 9th, 2001,
9 is as follows.

10 Subject to and without waiving its prior objections,
11 Crossroads supplements its answers as follows: This
12 interrogatory is duplicative of interrogatory No. 15, and it
13 is answered, Crossroads' response to interrogatory No. 15 and
14 that response is dated March 9th, 2001.

15 Response to interrogatory No. 15 is objection, this
16 interrogatory is duplicative of interrogatory No. 6.
17 Interrogatory No. 15. Identify by name and model number each
18 subject device manufactured, offered for sale, or sold by
19 Crossroads that Crossroads contends is not covered by any of
20 claims 1 through 10 of the 972 patent and describe any and all
21 such contentions about the bases and support.

22 Response: Without waiving the -- and subject to this
23 objection, Crossroads contends that to date, none of its
24 devices manufactured, offered for sale, or sold use access
25 controls or implements access controls as construed by the

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1 Court in this case.

2 With that, your Honor, plaintiff rests.

3 MR. ALBRIGHT: Defendant.

4 MR. BAHLER: Defendant rests.

5 THE COURT: Members of the jury, I'm going to -- you
6 probably haven't seen that jury room lately, so let's go ahead
7 and go in that jury room for a minute.

8 (Jury not present.)

9 THE COURT: All right, counsel. You may remove your
10 motion, file your motions. Plaintiff, you have the lectern.

11 MR. ALCOCK: Your Honor, I believe there's been handed
12 up a motion. Do you want me to start or -- do you want me to
13 proceed, your Honor?

14 THE COURT: Sure. Go ahead. Just summarize the
15 motion.

16 MR. ALCOCK: Yes. First of all, we would renew our
17 motion on infringement. They haven't established they don't
18 infringe. Certainly, with respect to the VPS product, they've
19 offered no expert testimony on the subject and no testimony on
20 any other subject. And I don't believe that the testimony
21 with respect to channel zoning has been sufficient.

22 The expert witness said that it didn't infringe, never
23 operated the device and the uncontradicted evidence is that
24 it, in fact, does perform access controls. We are entitled to
25 judgment as a matter of law that the 972 patent is not

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1 anticipated basically on the grounds that are articulated in
2 the Court's summary judgment ruling, reserve release doesn't
3 meet the access control limitation as a matter of law.

4 We're entitled to judgment as a matter of law that the
5 972 is not obvious because they have not put any evidence on.
6 We've had a discussion at sidebar with the Court where they
7 were -- their expert report didn't cover the subject and their
8 expert testimony didn't either.

9 They've placed no evidence in the record that the 972
10 patent is invalid as not being definite or as being
11 indefinite. There's been no testimony on that subject at all.
12 And, likewise, I believe on the issue of enablement, although
13 I believe they may have withdrawn that defense.

14 We're also entitled to judgment as a matter of law
15 that we did not commit inequitable conduct. They haven't
16 produced any evidence that the evidence -- that the prior art
17 was more material or that -- or people have deceptive intent.
18 And finally, we're entitled judgment as a matter of law on our
19 willful infringement claim for the reasons set forth in the
20 motion.

21 THE COURT: Does the defendant wish to summarize its
22 petition?

23 MR. BAHLER: Yes, your Honor. We of course oppose
24 with respect to the anticipation issue, your Honor. As your
25 Honor as observed that the summary judgment was -- that was

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1 issued was simply denial of our motion for summary judgment
2 rendered the same factual issue for the jury to decide. And
3 indeed, there is sufficient facts to -- in our opinion grant J
4 N O L in favor of defendant Pathlight on tissue of
5 anticipation. So we certainly would oppose their motion that
6 it is not anticipated.

7 I'll get to that the first issue as soon as it's our
8 turn to go up to go. With respect to the issue of whether or
9 not the 972 patent is not obvious, your Honor, there is solid
10 evidence in this record that it is anticipated and, your
11 Honor, obviousness conclude it was one of those lesser
12 included evidence things and there's evidence in the record
13 that obviousness should go to the jury, also.

14 With respect to the indefiniteness, I spent an hour
15 and 15 minutes on the stand here cross-examining Dr. Hodges on
16 this very issue. This is a very confusing patent. Nobody
17 seems to know exactly what access controls means. Nobody
18 seems to know what native low level block protocol means
19 exactly. Nobody seems to know what virtual local storage
20 means. This is a seriously indefinite patent and we certainly
21 would resist that motion and in fact we have a counter
22 on that motion the opposite correction which I'll get to in a
23 second.

24 With respect to the issue of inequitable conduct, your
25 Honor, the evidence is clear as a bell that the group of

1 people including Mr. Hoese, Mr. Smith, Mr. Russell, believe,
2 and -- I think that's the only people that really need to be
3 talked about. First of all, had a duty of disclosure to the
4 Patent Office. Each one of them, two of the inventors, the
5 third Mr. Smith actually signed the papers acknowledging his
6 personal duty to disclose to the Patent Office.

7 All three of those individuals were personally
8 knowledgeable of several pieces of prior art of Crossroads'
9 own making of particularly Comdex 1996 and offers for sale of
10 those devices before the end of 1996, before the so-called
11 critical date which is December 31, 1996.

12 Of particular interest here, your Honor, is the fact
13 that claims 5 and 6 in the patent are extremely detailed.
14 They go right down the nitty-gritty of what's been referred to
15 the fiber channel controller and what's been referred to as
16 SCSI controller.

17 Your Honor, those things were in -- down to that
18 detail and known to these inventors and to Mr. Smith at Comdex
19 '96, in public use at Comdex '96. They knew it. They
20 withheld from the Patent Office. And inequitable conduct
21 indeed is shown. And we have a -- once again, we have a
22 countervailing motion on that issue.

23 With respect to the willful infringement claim, the
24 evidence is clear that, at the very least, your Honor, this is
25 a factual issue. I won't be -- actual, the evidence is clear

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1 that Mr. Rahmani and others at Pathlight did what was exactly
2 right. Immediately when learning of the patent, they
3 contacted their patent lawyer and got an opinion and trusted
4 that opinion.

5 What more could they do? That's exactly what they
6 did. There's been no willful infringement here, your Honor.
7 Your Honor, our countervailing motion, I'm told, is basically
8 on the same issues, so I basically already argued that. So
9 with your permission, I'll stop arguing. How's that?

10 THE COURT: You have my permission. I overrule both
11 motions. All right. Are you ready to proceed?

12 MR. ALCOCK: Absolutely, your Honor.

13 THE COURT: Bring the jury in.

14 (Jury present).

15 THE COURT: All motions as already been made, the
16 Court considered in the record renewed by both parties. You
17 may be seated as you come in, members of the jury.

18 MR. ALCOCK: Thank you, your Honor. As part of our
19 case responding to the defendant's invalidity case, we'd call
20 Dr. Hodges back to the stand briefly.

21 THE COURT: You understand that you remain under oath,
22 sir?

23 THE WITNESS: Yes, sir.

24 THE COURT: You may proceed.

25 RE-DIRECT EXAMINATION

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1 BY MR. ALCOCK:
2 Q. Dr. Hodges, have you reviewed the prior art that the
3 defendants are relying upon?
4 A. Yes, I have.
5 Q. And do you believe that invalidates the 972 patent?
6 A. No, I do not.
7 Q. Does all the prior art that they're relying upon share a
8 common characteristic?
9 A. Yes, it does.
10 Q. What is that common characteristic?
11 A. All relies on the SCSI reserve and release functions.
12 Q. And are you familiar with the SCSI reserve and release
13 functions?
14 A. Yes, I am.
15 Q. How long had the SCSI and reserve -- SCSI reserve and
16 release functions been around at the time that Mr. Hoese and
17 Mr. Russell invented the 972 patent?
18 A. I am not exactly sure how long, but probably it was five
19 to ten years.
20 Q. Okay. And are you familiar with those?
21 A. Yes, I am.
22 Q. Can you explain to the ladies and gentlemen -- the ladies
23 of the jury. I've done it a few times. I apologize -- what
24 the SCSI reserve and release commands are?
25 A. Yes, the SCSI reserve and release commands are a set of

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1 commands that are defined in the SCSI standards, along with
2 their relationship with the rest of the SCSI functions. They
3 are designed and stated in the standard, they're designed the
4 allow two or more processors, two or more computers to share
5 the same storage without stepping on each other's toes.

6 Q. Okay. Have you prepared some graphics that would help in
7 explaining?

8 A. Yes, I have.

9 Q. Show to the ladies and gentlemen of the jury exhibit 524.
10 What is exhibit 524 depicting, sir?

11 A. Well, this graph shows an analogue. Let's consider a disk
12 drive or storage device as if it were a file room. So we've
13 shown three file rooms here labeled one, two and three and
14 reading and writing to the storage device would be equivalent
15 to carrying some data into the file room or copies only data
16 out of it.

17 One of these file rooms is already reserved to
18 someone. It has a reserve sign in front of it and the door is
19 closed.

20 Q. Okay. Let me move on the exhibit 525. Sorry. What is
21 exhibit 525 depicting, sir?

22 A. Well, in this graphic we're depicting the reserve process.
23 The man in the green shirt there, corresponds to a particular
24 computer, comes up to storage unit 1 and says I want you to be
25 reserved to me and the attendant inside says, all right, and

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1 he closes the door and puts the reserve sign up.

2 Q. So that's the reserve command?

3 A. That's the reserve command.

4 Q. It's another part to the story?

5 A. Yes.

6 Q. Let me show you exhibit 34. Sorry, your Honor, exhibit
7 534. What is exhibit 534 depicting, sir?

8 A. I'll wait till it stops moving. Exhibit 534 shows a
9 sequence of things happening. We have storage unit one
10 reserved as before by the man in the green shirt. Another man
11 comes up with some data and obviously not the same person, and
12 he finds the what he wants to access unit one that there's a
13 reserve sign out. It's reserved to somebody else. He knows
14 -- finds out it's not reserved to him.

15 But he does not have to give up on that. He always
16 carries with him a key, a key is called reset, and he can
17 insert the key in the lock and open the door and that the
18 reserve sign goes away and he can use the device.

19 Q. So then --

20 A. Storage unit.

21 Q. So then when this reserve release command, there's a
22 release aspect to the command available to the host?

23 A. Yes. The same host that reserved it can release it. In
24 other words, he reserves it until he is through using it, and
25 then, he releases it. But anyone else can use their master

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1 key to get in the they so desire.

2 Q. So, in other words, not only does that host have a release
3 capability, all the other hosts do, too Steve?

4 MR. GARRETT: Objection, your Honor, leading.

5 THE COURT: It is.

6 MR. ALCOCK:

7 Q. Is only that host able to release the command?

8 A. Only that host is allowed to issue a release command
9 successfully but the reset will release the reserve, just as
10 well.

11 Q. Okay. Very good. Is there another type of reset command,
12 sir?

13 A. Yes. There's another type of reset command that will --
14 is this the same one?

15 Q. Let me place before you exhibit 527. It's registering but
16 it's not showing up. So is there another type of reset
17 command?

18 A. There is another type of reset command which can be used.
19 It's not a command. It's a function on the SCSI bus that will
20 release -- all reservations. What we're talking about here is
21 all of the reservations that are devices that are on the same
22 bus if it's a SCSI bus command. If we were -- I am confusing
23 this. I'm sorry. I need to start over.

24 Q. I'm sorry. There's been some juxtaposition of things.

25 A. In the context of a router, where the router is a unit

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1 that contains multiple storage devices, the storage -- the
2 computer can give -- has a function that it could issue a
3 reset command to the router. If it issues a reset command
4 that is called a reset function that's called LUN reset or
5 logical unit reset, it will open one of those doors.

6 If it issues a command that -- function that says
7 target reset, it will reset all of the doors. So this shows
8 the target reset function being exercised by the man in the
9 white shirt. He pushes the key into the number one key hole
10 and all of the doors open.

11 Q. Okay. So let me show you exhibit 602 and ask you to
12 summarize, if you could, why reserve management does not
13 constitute access controls?

14 A. We mentioned the fact that the reset functions can cancel
15 a reserve. There are other functions as well that can cancel
16 the reserve, for example, if power goes away, the reserve is
17 cancelled, but if you do a power off and power back on. So in
18 fact, I did some testing on the Pathlight device and found
19 that if the Pathlight power is turned off, the reserves go
20 away.

21 Q. Okay.

22 A. There are other functions, there are some Fibre Channel
23 functions that also cause that to happen.

24 Q. Okay. Now, when you just mentioned the Pathlight you
25 weren't talking about access controls?

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1 A. No. I was talking about reserve.

2 Q. Okay. To summarize, Dr. Hodges, what are the fundamental
3 differences between the access controls of the 972 patent and
4 this old SCSI reserve management?

5 A. Well, the fundamental difference is as if you left your
6 house and locked your front door. If everyone in the city has
7 a key to your front door, you wouldn't consider that you had
8 performed any access control whereas if you are using the
9 access controls of the 972 patent, you would have a secure
10 lock on your door.

11 Q. Now, were you sitting out there in the courtroom when the
12 testimony from Mr. Englebrecht was read? Did you hear that?

13 A. Yes, I did.

14 Q. And that involved the LSI Symbios devices?

15 A. Yes.

16 Q. Did those invalidate the 972?

17 A. No, they do not.

18 Q. Why not?

19 A. They do not have access control and they do not implement
20 virtual local storage.

21 Q. And you were in the courtroom when you heard testimony
22 regarding the Adaptec documents. Do you remember that?

23 A. Yes, sir.

24 Q. That that's the Coronado product?

25 A. Yes.

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1 Q. Does that invalidate the 972 patent?

2 A. No, it does not.

3 Q. And what's your basis for that?

4 A. It lacks access controls according to the 972 patent and
5 it does not produce virtual local storage.

6 Q. Did anyone before Geoff Hoese and Jeff Russell with the
7 972 patent invent a storage router with access controls?

8 A. Not that I'm aware of.

9 Q. No further questions of the witness at this time, your
10 Honor.

11 THE COURT: Counsel, I'll have y'all up here for a
12 minute.

13 (At the bench, on the record.)

14 THE COURT: How many more witnesses do you have?

15 MR. ALCOCK: We have Geoff Hoese and his testimony
16 won't be ten minutes.

17 THE COURT: All right. The defendant is out of time,
18 but I will permit ten minutes cross-examination -- up to ten
19 minutes and up to five minutes on the second witness.

20 MR. BAHLER: That's fine, your Honor.

21 MR. ALCOCK: Thank you

22 CROSS-EXAMINATION

23 BY MR. GARRETT:

24 Q. Good afternoon, Dr. Hodges.

25 A. Good afternoon.

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1 Q. I believe you and I have met before?

2 A. We have.

3 Q. At your deposition sometime ago, correct?

4 A. That's correct.

5 Q. Okay. Now, you testified a good deal on something that
6 Mr. Alcock as termed reserve management and you talked a lot
7 about the reserve and the release functions, right?

8 A. Yes.

9 Q. Now, were you present in the courtroom when Mr. Stephens
10 was talking about the Adaptec Coronado product and the Symbios
11 3701 product?

12 A. Yes, I was.

13 Q. And did you listen carefully to his testimony?

14 A. Yes, I did.

15 Q. And did you hear him mention the word SCSI reserve as
16 being access controls?

17 A. In his direct testimony, he did not mention that.

18 Q. And did you hear him say that the release command was
19 access controls?

20 A. No, sir.

21 Q. And, in fact, what Mr. Stephens said, and correct me if
22 I'm wrong, but that it's the use of tables by both of those
23 products that provides the access controls that's required by
24 this patent; isn't that correct?

25 A. That is what Mr. Stephens said.

1 Q. And you would admit, would you not, that both the Symbios
2 3701 product and the Adaptec Coronado product use tables?

3 A. That is what Mr. Stephens said.

4 Q. Are you disputing if fact that they do use tables? Are
5 you taking issue with the factual testimony of the witnesses
6 we've heard today?

7 A. I have no personal knowledge that they use tables.

8 Q. You have no personal knowledge. Were you here when Mr.
9 Davies testified this morning?

10 A. Yes, I was.

11 Q. And you know that he works at Chaparral, formerly at
12 Adaptec, and he's familiar with the Adaptec Coronado project,
13 and you heard him say the AMD 586 processor, kept track of the
14 table, right?

15 A. Did he say that that provided access control? I don't
16 remember that.

17 Q. That's not what I asked you, Mr. Stephens -- excuse me,
18 Mr. Hodges. I asked you if you took issue with the fact that
19 he said what his product used a table?

20 A. I think that's a matter of record one way or the other.

21 Q. So you don't dispute that?

22 A. I do not remember that particular statement.

23 Q. Okay. Now, do you dispute that the testimony we heard
24 from Mr. Englebrecht in his deposition recited the use of a
25 table?

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1 A. A table is a generic term. It could do anything.

2 Q. So is that a yes?

3 A. I do not remember that particular statement in Mr.
4 Englebrecht's statement.

5 Q. Do you believe Mr. Stephens when he says that those two
6 products use tables?

7 A. I have no reason to dispute him, but I do not know that
8 from my knowledge.

9 Q. Now, do you understand that the tables, that both of those
10 products provided, would keep track of information and that
11 that information could be modified?

12 A. That's a very generic thing, but yes.

13 Q. You do understand that?

14 A. That seems to be the feature of the table.

15 Q. And you understand that that information could be
16 modified, couldn't it?

17 A. I assume it could. I don't know that it could.

18 Q. And you understand that there's a limitation in the claims
19 that says maintain a configuration, right?

20 A. That's correct.

21 Q. And you understand that the court has defined that term to
22 mean keeping a modifiable setting of information, right?

23 A. Approximately.

24 Q. And you know that that can be done using a table, right?

25 A. It can be done using a table.

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1 Q. And, in fact, the patent talks about tables, doesn't it?

2 A. I believe it does.

3 Q. In two locations, the first is at the top of column 4,
4 storage router 56 allows the configuration of modification of
5 the storage allocated to each attached work station through
6 the use of mapping tables or other mapping techniques. Do you
7 see that, Dr. Hodges?

8 A. I see that.

9 Q. Okay. And at column 8, lines 59 to 62, the storage router
10 can use tables. Do you see that?

11 A. I see that. I see what you've highlighted.

12 Q. Okay.

13 A. Might be nice if I could read the rest of the paragraph.

14 Q. No. That's okay. Now, you also mentioned a function
15 called reset, right?

16 A. Yes.

17 Q. And isn't it true that there's no requirement, as you
18 understand the Court's definition of access controls, that the
19 information in the table that can perform the access control
20 be retained across resets?

21 A. There is a -- requirement for access controls that would
22 produce virtual local storage would require that you not grant
23 new access over a reset.

24 Q. Okay. I had a little trouble following you, so I'm going
25 to ask it again in a little different way. Is it your

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1 understanding of the Court's definition that the information
2 in tables has to be retained across resets?

3 A. The information in tables do not have to be retained, but
4 they would -- should not allow access to be granted because of
5 a reset.

6 Q. So was that a yes to my question?

7 MR. ALCOCK: Objection, your Honor. That's
8 argumentative.

9 THE COURT: Ask your next question.

10 MR. GARRETT:

11 Q. Okay. Well, Dr. Hodges, I think we're having trouble
12 communicating so I'd like to remind you what you said at your
13 deposition?

14 MR. ALCOCK: Your Honor, this is improper. It's not
15 impeachment.

16 MR. GARRETT: Your Honor, he just gave an answer and
17 then, he qualified it with a qualification that he did not
18 give in response to the same question at his deposition.

19 THE COURT: I don't know what it is. You may show him
20 that and ask him if that is his answer.

21 MR. GARRETT: Okay.

22 Q. (BY MR. GARRETT) Dr. Hodges, I'll show this to you
23 silently. Can you read this question for me, and this answer?
24 The question was, as you understand the Court's definition of
25 access controls persistence is not required across a reset.

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1 A. As I understand the Court's definition of access controls
2 as an abstract definition standing alone, it does not require
3 anything that's relative to resets.

4 Q. And that's also true for power offs, is it not?

5 A. As far as an abstract definition standing alone, it does
6 not require anything about power off.

7 Q. Bus resets and target resets, true?

8 A. As an abstract definition standing alone, not in relation
9 to the rest of the patent, it does not require that.

10 Q. Thank you, Dr. Hodges. Pass the witness.

11 MR. ALCOCK: Yes, your Honor.

12 RE-DIRECT EXAMINATION

13 BY MR. ALCOCK:

14 Q. Those tables that Mr. Stephens was talking about, did they
15 have something to do with reserve release?

16 A. Not directly.

17 Q. How are they used?

18 A. The tables that Mr. Stephens required are used to keep
19 track of which reserves are in place relative to processors
20 and devices.

21 Q. And they provide access controls like the 972 patent?

22 A. No, they do not.

23 Q. No further questions, your Honor.

24 MR. GARRETT: Nothing further, your Honor.

25 THE COURT: You may step down, sir. You may call your

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1 next witness.

2 MR. ALCOCK: Last witness, your Honor, Geoff Hoese.

3 THE COURT: If you'll come on down, please, sir. Just
4 have a seat. Mr. Hoese, you remain under oath. Do you
5 understand that?

6 THE WITNESS: Yes.

7 RE-DIRECT EXAMINATION

8 BY MR. ALCOCK:

9 Q. Good afternoon.

10 A. Good afternoon.

11 Q. Were you familiar with SCSI commands when you made the 972
12 invention?

13 A. Yes, I was.

14 Q. How were you familiar with them?

15 A. I had done a large amount of programming of systems using
16 SCSI commands, device drivers, devices that acted on SCSI
17 commands, et cetera.

18 Q. Were you familiar with the SCSI reserve release command?

19 A. Yes.

20 Q. How were you familiar with them?

21 A. I have in the past implemented target device that
22 implemented the reserve release command that use it as well as
23 most device drivers that use that command.

24 Q: In the abstract, could it be considered as some form of
25 access control?

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1 A. I don't consider it as a form of access control.

2 Q. Does it have anything to do with the access control of
3 your invention?

4 A. No, it does not.

5 Q. Can you explain to us your understanding basically of the
6 reserve release command?

7 A. The reserve release command is a SCSI command that's used
8 to help coordinate sharing of storage devices between
9 cooperative hosts or computers.

10 Q. And how is it different from --

11 A. Well, it's very different. It's a SCSI command that has
12 to be carried by the transport er to use that, you have to
13 have access to the device since the command is being issued to
14 the hosts have to have access to the device. And in that
15 respect, it just acts like any other SCSI command in the
16 context of a storage router being passed through it.

17 Q. Perhaps we can go low tech here, Mr. Hoese. If you could
18 come down and just explain for the ladies of the jury, A, your
19 Honor understanding of this command and, B, how it is that
20 your invention is different from --

21 MR. BAHLER: Your Honor, may I move around?

22 THE COURT: Sure. Move where you want.

23 A. In a computer environment where you have multiple
24 computers in a SCSI interconnect to a storage device or
25 multiple storage devices, reserve release basically allows one

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1 computer to set a reservation on storage device. So -- and a
2 reservation is basically a notation so when any computer
3 issues a command to that device, that command would come back
4 with -- indicating that it has a reservation.

5 A reservation is kind of like a -- I think of it is
6 like a post-it note on the door that says knock before
7 entering. So in this case, if this computer put a reservation
8 on this, computer 2 would access that device, issue a command
9 to it. The command would come back with a status that says
10 it's reserved and cooperative environment where these systems
11 are working together to share these devices.

12 Computer two would then, most likely, wait, come back
13 later, see if the reservation is still in place and re-try
14 that until the device is available.

15 Q. Okay.

16 MR. BAHLER: Your Honor, I object to this line of
17 questioning. It's expert testimony. Mr. Hoese's not been
18 identified as an expert. We have no --

19 THE COURT: The objection's overruled. You may ask
20 him.

21 MR. ALCOCK:

22 Q. Thank you. So how does that differ -- now, you were fully
23 aware of this when you came to your invention; is that right?

24 A. Yes, I was.

25 Q. I mean, this wasn't news to you?

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1 A. No, not at all.

2 Q. Okay. And so how many, how is what you did different from
3 the reserve release command?

4 A. Well, when you put this in an environment where you
5 implement a storage router, the reserve command essentially
6 operates the same way as do all other SCSI commands. So these
7 computers still use that same method to share devices.

8 When you incorporate the invention and you have your
9 storage router, say, with your access controls in place so
10 that you have multiple storage units. So this would have
11 access to computer one, this would have access to computer
12 two, and this would be both one and two as global access.

13 Computer one could go to this device that has global
14 access.

15 Q. When you say this device, you mean the last device that
16 has a one and two next to it?

17 A. Correct.

18 Q. Okay.

19 A. Correct. The device with global access. Both these
20 computers can access this device. So either a computer can
21 put a reservation in place on this device, the other computer
22 will see that and will work identically in this scenario.

23 However, with the devices subject to the access control,
24 computer two would have no access to this device. So it would
25 not know it exists. As far as it's concerned, it's not there.

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1 So there's no way for it to use reserve. In other
2 words, it can't address any SCSI commands, it doesn't know it
3 exists, there's just no access. Conversely, with two to one.
4 So essentially, it's a layer above the SCSI commands. It
5 affects the transport characteristics rather than the commands
6 themselves.

7 Q. And when you say it is a layer above, you mean your
8 invention is a layer above?

9 A. Correct.

10 Q. Have a seat. When you are filing for a patent on the 972,
11 did it occur to you to disclose reserve release to the patent
12 office?

13 A. I believe we enclosed the SCSI specification which is a
14 part of. I don't recall that question specifically called it
15 out.

16 Q. Did it have anything to do whatsoever with your invention?

17 A. No.

18 Q. No further questions, your Honor.

19 RE-CROSS EXAMINATION

20 BY MR. BAHLER:

21 Q. Mr. Hoese, I hand you what's been marked adds defendant's
22 D-2 that's a copy obtained from the U.S. patent and trademark
23 office, actually a certified copy of their records. You just
24 mentioned that you filed a copy of the SCSI manual with the
25 Patent Office. Can you find it in there, sir?

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1 A. I believe I testified that it referenced the SCSI
2 specification.

3 Q. You didn't file it with them, though, did you?

4 A. It's a published specification readily available. I don't
5 know that we sent them a copy specifically, but we certainly
6 did reference the specifications that included that.

7 Q. No further questions, your Honor.

8 MR. ALCOCK: We rest.

9 THE COURT: You may step down, sir. Does the
10 plaintiff close?

11 MR. ALCOCK: Yes, your Honor.

12 THE COURT: Defendant?

13 MR. BAHLER: Defendant closes.

14 THE COURT: Members of the jury, what that means is
15 you've heard all the evidence that you're going to hear in the
16 trial. It's going to take me some time to get the legal
17 instructions out and to coordinate the clerk on getting all of
18 the exhibits up, so I'm going to let you go home. And I think
19 I will ask you to be back about 12:45 with lunch, eat or a
20 late breakfast, however you like. And we'll try to start
21 promptly at 1:00 with the instructions and the lawyers' final
22 closing.

23 So we'll give you the morning off. Remember, still,
24 don't discuss the matter with anybody including yourselves
25 and don't go out to the libraries tonight and try to learn how.

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1 to spell SCSI or anything like that. Go home, enjoy yourself.

2 Please be back at 12:45 tomorrow in the jury room.

3 (Jury not present.)

4 THE COURT: Plaintiff has the lectern.

5 MR. ALCOCK: Your Honor, I believe at this time, we'd
6 just renew our motions that we argued a few short moments ago.

7 THE COURT: All right. Those motions or that motion
8 is overruled.

9 MR. BAHLER: Same here.

10 THE COURT: Say the magic word.

11 MR. BAHLER: We also renew all of our motion.

12 THE COURT: All right. I get no satisfaction of
13 overruling same here. Motion is overruled. All right,
14 counsel. I am going to go and check and see if I don't have a
15 draft of the instructions. I require the lawyers to be here.
16 Everybody else just have to do what the lawyers say.

17 (Recess.)

18 THE COURT: Okay, counsel. It is my intent to hand
19 you our proposed instruction. And Mr. Bahler says he only
20 needs four or five minutes to review them.

21 MR. BAHLER: No, I don't say that.

22 THE COURT: I'll let you overrule them overnight,
23 although it's against my better judgment, and we will meet
24 back at 8:45 in the morning, where you could make your
25 suggestions, objections and exceptions. And that will give us

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1 some lead time in the event, unlikely as it may be, we have to
2 change them.

3 You notice how much confidence I had by giving the
4 jury four-and-a-half hours off. How long do you want to argue
5 it? Let me rephrase that. How long do you have the guts to
6 ask?

7 MR. ALCOCK: Your Honor, I was thinking, you know, 40
8 minutes open and ten close, something like that.

9 MR. BAHLER: I'd say about 45 minutes total.

10 THE COURT: Oh, I was willing to give y'all -- I'll
11 give you at least an hour.

12 MR. ALCOCK: Oh, fine. An hour would be just --

13 THE COURT: Y'all are very reasonable. Usually they
14 start looking at their calendars when I ask that in these
15 patents cases. So an hour is fine.

16 MR. ALCOCK: An hour is fine.

17 THE COURT: And the only rule I have is you've got to
18 make a full opening or you don't get to close is the little
19 thing. But you keep your own time. I expect y'all to be big
20 persons. At the end of one hour, I will tell you. I don't
21 cut you off at the knees. You get to finish with that
22 sentence. Hopefully it's a good sentence.

23 Okay. So we're going to give you the instructions
24 now. And if you'll be ready to proceed with the charge at
25 8:45 in the morning, I will appreciate it.

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1 (Proceedings adjourned.)
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1 THE COURT: I take it this means you haven't settled
2 the case. Anything before we bring in the jury?

3 MR. ALCOCK: Not from plaintiff, your Honor.

4 THE COURT: All right. Bring them in.

5 (Jury present.)

6 THE COURT: Members of the jury, during the break from
7 last Thursday till today, has anyone attempted to talk to you
8 about this case?

9 THE JUROR: No.

10 THE COURT: Have you talked to anybody about the case?

11 THE JUROR: No.

12 THE COURT: And have you learned anything at all about
13 the case outside the presence of each other and this
14 courtroom?

15 THE JUROR: No.

16 THE COURT: Learn. Show negative responses to all
17 questions by all jurors. You may call your next witness.

18 MR. ALCOCK: Thank you, your Honor. We'll call Dr.
19 Paul Hodges.

20 (Witness was sworn.)

21 THE COURT: Come around that column and have a seat.
22 If you'll tell us your full name, please, sir, and spell your
23 last.

24 THE WITNESS: My name is Paul Hodges, H O D G E S

25 DIRECT EXAMINATION

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1 BY MR. ALCOCK:

2 Q. Good morning, Dr. Hodges.

3 A. Good morning.

4 Q. Could you give the jury a brief rundown of your
5 educational background, sir?

6 A. Yes. I have a bachelor of arts and bachelor of science in
7 electrical engineering from rice university, graduated 1957.
8 I have a masters degree in electrical engineering from
9 Stanford and a Ph.D. from Stanford in electrical engineering
10 accredited in 1967.

11 Q. And could you give us a brief rundown of your work
12 experience since you left Stanford, Dr. Hodges?

13 A. Yes. I worked for IBM for 39 years. For the last 33 of
14 those years I was working in storage products. I have -- I
15 was primarily engaged in half that time in storage
16 architecture, which is the art of describing how things work
17 and how they work with the rest of the computer system.

18 Q. Okay. Do you hold any patents to your name, sir?

19 A. I have thirteen issued patents and two more in the Patent
20 Office pending.

21 Q. And what general area are those patents involved in, sir?

22 A. Nearly all of them are in the area of disk storage.

23 Q. And have you worked with SCSI and Fibre Channel
24 interfaces, sir, in the last decade or so?

25 A. Yes, I have. I've worked with SCSI interfaces. I've

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1 worked with Fibre Channel outlet task force at IBM to design
2 whether we should emphasize Fibre Channel or some other
3 interface in our disk files. And I came to the conclusion it
4 was turned out to be not to go Fibre Channel because that was
5 a bad political decision.

6 Q. So have you worked with Fibre Channel devices in the last
7 decade?

8 A. I have worked with the fine design of Fibre Channel.

9 Q. Have you ever testified before?

10 A. No, I have not.

11 Q. This is your first time?

12 A. Yes, it.

13 Q. Okay. Do you have any honors or awards that would be of
14 significance to the subject matter of this case, sir?

15 A. Yes. In 1991, I was elected to the IBM academy of
16 technology which is an election by one's peers. Based on my
17 work in storage sub systems.

18 Q. Now, what is the IBM academy of technology?

19 A. IBM academy of technology is a great of engineers and
20 programmers modelled on the national academy of engineering,
21 designed to provide a group of people who are able to advise
22 senior management on technical matters. Membership is elected
23 by the members of the academy so you have to be well-known
24 within the company.

25 Q. How many people are in this academy?

1 A. There's approximately 300 members in the academy.

2 Q. And how many engineers work at IBM?

3 A. Probably close to 100,000.

4 Q. What is the -- your area is storage architecture. What is
5 the technical area? How would you describe the technical area
6 of the 972 patent?

7 A. I believe it is in storage architecture. All of the
8 descriptions are in terms of what the device does and how it's
9 put together and how it interacts with the rest of the
10 computer system.

11 Q. We would offer Dr. Hodges as an expert in the area of
12 storage architecture, your Honor.

13 MR. BAHLER: No objection, your Honor.

14 THE COURT: All right. Members of the jury, as I've
15 already told you, a person who is qualified by education,
16 experience or practice can be qualified as an expert and that
17 means the witness will be allowed to give opinions, but you
18 will accept this testimony as you would any other and judge it
19 as you would any other.

20 MR. ALCOCK: Thank you, your Honor.

21 MR. ALCOCK:

22 Q. Let me show you exhibit 504, graphic exhibit 504. Your
23 Honor, with the Court's permission, could I have the witness
24 step down for explanation purposes?

25 THE COURT: You may.

1 MR. ALCOCK:

2 Q. Go ahead and step down. This is a graphic that we've seen
3 a few times, and I want to ask and get into a little bit more
4 detail on a couple of aspects of it. On the left side of
5 exhibit 504 is something called fiber channel. Exactly what
6 language is on that side of exhibit 504?

7 A. In this exhibit we're showing Fibre Channel interacting
8 with the network server which means it's speaking a network
9 language where network requests go across from the Fibre
10 Channel to the server.

11 Q. Okay. Now, the other side is SCSI. What kind of language
12 does that speak?

13 A. SCSI is the native language of the disk drive shown on the
14 right-hand side. Low level block protocol.

15 Q. What is low level and the other is network? What's the
16 basic difference between them?

17 A. Basic difference is the low level is much simpler and
18 addresses the -- things in the manner that the device
19 understands physically whereas the network request is a high
20 level thing that requires interpretation by the network
21 server.

22 Q. Okay. Let me place before the jury exhibit 552. We've
23 heard a lot about a bottle neck. What exactly causes this
24 bottle neck at the network server level?

25 A. The network server level what happens is it receives these

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1 network requests. They are wrapped up in some additional
2 protocol to make sure that the data that's transmitted across
3 the network is done properly and it's got it the date you
4 expect it to get. And what we're seeing here is some large
5 blue balls which have within them a rather small request that
6 might -- that have to be unwrapped, checked and interpreted
7 and then, one has to -- the network server has to find out
8 where physically the data that's desired is and create the low
9 level block protocol.

10 Q. Okay. Let's look at exhibit 514. Does it take the
11 computer a while to create one of these network protocols, Dr.
12 Hodges?

13 A. Yes. It's a complicated process. We start with a request
14 for a particular piece of data. We'll have to find out that
15 it's not on my local drive. It's somewhere on the network to
16 create the network protocol wrap it around the request and
17 send it out over the network.

18 Q. Okay. And I'm showing you exhibit 518. Once that network
19 protocol gets to the server, the does it take a long time?

20 A. Yes, that basically has to be unwrapped again. There's
21 some checking involved and then once I get it unwrapped and
22 have the request at hand, I have to find out where it is
23 physically.

24 Q. Okay. Exhibit 518 shows native low level block protocol.
25 You mentioned that word a couple of times. What's the basic

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1 difference between that and the network protocol?

2 A. The basic difference is that the native low level block
3 protocol is addressing the physical location of data on a disk
4 drive or on a storage device whereas the network protocol is
5 asking for a specific piece of data by name.

6 Q. Okay. Showing you exhibit 520, what is the basic
7 difference between using a router such as described in the 972
8 and using the -- one of these network servers?

9 A. Basic difference is that what's shown here with the router
10 is the Fibre Channel is carrying a native low level
11 block protocol. I'm sorry. That trips over my tongue
12 sometimes. The Fibre Channel is carrying native low level
13 block protocol T router merely as an address translation and
14 passes it on to the storage device.

15 Q. Okay. And I'm showing you exhibit 522 which we've seen
16 before. How does the router make that transition?

17 A. The computer on the Fibre Channel side would ask for data
18 on a particular disk by -- as shown here by -- it knows it as
19 disk Y, and it wants a particular address and a particular
20 number of blocks. The router then needs only find out which
21 the disk is attached to it. It is associated with disk Y in
22 this case, disk 1, and send the low level block protocol
23 request --

24 Q. Does this work a lot faster?

25 A. Much faster.

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1 Q. Have you prepared an animation to describe this?
2 A. Yes, I have.
3 Q. This is animation 1, your Honor?
4 A. Here we see the --
5 Q. Why don't you describe what's being shown here?
6 A. Pardon me?
7 Q. I stopped it.
8 A. What's being shown here is this similar to what we saw in
9 the previous slide except we have now some little boats that
10 are carrying the requests along. The computer's on the fiber
11 channel side the storage device is on the SCSI side.
12 Q. Okay. Now, you said with using one of these routers you
13 don't have a network protocol. What's that shown in that
14 little boat or sled?
15 A. That little sled is a Fibre Channel frame carrying a along
16 a little red ball which intended to represent the low level
17 block protocol request, the command the storage device will
18 recognize.
19 Q. Okay. And let's see how this happening works. What is it
20 describing?
21 A. It was to transfer from one address to another and send it
22 on to the appropriate address.
23 Q. And so is that basically how a -- how the routing and
24 mapping function works?
25 A. Yes, it does.

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1 Q. In simplified terms?

2 A. Yes.

3 Q. Now, how does that improve on the network server?

4 A. That's considerably faster to send or retrieve data.

5 Q. Okay. Let's show animation 2. How is this describing
6 what happens with the network server?

7 A. The network server is having to process all of these
8 requests it can easily get overloaded and you can get a bottle
9 neck here some what we're seeing here is requests coming in
10 faster than the network can service them.

11 Q. Okay. You can have a seat. And I'll place -- that's the
12 wrong one. Showing the ladies and gentlemen exhibit 604,
13 routing and mapping and the only thing involved in the 972; is
14 that right, sir?

15 A. That's correct.

16 Q. What does figure 3 show?

17 A. Figure 3 shows the addition of access controls to the
18 routing and mapping.

19 Q. And from your perspective briefly, what does figure 3
20 show?

21 A. Figure 3 shows the number of work stations attached to the
22 Fibre Channel on the left side, a number of storage devices
23 attached to the SCSI channel on the right side. SCSI bus and
24 in between is a storage router with its management station and
25 we have some colors here that would show the association of

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1 the -- computers with various storage subsets of the storage
2 so that if you look at, for example, work station E on the
3 bottom in orange is associated with the storage device on the
4 bottom 64. And that means that it has access to that -- the
5 data on that work station but not any of the others.

6 Q. Okay. So, Dr. Hodges, in your experience in the area of
7 storage architecture, have you ever seen a storage router with
8 access controls such as described in the 972 patent?

9 A. No, I haven't.

10 Q. Now, were you asked to determine whether or not the
11 defendant's products infringe the claims of the 972 patent?

12 A. Yes, I was.

13 Q. Did you review the patent and the Markman ruling and the
14 file history in order to come to that opinion?

15 A. Yes, I did.

16 Q. Let me show you exhibits 1, 91, 22, 23 and exhibit 153.
17 And copies have already been given to counsel, your Honor.
18 Are those materials that you reviewed in connection with your
19 analysis? And for the record, your Honor, exhibit 1 is the
20 patent. Exhibit 91 is the Court's claim construction ruling.
21 Exhibits 22 and 23 are already in evidence are users manuals
22 for the Pathlight products. And exhibit 153 is selected pages
23 of the Pathlight web site printed in color. It's similar to
24 exhibit P-24, which has already been admitted in the record?

25 Did you review those materials and others in

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1 connection with your analysis.

2 A. Yes, I did.

3 Q. What products did you review?

4 A. I reviewed the Pathlight SAN router and Pathlight SAN
5 gateway.

6 Q. Okay. And sitting on counsel table from exhibits P-126
7 and P-125. Can you identify those for us, sir?

8 A. Yes. I have to look closely to tell which is which. The
9 bottom one is the Pathlight SAN router. The top one is the
10 Pathlight SAN gateway. You'll see if you can see that far
11 that the top one is labeled IBM. Pathlight sells SAN gateway
12 with IBM of our sale under their label. Internally this is
13 the same as the Pathlight gateway.

14 MR. BAHLER: Objection, your Honor this is way outside
15 the expert report. It has nothing in his expert report that
16 says IBM.

17 THE COURT: Objection's overruled. It's just a fact
18 if it's marked IBM.

19 MR. BAHLER: Okay.

20 MR. ALCOCK: It's just the product.

21 MR. ALCOCK:

22 Q. So, Dr. Hodges, where did those two boxes come from?

23 A. I obtained them from counsel.

24 Q. And where were they before they were brought into court
25 here?

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- 1 A. The Pathlight SAN gateway was at my house.
- 2 Q. Where?
- 3 A. In my basement.
- 4 Q. And what was it doing in your basement?
- 5 A. I was using it for testing.
- 6 Q. I see. So what did you do with exhibits 125 and 126?
- 7 A. I disassembled them, I looked inside to see what was
- 8 inside them and photographed the inside. I reassembled them,
- 9 connected them in a network and ran tests on them.
- 10 Q. When you say you connected them in a network, what do you
- 11 mean by that?
- 12 A. I assembled a small network with two computers, Fibre
- 13 Channel and the router and also made this test on the router
- 14 earlier and the gateway. I connected five SCSI storage
- 15 devices disk files to the SCSI port, connected the fiber
- 16 channel to the gateway, also, and ran tests on them.
- 17 Q. So you actually ran these devices?
- 18 A. Yes, I did.
- 19 Q. Okay. What software do you use to run those devices, sir?
- 20 A. I used the Pathlight SAN director which was furnished with
- 21 the products and in the products themselves, I used the
- 22 virtual private SAN software and the channels only software.
- 23 Q. Okay. So you used the VPS software?
- 24 A. Yes.
- 25 Q. And you used the channel zoning software, also; is that

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1 right?

2 A. Yes, that's correct.

3 Q. And you ran tests with both kinds of software?

4 A. Yes.

5 Q. Okay. Let me show you exhibit 556. What is exhibit 556?

6 A. 556 shows a diagram of my test setup with the two work
7 stations. The labels on there left and right were labels that
8 I placed on the work stations so that I could see what was
9 happening in the testing. The five storage devices on the
10 right and the lower management station there is connected by
11 either net to router for -- I used the work station to do the
12 management, as well.

13 Q. Okay. So was this the setup that was sitting in your
14 basement?

15 A. Yes, it is.

16 Q. And what did you do with this set up?

17 A. I ran quite a number of tests to determine what functions
18 were present in the devices.

19 Q. What else did you do? What else did you review in
20 addition to these two products?

21 A. I attended the deposition of Mr. Said Rahmani. I read
22 considerable number of documents, other documents besides
23 these that were supplied by Pathlight.

24 Q. When you say these, you mean the two users manuals?

25 A. That were just handed to me.

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- 1 Q. Okay.
- 2 A. And I reviewed the Pathlight web site.
- 3 Q. How many hours did you spend on this infringement site?
- 4 A. Spent approximately 200 hours doing this.
- 5 Q. And did you generate a report?
- 6 A. Yes, I did.
- 7 Q. And I believe there's exhibit 95 in front of you.
- 8 A. Yes.
- 9 Q. Is that the report?
- 10 A. Yes, it is.
- 11 Q. How long is that?
- 12 A. About 95 pages as I recall.
- 13 Q. Do you have an opinion as to whether the Pathlight
- 14 products infringe the claims of the 972 patent?
- 15 A. Yes, I do.
- 16 Q. And what is your opinion?
- 17 A. My opinion is that the products -- both products infringe
- 18 all of the claims of the patent in that they met all of the
- 19 claim elements of each claim.
- 20 Q. Have you prepared some summary graphics to describe how
- 21 the Pathlight products have each and every element of the 972
- 22 claims?
- 23 A. Yes, I have.
- 24 Q. How were those prepared, sir?
- 25 A. I provided the -- well, the graphics include screen shots,

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1 that is, copies of computer screens that I generated. They
2 include some photographs and they include some copies of other
3 screen shots of tests that I did which are not just the
4 Pathlight programs. I provided those and they were put into
5 -- as input into a professional graphics designer who gave us
6 some very nice graphics.

7 Q. Okay. Before we get to those, let me show you -- I'm
8 going to place before you a binder with exhibits P-174, 175,
9 176, 110, 111, 178, 112, 113, 181, 116 and 117. Could you
10 look at those briefly, sir?

11 A. Yes, sir.

12 Q. And for the record, your Honor, exhibits 174, 175 and 176
13 are tables indicating the tests performed, that is, which
14 computer was hooked up where. Exhibits 110, 111, 112, 113,
15 116 and 117 are screen shots printed out from the use of those
16 computers. Have I identified the exhibits before you
17 correctly, Dr. Hodges?

18 A. Yes, you have.

19 Q. Now, with respect to those tables how were they prepared?

20 A. They were prepared from the tests that I made. Made a
21 large number of screen shots in each test. Then, summarized
22 those tests and these tables.

23 Q. And then, with respect to the screen shots, how were they
24 prepared?

25 A. They were prepared by taking copies of the screens that I

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1 saw on the screen as I did the testing.

2 Q. I see. So if you had a computer screen up and it showed
3 something just like this screen, you hit the print button and
4 saved it?

5 A. That's correct.

6 Q. Offer those exhibits in evidence, your Honor, 174, 175,
7 176, 110, 111, 178, 112, 113, 181, 116 and 117.

8 MR. BAHLER: Your Honor, I object to these exhibits as
9 evidence. I don't have a problem with them as demonstrative.
10 It seems to me like Dr. Hodges just prepared these for this
11 case. It's demonstrative evidence I have no problem, actual
12 evidence, I do.

13 THE COURT: Well, is there any comment on --

14 MR. ALCOCK: None.

15 THE COURT: The objection's overruled T exhibits are
16 admitted.

17 MR. ALCOCK:

18 Q. Okay. We're going to switch gears, Dr. Hodges. I'm going
19 to place before the jury a board that has claim 1 with a bunch
20 of check boxes on it. I'm going to ask you to come down. And
21 what we're going to do, Dr. Hodges, is I'm going to go through
22 -- we're going to go through claim 1 and compare it to some
23 screen shots. There's a marker right behind you next to the
24 water.

25 So let's start with the first claim element. Before

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1 we do that, let's just take a look at exhibit 558, graphics
2 exhibit 558. Can you -- walk over there and describe for the
3 jury what is being shown with exhibit 558.

4 A. There are three things shown on this exhibit. On the left
5 side here is a block diagram of the router and some
6 connections to it. By block diagram we just mean shows the
7 major components of the router and how they're connected to
8 each other.

9 Q. Where did that block diagram come from?

10 A. This block diagram came from an exhibit of Mr. Rahmani's
11 deposition.

12 Q. Okay.

13 A. And I was testified as being correct by him.

14 Q. Okay. And what is shown on the other side of exhibit 558?
15 And we'll start with the top of the other side.

16 A. Two screen shots on here. This is a screen shot of the
17 Pathlight SAN director. One screen of it, the director has
18 multiple screens that it can show. This is one of them that
19 de-- that is a screen shot of defining access control between
20 computer on each line, that is, the left computer and the
21 right computer and my test setup and a number of storage
22 devices here, 1, 2, 3, 4, 5. You may recall I had five
23 storage devices.

24 The column that's labeled zero here is checked off.

25 That's the router itself so it doesn't -- it isn't one of the

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1 storage devices. Here I've checked one, two, three, four five
2 as being accessible to the theft computer. Five checked
3 nothing accessible to the right computer.

4 Q. Okay. Let me flip back no exhibit 556 for just a moment.
5 The screen shot that you were just looking at that we all were
6 just looking at, Dr. Hodges, was it a screen shot of the
7 software resident on the storage router?

8 A. Its was a screen shot of the software resident on the
9 management station, interacting with the storage router.

10 Q. Okay. Very good. Now, going back to exhibit 558, let's
11 move down to the bottom, and what is the screen shot shown on
12 the bottom of exhibit 558?

13 A. This is a windows explore er for the window system on the
14 computer, and what it shows is what the -- what storage
15 devices the computer can actually see. What we see is a
16 number -- let me just bring this into perspective. The first
17 three of these labeled three and a half floppy power spec and
18 compact disk, those are internal storage devices to the
19 computer. The next five have color labels on them. Those are
20 labels that are written on the device, on the storage device
21 so that I can be sure that I know which one I'm talking to.

22 And these are respectively device No. 1, device No. 2.
23 I don't know why that came out of order. Device No. 3, device
24 No. 4 and device No. 5.

25 Q. Okay.

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1 A. So that shows all five devices accessible to that
2 computer.

3 Q. Okay. Just so that we all understand, now we're looking
4 at exhibit 556, and the screen shot that we were just looking
5 at was a screen shot from one of these work stations or
6 computers; is that right?

7 A. Yes, it was.

8 Q. So the first screen shot we looked at was the first screen
9 shot of the management station?

10 A. Yes.

11 Q. And the two that we just looked at were the screen shots
12 of the computers?

13 A. Yes.

14 Q. And what that showed is that on at least that screen shot?

15 A. Sorry. Only one of those. The second one we looked at
16 was the screen shot of the computer.

17 Q. Yes. And those -- and that second screen shot showed how
18 many of these storage devices connected?

19 A. Yes. Shows which ones and what could be seen. You'll see
20 later that that's important.

21 Q. Okay. Now let's go to exhibit 559 and let's start -- what
22 I'm going to ask you to do, Dr. Hodges, is match the elements
23 of the claims to where you found them in the Pathlight
24 product, so let's start out with the first, a storage router
25 for providing virtual local storage?

1 A. Right. There were two things we want to point out in this
2 slide, SCSI storage devices and fiber channel devices. This
3 is a photograph of the back side of the storage -- of the
4 Pathlight SAN gateway that shows four SCSI plugs for
5 connecting SCSI storage devices. It shows two Fibre Channel
6 ports for connecting Fibre Channel devices. On the right-hand
7 side is the block diagram that we saw a few moments ago, and
8 one element of this is a section here, this is labeled SCSI
9 interface. This is labeled SCSI sub systems and there from
10 disk files involved there. It could be other storage devices,
11 as well.

12 Q. Okay. So it's the first element of claim 1 shown?

13 A. Yes, it is.

14 Q. Could you check that on the box. Now, I'm going to move
15 to exhibit 560, your Honor. What is exhibit 560 depicting?

16 A. 560 is depicting the second element of the claim, the
17 buffer. We have in the upper left here an excerpt from the
18 block diagram showing something labeled DDF board. DDF stands
19 for direct data flow and is the board that allows data to go
20 from the -- to storage data intermediately between the Fibre
21 Channel and the SCSI and here is a photograph of the DDF board
22 taken out of the Pathlight SAN gateway.

23 The Pathlight SAN router does not have the DDF board,
24 at least the one that I tested did not. And looking at the
25 documentation I have, it shows that the data is buffered in

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1 the process -- the memory that's shared with the processor and
2 this is an inaccurate diagram. It was supposed to have been
3 updated. This memory is right here.

4 Q. Okay. So does it have a buffer, the second element of the
5 claim?

6 A. Yes.

7 Q. Let's look at exhibit 561. What does exhibit 561 show?

8 A. Third element of the claim is Fibre Channel controller.
9 Again, we're taking an excerpt from the block diagram on the
10 left side. It shows something labelled PFC slots. Mr.
11 Rahmani testified that could be Fibre Channel connections. We
12 show Fibre Channel connection here this is a Fibre Channel
13 switch and various Fibre Channel hosts. I have a photograph
14 here is of the actual Fibre Channel controller taken from the
15 Pathlight SAN gateway.

16 Q. Okay. So does it have the Fibre Channel controller?

17 A. Yes, it does.

18 Q. Okay. Moving on to exhibit 562, what does 3562 depict?

19 A. 562 is the next element which is a SCSI controller.

20 Again, we took an excerpt from the block diagram showing 562
21 SCSI controllers showing SCSI sub systems attached to it and
22 here is a photograph of the interface module from the
23 Pathlight SAN gateway.

24 Q. Okay. And so does it have the SCSI control element?

25 A. It has the SCSI control element.

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1 Q. Okay. Moving on to exhibit 563, the next element of the
2 claim is a supervising unit. Does it have a supervisor unit?

3 A. Yes, the supervising unit is defined as a micro processor
4 that's programmed to do the functions required, and this is --
5 the supervisor unit is here is a micro process sir which is an
6 Intel I 960 that's commonly used in the industry. This is a
7 photograph of the main board of the Pathlight SAN gateway.

8 Here is the corresponding block diagram on the right showing I
9 owe processor connected to the -- you may not see these lines
10 very well but connected to the buffer connected by the SCSI
11 interface used by the PCI bus to the Fibre Channel interface.

12 Q. So does that have the supervisor unit element?

13 A. Yes.

14 Q. Okay. Now, this one's going to take a little bit longer.
15 This is to maintain that configuration for SCSI storage
16 devices which we've seen, connected to the SCSI bus transport
17 medium that we've seen, that maps between Fibre Channel
18 devices and SCSI storage devices and that implements access
19 controls.

20 Do those devices it plenty access controls.

21 A. Yes, they do.

22 Q. Now, have you created a screen shot down here that shows
23 how they do that?

24 A. Yes. This is a composite of three screen shots, a little
25 bit confusing I think we should probably take that into

1 pieces, into smaller pieces.

2 Q. Okay. This is from exhibit 110, your Honor. The screen
3 shot that is entitled left G 10. Can you describe for us what
4 left G 10 shows?

5 A. This is a screen shot of -- from the Pathlight SAN
6 director, which shows the assignment of discs to processors.
7 Difference between the one we showed before but very similar.
8 The left computer here have access to disk drives one and two.
9 The right computer here is allowed to have access to disk
10 drives three, four and five.

11 Q. Okay. Let me just --

12 MR. BAHLER: Counsel, is this the first fame of
13 exhibit 1?

14 MR. ALCOCK: No. It's a handful of pages in there.
15 It's shown on the top. There should be a top index.

16 MR. ALCOCK:

17 Q. So --

18 MR. BAHLER: There's page numbers on these things. Do
19 you have a page number? Is it page 7?

20 MR. ALCOCK: It's the one that on the top is left G
21 12.

22 MR. BAHLER: I have it. Thanks.

23 MR. ALCOCK:

24 Q. Okay. Now, so what I've shown you is a slightly different
25 version of exhibit 556. What is exhibit 556 showing now with

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1 the color?

2 A. This shows the -- with the color, the accesses that are
3 defined in the previous slide, that is, the left work station,
4 which is shown in blue has access to two devices. The right
5 work station shown in red has access to three devices.

6 Q. Now, let me just make sure I understand. The screen shot
7 that we were just looking at is the screen shot of the
8 management station. Is that right?

9 A. That's correct.

10 Q. Not either of those computers over there?

11 A. That's correct.

12 Q. Okay. And so what you did at least for this test showing
13 left G 12 again is you checked two blocks for the left
14 computer and three for the right?

15 A. Yes, that's true, correct.

16 Q. Okay. What should we look at next, then?

17 A. Then we should look at the screen shot of the windows
18 explore er results from the left computer.

19 Q. Okay. And this is, again, left G 12, showing windows
20 explore er with ones one and two enabled for left system.

21 What is this showing?

22 A. This gone shows what devices are available to the computer
23 for operation. The three internal devices and the two devices
24 to which it's allowed. Red, the red label goes with device
25 one, the green label goes with device two. You'll notice