

# P GVCRR EXHIBIT 1024

## PART 4

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1 there's no access to devices three, four and five.

2 Q. Okay. And so if we go back to the colorized version of  
3 exhibit 552, which computer screen shot were we looking at  
4 then?

5 A. We were looking at the left computer the one shown in  
6 blue.

7 Q. Now, should we look at the right one?

8 A. Yes.

9 Q. And now I'm showing, again, a screen shot from exhibit  
10 110, your Honor, showing right G 06, windows explore er with  
11 ones three four and five enabled for right system and what is  
12 this showing?

13 A. This is the windows ex er showing what the right system  
14 can see for storage devices and three external devices labeled  
15 blue, purple and orange.

16 Q. It's a few pages later and it's also on the graphic  
17 exhibit in you want to look at them.

18 MR. BAHLER: What graphic exhibit?

19 A. The blue, purple and yellow are -- blue, purple and orange  
20 are devices three, four and five.

21 MR. ALCOCK:

22 Q. Okay. And so now let's go back to exhibit 564. What is  
23 exhibit 564 showing?

24 A. This is a composite of the three slides we've showed for  
25 access control. The Pathlight sun director, the left computer

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1 and the right computer.

2 Q. So what is this showing us, then?

3 A. Showing the correspondence between the checkmarks on the  
4 Pathlight SAN director and the devices that are available to  
5 the particular computers.

6 Q. Now, how does this show access controls?

7 A. It shows that we have allowed access to certain devices to  
8 a particular computer and not to -- and that computer does  
9 not have access to other devices.

10 Q. Okay. So by operating the management station, you can  
11 control the access of the left and the right computer to the  
12 various remote storage devices?

13 A. Yes, that's true.

14 Q. And in effect, here it shows that those computers can't  
15 even see those storage devices on their computer screen; is  
16 that right?

17 A. That's correct.

18 Q. How would they get access to them?

19 A. I was unable to do that. I tried doing that by running  
20 SCSI -- a SCSI commands director to the particular addresses  
21 and simply said the device was not recognized.

22 Q. Lastly, let me show you exhibit 611. What is exhibit 611?

23 A. This is an excerpt from the Pathlight from one of the  
24 manuals. It's gateway, I believe. And it shows the use of  
25 the SAN director and the privileges that one might have in

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1 terms of using the Pathlight SAN director. There are --  
2 Q. Now, hold on one second. Let's just step back for the a  
3 moment T SAN director is what?

4 MR. BAHLER: Counsel, I don't have 611 in the book.

5 MR. ALCOCK: I apologize. It was left out. You were  
6 given a copy of all the graphics earlier, counsel, every  
7 single one of them.

8 MR. ALCOCK:

9 Q. Continue.

10 A. Would you repeat the question?

11 Q. What is exhibit 611 showing?

12 A. It's showing the -- how one uses the SAN director. And in  
13 particular, it says that there are two different privilege  
14 modes that one might have in using the SAN director. One is a  
15 user privilege which simply allows you to look at things that  
16 is -- you could look at the access control and the  
17 administrator mode which allows you to actually change access  
18 control.

19 Both of those actually require a pass word for access  
20 before you can do anything. Here is a administrator's pass  
21 word screen shot here when you log on to the Pathlight SAN  
22 director, it asks you who you are and your pass word.

23 Q. Okay. So does the products that you've tested have the  
24 element of the claim including the access control limitation?

25 A. Yes, it does.

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1 Q. Okay. Now, finally we'll move to exhibit 565 and what is  
2 that showing, sir?

3 A. This is showing the final element of claim 1 in which we  
4 talk about the native low level block protocol, and the text  
5 down there comes from a computer screen where I was actually  
6 operating the devices with SCSI commands addressing a  
7 particular device.

8 Q. So the bottom is another one of those screen shots from  
9 your computer?

10 A. Yes, it is.

11 Q. And what does that show?

12 A. It shows that I have addressed this device with a  
13 particular bus, target and LUN which is the SCSI addressing  
14 mechanism that I was actually was able to find that device and  
15 I actually execute commands against it.

16 Q. Okay. Now, let me take us back to exhibit 559. A word  
17 that we didn't talk about is virtual local storage. Is that  
18 an element of this claim and some of the other claims?

19 A. Yes, it is.

20 Q. And do these devices have that?

21 A. Yes, they do.

22 Q. Can you explain?

23 A. Virtual local storage is what you get -- is defined as --  
24 I've got blank. I'm sorry. Storage that has the appearance  
25 and characteristics of local storage. It's what you get when

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1 you combine mapping, virtual -- native low level block  
2 protocol and access control.

3 Q. Okay. Let me put before you an exhibit, a number of which  
4 I'll give you a in a second and can you explain what that is?

5 A. This is a summary of claim 1.

6 Q. It's exhibit 572 for the record, your Honor.

7 A. A summary of claim 1, a summary of the graphics that you  
8 saw as we went through the claimed elements so that you can  
9 see that each one of these looks exactly as you saw on the  
10 graphics.

11 Q. Okay. Now I'm going to put before you claim 7. There  
12 were three independent claims in the patent, sir?

13 A. Yes, that's right.

14 Q. And is this the next independent claim?

15 A. This is the next one.

16 Q. And how does is this different from the other claim that  
17 we just looked at?

18 A. The first claim that we looked at was the claim that  
19 described the storage router. This one starts off describing  
20 a storage network, Pathlight product. It's not a network,  
21 it's a router.

22 Q. Okay. But does it go in a network?

23 A. Yes, it does.

24 Q. Does it have any use other than being in a network?

25 A. Nothing substantial.

1 Q. Okay. And so does the products have all the elements of  
2 claim 7?

3 A. Yes, it does.

4 Q. Okay. I've put before you exhibit 575. Does that help  
5 you explain this quickly?

6 A. Yes, it does. But we have a storage network which has  
7 such characteristics which show a photograph of the device of  
8 the Pathlight SAN gateway. The block diagram, again. We have  
9 a fiber channel transport medium emphasized in red here. We  
10 have the SCSI bus transport medium emphasized in blue. We  
11 have Fibre Channel transport medium is just the light pipe.  
12 The SCSI bus transform medium is the SCSI came.

13 Work stations, shows work stations and there are  
14 references all through the documentation to work stations.  
15 Plurality of SCSI storage devices connected to the SCSI bus,  
16 connected to the fiber channel. So it has all the elements of  
17 claim 7. It has all the elements of claim 7, and the storage  
18 router itself is in the middle of this network, and it has  
19 exactly the same characteristics that are described in claim  
20 1.

21 Q. Can you check those off?

22 A. Yes. Mapping, access controls, native low level block  
23 protocol.

24 Q. Okay. Now, claim 11 is the last independent claim.

25 What's the basic difference between that and the other claims?

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1 A. The other claims claim specific hardware. This claims a  
2 method of doing something which looks remarkably familiar to  
3 you by now.

4 Q. And just quickly showing you exhibit 578. Does it neat  
5 the elements of the method claim 11?

6 A. Yes, it does. We have, again, we have a means describe --  
7 that's described by looking at the product itself and at the  
8 block diagram. We have a means of connecting to the Fibre  
9 Channel, means of connect together the SCSI bus.

10 Q. Can you check the boxes for us?

11 A. Uh-huh. We have another graphic on the rest of that?

12 Q. Exhibit 579?

13 A. Yes, means of maintaining a configuration. We've got  
14 through that. Access controls, means of allowing access in  
15 accordance with configuration using native low level block  
16 protocol. So we've covered all those things before.

17 Q. Now, very quickly Dr. Hodges because we are running out of  
18 our allotted time here, exhibit -- I'm going to ask you very  
19 briefly about the dependent claims. Right now we've covered  
20 three independent claims. What's a dependent claim?

21 A. A dependent claim is one that incorporates all of the  
22 elements of the independent claim plus something else.

23 Q. Okay. Let's go through claims 2, 8 and 14 and I've shown  
24 you exhibit 580. Did they infringe those claims?

25 A. Yes, they do. Claim 2, 8 and 14 are all similar and they

1 require that one have only one computer that has access to a  
2 particular device and the access control that I defined in  
3 previously was -- covers that.

4 Q. Okay. I'm showing you exhibit 581 and I'll ask your  
5 opinion with respect to claims 3 and 13.

6 A. Claims 3 and 13 indicate that the Fibre Channel devices  
7 could have -- could be work stations. Work stations are  
8 mentioned in a lot of different places in the manuals and the  
9 web site and various diagrams.

10 Q. Okay. Now, exhibit 582 showing claims 4, 9 and 14. To  
11 they infringe those claims?

12 A. Yes, the SCSI storage devices, the hard disk drives, they  
13 show pictures and discussion of that throughout the  
14 documentation.

15 Q. And lastly, claims 5 and 6. Do they infringe those, sir?

16 A. Claims 5 and 6, you have a graphic on that?

17 Q. Exhibit 569 and I'm going to focus you on the bottom two  
18 claims.

19 A. This way I don't leave anything out. Claim 5 describes  
20 the router as in claim 1, but further defines the Fibre  
21 Channel controller that has a fiber channel protocol unit,  
22 first in, first out cue, direct memory access, technical terms  
23 all of which are contained in the Fibre Channel controller  
24 found by looking at the data sheets and manuals for the  
25 control that is used.

1           The same thing is true on claim 6. The elements are  
2 all there looking at the manuals and data sheets for the SCSI  
3 controller that's used in the device.

4 Q. Okay. Have a seat, sir. While you're doing that, I'm  
5 going to put up a page of exhibit 153. It's page 109 of  
6 exhibit 153. It's a page from if Pathlight web site. So far,  
7 Dr. Hodges, have all the tests that you've done, the screen  
8 shots that we've shown have been used with this VPS software?

9 A. That's correct.

10 Q. Now, earlier you mentioned you tested it with another kind  
11 of software. What was that?

12 A. That's called channel zoning.

13 Q. Okay. And showing exhibit 109 and I'm putting a portion  
14 of it, Pathlight SAN gateway solve these type of problems with  
15 two levels of access control. The first method offered by SAN  
16 gateway is channel access control or zoning. Is that the  
17 other kind that question haven't talked about yet?

18 A. Yes.

19 MR. BAHLER: Counselor, you just mentioned 109. Are  
20 you within Plaintiff's Exhibit 153?

21 MR. ALCOCK: Exhibit 153 point 109 and at the end of  
22 your book are a handful of pages and in it is this included.

23 MR. BAHLER: Thank you.

24 MR. ALCOCK:

25 Q. Let me take a look at page 110. Panels Pathlight's

1 channel access control inhibits devices from knowing that the  
2 storage channel exists, making it inaccessible. Do you agree  
3 with that statement?

4 A. Yes.

5 Q. And what test did you perform to confirm that in fact is  
6 the case?

7 A. I reconfigured my test setup so that each of the computers  
8 was on a separate fiber channel port and I reconfigured the  
9 disk drives to have some of them on two different SCSI ports.

10 Q. Okay. Let me show you exhibit 607. What is exhibit 607?

11 A. This is a screen shot for the Pathlight SAN director  
12 again, channel zoning control, and the color is added.

13 Q. And what are you doing here?

14 A. What I'm doing here is setting up the access control for  
15 the channel zoning.

16 Q. Okay. Let me show you exhibit 606. What does that show,  
17 sir?

18 A. This shows a picture of how things are connected. This is  
19 again the Pathlight SAN director. They have an information  
20 screen that will show you this kind of thing. You can see  
21 that the -- in the upper section, the SCSI devices, there are  
22 three devices connected to SCSI channel one and two connected  
23 to SCSI channel two and that the two computers are connected  
24 to two different Fibre Channels.

25 Q. And what is the right-hand of this thing show -- I mean

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1 the left-hand side of it show?

2 A. That's what I was just talking about.

3 Q. Oh, I'm sorry. So which are connected to which fiber a  
4 channel?

5 A. The checkmarks in the previous graphic show that Fibre  
6 Channel one was connected to SCSI channel one and not to SCSI  
7 channel two. So you'll see the Fibre Channel one outlined in  
8 red here connected to SCSI channel one should be able to see  
9 only devices one, three and five which are connected to the  
10 SCSI for that channel. And the same -- similarly for fiber  
11 channel two.

12 Q. Okay. So let me show you exhibit 608. What is that a  
13 screen shot of?

14 A. Screen shot of the windows explore er showing what is  
15 available to the left computer. The left computer, you'll  
16 recall, was on fiber channel 1 and was allowed access to SCSI  
17 kennel 1 which contained devices one, three and five, that is  
18 the red, blue and orange devices.

19 Q. Okay. And let me show you exhibit 609. What is that  
20 depict?

21 A. That is the right computer, windows explore er showing  
22 what's accessible to the right computer. Again, it was on --  
23 it was on fiber channel two with access to SCSI channel two  
24 and we see that SCSI channel two had devices two and four,  
25 purple and green.

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1 Q. So is this channel zoning access controls?

2 A. Yes, it is.

3 Q. Does it perform the same function as the access controls  
4 in the claims?

5 A. Yes, it does.

6 Q. Does it do it in a substantially the same way?

7 A. Yes, it does.

8 Q. Does it achieve the same result?

9 A. Yes, it does.

10 Q. With respect to all the claim elements of all the claims,  
11 do they perform the same function as the claims -- with  
12 respect to all the functions we've talked about with the  
13 devices, are they performing the same function as in the  
14 claims?

15 A. Yes, they are.

16 Q. And do they do it in substantially the same way?

17 A. Substantially the same way.

18 Q. And does it achieve substantially the same result with  
19 respect to every claim element?

20 A. Yes, it does.

21 Q. And so do you determine every element of every claim being  
22 present in those devices?

23 A. Yes, I did.

24 Q. Then I think you better check that last box.

25 A. Which one did I leave off? Oh.

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1 Q. Pass the witness, your Honor.

2 CROSS-EXAMINATION

3 BY MR. BAHLER:

4 Q. Dr. Hodges, I'd like to talk to you for just a second,  
5 first of all, about this concept of access controls. It's a  
6 word that although you weren't here, Mr. Alcock wrote in big  
7 letters on a board that's right over there. And what is --  
8 does access control require any form of security in your mind?

9 A. Yes, it does.

10 Q. Okay. What security's required?

11 A. Similar to locally attached storage.

12 Q. Okay. What does the security of -- or the security of  
13 locally attached storage means for example, at least in your  
14 opinion, that no other hosts can access that storage, right?

15 A. Not exactly.

16 Q. What is your idea of security with respect to local  
17 storage?

18 A. No unauthorized host can have access to the storage. The  
19 security should be similar to what you would if you had  
20 something attached the a local compute.

21 Q. So in your mind access control does not prohibit access to  
22 storage devices by hosts that are prohibited from -- or that  
23 are -- that the access control intends to exclude?

24 MR. ALCOCK: Objection, your Honor. Vague and  
25 ambiguous.

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1 MR. BAHLER: I'll withdraw it.

2 Q. There your opinion, access control is not -- does not  
3 prohibit other hosts from getting access?

4 A. It does not prohibit unauthorized -- excuse me. It does  
5 not prohibit authorized hosts from getting access.

6 Q. But does it prohibit unauthorized hosts from getting  
7 access?

8 A. Yes.

9 Q. All right. Prohibit --

10 A. To the degree that it would prohibit it with local  
11 storage.

12 Q. I'd like to show you what's on the board as exhibit --  
13 this is Defendant's Exhibit 1. This is figure 3. Now, the  
14 thing in the Pathlight or I'm sorry, the Crossroads patent  
15 that governs access control is this thing called the  
16 management station, correct?

17 A. No, sir.

18 Q. Well, the management station is required to -- well, the  
19 storage router ultimately accomplishes the function of access  
20 control, correct?

21 A. Yes.

22 Q. All right. And the settings in the storage router that  
23 accomplish that function are done by the management station,  
24 correct?

25 A. Yes.

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1 Q. All right. And the work stations don't make those  
2 settings, right?

3 A. Work stations that do not have management capability or do  
4 not do that.

5 Q. Right. Well, take a look at -- column 4 of the patent,  
6 right around line 33. Do you see that, sir?

7 A. I see what are you referring to?

8 Q. Well, it talks about the management station 76 and that's  
9 the one that we were just looking at in figure 3, right?

10 A. Yes.

11 Q. It says the management station 76 can be connected  
12 directly to storage router 56 via connection, direct  
13 connection or can interface with the storage router 56 through  
14 either Fibre Channel 52 or SCSI bus 54. Do you see that?

15 A. Can I read the rest of that paragraph, sir?

16 Q. Sure. Do you have a copy of the patent?

17 A. Yes, I do. This is which column?

18 Q. Column 4, line 33.

19 A. Column 4?

20 Q. Column 4, line 33.

21 A. I'm sorry. My copy is not very good. I was looking at  
22 line 23. Yes, sir.

23 Q. All right. Just after that, it says in the latter case,  
24 and that is when the management station is connected to the,  
25 for example, Fibre Channel bus, the management station can be

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1 a work station. Do you see that?  
2 A. Yes.  
3 Q. All right. Referring back to figure -- to your 3, that  
4 means this management station right here on figure 3 doesn't  
5 have to be connected right here, it doesn't have to be  
6 connected right here, but it can be connected directly to the  
7 SCSI bus, right?  
8 A. That's allowed --  
9 Q. Right there, right?  
10 A. Yes.  
11 Q. And in that case, according to that section of column 4,  
12 it could be a work station, right? Just like all the other  
13 hosts on there, right?  
14 A. No, sir.  
15 Q. How is it different?  
16 A. It's a management station that has special rights.  
17 Q. All right, sir. Could that management station be within  
18 one of the work stations that already exists?  
19 A. I don't know what that means.  
20 Q. Well, I've got a management station here that according to  
21 the patent can be a work station, right?  
22 A. Yes.  
23 Q. And then, I've got a whole bunch of work stations over  
24 here, too, right?  
25 A. Yeah.

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1 Q. Well wouldn't it make sense rather than have a management  
2 station dedicated to or work station dedicated to the  
3 management station wouldn't it just make sense to put the  
4 management station, combine it with one of those work  
5 stations?

6 A. You could do that.

7 Q. You could actually put it in more than one work station,  
8 right?

9 A. One could do that.

10 Q. You could put it in all work stations, right?

11 A. If you wanted to do that.

12 Q. And in that case, all hosts could get access, right?

13 A. All hosts could -- would have the capability -- all hosts  
14 would be management stations.

15 Q. Right.

16 A. You would have the capability of changing access.

17 Q. In that case -- all right. Now, if all hosts can get  
18 access to storage at any time, what kind of access control is  
19 it?

20 A. It's controlled by the management station which has  
21 special rights. The management station itself has pass word  
22 protection for the administration so that only the authorized  
23 people can make the changes.

24 Q. Well, --

25 A. It's no different from having dedicated management

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1 station.

2 Q. Well, the hypothetical I've posed for you, Dr. Hodges, was  
3 that each and every work station, A, B, C, D and E has  
4 management functions. That means that each one of those work  
5 stations can adjust access control, right?

6 A. Given the appropriate pass word by the administrator.

7 Q. Is that a yes?

8 A. The administrator could control access from any work  
9 stations.

10 Q. Right. Okay.

11 A. It does not mean that any work station will willy-nilly  
12 change it.

13 Q. Well, if any work station can change access control and,  
14 therefore, permit that work station to gain access to the  
15 storage, then there is, in fact, no access control?

16 A. I'm sorry. The work stations -- the control software in  
17 the work station can -- is what can change the access control  
18 and one can choose to -- one can expect to have minimum --  
19 have special rights for an administrator. So an administrator  
20 can use any work station to change.

21 Q. Well, I've just given you a hypothetical with the  
22 management function is in all work stations and so they all  
23 have special rights. That's a possibility, right?

24 A. One could con figure it that way if one desired.

25 Q. All right. And in that case, any work station can get

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1 access to any storage at any time, right?

2 A. If one chose not to provide the protection that is  
3 inherent in the patent, yes.

4 Q. Well, the patent says that the management station can be  
5 connected to the Fibre Channel, right?

6 A. One could choose not to provide any management -- any  
7 protection at all in one wanted to.

8 Q. And that would be access control that would be covered by  
9 the patent in your opinion?

10 A. The access control is provided by the device. That's if  
11 it's available.

12 Q. Is the way that device -- by the device, you mean the  
13 storage router?

14 A. Access control is provided by the storage router, the  
15 administration is available as desired by the administrator,  
16 and the function is there.

17 Q. But -- okay. Let me make sure I have this right. The  
18 management station just serves to set the configuration that's  
19 maintained by the router which ultimately accomplishes access  
20 control, right?

21 A. Yes.

22 Q. And there's nothing in the claims directed to the  
23 management station, is there? You didn't check any boxes  
24 anywhere that said management station, right?

25 A. That's true.

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1 Q. Management station isn't in that claim, is it?

2 A. There's no -- those words are not used in the claim.

3 Q. What is used in the claim is -- this is claim 1.

4 A. Yes.

5 Q. It says to maintain a configuration for SCSI storage  
6 diseases connected to the SCSI bus transport medium, right?

7 A. Yes.

8 Q. So it's the maintenance of that configuration, that's  
9 what's required, right?

10 A. That's what is required.

11 Q. And that has nothing to do with how those -- that  
12 configuration is set by the management station, right?

13 A. That's not addressed in the claim. And the function --  
14 what is addressed by the claims is the function that's  
15 provided by the router.

16 Q. And, in fact, the claims don't say anything about how that  
17 configuration is set, right?

18 A. They do not.

19 Q. Could be set by the SCSI reserve command, right?

20 A. No.

21 Q. Why not?

22 A. The SCSI reserve command being implemented according to  
23 the SCSI specification is not sufficient access control.

24 Q. Why not?

25 A. Because it does not provide the kind of access control

1 that is available for local storage. You do not have virtual  
2 local storage from that.

3 Q. We'll get to that in just a second. I'm talking about  
4 access control right now, all right?

5 A. Access control is illuminated by the virtual local  
6 storage. It tells you what kind of access control is  
7 required.

8 Q. Well, actually virtual local storage in claim 1 appears up  
9 here at the top, right? Providing virtual local storage,  
10 right? And access controls's down here, right? Those are the  
11 same in your opinion?

12 A. They're not the same, no, sir.

13 Q. Well, so in your opinion, a device that's configured like  
14 that shown in figure 3 that uses the SCSI reserve command to  
15 set that configuration, that performs access control in your  
16 opinion, right?

17 A. No, sir.

18 Q. Okay. Why not?

19 A. It does not meet the requirements for virtual local  
20 storage.

21 Q. No, no, no. It doesn't meet the requirements for access  
22 control?

23 A. No, sir.

24 Q. So they're the same, the requirements are the same or are  
25 they different, Dr. Hodges?

1 A. Which requirement?

2 Q. Requirement for virtual local storage on the one hand and  
3 access control on the other hand?

4 A. Virtual local storage describes what is expected of the  
5 storage device and illuminates what kinds of access control  
6 is required.

7 Q. All right. One of the reasons is because any host  
8 connected to the storage router when the configuration has  
9 been set up using this reserve command, any of those hosts can  
10 change access at any time, right?

11 A. That's true.

12 Q. Dr. Hodges, I just posed for you a hypothetical a second  
13 ago where all of the work stations have management capability,  
14 all of them can set access, and you said that that was access  
15 controls still?

16 A. The access control function in previous case was present  
17 in the router. That's what the patent is about, what is  
18 present in the router.

19 Q. Right. Reserve and release do not provide within the  
20 router the capability for doing the same kind of access  
21 control. Reserve and release. Well, let's forget about  
22 release, let's talk about reserve, reserve makes settings in  
23 that router, correct?

24 A. It could.

25 Q. It changes modifiable set information the router, within

1 the router, right?

2 A. Its could.

3 Q. It could, it does, that's the way its works, right?

4 MR. ALCOCK: Objection, your Honor. Beyond the scope

5 of redirect. Reserve release is part of their invalidity

6 case.

7 THE COURT: The objection's overruled.

8 MR. BAHLER: Thank you, your Honor.

9 Q. (BY MR. BAHLER) Do you need the question again, sir?

10 A. I'm not aware there was a question. Please repeat it.

11 Q. Let me withdraw it in case there is one. Dr. Hodges, the

12 claim requires this maintaining a configuration as we said,

13 right?

14 A. Yes.

15 Q. Doesn't require it be set by anything, and indeed, a SCSI

16 reserve command will make -- will change that configuration in

17 a storage router, correct? Can be used that way, right?

18 A. It could.

19 Q. Could. And when it makes that change, requests by

20 subsequent -- by other work stations will be prohibited from

21 accessing storage that is reserved, right?

22 A. No, sir.

23 Q. Well, is one of the reasons because those other work

24 stations can issue a reset?

25 A. According to the SCSI command, according to the SCSI

1 standard, any of those work stations could revoke the reserve  
2 at any time. Therefore, the capability for prohibiting access  
3 does not exist within the router if you use SCSI reserve.

4 Q. If the capability exists to override, then there is no  
5 access control. Is that what you just said?

6 A. If the capability -- if the access control inherently has  
7 the capability to be overridden by any work station without  
8 any further authority, that is not access control.

9 Q. All right. So if any work station can override the access  
10 controls, then there is no access control?

11 A. That's not what I said.

12 Q. All right. I couldn't understand completely and I  
13 apologize. Maybe I'm thick this morning.

14 MR. ALCOCK: Your Honor, move to strike. That's not  
15 appropriate.

16 THE COURT: Counsel, let's just calm down.

17 Q. (BY MR. BAHLER) Could you explain that again, please?

18 A. What would you like for me to explain?

19 Q. The part about where any -- well, let me just start down  
20 the same track, only differently. These work stations shown  
21 in figure 3 could be configured to issue reserve commands,  
22 right? Any one?

23 A. SCSI reserve commands?

24 Q. Yes, sir.

25 A. Yes, they could.

1 Q. And if the router were so programmed, work station A could  
2 reserve for itself storage A and storage B and work station B  
3 could reserve storage B, et cetera. In other words, this  
4 exact configuration shown in figure 3 could be established  
5 using the SCSI reserve commands, correct?

6 A. The configuration as described in the patent would not be  
7 the same.

8 Q. Well, work station A could issue a reserve command and it  
9 would be stored in the storage router and it would reserve for  
10 work station A, work station A storage on storage device 62,  
11 right?

12 A. That is not access control.

13 Q. Well, let's say that no other hosts issue a reset or do  
14 anything unusual, all right?

15 A. I'm willing to do that because that's part of the SCSI  
16 standard.

17 Q. Well, let's say that none of them have done it yet.

18 A. If none of them have done it yet, then nothing has  
19 happened.

20 Q. All right. Well, let's say none of them have issued a  
21 reset and that setting is sitting there in the storage router,  
22 the setting that was made by work station A, all right?

23 A. Whatever setting that was.

24 Q. All right. Now, if work station B tries to get access to  
25 the storage of work station A, it will be rejected by that

1 storage router, correct?

2 A. No, sir.

3 Q. Why not?

4 A. This is no different from encountering a locked door that  
5 you have a key to it. Doesn't keep you from getting it, it  
6 only delays you.

7 Q. Isn't that the same as a pass word?

8 A. The same as pass word?

9 Q. Yeah, before we talked about the management station  
10 according to the patent could be actually exist on all of  
11 those work stations.

12 A. Yes, sir.

13 Q. All those could have management functions, right? That's  
14 what you said before, right?

15 A. In this case, everybody has a key. By definition in the  
16 case of reserve release. There's no capability in the storage  
17 router to prevent any work station regardless of how it's  
18 programmed as long as issues a command according to the SCSI  
19 protocol to prevent another work station from getting to that  
20 storage.

21 Q. All right. So in a -- if -- well, the SCSI reserve every  
22 work station has a key, right, in your opinion?

23 A. By definition.

24 Q. All right. And in the management, every -- in the  
25 management station, where the management function distributed

1 across all those work stations, everybody would have a pass  
2 word, wouldn't they?

3 A. The capability is there in the latter case for the storage  
4 router to create whatever access control is desired by the  
5 person who sets this up. The capability is just there for  
6 access control with reserve the capability is not there.

7 Q. All right. Now, this management function that's performed  
8 by the -- that you say is performed by the SAN gateway and SAN  
9 router products, Pathlight products, that's done by this SAN  
10 director?

11 A. I'm sorry. Would you repeat that?

12 Q. The management function that you have concluded exists in  
13 the SAN gateway and SAN router products, is that done by the  
14 SAN director software?

15 A. That's one way of doing it.

16 Q. Are there any other ways of doing it?

17 A. Yes, one can connect by the service port and use a  
18 different protocol for doing the same functions.

19 Q. That would still be using the SAN director, right?

20 A. No, sir.

21 Q. How would that be?

22 A. It's using hyper terminal that's built into the windows  
23 system. It does not use the SAN director at all.

24 Q. All right. And would that be access control?

25 A. That gives the same function.

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1 Q. Okay. Now, --

2 A. As the SAN director.

3 Q. In that situation, don't all hosts have that capability  
4 in the latter situation?

5 A. It gives the same function as the SAN director. All hosts  
6 who are physically connected to the storage router actually  
7 only one could be connected in the case of a serial port.

8 Q. Are you sure about that?

9 A. I've never seen anything that allowed more than one to  
10 connect to a serial port.

11 Q. How about Ethernet connection?

12 A. This is not Ethernet.

13 Q. All right. Now, in fact, there are Ethernet connections  
14 in the SAN gateway and SAN router product, also, right?

15 A. That's correct.

16 Q. Now, you didn't show those in your drawing, did you?

17 A. Yes, I did.

18 Q. Now, this is the setup that you made?

19 A. Yes.

20 Q. And here it says Ethernet serial.

21 A. Yes.

22 Q. That's actually connected to the work station, right?

23 A. Connected to the left work station which was being used as  
24 a management station.

25 Q. And the right work station, right?

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1 A. Not necessarily. It could have been.

2 Q. Could be, right? If it is, then there's management  
3 function there, too, right?

4 A. There is an Ethernet connection there.

5 Q. Well, I'm talking about this Ethernet connection that you  
6 just mentioned. Now, is this management station, let me make  
7 sure I'm clear about this. Is this management station the  
8 same as that one?

9 A. The left work station is being used as a management  
10 station, as well.

11 Q. Why did you draw it like this?

12 A. For clarity, sir.

13 Q. For clarity or to make its look like figure 3, sir?

14 A. For clarity.

15 Q. All right. So in fact, there's only -- this isn't even  
16 there, right?

17 A. What isn't there? Yes, it is. It's the left work  
18 station.

19 Q. All right. Well, that's already there, right?

20 A. It's a different -- yes.

21 Q. So in your configuration, one of the work stations had  
22 management capability right off the bat, right?

23 A. It had the management software installed in it and I had  
24 management capability when I used that proper pass word.

25 Q. All right. Did you use this Ethernet connection at all,

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1 sir?

2 A. Yes.

3 Q. Okay. Did you use it from the right work station?

4 A. I sometimes used it from the right work station.

5 Q. Did you use it from the right and the left work station?

6 A. I'm not sure what you mean.

7 Q. Well, you use it -- okay. You use the Ethernet connection

8 was permitted, modification of the settings and if router from

9 the left work station, correct?

10 A. Yes.

11 Q. And you used the Ethernet connection to make the

12 modifications to the settings from the right work station,

13 right?

14 A. In a very small number of tests I did that, most tests the

15 right work station had only user capability.

16 Q. All right, sir. And in that situation -- and neither or

17 one of those use the SAN director, correct?

18 A. Both of those use the SAN director.

19 Q. I'm talking about the one you said didn't require the SAN

20 director?

21 A. No, you're not.

22 Q. Okay. So the SAN director requires Ethernet, right?

23 A. That's correct.

24 Q. All right. At least we got that. And in the situation

25 where you had the left work station and the right work station

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1 with the SAN director -- that means the SAN director software  
2 you had it on both the left work station and right work  
3 station?

4 A. Yes, I did.

5 Q. That means the left work station could modify the access  
6 control to permit itself access to the storage that was  
7 supposed to be dedicated to the right work station, correct?

8 A. Given that I logged on to the SAN director with  
9 administrative capability.

10 Q. All right.

11 A. Using the administrative password.

12 Q. All right. And likewise, the right work station could  
13 modify the set information the storage router and gain access  
14 to the storage that was previously dedicated to the left work  
15 station, correct?

16 A. Given that I logged on to the SAN director with  
17 administrative capability using the administrator's password.

18 Q. So in the Pathlight product, either host could get access  
19 at any time, right?

20 A. The capability of the router allowed -- was -- stop and  
21 think a minute. The router's capability was to control access  
22 based upon whatever station, whatever work station or  
23 management station to have the appropriate administrative  
24 control.

25 Q. All right, sir. And in the setup that you had in your

1 basement, both work stations had administrative capabilities,  
2 correct?  
3 A. They both had administrative capabilities if I logged on  
4 using administrative password.  
5 Q. And that means either work station could adjust the set  
6 information the router and gain access to the storage of the  
7 other, correct?  
8 A. If the administrator was logged on to it.  
9 Q. That's a yes, right?  
10 A. I was the administrator of both of those.  
11 Q. To that's a yes, right?  
12 A. That's a yes under the conditions of the proper log-on.  
13 Q. In your opinion, if two work stations can gain access or  
14 can override the access settings maintained -- that are being  
15 maintained for the other work stations, that's still access  
16 control?  
17 A. If they are -- if they can override based upon appropriate  
18 authority, yes.  
19 Q. Appropriate authority. Can passwords be hacked?  
20 A. Can passwords be hacked?  
21 Q. Yes.  
22 A. Yes.  
23 Q. That means somebody could right there in the work station  
24 or in the setup you had either work station could be used to  
25 modify the settings for the other work station and to gain

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1 access to the storage that was previously dedicated to the  
2 other one, right?

3 A. I think it would be easy for a hacker to get into the  
4 work station and get access to the control -- to the local  
5 storage of that work station.

6 Q. All right. But you need a password in any case, right?

7 A. In any case for what?

8 Q. To, in your opinion, have access control, right?

9 A. No, sir.

10 Q. You need some sort of administrator somewhere, right?

11 A. You need security that you could -- that one can -- the  
12 appropriate security for that.

13 Q. Appropriate security. In your case, a password, right?

14 A. Not necessarily.

15 Q. And you need a management station, also, to do that,  
16 right?

17 A. Some sort of -- yes, some sort of management station.

18 Q. Some sort of management station with some sort of secure  
19 authority, right?

20 A. Yes.

21 Q. All right. Let's look at claim 1, for example.

22 A. Yes, sir.

23 Q. Where is the management station with appropriate authority  
24 in claim 1, sir?

25 A. One has -- I believe you have got me. I don't need a

1 management station -- but I need some mechanism for securely  
2 changing the configuration of access control.

3 Q. Where is that?

4 A. In the Pathlight SAN router.

5 Q. No, no, no, no. Where is that in claim 1?

6 A. In claim 1, it is not defined.

7 Q. It's not in claim 1, is it, sir?

8 A. Access control is in claim 1. The security is in claim 1.

9 Q. Where is security? Find the word security in claim 1.

10 A. The security is in -- phrased virtual local storage which  
11 requires the same security that one would have if storage was  
12 attached locally.

13 Q. All right. Let me make sure I have this right virtual  
14 local storage requires in your opinion security and requires  
15 some sort of management with authority, right?

16 A. Management with authority, yes.

17 Q. Okay. Security and management with authority, right?

18 A. Yes.

19 Q. And you're squeezing all that into those two words.

20 A. In which two words, sir?

21 Q. Those two words right there, access control?

22 A. There's a lot of words there.

23 Q. Access control.

24 A. Access control is a very specific term.

25 Q. All right. Now, access controls has already been actually

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1 defined by the Court in this case, right?

2 A. Yes, it is.

3 Q. I would like you to assume a hypothetical for me which the  
4 Court can do whatever it wants, of course. But let me assume  
5 that when the Court instructs this jury regarding the meaning  
6 of the word access control, it will say implements access  
7 controls for storage space on the SCSI storage devices means  
8 provides controls which limit a computer's access to a  
9 specific subset of storage devices or sections of a single  
10 storage device. I want you to assume with me that that is  
11 what the Court is going to instruct the jury, all right, sir?  
12 There's nothing about security there, is there?

13 A. That definition is abstract definition, taken without  
14 context and those access control obviously does not appear in  
15 those words -- excuse me. The word security obviously does  
16 not appear there.

17 Q. It's nowhere in there, right?

18 A. It's an abstract definition.

19 Q. Okay. And there's no requirement in that definition for  
20 any sort of management with authority, is there?

21 A. No, sir. I assume the Judge will not instruct the jury  
22 only in that definition.

23 Q. Well, let's assume you're wrong about that.

24 A. Well, if you want to take an abstract definition standing  
25 alone, those words do not occur in that definition.

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1 Q. There's no requirement in the words access control and  
2 there's no requirement in the definition that I read to you  
3 for any form of security, right?  
4 A. Those words do not occur in the definition.  
5 Q. That's a yes, right?  
6 A. That's a yes for the abstract definition standing alone.  
7 Q. All right. And there's no requirement for any sort of  
8 management with authority, right?  
9 A. That's a yes for the abstract definition standing alone.  
10 Q. All right. And, in fact, a storage network like that  
11 shown in figure 3 that's set up using the SCSI reserve  
12 command, all right, such that the storage of work station A,  
13 B, C, D and E is set up exactly as shown in figure 3. That's  
14 possible, is it?  
15 A. It's possible to set up storage network with -- repeat  
16 that for me, please.  
17 Q. Well, it's possible to set up a storage network as shown  
18 in figure 3 using the SCSI reserve command, correct?  
19 A. It's possible to use the SCSI reserve command.  
20 Q. To do that, to make a configuration as shown in figure 3,  
21 right?  
22 A. No, sir.  
23 Q. Well, work station A could reserve for itself that storage  
24 called 66, right?  
25 A. Reserve, assuming that the reserve commands is implemented

1 properly.

2 Q. And the same for B could reserve its space, right?

3 A. It could.

4 Q. C could do the same, right?

5 A. Same as what?

6 Q. Reserve its space as shown in figure 3, right?

7 A. Yes.

8 Q. And D could reserve its space for as shown in figure 3,  
9 right?

10 A. Yes.

11 Q. Same for E, right?

12 A. Yes.

13 Q. And in that case, after those -- all those reservations  
14 are in place, that's what would result, figure 3, right?

15 A. No, sir.

16 Q. Why not?

17 A. Figure 3 shows storage space that is allocated to  
18 particular work stations. The reserve does not allocate  
19 storage particular work stations.

20 Q. Well, is that part of access controls, too?

21 A. What.

22 Q. Allocation of the --

23 A. You're asking me about figure 3.

24 Q. The whole point here is the claims fundamentally.

25 A. I think we ought to look at the claims.

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1 Q. My question to you is this allocation of storage, is that  
2 a requirement of access controls, too?

3 A. Allocation of storage?

4 Q. Yeah.

5 A. It's just what's shown in figure 3. If you want to go  
6 back to the claims, I'll be glad to interpret the claims for  
7 you.

8 THE COURT: Mr. Bahler, I think we'll take a break.  
9 Members of the jury, we'll give you a morning break, 15  
10 minutes. Stretch, be ready to come back in 15 minutes.

11 (Recess.)

12 THE COURT: Bring them in.

13 (Jury present.)

14 THE COURT: Mr. Bahler, you may proceed.

15 MR. BAHLER: Thank you, your Honor.

16 Q. (BY MR. BAHLER) Now, Dr. Hodges, just before we leave  
17 this, one of the ways in your opinion that the SCSI reserve  
18 command does not constitute access control is that other hosts  
19 can override that control, right?

20 A. Yes, a part of the standards requires that.

21 Q. So other hosts can override the access control then in  
22 your opinion there is no access control, right?

23 A. That's not what I said.

24 Q. Well, one of the -- in the reserve context, one of the  
25 ways a host could override is by issuing a reset, right?

1 A. Yes, sir.

2 Q. Okay. Take a look at column 6 of that patent, please?

3 A. Is that shown?

4 Q. Yes, sir. Down at the bottom of column 6, this is in the  
5 detailed description of the invention part, right?

6 A. Yes, sir.

7 Q. And down there, it says in configuration information can  
8 be stored in a segment of flash memory and can be retained  
9 across resets and power off cycles. Password protection can  
10 also be provided. That's what it says, right?

11 A. Yes, sir.

12 Q. And that's just what -- well, let's see. It doesn't say  
13 first of all that configuration information is required to be  
14 maintained across power cycles?

15 A. That does not say that.

16 Q. It doesn't say password protection is required, does it?

17 A. Does not say that.

18 Q. All right. So, in fact, the invention as described  
19 contemplates the possibility of configuration information  
20 being eliminated by a reset, right?

21 A. No, sir, but this paragraph does not have anything to do  
22 with access control.

23 Q. Well, --

24 A. It describes functional modes of operation.

25 Q. Back to the claims. It says maintaining a configuration,

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1 right?  
2 A. Yes.  
3 Q. The part I just had says the configuration information,  
4 right?  
5 A. That's right.  
6 Q. Doesn't say there configuration information except for  
7 access control, does it?  
8 A. It doesn't address that, sir.  
9 Q. Let's talk for a second about virtual local storage. Is  
10 security required for that, sir?  
11 A. Security required for virtual local storage?  
12 Q. Yes, sir.  
13 A. Yes.  
14 Q. Okay. Security from what exactly?  
15 A. From unauthorized access.  
16 Q. By other hosts?  
17 A. By anyone.  
18 Q. Okay. Remember your friend figure 3?  
19 A. (Moving head up and down.)  
20 Q. All right?  
21 A. Yes.  
22 Q. Now, that describes storage device 60, storage device 62  
23 and storage device 64, right?  
24 A. Yes.  
25 Q. And at the top of column 4, it says each work station --

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1 and this is in reference to figure 3, right, sir?

2 A. Uh-huh.

3 Q. It says each work station 58 can have access to a specific  
4 subset of the overall data stored in the storage devices 60,  
5 62, 64. The specific subset of data has the appearance and  
6 characteristics of local storage and is referred to here in as  
7 virtual local storage, right?

8 A. Yes.

9 Q. That's what it says right there, right? So that's what  
10 virtual local storage means, right?

11 A. That is a -- yes, well, let me look at that again. The  
12 complete sentence says that the storage router has enhanced  
13 functionality to implement security controls and routing.

14 Q. Right.

15 A. Such that each work station can have access to a specific  
16 subset of overall data stored in storage devices.

17 Q. All right. It says 60, 62, 64?

18 A. Yes.

19 Q. Right? And that's virtual local storage. That says it's  
20 referred to in this patent as virtual local storage, right?

21 A. Yes.

22 Q. Okay. And you just said virtual local storage means that  
23 it's other unauthorized computers can't get to it, right?

24 A. Yes.

25 Q. Okay. Let's look at the subset of data that is permitted,

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1 let's say, work station A, right here. Okay? That includes  
2 -- it can get to this, right, global data?  
3 A. Yes, that's authorized.  
4 Q. And then he can get to this part, too, right?  
5 A. Yes.  
6 Q. Okay.  
7 A. That's shown in the diagram.  
8 Q. Okay. So that's the subset, right?  
9 A. Yes, sir.  
10 Q. That can be had by work station A, right?  
11 A. (Moving head up and down.)  
12 Q. Okay. Now, later in that same column, Dr. Hodges, right  
13 about 51, 52, it says no access from a work station 58 is  
14 allowed to the virtual local storage of another workstation  
15 58.  
16 A. Yes.  
17 Q. See that?  
18 A. I need to read the entire paragraph, sir.  
19 Q. Do you have the patent, sir?  
20 A. Yeah. Which column is this?  
21 Q. Column 4, the first entry was in line 4 and 5, around the  
22 second one I've highlighted is right around line 50.  
23 A. Yes, sir.  
24 Q. All right, sir. Have you read that paragraph?  
25 A. Yes, I have.

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1 Q. So that says there that no access from work station 58 so  
2 that 58 is allowed to the virtual local storage of another,  
3 right?

4 A. That's what it says.

5 Q. Okay. Now, in figure 3, according to the top of column 4,  
6 all work stations can have access to this part of work station  
7 A's virtual local storage, right?

8 A. Yes. In the subsequent paragraph in column 4, work  
9 station 60 is described as global storage and is distinguished  
10 from the local -- from the virtual local storage.

11 Q. All right. So that's another place where there's a  
12 difference between the top of column 4 and bottom of column 4.  
13 Right there, it talks about the specific subset has the  
14 appearance -- can have access to a specific subset of overall  
15 storage, 60, that's the global storage, right? 62 and 64, and  
16 that's called virtual local storage according to the patent,  
17 right?

18 A. Which is called virtual local storage?

19 Q. Shown by this figure 3 drawing, right?

20 A. What's your question?

21 Q. Well, let me ask this question: The global data can be  
22 accessed by anybody, right?

23 A. The global data can be accessed by anybody.

24 Q. And yet, that is stated in the top of column 4 as being  
25 part of the virtual local storage of work station A, right?

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- 1 A. I'd have to read it again but I believe that's true.
- 2 Q. Okay. And that means that anybody can get access to part  
3 of work station A's virtual local storage, right?
- 4 A. I'm rereading this paragraph at the top and I believe that  
5 it does not say that 60 is local storage.
- 6 Q. All right. I thought we went through this. Well, back to  
7 figure 3. When I read that to you, I drew on figure 3 the  
8 subset of overall storage that A could get to and top of  
9 column 4 calls that a virtual local storage?
- 10 A. I misread that.
- 11 Q. Pardon?
- 12 A. I misread the top of column 4.
- 13 Q. Was the top of column 4 just wrong?
- 14 A. No, sir.
- 15 Q. Specific set of data stored?
- 16 A. Subset of overall data stored on subset 62 and 64 which is  
17 virtual local storage what is me fined further in the  
18 following paragraph that 60 is not included in the virtual  
19 local storage.
- 20 Q. Well, the specific subset includes 60, right?
- 21 A. I cannot tell that from that -- on that paragraph. The  
22 reference to figure 3 is in the following paragraph.
- 23 Q. And the specific subset is the appearance and  
24 characteristics of local storage, right?
- 25 A. A specific subset it says according to the invention

1 storage router 56 has enhanced functionality to implement  
2 security controls in routing such as this each work station 58  
3 can have access to a specific subset of the overall data  
4 stored in storage devices 60, 62 and 64 which are -- and the  
5 specific subset has the appearance and characteristics of a  
6 local storage. The following paragraph describes what is  
7 shown in figure 3. That paragraph does not show the first  
8 paragraph does not show that. All it talks about is specific  
9 subset.

10 Q. Dr. Hodges, I see in that paragraph we're talking about  
11 right there it says workstation 58. That's if figure 3,  
12 right?

13 A. That's in figure 3.

14 Q. 60, 62 and 64, they're in figure 3?

15 A. Yes.

16 Q. And then, storage router 56, that's in figure 3, right,  
17 sir?

18 A. Pardon?

19 Q. That's in figure 3, also, storage router 56?

20 A. Yes.

21 Q. Are you trying to tell this jury that that paragraph does  
22 not talk about figure 3?

23 A. I am not trying to say that. I'm saying that the  
24 paragraph describes figure 3 in more detail.

25 Q. So doesn't this one, doesn't it, sir?

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1 A. This does not define that subset of data is that is the  
2 subset of storage -- data storage devices 60, 62 and 64.  
3 Q. But it's shown in figure 3, right?  
4 A. Pardon, sir?  
5 Q. It's shown in figure 3, right, the subset?  
6 A. It's shown in figure 3, but it doesn't -- this paragraph  
7 does not describe which subset they're speaking of.  
8 Q. That's shown in figure 3, isn't it?  
9 A. Indeed it is but can we look at figure 3? There is a  
10 subset of the storage devices 60, 62 and 64 that is described  
11 as being accessible by work station A.  
12 Q. That you told me about ten minutes ago. I had drawn  
13 correctly and put an A on. That's the subset for work station  
14 A, right?  
15 A. We were look at what paragraph and as I said, I misread  
16 it.  
17 Q. Oh, okay. So the patent's easy to misread. You could do  
18 it on the stand?  
19 A. It's very easy to do things on the stands that you would  
20 do in a study.  
21 Q. It's not the first time you've looked at that passage, is  
22 it, Dr. Hodges?  
23 A. No, sir, but I have not looked a it that question that you  
24 asked.  
25 Q. Dr. Hodges, virtual local storage, the appearance and

1 characteristics of local storage. What are the  
2 characteristics of local storage?

3 A. The characteristics of local storage are virtual -- are  
4 native low level block protocol and access control.

5 Q. Is that it?

6 A. I think that's what is described in the patent.

7 Q. In fact, there are many characteristics of local storage,  
8 right?

9 A. But not described in the patent.

10 Q. And, in fact, it's not possible for you to tell me how  
11 many of these characteristics are required to meet that claim  
12 limitation virtual local storage, is it?

13 A. That's not so.

14 Q. So you told me in your deposition, wasn't it, sir?

15 A. Yes, sir.

16 Q. Are you going to change your sworn testimony. It did not  
17 occur to me the definition that I needed to make that  
18 definition expand upon the Court's definition?

19 Q. May I approach, your Honor?

20 THE COURT: Don't need my permission.

21 Q. (BY MR. BAHLER) Please turn to page 96 of your  
22 deposition, sir. Do you have it, sir?

23 A. Yes, sir.

24 Q. That was taken April 4th, 2000 of this year?

25 A. I believe so.

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1 Q. And that's after rude been working for months and months  
2 on this case?

3 A. Yes.

4 Q. After you wrote the 95-page opinion you waved in front of  
5 the jury?

6 A. Yes.

7 Q. There your were asked the following question, this is line  
8 20: All right. There are many characteristics of local  
9 storage, are there not answer yes. Question, and it's not  
10 possible for you to tell me how many of those characteristics  
11 are required to meet that limitation, is it? Answer, that's  
12 true. That was when I asked you those questions, those are  
13 the answers you gave under oath at that time, right, sir?

14 A. Yes, those are answers that were given after I had  
15 declared that I had no opinion on what aspects of local  
16 storage might be required.

17 Q. And you were asked to render --

18 A. Consistent with my having no opinion on that.

19 Q. And that's -- well, we were asking you about can  
20 characteristics of local storage. That's required by the  
21 claims, right?

22 A. There are characteristics of local storage that are  
23 required by the claims.

24 Q. Right. And at that time, you had no idea what that meant?

25 A. It did not occur to me that I needed to have that

1 definition.

2 Q. It's in the claims, Dr. Hodges?

3 MR. ALLCOCK: Objection, your Honor, this is  
4 argumentative.

5 THE COURT: It is argumentative. State a question.

6 Q. (BY MR. BAHLER) Well, you were hired to do a claim  
7 analysis to determine whether there was infringement, right?

8 A. Yes, sir.

9 Q. And that's part of the definition of virtual local  
10 storage, right, characteristics of local storage?

11 A. Virtual local storage was defined by the court as having  
12 the appearance and characteristics of local storage and that's  
13 the definition I used in assessing the claims.

14 Q. And now, since April, you've thought of some  
15 characteristics that are necessary?

16 A. Your question focused my attention on that.

17 Q. And so you're changing your testimony, right?

18 A. I am -- I am changing my testimony but I now have an  
19 opinion.

20 Q. Dr. Hodges, I'd like to show you what you showed before as  
21 exhibit 565. Please correct me if I'm wrong, sir, but I  
22 believe you said that you were using that to show how the  
23 Pathlight product used native low level block protocol, right?

24 A. Yes, sir.

25 Q. Okay. Now, this computer program here, looking at this

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1 computer program, there's really no way to tell what protocol  
2 the commands are formatted in, correct?

3 A. Looking at the screen shot here, it is not necessarily  
4 obvious. This is a -- this program is a SCSI exercise program  
5 and this is a portion, a very small portion of the discussion  
6 on the testing that I did. Merely shown as an example.

7 Q. All right. And just for clarity, where was this program  
8 being executed in the setup you had in your basement?

9 A. One of the work stations.

10 Q. All right. And then, commands from here were being sent  
11 on fiber channel, right?

12 A. Yes, sir.

13 Q. All right. Now, the native low level block protocol is  
14 required to happen in the router, right?

15 A. To happen in the router?

16 Q. Right.

17 A. I don't think so.

18 Q. Well, the claims require that things be done using native  
19 low level block protocol, right?

20 A. I look at the claim.

21 Q. Pardon?

22 A. The claim requires that the access be using native low  
23 level block protocol.

24 Q. As we've already discussed, that's done by the router,  
25 right, not by the work station?

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1 A. It's not done by the router.  
2 Q. Pardon me?  
3 A. It's not done by the router. Just look at the claim.  
4 Q. Process data in the buffer, that's done by the router,  
5 isn't it?  
6 A. Yes.  
7 Q. Well, first of all, wait a minute. It says a supervisor  
8 unit, right?  
9 A. Yes.  
10 Q. And then, it has some functions of the supervisor unit?  
11 A. Right?  
12 Q. The supervisor unit is in the router, correct?  
13 A. That is correct.  
14 Q. All right. And those two functions are done by the  
15 router, right?  
16 A. What two functions?  
17 Q. The two functions that are said to be done by the  
18 supervisor unit?  
19 A. The two paragraphs shown there?  
20 Q. Yes, sir.  
21 A. Yes, sir.  
22 Q. All right. And supervisor unit does those two functions  
23 and that's in the router, and one of those functions done by  
24 the supervisor in the unit is to allow access from the Fibre  
25 Channel initiator devices to the SCSI storage devices using

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1 native low level block protocol, right?

2 A. Yes.

3 Q. And you never -- looked at what the supervisor unit was  
4 doing, did you?

5 A. I did not have to do that. The claim here says that I  
6 should be able to access the storage devices from fiber  
7 channel devices using native low level block protocol.

8 Q. And what you showed for that proof was a program running  
9 on the work station, right?

10 A. That is running on a Fibre Channel device issuing native  
11 low level block protocol.

12 Q. All right. Did you ever look at the wire to see whether it  
13 was native low level block protocol or did you just assume  
14 that?

15 A. Neither, sir.

16 Q. What did you do? You ran a program. Here, on the work  
17 station, right?

18 A. I ran a program whose purpose was to exercise the native  
19 low level block protocol across whatever interface is there,  
20 in this case, the Fibre Channel program which was set up to do  
21 the native low level block protocol according to the standard  
22 for Fibre Channel carrying SCSI on fiber channel protocol.

23 Q. All right, sir.

24 A. The address here is the address that goes through the  
25 Fibre Channel adapter.

1 Q. How do you know that's not going through the Ethernet?

2 A. Two-way, one is that I addressed it to the Fibre Channel  
3 adapter. The other is in other testing, I found that the  
4 performance of the storage through this mechanism was far  
5 beyond what could have been done with Ethernet. Thirdly, it  
6 doesn't make sense not to do that.

7 Q. Now, sir, what you did to confirm that the Pathlight  
8 product use native low level block protocol was to run a  
9 program on the work station, right?

10 A. Yes, sir, it's partly what I did.

11 Q. Now, this program does not dictate in any way what sort of  
12 protocol is going to be used to communicate, right?

13 A. It does not dictate -- that's not quite true.

14 Q. You could use any protocol, correct?

15 A. For what?

16 Q. To communicate the results of this program from the work  
17 station to the router?

18 A. I don't think I understand that. This is a program that's  
19 designed to create SCSI protocol and the Fibre Channel adapter  
20 is designed to accept SCSI protocol and transmit it across  
21 Fibre Channel.

22 Q. Back to the claim. This is claim 1 again. Claim 1  
23 requires that the supervisor unit, once again, that's in the  
24 router, right?

25 A. Yes.

1 Q. Maintain a configuration for SCSI storage devices  
2 connected to the SCSI bus transport medium, right?

3 A. Uh-huh.

4 Q. That's singular, right, medium?

5 A. Yes.

6 Q. The plural is media, right?

7 A. Yes.

8 Q. Maintaining configuration for SCSI storage devices  
9 connected to the transport medium, SCSI bus transport medium,  
10 right?

11 A. (Moving head up and down.)

12 Q. Now, that requires that there be a configuration  
13 maintained that distinguishes one storage device from another  
14 on that SCSI transport medium, correct?

15 A. Yes.

16 Q. All right. That's a requirement of that claim.  
17 Maintaining a configuration of SCSI storage devices connected  
18 to the medium requires that there be a configuration stored in  
19 the router that distinguishes between the storage devices  
20 connected to the medium, right?

21 A. As far as I could tell what you're saying.

22 Q. That's a requirement of the claims, right. That's not  
23 what channel zoning does, is it?

24 A. Channel zoning does this in a some what different way.

25 Q. Different way? Does it a different way?

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1 A. It does it by -- it does the same by maintaining a  
2 configuration between Fibre Channel ports and SCSI ports.

3 Q. All right. But there's no maintaining a configuration of  
4 SCSI device, storage devices connected to the SCSI bus  
5 transport medium, is there, sir?

6 A. The effect is equivalent, the results are substantial.

7 Q. But it does it in a different way?

8 A. It does a different thing in terms of what connections,  
9 what configuration is maintained. It does maintain a  
10 configuration between the ports.

11 Q. All right. Maintains a different configuration, right?

12 A. That's true.

13 Q. Doesn't do this, does it?

14 A. Not specifically.

15 Q. Pass the witness.

16 RE-DIRECT EXAMINATION

17 BY MR. ALCOCK:

18 Q. I'll put before you figure 3. Where are the access  
19 controls?

20 A. Access controls are in the router.

21 Q. And what is this management station do?

22 A. The management station, given proper authority, can change  
23 the access controls and the mapping.

24 Q. So you have to have some kind of computer to set the  
25 access controls. Have I got that right?

1 A. You have to have some mechanism to do that.

2 Q. Okay. Now, let's take a look at column 4, starting  
3 around line 27. I'll try to do this right. And you were  
4 asked a lot about the top part there. Storage router 56  
5 allows this allocation of storage devices, 60, 62 and 64 to be  
6 managed by a management station. Management station can  
7 connect directly to router 56 via direct connection, or,  
8 alternatively, can interface with storage router 56 through  
9 Fibre Channel.

10 So that's the picture that's shown in figure 3 of  
11 direct connection.

12 A. Yes, sir.

13 Q. And then it goes on to say that it can be a work station  
14 or other computing device with special rights such that  
15 storage router 56 allows access. What are those special  
16 rights?

17 A. The special rights -- this is reference to the work  
18 station being used to do this. The special rights would  
19 include an array of special program with password or some  
20 other mechanism for making sure that only the authorized  
21 person could do the management.

22 Q. Okay. And so now showing you exhibit 111, what is this,  
23 sir?

24 A. This is the excerpt that we saw before from the manuals,  
25 and we have highlighted here that the administrator has access

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1 to all of the options that a user can only view data and shows  
2 that the administrator is required a password as part of the  
3 SAN director.

4 Q. Okay. And so what does this do? What is the function of  
5 this?

6 A. This would allow the special rights that would allow  
7 changing to the configuration.

8 Q. These special rights, can any host get access?

9 A. No, not without the special rights.

10 Q. So you can turn one of the work stations into a management  
11 station, right?

12 A. Yes.

13 Q. But unless you do this, the hosts can't have access?

14 A. That's correct.

15 Q. Now, we heard a lot about something called reserve  
16 release, and I'm going to ask you some questions about that  
17 tomorrow afternoon, possibly. But does reserve release have  
18 anything like what's shown in exhibit 611?

19 A. No, it doesn't.

20 Q. I'm showing you figure 3. Does reserve release allow  
21 access controls such as figure 3 has shown?

22 A. No, it does not.

23 Q. Why not?

24 A. Because reserve release does not allow a work station from  
25 having access to the work station reserve to a different one

1 -- sorry I phrased that badly. Reserve release does not  
2 prevent access by another work station, say, work station B,  
3 to storage reserve to the first work station, say, work  
4 station A.

5 Q. No control?

6 A. No control.

7 Q. Now, lastly, let me direct your attention to 606. Counsel  
8 showed you 607. I want to show you the graphics right around  
9 there. What does 606 depict?

10 A. The tests in which the two computers are attached to  
11 different Fibre Channels, the two discs are attached to two  
12 different SCSI channels.

13 Q. Okay. And which ones can the left one get?

14 A. It doesn't show them here, but in the previous diagram,  
15 the checkmarks, the left one has access to the three devices,  
16 one, three and five on the SCSI channel one.

17 Q. I'll show you 608. So what happens when with channel  
18 zoning you set up this way?

19 A. I was able to from the left computer access devices 1, 3  
20 and 5 as shown on this diagram and I was not a able to access  
21 devices 2 and 4 which were on the other SCSI channel.

22 Q. I'm showing you exhibit 609. What does that refer to?

23 A. This refers to the right computers access under the same  
24 conditions. The right computer had access to a SCSI channel 2  
25 and they were able to access only those two devices on SCSI

1 channel 2.

2 Q. Okay. I'm now going to show you page 49. Actually, this  
3 is a bad copy. One second. This is exhibit 153, page 110.

4 Is that a discussion of channel zoning?

5 A. Yes, it is.

6 Q. And here, it says the administrator simply indicates with  
7 checkmarks on an access control dialogue box that connections  
8 are to be enabled?

9 A. Yes, it does.

10 Q. Is that what you did?

11 A. That's what I did. I was logged on to the SAN director as  
12 an administrator and to check those boxes off.

13 Q. It says inhibits devices from knowing that the storage  
14 channel exists making it inaccessible. Is that what you did?

15 A. That's what I did.

16 Q. And does that satisfy the elements of the claims?

17 A. Yes, sir.

18 Q. No further questions at this time, your Honor. We reserve  
19 to call Dr. Hodges back in our case responding to their  
20 invalidity case.

21 RE-CROSS EXAMINATION

22 BY MR. BAHLER:

23 Q. Dr. Hodges, you just mentioned checking boxes on the  
24 screen. This is the screen that you check boxes on?

25 A. Yes, it is.

1 Q. There's no distinction in here of any of the individual  
2 storage devices connected to the different channels, right?

3 A. Yeah, there's no distinction between storage devices  
4 connected to channel 1 among storage devices connected to  
5 channel 1. There's no distinction among storage devices  
6 connected to channel 2.

7 Q. All right. Now, you use a lot of words during redirect  
8 examination by Mr. Alcock. Unauthorized, prohibits access by  
9 unauthorized hosts, and you've got to have a password and  
10 things like that. Do you recall that?

11 A. Yes.

12 Q. It's not in the claims, is it, Dr. Hodges?

13 A. What is in the claims is a requirement for security.

14 Q. That's not in the claims either?

15 A. This is a method providing security.

16 Q. Security does not appear anywhere in those claims, does it  
17 not, sir?

18 A. Securely is clearly implied by the virtual local storage

19 --

20 Q. Or is it access controls that implies security?

21 A. Security virtual local storage describes what kind of  
22 security is required by access controls.

23 Q. Okay. Including global access by work station A?

24 A. Global access is allowed.

25 Q. Global access is no security, right?

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1 A. Global access is a choice of whether you want to restrict  
2 access or not. The security is provided by the router.

3 Q. And if global access, which is no security is security,  
4 does that make sense to you?

5 A. No, sir, that does not make sense.

6 Q. I withdraw that comment. No further questions.

7 MR. ALCOCK: No further questions.

8 THE COURT: You may step down. You may call your next  
9 witness.

10 MR. ALBRIGHT: May I have about ten seconds to get the  
11 exhibits I need to go?

12 THE COURT: You may.

13 MR. ALBRIGHT: Thank you, your Honor. I appreciate  
14 it.

15 THE COURT: All right, sir. If you'll stand up,  
16 please, and have an oath. Just right there is fine.

17 (Witness was sworn.)

18 THE COURT: If you'll tell us your full name and spell  
19 your last, please.

20 THE WITNESS: My name is D. Paul Regan, R E G A N

21 DIRECT EXAMINATION

22 BY MR. ALBRIGHT:

23 Q. Mr. Regan, would you introduce yourself to the jury,  
24 please, sir?

25 A. My name is Paul Regan. I'm a CPA.

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1 Q. What is your educational background, sir?

2 A. I have a undergraduate BS in accounting, as an accounting  
3 specialist. I have a masters in accounting.

4 Q. Okay. And my understanding is that you are what is called  
5 a forensic accountant; is that correct?

6 A. Yes.

7 Q. Would you explain quickly to the jury what is meant by  
8 forensic accounting?

9 A. Forensic accounting is the application of accounting and  
10 economic principles in matters which are in dispute in our  
11 likely to be resolved in a courtroom or in arbitration or  
12 mediation. It's using the same tools that we learned as  
13 accountants but applying it in that environment.

14 Q. And do you have any special credits in your professional  
15 experience that would enable you to give the jury an expert  
16 opinion with respect to the damages in this case?

17 A. Yes, sir.

18 Q. And what would those -- just quickly, what would those be,  
19 for example?

20 A. I have -- I am presently chairman of the American  
21 institute of certified public accountants, a national economic  
22 damages section, and I sit on the A I CPA's nine-person  
23 guidance committee in which provides guidance to CPAs that  
24 perform forensic accounting services. There's 330,000 CPAs in  
25 the United States, some of which practice forensic accounting.

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1 Forensic accounting and we provide that kind.

2 Q. Are you currently working in a -- for the government, for  
3 the FBI?

4 A. We do work for the FBI. We do work for the SCC. We do  
5 work for various federal bank boards, various departments of  
6 the government and, for example, on June 26th of this month, I  
7 will be -- I am writing and teaching a course at national  
8 academy of the FBI in Quantico, Virginia on damages and  
9 intellectual property cases.

10 Q. They invited you to do that?

11 A. They asked me to write a course and print present it on  
12 June 26th.

13 Q. Do you have any experience Mr. Regan personally with the  
14 area of licensing?

15 A. Yes.

16 Q. And would you briefly give the jury your personal  
17 experience in that regard, sir?

18 A. I wrote software was used by over a thousand CPA firms  
19 around the world and I participated in creating licenses and  
20 negotiating licenses for my firm. I've also worked on a  
21 number of cases that involved licensing issues.

22 Q. And by worked on, you worked as a CPA?

23 A. Yes.

24 Q. Yes, sir. How many hours would you say you spent on this  
25 case, Mr. Regan?

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1 A. Approximately 100 myself, personally and the people in my  
2 firm have invested about another 500 hours.

3 Q. What rate do you bill at, sir?

4 A. \$410 an hour.

5 Q. Your Honor, I offer Mr. Regan as an expert with respect to  
6 the damages in this case.

7 THE COURT: Any questions?

8 MR. BAHLER: No, Judge.

9 Q. Mr. Regan, would you explain to the Judge what a  
10 reasonable royal city is in the context of this allegation of  
11 infringement by Pathlight?

12 A. Reasonable royalty is like a lease on the building, you're  
13 allowing somebody to use your property for a period of time  
14 and a reasonable royalty is what is the amount of the licensor  
15 and licensee will pay for that right of use.

16 Q. And is this the type of negotiation between, say,  
17 Microsoft and someone that wants to use their operating  
18 system?

19 A. Well, I characterize that as a different environment  
20 because Microsoft wants people to use their operating systems.  
21 They want people to use their application software because  
22 Microsoft is in the business of licensing its products and it  
23 needs a partner to put it into computers which will enable it  
24 to be used and be useful.

25 Q. Is Crossroads in that business, sir?

1 A. Crossroads is not in the business of licensing product.

2 Q. Back in 1999, a hypothetical negotiation was taking place,  
3 sir, correct?

4 A. Yes. The law indicates that in an instance where there's  
5 infringement, in a determination of reasonable royalty, you  
6 need to assume that a hypothetical negotiation would have  
7 taken place immediately before the first sale.

8 Q. And that negotiation would have taken place between  
9 Crossroads and Pathlight?

10 A. Yes, sir.

11 Q. To put us back in the 1999 time frame when this would have  
12 taken place, how did the market share compare with respect to  
13 Crossroads and Pathlight?

14 A. My understanding is Crossroads maintained about at 98  
15 percent market share in the router community.

16 Q. And let me --

17 A. Router marketplace.

18 Q. Let me introduce Plaintiff's Exhibit 52.

19 THE COURT: What's the number?

20 MR. ALBRIGHT: Plaintiff's 52, your Honor.

21 MR. DELLETT: Objection. Hearsay.

22 THE COURT: Let me see it.

23 MR. ALBRIGHT: Your Honor, may we approach the bench  
24 for a second?

25 THE COURT: You may.

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1 (At the Bench, on the record.)

2 MR. ALBRIGHT: Your Honor, number one, it's something  
3 that an expert can consider but number two, what I wanted to  
4 bring up outside the presence of the jury was we discussed  
5 these matters with each other before the trial began, and we  
6 had an agreement that documents were produced by the parties  
7 in this matter. They were in the Crossroads documents or if  
8 they were Pathlight documents that we would not receive an  
9 objection of hearsay so we can move the case more quickly.

10 We provided all of these exhibits over a week ago. We  
11 gave them the numbers last night to make certain we wouldn't  
12 have to take care of these kind of objections during trial.

13 MR. DELLETT: Your Honor, this is excerpts from the  
14 Pathlight document. I'm not contesting that it is a Pathlight  
15 document, but it's excerpts from a document without any  
16 sponsor at all. The witness has testified about it. I don't  
17 have any objection to Mr. Regan to talk about it, but I don't  
18 want this document in evidence without a sponsor for it.

19 THE COURT: Well, I don't know what it is, but --

20 MR. DELLETT: It's a Crossroads --

21 MR. ALBRIGHT: Your Honor, it's simply a document --

22 MR. DELLETT: No witness to sponsor it at all.

23 THE COURT: During the recess, you will get a witness  
24 to sponsor it and it will run on your time. Members of the  
25 jury, I'm going to give you a lunch break. I'd like you to be

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1 ready to come back at 1:15.

2 (Jury not present).

3 THE COURT: Let me look at 52 because my  
4 understanding, it is a document that's been circulated by and  
5 between the parties and is a document of the plaintiff,  
6 Crossroads'?

7 MR. ALBRIGHT: Yes, sir, your Honor.

8 THE COURT: Mr. Regan, I'm going to excuse you, sir.  
9 If you'll be in the hall, please. All right. As I understand  
10 it, it's represented by Mr. Albright that there was some sort  
11 of agreement that documents would be admitted as documents if  
12 they were by the parties. Now, this is a document of  
13 Crossroads trying to be admitted by Crossroads which if  
14 admitted, would, at least, establish a market share of  
15 Crossroads, Pathlight, Chaparral, CNT and ATTO, whatever that  
16 is.

17 So I'll hear arguments on it. I can't imagine anybody  
18 agreeing just to let this get in. I mean, are you going to  
19 have any other evidence of market in this case?

20 MR. ALBRIGHT: Your Honor, I believe that's what we're  
21 going to put on is the market share.

22 THE COURT: What is your idea of the agreement that  
23 you set out? I assume it's not in writing.

24 MR. ALBRIGHT: The agreement was I discussed with Mr.  
25 Bahler, I specifically discussed with him in the necessity of

1 having to put on Crossroads people to prove up documents that  
2 were produced by Crossroads, and we exchanged exhibits over a  
3 week ago so that we would have notice if we had to put  
4 something on in our case in chief before the expert were to  
5 rely on it.

6 And this was the specific type of document -- let me  
7 take that back. We were concerned about all these documents  
8 just in terms of getting this case done as quickly as possible  
9 and not using up unnecessary time with witnesses to lay the  
10 foundation for the expert to render his opinion.

11 I believe the expert could render his opinion, he  
12 could consider that. And if Mr. Dellett's problem is simply  
13 that it shouldn't be -- that particular document shouldn't be  
14 admitted, it's only a demonstrative exhibit, then, you know,  
15 perhaps we could handle it that way and Mr. Regan can just  
16 testify with regard to what's in it.

17 MR. DELLETT: That's exactly my objection. I'm not  
18 saying that Mr. Regan can't rely on this in whatever way he is  
19 going to testify to. I'm not acknowledging the relevance of  
20 it or anything. But to the extent Mr. Regan wants to rely on  
21 that, he's entitled to without the exhibit being admitted into  
22 evidence.

23 MR. ALBRIGHT: Your Honor, that's fine with us.

24 THE COURT: All right.

25 MR. ALBRIGHT: And what I'll do, your Honor, is I'll

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1 meet with Mr. Dellett during the lunch break and we'll make  
2 certain that there are no --

3 THE COURT: Is it the plaintiff's thought that there  
4 need not be any independent evidence of market -- on market  
5 share put in this record before any damages can be allowed?

6 MR. ALBRIGHT: Your Honor, I believe that Mr. Regan's  
7 --

8 THE COURT: Mr. Regan says he was advised. That's  
9 what he said. That's what his testimony is, what's in the  
10 record. I don't know who advised him.

11 MR. ALCOCK: Your Honor, perhaps I could speak to  
12 this. There's no evidence, there's no lost profits theory  
13 being articulated.

14 THE COURT: Well, I understand that.

15 MR. ALCOCK: So with no lost profits theory being  
16 articulated, the only issue is how many sales they had and  
17 what the reasonable royalty is.

18 THE COURT: Well, that's true and if you're going to  
19 do that with market share without any substantive evidence  
20 what the market share is if there's that trouble with this  
21 old, sore back lawyer, you'll have trouble with the records on  
22 damages.

23 MR. ALCOCK: My point is there needs not be evidence  
24 of market share under reasonable royalty theory.

25 THE COURT: I agree. Is the thought of the

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1 plaintiff's counsel going to be to extrapolate from market  
2 numbers?

3 MR. ALBRIGHT: No, sir.

4 THE COURT: I'm sorry. I was on the wrong train.

5 MR. ALBRIGHT: Just to let counsel -- all I'm trying  
6 to do is have Mr. Regan put in perspective in terms of when  
7 the hypothetical negotiations were taking place in 1999, what  
8 their respective market shares were. We are not going to  
9 extrapolate or rely on that information with respect to our  
10 reasonable royalty claim.

11 THE COURT: Y'all worked out this one. Do you  
12 anticipate anything else with the witness reading?

13 MR. ALBRIGHT: We gave last night the list of exhibits  
14 to them.

15 MR. DELLETT: We've got objections. I'm going to have  
16 to go exhibit by exhibit. We've already informed you, but I  
17 think we can work that out over the lunch hour.

18 THE COURT: All right. Y'all be back at 1:00.

19 (Lunch recess.)

20 THE COURT: Anything before we bring in the jury?

21 MR. ALBRIGHT: Your Honor, I just want to clear, I am  
22 permitted to offer P-52 for demonstrative purposes only. And  
23 we've worked out with respect to all the other exhibits.

24 MR. DELLETT: That's right.

25 THE COURT: All right. Bring the jury in.

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1 (Jury present.)

2 THE COURT: Members of the jury, the during the noon  
3 hour, did anyone attempt to talk to you about this case?

4 THE JUROR: No.

5 THE COURT: Did you talk to anybody about the case?

6 THE JUROR: No.

7 THE COURT: And did you learn anything at all about  
8 the case outside the presence of each other and this  
9 courtroom?

10 THE JUROR: No.

11 THE COURT: See how together you are? Show negative  
12 responses to all questions by all jurors. Mr. Albright, you  
13 may continue.

14 MR. ALBRIGHT: Thank you, your Honor.

15 MR. ALBRIGHT: Your Honor, may I remind them where we  
16 were before the lunch break?

17 THE COURT: All right with me.

18 Q. (BY MR. ALBRIGHT) Mr. Regan, we were about to discuss the  
19 situation back in 1999 with respect to Crossroads and  
20 Pathlight in terms of the market share that they had and I'm  
21 going to show you a demonstrative exhibit. Could you pull up  
22 052001? Mr. Regan, would you explain what that is, please,  
23 sir?

24 A. This is a chart which is plotting the market share and  
25 it's the market share for the year 1999. It shows Crossroads

1 at 73 percent. Pathlight at 14 percent. And it's  
2 demonstrated, also, in a bar graph here, plotted on millions  
3 of revenue for 1999.

4 Q. And with respect to your determination of parties's  
5 position with respect to the hypothetical negotiation, did you  
6 take into consideration, sir?

7 A. Yes, sir. This is for all of 1999 and as I said earlier  
8 in the summer of 1999, I've seen documents indicating that  
9 Crossroads had approximately 98 percent of the market, the  
10 router market.

11 Q. Now, when a person like yourself, forensic accountant,  
12 tries to determine what a reasonable royalty rate ought to be,  
13 there are Georgia Pacific factors that you take into  
14 consideration, correct?

15 A. Yes, sir. That comes from some litigation where Georgia  
16 Pacific was a party.

17 Q. Okay. And are these the Georgia Pacific factors that you  
18 took into consideration?

19 A. Yes, I did.

20 Q. Okay. Do you take all 15 in consideration?

21 A. I considered all 15, some I think are more important than  
22 others.

23 Q. Tell the jury if you would, please, sir, which are the  
24 ones that are more important are?

25 A. I particularly think No. 2 and No.

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1 Q. 5?

2 A. 5, excuse me. No. 5.

3 Q. Let me help the jury out here with a demonstrative exhibit  
4 595, and if you would tell the jury what category No. 2  
5 represents, please, sir.

6 A. Category No. 2 is whether or not there are in place  
7 royalty rates based upon actual agreements involving the  
8 parties, and so I look for are there rates in place based upon  
9 real negotiations involving real parties.

10 Q. And in this case, were there real negotiations that had  
11 taken place between real world parties?

12 A. Yes, there were.

13 Q. And what did you take in consideration if that regard, Mr.  
14 Regan?

15 A. A 1998 agreement between Crossroads and Hewlett Packard  
16 involving similar technology.

17 Q. Okay. I'm going to show a demonstrative exhibit 597,  
18 which will show the jury No. 5 which you discussed. Would you  
19 let the jury know what's represented there under No. 5,  
20 please, sir, and why it was important in your determination of  
21 a reasonable royalty?

22 A. No. 5 shows two boxes. The first box is where the parties  
23 to the hypothetical negotiation are partnering together, like,  
24 Microsoft and Dell. Microsoft wants to place its operating  
25 system into a Dell computer. They want to partner and

1 hopefully profit together. Also, HP and Crossroads were in a  
2 partnering situation when they established the royalty that I  
3 was looking at in the 1998 agreement.

4 And this would contrast with the relationship that was  
5 in place for this hypothetical negotiation and that Crossroads  
6 is a dominant player in the router marketplace as indicated by  
7 its market share in the summer of 1999. And a hypothetical  
8 negotiation that we're asked to look at in this matter would  
9 take place just before the first infringement, which is  
10 basically the end of August, beginning of September.

11 And Crossroads is basically going to go to the table  
12 and being asked to give up, provide a tool to a competitor  
13 which might take away its revenue and its market share.  
14 That's a different circumstance. It's a different environment  
15 and it calls for a different negotiation methodology and  
16 results.

17 Q. When you were coming up with what you believe to be a  
18 reasonable royalty rate, did you take into consideration  
19 whether or not Crossroads and Pathlight are competitors?

20 A. I did.

21 Q. And direct competitors?

22 A. Yes.

23 Q. And what information -- give the jury an example of the  
24 information that you relied on to form your opinion that they  
25 were, in fact, direct competitors?

1 A. I have seen testimony of the CEO of Pathlight, Mr. Hood,  
2 and the CEO of Crossroads, Mr. Smith, they've both taken the  
3 position that they were competitors. I've also seen a variety  
4 of documents that are Pathlight and Crossroads documentation  
5 which address the competitive relationship.

6 Q. Let me show you, for example, Plaintiff's Exhibit 147, and  
7 ask you if you would, please, sir, to tell the jury what 147  
8 is, please, sir.

9 A. Yes, this is a Pathlight document and it's a multi-page  
10 document analyzing the competitive analysis of the  
11 marketplace, and this is the facing page. It follows a number  
12 of pages and there's a discussion within that document of a  
13 entity called Chaparral and Crossroads systems. And it  
14 focuses on their products and how they compete with those  
15 companies, they being Pathlight.

16 Q. Move for admission of 147, your Honor?

17 MR. DELLETT: No objection.

18 THE COURT: Received.

19 MR. ALBRIGHT:

20 Q. Mr. Regan, as an accountant, I take it in formulating your  
21 damage opinion, you looked at a fair number of documents just  
22 to the vanilla nature in terms of sales of both parties's  
23 profit margins, cost, the type of things that forensic  
24 accountants look at in determining things like profit margin,  
25 costs and those type of matters, correct?

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1 A. Yes.

2 Q. I'm going to--you have in front of you but if you would  
3 follow along with me -- exhibit 25, 26, 27, 46, 55, 35, 36,  
4 37, 38, 149 and 150. Are those documents documents that  
5 contain information that you relied on in coming up with your  
6 opinion with respect to the reasonable royalty rate in this  
7 case?

8 A. Yes, sir.

9 Q. I move for admission of those documents, your Honor?

10 MR. DELLETT: No objection.

11 THE COURT: They're received.

12 MR. ALBRIGHT:

13 Q. When you were putting together your calculations, Mr.  
14 Regan, did you put together a chart that basically showed the  
15 impact that the inclusion of the VPS software had with respect  
16 to Pathlight sales?

17 A. Yes.

18 Q. I'm going to show demonstrative exhibit 549. Would you  
19 tell the jury what exhibit 549 represents, Mr. Regan?

20 A. 549 plots the monthly revenues of Pathlight for 1999 and  
21 the year 2000. The green line is the amount of revenue  
22 recorded by Pathlight. There is a vertical black line which  
23 is approximately December of 1999, which is the date on which  
24 the VPS software was first enabled in the product. Although  
25 with respect to many of the prior sales, the customer that --

1 one of the customers which is a principal customer here was  
2 IBM and it asked that VPS be enabled on these prior sales, as  
3 well.

4 So this demonstrates that prior to the enabling of  
5 VPS, the sales of Pathlight were at modest levels in  
6 comparison to the very substantial increase that occurred in  
7 the year 2000.

8 Q. And did that very substantial increase in sales include a  
9 VPS play any part in your determination of a reasonable  
10 royalty rate in this case?

11 A. It's consistent with Pathlight documents which indicate  
12 that it is a huge benefit and a competitive necessity in the  
13 product.

14 Q. Do you also calculate with respect to the sales numbers  
15 that go along with the inclusion of the infringe products?

16 A. I do.

17 Q. I'm going to show exhibit 573, demonstrative exhibit 573  
18 to the jury. Would you tell the jury what that represents,  
19 please, sir?

20 A. This is a chart that comes from a sales database that we  
21 put together, analyzing the -- for the period September 1,  
22 1999 through April 27, 2001, Pathlight sales and identified  
23 those sales which did not contain infringing product, those  
24 sales during that period which did. You can see that the  
25 sales that did not contain infringing product were

1 approximately a million 355 and the sales with infringing  
2 product were \$21,899,000. That's also a total bar on the  
3 chart.

4 Q. Okay. With respect to all the information that we've  
5 shown the jury up to this point and that you considered with  
6 respect to the exhibits that we've admitted, did you come up  
7 with what you believe would be a reasonable royalty rate in  
8 this case, Mr. Regan?

9 A. Yes, I do.

10 Q. I'm going to demonstrative exhibit 545. Okay. Would you  
11 tell the jury what the reasonable royalty rate that you  
12 believe is appropriate in this case?

13 A. 30 percent.

14 Q. Okay. Now, you also have at the top of that exhibit  
15 calculated royalty rate from the Hewlett Packard C P 4200  
16 agreement of 19 percent. Who calculated that figure of 19  
17 percent?

18 A. I did.

19 Q. So when the jury is trying to figure out what we're  
20 talking about here in that situation, the licensor or licensee  
21 agreement was a prospective agreement?

22 A. Yes.

23 Q. Between two parties who are trying to work out a business  
24 plan?

25 A. Yes.

1 Q. And you determined that they came together and agreed with  
2 19 percent?

3 A. Yes.

4 Q. Now, are there factors that make it appropriate for the  
5 royalty rate that Pathlight would be expected to pay higher or  
6 lower than what Crossroads is receiving from Hewlett Packard?

7 A. Yes there are and I've listed some of the more important  
8 factors on this chart.

9 Q. And I'm certain the jury can figure it out, but if you'd  
10 like clear on the record, is it appropriate for Pathlight to  
11 be expected to pay more as a result of a hypothetical  
12 negotiation than Hewlett Packard or less?

13 A. I believe that they would pay more as a result of these  
14 factors.

15 Q. And would you explain to the jury why you have that  
16 opinion, Mr. Regan?

17 A. The first factor is that Crossroads and Pathlight are  
18 direct competitors, so they're going to be sitting down at a  
19 hypothetical negotiation and Pathlight is trying to receive a  
20 product from Crossroads which Pathlight has described as  
21 providing a huge benefit, a competitive necessity to its  
22 product.

23 Crossroads doesn't want to give them this product and  
24 take away its market share, lose its revenue. Revenue is king  
25 in that time frame, particularly in the high tech world 1999,

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1 2000, revenue and market share. They don't want to give that  
2 away. So that -- I believe Mr. -- Dr. Flamm agrees with me  
3 as to that -- as an item which will cause the reasonable  
4 royalty to increase over the friendly royalty, the cooperative  
5 royalty that's been established.

6 Q. Okay.

7 A. Now, in addition, Crossroads is trying to negotiate with  
8 Pathlight. Pathlight is not a Hewlett Packard. Hewlett  
9 Packard is a very respected name, very respected brand. It's  
10 very nice to be associated with Hewlett Packard. And Hewlett  
11 Packard is also a major shareholder in a major customer of  
12 Crossroads. It helped it provide seed money, early money to  
13 Crossroads. They had an important relationship.

14 Q. Okay. Was the technology at issue in the negotiation  
15 between Hewlett Packard and cross road similar to the  
16 negotiation that would take place in this case?

17 A. My understanding is that it was.

18 Q. Okay. Now, I anticipate that we might hear a little bit  
19 that 30 percent is a very substantial percentage. I'm going  
20 to show you demonstrative exhibit 574, and if you would tell  
21 the jury what this represents.

22 A. Well, this represents a summary of an analysis that we did  
23 of Pathlight's gross profit margin during the infringement  
24 period. The gross profit margin is the net revenues  
25 subtracting materials and labor and other costs that are

1 necessary to produce the product. That yields a gross margin  
2 of approximately 57 percent.

3           What I did is took the position that with respect to  
4 the hypothetical negotiation, with this kind of strong gross  
5 margin, Crossroads does not have great incentive to lease this  
6 technology. It's not in this business. It's in this business  
7 to sell routers. If it is going to give it largest competitor  
8 a significant advantage and capability to produce profits, I  
9 think it's reasonable that Crossroads would want approximately  
10 half of those products.

11 Q. Comparing this -- what you shown here in terms of the  
12 profit margin that Pathlight was able to Garner how would that  
13 compare to the typical examples say in the computer industry  
14 or semi conductor industry?

15 A. Much in the semi conductor industry the profit margins are  
16 much, much smaller.

17 Q. Much smaller than the 57 percent they were able to obtain?

18 A. Yes.

19 Q. Now I anticipate that we will hear testimony from  
20 Pathlight's expert that the appropriate royalty ought to be  
21 about \$116 per product. Are you aware of that, sir?

22 A. I'm aware of that, yes.

23 Q. And could you tell the jury, please, sir, what the average  
24 price so they understand and can put the \$116 in perspective,  
25 can you tell them what the average Pathlight gateway sells

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1 for, what the price is?

2 A. In this time frame, the average was approximately \$6,800.

3 Q. So roughly using your C P A skills here, they're probably  
4 better than mine in terms of math, if they sell for \$6800 and  
5 they're making roughly 57 percent gross profit margin on it,  
6 what does that work out in dollars?

7 A. About \$4,000.

8 Q. Okay. And if Dr. Flamm were to suggest that the  
9 appropriate rate were \$116, would you think that that would be  
10 an appropriate royalty for Pathlight to pay no Crossroads?

11 A. No. I don't think Crossroads would ever agree to such an  
12 agreement.

13 Q. And have you done a calculation as to what \$116 represents  
14 as a percentage of the sales price of \$6800?

15 A. Yes.

16 Q. And what is that amount?

17 A. 1.7 percent.

18 Q. Given everything you've looked at and in your expert  
19 opinion, do you have an opinion, sir, as to whether or not a  
20 1.7 percent royalty rate would be an appropriate amount to  
21 expect Crossroads to accept for the amount of damage that it's  
22 incurred?

23 A. Yes.

24 Q. You would expect 1.7 to be adequate?

25 A. I'm sorry. I thought you said do I have an opinion as to

1 whether it was --

2 Q. Would you tell the jury what the opinion is?

3 A. I don't believe that that's near appropriate.

4 Q. Okay. Let's turn to the subject of IBM. Are you familiar  
5 with IBM and its relationship to Pathlight?

6 A. Yes.

7 Q. In the -- in terms of customers of Pathlight, where does  
8 IBM rank?

9 A. I think in 1999, it represented something greater than 90  
10 percent of Pathlight's revenues and in the year 2000, it was  
11 very close to 90 percent of Pathlight's revenues.

12 Q. Okay. And do you think that it was -- that the VPS  
13 function was an important function to IBM?

14 A. Yes.

15 Q. I'm going to show you exhibit -- Plaintiff's Exhibit 157.  
16 In the middle there, it reads that the VPS option is a must  
17 for large enterprise configurations. And this is in October  
18 5th, 1999 letter from Mr. Hood to IBM, correct?

19 A. Yes.

20 Q. And what is he shown there?

21 A. That Pathlight is recommending that IBM upgrade the  
22 existing SAN gateway to include the VPS option which is  
23 characterized as a must for large enterprise configurations.

24 Q. Move for admission of 157, your Honor?

25 MR. DELLETT: No objection.

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1 THE COURT: Received.

2 MR. ALBRIGHT:

3 Q. I'm now going to show you Plaintiff's Exhibit 49. This is  
4 November 24th, 1999 letter from Mr. Hood, again, and I'll ask  
5 you to look at this particular section which states:  
6 Richards, other companies that IBM competes with are design  
7 something this option as well as writing special software will  
8 integrate path lick's solution with their software. We believe  
9 it is a competitive necessity for IBM to adopt this new SAN  
10 gateway configuration and that this quotation represents a  
11 very special value.

12 Did you take that in consideration when you were  
13 determining an appropriate royalty.

14 A. Yes, sir, because it indicates that in order to compete  
15 with this product, this capability is necessary.

16 Q. Move for admission of that exhibit, your Honor?

17 MR. DELLETT: No objection.

18 THE COURT: Is it 154?

19 MR. ALBRIGHT: I believe it's 149, your Honor.

20 MR. DELLETT: 49.

21 MR. ALBRIGHT: 49, your Honor.

22 THE COURT: All right, 49.

23 MR. ALBRIGHT:

24 Q. Finally, one more quick IBM document, Plaintiff's Exhibit  
25 43. This is a letter dated May 4th, year 2000 from Mr. Hood,

1 again, CEO of Pathlight to IBM. What does this represent, Mr.  
2 Regan?

3 A. This is a letter which is offering IBM a one-year license  
4 for VPS, and it's discussing that one-year license will carry  
5 a price of \$1,875,000 plus \$281,250 for maintenance contract  
6 on that.

7 Q. So is Pathlight selling this to them for that much money?

8 A. No. It's a one-year license to use.

9 Q. So that's what Pathlight believes it's worth?

10 A. That's what Pathlight is offering it to IBM for a one-year  
11 use.

12 Q. Do you take that in consideration with determining what  
13 you believe was a reasonable royalty in this case?

14 A. Yes, that's a consideration.

15 Q. Okay. I've just got a couple of more documents and I'll  
16 be done, Mr. Regan. I'm going to show you Plaintiff's Exhibit  
17 153 and page 92 of that. And actually, your Honor, I'd move  
18 for the admission of 43.

19 MR. DELLETT: No objection.

20 THE COURT: Received.

21 MR. ALBRIGHT:

22 Q. And with respect to page 92 of exhibit 153, this states  
23 that -- this is page from the Pathlight web site is it not?

24 A. Yes.

25 Q. And it states, this is accomplished by SAN gateway's

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1 access control features which include channel control zoning  
2 or the channel zoning we've heard about this morning, and  
3 optional VPS. Such access control is an absolute necessity for  
4 multi-host SAN solutions. Did you take this in consideration  
5 in determining what a reasonable royalty rate would be?

6 A. Yes. Again, because it's being considered in the mind of  
7 Pathlight an absolute necessity toward its customers, it's an  
8 indication of its strong importance.

9 Q. Move for admission of 153, your Honor.

10 MR. DELLETT: Subject to the agreement by the parties  
11 as to what pages this includes.

12 THE COURT: Well, he's only offering in 92 as I  
13 understand.

14 MR. ALBRIGHT: It be fine to do it at this moment that  
15 way, as well, your Honor, page 92. That will be fine.

16 MR. DELLETT: No objection.

17 THE COURT: All right. 92, 153, page 92 is admitted.

18 MR. ALBRIGHT: Finally, your Honor, I'm going to have  
19 Mr. Regan look at Plaintiff's Exhibit 51, which is Pathlight  
20 document.

21 MR. ALBRIGHT:

22 Q. I believe this is about the third page down. Mr. Regan,  
23 this states -- this is Pathlight document which states that  
24 resource sharing enabling sharing of storage resources and  
25 network connections while avoiding potential conflicts that

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1 cause data or systems corruption and/or interrupt other  
2 processes. It provides unique zoning and VPS capabilities.  
3 VPS software provides the only LUN masking solution in the SAN  
4 market viewed as a huge benefit by many OEMs?

5 Did you take this document of Pathlight's statement in  
6 consideration in determining your reasonable royalty rate?

7 A. Yes, particularly the language about unique zoning and  
8 virtual private SAN and providing a huge benefit by many OEMs,  
9 which is an acronym for original equipment manufacturer which  
10 is many of Pathlight's clients were OEMs.

11 Q. To summarize, Mr. Regan, you believe that it would be  
12 appropriate for the jury to award a reasonable royalty rate of  
13 30 percent, correct?

14 A. Yes.

15 Q. I'm going to show you demonstrative exhibit 543, and would  
16 you explain to the jury what that document represents, please,  
17 sir?

18 A. This document summarizes the infringing sales, the gateway  
19 products, the router products, and totals the infringing  
20 sales, applies the 30 percent reasonable royalty rate to  
21 arrive at a total of \$6,569,597.

22 Q. And in your expert opinion; that the amount of royalty  
23 that's appropriate in this case?

24 A. Yes.

25 Q. Your Honor, I failed to move for the admission of 51,

1 which was the exhibit before. I move at this time.

2 MR. DELLETT: No objection.

3 THE COURT: Received.

4 MR. ALBRIGHT: Thank you, sir.

5 MR. ALBRIGHT:

6 Q. Mr. Regan, to summarize, does this demonstrative exhibit  
7 reflect your calculation of an appropriate reasonable royalty  
8 rate to make Crossroads whole with respect to the damages it  
9 suffered through the infringing actions of Pathlight?

10 A. Yes.

11 Q. And do you believe that the calculation that you did there  
12 and the results royalties of about six and a half million  
13 dollars is an appropriate calculation?

14 A. I do.

15 Q. I pass the witness.

16 CROSS-EXAMINATION

17 BY MR. DELLETT:

18 Q. Good afternoon.

19 A. Good afternoon.

20 Q. Now, Mr. Regan did you do any analysis yourself as to  
21 whether or not Pathlight infringes the 972 patent?

22 A. The determination of infringement is something which I  
23 looked to for others to testify about.

24 Q. So you have no opinion of whether or not Pathlight  
25 infringes, correct?

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1 A. I don't have an opinion. That's not an area of expertise  
2 that I have.

3 Q. Okay. Do you have any opinion as to whether or not the  
4 972 patent is valid?

5 A. Again, I don't consider that in my area of expertise.

6 Q. That's outside your area of expertise?

7 A. Yes.

8 Q. Thank you. Now, did you just assume that the patent was  
9 valid and infringed?

10 A. It's the result of having seen testimony of others,  
11 reports of others. I've read the report of Dr. Hodges and  
12 based upon those documents, I believe that there was enough  
13 information so that it appeared to be a valid presentation.

14 Q. Did you read the reports of any of Pathlight's experts?

15 A. Yes.

16 Q. Did you read the reports of Pathlight's experts that said  
17 that the patent was invalid?

18 A. I believe so, yes.

19 Q. And did you make any assessment in whether or not they  
20 were correct?

21 A. Again, that's not an area where I consider myself to have  
22 expertise, so I look to others to make that determination for  
23 me.

24 Q. So you don't have any --

25 A. Any calculations are based upon there being a patent and

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1 that it's a valid patent and that these are infringing  
2 products.

3 Q. So you're not making any judgment here as to whether or  
4 not Pathlight's experts are correct or Crossroads's experts as  
5 to validity or infringement?

6 A. Not with respect to validity.

7 Q. All right.

8 A. Or infringement.

9 Q. Not with respect to infringement?

10 A. That's correct.

11 Q. All right. Now, I understand you're a forensic  
12 accountant. In your career as a forensic accountant, have you  
13 ever done a patent license negotiation that resulted in a  
14 license of a patent?

15 A. I've never been a percipient in a negotiation on a patent.  
16 I have participated in negotiation of other intellectual  
17 property but not a patent.

18 Q. So it's correct that you have never participated in a  
19 license negotiation for a patent that resulted in a license of  
20 that patent, correct?

21 A. That's correct.

22 Q. Okay. Now, you have spent substantially all of your time  
23 on litigation since approximately 1990?

24 A. Yes, I have spent substantially all of my client-related  
25 time, relates to matters that are involved in litigation.

1 Q. And in all of that time, is it more than ten years that  
2 you've done that?

3 A. Yes.

4 Q. And in all of that time, is it correct that not only two  
5 occasions, you have provided opinions as to the amount of a  
6 reasonable royalty for a patent?

7 A. I think in terms of actual testimony that is likely to be  
8 accurate. I have done -- issued reports and assisted in cases  
9 which settled prior to trial.

10 Q. But in only two occasions, you've testified before a court  
11 as to what a reasonable royalty should be for a patent,  
12 correct?

13 A. I believe that's correct, yes.

14 Q. Okay. And this is the third time, right?

15 A. Yes.

16 Q. Okay. Let's go back to the first time, you testified that  
17 a patent ownership get a 25 percent royalty; isn't that right?

18 A. That was in a deposition, I think, and that's consistent  
19 with my recollection.

20 Q. And the second time that you testified as to reasonable  
21 royalty for a patent, you said the defendant should pay a  
22 three percent royalty, right?

23 A. Again, I think in that instance, that was in a deposition,  
24 and I think that particular royalty -- I don't think that was  
25 a patent. Have you got a page in my deposition?

- 1 Q. Sure. It had to do with a company called Hewlett Packard?
- 2 A. Which page?
- 3 Q. Page 12 -- excuse me, page 11.
- 4 A. Maybe I'm looking at the wrong page 11, but I don't see
- 5 that on my page 11.
- 6 Q. Do you recall any other instances where you testified as
- 7 to what a royalty rate should be for a patent?
- 8 A. I recall the Hewlett Packard case and my recollection in
- 9 that case is that it was a small royalty. It involved a
- 10 patent relating to the definition of --
- 11 Q. Dr. Regan, just answer the questions, please. Now, is
- 12 your opinion that the royalty should be 30 percent, is that
- 13 based on actual licenses you've negotiated in the computer
- 14 industry?
- 15 A. No.
- 16 Q. Is it based on actual royalty rates that you remember
- 17 seeing in the computer industry?
- 18 A. I've seen a variety of rates in the computer industry.
- 19 Q. And --
- 20 A. Both as to copyright and patents.
- 21 Q. Okay. Now, is it correct, then, that you have no actual
- 22 experience negotiating royalty rates for patents where an
- 23 actual license was reached between the parties?
- 24 A. That's correct.
- 25 Q. Okay. And so your royalty rate here is based on a

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1 hypothetical negotiation?

2 A. Yes, there was no real negotiation here.

3 Q. No real negotiation?

4 A. You had to assume a hypothetical negotiation in  
5 accordance with the Georgia Pacific requirement.

6 Q. In that hypothetical negotiation, would somebody from  
7 Crossroads be present?

8 A. I would expect that to be the case, yes.

9 Q. Like Mr. Smith?

10 A. He may have attended, yes.

11 Q. And from Pathlight at the hypothetical, would somebody  
12 like Mr. Rahmani be present?

13 A. It would be up to the parties as to who to participate in  
14 the discussions.

15 Q. And in your opinion, could Mr. Smith or Rahmani ask other  
16 people to assist them in the hypothetical negotiation?

17 A. Yes.

18 Q. And would you be able to provide them any useful advice of  
19 that hypothetical negotiation?

20 A. If I were asked?

21 Q. If you were asked.

22 A. I believe I could.

23 Q. Okay. Why do you believe you could?

24 A. I have studied in this area, and as I have said, I have  
25 participated in licenses for other intellectual property.

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1 Q. Do you think Mr. --

2 A. I could analyze factors which are important to a  
3 determination of what a reasonable royalty is and what people  
4 have used to determine what a reasonable royalty is, and that  
5 includes market share, impact on revenues, gross margins,  
6 those types of things.

7 Q. Do you think either Mr. Smith or Mr. Rahmani would want  
8 you at a hypothetical negotiation?

9 A. Well, nobody can really be at a hypothetical negotiation.  
10 That's something that doesn't exist.

11 Q. Okay. So you don't know --

12 A. Really impossible to attend a hypothetical negotiation.

13 Q. Okay. Now, let me ask you about some of the things now.  
14 If you were helping Mr. Smith or Mr. Rahmani at a hypothetical  
15 negotiation, could you tell them if Pathlight could make  
16 storage routers at all without using the 972 patent?

17 A. That would not be a part of my expertise.

18 Q. And that didn't enter your mind in coming to your opinion  
19 that a royalty should be 30 percent, did it?

20 A. Well, I have seen that statement made that there could be  
21 a work around or there could be costs incurred by Pathlight,  
22 but I know that Pathlight didn't do a work around, at least  
23 that's my understanding.

24 Q. Now, when you came up --

25 A. And so --

1 Q. Excuse me. When you came up with the 30 percent royalty,  
2 did you have any idea whether Pathlight could make storage  
3 routers without using the 972 patent?

4 A. My understanding is that they didn't and that was a  
5 consideration.

6 Q. Okay. But you don't know whether they could or not?

7 A. I don't know whether they could without infringing.

8 Q. Okay. Do you know if Pathlight would have to reduce it --

9 A. Excuse me. I don't know whether they could do it without  
10 infringing and whether they could provide the same level of  
11 benefit.

12 Q. You don't know one way or another today?

13 A. No. I don't know whether they could do both of those  
14 things.

15 Q. Okay. And you didn't know one way or another when you  
16 wrote your opinion that the royalties should be 30 percent?

17 A. That's correct.

18 Q. Now, if you were at the hypothetical negotiation helping  
19 Mr. Smith or Mr. Rahmani, would you be able to tell them that  
20 Pathlight would have to reduce its prices if it took out  
21 access controls?

22 A. That's something you would consider. You would consider  
23 not only reduction of price, but whether or not the product  
24 would be accepted at all.

25 Q. But you didn't consider --

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1 A. If it's essential, if it's an absolute necessity to be  
2 competitive and you don't have it in your product, it may  
3 require more than a price reduction.

4 Q. But you didn't consider that in coming up with your 30  
5 percent royalty, did you?

6 A. I don't believe I did consider it. I considered it a  
7 reciprocal that it was a huge benefit, that it is a  
8 competitive necessity, it is something which you would want to  
9 have in your product in order for your product to successfully  
10 compete. And I'm driving towards the resolution of Pathlight  
11 and Crossroads having a negotiation where Pathlight leaves the  
12 room with an ability to compete and have this license. What  
13 would the amount that they would need to pay.

14 Q. Objection. Move to strike. Mr. Regan, I'm going to ask  
15 questions that I believe you can answer yes or no. And if you  
16 can't answer yes or no, I'd appreciate you just saying you  
17 can't answer yes or no. Okay?

18 Now, isn't it true that you were deposed and I took  
19 your deposition on April 6th of this year?

20 A. Yes.

21 Q. Okay. And I asked you on page 85, so you would be  
22 speculating -- it's line 14 -- you would be speculating if you  
23 tried to determine how much Pathlight would have to reduce its  
24 price to get the IBM contract without the access control  
25 feature in the storage routers. Answer, yes, I'm not able to

1 tell you how much that would need to be.

2 Question, you don't know whether it would be \$100 less  
3 or a thousand dollars less or more per unit? Answer, that's  
4 correct. Or whether IBM perhaps would not have considered  
5 Pathlight? I don't know. Is that your answers?

6 A. That's correct.

7 Q. Okay. Now, if you were at a hypothetical negotiation, do  
8 you know if Pathlight would be able to achieve higher profit  
9 margins with the 972 patent?

10 A. I don't know that I could answer that question yes or no.

11 Q. Well, you answered it in your deposition, didn't you?

12 A. You probably have a page and line reference that you can  
13 take me to.

14 Q. You're right. I do. You were under oath when you  
15 testified in your deposition, correct?

16 A. Yes.

17 Q. And on page 83, line 12, I asked, do you believe that  
18 Crossroads would have been able to increase its profit margins  
19 if it used the 972 technology in its storage routers, and your  
20 answer was I don't know.

21 MR. ALBRIGHT: Your Honor, I believe and I could be  
22 wrong, but I believe when he asked the question the first  
23 time, he asked about Pathlight in direct and that question  
24 asked about Crossroads. And I just want to make sure they're  
25 talking about the same.

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1 MR. DELLETT:

2 Q. All right. Let me refer you to line 3. Do you have any  
3 opinion as to how much additional profits Pathlight made by  
4 using technology alleged to infringe the 972 patent? Answer,  
5 I haven't attempted to quantify it. I think that's a very  
6 difficult thing to do. Is that your answer?

7 A. Oh, yes, I'm agreeing it's a very difficult thing to do.  
8 And if you'd like me to explain, I would.

9 Q. Okay. What fraction of Pathlight's selling price is the  
10 access control feature?

11 A. Again, I think that's a very difficult thing to determine.

12 Q. And if you were at the hypothetical negotiation, would you  
13 be able to advise Mr. Smith or Mr. Rahmani on that?

14 A. That's something that we could discuss. I could certainly  
15 have consideration as can you sell the product without it in  
16 its competitive marketplace.

17 Q. And you --

18 A. That's very important answer.

19 Q. Is it correct that you have not determined what fraction  
20 of Pathlight's selling prices of access controls?

21 A. That's correct. I have not made that determination.

22 Q. Okay. Have you -- if you were at the hypothetical  
23 negotiation, could you advise Mr. Smith or Mr. Rahmani if a  
24 license to the 972 patent would save Pathlight any engineering  
25 costs?

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1 A. That's something we could discuss and depends upon the  
2 answers that we get as we brain storm that issue.

3 Q. That's not something you did when you came up with your 30  
4 percent reasonable royalty, is it?

5 A. Well, depends on what engineering costs you're talking  
6 about.

7 Q. Okay. Well, I asked you on -- it's on page 48, if you  
8 want to follow along there. At your deposition, I said, line  
9 11, Mr. Regan. Do you have any understanding as to whether or  
10 not Pathlight would avoid any engineering expenses by taking a  
11 licensed 972 patent? Answer: That's not a determination that  
12 I made. Question: Has anybody expressed an opinion on that  
13 issue to you? Answer: No?

14 Did I read that right.

15 A. Yes.

16 Q. Okay. Now, do you have any opinion yourself or would you  
17 be able to advise Mr. Smith and Mr. Rahmani how much it would  
18 cost Pathlight to come up with an alternative and put it in  
19 its products to what's alleged to infringe the 972 patent?

20 A. That's the kind of thing where I've been on teams where  
21 we've made that determination, but I won't do that by myself.  
22 I'll have input from others.

23 Q. And you haven't done that here?

24 A. No.

25 Q. Okay. Would you be able to tell Mr. Smith and Mr. Rahmani

1 what Pathlight's net profit margin is on SAN gate ways or SAN  
2 routers?

3 A. I would be able to help them analyze that and assist them  
4 in understanding what it is.

5 Q. They're net profit margin is not 60 percent, is it?

6 A. No. It depends on your focus, but your net profit margin  
7 which most people think about in terms of net profit margin  
8 would not be the incremental profit margin that I've  
9 calculated in this case.

10 Q. When you said gross profit margin, were you meaning  
11 incremental profit margin?

12 A. It's very similar to an incremental.

13 Q. Similar. Is it exactly the same thing?

14 A. Incremental private margin would tend to be a bit higher.

15 Q. Is Pathlight's net profit margin higher or lower than that  
16 figure?

17 A. If you were to attempt to calculate a net profit margin, I  
18 would expect that you might argue for a calculation that would  
19 be lower than an incremental profit margin and lower than a  
20 gross profit margin.

21 Q. And that's not something you did here?

22 A. No.

23 Q. If you were at the hypothetical negotiation, do you think  
24 you could advise Mr. Smith and Mr. Rahmani or anybody else if  
25 Pathlight could compete paying a 30 percent royalty?

1 A. That's something I, again, would participate in  
2 discussions and analysis as part of the team.

3 Q. But you didn't come to any conclusions on that issue in  
4 reaching your 30 percent royalty, did you?

5 A. I would expect that it would have competed and it might  
6 give them the ability to compete in the absence of acquiring  
7 this capability, their own literature indicates that they  
8 would not be able to compete.

9 Q. All right. Would you please turn to page 120 of your  
10 deposition again, line 14, and I asked you, do you recall ever  
11 seeing such a company that pays a 30 percent royalty on most,  
12 if not all of its sales, continue in business? Answer: I've  
13 not done that investigation. Was that your answer?

14 A. Yes.

15 Q. Okay. Now, would you be able to advise Mr. Smith and Mr.  
16 Rahmani what a reasonable royalty rate would be if instead of  
17 the royalty base being all SAN gateways and SAN routers if  
18 instead the royalty base were sales just to the VPS feature  
19 that's allegedly infringing?

20 A. Again, that's the kind of question which I would expect to  
21 be able to participate in on a team and make that calculation  
22 to the extent that we define the scope of the discussion.

23 Q. But you haven't done that?

24 A. Let me hear that question again, please.

25 Q. Have you ever determined what the royalty rate would be if

1 the royalty base instead of all the SAN gateways and SAN  
2 routers, if it were the royalty base were the sales, the VPS  
3 feature that's alleged to infringe?

4 MR. ALBRIGHT: Your Honor, before he answers, I have  
5 an objection. There's no evidence that only the VPS in  
6 fringes. In fact, the only evidence indicates to this date is  
7 that the entire router infringes the 972 patent. There's no  
8 evidence to even support this hypothetical for this witness.

9 THE COURT: The question is did the witness do any of  
10 these other things. I'll permit the question. You may answer  
11 it.

12 A. I have not done that.

13 MR. DELLETT:

14 Q. Okay. Now, would you be able to advise Mr. Smith or Mr.  
15 Rahmani what royalty rates Pathlight has paid for other  
16 software to be used in its products?

17 A. I would inquire as to other licenses and identifying those  
18 licenses and make calculations. I could do that.

19 Q. What royalty rates has Pathlight paid for other software  
20 of its products?

21 MR. ALBRIGHT: Your Honor may we approach the bench?

22 An.

23 (At the Bench, on the record.)

24 THE COURT: Is this information that you wouldn't  
25 permit in discovery?

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1 MR. ALBRIGHT: This is information we never got from  
2 Pathlight.

3 MR. DELLETT: You've got them.

4 MR. ALBRIGHT: We have not gotten this information.

5 MR. DELLETT: It was the subject of our expert report.  
6 It was in our documents we produced.

7 MR. ALBRIGHT: Where are they?

8 MR. DELLETT: I am not sure if they're trial exhibits  
9 or not, but we produced them.

10 MR. ALBRIGHT: Yeah, our position is that that they  
11 have not been produced to us.

12 MR. DELLETT: Well, I can get you a document number.  
13 We produced them months ago.

14 THE COURT: I don't know one way or the other.  
15 Counsel, be careful with your comments about what you did in  
16 your deposition when he didn't.

17 MR. DELLETT: Uh-huh.

18 THE COURT: Now, y'all figure out if he has that  
19 information or not, whether it's just voluntary or did y'all  
20 ask for it. You're going to have to give me some basis.

21 MR. DELLETT: I'm clearly certain it was near the end  
22 of the discovery period, and I can tell you specifically what  
23 the agreements are.

24 MR. BAHLER: Do you know the names?

25 MR. DELLETT: Yes, I can give you -- that's something

1 he learned.

2 MR. ALBRIGHT: Our concern is that the question  
3 implies that there was more than the license. We were given  
4 one license with respect to --

5 MR. DELLETT: There's some more -- well -- I can show  
6 you what was --

7 MR. ALBRIGHT: We'll withdraw the objection, let him  
8 go ahead.

9 MR. DELLETT:

10 Q. Mr. Regan, did the actual royalty rates that Pathlight  
11 pays for software impact your calculation that a royalty  
12 should be 30 percent?

13 A. No.

14 Q. Okay. Now, I believe earlier, you had testified about  
15 the proposal that Pathlight made to IBM. Do you remember  
16 that?

17 A. I do.

18 Q. And did IBM ever agree to that?

19 A. I don't believe so.

20 Q. Would you be able to tell Mr. Smith and Mr. Rahmani at a  
21 hypothetical negotiation how much per unit that \$2 million is?

22 A. You'd need to know how many units were projected to be  
23 received.

24 Q. Have you done that?

25 A. This is a price for a one-year fully paid license of

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1 \$1,875,000. It would be dependent upon how many years were  
2 acquired.

3 Q. You haven't calculated how much that would be per unit,  
4 correct?

5 A. I have not.

6 Q. Would you be able to advise Mr. Smith and Mr. Rahmani how  
7 many VPS units were put on gateway's instead of routers?

8 A. Again, you could collect the data and make that  
9 determination.

10 Q. But you haven't done that?

11 A. As I said here, I don't recall.

12 Q. Would you be able to advise Mr. Smith and Mr. Rahmani if  
13 Crossroads uses the 972 patent?

14 A. I would make that determination by someone who possessed  
15 those skills. I don't have the skills to make that  
16 determination.

17 Q. Okay. Would you be able to advise them why Crossroads has  
18 never used or claims it's never used the 972 patent?

19 A. Again, I didn't -- that's not in my area of expertise.

20 Q. Would you be able to advise them whether Crossroads could  
21 increase its prices by using the 972 patent?

22 A. I might be able to participate that as a member of the  
23 team, but I wouldn't do that with technical assistance.

24 Q. And you haven't done that with coming up with your 30  
25 percent royalty?

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1 A. I've explained how I -- where I get the 30 percent  
2 royalty, and I believe that it's consistent with Pathlight  
3 being able to compete in the marketplace and earn revenue in  
4 market share.

5 Q. You don't have any idea whether Crossroads could do better  
6 itself if it used what it says is in the 972 patent?

7 A. I've not made that study.

8 Q. Okay. Would you be able to advise Mr. Rahmani or Mr.  
9 Smith what the advantages of the 972 patent are?

10 A. I would look to others to do that.

11 Q. Would you be able to advise either of them what  
12 Crossroads's net profits are on storage routers?

13 A. I tend to make that determination of incremental profit,  
14 gross margin. If you were to try to determine a net profit,  
15 I'd determine an incremental profit, incremental net profit.

16 Q. And that's different than a net profit, correct?

17 A. Generally.

18 Q. And do you have any idea what Crossroads's net profit is  
19 on storage routers?

20 A. Again, it depends on how you define net profit. I would  
21 look to its gross margin as an indicator.

22 Q. Well, that's gross margin, not net profit, isn't it?

23 A. That's right.

24 Q. And Crossroads produces financial statements?

25 A. Yes.

1 Q. You've seen those, haven't you?

2 A. Yes.

3 Q. And isn't it correct that Crossroads' financial statement  
4 showed a net loss in every quarter of its existence? Did you  
5 know that?

6 A. Yes, I did know that.

7 Q. Is that an indicator of its net profitability?

8 A. I think it's something you would need to study in terms  
9 of, as well discussed in my deposition, in a company like  
10 Crossroads, it's buildings and infrastructure. Building  
11 scalability is incurring a tremendous amount of infrastructure  
12 expenses which do not relate directly to the profitability of  
13 the particular product. They're incurring a lot of expenses  
14 to position itself as a market leader to drive market shares  
15 and revenues which is extremely important to a start-up  
16 company in that stage of its existence.

17 Q. So is it correct, then, that Crossroads's net profit  
18 margins did not enter into your set of factors to determine  
19 that the royalties should be 30 percent?

20 A. Well, I think you need to look at calculations that are  
21 more product-specific, and in this instance, you look to, I  
22 think, the profitability of the infringer of using that  
23 particular technology. And as I said earlier, with respect to  
24 the other exhibit, the HP agreement gives me a benchmark from  
25 which to move up, and I landed at the 30 percent as I've

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1 described.

2 Q. Is it correct, then, that you're relying primarily on the  
3 HP agreement here?

4 A. It's certainly an influence.

5 Q. And you investigated that agreement pretty thoroughly?

6 A. I read it, analyzed it.

7 Q. And you spent a lot of time on it?

8 A. Yes.

9 Q. And, in fact, you have charged -- just for your own time,  
10 upwards of \$40,000 for your testimony here?

11 A. My firm charges for my work. A lot of my work is other  
12 than testimony. We're studying reports, analyzing documents,  
13 collecting information.

14 Q. And approximately how much in dollars have the other  
15 members of your firm charged for their work in this case?

16 A. I would think something in excess of \$75,000.

17 Q. Okay. Let's take a look at the HP agreement. That is  
18 exhibit 40, and the agreement itself doesn't say the royalty  
19 is 19 percent, correct?

20 A. No.

21 Q. That's a calculation that you did, right?

22 A. Yes, sir.

23 Q. And if you would turn, please, to page 14 of the  
24 agreement, which I'll put up on the screen, this is the page  
25 that shows what actually was -- what HP agreed to pay,

1 correct?

2 A. Yes.

3 Q. And it specifies that if payment -- the royalties in the  
4 middle of the page here are between \$175 and \$275 per unit,  
5 correct?

6 A. Yes, that is a part of the total payment package you see  
7 right above it.

8 Q. We'll get to that. Now, what percentage of the price of a  
9 storage router is this \$175 to \$275?

10 A. Well, you'd need to determine what the C P 4200 is going  
11 to be. I've not made that calculation.

12 Q. Okay. Now, is it a relatively small percentage like on  
13 the order of five to ten percent of the total selling price of  
14 a storage router?

15 A. I've not made the calculation.

16 Q. Okay. Now, is the \$175 to \$275, is that part of your 19  
17 percent?

18 A. Yes.

19 Q. Okay. And what is the other part of your 19 percent? I  
20 believe you mentioned that just a minute ago. You referred to  
21 the code and hardware fees, correct?

22 A. Yes.

23 Q. And does -- is any of that code for access controls?

24 A. These are the total amounts paid in order for HP to have  
25 the product from Crossroads.

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- 1 Q. Is any of that code for access controls?
- 2 A. That's not a determination that I've made.
- 3 Q. Is any of that code for the 972 patent?
- 4 A. I don't believe so. I think this is similar technology as  
5 testified by others, and this lays out the payment schedule  
6 which HP will be paying Crossroads for the ability to obtain  
7 this product.
- 8 Q. So the answer is no, none of that code and hardware fees  
9 is for the 972 patent?
- 10 A. I don't believe it is, no.
- 11 Q. And it's also correct that none of the royalties, the \$175  
12 to \$275 is for the 972 patent, correct?
- 13 A. I don't believe it is, no.
- 14 Q. Okay. And none of -- any of the royalties on this  
15 agreement are for access controls, correct?
- 16 A. I don't know the answer to that question.
- 17 Q. Okay. Do you think access controls are in the C P 4200  
18 product that this agreement is all about?
- 19 A. Again, I've not made that determination.
- 20 Q. Do you think the parties to this hypothetical negotiation  
21 would agree to a license of the 972 patent plus binary code,  
22 source code, hardware design?
- 23 A. I think what the parties would need to do in the  
24 hypothetical negotiation is get to a point where Crossroads  
25 provides and Pathlight delivers the ability to sell the

1 product with these benefits and features that are essential.

2 Q. And so it's correct that your 30 percent royalty, you're  
3 not sure if it's just for the 972 patent or for the 972 patent  
4 plus other code and features that Pathlight would want from  
5 Crossroads?

6 A. It's for Pathlight having a license. It puts it in a  
7 position to be able to market those facilities, those features  
8 and compete in the marketplace.

9 Q. And you're not sure if that license that you say should  
10 have a 30 percent royalty is for just the 972 patent or for  
11 some other information code and hardware that is outside the  
12 972 patent, correct?

13 A. I am talking about the 972 capabilities and features. How  
14 they deliver it between the parties, I've not gotten into that  
15 level of specificity. I'm merely saying that if Crossroads is  
16 going to give Pathlight the entre into its marketplace, with  
17 those abilities and features the specifics of whether or not  
18 there are manuals and codes, I have not gotten to that level.

19 Q. In reaching your 30 percent royal city, you didn't decide  
20 one way or another whether that information should be part of  
21 the license or not, correct?

22 A. I don't get into that level of specificity. I look to how  
23 much does Pathlight need to pay in order for Crossroads to be  
24 willing to allow a competitor to chew into its marketplace.

25 Q. And whether or not that agreement would include just the

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1 972 patent or not, you don't know?

2 A. I'm talking about the 972 features and capabilities.

3 Q. Okay. Now, do you really think this agreement for the  
4 4200 shows what royalty rates are for access controls?

5 MR. ALBRIGHT: Objection. If he is trying to imply  
6 that that's what this gentleman said in the past, I object.  
7 It mischaracterizes any prior testimony. Mr. Regan has never  
8 stated that.

9 THE WITNESS: I have not said that.

10 MR. DELLETT:

11 Q. Did HP get any access controls from Crossroads?

12 A. I believe you asked me that and I have not made that  
13 determination.

14 Q. No further questions.

15 MR. ALBRIGHT: May I, your Honor?

16 RE-DIRECT EXAMINATION

17 BY MR. ALBRIGHT:

18 Q. Mr. Regan, you're not trying to imply to this jury that  
19 this HP agreement is a perfect replica of what is going to  
20 take place in a hypothetical negotiation between Crossroads  
21 and Pathlight; is that correct?

22 A. That's correct.

23 Q. And when we talk about the reasonableness of a 30 percent  
24 royalty versus the computer industry, is this the computer  
25 industry that we're talking about?

1 A. I'm unsure what you mean by the word this.

2 Q. Mr. Dellett was pointing out a 30 percent royalty would be  
3 a high rate in the computer industry.

4 A. Oh, okay.

5 Q. And I think the jury ought to understand whether or not  
6 it's a fair comparison between this patent and the royalty  
7 rate ought to be paid to come pair it to the computer  
8 industry?

9 A. No. You need to be more specific and this is a niche  
10 within the industry and as we see with Pathlight's financial  
11 statement, the gross margins are very strong with respect to  
12 these products.

13 Q. I also make very clear to the jury that this is a  
14 hypothetical negotiation, correct?

15 A. Yes.

16 Q. So you could never have been at a negotiation advising Mr.  
17 Smith or Mr. Rahmani anything. This is something that is a  
18 court-created concept, right?

19 A. Yes, sir, it's something we have to assume would have  
20 taken place had the parties negotiated for the right to use  
21 this feature.

22 Q. If you -- if the parties weren't forced to do so by the  
23 court in coming up with a reasonable royalty rate, what  
24 success do you think that you and Mr. Regan, with all your  
25 backgrounds and charm as a C P A, would have in convincing Mr.

1 Smith, who's a CEO of Crossroads, to ever enter into a license  
2 of any kind with Pathlight with respect to this patent?

3 A. I don't think I'd be able to convince him. I don't think  
4 they want to do that. It's something they must do as a result  
5 of the process that they find themselves in.

6 Q. Finally, there are a number of questions in which Mr.  
7 Dellett asked you to speculate what the product that Pathlight  
8 makes would be worth for what margin might be made if the  
9 infringing products, the channel zoning and VPS were not  
10 included in it?

11 A. Yes.

12 Q. Do you recall that? We don't have to speculate about how  
13 or what Pathlight did when they did have the VPS and the  
14 channel zoning, do we?

15 A. That's right.

16 Q. Let me take you back quickly through exhibit 549. Tell  
17 the jury what happens without speculating what might happen  
18 had they not had the channel zoning or VPS, tell the jury what  
19 happened when they did have it?

20 A. Well, as I said earlier, after the VPS was enabled, the  
21 sales increased dramatically. The sales in 1999, say, in  
22 December were well below half a million dollars. And in the  
23 year 2000, many months are in the two to something greater  
24 than \$3 million level.

25 Q. So while you can't speculate what might have happened if

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1 they didn't have the VPS or channel zoning, there's no  
2 question what happened when they did?

3 A. That's right. And this tracks after the VPS. There is  
4 channel zoning in the products prior to December of 1999.

5 Q. Exhibit 573 which the jury has seen before. In terms of  
6 dollars, again, without speculating what might have happened  
7 if Pathlight had not put the infringing products in, what  
8 happened when they did?

9 A. Pathlight achieved a very substantial amount of revenue as  
10 a result of selling the infringing products, revenue which  
11 enabled it to gain market share which was very important to it  
12 as a company in 1999 and 2000.

13 Q. Finally, Mr. Regan, exhibit 543. You've heard all the  
14 questions Mr. Dellett asked you and I've asked you. Tell the  
15 jury what you believe the appropriate reasonable royalty rate  
16 ought to be in your opinion?

17 MR. DELLETT: Objection. He's just repeating his  
18 direct.

19 THE COURT: You can ask him. Objection sustained.

20 MR. ALBRIGHT: Have no more questions, your Honor.

21 RE-CROSS EXAMINATION

22 BY MR. DELLETT:

23 Q. Mr. Regan, if you were at the hypothetical negotiation,  
24 would you be able to tell Mr. Smith and Mr. Rahmani any other  
25 reasons why Pathlight increased its sales in 2000?

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1 A. Well, hypothetical negotiation, according to the rules of  
2 Georgia Pacific, has to occur just before the first  
3 infringement, which would be, say, September 1st. So you  
4 wouldn't know what the sales are going to be in the year 2000.

5 Q. So this chart would be not known at a hypothetical  
6 negotiation?

7 MR. ALBRIGHT: Your Honor, that's an incorrect  
8 statement of the law. That's just flat wrong.

9 THE COURT: I'll instruct the jury as to what --

10 MR. ALBRIGHT: Apologize.

11 THE COURT: The question is at the hypothetical  
12 circumstance, they wouldn't have the particular chart. That's  
13 the only question before the witness. And we all know the  
14 answer to it, so let's ask your next question.

15 MR. DELLETT:

16 Q. Now, do you think Mr. Rahmani would know more than you do  
17 about reasons why Pathlight increased its sales?

18 A. I would expect that he would be very knowledgeable and his  
19 knowledge is greater than mine.

20 Q. Okay. And Mr. Albright asked you about this graph that he  
21 put up. Is it correct there that those amounts, the \$23  
22 million -- let's just talk about the \$21 million in the  
23 middle. Is it correct that that is for sales of all gateways  
24 and routers, correct?

25 A. Yes. For a period of September 1, '99 through April 27,

1 2001.

2 Q. That's not sales of the VPS option?

3 A. That is the total sales of gateways and routers.

4 Q. Do you know what portion of that \$21 million is the VPS  
5 option?

6 A. I don't believe you can determine that number.

7 Q. Finally, do you know what the list price to IBM is with  
8 the VPS optional all your Honor, beyond the scope of my  
9 redirect?

10 THE COURT: It is and I sustain the objection.

11 MR. DELLETT: No further questions.

12 MR. ALBRIGHT: We have nothing, your Honor.

13 THE COURT: You may step down. May this witness be  
14 excused, counsel? You may be excused, sir.

15 THE WITNESS: Thank you, your Honor.

16 THE COURT: You may call your next witness all.

17 MR. ALCOCK: Your Honor, subject to a couple of topics  
18 I'd like to discuss with the court at sidebar, we rest.

19 THE COURT: All right. Members of the jury, I'm going  
20 to put you in the jury room for a few minutes. You'll have  
21 time to use the facilities.

22 (Jury not present.)

23 MR. ALCOCK: Your Honor, we have no more witnesses.  
24 We rest. There are a couple of housekeeping document issues  
25 that I'd like to address with counsel. There's exhibit 153

1 that is partially in and partially not. We've got an  
2 agreement --

3 THE COURT: It's 92, isn't it?

4 MR. ALCOCK: I believe some other portions of it and  
5 there may be a couple of other document housekeeping issues  
6 and then, I didn't want the case to go on without making a  
7 rule 50 motion. We have one prepared. I know the Court's  
8 practice generally is to proceed on and hear that at some  
9 appropriate time.

10 But we would like to make a rule 50 motion on  
11 infringement.

12 THE COURT: My rule is that I make the rulings at the  
13 resting and at the closing just like any others. I don't have  
14 any other procedure that I'm aware of. I mean, there's some  
15 judges that don't even make any rulings?

16 MR. ALCOCK: Your Honor, I think -- let me say it this  
17 way. When I'm the plaintiff, I never rest my case without  
18 making a rule 50 motion on that which I have the burden on.

19 THE COURT: That tells me how important it is. All  
20 right. Let me give you a few minutes to do the housekeeping  
21 and then, I'll hear both of your motions. Yours, I assume, is  
22 in writing. Is yours in writing?

23 MR. DELLETT: We have three motions, two of them are  
24 in writing. I'm not sure if we're going to be able to -- I  
25 guess when I said in writing, we'll be able to file those by

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1 the close of business. The third one was based on Mr. Regan's  
2 testimony and that we'll be able to argue that orally. But  
3 the writing, I don't think we're going to be able to file  
4 until tomorrow. But I'll be able to address all three of  
5 those orally. These are rule 50 motions.

6 THE COURT: I understand that. I'm always curious. I  
7 don't mean this critical. I'm always curious why you even  
8 have a rule 50 motion before you announce ready for trial. I  
9 wouldn't permit a lawyer to work for me. All right.

10 (Recess.)

11 THE COURT: All right. You may be seated. All right.  
12 I have reviewed the plaintiff's motion for judgment. Based on  
13 un rebutted testimony, of course, that's very accurate and an  
14 opportunity to put in any testimony other than the plaintiff,  
15 I'll take the motion under advisement till I've heard the  
16 evidence, of course, with the exception of contributory and  
17 induced infringement.

18 Counsel, why is this in here?

19 MR. ALCOCK: Your Honor, because of claim 7 is a claim  
20 to a storage network, and Dr. Hodges testified that --

21 THE COURT: Well, I understand that you may have  
22 evidence to support it, but I mean in the overall grand scheme  
23 of things, you have no separate damages on it. It's just  
24 internal.

25 MR. ALCOCK: That's true. I mean, it is for the

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1 different claims, but in order to prove infringement of claim  
2 7, it's a contributory claim. And claim 11 is inducement and  
3 we've put on evidence of both, both in terms of the operation  
4 of the device itself for a contributory and for the user  
5 manuals which are in evidence for inducement.

6 THE COURT: Okay. I'll hear from the defendants.

7 MR. BAHLER: Your Honor, I have -- we certainly oppose  
8 the plaintiff's motion for JMOL on issue of infringement, and  
9 we have indeed filed our own motion, actual paper, for  
10 judgment as a matter of law under rule 50 on the issue of  
11 infringement. And what I'd like to do is address -- that has  
12 several facets, not simply contrib and inducement.

13 What I'd like to address first is channel zoning.  
14 Channel zoning, each of those claims -- you're moving around  
15 like you need to go to the rest room.

16 MR. ALCOCK: Your Honor, I don't think I have a copy  
17 of the paper --

18 THE COURT: Oh.

19 MR. ALCOCK: -- that he's talking about. I don't know  
20 what it is.

21 MR. BAHLER: Hang on just a minute.

22 THE CLERK: I'll make one.

23 THE COURT: All right.

24 MR. BAHLER: Should I wait or go?

25 THE COURT: Here, give plaintiffs this and I'll just

1 listen.

2 MR. ALCOCK: I'm sorry, your Honor. Thank you.

3 MR. BAHLER: With respect to as the evidence is in,  
4 there are two aspects of the plaintiff's price, one's this  
5 thing called channel zoning and this other is this feature  
6 added called VPS. With respect to channel zoning this is when  
7 VPS is not enabled; channel zoning is just there. And we move  
8 for judgment as a matter of law that that feature does not  
9 infringe, cannot possibly infringe, literally, under the  
10 doctrine of equivalence. Particularly, all the claims require  
11 this limitation of maintaining a configuration of storage  
12 devices connected to the medium.

13 And in this channel zoning environment, the -- excuse  
14 me, could you get this going, please? Oh, I'm sorry. On the  
15 channel zoning environment, the granularity there is on a  
16 channel-by-channel basis, and there's no granularity within  
17 the channel, in other words, identifying specific subset or  
18 specific ones of the storage devices. And that's an express  
19 requirement of the claims, your Honor, that element is  
20 completely missing in the channel zoning environment.

21 In addition, doctrine of equivalence is inappropriate  
22 to add a missing element. Mr. -- Dr. Hodges even slipped and  
23 said it's done a different way. Channel zoning is -- he  
24 contends it's the same, but he admitted it's done by a  
25 different way. That's the middle part of the function wave

1 result test for doctrine of equivalence, therefore, we think  
2 that the Court should grant judgment as a matter of law and  
3 Pathlight's favor with respect --

4 THE COURT: He also said it was at the same result  
5 through the same medium. This was done differently.

6 MR. BAHLER: Do you want that back up? By the way,  
7 this is just a -- this is a tab that's attached to their  
8 motion. And as I said, your Honor, the granularity there is  
9 on a group basis rather than simply elements within the group.  
10 You take a look at the patent itself on this side, your Honor,  
11 there's a single SCSI bus, single one.

12 And on this side there's a single fiber channel bus,  
13 single one. And the single one is the single arrow right  
14 there and a single arrow right there so the patent doesn't  
15 even contemplate the fact that there would be a number of SCSI  
16 buses coming out the other end, each of which would have a  
17 number of SCSI storage devices.

18 And the facts, in fact, require that within each  
19 medium singular there's required to be the maintenance of a  
20 subset of a configuration of storage devices connected to that  
21 medium. And channel zoning doesn't do that. Doesn't do  
22 anything like that.

23 As can be seen here, your Honor, the granularity here  
24 is on a bus-by-bus basis, as I just explained through figure  
25 3. There's only one bus disclosed and there's a singular use

1 but I'm not relying on that because not only is there a use of  
2 the singular, but the configuration is required to be  
3 maintaining a configuration of the storage devices on the  
4 medium and that's not in channel zoning.

5 The elements missing is inappropriate to apply -- to  
6 provide a missing element. These next arguments with respect  
7 to noninfringement, your Honor, apply to the VPS enabled or  
8 the channel zoning, either one, doesn't matter. So the first  
9 is that they have not shown or there's no evidence that the  
10 devices implement access controls. That's waiving all around.  
11 I still don't know what it means.

12 Dr. Hodges was -- whether there was security, whether  
13 there was no security. There's no evidence that the access  
14 controls as required, the narrow definition that is being  
15 urged by the plaintiffs in this case is met by any of  
16 Pathlight's products.

17 The next issue, your Honor, is with respect to native  
18 low level block protocol. I showed that computer program on  
19 the screen and that was a program that Dr. Hodges was running  
20 on his work stations, but the protocols, your Honor, are  
21 what's flowing in the channels, what's flowing from the work  
22 station on to the fiber channel through the router and out the  
23 other end on the SCSI bus. It's what's on the channel.

24 And he never looked at that. He never opined about  
25 that. He never measured that. He has no idea. There's no

1 evidence at all what that protocol is much less whether it's a  
2 native low level block protocol as narrowly and specifically  
3 required by the claims.

4 With respect to claim 7 through 14, and that is with  
5 respect to 7 through 14, there cannot possibly be any direct  
6 infringement. So we'd like a JMOL on that that Mr. Alcock  
7 just addressed the contributory and inducement issue. We  
8 should get a directed verdict on -- direct infringement  
9 because those claims are directed to a network and the network  
10 requires storage devices and work stations. We don't sell any  
11 of that stuff. So there's no way Pathlight could be in direct  
12 infringement.

13 Next, your Honor, we believe that the mapping issue is  
14 absent, too, the mapping element and that's a functional  
15 element that's required to be a function of the supervisor  
16 unit. The evidence is that Dr. Hodges has simply concluded  
17 from the blue there's mapping. There's no evidence that there  
18 is mapping, in fact. He never looked at any source code or  
19 anything to figure out exactly that's going on inside.

20 And that is required. And, your Honor, that completes  
21 our -- in addition, your Honor, I should address 7 through 14  
22 with respect to the issue of inducement. There's been no  
23 showing that there's been any inducing acts, and contrib  
24 requires that there be sold a -- something that is incapable  
25 of substantial non-infringing use and there's been no evidence

1 on that front either. So either inducement or contrib go on  
2 the 972 either.

3 I think I probably addressed their issues in the  
4 interim.

5 THE COURT: All right. Mr. Alcock.

6 MR. ALCOCK: I'll take the issues in reverse order,  
7 your Honor. The evidence -- I think Mr. Bahler has his law  
8 wrong. With respect to inducing, all that is required is that  
9 there be proof that customers be instructed to perform the  
10 method and that there's a performance of the method. There's  
11 been proof that customers were instructed to perform the  
12 method by virtue of the user manuals.

13 There's been proof that customers have performed the  
14 method with respect to the evidence on IBM. With respect to  
15 contributory infringement, claims 7 through 14, there has been  
16 proof that those routers have no substantial non-infringing  
17 use. They can only be used in a storage network. That was  
18 the evidence from the stand.

19 So contributory infringement has been established.  
20 With respect to the native low level block protocols, the  
21 evidence was that, in fact, through the use of that program,  
22 Dr. Hodges was able to determine that that's, in fact, what  
23 went into the S-C-S-I, SCSI storage devices and, therefore,  
24 did use native low level block protocols as to those claims.

25 With respect to the access controls, the evidence was

1 through screen shots that showed that the storage router  
2 operated with access controls. There was extremely detailed  
3 evidence of that. Now, with respect to channel zoning, could  
4 you -- just a moment, your Honor. It's registering. It's  
5 just not showing up on the screen. 016 R O 1 H R.

6 Your Honor, the graphic that he showed was only one in  
7 a series of three -- of four. First, there was the graphic  
8 checking the boxes, just as it was instructed on the web site.  
9 Then there was a graphic that showed that as a result of  
10 checking the boxes, one was able to get access controls  
11 between the five storage devices that were on there.

12 And then, there were two additional graphics shown  
13 that, in fact, by checking the boxes in the way that they were  
14 checked, they achieved the same access controls that were  
15 achieved through use of the VPS option. One computer could  
16 have access to two of the -- one work station could have  
17 access to two of the remote storage devices, the other could  
18 have access to the other three storage devices.

19 So there has been testimony that the channel zoning is  
20 access controls just as the VPS has access controls to the  
21 extent there's any question on the issue. There was testimony  
22 that it did the same function, the same way and performed the  
23 same result. In more detailed questioning about a detail of  
24 how it performed those, Dr. Hodges did say that a particular  
25 detailed function was different.

1           But not that questioning was not in terms of the claim  
2 element itself. So it does meet the elements of the claim.

3           THE COURT: All right. I'll hold both motions under  
4 advisement at the present time. Bring the jury back.

5           MR. BAHLER: Your Honor, we have two more motions.  
6 Sorry.

7           MR. DELLETT: Rule 50 motion. One you have in --

8           THE COURT: I know the rules contemplate at the end of  
9 the plaintiff's case when the plaintiff rests, the party may  
10 file a motion pursuant to rule 50. How many -- you've already  
11 filed two. You have two more.

12           MR. DELLETT: No. I'm sorry. One more. We filed  
13 two. One, Mr. Bahler addressed. The other one that your  
14 Honor has is specific to the issue of willful infringement,  
15 and that was the subject of Mr. Kuffner's testimony, for  
16 example, and specifically, the element that is missing from  
17 the plaintiff's proofs right now is that anything that  
18 Pathlight did was unreasonable.

19           And willful infringement has a number of different  
20 elements. The most important one, though, is whether or not  
21 the plaintiff or the accused infringer got an opinion of  
22 counsel. And there's testimony that Mr. Rahmani did get an  
23 opinion of counsel and Mr. Rahmani even testified about what  
24 he did.

25           They have no proof that what Mr. Rahmani did was

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1 unreasonable under the circumstances, and that is an element

2 --

3 THE COURT: There's evidence that any thinking person  
4 might question Mr. Levi's credibility. I think his  
5 credibility's going to be an issue. I'll take that under  
6 advisement, also.

7 MR. DELLETT: The one last motion, rule 50 motion was  
8 entirely based on what Mr. Regan said when he was on the stand  
9 just a little while ago. That has to do with what is the  
10 basis for his reasonable royalty. I'm not talking about what  
11 evidence went into it or anything. I'm talking about what he  
12 said his 30 percent was for.

13 And he said his 30 percent was for, well, maybe it was  
14 for the 972 patent, maybe it was for the 972 patent plus some  
15 other software. There's no proof that Pathlight ever took any  
16 software from anybody else, and that's a fundamental part of  
17 Mr. Regan's royalty. He doesn't know whether it's got  
18 software in it or not, so he's asking for a royalty for not  
19 just the 972 patent that's in this case but for other things,  
20 as well.

21 So as a matter of law, we don't -- Crossroads had not  
22 presented any evidence of what a reasonable royalty would be  
23 for the 972 patent by itself.

24 THE COURT: Response?

25 MR. ALBRIGHT: Your Honor, Mr. Regan testified he

1 considered the Georgia Pacific factors, he considered relevant  
2 documents, for example, the HP document in terms of coming up  
3 with the reasonable calculation. And frankly, I'm not even  
4 sure I follow what Mr. Delllet's argument is. He specifically  
5 addressed what Crossroads would -- as a forced licensor would  
6 be willing to accept to license the patent for in the  
7 situation of a hypothetical negotiation.

8 That was all he talked about. I think Mr. Dellett has  
9 some arguments he could make on closing argument, but  
10 certainly there's evidence in the record now as to what a  
11 reasonable royalty rate in this case ought to be.

12 MR. DELLETT: Just before the finish of crossing Mr.  
13 Regan, I asked him about three or four times, do you have any  
14 opinion as to whether your royalty rate is for the 972 patent  
15 by itself or for the 972 patent and some other software and  
16 hardware and whatnot. There's no proof that Pathlight took  
17 from Crossroads. Mr. Regan didn't know.

18 THE COURT: Well, you'll be able to argue that if you  
19 wish to the jury. There's no question that the gentleman did  
20 testify to the tune of over \$100,000 that this 972 patent  
21 function was the precipitating factor and was considered  
22 essential by the defendant to compete and essential by the  
23 defendant to sell the products.

24 If you want to argue it, then take away a little bit  
25 of his 30 percent, I think you're certainly entitled to do it

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1 based on the evidence, but that's all the evidence  
2 establishes. On the other hand, I expect you're going to come  
3 back the other way on one percent, and not mention it. But  
4 that's your choice.

5 All right. Anything else?

6 MR. BAHLER: No, your Honor.

7 MR. DELLETT: No, your Honor.

8 THE COURT: All right. Bring in the jury.

9 (Jury present).

10 THE COURT: Okay. Mr. Bahler, you may call your first  
11 witness.

12 MR. BAHLER: Defendant calls Mr. Said Rahmani.

13 THE COURT: If you'll tell us your full name, please,  
14 sir.

15 THE WITNESS: Said Rahmani Khezri.

16 THE COURT: Mr. Rahmani, you are still under oath. Do  
17 you understand that, sir?

18 THE WITNESS: Yes, sir.

19 THE COURT: All right. Proceed.

20 DIRECT EXAMINATION

21 BY MR. BAHLER:

22 Q. Mr. Rahmani, would you please summarize your educational  
23 background, please, sir?

24 A. Sure. I would first like to apologize for my voice. I'm  
25 suffering from a cold right now, so I'll proceed so.

1 Q. Would you please summarize your educational background,  
2 please?

3 A. Yes. I received my undergraduate degree in electrical and  
4 computer engineering from Arizona State University. Later on,  
5 I received a master of science degree in digital system  
6 design, and graduate degree, master of science in computer  
7 engineering and digital system design.

8 I also completed one year of MBA course.

9 Q. When did you finish your education? What year?

10 A. I received my bachelor of science in electrical computer  
11 engineering in 1983. I received my graduate degrees in 1986  
12 and 1988.

13 Q. All right, sir. Could you please summarize for us your  
14 employment history?

15 A. Sure. I worked as a teacher, teaching math and physics  
16 for a couple of years. During my graduate studies, and I  
17 joined IBM in 1989 and worked at IBM for almost six years, and  
18 later on, in 1995, I cofounded Pathlight Technology.

19 Q. All right, sir. Could you just tell us the nature of your  
20 work at IBM?

21 A. Yes, we at IBM, I was involved in developing storage  
22 networking products.

23 Q. What do you mean by storage networking?

24 A. Storage networking, solutions that interconnected multiple  
25 work stations and storage devices, and enabled high speed

1 interconnect activity between those work stations and those  
2 storage devices using typically using native low level  
3 protocols.

4 Q. How many years of experience have you had in storage net  
5 working?

6 A. Almost 13 or 14 years.

7 Q. Are you a member of any societies in technology?

8 A. Yeah, a number of them, specifically in regard to the  
9 storage networking, I'm a member of the storage networking  
10 industry association.

11 Q. What do they do?

12 A. For storage networking association helps educate and  
13 define anything related to the storage networking,  
14 specifically it's used in solving customer problems and  
15 creating solutions.

16 Q. What role have you played in that organization?

17 A. Well, I helped cofound Niagara, storage networking  
18 industry association in 1997, mid-1997.

19 Q. How many members are there today, sir, in that  
20 organization?

21 A. Close to 100 companies including IBM, Hewlett Packard,  
22 Compaq, Dell, many other companies and thousands of  
23 individuals.

24 Q. Right. Now, you left IBM to form Pathlight; is that  
25 correct?

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1 A. Yes, I did.

2 Q. Why did you leave IBM to form Pathlight?

3 A. Well, I left IBM to form Pathlight because I had the dream

4 to create my own company, to be able to leave and impact the

5 industry and I wanted to follow, pursue the challenges that I

6 really felt I should have pursued at that time.

7 Q. And that was in early 1995?

8 A. It was end of 1994, beginning 1995, yes.

9 Q. All right, sir. What has been the business of Pathlight

10 since then?

11 A. From day one at Pathlight, basically develop the storage

12 networking product, again, products that enable connectivity

13 between multiple work stations and storage devices.

14 Q. Now, as the pretty clear from this case, the phrase access

15 control is important. Have you ever heard that phrase during

16 your experience in the storage network -- storage networking

17 area?

18 A. Yes, many times.

19 Q. And when was the first time you heard it?

20 A. The first time I heard it was actually in late 1980ses

21 when I joined IBM in relationship with the product that we

22 were developing at IBM, again, storage networking product.

23 Q. What does access control mean in that field?

24 A. Well, access control to me means -- is a generic word.

25 I've used it, I have been involved in developing access

1 control techniques and methods since the end of 1980s, and as  
2 a generic word, it basically means controlling access from a  
3 work station to single device or multiple devices in the  
4 storage network.

5 Q. Are there -- is there only one kind of access control?

6 A. I am familiar with multiple kinds of access control  
7 techniques.

8 Q. How have they been -- how have those multiple times been  
9 historically implemented?

10 A. Well, I can classify them in three categories, really.  
11 One category is where you have -- or I would refer to it as  
12 manual access control, another category is what I refer to as  
13 distributed access control, and the third one is why refer to  
14 or probably the most generic the industry refers to as  
15 controller based access control.

16 The first one, the manual one is really just -- and  
17 all these cases, the access control is implemented using the  
18 software, a piece of code and it's really irrelevant of the  
19 technologies or the interfaces that are used. Could be a  
20 processor, fiber channel SCSI. It is really a means to  
21 control access from one point to another point.

22 Q. Okay. And the storage network architecture, there's  
23 control between hosts and storage devices, correct?

24 A. Well, obviously when you connect multiple work stations,  
25 the multiple storage devices, somehow you need to control the

1 access from those work stations to those storage devices, and  
2 that's the fundamental need to be addressing any storage net  
3 working solution.

4 Q. Now, what does the term security mean in the context of  
5 storage networking as it relates to access control?

6 A. Well, again, it is a widely-used term that could mean  
7 anything. I mean, you could have maximum security or you  
8 could have no security or you could have some sort of  
9 security. When you talk about controlling access in any field  
10 -- and this is nothing related to computers. I mean, when you  
11 talk about controlling access to your home, it could be  
12 controlling access to your home using a key, or you could go  
13 and purchase an elaborate A D T security system.

14 In both cases, you are controlling access. And in  
15 both cases, you could claim that you have some level of  
16 security. But in either case, it takes certain effort to  
17 break into that security system if none of them are really  
18 absolute. And you could go overboard and invest much more and  
19 try to have multiple other different ways of controlling  
20 access.

21 So in sort, security really is a relative term in  
22 relationship with access control, as well.

23 Q. Thank you, Mr. Rahmani. Are you aware of any past  
24 products or products from the past that have used access  
25 control?

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1 A. Yes, indeed. The first product that in 1989 that I worked  
2 on in IBM had access control, and it was implemented on the  
3 controllers. I should say a specific controller that was  
4 between the devices, the storage devices, and the work  
5 stations that are connected to the storage devices.

6 Q. Did that use this native low level block protocol that  
7 we've been hearing about?

8 A. All the products that I have developed or I having  
9 involved with in the last 14 years have used native low level  
10 block protocols for connecting work stations to a storage  
11 device.

12 Q. That -- the first product you mentioned was at IBM?

13 A. Yes.

14 Q. Were there any other IBM products that used access  
15 control?

16 A. Yes, later on in any career the second major product that  
17 I was responsible for overall program, development of this  
18 product, both hardware, software, testing and qualification of  
19 it to the end, it also implemented access control. It was a  
20 storage networking solution, again, we've heard connecting  
21 multiple work stations to multiple storage devices using  
22 native low level protocols, block protocols.

23 And the implement access control in this case on the  
24 controllers using the special software that we developed.

25 Q. All right, sir. Were there any other product within IBM

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1 while you were there that used access control?

2 A. Well, I can go back beyond my career, the ones that I  
3 didn't work on, going back to Escon and other technologies.

4 Q. I'd just like the ones you know about personally.

5 A. I worked in two mayor classes that we developed from  
6 concept to full production and shipped to our customers during  
7 those six years, and they both had access controls.

8 Q. All right, sir. Now, since you left IBM and formed  
9 Pathlight, has Pathlight sold product has based on your  
10 understanding of the terms used access controls?

11 A. Indeed, in 1995, the first product that we developed in  
12 Pathlight was actually a controller card that would plug into  
13 the host system, a work station and would connect multiple  
14 work stations to multiple storage devices. And we were  
15 setting up a demo, a major demo for Comdex 1995, and what we  
16 realized, obviously, was that when you have these multiple  
17 systems interconnected in the storage network, one was  
18 running, for example, McIntosh operating system, one was  
19 running Windows '95, and the other was running Unex. We had  
20 to provide some access control within those work stations with  
21 these hosts, this service to this storage that they all had a  
22 success. And we actually set up that demo, we demonstrated  
23 that solution in 1995 at Comdex.

24 Q. All right, sir. That was Las Vegas?

25 A. Yes.

1 Q. All right. Mr. Rahmani, what I'd like you do is run  
2 through briefly the chronology of the Pathlight products  
3 leading town the SAN gateway and SAN router products that are  
4 at issue in this case and with your Honor's permission, could  
5 he step down from the bench?

6 THE COURT: He may.

7 MR. BAHLER: I mean the witness chair.

8 MR. BAHLER:

9 Q. I have exhibit -- demonstrative exhibit 500 and Mr.  
10 Rahmani will also be referring to physical exhibits 558  
11 through 566, which are here on the table in front of the jury.

12 Mr. Rahmani, what's the first line show? Absolutely  
13 nothing, does it.

14 A. It's a time line. Well, before this product will be  
15 referred to as Niagara, as I was explaining, we had storage  
16 networking products that implemented access control using the  
17 first two methods that I described. One, the manual method or  
18 the distributor method. We actually shipped products called  
19 image net one, image net work one and image net two before  
20 this time frame that used those two methods of access control  
21 for controlling access from multiple work stations to a  
22 storage device.

23 What happened in mid-1996, we had transferred some of  
24 experience that we had gained in Pathlight and moved this  
25 method of access control on a controller, and this was the

1 controller exhibit D-559 that implemented access control.  
2 This was actually a bridge controller. It had ability to  
3 connect host work station devices and had the plug in  
4 capability for storage devices.

5 So it basically is a piece of hardware and the  
6 software was running on this hardware and had the ability to  
7 control access from work stations to devices. This is the  
8 product that we refer to as Niagara.

9 Q. That was sometime in the middle of '96?

10 A. Yes.

11 Q. All right.

12 A. Actually sold multiples of these products around this  
13 time.

14 Q. Could we have the next slide, please?

15 A. In mid '96 to 1996 -- one of the characteristics of this  
16 specific controller was although it was a bridge or  
17 interconnectivity between work stations and the storage  
18 devices was actually in the work station itself. It wasn't  
19 out there in the network. What we did was we basically take  
20 the same circuitry, almost identical to this, and we put it in  
21 different size and form and put it in this box.

22 And this is a product called Image Agent one and this  
23 is where we performed both all of that function in this box,  
24 including access control, and work stations and this was  
25 basically sitting at work stations and storage devices.

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1 Q. Mr. Rahmani, could you tell us what the number is on that  
2 blue sticker is, please?

3 A. Sure, it's D-561.

4 Q. All right.

5 A. As you can see, the difference between the previous  
6 product and this one is that it has a parts supply of its own  
7 and with this parts supply, you take power from any power  
8 cord, any plug and you can power up this hardware and the  
9 software will be running here and will be performing access  
10 control in this platform basically.

11 It uses the same processor as the previous one,  
12 supervisor that everybody refers to. You have buffer, same as  
13 the previous one is memory like in the other computer. It had  
14 interface chips that would connect -- either storage devices  
15 or work station to it. And it basically -- if you look at the  
16 back, I'm sure you're hearing about all this SCSI and fiber  
17 channel and SSA and all this technology.

18 If you look at the back, this wire connector, big  
19 connectors, these are the connectors that you typically use to  
20 conduct to SCSI. So you had a disk drive or tape drive that  
21 connected to this channel or multiples of this channel,  
22 multiples of them to that channel so you have storage devices  
23 here now.

24 As you can see here on the right side or left-hand  
25 side, your left, it says storage network 1. It doesn't say

1 SSA or fiber channel or SCSI or anything. From that time in  
2 1996 or before that, we intended to be able to plug in any  
3 controller here that the work stations would connect to now.

4 It would be fiber channel, SSA, anything, work station  
5 connect here, the storage device is connected here and we  
6 basically connect, you know, we were running low level native  
7 block protocol. Here in this work station connections and  
8 SCSI connections.

9 Q. All right, Mr. Rahmani. Could I have the next slides,  
10 first. First of all, with respect to the image agent, those  
11 were both before the end of 1996, right, sir?

12 A. Yes.

13 Q. And when was the patent in this case filed? The end of  
14 '96, right?

15 A. It was December 1997 was here.

16 Q. Okay. So these were long before, right?

17 A. We actually demonstrated Image Agent as a complete  
18 solution with a company called sigh Tex. It's an  
19 international company. Another major show in Las Vegas called  
20 national association of broad casters. And that was back in  
21 March or April of 1997. We won two awards for this product  
22 for contribution to the science and solutions and digital  
23 video and TV broadcast. Our customers were using it in that  
24 show.

25 Now, day one, in the middle of that year, basically a

1 slight in hand, a slight change that made it a little bit more  
2 configurable and called this product Image Agent two. And  
3 this is the Image Agent two.

4 Q. Could you just tell us the blue sticker number on that,  
5 too, please?

6 A. Sure. It's D-562. And again, just a quick -- I don't  
7 want to take too much of your time. As you can see, it has  
8 the same elements. Now, it has SCSI here, it has the plug-in  
9 parts that could be the storage network. It still says  
10 network connection one, connection two, and it has power  
11 supply in it and it's the same kind of front as the one  
12 before.

13 It's rust bigger. It has other hardware and performs  
14 the same function as this one.

15 Q. All right. Could we have the next slide, please? Okay.  
16 And what's next?

17 A. In 1998, we started to change the previous product, the  
18 Image Agent two, and created this product, the SAN gateway.

19 Q. And that's exhibit 563 you're holding?

20 A. It is exhibit 563. And again, as you can see, the only  
21 difference you can visually see is these SCSI connectors are  
22 further apart, you can change them, get more configurable. We  
23 actually enhanced the performance. It could run faster than  
24 before. But it's still connected work stations storage  
25 devices and had all the previous elements and basically

1 performed access control functions, as well as access control.

2 Q. This case deals with fiber channel and SCSI bridges. Are  
3 any of those that?

4 A. All of these have the ability to bridge within fiber  
5 channel and SCSI any of those technologies.

6 Q. How is that ability realized?

7 A. Well, as I said, all of this had storage network  
8 connections. And this is how you would enable those storage  
9 network connections. You could have even connect SCSI to  
10 them. So you connect SCSI to SCSI. SSA so you connect SSA to  
11 SCSI, or you connect fiber channel, which is not here. You  
12 connect fiber can Mel to SCSI and in our case and in these  
13 products you can actually put all of in there and you connect  
14 any of this to any -- you can connect SSA to fiber channel  
15 SCSI to SSA, SCSI to fiber channel. Really we never felt  
16 there was any novelty connecting two boxes together. That was  
17 something they're doing for ages, I mean, they're doing it at  
18 IBM, doing it at Pathlight.

19 Q. Before you put those down, could you just tell those  
20 numbers on the blue stickers?

21 A. Sure, it's D-564, D-565 and D-566.

22 Q. All right.

23 A. So the last thing in this chart, I don't know if it's  
24 there or not, but we did SAN router actually in 1999.

25 Q. Yes.

1 A. So that's the first product we actually call SAN router.  
2 This was a gateway, this was Image Agent two, Image Agent and  
3 Niagara. This was the time line that the products they have  
4 been developing in Pathlight.

5 Q. All right, sir. Thank you. If you could please take your  
6 seat. I'd like to move on to a new topic. Put this chart  
7 back up there. This is defendant's demonstrative 549. Now,  
8 you recall the testimony that this spike is being attributed  
9 to introduction of VPS in SAN gateway and SAN router. Do you  
10 recall that?

11 A. Yes, I do.

12 Q. By the way, Mr. Rahmani, with respect to the SAN gateway  
13 and SAN router, what is the price of the SAN gateway?

14 A. Oh, it's about \$6,000 to \$7,000.

15 Q. What's the price of the SAN router?

16 A. 2 to 2 and a half, \$2,000 to 2500.

17 Q. Why are they different?

18 A. Well, the SAN gateway provides a different hardware than  
19 SAN router provides faster performance, higher performance,  
20 mainly that and the hardware is different between the two  
21 basically.

22 Q. All right. Where do you manufacture those products?

23 A. Right here in Austin.

24 Q. Okay. Now, let's move on to this revenue trend chart,  
25 which is exhibit 549. During this period -- and this shows

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1 1999 and 2000 -- who was Pathlight's principal customer?

2 A. Our principal customer was IBM.

3 Q. All right. And at some point, did IBM receive request for  
4 proposal from IBM to bid on business?

5 A. Pathlight received --

6 Q. I'm sorry, yes, apologize.

7 A. Request for proposal from IBM.

8 Q. Would you please take a look at your book at Defendant's  
9 Exhibit 243?

10 A. Yes.

11 Q. What is that?

12 A. It is the RFP, the request for proposal that we received  
13 from IBM on the 21st of April, 1998.

14 Q. All right. Your Honor, I'd move defendant's 243 into  
15 evidence?

16 MR. ALCOCK: No objection, your Honor.

17 THE COURT: Received.

18 MR. BAHLER:

19 Q. I'll just put up the first page so we have a reference  
20 here. What was this -- what is this request for proposal?  
21 What's it asking for?

22 A. As you can see, it is a request for a fiber channel to  
23 SCSI bridge, and it basically stated from IBM to us what  
24 requirements they have for this fiber channel to SCSI bridge.

25 Q. So what product they really wanted, were there any

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1 requirements in that request for proposal for access control,

2 sir?

3 A. Absolutely not.

4 Q. Now, did Pathlight win that business?

5 A. We did so, yes.

6 Q. Do you know why?

7 A. My belief is that we had the most superior, the highest,  
8 the best product, the highest performance, the highest  
9 connectivity, the best reliability features and the best  
10 manageability and serviceability capabilities that none of our  
11 competitors had at that time.

12 Q. All right, sir. And then, RFP was dated April 21, 1998?

13 A. Yes.

14 Q. All right. Now, did -- when did Pathlight win that  
15 contract?

16 A. Well, the contract, the process that a company like IBM  
17 starts with RFP, it is a long process. They had probably four  
18 or five companies they send RFP to, they short-listed some and  
19 then we went to RFQ, request for quotation process. That  
20 whole process went through almost all of 1998 and it was clear  
21 we were told I think sometime towards, you know, I really  
22 don't remember exactly. I think August, maybe that year that  
23 we have won the business.

24 But it took us at IBM until end of January 1999 to  
25 actually see the contract. Procurement contract between us

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1 and --

2 Q. Did -- okay. So did you start selling the product in 1999  
3 as reflected by this chart that's shown here?

4 A. Yes.

5 Q. All right. And did your sales just take off immediately  
6 in 1999?

7 A. No, it did not. As you can see -- can I approach the --

8 Q. Sure. Your Honor, with your permission.

9 A. As you can see, we signed the contract in January 1999,  
10 and I B P really completed its test qualifications by this  
11 time, February. And they started shipping sometime in March.  
12 But our sales didn't go up much during 1999.

13 Q. Why is that?

14 A. Well, IBM was buying -- wanted to buy this product, the  
15 SAN gateway product from us to connect one of its own store am  
16 devices to the storage network. Basically, that storage  
17 device was called by IBM. The code name was tar pan and that  
18 tar pan storage device is the high end storage wave some wear  
19 system they use in banks. Was connecting to gateway fib er  
20 channel. That tar pan was not received very well in the  
21 market. IBM had difficulty with the pressure and they really  
22 department sell much of that product and that's why, you know,  
23 they didn't sell much of their product, they didn't sell much  
24 of our products.

25 Q. That changed in 2000, right? What happened to cause that

1 increase?

2 A. Well, what happened was IBM at this time was developing  
3 another product which was a replacement to tar pan. It was  
4 code named shark. That product was being developed for a few  
5 years and the whole reason they did tar pan was because the  
6 shark was not ready yet. But then, shark was ready around  
7 this time and they cheated testing that new product shark or  
8 they call it ESS, enterprises storage server, around this time  
9 and they started shipping our products with the shark, the new  
10 product, right around this time. Exactly that time.

11 And they did much better with shark. They actually  
12 had everybody in the storage system division at IBM, every  
13 salesperson, every marketing person had been asked that they  
14 must sell this product because it was really a serious threat  
15 for their existence in that division.

16 So they did sell it and therefore, they sold more of  
17 our products.

18 Q. Did that increase have anything to do with VPS?

19 A. Absolutely not.

20 Q. Now, later in 2000, the sales actually went down, correct?

21 A. Yes.

22 Q. Why is that?

23 A. Because IBM, as I said, was using our product to connect  
24 either tar pan or shark. Their storage device from one side  
25 to this side. And at the same time, they were developing

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1 their native fiber channel connections for that product,  
2 shark. As soon as they had the direct storage network  
3 connection in their own product, which was right around here,  
4 they announced it, they didn't need our product anymore. So  
5 they didn't buy it anymore and since then, we actually haven't  
6 sold, I don't think, any gateways to IBM anymore.

7 Q. Did the product have VPS since the beginning of 2000?

8 A. Yes. The product had VPS, you know, had the ability,  
9 still has it, but the reason that they sold the product, we  
10 didn't sell it had nothing to do with that.

11 Q. Now, did you ever ship to IBM a VPS on a SAN gateway?

12 A. Yes, we did.

13 Q. Did you ever ship to IBM VPS on a SAN router?

14 A. No. We never shipped VPS to IBM on SAN routers.

15 Q. What percentage of VPS option are sold as gateway as  
16 opposed to routers?

17 A. All of them. They're sold in gateway, SAN gateway and not  
18 on SAN router.

19 Q. I'm talking about not only IBM but everything, just as --

20 A. IBM's not the only customer, it's a big one, but it's not  
21 the only one, correct. I don't recall us really anybody being  
22 interested in having access control kind of function that VPS  
23 and a router.

24 Q. All right. Now the gateways you were selling to IBM  
25 during 1999 and 2000, how many SCSI buses were there?

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1 A. Gateway had four SCSI channels.

2 Q. How many fiber channels?

3 A. It would have up to six fiber channel, but to IBM  
4 specifically, they were buying a -- sometimes one fiber  
5 channel and four SCSIs, sometimes they were buying two fiber  
6 channel, four SCSI.

7 Q. All right. Now, I'd like to move to this license  
8 agreement that came up with -- during Mr. Regan's discussion  
9 and that is the \$1.8 million per year offer to IBM. Do you  
10 know anything about that, sir?

11 A. Yes, I do.

12 Q. And how is that? How do you know about that?

13 A. Well, we were negotiating a source code license agreement  
14 on VPS with IBM. The first quarter of 2000, around that time.

15 Q. And what was -- what's a source code license, first of  
16 all?

17 A. Source code is the computer program that helps perform any  
18 of the software functions. Really, it's the software source  
19 code program.

20 Q. All right. Did the license agreement that was being  
21 proposed to IBM during 2000 have anything to do with access  
22 controls?

23 A. It did not have anything to do with access control  
24 whatsoever.

25 Q. Have anything to do with VPS?

1 A. Yes.

2 Q. What part of VPS?

3 A. Specifically, IBM was, as I said before in my prior  
4 testimony, VPS is a system. It has multiple components. One  
5 of its components is access control. It has a VPS component  
6 that actually runs on the work station. It's a piece of  
7 software actually doesn't run on the gateway or a router. It  
8 runs on the work station itself.

9 That piece we call -- we refer to as VPS host  
10 registration service. It's a piece of software on the work  
11 station. They were interested on that part of VPS, and that's  
12 what the source code licensing discussions was all about.  
13 They were not interested on the access control for the simple  
14 reason that they already had access control on their storage,  
15 the shark that was connecting to our product already had that,  
16 so they didn't need access control.

17 Q. If they already had it they didn't need to buy it from  
18 you?

19 A. Absolutely.

20 Q. Now, this was -- these negotiations were going on in the  
21 spring of 2000, sir, correct?

22 A. Yes.

23 Q. Okay. Seems to be big deal brewing about this e-mail.  
24 This is February 25th, 2000, 2:39 a.m., it's an e-mail from  
25 you.

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1 A. Yes, it is.

2 Q. What was that about?

3 A. As you can see, it's an e-mail that I sent to our patent  
4 lawyers at sales man and levy and copied Mark DeWilde and Greg  
5 Prestas.

6 Q. Why did you send it at 2:39 in the morning?

7 A. Well, people know me know that I actually send quite a few  
8 of my e-mails during that time. It's been 11:00 p.m. to 2:00  
9 or 3:00 a.m.

10 Q. Why is that?

11 A. Well, it is a hard job, as Mr. Smith said. I mean, we  
12 work hard in this -- the make these things happen. And one of  
13 the things I tried to do is to get home about 7:00, 8:00 in  
14 the afternoon, spend the time with my family, have dinner, put  
15 my son in bed, spend some time with my wife. And then, I get  
16 back to work typically around 10:00, 11:00 at night in my home  
17 office and stay on till 2:00, 3:00, sometimes 4:00 in the  
18 morning, .

19 Q. Now, you conclude that e-mail by saying, as I said, there  
20 are some business urgency. It's 2:30 in the morning, right?

21 A. Yes.

22 Q. What was that about?

23 A. Well, the business urgency was that I was referring to the  
24 -- our private connection, the patent that has been referred  
25 to before, patent application. And because we were in

1 negotiation with IBM about source code license, license for  
2 the source code of the VPS source registration service, I  
3 wanted to make sure that we have done the right things, we  
4 have covered our, you know, implementation of that technology  
5 because those discussions were happening at the same time.

6 And I thought it might be -- that it might get to a  
7 point that we might have to transfer the source code to IBM  
8 and I just wanted to make sure it's covered by our patent.

9 Q. Did this business urgency have anything whatsoever to do  
10 with the 972 patent?

11 A. No, it has nothing to do with it.

12 Q. Did IBM accept your offer for a source code license of  
13 \$1.8 million?

14 A. No, they rejected it.

15 Q. All right, sir. Now, I'd like to turn to the royalty rate  
16 issue and we've just heard Mr. Regan sponsor a royalty rate of  
17 30 percent. Do you know what Pathlight's net profit margin is  
18 on its sales?

19 A. Yes.

20 Q. What is it?

21 A. It is in the year 2000, it was about 25 percent.

22 Q. Now, Mr. Regan mentioned a gross profit margin of 60  
23 percent. Why is the net profit margin less than the gross  
24 profit margin by so much?

25 A. Well, the gross profit margin doesn't take into account

1 our expense rate.

2 Q. What type of expenses are you talking about?

3 A. Well, everything that we spend R and D, engineering,  
4 sales, marketing, administration, everything that we do to run  
5 the business is not taken into account for gross margin.

6 Q. Does IBM spend a lot of money on research and development,  
7 Mr. Rahmani?

8 A. Do we, yes.

9 Q. Mr. Rahmani, have you ever heard of a 30 percent royalty  
10 rate being paid in this industry?

11 MR. ALCOCK: Objection. Calls for hearsay, calls for  
12 expert testimony.

13 THE COURT: Whether he's heard of it or not is not  
14 relevant. I'll sustain the objection.

15 MR. BAHLER: Your Honor -- I'm sorry.

16 MR. BAHLER:

17 Q. Mr. Rahmani, what royalty rates are you aware of?

18 MR. ALCOCK: Objection, your Honor. Calls for  
19 hearsay, calls for expert testimony.

20 THE COURT: Is he listed as an expert?

21 MR. BAHLER: No, your Honor.

22 THE COURT: Sustain the objection.

23 MR. BAHLER:

24 Q. Mr. Rahmani, could Pathlight afford to pay a 30 percent  
25 royalty rate on its SAN route, SAN gateway products?

1 A. No, we could not.

2 Q. Turning back to the 972 patent, do you believe that patent  
3 is valid, sir?

4 A. Yes, I do so. What was the question? Sorry.

5 Q. Do you believe that that patent is valid?

6 A. No, I don't.

7 Q. Have you ever done anything to confirm that belief?

8 A. Yes, I have.

9 Q. And what did you do?

10 A. As soon as I became aware of its existence, as you have  
11 seen the evidence so far, I contacted our patent attorneys and  
12 asked for their legal advice and what I had to do or what we  
13 had to do at that time.

14 Q. That was Mr. Levy?

15 A. Mr. Levy at Salzman & Levy, yes.

16 Q. Why did you pick Mr. Levy?

17 A. Well, Mr. Levy was working with us for many months before  
18 that time and he was at the patent office, helping us to  
19 prepare our patent applications, so it was a logical and an  
20 obvious choice for us to contact Mr. Levy for his advice.

21 Q. Your Honor, just for completeness, the e-mail that I was  
22 referring to, 239, was Plaintiff's Exhibit 59. That's already  
23 in evidence.

24 Now, did Mr. Levy know anything about storage  
25 networking products.

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1 A. By that time, Mr. Levy was very well-informed of the  
2 storage networking products because we had invested quite a  
3 substantial amount of time with Mr. Levy and his team and  
4 transferring the information that we had on our own products,  
5 our competitors, every web site, every information that he  
6 could think could be relevant to anything that we do, and they  
7 had studied those information and they were using that  
8 information for writing, you know, helping us write patent  
9 applications.

10 They had also performed multiple searches in the  
11 patent library in Washington for prior arts before that time.

12 , .

13 Q. All right, sir. What did Mr. Levy tell you?

14 A. Well, Mr. Levy told me that he has to investigate this and  
15 inform us with his opinion in writing.

16 Q. And did he do that?

17 A. He did do that.

18 Q. And was it -- what was that opinion as far as you  
19 understand it?

20 A. He basically in his opinion said that this patent is  
21 invalid.

22 Q. And he gave you an opinion in writing, correct? Show you  
23 Plaintiff's Exhibit 7.

24 A. Yes, he did.

25 Q. It's already in evidence. Did you read it?

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1 A. Yes, I did.

2 Q. Did you understand it?

3 A. I believe so.

4 Q. Do you believe it?

5 A. I do believe it, yes.

6 Q. Did you have any reason whatsoever to think he was wrong?

7 A. I had no reason to believe he was wrong, no.

8 Q. Do you still believe Mr. Levy today?

9 A. Yes, he still is our patent lawyer and he's still helping

10 us prepare patent applications.

11 Q. Now, Mr. Rahmani, before suing Pathlight, did Crossroads

12 receive any communication from -- I'm sorry. Did Pathlight

13 receive any communications from Crossroads?

14 A. No, we did not.

15 Q. Receive an e-mail?

16 A. No.

17 Q. Letter?

18 A. No.

19 Q. Phone call?

20 A. No.

21 Q. Mr. Rahmani, after all you've been through in this case,

22 is there anything you would have done differently once you

23 found out about that patent?

24 A. I can't think of anything I could do differently. As soon

25 as I was aware of this, I contacted a patent attorney for his

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1 legal advice, received that add vice. We accepted that add  
2 vice, and I still, a year and a half later than that, no  
3 lawyer, no lawyer advice I've received I could have done  
4 anything beside what I did.

5 Q. Pass the witness.

6 CROSS-EXAMINATION

7 BY MR. ALCOCK:

8 Q. I've got a book of exhibits. It's real thick, but I'm not  
9 going to ask you about very many of them. I just had them  
10 collected up.

11 A. Thank you.

12 Q. I'd like to start with that IBM request for proposal.  
13 It's exhibit D-243, and you testified on direct that that was  
14 a proposal for a fiber channel to S-C-S-I or SCSI bridge; is  
15 that right?

16 A. Yes.

17 Q. And they were asking you for a fiber channel to SCSI  
18 bridge because you didn't have one?

19 A. That's not correct.

20 Q. Okay. Before this --

21 A. That's not what RFP means.

22 Q. But they were asking the product IBM wanted was a fiber  
23 channel to SCSI product; is that right?

24 A. That's correct, yes.

25 Q. They were asking you to propose a product for them?

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1 A. And they asked Crossroads and a few other companies to do  
2 the same, yes.

3 Q. Right. You talked earlier about the Image Agent II,  
4 Niagara and Image Agent. Those were SSA products, were they  
5 not?

6 A. No, sir.

7 Q. They were sold as SSA products, were they not?

8 A. They were sold as SSA and fiber channel.

9 Q. Okay. You discontinued all those products?

10 A. Some of them.

11 Q. Are any of them still being sold?

12 A. As I said, Image Agent II was really almost identical to  
13 SAN gateway and actually, if you look at our proposal, the  
14 proposed Image Agent II to IBM. We just changed the name from  
15 I and made some --

16 Q. In any event, the products you had were not what you were  
17 asked to propose to IBM because they wanted a fiber channel to  
18 SCSI bridge; isn't that right?

19 A. That's incorrect, sir. Do you want me to explain why?

20 Q. No. They wanted a fiber channel to SCSI bridge, did they  
21 not?

22 A. In an RFP, you explain what you need obviously and send it  
23 to people who can provide that. If they thought that we can't  
24 provide that or we don't have it, they wouldn't send it to us.

25 Q. Okay. And so then, did you start work on a fiber channel

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1 to SCSI bridge?

2 A. No. We were working fiber channel technology well before  
3 that time, sir.

4 Q. Okay. Did you respond to the request for proposal?

5 A. Yes.

6 Q. Okay. And did ultimately you develop a product in  
7 connection with this proposal?

8 A. We had a product.

9 Q. Okay. And ultimately, did you sell them the SAN gateway  
10 product?

11 A. We initially sold them Image Agent II, sir.

12 Q. Okay. Did you ultimately sell them the SAN gateway  
13 product?

14 A. Ultimately, yes.

15 Q. Okay. And in connection with developing the SAN gateway  
16 product, there came a time when you were to develop an access  
17 control feature for that product; is that right?

18 A. We had an access control feature of that product.

19 Q. Okay. And in early 1999, you were working with this  
20 access control feature called ITL access control; isn't that  
21 right?

22 A. Could you repeat your question again?

23 Q. Yes. In early 1999, you were working with this access  
24 control feature for this SAN gateway product, and it was  
25 called at the time ITL access control; is that right?

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1 A. Not really. My mean the ITL access control was -- the  
2 first specify cake, was about April 1999. When I talk about  
3 access control I mean many different matters of access  
4 control.

5 Q. I see, so this ITL access control, you believe you started  
6 developing in April 1999?

7 A. The ITL ?

8 Q. Yeah.

9 A. Access control, I believe so.

10 Q. Okay. But whatever it was, whenever you started it, it  
11 was different than the other access control features you had  
12 previously thought about?

13 A. Some what, yes.

14 Q. Well, it was so different that you thought it was  
15 patentable, didn't you?

16 A. Not really.

17 Q. Could you turn to exhibit 16, sir. This is -- looks to be  
18 like a presentation that you made on March 6, 1999. Do you  
19 see that, sir?

20 A. Yes.

21 Q. Do you remember this presentation?

22 A. Vaguely.

23 Q. Right. And you mentioned that some aspects of the  
24 following technologies might be patentable. That means new,  
25 different than the access control features that came before.

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1 Is that what you had in mind?

2 A. Can I have a look at it?

3 Q. Sure. I'm particularly interested in the --

4 A. Sure, yes.

5 Q. VPS using ITL access control. That's what we talked about  
6 a little bit the other day. Do you remember that?

7 A. Yeah, this is a laundry list of technology that I taught  
8 that some aspects of them might be patentable.

9 Q. Right. And so certainly, as of March of 1999, this access  
10 control feature that you were thinking of putting in this SAN  
11 gateway product, you thought was potentially patentable  
12 because it was different than all those access control  
13 features that were in history. Have I got that right?

14 A. I would say it is very different than what I said, but I  
15 don't --

16 Q. Well, and ultimately, you did file a patent application on  
17 this access control feature, and you called it the VPS patent;  
18 is that right?

19 A. No.

20 Q. Could you take a look at exhibit 75, sir? This is that  
21 e-mail that we've talked about. There's one that's at 2:39  
22 a.m. and there's one that's at 2:40 a.m. I think it just  
23 went to two different people. This is the one that in the  
24 first part of that, you talk about the report that you want  
25 from Mr. Levy on the Crossroads patents's invalidity. Do you

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1 see that?

2 A. Yeah.

3 Q. Right. But I'm interested in the bottom half. This is  
4 your writing; is that right?

5 A. Yes.

6 Q. And the patent, you're calling this patent the VPS patent.  
7 Isn't that what it was called commonly inside of Pathlight?

8 A. In short, yes, but the patent is not called VPS.

9 Q. I understand that. But --

10 A. Those are just accurate in my statement or response, I'm  
11 sorry.

12 Q. Right. We all use shorthand words for things, but the  
13 words that you chose as your shorthand words for the patent  
14 that we're referring -- that you were referring to was this  
15 VPS patent; is that right?

16 A. Sure, yes.

17 Q. Okay. And now, I'll show you exhibit 232. That, in fact,  
18 is the VPS patent; isn't it?

19 A. The title says creating virtual private connections  
20 between end points across a SAN. It doesn't say VPS.

21 Q. I understand. But that is the patent that you called the  
22 VPS patent in your 2:40 a.m. memo on February 25th.

23 A. That's the one I was referring to, yes.

24 Q. Right. And this is the one that was filed just three days  
25 before you got that opinion letter from Mr. Levy; is that

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1 right?

2 A. If you say so.

3 Q. You can take a look back at exhibit P-32. I apologize,  
4 P-31. That's a letter from Mr. Levy to Mark DeWilde,  
5 referring to the P T I 108 patent application and it indicates  
6 it was filed on February 7, 2000. Is that right?

7 A. Yes, sure.

8 Q. Okay. And so, then, the patent that we were just looking  
9 at, exhibit 232, you all filed that patent application at the  
10 same time you were considering Mr. Levi's invalidity analysis  
11 on if Crossroads 972 patent; is that right?

12 A. The work was being done, yes.

13 Q. And in fact, there were e-mails and communications back  
14 and forth between you and Mr. Levy where both subjects were  
15 discussed interchangeably; is that right?

16 A. No.

17 Q. Okay. Do you remember meetings in that time period  
18 between November 15th of 1999 and April 10th of 1999 where  
19 both the VPS patent and the Crossroads -- the VPS patent  
20 application and the Crossroads 972 patent were discussed?

21 A. Yes.

22 Q. Okay. It was more than one, wasn't it?

23 A. I really don't recall how many there were.

24 Q. Maybe we'll ask Mr. Levy about that. But the -- this is  
25 the patent application where the access control feature you

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1 were telling the patent office is one of the most significant  
2 advantages realized by the invention?

3 A. That's not true. I said that a couple of days ago in my  
4 testimony, and I'll say it again that this patent is about as  
5 you can read here, it is about creating virtual connections,  
6 it is about implementation of a method, software method and  
7 the fact that it can enforce access control but with no  
8 performance degradation. It's about how you use the cache  
9 system inside our system to avoid degradation. It's not a  
10 concept of access control.

11 Q. Okay. Let's switch topics for just a moment, Mr. Rahmani.  
12 If you look at exhibit 48, I'm just going to ask you a  
13 question or two about this IBM situation. There is in exhibit  
14 48 -- do you have it in your notebook -- that they're in  
15 numerical order.

16 A. Yes.

17 Q. And what I'm interested in is the third page in. It's a  
18 memo from or an e-mail from Mr. Watson to Mr. Hood. I believe  
19 you were copied on some of the other memos in this package.  
20 But the date on the memo is September 29, 1999, and I'm  
21 interested in -- first of all, let me ask you a background  
22 question.

23 Was the VPS software fully operational here in  
24 September of 1999? Was it ready to be used on the SAN  
25 gateway?

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1 A. It was, yes.

2 Q. Okay. So was it not quite ready yet, or was it pretty  
3 close to being ready?

4 A. My recollection is it had completed its development before  
5 that and it had gone through quite a bit of testing that time.  
6 So it was.

7 Q. Okay. So what ended up happening was IBM not only put the  
8 VPS software on all future products, but they also put it on  
9 all the products that they already had bought. Is that right?

10 A. No, it's not. That's not right. That's not correct.

11 Q. You don't remember IBM shipping hundreds of units back to  
12 you so that you could install the VPS software on it after  
13 they were already out in the field?

14 A. I'm under oath, sir. They did not put VPS in the prior  
15 products. They did recall those units for upgrade, hardware  
16 upgrades they had to do, but that wasn't because of VPS. They  
17 had old hardware that needed to be upgraded and that's listed  
18 here as part of G enhancement plan, it was an enhancement to  
19 Tachyon -- Tachyon is a fiber channel chip.

20 Q. So they were upgrading?

21 A. For other reasons.

22 Q. When they were upgraded the VPS software was put on there?

23 A. IBM decided not to purchase VPS for all gateways to that  
24 date, sir.

25 Q. On that date. How about later? How about in December of

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1 19 --  
2 A. They never decided to buy VPS for the gateways shipped  
3 earlier.  
4 Q. So this VPS does a lot of other things?  
5 A. A few other things, yes.  
6 Q. And those other things are important?  
7 A. I believe so.  
8 Q. Okay. Take a look at exhibit 24. It's the second in your  
9 book. This is one of the two web sites?  
10 A. Yes.  
11 Q. One of the things that both channel zoning and VPS does is  
12 provide access controls which is an absolute necessity for  
13 multi-host SAN solutions; is that right, sir?  
14 A. What was your question, sir?  
15 Q. Is that a correct statement?  
16 A. What was your question? Read this and say it is correct  
17 or not?  
18 Q. I think I added a little. I think I said that the channel  
19 zoning and the VPS provide access controls which are an  
20 absolute necessity for multi-host SAN solutions.  
21 A. I explained that I think access control is a necessary  
22 function, yes.  
23 Q. I have no further questions of the witness, your Honor.  
24 RE-DIRECT EXAMINATION  
25 BY MR. BAHLER:

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1 Q. Mr. Rahmani, I'd like you to refer to exhibit --  
2 Plaintiff's Exhibit 232, which is your patent application.  
3 It's in your notebook there, sir. Mr. Rahmani, were you  
4 trying to patent access control with that patent application?  
5 A. No, we were not, sir.  
6 Q. Okay. Please take a look in there. Please take a look at  
7 page 11, first of all. And there, you begin a section summary  
8 of the invention. Do you see that, sir?  
9 A. Yes.  
10 Q. Okay. Now, before that, beginning on page 1, you have a  
11 section entitled background of the invention, correct?  
12 A. Yes.  
13 Q. Can you explain anywhere in the back grounds of the  
14 invention part -- first of all, is the background of the  
15 invention, is that your invention?  
16 A. No.  
17 Q. Okay. In the backgrounds of the invention part, you speak  
18 at all about access controlling?  
19 A. I believe so.  
20 Q. Could you point that out to me?  
21 A. There are a number of places I believe I --  
22 Q. Take a look at page 3.  
23 A. Uh-huh.  
24 Q. See this? It says manual host configuration depends on  
25 the configuration?

1 A. Actually, I just saw right above that, it says we  
2 explained to the patent office that there are three methods of  
3 access control historically. Basically what I said today at  
4 court, we have explained there that the manual methods, the  
5 distributed, and the access control based on the controller.  
6 Those three methods are explained here to the patent office  
7 and just to explain that access control is prior art, there's  
8 no novelty in implementing access control.

9 Q. Okay. Now, if that's in the background portion, are you  
10 claiming that as your invention, sir?

11 A. No. We're trying to be honest and truthful to the patent  
12 office that access control is not an invention and that's not  
13 our claim. And we explained everything we knew at that point  
14 in detail in eleven pages to the patent office why -- what  
15 methods there exists for access control and how they're  
16 implemented as prior art, all their products.

17 Q. Then you go on to describe the improvement provided by  
18 your invention, right?

19 A. We basically specifically in this patent describe an  
20 architecture and implementation of a method. It is describing  
21 how the software worked -- works. There are nine flowcharts,  
22 detailed flowcharts in here that explains in detail how this  
23 system works that we have implemented, not any hypothetical  
24 thing that -- called access control.

25 Q. All right. Pass the witness.

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1 MR. ALCOCK: No further questions of the witness, your

2 Honor.

3 THE COURT: You may step down.

4 MR. BAHLER: Plaintiff calls Terry Kelleher.

5 THE COURT: Just stand there and be sworn, please.

6 (Witness was sworn.)

7 THE COURT: Take this chair.

8 MR. BAHLER: Please state your name, please.

9 THE WITNESS: Terrence Michael Kelleher.

10 THE COURT: Spell Kelleher.

11 THE WITNESS: K E L L E H E R.

12 DIRECT EXAMINATION

13 BY MR. BAHLER:

14 Q. Mr. Kelleher, do you have a college degree?

15 A. Yes, I have.

16 Q. From where?

17 A. It's from Boomington Community College in Boomington, New

18 York.

19 Q. In what?

20 A. Electrical engineering technology.

21 Q. When did you graduate from college?

22 A. In 1981.

23 Q. And since that -- after then, did you take a job in the

24 computer field or did you start working, I guess is better

25 yet?

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1 A. Yes, I did.

2 Q. Did there come a time during your employment when you  
3 became involved in the computer storage area network industry?

4 A. Yes. In 1986, I started working for Encore Computers.  
5 They built a super mini computer and I dealt with the software  
6 and hardware to connect those computers to storage devices,  
7 disk drives, tape drives.

8 Q. All right. And did you continue working in that industry  
9 after that?

10 A. Yes, I have.

11 Q. And what was your next job in that industry?

12 A. After Encore, I next worked for Pathlight Technology --  
13 I'm sorry. I spent a year as an independent consultant  
14 between those two jobs.

15 Q. What were you consulting with -- what were you consulting  
16 about when you were a consultant?

17 A. I worked for array technologies and I was doing some  
18 software for IBM's RS 6,000 systems to connect those RS 6,000  
19 systems to Array Technologies storage devices.

20 Q. All right, sir. What did you do next?

21 A. I next worked for Pathlight technology.

22 Q. When did you start working for Pathlight?

23 A. It was in March of 1994.

24 Q. Could you --

25 THE COURT: March of what? What year.

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1 THE WITNESS: 194.  
2 MR. BAHLER:  
3 Q. March of '94?  
4 A. Yes.  
5 Q. Okay. And what did you do for Pathlight?  
6 A. I've been a software engineer, product manager and an  
7 engineering manager and product architect.  
8 Q. Okay. What has been Pathlight's business during that  
9 time?  
10 A. Buildings interconnect products for storage technology.  
11 Q. Okay. Now, we've already heard in this room the kind of  
12 chronology of Pathlight products including the Niagara  
13 product, the image agent product, the image agent I and SAN  
14 gateway and SAN router. My question to you, sir, is what  
15 responsibility did you have in the development of those  
16 products?  
17 A. I designed the software architecture for those products,  
18 starting with the Niagara and working through the SAN gateway  
19 and SAN router. I continued to have that responsibility and I  
20 worked on the implementation of much of the software runs on  
21 those products.  
22 Q. Okay. And you were there all the way up until the time  
23 that the SAN router was made?  
24 A. Yes.  
25 Q. Okay. Which was made later, the SAN router or the SAN

1 gateway?

2 A. The SAN router was later.

3 Q. Okay. During the development of any of those products,  
4 did you rely in any way on the Crossroads 972 patent in this  
5 case?

6 A. No.

7 MR. ALCOCK: Your Honor, I think it's the 972.

8 MR. BAHLER:

9 Q. I'm sorry. The 972 patent in this case?

10 A. No, I did not.

11 Q. Did you copy anything from that Crossroads patent?

12 A. No.

13 Q. Did you rely in any way upon any of Crossroads' products?

14 A. No.

15 Q. Now, Mr. Hood testified yesterday by deposition that a  
16 Pathlight had in its in-house a Crossroads product, and I want  
17 to know if you know anything about that?

18 A. Yes, I do.

19 Q. Okay. Could you tell us about that?

20 A. One of our customers was comparing the Crossroads products  
21 to our SAN gateway product and asked us to do some performance  
22 testing on that box to see how the two compared.

23 Q. And who did that testing for Pathlight?

24 A. I did that testing.

25 Q. How long was that Crossroads product in-house?

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- 1 A. For one afternoon.
- 2 Q. Where did you get it from?
- 3 A. It belonged to the customer who asked us to do the test.
- 4 Q. And what did you do with it when you were done with it?
- 5 A. We returned it to the customer.
- 6 Q. Did you look at any of the software?
- 7 A. No.
- 8 Q. Did you do any sort of reverse engineering at all?
- 9 A. No.
- 10 Q. Okay. Did you copy anything at all from that Crossroads  
11 product?
- 12 A. No.
- 13 Q. Mr. Kelleher, please look in your notebook there at  
14 exhibit -- Defendant's Exhibit 343?
- 15 A. Yes, I see that.
- 16 Q. All right. What is that, sir?
- 17 A. That's the -- titled the media server interface  
18 specification.
- 19 Q. And who wrote it?
- 20 A. I did.
- 21 Q. Did you write that as part of your work at Pathlight?
- 22 A. Yes, I did.
- 23 Q. And is the date at the bottom -- did you prepare it before  
24 that date?
- 25 A. It was in progress before this date. This is indicating

1 the date it was printed.

2 Q. As of this date, is this an accurate document?

3 A. Yes, it is.

4 Q. Your Honor, I move D-43 into evidence.

5 MR. ALCOCK: Objection, your Honor, irrelevant,  
6 hearsay.

7 THE COURT: May I see it? Did you prepare this while  
8 you were in the employ of Pathlight in your job  
9 responsibility?

10 THE WITNESS: Yes, I did.

11 THE COURT: Objection's overruled. 343's admitted.

12 MR. BAHLER:

13 Q. I'm going to put it up here. This is called the media  
14 server interface specification. First of all, what's the  
15 media server?

16 A. Well, at the time I wrote this document, we were working  
17 on a conceptual design of what we later called the Image  
18 Agent. We hadn't given the product a name yet, and I was  
19 using the name media server to talk about it.

20 Q. So is it media server, is this document about the Image  
21 Agent?

22 A. Yes, it is.

23 Q. Okay. Take a look at section 2.4 within that document.

24 Down there at the bottom, it says device addressing. Do you  
25 see that, sir?

1 A. Yes.

2 Q. What is that section dealing with?

3 A. Describes the device addressing method we were using in  
4 the image agent.

5 Q. And it says there the media server will maintain a mapping  
6 table of logical unit numbers to devices for each initiator  
7 which requests a mapping. What does that mean?

8 A. The initiator is going to be sending commands to the Image  
9 Agent to try to direct them at target devices connected, and  
10 this is a mapping table that says how we're going to route  
11 those commands.

12 Q. Where is that mapping table stored?

13 A. In the image.

14 Q. What devices are those?

15 A. Those are disk drive or tape drives connected to the Image  
16 Agent.

17 Q. Okay. And it says each initiator. What's an initiator?

18 A. It's a host, a work station or a server computer.

19 Q. Okay. That's connected to the Image Agent?

20 A. Yes.

21 Q. Okay. Take a look at the next section, section 2.4.1.

22 See that, sir?

23 A. Yes.

24 Q. Okay. This says LUN to device mapping request, right?

25 A. Yes.

1 Q. What's that section about?

2 A. This describes how a device mapping through this table can  
3 get configured, how we're going to set up that -- the mapping  
4 instruction.

5 Q. And it says here, a host may request a mapping of a LUN to  
6 a specific device. Right?

7 A. Yes.

8 Q. What does that mean?

9 A. That means the host is going to send a request to the  
10 Image Agent that specifies one of those logical unit numbers  
11 and tell us which device attached it wants that logical unit  
12 number to be directed at.

13 Q. All right. And once that mapping is set up, can other  
14 hosts get access to that storage device?

15 A. Well, another host can issue another mapping request to  
16 that same device, yeah.

17 Q. Well, let's back up and just say that another host doesn't  
18 do that. But can a host -- well, once the mapping is set up,  
19 can other hosts read and write data from that storage device  
20 without something else happening?

21 MR. ALCOCK: Objection, your Honor, calls for  
22 speculation, lacks foundation.

23 THE COURT: Why don't you rephrase the question?

24 MR. BAHLER:

25 Q. Once one host establishes this mapping in the Image Agent,

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1 can -- that maps the host to a specific device, that storage  
2 device, correct?

3 A. Yes.

4 MR. ALCOCK: Your Honor, still lacks foundation. Are  
5 we talking about a device that this document describes or I  
6 don't know what we're talking about.

7 MR. BAHLER:

8 Q. Well, what is this specific device here?

9 A. The specification is documenting what we built for the  
10 Image Agent.

11 Q. But this is talking about mapping of a LUN to a specific  
12 device. What is specific device?

13 A. Oh, the specific devices are the disk drives and tape  
14 drives that might be attached to the image agent.

15 Q. All right. And does this mapping, is this mapping between  
16 a host and a tape drive or disk drive?

17 A. Yes, the host would request that a logical unit number  
18 would reference one of the attached devices.

19 Q. All right. And what, if anything, happens to requests by  
20 other hosts once a host establishes this mapping between  
21 itself and a specific storage device?

22 A. This affects only the host that made the request, no other  
23 host is affected.

24 Q. Okay. Can other hosts get access to that storage device?

25 A. Not through this mapping, no.

1 Q. Okay. Now, later on, it says a request is made to assign  
2 a LUN to a device using a LUN which is already assigned, then  
3 the new mapping will replace the prior mapping. What does  
4 that mean?

5 A. Oh, that means if the host sends another request that will  
6 use the same logical unit number but direct the commands at a  
7 different device, then the new mapping will override the olds  
8 one. So if previous mapping, the host could talk to disk A,  
9 it may send a request and said now this same LUN is going to  
10 talk to disk B, further commands will go to disk B.

11 Q. Okay. By this mechanism, can one host who was not mapped  
12 to speak with a specific device, storage device, send a  
13 request and as a result of the request, be allowed to read and  
14 write data to that storage device?

15 MR. ALCOCK: Objection. Lacks foundation, leading and  
16 calls for -- lacks foundation.

17 THE COURT: The lacking of foundation I overrule. The  
18 leading I sustain.

19 MR. BAHLER:

20 Q. All right. What -- once a mapping is set up between a  
21 host and a storage device through this mechanism, what, if  
22 anything, can other hosts do to change that mapping?

23 A. Well, another host could not modify the first host's  
24 mapping.

25 Q. Could modify?

1 A. Could not modify the host A sets up a mapping to a device,  
2 then host B could set up its own mappings but its couldn't  
3 change the mappings for the host A.

4 Q. Okay. Now, down at the bottom here, it talks about a send  
5 diagnostic command. Do you see that?

6 A. Yes.

7 Q. What is that?

8 A. That's one of the SCSI commands. We'll use the send  
9 diagnostic command to send out LUN device mapping request  
10 along with other things.

11 Q. Okay. Is that the mechanism that's used to accomplish  
12 this function described in this background?

13 A. Yes, it is.

14 Q. Mr. Kelleher, I refer you to Plaintiff's Exhibit 136,  
15 which is already in evidence. It's in your notebook?

16 A. Yes, I found it.

17 Q. Do you know what that is, sir?

18 A. It appears to be some prints from the ADIC web site.

19 Q. Let me turn you specifically to page -- there's numbers in  
20 the bottom right-hand corner, 64423.

21 A. Yes.

22 Q. Put that sheet up. What is that page dealing with?

23 A. That's a product marketing sheet that describes our SAN  
24 gateway product.

25 Q. All right, sir. Now, in the right-hand column, it talks

1 about comprehensive SAN serviceability and maintenance. See  
2 that, sir?

3 A. Yes.

4 Q. What is that section dealing with?

5 A. We have various methods for management configuration,  
6 control and service of the SAN gateway and this is a paragraph  
7 dealing with those features.

8 Q. It talks about three distinct options, right, for maximum  
9 administrative flexibility. Do you see that?

10 A. Yes.

11 Q. What are those three options?

12 A. First is SAN gateway's Ethernet port provides out of band  
13 management with S N M P. It's for use with the SAN director.

14 Q. And then, after that, it says alternatively, in-band SAN  
15 management is supported using Pathlight's well-defined API.

16 A. Yes.

17 Q. See that in first of all, what's in-band management?

18 A. In-band management is what management commands would be  
19 sent between a host and a SAN gateway across the same channel  
20 that the host is requesting data transfer, so read and write  
21 commands.

22 Q. All right president and the second alternative deals with  
23 in-band management, correct?

24 A. Yes.

25 Q. And it's stated here -- first of all, were these three

1 options available in the SAN gateway and SAN router today?

2 A. Yes.

3 Q. Okay. And the first option as you mentioned deals with  
4 the SAN director. What is the SAN director first of all?

5 A. The SAN director is a software product that we sell, graph  
6 call user interface that provides management capabilities for  
7 the SAN gateway, SAN router.

8 Q. Okay. And this alternative in-bands SAN management, my  
9 question is, first of all, what is Pathlight's well-defined  
10 API? What's that?

11 A. That's the language. An API is an applications  
12 programming interface, and this is a language that we've  
13 defined to allow the host to communicate with the SAN gateway  
14 to do management tasks.

15 Q. All right. What's an API?

16 A. That's applications programming interface.

17 Q. What's an applications program?

18 A. An applications program is a computer program that runs on  
19 some kinds of computer.

20 Q. Okay. Can you give us some examples of applications?

21 A. Sure. A web browser, an e-mail tool, word processor,  
22 Microsoft word is an application, things of that sort.

23 Q. Solitary?

24 A. Yes, solitary.

25 Q. Where are the applications running on the SAN -- in a

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1 network including the SAN get way?  
2 A. Those are run on the hosts on the workstations.  
3 Q. Do they run on the management stations?  
4 A. Yeah, that's a computer.  
5 Q. Okay. Now, this is stated as an alternative it's a SAN  
6 director, correct?  
7 A. Yes.  
8 Q. Is it the same SAN director?  
9 A. No.  
10 Q. This in-bands management?  
11 A. No, it's not the same.  
12 Q. Okay. Now, is this in-bands management function in a SAN  
13 gateway or in the SAN -- including a SAN gateway with host  
14 computers located on one side and storage devices on the  
15 other, where are the applications that are referred to in this  
16 highlighted portion? API?  
17 MR. ALCOCK: Objection, leading.  
18 THE COURT: It is.  
19 MR. BAHLER: Where? There was a where in there.  
20 MR. BAHLER:  
21 Q. All right, Mr. Kelleher, in a system including a SAN  
22 gateway and host computers, on one side and storage devices on  
23 the other, would those have application programming?  
24 A. The host computers could have application programs, yes.  
25 Q. Okay. And what, if anything, does that have to do with

1 the API that's mentioned in this paragraph?

2 A. An application program running on that computer could make  
3 use of this applications program interface to send commands to  
4 the SAN gateway.

5 Q. Okay. Is that true of all computers connected to the  
6 gateway?

7 A. Yes.

8 Q. All host computers?

9 A. Yes.

10 Q. Or just special ones?

11 A. No. Any computer that's connected via, well, through any  
12 storage connection can sends commands.

13 Q. And is this in band management mentioned in this section,  
14 is it provided in addition to that provided by the SAN  
15 director?

16 A. Yes, those are separate interfaces.

17 Q. Okay. We brought this up briefly with Mr. Rahmani. I'd  
18 like to refer you to Plaintiff's Exhibit 232, which is your  
19 patent application. The three distinct options, are those  
20 discussed anywhere in the -- in your patent application,  
21 exhibit 232?

22 A. Yes.

23 Q. Where is that?

24 A. From page 30.

25 Q. All right. Where?

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1 A. It's starting at line 18.

2 Q. Okay. It says the administrative and user interface  
3 functions in one of three forms. Okay. What does that have  
4 to do with the three options that are mentioned in Plaintiff's  
5 Exhibit 136?

6 A. This paragraph is describing the same three functions that  
7 we talked about on the other exhibit.

8 Q. All right. And this first one is SCSI commands over the  
9 in-band SAN interface. Do you see that?

10 A. Yes.

11 Q. Okay. What does that have to do with the second  
12 alternative, what, if anything, does that have to do with the  
13 second alternative mentioned in Plaintiff's Exhibit 136?

14 A. That's referring to what we call the well-defined API.

15 Q. Okay. And what are SCSI commands?

16 A. Those are the commands that the host sends to the Image  
17 Agent, the same gateway to SCSI devices.

18 Q. You remember all the way back to that exhibit 343 that  
19 multi -- that media server. There was that send diagnostic  
20 command.

21 A. Oh, yes.

22 Q. Is that a SCSI command?

23 A. Yes, SAN diagnostic is a SCSI command.

24 Q. Is exhibit 343 an example of in-band management?

25 A. That section of 343 is an example of in-band management,

1 yes.

2 Q. All right. Are these three features in the SAN gateway  
3 and SAN router product?

4 A. Yes.

5 Q. Okay. And then described a little bit here. What are  
6 those -- what functions can be performed by the in-band  
7 management?

8 A. The in-band management provides administrative controls.  
9 It allows the host application to reconfiguration data from  
10 the SAN gateway, make modifications, send requests back to  
11 alter the configurations.

12 Q. Okay. Please take a look at page 31. It's the next page.

13 A. Yes.

14 Q. It says here several functions are provided via one or  
15 more of the interfaces, see that?

16 A. Yes.

17 Q. Okay. Is that true, the in-band SCSI commands?

18 A. Yes, it is.

19 Q. Okay. Can those functions be performed by any host in a  
20 system including a SAN gateway and a SAN router?

21 A. Yes.

22 Q. Okay. Let's take a look at the functions. It says one of  
23 the functions is the administrative access privileges may also  
24 be displayed or set. What does that mean, sir?

25 A. This is a function to describe being able to control which

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1 host attached on the SAN gateway might control that  
2 administration.

3 Q. All right. Now, what does that have anything to do with --  
4 hang on just a minute. Is that function included in the SAN  
5 gateway and SAN router products?

6 A. No. That's a feature we have not yet implemented.

7 Q. The displaying of setting of access privileges?

8 A. You asked me at about the administrative access  
9 privileges.

10 Q. May be displayed or set?

11 A. I think you're on the line above where I thought you were.  
12 Could you restate which line you're talking about?

13 Q. Line four, line six, the administrative access privileges  
14 pay also be displayed and set. See that?

15 A. Yes, I do.

16 Q. All right. Is that a function that's performed by the SAN  
17 gateway and SAN router products?

18 A. The administrative access privileges are not controlled,  
19 no.

20 Q. Okay. I'm sorry. I am on the wrong line. You're  
21 absolutely right. It says the host initiator access  
22 configuration likewise may either be displayed or set. All  
23 right. Is that function in the SAN gate which and SAN router  
24 products?

25 A. Yes:

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1 Q. Okay. And what does that mean -- first of all, what are  
2 host initiator access configuration? What is that?

3 A. We're referring there to the access controls that allow  
4 the host that are connected on the one side to communicate  
5 with the target devices, the disk drives, the tape drives on  
6 the other side.

7 Q. Okay.

8 A. And these are the controls essentially -- well, the  
9 configuration that says which host can talk to which devices.

10 Q. And this is done using the in-band signaling that we  
11 talked about earlier?

12 A. Yes.

13 Q. In-band management?

14 A. Yes.

15 Q. Can this be done by any host?

16 A. Yes, it may.

17 Q. Okay. At any time?

18 A. Yes, at any time.

19 Q. Okay. Using this feature of the SAN gateway and SAN  
20 router, can any host change the access configuration at any  
21 time?

22 A. Yes.

23 Q. Now, Mr. Kelleher, in a storage area network, in using the  
24 in-band management that we've just been talking about with  
25 respect to Plaintiff's Exhibit 136 and 232 in a storage area

1 network with the Pathlight SAN gateway that has several host  
2 computers connected to one side and several SCSI storage  
3 devices connected to the other, can all hosts get access to  
4 any storage device at any time?

5 A. Yes.

6 Q. The same question with respect to the SAN router. Can all  
7 hosts get access to any storage device at any time?

8 A. Yes.

9 Q. Please take a look at the next paragraph on page 31, it  
10 talks about the administrative accounts database. I'm not  
11 going to highlight the whole thing. What is that dealing  
12 with?

13 A. Well, this is talking about administrative controls that  
14 would allow or deny a particular host the ability to change or  
15 access those -- the configuration.

16 Q. Does it include a password, for example?

17 A. That's a possibility.

18 Q. Okay. Has that feature been implemented in the SAN  
19 gateway and SAN router products?

20 A. No, it hasn't.

21 Q. Pass the witness.

22 THE COURT: I'm going to give the jury a break.  
23 Members of the jury, we'll take a ten minutes. You'll have  
24 time to use the facility, stretch, wake up.

25 (Recess.)

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1 CROSS EXAMINATION

2 BY MR. ALCOCK:

3 Q. Hello, Mr. Kelleher. We've never met before. My name is

4 John Alcock. A few questions on this in-band. How is it

5 enabled?

6 A. How is the in-band management enabled?

7 Q. Yes.

8 A. It's enabled when the product was shipped.

9 Q. How is it disabled?

10 A. It can't be disabled.

11 Q. Okay. Would a normal user with Microsoft be able to make

12 the change issues as you have described with in-band?

13 A. I'm afraid I'm not -- a normal user with Microsoft what?

14 Q. Normal user with Microsoft windows, that's all, a work

15 station or a computer with Microsoft windows, would it be able

16 to make those changes that you described?

17 A. I don't know about the user. The system could.

18 Q. Okay. Does it work -- does in-band work if channel zoning

19 is active?

20 A. Yes.

21 Q. Okay. Could you take a look at exhibit 64422. I mean

22 page 64422 of exhibit 136.

23 A. Yes.

24 Q. Excuse me. It will take a second. This is the page

25 before the page that you were referring to, and it talks about

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1 the SAN gateway including VPS and virtual private map,  
2 powerful access security control services that provide  
3 protected connections between multiple hosts and multiple  
4 storage. Do you see that?

5 A. Yes.

6 Q. Is that an accurate statement?

7 A. Yes.

8 Q. And so the present products still provide this access  
9 control according to VPS and virtual private map; is that  
10 right?

11 A. Yes.

12 Q. So nothing you earlier testified to is inconsistent with  
13 that?

14 A. I don't believe so.

15 Q. Okay. Let me ask you just a couple of questions about the  
16 D-343 that you were asked about earlier. First of all, I  
17 notice on the bottom, it says preliminary draft, 1-10-97. Do  
18 you see that?

19 A. Yes, I do.

20 Q. Is this an early working document?

21 A. Yes.

22 Q. And it says 0.00, so is this the very first working  
23 document?

24 A. This was a work in progress. I have not yet set a  
25 revision on it.

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1 Q. I see. So was this the start?

2 A. No. This is the state it was in on that date.

3 Q. I see. And then, I notice on the top that it says it's an  
4 application of the SSA SCSI bridge?

5 A. Yes.

6 Q. Is that a correct statement?

7 A. Yes, it is.

8 Q. And on the second page of the document, it shows SSA web 1  
9 and SSA web 2. Do you see that?

10 A. Yes, that's correct.

11 Q. And what does SSA stand for?

12 A. Serial storage architecture.

13 Q. I have no further questions of this witness, your Honor.

14 MR. BAHLER: No questions, your Honor.

15 THE COURT: May this witness be excused, counsel? Mr.  
16 Alcock?

17 MR. ALCOCK: Perhaps we want to speak about that at  
18 the end of the day, your Honor. Subject to recall.

19 THE COURT: Well, okay. Do you live in Austin?

20 THE WITNESS: No.

21 MR. BAHLER: Right now he does.

22 THE COURT: Yeah, you're a resident for a while.

23 THE WITNESS: I'll be here tomorrow.

24 THE COURT: All right. Yes. Thank you. Call your  
25 next witness.

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1 MR. DELLETT: Pathlight calls Greg Prestas.

2 (Witness was sworn.)

3 THE COURT: You need to walk up around this column and  
4 have a seat, sir. If you will tell us your full name.

5 THE WITNESS: Gregory Prestas.

6 THE COURT: Spell your last.

7 THE WITNESS: P R E S T A S.

8 DIRECT EXAMINATION

9 BY MR. DELLETT:

10 Q. Mr. Prestas, how long have you worked for Pathlight?

11 A. I've worked there since 1996, April.

12 Q. What is your current position?

13 A. I'm manager of embedded software engineering.

14 Q. And what are you responsible for in that position?

15 A. I'm responsible for the software that makes our box work  
16 and ships with it and runs when it's powered on and for  
17 coordinating development and fixing problems.

18 Q. How many people report to you?

19 A. I have four people reporting to me directly.

20 Q. Have you had any other positions while you've been at  
21 Pathlight?

22 A. Yes, I was hired as a senior engineer, and then, I worked  
23 on a SSA firm wear product and then I was manager of a product  
24 engineering group for about a year with product testing.

25 Then, I went back into development.

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1 Q. Before you joined Pathlight in was it 1996?

2 A. Yes.

3 Q. How long had you been working in the software field?

4 A. I'd been in programming professionally since 1977.

5 Q. And do you have any patents where you are the inventor?

6 A. Yes, I'm co holder of five patents.

7 Q. Now, when did you first do any work on Pathlight's SAN  
8 gateway or SAN router products?

9 A. My first involvement with SAN gateway was in June of 1998,  
10 when I was managing the product engineering group and the  
11 involvement was with testing the gateway and going through the  
12 initial qualification tests while we were pursuing the  
13 contract and delivery to IBM.

14 Q. What was your next involvement with the Pathlight SAN  
15 gateway or SAN router products?

16 A. In December of '98 and January of '99, we contracted with  
17 an outside firm to conduct a software review of our critical  
18 performance code, because we needed to increase the  
19 performance and I was involved with that and with some of the  
20 modifications we did after that in order to increase  
21 performance.

22 Q. Now, at some point in time, did you get involved with  
23 something called VPS?

24 A. Yes.

25 Q. When was that?

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- 1 A. That began in March of 1999.
- 2 Q. Who asked you to get involved in that?
- 3 A. Said Rahmani.
- 4 Q. What was the first thing you did?
- 5 A. We had been having discussions about features that we
- 6 wanted to add to the box for quite a while, and the first
- 7 thing I did was specifically discussed the features concerning
- 8 VPS that we wanted to add and actually write a requirement
- 9 specification that actually detailed just what it was we
- 10 wanted to do so that I could get everyone to agree before I
- 11 actually tried to figure out how to do it and actually started
- 12 doing it.
- 13 Q. Mr. Prestas, I'm going to show you what we have marked as
- 14 an exhibit D-331. Is that the requirement specification that
- 15 you wrote?
- 16 A. Yes, it is.
- 17 Q. And how long did it take you to write that?
- 18 A. Oh, approximately a month.
- 19 Q. Did you write it yourself?
- 20 A. Yes, I did with input from the other people I mentioned.
- 21 Q. Pathlight moves to admit exhibit D-331.
- 22 MR. ALCOCK: No objection, your Honor.
- 23 THE COURT: It's received.
- 24 MR. DELLETT:
- 25 Q. What did you do next after you did the requirement

1 specification?

2 A. The next step was a design specification where continuing  
3 discussions, especially with Terry and review of the code  
4 began to figure out how it was we were going to implement  
5 these functions and I began to capture that information in a  
6 document so that I, as a guide, basically, for actually  
7 writing a code tried to figure out the big problem and get the  
8 main organization set, first, before I actually started to  
9 write code.

10 Q. And what is a control design specification?

11 A. Well, that's the design specification for the ITL access  
12 control is what we called the feature at the time and it  
13 specifies, again, the requirements spec spells out what it is  
14 we were going to do. So I got everybody to agree that, yes,  
15 this is what we wanted to do, and then, that spec is the  
16 beginning of our strategy on how I was going to do it and make  
17 it work.

18 Q. I'm going to show you what's been marked as D-330. Can  
19 you tell me if that is the design specification you did?

20 A. Yes, this is it.

21 Q. And did you write that yourself?

22 A. Yes, I did.

23 Q. Pathlight offers to admit exhibit D-330?

24 MR. ALCOCK: No objection.

25 A. Your Honor.

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1 THE COURT: It's received.

2 MR. DELLETT:

3 Q. Now, to yes the requirement specification or the design  
4 specification, did you use any information from Crossroads?

5 A. No, I did not.

6 Q. Did you copy anything of Crossroads's products?

7 A. No.

8 Q. Okay. Did you use anything from Crossroads at all?

9 A. No, nothing at all.

10 Q. Now, what did you do next in this VPS project?

11 A. Began writing the code.

12 Q. And did you write that code yourself or did you sign that  
13 to somebody?

14 A. I wrote it myself.

15 Q. What computer language did you write it in?

16 A. It's written in C programming.

17 Q. Is that a language you had used before?

18 A. Yes, for many years.

19 Q. Now, there's been some testimony here about access control  
20 functionality. Is that part of the VPS code that you were  
21 working on back in 1999?

22 A. Yes, there is access control function as part of VPS, yes.

23 Q. Did it have other functions and if so, what?

24 A. Yes, it has several other functions. There's a host  
25 registration function that allows it to automatically register

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1 the identity of the host computers that are attached to it.  
2 It has a dynamic health monitoring function that allows it to  
3 monitor the status of those hosts and allow a user to discover  
4 which hosts are attached and if they're active, if they're  
5 currently active. It has some other things to it.  
6 Q. Those functions are different than the --  
7 A. It has an in-band configuration functions built into it,  
8 also.  
9 Q. Are those functions different than the access control  
10 function?  
11 A. Yes.  
12 Q. Now, when did you have the VPS code for the access control  
13 function complete enough to know that it worked?  
14 A. I began experimenting with the access controls by late May  
15 and by the end of June the access control part was  
16 functioning.  
17 Q. How did you know that?  
18 A. I had a test set up so that I could compile and run the  
19 code and perform tests and determine that it was doing what it  
20 was supposed to be doing.  
21 Q. Were you working on VPS full-time during that period?  
22 A. It was my main task, but I did have other responsibilities  
23 that I would also work on and sometimes have to stay later. I  
24 devoted most of my time to that during what period.  
25 Q. By June 1999, had you shown the VPS code to anybody

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1 outside of Pathlight?  
2 A. No.  
3 Q. Now, what equipment did you use in writing the VPS code?  
4 A. Well, the code is just written on a regular computer with  
5 a text editor and stored in files on one of our servers.  
6 Q. Did you use any equipment from Crossroads when you wrote  
7 the VPS code?  
8 A. No, not at all.  
9 Q. Now, is it correct that the VPS code is copied on this  
10 disk?  
11 A. Yes, this disk contains the entire source treat during our  
12 product including the VPS code.  
13 Q. How do you know that?  
14 A. I examined it when I was at your offices last week.  
15 Q. Now, approximately how many lines of code are in the VPS  
16 software?  
17 A. Approximately 3,000 lines of active code.  
18 Q. And of that 3,000 lines, how many lines relate to the  
19 access control functions?  
20 A. Approximately one-third or 1,000.  
21 Q. 1,000 lines?  
22 A. Yes.  
23 Q. And how many lines of code in total are in a Pathlight  
24 storage gateway or router?  
25 A. Approximately 240,000.

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1 Q. 240,000?

2 A. Yes.

3 Q. Now, Pathlight moves the admit exhibit D-334?

4 MR. ALCOCK: No objection, your Honor.

5 THE COURT: 334 is admitted.

6 MR. DELLETT:

7 Q. Now, let's move ahead to August 24th, 1999. Are you aware  
8 that that's the date when the Crossroads 972 patent issued?

9 A. Yes, I am.

10 Q. And did you know about it, the Crossroads patent on August  
11 24th, 1999?

12 A. No, I did not.

13 Q. What was the status of your work on writing the software  
14 for the access control function as of August 24th, 1999?

15 A. The access control function was complete at the beginning  
16 of August.

17 Q. Before you -- before the patent even issued?

18 A. Yes, I reviewed the source code in the last check-in was  
19 August 4th.

20 Q. Did you do any work at all on access control function  
21 after August 24th, 1991?

22 A. There's been some occasional maintenance and minor changes  
23 but nothing beyond that.

24 Q. Has the functionality of the access control feature  
25 changed at all since you wrote it in 1999?

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1 A. No, it has not.

2 Q. Now, did you ever look at any Crossroads products or other  
3 Crossroads information while you were writing the computer  
4 code for access controls?

5 A. No, I did not.

6 Q. Let's move ahead into a time period when you became  
7 involved in a patent application for Pathlight. The jury's  
8 heard some testimony about that. And I'd like to first refer  
9 you to the cover page of that patent application. Do you  
10 recognize this patent application?

11 A. Yes, I do.

12 Q. What is your name first? It's down there under inventors.

13 A. Uh-huh. I'm listed as the principal inventor. It's  
14 because I designed and implemented and ran this project.

15 Q. Do you have an understanding as to why you filed this  
16 patent application?

17 A. Yes.

18 Q. Why is that?

19 A. We had invested considerable time, energy and talent in  
20 developing these features and improvements and we wanted to  
21 protect them.

22 Q. Is this the only patent application Pathlight has filed?

23 A. No, there are others.

24 Q. Now, did you write this patent application yourself?

25 A. No. I provided the technical information to our

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1 attorneys.

2 Q. Who was that?

3 A. Mark levy and David Ben her.

4 Q. Did you help Mr. Levy write it?

5 A. In that I review and commented and gave feedback, yes.

6 Q. Okay. What is your understanding of what you were trying  
7 to get a patent on?

8 A. We were trying to patent the specific method and  
9 implementation that we had used in order to implement these  
10 features in our product.

11 Q. Were you trying to get a patent on every type of access  
12 control?

13 A. No.

14 Q. Why not?

15 A. Well, access control is something that's just part of  
16 storage area networking and has been from its conception. So  
17 we didn't consider that the concept was patentable, but this  
18 particular method involved unique aspects of our architecture  
19 and considerable experimentation and development that we had  
20 done and felt that it was worthwhile and worth patenting.

21 Q. So what extent did you tell the patent office whether or  
22 not access control, the concept of access control was  
23 patentable?

24 A. I included in the background section of the application a  
25 discussion of the three primary methods of access control that

1 I was familiar as existing in the prior art and being used and  
2 then previously.

3 Q. Now, does this patent application show the virtual  
4 connection architecture that you designed?

5 A. Yes, it does.

6 Q. And where would I find that in the patent application?

7 A. There's a figure 1 is in overall block diagram of the  
8 entire system.

9 Q. Let me see if I can get that on the screen. Can you read  
10 that?

11 A. Yes.

12 Q. Okay. Now, is this diagram show the virtual connection  
13 architecture that you designed?

14 A. Yes, it does.

15 Q. Okay. Can you describe it briefly?

16 A. Yes, the top box on the left represents a host that would  
17 send a command. The command is received by the virtual  
18 connection manager, which is the little box in the top center  
19 of the big box that's on the bottom. Then, the virtual  
20 connection manager interacts with the virtual connection cache  
21 and the initiator accounts database to determine whether that  
22 connection is valid or not and then, processes the command out  
23 to the target and back to the host accordingly.

24 Q. Now, does the patent application explain anything more  
25 about what the virtual connection manager is?

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1 A. Yes, figure 4 should be a flowchart of that process.

2 Q. Can you explain what your invention is in figure 4?

3 A. Yes, well, the top box and the middle where it says wait  
4 for command, that's -- this is the virtual connection manager  
5 when no command is pending. The command comes in at first,  
6 checks to see if there's already a connection in the cache.  
7 If there is, it goes off to the right where it says yes. If  
8 it's a valid connection, it means that command is allowed to  
9 be processed and it is processed. If it's invalid, the  
10 command is returned as failed back to the host.

11 If there's not already a connection in the cache, it  
12 goes to the left where it says no. And then, in the diamond,  
13 it says 412, it checks with the initiator account database to  
14 see if this connection is allowed, if it creates a valid  
15 connection in the cache and processes the command normally.  
16 If not, it puts an invalid connection in the cache and rejects  
17 the command as failed.

18 Q. Now, does your patent application include any other  
19 features other than what we showed in figure 4 and figure 1?

20 A. Yes, it does.

21 Q. What are those features?

22 A. It includes the host registration and dynamic health  
23 monitoring feature that I mentioned and it also includes  
24 mention of the other in-band control mechanisms.

25 Q. Are the virtual connection architecture and the host

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1 registration features ones that Pathlight uses in its SAN  
2 gateways and SAN routers?

3 A. Yes, they are.

4 Q. Now, does the same virtual connection architecture exist  
5 in the SAN gateway that exist in the SAN router?

6 A. Yes, it does.

7 Q. Identical?

8 A. Yes.

9 Q. Now, have you read the Crossroads 972 patent?

10 A. Yes, I have.

11 Q. When did you first hear about that patent?

12 A. The end of November 1999.

13 Q. Now, by the time you saw the 972 patent, what was the  
14 status of the VPS software you were writing?

15 A. It was finished.

16 Q. Finished?

17 A. Yes.

18 Q. Now, does the 972 patent describe the virtual connection  
19 architecture that you talked about here?

20 A. No, it does not.

21 Q. Is there anything in the 972 patent that would help you  
22 write the computer code for virtual connection architecture?

23 A. No, there's not.

24 Q. Is there anything in the 972 patent that would help you  
25 write computer code for any feature of VPS?

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1 A. No.

2 Q. Did you use anything in the 972 patent to design and write  
3 the code for VPS?

4 A. No, I didn't.

5 Q. Have you ever been accused of copying any computer  
6 software before?

7 A. No.

8 Q. Pass the witness.

9 CROSS-EXAMINATION

10 BY MR. ALCOCK:

11 Q. Hello, Mr. Prestas. My name's John Alcock. We've not met  
12 before. If you could turn to -- I'm going to call it exhibit  
13 232. Do you have your patent application in front of you?

14 A. No, I don't.

15 Q. Here, I'll hand you one. Actually, I think it's in that  
16 book, too. Just quickly, could you turn to page 13. There's  
17 a discussion there of the description of the preferred  
18 embodiment. Do you see that?

19 A. Yes.

20 Q. All right. And you have a number of patents. The  
21 preferred embodiment is the best which to build the invention;  
22 is that your understanding?

23 A. Well, I didn't write the patent. I'm not that familiar  
24 with patent language itself, but that sounds reasonable.

25 Q. Okay. I want you to fast-forward to page 20. You were

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1 asked some questions about figure 4. Figure 4 is the kind of  
2 overall architecture of the device; is that right?

3 A. No. Figure 4 is the flowchart of the connection manager  
4 relative to executing a command.

5 Q. I see. And the connection manager is the device or the  
6 part of the software that manages the connections between the  
7 work stations and the remote storage devices?

8 A. Yeah.

9 Q. Okay. And here, it says that figures 4 and 3 show how the  
10 inventive architecture is able to enforce, complete end-to-end  
11 access control with no performance degradation. End-to-end  
12 access control means from the work stations to the remote  
13 storage devices?

14 A. Yes, the end points on the storage area network.

15 Q. I see. And this feature? The products that's in the SAN  
16 director through the VPS software?

17 A. Yes, there are -- to a degree, yeah.

18 Q. And it works?

19 A. Yes, it does.

20 Q. Works well?

21 A. It works.

22 Q. And the next sentence there, this is one of the most  
23 significant advantages realized by the instant invention. Is  
24 that your words or is that Mr. Levi's words or whose words is  
25 that, do you know?

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1 A. I really don't know who wrote that sentence.

2 Q. Okay. Thank you very much. No further questions. Pass  
3 the witness.

4 RE-DIRECT EXAMINATION

5 BY MR. DELLETT:

6 Q. Mr. Prestas, does the access control feature that Mr.  
7 Alcock showed you, does that provide ironclad restrictions of  
8 access to -- between a host and a storage device?

9 A. No. They're not ironclad.

10 Q. Pass the witness.

11 MR. ALCOCK: No further questions, your Honor.

12 THE COURT: All right. May this witness be excused?

13 MR. ALCOCK: Yes, he may, your Honor.

14 THE COURT: You may be excused, sir. Who is your next  
15 witness?

16 MR. BAHLER: We have a deposition to read in, your  
17 Honor. This might be a good time to break for the day.

18 THE COURT: Might be, but it's not.

19 MR. BAHLER: Okay.

20 MR. ALBRIGHT: Your Honor, which deposition is going  
21 to be read?

22 MR. BAHLER: Mr. Englebrecht.

23 THE COURT: How long is the deposition?

24 MR. BAHLER: About 30 minutes direct.

25 THE COURT: Are you going to have a bunch of cross on

1 this deposition?

2 MR. ALBRIGHT: Very brief, your Honor, I believe. No,  
3 sir. Just a couple of minutes.

4 MR. DELLETT: The first deposition was taken of Mr.  
5 Englebrecht on November 30th, 2000.

6 THE COURT: Spell the witness' name, if you would for  
7 the Court Reporter and the Court.

8 MR. DELLETT: E N G E L B R E C H T.

9 THE COURT: Thank you.

10 Q. My name is Michael Barrett and I work with the firm  
11 Fulbright and Jaworski. I represent two defendants in this  
12 case, Pathlight and Chaparral. Before we get into the main  
13 part --

14 THE COURT: Before you get your head taken off, a  
15 little slower. She's been working all day.

16 MR. DELLETT: Sorry.

17 THE COURT: It's all right.

18 MR. DELLETT:

19 Q. My name is Michael Barrett and I work with the firm  
20 Fulbright and Jaworski. I represent two defendants in this  
21 case, Pathlight and Chaparral. Before we get into the main  
22 part of our questioning, I was wondering if we could cover  
23 some background material. Would you please explain to me a  
24 synopsis of your educational background?

25 A. Okay. I have a bachelor's degree and a master's degree in

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1 electrical engineering from the university of Missouri at hoe  
2 have my master's degree granted in 1973 and we have a master's  
3 in engineering management in science from Wichita state  
4 university. That was granted in 1982.

5 Q. I know you already have described it some, but what's the  
6 overview of your current job responsibilities for LSI?

7 A. Okay. I'm in charge of the engineering development of our  
8 product lines, which at this point are almost completely  
9 storage systems. We do high performance, high availability  
10 storage systems and sell them to both OEM customers and to end  
11 user customers through our reseller channel so the engineering  
12 development includes hardware development firm wear  
13 development, system software test. And I also have  
14 responsibility for the manufacturing operations that actually  
15 build and assemble these units for the end user customers.

16 Q. What was the earliest fiber channel RAID controller that  
17 LSI made?

18 A. It was a product called the 3701 controller. And this was  
19 developed in late 1994 and 1995. We did some demonstrations  
20 of the product to selected OEM customers in the middle of  
21 1995.

22 Q. Okay. So we're talking about the 3701 controller. You  
23 said it was demoed in 1995?

24 A. Yes.

25 Q. Is that product still current?

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1 A. There is -- there are actually two versions, a 3701 and a  
2 3702 and they differed only in they're mechanical form factor,  
3 in the mechanical enclose were they went into. The 3701 is no  
4 longer current. The 3702 version is actually still sold.

5 Q. Okay. Let's move on to the first fiber channel family  
6 controller. If I've got my notes right, it's the 3701.

7 A. Yes.

8 Q. Now, you mentioned before that the May have been developed  
9 in the '94 time frame; is that correct?

10 A. Development began in 1994.

11 Q. I know it's difficult to gauge when something has stopped  
12 development and completed, but when would you say this 3701  
13 product was completed?

14 A. The ends of 1995.

15 Q. Do you remember when the first 3701 product was sold,  
16 approximately?

17 A. Fourth quarter of 1995, limited engineering models.

18 Q. Now, did the 3701 product which is fiber channel to SCSI  
19 support reserve release?

20 A. Yes.

21 Q. Can you explain how that was done?

22 A. Well, it was implemented exactly the same as I've  
23 explained for the 3621 because it's the same, the same core  
24 firm wear set runs on a 3701 and 3702 controllers. All that  
25 we do from a firm wear point of view is add a fiber channel.

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1 driver effectively on the front end of this firm wear package  
2 to do the interfacing to fiber channel. So the structure of  
3 the table that maintains access privileges in the firm wear is  
4 the same as explained for the 3621.

5 Q. So in this fiber channel to SCSI product, the controller  
6 itself was keeping track of which host had reserved which  
7 target?

8 A. Yes.

9 Q. Now, I'm sure this is probably simplistic, but the table  
10 you're talking about, it keeps track of -- let's see if I can  
11 get a grasp of all the information it's keeping track of. Is  
12 it keeping track of the fiber channel hosts that makes the  
13 reservation?

14 A. Yes.

15 Q. And how does that do that by worldwide name?

16 A. Today it does. In the early implementations, we had not  
17 supported the worldwide name conventions, and I believe it was  
18 -- it was kept track by a lower order primitive.

19 Q. But it was some unique identifier?

20 A. It was a unique identifier. I think there's an eight-bit  
21 field that we were able to use at that point.

22 Q. And then, how would it keep track of which SCSI target the  
23 reservation was meant for?

24 A. Well, it tracked -- it basically maintains that accounting  
25 on a logical unit basis. Theological units are defined

1 separately and they actually are typically comprised of  
2 multiple disk drives that are striking data across multiple  
3 channels and multiple disk drives to get the high  
4 performability and characteristics. So there's another table  
5 in the firm wear that defines each of these LUNs and maps the  
6 logical address range to the physical set of devices that  
7 comprise that address range.

8 Q. So in this reserve release feature, the table we're  
9 talking about now, you would have some unique identifier  
10 associated with the fiber channel hosts and then, some unique  
11 identifier associated with the target that had been reserved;  
12 is that correct?

13 A. With the LUN that will be reserved, yes.

14 Q. Could you reserve just part of a LUN or is it on a  
15 LUN-by-LUN basis only?

16 A. We did define something that we called sub LUNs which  
17 allow you to reserve part of a LUN, yes.

18 Q. Would that corresponds to, if we're talking about hard  
19 disk drives, would that correspond to a portion of the hard  
20 disk drive or could it?

21 A. Yes, it's actually portions of multiple disk drives in our  
22 interpretation.

23 Q. Okay. Could the LUN that's being reserved also refer to  
24 an entire storage device? For instance, an entire hard disk  
25 drive?

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- 1 A. It could be or portions thereof or portions, yes.
- 2 Q. Okay. Do you know if the 3701 product had any type of  
3 buffer memory in it?
- 4 A. Yes, it did.
- 5 Q. And where was that?
- 6 A. Well, it's -- it resides on the -- off the main processor  
7 bus. The architecture of the controller is what we  
8 characterize as a dual memory architecture. It has one memory  
9 structure that is used by the processor for processor commands  
10 and some table storage and it has another memory that is  
11 dedicated to data buffering.
- 12 Q. Okay. And did the 3701 have a fiber channel controller?
- 13 A. It has a fiber channel controller chip on the option card  
14 that I mentioned earlier.
- 15 Q. Do you know what brand of fiber channel controller was  
16 used?
- 17 A. It was a Tachyon chip.
- 18 Q. Was that made by Hewlett Packard?
- 19 A. It was a Hewlett Packard at that point in time. Today's  
20 it's Adulent.
- 21 Q. And this fiber channel controller, it's connected to the  
22 -- it connected to the fiber channel bus, if you will?
- 23 A. Yes.
- 24 Q. And did the 3701 have a SCSI controller?
- 25 A. Yes, it had multiple SCSI controllers.

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- 1 Q. How many?
- 2 A. Six.
- 3 Q. Do you know what brand was used?
- 4 A. They were Symbios Logic at that point.
- 5 Q. And each one of those connected to a SCSI bus?
- 6 A. Yes.
- 7 Q. Did the 3701 have a microprocessor in it?
- 8 A. Yes.
- 9 Q. Was the I 960 chip used?
- 10 A. No.
- 11 Q. Are you familiar with the I 960 chip?
- 12 A. Yes.
- 13 Q. What microprocessor was used in the 3701, if you remember?
- 14 A. An Intel 486.
- 15 Q. In general terms, what was the function of this
- 16 microprocessor?
- 17 A. To execute the firm wear program that provides the
- 18 functionality of the controller. Basically, the data striking
- 19 and data recovering functions.
- 20 Q. Did it work in conjunction with the release to firm wear?
- 21 A. Yes.
- 22 Q. Did it when working in conjunction with the release to
- 23 firm wear, then, did it have any role in translating between
- 24 fiber channel and SCSI?
- 25 A. Yes.

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1 Q. And what role would that have been?

2 A. Processor is executing the firm wear code that is actually  
3 doing this translation which is basically a specified by the  
4 fiber channel specification developed by an si.

5 Q. Do you know what version of SCSI was running on the 3701?

6 Was it SCSI two?

7 A. The host side implement take could be characterized as  
8 SCSI 2 with 16-bit implementation.

9 Q. Okay. If you remember, we were talking about a table that  
10 keeps track of reservations. Where would that table reside in  
11 the controller? Is it also in E prom memory?

12 A. It would -- the code would and the table structure would  
13 reside there prior to the controller actually be included up  
14 and brought into service. After that point in time, that  
15 table structure would reside in what we would characterize as  
16 the process of memory as opposed to a data buff memory.

17 Q. Okay. What is going on in the buffer in the 3701 product?  
18 In other words, how is it used in the 3701 product?

19 A. It's used as intermediate storage for the data. The data  
20 coming in the host is buffered in the buffer memory process.  
21 The firm wear generates in another step this redundancy  
22 information that I mentioned earlier, and it effectively  
23 inserts it into the buffer in appropriate locations. And  
24 then, a second set of operation takes the buffer contents and  
25 strikes them across the specified number of disk drives.

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1 Q. So it truly is the data, then, so whatever data needs to  
2 be written to the disk drive, for instance, during its travel  
3 to those disk drives, it travels through the buffer at one  
4 point or the other?

5 A. Yes.

6 Q. Okay. Do you know if the 3701 had any DMA which is direct  
7 memory access memory?

8 A. The architecture used DMA really on both of these memory  
9 structures. In fact, we have a very high performance DMA  
10 engine on the buffer memory to optimize performance, so would  
11 it be fair to say that this 3701 is translated between fiber  
12 channel and SCSI, yes.

13 Q. Okay. Just so I can get my date straight, all these  
14 features we've been talking about in the hardware and software  
15 side, they were available sometime in 1996?

16 A. Yes.

17 Q. Okay. This section, again, entitled reserve, the one --  
18 the seconds sentence says, the controller processes this  
19 command at the controller level. No member drives are issued  
20 a reserve command. Can you explain what is meant by that?

21 A. It means that the controller itself is managing the  
22 execution because the drives it were using SCSI drives, those  
23 drives respond to the SCSI commands, as well. These are  
24 standard SCSI commands. And so the intent here is to indicate  
25 that the controller is managing all of this reserve release

1 activity.

2 We aren't delegating any of it to the actual target  
3 drugs for executed.

4 Q. So the sentence basically says the controller is the one  
5 keeping track of the reserve commands?

6 A. Yes.

7 Q. Is it doing it via the table, that table we were talking  
8 about earlier?

9 A. Yes.

10 Q. All right. Let's -- well, in general terms, what does  
11 this document that we marked as Defendant's Exhibit 74  
12 describe?

13 A. Well, it's the functional specification or the hardware  
14 part of the controller so it specifies the IO printouts, it  
15 specifies the power requirement, it sets up the connector  
16 schemes for the various SCSI buses that are utilized.

17 Q. All right. Let's turn to page 4, which is the block  
18 diagram we mentioned a little earlier. Pathlight moves to  
19 admit exhibit D-74.

20 MR. ALBRIGHT: No objection, your Honor.

21 THE COURT: Received.

22 MR. DELLETT:

23 Q. Let's turn to page 4 which is the block diagram we  
24 mentioned a little earlier. Are you generally familiar with  
25 what block diagram?

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1 A. Yes.

2 Q. Do you know if that's an accurate representation of the  
3 3701 controller's hardware?

4 A. Yes, yes, it is.

5 Q. And do you know what date -- let me see if I can words  
6 this. That block describes the 3701's hardware from what  
7 date, if you know?

8 A. 1995.

9 Q. Do you know if the hardware changed significantly from  
10 what is shown in that block diagram after 1995?

11 A. No, I do not.

12 Q. Now, I haven't studied that much in detail, but does that  
13 show a buffer anywhere?

14 A. The cache data area here is what you've termed the buffer  
15 previously.

16 Q. Okay. And what is that connected to?

17 A. It's connected to a chip that we call the Saturn, which is  
18 a unique basic that we developed that provides high speed DMA  
19 in-and-out of this buffer. It also does the ex or function,  
20 that's critical for most of the radiant mutations.

21 Q. Is that different than the chip we were talking about  
22 earlier? I think we were talking about a 486 chip.

23 A. Well, the 486 is the actual processor chip.

24 Q. Okay. And does that block diagram show a fiber channel  
25 controller?

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1 A. Its shows the interface port. It doesn't show the  
2 controller chip. It shows a depiction in the block diagram of  
3 this plug-in daughter card that contains the interfacing chip.

4 Q. Okay. So would the fiber channel, would a fiber channel  
5 controller somehow hook up to the interface or is that block  
6 meant to include the fiber channel controller?

7 A. It's meant to include the fiber channel controller.

8 Q. How about a SCSI controller? Is that shown in the block  
9 diagram?

10 A. All these six chips are the SCSI controllers.

11 Q. How are those labeled?

12 A. They're labeled as 53C, 875, PCI-SCSI.

13 Q. Do you know what that designation means, 53C?

14 A. Well, those are the Symbios part number designations.  
15 That was the part number that it was marketed under.

16 Q. Was the information contained in this ever presented at  
17 what trade show?

18 A. The information itself was not. The controller was  
19 demonstrated at at least one trade show.

20 Q. Do you remember which trade show that was?

21 A. Comdex.

22 Q. Was that Comdex '95 or '96?

23 A. Both. Well, the 3701 was demonstrated in '95. By 1996,  
24 it would have been the 3702.

25 Q. In the other demonstration you guys were running at Comdex

1 1996, I'll refer to that as the loop demonstration. Exactly  
2 how many fiber channel hosts were hooked up to the host side  
3 of the controller, if you remember?

4 A. I don't remember, ten or more.

5 Q. And they were in the arbitrated loop topology?

6 A. Yes, yes.

7 Q. And how exactly does that work? If you have ten fiber  
8 channel hosts on one side, do they plug into a single fiber  
9 channel port of your controller?

10 A. No, it's effectively a daisy chain between the devices on  
11 the loop. Actually in that configuration, I'm sure we  
12 were using a hub and the hub, in effect, turns sort of point  
13 to point connections into a loop connection.

14 Q. Okay.

15 A. It prevents any one device failure from bringing down the  
16 entire loop.

17 Q. Okay. And so we have multiple fiber channel hosts on one  
18 side, correct?

19 A. Uh-huh.

20 Q. Do we have multiple SCSI storage devices on the other side  
21 of the controller?

22 A. Yes.

23 Q. Now, in that device, was the reserve release functionality  
24 implemented?

25 A. It was implemented but not demonstrated.

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1 Q. Okay. Had it been demonstrated, would it have the --  
2 would it have add the ability to reserve the specific LUN for  
3 a specific fiber channel host?

4 A. Yes.

5 Q. And how do you come to that conclusion?

6 A. Because I'm confident that the firm wear functionality  
7 was, in fact, present and if reserve release commands were  
8 issued to us, we would have responded appropriately.

9 Q. Okay. And if one of those reserve commands was issued and  
10 a LUN was reserved, if a different one of the fiber channel  
11 host was then trying to access that reserve drive, what would  
12 happen?

13 A. Would have reserved an illegal command status.

14 Q. Who would have sent that illegal command status?

15 A. The RAID controller.

16 Q. And is that because the RAID controller was keeping track  
17 of the reservations?

18 A. Yes, it is.

19 Q. And so, at the Comdex '96, the RAID controller have the  
20 ability to associate a unique identifier for a fiber channel  
21 host with a unique identifier for a SCSI storage device?

22 A. Yes.

23 Q. Okay. Let me step back just a little bit and kind of talk  
24 about some of the hardware of the devices shown at '95 Comdex  
25 and '96 Comdex. I'll start with 1995. In '95, you showed the

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1 3701. Do you remember if within the hardware of the  
2 controller shown at 95 Comdex, if a buffer was present in the  
3 controller?  
4 A. Yes, it was.  
5 Q. Was there a fiber channel controller within the device  
6 shown at Comdex '95?  
7 A. Yes, there was.  
8 Q. Was there a SCSI controller?  
9 A. Yes, there was.  
10 Q. And was there a micro processor within the controller that  
11 worked in association with the firm wear?  
12 A. Yes, there was.  
13 Q. Actually, I have the same questions for Comdex '96. But  
14 just for completeness, the 3702 controller shown at Comdex  
15 '96, are you aware it did have a buffer?  
16 A. Yes, it did.  
17 Q. And a SCSI controller?  
18 A. Yes, it did.  
19 Q. A fiber channel controller?  
20 A. Yes, it did.  
21 Q. I'm sorry if I'm repeating. And a SCSI controller?  
22 A. Yes.  
23 Q. And did it also have a microprocessor that worked in  
24 association with the firm wear?  
25 A. Yes.

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1 Q. Okay. Were there any other trade shows or presentations  
2 that the 3701 or 3702 products were shown at, if you remember?

3 A. Not that I recall.

4 Q. Did you guys ever publish any journal articles or get  
5 presentations outside the Comdex arena?

6 A. I don't recall any in that time frame.

7 Q. Okay. I don't know if I got into this, but at Comdex '96,  
8 was literature or product information handed out to people who  
9 were interested?

10 A. Yes.

11 Q. Do you know what kind of information was handed out?

12 A. Product briefs or brochures. I think we provided one  
13 example.

14 Q. Do you know if those brochures mention hard wear  
15 components?

16 A. Yes, they were more hardware descriptive than they were  
17 firm wear descriptive.

18 Q. Okay. Do you know or do you remember -- well, first, were  
19 you at these cop Defendant's Exhibit '9 --

20 A. Yes, I was.

21 Q. You were at both the '95 and '96?

22 A. Yes, I was.

23 Q. Okay. Do you remember who else was with you at these  
24 Comdex shows?

25 A. No, I don't.

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1 Q. Were you -- you weren't by yourself, though, were you?  
2 A. I wasn't by myself, no. The shows are too long for that.  
3 But you know, one person I can recall was along was Rich  
4 Watsonheiser, who was my marketing manager at the time.  
5 Q. Is he still around LSI?  
6 A. No, he's not.  
7 Q. Do you know where he is?  
8 A. Actually, I believe he's with Crossroads.  
9 Q. Oh, okay.  
10 A. He was with HP. I believe I recall hearing that he had  
11 gone to Crossroads.  
12 Q. Before we broke for lunch, we were talking about Comdex  
13 '96. I just want to continue along that line for a little  
14 while. What exactly were you demonstrating at Comdex '96?  
15 Was the controller up and running?  
16 A. Yes, it was.  
17 Q. So during the demonstration, was it evident that fiber  
18 channel protocol was being translated into SCSI protocol?  
19 A. Yes.  
20 Q. At the time of Comdex '96, LSI was already selling their  
21 3702, correct?  
22 A. It was being offered for sale.  
23 Q. Okay. Now, the version being offered for sale, was it  
24 identical to the version up and coming in '96?  
25 A. Yes.

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- 1 Q. No difference in the hardware?
- 2 A. No.
- 3 Q. Or software?
- 4 A. No.
- 5 Q. Or firm wear?
- 6 A. No.
- 7 Q. Okay. And at the demonstration of Comdex '96 that
- 8 demonstrated product, that demonstrated product was running
- 9 RAID manager five; is that correct?
- 10 A. Yes.
- 11 Q. Okay. Because you said that the hardware and software was
- 12 identical to that being offered for sale, then, or at some
- 13 time later, is it safe to say that these documents that you
- 14 provided today accurately reflect the hardware and/or software
- 15 features of the device shown at Comdex '96?
- 16 A. Yes.
- 17 Q. So the hardware specification block diagram that we
- 18 discussed before, does that describe the top level hardware
- 19 features of the Comdex '96 device?
- 20 A. Yes.
- 21 Q. And the same is true for the software?
- 22 A. Yes.
- 23 Q. And firm wear?
- 24 A. Yes.
- 25 Q. Okay.

1 A. Before we go further, during the break, I was looking  
2 again at the block diagram.

3 Q. Uh-huh.

4 A. I'm nor familiar with the marketing version of this  
5 question had created and realized I had pointed out the buffer  
6 area incorrectly on this.

7 Q. Okay.

8 A. The buffer memory area is actually this odd bank-even bank  
9 area that's pointed out down here controlled by the RPH.

10 Q. Just because we're all not text, you're pointing to the  
11 box RPH chip and also pointing to the two little structures  
12 immediately below it, one of them says even bank and the other  
13 one says odd bank?

14 A. Right. This is the actual data buffer. I got misled by  
15 the cache. This is the second level cache of the processor  
16 memory I originally pointed to. This is the data buffer area.

17 Q. Thanks for pointing that out. A couple of nor questions.  
18 Do you know the date of the -- the date of the first  
19 commercial sale of the 3701 product?

20 A. Fourth quarter, 1995.

21 Q. And that was a sale? Do you know who did that?

22 A. IBM corporation.

23 Q. Okay. The first sale of the 3702 product, do you know the  
24 date of that?

25 A. Second half, 1996.

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1 MR. DELLETT: We next have a portion of the deposition  
2 of Mr. Englebrecht also, this one is March the 5th, 2001.

3 Q. Okay. Mr. Englebrecht, I sent to you several exhibits,  
4 draft exhibits or proposed exhibits. Could you turn within  
5 that stack to what has been marked defendant's trial exhibit  
6 D-79, okay? Actually, we're going to turn over to -- let's  
7 turn over to D-80.

8 A. Okay.

9 Q. And that's a -- do you know what that is?

10 A. Yes. This is another order for trans soft. I got three  
11 sheets here. The first sheet is the actual order that came  
12 from Transoft. We were using a manufacturer's wrap at that  
13 point called leading concept technology so the or came from  
14 Transoft to leading technology who then forwarded on to us.

15 Q. All right. And what does this purchase order deal with?

16 A. This is another order for, in this case, 26299 controller  
17 assembly and this one specific think calls out the fiber  
18 channel option on the 2699.

19 Q. And by option, is that the daughter board option that you  
20 spoke with Mr. Barrett about?

21 A. Yes, it is.

22 Q. Okay. And when the 3620 was outfitted with the fiber  
23 channel daughter board, did it have an LSI? Did that product  
24 have an LSI number?

25 A. Yes, we would call that assembly bend a 3701 controller.

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1 Q. Okay. So does this purchase order, Defendant's Exhibit

2 D-80, deal include the sale of a 3701 controller?

3 A. Yes, it does.

4 Q. Pathlight offers exhibit D-80.

5 MR. ALBRIGHT: No objection.

6 THE COURT: 80 is received.

7 MR. DELLETT:

8 Q. Okay. Do you know how many controllers of that type it  
9 includes? Can you tell by looking at this?

10 A. I only see one specifically listed.

11 Q. Okay. And the price is \$61,570?

12 A. Yes, that would be the price for two of the 6299 units.

13 Q. Okay.

14 A. That are ordered on this purchase order.

15 Q. So this purchase order in contrast with the purchase order  
16 of exhibit or the invoice of exhibit D-79 deals with the 3701  
17 controller?

18 A. That's correct.

19 Q. Do you know how Transoft was using these 3701s?

20 A. It was in the same general application of storage that was  
21 used to store a video game edited, and in this file was shared  
22 between multiple work stations.

23 Q. Okay. Were those fiber channel work stations in this  
24 instance?

25 A. In this case, they must have been. They were using both

1 modes and since they're ordering the fiber configuration,  
2 that's the only way to connect it.

3 Q. Okay. And that's why you say why you said they must have  
4 been using fiber channel?

5 A. Yes. I assume they would not have ordered the fiber  
6 channel option if they weren't using it in the fiber channel  
7 mode because it cost additional money over the SCSI  
8 configuration.

9 Q. Now, do you know whether or not Transoft -- was Transoft  
10 an OEM?

11 A. Transoft was treated as an OEM. They were what we could  
12 call today a systems integrator.

13 Q. And were they -- do you know whether or not they were  
14 using a 6299, which included the 3701 controller in order to  
15 create an integrated system for some ultimate customer?

16 A. Yes, that was their intent.

17 Q. Okay. Do you know whether or not they actually did that?

18 A. I don't absolutely know that.

19 Q. All right. Let's move to LSI exhibit D-81. Do you know  
20 what that is, sir?

21 A. This is a press release that we released in the time frame  
22 of Comdex, the industry computer show in the fall of 1996.

23 Q. Let me offer exhibit D-81.

24 MR. ALBRIGHT: No objection.

25 THE COURT: It's received.

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1 MR. DELLETT:

2 Q. Okay. And is this -- was this an actual release to the  
3 public?

4 A. Yes. Well, this was released to the press and then we had  
5 copies of this as handouts at our exhibit during Comdex fall  
6 1996.

7 Q. Okay. Now, at Comdex fall '96, was there a 3701 RAID  
8 controller on display?

9 A. Yes.

10 Q. Okay. And just to cut to the chase, you mentioned two  
11 during your last deposition, you mentioned two demonstrations,  
12 one of which was in FCLC room, which is the fiber channel loop  
13 community; is that correct?

14 A. Right.

15 Q. Okay. And that's mentioned actually in the second to the  
16 last full paragraph. It's a sentence-long near the bottom of  
17 the first page of page 12.

18 A. Yes.

19 Q. Of D-81.

20 A. Yes.

21 Q. Was that the -- was that FCLC room, was that a private  
22 suite or was it open to the public?

23 A. No. It was open to the public.

24 Q. I'm sorry. Were there multiple fiber channel hosts  
25 connected to the 3701 at that demonstration?

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1 A. Yes.

2 Q. Okay. Do you remember how many?

3 A. No, I don't.

4 Q. Okay. But there was more than one?

5 A. Yes.

6 Q. All right. Could you just describe for me how the 3701  
7 was being demonstrated in that FCLC room in Comdex '96?

8 A. Well, the mode of the demonstration was actually fairly  
9 similar to this application that I mentioned Transoft doing.

10 Q. Right.

11 A. What we had was a video file on the RAID sub system and  
12 multiple hosts and could access this video screen and display  
13 it locally at the various servers.

14 Q. Okay.

15 A. The intent was to demonstrate the higher performance of  
16 fiber channel relative to SCSI and to show the ability to do  
17 actual streaming video off the shared storage.

18 Q. Okay. And how many -- do you recall how many SCSI discs  
19 were connected in that RAID system?

20 A. 20.

21 Q. Okay. And do you recall -- okay. There were more than  
22 one fiber channel hosts connected on a fiber channel side,  
23 correct?

24 A. Yes, there were a number of other companies who were  
25 demonstrating their host adapters and servers. But I don't

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1 remember exactly how many were in this particular  
2 demonstration.

3 Q. Okay. Do you know over how many days the 3701 was  
4 demonstrated at Comdex '96?

5 A. Yes. All of the come depositions have been five days long  
6 and the demonstration lasted through that week, five days.

7 Q. Okay. And, sir, were you there personally?

8 A. Yes, I was.

9 Q. And you witnessed everything that you've been talking  
10 about?

11 A. Yes.

12 Q. Okay. Take a look at D-82, sir. It's one duplex page.

13 A. Yes.

14 Q. Do you know what that is?

15 A. This is our OEM data sheet on the 3701 controller.

16 Q. Okay. Was this available at Comdex 1996?

17 A. Yes, it was.

18 Q. Does this accurately describe the 3701 as at this time  
19 existed at Comdex '96?

20 A. Yes.

21 Q. Pathlight offers exhibit D-82.

22 MR. ALBRIGHT: No objection, your Honor.

23 THE COURT: Received. Mr. Dellett, why don't you mark  
24 your place. Members of the jury, I'm going to give you the  
25 evening break. I'd like for you to be here about little

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1 before 9:00 so we could start promptly at 9:00. Please  
2 remember the instructions. See you in the morning.

3 (Proceedings adjourned.)

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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  
6 thereof, in the above-entitled matter, taken on being delivered UNEDITED  
7 Reporter at the request of PLAINTIFF AND DE

8 The purchaser agrees not to disclose this realtime unedited t  
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1 THE COURT: All right, counsel, let's get the nuts and  
2 bolts around. I have received Pathlight's proposed  
3 preliminary instructions. I have reviewed them. They are  
4 accurate. Of course, I would like to accommodate counsel in  
5 every way I can to make it easier.

6 I have a fear, however, if I read these instructions,  
7 the jury would get up and leave. I don't believe that the  
8 reading of these instructions would be at this point in time  
9 anything but very confusing to the jury, since they don't know  
10 anything about this case. I contemplated copying them and  
11 give them each a copy. Then I thought, well, you know, then  
12 -- if they're conscientious, they will start trying to  
13 interpret these instructions to the statements of the lawyers  
14 and the evidence a little early in the case.

15 So I'll be glad to listen to your comments with regard  
16 to these instructions, but by the time I get to the definition  
17 of terms and the doctrine of equivalence, I really fear we're  
18 going to lose the jury. Now, with those preliminary remarks,  
19 I'll be glad to hear anybody that would like to make a  
20 comment.

21 MR. BAHLER: Your Honor, those were offered simply as  
22 a possible aid to the Court to do with it what you wanted.

23 THE COURT: No. I understand that. But as far as  
24 your presentation, if you think it would be helpful, I'll be  
25 glad to listen to you, Mr. Bahler. I just think that fresh

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1 early in the morning, without opening statements, is going to  
2 be confusing.

3 MR. BAHLER: Well, I'll defer to your judgment, then,  
4 your Honor.

5 MR. ALCOCK: We agree with the Court, your Honor. We  
6 believe we should go directly to opening.

7 THE COURT: All right. Anything else before we bring  
8 in the jury? We've got them all?

9 THE BAILIFF: Yes, sir.

10 MR. BAHLER: To things. One, both parties agree we're  
11 going to invoke the rule.

12 THE COURT: All right.

13 MR. BAHLER: And secondly, we have a relatively minor  
14 some what significant in light of the time constraints with  
15 respect to deposition designations. We propose Pathlight  
16 proposes that the time be allotted for depositions that are to  
17 be read according to the lines designated by each party. That  
18 we thought that that would be fair. And they have --

19 THE COURT: It's a little bit difficult for Ms. Same  
20 toss do because she doesn't now hoe long it's going to read  
21 the deposition. She did not start off singing the star  
22 spangled banner this morning.

23 MR. ALBRIGHT: Your Honor, our only concern is from  
24 what we can tell of some of the portions that they have picked  
25 out no reading depositions, needless to say they would do what

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1 any good lawyer would do which is read as much as helps them  
2 and then stop if there is anything that comes after or starts  
3 that doesn't. And all that we care about is that we shouldn't  
4 have time taken against us for them to complete a subject  
5 matter with respect to the deposition over a topic --

6 THE COURT: We'll do it like we do in every case.  
7 We'll stop the clock as long as one of you are up there  
8 reading the deposition and it will run on your time and if the  
9 other wants to do it, it will run on his time. Ms. Sims can  
10 do that. We do that daily. So we'll just -- we'll handle it  
11 that way.

12 All right. The rule has been invoked. I don't know  
13 who is and who is not a witness, so I'll rely upon the  
14 lawyers. I'll just simply tell the lawyers they're to  
15 instruct all their witnesses not to speak to anybody about  
16 their testimony in the case except the lawyers and that they  
17 are free not to talk to the lawyers if they wish and if they  
18 communicate in any way, shape or form any portion of their  
19 testimony without consent of the Court or the stipulation of  
20 counsel to a third party, they are subject to disqualification  
21 as a witness.

22 All right. With that said, bring the jury in.

23 MR. BAHLER: Your Honor, may I -- during opening may I  
24 move around so I can see that big screen?

25 THE COURT: Yes. The only thing that -- the only

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1 limitation I have is don't hurt lily and don't go sit over in  
2 the jury box, but if you do move around, which I have no  
3 objection to, you've got to keep your voice up because the  
4 mechanical recordings need to pick it.

5 MR. BAHLER: Specifically what I was talking about was  
6 during their opening if I could move around to see the big  
7 screen.

8 THE COURT: Anywhere in the courtroom.

9 MR. BAHLER: Thank you.

10 THE COURT: Members of the jury, when we met Monday  
11 and you were selected in this case, I told you that at each  
12 time we opened Court, that is, in the morning session and in  
13 the afternoon session, I would ask you three questions which  
14 under your oath you must answer. Those questions are  
15 these: Have you talked to anybody about this case, have you  
16 permitted anybody else to talk to you about this case? Or  
17 have you learned anything about the case outside the presence  
18 of each the seven of you in this courtroom? You need the  
19 answer those questions orally. I look and make sure. As a  
20 matter of fact, after a day or two, you start sounding like a  
21 choir. We kind of cultivate that. And then I will tell Ms.  
22 Reznik how you answered those questions.

23 So let's start off. Of course, if you've talked with  
24 somebody, you have to tell us. Have you talked to anybody  
25 about this case?

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1 THE JUROR: No.

2 THE COURT: Have you permitted anybody else to talk to  
3 you about this case?

4 THE JUROR: No.

5 THE COURT: And have you learned anything at all about  
6 the case outside the presence of each other and this  
7 courtroom?

8 THE JUROR: No.

9 THE COURT: All right. If you'll be kind enough to  
10 stand and raise your right hand, Ms. Sims will swear you in as  
11 the jury in this case.

12 THE CLERK: Do you and each of you solemnly swear or  
13 affirm that in the case of Crossroads systems, Inc. Vs.  
14 Pathlight technology Inc. that you will a true verdict render  
15 according to the law as it may be given to you in charge by  
16 the Court and the to evidence as submitted to you under the  
17 rulings of the Court, so help you God?

18 THE JUROR: I do.

19 THE COURT: You may be seated. Now, in the taking of  
20 that oath, you have become judges in this case. Your  
21 responsibility will be to judge the evidence and determine the  
22 facts. Any responsibility is to make the legal decisions in  
23 the case which basically amount to what evidence you are to  
24 consider when you answer the questions that will be submitted  
25 to you at the end of the case. Those questions we call the

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1 verdict, but there will be a list of several questions for you  
2 to answer after I've heard the Edwards, I have to formulate  
3 those questions evidence).

4           So let's talk a little bit about what the evidence is.  
5 As you can see, we have lots of electronic equipment and we  
6 have an electrical storm probably this entire bank of  
7 courtrooms will go in the dark. But the evidence is the sworn  
8 answers to the questions by the witness. Notice I said the  
9 answers.

10           The questions are not evidence. The statements of the  
11 lawyers are not evidence. The summaries of the lawyers are  
12 not evidence. What I say is not evidence the sworn answers to  
13 the questions, any documents and all the documents and there  
14 are going to be plenty of documents, I fear. All of the  
15 documents that will be presented in evidence will be with you  
16 when you deliberate, and the lawyers before, just before you  
17 start deliberating in this case, they will tell you which  
18 documents they think are the most worthy of your consideration  
19 and so you don't have to worry about seeing them during the  
20 trial until deliberation, although the lawyers may extrapolate  
21 parts of a document so that they can question a witness, but  
22 you'll have all the documents.

23           And the third form is a stipulation. The parties  
24 could agree for example, today is Wednesday and they wouldn't  
25 have a bring a person with a calendar to try to prove up it's

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1 Wednesday because there's no dispute about that. So those are  
2 the three ways that the evidence comes in.

3 This case will be just like all cases and that is,  
4 there will be objections made. When a lawyer makes an  
5 objection, don't think the lawyer is trying to hide something  
6 or make something more important than it is or less important.  
7 That lawyer is obligated to me to make an objection to call my  
8 attention to the fact that I have to nick a ruling as to  
9 whether or not you should consider the evidence.

10 Many times, I will ask the lawyers to come up here if  
11 I want an explanation. Don't try to listen, just kind of  
12 think of it like the pitcher and the catcher when they go out  
13 there in baseball. I've always wondered what they talked  
14 about. But I never ease dropped. Just relax because the  
15 alternative is for me to take you and put you in the jury room  
16 and then bring you back and while the exercise may be good for  
17 you, you'll get tired of it. So we'll bring the lawyers up  
18 here and we'll hash out some if we need to.

19 If I sustain the objection, that means you generally  
20 will not hear the evidence. Don't try to guess at what it was  
21 because you won't be -- you won't be considering it any way.  
22 If I overrule the objection, you'll hear the evidence, but  
23 don't think it's any more important than any of the other  
24 evidence that you're going to hear.

25 During the trial, I might tell you that you can

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1 consider the evidence for one purpose but not another. If you  
2 don't understand it, just raise your hand. I'll make sure  
3 that you understand it. I may turn to you and say, members of  
4 the jury, I don't want you to consider that evidence for any  
5 purpose.

6 One of my sons once asked, how do you expect a jury to  
7 forget what they've just heard. Well, the law is not that  
8 crazy. We don't expect you to forget it, but we do expect  
9 under your oath not to rely upon it when you answer the  
10 questions. And so that's how the game of evidence is played,  
11 and it goes on in every trial, this trial would be no  
12 exception.

13 Now, I, because of the nature of this case and because  
14 of the length of the case, Mr. Mace has given you each a pad  
15 with a pencil so that you can make such notes. Let me give  
16 you my little speech on that. If you'll remember back in  
17 school, when you're making notes, you forget to listen for a  
18 minute and then you start listening again and you might miss  
19 something.

20 So be careful about your notetaking. That's the first  
21 thing. Don't try to record everything that's happened. Just  
22 make a personal note that you wish. The second is those notes  
23 are yours. They're not your neighbor's. You're not to share  
24 them with anybody because if you shared them with any other  
25 person on the jury, then you could become a witness and you're

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1 not a witness, you're a judge.

2 Those notes are just for your memory when you  
3 deliberate, then you can use them if you wish. Every evening  
4 you will turn them over to Mr. Mace. He will keep them in  
5 custody until you come back the next morning. And at the end  
6 of the case, he will maintain custody. So don't write down  
7 the Judge is a fink or something like that in your notes  
8 because somebody might look at them sometime.

9 When you deliberate, however, regarding your notes,  
10 it's your memory of the evidence that's more important, not  
11 the notes, but the notes can be helpful. And I permit you to  
12 take notes in this particular case.

13 Now, we're going to -- for those of you who may not  
14 have seen a trial before, generally here's what's going to  
15 happen. The lawyers in just a minute are going to make their  
16 opening statements, and the purpose of that is to educate you  
17 as to the contentions that is what they contend, and to tell  
18 you what evidence they're going to produce that will support  
19 those contentions.

20 As I've told you, it's not evidence, just sit back and  
21 listen to it, but what the lawyers say is very important  
22 because they know what the evidence is going to be. They've  
23 lived with it for a year, and they're going to be at the end  
24 of the case trying to tell you what this evidence means.

25 So while I say you can't -- what the lawyers say is

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1 not evidence does not mean it's not important. Listen, they  
2 can be helpful. Challenge what they say from the evidence,  
3 but in the end, you will make a determination of what you  
4 believe the evidence establishes in answering the questions.

5 After the lawyers make their opening statements, then  
6 the plaintiff -- in this case, Crossroads, who's filed this  
7 lawsuit, they have the burden of convincing you by a  
8 preponderance of the evidence, that is, more evidence that  
9 establishes something is more likely true than not. They have  
10 the burden of proof because they filed the lawsuit. They get  
11 to bring their witnesses first.

12 They'll call their witnesses, they'll ask their  
13 witness a question. When they're through, then the defense  
14 will be able to ask the questions. Then they'll be able to  
15 ask what we call a rebuttal question and then they'll call  
16 their next witness and we'll go through that until they have  
17 called all of their witnesses. And then, it will switch over.  
18 The defendant will call the witnesses and the process is  
19 reversed.

20 When all of the evidence is in and we will take a  
21 short recess, maybe half a day or maybe a day, depends, and it  
22 will be my responsibility to write up the legal instructions  
23 for you, submit them to the lawyers. They have the right to  
24 criticize them and make suggestions, and then, I get them in  
25 final form. I bring you back into the courtroom. I will read

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1       them to you but I also give them to you verbatim in writing.

2               And then, the lawyers make their final statements, and  
3 then, you will have the responsibility of deliberation and  
4 decision. Now, during the trial, you're not to talk to  
5 anybody including each other about the case. So if you go to  
6 lunch, which is fine, talk about anything else, but don't talk  
7 about anything going on in the case until you've heard all of  
8 the evidence.

9               The last witness may be the most important. Don't  
10 make up your mind on anything until you've heard all of the  
11 evidence and you've been able to deliberate with your fellow  
12 jurors after you've looked at the documentary evidence.

13              I don't know if there's going to be any publicity  
14 about this case. Fortunately, most of the media think the  
15 courtroom's on the fourth floor, so they go to the fourth  
16 floor or the second floor. They don't know about my  
17 courtroom. That's fine with me. But if something in the  
18 paper or something in the news, just ignore it because you  
19 don't want to know anything about it. Save the newspaper so  
20 that you can read it after the trial is over.

21              But don't try to learn anything about the case through  
22 media. Now, the rule has been invoked in this case which  
23 means that the parties have agreed the witnesses will not  
24 speak to each other about their own testimony and, of course,  
25 will not hear the testimony of each witness. So as each

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1 witness comes in, they will testify and the other witnesses  
2 will not know exactly what they have said.

3 Now, this is a patents infringement case, and I will  
4 be instructing you at the end of the case, but let me just  
5 tell you generally a little bit about what happens. A person  
6 who has something that he believes that a patent will make a  
7 patent application to the patents office in Washington and  
8 they study it and after a period of time of investigation,  
9 they will either grant or not grant a patent.

10 In this particular case, a patent was granted to  
11 Crossroads systems. Now, that patent protects in the United  
12 States the owner of the patent from anybody producing a  
13 product that infringes on that product, and this is what this  
14 lawsuit is about. Crossroads contends that Pathlight has  
15 infringed on their patent. And they'll explain that in  
16 detail.

17 But the law on patents is very complex. For example,  
18 juries can determine whether a patent is valid or invalid  
19 based on certain criteria based on certain doctrine, which I  
20 will, of course, give you instructions on. And the lawyers  
21 will explain their contentions to you.

22 So you'll be listening to a lot of complex testimony  
23 in this trial. Don't worry about getting confused or not  
24 understanding. These are good lawyers. Be patient with them.  
25 You will find that it will be a very, very interesting case.

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1 Just stay with it. It is a lot more complex than somebody  
2 running a red light, but we try these cases all the time in  
3 federal court and juries, just like yourself, listen to the  
4 evidence and make those determinations.

5 So just have patience, listen to the lawyers and  
6 listen to the evidence, and I don't think you'll have any  
7 problems at all. All right. Mr. Alcock, you have the  
8 lectern.

9 MR. ALCOTT: Thank you, your Honor. May it please the  
10 Court, counsel.

11 Members of the jury, I like to say that every case can  
12 be summarized in just a few words. And this case is no  
13 different. This case is about invention and infringement,  
14 about inventors and infringers. I'm privileged to stand  
15 before you representing Crossroads. We have the invention.

16 The defendant, Pathlight, we will prove to you,  
17 infringes our patent. Crossroads got a patent from the United  
18 States Patent Office on August 24th, 1999. Less than four  
19 months later, on November 15th, 1999, the chief engineer from  
20 the defendant uncovered that patent, and the minute he  
21 uncovered that patent, he realized all their products were at  
22 risk of infringing it.

23 So what he did was immediately notify his boss, upper  
24 level management at the defendant, and he immediately notified  
25 the company patent lawyer. Upper level management appreciated

1 the risk, but they knew that they needed that patented  
2 invention in order to sell their products. Indeed, it was an  
3 absolute necessity for them to sell their products.

4 So they took a gamble. Instead of calling Crossroads  
5 and asking for permission in the form of a license to use the  
6 patented invention, they went ahead and built products using  
7 it, products that got them revenue of millions of dollars.  
8 They lost the gamble. Crossroads found out about the sales of  
9 infringing products and filed this case. And that's why we're  
10 here.

11 And we will prove to you that the products that they  
12 sold infringed our patent. This is my opportunity to go over  
13 the evidence that you'll hear in this case. I'd like to  
14 organize it sort of like in chapters, and so there will be  
15 four chapters to my discussion. First, I'll take talk a  
16 little about the parties starting with Crossroads and then  
17 talking about the defendant, Pathlight.

18 I'll then spend a fair amount of time talking about  
19 Crossroads's patented invention. Then, I'll turn to  
20 Pathlight's products and fill out the story that I just gave  
21 you a moment ago. And then, lastly, I will talk about damages  
22 and in this case, in a patent case, that's reasonable  
23 compensation for the defendant's use of my client's property.

24 Crossroads is an amazing company. It started in 1994.  
25 Brian Smith, who's sitting at the table, you've already met,

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1 and Dale Quisenberry, who you will meet, started the company.  
2 They started it as a consulting company. They weren't sure  
3 quite what they were going to do. Of a while, they determined  
4 that they thought they could build a product and they came up  
5 with a product, a product called a storage router.

6 I'll explain that more in a little while. But they  
7 hired two brilliant engineers to help with that -- to come up  
8 with that product, Geoff Hoese and Jeff Russell. You'll hear  
9 from them today and maybe tomorrow. And they came up with  
10 more than a product. They came up with an invention and  
11 that's what brings us here.

12 I'll describe the invention in some detail in a few  
13 moments, after I give you some background on the network that  
14 the invention generally involves. But right now, I want to  
15 bring you two words. Five years from now, ten years from now,  
16 if anyone asks you what your jury service was about here in  
17 this federal courthouse for this week, you'll be able to  
18 answer them using two words: Access controls.

19 This is a key part of the invention that Geoff Hoese  
20 and Jeff Russell came up with. And I'll return to that in  
21 more detail in a minute. But as I told you, I give you a  
22 little background before I describe the invention. That's  
23 what I'm going to do now.

24 Now for some people, problems are bad things. For  
25 other things, problems are opportunities. Crossroads saw a

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1 problem as an opportunity. The picture before you shows a  
2 common situation in the modern world. Computers are networked  
3 one with another. People need to communicate and share  
4 information by computers.

5 But, also, sometimes where they need to get that  
6 information from is some distance away from the computers that  
7 they're working with. So in this picture, we have a number of  
8 people working together in one building with the computers  
9 networked together, and the storage that they need to get  
10 information is a little distance away.

11 This is pretty much the picture of the world when  
12 Brian Smith and Dale Quisenberry struck out to form  
13 Crossroads. And before the Crossroads invention, this is  
14 essentially how that problem was solved. There were things  
15 called network servers and these still are commonly used.  
16 Crossroads hasn't replaced this.

17 And on the one side are those computers, and at the  
18 time that Brian Smith and Dale Quisenberry struck out, this  
19 Fibre Channel stuff that you'll hear a lot about and that you  
20 know is used a lot today wasn't really sure that it was going  
21 to be used that much when they struck out on their own.

22 For now, all you need to know about that and there  
23 will be some detailed explanation on Fibre Channel -- is it's  
24 a connection between the computers and it's a way they can  
25 communicate, a particular language. For the moment, we'll

1 call it English.

2 On the other side of the network server in that  
3 building that's a little ways away are what's called remote  
4 storage. That's memory that these computers need to get to  
5 and get information from, and there's something called SCSI on  
6 that side of the server. It's called small computer system  
7 interface, I'm told, but the word that everybody uses for it  
8 is SCSI.

9 Now, all you need to know about that for the moment is  
10 that's a different language, sort of like Greek. And so the  
11 problem is that the computers on this side of the network  
12 server talk one language and the information that they need to  
13 get on the other side talks a different language.

14 So you need a translator. And the network server,  
15 until Crossroads came along with their product, was the  
16 primary way that this translation was done, but there was a  
17 problem. The problem is that server is a very slow  
18 translator. The computers are asking for information from  
19 that remote storage on the other side, and the network server  
20 can't keep up with the requests.

21 And we know in the modern world with computers there's  
22 a need for speed, and so one of the problems that Crossroads  
23 confronted was this problem of slowness. So Crossroads came  
24 up with an alternative, something called a storage router. It  
25 solved the speed problem. It allowed communication directly

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1 from these computers on one side to these routers on the other  
2 side, and it got the information fairly quickly without the  
3 complicated translation involved in the network server.

4 Now, these routers weren't completely new. Crossroads  
5 wasn't the first person ever to come up with a storage router.  
6 They were one of the first companies, however, to make a  
7 commercially viable and successful storage router, and the one  
8 that they built initially, as is often the case at the start  
9 of an industry, was not a Ferrari, it was not super advanced;  
10 it was a basic standard product because they were in it at the  
11 beginning of this industry, and it didn't have the invention  
12 that brings us here today.

13 Geoff Hoese and Jeff Russell came up with the Ferrari.  
14 Crossroads didn't need it when they were introducing product  
15 first into the market. So I'll explain that more to you in a  
16 minute.

17 So this initial Crossroads product, it's called the  
18 4100, was very successful, not because it was fancy but  
19 because it was first, and it took that little four-person  
20 company here in Austin to a almost 200-employee company, very  
21 successful.

22 But as I said, that product didn't have the invention.  
23 Geoff Hoese and Jeff Russell came up with something more  
24 advanced. And what was it? It came back to those two words I  
25 brought you a few moments ago, access controls. Not only

1 speed but security.

2 Here are those computers that are on one side of this  
3 router. Let's say that computer A is the personnel department  
4 and let's say that computer B is the tax or finance  
5 department. Now, if you're running a business, you'd kind of  
6 like to keep the finance people out of the personnel records  
7 and you'd kind of like to keep the personnel people out of the  
8 tax records. And that's what access control allows.

9 Here, computer A can get into storage location one,  
10 which has personnel files, computer B can get into storage  
11 location two that has tax files, and access controls allows  
12 both of the computers to get into three, which is the company  
13 web site.

14 Before Geoff Hoese and Jeff Russell, no one had built  
15 a storage router with the speed advantage, and access controls  
16 with the security. So, on December 31, 1997, they filed a  
17 patent application. Now, you've heard a little bit from the  
18 Court about the patent process and you'll hear more as the  
19 trial goes on.

20 The Patent Office was authorized by the constitution.  
21 It's been around for over a hundred years. And if you come up  
22 with something new, you can apply to the Patent Office and  
23 there are technically trained examiners. That's what they're  
24 called, examiners, because what they do is they examine. They  
25 examine the application to determine if it really is new. And

1 if it's not new, they don't grant a patent on it.

2 If it is new, they grant a patent on that which is  
3 new, not that which is old. It's sort of like a deed, it  
4 marks out the corners of your property, not land in this case,  
5 but intellectual property, and it's what you own. And if  
6 someone uses your property, they can't do it without your  
7 permission or without their payment to you of reasonable  
8 compensation.

9 Now, one thing about the Patent Office, there's no  
10 patent police at the Patent Office. The Patent Office doesn't  
11 enforce patents. The only way to enforce a patent is to come  
12 in here, federal court stands exercise your constitutional  
13 right to a jury trial and that's what Crossroads is doing in  
14 this case.

15 I want to tell you one more thing about patents  
16 because it's going to be relevant to a discussion we have in a  
17 moment. There's something at the end of a patent called  
18 claims. They define the scope of the invention. It's  
19 actually pretty simple. It's just a list of elements that  
20 define what you own.

21 So if I came up with a new invention, screwdriver, you  
22 could get a patent on that, and the patent would -- the claim  
23 could say a tool comprising a handle, a shaft, and a tip for  
24 engaging a threaded fastener. Patents can't be written in  
25 English. They need to be written in some funny way and this

1 would be a way that one could describe and claim an invention  
2 on a screwdriver.

3 And so when you figure out if someone's infringing a  
4 patent, you take that list of elements, you look at the  
5 product, and you see whether or not it has the elements. More  
6 on that in a minute.

7 This is another figure of the 972 patent. That's what  
8 we're going to call the patent that has seven numbers to it,  
9 but it's commonly referred to as the last three numbers. And  
10 this is a more complicated picture, but it shows the  
11 invention. It shows the work stations or computers on one  
12 side, the storage router in the middle, and the remote storage  
13 devices on the other side, and it shows that certain of the  
14 computers can only access certain of the remote storage or  
15 certain parts of the remote storage.

16 And I think I mentioned to you earlier that the  
17 product that Crossroads came out with didn't need this  
18 invention. They were quick to market. They were able to make  
19 a market and make a product without using this.

20 Now, on to the next chapter. While Crossroads didn't  
21 use the patented invention, the defendant, Pathlight, did.  
22 Pathlight started out with a completely different technology,  
23 not something called Fibre Channel, but something called SSA,  
24 and it's sort of like beta max and V H S. SSA was beta max.  
25 It lasted for a while and then died. And so Pathlight had to

1 get into a different market and so they moved into the Fibre  
2 Channel market. But since they were late to the market, they  
3 needed something. They need an extra boost. They had to  
4 offer an advanced feature. That wasn't already present.

5           You know what that add entranced feature was? Access  
6 controls. You don't have to take my word for it. I've put  
7 before you the Pathlight web site. The bottom line is access  
8 control is an absolute necessity for multi-host sand  
9 solutions. What that means is more than one computer (S A N)  
10 so let me explain this to you, there's some new language here.

11           San means storage area network. That just means a  
12 network with a number of remote storage locations. That is  
13 their product. That is a storage router. We will prove that  
14 to you. It says the only San product of capable of providing  
15 true research sharing, this is accomplished by San gait way's  
16 access control features, and there are two of them, channel  
17 zoning and optional VPS or virtual private San.

18           VPS is the one that they used initially and you're  
19 going to see in their documents quite a lot, but they are both  
20 forms of access control. Now, remember I told you at the  
21 beginning that a Pathlight engineer found this patent, just  
22 found the Crossroads patent, just a few months after the  
23 Patent Office granted it?

24           And the upper level management there decided to take a  
25 gamble. Let's take a look at what happened. November 15th,

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1 patent. The day he found it by e-mail, he reported its  
2 existence to Mr. Rahmani, upper level management at the  
3 defendant Pathlight, and to Mr. Levy, the company patent  
4 lawyer.

5 Three days later, upper management acted quickly. Mr.  
6 Rahmani sends Mr. Levy an e-mail. We need to get your advice  
7 on this matter, that is, the 972 patent, and, also, the  
8 clarify our current patents and make sure they are valid and  
9 enforceable. I'm not going to tell you much about this part  
10 of the story in opening but you're going to hear that not only  
11 was the defendant concerned about Crossroads's patent  
12 impacting their products, they were concerned that this patent  
13 impacted heavily their own intellectual property.

14 They did move fairly quickly. On December 23rd, there  
15 was a meeting, the bill for it was on December 29th. There  
16 was a meeting at Pathlight with Mr. Levy and with the  
17 engineers and at that meeting, Mr. Levy agreed to write an  
18 opinion to give them a letter to say it's okay to keep selling  
19 the products. They needed that to try to develop a reasonable  
20 belief that it was okay for them to keep doing what they were  
21 doing.

22 There was no letter in December. There was no letter  
23 in January. There was no letter from Mr. Levy in February.

24  
25

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1 The next thing that happened is there's an e-mail from Mr.  
2 Rahmani to Mr. Levy at 2:39 in the morning, 2:39 a.m., early  
3 on a Friday morning. Could you please let me know when you  
4 can get us your report on if Crossroads patent? 2:39 in the  
5 morning.

6 What was the sense of urgency? What was going on in  
7 January, February and March? Sales. Remember I said VPS was  
8 the first access control software that they used and later on,  
9 they used another one? They began bundling that software with  
10 this San gait way product and with all their other products in  
11 or around the end of 1999, the beginning part of 2000.

12 Before that, their products weren't doing too well.  
13 After that, they did a lot better. In the month of March --  
14 and obviously this was orders taken earlier -- they sold  
15 almost two million dollars worth of this product, and it kept  
16 going up and up and up. It went down later for reasons that  
17 we'll explain later in the trial.

18 Most of these sales were to one customer, IBM. Now,  
19 let's see what Pathlight was telling IBM about this access  
20 control feature in this time period. November 24th, 1999, a  
21 fax, day before Thanksgiving, a fax from the president of  
22 Pathlight to a gentleman at IBM. Now, remember the  
23 chronology. Nine days before this letter, their chief  
24 engineer discovers Crossroads's patent and e-mails around to  
25 upper level management.

1           What are they doing nine days later? Trying to get  
2 IBM to buy their products because they have access controls.  
3 We believe it is a competitive necessity for IBM to adopt this  
4 new San gate way configuration. And what is that new San gate  
5 way configuration? The VPS option, the access controls that  
6 we've been talking about.

7           They were right. It was a competitive necessity for  
8 them to include these access controls, not for Crossroads  
9 because they started the market early, but for Pathlight. We  
10 will prove to you that the San gate way with VPS software and  
11 with channel zoning software infringes every claim of the 972  
12 patent.

13           And here's how we'll prove it. We have a standard  
14 Ph.D., who's worked 30 years in the storage routing area.  
15 He's gotten their product. He's analyzed it. He's set up a  
16 test setup and he's tested it every which way. And you'll  
17 hear detailed testimony matching up every element of the claim  
18 with an aspect of their product.

19           Now, as the Court said, some of the testimony you're  
20 going to hear is a little complicated. This obviously is a  
21 little more complicated than the screwdriver that I showed you  
22 a few moments ago. We will provide tutorial testimony before  
23 we talk about the details of this product so that you all are  
24 comfortable with the technology before we get into the details  
25 of this claim language and the details of the Pathlight

1 product.

2 Let me return to the time line. So you saw the sales  
3 skyrocketing during this time period so they did get a letter.  
4 They got a letter on April 10th of the year 2000. And you're  
5 going to hear a lot about what that letter said and, also,  
6 about what it didn't say.

7 One thing it didn't say -- no where in that letter --  
8 and it's 25 pages long -- is there a word spoken that any  
9 Pathlight product lacks any elements of those claims over  
10 there. Not one word said that the Pathlight products don't  
11 have all those claim elements.

12 Instead, what it says is that the Patent Office  
13 shouldn't have granted the patent, that is, it says that there  
14 is prior art available and you're going to hear a lot about  
15 this. There's prior art available that invalidates the  
16 Crossroads patent, takes away their property. And you're  
17 going to hear some evidence on that and you're going to hear a  
18 lot of evidence justifying or trying to justify Mr. Levy's  
19 letter.

20 They're going to try to convince you that something  
21 called reserve management, an old technology, is the same as  
22 what Geoff Hoese and Bill Russell came up with. And you're  
23 going to evaluate that testimony technically, and we're  
24 confident it will become obvious to you that it isn't  
25 invalidating.

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1           To complete the chronology, just a few days after the  
2     levy letter, the complaint for this case was filed. Now,  
3     there's some evidence that I'm not going to talk with you much  
4     about now, but it's very interesting. Three days before Mr.  
5     Levy sent a letter to Pathlight saying that the Crossroads  
6     patent was invalid, three days, he filed a patent application  
7     for Pathlight on if VPS access control for Pathlight.

8           And he told the Patent Office that that wasn't old.  
9     We'll hear more about that later. I told you there's going to  
10    be some evidence on this reserve management, and I'm not going  
11    to go into great detail on it right now, but as you hear the  
12    testimony on whether or not this old technology reserve  
13    management really is what Geoff Hoese and Jeff Russell came up  
14    with, ask yourself the question whether or not there are  
15    multiple conditions where this reserve management doesn't keep  
16    people out, doesn't provide the access control that the cross  
17    roads invention does.

18           So I now have covered the first three topics. We've  
19    talked about the parties. We've talked about, at some length,  
20    the Crossroads patented technology, and I've talked about the  
21    San gate way product and how those products infringe the  
22    Crossroads patent.

23           Now I just want to spend a moment on damages at the  
24    end of the case, you will be asked to determine what is  
25    reasonable compensation for Pathlight, who is a competitor of

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1 Crossroads, for Pathlight's use of Crossroads's patented  
2 technology. And the form of damages that are presented here  
3 to you in this case are a royalty that is a portion of the  
4 revenue that they obtained through, we will prove to you, the  
5 use of the Crossroads patented invention.

6           These products sold for around \$6,000 per unit, and we  
7 will be asking you for a royalty on the order of \$1500 to  
8 \$1800 per unit. Their profit margin was close to 60 percent  
9 of these sales. So we will be asking you for a portion of the  
10 profit that they achieved through what we believe is the use  
11 of the Crossroads invention.

12           Now, there may be some argument and evidence as to  
13 whether or not the access controls contributed to these sales.  
14 I think Pathlight has given us the answer to that in their own  
15 documents. Thank you for your attention at the close of the  
16 evidence, I will ask you to render a just verdict in this case  
17 which we believe will be a verdict for my client. Thank you  
18 very much.

19           THE COURT: Mr. Bahler do you wish to make an opening  
20 statement at this time?

21           THE COURT: Yes, sir, I do. I need a minute to set  
22 up.

23           THE COURT: Members of the jury, I give you a short  
24 break. Have time to use the facilities if you do. But short  
25 break. Let's try to keep it under ten minutes.

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1 (Jury not present.)

2 THE COURT: All right. We're in recess for ten  
3 minutes. Mr. Bahler, you ready?

4 MR. BAHLER: Yes, your Honor.

5 MR. BAHLER: All right. Bring the jury in.

6 (Jury present.)

7 THE COURT: Mr. Bahler, you have the courtroom.

8 MR. BAHLER: Play it please the Court, counsel.

9 Good morning. I'm Dave Bahler and I am proud in this  
10 case to represent Pathlight. Now, Pathlight has been sued  
11 here phone patent infringement, an access that Pathlight takes  
12 very seriously. It's a very serious accusation. Crossroads  
13 is trying to prevent Pathlight from competing with Crossroads  
14 in the marketplace.

15 This lawsuit has hurt Pathlight's reputation and  
16 business. Fortunately, you have the power to end this  
17 injustice by finding in favor of Pathlight. Now, the Judge  
18 touched on the order of evidence when he gave you your  
19 instructions. I want you to keep that in mind.

20 The law states that the plaintiff in this case,  
21 Crossroads, gets to go first. They get to go first in every  
22 instance. They get to go first not the opening, they get to  
23 go first in the presentation of evidence, and in this case,  
24 it's likely that you won't get to hear Pathlight's side of the  
25 story until same next week.

1           There's going to be a big gap between Crossroads's  
2 case and Pathlight's case. Wait to hear Pathlight's side of  
3 the story because I assure you, members of the jury, there are  
4 two sides of this story. This patent should never have been  
5 issued and had the Patent Office examiner been aware of all  
6 the facts that were necessary for proper issuance, it would  
7 not have been.

8           Now, please don't believe for a minute that the act of  
9 filing of this lawsuit makes Pathlight guilty of anything.  
10 This is America; anybody can file a lawsuit for any reason if  
11 you have a typewriter and \$25, you can walk into the clerk's  
12 office, just behind me down haul, and sue anybody for almost  
13 anything.

14           But we have the best legal system in the world, it  
15 does indeed permit that. Crossroads is pursuing this case  
16 because it can't succeed by fair competition. Crossroads has  
17 never had a profitable quarter in its history. They have  
18 never made any money. They've lost money at every turn.

19           And they are simply trying to use this case to earn in  
20 the courthouse what they have miserably failed to earn in the  
21 marketplace. As you will see, Pathlight is not a company that  
22 copies other people's products or that has succeeded by  
23 stealing ideas and devices from other companies.

24           Pathlight began as three trends with a dream to make  
25 the best storage routers in the world. They spent millions

1 and millions of dollars developing that product and they do  
2 have, indeed, a successful product. Trends) not every patent  
3 is valid. As the Judge will instruct you at the end of the  
4 evidence, a patentable invention means what a device or method  
5 needs to be number one, novel, that means new, never been done  
6 before, and number two, non obvious in view of what's called  
7 the prior art.

8 Now, Mr. Alcock was kind enough to describe several  
9 things to you. Prior art is a term that you will be hearing a  
10 lot from Pathlight. Prior art means things that have come  
11 before. You can't get a patent if an invention is in the  
12 prior art, described by the prior art. What is that in this  
13 case? In this case, there are many companies that had  
14 products that included Crossroads's invention long before  
15 Crossroads had even thought of that.

16 That prior art, members of the jury, invalids these  
17 patent claims. In addition, there are several things that  
18 Crossroads themselves knew about that invalidated these patent  
19 claims. Because the patent application process is  
20 confidential and that means that once a patent application is  
21 filed, the government is required by law to keep it secret,  
22 even away from the public, nobody else including Pathlight can  
23 participate in the patent application process.

24 The patent issued in August 1999. Before that date,  
25 nobody, nobody in the world except for Crossroads knew about

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1 what was in that patent application kept for one person, the  
2 patent examiner, patent examiner knew and he was relying upon  
3 Crossroads to tell him what he needed to know.

4 The examiners -- the law recognizes that patent  
5 examiners are at some what of a disadvantage. They have to do  
6 a lot of work. There's a lot of patent filings in the United  
7 States. Over 100,000 patent applications a year are filed in  
8 the United States and they are all carefully examined by the  
9 Patent Office.

10 But the crush of that business makes their job less  
11 than perfect. And so the law places upon patent applicants,  
12 in this case, Crossroads, what's called a duty of disclosure.  
13 You are required when applying for the pressure right of a  
14 patent to tell the Patent Office everything that you know  
15 about that may be considered important by the Patent Office in  
16 determining whether or not to allow you a patent.

17 This Crossroads did not do. As Judge Sparks will  
18 instruct you, when a patent applicant intentionally with holds  
19 information from the Patent Office, as in this case, the  
20 patent -- the prior art renders that patent unenforceable.  
21 That means it cannot be enforced against anyone, not against  
22 Pathlight, not against you, not against me, not against  
23 anybody.

24 Now, one of the key issues in the case is whether the  
25 claims and Mr. Alcock described the claims in the patent,

1 describe an invention which when compared to the prior art was  
2 -- whether or not that was unknown to the examiner. That the  
3 evidence will show the 972 patent is, indeed, described by the  
4 prior art, or, at the very least, the differences between the  
5 prior art and the patent are so trivial that it would have  
6 been obvious to somebody who -- to a skilled computer engineer  
7 to make the invention based upon what case Ted in the prior  
8 art.

9 Mr. Alcock pointed out everything in those claims  
10 existed) -- let me set it up again. He pointed to you claim  
11 1. This is claim 1 of the 972 patent we'll be talking a lot  
12 object this. He pointed to -- what did he pick out in here  
13 that was new? What did he pick out of here that was the real  
14 invention? It's real here, access control.

15 Where is it? Let me see if I can find it. It's right  
16 here. Right there. Two words, and you know what, the  
17 evidence will show that every other piece of this, every  
18 single piece of this, all of it is old, every piece with the  
19 possible exception of access control and, indeed, even that  
20 was old.

21 Members of the jury, if you were to find it in your  
22 heart to find this patent invalid at the end of the day next  
23 week, you wouldn't be the first person to do that. Mr. Alcock  
24 mentioned Mr. Mark levy did exactly the same thing. Mark levy  
25 is a highly skilled patent attorney with a degree in physics

1 and patent law, and he looked at the patent as Mr. Alcock  
2 described, and concluded independently that that patent was  
3 invalid. He's already done this job.

4           You will also hear from an expert witness, fella named  
5 Gary Stevens, who is highly skilled engineer, and he  
6 participates in standard study committees, he acts as a  
7 consultant in the Fibre Channel and SCSI industry and he has  
8 come to exactly the staple conclusion as Mr. Levy, that indeed  
9 this patent is invalid.

10           The evidence will also show as I mentioned the  
11 Crossroads knew about prior art more relevant, more important,  
12 more critical, more material than that considered by the  
13 examiner. Crossroads's failure to disclose such prior art is  
14 a clearly independent basis to find the patent can't be  
15 enforced against Pathlight.

16           Prior art is one basis, unenforceability because  
17 Crossroads didn't tell the Patent Office everything they  
18 should have known is a completely independent basis. I  
19 touched on the Patent Office just a second ago. Now, the  
20 Patent Office, like -- isn't perfect, as I mentioned. They  
21 try to do the best job that they can, but the law provides a  
22 safety net, and that safety net, in fact, provides for a  
23 second Patent Office. The first Patent Office is in  
24 Washington, D.C. and the second Patent Office is sitting right  
25 in front of you, you, the members of the jury. You get to

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1 look at the evidence and to decide whether or not the patent  
2 was issued legitimately. That's your power, that's your right  
3 under the law.

4 Now, Pathlight will explain to you what you need to be  
5 watching and listening for during the testimony so you can  
6 decide for yourself whether Pathlight has, indeed, done  
7 anything wrong. And we will prove that the Patent Office  
8 never should have issued this patent, ever.

9 Now, before I get started on this, I'd like to just  
10 tell you just a little bit about the Patent Office. The  
11 Patent Office is perceived by many to be a pillared marble  
12 bidding sitting on a pillar in Washington, D.C.. In fact,  
13 it's a building -- it's not even Washington, it's in Virginia,  
14 it's in rented space and it's actually several buildings.  
15 It's just across, just right next to Ronald Regan court on the  
16 west side of the Patoma River.

17 It doesn't have one single marble pillar, not one.  
18 And there aren't inside of the Patent Office, there aren't a  
19 bunch of scientists in white coats running around with test  
20 tubes and bikers and micro scopes, microscopically examining  
21 people's inventions and looking at models of inventions with  
22 magnifying glasses.

23 Indeed the Patent Office is a bunch of offices and in  
24 those offices are patent examiners and what they have to look  
25 at is paper, lots and lots of paper. That's all they have at

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1 their disposal. They don't have technical equipment, they  
2 don't have anything that would permit them to assess whether  
3 or not inventions are patentable other than paper.

4 And that is why, members of the jury, it is so  
5 critical that when patent applicants apply for patents, they  
6 come clean, they tell the Patent Office what they know about  
7 it, what they know about it so that the Patent Office doesn't  
8 have to -- because the Patent Office certainly could miss  
9 manage in that mountain of paper. (Miss something).

10 In this particular case, the evidence will show that  
11 the Patent Office did not have all that they needed to do a  
12 good job. They did not have what you, the second Patent  
13 Office, will have, and they did not have what Crossroads  
14 themselves knew about and withheld from the Patent Office.

15 Moving on to Pathlight, the evidence will show that  
16 Pathlight has done nothing wrong and owes Crossroads nothing.  
17 On the outside, Pathlight has acted responsibly, fairly and  
18 ethically. When they dropped their product, they never copied  
19 one sentence, one iota from the 972 patent. Their product was  
20 developed and completed by the time the 972 patent even issued  
21 in August 1999.

22 In addition, they never looked at or considered any of  
23 Crossroads's products. They never copied anything at all.  
24 They developed their own products and these products were, in  
25 fact, much better than what Crossroads was producing.

1 Crossroads's patent is invalid because Crossroads broke the  
2 rules.

3 First, as I mentioned, the patent is invalid because  
4 it's old. Somebody's done it before. The evidence will show  
5 that several companies have built product that did exactly  
6 what Crossroads's patent did. Exactly. And long before  
7 Crossroads had ever even thought of their invention. Second,  
8 Crossroads did not fell the Patent Office everything that they  
9 knew and that is a fundamental requirement when dealing with  
10 the patent office in order to get this precious and powerful  
11 right of a patent. And third, the evidence will show that  
12 Crossroads's patent is extremely unclear. The issue of access  
13 controls is simply one example, what does that mean.

14 It's so unclear that it is not possible, members of  
15 the jury, to figure out exactly what the patent covers. And  
16 in that case, one of the fundamental requirements of a patent  
17 is to let the public know what it covers. That's a  
18 requirement. How else can people like Pathlight or you or I  
19 figure out whether products that we want to make fall inside  
20 or outside the patent?

21 The burden falls on the patent applicant to come clear  
22 -- to make his invention clear so it can be understood by  
23 anybody and that was not done in this case. Now, I mentioned  
24 three things. Those three different things. Any one of those  
25 things if found by you to be in Pathlight's favor, will be

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1 sufficient. Any one, any one of those three.

2           However, the evidence will show that all three, all  
3 three are there. Pathlight has always done the right thing  
4 from the outset and has not done anything that Crossroads says  
5 it has. I'd like to tell you a little bit about Pathlight.  
6 Pathlight was started in 1994 and was started by three  
7 gentlemen, not just two like Crossroads, but three gentlemen.  
8 They were all trends. One of whom is Mr. Said Rahmani who  
9 will be sitting with me at counsel table. He was one of the  
10 founders of Crossroads and you'll be hearing from Mr. Rahmani  
11 during the testimony of this case.

12           Now, Mr. Rahmani that will testify that Pathlight  
13 successfully designed, developed and sold the computer data  
14 storage products since 1995. Mr. Alcock mentioned IBM. The  
15 deal was struck between Pathlight and IBM in 1998, 1998. That  
16 is at least eight months before Crossroads patent even issued  
17 and long before this VPS option was even created.

18           The deal was struck with IBM in 1998. And who did  
19 Pathlight compete with in that deal? Crossroads. Before VPS  
20 when the products were compared side-by-side, IBM chose  
21 Pathlight over Crossroads. IBM's selection of Pathlight for  
22 its supplier of those products has nothing to do with this  
23 invention, nothing to do whatsoever.

24           You'll also hear from Mr. Terry Keller here. He's  
25 sitting back here. Mr. Keller here was the chief architect of

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1 Pathlight's products and he'll testify about the history of  
2 Pathlight's products including the development of the products  
3 from -- long before Pathlight or long before Crossroads had  
4 thought of their invention to date including all of the parts  
5 that are old, all of them.

6 You'll also hear from Mr. Greg press us the. Mr. Greg  
7 press us the is the computer programmer who actually  
8 programmed VPS. Mr. Press us the has over 20 years experience  
9 and Mr. Press us the will testify he wrote the computer  
10 programs for Pathlight without ever looking at anything from  
11 Crossroads, completely independent.

12 So you'll be hearing from Mr. Rahmani during the case,  
13 one of the founders of Pathlight, Mr. Keller, the chief  
14 architect of the product that's being accused of infringement  
15 and Greg press us the, who worked for Mr. Keller and who  
16 actually programmed the computer.

17 Now, Pathlight was started in order to market products  
18 for use in the computer data storage market. That's a market  
19 that Mr. Rahmani learned about during his years of employment  
20 with IBM. Now, before the end of 1995, Pathlight had sold its  
21 first product into this market and you'll see evidence about  
22 that.

23 Pathlight's patent issued four years later, long after.  
24 Pathlight started developing their products. This was August  
25

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1 discovered the Crossroads patent. They did so without any  
2 word from Crossroads. Nobody from Crossroads called them,  
3 sent them a letter, phone call, nothing.

4 And what did they do? They immediately contacted  
5 their patent lawyer. That's exactly what they're supposed to  
6 do. That's exactly what the law requires. That's exactly  
7 what they did and they did it within days of discovery of the  
8 972 patent.

9 Why did they select Mr. Levy? Mr. Levy was a very  
10 well-respected or is a very well-respected member of the  
11 community and highly skilled patent lawyer. He came highly  
12 recommended and indeed, Mr. Levy had been doing patent  
13 application work for Pathlight, so he already knew about  
14 Pathlight's technology. That wasn't a requirement. He wasn't  
15 required to get up to speed.

16 Mr. Levy thoroughly studied the 972 patent and  
17 concluded that it wasn't valid because Crossroads wasn't  
18 first. Now, as I mentioned earlier, you'll also be hearing  
19 from Mr. Levy in this case. And then, without sending a  
20 letter, once again, without sending a letter, without phone  
21 call, without any communication whatsoever, Crossroads sues  
22 Pathlight.

23 Just shoot first and ask questions later. That  
24 exactly what happened. That was April of 2000. Crossroads  
25 sued Pathlight because Crossroads could not compete in the

1 market. Pathlight had passed them by with more advanced  
2 technology.

3           Although Crossroads sued Pathlight, the evidence will  
4 show, as I mentioned, that Crossroads was not the first to  
5 make their invention. You listen carefully to the evidence,  
6 the evidence clearly shows that several companies made  
7 products before Crossroads, and even indeed before Pathlight.  
8 And they have exactly the same things that are in the 972  
9 patent.

10           So why did the U.S. Patent Office grant this patent at  
11 all if Crossroads really wasn't first? Because the U.S.  
12 Patent Office didn't know about the devices and products that  
13 came before Crossroads. They didn't know about it. Why  
14 didn't the Patent Office know? Well, one reason is because  
15 Crossroads did not tell them of its own stuff that was prior  
16 art.

17           You'll hear testimony that Crossroads's witnesses knew  
18 about other companies's products that were first. Crossroads  
19 didn't tell the Patent Office. Crossroads knew that because  
20 -- Crossroads knew if it told the Patent Office, hey never  
21 would have gotten the 972 patent. They never would have gotten  
22 the leg up that they have that they think they have now  
23 against Pathlight.

24           Now, Mr. Alcock mentioned that the whole point of  
25 contention here and I have difficulty disagreeing with this,

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1 is access control. Boils down to access control. Now, during  
2 trial and during, indeed, during Mr. Alcock's opening  
3 statement, he brought out that Pathlight's products were  
4 advertised as having access controls. Those advertisements,  
5 members of the jury, were created in January 1999. That when  
6 it started. That's when Pathlight started using the word  
7 access control.

8           When did the patent issue? Patent issued in August  
9 1999. Pathlight coined that phrase long before the Pathlight  
10 patent even -- I'm sorry, long before the Crossroads patent  
11 even hit publication, even came out of the Patent Office.

12           And Crossroads will, indeed, as they have during  
13 opening, parade documents up and down saying Pathlight has  
14 access controls, Pathlight has access controls. Well, first  
15 of all, if Pathlight used those terms before the patent even  
16 issued, could they have been using it differently? Indeed,  
17 that's the case. That is the very case here.

18           While the words are the same, Pathlight used those  
19 words in their marketing materials, first of all, long before  
20 they ever knew about the 972 patent and the way that Pathlight  
21 used these words in their marketing materials was completely  
22 different than Crossroads now contends access controls means  
23 -- now what Crossroads now contends access controls means in  
24 their patent.

25           Now, access controls is a concept used in many

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1 She's going to want to drive the car. I know that some of cow  
2 have been through this already. I'm not looking forward to  
3 it, but it's going to come up. She's going to want to drive  
4 my car if her attitude at all remains consistent.

5           And I'm going to have to put rules down. I know.  
6 What can I do? I can say, Alex, you will not drive the car  
7 unless you ask my permission. That's one. What's the other  
8 way? What's another way? I could keep the only keys to the  
9 car in my pocket, keep them away from her so she couldn't  
10 drive the car, or I could -- a third way would be to buy a  
11 garage and to put a padlock -- put the car in the garage and  
12 put a padlock on the car. That would be another way.

13           What would be another way? Well, I could drive the  
14 car to my relatives up in Cameron, Texas. I could park it in  
15 trier Dave way so she doesn't even see the car. Each of those  
16 is what? Access control. Each one is access control.  
17 (Driveway) but each one is complete think different from the  
18 other. They all control access to that car to varying  
19 degrees.

20           The evidence will show that Pathlight's access control  
21 is much closer to the first one than it is to the last one,  
22 locking the car up in Cameron, Texas as Crossroads contends  
23 their patent covers.

24  
25

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1 patent at all. And therefore, Pathlight's products cannot  
2 possibly infringe those claims. So there's a fourth one.  
3 Number one, the patent is invalid because it's in the prior  
4 art. Number two, patent is invalid because it's  
5 unenforceable. Crossroads didn't tell the Patent Office  
6 everything it needed to know. Number three, the claims of the  
7 patent are indefinite. You can't tell what they mean. Number  
8 four, Pathlight doesn't infringe. Once again, four  
9 independent bases, four independent situations, any one of  
10 which, any one of which if proven to your satisfaction means  
11 Pathlight owes Crossroads nothing.

12           Indeed, the evidence will show that, indeed, that is  
13 exactly the case. Mr. Alcock touched on the issue of damages  
14 and he gave you a number -- actually, he didn't give you a  
15 number, but he said that Crossroads is going to ask you if you  
16 -- if and only if you find that there is infringement and if  
17 and only if you find that the patent is valid and Crossroads  
18 has asked that you award them what they term to be a, quote,  
19 reasonable royalty, and that's 30 percent, 30 percent of the  
20 gross selling price of the entire product.

21           Now, Mr. Alcock mentioned that Crossroads sells their  
22 product for around \$6,000. That's about correct. Do you know  
23 how much the VPS option costs? \$285. That's what Pathlight  
24  
25

1 charges for that VPS option. That's what Pathlight charges  
2 for what it calls access control.

3 Thirty percent would be about a -- thirty percent of  
4 the gross selling price, members of the jury, would be about 6  
5 or 700 percent reasonable royalty and that on its face is  
6 completely unreasonable. In addition, I mentioned the entire  
7 product. Let's look at it again.

8 Pathlight's entire product is -- it is undisputed that  
9 every single element, every single piece of this claim is in  
10 the prior art. Every single piece. None of this is new.  
11 None of this at all is new. All of this is access control.  
12 They want 30 percent for two words, 30 percent for two words.

13 If you look at the lines of programming code, there  
14 are almost 300 lines of programming code in the Pathlight  
15 product. How many lines are dedicated to VPS? 3,000. That's  
16 one percent, one percent of the programming code that goes  
17 into the product is for VPS, which is the portion of the  
18 product that Pathlight or that Crossroads is contending  
19 infringes.

20 That is perhaps the most outrageous part of this case.  
21 So Pathlight owes Crossroads nothing because Crossroads was  
22 not first because the Crossroads patent was not clear because  
23 the Crossroads patent is unenforceable because Crossroads  
24 didn't tell the Patent Office everything it needed to know and  
25 that Crossroads's patent is not infringed by the Pathlight

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1 product.

2 On behalf of Pathlight, I'd like to thank you in  
3 advance for your attention and patience during the next week  
4 or so. All that Pathlight's asked is that you be fair and  
5 listen to all the evidence including Pathlight's evidence that  
6 comes in next week before making your decision. Don't let  
7 Pathlight break the rules yet again and use this courtroom to  
8 get an advantage that it can't get in the marketplace. Thank  
9 you.

10 THE COURT: Turn the lectern around, do we have to  
11 disconnect it in any way, shape or form?

12 MR. ALCOCK: We may need to move some cords and some  
13 --

14 THE COURT: All right, members of the jury, I'll give  
15 you a short break while we get the courtroom ready for the  
16 trial.

17 (Jury not present.)

18 THE COURT: Is there a resolve on experts?

19 MR. ALBRIGHT: Yes, sir. They'll be allowed to say in  
20 the courtroom.

21 THE COURT: Is that satisfactory with you, Mr. Bahler?

22 MR. BAHLER: Yes, your Honor.

23 THE COURT: You may call your first witness.

24 MR. ALBRIGHT: Your Honor, Crossroads would call Mr.  
25 Brian Smith.

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1 THE COURT: Come forward, please. Ms. Sims will  
2 administer an oath to you.

3 (Witness was sworn.)

4 THE COURT: Step right up here, please. If you'd  
5 state your full name and spell your last, please.

6 THE WITNESS: Brian Rutledge Smith, S M I T H.

7 DIRECT EXAMINATION

8 BY MR. ALBRIGHT:

9 Q. Mr. Smith, can you introduce yourself to the jury, please?

10 A. My name is Brian Smith and I am the founder and chairman  
11 and CEO of Crossroads Systems.

12 Q. Mr. Smith, would you tell the jury your educational  
13 background?

14 A. I have an undergraduate degree in electrical engineering  
15 from the university of Cincinnati and a graduate degree in  
16 electrical engineering from Purdue University.

17 Q. And just briefly what your work background was in the  
18 early '90s.

19 A. While at the University of Cincinnati, I worked my way  
20 through undergraduate school while working for IBM. I went to  
21 work for them full-time after Purdue University, graduate  
22 school, which I went to directly after undergraduate and  
23 worked for them approximately seven years in total.

24 Q. Would you tell the jury what you were working on while you  
25 were working with IBM?

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1 A. I worked on number of development projects. I was in  
2 engineering. I'd developed hardware and software products  
3 both in the New York operations, as well as here in Austin,  
4 for about three years.

5 Q. And in around 1992 or 1993, you met Mr. Dale Quisenberry?

6 A. That's correct.

7 Q. And what effect did that have on your life?

8 A. Dale eventually became the cofounder of Crossroads with  
9 me, and we had many discussions in that time frame about what  
10 business opportunities we might look at.

11 Q. Would you tell the jury very briefly of the transition  
12 from when you were at IBM to moving into the consulting and  
13 Fibre Channel industry?

14 A. I spent three years, as I said, here in Austin working on  
15 the beginnings of what was called Fibre Channel. At that  
16 time, it was brand new, not yet a standard discussion amongst  
17 the industry about disciplines about what it could be and I  
18 worked on --

19 Q. Let me stop -- why don't you tell the jury what fiber  
20 channel is?

21 A. Fiber channel is an agreed-upon standard amongst a number  
22 of companies that work in the computer business, for instance,  
23 Hewlett Packard or Compaq or Del might be examples of those  
24 kind of companies, and they agree on a way to build a standard  
25 that would enable networking of computer information as you

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1 were shown earlier in the diagrams.

2 Q. And what were you working on while you were with IBM?

3 A. I worked on a number of projects. The time I was in New  
4 York, I worked on technology called Escon, technology for DBI,  
5 which were both networking technologies. And when I came to  
6 Austin, we began to work on the -- what became the standard  
7 Fibre Channel, we worked on software products.

8 Q. I want you to take a minute, take a deep breath, and we're  
9 going to slow down just so you don't kill the Court Reporter  
10 by talking as fast as you're talking. Okay. So we're in or  
11 around the 1994 time period. You decided to leave IBM and you  
12 start doing consulting, correct?

13 A. That's correct.

14 Q. And just thumbnail sketch to the jury slowly about kind of  
15 a consulting work that you and Mr. Quisenberry started.

16 A. Since I had the opportunity to work on Fibre Channel for  
17 about three years, there were a number of industry companies  
18 that had not been working on Fibre Channel yet and they needed  
19 my expertise, and so, we offered that expertise to help them  
20 develop their products.

21 Q. Okay.

22 A. We had worked on other things, but purely consulting from  
23 the development point of view and even some market kind of  
24 analysis work.

25 Q. And at some point, you decided that there might be a

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1 market for a product called a storage router, correct?

2 A. Correct. We were developing our consulting business. We  
3 realized that it was going to be hard to scale it up.  
4 Basically, our assets, got into our cars at night and drive  
5 home, and we needed to build a business that could scale much  
6 better than that.

7 Q. You heard Mr. Alcock describe, basically, what a storage  
8 router does is translating Greek from English or vice versa.  
9 Would you give the jury a little understanding what a storage  
10 router does?

11 A. It's a great way to think about it. Essentially, on one  
12 side of the router is one computer language and on the other  
13 side is another computer language, and there are some needs to  
14 translate between them very rapidly. And a number of  
15 companies have invested in technologies that are old like  
16 SCSI. You want to move to new technologies like Fibre Channel  
17 and so router enables them to do that to preserve their  
18 investments or to have some advantages with applications that  
19 are out there.

20 Q. If I can figure out how to make this wand work, I'm going  
21 to show a graphic and have you explain to the Court basically  
22 the problem you were trying to address in this time period.  
23 If you would -- does the monitor show what the jury is looking  
24 at?

25 A. I can see it, yes.

1 Q. Would you basically explain what the jury is looking at  
2 this point?

3 A. On the left-hand side is a facility with a number of  
4 computers in it. The campus of a typical Fortune 1,000  
5 company. On the right-hand side this IT department has  
6 decided to keep its information disk storage devices in  
7 another building, and the problem is that there's a lot of  
8 distance between them, and technologies prior to Fibre Channel  
9 could not connect the two together over a large distance. And  
10 so we had an interest in helping them to design their data  
11 centers so that they could connect the two together.

12 Q. Let me show you the jury a different graphic. Would you  
13 explain to the jury what a SCSI bus is and how it's relevant  
14 to what you just discussed?

15 A. Here, there are -- it's showing a connection between a  
16 computer on the left and a storage device on the right being  
17 connected by a -- what's called a SCSI cable, has 68 wires in  
18 it and SCSI limits that distance to 25 meters or about 25  
19 yards. And in a typical enterprise application today, you can  
20 only go about six meters or about 18 feet, and that severely  
21 constrains the way that a storage device and a set of  
22 computers can be interconnected to one another.

23 Q. Okay. So one of the features of fiber channel addresses  
24 is the distance issue?

25 A. That's correct.

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1 Q. There was another issue that was addressed, though, with  
2 regard to speed by Fibre Channel, correct?

3 A. Correct. In this picture, there's a network of servers on  
4 the left that want to have access, common access to  
5 information. And before our products were invented, there had  
6 to be a network server in between those described earlier.

7 Q. And what did Fibre Channel and storage routers do to  
8 address that problem?

9 A. We enabled the devices on the right, the SCSI, in this  
10 case, the SCSI disk drives to be connected to the network of  
11 fiber channel on the left where multiple servers could have  
12 access then to those storage devices.

13 Q. I'm going to get back to talking a little bit more about  
14 you and how Crossroads began. I take it there was some risk  
15 when you left IBM?

16 A. There was indeed.

17 Q. And you decided to leave IBM because?

18 A. I was convinced that Fibre Channel was a very good  
19 technology, that it could solve real world customer problems,  
20 and that with IBM moving away from it at the time that that  
21 didn't make sense to me and I wanted to go invest in building  
22 products for customers with that technology.

23 Q. Would you say there was universal agreement back in 1995  
24 and 1996 when you took the risk of leaving IBM that Fibre  
25 Channel was the way to go?

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1 A. It was clearly very risky. There were other standards out  
2 there that was mentioned earlier today, SSA, there were even  
3 concepts of hybrids, and so it wasn't clear at all that Fibre  
4 Channel would be a winning technology.

5 Q. In fact, in 1996, isn't it true that there was an effort  
6 to derail the Fibre Channel process?

7 A. There were a couple of companies that got together and  
8 tried to change the standard rather dramatically and move the  
9 industry away from the core of Fibre Channel technology, yes.

10 Q. What caused you all to persevere?

11 A. We still believed that it was the right technology as  
12 defined. We believe that customers could benefit from it, and  
13 we again thought it was the right thing. We were out  
14 evangelizing that.

15 Q. Now, back in the 1996 time period, there were how many  
16 people at Crossroads?

17 A. About six or seven in the early part of year. It grew a  
18 couple by the end of the year.

19 Q. I'd like to talk about three others beside yourself.  
20 There's Mr. Dale Quisenberry who the jury is going to meet.  
21 What was his just thumbnail sketch, his role at Crossroads?

22 A. Dale's really responsible for day-to-day operations. He  
23 had more business experience and that complemented my  
24 technology background.

25 Q. And two other gentlemen who Mr. Alcock introduced that are

1 going to also be witnesses in the case today. Their names are  
2 Mr. Hoese and Mr. Russell. Who were they in relationship to  
3 Crossroads?

4 A. Geoff Hoese was a gentleman who had a lot of experience in  
5 developing software technologies in the past. He had also  
6 been a manager. So we hired Jeff to come in and manage and  
7 help us develop the software side of our business. And Jeff  
8 Russell was also a senior engineer who had hardware  
9 experience, and he came in to help us develop the hardware  
10 side of our products.

11 Q. You mentioned earlier that you meant to be an evangelist  
12 for Fibre Channel. Tell the jury what you meant by that.

13 A. Well, since Fibre Channel was new, there were a lot of  
14 companies that we would have -- begin to sell to and therein  
15 user who would need to understand what this technology was and  
16 part of my job was to communicate the advantages of moving to  
17 Fibre Channel as well as convince them that they could put  
18 very successful solutions together to sell the customers.

19 Q. On the micro level, what was Brian Smith's role with  
20 potential customers in that time period?

21 A. I was out educating on our company. I was out helping  
22 investors understand what we were doing so we could receive  
23 investment and be able to fund our business. And in general,  
24 kind of keep division up for the company, what products do we  
25 build and where we should be going.

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1 Q. And on a macro level, what was your job at Crossroads?

2 A. Again, to be out there evangelizing in the industry, help  
3 to make sure that people who had questions about Fibre Channel  
4 could get them answered and show them why this was a  
5 compelling piece of technology.

6 Q. In the 1996, 1997 time period, during the development of  
7 this invention, what was your general role as CEO with the  
8 development of or getting patents or protecting patents?

9 A. I had hired Geoff and Jeff and others to actually develop  
10 the products and so my job was to go out and collect customer  
11 input and give that back to them so they could build the  
12 products that our customers were asking with features they  
13 wanted. And, also, to continue to raise funds so we could  
14 fund our business as we grew.

15 Q. Specifically with respect to the 972 patent, the patent  
16 that we're dealing with in this case, what was your role with  
17 the 972 patent?

18 A. I had no specific role other than kind of all the time and  
19 regularly encouraging our engineering team that as they  
20 thought of new and novel things that could be part of our  
21 products or important in our business to go through the  
22 process of filing for their invention disclosures.

23 Q. Do you recall whether or not you saw anything from the  
24 Patent Office with respect to this patent?

25 A. I would have signed documents given to me by our patent

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1 attorney requesting the making steps with the Patent Office.

2 That would be about it.

3 Q. On a day-to-day basis, did you have any involvement with  
4 the 972 patent?

5 A. I did not.

6 Q. And why didn't you take a more active role in that time  
7 period?

8 A. Certainly there were many other things to be done.  
9 Raising money, seeing customers. We had -- there were about  
10 20 customers at a macro level that we sell to and each of them  
11 have multiple divisions. So I was out with our sales force  
12 seeing customers and frankly raising money to keep the company  
13 alive.

14 Q. I'm about to wrap up, sir, the background of your  
15 involvement. I'd like you to give the jury some idea, if you  
16 even can, of what Brian Smith invested in the '96 and '97 time  
17 period in terms of the hours of your life that you dedicated  
18 to building Crossroads and what it is today.

19 A. They were certainly significant. I would say work weeks  
20 were 80 hour plus each and every week on planes, each and  
21 every week to go see customers, to talk to investors, to work  
22 with, you know, the customer base that was out there and it  
23 was a significant part of my life.

24 Q. How much would you estimate that Crossroads invested, has  
25 invested in creating marketplace in the storage router portion

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1 of the Fibre Channel industry?

2 A. Well, all told, we have raised from investors over \$100  
3 million in building our company and we have had just in the  
4 class three years about \$75 million of revenue, and so we've  
5 invested all of our profits into developing our storage  
6 routers and additional marketplaces that we believe are big  
7 opportunities for us going forward.

8 Q. How much would you estimate that Crossroads had invested  
9 in developing and protecting its intellectual property, its  
10 patents, like the 972 patent?

11 A. Certainly a significant effort on the engineers who have  
12 filed for those. We have invested probably on the order of  
13 12, \$15,000 per patent disclosure and just countless hours of  
14 engineering.

15 Q. What was the first Crossroads product?

16 A. The first Crossroads product was what we call today the  
17 4100.

18 Q. And when did Crossroads begin to develop the 4100?

19 A. We got -- had a vision for that product in the '96 time  
20 frame and began to talk to customers in the summer of '96  
21 about what it might look like from a feature point of view,  
22 and began to get feedback on that product around then.

23 Q. Were Mr. Hoese and Mr. Russell who we discussed earlier,  
24 were they involved in the development of the 4100?

25 A. Yes, they were.

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1 Q. And by the end of, say, 1996, how far along would you say  
2 Crossroads was in the development of that 4100?

3 A. We had an ability to demonstrate a what I call a  
4 technology hard wire function at the end of the year which we  
5 showed at Comdex in Las Vegas in November. It's a trade show  
6 that we go to typically every year. And so not as far as I  
7 would have wanted.

8 Q. Now when you tell the jury you have a capacity to show a  
9 hard wired model, what do you mean by that?

10 A. We had an ability to very simply translate one sentence,  
11 if you will, between Greek and English like how do I go to the  
12 bathroom. So we were able to communicate very simply between  
13 the Fibre Channel side and the SCSI side.

14 Q. In 1996, would it be more fair to say that you were able  
15 to show a product or a concept?

16 A. We showed a concept of technology, piece of hardware and  
17 software, had very limited function.

18 Q. I'd like to turn your attention to another company that  
19 has a big part in Crossroads's history which is Hewlett  
20 Packard. And would you tell the jury what the relationship --  
21 when the relationship with Hewlett Packard began with  
22 Crossroads?

23 A. Hewlett Packard has multiple divisions. The first group  
24 of people we met at Hewlett Packard were in the fall of '96,  
25 the Roseville group; and we began to talk to them about that

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1 product they were developing called the Mux.

2 Q. Is the Mux or the Hewlett Packard Mux or the HP Mux, is  
3 that the same thing as the 4100 you've told the jury about?

4 A. It is not.

5 Q. With respect to Hewlett Packard, did they invest in  
6 Crossroads?

7 A. They did in September of '98.

8 Q. And were they a minor or major investor?

9 A. They were the major investor in that round of financing,  
10 and as I understand, they still hold their position today.

11 Q. Okay. With respect to them as a customer, are they a  
12 substantial or a minor customer of Crossroads'?

13 A. They are a significant customer of ours. They were over  
14 ten percent of our revenue in the last quarter.

15 Q. Was it important to Crossroads to latch on to Hewlett  
16 Packard as a strategic partner in this time period?

17 A. Indeed it was. We knew that they had a lot of the  
18 marketplace for the products in which we wanted to -- the the  
19 products they wanted to connect with our products through the  
20 network. They had a significant part of the market so they  
21 were a big market leader. Certainly Hewlett Packard is a very  
22 big computer company, and so they would have validated our  
23 technology and our solution. And as an investor, that's just  
24 further validation that we were on the right track.

25 Q. Was it fair to say back in '96, 1996 that Hewlett Packard

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1 was a slightly larger entity than Crossroads was?

2 A. Very definitely, still are today.

3 Q. Okay. Now, at one point, or several points, Crossroads  
4 entered licenses with HP, correct?

5 A. That's correct.

6 Q. Counsel, I'm going to move for the admission of  
7 Plaintiff's Exhibit 39, 40, 41 and it looks to me to be 59.  
8 I'm sorry, it could be 54. We have a pretty dark copy here.  
9 It is 54, your Honor.

10 MR. BAHLER: No objection, your Honor.

11 THE COURT: All right, 39, 40, 41 and 54 are admitted.

12 Q. (BY MR. ALBRIGHT) Just to run briefly through these, Mr.  
13 Smith, I'll represent to you that these are all license  
14 agreements with Hewlett Packard, dated May 12, 1997. There's  
15 a 4200 license agreement, there's a purchasing agreement in  
16 1998, and there's an amendment June 23rd, 2000. Are you  
17 familiar with all those documents?

18 A. I think so, yes.

19 Q. Okay. Basically, what is it that Crossroads was licensing  
20 to Hewlett Packard?

21 A. Well, we were talking to them, they had an interest in  
22 taking our technology which today we sell as external boxes.  
23 They wanted to put that technology inside their product. And  
24 they believed that they could build that product cheaper than  
25 we could build it and so they really wanted a license as

1 opposed to actually buying it from us in their interested form  
2 factor so we worked out a deal with they could license or hard  
3 work.

4 Q. Has Crossroads licensed its products to any other entity?

5 A. Not that I'm aware of.

6 Q. Would it be fair to say that Hewlett Packard and in your  
7 mind set is a competitor or a strategic partner of Crossroads?

8 A. They're very definitely a strategic partner both  
9 investment side and customer side.

10 Q. Did that relationship go into the figuring out of what the  
11 appropriate licensing or license rate would be for Hewlett  
12 Packard?

13 A. Its certainly was a big part of it in the '98 time frame  
14 when we would have been talking to them about their potential  
15 to be a customer. We would have been interested in their  
16 validation of our marketplace, their sales force which is many  
17 people who can go out and sell products, and their ability to  
18 fund what we were doing.

19 Q. Turning for a second from Hewlett Packard to Pathlight,  
20 would you consider Pathlight to be a competitor or not a  
21 competitor?

22 A. Absolutely a competitor.

23 Q. As compared for example, a Hewlett Packard and Pathlight,  
24 would you tell the jury the differences between those two in  
25 your opinion?

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1 A. Hewlett Packard is a customer of ours that is a strategic  
2 partner and Pathlight is someone we compete with on a regular  
3 basis and have in the past.

4 Q. Counsel, I'm going to ask questions from exhibit 42.

5 MR. BAHLER: All right.

6 Q. (BY MR. ALBRIGHT) Would you tell the jury what this is,  
7 please, sir?

8 A. It appears to be a title description of a analysis of  
9 competition.

10 Q. Okay. Who is that prepared by, what company?

11 A. There's nothing other than the title on any screen.

12 Q. Is it Crossroads document? Here, I'll show you one on the  
13 next page. If you would look at this page, sir. It is the  
14 third page. It has -- fourth page under competitive snapshot  
15 of Pathlight.

16 A. It's a competitive analysis that we had internally that  
17 what had a high level outline of the comb pet for.

18 Q. Who is shown as a comb pet for of yours?

19 A. Pathlight.

20 Q. If you would read to the jury that statement about  
21 Pathlight, please, sir?

22 A. Recent news, introduced virtual private San, that provides  
23 San administrators with full access control over all available  
24 targets and lungs. The second bullet is the Rand capitol Corp  
25 of buffalo, increased its investment of Pathlight by 750,000

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1 for a current total of \$1,175,000. This figure is expected to  
2 grow into an estimated \$5 million.

3 Q. Would it be fair to say that at the time this was prepared  
4 that Crossroads considered the fact with regard to the virtual  
5 private San or the VPS that we talked about that something its  
6 competition was doing?

7 A. Yes.

8 Q. It would give them competitive advantage?

9 A. Certainly would.

10 Q. Let's turn to IBM. Back in the 1998 time periods, Mr.  
11 Bahler discussed the fact that Pathlight got a contract from  
12 IBM. Do you recall the opening argument where he told them  
13 that?

14 A. Yes.

15 Q. How much time would you say, time and money would you say  
16 Crossroads invested in trying to get IBM as a potential buyer  
17 or contractor during that period of time?

18 A. We had an opportunity to bid on their request for product  
19 at that time frame, we would have spend hundreds of hours,  
20 numbers of people in visiting IBM to educate them on the  
21 company, educate them on our product and the time it took to  
22 develop the response to that R F P. So hundreds of hours and  
23 lots of people and time.

24 Q. What about in 1999?

25 A. We again had another opportunity in 1999 to bid on R F P,

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1 again, the same kinds of effort, hundreds of hours and lot of  
2 people and time.

3 Q. In 1999 is the year that the patent issued, correct?

4 A. Yes.

5 Q. Are there any other companies that you considered that  
6 you've been in competition with Pathlight to get their  
7 business?

8 A. There are others we compete with. Chaparral, Ado and  
9 others.

10 Q. What about other companys that you've tried to get  
11 business from where you've had to compete with Pathlight?

12 A. We believe that some of the other OEMs that we have  
13 opportunities to bid on business with that Pathlight is a  
14 competitor there.

15 Q. Could you give the jury just a couple of examples?

16 A. We have had opportunities to bid on business for a number  
17 of companies including Compaq and Del and sun, those would be  
18 examples of places where we would anticipate like competitors  
19 like Pathlight to show up.

20 Q. I want to run briefly through three different topics,  
21 first is the Hewlett Packard Mux. You talked a little bit  
22 about it. It was a 1996 product. How would you describe the  
23 Hewlett Packard Mux in terms of where it was in development as  
24 a router?

25 A. It was very primitive in 1996, when we were introduced to

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1 it with Hewlett Packard, and it had more activity from a  
2 account point of view than the 100, so in some ways it  
3 complemented what we were doing with the 4100 but it was  
4 pretty primitive at the time.

5 Q. With respect to negotiations that you had with the company  
6 called Clarion?

7 A. Uh-huh.

8 Q. This took place back in 1996, did it not?

9 A. We had meetings with them in '96, yes.

10 Q. Did Crossroads have any products to sell at this time?

11 A. No.

12 Q. What were you trying to sell to Clarion back in 1996?

13 A. It's a common practice of ours in the business when we're  
14 looking for new customers and new products to introduce them  
15 to our way of thinking about it, get their input on those  
16 products, and that's what we did with Clarion. We met with  
17 them in the summer of '96, proposed what we thought would be  
18 interesting product for them and they gave a feedback to us..

19 Q. Did you sell them any products in 1996?

20 A. No, we did not.

21 Q. Did you ever '96 or to the present sell them any products  
22 or deliver any products?

23 A. I don't recall ever selling Clarion any product.

24 Q. And have you ever delivered any product to Clarion?

25 A. I don't recall us doing that.

1 Q. Finally, I want to turn to the Comdex demonstration in  
2 class Vegas in 1996. Tell the jury just briefly what Comdex  
3 is?

4 A. Comdex is a computer trade show where a number of sellers  
5 of computer hardware and software can show their products to  
6 very concentrated audience. And for us, it was an opportunity  
7 to meet with all of our customers in one week. And so we used  
8 Comdex as a way to kind of show them what we were thinking  
9 would be future products and we also demonstrated a piece of  
10 technology that we described earlier, connecting a Fibre  
11 Channel network to a storage device.

12 Q. Basically shared a booth with Hewlett Packard, correct?

13 A. I don't recall what we did. We were involved as I think I  
14 remember with the industry association.

15 Q. Okay. Now, when you say you showed a product in 1996,  
16 tell the jury what that product was?

17 A. We would certainly not call it a product inside  
18 Crossroads. It was really a piece of technology that we had  
19 dropped that was a precursor to what was hopefully someday  
20 become our product line that we started with the 4100.

21 Q. Could that product that you showed in 1996 do any of the  
22 things we've been talking about today in terms of the access  
23 control that's in the 972 patent?

24 A. Not as I understand access controls but it was a very  
25 simple hard wired piece of technology.

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1 Q. Or just from the description you heard Mr. Alcock and Mr.  
2 Bahler give this morning of what access controls are, would it  
3 have been able to do any of that in '96?

4 A. No.

5 Q. Let me wrap up with just a few things. Tell the jury how  
6 important intellectual property is to a young company. Think  
7 back to 1996, '97 and tell the jury how important these --  
8 this patent and other intellectual property was?

9 A. It was very important to us. We believe it was a way for  
10 us to protect the things that we were designing and inventing.  
11 It was important for us investors to know that they could  
12 invest in something that had value and so they often asked us  
13 how the patent application's going, how many patents did we  
14 file. So it was a very core piece of the culture at  
15 Crossroads.

16 Q. Was it ever brought up at board meetings?

17 A. We discussed it regularly how many had been filed since  
18 the board meeting, it's been a topic of conversation since the  
19 earliest board meetings.

20 Q. Did it make any difference to investors or potential  
21 investors whether or not you were able to get intellectual  
22 property and protect it?

23 A. I think it was very important.

24 Q. And why?

25 A. That was a way for them to understand that they had an

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1 asset, protectable asset in Crossroads and that gave them  
2 reasons to make further investments.

3 Q. Has Crossroads ever had any kind of incentive plan for  
4 folks could develop intellectual property?

5 A. We do it's a common practice in our field to encourage  
6 engineers to file patent applications and so we have in the  
7 past given a thousands dollars to award -- awarding to  
8 employee who's file patent disclosures that make it through  
9 the process and then some additional awards on the back end.

10 Q. If the patent is --

11 A. If it's issued, yes.

12 Q. Who is it at Crossroads that you, Brian Smith, as the CEO,  
13 count on to take care of protecting your --

14 A. It's really the responsibility of the engineering group to  
15 work amongst the engineering team am when they discover novel  
16 idea toss get them filed in the process. So we really look at  
17 the management team in engineering to run that process.

18 Q. And in the '96-'97 time period, who was that  
19 engineering/management team?

20 A. It was Geoff Hoese as the manager, if you will, of the  
21 software effort. Jeff had a great appreciation for the value  
22 of patents, had done the process himself prior to coming to  
23 Crossroads and so he was a great leader in that area.

24 Q. Okay. Finally, Mr. Smith, before I sit down, in 1996,  
25

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1 Crossroads to get the protection of the patent in place or to  
2 implement the patent in a product and get the product up for  
3 sale?

4 A. Our number one priority is to protect our intellectual  
5 property and inventions that we have and so we encourage our  
6 engineering team to file for patent protection and then, as we  
7 introduce those ideas under non disclose your to our customers  
8 we prioritize the features that they're interested in and go  
9 off according to that priority.

10 Q. And is that what you did in this case?

11 A. That is what we did in this case.

12 Q. Thank you, sir. Pass the witness.

13 MR. BAHLER: Could I have just a second to set up,  
14 your Honor?

15 CROSS-EXAMINATION

16 BY MR. BAHLER:

17 Q. Morning, Mr. Smith.

18 A. Morning.

19 Q. Mr. Smith, how many shares of Crossroads do you own  
20 personally?

21 A. I don't know the exact number, but about 13 percent of the  
22 company? About 13 percent.

23 Q. About how many shares -- what's the market capitalization?

24 A. Varies from day-to-day, but 180 million let's say.

25 Q. So it's about \$20 million?

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1 A. Uh-huh.

2 Q. All right. Now, Mr. Smith, Crossroads issues press  
3 releases periodically, correct?

4 A. That's correct.

5 Q. And if Crossroads wins this case, it's going to issue a  
6 press release, right?

7 A. It's our duty as a public company to disclose significant  
8 events, yes.

9 Q. And when that press release hits the wire, your stock's  
10 going to go way up?

11 A. I have no idea. The market's been difficult to predict  
12 lately.

13 Q. You expect that to happen, don't you?

14 A. I'm not sure.

15 Q. Now, Mr. Smith, you mentioned Comdex 1996 and you  
16 described briefly what Comdex 1996 but I'd like to cover that  
17 in just little more detail. First of all, it's a trade show  
18 in Las Vegas?

19 A. That's correct?

20 Q. And it happened in November 1996, right?

21 A. Yes.

22 Q. And it's a trade show that anybody in the world can come  
23 to, right?

24 A. Yes.

25 Q. Now, I've heard reports -- I've read reports that Comdex

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1 1996 attracted some 200,000 people. Is does that sound out of  
2 line to you?

3 A. On the order, yes, I'm sure.

4 Q. And Crossroads was there, right?

5 A. That's correct.

6 Q. And they had this what you called a technology review.  
7 What did you call it?

8 A. Technology demonstration.

9 Q. Technology demonstration. And that was of the 4100 card,  
10 right?

11 A. That's not true.

12 Q. All right, sir. You had the 4100 card literature there,  
13 right?

14 A. We had a demonstration of some technology and some  
15 documents describing what we hope to have someday.

16 Q. All right, sir. Mr. Smith, also Comdex 1996, you were in  
17 a booth with Hewlett Packard, right?

18 A. We were as I remember there with what's called the Fibre  
19 Channel industry association.

20 Q. Fibre Channel community?

21 A. That could be the right -- I forget the exact term.

22 Q. All right, sir. And that was a room at Comdex that was  
23 open the public?

24 A. That's correct.

25 Q. And this technology demonstration that you mentioned was

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- 1 open to the public, too, right?
- 2 A. Yes.
- 3 Q. And it was in that room, right?
- 4 A. It was.
- 5 Q. Okay. And what I'm putting on the board here is a copy of
- 6 the claims of the patent that's in this case, the 972 patent.
- 7 Let me see if I can get there on your screen so you can see
- 8 it. Can you see it, sir?
- 9 A. Yes.
- 10 Q. Specifically, I'd like you to focus on claim 1.
- 11 A. Okay.
- 12 Q. Now, the technology demonstration at Comdex 1996, in that
- 13 room that was open to the public, it had a buffer, right?
- 14 A. I don't recall the specifics of it.
- 15 Q. It had a Fibre Channel controller, right?
- 16 A. It did.
- 17 Q. Had a SCSI controller, right?
- 18 A. It did.
- 19 Q. And it had a supervisor unit, right? Had a micro
- 20 processor?
- 21 A. It did, yes.
- 22 Q. And you mentioned that there was connecting Fibre Channel
- 23 describe vices on one side, SCSI storage devices on the other
- 24 sides?
- 25 A. As I recall, it was one computer, one server talking to

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1 one storage device.

2 Q. All right. And was there any -- how many devices were

3 connected to the server?

4 A. The server was only connected to the router.

5 Q. All right.

6 A. Or the prototype.

7 Q. What was it serving?

8 A. The storage device had images on it and we were showing

9 those images being displayed on the screen of the computer.

10 Q. All right. So it had a Fibre Channel host, right?

11 A. It had a Fibre Channel host, yes.

12 Q. And it had SCSI storage device, right?

13 A. It did.

14 Q. All right. And in order to permit the Fibre Channel hose

15 to talk to the SCSI storage device, there had to be some

16 mapping between nose to, right?

17 A. Its was a hard wired technology.

18 Q. But it was mapping sufficiently to permit the Fibre

19 Channel hose to communicate with the SCSI storage device,

20 right?

21 A. Right. That hard wire ability, yes.

22 Q. And it was using -- what was the protocol on the Fibre

23 Channel side? Fiber channel protocol, is that a term you're

24 familiar with?

25 A. Could have been used. I don't know what specifically was

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1 being used on that demonstration.

2 Q. Well, was there any high level server protocols in that  
3 network like Mr. Alcock talked about during his opening  
4 statement?

5 A. I don't really know.

6 Q. Don't know?

7 A. I didn't develop think of that technology.

8 Q. Okay. All right, sir. I'd like to refer you to  
9 Defendant's Exhibit 113. Do you see that, sir?

10 A. Yes.

11 Q. All right. Let me just pull it down. First of all it  
12 says dated 11-96. Do you see in the much per left hand Corp?

13 A. I do.

14 Q. Fibre Channel to SCSI router, correct?

15 A. That's what it says.

16 Q. And this was distribute Todd the public at comments 1996,  
17 right?

18 A. I'm not sure what the final document was there, but this  
19 could have been that.

20 Q. Well, something this or something like it was district  
21 Todd the public there, right?

22 A. I believe so.

23 Q. And how many versions of this did you have?

24 A. There would have been some we edited before going, I'm  
25 sure, but the only one would have been shown.

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- 1 Q. Comdex '96 you had one, right?
- 2 A. (Moving head up and down.)
- 3 Q. Please take a look at that figure in the lower right-hands  
4 corner there?
- 5 A. Uh-huh.
- 6 Q. It's hard for me to see over here. Right here is the  
7 cross point 4100, right?
- 8 A. Yes.
- 9 Q. And that's the 4100 product that you were trying to  
10 promote at the time, right?
- 11 A. That was the product we were trying to promote, yes.
- 12 Q. And it's connected to a Fibre Channel right here, right?
- 13 A. Uh-huh, I believe so.
- 14 Q. And there are -- you said one server. This picture shows  
15 actually two servers up there, right?
- 16 A. Yes, I'm having a hard time reading the --
- 17 Q. Yes.
- 18 A. Detail.
- 19 Q. Let me see if I can zoom in a little bit better for you.  
20 This is defendant's exhibit 13?
- 21 THE COURT: 13 or 113.
- 22 Q. (BY MR. BAHLER) 113. There's two servers shown up there,  
23 right?
- 24 A. Correct.
- 25 Q. And those are in this picture, at least, those are Fibre

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1 Channel hosts, right?

2 A. Yes.

3 Q. Okay. Then, down here, there's a SCSI tape device, right?

4 A. Yes.

5 Q. And actually, such tape devices usually have more than one

6 SCSI tape in it, right?

7 A. Depends on whether it's a tape drive or a tape library.

8 Q. Well, it could certainly have for, right?

9 A. Yes.

10 Q. All right. And that's a SCSI storage device, right?

11 A. Yes.

12 Q. And this is you're handing out literature at Comdex 1996

13 showing this product, right?

14 A. What we had hoped to have the 4100, yes.

15 Q. Now, you weren't the only person there from Crossroads at

16 Comdex 1996, right?

17 A. That's correct.

18 Q. And Mr. Quisenberry was there, right?

19 A. Yes, he was.

20 Q. And Mr. Hoese was there?

21 A. I believe so.

22 Q. And Mr. Russell was there, right?

23 A. I don't recall.

24 Q. And a come named Barbara Bardach was also there?

25 A. I believe so.

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1 Q. And Mr. Hoese was one of the inventors of the patents in  
2 this case?

3 A. That's correct.

4 Q. And he was there at the booth, right?

5 A. I believe so, yes.

6 Q. And he was working with customers, right?

7 A. Yes.

8 Q. And he was responsible for handing out brochures like  
9 Defendant's Exhibit 13, right?

10 A. I believe so, yes.

11 Q. Okay. And why did Crossroads go to Comdex 1996?

12 A. We had hope to meet customers and introduced them to what  
13 we would one day have which was called the 4100.

14 Q. You wanted to meet customers?

15 A. Yes.

16 Q. Okay. Now, Mr. Albright touched briefly on the Hewlett  
17 Packard 4400. That was also at Comdex 1996, correct?

18 A. I don't recall that.

19 Q. Let me take a look at Defendant's Exhibit 98. Once again,  
20 can you see that, sir?

21 A. I can.

22 Q. Let me point to the upper left-hand corner there.

23 A. Uh-huh.

24 Q. And once again, that's dated November 1996, right?

25 A. Correct.

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1 Q. This was a brochure that Crossroads had at Comdex 1996,  
2 right?

3 A. I believe so.

4 Q. And it was used to interest customers, once again, in  
5 purchasing the cross point 4400 in this case, right?

6 A. Yes.

7 Q. What's the difference between the 4100 and the 4400?

8 A. The 4400 was a product that HP had developed that they  
9 called the Mux. And we were interested in OEM'ing that  
10 product or buying from them to sell to our customers in  
11 compliment to the 4100 which was a product of lower  
12 multiplexer count.

13 Q. And Mux means a lower multiplexer, right?

14 A. That's correct.

15 Q. And HP Mux is also point adds a CrossPoint 4400, it had a  
16 connection that would permit it to connect to multiple fiber  
17 channel hosts, right?

18 A. Had the connection. I don't know if the software could  
19 handle that. I believe it had no access controls. It was  
20 just hard wired.

21 Q. We'll get to that. And it had a connection that permitted  
22 it to be connected to the SCSI storage devices, right?

23 A. That's correct.

24 Q. Fiber chance them to SCSI storage router?

25 A. It was a Mux multiplexer.

- 1 Q. It had a buffer, right?
- 2 A. I believe it did.
- 3 Q. It had a SCSI controller, right?
- 4 A. Yes.
- 5 Q. Had a Fibre Channel controller, right?
- 6 A. Yes.
- 7 Q. And it also operated to map between fiber chance them
- 8 diseases and SCSI storage devices, right?
- 9 A. I believe it was hard wired.
- 10 Q. Okay. But once again, it could work to connect SCSI
- 11 storage devices with Fibre Channel devices?
- 12 A. Yes.
- 13 Q. So those two can communicate?
- 14 A. Yes.
- 15 Q. Greek on one side and I forgot the other language, right?
- 16 A. English.
- 17 Q. That would work?
- 18 A. Uh-huh.
- 19 Q. Okay. Was there any high level server protocol on that
- 20 product?
- 21 A. I don't know.
- 22 Q. Or was it all native low level --
- 23 A. I don't know. I did not develop think of that product.
- 24 Q. Do you know what that means native low level block
- 25 protocol?

- 1 A. I'm minute sure what your definition is.
- 2 Q. Do you know what it means in the claims?
- 3 A. I don't.
- 4 Q. Now, did Hewlett Packard sell the HP Mux?
- 5 A. I believe they did, yes.
- 6 Q. And when did they sell it?
- 7 A. I don't recall when they started selling it.
- 8 Q. Were they selling it before they had these dealings with
- 9 Crossroads in 1996?
- 10 A. No, they were not. I believe it was at the earliest, late
- 11 in '97, if not, '98.
- 12 Q. Now, you made a deal with Crossroads or with Hewlett
- 13 Packard in 1996 in respect to the Hewlett Packard Mux, right?
- 14 A. I don't recall when the deal was actually agreed to.
- 15 Q. I'm going to show you what's been marked as Defendant's
- 16 Exhibit 97. Do you recognize that, sir?
- 17 A. I believe it's a letter from Barbara, yes.
- 18 Q. And in fact, it's to Mr. Bob -- boy, I can't pronounce
- 19 that name?
- 20 A. It's why cycle.
- 21 Q. And it's dated November 27, 1996, right?
- 22 A. Yes.
- 23 Q. And it's just after Comdex '96, right?
- 24 A. I believe so.
- 25 Q. And he works for Hewlett Packard, right?

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1 A. He did at the time, I think.

2 Q. And this is from Barbara Bardach, right?

3 A. Yes.

4 Q. The lady that I mentioned earlier?

5 A. Uh-huh.

6 Q. Who was at Comdex with you, right?

7 A. Yes.

8 Q. And in the first paragraph, she mentions Brian and I want  
9 to thank you and Joel for inviting us to represent Crossroads  
10 in your technology suite at the marriage hotel during Comdex.  
11 That's what she wrote there, right?

12 A. Yes.

13 Q. And that accurately describes what was the deal between  
14 Hewlett Packard and Crossroads at Comdex '96?

15 A. Well, this just says we were able to represent Crossroads  
16 there. I don't think that suggests a deal.

17 Q. Well, you were in Hewlett Packard's technology suite,  
18 though, right?

19 A. Yes.

20 Q. Okay. And that's where the 4400 brochure that we talked  
21 about earlier, that's where it was -- was handed out?

22 A. Again, I don't remember where it was handed out.

23 Q. And in the next paragraph, Ms. Bardach continues, our  
24 prospective customers who visited with us at Comdex are quite  
25 enthusiastic about the Fibre Channel SCSI Mux, Joel's group

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1 designed. Right?

2 A. Yes.

3 Q. That's a Hewlett Packard Mux, right?

4 A. Yes.

5 Q. Customers were reviewing that at Comdex '96, right?

6 A. Yes.

7 Q. All right. And it was the whole purpose of that show at  
8 Comdex '96 was to interest those customers in purchasing the  
9 HP Mux, right?

10 A. Our goal was to interest customers in the product.

11 Q. Well, this product in this case, the product was the HP  
12 Mux, right?

13 A. It was a product we were going to buy from them, yes.

14 Q. And also goes by the name CrossPoint 4400, right?

15 A. Yes, that was the Crossroads designation.

16 Q. All right. And then it says in the next paragraph it  
17 says, we are looking forward to completing a mutual technology  
18 license agreement with your group in January, right?

19 A. Yes.

20 Q. This will allow us to incorporate your HP Mux into our  
21 cross-link storage router line in early 1997 as the CrossPoint  
22 4400, right?

23 A. Yes.

24 Q. Did you talk money terms at this time in 1996?

25 A. I don't recall.

06/06/2001 Pathlite Trial, Day 1

1 Q. Did you at any time purchase a HP Mux from Hewlett  
2 Packard?

3 A. Yes.

4 Q. When?

5 A. In '97, I believe.

6 Q. When in '97?

7 A. I don't recall when.

8 Q. Well, at this point in time in November 1996. You were  
9 certainly talking ability buying one, weren't you?

10 A. We were talking about OEM'ing their productings yes.

11 Q. And part of the OEM deal was to buy one from them, right?

12 A. Its would have been.

13 Q. And you talked about purchasing a 44 -- or HP Mux from  
14 Hewlett Packard before the end of 1996, right?

15 A. I don't know if we actually talked about the purchase of  
16 it. We would have talked about its features and its  
17 capabilities and an OEM deal but I can't recall if we talked  
18 specifically about purchasing one.

19 Q. Mrs. Bardach says in this letter that the mutual  
20 technology license will allow us to incorporate your Mux in  
21 our cross-link storage system, right?

22 A. Yes, it does.

23

24

25

06/06/2001 Pathlite Trial, Day 1

- 1 Q. All right. Isn't that an offer to sell the HP Mux to you,  
2 to Crossroads?
- 3 A. It was an offer for us to OEM it if our customers  
4 registered it and then sell it at that point.
- 5 Q. What's an OEM?
- 6 A. It's where one company provides a product to another who  
7 then sells that product to a final customer.
- 8 Q. Right. One company provides a product, actually sells the  
9 product to the second company, right?
- 10 A. That's correct.
- 11 Q. And that's exactly what Crossroads and Hewlett Packard  
12 were talking about in November 1996, right?
- 13 A. Appears to be, yes.
- 14 Q. And that dealt with the Hewlett Packard Mux, right?
- 15 A. That's correct.
- 16 Q. Which was also known as the CrossPoint 4400, right?
- 17 A. Right, that was our designation.
- 18 Q. So that we're on the same page, involves that product,  
19 right?
- 20 A. Yes, that's the name.
- 21 Q. Now, I'd like to talk to you about back to the CrossPoint  
22 4100. That's a storage router, right?
- 23 A. Yes.
- 24 Q. No doubt about it?
- 25 A. Yes.

06/06/2001 Pathlite Trial, Day 1

1 Q. Right. And Crossroads had the technology demonstration at  
2 Comdex '96 and also had flyers for the 4100 at Comdex 1996,  
3 correct, sir?

4 A. Yes, we did.

5 Q. And, in fact, before the end of 1996, you offered to sell  
6 the 4100 to Clarion, right?

7 A. We offered to have Clarion evaluate our product.

8 Q. I'd like to put on the overhead Defendant's Exhibit 93.  
9 Can you see that, sir?

10 A. Yes.

11 Q. On your screen?

12 A. Yes.

13 Q. And that is a, in fact, a purchase order. It's a bunch of  
14 paper, right? Well, you can only see --

15 MR. ALBRIGHT: Mr. Bahler, what exhibit is that, sir?

16 MR. BAHLER: Defendant's Exhibit 93.

17 Q. (BY MR. BAHLER) I tell you what, Mr. Smith. May I  
18 approach bench, your Honor?

19 THE COURT: Sure. You don't need my permission.

20 Q. (BY MR. BAHLER) These are loose papers but if you'd permit  
21 me to hand you copies, I want to show you several pages in  
22 there. Okay. With the whole document in front of you, Mr.  
23 Smith, that is a purchase order from data general, which is  
24 Clarion, right? Clarion, data general, the same company?

25 A. I believe they are.

06/06/2001 Pathlite Trial, Day 1

1 Q. Okay. And it's a purchase order for the CrossPoint 4100,  
2 right?

3 A. No, it's not.

4 Q. Well, let's see. Take a look at the second page. First  
5 of all, let's get a date on this. June 22nd, 1996? See that?

6 A. I believe it says July.

7 Q. I'm sorry. You're right. July 22nd, 1996. And the  
8 subject matter of the purchase order is for a F C 2 S-11 Fibre  
9 Channel protocol to bridge. Isn't that the 4100, sir?

10 A. I'm not sure what that is.

11 Q. It's a Crossroads product, isn't it?

12 A. We never had a product of that designation.

13 Q. Well, whatever it is, it's a Fibre Channel to SCSI  
14 protocol bridge, right?

15 A. Yes, that's what it says.

16 Q. It's exactly what the 4100 was, right?

17 A. No. The 4100 didn't exist at this time.

18 Q. So this was the pre cursor to the 4100, right?

19 A. I don't know what that designation is.

20 Q. Mr. Smith, let me show you what's been marked as  
21 Defendant's Exhibit 25. May I approach again, your Honor?

22 THE COURT: You don't need my permission. You can.

23 Q. (BY MR. BAHLER) Thank you, your Honor. This is once again  
24 the entire document loosely. This is, counsel, Defendant's  
25 Exhibit 25. Now, that is a series of e-mails, correct?

06/06/2001 Pathlite Trial, Day 1

- 1 A. Yes.
- 2 Q. And the first one is dated December 20th, 1996, right?
- 3 A. Yes.
- 4 Q. And that's an e-mail to Clarion, right?
- 5 A. It appears to be from Clarion.
- 6 Q. Right. From Clarion. And the first part, just so we're
- 7 on the same page here, we're on the first page, and there's a
- 8 bunch of bullets. That is an e-mail from you, right, little
- 9 carrot there on the left-hand side, right? You say Joe, so
- 10 forth, right?
- 11 A. Yes, it appears to be.
- 12 Q. And then, Brian is you, right?
- 13 A. Yes, appears to be.
- 14 Q. And he says our 4100 with proper is available on
- 15 evaluation P O for 3300 for 60 day evaluation. That's a
- 16 dollar figure, right, sir?
- 17 A. It is.
- 18 Q. And you're asking for \$3,000 for a 4100 product, right?
- 19 A. We are not.
- 20 Q. Okay. You're saling it -- you're offering it to sell them
- 21 for evaluation purposes, right?
- 22 A. We are offering for them to evaluate the product and then
- 23 return it.
- 24 Q. And you're asking them to pay you \$3,000, right?
- 25 A. We are not. We are expecting to have it back.

1 product, right?

2 A. We are not.

3 Q. Now, Mr. Smith, you've heard of a company called Adaptec,  
4 right?

5 A. Yes.

6 Q. And, in fact, you visited Adaptec once upon a time, right?

7 A. I believe so, yes.

8 Q. That was in early 1997, right?

9 A. I don't recall.

10 Q. All right. Now, you went to Adaptec and you looked at one  
11 of their fiber channel to SCSI bridge products, right?

12 A. I don't recall that either.

13 Q. All right. Let me show you what's been marked as  
14 Defendant's Exhibit 95. First of all, Mr. Smith, that's your  
15 handwriting, right?

16 A. Yes.

17 Q. Okay. And that's a note you took, that's notes you took  
18 to record your trip to Adaptec, right?

19 A. It appears to be.

20 Q. And that was in February 1997?

21 A. Yes.

22 Q. Now, Mr. Smith, did you make these notes like on the plane  
23 back or while you were there or what? Do you recall?

24

25

06/06/2001 Pathlite Trial, Day 1

1 Q. And when you went to Adaptec, you looked at the Adaptec  
2 bridge, right?  
3 A. I don't know that I looked at it.  
4 Q. Well, you wrote a lot of stuff down about it, right, sir?  
5 A. Correct. I don't know that they showed it to us.  
6 Q. You refer to it as a 4200 look alike, right?  
7 A. Uh-huh.  
8 Q. What's a 4200?  
9 A. 4200 was our second generation product.  
10 Q. Crossroads product, right?  
11 A. Yes.  
12 Q. And it looks just like it, right?  
13 A. Yeah, I'm not sure what the reference means.  
14 Q. Well, if you didn't see it, Mr. Smith, how do you know it  
15 looked alike?  
16 A. The reference could have been just to functionality as far  
17 as objectivity as opposed to what it physically looked like.  
18 Q. You don't remember one way or the other, right, sir?  
19 A. I don't.  
20 Q. You didn't say functions alike?  
21 A. I did not.  
22 Q. It says look alike?  
23  
24  
25

- 1 A. That's what I said.
- 2 Q. And you knew this emerald chip on the Fibre Channel side,  
3 that's a finer channel controller, right?
- 4 A. Yes.
- 5 Q. And you knew that and you've got it 895 dual channel SCSI  
6 that's a SCSI controller, right?
- 7 A. I believe so.
- 8 Q. And it's got an A.M. D 3586 processor. That's a  
9 supervisor unit, right 586)?
- 10 A. I believe so.
- 11 Q. And right here, it says RAID box FF assist engine, right?
- 12 A. The letter is X O R. I'm not sure what that means.
- 13 Q. That's a -- or RAID is a type of SCSI storage system,  
14 right?
- 15 A. It is.
- 16 Q. And that's how the Adaptec bridge was being promoted at  
17 the time by Adaptec, right?
- 18 A. I assume so.
- 19 Q. And down here, you knew that they were offering that  
20 Adaptec product for 1500ed, right?
- 21 A. I'm not sure why I wrote that down, but it says \$1500.
- 22 Q. Why were you looking at Adaptec?
- 23 A. I don't recall.
- 24 Q. You had your own stuff, right?
- 25 A. We did.

06/06/2001 Pathlite Trial, Day 1

- 1 Q. So Adaptec had something else, right?
- 2 A. Apparently, they did.
- 3 Q. Why were you considering and OEMing -- were you
- 4 considering OEM'ing something from Adaptec?
- 5 A. I don't recall.
- 6 Q. Now, Mr. Smith, turning to the patent application that
- 7 resulted in the issuance of the 972 patent -- I'll put the
- 8 lames back up there again just for reference point. Now, you
- 9 were involved with the initial meetings with Crossroads
- 10 outside of patent counsel, correct?
- 11 A. Yes.
- 12 Q. And you were involved in the selection of this particular
- 13 idea for filing patent application, right?
- 14 A. I don't recall.
- 15 Q. You did meet with the lawyers, right?
- 16 A. I did.
- 17 Q. And those lawyers are from gray carry, right?
- 18 A. Yes -- at the time, I don't believe he was, though.
- 19 Q. At the time he was with Baker Botts, right?
- 20 A. That sounds correct.
- 21 Q. Taking ability Mr. Bill Halsey, right?
- 22 A. That's correct.
- 23 Q. And he's the guy that wrote the application?
- 24 A. I believe so. I'm not sure if he actually wrote it.
- 25 Q. All right. And now, as president and CEO of Crossroads,

06/06/2001 Pathlite Trial, Day 1

1 Mr. Smith, you sign documents on behalf of the corporation all  
2 the time, correct?  
3 A. I do.  
4 Q. And you are careful when you sign such documents, right?  
5 A. I try to be, yes.  
6 Q. And you read the documents before you sign them, right?  
7 A. Not all of them.  
8 Q. Well, if you don't understand something in a document,  
9 you'll get somebody to tell you what it means, right?  
10 A. I certainly try to, yes.  
11 Q. Okay. Let me show you what was marked at your deposition  
12 and what was marked at as trial exhibit today as Defendant's  
13 Exhibit D-90. Do you see that, sir?  
14 A. Yes, but difficulty reading it.  
15 Q. It is hard to read. Turn to the second payment there?  
16 A. Uh-huh.  
17 Q. That's your signature, is it not?  
18 A. Yes, it is.  
19 Q. And you filed this paper on behalf of Crossroads, right?  
20 A. I believe so.  
21 Q. And you filed it -- this was a paper that was filed with  
22 the U.S. patent and trademark office, right?  
23 A. Yes, it was.  
24 Q. And it was filed with the U.S. patent and trademark office  
25 in connection with the patent application that resulted in the

1 patent that's in this case, right?

2 A. Uh-huh, I believe so, yes.

3 Q. And in that paper, you stated, quote, we acknowledge the

4 duty to disclose information which is material to the

5 examination of this application in accordance with title 37,

6 code of federal regulations, section 1.356 A, right?

7 A. Yes.

8 Q. That's a statement that you signed, right?

9 A. It is.

10 Q. And you know that that is -- it talks about the duty to

11 disclose information, right?

12 A. Yes.

13 Q. And you signed that, right?

14 A. I did.

15 Q. And you acknowledged that you had a personal duty to

16 disclose such information, correct?

17 A. Yes.

18 Q. Mr. Smith, you never disclosed to the Patent Office the HP

19 Mux, did you, sir?

20 A. I don't know.

21 Q. And you never disclosed to the Patent Office the cross

22 .4400 product, did you?

23 A. Again, I don't know.

24 Q. And you never disclosed to the Patent Office -- I'm

25 talking about you personally, right?

06/06/2001 Pathlite Trial, Day 1

- 1 A. Right. I did not.
- 2 Q. Okay. You didn't disclose the HP Mux?
- 3 A. Right.
- 4 Q. You didn't disclose the CrossPoint 4400, right?
- 5 A. Right.
- 6 Q. You didn't disclose the CrossPoint 4100, right?
- 7 A. Yes.
- 8 Q. You didn't disclose the public -- you didn't disclose
- 9 anything about Comdex 1996, right?
- 10 A. Right.
- 11 Q. You didn't disclose anything about the Clarion, right?
- 12 A. Right.
- 13 Q. You didn't disclose anything about the Adaptec product
- 14 that you saw either, did you, sir?
- 15 A. Right.
- 16 Q. Now, Mr. Smith, as the chairman and CEO of Crossroads,
- 17 ultimately your responsibilities for the actions of
- 18 Crossroads, right?
- 19 A. Yes.
- 20 Q. Early on, when it was a small group, you had a lot of
- 21 control, right?
- 22 A. I'm not sure what you mean by control.
- 23 Q. Well, you knew what was going on, right?
- 24 A. Certainly some things.
- 25 Q. You made it part of your day-to-day operation to make sure

06/06/2001 Pathlite Trial, Day 1

1 you knew what was going on, right?

2 A. I was interested in many things in the company, yes.

3 Q. And when the 972 patent issued, patent that's in this  
4 case, Crossroads applied a patent label to its products,  
5 right?

6 A. I believe that's correct.

7 Q. Okay. And that patent label listed the 972 patent as  
8 being embodied in, for example, the cross .4100 product,  
9 right?

10 A. Again, I didn't know.

11 Q. Do you have any reason that it was not?

12 A. No.

13 Q. Let me show you what's been marked as Defendant's Exhibit  
14 11.

15 MR. ALBRIGHT: Your Honor, we would object on the  
16 grounds that we discussed yesterday with respect to the  
17 introduction of any of the documents relating to marketing.

18 THE COURT: Let me see 11.

19 (At the bench, on the record.)

20 MR. BAHLER: Your Honor, there's several pages in  
21 there that are more relevant.

22 THE COURT: How does it refer to the products?

23 MR. BAHLER: There we go. Here's the patent and  
24 here's the 4100 right this.

25 THE COURT: Your objection.

06/06/2001 Pathlite Trial, Day 1

1 MR. ALBRIGHT: Our objection, your Honor, is on  
2 relevance.

3 THE COURT: Okay. It's overruled. 11 is admitted.

4 Q. (BY MR. BAHLER) Mr. Smith, let me hand you a complete  
5 copy, once again, it's loosely, of Defendant's Exhibit 11.  
6 Let's just look at the first page right now. Can you tell me  
7 -- well, first of all, this is a group of documents that are  
8 drawings from -- for Crossroads, right?

9 A. Yes.

10 Q. And, in fact, let's just stay on the first page. It says  
11 regulatory label, Crossroads C P 4200, right?

12 A. Yes.

13 Q. That's what the first page; right?

14 A. Uh-huh.

15 Q. Okay. Then, let's turn several pages in to this page. Do  
16 you have it; sir? This is the one labeled regulatory rodeo  
17 4100. That's the CrossPoint 4100 product, right?

18 A. I believe so, yes.

19 Q. That's the 4100 product that we've been talking about,  
20 right?

21 A. Yes.

22 Q. It's the 4100 product that Mr. Alcock during his opening  
23 statement said did not include the invention of the patent in  
24 this case, right?

25 A. Yes.

1 Q. And yet, Crossroads applied this label to that product,  
2 right?

3 A. I believe so.

4 Q. And included in that label is an indication that the 4100  
5 is protected by U.S. patent No. 5941972. It's not very good,  
6 but that's what it says, right?

7 A. I believe so.

8 Q. That's the patent in this case, right?

9 A. Yes.

10 Q. Crossroads -- this is the first patent that Crossroads had  
11 ever gotten, right, sir?

12 A. I don't remember which was the first.

13 Q. It was an important one, right?

14 A. It is an important one.

15 Q. First one that or at least that's what you think, right?

16 A. Uh-huh.

17 Q. First one that Crossroads ever filed, right, sir?

18 A. I don't recall that either.

19 Q. Certainly first one you ever sued anybody on, wasn't it?

20 A. It is.

21 Q. Do you know why it was Mr. Alcock said you never made your  
22 invention during his opening?

23 A. I'm sorry.

24 Q. Do you know why -- first of all, does Crossroads make any  
25 products that include the patent in this case in your opinion?

06/06/2001 Pathlite Trial, Day 1

1 A. That we -- what do you mean by make? It's unclear. We've  
2 already sold, will sell?  
3 Q. Well, does the 4100 include the patent in this case?  
4 A. I didn't believe it does.  
5 Q. What leads you to that belief?  
6 A. That's what I've learned from our engineering team.  
7 Q. Pardon me?  
8 A. That's what I've learned from our engineering team.  
9 Q. Okay. And that's not what you told the world in November  
10 1999, was it?  
11 A. I'm not sure I understand.  
12 Q. Well, up in the right-hands corner of that document  
13 there's a November 1999 date, right?  
14 A. There is.  
15 Q. That means that that's the effective date of this  
16 document, right?  
17 A. Somewhere in that time frame.  
18 Q. Effective date of that label, right?  
19 A. It appears to be.  
20 Q. And after that date, sometime after that date, this label  
21 is actually applied to the product, right?  
22 A. Yes.  
23 Q. That was done so Crossroads could tell the world that the  
24 4100 product was covered by the patent in this case, right?  
25

06/06/2001 Pathlite Trial, Day 1

1 Q. And at that time, Mr. Smith, the only form of access  
2 control in the 4100 was this reserve command that Mr. Alcock  
3 mentioned during his opening, correct, sir?

4 A. I don't know that.

5 Q. Next page in that exhibit, sir. First of all, 4200,  
6 right?

7 A. Yes.

8 Q. That's the one that's the Adaptec look alike, right, sir?

9 A. That's what any comments were in the note.

10 Q. Well, that's what you said in the notes we've talked about  
11 a second ago, right? And you applied the patent number to  
12 that product, too, right?

13 A. Yes.

14 Q. Which means Crossroads is telling the world that the cross  
15 point 4200 included the invention of the patent in this case,  
16 right?

17 A. Yes.

18 Q. Okay. Next page is another level for another version of  
19 the 4100, right, sir?

20 A. Yes.

21 Q. And once again, patent number's on there, right?

22 A. It is.

23 Q. Next page. This label says effective against the 4100 and  
24  
25

06/06/2001 Pathlite Trial, Day 1

1 Q. And that is April 3rd, 2000, right?

2 A. Yes.

3 Q. It's right about the time you sued Pathlight, right?

4 A. Yes.

5 Q. And you were still telling the world that your product was  
6 covered by the patent in this case, right?

7 A. Yes.

8 Q. Pass the witness -- or hang on just a second. I move for  
9 the admission of Defendant's Exhibit 11. I think your Honor  
10 already moved on that one?

11 THE COURT: It's in.

12 MR. BAHLER: Defendant's Exhibit 90.

13 THE COURT: Any objection on 90?

14 MR. ALBRIGHT: Your Honor, if he just wants to read  
15 off the numbers we have if objection to any.

16 THE COURT: 90, 95, 25, 93, 97, 98 and 113 are  
17 admitted.

18 MR. BAHLER: All right. Thank you, your Honor.

19 MR. ALBRIGHT: Your Honor, do we do redirect now?

20 THE COURT: Redirect now.

21 MR. ALBRIGHT: Okay.

22 RE-DIRECT EXAMINATION

23 BY MR. ALBRIGHT:

24 Q. Mr. Smith, I'm going to ask you to introduce a new concept  
25 to the jury which is have you ever heard of a company making a

06/06/2001 Pathlite Trial, Day 1

1 mistake?

2 A. Yes.

3 Q. With respect to the label that we've just heard about for  
4 a good while, do you know whether or not the 972 patent is in  
5 the products that Crossroads have sold up to today?

6 A. It is not.

7 Q. And who do you rely on for that testimony?

8 A. Engineering didn't and then, the customer group that work  
9 with our customers as to how to label the product.

10 Q. Would it be fair to say that Geoff Hoese and Jeff Russell  
11 say that the patent isn't in there if it's not in there?

12 A. That's fair.

13 Q. Would it be fair to say that as the CEO of a company the  
14 transition from four people to six people in '96 to 200 now  
15 that you were not in charge of putting labels on the products  
16 that you sent out?

17 A. Yes.

18 Q. Did anybody from the labeling section ever call you before  
19 they did anything?

20 A. No.

21 Q. Prior to this lawsuit, were you aware that this label was  
22 on your products?

23 A. No.

24 Q. Did you have anything to do with making -- putting on  
25 there or have any discussion with anyone that should or should

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1 out in have been on there?

2 A. I did not.

3 Q. And with respect to whether or not it should be on there  
4 in terms of whether or not the patent is actually in the  
5 product, you would defer to the engineers we're going to hear  
6 from today?

7 A. Yes.

8 Q. Okay. With respect to the questions about what it was  
9 that you informed the United States Patent Office about, who  
10 did you, Brian Smith as the CEO of Crossroads rely on to get  
11 the appropriate information to Patent Office in terms of  
12 applying for this patent?

13 A. Both Jeffs and the bill Halsey, the attorney.

14 Q. Okay. Again, were you personally involved in making  
15 certain that this information got to the Patent Office?

16 A. I was not.

17 Q. Did you give instructions to the engineers and to your  
18 lawyers to make certain that the appropriate information did  
19 get to the Patent Office?

20 A. Absolutely.

21 Q. As you sit here today under oath, do you believe that  
22 Crossroads did get all the information to the Patent Office  
23 that it was supposed to?

24 A. I do.

25 Q. And again, with respect to Mr. Hoese and Mr. Russell who

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1 are going to testify today and who were principals in terms of  
2 getting this application, did you rely on them to make certain  
3 they got the appropriate prior art to the Patent Office?

4 A. Yes.

5 Q. Is it your opinion that they did so?

6 A. It is my opinion they did so, yes.

7 Q. Okay. Mr. Bahler asked you a couple of questions about a  
8 purchase order, and I would think that a purchase order is a  
9 purchase order. Am I wrong?

10 A. There are differences.

11 Q. When he was asking you whether something was a purchase  
12 order and you were telling him it was not, I don't know that  
13 the jury could see the exhibit to see really what you're  
14 looking at. Why were you saying that what he was showing you  
15 was not a purchase order?

16 A. It's a common practice in our business to give early what  
17 we call beta products to potential customers to evaluate and  
18 see if it meets their needs and typically, the way they're  
19 exchanged is through what's called an evaluation purchase  
20 order. The customer agrees to take that product for 30 or 60  
21 days, evaluate it, and then return it.

22 Q. For example, right now, Crossroads, on August 1st, will  
23 release a next generation products?

24 A. Yes, our fourth generation.

25 Q. Okay. And as we speak right now, I take it there are

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1 people who have those products -- customers have purchased  
2 those products already, have they not?

3 A. There are customer who's are evaluating those products,  
4 re.

5 Q. So they might have an evaluation purchase order showing  
6 that customers have those next generation products but don't  
7 go on sale till August 1st so anything until August 1st is not  
8 typical a sale until Crossroads is concerned?

9 A. And many of them don't have the certifications required to  
10 be sellable.

11 Q. Okay. And tell us what you mean by that.

12 A. The FCC, for instance, has to certify that products meet  
13 their requirements for safe use in both home and businesses,  
14 and many of those evaluation units have not been through that  
15 process. They're merely to be evaluated.

16 Q. To see if those customers will want to buy them?

17 A. That's correct.

18 Q. And with respect to those products that you call beta  
19 products, I take it that comes after alpha?

20 A. Yes.

21 Q. Those beta products, is there any protection against those  
22 being released to the public, for example in form of an  
23 NDA?

24 A. There is we have M D As with all of our customers adds we  
25 give them early access to products under those

1 non-disclosures.

2 Q. Now, I've just talked about an NDA I want to make sure the  
3 jury understands what an NDA is?

4 A. Nondisclosure agreement between parties or more where  
5 things, concepts, products can be exchanged under just the  
6 disclosure between those two organizations and not to others  
7 beyond that.

8 Q. So the company is taking or that's getting the product to  
9 evaluate cannot disclose what's in that product?

10 A. That's correct.

11 Q. Now, once your new products go on sale on August 1st,  
12 there's not going to be a non-disclosure agreement with those?

13 A. Correct. We make them what we call generally available.

14 Q. Those are going to meet all the standards by the FCC and  
15 whatever government agency you need to meet, correct?

16 A. That's correct.

17 Q. Will those products have the 972 patent in them?

18 A. I believe they will.

19 Q. Okay. Finally, we had a fair amount of discussion -- I'm  
20 not certain if the jury remembers or not -- concerning what  
21 was on sale at Comdex of '96. There were two products, the  
22 Crossroads or cross .4100, and the 4400 which is basically the  
23 Hewlett Packard product, correct?

24 A. Uh-huh.

25 Q. In 1996, was there a 4100?

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1 A. No.

2 Q. In 1996, was there a 4400?

3 A. There was an HP precursor to that.

4 Q. But could you have sold either of those products?

5 A. We could not in '96.

6 Q. If Clarion called up and said get me the 4100 today, could  
7 you have done it in 1996?

8 A. We could not.

9 Q. So when they talked to you again about the Clarion  
10 purchase order or even an offer to purchase or anything like  
11 that in 1996, was there a 4100 that Crossroads could have sold  
12 to them in 1996?

13 A. No.

14 Q. And as you've testified earlier, did you ever sell a  
15 product to Clarion?

16 A. I don't recall ever selling one to Clarion.

17 Q. And let's get down to the heart of it, really, with  
18 respect to the two products that are being shown in 1996 at  
19 Comdex. Did either one have the patent -- the 972 patent in  
20 them?

21 A. I believe they did not.

22 Q. Did either one, as far as you know, have the ability from  
23 what you've heard today in this courtroom and what you've  
24 discussed with your engineers now in terms of what access  
25 control is in 1996, could either of those products perform

1 precursor, was hard wire. What does that mean?

2 A. Means there's only one way for them to connect between the  
3 Fibre Channel side and the SCSI side. There were no choices,  
4 there was no access control as we've talked about today. It  
5 was just simply the data came up and went up.

6 Q. Again, it's because there's a box here and the box  
7 underneath the table and wires running back and forth and it  
8 was just approved the consent?

9 A. That's correct.

10 Q. Would there be any need for access control if there was  
11 only one box on top and one box on bottom?

12 A. I don't believe so.

13 Q. Because you wouldn't have the host or the computer trying  
14 to get into different storage devices, right?

15 A. That's correct.

16 Q. There was one host or one computer and one storage device?

17 A. That's correct.

18 Q. Pass the witness.

19 MR. BAHLER: May I redirect?

20 THE COURT: Yes, if you have something that was  
21 brought up on redirect that you haven't covered.

22 MR. BAHLER: Thank you, your Honor.

23

24

25

1 RE-CROSS EXAMINATION

2 BY MR. BAHLER:

3 Q. Now, Crossroads put those labels on its products because  
4 its patent lawyer said it was okay to do it?

5 A. I don't know.

6 Q. Okay. Now, Mr. Sims was identified by Crossroads to speak  
7 on his behalf on selected topics. Do you have that knowledge,  
8 sir?

9 A. I don't, no.

10 Q. Mr. Smith, when was it that Crossroads decided that it  
11 wasn't making any products according to your patent in this  
12 case?

13 A. I would say when was it decided?

14 Q. Yes. When did you figure that out?

15 A. I'm not sure when the team figured out. I understood it  
16 recently personally.

17 Q. All right. Were you aware that Pathlight served upon  
18 Crossroads what's called an interrogatory, asking them to  
19 identify products that incorporated the patent in this case?

20 MR. ALBRIGHT: Your Honor, if I may, I think he's got  
21 to ask a question and if there's an answer he disagrees with  
22 in terms of the responses, then that's the appropriate way to  
23 do this.

24 THE COURT: It may be. He just asked if he was aware  
25 of an interrogatory. Are you aware of an interrogatory?

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1 THE WITNESS: I am not.

2 THE COURT: All right. Ask your next question.

3 Q. (BY MR. BAHLER) All right. Were you aware that in  
4 response to such interrogatory --

5 MR. ALBRIGHT: Your Honor, if I may. I believe he  
6 must ask the witness a question and find out what the answer  
7 is and then he can show the interrogatory response.

8 MR. BAHLER: I haven't shown him anything.

9 MR. ALBRIGHT: Well, read the interrogatory.

10 MR. BAHLER: That's what I'm going to do.

11 THE COURT: Well, I don't have a question before me  
12 yet.

13 Q. (BY MR. BAHLER) Were you aware that in response to such an  
14 interrogatory, Crossroads answered after objecting subject to  
15 and without waiving its objections, Crossroads answers as  
16 follows. Crossroads is still investigating its sales of  
17 products which incorporate the invention of the 972 patent.  
18 Were you ever aware that Crossroads answered that question?

19 A. I was not.

20 Q. All right. And --

21 MR. ALBRIGHT: Your Honor, if we could still have a  
22 date on the interrogatory answer?

23 MR. BAHLER: I'm about to do that, sir. Thank you.

24 Q. (BY MR. BAHLER) That response was July 2000 and it was in  
25 response to a question that we had served about a month

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1 before, May of 2000, right, sir?

2 A. And the question is?

3 Q. Well, my next question is, you just figured out what  
4 products cover -- are covered by your own patent recently?

5 A. Me personally, yes.

6 Q. How about the company?

7 A. I don't know.

8 Q. Okay. Now, this case was filed in April of 2000, right?

9 A. Yes.

10 Q. And at the time, Crossroads was telling the world with its  
11 patent label that its product included the patent, right?

12 A. Yes.

13 Q. And then, recently, at least you discovered that  
14 Crossroads really wasn't making any products according to your  
15 invention?

16 A. That the image was not included in the products sold, yes.

17 Q. Exactly. And in July 2000, you didn't know whether or not  
18 they did, right, according to this corporate statement, right?

19 A. I don't know.

20 Q. Okay. Were you having difficulty figuring out what that  
21 patent meant, Mr. Smith?

22 A. I don't know. It's not my job.

23 Q. Pass the witness.

24 MR. ALBRIGHT: About another half hour, your Honor.

25 THE COURT: You may step down. Members of the jury,

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1 we're going to let you go to lunch, 1:30. I'd like you back  
2 at 1:30 please remember the instructions. Have a nice lunch.

3 (Jury not present.)

4 THE COURT: We're in recess till 1:30.

5 (Lunch recess.)

6 THE COURT: All right, counsel anything before we  
7 bring in the jury?

8 MR. BAHLER: No, your Honor.

9 MR. ALBRIGHT: Not from the plaintiffs, your Honor.

10 THE COURT: Knowledge, during the noon hour, did  
11 anyone attempt to talk to you about this case?

12 THE JUROR: No.

13 THE COURT: Did you talk to anybody about the case?

14 THE JUROR: No.

15 THE COURT: And did you learn anything at all about  
16 the case outside the presence of each other and this  
17 courtroom?

18 THE JUROR: Know.

19 THE COURT: Show negative answers to all questions by  
20 all jurors. You may call your next witness.

21 MR. ALBRIGHT: Thank you, sir. Plaintiff would call  
22 Mr. Dale Quisenberry.

23 THE COURT: Come forward and be sworn, please, sir.  
24 This is Mrs. Sims. She's going to administer an oath to you.

25 (Witness was sworn.)

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1 THE COURT: Walk around this column and have a seat,  
2 please, sir. And if you'll tell us your full name and spell  
3 your last.

4 THE WITNESS: Thomas Dale Quisenberry, Q U I S E N B E  
5 R R Y.

6 DIRECT EXAMINATION

7 BY MR. ALBRIGHT:

8 Q. Mr. Quisenberry, the jury's already heard about you this  
9 morning. If you'd be so kind as to introduce yourself to them  
10 and basically tell them how you met Mr. Smith back in the  
11 early '90s?

12 A. Sure. I'm Dale Quisenberry and I'm met Brian at church in  
13 1992. At the time that we were both looking for something to  
14 do, to go out on our own to do and so that's -- we started  
15 talking and primarily 1993 to get together and do something on  
16 our own, business-wise.

17 Q. And what did that lead to in the 1993-'94 time period,  
18 sir?

19 A. In 1994, we had started a company by the name of infinity  
20 software, which was primarily a consulting company, and we --  
21 I was doing networking consulting. That is my background,  
22 which is data networking. And then, Brian was still at IBM at  
23 the time and left IBM in the fall of 1994 and then, we both  
24 started doing consulting. I again was still doing data  
25 network consulting and Brian was doing some system analysis

1 to 1995?

2 A. In late '94, we had some queries from -- actually a head  
3 hunter who were looking for people that had expertise in the  
4 Fibre Channel area. They had heard about Brian and what Brian  
5 had been -- had worked on at IBM and inquired with us as to  
6 were we available to work on a contract with a company,  
7 Symbios Logic, to assist them in some Fibre Channel  
8 architecture and software implement take that they were trying  
9 to do on some of their products.

10 Q. Now, just to put this in time context for the jury in the  
11 '94-'95 time period, you all had not at this point decided to  
12 start trying to develop a storage router, correct?

13 A. That is correct.

14 Q. So '95 period, you all were doing consulting for other  
15 companies?

16 A. That is correct.

17 Q. Okay. If you could tell the jury what happened from 1995  
18 into 1996 and the transition that you and Mr. Smith met.

19 A. Sure. In 1995, when we were awarded a contract to do  
20 consulting for this company that needed the expertise, Fibre  
21 Channel software engineering expertise, we established another  
22 company that was infinity come stole L L C. The reason why we  
23 did that was that we had done some work store) in the prior

24

25

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1 company, some software work that could have resulted in us  
2 receiving royalties, and we did not want to mix that revenue  
3 with both companies.

4 So we started this new company called infinity come  
5 store and that was in the spring of '95. In all of that year,  
6 we did consulting for various companies. And then, on into  
7 '96, we continued doing consulting but, also, as we -- as the  
8 consulting continued, some of the members of the company and  
9 certainly primarily Brian was the person who was the external  
10 face would travel. He also did education classes with another  
11 gentleman.

12 And so, in the course of that time frame, he would be  
13 able to visit with companies to find out what their needs  
14 were, and what types of products were currently being  
15 developed by other companies in the Fibre Channel arena.

16 And again, in doing so in '96, we started talking  
17 about the actual -- a product and moving away from consulting  
18 and moving into just being a product development company.

19 Q. Okay. So we're in '96 now. And you all have decided to  
20 make the transition from consultants to hopefully producing a  
21 product, this storage router that Mr. Smith talked about this  
22 morning.

23 How many folks were with the company at this point.

24 A. In mid-'96, we probably was around ten.

25 Q: Okay. And we've heard already this morning from Mr. Smith

1 that he was the CEO. What was your role?

2 A. My role at certainly from the the point of infinity come  
3 store and moving with always kinds of an inside role of taking  
4 care of facilities, taking care of personnel, taking care of  
5 payroll, some little marketing at times, but very little. And  
6 so, again, it was dealing with, you know, making sure people  
7 had medical insurance, making sure that the accounting was  
8 taken care of, et cetera.

9 Q. Making sure the ship kept running?

10 A. Uh-huh.

11 Q. Okay. Was your job at all in 1996 or ever with Crossroads  
12 to develop intellectual property?

13 A. It was not.

14 Q. Okay. Did you have -- did you interact with the engineers  
15 that ones that were going to meet with Mr. Hoese and Mr.  
16 Russell about developing intellectual property?

17 A. I did not.

18 Q. Okay. As between Mr. Smith, yourself and the engineers,  
19 would you tell the jury whose role it was to develop and  
20 product intellectual property on behalf of Crossroads?

21 A. Geoff Hoese.

22 Q. Okay. And Geoff Hoese is an engineer -- was an engineer  
23 with Crossroads?

24 A. He was.

25 Q. Okay. He's also a manager at the time?

1 A. He was.

2 Q. Okay. We're in 1996, we're in November of 1996. It's Las  
3 Vegas at the Comdex. Do you recall what it was Crossroads  
4 showed at Comdex in 1996?

5 A. I do. We had a prototype or a demo set up on a table in a  
6 room about this size with probably 20 other companies that  
7 were also displaying their products, and at this time, we had  
8 a monitor connected to what looked -- what was a Del P C  
9 frame, and then which was connected to some storage -- a  
10 storage device.

11 And basically, our demo was showing that we could go  
12 take a SCSI protocol and go to a Fibre Channel protocol  
13 through the conversion, what have you. And so when folks  
14 would come by our booth, if you will, and look, what they  
15 would see on the screen were images. And basically, those  
16 images came from the storage device. Started out with being  
17 one protocol and then, ended up on the screen as Fibre  
18 Channel.

19 Q. Was this a product y'all could have sold?

20 A. No.

21 Q. If someone from Clarion or some other company had been at  
22 Comdex there and said I sure would like one of those, would it  
23 have been available for sale to them?

24 A. No.

25 Q. What do you know about the two words we've heard the most

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1 about here today, which are access control?

2 A. I know how to spell it, but I don't know necessarily what  
3 it does or certainly didn't know -- I don't even recall those  
4 words back in that time frame.

5 Q. Okay.

6 A. But later on in the Crossroads, you know, years is when I  
7 recall hearing those words.

8 Q. If I were to ask you either were access controls in that  
9 product or was the 972 invention in that product, the Comdex  
10 '96, would you know one way or the other?

11 A. I would not know.

12 Q. Thank you, Mr. Quisenberry. Pass the witness.

13 CROSS-EXAMINATION

14 BY MR. GILLETTE:

15 Q. Good afternoon, your Honor, ladies and gentlemen, my name  
16 is Steve Jill let. I'm one of Pathlight's attorneys. I know  
17 I was introduced yesterday, but I just wanted to introduce  
18 myself again?

19 Good afternoon, there Quisenberry. You attended  
20 Comdex '96, didn't you.

21 A. I did.

22 Q. And why did you attend Comdex '96?

23 A. Well, at the time, the company only had still I think  
24 around twelve people at that time, and so we needed some  
25 bodies to help man the booth, if you will, and so I was

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- 1 certainly a warm body that didn't mind talking to people and  
2 introducing them to the company, introducing them to what the  
3 prototype and the demo was accomplishing and what the product  
4 ideas that we had in mind q.
- 5 Q. And you viewed these mind that you were introducing  
6 yourself to as customers or prospective customers?
- 7 A. Prospective customers.
- 8 Q. Now, even before Comdex '96, you received -- you at  
9 Crossroads received a purchase order from a company called  
10 Clarion?
- 11 A. Date general I believe was the company.
- 12 Q. What's the relationship between data general and Clarion?
- 13 A. I'm not for sure.
- 14 Q. You say that purchase order in your desk, didn't you?
- 15 A. Uh-huh, I did.
- 16 Q. And why did you do that?
- 17 A. It was our first purchase order.
- 18 Q. First purchase order?
- 19 A. For the product.
- 20 Q. What product was that?
- 21 A. That we were developing. The bridge.
- 22 Q. The bridge?
- 23 A. Uh-huh.
- 24 Q. And was that the 4100?
- 25 A. Yes.

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1 Q. Okay. And when did you get what purchase order?  
2 A. I don't recall at the top of my head. I would have to --  
3 Q. I'm going to put up on the screen a copy of what I believe  
4 the jury has seen earlier. This is a purchase order. At the  
5 top it says data general. Do you see that?  
6 A. Yes.  
7 Q. And do you see there it has a purchase order date down at  
8 the left-hand side?  
9 A. Yes, P O date.  
10 Q. And what's what date?  
11 A. July 22nd, '96.  
12 Q. And that is the purchase order that you saved in your desk  
13 as the first purchase order for a product that was  
14 manufactured by Crossroads, correct?  
15 A. I'm not seeing the whole purchase order, so if you want me  
16 to speculate that this is an exact copy of what I kept on my  
17 desk, I would only -- that would only be speculation at this  
18 time, but I did keep a purchase order, one of the first  
19 purchase orders that I received in any desk.  
20 Q. Was one of the first --  
21 A. I said the first purchase order that I remember getting.  
22 Q. It's your recollection that purchase order was in the July  
23 1996 time frame?  
24 A. I do not recall that, but just didn't recall when it came  
25 in.

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1 A. I don't have any reason that's not the date. I just don't  
2 recall the date.

3 Q. Now, between July 1996 and December 31st, 1996, did data  
4 general ever withdraw that purchase order?

5 A. Not that I'm aware.

6 Q. Now, in fact, in December 1996, did somebody at data  
7 general get a hold of you at Crossroads and said, why haven't  
8 we received the products we ordered yet? Did somebody do  
9 that?

10 A. Again, I'm not sure of the date. There was some  
11 conversation, I believe, e-mail-wise that I recall seeing as  
12 to an inquiry as to when they would receive those.

13 Q. And was that from somebody at data general named Mr. Boy  
14 Ken?

15 A. That was the gentleman that we were dealing with from a  
16 technical lead on that -- on the data general side.

17 Q. And he wanted to get those products that he ordered by the  
18 ends of the year 1996, correct?

19 A. I do not know that.

20 Q. Well, let's look at another document here. This is  
21 Defendant's Exhibit 25. What I've got up on the screen here,  
22 this is Defendant's Exhibit 25, it looks like a series of  
23 e-mails here, and do you remember, I asked you questions about  
24  
25

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1 this set of e-mails earlier this year?

2 A. I do.

3 Q. And I asked you, do you remember, now that you've had a  
4 chance to see this e-mail, that that was an issue that was of  
5 some concern to Crossroads in late 1996, and your answer was  
6 yes?

7 A. (Moving head up and down.)

8 Q. Do you remember that?

9 A. I do.

10 Q. Okay. You see the e-mail's dated December 20th, 1996?

11 A. Yes.

12 Q. Now, do you have any understanding as to why data general  
13 was upset they hadn't received the products they ordered yet?

14 A. These were products that were being developed and so,  
15 again, my recollection is that the development wasn't complete  
16 for them to receive the product.

17 Q. And that's what you told Clarion?

18 A. I do not know what was -- I did not respond to this e-mail  
19 with Clarion, so I could not respond to that question.

20 Q. Now, let's go back, again, to what happened at Comdex.

21 The demonstration that Crossroads did at Comdex '96, was there  
22 something that was actually turned on there?

23 A. Yes.

24 Q. Okay. Did anyone in the public see it? Anybody that came  
25 into Comdex?

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1 A. I don't recall. You know as far as the monitor, it was  
2 turned on, and so people could see it. And I'm not -- I don't  
3 recall everything was on a table or not. I know at some  
4 Comdexes in the latter years you could put things under the  
5 table, but I don't recall in 1996 what the situation was  
6 there.

7 Q. And the people that saw it, did Crossroads keep track of  
8 those people by making a list of customer leads?

9 A. If they left a card or if we got their information, that  
10 information was attempted. It was attempted to be tracked and  
11 kept. I'm not sure that it was 100 percent completely done.

12 Q. Whose responsibility was it to keep track of customer  
13 leads?

14 A. If the -- whoever was at the booth, you know, was  
15 responsible to try to get business cards or write their name  
16 down and then, hand those back to Barbara Bardach.

17 Q. What was her job back in 1996?

18 A. It was vice-president of business development.

19 Q. What were her responsibilities?

20 A. Primarily to cultivate new relationships, E O M  
21 relationships with Crossroads. OEM) not only cultivate but of  
22 course introduce the company and what the products that we  
23 were hoping to develop or in the process of developing.

24 Q. Now, back in the 1996 time frame, did you keep any type of  
25 notebook which you kept notes and things about Crossroads in?

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1 A. I did.

2 Q. We're going to mark this notebook, or at least a copy of  
3 this notebook as exhibit -- it's D-354. I'd like to put it up  
4 on the screen here?

5 MR. ALBRIGHT: Your Honor, may we approach the bench?

6 THE COURT: You may.

7 (At the bench, on the record.)

8 MR. ALBRIGHT: Your Honor, my problem with this  
9 exhibit is that we didn't get it till last night. We didn't  
10 have notification it was going to be introduced until last  
11 night.

12 MR. GILLETTE: We didn't know Mr. Quisenberry was  
13 going to be a witness until I think early yesterday. We  
14 thought we were going to read it in his deposition and this  
15 exhibit was parts we were going to read it. They changed it  
16 and put Mr. Quisenberry on their list sometime either --  
17 either yesterday morning.

18 MR. ALBRIGHT: Believe we let them know on Monday, and  
19 --

20 THE COURT: Let's cut through the fat. What's the  
21 problem with the --

22 MR. ALBRIGHT: Your Honor, I have no problem with in  
23 exhibit. It's just we've got a host of exhibits last night  
24 and I didn't want to waive -- there may be others where  
25 they're trying to introduce them that they're going to raise

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1 this point with and I didn't want to have the argument made,  
2 well, if we let this one in, we're allowing all of them in.

3 We've got a group of documents last night. I don't  
4 think it's fair to say they didn't know Mr. Quisenberry was  
5 going to be there. I think I let them know. But I don't want  
6 to argue that.

7 MR. GILLETTE: Sometime Monday or Tuesday.

8 MR. ALBRIGHT: Well, Monday we found out we were going  
9 to trial today.

10 THE COURT: Surely there's a list of exhibits.

11 MR. ALBRIGHT: That's what I'm saying, your Honor,  
12 this was not on it. We didn't get this till last night. But  
13 my point is --

14 THE COURT: If it's not on the list, it's not going  
15 in.

16 MR. GILLETTE: It was not on the list last night, your  
17 Honor. Your Honor, this is the reason that we're having to  
18 scramble at the last minute is we got -- Mr. Albright added  
19 Mr. Quisenberry last night. He added another witness I  
20 believe --

21 THE COURT: You didn't provide a witness list?

22 MR. GILLETTE: He was changed. I think he had it by  
23 deposition.

24 MR. ALBRIGHT: This is silly to argue it's -- Monday  
25 they told us we didn't call -- I told them we had decide we

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1 didn't have time to call Mr. Quisenberry. That we'd just take  
2 Mr. Smith. They told me if we didn't call and say that they  
3 would subpoena him, so it was at that point we said, fine,  
4 we'll just call him.

5 And that's the reason we didn't know until --

6 THE COURT: What is in the diary that you're --

7 MR. GILLETTE: Mr. Quisenberry's involvement with the  
8 prosecution. He had involvement in keeping track of  
9 competition, things that he said he directly had no  
10 involvement in. His lab book says otherwise.

11 MR. ALBRIGHT: He had no involvement with patent  
12 prosecution and there's a statement, one statement that I can  
13 find that says something about contact --

14 THE COURT: My understanding, admissibility he'd be  
15 able to look at it and refresh his memory. But I don't quite  
16 understand how we're operating with adding people to a witness  
17 list or adding exhibits to witness lists. Those lists should  
18 have been completed pursuant to my order over a month ago. So  
19 I don't know exactly -- I did note that Mr. Smith wasn't on  
20 the witness list, and he's already testified.

21 MR. ALBRIGHT: Your Honor, I'm not going to object to  
22 this document as long as we can raise it with other documents  
23 we received last night.

24 THE COURT: I can't rule on objections I haven't  
25 heard.

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1 MR. ALBRIGHT: Okay.

2 MR. GILLETTE:

3 Q. Mr. Quisenberry, I'd like to show you a page from your  
4 notebook?

5 THE COURT: That exhibit is not in evidence.

6 MR. GILLETTE:

7 Q. It is dated September 4th, 1996, do you see that?

8 THE COURT: Counsel, y'all are starting -- you're  
9 showing the jurors exhibits that are not in evidence. If you  
10 want to show it on the machine, you ask to have it introduced.  
11 If you want to show it to the witness, then show it to the  
12 witness. But unless there is -- both sides have been doing  
13 this, but I don't know what agreements, if any, there are.

14 But I don't want to have an exhibit shown if there's  
15 going to be an objection. So let's admit an exhibit before  
16 it's disclosed to the jury just like lawyers do.

17 MR. GILLETTE: Pathlight offers exhibit D-354.

18 MR. ALBRIGHT: No objection, your Honor.

19 THE COURT: All right. 354 is received.

20 MR. GILLETTE:

21 Q. Can you tell if that's your handwriting?

22 A. It is.

23 Q. And that page is dated September 4th, 1996?

24 A. Yes.

25 Q. And was it your practice to keep handwritten notes of

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- 1 meetings that you participated in back in that time frame?
- 2 A. It was.
- 3 Q. All right. And the next page doesn't have a date on it,  
4 but it's got the number 2 in the upper left-hand corner, and  
5 then, the page after that has a number 3 in the upper  
6 right-hand corner. Would that indicate that those are all  
7 your notes from September 4th, 1996?
- 8 A. It appears that they are.
- 9 Q. Okay. Now, near the bottom of the page here, what does  
10 that very last line say?
- 11 A. It says patent lawyer, have to be done before Comdex.
- 12 Q. Why did you write that down?
- 13 A. I believe it was part of the discussion with Dr. Prior  
14 Marter.
- 15 Q. Do you know why you thought you had to have a patent  
16 lawyer before Comdex in 1996?
- 17 A. I don't recall the conversation as to, you know, why this  
18 note was written, so therefore, I do not --
- 19 Q. Did Crossroads, in fact, get a patent lawyer before Comdex  
20 many 1996?
- 21 A. I don't recall.
- 22 Q. Now, you also saw the product we've referred to here as  
23 the HP Mux at Comdex 1996. Didn't you?
- 24 A. Rephrase the question.
- 25 Q. Did you see a product referred to as the HP Mux at the

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1 Comdex 1996?  
2 A. I did.  
3 Q. And where did you see it?  
4 A. It was in the HP suite.  
5 Q. Did you -- did Crossroads invite prospective customers to  
6 look at the HP Mux?  
7 A. They did.  
8 Q. And was the HP Mux turned on?  
9 A. I believe it was.  
10 Q. Was it hooked up to SCSI drives?  
11 A. I believe it was.  
12 Q. And did several customers tell you and others at  
13 Crossroads that they were interested in buying that product?  
14 A. I was not involved in those discussions with customers. I  
15 was there as a personal -- on a personal visit to the HP suite  
16 when I -- just as I just stated about what I saw in the HP  
17 suite but I was not there during any customer visits. I was  
18 only there with Crossroads people or HP personnel.  
19 Q. And after -- right after Comdex 1996, did Crossroads bring  
20 one of these HP Mux back to Austin?  
21 A. I don't recall at what time, but we did have some 4400 HP  
22 Mux come into Austin, but I don't recall when that would have  
23 been.  
24 Q. Why did you bring those into Austin?  
25 A. We were talking with HP about doing some further

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1 development on that particular box. We were also talking to  
2 them about maybe adding that to the product line, having a  
3 high end product along with our low end 4100. And so there  
4 was a lot of talk with HP around that time about what might be  
5 done.

6 Q. As of Comdex 1996, was the HP Mux further along in  
7 development than the 4100?

8 A. I would not know.

9 Q. Now, when you got back to Austin after Comdex 1996, did  
10 Crossroads receive a purchase order from Compaq for a 4400, I  
11 was the same as the HP Mux?

12 A. I don't know.

13 Q. Well, there was something called a Crossroads purchase  
14 order log that Crossroads used at that time?

15 A. Yes.

16 Q. Pathlight offers exhibit D-353?

17 MR. ALBRIGHT: Your Honor, we object on the basis of  
18 the fact that witnesses first said he doesn't know, and the  
19 second in terms of the time of the delivery of the exhibits  
20 which were last night.

21 THE COURT: Let me see the exhibit. Counsel, is it on  
22 the exhibit list?

23 MR. GILLETTE: Yes, it is.

24 THE COURT: Okay. The objection's overruled.

25 MR. GILLETTE:

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- 1 Q. Now, Mr. Quisenberry, do you recognize this as a  
2 Crossroads purchase order log?
- 3 A. I can't read this.
- 4 Q. Let me see if I could zoom it in a little.
- 5 A. Yes.
- 6 Q. And there I've highlighted in yellow an entry that says  
7 data general-Clarion. Do you see that?
- 8 A. Yes.
- 9 Q. And it shows that the date the purchase order received was  
10 July 22nd, 1996. I know it's awfully hard to read. It's very  
11 small print. Is that any better?
- 12 A. I can make the -- yeah, I can make 22 out. As far as the  
13 date received.
- 14 Q. Okay. And that product that was ordered was the C P 4100?
- 15 A. That's what it says.
- 16 Q. Now, about four or five lines above that, do you see a  
17 company entry for Compaq and if you go across to the date  
18 received, it shows the date of December 9th, 1996?
- 19 A. Again, you know, if you're asking me to repeat what you're  
20 saying that I see on this that I can't read, then I'd ask you  
21 to rephrase the question if there is a question.
- 22 Q. Did Crossroads receive a purchase order from Compaq for  
23 the 4400 on December 9th, 1996?
- 24 A. I do not know.
- 25 Q. Do you have any reason to believe that this purchase order

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1 log was inaccurate?

2 A. I have no reason to believe that it is inaccurate, no.

3 Q. Now, did Compaq know what the price for the C P 4400 was  
4 going to be?

5 A. I don't know.

6 Q. Turning back to this exhibit that shows the price of  
7 \$17,000, do you see that? I'll highlight it here.

8 A. I'll take your word that that's a 17.

9 Q. Do you know how Crossroads decided to price the 4400 at 17  
10 thousand dollars?

11 A. I don't know.

12 Q. Now, let's move ahead to 1997. That was the year in which  
13 Crossroads claims it developed the invention here, correct?

14 A. I do not know.

15 Q. Do you know that Crossroads filed a patent application for  
16 the 972 invention on December 31st, 1997?

17 A. I knew that Crossroads filed several patent applications,  
18 but I don't know of one specific on that date. I don't know  
19 that information.

20 Q. Did you ever meet with these patent attorneys who were  
21 working on the patent application in 1997?

22 A. I don't recall dates. I did meet with patent attorneys  
23 along with Geoff Hoese or at some point, probably, Brian  
24 Smith. And again, that probably was more of an introduction  
25 meeting. I did not, was not responsible for patent -- the

1 creation of or even ensuring that they were done.

2 Q. Why did you meet with them then?

3 A. Is to meet them that they knew that I was the guy that was  
4 most likely going to write the check to pay their bills, and  
5 so I wanted to make sure that they could have a face with a  
6 name so when I call to inquire about the bills, which I often  
7 did which I didn't understand them, they knew who I was.

8 Q. And you saw the patent application?

9 A. I could have seen it. I think I remember seeing it at one  
10 time, but again, that's just a vague recollection. I don't  
11 know when that was.

12 Q. Have you seen the patent finally issued?

13 A. Again, I'm not sure that I have. I wouldn't know if I was  
14 to see it right now, so you'd have to point it out to me.

15 Q. Now, let's talk about another entry in your notebook which  
16 we had talked about earlier. Can you identify this page as in  
17 your handwriting?

18 A. It is.

19 Q. And that date is October 2nd, 1997?

20 A. I believe so.

21 Q. And as of that time, had you met with any of the patent  
22 attorneys who were working on the patent application for  
23 Crossroads?

24 A. As I said earlier, I had not met with any of the attorneys  
25 except for just meeting them. So I don't know if I had done

1 that prior to that date. I -- again, it would be an  
2 assumption that I had.

3 Q. What is this list in you've got three headings here, hub  
4 switches and routers. What did you need to show by that?

5 A. These notes were taken at a meeting and as I recall these  
6 companies were named under these categories as to being --  
7 this was their product that they were in business to build and  
8 to sell.

9 Q. And you listed Ancot sequin HP and Adaptec under routers?

10 A. I did.

11 Q. And how did you come to understand that those were  
12 companies that should be listed under routers?

13 A. You know, I don't recall the ins and outs of that  
14 conversation. I think what started that conversation that day  
15 was talking about different acquisition activity that might be  
16 going on during that time frame.

17 Q. Now, as one of your responsibilities, I believe, Mr..  
18 Albright asked you about in your job at Crossroads, you had  
19 responsibility over some of the financial?

20 A. I did.

21 Q. What, specifically, was your responsibility there?

22 A. In the '97 time frame, my title was vice-president of  
23 finance and administration. So, again, it was anything that  
24 had to do with from an accounting standpoint, you know, paying  
25 bills, you know, making sure that the financial reporting was

1 done is kind of all under that category.

2 Q. Did you keep track of whether financial reporting was done  
3 properly in 1998?

4 A. I don't recall the date. We switched to a C F O, interim  
5 C F O and it could have been in the late '97 or early '98 time  
6 frame to jack low si. I don't recall the date that that  
7 happened.

8 Q. Do you remember if Crossroads lost money in every quarter  
9 in 1998?

10 A. I don't recall.

11 Q. You don't recall? Pathlight offers the exhibit D-350.

12 MR. ALBRIGHT: Another exhibit we had identified last  
13 night, your Honor.

14 THE COURT: When you say identified, but it was on a  
15 witness list -- I mean was on an exhibit list.

16 MR. ALBRIGHT: It got on the exhibit list like the  
17 other two last night. In other words, when you asked Mr.  
18 Earlier was it on the exhibit list last night as of when we  
19 got it the answer was yes.

20 THE COURT: Members of the jury, I'm going to put you  
21 in the jury room for a minute.

22 (Jury not present P).

23 MR. ALBRIGHT: Your Honor, in other words, we've had  
24 no opportunity to prepare Mr. Quisenberry for any of this  
25 because we got all this information last night that these were

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1 going to be exhibits in this case.

2 MR. GILLETTE: I have an e-mail -- your Honor, I have  
3 an e-mail here of -- I don't believe it's dated, but I think I  
4 remember seeing it in the evening, late evening of yesterday.  
5 This is the first time they indicated they were going to call  
6 Mr. Quisenberry live.

7 MR. ALBRIGHT: Your Honor, that's just flat wrong.

8 THE COURT: Okay. I don't, you know, somewhere I've  
9 got the magic ball up here, but it doesn't help me. I don't  
10 know who is representing accurately or who is not. I note  
11 from the lawyers in the courtroom that I don't believe anybody  
12 would misrepresent. Sometimes we forget things, but I know a  
13 lot of lawyers that do misrepresent, but I don't think they're  
14 in the courtroom.

15 But I don't know how I can operate except under the  
16 rules and the exhibit list and the witness list was to be  
17 accomplished by the plaintiff by August 18, 2000. And by the  
18 defendant on September 28, 2000 by my order. Now --

19 MR. ALBRIGHT: Your Honor, I believe that was the  
20 order, that order was changed as of December when you  
21 rescheduled the trial.

22 THE COURT: I was going to ask, then, but did I change  
23 -- I've got a date down for -- I don't know that I have a  
24 different date on an exhibit list or witness list, but at some  
25 point in time either you all made agreements or you ignored

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1 the orders, and it doesn't help that an exhibit list or a  
2 witness list was made last night.

3 The whole point is that we don't sit here and take  
4 time and put the jury out while you two argue about when you  
5 learned that Mr. Quisenberry was going to be a witness if his  
6 name's on the list, he may be a witness. Or when you learned  
7 that they were going to put on your own client's financial  
8 information because it was on a list.

9 Now, what am I supposed to do? I can make a blanket  
10 -- if y'all can find me another order that changes the 2000  
11 dates, I will be glad to follow it. But if you're going to  
12 get up here and both of you make these accusations that they  
13 came in last night, then I'm not going to allow any witnesses  
14 who not on the list by the October and September dates testify  
15 and I'm not going to let any exhibit that's not on the list by  
16 those dates come into evidence.

17 So y'all get together and you decide how you wish to  
18 proceed and then, you tell me when you're ready.

19 (Recess.)

20 MR. ALBRIGHT: If they want those exhibits we have no  
21 objection and I don't anticipate us having any other problems  
22 because I think this is a unique situation with respect to  
23 exhibits and Mr. Quisenberry. And so I do want the Court to  
24 know that there are a couple of separate issues we would like  
25 to take up at the end of the day that don't have anything to

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1 do with the late production of exhibits.

2 THE COURT: There are a few terms I want to ask y'all  
3 at the end of the day, too, and we'll do it while the sun is  
4 still up.

5 MR. ALBRIGHT: Thank you, your Honor.

6 THE COURT: All right. Ready for the jury. Mr.  
7 Quisenberry, you remain under oath, sir. You may proceed,  
8 sir.

9 MR. GILLETTE:

10 Q. Mr. Quisenberry, I've got here what's identified as  
11 Crossroads's financial reporting package, and I'm going to  
12 look specifically at a bar chart here which is entitled the  
13 net loss matrix analysis starting with the third quarter  
14 fiscal year '98 and going through the third quarter fiscal  
15 year 2000. Were you --

16 MR. ALBRIGHT: Could I ask for a page?

17 MR. GILLETTE: I'm sorry. It is page 51879.

18 MR. ALBRIGHT: Thank you, sir.

19 MR. GILLETTE:

20 Q. Were you there at Crossroads for that entire period?

21 A. No.

22 Q. What period -- when did you leave Crossroads?

23 A. I left May 31st, 2000.

24 Q. Would that have been between the second year and third  
25 quarter fiscal year 2000 (net loss trend)?

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1 A. You may have to have a clarification when fiscal quarter  
2 ended now, when it ended then.

3 Q. When did it end?

4 A. I'm speculating, trying to recollect that it ended in  
5 January was the end of the first quarter. Is that --

6 Q. Now, between the third quarter fiscal year 1998 and the  
7 time you left Crossroads, do you recall that Crossroads did,  
8 in fact, lose -- had a net loss every single quarter?

9 A. I do by this chart.

10 Q. It never made a profit any quarter while you were there?

11 A. I don't recall. I was -- I was thinking maybe we had a  
12 profitable month or two, but maybe not the whole quarter at  
13 that time.

14 Q. Now, you said you don't have any understanding of the  
15 patent in this lawsuit?

16 A. I do not.

17 Q. Is that right? You would rely on your patent attorneys to  
18 tell you what was covered by that patent?

19 A. I would.

20 Q. And have the Crossroads patent attorneys ever toad you  
21 whether or not Crossroads's own products are covered by the  
22 972 patent?

23 MR. ALBRIGHT: Your Honor, objection, invade the  
24 attorney client privilege.

25 THE COURT: It would and it's also hearsay. Objection.

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1 is sustained.

2 MR. GILLETTE: No further questions.

3 MR. ALBRIGHT: May I have ten seconds, your Honor?

4 THE COURT: You may.

5 MR. ALBRIGHT: Thank you, your Honor.

6 RE-DIRECT EXAMINATION

7 BY MR. ALBRIGHT:

8 Q. Mr. Quisenberry, Mr. Gillette spent a fair amount of time  
9 talking to you about purchase orders for 1996. Do you  
10 remember that?

11 A. Yes.

12 Q. He kept trying to get you to explain why Clarion was  
13 unhappy in December of that year. Do you remember why in that  
14 December Clarion was unhappy with Crossroads?

15 A. I don't recall that there was ever a -- what month Clarion  
16 was unhappy. I remember the question coming up as to when  
17 will we receive our prototypes that they had ordered.

18 Q. And when they kept calling you and asking you month after  
19 month when were they going to get these, who got those calls?

20 A. Usually it was either Barbara Bardach or Brian.

21 Q. Basically during that entire 1996 period, they remained  
22 unhappy because you never got a product to them, did you?

23 A. I do not know that.

24 Q. Okay. I was wrong. Do you have any idea whether or not  
25 the products that Mr. Gillette was talking about in 1996 had

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1 any capacity to perform access control?

2 A. I would not know that.

3 Q. Okay. When he was talking to you about a purchase order  
4 in the amount of \$17,000, did you all ever sell a product,  
5 actually sell a product for \$17,000?

6 A. I would not recall if we had or not.

7 Q. Okay. If Mr. Smith has testified about what a beta unit  
8 was to this jury, would you defer to what he would know about  
9 that?

10 A. Absolutely.

11 Q. Okay. If he testified about what a development unit was,  
12 would you defer to him in that situation?

13 A. Absolutely.

14 Q. Finally, I think Pathlight has pointed out a couple of  
15 occasions that Crossroads didn't make a lot of money in any of  
16 those quarters. Did you get that sense?

17 A. I did.

18 Q. Okay. From 1996 to present, how much did Crossroads grow  
19 in terms of people?

20 A. From 1996 to today?

21 Q. Yes, sir. Or till the time you left, let's just say.

22 A. In '96, let's say at the end of '96, I believe we had 13  
23 or 14 employees until I left on May 31st, 2000. I believe we  
24 had over 200 May 31st. You know, somewhere around I think it  
25 was 200, 220, something like that.

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1 Q. During that period of time, did you all build a building  
2 of your own out on MOPAC?

3 A. Yes, we occupied, yes.

4 Q. Okay. During that period of time, did anything happen in  
5 terms of going public with Crossroads?

6 A. Yes, October of '99.

7 Q. And despite the fact this doom and gloom over not making a  
8 profit in these quarters, would you consider the I P O that  
9 Crossroads did, would it be considered successful in your  
10 book?

11 A. Absolutely.

12 Q. In terms of NASDAQ rankings, do you have any idea where it  
13 places on the NASDAQ rankings?

14 A. We were fifth at all times first day as far as the initial  
15 public offering we were fifth, as far as the amount of  
16 percentage that open it at and then it closed at, the pricing  
17 that it closed at.

18 Q. When did y'all go public?

19 A. October 20th, 1999.

20 Q. Would you say that makes y'all fairly successful?

21 A. Sure.

22 Q. Thank you, sir.

23 RE-CROSS EXAMINATION

24 BY MR. GILLETTE:

25 Q. Mr. Quisenberry, do you still own any stock in Crossroads?

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1 A. I do.

2 Q. Approximately how much?

3 A. Approximately 600,000 shares.

4 Q. No further questions.

5 THE COURT: May this witness be excused, counsel?

6 MR. ALBRIGHT: Yes, your Honor. Thank you.

7 MR. GILLETTE: We offer --

8 THE COURT: May the witness be excused?

9 MR. GILLETTE: Yes, sir.

10 THE COURT: You may be excused, sir.

11 THE WITNESS: Thank you.

12 MR. GILLETTE: Pathlight offers exhibits D-354, D-353

13 and D-350.

14 THE COURT: All right. They're received. You may

15 call your next witness.

16 MR. ALCOCK: Yes, your Honor, we'd call Geoff Hoese.

17 THE COURT: Just come all the way up, please, sir.

18 This is Mrs. Sims. She's going to administer an oath to you,

19 sir.

20 (Witness was sworn.)

21 THE COURT: Come up here and have a seat, please. If

22 you'd tell us your full name and spell your last name, please,

23 sir.

24 THE WITNESS: Jeffrey Hoese, H O E S E

25 DIRECT EXAMINATION

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1 BY MR. ALCOCK:

2 Q. Where do you live, sir?

3 A. Austin, Texas.

4 Q. And how long have you lived in Austin?

5 A. About 14 years.

6 Q. Ever work for a company called Crossroads?

7 A. Yes, I have.

8 Q. From what time period -- over what time period did you  
9 work for Crossroads?

10 A. From May of 1996 through October of 2000.

11 Q. Okay. I'm going to hand you a notebook that has trial  
12 exhibits 1, 4, 5 and 7 in it, and I'm going to ask you to take  
13 a look at exhibit 1 and tell us if you can identify that.

14 A. It's a patent filing of an invention between myself and  
15 Jeff Russell.

16 Q. Offer exhibit 1 in evidence, your Honor?

17 MR. BAHLER: In objection.

18 THE COURT: Received.

19 MR. ALCOCK:

20 Q. What role did you have in exhibit 1?

21 A. Well, in conjunction with Mr. Russell, we conceived the  
22 idea we were to document the idea and work through the  
23 disclosure and patent filings associated with it.

24 Q. Okay. Could you give the ladies of the jury some idea as  
25 to what your job was in coming up with this invention and

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1 what Mr. Russell's job was in coming up with the invention?

2 A. We collaborated a great deal on it. Primarily I was more  
3 of a software person. Mr. Russell was more of a hardware  
4 person. So he had greater involvement like the hardware  
5 design and architecture that went into it. I did more of the  
6 software. However, we both collaborated a fair amount in  
7 discussing concepts and ideas that led to this.

8 Q. Okay. Could you --

9 A. I'll try. I'm sorry. I have a soft voice, so I'll try to  
10 speak louder.

11 Q. Okay. What did you do when you first started at  
12 Crossroads? What was your job when you first started there in  
13 May of '96?

14 A. I started essentially as a software engineer. My job was  
15 mainly to start developing concepts and ideas towards the  
16 business consent of having Fibre Channel connectivity for the  
17 company of developing these concepts to further to make its  
18 products.

19 Q. Did you have any experience before Crossroads in managing  
20 people to build a product?

21 A. Yes, I did. I was a manager at Compaq corporation. I  
22 managed the software development for their network adapt er,  
23 got through that through management I had at form as Conrad  
24 which was my employer at Compaq.

25 Q. How long did you do those management jobs?

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1 A. It was with Compaq and Thomas Conrad approximately a  
2 couple of years in those positions.

3 Q. And did that all involve software development?

4 A. Yes, it did.

5 Q. I see. And how many people did you manage?

6 A. It varied. I would say from a lower five to maybe a  
7 dozen, some what more perhaps at times.

8 Q. All on software engineering products?

9 A. Predominantly. There may have been a project manager  
10 person involved at different points or something of that sort,  
11 but predominantly software development.

12 Q. Okay. And did these come out with products?

13 A. Oh, yes, quite a few (development).

14 Q. Could you tell the members of the jury your educational  
15 backgrounds?

16 A. I have a couple of years of college. I was a glass any  
17 major with physics minor. I did not complete a degree.

18 Q. When did you leave school?

19 A. 1981, I believe, may have been '82.

20 Q. Okay. When did you first write any software programs?

21 A. I started when I was in high school writing software and  
22 playing with computers and doing things of that sort.

23 Q. How many patents are issued to you as a named inventor,  
24 sir?

25 A. I believe five, at least five. I haven't followed what's

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1 been issued recently. I have a couple more filed, so I  
2 believe it's five.

3 Q. Those at Crossroads or other companies, too?

4 A. I have two others outside of Crossroads. One issued from  
5 Compaq and one from previous employment at Del computer  
6 corporation.

7 Q. What are you doing now, sir?

8 A. Right now, I have some involvement with a couple of smart  
9 startups. I'm trying to decide what role I really have if I  
10 work with them more directly, pick one to work with. So it's  
11 -- I have some consulting roles that I do at one or two places  
12 and other involvement.

13 Q. Why did you leave Crossroads?

14 A. I had worked hard for a long time and spent, you know,  
15 four or five years really focused and really working hard and  
16 really wanted to take a break.

17 Q. Okay. So you're one of the inventors on the 972 patent.  
18 Can you explain your invention to us in your own words?

19 A. Simply put, it's a device and method this allows computers  
20 to be connected to storage using more native protocols to  
21 allow access to that storage and access control storage to  
22 provide for security and controlled access for those  
23 computers.

24 Q. Would a graphic exhibit or two help to explain this to the  
25 jury?

1 A. Absolutely.

2 Q. I'm going to place on the screen demonstrative exhibit  
3 504, your Honor. Could you explain what 504 is showing?

4 A. This drawing shows a network server environment, which  
5 shows computer systems, work stations, tied to storage by a  
6 network server. This really shows the prior existing  
7 solutions for the type of problems that the patent addresses.  
8 It addresses certain problems with this environment. So what  
9 we have here is a network server with computers attached to  
10 one side of it and storage devices attached to the other side  
11 of it.

12 Q. Okay. And what was one of the problems that you were  
13 trying to solve that we see here on exhibit -- demonstrative  
14 exhibit 504?

15 A. Primarily performance network server acts a bottle neck  
16 getting to this storage. All these computers here have to go  
17 through the server to access this data on the storage devices,  
18 and there are some particular bottle necks involved that limit  
19 performance, limit the speed at which data may access.

20 Q. Placing before the witness, your Honor, demonstrative  
21 exhibit 552. You mentioned a bottle neck. What's the nature  
22 of this bottle neck that you faced?

23 A. Well, a network server basically implements a file system  
24 to represent that data, and implements network protocols to  
25 translate that data and carry it over the network. What this

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1 drawing indicates is that you've got data coming in with the  
2 blue balls, represent data coming from the computer systems.  
3 As that data -- those data requests, really, get to the  
4 network server, they have to be translated from the network  
5 protocol, translated through the file system to the actual  
6 data represented on the storage media, converted to those  
7 native low level request that's the storage devices require,  
8 and then meet out to the storage devices.

9           So as you could see, the representation is that you  
10 can get a lot more requests in than you can process through  
11 that entire process to get the data out or the data requests  
12 out to the storage devices. So you can have a lot more going  
13 on the one side than the other basically there's an intrinsic  
14 bottle neck there during that conversion.

15 Q. When did you recognize it?

16 A. This problem has been around for quite a long time. I  
17 started focusing on it shortly after joining Crossroads.

18 Q. Okay. So what is your invention change about this  
19 picture?

20 A. Well, seeing that a large part of the bottle neck is by  
21 the protocol conversions involved and the accessed through the  
22 file system, converted to that low level native protocol that  
23 the storage devices use, what our invention does is eliminate  
24 that conversion by having the requests from the computers on  
25 the network side directly routed as data low level requests so

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1 those protocol conversions and file system conversions don't  
2 have to occur while simultaneously providing a lot of the  
3 access control and security that's needed to support multiple  
4 systems in that environment.

5 Q. Okay. Let me place before you demonstrative exhibit 520.  
6 What does that depict, sir?

7 A. Basically, it's a similar environment where we had the  
8 network server. However, in this case we have a storage  
9 router in place of the network server. The computer's  
10 talking to the router and the router talking to the storage  
11 devices.

12 Q. And what's the fundamental difference between a router and  
13 a server in this context, sir?

14 A. Server implements a file system. The router does not have  
15 to implement the file system. The server also provides higher  
16 level protocols at conversion to T C P I D is one of the  
17 predominant protocols for network communication for computers  
18 in this case do not have to use that T C P I D protocol. We  
19 use their native SCSI protocols.

20 Q. Okay. You said a mouthful. Let me see if I can  
21 understand. So one thing is it doesn't use a file server and  
22 another thing it doesn't need these fancy protocols; is that  
23 right?

24 A. That's right.

25 Q. Okay. And what's the net effect of that?

1 A. You gain that performance back that you would have lost by  
2 going through those conversions.

3 Q. Okay. Now, you've mentioned on a couple of occasions  
4 access controls. What do you mean by that?

5 A. Access control refers to the ability to recognize read and  
6 write data to a storage device on a device by device basis.

7 So you have these different computers out here. Their ability  
8 to know that data's out there, note that these storage devices  
9 are there, be able to put that data there selectively for the  
10 protection of that data essentially.

11 Q. And what is the benefit of these access controls?

12 A. They are numerous. You may have data that you don't want,  
13 certain computers have access to, uses that computer you might  
14 not want them to see that data. You may have environments  
15 where you worry about corruption of that data. If more  
16 computers could get to that data, if a program crashes on this  
17 one computer, it could destroy the data if it has access to  
18 it, you could strain that access and prohibit that from  
19 happening.

20 So those are two examples. There are many reasons you  
21 might want security controls to access controls.

22 Q. Okay. I'm placing before you exhibit -- demonstrative  
23 exhibit 593. Can you explain this for us, sir?

24 A. Sure. In the drawing here, we have two computers attached  
25 through a storage router to multiple storage devices. Both of

1 these computers here can access the storage device No. 3, it's  
2 global access. There are essentially not any constraints put  
3 on the access to that data. However, on the other two storage  
4 devices one and two, A for example can only get storage device  
5 one. The computer system A, the user on A would have no idea  
6 that B exists. They would not know that data's there. It's  
7 there. They without president be able to access it, they  
8 wouldn't be able to modify it, they wouldn't be able to  
9 corrupt it in any way.

10 Likewise, with computer B, it can only access this two  
11 and three. It has no idea that one exists there. It may see  
12 for example, it may be this number two as this primary disk.  
13 A would see one as its primary disk, not knowing that the  
14 data's there for the other one. So they could be configured  
15 similarly without having access to the other device.

16 MR. BAHLER: Counsel, what exhibit's that? 50  
17 something?

18 MR. ALCOCK: Demonstrative exhibit 593.

19 MR. BAHLER: Thank you.

20 MR. ALCOCK:

21 Q. Placing before the witness demonstrative exhibit 604 --  
22 your Honor, with the Court's permission, could the witness  
23 step down?

24 THE COURT: Sure. I will ask you to really keep your  
25 voice up, though.

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1 THE WITNESS: I will try. Thank you.

2 MR. ALCOCK:

3 Q. Now you have to yell, Mr. Hoese, okay?

4 THE COURT: Now only will you try, you will succeed.

5 THE WITNESS: I understand.

6 MR. ALCOCK:

7 Q. Okay. Could you explain for us demonstrative 64 -- first  
8 of all, can you recognize what it is for the jury? It says  
9 figure 3 on the bottom. What does that mean?

10 A. This is a drawing I believe from the patent itself  
11 describing the invention so it's a schematic drawing of the  
12 environment, describing the characteristics of the invention.

13 Q. Okay. Now, can you explain to us your invention using  
14 exhibit 604?

15 A. It's a very similar draw together this in that we've got  
16 multiple stations, multiple computers out here connected to  
17 the router. Also with storage devices behind it. What this  
18 shows is that all of these computers can access the global  
19 data.

20 Q. Excuse me. The global data is the block on the top No.  
21 60; is that right, for the record?

22 A. That's correct.

23 Q. Okay. Continue.

24 A. And this is an arbitrary storage device. It could be a  
25 disk drive; it could be a tape drive, any sort of SCSI storage

1 device. So each one of these 60, 62, 64 here represent  
2 different storage devices. So this shows that we can  
3 segregate this access so that selectively, these computers can  
4 access parts of or all of the different storage devices.

5 Q. Okay. And then, I see a storage router in a management  
6 station, what do those things do in your invention?

7 A. Storage router provides the connectivity between the fiber  
8 channel and SCSI. Management station is agent essentially  
9 that allows the configuration and management of these access  
10 controls and the configuration of the overall system. So the  
11 management station would be perhaps a software entity or  
12 perhaps a separate work station or could be any one, you know,  
13 with that capability specifically enabled, that provides the  
14 capability as maybe as an administrator or whatnot. So the  
15 administrator for this could come in and set up these  
16 provisions so that maybe work station E crashes, well, we want  
17 to give E that capability the configuration, the different  
18 management systems have different access.

19 Q. Okay. Have a seat. Could you turn to exhibit 7 in your  
20 book, sir?

21 A. Yes.

22 Q. What is exhibit 7?

23 A. Exhibit 7 is the -- basically the concept disclosure that  
24 I wrote up for this invention and for the purpose of starting  
25 the patent process and get -- documenting the concept to give

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1 to our patent attorneys and start.

2 Q. I see. So did you write this yourself?

3 A. Yes, I did.

4 Q. Did you write it in the regular course of business?

5 A. Yes, I did.

6 Q. And was it written at or near the time of the events  
7 described therein?

8 A. Absolutely, yes.

9 Q. I'll offer exhibit 7 in evidence, your Honor.

10 MR. BAHLER: Your Honor, may we approach?

11 THE COURT: Yes, sir.

12 (At the bench on the record.)

13 MR. BAHLER: Mr. Alcock can certainly correct me if  
14 I'm wrong, but this is going to be used as proof of conception  
15 of the invention, okay? Conception of the invention is a very  
16 complicated issue and requires not only that the invention be  
17 conceived or that written down like this, but it also be  
18 communicated to somebody.

19 Now, it says Anthony Peter man, but that's hearsay.  
20 This is a business record, granted, your Honor, but that part  
21 is hearsay within hearsay. There's no exception for that one.  
22 There's no evidence of this --

23 THE COURT: Your objection to 7 is that the name  
24 Anthony Peter man is hearsay?

25 MR. BAHLER: Yes.

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1 THE COURT: The objection is overruled.

2 MR. BAHLER: Thank you.

3 THE COURT: 7 is admitted.

4 MR. ALCOTT: Thank you, your Honor.

5 MR. ALCOCK:

6 Q. What is the first page of exhibit 7?

7 A. It's fax cover document.

8 Q. And who did you send this to?

9 A. Anthony Peterman.

10 Q. Who is he?

11 A. Attorney at Baker and Botts that we retained to do patent

12 --

13 Q. What date did you send this to him?

14 A. The 28th of May, 1997.

15 Q. Okay. And could you take a look at the next two pages of  
16 the document? What does the next page show?

17 A. Next page is an abstract in describing what's essentially  
18 the methods that were in use at the time and the invention and  
19 high lighting some of the distinctions there of what the  
20 invention provided.

21 Q. Okay. So you weren't the first one to have a bunch of  
22 computers on one side and a bunch of remote storage devices on  
23 the other sides. You weren't the first to do that, were you?

24 A. No, I wasn't.

25 Q. And did you tell your patent lawyer that this was already

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1 done here in this figure?

2 A. Yes.

3 Q. Take a look at the next page. What are these two figures  
4 showing, sir?

5 A. Drawing 2 describes a storage route er environment with  
6 global access where there are no access controls, so you have  
7 the translation of data from the one side of the route tore  
8 the other side of the router, an environment where all the  
9 devices can see all the other devices so it's bringing that  
10 data across directly.

11 Q. Okay. So here we've got a router. Have I got that right?

12 A. Yes.

13 Q. And we've got computers on one side and SCSI remote  
14 storage on the other; is that right?

15 A. That's correct.

16 Q. Is this your invention?

17 A. No, that's not the invention.

18 Q. So if we see all kinds of prior art that has remote  
19 storage and work stations and a router, that's not your  
20 invention necessarily, is it?

21 A. It is not.

22 Q. Okay. Could you go further down the page?

23 A. Drawing 3 shows an environment with the computers on one  
24 side and storage devices on the other as being routed,  
25 additionally, the storage access mechanisms are in place to

1 allow these access controls to selectively enable or disable  
2 these systems to get to a storage device, a portion of those  
3 devices.

4 Q. I see. Now, I notice that page 3 of exhibit 7 bears a  
5 remarkable resemblance to figure 3 of the patent. Was this --  
6 exhibit 7 used to draft up the patent application?

7 A. Absolute -- yes.

8 Q. Okay. Now, while you were at Crossroads, was any  
9 Crossroads product sold to your knowledge that used the 972  
10 invention?

11 A. No.

12 Q. Why not?

13 A. Mainly it was a matter of bandwidth, manpower. We started  
14 out with our basic products. We had different features we  
15 wanted to put in over time as the market was able to adopt  
16 those features and use them. So we started out with the basic  
17 storage routers and given the constraints of, you know, small  
18 business, et cetera, the things we needed to do, we did not  
19 get to that point where we had the resources and the time to  
20 put this in.

21 Q. Was there intent to put in the product?

22 A. We had at different points discussed putting these  
23 features in, yeah.

24 Q. And so now, did any of the Crossroads -- were you familiar  
25 with the Crossroads products when you were there?

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1 A. Absolutely, yes.

2 Q. How were you familiar with them?

3 A. I was very familiar with them. I helped with the  
4 conception of a number of them, design and architecture. I  
5 managed a lot of the software engineering effort to develop  
6 the products, worked with the different teams on manufacture  
7 and design of them, I was it Natalie familiar with them.

8 Q. So if there was anybody to ask about whether or not this  
9 patent was in a product, you're the guy?

10 A. I would think so intimately), yes.

11 Q. Now, you mentioned you had other patents, other patents at  
12 Crossroads. Did any of those finds their way into products?

13 A. We had a number of patent disclosures that were used,  
14 number of inventions that were used in our products. And some  
15 of those were issued patents were used in the products. I  
16 don't have the list in mind exactly. We had on the order of  
17 20 disclosures of patents that we had filed during the period  
18 that I was there.

19 So I'm not able to name them, but, yes, absolutely.

20 Q. Okay. Now, have you become aware that a Crossroads  
21 product was marked as having your invention, that is, marked  
22 with the 972 patent?

23 A. I found that out during the deposition process for this  
24 trial.

25 Q. First time?

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- 1 A. Yes.
- 2 Q. Was that right? I mean, should it have been marked?
- 3 A. No, no, absolutely not.
- 4 Q. Did you have anything to do with it?
- 5 A. No, I did not.
- 6 Q. Do you know who's responsible for its?
- 7 A. No, I don't, no, I didn't.
- 8 Q. Now, did you attend Comdex in 1996?
- 9 A. Yes, I did.
- 10 Q. What was your role there?
- 11 A. General support. I mean, I was there -- we showed a
- 12 technology demo there, so I was there to help put that
- 13 together and explain to people how that functioned, represent
- 14 the company, you know, we were a small company at that point,
- 15 so I think everybody was doing a number of things in that
- 16 regard.
- 17 Q. Did you have a product?
- 18 A. No.
- 19 Q. Did the demo that you do -- that you did have the 972, did
- 20 it use the 972?
- 21 A. No, it did not.
- 22 Q. I mean, it was five months before exhibit 7, right?
- 23 A. I'm not sure of the exact date of Comdex but on this
- 24 order, yeah.
- 25 Q. What was lacking in this technology demonstration compared

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1 to your invention?

2 A. The technology demonstration connected a single work  
3 station to a single storage device. It did not provide any  
4 kind of mapping between the devices. It didn't have any  
5 routing capabilities, as it were. It didn't have any access  
6 control mechanisms. It had no management capabilities.  
7 There's no configuration benefit. It's a pretty large  
8 difference there.

9 Q. So did it really have anything to do at all with figure 3?

10 A. Not really, no.

11 Q. We have heard a lot about the HP Mux. Do you know what  
12 that is?

13 A. Yes, I do.

14 Q. How do you know what that is?

15 A. I was involved in working with HP and understanding that  
16 product.

17 Q. What do you know about that product?

18 A. I know a fair amount -- a lot about it, I know a great  
19 deal about it.

20 Q. Did it have anything to do with figure 3? Did it have  
21 anything to do with your invention?

22 A. No, it did not.

23 Q. What was different about it?

24 A. The HP Mux did not do any configurable mapping, it did not  
25 have any management of that sort, it did not provide access

1 controls at all.

2 Q. You've used the term configurable mapping a couple of  
3 times now. Can you explain that to the ladies and gentlemen  
4 of the jury what you mean by that?

5 A. What I mean by that is what I would consider a storage  
6 router is a device that provides mapping that can change --  
7 that can be changed where you might have a device that you  
8 might call a bridge or a Mux. Those devices have a direct  
9 correlation between devices on either side.

10 So for example, the computer's on one side would all  
11 see these storage devices exactly the same way every time.  
12 There's no way to change their addressing, how they appear.  
13 It's a constant configuration, fixed configuration in that  
14 regard. A router that does mapping can change those mappings.  
15 So you can have different devices tied in at different  
16 addresses so that one computer may be able to see the  
17 different devices at a given address and another may see a  
18 different address. Or you could go in at some point in time  
19 and selectively change that administratively.

20 Q. Take a look -- I'm placing before you demonstrative  
21 exhibit 522. Could you come down and explain to the ladies  
22 and gentlemen of the jury what that is?

23 A. This describes a map and what the mapping does, in effect,  
24 where we have a system wanting to address the data on a  
25 storage device. A request is ven rated by one of these

1 computers. It has to do that correlation, what does it want  
2 so it puts in that request as to what it wants the map draws a  
3 correlation as to what device that may be on and the region it  
4 may be on.

5 And this example, these are the same in mapping con  
6 figures, it's not necessarily true. It's not shown by this,  
7 but it could be -- yeah, this guy's looking for disk Y so he  
8 knows it by one address. In reality the router knows it by a  
9 different address and remaps that to a different address. So  
10 these addresses that are seen from the computers on one side  
11 can be different and these regents can be different from one  
12 side to the other and that's determined by the mapping tables  
13 in the routing.

14 Q. And that's part of your invention?

15 A. The -- yeah, the addressing controls associated with that  
16 are, yes.

17 Q. Can you have a seat?

18 A. Uh-huh.

19 Q. So having worked at Crossroads for a while, were you  
20 pretty familiar with the kinds of solutions that were out  
21 there to solve the problem that you solved with this 972  
22 patent?

23 A. There weren't solutions out there to solve the problem  
24 that we saw. That why we did the invention on it or did I  
25 misunderstand your question?

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1 Q. You didn't. What is the significance of the invention  
2 over the existing solutions?

3 A. It allows faster access so it allows systems to perform  
4 the same function at greater speed or more data to be  
5 retrieved at a given rate, so it's faster, faster and better.

6 Q. Pass the witness, your Honor.

7 MR. BAHLER: Your Honor, could we take a short recess?

8 THE COURT: Members of the jury, I'm going to give you  
9 enough time to use the facilities, stretch your legs.

10 (Recess.)

11 THE COURT: Bring them in.

12 CROSS-EXAMINATION

13 BY MR. BAHLER:

14 Q. Mr. Hoese, I'd like to talk to you a bit about what  
15 everybody's calling this technology prototype or whatever it  
16 was at Comdex in 1996, all right, sir?

17 A. Yes, sir.

18 Q. That had a fiber channel controller in it?

19 A. It did.

20 Q. And that was a tacky on Fibre Channel controller from  
21 Hewlett Packard, right?

22 A. I believe so, yes.

23 Q. And it had a microprocessor inside there, right?

24 A. Yes.

25 Q. And was that an Intel I 968 microprocessor?

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- 1 A. I believe so.
- 2 Q. That's where you got it from?
- 3 A. Uh-huh.
- 4 Q. And just for clarity, the -- just to back up, the tacky on  
5 I 960 has a internal buffer, right? It's called a guy know?
- 6 A. It has a guy know in it, yes.
- 7 Q. And it uses something called D M A to transfer from the --  
8 that guy know memory which stands for first in, first out,  
9 right, transfer from there to the buffer memory, right?
- 10 A. I haven't looked at that chip in a while. It's very  
11 possible. I don't specifically recall.
- 12 Q. It what as fiber channel protocol unit, too, right?
- 13 A. Yes.
- 14 Q. And also in that demonstration Comdex 1996 was a SCSI  
15 controller, right?
- 16 A. Yes.
- 17 Q. And that SCSI controller was bought from Symbios, right?
- 18 A. Symbios logic.
- 19 Q. And that had stuff inside of it, too, right?
- 20 A. Yes.
- 21 Q. And one of the things was a guy know memory, right?
- 22 A. I believe that has a guy know in it, yes.
- 23 Q. And it had SCSI protocol unit inside that chip, right?
- 24 A. Yeah, yes.
- 25 Q. Okay. And it had -- and a transfer data from the guy know

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1 memory and protocol unit to the buffer memory of the router  
2 using something called D M A, right?

3 A. I would not -- you used the term router in there and  
4 described the whole thing but I wouldn't characterize it --

5 MR. ALBRIGHT: Your Honor, excuse me, that's the third  
6 time that they've been on top of each other. I'm having  
7 trouble following. I'm sure the court reporter.

8 THE COURT: The court reporter has a real good way of  
9 telling me when she stands up and puts her hands up in the  
10 air, I will know that she can't take it down until then, I  
11 have confidence she's got every word. But let's do -- let him  
12 finish the question and let him finish the answer.

13 MR. BAHLER: Yes, sir. Thank you. I'm withdrawing  
14 the question and I'll ask it again.

15 Q. (BY MR. BAHLER) Symbios SCSI controller that was in the  
16 thing at Comdex 1996 that was on display used something called  
17 D M A to transfer data from the guy know memory within the  
18 SCSI controller to the buffer memory of the thing, right?

19 A. I would think so, yes.

20 Q. All right. Now, Mr. Hoese, please take a look at -- you  
21 still have a notebook up there and I also put some loose  
22 papers up there that are clipped. Please look at your  
23 notebook to plaintiff's 1. P-1 is a copy of the patents in  
24 that note book. I would like you to take specifically a look  
25 at figure 5 which I have up on the screen.

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1 A. Okay.

2 Q. Now, that's a copy of the figure from your patent apply --  
3 or from your issued patent, right, sir?

4 A. Yes.

5 Q. And that shows a Fibre Channel controller right here,  
6 right, sir?

7 A. Yes.

8 Q. And that has all the stuff I just talked about that was in  
9 the box that was at Comdex 1996, right?

10 A. That's correct.

11 Q. And it's got a micro processor right here, right?

12 A. Yes.

13 Q. That's just like in the box at Comdex 1996, right?

14 A. That's fair.

15 Q. All right. And then, over here the SCSI controller,  
16 right?

17 A. Uh-huh.

18 Q. And that's exactly like what was in the box that Comdex  
19 1996, right?

20 A. Yes.

21 Q. And up here, I'm sorry, this is a buffer. This isn't a  
22 micro process earn, right? Here's the buffer?

23 A. This is a schematic diagram that don't directly correlate.  
24 It would have maybe in the diagram some characteristics of  
25 both.

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1 Q. Sit says right here item 84 it's a buffer, right?  
2 A. Yes.  
3 Q. And the box Comdex 1996 had a buffer, right?  
4 A. Yes.  
5 Q. And then, up here, this supervisor, that's the  
6 microprocessor, right?  
7 A. I would consider that so.  
8 Q. And the box at Comdex 1996 had a supervisor unit,  
9 processor, right?  
10 A. Yes.  
11 Q. Okay. Now, let's take a look at the way you describe that  
12 figure to the Patent Office. Let's see. First of all, take a  
13 look at figure 3. Do you have it, sir?  
14 A. Yes.  
15 Q. And I notice that the storage router on this figure is  
16 labeled item 56, right?  
17 A. That's correct.  
18 Q. All right. And the storage router in the other figure,  
19 which is figure 2 -- by the way, did you invent or did you not  
20 invent figure 2?  
21 A. I would not consider figure 2 the invention described  
22 here.  
23 Q. All right, sir. And that storage router in contrast is  
24 called item 44, right?  
25 A. Yes, it is.

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1 Q. All right. And then, you go on to talk about in figure --  
2 in the figure 5 we just talked about where you're describing  
3 there is item 56, right?  
4 A. I'm sorry. Could you -- I'm not sure what you're asking.  
5 Q. The figure 5 that had all the stuff in the box at Comdex  
6 1996 is figure 5, right?  
7 A. Yes.  
8 Q. And you told the Patent Office that was your invention,  
9 right?  
10 A. I don't believe so.  
11 Q. You didn't tell them it wasn't, did you?  
12 A. I believe this is described in the patent as that  
13 component of the invention.  
14 Q. That's right.  
15 A. It is not described as the invention.  
16 Q. And you never told the Patent Office that that part was  
17 old, did you?  
18 A. I did.  
19 Q. When?  
20 A. In the invention disclosure forms in figure 2, basically  
21 describes the characteristics of figure 5 in that regard.  
22 Q. Mr. Hoese, figure 4 was storage router No. 44, right?  
23 A. It is labeled as such.  
24 Q. It's not storage router No. 56, right?  
25 A. It is not labelled as such.

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1 Q. And in fact, there is no presentation anywhere of any  
2 details within storage router 44 which is not your invention  
3 in this, right?

4 A. I don't know. I'd have to read it.

5 Q. I looked for it very carefully and I don't find it. Do  
6 you think I missed it?

7 MR. ALCOCK: Your Honor, that's argumentative.

8 MR. BAHLER: I'll withdraw it.

9 THE COURT: Let's don't pitch it out anymore.

10 MR. BAHLER: All right.

11 Q. (BY MR. BAHLER) Just for completeness, let's take a look  
12 at column 5 of your patent near the bottom, zoom in on that.  
13 Do you have it, sir?

14 A. No, I don't.

15 Q. Column 5 of the patent, at the bottom?

16 A. Okay.

17 Q. After describing the function you say to accomplish this  
18 functionality one implement take of the storage router  
19 includes a Fibre Channel interface and there you mention the  
20 tacky on chip, right?

21 A. Yes.

22 Q. And then, you mention the Intel I 960 chip, right?

23 A. Yes.

24 Q. And then the top of the next column, you specifically  
25 mention the Symbios chip, right?

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1 A. Yes.

2 Q. All right. And all that stuff was in the box in Comdex  
3 1996, right?

4 A. Those were components that were use merchandise that.

5 Q. And you never told the Patent Office about that, either,  
6 did you?

7 A. I told them about --

8 Q. You never told the Patent Office that you had all those  
9 components down to the specific manufacturers in the box that  
10 you showed to the public in Comdex 1996, did you, sir?

11 A. Didn't believe they're relevant.

12 Q. Objection, move to strike. Nonresponsive.

13 THE COURT: Ask your next question.

14 Q. (BY MR. BAHLER) You never told the Patent Office that the  
15 components that you -- that you had represented to the Patent  
16 Office were required for your invention or embodiment of your  
17 invention were in fact completely and fully in that box and on  
18 public display in Comdex 1996?

19 A. Your question says what was an embodiment and I don't  
20 believe that's the case.

21 Q. You never told the Patent Office that you had a box that  
22 looked exactly like figure 5 including the manufacturers, the  
23 details of the manufacturing of the individual components, you  
24 never told them that that was in the box at Comdex 1996, did  
25 you?

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- 1 A. Specifically, no, I don't think I told them that.
- 2 Q. I'd like to touch on the HP Mux for a minute, which is  
3 also the CrossPoint 4400, right?
- 4 A. At one point it became that.
- 5 Q. Okay. And --
- 6 A. It became the basis for that.
- 7 Q. HP Mux is manufactured by Hewlett Packard of course and  
8 the C P 4400 was manufactured by Crossroads, right?
- 9 A. I'm sorry.
- 10 Q. The 4400 was the Crossroads product, right?
- 11 A. The 4400 was a Crossroads product.
- 12 Q. And that had a buffer in it, right?
- 13 A. Yes, it did.
- 14 Q. And it had a Fibre Channel controller?
- 15 A. Yes, it did.
- 16 Q. In fact it has a Hewlett Packard tacky in the controller,  
17 didn't it?
- 18 A. It had two.
- 19 Q. And it had a Symbios SCSI control, right?
- 20 A. Yes, it did.
- 21 Q. And it had an I 960 microprocessor, right?
- 22 A. Yes, it did.
- 23 Q. And that was something that was also a Comdex 1996, right?
- 24 A. I don't recall that. I don't know. May have been.
- 25 Q. You were at Comdex 1996, right?

1 A. Yes.

2 Q. Please take a look at column 7 of your patent, sir. Do  
3 you have it?

4 A. Yes, I do.

5 Q. I'd like to direct your attention to -- first of all,  
6 column 7 is describing how -- it's part of the description how  
7 your invention works, right?

8 A. I'd have to read through this. I haven't looked at this.

9 Q. You didn't look at your patent before you came to testify  
10 in court about it?

11 A. I didn't read it in detail, no.

12 Q. Well, maybe I can help you out here. Specifically I want  
13 to ask you about this all capital inquiry issue. Do you see  
14 that?

15 A. I do.

16 Q. That's a standard SCSI command, right?

17 A. That is correct.

18 Q. And it says there that the commands that the storage  
19 router will support and that's talking about the storage route  
20 er of your invention, right?

21 A. As a component of that invention, yes.

22 Q. Can include inquiry as well as vendor-specific management  
23 commands, right? It says these are to be generally consistent  
24 with the S C C's standard commands, right?

25 A. Yes.

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1 Q. And that's S C C, that's a standard setting command  
2 committee, right?

3 A. That S C C refers to a specific specification regarding  
4 formatting for addressing devices.

5 Q. All right, sir. Now, this inquiry command permits any host  
6 to get inquiry data, which is data actually from any storage  
7 device, right?

8 A. The SCSI specification describes inquiry command as way to  
9 get information about a device, it's not storage device  
10 specific.

11 Q. All right. And it doesn't say anywhere here that inquiry,  
12 this inquiry data can be gotten from a storage device except  
13 when access controls are in place. It doesn't say that, does  
14 it?

15 A. This paragraph has no bearing on that. I'm not sure how  
16 to relate your question to that paragraph.

17 Q. It doesn't say that, right? Doesn't condition that  
18 statement at all on whether or not the access controls exist  
19 in the router or not, right?

20 A. As I understand your question, I'd say no, it doesn't, but  
21 I'm not sure I understand your question.

22 Q. What's your problem?

23 A. You're talking about addressing storage devices. This  
24 paragraph talking about addressing a controller device that  
25 the router has a controller device so you're essentially -- I ...

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1 don't know what your meaning is, you know, you're asking a  
2 question about something different than described here, so I  
3 can't relate the two things.

4 Q. Well, inquiry data comes from storage devices, right, ago  
5 cord together the SCSI S C C standard, right?

6 A. Inquiry data comes from any device.

7 Q. Right. And it doesn't say there that it has to come from  
8 the controller, does it?

9 A. That's what it's saying here, yes. It's saying that  
10 addressed is logic unit 10 as a controlling device. That's  
11 why I don't understand your question.

12 Q. All right. Let's take a look at column 6. Are you there,  
13 sir?

14 A. Okay. I have column 6 here.

15 Q. It says there that -- I lost my place. I'd like you to  
16 draw your attention to line 61 through 63 there. It says  
17 right here configuration information can be stored in a  
18 segment of flash memory and can be retained across resets and  
19 power off cycles. See that? And it says pass word protection  
20 can also be provided, right?

21 A. Yes, I see that.

22 Q. And that says -- doesn't say that it's required that  
23 configuration information be stored in flash so it can survive  
24 resets, does it? It says can, right?

25 A. That's true.

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1 Q. And the same as power off cycles, right?

2 A. Yeah.

3 Q. So that's just -- that's one possible implementation or  
4 it's not a requirement, right?

5 A. I don't believe so.

6 Q. And so let's make sure we're clear on what we're talking  
7 about. Configuration data there, and over in the claims,  
8 there were for example, claim 1, just so we're clear, that use  
9 of the phrase to maintain a configuration, right?

10 A. I'm sorry, go ahead.

11 Q. The claim says to maintain a configuration and then it  
12 goes on, right?

13 A. Yes.

14 Q. And that's the same configuration data that's being talked  
15 about at the bottom of column 6 that we just talked about,  
16 right?

17 A. The column 6 would be some subset of the configuration  
18 referred to in claim 1.

19 Q. Doesn't say that in column 6. Column 6 says configuration  
20 data, it doesn't say a subset of configuration data, does it?

21 A. No, it doesn't but it goes on to describe that data, which  
22 is by implication a subset.

23 Q. Pass the witness.

24 RE-DIRECT EXAMINATION

25 BY MR. ALCOCK:

1 Q. Real quick, Mr. Hoese, do you still have exhibit 7 in  
2 front of you, sir?

3 A. Yes, I do.

4 Q. Take a look at the bottom where it says concept by Jeffrey  
5 Hoese, March 22, 1997, first draft, May 1997.

6 MR. BAHLER: Objection, your Honor. This is beyond  
7 the scope of cross.

8 MR. ALCOCK: He was questioned extensively.

9 THE COURT: It was -- let me hear your question.

10 MR. ALCOCK:

11 Q. Question is, you heard a lot about Comdex of 1996. When  
12 did you come up with the access control notion?

13 MR. BAHLER: Objection, your Honor.

14 THE COURT: Objection's overruled.

15 A. In March of '97.

16 MR. ALCOCK:

17 Q. And if you look at the top figure on page 3 of exhibit 7,  
18 what were you trying to do there?

19 A. I was trying to describe existing solutions.

20 Q. Okay. And now, if we look at figure 2 of exhibit 1, what  
21 were you trying to do there?

22 A. It's the same purpose as the drawing in the previous  
23 exhibit.

24 Q. Okay.

25 A. Of showing existing solutions.

1 Q. Right. Prior art?

2 A. Yes.

3 Q. Okay. Now, is the HP Mux closer to your invention than  
4 figure 2 or further away?

5 A. It's further away.

6 Q. Why is it further away? What's in figure 2 that the HP  
7 Mux lacks?

8 A. There are a number of elements that HP Mux lacks in figure  
9 2. It doesn't have the management interface, it doesn't have  
10 the addressing configuration, mapping that's described,  
11 associated with figure 2 here.

12 Q. Okay. How about this demo unit at Comdex? Is it closer  
13 to figure 2 or -- is figure 2 closer to your invention or  
14 further away?

15 MR. BAHLER: Objection, vague. Closer or further  
16 away.

17 THE COURT: Objection is overruled. You may answer it  
18 if you understand it.

19 A. The device we showed at Comdex was much further away than  
20 the invention in figure 2.

21 MR. ALCOCK: There what do you mean.

22 A. It has less of a characteristic as figure 2 so it was less  
23 similar to it than figure 2 would be.

24 Q. So is your intent if figure 2 to disclose what you thought  
25 was the closest?

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1 A. Yes.

2 Q. No more questions, your Honor. Pass the witness.

3 RE-CROSS EXAMINATION

4 BY MR. BAHLER:

5 Q. Mr. Hoese, let's take you back and look at figure 2. See  
6 that? I'm sorry. How is that?

7 A. Yes.

8 Q. Okay. Now, and then, above that is figure 1, right?

9 A. That is correct.

10 Q. Figure 1 is this network server thing that Mr. Alcock's  
11 been talking about, right?

12 A. Yes.

13 Q. All right. Take a look at column 1 -- column 2 where  
14 you're describing what the figures are. All right, see that?

15 A. Yes, I do.

16 Q. Okay. You say that there figure 1 is a block diagram of a  
17 conventional network that provides storage through a network  
18 server, right?

19 A. That's what it says.

20 Q. And then, you say figure 2 is a block diagram of one  
21 embodiment of a storage net work with a storage router that  
22 provides global access and routing, right?

23 A. Correct.

24 Q. And you say -- then you describe figure 3 says a block  
25 diagram of one embodiment of a storage router that provides

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1 local storage?

2 A. That is correct.

3 Q. You described figure 1 as a conventional network?

4 A. Yes, sir.

5 Q. That's not the way you described figure 2, was it?

6 A. It is not a conventional network. I wouldn't describe it  
7 that way.

8 Q. It's not your own invention, is it?

9 A. No, it's not.

10 Q. Why did you tell the Patent Office that?

11 A. I think it's obvious. It's describe merchandise the text  
12 here.

13 Q. You point it out to me, please?

14 A. I don't know specifically where it states that. It's in  
15 the description. It discusses what these things are and  
16 describes them as such.

17 Q. Pass the witness.

18 MR. ALCOCK: No further questions of the witness, your  
19 Honor.

20 THE COURT: May this witness be excused?

21 MR. ALCOCK: He may.

22 MR. BAHLER: Yes, your Honor.

23 THE COURT: You may be excused. Call your next  
24 witness. If you'll just come all the way down, please. This  
25 is Mrs. Sims. She's go together administer an oath to you.

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1 (Witness was sworn.)

2 THE COURT: Walk around this column and have a seat up  
3 here in this blue chair, please. You need to tell us your  
4 full name and spell your last, please.

5 THE WITNESS: Keith arroyo, last name is spelled A R R  
6 O Y O

7 DIRECT EXAMINATION

8 BY MR. GUIST:

9 Q. Good afternoon, Mr. Arroyo. Now you've introduced  
10 yourself, I'll introduce myself to the jury. I'm John Guist,  
11 representing Crossroads, and one of the many attorneys here.

12 Mr. Arroyo, what kind of work do you do?

13 A. I do software development.

14 Q. What does that entail?

15 A. Entails design, writing code and testing.

16 Q. How long have you been doing this software development?

17 A. I'd say for about thirteen years.

18 Q. Can you give me an idea of some companies that you've  
19 worked for?

20 A. IBM, Thomas Conrad, the Compaq, Crossroads and sis co  
21 systems.

22 Q. And what kind of work did you do with those companies?

23 A. Software development.

24 Q. Did software development writing computer code?

25 A. Yes, it does.

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1 Q. Did you write computer code at all at these companies?  
2 A. Yes, I did.  
3 Q. When did you begin writing computer code?  
4 A. I'd say '87.  
5 Q. At the companies you just mentioned, have you done  
6 anything else other than write computer code?  
7 A. I've done quality assurance at IBM.  
8 Q. For how long?  
9 A. Two years.  
10 Q. When did you start Saturday working for Crossroads?  
11 A. Sometime in '96.  
12 Q. And what was your employee number?  
13 A. You mean like the number I was hired or --  
14 Q. Yeah?  
15 A. Employee number like a badge number?  
16 Q. Number when you were hired.  
17 A. I think I was like No. 10 or 11.  
18 Q. So tenth or eleventh employee or something like that?  
19 A. Yes.  
20 Q. What did you do when you started working at Crossroads?  
21 A. I started working on the design and coding of the router  
22 product.  
23 Q. And did that product have a name at the time?  
24 A. I don't know if it had a name when I started writing --  
25 when I started working on its. It had a name of Verzano as an

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- 1 internal name.
- 2 Q. Do you know what a Verzano is?
- 3 A. I think it's a bridge in New York.
- 4 Q. You said you worked on routing code. What does routing  
5 code do?
- 6 A. Routing code is the code that sits between the Fibre  
7 Channel driver and the SCSI driver and it basically is the  
8 code that translates or converts one media to the next. So  
9 for information going from one side like in this instance,  
10 fiber channel, it would map over to the protocol note SCSI.  
11 So my code is involved in that process.
- 12 Q. So would your code connect the Fibre Channel computers to  
13 the SCSI disk drives?
- 14 A. Yes.
- 15 Q. The Verzano product you just mentioned, did that  
16 eventually release as a Crossroads product?
- 17 A. Became the 4100.
- 18 Q. The C P 4100?
- 19 A. C P 4100.
- 20 Q. Did you ever work on a Crossroads technology  
21 demonstration?
- 22 A. I've worked on, yes.
- 23 Q. And why did you do that?
- 24 A. As a demo for the Comdex show.
- 25 Q. What did you do with respect to this demo at the Comdex

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1 show?

2 A. I worked on getting -- writing the software or the P C I  
3 described to you at that show.

4 Q. May we approach the witness, your Honor?

5 THE COURT: Don't need my permission.

6 MR. GUIST:

7 Q. Mr. Arroyo, I'm going to show you exhibit 141. Can you  
8 take a look at that?

9 MR. BAHLER: Mr. Guist, do you have a copy?

10 MR. GUIST: Yes.

11 MR. BAHLER: Is that Plaintiff's 141?

12 MR. GUIST: Yeah.

13 MR. GUIST:

14 Q. Mr. Arroyo, could you tell me what exhibit 141 is?

15 A. This is the code that was used on the demonstration  
16 platform.

17 Q. Did you write this code?

18 A. Yes, I did.

19 Q. And was it created in the course of your employment at  
20 Crossroads?

21 A. Yes.

22 Q. Was it created in furtherance of the business interest at  
23 Crossroads?

24 A. Yes.

25 Q. Your Honor, I'd like to move -- I'd like to offer exhibit

1 141 into evidence?

2 MR. BAHLER: No objection.

3 THE COURT: It's received.

4 MR. GUIST:

5 Q. Let's talk about if Comdex demonstration in 1996 a little  
6 more. What relation did that code have to the product at  
7 Comdex?

8 A. That the product -- the -- ask your question again.

9 Q. Sure. What relation did that code have to the product  
10 that was shown at Comdex in 1996?

11 A. Did this code have --

12 Q. Right.

13 A. This is the code that was used in the demonstration  
14 platform.

15 Q. Okay. And using that code, can you tell me how many disk  
16 drives the Comdex demonstration connects to?

17 A. It connected to one only.

18 Q. One only?

19 A. Yes.

20 Q. And how do you know that?

21 A. Because we hard coded the SCSI driver to only address one  
22 device.

23 Q. Okay. And using this code in front of you, can you tell  
24 me how many computers the demonstration unit at Comdex in 1996  
25 worked with?

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1 A. It worked with one.  
2 Q. Just one?  
3 A. Just one.  
4 Q. How do you know that?  
5 A. I had set it up. There was just one computer and one  
6 drive.  
7 Q. It could be -- could this code work with more than one  
8 computer?  
9 A. It wasn't tested for more than one computer. I doubt it  
10 did because we weren't at the stage of topping one more  
11 computer. So I'd say no but, you know, it's something we  
12 hadn't completed yet so we were only concerned with getting  
13 one computer to talk to one drive.  
14 Q. Did you ever hook up more than one computer to this  
15 demonstration?  
16 A. No, I didn't.  
17 Q. Did you attend Comdex in 1996?  
18 A. I did not.  
19 Q. Have you worked on other products besides the C P 4100?  
20 A. The C P 4200, which is the following product and I think  
21 it was the follow-up -- I don't remember the name of that, but  
22 there's another product.  
23 Q. What did you do in relation to these other products?  
24 A. Most of the code that I wrote was directly portable to  
25 those other platforms. So there was certain tweaks in the

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1 code that we had to make, but basically 99 percent of it was  
2 used in the other products.

3 Q. Do you ever use the term mapping in your operations of  
4 Crossroads at work?

5 A. Yes.

6 Q. And what's your understanding of mapping in terms of a  
7 Crossroads router?

8 A. Mapping to me, the way I use it, is a mapping between  
9 Fibre Channel entities and SCSI entities, and there's a  
10 protocol involved in translating one to the other.

11 Q. Did the unit at Comdex in 1996 have this capacity for  
12 mapping?

13 A. No.

14 Q. How do you know that?

15 A. Because we hard coded in the SCSI driver to always address  
16 one device.

17 Q. Okay. And is that proven by the code seen there in front  
18 of you?

19 A. In this code, there's no setting of bus target line which  
20 are identifications of the disk device. Eat not set in this  
21 code and so that because we had the SCSI driver set those to  
22 our coded addresses, there's no need to put that kind of code  
23 in this.

24 Q. But eventually, a code of all to perform this mapping  
25 function?

1 A. That's correct. That's one of the main pieces of this  
2 code was to do that mapping function.

3 Q. And was there any way at all in the code sitting there on  
4 exhibit 141 to control about set from any computer to any disk  
5 drive?

6 A. Say it again.

7 Q. Sure, was there any way that the code sitting there on  
8 exhibit 141 to control access from a computer to a disk drive?

9 A. If a command came in for the disk drive, it would be  
10 nothing there to prevent from going to the drive. So there's  
11 nothing to prevent a command from getting from -- from flowing  
12 from fiber channel to SCSI.

13 Q. So there's nothing there that can block any access  
14 whatsoever to the disk drives?

15 A. The only way it would stop is it an ill formed function or  
16 ill formed command itself, it's a syntax there and the  
17 protocol and it gets rejected. But if it's abiding by the  
18 protocol, it's valid command, there's nothing that we do to  
19 prevent that from going to the SCSI, to one SCSI drive.

20 Q. Is that supported by the code in exhibit 141, just your  
21 last answer?

22 A. Yes.

23 Q. You're sitting here today in the witness box. Can you  
24 tell me your understanding of what this case is about or why  
25 you're here?

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1 A. I'm just aware of there's a lawsuit between Crossroads and  
2 Pathlight Chaparral over a patent infringement that's not  
3 involved with me.

4 Q. Okay. You knows there a patent involved in this case?

5 A. Yes.

6 Q. Have you ever seen or read this patent?

7 A. No.

8 Q. Do you know any definitions of any words that are used in  
9 the patent?

10 A. I don't know anything about the patent.

11 Q. Okay. Pass the witness.

12 CROSS-EXAMINATION

13 BY MR. BAHLER:

14 Q. May I approach the witness, your Honor?

15 THE COURT: You don't need my permission.

16 MR. BAHLER: Okay. I'm sorry. I won't ask again.

17 Thank you.

18 Q. (BY MR. BAHLER) Mr. Arroyo, I place in front of you a  
19 notebook that has several exhibits and I'd like you to turn  
20 your attention to exhibit P 145 which is in there. It's at  
21 tab 2, sir.

22 A. Tab 2, okay.

23 Q. Right?

24 A. Okay.

25 Q. Are you with me?

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1 A. Yes.

2 Q. All right. Now, this is a code that you wrote in  
3 September 18th, 1997, correct?

4 A. That's the day of the -- that's the date that was put in  
5 by the -- that was put in this code at a checking of some  
6 time.

7 Q. Well, sorry, I didn't mean to overstep your question. You  
8 wrote this, right?

9 A. This is a code I wrote, yes.

10 Q. And when did you write it?

11 MR. GUIST: Your Honor, he's talking about an exhibit  
12 not in evidence.

13 MR. BAHLER: I haven't shown it to anybody.

14 MR. GUIST: I'm objecting to the basis he's reading  
15 from an exhibit not in evidence.

16 THE COURT: He's just asking him if he wrote this code  
17 and when. He's not asking it to be placed in evidence. You  
18 may answer if you know when.

19 A. I don't know exactly when I wrote this code. I just know  
20 that there's a date on here when the code was checked in.

21 Q. (BY MR. BAHLER) This is a code you wrote that found its  
22 way into the Crossroads CrossPoint 4100 product, correct?

23 A. I don't know when we -- at some point, we got off the  
24 platform and then, we went to the 4100 and I'm not sure if  
25 this is the code that was actually billed for the official

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1 product. Built).

2 Q. Eventually, a code -- let me ask specifically. In this  
3 code, there's, as we've discussed at your deposition, there's  
4 accommodation or management of the SCSI reserve command,  
5 correct?

6 A. If you give me a minute to look at it, just to find it.

7 Q. Sure. Why don't you take a look at -- see those numbers  
8 at the bottom?

9 A. Yes.

10 Q. Page 63127.9729 G.90.

11 A. Yes.

12 Q. That's the page that discusses reserve command, right?

13 A. Well, it's a team that's called to build a request or send  
14 back reserve, reservation conflict. I have to see if it's  
15 called. Didn't write down the calling. You don't have the  
16 calling page, do you?

17 Q. No, I don't.

18 A. Figure it out, find it.

19 Q. Mr. Arroyo, why don't we try to speed things along. As  
20 you know, we have some time constraints here. Tab 1 in your  
21 notebook is a copy of your deposition?

22 A. Okay.

23 Q. Right? And you were designated as a representative of  
24 Crossroads to tell us about which products of Crossroads  
25 included support for the SCSI reserve command, right?

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1 A. I don't -- I mean, I just write the code and as far as the  
2 products it goes into.  
3 Q. All right.  
4 A. That's a marketing.  
5 Q. Well, you told us at your deposition that the SCSI reserve  
6 command went into the 4100?  
7 A. Yes, I did.  
8 Q. And you know that for a fact?  
9 A. Yes.  
10 Q. And you're speaking on behalf of the corporation at the  
11 time, right?  
12 A. Yes.  
13 Q. And also, the 4200, right?  
14 A. I know that for sure.  
15 Q. And it went into the 4400, too, right?  
16 A. 4400? I don't know about that.  
17 Q. Well, at the very least, a program that kept track of the  
18 SCSI reservations was written and included in a 4100 product,  
19 right?  
20 A. Right.  
21 Q. And by what time, sir?  
22 A. I don't know when --  
23 Q. Was it before the end of '97?  
24 A. Before the end of '97?  
25 Q. Yeah.

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- 1 A. I can't say.
- 2 Q. End of '98?
- 3 A. I don't know when the Mux was available.
- 4 Q. 4100 I'm talking ability?
- 5 A. Right.
- 6 Q. That's not the Mux. 4400 is the Mux. We're talking about
- 7 the 4100. When did it have support for the reserve command?
- 8 When did the 4100 have that support?
- 9 A. For the reserve command?
- 10 Q. Yeah.
- 11 A. Well, there's early -- when I did the reserve code,
- 12 there's cases where I would -- I mean, it was a progression.
- 13 In other words, it wasn't like one day it's in or not in and
- 14 then all of a sudden it's the complete version with all the
- 15 details is complete the next day. So there's a -- as we go
- 16 through and develop, right, we add something we know it's not
- 17 complete but we go ahead and test that part and move on.
- 18 Q. Well, eventually the 4100 product had or used the SCSI
- 19 reserve command to control reservations sent by hosts for
- 20 storage devices, right?
- 21 A. Yes.
- 22 Q. Okay. And when was that?
- 23 A. I don't know.
- 24 Q. Was it before the end of 1999?
- 25 A. Before the ends of '99? Sure, yes.

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1 Q. All right. At least before the end of '99. Thank you.  
2 Other than keeping track of reservations, was there any other  
3 way for the 4100 at any point in time to control access  
4 between Fibre Channel hosts and SCSI storage devices?

5 A. You're saying before?

6 Q. No. At any time.

7 A. Reserve leases is the only thing -- there's nothing other  
8 than reserve release.

9 Q. That's the only thing that did access control, right?

10 A. What do you mean by access control? I mean, it's really  
11 -- it's an open system, so depends on what you mean by access  
12 control.

13 Q. Did the 4100 at any time ever have any mechanism other  
14 than support of the SCSI reserve command to prevent a host  
15 from accessing the storage devices?

16 A. Not to my knowledge.

17 Q. All right. Please take a look at tab 4 in your notebook,  
18 which is Plaintiff's Exhibit 346.

19 A. Okay.

20 Q. Now, this is a -- this is called -- your Honor, I move  
21 defendant's 346 into evidence.

22 THE COURT: It's received.

23 MR. BAHLER: Is it in?

24 THE COURT: Received. No objection from the  
25 plaintiff.

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1 MR. BAHLER: All right. I also move Plaintiff's  
2 Exhibit 145 into evidence.

3 THE COURT: Received.

4 Q. (BY MR. BAHLER) Mr. Arroyo, let me show you plaintiff's  
5 146 to you. Take a look another that in your notebook. This  
6 is called a Compaq C P 4100 Shiner OEM requirements, right?

7 A. That's what it says, yes.

8 Q. And this is dated October 22nd, 1997, right?

9 A. That's what the date is on this.

10 Q. And this is the version of the 4100 that was being  
11 prepared for Compaq, right?

12 A. I didn't write this document. I don't know.

13 Q. Did you have anything whatsoever to do with the shine er  
14 project?

15 A. I was -- I delivered source code for it.

16 Q. Okay.

17 A. I didn't write this document.

18 Q. Okay. Take a look at page 5 within that document.

19 A. Okay.

20 Q. Okay. Page 5 makes specific reference to implementation  
21 of the SCSI reserve and release commands, right?

22 A. Uh-huh.

23 Q. And was that included in the Shiner project that of the  
24 version of the C P 4100 that Crossroads was making for Compaq?

25 A. It eventually got into the product.

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1 Q. Do you know when?  
2 A. No, I don't.  
3 Q. This is dated October '97. Was it before the end of that?  
4 A. We -- I just remember shipping many, many versions of code  
5 that had -- didn't have full support of this document. So I'm  
6 not sure when the reserve release command --  
7 Q. Were you the one responsible for preparing the code that  
8 would have done the functions that are described there in  
9 section 4.2?  
10 A. Yes, I was in charge of writing the code that did this.  
11 Q. And this is the requirements from Compaq sent to  
12 Crossroads and you filed those requirements, right?  
13 A. Let me read them real quick again. Looks like it's close  
14 to what I have.  
15 Q. All right. And you wrote that code and it was put into C  
16 P 4100 for Compaq, right?  
17 A. It was -- well, it was used for our product and the Compaq  
18 product.  
19 Q. Okay. So this accurately describes the implementation of  
20 the SCSI reserve command for the 4100 before the end of 1999?  
21 Is that true?  
22 A. Yeah, I think end of '99.  
23 Q. Pass the witness.  
24 MR. GUIST: No further questions.  
25 THE COURT: Counsel, may this witness be excused?

06/06/2001 Pathlite Trial, Day 1

1 MR. BAHLER: Yes, your Honor.

2 THE COURT: You may be excused, sir.

3 MR. ALCOCK: We're getting our next witness, your  
4 Honor.

5 THE COURT: All right. If you'll come down, please.  
6 Just right up here. This is -- this lady right here standing,  
7 Mrs. Sims, she's going to administer an oath the you.

8 (Witness was sworn.)

9 THE COURT: Now you need to walk around this column  
10 and have a seat. Now if you'll tell us your full anymore and  
11 spell yours last name.

12 THE WITNESS: I'm Jeffrey Thomas Russell, R U S S E L  
13 L.

14 DIRECT EXAMINATION

15 BY MR. GUIST:

16 Q. Mr. Russell, can you introduce yourself to the jury?

17 A. I'm Jeff Russell.

18 Q. Where do you live, Mr. Russell?

19 A. I live in Austin, Texas.

20 Q. How long have you lived there?

21 A. I've lived here about a year.

22 Q. And where did you live before Austin?

23 A. Before Austin, I was in San Antonio for about five years.

24 Q. Okay. Can you give the jury a synopsis of your  
25 educational background?

06/06/2001 Pathlite Trial, Day 1

- 1 A. Sure. I have bachelor of science in electrical  
2 engineering and after that, I went to Purdue university and I  
3 got a masters of science in electrical engineering there.
- 4 Q. What year did you get your masters?
- 5 A. I graduated with a masters in 1991.
- 6 Q. Can you give me and the jury, as well, a brief synopsis of  
7 your work history background?
- 8 A. Sure, when I graduated from Purdue in '91, I was recruited  
9 down here by IBM and I worked at IBM for about five years and  
10 designed local area net work adapters circuit boards and some  
11 computer chips and then, in '95, I hired on at precursor to  
12 infinity to Crossroads which was infinity come star.
- 13 Q. What was your position at Crossroads?
- 14 A. I was hired as the first engineer and designed hardware  
15 for Crossroads and that consisted of things like what you'd  
16 see inside of a P C, the green circuit boards, computer chips,  
17 figuring out connectors that go on and power supplies and  
18 things like that.
- 19 Q. Terms of employees, what was your employee number?
- 20 A. Five plus or minus one, depends how you count, but five.
- 21 Q. Okay. Let me show you exhibit 1. Do you recognize  
22 exhibit 1 shown in front of you?
- 23 A. Yeah, that's a patent.
- 24 Q. Okay. And you're listed as an inventor on this patent?
- 25 A. Yes, I am, along with Geoff Hoese.

06/06/2001 Pathlite Trial, Day 1

- 1 Q. And that's you, you're Jeffrey T Russell?
- 2 A. That's me. Cibolo is a little suburb of San Antonio.
- 3 Q. Okay. When you arrived at Crossroads, what products did  
4 you start working on?
- 5 A. First big product I worked on was the C P 4100 which was  
6 our first Fibre Channel to SCSI bridge.
- 7 Q. What products do you work on now?
- 8 A. Now I really don't work on specific products. I kind of  
9 investigate new technologies that might get put into products  
10 in the long-term, in connection with this patent.
- 11 Q. Can you tell me what your contribution was?
- 12 A. Sure. I collaborated with Geoff Hoese and my expertise  
13 was designing hardware. So we went back and forth on ideas  
14 and I really brought the hardware perspective to the  
15 invention.
- 16 Q. Can you give the jury an example of this hard wire you're  
17 talking about?
- 18 A. Sure. Again, if you look inside of a PC, you'll see the  
19 green circuit boards, what we designed for the CP 4100 is  
20 about that complicated. Circuit board with computer chips on  
21 it and then there's wires embedded in the circuit board that  
22 connect all the chips together.
- 23 Q. Okay. What was your hardware design to do in connection  
24 with that?
- 25 A. Hardware provides like all the physical interface to the

1 outside world, the connectors and the protocol interface  
2 chips. It provides other connectors so you can manage it and  
3 make it do something useful. It provides the power so it can  
4 run and it works with the software to let the programs  
5 execute.

6 Q. Getting back to the patent, can you tell me and the jury  
7 just a quick synopsis of what the patent is?

8 A. Sure. Uses a space storage router and then it provides  
9 virtual local storage using access controls. So the different  
10 computers can get to different storage, things on the other  
11 side using some kind of access control.

12 Q. And why did you come one this invention?

13 A. We thought it was a better way to do connections to remote  
14 storage compared to traditional network file servers. So it's  
15 -- it use as different set of protocols that have lower  
16 overhead to access the storage compared to network file  
17 servers.

18 Q. Are access controls important to this invention?

19 A. Yes, it's the central part of what allows the mapping to  
20 occur.

21 Q. When did you come up with this invention?

22 A. It was in early to mid 1997.

23 Q. What product were you working on during that time frame?

24 A. That's when I was working on CP 4100.

25 Q. Did you put this invention into that product, the CP 4100?

06/06/2001 Pathlite Trial, Day 1

1 A. No. The CP 4100 was just kind of a basic bridge router  
2 kind of thing.

3 Q. Why didn't you put the invention into the CP 4100?

4 A. Well, this was kind of one of those things you sat back  
5 and said, gee whiz, this would be the great features to have  
6 but there's just no time to implement that in a base product  
7 that you had to get out the door, only a few people working on  
8 it.

9 Q. Did you work on any technology demonstrations for  
10 Crossroads?

11 A. Sort of. We had a technology demonstration at Comdex  
12 towards the end of 1997, and I had worked to put together a  
13 box that was the concept of how the CP 4100 might be packaged.

14 Q. Do you mean Comdex in 1996?

15 A. Yeah, I do.

16 Q. Sorry. Did you attend that Comdex?

17 A. Yes, I did.

18 Q. And what did Crossroads show at that Comdex?

19 A. We showed two thing, one was a box, that's what I  
20 mentioned that I worked on, and we also showed the technology  
21 demonstration of a computer talking to storage. And the box  
22 was what I worked on. It sat on top of the table and it had  
23 blinking lights and it had some connectors glued from the  
24 inside but otherwise the inside of the box was kinds of empty  
25 and then we took the determine straight that was actually

06/06/2001 Pathlite Trial, Day 1

1 doing something and kind of draped the cables over that to a F  
2 C that was under the table that executed all the software that  
3 was doing the technology demonstration.

4 Q. Okay. So what was the unit actually doing the technical  
5 aspect?

6 A. It was the PC. So my contribution of the box was just a  
7 box with blinking lights.

8 Q. And the PC was under the table?

9 A. Yes.

10 Q. And why was the PC under the table?

11 A. It's just to get people to look and say there's a box  
12 doing something so they'd come up and talk to us, you know. I  
13 know when I was there talking to people, I didn't try to pull  
14 any bate and switch. I just said what was going on.

15 Q. Could you tell by looking at the demonstration what was  
16 inside of the box or inside of the PC?

17 A. Not really. You can tell that there was some kind of  
18 hardware to interface the SCSI channel because there were  
19 tables and things but past that you couldn't really see what  
20 was going on. Cables).

21 Q. Did this technology demonstration use the patented  
22 invention, the 972 patent?

23 A. No, it didn't.

24 Q. And why not? Let me ask you this. How do you know it  
25 didn't use the invention?

06/06/2001 Pathlite Trial, Day 1

1 A. Well, the invention really wasn't part of the CP 4100. We  
2 were just trying to show case some of the technology that was  
3 in the CP 4100 at that time.

4 Q. So what was lacking from the CP 4100 in terms of your  
5 invention?

6 A. Well, hardly any of the hardware was there. I mean, there  
7 was some hardware interfaced to these protocols that you could  
8 see, but there was none of the guts of the 4100 implemented at  
9 that time.

10 Q. Did the technology demonstration use these access  
11 controls?

12 A. No, it didn't.

13 Q. Is the technology demonstration from Comdex in 1996, is  
14 that relevant to the 972 patent?

15 A. I don't think it is.

16 Q. Why not?

17 A. It was just kind of an early consent of, hey, this is what  
18 you can do the hook up Fibre Channel and SCSI. It was just  
19 trying to show what the product might eventually start to do.  
20 It was a vague functionality.

21 Q. Pass the witness.

22 CROSS-EXAMINATION

23 BY MR. GARRETT:

24 Q. Good afternoon, Mr. Russell. How are you?

25 A. Great. How are you doing.

06/06/2001 Pathlite Trial, Day 1

1 Q. I'm okay. I just have a few questions for you to follow  
2 up on some of the testimony you gave. My name is Martin  
3 Garrett. You and I met when we took your deposition sometime  
4 ago, do you remember that?

5 A. Yes, I do.

6 Q. Now, you stated a second ago that the technology  
7 demonstration at Comdex didn't include -- well, didn't have  
8 hardly any of the hardware of the 4100; is that right?

9 A. Right.

10 Q. Now, the 4100 is a Fibre Channel to SCSI router, is that  
11 right?

12 A. I personally call it a Fibre Channel to SCSI bridge.

13 Q. A Fibre Channel to SCSI bridge and it has a buffer in it,  
14 right?

15 A. The CP 4100 does, yes.

16 Q. And it has a Fibre Channel controller, right?

17 A. Yes, it does.

18 Q. And it has a SCSI controller, right?

19 A. Yes, it does.

20 Q. And there's a supervising unit in there, as well; is that  
21 correct? A microprocessor?

22 A. There was a microprocessor, yes.

23 Q. Okay. And isn't it true, though, Mr. Russell, that the  
24 technology demonstration as you put it at Comdex had every  
25 single one of those elements?

06/06/2001 Pathlite Trial, Day 1

1 A. I don't know.

2 Q. Would you be surprised to learn that Mr. Hoese testified  
3 that it did?

4 A. I wouldn't be surprised.

5 Q. Would you disbelieve him?

6 A. No. I wasn't involved in assembling all the details of  
7 the PC that ran that software that was demonstrated in the  
8 4100 so that's why I say I don't know for sure.

9 Q. But you testified it didn't have hardly any of the  
10 hardware, correct?

11 A. I believe I testified that the 4100 prototype didn't have  
12 hardly any hardware. It was just an empty box with a power  
13 supply.

14 Q. Now, let's talk for a minute about your invention. In  
15 case you don't already have a copy of it, would you look at  
16 that? You're familiar with the patent application process,  
17 right, Mr. Russell? You went through it with respect to the  
18 application at issue, this patent?

19 A. Yes, I did go through it and I'm familiar with it in that  
20 sense.

21 Q. And you're familiar where the contents of the patent  
22 itself, kind of how it's laid out, what's what?

23 A. Yes.

24 Q. Okay. And you know, then, that in the detailed  
25 description part of the invention, that's generally where you

06/06/2001 Pathlite Trial, Day 1

1 actually describe what your invention; right?

2 A. Yes.

3 Q. Okay. Now, I'm going to put up on this nifty little  
4 device here that hasn't been too kind to us so far what would  
5 be column 6 for you. It may be easier for you to look at the  
6 screen or neighbor the hard copy. Mr. Russell, have you  
7 discussed this case with anybody today outside the courtroom?

8 A. No, I haven't.

9 Q. Okay. Let's look --

10 A. What page are you looking at?

11 Q. It's column 6. I believe the patent's not numbered in  
12 terms of payments.

13 A. Okay.

14 Q. The sentence that my pen is more or less pointing to  
15 states -- well, now it states, configuration information can  
16 be stored in a segment of flash memory and can be retained  
17 across resets and power off cycles. Is that right?

18 A. That's what the sentence says.

19 Q. That's what it says, right?

20 A. Yes.

21 Q. And this is in the detail description part of your  
22 invention; is that correct? You can actually flip back to  
23 column 2 and I think you'll see that heading, if you'd like to  
24 verify it.

25 A. Yeah, it is part of that section.

06/06/2001 Pathlite Trial, Day 1

1 Q. Okay. So in a part of the section of the patent that  
2 discusses your invention, there's a sentence that says resets  
3 are okay, isn't there?

4 A. I don't see the word reset in that sentence.

5 Q. Okay. Let me point it out to you. How about right there.

6 A. Okay. So could you repeat that question?

7 Q. Sure, sure. So in the detailed description part of your  
8 invention a part of the patent that actually describes your  
9 invention, you say the resets are okay, right?

10 A. Can I read the whole paragraph before I --

11 Q. Absolutely.

12 A. This is the kind of legalese form of what --

13 Q. Absolutely.

14 A. Okay. Can I hear the question again?

15 Q. Sure. In the detailed description part of your invention,  
16 part of the patent that describes your invention, right?

17 A. Uh-huh.

18 Q. You said that resets can but don't need to be retained of  
19 cross power cycles -- wait, withdrawn, apologies. The  
20 configuration information can but need not be retained across  
21 resets?

22 A. It does say it can be retained across resets.

23 Q. And it doesn't say it must be retained across resets, does  
24 it?

25 A. I agree.

06/06/2001 Pathlite Trial, Day 1

1 Q. Now, I've got one more place I'd like you to look with me.  
2 If you can flip to column 7 -- do a little better job here.  
3 Okay. And we're going to look at this paragraph where my pen  
4 is pointing -- actually, that's not exactly true. Paragraph  
5 where it's now pointing. I'm going to zoom in just a little  
6 bit here.

7 Okay. Now, we're still in the detailed description  
8 part of your invention, are we not.

9 A. Yes, we are.

10 Q. Okay. Here it says commands of the storage router will  
11 support can include inquiry. Is that right? Did I read that  
12 right?

13 A. Yes.

14 Q. Okay. So again, in the description, the detailed  
15 description of the invention a part of the patent that talks  
16 about your invention, you say the inquiry commands are okay;  
17 is that right?

18 A. Again, can I read the whole paragraph?

19 Q. Absolutely. You bet.

20 A. Just to get the context? Okay. I'm ready to listen to  
21 the question again. I'm sorry.

22 Q. Let me see if I can repeat was bay have trouble doing  
23 that. Detailed part of the invention, part of the patent,  
24 that's what describes your invention, right?

25 A. Uh-huh.

06/06/2001 Pathlite Trial, Day 1

1 Q. And in that part, you have said the commands that your  
2 invention will support can include inquiry; is that correct?

3 A. Yes.

4 Q. Okay. Now, you're a named inventor on this patent, right?

5 A. Yes, I am.

6 Q. We get to see your name up there. And you realize, don't  
7 you, that as a named inventor, you have a duty to disclose  
8 information to the Patent Office that you consider to be  
9 important and that the Patent Office might consider to be  
10 important.

11 A. Yes.

12 Q. Is that right? Now, Brian Smith, did he have a lot of  
13 interaction with you when the patent application process was  
14 underway?

15 A. No, he did not.

16 Q. Did he ever talk to you about how you should conduct  
17 yourself during that process?

18 A. No.

19 Q. Did he ever tell you to disclose anything about the Comdex  
20 technology demonstration to the patent office?

21 A. No.

22 Q. Did he ever tell you to disclose anything about the HP Mux  
23 to the Patent Office?

24 A. No, he didn't.

25 Q. Did he ever tell you to disclose any prior art to the

06/06/2001 Pathlite Trial, Day 1

1 Patent Office?

2 A. No.

3 Q. Would it surprise you to learn that this morning, he  
4 testified that he did?

5 A. I don't think it surprises me. I don't think it was  
6 important if that's what was done.

7 Q. Pass the witness.

8 RE-DIRECT EXAMINATION

9 BY MR. GUIST:

10 Q. Mr. Russell, you worked for Brian Smith. I mean right  
11 now, as of the time of the invention, right?

12 A. Yes.

13 Q. And is it your testimony that he was not involved in the  
14 patent prosecution effort to this patent?

15 A. I didn't see him involved in day-to-day activity with it.

16 Q. Okay. So did he ever instruct you how to behave in terms  
17 of communications with the patent office?

18 A. No, I don't think so.

19 Q. And would you have expected him to do that?

20 A. No.

21 Q. Who was responsible for overseeing the patent prosecution  
22 efforts at Crossroads?

23 A. I thought it was Geoff Hoese.

24 Q. Mr. Russell, do you know what the inquiry command is?

25 A. Yes, some what.

06/06/2001 Pathlite Trial, Day 1

1 Q. Why don't you tell us what your understanding of that is?

2 A. My understanding is it's a command you send to a storage  
3 device as kind of an initial hey, what kind of things can you  
4 do.

5 Q. And can you also send that command to the CP 4100?

6 A. In certain operating modes you can -- it may interpret the  
7 command instead of passing it through.

8 Q. Okay. Would that interpretation give you something,  
9 information about the CP 4100?

10 A. I believe when you set up the right kind of mode it will  
11 return CP 4100 stuff.

12 Q. If you look at column 7 of the patent on lines 27 through  
13 34, which I have blown up here, do you see the inquiry command  
14 listed in that section?

15 A. Yes, I do.

16 Q. And that's the inquiry command that you previously  
17 testified, right?

18 A. Yes.

19 Q. What kinds of inquiry command is that as far as you can  
20 tell?

21 A. Well, seems related to the ones consistent with the SCC  
22 command standards.

23 Q. And what kind of information would you get back?

24 A. I don't know the specifics of what it would return.

25 Q. Would it be information about the router?

06/06/2001 Pathlite Trial, Day 1

1 A. Yeah, it would be the information about the router.  
2 What's actually in there, I don't know.

3 Q. Okay. Thank you.

4 THE COURT: Are you through with the witness?

5 MR. GARRETT: Just a couple more questions, your  
6 Honor, if that's okay.

7 RE-CROSS EXAMINATION

8 Q. Mr. Russell, could the inquiry command that we've talked  
9 about also return information about storage devices on the  
10 other side of the router?

11 A. If you put the router in the right kind of addressing mode  
12 it will pass the router and return information from the  
13 devices on the other side.

14 Q. Thank you. No further questions.

15 MR. GUIST: No further questions.

16 THE COURT: May this witness be excused?

17 MR. GARRETT: He may, your Honor.

18 THE COURT: Y'all may be excused. Members of the  
19 jury, I'm going to do a terrible thing. I'm going to let you  
20 go home at 4:30, but you be very careful about the traffic.  
21 Maybe this will give you a little bit of a lead, but I doubt  
22 it. And I'll expect to see you in the morning at 9:00.  
23 Please remember the instructions so that you can answer those  
24 questions.

25 (Jury not present.)

06/06/2001 Pathlite Trial, Day 1

1 THE COURT: Do you wish to have any further  
2 proceedings today?

3 MR. ALBRIGHT: No, sir.

4 MR. ALCOCK: No, your Honor, not today.

5 MR. BAHLER: No, your Honor.

6 THE COURT: See you in the morning of ten of 9:00.  
7 (Proceedings adjourned.)

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UNITED STATES DISTRICT COURT WESTERN DISTRICT OF TEXA

WESTERN DIVISION

CROSSROADS SYSTEMS, ) Docket No. A 00-CA-217 SS (TEXAS), INC., A TE

CORPORATION ) )

vs. ) Austin, Texas )

CHAPARRAL NETWORK ) STORAGE, INC., A )

DELAWARE CORPORATION ) September 11, 2001

TRANSCRIPT OF TRIAL ON THE MERITS

BEFORE THE HONORABLE SAM SPARKS

Volume 5 of 6

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I N D E X

Direct    Cross    Redirect    RecrossWitnesses:

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E X H I B I T S

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| #263 Hoese Excerpts     | 63      | 63                  |
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1 THE COURT: Anything before we bring in the jury?

2 MR. ALBRIGHT: No, sir.

3 (Jury present.)

4 THE COURT: Members of the jury, since we last met,  
5 has anyone attempted to talk to you about this case?

6 THE JURORS: No.

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

8 THE JURORS: No.

9 THE COURT: And have you learned anything at all about  
10 the case outside of the presence of each other and this court  
11 room?

12 THE JURORS: No.

13 THE COURT: Show negative responses to all questions  
14 by all jurors.

15 Members of the jury, this morning, a little after New  
16 York time, 9:00, our time 8:00 -- I see y'all are nodding --  
17 because of the circumstances of two separate airplanes hitting  
18 the two separate buildings, I'm going to assume that that is  
19 terrorism in New York. So I have put the courthouse on alert  
20 and doubled our security.

21 So if you see extra security around, it has nothing to  
22 do with anything local here, but it's for everybody's  
23 protection here in the building. This is something that I,  
24 unfortunately, have to do one or two times a month, regardless  
25 of this, where something has happened or some information has

09/11/2001 Chaparral Trial - Day 5

1 leaked, and our informational sources from the United States  
2 Marshal's Office calls us to do that.

3 But you might notice more security people, and that's  
4 the reason for it. All right. Anybody have any questions or  
5 they need to do anything?

6 All right. Mr. Flamm, if you'll come forward, please.  
7 Mr. Flamm, you're still under oath, sir.

8 THE WITNESS: I understand, sir.

9 CROSS-EXAMINATION

10 BY MR. ALBRIGHT:

11 Q. Good morning, Dr. Flamm.

12 A. Good morning.

13 Q. Yesterday, you testified to the jury one point that when  
14 we were discussing the Georgia Pacific factors that you were  
15 going through yesterday. You testified that in one of the  
16 considerations it was, for lack of a better word, negotiations  
17 on behalf of Crossroads because most of the products that had  
18 been sold by Chaparral did not contain the LUN zoning. Do you  
19 remember that testimony?

20 A. That's correct.

21 Q. You didn't mean to imply that with respect to the niche of  
22 Fibre Channel-to-SCSI RAID products that Chaparral has sold in  
23 2001 that most of those don't include LUN zoning?

24 A. No. I did mean to imply that.

25 Q. You meant to imply that most of the Fibre Channel-to-SCSI

09/11/2001 Chaparral Trial - Day 5

- 1 RAID products in 2001 did not include LUN zoning?
- 2 A. That's exactly what I meant to imply.
- 3 Q. And what is your basis of that?
- 4 A. I examined the sales invoices for all sales by Chaparral
- 5 from January through July of 2001, and I counted up the units
- 6 from the sales that contained LUN zoning, calculated the ratio
- 7 of those units to the total number.
- 8 Q. And you included only the RAID products that were Fibre
- 9 Channel-to-SCSI?
- 10 A. I did calculations of RAID and routers, routers and read
- 11 -- I'm sorry, I should mention that when I did the
- 12 calculation, I didn't include certain things.
- 13 Q. That's fine. Doctor, with respect to factor No. 5, which
- 14 is on the board, and I'll tell you, that's the one you
- 15 discussed with respect to the commercial relationship between
- 16 Crossroads --
- 17 A. I'm sorry. I can't see it. I'm going to have to open up
- 18 my factors here.
- 19 Q. Please do.
- 20 A. Okay.
- 21 Q. You testified that Crossroads and Chaparral are
- 22 competitive in the router industry but not in the RAID
- 23 industry; is that fair?
- 24 A. Yes, largely.
- 25 Q. Okay. And you took into consideration the fact -- you

09/11/2001 Chaparral Trial - Day 5

1 took into consideration coming up with your factors, right?

2 A. Yes.

3 Q. Now, Mr. Regan, when he performed his economic analysis --  
4 when Mr. Regan performed his economic analysis, he actually  
5 attributed different royalty rates to the router products  
6 which are competitive as opposed to the RAID products which  
7 are not, correct?

8 A. Right.

9 Q. However, when you performed -- and this, your Honor, for  
10 the record, this is D-706, defendant's demonstrative. When  
11 you performed your analysis, you attributed the same royalty  
12 rate to both the RAID and the royalty products?

13 A. That's correct.

14 Q. Is that correct?

15 A. That's correct.

16 Q. So you applied the same royalty rate regardless of whether  
17 the products were competitive or not competitive with  
18 Crossroads, correct?

19 A. That's a standard feature, yes, many licensing agreements  
20 I've seen.

21 Q. The answer is yes, you applied the same rate?

22 A. Yes, that's absolutely correct.

23 Q. Also, you prepared an algorithm yesterday. You didn't  
24 prepare it yesterday. I'm going to show D-705.

25 A. Yes.

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1 Q. And basically, the purpose of this algorithm was to tell  
2 the jury that for the products that Chaparral had sold this  
3 year, there had been no increase in profit as a result of  
4 that; is that a fair statement?

5 A. That's correct.

6 Q. But --

7 A. No increase in price as a result of including LUN zoning  
8 which would impact the profit.

9 Q. Okay. And there have been no increase in price,  
10 therefore, your assumption was there had been no additional  
11 profit accrued to Chaparral by the inclusion of LUN zoning?

12 A. There was no additional profit on those units that contain  
13 LUN zoning.

14 Q. Okay. I'm sorry. I didn't get it just right. Your  
15 algorithm, though, can't tell the jury whether or not there  
16 were customers who bought products from Chaparral for the  
17 first time in 2001 because they included LUN zoning, right?

18 A. The equation can't tell you that, but --

19 Q. Doctor, that --

20 A. -- I'm sorry.

21 Q. -- that was the question. The equation can't tell you  
22 that, can it?

23 A. No, it can't.

24 Q. Not a factor in there that can tell you that right in the  
25 equation?

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1 A. No, I wouldn't quite put that it way. The equation tells  
2 you something for the market as a whole, aggregated together.  
3 It doesn't talk about individual customers, that's true.

4 Q. But nothing in there establishes whether or not a customer  
5 decided in 2001 to buy a product because it had the LUN  
6 zoning. That's correct, is it not?

7 A. That's right. You have to look at individual invoice data  
8 to determine that.

9 Q. Okay. Doctor, you didn't contact any customer of  
10 Chaparral's to determine if they wanted or needed LUN zoning;  
11 is that correct?

12 A. No. But I did look at individual --

13 Q. Doctor --

14 A. -- invoices --

15 THE COURT: Doctor, just answer the question. We'll  
16 get along a whole lot better. The latest count, there's ten  
17 lawyers, there's a jillion questions throughout, so just  
18 answer.

19 THE WITNESS: Okay.

20 Q. (BY MR. ALBRIGHT) Doctor, you didn't contact any Chaparral  
21 customer to find out from the horse's mouth, as it were,  
22 whether or not they wanted the LUN zoning feature, did you?

23 A. I didn't talk to customers, no.

24 Q. And you didn't, for example, go through the invoices and  
25 determine which customers had decided to purchase the products

1 in 2001 for the first time because it had the LUN zoning in  
2 it?

3 A. Actually, I did analyze the invoices which shed some light  
4 on that issue.

5 Q. You did not do -- you did not do that step, though, did  
6 you?

7 A. Yes, I did.

8 Q. You didn't confirm it?

9 A. I did look at the invoice data, yes, I did.

10 Q. And you compared who had purchased RAID products for the  
11 first time with LUN zoning in it?

12 A. That's right. What I did was I broke the -- you can break  
13 the customers -- you can break the customers into two groups.  
14 There are customers who never purchase products other than  
15 products containing LUN zoning, okay, which assume, for the  
16 sake of argument, that those people are buying it because of  
17 the LUN zoning.

18 There are customers who purchase products without LUN  
19 zoning whom now purchase LUN zoning when it was available.  
20 And the third group would be customers who still don't  
21 purchase LUN zoning. If you take the first two groups, that  
22 is, people who purchased -- only purchased LUN zone products  
23 -- not people, companies who only purchase LUN zoning products  
24 and companies that purchase products without LUN zoning, then  
25 began to purchase LUN zoning products and then, didn't buy any

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1 further products without LUN zoning, okay.

2 So we're trying two candidate groups. Those two  
3 groups are only five --

4 Q. I don't believe this is responsive to my question.

5 THE COURT: Well, I think it is, but we've  
6 interrupted, so ask him another.

7 Q. (BY MR. ALBRIGHT) Okay. We'll move on to the alternatives  
8 that you suggested to the jury. You suggested that there are  
9 three alternatives that Chaparral could use that would not  
10 infringe; is that correct, sir?

11 A. There are actually more than three, but those three are  
12 the ones I focused on.

13 Q. You testified concerning three?

14 A. Yes.

15 Q. There actually were more noninfringing alternatives that  
16 Chaparral could have used in December of last year instead of  
17 implementing the LUN zoning. That's what you're telling the  
18 jury?

19 A. I believe that's correct, yes.

20 Q. Okay. And it's your understanding that Chaparral could  
21 have performed any of those noninfringing alternatives in  
22 December based on the engineering skill that they had at that  
23 time?

24 A. Yes, that's my understanding.

25 Q. Okay. Now, I'm going to show you what is your alternative

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1 No. 1, which is D-629, and that's basically just the products  
2 that are sold without any re -- without any LUN zoning feature  
3 at all, correct?

4 A. That's correct.

5 Q. And that was your first alternative, was it not, sir?

6 A. Yes.

7 Q. But you don't mean to imply to the jury that these  
8 products would have the same functionality that products with  
9 LUN zoning do?

10 A. There would be -- they would have acceptable performance  
11 in the marketplace.

12 Q. Doctor, that wasn't my question. They would not have 100  
13 percent of the functionality of products that have LUN zoning  
14 in them, correct?

15 A. They would not be absolutely identical, that's correct.

16 Q. They would not have the same functionality?

17 A. I think I heard Mr. Stephens testify that they would have  
18 equivalent performance.

19 Q. Doctor, do you remember when I took your deposition in  
20 August?

21 A. Yes.

22 Q. On page 77, I asked you: Would your alternative number  
23 one, where you took up the LUN zoning, be able to perform  
24 access control? You answered: Some of the functionality  
25 would be available with number one. I asked you: But not all

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1 of it? And you answered: Not 100 percent.

2 My question to you, then, sir, was: So it would not  
3 be the functional equivalent, number one would not be the  
4 functional equivalent of having LUN zoning in it, correct?  
5 Mr. Dellett made an objection and you responded: Yeah, I  
6 would agree with that. Is that what you said back in August?

7 A. That's what I said --

8 Q. It would not be the functional equivalent?

9 A. Well, I think I was trying to say they were not absolutely  
10 identical, and I think that's what -- that extent it's about.

11 Q. That's not what you said there, was it?

12 A. Well, I used slightly different words, yes.

13 Q. What you said there was they would not be functional?

14 A. If you read it back again -- I don't think that's exactly  
15 what I said.

16 Q. Well, the jury's heard it, Dr. Flamm. I'm going to move  
17 on to the second alternative. I'm going to show you D-703.  
18 And this is the second alternative that you suggested, was it  
19 not, sir?

20 A. Yes.

21 Q. Okay. And you estimated that this could have been  
22 performed back in December of 2000, and that it would have  
23 cost about \$51,000?

24 A. Correct.

25 Q. And the way you did that, the way you made the calculation

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1 of \$51,000 was you took what Mr. Stephens, who the jury saw  
2 yesterday, testified with respect to the amount of time it  
3 would take to do both design and testing, and multiply that by  
4 the cost per hour, which Mr. Permut testified was \$85,  
5 correct?

6 A. That's not exactly correct. It was based not only on what  
7 Mr. Stephens told me but, also, my direct conversations with  
8 Mr. Permut on my own.

9 Q. Sure. But I want to know -- just so the jury understands  
10 what they've heard testimony, Mr. Stephens was the source for  
11 the appropriate amount of time, correct?

12 A. No.

13 Q. Mr. Permut was, as well?

14 A. I talked to both Mr. Permut and Mr. Stephens.

15 Q. Okay. And Mr. Stephens talked to them, as well, correct?

16 A. I wasn't present in those conversations, but that's my  
17 understanding.

18 Q. Well, you heard Mr. Stephens tell the jury that yesterday?

19 A. Yes.

20 Q. And you -- Mr. Stephens and you were trying to get to the  
21 same goal of being able to tell the jury the appropriate  
22 amount it would cost to do this alternative design, correct?

23 A. Yes.

24 Q. I mean, you all were trying to come up with the same basic  
25 number of hours it would take, and then, you were relying on

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1 Chaparral for the cost it would take, correct? That was the  
2 goal?

3 A. Yes, I was relying on Chaparral and Mr. Permut and Mr.  
4 Stephens.

5 Q. Sure. But, I mean, the goal of what Mr. Stephens was  
6 testifying to the jury about how much it would -- how many  
7 hours it would take was to be as accurate as possible,  
8 correct?

9 A. That's correct.

10 Q. And that's your goal, as well?

11 A. Yes, of course.

12 Q. Of course. And for the second alternative, you have down  
13 \$51,000, correct?

14 A. Yes.

15 Q. Were you here yesterday when Mr. Stephens testified about  
16 alternative No. 3?

17 A. Yes, I did.

18 Q. I'm going to show D-704. This is alternative No. 3, is it  
19 not, sir?

20 A. Yes.

21 Q. Okay. And you determined based on your conversations with  
22 Chaparral and with Mr. Stephens that it would cost \$85,000?

23 A. Correct.

24 Q. And that was based on the number of hours that it would  
25 take to perform the design and the number of hours it would

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1 take to do the testing, and you multiply that out by \$85 an  
2 hour, correct?

3 A. That's correct, yes.

4 Q. Were you here yesterday when Mr. Stephens testified how  
5 long this design -- this alternative design would take?

6 A. Yes.

7 Q. And did you hear what he testified to, sir?

8 A. I thought so.

9 Q. And he stated it would take one week, which is 40 hours?

10 A. Okay.

11 Q. Per product family for five families for the design phase,  
12 correct? I mean, I have the testimony -- the transcript.

13 A. I don't remember precisely how he worded it, I'm afraid.

14 Q. But that's what he testified to. The jury will remember  
15 that he said one week of 40 hours per product family, five  
16 families for the design phase and \$85 an hour, calculations  
17 calculated, that would be \$17,000?

18 A. Correct.

19 Q. He also testified it would take four weeks. That would be  
20 160 hours, correct, four weeks would be four times 40?

21 A. I don't recall that.

22 Q. Well, do you want to see a copy of the transcript of what  
23 he testified to? I'll represent to you --

24 A. Okay. Yes.

25 Q. -- I'll represent to you, Doctor, that's what he said.

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1 A. I'll take your representation.

2 Q. It was four weeks of 160 hours for each product and that  
3 there were eight products for testing. Did you hear him  
4 testify to that, sir?

5 A. He may have testified to that.

6 Q. Okay.

7 A. But that would not -- but that's contradictory to the  
8 previous thing he said. I'm just listening to what you said.

9 Q. Doctor, okay. He testified it would be four weeks of 160  
10 hours for each product in the testing and that there were  
11 eight products. Are you following me there, sir?

12 A. I heard you, but that contradicts your previous statement.

13 Q. I understand, sir, but he testified there were five  
14 product families and that there were eight products. That's  
15 what Mr. Stephens testified to yesterday.

16 A. That he may -- okay. If you're going to represent to me  
17 that he said that --

18 Q. I'll do better than that. I'll tell you, Doctor, that we  
19 asked him specifically on the transcript, it is page 210.  
20 From the transcript, he said, it would be one week per family  
21 for five families for design, four weeks per product for eight  
22 products for testing. That's from the transcript yesterday.

23 Are you following me now what Mr. Mr. Stephens said?

24 A. I heard you with what Mr. Stephens said. He may have said  
25 that, but he was mistaken in that regard.

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1 Q. Yesterday, when Mr. Stephens was telling the jury what it  
2 would take, it was Mr. Stephens that was mistaken in telling  
3 the jury how long it would take to do alternative design?

4 A. There's a subtle issue here that's being confused that he  
5 may have not realized. He may have misspoke about it. I'd be  
6 happy to describe it.

7 Q. Doctor, you're telling the jury that Mr. Stephens made a  
8 mistake when he told the jury yesterday that it would be for  
9 eight products, correct?

10 A. A redesign would not be required for eight products, it  
11 would only be required for five as in the first sentence you  
12 went through the five product families.

13 Q. So Mr. Stephens, when he was testifying yesterday, was  
14 incorrect?

15 A. He may have misspoke at this point, I believe. If the --  
16 well, I believe it was possible he misspoke.

17 Q. Okay. But if he were correct and it were eight products  
18 and he distinguished between five product families and eight  
19 products, if he were correct, then the cost for testing that  
20 would be \$108,800, if I've done the math right, of 160 hours  
21 by eight products at \$85, correct? Mr. Stephens is correct  
22 when he told the jury yesterday --

23 A. He didn't do that calculation, I did that calculation.

24 Q. I understand, sir. But I've got a calculator and I'm  
25 asking you if I punch in the numbers based on what Mr.

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1 Stephens says, that it would take four weeks for each product  
2 and that there were eight products at \$85 an hour. As long as  
3 I do the math right on the calculator, it would be \$108,800,  
4 right?

5 A. Yes. If you punch in those numbers, it would come out  
6 that way.

7 Q. Okay. So the total under your analysis would be \$85,000  
8 for this change, the total under Mr. Stephens' analysis would  
9 be \$125,800, correct?

10 A. Mr. Stephens didn't provide that number, he provided you  
11 with hours, which is what I used.

12 Q. And I multiplied those hours by the appropriate amount,  
13 and it's \$125,000 and change?

14 A. That's your calculation, not mine. Mr. Stephens relied on  
15 me to do those calculations. I'd be happy to explain them why  
16 I did them the way I did.

17 THE COURT: The question is really simple: If  
18 Stephens testified to this, it would be \$125,000?

19 THE WITNESS: Yes, if we accept the eight products  
20 that would have to be redesigned, it would have to be whatever  
21 the number was, eight times 17,000, which is -- I don't have a  
22 calculator.

23 Q. (BY MR. ALBRIGHT) Dr. Flamm, would you step over here to  
24 the chalkboard, if you would, please.

25 A. Sure. Could I take my report with me?

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1 Q. I don't think you need it, but you're welcome to. Could  
2 you step over here just a second. I'm right-handed.

3 A. Absolutely.

4 Q. I just want to summarize for the jury what you --  
5 yesterday, you told the jury that you believe that the -- that  
6 the appropriate amount was roughly \$38,000 if you apply the  
7 reasonable royalty rate you said, correct?

8 A. Yes, the 2.5 percent.

9 Q. Okay. And if Chaparral had made these design changes and  
10 done all the testing that you suggested in this alternative,  
11 the first one that you discussed would have been 51,000; is  
12 that right?

13 A. That's also correct.

14 Q. Okay.

15 A. Wait a minute. That's the second one I discussed. Let's  
16 be clear on that.

17 Q. Okay. The second one you discussed. The first one you  
18 attributed a number to.

19 A. I'm sorry. You're confusing me now. This is the 2.5  
20 percent --

21 Q. That's exactly?

22 A. -- 1.5 million in sales. This is the fixed cost required  
23 to do the first design that we talked about, correct.

24 Q. Okay. And then, if you're right, the second one would  
25 have been \$85,000. If you're right, or if Mr. Stephens is

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1 right, it would have been \$125,000. It would be one of those  
2 two numbers for the second one, correct?

3 A. Yes.

4 Q. Okay. So back in December of 2000, it would have cost  
5 Chaparral either this amount or this amount to do the  
6 design-arounds that you've discussed, correct?

7 A. Yes.

8 Q. But by selling the products throughout the course of 2001  
9 with LUN zoning in it, you're telling the jury that they can  
10 get away with a reasonable royalty of just \$38,000, right?

11 A. No, that's not what I'm saying.

12 Q. You're telling them that --

13 A. I'm not --

14 Q. -- the appropriate damages would be only \$38,000, correct?

15 A. This 38,000 only covers sales through July. There are  
16 going to be sales in this year subject to this royalty for an  
17 additional six months or so which would --

18 Q. No, sir, there are not --

19 A. Oh, I'm sorry.

20 Q. -- that's an incorrect statement.

21 A. Well, I just --

22 Q. Doctor, through today, once this trial is over, if  
23 Chaparral's not selling products anymore, there won't be a  
24 royalty rate, are there?

25 A. I believe you're mistaken because this is about a

1 hypothetical negotiation that would have occurred in December  
2 2000, as soon as they came to a voluntary negotiation of a  
3 royalty rate, and if they came to a voluntary negotiation,  
4 signed licensing agreement, then they would be paying this  
5 rate throughout the year.

6 Q. Doctor, if you'll take your seat. Dr. Flamm, are you  
7 aware that in June of this year, Pathlight entered in a  
8 license agreement with Crossroads?

9 MR. DELLETT: Objection. Outside the scope of direct.  
10 This also brings up the 408 issue.

11 MR. ALBRIGHT: Your Honor, it's not outside the scope  
12 of the direct. He spent a great deal of time yesterday  
13 discussing factor 1. He said it was a critical factor what  
14 the royalty rates that were received from the patent were.  
15 And yesterday, Mr. Stephens testified explicitly with respect  
16 to receiving a license -- the fact that Pathlight granted a  
17 license.

18 MR. DELLETT: May we approach?

19 THE COURT: You may.

20 (At the Bench, on the record.)

21 MR. DELLETT: Mr. Stephens' testimony was solely about  
22 the issue of commercial successes as relates to  
23 non-obviousness. That's not something Dr. Flamm got into at  
24 all.

25 The second reason that this is not appropriate to get

1 into is because Dr. Flamm's testimony about the HP agreement  
2 was solely addressing what Mr. Regan said about the HP  
3 agreement. He wasn't talking about some other issue of  
4 licensing.

5 And he did not suggest anything other than that Dr. --  
6 Mr. Regan's calculation of the royalty rate from the HP  
7 agreement was incorrect. Dr. Flamm didn't go any further. I  
8 would further indicate that when Mr. Regan was about to  
9 testify, we had the same conversation whether or not  
10 discussion about the HP agreement would open the door to --  
11 Mr. Albright represented to me it would not open the door to  
12 get into the Pathlight settlement.

13 MR. ALBRIGHT: Your Honor, first, he discussed  
14 yesterday, at great length yesterday, the fact that there were  
15 no royalties obtained and factors 1 and 8, this would be  
16 admissible. He gave the impression that basically that the  
17 patent continued success, that was the patent he took in  
18 consideration.

19 With respect to opening the door, what I discussed,  
20 the Chaparral product before the trial, he told us that any  
21 information would be admissible is to allow experts being able  
22 to testify in a manner that is consistent with the fact that  
23 there are more licenses out there -- the Pathlight license --  
24 he was asking the same question submitted yesterday with  
25 respect to Mr. Stephens, which was Pathlight as a licensee

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1 agreed to pay \$15 million.

2 THE COURT: Well, when you say Pathlight license in  
3 evidence, the document is not in evidence.

4 MR. ALBRIGHT: Yes, sir.

5 THE COURT: Okay. Pathlight had different products,  
6 and I'm going to sustain the objection. The settlement and  
7 the royalty paid by virtue of the trial and settlement in  
8 Pathlight has come up with regard to a couple of notices and a  
9 couple of issues that are influential from opening the door,  
10 if you want to use that, but here, we're talking about  
11 different products.

12 And this gentleman's testimony is that the products of  
13 the defendant, even with LUN zoning, are marginal, at best.  
14 So I don't see how the relevance would come in with settlement  
15 with regard to Pathlight's products. I'm going to sustain the  
16 objection on that basis.

17 MR. ALBRIGHT: Yes, sir.

18 MR. DELLETT: No further questions.

19 THE COURT: May this witness be excused, counsel?

20 MR. DELLETT: Yes.

21 THE COURT: You may be excused. You may call your  
22 next witness.

23 MR. BAHLER: Your Honor, as a housekeeping matter, on  
24 Plaintiff's Trial Exhibit list were Exhibits 174 and 177,  
25 which we had originally objected or objected to, we would

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1 withdraw those objections and move Plaintiff's Exhibit 174 and  
2 177 into evidence.

3 MR. ALLCOCK: I think the same would go to Plaintiff's  
4 Exhibit 21 and 168, your Honor. That's the complaint and the  
5 other set of answers to interrogatories.

6 MR. BAHLER: The complaint and amended complaint are  
7 already in evidence. And with respect to the other  
8 interrogatory responses, we have objections to those. These  
9 are the ones we don't --

10 THE COURT: All right. Let's take them individually.  
11 Any objection to 174 and 177?

12 MR. ALLCOCK: Yes, your Honor, relevance.

13 THE COURT: I'll have to look at them. 21 and 168,  
14 you have objections to.

15 MR. BAHLER: If one of those is the complaint, it's  
16 already in evidence. So I don't have any objection to that  
17 one.

18 MR. ALLCOCK: Yeah, 21 is the complaint, your Honor,  
19 and 168 is answers -- their answers to interrogatories as  
20 opposed to our answers to interrogatories.

21 THE COURT: All right. Subject to ruling on that, do  
22 you have another witness?

23 MR. BAHLER: Your Honor, I notice that 21 is not the  
24 complaint. This is Plaintiff's 21?

25 MR. ALLCOCK: Yeah.

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1 MR. BAHLER: It's not the complaint.

2 MR. ALLCOCK: It's the complaint and a cover letter.  
3 It's a cover letter enclosing the complaint.

4 MR. BAHLER: We have an objection to the cover letter.  
5 The complaint is in evidence. We don't have a problem with  
6 that. But we have an objection to 21 as it exists.

7 THE COURT: So 174, 177, 168. Counsel will be kind  
8 enough to get those out for me so I could look at them.  
9 Subject to the admissibility or not of those exhibits, do you  
10 have any other witnesses?

11 MR. BAHLER: No, your Honor. We rest.

12 THE COURT: Members of the jury, I'm going to give you  
13 a break. I'm obliged to tell you that the Pentagon has been  
14 bombed. So during the break, those of you who care to, I  
15 think some prayers for the country may be in order. Anyway,  
16 y'all are recessed.

17 (Recess.)

18 THE COURT: All right, counsel. On the -- let's go  
19 back on the record. All right. On Plaintiff's 21, it is  
20 already in evidence. It would be duplicative, although I'm  
21 sure we've got duplicates. But the letter of March 3rd, 2000  
22 is not relevant to anything, so I will deny the admission of  
23 21.

24 168 are Chaparral's original answer to plaintiffs.  
25 It, like 177 and 174, is full of objections and whatnot. As

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1 exhibits, I'm not going to permit any of them. I deny 174,  
2 177, 21 and 168 for any reason a specific interrogatory answer  
3 is germane and relevant. Counsel can put that in the record.  
4 But as an exhibit, all it shows is that you two can get along  
5 in discovery and objected to every single interrogatory in  
6 every single exhibit.

7 All right. You have the lectern.

8 MR. ALLCOCK: Yes, your Honor. We have a motion.

9 MR. BAHLER: Your Honor, with that caveat, I'd like to  
10 read, at least, the relevant portions of 174 into the record.

11 THE COURT: You have that right.

12 MR. BAHLER: All right. If we're going to do a  
13 motion, we haven't rested yet. Is that okay --

14 THE COURT: You have rested. You want me to bring the  
15 jury in for one interrogatory and take them out?

16 MR. BAHLER: No.

17 THE COURT: I didn't think so. I'll permit you to  
18 read the interrogatory when they come back. But as far as the  
19 record's concerned, the record will show if I let it in -- I  
20 don't know if I'll let it in or if it's objected to. Why  
21 don't you show counsel so that we can get that out of the way.

22 MR. ALLCOCK: Your Honor, we have no objection as long  
23 as the supplemental answers are also being read.

24 THE COURT: You have the right to read the  
25 supplemental if he doesn't want to.

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1 MR. BAHLER: Well, your Honor, if they want to have  
2 the supplementals in, I think they should be on their time,  
3 too.

4 THE COURT: Pardon me?

5 MR. BAHLER: If the supplementals are to come in, it  
6 should be on their time, it should be on their case.

7 THE COURT: Well, I'm sure that Ms. Sims also put it  
8 on their time. When they're up, they're running, when you're  
9 up, you're running. Not going to take but a few seconds to  
10 read.

11 MR. BAHLER: Thank you, your Honor.

12 THE COURT: All right. So the record is clear, the  
13 defendant will have the opportunity when the jury comes in to  
14 read whatever interrogatory and answer counsel wishes in  
15 Exhibit 174 and 177. The plaintiff may read any supplemental  
16 answer, but the record should and does show that all of this,  
17 then, occurred prior to the time of the resting of the  
18 plaintiff -- I mean, the defendant. And defendant has now  
19 rested, and so, I'll hear motions while the jury is out.

20 MR. ALLCOCK: Thank you, your Honor. We would move  
21 for judgment as a matter of law that Chaparral has literally  
22 infringed all claims of the 972 patent, that they've infringed  
23 them under the doctrine of equivalents, that they've  
24 contributorily infringed Claim 7 through 14, that they've  
25 induced the infringement of Claim 7 through 14, that they

1 willfully infringed all claims of the 972 patent, that the  
2 patent is not anticipated, that the patent is not obvious,  
3 that the patent is not indefinite, and that Crossroads did not  
4 commit inequitable conduct.

5           There's no legally sufficient evidentiary basis to  
6 rule in Chaparral's favor on any of these issues. We filed  
7 for the Court's benefit a written motion directed to this  
8 issue that sets fourth some of the evidence and the arguments  
9 in most detail -- in more detail.

10           I think, in particular, your Honor, the evidence on  
11 the willful infringement question is overwhelming, and we're  
12 entitled to a judgment as a matter of law on that issue.

13           Yesterday, we heard Mr. Stephens admit that there is  
14 one mode of operation of the device that infringes. Under the  
15 law, that is all that is legally sufficient, and we've heard  
16 testimony yesterday from Mr. Zinger and earlier, from Mr.  
17 Walker that they have no opinion on the products that contain  
18 LUN zoning.

19           There is no opinion. And we heard testimony that, in  
20 fact, they avoided getting an opinion on that subject by not  
21 telling Mr. Zinger that they were selling products. That, I  
22 believe the record is clear, he clearly earlier suggested to  
23 them what were problems with infringement, the LUN zone  
24 products and, in specific, the ones that they pulled out of  
25 the product, the feature that they pulled out of the product

1 as a result of his advice to them.

2 In addition, I don't believe there's been any evidence  
3 on the 972 patent on definiteness issue. Mr. Stephens --

4 THE COURT: I'm going to ask counsel on that. I've  
5 got that down. While you're up there, tell me what evidence  
6 you've got on inducement and contributory.

7 MR. ALLCOCK: Yes, your Honor. Claim 7 is a system  
8 claim, and that requires evidence that the router is placed in  
9 a system. The evidence on that is uncontradicted and  
10 overwhelming. Page 7-12 of Exhibit 230 is the -- one of the  
11 users manuals, the one that has been referenced most  
12 frequently.

13 It shows the RAID products and the router products  
14 squarely set in the middle of a fiber-optic network, which is  
15 what Claim 7 calls for. Dr. Hodges testified that that was  
16 the only reasonable use for the products that is to be put  
17 into such a system.

18 And so, we have overwhelming, indeed, uncontradicted  
19 evidence that the only use of the products is in a system,  
20 according to the language of Claim 7. With respect to the  
21 inducement claim, the same is true. There's overwhelming  
22 evidence that with respect to the LUN zoning mode of  
23 operation, there's no way to do that mode of operation other  
24 than according to the claim of Claim 11 of the patent.

25 And Dr. Hodges testified to that. In addition, the

1 users manuals, 230 is just one example, but there are other  
2 examples, instruct the user exactly how to perform the method  
3 of Claim 11. And so, not only is there an instruction in the  
4 users manuals, there's testimony that the only reasonable way  
5 of performing the method of -- the only reasonable way of  
6 using the product when it's in the LUN zoning mode is  
7 according to the elements of Claim 11.

8 So there's overwhelming, indeed, uncontradicted  
9 evidence of inducement of infringement.

10 THE COURT: All right.

11 MR. BAHLER: Your Honor, we, too, have a motion for  
12 judgment as a matter of law, but, first, I'd like to address  
13 Mr. Allcock's motion and, at the same time, renew our motion  
14 for noninfringement and no willful infringement.

15 With respect to the willfulness issue, first, your  
16 Honor, it's clear that Mr. Zinger's opinion expressed an  
17 opinion of invalidity. That is where the reliance,  
18 independent of the issue of infringement, your Honor, if the  
19 patent is invalid --

20 THE COURT: Save the jury argument for the jury. I'm  
21 going to submit the issue of willfulness. I'm going to keep  
22 it under wraps. I can't comprehend the jury not finding  
23 willfulness in this case on this record, but I believe that we  
24 will give them the opportunity.

25 The only thing I'm concerned about, and I would like

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1 for you to speak on your motion, is what evidence of  
2 indefiniteness do you have?

3 MR. BAHLER: Your Honor, that was one of the reasons I  
4 was going to read in the interrogatory evidence is that  
5 indefiniteness issue. In the spring of 2000, the plaintiffs  
6 did a study. Mr. Middleton talked about the study. They  
7 enlisted the assistance of the inventor and this Mr.  
8 Wanamaker, an inventor in the field, employees of Crossroads,  
9 they concluded the patent covered the 4100 product.

10 And they proceeded along. One of the interrogatories  
11 I'm going to submit to your Honor is an interrogatory which is  
12 June of 2000. We asked them which of their products are  
13 covered. At that time, June of 2000, they said they don't  
14 know. And later on, they said we don't make --

15 THE COURT: So the evidence that you're relying on  
16 with regard to the defense of indefiniteness is all going to  
17 be contained in these interrogatories?

18 MR. BAHLER: Yes, your Honor.

19 THE COURT: All right. I'll listen to them and I'll  
20 make --

21 MR. BAHLER: With respect to inducement and  
22 contributory, your Honor, the elements of both of those passes  
23 the infringement requirement shows the infringement by  
24 customer. There's been no evidence of any customer at all.

25 THE COURT: Circumstantial evidence, you want me to

1 believe that they just buy the product and put it in the  
2 garage?

3 MR. BAHLER: Well, your Honor, on that issue with  
4 respect to the -- substantial noninfringing uses each of the  
5 claims identified by Mr. Allcock require plurality of  
6 workstations, more than one. In other words, the Fibre  
7 Channel side has to have more than one computer, and there's  
8 no requirement whatsoever that there be more than one computer  
9 on that side.

10 I mean, there's no evidence that how these are applied  
11 in the marketplace, anybody uses them with more than one  
12 computer on this thing.

13 THE COURT: You want to present your renewed motion?

14 MR. BAHLER: Yes, your Honor. I renew the previous  
15 motions and I have a new motion. This is a motion for  
16 judgment as a matter of law on the issue of anticipation and  
17 obviousness, definiteness, which, of course, depends on the  
18 evidence that's going to come in through these interrogatories  
19 and then, unenforceability.

20 Your Honor, the evidence is uncontroverted that, for  
21 example, the Adaptec Coronado, which is prior -- under Section  
22 102(g), includes all of the elements of those claims including  
23 the workstation.

24 THE COURT: Well, I've ruled on that so many times.  
25 It just amazes me that the evidence came in like that, but it

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1 came in unobjected. It's a fact issue. I'll overrule all  
2 Rule 50 motions. They're all on file, they're all a matter of  
3 record with the one exception on the -- defense of indefinite,  
4 I will hear the interrogatory, and I'll allow you to reopen  
5 and read that into the record.

6 And then, are you ready to proceed?

7 MR. ALLCOCK: Yes, your Honor. May I inquire as to  
8 what our time is?

9 THE COURT: It's just right there for the world to  
10 see. Both of you are well on your time. You both have plenty  
11 of time. Fourteen minutes of cross left and you've got, looks  
12 like, 50 minutes. All right. Bring the jury in.

13 (Jury present.)

14 THE COURT: Mr. Bahler, you may have the lectern.

15 MR. BAHLER: Thank you, your Honor. I'd like to read  
16 into the record responses to interrogatories filed by  
17 Crossroads.

18 THE COURT: Members of the jury, an interrogatory is a  
19 question in writing, submitted under the Rules of Civil  
20 Procedure by one party to another that requires an answer or  
21 an objection or an explanation, and that's what an  
22 interrogatory is. So this is an interrogatory that was  
23 prepared by Chaparral that went to Crossroads. You may  
24 proceed.

25 MR. BAHLER: Thank you, your Honor. Actually, there's

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1 two interrogatories. These are interrogatories originally  
2 served June 20th, 2000, and they were responded to on July 26,  
3 2000. Interrogatory No. 3 reads as follows: Quote, for each  
4 claim of the 972 patent, describe on an element-by-element  
5 basis any and all bases for any and all contentions of  
6 Crossroads concerning each apparatus or method of Chaparral  
7 that Crossroads contends infringes that claim.

8 Literally, your Honor, the doctrine of equivalents  
9 identify any and all documents and the relevant pages thereof  
10 or other facts, law or evidence relied upon to support such  
11 contention. Crossroads responded as follows -- Crossroads  
12 answers as follows:

13 Crossroads' infringement contentions are set forth in  
14 its concise statement of alleged infringement, and in the  
15 complaint filed against defendant, such documents are herein  
16 quoted by reference. Interrogatory No. 6, same date, response  
17 is the same date, reads as follows.

18 Question: For each claim of the 972 patent, identify  
19 by name and model number each device manufactured, offered for  
20 sale or sold at any time including prior to the issue date by  
21 Crossroads that embodied one or more of the claims in the 972  
22 patent, including for each such devices a state of which claim  
23 or claims of the 972 patent embodies, the date when Crossroads  
24 began accepting any such device, selling quantity of  
25 manufacturing of any such device and Crossroads' sales in

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1 units and dollars and prices of such devices. Crossroads  
2 responded as follows.

3 Crossroads answers as follows: Crossroads is still  
4 investigating its sale of products which incorporates the  
5 invention of the 972 patent. Those are those two  
6 interrogatories, your Honor, and with that, plaintiff rests --  
7 I'm sorry, defendant rests.

8 THE COURT: Any supplemental reading to the answers at  
9 this time?

10 MR. ALLCOCK: Yes, your.

11 THE COURT: All right. You may.

12 MR. GIUST: Your Honor, we would read the supplemental  
13 answers to Interrogatory No. 3, dated July 6, 2001, just  
14 excerpts from that answer.

15 A, basis for infringement. Chaparral's offer for sale  
16 of LUN zoning features in connection with its Fibre  
17 Channel-to-SCSI routers constitutes infringement of the 972  
18 patent.

19 MR. BAHLER: Your Honor, may we have a date for this  
20 supplementation?

21 MR. GIUST: I said July 6, 2001.

22 MR. BAHLER: Okay. Thank you.

23 MR. GIUST: Additionally, Chaparral's making, using,  
24 selling and offering for sale of its Fibre Channel-to-SCSI  
25 RAID controllers constitutes infringement of the 972 patent.

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1 Chaparral's accused RAID products include all of Chaparral's  
2 Fibre Channel-to-SCSI RAID controllers that: (a) implement  
3 Chaparral's LUN zoning, either directly or through Chaparral's  
4 application interface, CAPI, and (b) are capable of operating  
5 as JBOD, meaning the commonly understood configuration: just a  
6 bunch of disks.

7 To the best of Crossroads' knowledge, as testified to  
8 by Chaparral employee Ian Davies, all current Chaparral Fibre  
9 Channel-to-SCSI RAID controllers implement LUN zoning,  
10 including models G7324, G7313, G7413 and A8526. See Davies  
11 transcript at 83-84, 150-151, parenthesis, 2-21-2001; Davies  
12 Exhibit 10, Crossroads Exhibit 224, CNS 185195 to 185403,  
13 parenthesis, CNS 185275 and CNS 184734.

14 To the best of Crossroads' knowledge, all such RAID  
15 controllers are operable as JBOD.

16 Continuing with interrogatory answer, other similar  
17 products in further infringement. To the best of Crossroads'  
18 knowledge, Chaparral continues to introduce new products  
19 substantially similar to the above-listed products in willful  
20 disregard of Crossroads' patent rights.

21 Such products are Fibre Channel-to-SCSI RAID  
22 controllers and routers which include Chaparral's LUN zoning  
23 features and/or which are offered for sale with such LUN  
24 zoning features. All other such products are infringing in  
25 the 972 patent for the reasons stated above.

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1 THE COURT: All right. I'll have counsel up here,  
2 please.

3 (At the Bench, on the record.)

4 THE COURT: Does defendant rest?

5 MR. BAHLER: Yes, your Honor.

6 THE COURT: Does defendant renew its motions?

7 MR. BAHLER: Yes, your Honor, it does.

8 THE COURT: The motions are overruled. Plaintiff wish  
9 to renew their motion?

10 MR. ALLCOCK: Yes.

11 THE COURT: Your motion is overruled with the  
12 exception of indefiniteness. There's no evidence of  
13 indefiniteness which will be submitted to the jury.

14 MR. ALLCOCK: Thank you, your Honor.

15 THE COURT: You may proceed.

16 MR. ALLCOCK: Yes, your Honor. We would recall to the  
17 stand Dr. Hodges.

18 THE COURT: You're still under oath, sir.

19 THE WITNESS: Yes, sir.

20 RE-DIRECT EXAMINATION

21 BY MR. ALLCOCK:

22 Q. Morning, Dr. Hodges. I'm going to ask you about some of  
23 the prior art we talked about yesterday. Let me start off by  
24 asking you about Exhibit 602. This is this LUN mapping mode  
25 implementation based on the SCSI standards.

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1           First of all, is there anything like 602 shown in the  
2   SCSI standards?  
3   A.  No, there is not.  
4   Q.  Have you ever seen a product built like this?  
5   A.  No.  
6   Q.  Do you have -- is there a diagram in the standards that  
7   even remotely resembles figure 602?  
8   A.  No, there's not.  
9   Q.  Okay.  Let me ask you a few questions about 602.  Is there  
10   anything in the SCSI standards that talks about this material  
11   on this side being Fibre Channel?  
12   A.  Not in the context of the LUN mapping.  
13   Q.  So there's no Fibre Channel in the context of the LUN  
14   mapping?  
15   A.  No, not on that side.  
16   Q.  And here, this says device.  Is there anything in the  
17   standards that suggests a Fibre Channel-to-SCSI router?  
18   A.  Not in reference to LUN mapping.  
19   Q.  Okay.  Now, is there any reference in the SCSI standards  
20   to access controls whatsoever?  
21   A.  No.  
22   Q.  Let me show you briefly -- the -- this is a page from  
23   Exhibit 88.  It is the SCSI standards.  You were in the  
24   courtroom yesterday.  Did we see this actual standards  
25   displayed ever?

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1 A. I don't believe so. I don't remember.

2 Q. And is this standard only about SCSI devices?

3 A. Yes, this is only about SCSI parallel devices. It  
4 specifically talks about things that conform to the SCSI three  
5 interlocutory protocol which is the SCSI bus.

6 Q. So does it have anything to do whatsoever with the Fibre  
7 Channel?

8 A. No, it does not.

9 Q. Doctor, does the patent talk about the SCSI standards?

10 A. Yes, it does.

11 Q. Let me show you column one, around lines 14 through 18.  
12 It talks about SCSI-1, SCSI-2 and SCSI-3. What are those?

13 A. The SCSI-1 is a very old standard. SCSI-2 is a successor.  
14 SCSI-3 is the latest one, which has been published as standard  
15 but is continually being worked on by the standards committee,  
16 but it is the current SCSI standard.

17 Q. Okay. And is that the information that's being relied  
18 upon as prior art?

19 A. Yes, it is.

20 Q. So the Patent Office considered it?

21 A. Yes.

22 Q. Can you combine these SCSI LUN mapping standards with any  
23 other piece of prior art to get the invention?

24 A. Not as far as I could see.

25 Q. Now, let's turn to the Adaptec information. First of all,

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1 is there any actual evidence that Adaptec actually used  
2 reserve release prior to March of 1997?

3 A. No, there's not.

4 Q. And you've heard all the evidence?

5 A. I've heard all the evidence.

6 Q. What's the best they got?

7 A. The best that I heard was that Adaptec was -- had  
8 evaluation units available in the fall -- late fall of '97,  
9 that there were sales in 1998. I don't believe there was any  
10 public knowledge of that.

11 Q. Are you familiar with the reserve release?

12 A. Yes, I am.

13 Q. Have you prepared some graphics to explain it?

14 A. Yes, I have.

15 Q. Okay. Let me show you Exhibit 549.

16 A. This is a -- using an analogue of a storeroom for a disk  
17 storage device. Here we've shown three storerooms labeled  
18 drive 1, drive 2 and drive 3. Each one of them has some data  
19 in it represented by a filing cabinet and an attendant that  
20 represents the disk controller.

21 One of these storerooms is already reserved to  
22 someone, the door is closed, and it has a reserved sign on it.

23 Q. Okay. Let me show you Exhibit 550. Can we reserve  
24 another door?

25 A. Yes. Here is a man in the green shirt representing a

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1 particular computer, goes to drive 1 and says, you're reserved  
2 to me. And the attendant inside says, okay, you're now  
3 reserved, closes the door, pushes off the reserve sign.

4 Q. Does that keep somebody from coming in?

5 A. No, it doesn't.

6 Q. Let me show you Exhibit 556. What does this show?

7 A. This is a sequence of actions. The left-hand diagram  
8 shows a man in a white shirt that is someone who didn't  
9 reserve drive 1, approaching drive 1 and looking for access.  
10 And if he does that, he'll be told that it's reserved. But he  
11 has -- he doesn't have to be kept out. All he has to do is  
12 pull out of his pocket the reset key, insert it in the key  
13 hole and open the door.

14 So in the second one, he opens the door and the --  
15 you'll see the sign on the door that says it's being reset,  
16 and then, the reserve is gone and he has access to it. Now,  
17 this key as shown here is equivalent of issuing to the router  
18 the SCSI operation of reset LUN, reset the logical unit.

19 Q. Okay. And let me see -- let me show you Exhibit 551.  
20 What does this describe?

21 A. This is essentially the same thing with a slight  
22 variation. Man in the white shirt approaches, finds that he  
23 can't -- that the door is shut and he's not -- it's not  
24 reserved to him. He pulls out a different reset key in this  
25 case. Unlocks that door and you'll notice that not only drive

1 1 became unlocked but drive 2, as well, became unlocked.  
2 That's the equivalent of issuing to the router the function of  
3 reset target, which would be a reset of all of the LUNs on the  
4 router.

5 Q. Okay. And let me show you Exhibit 589 and ask you why is  
6 this reserve release not access controls of the -- according  
7 to the patent?

8 A. Reserve release doesn't really limit access. It's not  
9 designed to limit access. There are many -- a number of ways  
10 in which the reservation can be cancelled. And basically, the  
11 reserve is designed to facilitate the coordination of  
12 operations where multiple computers are sharing data on the  
13 same drive.

14 And, therefore, it is -- it has the capability for  
15 somebody to break in if somebody fails to release the  
16 reservation, and the programming support for this would be  
17 included in any system in which multiple computers are sharing  
18 data on a particular storage device.

19 Q. Okay. Let me flip back to the patent. Did the Patent  
20 Office specifically consider prior art on this reserve release  
21 feature?

22 MR. BAHLER: Objection. Requires speculation.

23 THE COURT: Sustain the objection to the question  
24 asked.

25 Q. (BY MR. ALLCOCK) Okay. Was there prior art before the

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1 Patent Office cited on the front page of the patent?

2 A. Yes, there was.

3 Q. And does that Judd patent talk about reserve release?

4 A. Yes, it does.

5 MR. BAHLER: Objection. Leading.

6 Q. (BY MR. ALLCOCK) Moving you to page --

7 THE COURT: It's all right. I overrule the objection.

8 Q. (BY MR. ALLCOCK) Moving to Exhibit D-4. Have you reviewed  
9 the Judd patent?

10 A. Yes, I have.

11 Q. Let me direct your attention to column 8, lines 54.

12 There's a reference there to the SCSI reserve command. Do you  
13 see that?

14 A. Yes, it is.

15 Q. Is that the same SCSI reserve command that they're  
16 asserting as prior art?

17 A. Yes, it is.

18 Q. Does this SCSI reserve command have anything to do with  
19 access controls?

20 A. No, it does not.

21 Q. Okay. Let's now turn to the Exhibit D-104, which is the  
22 771 patent. Have you analyzed that?

23 A. Yes, I have.

24 Q. Is the patent prior art?

25 A. No, it's not prior art.

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1 Q. And what is the date that you used for that?

2 A. The date this patent was filed was August 18th of 1997.

3 That becomes the date when this is effective as prior art, and

4 that is well after the March date of conception of this -- of

5 the 972 patent.

6 MR. BAHLER: Objection, your Honor. This is beyond

7 the scope of his expertise, what constitutes an invention.

8 MR. ALLCOCK: He's analyzed it. Part of his expert

9 report.

10 MR. BAHLER: Then he's an expert.

11 THE COURT: He may testify as to facts but not his --

12 Q. (BY MR. ALLCOCK) Have you reviewed the invention

13 disclosure form that's Plaintiff's Exhibit 7?

14 A. Yes, I have.

15 Q. Does that show access controls?

16 MR. BAHLER: Objection, your Honor. This is opinion.

17 THE COURT: Well, it is opinion on an expert that has

18 testified to access control. I'll overrule that objection.

19 You may answer.

20 A. Yes, it does show access controls.

21 Q. (BY MR. ALLCOCK) Okay. And Exhibit 7 is -- we'll get the

22 date later. Now, let's assume for the moment that the 771

23 patent is somehow prior art. Does it disclose access -- does

24 it disclose the invention?

25 A. No, it does not.

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- 1 Q. Well, what does this 771 patent disclose?
- 2 A. The 771 patent discloses a means of doing certain kind of  
3 control of access from a host, a multiple host addressing  
4 something that's referred to as a disk apparatus, which has  
5 one data storage unit in it and there is -- it has the ability  
6 to test for the host address to see whether it should have  
7 access to that single data storage unit.
- 8 Q. Where is the storage router in this picture?
- 9 A. There is no storage router in this picture.
- 10 Q. So what is a disk apparatus?
- 11 A. Disk apparatus is, in general, something that you can  
12 address to access a single disk, and this could be included in  
13 the controller for the disk itself.
- 14 Q. So the 771 patent doesn't describe a storage router?
- 15 A. No, it does not describe a router.
- 16 Q. Does it describe mapping?
- 17 A. No, it does not describe mapping.
- 18 Q. Does it describe access controls?
- 19 A. Not in the sense of the 972 patent.
- 20 Q. Could you combine this 771 patent with some of this other  
21 prior art?
- 22 A. I'm sure you could. It's -- it doesn't lead you to the  
23 972 patent.
- 24 Q. Would it be reasonable for one of skill in the art to  
25 combine any of these references?

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1 A. I believe that one of skill in the art taking this  
2 reference would probably not get to the 972 patent.

3 Q. And so, Dr. Hodges, of all the prior art you have  
4 reviewed, have you seen anything that combines a storage  
5 router with access controls such as the patent?

6 A. No, I have not.

7 Q. No further questions of the witness at this time, your  
8 Honor.

9 RE-CROSS-EXAMINATION

10 BY MR. BAHLER:

11 Q. Dr. Hodges, I direct your attention to the 771 patent.  
12 Why don't we call that up, first. I have page 1 up here on  
13 the screen. See that, sir?

14 A. Uh-huh.

15 Q. And right about down here, it says -- so on receipt, it  
16 says -- so on receipt of a command from a host device, a  
17 command interpreted and executed only after access is  
18 authorized by the address verification unit. See that, sir?

19 A. I see that.

20 Q. That contemplates multiple hosts, doesn't it?

21 A. It does include multiple hosts.

22 Q. So we got that part of it -- the 771 has multiple hosts,  
23 right?

24 A. (Moving head up and down.)

25 Q. Take a look at the -- at columns 5 and 6 of that patent,

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1 particularly column 5, right around 41 -- line 41. Now, it  
2 says there that the disk apparatus can be a disk array on the  
3 disk drive. Do you see that?

4 A. I see that.

5 Q. And that means more than one disk, doesn't it?

6 A. It does, it means more than one disk, but it does not mean  
7 more than one address, and particularly, they expect to see  
8 only one address. Only one storage device, logically  
9 speaking.

10 Q. You recall your deposition, right, Mr. Hodges?

11 A. Yes, I do.

12 Q. And that was taken August 29th, 2000?

13 A. May have been.

14 Q. And when you were asked this question, question, okay, but  
15 the path between the host on one side would exist to the  
16 multiple disks within that array, no matter whether they saw  
17 it or not, correct, and to that you answered in this case, as  
18 a generic path, yes, you answered that, right?

19 A. I don't remember that question. I don't remember what the  
20 -- what preceded that, so I can't tell what question I was  
21 answering.

22 Q. You were talking about the 771 patent, weren't you, sir?

23 A. I don't know with that answer.

24 Q. Okay. Now, you said that the SCSI reserve command does  
25 not deal with access control, correct?

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1 A. That's correct.

2 Q. Do you recognize Exhibit 89, don't you, sir?

3 A. Yes, I do.

4 Q. SCSI three primary commands, November 13th, 1996?

5 A. Yes.

6 Q. That's one of the SCSI standards, correct, sir?

7 A. Yes.

8 Q. Okay.

9 A. This actually is a draft of the standard, but it's just  
10 the one we can -- both sides have been working from.

11 Q. And it existed on November 13th, '96?

12 A. Yes.

13 Q. And on page -- well, Section 7.21 of that document, it  
14 describes the SCSI reserve commands, right, sir?

15 A. Yes, it does.

16 Q. And down here, this is how it describes it, right? Right,  
17 sir?

18 A. Yes. I haven't had a chance to read it.

19 Q. It says, if the extent -- this is kind of complicated, but  
20 it says, the extent bit is zero, this command shall request  
21 that the entire logical unit -- this command will return to  
22 the SCSI reserve commands right there, sir?

23 A. Yes.

24 Q. Reserve the entire logical unit, that means storage device  
25 or part thereof, right, sir?

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- 1 A. Yes.
- 2 Q. Be reserved?
- 3 A. It actually may mean more than one storage device. It may  
4 mean a disk array.
- 5 Q. Right. It says be reserved for the exclusive use of the  
6 initiator, right, sir?
- 7 A. Yes.
- 8 Q. Initiator is the host computer that issued the reserve  
9 command, right?
- 10 A. Yes.
- 11 Q. And so, there is access control in the SCSI reserve  
12 command?
- 13 A. Not in the sense of the 972 patent.
- 14 Q. That paragraph continues and it says until the reservation  
15 is and then, it continues on, right?
- 16 A. Yes.
- 17 Q. And that's one reason in your opinion that it's -- those  
18 are the reasons why in your opinion the SCSI reserve is not  
19 access control, right?
- 20 A. That's one of the reasons.
- 21 Q. Okay. And it lists a bunch of things there including  
22 target reset and that sort of stuff, right?
- 23 A. Yes.
- 24 Q. Now, the initiators used, for example, in the Adaptec  
25 Coronado, Dr. Hodges, are workstations, right?

- 1 A. They can be.
- 2 Q. And workstations can be personal computers, right, sir?
- 3 A. They can be.
- 4 Q. And those are programmable machines, right, sir?
- 5 A. Yes.
- 6 Q. And programmable machines, personal computers were  
7 invented by IBM, right?
- 8 A. I think so. I'm not sure that's true, but they get credit  
9 for it.
- 10 Q. Right. Exactly. And a personal computer could be  
11 programmed to do these target resets or inquiries, or any of  
12 that stuff, right, sir?
- 13 A. Yes.
- 14 Q. And, also, they could be programmed not to do that, right?
- 15 A. Programmed to do quite a variety of things.
- 16 Q. They're capable of being programmed to not perform those  
17 functions, right, sir?
- 18 A. I don't know how you program something to not perform a  
19 function.
- 20 Q. You just don't program it, right?
- 21 A. You not program to perform those functions. There's a  
22 difference. I can't program it to prohibit those functions.
- 23 Q. You can eliminate the programming that causes those  
24 functions, right?
- 25 A. I do not have to put the programming in to cause those

1 functions.

2 Q. All right, sir. In that case, a system using the Adaptec  
3 Coronado SCSI reserve could have a number of hosts, all but  
4 one are programmed to prohibit doing any of the stuff that  
5 would eliminate reserve, right?

6 A. That would be possible.

7 Q. And that wouldn't -- and that would be access controls,  
8 right?

9 A. That would be access -- well, I'm not sure it would be  
10 access control. I think you'd have to look at the specifics,  
11 but this is definitely not the way that the SCSI standard  
12 presents reserve, and it does not -- is not presented as a  
13 method of doing this.

14 If you read the paragraph about two or three  
15 paragraphs above the one you have highlighted, it says that  
16 it's a way from coordinating the operations between multiple  
17 hosts that want to share storage and --

18 Q. All right, Dr. Hodges. We don't have much time. I'm  
19 sorry for interrupting. The question was, the prior art is  
20 capable of being programmed the way I described it, right?

21 A. With invention.

22 Q. Pardon?

23 A. With some invention.

24 Q. Okay. Pass the witness.

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

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1 your Honor.

2 THE COURT: You may step down, sir.

3 MR. GIUST: Your Honor, we recall Jeff Russell.

4 THE COURT: Come forward, please. Have a seat. Mr.  
5 Russell, you're still under oath, sir.

6 THE WITNESS: Okay.

7 RE-DIRECT EXAMINATION

8 BY MR. GIUST:

9 Q. Mr. Russell, I'm going to hand you a notebook. I want you  
10 to take a look at it. Mr. Russell, just to reacquaint  
11 yourself with the jury, you're one of the inventors of the 972  
12 patent; is that right?

13 A. Yes, I am.

14 Q. And let me show you Exhibit 6 already in evidence. You  
15 testified about this exhibit before, didn't you?

16 A. Yes, I did.

17 Q. And does this exhibit show conception of the hardware  
18 concepts of the 972 patent?

19 MR. GARRETT: Objection, your Honor. This is opinion  
20 testimony about conception. I think it's proper for him to  
21 testify about facts. He's trying to jump to a legal  
22 conclusion.

23 THE COURT: Sustain the objection to the question  
24 asked.

25 Q. (BY MR. GIUST) Does this exhibit show how you arrived at

1 the hardware aspects of the 972 patent?

2 MR. GARRETT: Objection, your Honor. This is just a  
3 back door to the same result.

4 THE COURT: Well, that question is fine. I'll  
5 overrule the objection. You may answer that.

6 A. Could I hear it again?

7 Q. (BY MR. GIUST) Does this exhibit show how you arrived at  
8 hardware concept of the 972 patent?

9 A. Yes, it does.

10 Q. But you continued to work on the invention after the date  
11 of this Exhibit?

12 A. Yes.

13 Q. What's the date of this exhibit?

14 A. This one's dated January 22nd and, also, January 31st,  
15 1997.

16 Q. Okay. And as part of that continued work, do you  
17 recognize Exhibit 7 already in evidence?

18 A. Yes, I do.

19 Q. Does this reflect continued work on the invention up until  
20 the date of this exhibit?

21 MR. GARRETT: Your Honor, objection. If we could just  
22 be clear about what invention means in this context. This is,  
23 again, opinion testimony. He could testify --

24 THE COURT: He actually asked if this document  
25 represented something.

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1 MR. GARRETT: No, your Honor. He asked if this  
2 reflects work on the invention. And I think that's --

3 THE COURT: He said it represents work on the thing.  
4 Restate your question.

5 Q. (BY MR. GIUST) Mr. Russell, does this document reflect  
6 additional work done on the concepts that you worked on  
7 related to the 972 patent?

8 MR. GARRETT: Same objection, your Honor.

9 THE COURT: I'll sustain the objection to the question  
10 asked.

11 Q. (BY MR. GIUST) Mr. Russell, what is this document?

12 A. This document's an early draft of some concepts related to  
13 the invention.

14 Q. Okay. What's the date of this document?

15 A. This cover sheet's dated May 28th, 1997, and then, some of  
16 the content pages have a date stamp of -- from March and May  
17 of 1997.

18 Q. Did you review this document with Mr. Hoese?

19 A. Yes, this was an initial kind of write-up of the ideas,  
20 the main points of the invention, main point of discussion.

21 Q. Was this document communicated to your patent attorneys?

22 A. Yes, it was.

23 Q. Let me show you Exhibit 267, already in evidence. Flip to  
24 that in your binder. What is this document?

25 A. It's the CP 4100 product specification, so it's kind of

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1 the write-up of some of the design work that had been going on  
2 of the CP 4100.

3 Q. When you say "write-up of the design," does that include  
4 the hardware of the design that you inflect in your  
5 specification?

6 A. Some aspects, yes.

7 Q. What date range does this document cover?

8 A. From looking at the third page, there's a revision  
9 history, so from mid-1997 through '98.

10 Q. Does it cover the date from March of '97 -- I'm sorry,  
11 from mid-'97 up until the filing date of the patent  
12 application?

13 A. Yes, its does.

14 Q. Did you continue to work in re-filing the hardware  
15 concepts up through that time?

16 A. Yes.

17 Q. Let me show you -- flip in your binder to 276. Sorry,  
18 266. Tell us what Exhibit 266 is.

19 A. This is an early draft of the patent application.

20 Q. Is this the type of document that's retained by Crossroads  
21 in the ordinary course of its business?

22 A. Yes.

23 Q. Have you seen this document before?

24 A. Yes.

25 Q. Offer 266.

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1 MR. GARRETT: Your Honor, no objection.

2 THE COURT: 266 is received.

3 Q. (BY MR. GIUST) Mr. Russell, flip to the second page of  
4 Exhibit 266. Okay. Again, Mr. Russell, Exhibit 266, could  
5 you explain to the jury what it is?

6 A. This is an early draft of the patent application. I  
7 believe it's the first one that had been written up to be, you  
8 know, first draft of the whole thing being there.

9 Q. Okay. And was this prepared after the transmittal to the  
10 patent attorney of Exhibit 7, the invention disclosure? I'm  
11 sorry, Exhibit 6. Wait, 7, yeah.

12 A. Yes, this has kind of got a lot more detail compared to  
13 Exhibit 7.

14 Q. Let me show you -- if you'd flip to 276 in your binder.  
15 What is Exhibit 276?

16 A. 276 is an intermediate draft of an application.

17 Q. It's the type document that's retained in the ordinary  
18 course of business at Crossroads?

19 A. Yes.

20 Q. Have you seen this document before?

21 A. Yes.

22 Q. Offer 76.

23 MR. GARRETT: No objection, your Honor.

24 THE COURT: It's received.

25 Q. (BY MR. GIUST) And at what point in time did Exhibit 276

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1 come about in relation to the prior draft that we just  
2 discussed?

3 A. It came about sometime after.

4 Q. Flip in your binder to Exhibit 275. Do you know what  
5 Exhibit 275 is?

6 A. Yes.

7 Q. What is it?

8 A. It's the final draft of the patent application, so I guess  
9 it is the patent application.

10 Q. Is this the type of document retained in the ordinary  
11 course of business by Crossroads?

12 A. Yes.

13 Q. Have you -- did you receive this document on or about the  
14 dates indicated therein?

15 A. I received a copy of it.

16 Q. How do you know?

17 A. I found it in my files.

18 Q. Offer 275, your Honor.

19 MR. GARRETT: No objection.

20 THE COURT: It's received.

21 Q. (BY MR. GIUST) Up until the date of -- filing date of this  
22 patent, did you work on numerous drafts of the application?

23 A. Yes.

24 Q. Did you continue to work on the hardware aspects disclosed  
25 in the patent application?

1 A. Yes.

2 Q. Did there ever come a point in time when you stopped work  
3 on these things?

4 A. No.

5 Q. Did there ever come a time when the project was put on  
6 hold to file the patent application?

7 A. No.

8 Q. Did you ever hide the fact that you were going to file the  
9 patent application from anyone at Crossroads?

10 A. No.

11 Q. Did other people other than yourself and Mr. Hoese review  
12 the design work you had done on hardware aspects of the system  
13 disclosed within the patent application?

14 A. Yes.

15 Q. And those includes the exhibits we looked at today?

16 A. Yes, especially the schematic one.

17 Q. And why did other people look at that?

18 A. Well, to get the circuits made, circuit boards made, we  
19 need the hardware made, they'd have to go through review with  
20 other engineers, we'd have to turn to manufacturing, data get  
21 manufacturing people to make it.

22 Q. Given the time constraints and your other work at  
23 Crossroads, did you obtain this application as fast as you  
24 could?

25 A. Yes.

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1 Q. No further questions.

2 RE-CROSS EXAMINATION

3 BY MR. GARRETT:

4 Q. Couple of quick questions, Mr. Russell. 276, is there a  
5 date on this document?

6 A. No, I don't see a date.

7 Q. Can you give me a specific date or time when you worked on  
8 this?

9 A. Well, from looking at the content, I can see it occurred  
10 after that first application and before the last one.

11 Q. Okay. But no specific date or time?

12 A. No.

13 Q. Okay. Can't give me a specific amount of time that you  
14 worked on it?

15 A. No.

16 Q. And you're a hardware guy, right?

17 A. Yes, I am.

18 Q. So you worked on hardware stuff in 1997?

19 A. Yes, I did.

20 Q. And access controls is software, right?

21 A. Yes, it is.

22 Q. So you didn't work on software. You don't work on access  
23 controls; is that right?

24 A. I didn't work on writing software, but I worked on  
25 specifying what it would have to do for this invention.

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1 Q. Right. But you didn't work on creating whatever it was  
2 that would actually do access control?

3 A. I believe I worked on creating it in the sense that it's  
4 described here in this application.

5 Q. Okay. But I'm stepping back from the application. I'm  
6 talking about a device. You didn't do anything to actually  
7 create access controls, right, because you're a hardware --

8 A. I designed hardware that would execute the software would  
9 implement that.

10 Q. Right. But you didn't code the software?

11 A. I did not code software, no.

12 Q. So you didn't write the code that does access controls?

13 A. Correct.

14 Q. And, in fact, nobody did in 1997, did they?

15 A. I don't know.

16 Q. But is it -- the 4100 isn't the only thing everyone was  
17 working on, right? .

18 A. That's what I was working on and the people immediately  
19 around me.

20 Q. And that, according to you, doesn't have access control,  
21 does it?

22 A. I'm not aware of having access controls, right.

23 Q. No further questions.

24 MR. GIUST: No further questions.

25 THE COURT: You may step down, sir.

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1 MR. ALLCOCK: Recall to the stand Mr. Hoese.

2 THE COURT: If you'll have a seat, please, sir. Mr.  
3 Hoese, you're still under oath. Do you understand that?

4 THE WITNESS: Yes, I do.

5 RE-DIRECT EXAMINATION

6 BY MR. ALLCOCK:

7 Q. Okay. Mr. Hoese, we're moving things a little quick here.  
8 There's not much time left.

9 A. Okay.

10 Q. So let me show you Exhibit 7, and ask you from, roughly,  
11 May of the year 1997 through when the patent application was  
12 filed December of 1997, what were you working on?

13 A. A large variety of things towards the business of creating  
14 storage routers with Crossroads.

15 Q. Okay. Now, if you'll look at Exhibit 263 and 274, can you  
16 tell me what those are?

17 A. Do you have the Exhibits? Are they here?

18 Q. They're right in front of you, yes, sir.

19 A. 263 is a copy of a notebook I kept.

20 Q. Did that record some of your activity during that time  
21 period?

22 A. Yes, definitely. It appears to start at the date of  
23 February '97.

24 Q. Okay. And how about 266, what is that -- I mean, 274,  
25 what is that?

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1 A. 274 is a copy of another notebook starting in -- well,  
2 10-31 of '97, it appears.

3 Q. So do those record some of your activities during this  
4 seven-month period?

5 A. Certainly.

6 Q. Offer Exhibits 263 and 274 into evidence, your Honor.

7 MR. BAHLER: Objection, relevance.

8 THE COURT: Well, the relevance objection is  
9 overruled. 263 and 274 are in.

10 Q. (BY MR. ALLCOCK) Let me ask you, Exhibit 275, could you  
11 take a look at that, please?

12 A. Okay.

13 Q. What is Exhibit 275?

14 A. It's a copy of a draft application of the patent  
15 application.

16 Q. Okay. Now, from when you first came up with this idea  
17 through when you filed, did you go through a number of draft  
18 applications?

19 A. Yes.

20 Q. Were you diligent in responding to drafts that you got?

21 MR. BAHLER: Objection, your Honor. Calls for a legal  
22 conclusion. It's opinion testimony.

23 THE COURT: No, it does not require, but rephrase your  
24 question.

25 Q. (BY MR. ALLCOCK) Okay. Did you respond to the request

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1 from the patent lawyer reasonably promptly?

2 A. Certainly, yes.

3 Q. Now, you were in charge of the patent program at this  
4 time, right?

5 A. Correct.

6 Q. And so, was one of your responsibilities to make sure  
7 these got filed?

8 A. Yes.

9 Q. In fact, were there some applications that you did  
10 back-burn?

11 A. Yeah, we had a number of applications that we generated  
12 during this period, number of patent disclosures and concepts,  
13 and there were those that we deliberately did not work on and  
14 did not put time into.

15 Q. How about this one?

16 A. This was not one of those. We definitely put the time  
17 into this one.

18 Q. Were you familiar with the SCSI commands when you made the  
19 972 invention?

20 A. Yes.

21 Q. How were you familiar with that?

22 A. I'd spent a number of years programming SCSI systems both  
23 device drivers that use SCSI commands, as well as target  
24 devices that responded to those commands.

25 Q. Were you familiar with this reserve release command?

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1 A. Yes, definitely.

2 Q. How were you familiar with it?

3 A. Well, I had written programs that used it -- device  
4 drivers that passed it through as well as target devices that  
5 responded to the command and effected the reservations for  
6 storage devices.

7 Q. Okay. In the abstract, could this reserve release be  
8 considered some form of prohibiting access?

9 MR. BAHLER: Objection, your Honor. Calls for an  
10 opinion.

11 THE COURT: It does require an opinion.

12 MR. ALLCOCK: Your Honor, there's -- unless Mr. --  
13 unless Chaparral's willing to dismiss their inequitable  
14 conduct charge, this witness' state of mind is directly  
15 relevant.

16 THE COURT: Well, it's not on rebuttal, and I sustain  
17 the objection.

18 MR. ALLCOCK: Your Honor, this is our first  
19 opportunity to respond to their case.

20 THE COURT: I understand that, but to that question,  
21 I'm sustaining the objection.

22 Q. (BY MR. ALLCOCK) Well, were you familiar with the reserve  
23 release?

24 A. Yes.

25 Q. And does it have anything to do with the access control of

1 your invention?

2 MR. BAHLER: Objection, your Honor. This is right on  
3 the money; this is opinion testimony.

4 THE COURT: I'll permit the witness to explain why  
5 something was not in the patent or why something was in the  
6 patent, but his opinion, he's not down as an expert. Now, as  
7 far as his personal belief is concerned, it may go to  
8 inequitable conduct, but I think we'll handle it that way.

9 MR. ALLCOCK: Very well, your Honor.

10 Q. (BY MR. ALLCOCK) So what was your belief at the time you  
11 filed the patent as to what this reserve command was as it  
12 relates to your invention?

13 A. The reserve command is -- in context to the invention is  
14 just another SCSI command like any other SCSI command. It has  
15 nothing to do with the access controls or the router  
16 implements. It's subject to those access controls.

17 In fact, all SCSI commands are prohibited from  
18 interacting with devices, are allowed to -- per the access  
19 controls including reserve release, so it's really just  
20 another command as far as that goes.

21 Q. So how would you consider access controls as it relates to  
22 reserve release?

23 MR. BAHLER: Objection, your Honor. Calls for an  
24 opinion.

25 THE COURT: Well, that objection's overruled.

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1 A. It's just not directly relevant to that access controls.

2 Q. (BY MR. ALLCOCK) Can't say it any other way, huh?

3 A. No, it's another command just like any other command. You  
4 have, you know, SCSI command that consists of, you know, a  
5 large number of commands. They all get issued to devices by  
6 hosts. And if, you know, if the router can route those  
7 commands to devices, they work just like they do. If they  
8 can't, they don't. That's true for reserve release as well  
9 as, you know, read, write, all the SCSI commands.

10 Q. And where does access controls fit in?

11 A. In the storage router. It's a transport level access  
12 control. So the visibility of the device, the storage device  
13 being able to interact with the host, it's either cut off or  
14 allowed such that, you know, those commands as a whole just  
15 can't reach the target devices.

16 Q. In your mind, was it completely different?

17 A. Oh, absolutely.

18 Q. No further questions of the witness, your Honor.

19 MR. BAHLER: No questions, your Honor.

20 THE COURT: You may step down. You may call your next  
21 witness.

22 MR. ALLCOCK: We rest.

23 THE COURT: Do you have any surrebuttal?

24 MR. BAHLER: No, your Honor.

25 THE COURT: Plaintiff close?

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1 MR. ALLCOCK: Yes, your Honor.

2 THE COURT: Defendant close?

3 MR. BAHLER: Defendant closes.

4 THE COURT: I'd like to have counsel up here, please.

5 (At the Bench, on the record.)

6 THE COURT: In all probability, I can work y'all and  
7 have you ready for at least reading of the charge this  
8 afternoon, get that down. On the other hand, I'm not so sure  
9 that everybody's mind is going to be on trial with everything  
10 happening. I can also recess, bring the jury back in the  
11 morning. We can start all -- we'll work today.

12 The federal building is closed as the recommendation  
13 that federal buildings be closed. I do not ever close this  
14 courthouse. Nobody's going to force us to close. But I limit  
15 access. I also can give that option to the jury, but before I  
16 decide what to do, I wanted to find out what your druthers  
17 are.

18 MR. ALLCOCK: Your Honor, from our point of view, it's  
19 a fairly lengthy charge. I believe if we could get that out  
20 of the way today.

21 THE COURT: Well, there's no question.

22 MR. ALLCOCK: That would be fabulous.

23 MR. BAHLER: And we close tomorrow?

24 THE COURT: Is that what y'all wish?

25 MR. BAHLER: That would be fine.

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1 THE COURT: All right. Members of the jury, all that  
2 closing means that you've heard all the evidence that you're  
3 going to hear. We're going to have to go through the  
4 exhibits. It's going to be my obligation to prepare the legal  
5 instructions, which I fear are going to be 50, 60 pages long  
6 because of the nature of the case.

7 Then, I have to give the draft to the lawyers, and  
8 they have the right to make suggestions and make objections,  
9 if they wish, and then, they will know what the legal  
10 instructions are for the first time. I am also required to  
11 read you those legal instructions, but I give them to you in  
12 verbatim in writing in typewritten form so you'll have that,  
13 too.

14 But it's going to take time. And in view of what's  
15 happened today, I just have a hunch that many of us aren't  
16 going to be thinking about patents and the testimony of what's  
17 occurred, so what I'm going to do is recess you till tomorrow,  
18 go home, check with your family members if any of them are  
19 there.

20 Every aircraft in the country has been grounded.  
21 Washington is closed. It is a bad day, and hopefully tomorrow  
22 will be better. So I'd like for you to be here tomorrow at a  
23 quarter of 9:00. I'll give you an extra ten minutes, quarter  
24 of 9:00. Please remember the instructions, be able to answer  
25 these questions.

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1           And I will see you a quarter of 9:00 tomorrow.

2           (Jury not present.)

3           THE COURT: Mr. Bahler, you want to renew your  
4 motions?

5           MR. BAHLER: Yes, your Honor. At this time, we renew  
6 our motions for, first of all, noninfringement and no willful  
7 infringement and, also, for -- on the issues of validity both  
8 anticipation and obviousness, inequitable conduct.

9           However, we do withdraw our motion on diligence. That  
10 was part of the validity motion. You've already ruled on  
11 that, so --

12          THE COURT: You mean indefinite, not on diligence.

13          MR. BAHLER: I'm sorry.

14          THE COURT: That's all right. Everybody's thinking  
15 of --

16          MR. BAHLER: I'm thinking about something else.

17          THE COURT: It was such a red flag, I knew you didn't  
18 mean that. That's all right.

19          MR. BAHLER: I don't have any relatives in New York.  
20 Your Honor, the evidence that was presented on cross-exam --  
21 in rebuttal --

22          THE COURT: I don't need argument. Just cover the  
23 bases you want to cover. All right. Those motions are  
24 overruled.

25          MR. BAHLER: Thank you.

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1 MR. ALLCOCK: Your Honor, we would renew our motions  
2 to the extent --

3 THE COURT: But with the exception of the  
4 indefiniteness, your motions are overruled. Now, counsel, how  
5 long do you wish to argue this case?

6 MR. ALLCOCK: Your Honor, between opening and closing,  
7 I believe an hour and a half.

8 MR. BAHLER: Your Honor, I have about 55 minutes last  
9 time I checked.

10 THE COURT: No. Your time's over.

11 MR. BAHLER: No, no. Closing.

12 THE COURT: No. Your time is over. Closing arguments  
13 don't count on your time. He wants an hour and a half. How  
14 much do you want?

15 MR. BAHLER: Fifty-five minutes.

16 THE COURT: All right. Can you argue in an hour?

17 MR. ALLCOCK: I'd prefer an hour and 15 minutes, your  
18 Honor. I may not use it.

19 THE COURT: All right. I'll give you both an hour and  
20 15 minutes. And you have the privilege of telling the jury, I  
21 will tell them that you have it, and if you want to give it  
22 back, be sure and tell them and you'll get credit for it. In  
23 a case like this, you may get a lot of credit. You never can  
24 tell.

25 I have a couple of questions for you, and then, I will

1 get you the first draft of the instructions that I am  
2 contemplating. I note from both of your requests -- with  
3 regard to the prior art, I don't think the jury's going to  
4 have any problem with what is referred to as the 771 patent.  
5 What about the 006 patent?

6 MR. ALLCOCK: There's no evidence of it, your Honor.  
7 I don't think it should be in the instruction.

8 MR. BAHLER: We apparently didn't present any evidence  
9 on that.

10 THE COURT: I didn't think so, but I goes both of you  
11 anticipated it, because it's in the requested instructions,  
12 but that's what I -- I couldn't see it, so I will remove it.  
13 And then, in the last instruction, in the last case,  
14 apparently, we have an issue of abandonment, suppression or  
15 concealment. Does the defendant still think that's in this  
16 case?

17 MR. DELLETT: That has to do with the Adaptec prior  
18 art.

19 THE COURT: Third party, yes.

20 MR. DELLETT: 102(g) prior art.

21 MR. BAHLER: We don't think it's there. I mean,  
22 that's not good for us.

23 THE COURT: Well, you know, and I know both of you  
24 used the preceding case's --

25 MR. BAHLER: Right.

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1 THE COURT: -- instructions and this was in there.

2 MR. BAHLER: Technically, your Honor, the Adaptec is  
3 one of the G issues and one of the G says that, although I  
4 don't know any evidence of abandonment and concealment.

5 THE COURT: All right. Counsel, it's 10:30. I'd like  
6 you back. I'll have a draft charge for you at 1:30 this  
7 afternoon, and you may recess until then.

8 (Recess.)

9 THE COURT: Okay. Mr. Dellett, are you going to  
10 handle it for the --

11 MR. DELLETT: Yes, sir.

12 THE COURT: -- defendant? All right. Mr. Allcock.

13 MR. ALLCOCK: Mr. Albright.

14 THE COURT: Mr. Albright. All right. Mr. Albright,  
15 you've got the lectern.

16 MR. ALBRIGHT: I'm just handling the offensive part.  
17 I think Mr. Giust is going to handle the responses.

18 THE COURT: Well, whoever's handling anything, have  
19 you had sufficient time to review the proposed legal  
20 instructions to the jury?

21 MR. ALBRIGHT: We have, yes, sir, your Honor.

22 THE COURT: And I'll be glad to hear your suggestions,  
23 objections, comments about the proposed charge.

24 MR. ALBRIGHT: Your Honor, Crossroads has but one. If  
25 you would turn to page 37, please, sir.

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1 THE COURT: All right.

2 MR. ALBRIGHT: If you would go down to the eighth line  
3 on your paragraph, sir.

4 MR. DELLETT: I'm sorry, which line?

5 MR. ALBRIGHT: The eighth. We believe, your Honor,  
6 that it would be more appropriate and compliant with the law  
7 if you would make it clear that the invention had to be filed  
8 in the United States, and therefore, we would recommend a  
9 change to line 8.

10 We would recommend the deletion of the word "the  
11 inventor" and the deletion of the words "conceived of his  
12 invention," and we would replace those with "was filed in the  
13 United States." So that first half of the sentence would  
14 read: "If you find, one, the inventors of the 972 patent  
15 conceived the invention before the 771 patent was filed in the  
16 United States," we believe that complies with the law, your  
17 Honor, because this patent was filed in Japan, as well, but  
18 they would be relevant here, and we believe it would confuse  
19 the jury.

20 THE COURT: The 771 was filed in Japan?

21 MR. ALBRIGHT: Yes, sir.

22 THE COURT: Was there any evidence of that in the  
23 record?

24 MR. ALBRIGHT: I believe we think it's on the face of  
25 the patent.

1 THE COURT: Well, may be. If you find, one, the  
2 inventors of the 972 conceived of the invention before the 771  
3 patent was filed in the United States. Okay.

4 MR. DELLETT: We disagree with that change because of  
5 a -- we believe there is a problem with that section which  
6 entitled anticipation by a prior invention, and based on what  
7 is in the instruction right now, it appears to be this  
8 instruction relates to one of 102(g) of the patent statute  
9 which is, indeed, prior invention.

10 However, what we are claiming that the 771 patent is  
11 in terms of prior art is prior art under Section 102(e), and  
12 in our proposed instruction, we included a 102(e) instruction.

13 The 771 patent is not something we were even asserting  
14 is 102(g). In fact, what we are asserting is 102(g) prior  
15 art, and we believe the evidence is all in the record that it  
16 is 102(g) prior art is the Adaptec Coronado.

17 And so, when we get an opportunity to go through this  
18 -- when I have the lectern, I could go through it in more  
19 detail as exactly how you would want to change this  
20 instruction, your Honor.

21 THE COURT: Okay.

22 MR. ALBRIGHT: Your Honor, that's all we have.

23 THE COURT: Okay, sir. Mr. Dellett.

24 MR. DELLETT: First, before I talk specifically about  
25 the changes that Chaparral proposes in your Honor's

1 instructions, there are two issues that I believe need to be  
2 addressed in a broader sense rather than page-by-page, and the  
3 first of those is that Chaparral has requested an instruction  
4 and renews its request for an instruction on -- that the jury  
5 consider infringement of the original Chaparral products and  
6 the modified Chaparral products separately.

7 The evidence came into the record. Indeed, our  
8 experts and our opening and our closing was based on that  
9 understanding -- based on the evidence that those products had  
10 separate issues of -- there were separate issues of  
11 infringement for the modified products as opposed to the  
12 original products.

13 And the modified products were sold. They're in this  
14 case, and without any jury instruction in that regard, I think  
15 the jury's going to be left in the dark about what our case  
16 was all about. And we'll be handicapped not only based on the  
17 evidence but in closing.

18 THE COURT: Well, you know, I thought I'd crossed this  
19 bridge a couple of times in summary judgment. What makes your  
20 modified products if the jury finds infringement not  
21 infringing?

22 MR. DELLETT: These modified products were modified in  
23 such a way that they do not have a mode that can operate in an  
24 infringing manner.

25 THE COURT: That's not the evidence I've heard.

1           MR. DELLETT: The evidence came in through Mr.  
2           Stephens that these products -- and Mr. Permut that the only  
3           mode that Crossroads argues infringes has been disabled. It  
4           cannot work. It is not a default mode or anything. It is not  
5           a mode that a user can ever go to in those products.

6           That is the evidence that we have offered in this  
7           case. It's in the record. In fact, the only expert that  
8           testified on this on behalf of Crossroads said he didn't even  
9           test whether that possibility existed. So we have evidence in  
10          the record that that mode operates in a different manner  
11          because -- that modified product operates in a different  
12          manner because the mode that is accused of infringement has  
13          been turned off. It cannot be turned on by any customer.

14          MR. GIUST: Your Honor, the evidence was that there  
15          was one mode of operation in all the products. That could be  
16          used in an infringing way. The mode that Chaparral's bringing  
17          up now is an additional mode. If you download forgetting the  
18          password and other information off of the Chaparral web site  
19          that doesn't come with the product, they're contending that  
20          mode has some relevance it.

21          Mr. Stephens on his direct testimony said that both  
22          modes were -- both versions of the product were noninfringing  
23          for the same reasons, didn't distinguish between them. So the  
24          evidence is there's at least a mode in the products, and it  
25          wasn't distinguished in the relevant parts.

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1 MR. GARRETT: Could I speak to that, your Honor?

2 THE COURT: Sure.

3 MR. GARRETT: So that we're clear, the modes in the  
4 original unmodified products, there is a mode where the CAPI  
5 commands and the pass-through commands are not useful, and you  
6 cannot achieve either partial access from a computer or --

7 THE COURT: This is the first modification.

8 MR. GARRETT: Right. So we have -- we have the  
9 original product and it has two different modes, and one of  
10 the two modes is such that the user seeing his computer can no  
11 longer get access to something that he's zoned out of. And  
12 Crossroads has argued that that clearly infringes.

13 Now, the flip side of that is the other mode in that  
14 original product and that is a mode in which when it's on --  
15 when it's in existence, computers can, with the items that Mr.  
16 Giust mentioned, the CAPI application and knowledge about the  
17 pass-through commands break through into off-limits stuff.

18 And so, we have those two modes in the original  
19 products. And the modified products, we no longer have the  
20 first mode that I spoke about. And what I mean by that is  
21 CAPI commands and pass-through commands are always useful. A  
22 user can always, if he has the information, use those commands  
23 to break into his own devices and to get access to things that  
24 he would normally not have access to.

25 It's Crossroads' argument that because those CAPI

1 specifications and the information that tells the user about  
2 the pass-through commands doesn't come with the products it's  
3 sold, none of the users know about them, and they can't  
4 benefit from them.

5 But we've established through fact witnesses that that  
6 material is available if the customers ask for them. And so,  
7 the issue that I think Crossroads is trying to raise and  
8 trying to make the point doesn't infringe --

9 THE COURT: They're saying you're selling an  
10 infringing product, but if your customers take a shotgun and  
11 shoots it where it doesn't work, well, it won't infringe. I  
12 don't follow the logic there.

13 What you're saying is if they do follow what your  
14 salespeople urge them to do, if they want this machine to work  
15 and to get the password and get in and download the software,  
16 then you don't believe it's infringing.

17 MR. GARRETT: That's accurate, your Honor, and the  
18 point that we're trying to make overall is that the prior art  
19 suffers from the same deficiency.

20 In other words, you can set up reserve management so  
21 that nobody can break in, but then, if a user comes along and  
22 he acquires the right information, then he can break in. In  
23 the same sense that you can set up LUN zoning so that nobody  
24 can break in, but if the user acquires the right information,  
25 he, too, can break in.

1           So the overarching concern is that they're trying to  
2 have their cake and eat it, too. In other words, they're  
3 saying the prior art fails for this reason because users can  
4 get this information and break in using resets, power cycles,  
5 and that sort of thing, but the same logic doesn't apply to  
6 Chaparral's customers. Who cares if Chaparral's customers can  
7 get this information from Chaparral's web site. It doesn't  
8 come with the product, so it infringes.

9           And we're saying, well, in the same sense, the prior  
10 art doesn't have to come with that information. The user has  
11 to go out and get it. And so, that's why we're struggling to  
12 bring this modified product to life so that that issue is all  
13 the more clear.

14           THE COURT: All right. Anybody else want to say  
15 anything on this issue?

16           MR. DELLETT: The next issue, again, is something that  
17 I'm not referring to a specific page in the instruction  
18 because it would basically rearrange some of the instructions,  
19 and that is that the instruction on damages should and we ask  
20 that it be moved after invalidity and unenforceability  
21 instructions.

22           And same with the verdict form. It would be  
23 misleading to the jury to think that they can award damages,  
24 even if the patent is invalid, and the way it's set up right  
25 now, it appears that the jury could award damages and then,

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1 move on and later, decide if the patent's valid or not.

2 THE COURT: Well, not if they read any instructions,  
3 they can't. I clearly tell them. But I want to have a  
4 determination on damages. I don't want to go through this for  
5 two more weeks. I'm going to have a determination on damages,  
6 no matter what the jury answers the questions.

7 And I thought about putting it at the last because  
8 that's the way y'all requested it. But I'm going to keep it  
9 in.

10 MR. DELLETT: The next thing that I'd like to bring up  
11 is on page 8 of the instructions, and there are a list of  
12 items at the top of the page. And item No. 5 refers to  
13 whether Chaparral's proof by clear and convincing evidence  
14 that the 972 patent as a whole. The law is inequitable  
15 conduct even on one claim of the patent makes that patent as a  
16 whole unenforceable.

17 So we propose to change item No. 5 that whether  
18 Chaparral has moved by clear and convincing evidence that  
19 Crossroads committed inequitable conduct -- I'm sorry, that  
20 the 972 patent is unenforceable based on inequitable conduct  
21 with respect to any claim of that patent.

22 And I can cite a case for that. That is Baxter vs.  
23 McGaw, M-C-G-A-W, 149 F. 3d, 1321. It is a Federal Circuit  
24 case for --

25 THE COURT: Is 321?

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1 MR. DELLETT: I'm sorry, yes. 1321, Federal Circuit,  
2 1998.

3 THE COURT: All right.

4 MR. DELLETT: The question of the original modified  
5 products are also on page 7. I'm not sure your Honor's  
6 interested in going through each instance where we propose  
7 that the original and modified products be specified for the  
8 jury, but that's the first instance.

9 THE COURT: All right.

10 MR. DELLETT: The second instance where we ask that  
11 originally modified products be specified is on page 9, the  
12 second full paragraph. There's two instances there where --  
13 the first instance says, in this case, Crossroads contends  
14 that Chaparral -- and we propose to add original products and  
15 modified products. The second instance on page 9, where it  
16 says in the same paragraph, you must determine based on any  
17 interpretation of these claims whether Chaparral, and there we  
18 insert original products and modified products.

19 THE COURT: All right.

20 MR. DELLETT: Next, on page No. 15, the second full  
21 paragraph, about the term comprising. Based on the evidence  
22 in the record, thus far, this paragraph is not something that  
23 is in issue on the evidence. I don't believe that Crossroads  
24 or Chaparral brought up evidence as to whether or not  
25 Chaparral's products have additional elements or not, and so

1 that is --

2 THE COURT: Surplus?

3 MR. DELLETT: Surplus, yes.

4 MR. GIUST: No, your Honor, it's not. The additional  
5 element is the step of going to their web site, downloading  
6 this CAPI stuff and trying to use it, using CAPI -- okay. I'm  
7 just looking for an agreement. It was too much to ask, but  
8 that's all right. All right. Go ahead, sir.

9 MR. DELLETT: The last paragraph on page 15, we  
10 propose to change the first sentence there to say, "If an  
11 accused product has several different modes of operation, you  
12 must examine each mode to determine whether the product  
13 infringes" instead of mode.

14 The concern we have there, it has to do with that  
15 issue being the same for validity of a patent. In other  
16 words, if a prior art product -- or if a prior art -- piece of  
17 prior art has several different modes of operation, you must  
18 examine each mode to determine whether it anticipates the  
19 patent.

20 Now, that instruction concerning the prior art having  
21 different modes of operation we believe would best be put on  
22 page 30, but I want to raise it right now that there is a --  
23 the same, the very same issue as to different modes of  
24 operation covers the prior art. This is an important issue  
25 for Chaparral here because the different modes of operation is

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1 something that we're addressing in our modified product by  
2 eliminating the mode of operation just as the prior art did.

3 MR. GARRETT: And the reason we feel this is relevant,  
4 your Honor, is simply the law that says you can't construe  
5 claims differently for infringement than you do for validity.  
6 I'll leave it at that.

7 MR. DELLETT: Thank you.

8 THE COURT: Well, I understand your argument with  
9 regard to the modified products, but I'm not understanding how  
10 it is different between validity and infringement.

11 MR. DELLETT: I'll let Mr. Garrett handle that.

12 MR. GARRETT: Okay. My best attempt.

13 THE COURT: Because I'm pretty well instructing it is  
14 the same.

15 MR. GARRETT: All right. Actually, I think --

16 THE COURT: And those instructions are instructions  
17 that are in every form book that I've got.

18 MR. GARRETT: Right. Actually --

19 THE COURT: On page 15, the last paragraph.

20 MR. GARRETT: Your Honor, if I could talk to Mr.  
21 Dellett for a minute.

22 MR. DELLETT: Our concern is this. I guess we can  
23 propose an instruction on it, too, is that the term different  
24 modes of operation is something that we believe should be  
25 included in the instruction on anticipation, and that is on

1 page 30. And the sentence that Chaparral proposes similarly,  
2 "If prior art has several different modes of operation, you  
3 must examine each mode to determine whether it anticipates the  
4 patent."

5 And we propose that to include that after the first  
6 sentence, on the last paragraph on page 30, following the  
7 sentence, the test for anticipation is similar to the test for  
8 infringement. In fact, we have -- when we got to page 30, I  
9 have some other changes to that paragraph, as well.

10 THE COURT: You want to add what now? Go slow.

11 MR. DELLETT: Similarly, if prior art has several  
12 different modes of operation, you must examine each mode to  
13 determine whether it anticipates the patent.

14 THE COURT: Similarly if prior art has different --

15 MR. DELLETT: Several.

16 THE COURT: Several modes you must examine each mode?  
17 Is that what you're --

18 MR. DELLETT: Each mode to determine whether it  
19 anticipates the patent.

20 MR. GIUST: Where do you want to put that?

21 MR. DELLETT: Following the sentence if an accused  
22 product has several -- I'm sorry. I misspoke there.  
23 Following the sentence the test for anticipation is similar to  
24 the test for infringement on page 30.

25 THE COURT: What says the plaintiff?

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1 MR. DELLETT: I'm sorry?

2 MR. GIUST: Your Honor, our only objection is if there  
3 has been evidence the prior art actually worked in those  
4 different modes. There's been a lot of speculation, Mr.  
5 Hodges up here and it was asked to him, could you program  
6 something to remove this, could you delete this out of the  
7 program? And I don't -- unless there was evidence someone  
8 actually did those things, I don't believe there's need for  
9 this instruction.

10 THE COURT: I'm not writing a textbook, although I'm  
11 sure the jury is going to think we've got a textbook. All  
12 right. I have that one. What's next?

13 MR. DELLETT: Again, on page 17, there are two  
14 instances where we ask that original products and modified  
15 products be separately specified under Question No. 1, we ask  
16 that it be modified to read: Do you find from a preponderance  
17 of the evidence that Chaparral's original products literally  
18 infringed any claim of the 972 patent? And then, in our  
19 proposed instruction, I believe we had a Question 1B  
20 concerning modified products.

21 I don't know if you want me to read that into the  
22 record.

23 THE COURT: Well, you've got it requested. I just had  
24 to laugh at it because the jury would have absolutely no idea  
25 what you're talking about, absolutely. Which are the modified

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1 products, which is the first modified, which is the second  
2 modified. You've got some that have never been changed.  
3 You've got some that have changed. That's the reason I  
4 rejected the request.

5 I sat down and tried to figure, one, if it had any  
6 substance, I couldn't come up with any substance, and two,  
7 some way I could instruct the jury, assuming it had substance  
8 because I've got confidence that y'all are awful good lawyers,  
9 but in some way, that wouldn't make sense to the jury, and I  
10 couldn't come up with anything that made sense including your  
11 suggestion.

12 So it's going to probably occur to you pretty soon I'm  
13 going to deny that --

14 MR. DELLETT: I understand.

15 THE COURT: -- and let you have your objection. But  
16 we tried. But I couldn't -- you know, you've got some with  
17 zone -- LUN zoning, you've got some without, you've got  
18 different products. I couldn't figure out a good way to  
19 define modified products. You've got too many modified  
20 products. I'm going to let the jury decide what they want to.  
21 They've heard the evidence.

22 So you'll have that, Mr. Dellett, running through all  
23 of that, so you can -- right now, I've got it down on pages 7,  
24 9 and 17, whatever pages should have modification if you're  
25 right, you'll have that objection to the charge.

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1 MR. DELLETT: All right. That might make it go a  
2 little faster. On page 22, instruction for Question 4. The  
3 first two numbered points could create some confusion, so we  
4 ask that the order be reversed.

5 In our proposed instruction, we indicated that the  
6 point number two be moved up to number one so that point  
7 number one referred to someone else who had obtained the  
8 product from Chaparral because as it reads right now, there's  
9 potential, I suppose, for somebody to misread it to believe  
10 that the someone else directly infringing the claim had  
11 nothing to do with Chaparral.

12 So we wanted to qualify point number one by indicating  
13 that someone else who obtained a Chaparral product directly  
14 infringed the claim rather than somebody else who, you know,  
15 may have no relationship whatsoever to Chaparral.

16 THE COURT: All right, sir.

17 MR. DELLETT: Next, we get to Question No. 5 regarding  
18 damages, and that's what we ask, again, to move to the end.  
19 Question No. 6, on page 26 --

20 THE COURT: Well, your moving to the end is twofold,  
21 as I understand it: One is you wanted an instruction if  
22 you've answered any of these defensive questions, you didn't  
23 have to answer it?

24 MR. DELLETT: Right.

25 THE COURT: Go ahead. Next question.

1           MR. DELLETT: Question 6 on page -- excuse me. That  
2 was an original and modified one again. Page 28, the last  
3 full paragraph, second sentence. The sentence starting with  
4 the word "prior art means." The term publicly available in  
5 that sentence is misleading because some types of prior art  
6 are not publicly available, so we ask that that term publicly  
7 available be modified to read in existence.

8           MR. GARRETT: Specifically, your Honor, we're speaking  
9 of the Adaptec Coronado product is actually a prior invention.

10          MR. DELLETT: Even though it wasn't publicly available  
11 at the time it became prior art.

12          MR. GARRETT: For the record, now that I think about  
13 it, your Honor, 102(e) patent, the 771 patent is in that same  
14 category in that publicly available information.

15          THE COURT: Well, if they're not publicly available,  
16 how can there be prior art?

17          MR. DELLETT: Well, the statute is --

18          THE COURT: Well, I know, the statute's made by people  
19 like myself that don't have any idea where their rear-ends  
20 are, but that's not the point. The point is how could anybody  
21 find it if prior art, if it's not publicly available?

22                I took out and maybe I'll have to put in the -- you  
23 know, if you make it secret, it's not prior art. I took that  
24 whole paragraph out because there was no evidence in this  
25 whole record that anybody was making something secret or

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1 abandoning anything, and I took it out because, you know, I'm  
2 all interested in getting a jury to give a verdict.

3 If I put this back in, I'm going to have to put that  
4 whole instruction back in. I guess I can go do that, but I'm  
5 not sure that the law is if it's in existence, in existence --  
6 it could be in existence in my garage.

7 MR. GIUST: Or in Japan, like the 771 patent was in  
8 existence in Japan, it stayed on the cover.

9 THE COURT: Or in Pakistan.

10 MR. GIUST: Right. Doesn't qualify as prior art.

11 THE COURT: And there's no evidence of it.

12 MR. DELLETT: We're not seeking to use it because it  
13 was filed in Japan, your Honor.

14 THE COURT: No, but I haven't heard any evidence.

15 MR. DELLETT: That is not an issue in this case. I  
16 can assure you. What is an issue is that 102(e), which is,  
17 you know --

18 THE COURT: I don't know. That's why we're here.

19 MR. DELLETT: 102(e) creates prior art out of a  
20 somewhat unusual situation which is exactly what we have here,  
21 and that is that something was filed in the Patent Office  
22 before the 972 patent was filed in the Patent Office. It is  
23 secret then. It is in the Patent Office. Nobody knows about  
24 it.

25 We didn't know about it until the 771 patent issued,

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1 after the 972 patent had already issued. And 102(e), it  
2 doesn't happen in every case, but in this case, that is what  
3 happened. And the 102(e) prior art was not publicly available  
4 until a couple of months ago.

5 MR. ALLCOCK: Your Honor, maybe I can cut through  
6 this. The only date I'm going to argue is the filing date of  
7 the patent, and so, this is all very interesting, you know,  
8 academic discussion.

9 THE COURT: Well, you have more confidence perhaps in  
10 the --

11 MR. ALLCOCK: I mean, the only way this comes up is  
12 if --

13 THE COURT: We're talking about something so minute,  
14 it's not going to make any difference to the jury at all. So  
15 it's only the appellate court that I am concerned about if  
16 they come in on some technicality in this very complex case on  
17 whether or not it's public or in existence. You're going to  
18 have to assume you get the verdict, you're going to have to  
19 live with it. Which one do you want to live with?

20 MR. ALLCOCK: Well, my only point, your Honor, was the  
21 only way it would become material is if someone would have  
22 somehow argued that the patent isn't prior art because it  
23 issued in 2000, or something, and no one's going to say that.

24 THE COURT: I doubt that 25 percent of these 46 pages  
25 are material, in any way, at all in the determination of this

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1 verdict. I'm going to repeat: Assuming you get a verdict,  
2 which way do you want it? Do you want it publicly available  
3 or in existence?

4 MR. GIUST: Your Honor, I think I can fix it. They  
5 have three kinds of prior art, publicly available is one of  
6 them, one of them is filed earlier in the U.S. Patent Office  
7 is the other kind, and then, third kind is previously  
8 invented. So if we just live those three, I think there won't  
9 be a problem.

10 THE COURT: They're already listed.

11 MR. GIUST: Okay. Then, we want to go with publicly  
12 available.

13 THE COURT: All right.

14 MR. GIUST: Because in existence is wrong.

15 THE COURT: You're not going to have the argument that  
16 would be so -- the argument is so subtle that no jury's going  
17 to catch it unless y'all make it, then we'll have to see where  
18 we are. But I'm sure I've got confidence that counsel is not  
19 going to make any of this. All right. Next objection.

20 MR. DELLETT: Next objection that Chaparral has is on  
21 page 29, paragraph No. 6, near the top of the page. The last  
22 word before the semicolon is controlled. Looks like that may  
23 have been a typo, the word is concealed in the statute, I  
24 believe. I think that's from 102(g). Right. 102(g).

25 THE COURT: All right, sir.

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1 MR. DELLETT: Next on the same page, we ask that a --  
2 the jury be instructed that the filing date of the 972 patent  
3 is December 31st, 1997. I do recall that being in the earlier  
4 instruction and we ask that it stay in.

5 THE COURT: Where do we put it?

6 MR. DELLETT: Between the paragraph starting with the  
7 word "known" and the next paragraph that starts with "for  
8 prior art." It could be a one-sentence paragraph there.

9 THE COURT: Does that relate to anything other than  
10 the conception argument?

11 MR. DELLETT: Yes, it relates to whether or not other  
12 things, for example, the Adaptec prior art. Well, it has to  
13 do with the introduction to practice which is important to  
14 consent for the Adaptec product as well as the 771 patent.

15 THE COURT: So I just put it at one place, you're just  
16 putting it in this relatively obscure place, and they'll just  
17 pick it up for both of them.

18 MR. DELLETT: Right.

19 THE COURT: All right. Good. What's next?

20 MR. DELLETT: We'll take our chances. Now, the next  
21 item is on page 30, and that has to do with the paragraph that  
22 we referred to a little bit earlier, and that paragraph starts  
23 with the words "the test for anticipation." Mr. Garrett, I  
24 think, has a proposed substitution for that entire paragraph.

25 MR. GARRETT: Not for the entire paragraph, your

1 Honor. My only concern with it was in the sentence beginning,  
2 for example, where you describe the situation, we would like  
3 something broader than just reference to a product. And so,  
4 getting to that end, we would propose these two sentences in  
5 place of the last two sentences in that paragraph.

6 For example, if you find that technology such as a  
7 product or a description in a publication meets the claims of  
8 the 972 patent and was invented before the subject matter  
9 claimed within the 972 patent, you must find that the  
10 technology anticipates the claim because it is prior art. But  
11 if that same technology were invented after the subject matter  
12 contained within the 972 patent, it would infringe the patent.

13 It's basically just broadening the concept you're  
14 expressing a little bit.

15 THE COURT: All right. Give it to me again. For  
16 example, if you find the technology.

17 MR. GARRETT: If you find that technology such as a  
18 product or a description in a publication -- and that phrase  
19 could be set off by parentheses or commas.

20 THE COURT: Such as a product or publication, okay.

21 MR. GARRETT: Meets the claims of the 972 patent.

22 THE COURT: Okay.

23 MR. GARRETT: And was invented before the subject  
24 matter.

25 THE COURT: Can you invent a publication?

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1 MR. GARRETT: Well, what I meant to say was -- no, I  
2 don't think you can, your Honor, but you can invent  
3 technology. And so --

4 THE COURT: That's described in the publication.

5 MR. GARRETT: Yes. Maybe instead of a product or a  
6 publication or product, a description in a publication would  
7 be a better way.

8 THE COURT: Okay. Before the subject matter.

9 MR. GARRETT: Before the subject matter claimed within  
10 the 972 patent, you must find that the technology anticipates  
11 the claim because it is prior art.

12 THE COURT: Well, we've got claims in the first part  
13 of your suggestion and claim in the singular in the second  
14 part.

15 MR. GARRETT: You could say meets a claim of the 972  
16 patent instead of meets the claims.

17 THE COURT: Uh-huh. Okay.

18 MR. GARRETT: And then, your last sentence would  
19 almost verbatim remain the same. It would just change to  
20 instead of but if that same product were invented would go to  
21 but if that same technology were invented. And then, instead  
22 of a reference to the technology contained within the 972  
23 patent, it would be subject matter contained within the 972  
24 patent.

25 THE COURT: Better read that last sentence that you

1 want.

2 MR. GARRETT: But if that same technology were  
3 invented after the subject matter -- I'm sorry, claimed within  
4 the 972 patent, it would infringe the patent.

5 THE COURT: Okay.

6 MR. GIUST: Your Honor, that's not a correct statement  
7 of the law as the change that they requested. This is a  
8 for-example phrase. It's supposed to give an example. The  
9 example in here isn't in compliance with the law.

10 THE COURT: Well, it's a stock instruction. I mean,  
11 I've given it before. It's been there before.

12 MR. GIUST: Right, as it is is fine, but with the  
13 example that poses technology does not qualify as prior art,  
14 for example. I mean what are they talking about? It's vague,  
15 it's making it more confusing. I just think we just want the  
16 original.

17 MR. DELLETT: The prior art that may be in a product  
18 that's in this sentence, prior art doesn't necessarily have  
19 claims, first of all, and the -- we're concerned with claims  
20 in the patent, not claims in the prior art.

21 MR. GARRETT: Just to beat a dead horse, your Honor,  
22 just to address one issue you said. The sentence begins, if  
23 technology was invented or if technology meets the claimed  
24 subject matter and it was invented before, then it's prior art  
25 and has to anticipate. That's accurate.

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1 MR. GIUST: No, it's not. Technology in the United  
2 States qualifying under 102(b). I mean, you're just assuming  
3 that anything in the world existed and qualifies as prior art.  
4 That's not an accurate statement.

5 THE COURT: What's the problem if I just change the  
6 word "claims" to "technology"?

7 MR. GIUST: No problem, your Honor.

8 THE COURT: Then, it reads: If you find that a  
9 product that contains the same technology as the 972 patent  
10 was invented before the technology contained within the 972,  
11 et cetera.

12 MR. DELLETT: Just one more issue there and that has  
13 to do with the -- instead of the technology contained within  
14 the 972 patent, we need to have that read technology claimed  
15 in the 972 patent.

16 MR. GARRETT: Yeah, that would be our only suggestion  
17 if you made that modification, your Honor.

18 THE COURT: You want to instruct the jury that all  
19 they have to do is claim it?

20 MR. DELLETT: No, no.

21 THE COURT: That's the way the English language reads.  
22 To just say before the technology contained, well, that's  
23 pretty simple. If you say the technology claimed in the 972.  
24 All right. I'm trying to understand, really, what you're  
25 complaining about. You're not really doing it.

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1 MR. DELLETT: Can I try one more time?

2 THE COURT: You may.

3 MR. DELLETT: I don't want to -- this isn't splitting  
4 hairs, I don't believe, because we're looking at the  
5 technology claimed, we're looking at the claims of the 972  
6 patent, and we're looking to see if that technology existed in  
7 the prior art, whether the prior art claimed it or not, so  
8 that's the reason that we have a dispute over this particular  
9 sentence.

10 For example, if you look at the 771 patent, the jury  
11 may look at the claims of the 771 patent, which are -- aren't  
12 really something that anybody's argued here, as far as I could  
13 tell, but whatever the 771 patent claimed doesn't matter.  
14 What the technology exists in the 771 patent is important,  
15 whether it's in the abstract or the drawings, or whatever.  
16 But then, you look at the 771 patent and you compare it to  
17 what the 972 patent claimed.

18 MR. GIUST: Nothing to add, your Honor.

19 THE COURT: Well, if I change the word "claims" to  
20 "technology" and change the word "contained" to "claimed,"  
21 does that affect the plaintiff?

22 MR. GIUST: No.

23 THE COURT: All right.

24 MR. DELLETT: We're happy.

25 MR. GARRETT: We're happy, your Honor.

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1 THE COURT: Oh, good, somebody's happy. All right.

2 MR. DELLETT: Made my day.

3 THE COURT: All right.

4 MR. DELLETT: Page 31.

5 THE COURT: Haven't you gone through a couple of more  
6 pages? Go ahead.

7 MR. DELLETT: Didn't want any page to feel left out.

8 The third sentence -- I'm sorry, the fourth sentence has to do  
9 with inherent disclosure in prior art. That is a surplus  
10 because I don't believe that the issue of inherency is  
11 something that has been argued or put into evidence. So we  
12 would delete that sentence that's starting with "a party  
13 asserting that."

14 MR. GIUST: Fine. If they want to delete it, delete  
15 it.

16 THE COURT: Fine. I'll take out the sentence and  
17 then, leave in determining.

18 MR. DELLETT: Right.

19 THE COURT: Okay.

20 MR. DELLETT: The next paragraph on page 31, that has  
21 a list of four types of prior art, and the one that is missing  
22 is the 102(e), and we propose that be listed in that group as  
23 an earlier filed patent application, and that's a -- about as  
24 few words as we can put 102(e) into, your Honor. It's  
25 something we'll address again in more detail. But it needs to

1 be in that list there as a separate type of prior art.

2 MR. GIUST: We would only add that it should be an  
3 earlier filed U.S. patent.

4 MR. DELLETT: That's fine.

5 THE COURT: Okay.

6 MR. DELLETT: In that same sentence, your Honor, the  
7 third item --

8 THE COURT: What same sentence? The one you're  
9 adding?

10 MR. DELLETT: No. In the sentence that says a patent  
11 claim may be anticipated by several categories -- I'm sorry.  
12 The sentence that starts with in this case, Chaparral alleges  
13 the 972 patent claims were anticipated by and either item No.  
14 1 or -- it didn't really matter which order they're in, I  
15 suppose, but one of those items should be added to be an  
16 earlier filed U.S. patent application.

17 Continuing in that same list, the term public sale is  
18 not what this statute refers to. The statute refers to on  
19 sale, and it could be even a secret sale to be -- and still be  
20 on sale and be prior art under Section 102(b). So we propose  
21 deleting the term public from that and put the word on instead  
22 because that's what the statute says.

23 THE COURT: Well, we're sure going to make the statute  
24 look good, but what is a jury going to think when they see on  
25 sale? They're going to think there's a typographical error in

1 the charge. How about sale of a product?

2 MR. DELLETT: Well, then, you know, I guess perhaps  
3 the jury's not going to appreciate that difference, but the  
4 statute says on sale, and the statute -- I'm sorry, the case  
5 law interprets the term on sale to mean something fairly  
6 specific which is an offer for sale or an actual sale.

7 So rather than dice it too fine, I say the term on  
8 sale is about as few words as we can get and still hopefully  
9 be in compliance with 102(b).

10 MR. GIUST: Your Honor, I would just say to make it  
11 simpler, just say subject to a commercial sale because that's  
12 what the instructions later talk about, a commercial sale.

13 THE COURT: Well, that's what I've got, and then, I  
14 have it defined as -- actually, I think the defendant is  
15 hurting himself by making this argument because if you read on  
16 sale or public sale or any sale, you don't get offer for sale.

17 MR. GIUST: So commercial sale is --

18 THE COURT: Define it later on, but not here. What's  
19 wrong with commercial sale?

20 MR. DELLETT: Well, again, there are cases that say an  
21 offer for sale is on sale. So the term commercial there is  
22 too narrow.

23 THE COURT: Let me tell you. I'll bet you all the  
24 money my children have, which isn't much probably, that  
25 there's not a single juror over there that knows what the

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1 patent statute says, and I'm not writing this for the law  
2 professors or the Federal Circuit. And if they want to  
3 reverse me on that, they can learn Texas language.

4 But this is your defense. And if you want on sale,  
5 I'm going to put it there. But I tell you if I was in your  
6 position, I would not want it. And if anybody says to the  
7 jury "on sale," I don't know what that is, and they look up at  
8 me, I'm going to go, "I don't know."

9 All right. We've got that now. That's on the  
10 paragraph before the anticipation by printed publication in  
11 which has the additional four, right?

12 MR. DELLETT: I'm sorry.

13 THE COURT: I just want to make sure. The earlier  
14 filed U.S. patent application goes in where?

15 MR. DELLETT: I would list that as No. 1 and then, No.  
16 2 is printed publication, No. 3, public use, No. 4, on sale,  
17 and No. 5, prior invention.

18 THE COURT: All right.

19 MR. DELLETT: And then, the next sentence, of course,  
20 would say anticipate under any of these five categories.

21 THE COURT: All right.

22 MR. DELLETT: The next objection that Chaparral has  
23 concerns the 102(e) instruction, and that was in our proposed  
24 instructions at pages 36 and 37, and, again, this relates  
25 specifically to the 771 prior art. And that paragraph should

1 be modified slightly from what we proposed earlier to read,  
2 anticipation by an earlier filed U.S. patent application. And  
3 I could continue reading on there.

4 Chaparral contends that Claims 1 through 4 and 7  
5 through 14 of the 972 patent were anticipated because the  
6 invention defined in those claims was described in U.S. patent  
7 No. 6219771, paren, the 771 patent, close paren, and because  
8 the application for the 771 patent was filed before inventors  
9 of the --

10 THE COURT: Where are you reading from? I'm looking  
11 at your requested instructions.

12 MR. DELLETT: There were supplemental jury  
13 instructions earlier version, it's on page 30.

14 THE COURT: All right.

15 MR. DELLETT: I'm not sure where I left off, but I  
16 will continue at the top of the continued jury instructions.  
17 The claim of the 972 patent would be invalid if the invention  
18 defined by that claim is described in a United States patent  
19 issued on a patent application that was filed before the  
20 invention was made by Crossroads.

21 You must determine the date of the invention for the  
22 claims of the 972 patent. If you determine the date of  
23 invention for those claims as not earlier than the filing date  
24 of the earlier filed patent application, then the earlier  
25 filed patent application is prior art and can anticipate or

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1 render obvious the claims of the 972 patent.

2 To show anticipation of a claim of the 972 patent,  
3 Chaparral must show by clear and convincing evidence that the  
4 earlier filed patent application described each and every  
5 element of the claim.

6 THE COURT: You know, I seem to be the only person in  
7 this whole trial that tries to get the issue to the jury so  
8 they can understand it and they can resolve it based on the  
9 evidence they hear, no matter how technical. You patents  
10 lawyers make it impossible.

11 I could put what you're asking, Mr. Dellett, in that  
12 charge. No one will understand it, not a soul. They won't  
13 pay any attention to it, and you, who have a defense perhaps  
14 in the evidence, lose that defense.

15 You put me in a position where I don't know if it's  
16 reversible error or not. It would not be in the Fifth  
17 Circuit, but you don't know what the Federal Circuit's going  
18 to do. I don't have enough familiarity with them although  
19 I've only been reversed once and that's because I gave too  
20 small a verdict.

21 But a jury's not going to understand that, not a word  
22 of it. And, you know, you can sit there and smile, but if you  
23 put it in English where they understand it, they might find  
24 for you. But you eliminate that chance because you're so  
25 committed to the worship of the patent statute that you lose

1 forest from the trees.

2 Now, I followed you when you were dictating that, but  
3 you changed from your supplemental requested instructions  
4 filed yesterday, this mere 50-something-page supplemental. So  
5 why don't you just tell me the changes you made. You dropped  
6 Geoffry Hoese and Jeffry Russell and you made Crossroads.

7 MR. DELLETT: Right.

8 THE COURT: And then, you changed --

9 MR. ALLCOCK: Your Honor, if I could weigh in on this  
10 for just a second.

11 THE COURT: Sure. Why not.

12 MR. ALLCOCK: I've tried a number of cases on this  
13 conception reduction of practice stuff. The instruction that  
14 you have on pages 36 and 37 is as clear, I think, as you can  
15 state it.

16 THE COURT: Well, it's as clear as I can state it.  
17 That's correct. We worked on it. And the problem is it's not  
18 in the structure as the same place that it was. That's one of  
19 the problems. And then, the second is -- the other is just  
20 going to go just -- maybe that's to your advantage, though.

21 What are you going to want me to do when I get over  
22 there -- let's just assume that we ever get through all of  
23 page 31, which, I think, is a bad assumption, but let's just  
24 assume that we do, what's wrong with the one I have?

25 MR. DELLETT: That's the 102(e) versus 102(g) issue.

1 Now, as a patent lawyer, that is something that so -- we're  
2 stuck with in the statute. Unfortunately, those are very  
3 difficult --

4 THE COURT: I'm going to unstick you because I'm going  
5 to require them to find a date, and if they find the date, all  
6 of these arguments are immaterial, aren't they?

7 MR. DELLETT: I'm sorry, as far as the prior art being  
8 actual prior art or not?

9 THE COURT: No. The patent. If you'll look on my  
10 verdict form, I'm having them find the date of the invention  
11 under the instructions. If they find that date, the letter to  
12 the lawyer, you know, we're just looking at how many angels  
13 are on the top of a pin.

14 But, you know, this is your issue, and I -- I'm not  
15 mad, I just took a lot of time to try to write something that  
16 I thought maybe these seven jurors would understand so that  
17 your defense would be there. But if you want it in this other  
18 way, it is your choice.

19 All right. So the last sentence, if you determine the  
20 date of the invention for those claims is not earlier than the  
21 filing of the earlier filed patent application, that asserted  
22 patent is prior art and can anticipate or render obvious the  
23 claims of the 972 patent.

24 MR. DELLETT: Right.

25 THE COURT: All right. While we're on it, does the

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1 plaintiff have objections to that?

2 MR. GIUST: Except it adds to the confusion, your  
3 Honor, but there's no objection.

4 THE COURT: All right. The next objection. Then,  
5 we'll have to renumber.

6 MR. DELLETT: Page 32, the second paragraph, starting  
7 with the word "an element is inherently disclosed." That,  
8 again, is not in the evidence or in the case, so we ask that  
9 that paragraph be deleted.

10 MR. GIUST: No objection.

11 THE COURT: All right.

12 MR. DELLETT: The last full paragraph on page 32,  
13 starting with the words "public use." We ask that it read,  
14 "Public use is any use by the inventor or a person other than  
15 the inventor."

16 MR. GIUST: We have no objection, your Honor.

17 THE COURT: All right. Public use is any use by an  
18 inventor. Is it just changing that 100 percent?

19 MR. ALBRIGHT: Your Honor, we would just leave out the  
20 word -- just say "any use by any person who is under no  
21 limitation."

22 MR. DELLETT: That's fine. So we're taking out the  
23 words "other than the inventor."

24 THE COURT: It's not objected to. All right.

25 MR. DELLETT: Next, on page 33, there we have three

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1 instances where the word "commercial sale" is used.

2 MR. ALBRIGHT: Your Honor, if we could just go back  
3 for a second. If you read that sentence, I don't know if it  
4 makes sense.

5 THE COURT: Well, I don't think that has anything to  
6 do with it, Mr. Albright.

7 MR. ALBRIGHT: I think the sentence -- and, John,  
8 check me here, but I think the sentence would end at the word  
9 "secrecy."

10 MR. GIUST: By the inventor.

11 MR. ALBRIGHT: By the inventor. I stand corrected.  
12 Thank you, sir.

13 THE COURT: All right. Then, page 33.

14 MR. DELLETT: Let me back up there. I think we'll  
15 accept the word "commercial sale." We'll withdraw that  
16 objection.

17 THE COURT: Well, you didn't make it, so it's all  
18 right.

19 MR. DELLETT: All right.

20 THE COURT: What's your next objection?

21 MR. DELLETT: On page 35, the first paragraph, last  
22 sentence. We ask that the word "has begun" and instead -- I'm  
23 sorry. Delete the word "has begun which" and instead, have  
24 the word "continuous" be before the word "diligence." The  
25 reason we ask that that change be made is that diligence, just

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1 beginning diligence isn't enough under the law. Continuous  
2 diligence is required.

3 THE COURT: All right.

4 MR. GIUST: Your Honor, we object to the change. The  
5 law requires only reasonable diligence. And this would appear  
6 to give you a higher burden -- give us a higher burden than  
7 the law requires.

8 MR. DELLETT: We can agree to reasonable diligence as  
9 long as we delete the words "has begun which."

10 THE COURT: Reasonable continuous diligence or --

11 MR. DELLETT: Reasonable diligence is fine.

12 THE COURT: And I thought your objection was because  
13 of the lack of continuous, even though I've instructed it  
14 somewhere.

15 MR. DELLETT: No. I'm concerned about the "has begun  
16 which."

17 THE COURT: All right. So reasonable diligence  
18 would --

19 MR. DELLETT: I'm sorry, it should say reasonable  
20 diligence which results.

21 THE COURT: All right. Okay. Next.

22 MR. DELLETT: Page 36, the full paragraph in the  
23 middle of the page, first sentence, instead of the words  
24 "after his conception date," we ask the words be inserted "for  
25 the time period preceding the prior invention." We withdraw

1 that objection.

2 THE COURT: Okay. Next.

3 MR. DELLETT: Last page of objections, 37. That page  
4 refers to the 771 patent on several occasions, and since we  
5 are not asserting the 771 patent as 102(g) anticipation prior  
6 to the invention, but we're asserting it as 102(e), we would  
7 -- instead of the word "771 patent" on each instance, we would  
8 have the words "Adaptec" or "Adaptec Coronado."

9 And I could go through each instance, but as sort of a  
10 global change. This section of the jury instruction bears on  
11 the Adaptec Coronado prior art, not on the 771 patent. And,  
12 of course, provided that your Honor allows -- instructs the  
13 jury on Section 102(e), then that will take care of the 771  
14 prior art issue.

15 THE COURT: All right. So you're sucking out 771,  
16 placing it back in the first paragraph on page 30. And you  
17 want me to simply substitute Adaptec Coronado on the 771  
18 notations. Is that what you're telling me?

19 MR. DELLETT: Basically, with one slight difference.  
20 I think the proposed instruction that relates to the 771  
21 patent would be on page 31, and then, there are -- I guess,  
22 maybe, the easiest way for me is to read exactly the language  
23 that we would substitute. And that is, specifically, at the  
24 top of the page, second line: "Specifically, Chaparral has  
25 argued that the Adaptec Coronado" --

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1 THE COURT: Do you have this in your requested  
2 instructions --

3 MR. DELLETT: It was in --

4 THE COURT: -- because I don't know how --

5 MR. DELLETT: I think we refer to it generically in  
6 our proposed instruction as a third party -- third party's  
7 prior invention, and since this instruction now we're at the  
8 771 patent --

9 THE COURT: Well, why isn't Adaptec already covered in  
10 the prior art instructions?

11 MR. DELLETT: Because Adaptec is only prior art under  
12 Section 102(g). It was -- we are not asserting that it was  
13 publicly used or offered for sale -- I'm sorry. We are not  
14 asserting that it was offered for sale more than one year  
15 before the filing date. We're not asserting that it's 102(e).  
16 And so, this section of the jury instructions deal very  
17 specifically with the Adaptec product and why it's prior art  
18 under the statute.

19 THE COURT: All right. Read it out and Lily will type  
20 it up for me if I need it. You're about to come out of your  
21 seat. Is there something you want to say?

22 MR. GIUST: Yes, your Honor. This section we want to  
23 make sure whatever happens in the 771, something like this  
24 section goes with it if they're going to move it somewhere  
25 else. All this law is applicable to the 771.

1 THE COURT: Well, he's basically going to say -- he's  
2 saying that he's not offering 771 under G.

3 MR. GIUST: It doesn't matter that under 102(e), all  
4 this conception of reduction of practice law still would apply  
5 to it, and we want the instruction to be as it is here for  
6 that section.

7 THE COURT: All right.

8 MR. ALLCOCK: Maybe I'll articulate, your Honor. The  
9 same -- it's up to him if he wants to do it twice. That's his  
10 problem. But this is really an excellent statement of exactly  
11 what needs to be proven under either E or G. And so, if he  
12 wants it in both places, that's fine. But this really lays it  
13 out extremely well so that in one -- three sentences you can  
14 tell the jury what they need to decide.

15 MR. DELLETT: I don't have any argument with  
16 specifying the conception of reduction practice applies to --  
17 and diligence, for that matter, applies to both this 102(e)  
18 and 102(g) prior art.

19 Now, exactly how that would be arranged, you know, we  
20 could have it in twice or have it in once. I guess I'd prefer  
21 to have it in once, but if -- that's just juggle the  
22 paragraphs a little bit. The proposed Section 102(e) part on  
23 page 31, perhaps we could move that instead of being the very  
24 first of the four or five types of prior art, we could move it  
25 to the bottom of page -- or perhaps an even easier way to say

1 that the discussion on pages 35 through 37 apply to both prior  
2 art anticipation by prior invention and anticipated by earlier  
3 filed patent application.

4 THE COURT: Just dawned on me that you're adding back  
5 in the language on the 006 patent that you agreed could be  
6 taken out on your anticipation argument by earlier filed U.S.  
7 application, you start referring to it in your instructions as  
8 a 006, which I've taken all of that out because you agreed  
9 that it wasn't in the case. Now you're putting it back in the  
10 case.

11 MR. DELLETT: I certainly didn't intend to.

12 THE COURT: Well, it says so if you look at page 30 of  
13 your supplemental instructions. The last sentence says,  
14 Chaparral also asserts that claims are anticipated by the  
15 United States patent, the 006 patent.

16 MR. DELLETT: Sorry, your Honor. I may have  
17 misspoken, but I -- what I meant to read in was limited to  
18 that section to the 972 patent. So any reference to the 006  
19 patent we ask to be deleted.

20 THE COURT: All right.

21 MR. DELLETT: I can read in the specific changes that  
22 we would have on page 37 where we specified the Adaptec  
23 Coronado instead of the 771 patent that reads: Specifically,  
24 Chaparral has argued that the Adaptec Coronado constitutes  
25 prior art. Crossroads had argued that this is not prior art

1 because -- that the Adaptec Coronado is not prior art because  
2 Crossroads conceived of the invention embodied in the 972  
3 patent prior to the date the invention in the Adaptec Coronado  
4 was made.

5           You must determine the date the inventors of the 972  
6 patent conceived of the invention embodied within the patent.  
7 Then, you must decide whether Crossroads was reasonably  
8 diligent in reducing its invention to practice. If you find,  
9 one, inventors of the 972 patent conceived of the invention  
10 before Adaptec conceived of his invention or its invention,  
11 and, two, the inventors of the 972 patent were reasonably  
12 diligent in reducing the invention to practice, you must  
13 conclude that the Adaptec Coronado cannot invalidate the 972  
14 patent.

15           If you conclude Crossroads did not conceive of its  
16 invention prior to the date the Adaptec Coronado was invented  
17 or Crossroads was not reasonably diligent in reducing its  
18 invention to practice, you must then determine whether the  
19 Adaptec Coronado -- you must then determine whether the  
20 Adaptec Coronado constitutes prior art before invalidating  
21 Crossroads' patent. That is all the objections.

22           THE COURT: Plaintiff wants me to include not only  
23 Adaptec Coronado, but still include the 771 in that  
24 instruction.

25           MR. ALLCOCK: Yes, your Honor.

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1 THE COURT: So I have to put both of them in there?

2 MR. ALLCOCK: If they want two separate sections, I  
3 think that's the only way to do it.

4 THE COURT: All right. Counsel, for the record --

5 MR. GIUST: One more thing, your Honor, on page 37,  
6 five lines down, it says the 771 patent was conceived, and  
7 that's just another one of these places where it should be 77  
8 patent -- 771 patent was filed in the U.S.

9 THE COURT: Okay. All right. On the first objection  
10 with regard to the modification and the subsequent  
11 modification and all of the products being sold, those are  
12 overruled. The second objection with regard to the damage  
13 issue being last is overruled.

14 The third objection on page 8, making the fifth  
15 category of inequitable conduct with respect to any claim, I  
16 didn't hear from the plaintiff on that. Do y'all agree that  
17 is the law? Or do I need to read this Baxter case?

18 MR. GIUST: Sounds good to us, your Honor.

19 THE COURT: All right. We'll sustain that objection.  
20 I'll make that change on page 8. Fourth objection, page 15,  
21 it is agreed that the comprising surplus -- no, it's not  
22 agreed the comprising surplus, that objection is overruled.  
23 Page 15, the next objection changing made to product and  
24 adding the sentence is overruled.

25 The next objection, page 22 to invert two and one, I

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1 will grant, and I will make that inversion. The eighth  
2 objection on page 23, moving the damage issue to the end,  
3 again, will be denied. I started to grant one and overrule  
4 the other, but I don't want to confuse the Federal Circuit.

5 The tenth objection on page 28, changing, quote,  
6 publicly available, end quote, to in existence, end quote, I  
7 overrule. Next objection, on page 29, changing the word  
8 "controlled" to "concealed," I grant.

9 The next objection on page 29, placing the undisputed  
10 instruction the filing date was December 31, 1997, I grant.  
11 Page 30, I'm going to overrule with the objection, with the  
12 exception, and I will change the word "claim" to "technology"  
13 and the word "contained" to "claimed."

14 Page 31, the next objection, I will grant, and I will  
15 delete the sentence that begins, quote, a party. Next  
16 objection, on page 31, I will add the paragraph earlier filed  
17 United States patent application and will place the requested  
18 instruction in the supplemental proposed instructions made by  
19 the defendant.

20 Page 31, I will also change the word public to on in  
21 worship of the statute. The eighteenth objection is on page  
22 32, add the first paragraph which I have already granted. The  
23 nineteenth objection, page 32 to eliminate the sentence that  
24 begins, an element, I grant as not disputed. The next  
25 objection, on page 32, to delete, quote, other than the

1 inventor, end quote, I grant as undisputed.

2           The next objection, on page 35, I will change the  
3 words "has begun which" to "reasonable diligence which  
4 results." And on page 37, the last and final objection, which  
5 I had down about 25, is that I will try to reword page 37 to  
6 contain both the 771 and the Adaptec Coronado product, which  
7 is going to take us a little while, so make yourself at home.

8           (Recess.)

9           THE COURT: Okay. Mr. Dellett.

10           MR. DELLETT: Your Honor, I believe it was Wednesday,  
11 September 5th of the trial, that Mr. Middleton was on the  
12 witness stand and Mr. -- after Mr. Albright had direct  
13 examination of Mr. Middleton about marking patent numbers on  
14 Crossroads' product, Mr. Bahler asked this question: Mr.  
15 Middleton, I've handed you what's been marked into evidence as  
16 defendant --

17           THE COURT: It's 123, label applied to the 4100 and  
18 4200 product. Right, he mentions that.

19           MR. DELLETT: And he asks Mr. Middleton --

20           THE COURT: Page 6 he asked him. The label product by  
21 the 972.

22           MR. DELLETT: Mr. Middleton indicated that is what, in  
23 fact, Crossroads applied to as its product. Examination of  
24 Mr. Middleton went on for several pages in the transcript.  
25 I'm not going to read it at this time, but Mr. Middleton --

1 Mr. Middleton certainly authenticated that document, indicated  
2 it was what Crossroads did apply to its products.

3 The objection or the exhibit was before the jury  
4 without objection by Crossroads' attorneys, and, in fact, it  
5 appears that after Mr. Middleton said it appears to have been  
6 admitted -- I handed you what's been marked into evidence and  
7 continued to examine Mr. Middleton about it, there was no  
8 objection by Crossroads.

9 It appears, as far as I can tell, that there was an  
10 omission as to formally asking the Court to admit it into  
11 evidence because Mr. Bahler was under the impression that it  
12 had been admitted into evidence.

13 We didn't find out until our paralegal, sometime at  
14 noon, checked with Margaret about the exhibit lists that her  
15 list showed it was not admitted into evidence. So we ask that  
16 that exhibit -- Defendant's Exhibit 123 be admitted into  
17 evidence based on the examination of Mr. Middleton about that  
18 without objection by Crossroads and --

19 THE COURT: Of course, there was no objection because  
20 there was never any offer. My notes do show that he did talk  
21 to it extensively about 123, Defendant's 123. Particularly  
22 page 26 of 123 by my notes clearly show he never moved for the  
23 introduction. Is there any objection to reopening and  
24 entering that exhibit?

25 MR. ALBRIGHT: Yes, your Honor, we would object to it.

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1 THE COURT: All right. It will remain not admitted.

2 (Proceedings adjourned.)

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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  
 CORPORATION )  
 vs. ) Austin, Texas )  
 CHAPARRAL NETWORK ) STORAGE, INC., A )  
 DELAWARE CORPORATION ) September 10, 2001

TRANSCRIPT OF TRIAL ON THE MERITS

BEFORE THE HONORABLE SAM SPARKS

Volume 4 of 6

11 APPEARANCES:

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25 Proceedings recorded by mechanical stenography, transcript produced by c

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|    | I N D E X             |       |          |                   |
|----|-----------------------|-------|----------|-------------------|
|    | Direct                | Cross | Redirect | RecrossWitnesses: |
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| 2  |                       |       |          |                   |
| 3  |                       |       |          |                   |
| 4  | Ian R. Davies         | 9     | 31       | 35                |
| 5  | George A. Kalwitz     | 36    | 45       |                   |
| 6  | Stanton M.            |       |          |                   |
| 7  | Manzanares            | 47    |          |                   |
| 8  | Allen R. Permut       | 58    | 72       | 79                |
| 9  | Barbara Bardach       | 81    |          |                   |
| 10 | David F. Zinger       | 97    | 114      | 136 138           |
| 11 | Gary R. Stephens      | 139   | 204      | 213               |
| 12 | Kenneth S. Flamm      | 215   |          |                   |
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| 15 | Proceedings Adjourned |       |          | 248               |
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|    | E X H I B I T S                  |          |
|----|----------------------------------|----------|
|    | Offered                          | Admitted |
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| 2  |                                  |          |
| 3  | Plaintiff's                      |          |
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| 9  | #615 Demonstrative               | 77 77    |
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| 13 | #21-29                           | 146 146  |
| 14 | #31,34-57,84,87-102,104,         | 146 146  |
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1 THE COURT: All right, counsel. Anything before we  
2 bring in the jury?

3 MR. ALLCOCK: Yes, your Honor. There's a couple of  
4 items. I'll hand up to the Court a letter I received  
5 yesterday from Mr. Bahler with a couple of -- well, with some  
6 additional bills attached from Mr. Zinger. Exhibit 11, your  
7 Honor, is a collection of bills of -- that relate to the work  
8 Mr. Zinger did on the opinion letter.

9 And I understand -- basically, this goes to what we  
10 may get into today with some of the witnesses. Certainly, Mr.  
11 Zinger but, also, some of the earlier witnesses, because I  
12 just don't know what their testimony's going to be. And as  
13 you can see from the two entries that I've highlighted there,  
14 it's going to be, I think, practically impossible for me to  
15 avoid directly or indirectly getting into the potentially --  
16 the joint representation.

17 I'll tell the Court that there are a few other entries  
18 in the -- in Exhibit 11 that aren't before you. Those are  
19 just the entries that we received yesterday at 4:00, or so.  
20 And I mean, aside from the issue of -- we deposed him in July  
21 of this year. We didn't have that information when we deposed  
22 Mr. Zinger.

23 The course of the case and the course of the trial may  
24 have taken a quite different tact had we had those, but  
25 putting that aside, I just wanted to bring it to the Court's

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1 attention that we would be getting into that area. And I just  
2 don't see how I can avoid at least potentially getting into --

3 THE COURT: Well, these bills don't say anything one  
4 way or the other except they conferred with Fulbright &  
5 Jaworski lawyers. It's just a level playing field. It  
6 doesn't make it a mountain --

7 MR. ALLCOCK: Okay. I'm not going to -- one of those  
8 entries does kind of imply --

9 THE COURT: You don't plan on putting it in, do you?

10 MR. ALLCOCK: These?

11 THE COURT: Yes.

12 MR. ALLCOCK: Absolutely because, your Honor, what  
13 they show --

14 THE COURT: No. I understand the implication of it.

15 MR. ALLCOCK: Well, forget about the Fulbright issue.

16 THE COURT: No, no. I understand the implication of  
17 \$195 plus another 100 to give a safe harbor letter. I  
18 understand well what you're putting it in there for, but I  
19 just never have seen anybody put anybody else's attorney's  
20 fees on it that are hearsay in, but I guess you can.

21 MR. ALLCOCK: Well, your Honor, the point they show  
22 what information the lawyer -- they show what information  
23 Zinger considered or --

24 THE COURT: Well, I understand. I understand. All of  
25 that's good and fair. I just -- I don't see why you have to

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1 get into it, but if you have to get into it, we'll just have  
2 to see.

3 MR. BAHLER: Your Honor, we obviously object to this  
4 exhibit. We haven't seen the complete exhibit yet, but Mr.  
5 Allcock has told us he's just stacking the ones that we found  
6 recently on the back of the existing exhibit. We had  
7 objections to the original one, it's objected to. So this  
8 comes up, we'll approach.

9 THE COURT: Okay. You're going to put Mr. Zinger on?

10 MR. BAHLER: Yes, sir.

11 THE COURT: It's going to be wide open on cross on his  
12 own duels on what he put down there. And whether or not it  
13 comes in as an exhibit is a separate question, but he's  
14 certainly going to have to -- I would anticipate he's going to  
15 be crossed on these.

16 MR. BAHLER: Well, your Honor, the most sensitive  
17 issues are the dealings with Fulbright. I mean, they moved  
18 for a limine instruction that --

19 THE COURT: Well, it's just like my grandmother said,  
20 it's not my problem, it's your problem, you'll handle it one  
21 way or the other. I learned early in life it wasn't my  
22 problem, stay out of it.

23 MR. BAHLER: Your Honor, I have one issue, also, and  
24 that is with respect to the consent judgment, your Honor gave  
25 a limiting instruction to the jury that they would only be

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1 permitted for willfulness after a certain day and would not  
2 be --

3 THE COURT: No, on notice on the issue of willfulness.

4 MR. BAHLER: Right. Exactly. Notice for the issue of  
5 willfulness after a certain date and would not be considered  
6 for validity or infringement in this case. And now I have  
7 several witnesses that I'm going to be calling today who  
8 testified in that previous case: Mr. Davies testified, Mr.  
9 Kalwitz testified by deposition, Mr. Stephens and Dr. Flamm,  
10 and what I would like is a motion in limine or -- I move in  
11 limine to prohibit the fact that they testified in that  
12 previous case. I don't see how that's relevant to any issue  
13 that's in this case.

14 THE COURT: My hunch is they have a transcript of that  
15 testimony, and they may use it. What's the --

16 MR. BAHLER: Your Honor, using the transcript as a  
17 deposition I think is fine, but just cross-examining them with  
18 respect to whether or not they actually submitted testimony in  
19 front of a jury, the jury made that decision.

20 MR. ALLCOCK: Your Honor, I'm not examining all the  
21 witnesses today. With respect to the witnesses I am  
22 examining, particularly Stephens, depending upon what he says  
23 on direct is very possible I would examine him on the  
24 substance of his testimony in the earlier case.

25 THE COURT: Well, the question is, don't -- well, I'll

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1 just make a ruling. Don't go into the fact they testified in  
2 the earlier case unless you approach the bench.

3 MR. ALLCOCK: Okay. Very well.

4 MR. BAHLER: Thank you.

5 THE COURT: Anything else?

6 MR. BAHLER: We have -- in accordance with the Court's  
7 suggestions, we have the supplemental jury instructions with  
8 our additions -- shall I hand them to your clerk -- with a  
9 disk.

10 MR. ALLCOCK: We have the same, your Honor.

11 THE COURT: All right.

12 MR. ALLCOCK: And, your Honor, what we did is we just  
13 took the Pathlight charge and said here's what should be --  
14 the one the Court gave us and said here's what changes and  
15 additions we need.

16 THE COURT: Bring them in.

17 (Jury present.)

18 THE COURT: Members of the jury, since we last met,  
19 has anybody attempted to talk to you about this case?

20 THE JURORS: No.

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

22 THE JURORS: No.

23 THE COURT: And have you learned anything at all about  
24 the case outside the present of each other and this courtroom?

25 THE JURORS: No.

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1 THE COURT: Show negative responses to all questions  
2 by all jurors. And you may call your next witness.

3 MR. BAHLER: Thank you, your Honor. Your Honor,  
4 defendant calls Ian Davies.

5 (Witness was sworn.)

6 THE COURT: Walk around this column and have a seat up  
7 here in this blue chair. And if you'll tell us your full name  
8 and spell your last, please.

9 THE WITNESS: Ian Robert Davies, D-A-V-I-E-S.

10 IAN R. DAVIES, called by the Defendant, duly sworn.

11 DIRECT EXAMINATION

12 BY MR. BAHLER:

13 Q. Mr. Davies, where do you work, sir?

14 A. Chaparral.

15 Q. What do you do for Chaparral?

16 A. I'm a software developer.

17 Q. How long have you worked there, sir?

18 A. Three years.

19 Q. Did you ever work at a company called Adaptec?

20 A. Yes.

21 Q. And when was that?

22 A. 1996 through '98.

23 Q. Would you please tell the members of the jury your  
24 education, college education?

25 A. Yeah, I have a Bachelor of Science Degree in Electrical

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1 Engineering from North Carolina State University. I have a  
2 Master's Degree in Electrical Engineering from U.T. Austin.

3 Q. And did you take a job right after college, sir?

4 A. Yes.

5 Q. And could you just describe as briefly your work  
6 experience leading up to your working in Adaptec beginning in  
7 February '96?

8 A. Sure. First worked at Digital Equipment at Colorado  
9 Springs for five years. And then, I took a job at Hewlett  
10 Packard in Levens, Colorado for a year, and then, I worked at  
11 Cirrus Logic for two years.

12 Q. Could you just generally describe your responsibilities in  
13 those three jobs that you just told us about?

14 A. Sure. They were all in storage-related industries. I  
15 wrote software for storage products in all three of those  
16 jobs.

17 Q. Mr. Davies, how long have you been working in the computer  
18 storage industry?

19 A. Since 1988.

20 Q. And how long have you been working with SCSI, S-C-S-I?

21 A. Since '91; ten years.

22 Q. And how long have you been working with Fibre Channel?

23 A. Since '96, five years.

24 Q. Do you have any patents that are issued that name you as a  
25 co-inventor?

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1 A. I have one issued and, I believe, two pending.

2 Q. Okay. Just generally, what are those -- what areas are  
3 those in?

4 A. They're all storage-related patents.

5 Q. Okay. Computer storage?

6 A. Computer storage, some are SCSI-related.

7 Q. Sir, now while at Adaptec, did you work on a product  
8 called the Coronado product?

9 A. Yes, I did.

10 Q. And when did you start working on Adaptec Coronado?

11 A. 1996.

12 Q. What generally was the Adaptec Coronado product?

13 A. It was Adaptec's first Fibre Channel-to-SCSI RAID  
14 controller.

15 Q. Mr. Davies, I'm going to put up on the screen Defendant's  
16 Exhibit 28 and, particularly, a page within that bearing  
17 production No. CNS 178642. Can you identify that for us, sir?

18 A. Sure. That's a high-level block diagram of the Coronado  
19 product.

20 Q. All right. What is the date on the bottom right-hand  
21 corner?

22 A. Right.

23 Q. What date does that refer to?

24 A. That's the date that document was created.

25 Q. What does that block diagram show generally?

1 A. Generally what are the components in it.

2 Q. We'll get to components in a second. Just generally what  
3 it is?

4 A. It's a RAID storage controller, Fibre Channel-to-SCSI.

5 Q. Does it connect Fibre Channel hosts to SCSI storage  
6 device?

7 A. Yes, it does.

8 Q. Does that block diagram accurately depict the date at the  
9 bottom, December 15, 1996?

10 A. Yes.

11 Q. I'd like you to go into detail about the individual blocks  
12 and, your Honor, with your permission, may Mr. Davies step  
13 down?

14 THE COURT: He may.

15 Q. (BY MR. BAHLER) Mr. Davies, would you please explain to  
16 the members of the jury what the individual blocks are that  
17 are in that block diagram?

18 A. Sure. The main blocks are right here. This is the  
19 Emerald Fibre Channel control -- Fibre Channel interface chip,  
20 and right here is the Excalibur-to-SCSI interface chip. This  
21 is the AMD processor, the supervisor unit for the whole board.  
22 This is a memory controller right here, and this is the data  
23 buffer, the data cache.

24 Q. All right, sir. Now, let's concentrate just for a second  
25 on the buffer. What does the buffer do?

1 A. The buffer serves as kind of a temporary storage location  
2 for data as it's moving from the Fibre Channel interface to  
3 the SCSI interface or vice versa. It goes into the buffer,  
4 first.

5 Q. What does the Fibre Channel controller do, that Emerald?

6 A. It basically interfaces the whole board to the Fibre  
7 Channel interface which is connected to the host systems, and  
8 so, it speaks the Fibre Channel language.

9 Q. All right, sir. And what does the SCSI controller, the  
10 7895 Excalibur, what does that do?

11 A. It connects to the SCSI disk drives on the back end. It  
12 speaks SCSI, and it talks to the disk drives and transfers  
13 data to and from those disk drives.

14 Q. Let's back up just a second to the Fibre Channel  
15 controller. And let me show you what's been marked as exhibit  
16 -- Defendant's Exhibit 47. What is that, sir?

17 A. That's the front page of the Emerald Fibre Channel chip  
18 data book.

19 Q. And does that accurately describe the Fibre Channel -- the  
20 Emerald Fibre Channel chip that is used in the Adaptec  
21 Coronado product?

22 A. Yes.

23 Q. Okay. Did that have parts within it that permitted it to  
24 do the Fibre Channel controlling function?

25 A. Yes, definitely.

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1 Q. Could you describe those for us, please?

2 A. Sure. It has a FIFO, a DMA unit.

3 Q. What's a FIFO, F-I-F-O?

4 A. F-I-F-O, first in, first out buffer. It was a way to  
5 basically speed match data transfer between the Fibre Channel  
6 interface and the internal interface.

7 Q. What else is there?

8 A. A DMA unit, which is direct memory access. That's  
9 actually a little machine that moves the data automatically  
10 from the Fibre Channel to the internal interface.

11 Q. All right, sir. Let's go back to Exhibit 28. Okay.

12 Let's take a look at the SCSI controller. What does that do  
13 in little bit more detail, 7895?

14 A. It, again, has very similar components to the Emerald chip  
15 that has a DMA and a FIFO and a SCSI protocol unit which  
16 actually connects to the SCSI bus.

17 Q. All right, sir. Please take a look at Defendant's Exhibit  
18 46. What is that?

19 A. That's the Excalibur SCSI chip data book.

20 Q. And does that accurately describe the SCSI controller that  
21 was used in the Adaptec Coronado that was on the previous  
22 exhibit?

23 A. Yes.

24 Q. Okay. Turn back to the drawing, which is the fourth page  
25 of Exhibit 28. You mentioned that it has an AMD

1 microprocessor. That's up in this area.

2 A. Right.

3 Q. What does that do?

4 A. That kind of runs the whole show. It supervises the data  
5 transfer between the fibre and the SCSI interfaces.

6 Q. Okay. Would you please describe just briefly the flow of  
7 data, let's say, from a Fibre Channel host to a SCSI storage  
8 device and back again?

9 A. Sure. What will happen is the host, which sits over here  
10 somewhere off of the picture, will send a SCSI command packet  
11 over the Fibre Channel interface, and it will be received by  
12 this Emerald chip. That will take in the packet, enter up the  
13 AMD processor and say, hey, we've got that command to process.

14 The AMD chip will decide where in this data cache,  
15 this data buffer, data that will program the Emerald to DMA,  
16 that means transfer the data, and then, the Emerald will  
17 communicate with the host system. The data will flow through  
18 here, through memory controllers into the data cache, and once  
19 that's done, the AMD chip will then program the Excalibur in a  
20 similar way so that it DMAs or transfers the data from the  
21 data cache through this line here over to SCSI bus, to the  
22 disk drives.

23 Q. All right, sir. Does -- did the Adaptec Coronado keep  
24 track of the SCSI reserve command?

25 A. Yes.

1 Q. And how did it do that?

2 A. It has a table stored in this DRAM block right here.

3 Q. Okay. And how would that work with respect to data  
4 flowing from the Fibre Channel host to SCSI storage device?

5 A. Every command that comes into the controller is checked  
6 against this table. What happens is the idea of host can slip  
7 up into the table to see if there's a reservation active, and  
8 a reservation basically says, you know, that host has reserved  
9 that storage. And so, any other host that came in and wanted  
10 that storage would be denied.

11 Q. Now, Mr. Davies, have you prepared a demonstrative exhibit  
12 that shows how this SCSI reservation table works?

13 A. Yes.

14 Q. Let me put up --

15 MR. GIUST: Your Honor, we object to this as calling  
16 for opinion testimony from a lay witness.

17 MR. BAHLER: It's just describing how this machine  
18 works.

19 MR. GIUST: The demonstrative is not something that  
20 was in existence at the time, and this person wasn't an  
21 employee there. It calls for expert opinions.

22 THE COURT: At this point in time, I'll overrule the  
23 objection. You bring it to my attention if you think he's  
24 getting into opinions if he hasn't been designated as an  
25 expert. I take it he has not been designated as an expert.

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1 MR. BAHLER: No, your Honor.

2 THE COURT: All right.

3 Q. (BY MR. BAHLER) I'll put up here, Mr. Davies, Defendant's  
4 Demonstrative Exhibit -- that's the wrong one -- 545. All  
5 right. With reference to Exhibit 545, could you describe for  
6 the members of the jury how the Adaptec Coronado kept track of  
7 and used the SCSI reserve command?

8 A. Sure. This block right here represents the Coronado,  
9 which is this larger picture right here. Well, actually, the  
10 whole thing because the table is inside the controller. So  
11 these two blocks together. These represent the SCSI storage  
12 devices on the right side over here, and these represent the  
13 workstations.

14 And, for example, in this case, it's color-coded, so  
15 you can see this red workstation right here is you have a  
16 reserve command to the controller which has put the red host  
17 workstation in its table here and said it's reserved storage  
18 device No. 3.

19 Similarly, for the green workstation, it's done the  
20 same for storage device No. 2. The blue workstation doesn't  
21 -- isn't in the table, and all workstations have access to  
22 this global data right here. But what would happen, for  
23 example, if the red workstation, for example, wanted to access  
24 storage device No. 2, the Coronado right here would consult  
25 with the table --

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1 MR. GIUST: Objection. This is getting into opinion  
2 testimony, your Honor.

3 MR. BAHLER: He's describing the function of the  
4 machine, your Honor.

5 THE COURT: Well, he's not describing the functions.  
6 He's saying what would happen if certain things, and I sustain  
7 the objection.

8 Q. (BY MR. BAHLER) All right, sir. Now, I'd like to address  
9 the SCSI inquiry command and request sense command just for a  
10 second?

11 A. Okay.

12 Q. How were they conditioned by the Coronado product in 1996?

13 A. Inquiry and request sense?

14 Q. Yes, sir.

15 A. They're handled entirely within the controller. They're  
16 not passed through to the storage devices.

17 Q. All right.

18 A. And, also, they're permitted when a reservation is in  
19 effect. So, in other words, if the red workstation --

20 MR. GIUST: Objection, your Honor. He's getting into  
21 opinion testimony, again. If certain things happened, it  
22 doesn't relate to the actual product.

23 THE COURT: Sustain the objection.

24 Q. (BY MR. BAHLER) When the Adaptec Coronado was used with  
25 multiple hosts -- first of all, did that ever happen?

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1 A. Yes.

2 Q. Okay. When it was used with multiple hosts and one of  
3 those hosts sent an inquiry command, how is that conditioned  
4 by the Adaptec Coronado?

5 A. Inquiry command was always permitted, like I said, and it  
6 wasn't sent back to the storage devices. It was handled in  
7 the controller, the data would be -- the command would be  
8 interrupted and sent back to the workstation.

9 Q. Let me make sure we're clear about this. The inquiry  
10 command, would that ever get through to any of the storage  
11 devices?

12 A. No, never.

13 Q. Would -- were there any commands from the Fibre Channel  
14 host that would get through to the storage devices?

15 A. Read and write data.

16 Q. Okay.

17 A. Unless a reservation was in effect.

18 Q. Okay. And what would happen if a reservation were in  
19 effect?

20 A. Those commands would be denied.

21 Q. Okay. Please take your seat. Please take a look in your  
22 book at Exhibits 49 and 50.

23 A. Okay.

24 Q. Defendant's.

25 A. 49 and 50?

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1 Q. Yes.

2 A. It says 55 here. Oh, I'm sorry. Yeah, they're not here.

3 Okay.

4 Q. First of all, what is Exhibit 49?

5 A. This is some source code I wrote for the -- I believe the  
6 Coronado controller.

7 Q. And when did you write that?

8 A. On or before the date at the top, which is August 8th,  
9 '96.

10 Q. Okay. And let's take a look at Exhibit 50.

11 A. Okay.

12 Q. What is that?

13 A. That's some more source code I wrote for the controller.

14 Q. Okay. Is the function that you described with reference  
15 to the SCSI reserve command, is that included in this source  
16 code?

17 A. Yes.

18 Q. Okay. And when did it exist, sir?

19 A. On or before the date at the top, August 8th, '96.

20 Q. Did you test it at that time?

21 A. Yes.

22 Q. Where did you do that test?

23 A. In -- that would have been in Boulder -- in our Boulder  
24 Adaptec office.

25 Q. Okay. Let's take a look at Exhibit 48. What's that?

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1 A. Oh, that's some of the code in the Coronado that handles  
2 the mapping between the SCSI devices and the host Fibre  
3 Channel addresses.

4 Q. Okay. And did that code exist -- when did that code  
5 exist?

6 A. In 1996, this was certainly there, parts of it were  
7 written before that, so it was 1995 up at the top.

8 Q. Was this the code that was used in the Adaptec Coronado  
9 that we had up there this morning?

10 A. Yes, it was.

11 Q. Okay. And you mentioned mapping. What do you mean by  
12 mapping?

13 A. Well, what the controller basically needs to do is assign  
14 what's called a logical unit number LUN, the back-end storage  
15 devices, and it also -- so when host commands come in, they  
16 can be directed to the appropriate storage and that's the  
17 mapping, we call it.

18 Q. Mr. Davies, I'm going to hand you what's in evidence as  
19 Exhibit 31, Defendant's Exhibit 31.

20 A. Yeah.

21 Q. Can you tell us what that is, sir?

22 A. Yeah, this is an Emerald board. I'm sorry, not an Emerald  
23 board. This is a Coronado board with the Emerald chip on it  
24 right there.

25 Q. As of what date?

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1 A. This -- well, it's representative of what we had in 1996.  
2 Q. Okay.  
3 A. Exactly when this was made.  
4 Q. Now, did -- when you started at Adaptec in beginning in  
5 '96, what product -- what project did you start working on?  
6 A. I started working on the Coronado and the Brooklyn product  
7 which was a related product.  
8 Q. Eventually, the Coronado was released and sold to the  
9 public?  
10 A. Yes, it was.  
11 Q. Okay. Do you know when that was?  
12 A. I believe in '97.  
13 Q. Okay. Did you work continuously on that project during  
14 that entire time?  
15 A. Yes.  
16 Q. Okay. How many other people were working on that project?  
17 A. Pretty large number. I would estimate approximately 50.  
18 Q. Okay. And they were working on the Coronado during that  
19 entire time?  
20 A. Yes.  
21 Q. Okay. Now, there came a time when you left Adaptec and  
22 went to Chaparral, correct?  
23 A. Yes.  
24 Q. And why did you do that?  
25 A. The group I was in was acquired by Chaparral.

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1 Q. Okay. And when was that, sir?

2 A. September '98.

3 Q. Now, what did you start working on when you got to  
4 Chaparral?

5 A. I continued to work on RAID controller products.

6 Q. Now, what Fibre Channel-to-SCSI products does Chaparral  
7 have right now today?

8 A. It has several. There's two general families, the RAID  
9 products and the writer products.

10 Q. And what do those do generally?

11 A. They connect Fibre Channel host systems to SCSI storage  
12 devices.

13 Q. Now, what, if anything, do the present designs of  
14 Chaparral Fibre Channel-to-SCSI products have to do with the  
15 Coronado product?

16 A. The basic hardware architecture is the -- is very similar.  
17 It's not the same. But the high-level block diagram's the  
18 same and the software or firmware, as we call it, is, again,  
19 very similar and derived from the Coronado firmware.

20 Q. There's been a lot of talk in this room about LUN zoning.  
21 What is LUN zoning, first of all, as far as you understand it?

22 A. It's a way for host systems to associate with certain  
23 storage devices.

24 Q. Okay. And do the Adaptec -- or do the Chaparral products,  
25 at least some of them, have LUN zoning?

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1 A. They do.

2 Q. Okay. How does LUN zoning compare with reserve --

3 MR. GIUST: Objection. Calls for an opinion, your  
4 Honor.

5 THE COURT: It does. Sustain the objection.

6 Q. (BY MR. BAHLER) How is the LUN zoning that's within the  
7 Chaparral products, how is that set up?

8 A. There's a table, similar table to the one I showed in the  
9 earlier white board right there.

10 Q. All right. Now, there's also been testimony about CAPI.  
11 What is CAPI?

12 A. CAPI is -- it stand for configuration API, which is --  
13 it's basically a language that -- a computer language for  
14 configuring and setting up the monitoring the Chaparral  
15 controllers.

16 Q. What, if anything, does CAPI have to do with LUN zoning?

17 A. CAPI has several commands that let you do LUN zoning in  
18 it.

19 Q. Now, did the Adaptec Coronado have anything like that?

20 A. No. Well, it didn't have LUN zoning. It has reserve  
21 release.

22 Q. Okay. And, first of all, where is CAPI -- is CAPI  
23 included in every Chaparral product?

24 A. Yes, it is.

25 Q. Okay. Is CAPI kept secret?

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1 A. No.

2 Q. Okay. Please take a look at Defendant's Exhibit 221.

3 What is that? It's on the screen.

4 A. That is the front page of Chaparral's CAPI specification.

5 Q. Okay. And what does this specification do?

6 A. It gives a real complete description of how you would use  
7 CAPI to send commands to the controller.

8 Q. Okay. Are there commands in Exhibit 221, the CAPI  
9 specification, that deal with LUN zoning?

10 A. Yes.

11 Q. Okay. And what are those commands?

12 A. There's several: Add host, remove host, change zone type,  
13 get host table, I think.

14 Q. Let's take a look within Exhibit 221 to the Roman four, it  
15 looks like, bearing production No. 175769. You mentioned add  
16 host. Let's pull that out. What does the add host command  
17 do?

18 A. That takes a host identifier and adds it to a list of  
19 hosts that can either access or not access storage.

20 Q. And what does it have to do with LUN zoning?

21 A. That's --

22 MR. GIUST: Objection. Calls for opinion testimony.

23 THE COURT: Sustain the objection.

24 Q. (BY MR. BAHLER) Okay. Is that used in the Chaparral  
25 product to adjust LUN zoning?

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1 MR. GIUST: Same objection.

2 THE COURT: Members of the jury, I'm going to excuse  
3 you to the jury room for a minute.

4 (Jury not present.)

5 THE COURT: I don't understand why this gentleman  
6 hadn't been labeled as an expert. It's just beyond me, but  
7 he's not, so he can't give any opinions. Now, how the thing  
8 worked, even though he invented it, involves opinions. If he  
9 says this is a pencil, well, certainly he can say that's a  
10 pencil.

11 But if he says, you know, the pencil, in my judgment,  
12 can be used as a lock, that's an opinion. And so, he can  
13 testify as to how the product runs as a fact, but every one of  
14 these questions is subject almost to the same objection, Mr.  
15 Bahler.

16 MR. BAHLER: Your Honor, I'll try to be more careful,  
17 but I would ask that when their non-experts come to the stand  
18 on rebuttal case that we have the same situation.

19 THE COURT: You don't have to ask me anything. I  
20 handle it question-by-question, and as far as I know, I'm  
21 pretty consistent.

22 MR. BAHLER: All right, your Honor. Thank you.

23 THE COURT: I don't have to draw that out.

24 MR. BAHLER: All right, sir.

25 THE COURT: The rules are very specific now on

1 experts, far more specific than they were six months ago, and  
2 whether facts are facts and what are now opinions are -- have  
3 to be designated. And Mr. Davies obviously is an expert.  
4 Obviously, he could testify to all of this. But he's not  
5 designated and there's no report. He can't testify to it.

6 MR. BAHLER: Just so we're clear, I can't ask him how  
7 the machine that he made works?

8 THE COURT: You ask him anything, but it's subject to  
9 these objections. He can't give an opinion because he hasn't  
10 been designated. It's that simple. I mean, it's not a big  
11 mystery.

12 All right. Bring him back in and bring in the jury.

13 (Jury present.)

14 THE COURT: Members of the jury, anybody called as a  
15 witness can testify to what we call the facts; that is what  
16 you see, what you hear, your impressions as to something that  
17 occurred or did not occur. In federal court, only an expert  
18 can give an opinion, and to be an expert, you have to be  
19 designated as an expert, give a report and qualified as an  
20 expert.

21 Mr. Davies has not been designated as an expert, so  
22 he's what we call a lay witness. He can testify as to facts  
23 but not opinions, and that's the reason for it. It's a very  
24 difficult area, it's in the gray areas, but that's the reason  
25 the recess was entirely my responsibility, not the lawyers.

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1           You may proceed, sir.

2           MR. BAHLER: All right, sir. Thank you, your Honor.

3       Q. (BY MR. BAHLER) Mr. Davies, please refer within Exhibit  
4       221 to figure 1-2 in that document.

5       A. Okay.

6       Q. Do you have it, sir?

7       A. Yes.

8       Q. What is shown in that figure?

9       A. That's a high-level diagram showing how a host system's  
10      connected, the Chaparral controller and how it might send CAPI  
11      commands to the controller.

12      Q. Okay. This -- on the left-hand side, there's the second  
13      thing down is called -- something called CAPI. What is that  
14      exactly?

15      A. That's the configuration API layer that actually builds  
16      the commands that send to the controller.

17      Q. Okay. And is this -- can that host system be -- can that  
18      CAPI user application be included in any host?

19      A. Yes.

20           MR. GIUST: Objection. Calls for expert opinion.

21           THE COURT: Sustained.

22      Q. (BY MR. BAHLER) Other than CAPI, do Chaparral's products  
23      provide any other mechanism for -- for computers to manage  
24      their own access?

25           MR. GIUST: Objection.

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1 THE COURT: Sustained.

2 Q. (BY MR. BAHLER) What is pass-through?

3 A. Pass-through is a mechanism that lets host systems send  
4 any command they like to any storage device connected behind  
5 the controller.

6 Q. And did the Chaparral products have that pass-through  
7 capability?

8 A. Yes.

9 Q. Okay. How does pass-through work with -- in the Chaparral  
10 products?

11 MR. GIUST: Objection. Calls for an opinion.

12 THE COURT: "How" is an opinion. I sustain the  
13 objection.

14 Q. (BY MR. BAHLER) Please take a look at Defendant's Exhibit  
15 332. 232, I'm sorry. What is that, sir?

16 A. That's a document I wrote that describes how pass-through  
17 commands are built.

18 Q. Okay. And is this provided to Chaparral customers?

19 A. It is.

20 Q. Okay. Have you worked with Chaparral customers with  
21 respect to Chaparral pass-through?

22 A. Yes.

23 Q. Okay. And is pass-through affected at all by LUN zoning?

24 MR. GIUST: Objection. Calls for an opinion.

25 THE COURT: Sustain the objection.

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1 Q. (BY MR. BAHLER) Are the --

2 THE COURT: Excuse me, Mr. Davies, when the lawyer  
3 stands, don't answer.

4 THE WITNESS: Okay.

5 THE COURT: All right.

6 Q. (BY MR. BAHLER) Now, are the CAPI commands, are they kept  
7 secret from Chaparral customers?

8 A. No.

9 Q. How are they made available?

10 A. Through tech support.

11 Q. Using the CAPI commands that we just discussed, can any  
12 host access any storage devices at any time?

13 MR. GIUST: Objection.

14 THE COURT: Sustained.

15 Q. (BY MR. BAHLER) Is pass-through kept secret from  
16 customers?

17 A. No.

18 Q. How do they know about it?

19 A. Again, through tech support.

20 Q. Now --

21 THE COURT: When you say tech or text?

22 THE WITNESS: Technical support. I was using  
23 abbreviation for technical support.

24 THE COURT: Okay. I went to plan two. Tech support.

25 Q. (BY MR. BAHLER) Now, the current -- there are Chaparral

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1 products that have the ability to turn the so-called bridge  
2 LUN off, correct?

3 MR. GIUST: Objection.

4 THE COURT: Sustained.

5 Q. (BY MR. BAHLER) There is a modification made to the  
6 Chaparral products relatively recently, correct?

7 A. Yes.

8 Q. And what was the result of that modification?

9 A. The result was that the controllers that were modified --

10 MR. GIUST: Objection. He's getting into opinion now.

11 THE COURT: No. This is a fact. He can answer.

12 A. The controllers that were modified were changed so that  
13 the controller LUN could not be disabled, and that's the LUN  
14 that commands are sent through such as pass-through commands.

15 Q. (BY MR. BAHLER) Okay. And as a result of that  
16 modification, how were CAPI commands conditioned?

17 MR. GIUST: Objection.

18 THE COURT: I sustain the objection to that question.

19 MR. BAHLER: Pass the witness, your Honor.

20 CROSS-EXAMINATION

21 BY MR. GIUST:

22 Q. How are you doing, Mr. Davies?

23 A. Good.

24 Q. Okay. You worked at Adaptec. You just testified to this  
25 on direct, right?

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1 A. Yes.

2 Q. And you're familiar with Adaptec's products?

3 A. Yes.

4 Q. And you work at Chaparral presently?

5 A. Yes.

6 Q. You're familiar with Chaparral's products?

7 A. Yes.

8 Q. Okay. Let me show you Exhibits 12 already in evidence.

9 I'll just draw your attention to page 33594 of that exhibit.

10 THE COURT: Plaintiff's Exhibit 12 or Defendant's 12.

11 MR. GIUST: Plaintiff's 12.

12 Q. (BY MR. GIUST) On direct, you mentioned something to do  
13 with SCSI reserve. Do you recall that?

14 A. Yes.

15 Q. And the Chaparral's products have the -- within those  
16 products, they handle this reserve the command; is that right?

17 A. Yes.

18 Q. And that's what's being shown on this page here?

19 A. Yes.

20 Q. Okay. Another feature you mentioned on your direct  
21 examination was this LUN zoning feature. Do you recall that?

22 A. Yes.

23 Q. Okay. Go to page 33597. This LUN zoning feature is  
24 generally depicted on the page; is that correct, Mr. Davies?

25 A. Yes.

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1 Q. Okay. So the Chaparral products have within them both  
2 this reserve feature that you mentioned as well as this LUN  
3 zoning feature; is that right?

4 A. Right.

5 Q. And you discussed Adaptec's products earlier. Adaptec's  
6 products only had this reserve feature in them; is that right?

7 A. Right.

8 Q. You began working on the LUN zoning feature after you had  
9 already left Adaptec?

10 A. Right.

11 Q. Now, you left Adaptec and went to Chaparral. A number of  
12 employees at Chaparral worked at Adaptec; is that right?

13 A. Yes.

14 Q. Mr. Lavan, is he one person?

15 A. Yeah.

16 Q. Mr. Kalwitz?

17 A. Yes.

18 Q. Mr. Selinger?

19 A. Yes.

20 Q. Victor Pico?

21 A. Yes.

22 Q. Aaron Daily?

23 A. Yes.

24 Q. At the time -- let me ask you this: What department  
25 within Chaparral do you work in?

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1 A. Engineering.

2 Q. And how many ex-Adaptec employees from your own personal  
3 knowledge work in that department currently at Chaparral?

4 A. I think approximately eight. I may be off. I'm trying to  
5 go through it mentally, but I think approximately eight.

6 Q. Approximately eight. Okay. And certainly it's no secret  
7 that there are a lot of Adaptec employees at Chaparral?

8 A. Well, there's -- I think eight, yeah. That's not a  
9 secret.

10 Q. Okay. And you're familiar with Mr. David Zinger, correct?

11 A. Yes.

12 Q. And what's your understanding of who he is?

13 A. He's our -- we work with him when we file patents.

14 Q. Okay. He's your patent attorney?

15 A. Yeah.

16 Q. And certainly you don't keep your prior employment at  
17 Adaptec a secret from Mr. Zinger, do you?

18 A. Certainly not. I mean, I don't recall I mentioned that to  
19 him, but it's not a secret.

20 Q. Okay. Now, you mentioned this -- these CAPI functions  
21 earlier today. Do you recall that?

22 A. Yes.

23 Q. And you discussed certain functions within CAPI, do you  
24 recall that?

25 A. Yes..

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1 Q. CAPI has many, many functions; is that right?

2 A. Yes, it does.

3 Q. And many of those functions are unrelated to this LUN  
4 zoning I'm showing here; is that right?

5 A. Right.

6 Q. So CAPI can be really used to do many things in addition  
7 to LUN zoning?

8 A. Right.

9 Q. No more questions, your Honor.

10 RE-DIRECT EXAMINATION

11 BY MR. BAHLER:

12 Q. Mr. Davies, Mr. Giust talked about LUN zoning. How many  
13 lines of code are used for LUN zoning in the Chaparral  
14 products?

15 A. Approximately 3500.

16 Q. And how many lines of code are there in the entire  
17 product?

18 MR. GIUST: Objection, your Honor. Beyond the scope  
19 of the cross-examination.

20 THE COURT: I sustain the objection. There was  
21 nothing on cross.

22 MR. BAHLER: No further questions, your Honor.

23 THE COURT: You may step down, sir. You may call your  
24 next witness.

25 MR. BAHLER: Plaintiff calls George Kalwitz.

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1 THE COURT: Be sworn, sir.

2 (Witness was sworn.)

3 THE COURT: If you'll walk around this column, have a  
4 seat up here, please. If you'll tell us your full name,  
5 please, sir, and spell your last.

6 THE WITNESS: George Alexander Kalwitz, K-A-L-W-I-T-Z.

7 GEORGE A. KALWITZ, called by the Defendant, duly sworn.

8 DIRECT EXAMINATION

9 BY MR. BAHLER:

10 Q. Mr. Kalwitz, where do you work right now?

11 A. Chaparral.

12 Q. What do you do for Chaparral?

13 A. I'm a software engineer.

14 Q. How long have you worked there, sir?

15 A. Since 1998, September.

16 Q. Now, did you -- did there come a time when you worked for  
17 a company called Adaptec?

18 A. Yes.

19 Q. And when was that?

20 A. November of 1995.

21 Q. Okay. Until September '98?

22 A. Yes.

23 Q. Okay. Would you please tell the members of the jury your  
24 educational background?

25 A. I have a Bachelor of Science in Computer and Electrical

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1 Engineering from Purdue University in 1986.

2 Q. And would you please tell us your work experience since  
3 graduating from Purdue?

4 A. My first job was with a company called MAI Basic Four,  
5 where I worked on the intelligent data terminals. After that,  
6 I went to Western Digital, where I worked on local area  
7 network products. After that, I went to Codenal Technologies,  
8 where I worked on fiber-optic networking. Following that, I  
9 went to Cannon Information Systems, where I worked on network  
10 printers, and that's where I got my introduction to SCSI.

11 After that, I went to Racal Data Com, where I  
12 continued working on networking, and following that, I went to  
13 Pola IO, where I started working on Fibre Channel. We were  
14 then acquired by Adaptec and then, Chaparral.

15 Q. All right, sir. How long have you been working in the  
16 computer storage industry?

17 A. I'd say about ten years.

18 Q. And how long have you been working with Fibre Channel?

19 A. Eight years.

20 Q. And how long have you been working with SCSI?

21 A. Ten years.

22 Q. Okay. Do you have any patents issued in your name, sir?

23 A. Yes, I do.

24 Q. How many?

25 A. Thirteen.

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1 Q. Are any in the computer storage industry or area?

2 A. Mainly with networking. It was with the network printer.  
3 There's a little bit of storage in there.

4 Q. All right, sir. Now, while at Adaptec, did you work on a  
5 project called the Coronado product?

6 A. Yes, I did.

7 Q. And when did you start working on that product?

8 A. That was in spring of '96.

9 Q. Okay. And when did you -- did you ever finish your work  
10 on that?

11 A. Actually continued to do so.

12 Q. Today?

13 A. Well, the Coronado isn't a product anymore, but it's  
14 ancestor or previous name.

15 Q. What generally was the Coronado product as far as you  
16 understand?

17 A. An external storage controller, RAID controller, Fibre  
18 Channel-to-SCSI.

19 Q. Okay. Please take a look at Defendant's Exhibit 31, which  
20 is up there. It's the board.

21 A. Yes.

22 Q. Can you hold that up for the jury, please? What is that,  
23 sir?

24 A. This is the Coronado product.

25 Q. Okay. When was that made, that particular board?

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1 A. Late 1996.

2 Q. Okay. What specifically -- did you work on that board or  
3 did you work on that product?

4 A. Yes, I did.

5 Q. What specifically did you do in your work on the Coronado  
6 product?

7 A. I helped a little bit with the hardware, but I was mainly  
8 a software person designing the software interface to the  
9 Fibre Channel chip.

10 Q. Okay. Please take a look at the screen at Defendant's  
11 Exhibit 55. What is that?

12 A. This is a status report from my colleague, Phil Colline,  
13 to our manager, Mark O'Dell.

14 Q. What is your working relationship -- what was your working  
15 relationship at the time with Mr. Colline?

16 A. I was the senior software engineer. He was the junior  
17 software --

18 Q. Were you two working together?

19 A. Yes, we were.

20 Q. This e-mail is from Mr. Colline, right?

21 A. Yes.

22 Q. And it's to MO. Who's MO?

23 A. That would be an acronym for Mark O'Dell.

24 Q. What were you and Mr. Colline working on at this point in  
25 time, this is the beginning of January 1996?

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1 A. We were working on the software to drive the Fibre Channel  
2 interface for the Coronado.

3 Q. Is that on the board in front of you?

4 A. Yes, it is.

5 Q. Can you point that part out to the jury?

6 A. That would be this chip here.

7 Q. Okay. Please take a look at within Exhibit 55 at bates  
8 No. 182510. First of all, that's dated, spans the dates March  
9 17th through March 21st.

10 A. Yes.

11 Q. Correct? The second paragraph in that e-mail says I've  
12 spent a fair amount of time also working with George. Is that  
13 you?

14 A. Yes, it is.

15 Q. Okay. What is Mr. Colline reporting to Mr. O'Dell in this  
16 e-mail?

17 A. He's talking about the interface with this Fibre Channel  
18 controller.

19 Q. Okay. And, first of all, Mr. O'Dell was your boss?

20 A. Yes.

21 Q. Both you and Mr. Colline reported to Mr. O'Dell?

22 A. Yes.

23 Q. Okay. Does this accurately reflect the activity that was  
24 going on at that time?

25 A. Yes, it does.

1 Q. Okay. It says that you -- are you working with George?  
2 That's you on the target side. What does that mean?

3 A. The software that drove this chip was acting as a target  
4 mode as opposed to an initiator.

5 Q. Okay. And it says to see him, targeting initialization  
6 appears to be working as of Friday. What does that mean, sir?

7 A. It means that we were successfully initializing this chip  
8 and we were starting to talk with the Fibre Channel interface.

9 Q. And we have -- it continues and says, we have received an  
10 initial command from the wire. What's the wire, first of all?

11 MR. BERNSTEIN: Objection, your Honor. This document,  
12 he's not the author or the recipient. He's never seen this  
13 document before or contemporaneously with the creation of this  
14 document.

15 THE COURT: What is your objection?

16 MR. BERNSTEIN: Foundation. Document's hearsay or his  
17 testimony is hearsay.

18 THE COURT: I assume this document is in evidence.

19 MR. BAHLER: It is in evidence, your Honor. In  
20 addition, he stated that --

21 THE COURT: Well, when I need help, I usually ask for  
22 it.

23 MR. BAHLER: Thank you.

24 THE COURT: Has this gentleman been designated as an  
25 expert in any way?

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1 MR. BAHLER: No, sir.

2 MR. BERNSTEIN: No, your Honor.

3 THE COURT: I'll overrule the objection to the  
4 question asked. You may repeat the question.

5 Q. (BY MR. BAHLER) In that sentence, it says, we have  
6 received an initial command from the wire. What is the wire?

7 A. That is the Fibre Channel medium.

8 Q. Okay. Where did that command come from?

9 A. From --

10 MR. GIUST: Objection, your Honor. Calls for expert  
11 opinion.

12 THE COURT: He may answer that.

13 A. It came from an MT initiator connected to the Fibre  
14 Channel.

15 Q. (BY MR. BAHLER) Okay. That's a computer connected to the  
16 Fibre Channel?

17 A. Yes.

18 Q. Okay. And it says, we are now debugging the indication  
19 path. What does that mean?

20 A. When the command comes in, we send it up to the RAID  
21 controller, and when it has a response, that's the indication  
22 that comes back down and we send it up on to the Fibre  
23 Channel.

24 Q. Now, what was the significance of this effort with respect  
25 to the Coronado product?

1 MR. GIUST: Objection, your Honor. Calls for expert  
2 opinion.

3 THE COURT: That is an opinion. I sustain the  
4 objection.

5 Q. (BY MR. BAHLER) All right. Please take a look at the next  
6 page. This is, once again, from Mr. Colline to Mr. O'Dell,  
7 right?

8 A. Yes.

9 Q. Does this accurately reflect the reporting activity that  
10 you and Mr. Colline were doing at this time?

11 A. Yes.

12 Q. Okay. The second sentence says, we have successfully  
13 completed one block IO's to the target side. First of all,  
14 who's we?

15 A. That would be Phil, myself and Mark O'Dell.

16 Q. Okay. We have successfully completed one block IO's to  
17 the target side and are now working on larger IO's. What does  
18 that mean?

19 A. It means that, at this point, we are doing all the SCSI  
20 commands, and we still are working on some issues with larger  
21 transfers.

22 Q. Now, what, if anything -- what, if anything, did this  
23 event tell you with respect to the ability of the Coronado to  
24 handle Fibre Channel commands?

25 MR. BERNSTEIN: Objection. Calls for expert opinion.

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1 THE COURT: It does.

2 Q. (BY MR. BAHLER) Mr. Kalwitz, you started working on the  
3 Coronado product at what time, sir?

4 A. Spring of '96.

5 Q. And the e-mails that we have here are in the beginning of  
6 '97, right?

7 A. Yes.

8 Q. Did you work on the Coronado product continuously between  
9 those two dates?

10 A. Yes, I did.

11 Q. Okay. And the Coronado, what -- was the Coronado product  
12 ever commercialized as far as you know?

13 A. Yes.

14 Q. Okay. When was it commercialized?

15 A. In late '97.

16 Q. Okay. Did you continue working on the Coronado product  
17 after this date until it was commercialized?

18 A. Yes.

19 Q. Okay. Did Mr. Colline do the same?

20 A. Yes.

21 Q. Mr. Colline actually started in January '97, right?

22 A. Yes.

23 Q. So between January '97 and the date that it was  
24 commercialized, what was Mr. Colline doing?

25 A. He was working with me on this software interface.

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1 Q. Now, the test that you were doing here with respect to  
2 this e-mail that's up right now, which is Defendant's Exhibit  
3 182511, within Exhibit 55, where were those tests done, sir?

4 A. In our lab in Irvine, California.

5 Q. Pass the witness, your Honor.

6 CROSS-EXAMINATION

7 BY MR. BERNSTEIN:

8 Q. Good morning, Mr. Kalwitz.

9 A. Good morning.

10 Q. My name is Matt Bernstein, and I just have a few questions  
11 for you. Just getting back into your employment history, you  
12 were employed at Adaptec from when?

13 A. November '95 through September '98.

14 Q. And then, you and several other Adaptec employees left  
15 Adaptec and went to work at Chaparral?

16 A. Yes. It was part of a spin-off.

17 Q. And what was the date that that occurred?

18 A. I believe it was September 17th of '98, something like  
19 that.

20 Q. And you're still currently employed at Adaptec?

21 A. Chaparral.

22 Q. Chaparral, excuse me. Exhibit 31 that you have, the  
23 actual board.

24 A. Yes.

25 Q. Is there a date 1996 actually on that board?

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1 A. I'm not sure. Do you want me to look for one?

2 Q. No. That's okay. What was the date of the first  
3 commercial sale of the Adaptec product?

4 A. I'm not sure. I believe it was late '97, but I'm not  
5 sure.

6 Q. Do you remember having your deposition taken in this case?

7 A. Yes.

8 Q. And do you remember testifying that the first commercial  
9 sale took place in early 1998?

10 A. Perhaps.

11 Q. I'm going to -- for the Court's information, I'm in  
12 Defendant's Exhibit 55, and this document is dated March 24th,  
13 1997; is that correct?

14 A. Yes.

15 Q. And are you the author of this document?

16 A. No.

17 Q. Were you the recipient of the document?

18 A. No.

19 Q. And I'm turning to page to CNS 182511. Is this document  
20 dated March 31st, 1997?

21 A. Yes.

22 Q. And are you the author of this document?

23 A. No.

24 Q. Were you the recipient of this document?

25 A. No.

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1 Q. Nothing further. Pass the witness.

2 THE COURT: Do you have any further questions?

3 MR. BAHLER: No, your Honor.

4 THE COURT: You may step down, sir. You may call your  
5 next witness.

6 MR. BAHLER: Plaintiff calls Stan Manzanares by  
7 deposition.

8 THE COURT: State the full name and spell the last of  
9 the witness, please.

10 MR. DELLETT: First name is Stanton, S-T-A-N-T-O-N,  
11 Michael Manzanares, M-A-N-Z-A-N-A-R-E-S.

12 THE COURT: You may proceed, sir.

13 MR. BAHLER: Starting on page 5, line 11.

14 Q. "Good morning, Mr. Manzanares. Would you please tell us  
15 your full name?"

16 A. Stanton Michael Manzanares."

17 Moving to page 6, line 21.

18 Q. "How long did you work for Adaptec?"

19 A. About two and a half years.

20 Q. Could you give me a starting date and an end date, if you  
21 remember?

22 A. I believe, let's see, I believe it was probably about '95  
23 through, probably, November of '98."

24 Okay. Moving to page 7, line 25.

25 Q. "Could you just tell me -- what I would like to do is

1 start the day -- you started at Adaptec and could you just  
2 tell me in 1995, whether that was -- could you just tell me  
3 generally what you did for Adaptec while you worked there just  
4 generally?

5 A. The whole time I was product management marketing.  
6 Initially responsible for SSA, host adapter project of which  
7 was later cancelled and with the restructuring the business  
8 called ESS, external storage sub-system, and it was that group  
9 that embarked on external RAID controllers."

10 Moving to page 8, line 19.

11 Q. "Did there come a time when you got involved with a  
12 product called Coronado?

13 A. Yes.

14 Q. What was Coronado?

15 A. Coronado was a derivative of Brooklyn, which put a Fibre  
16 Channel daughterboard on the Brooklyn motherboard to create a  
17 Fibre-to-SCSI external RAID controller."

18 Okay. Page 9, line 9. Question:

19 Q. "Okay. What was your responsibility in connection with  
20 those products?

21 A. Again, product management and marketing which would have  
22 required the development of market requirements in addition to  
23 working with sales, sales support to bring products to market,  
24 work with manufacturing and engineering. So life cycle  
25 planning for the product."

1 Moving to page 10, line 4.

2 Q. "Let me show you what was marked in Mr. Lavan's deposition  
3 as Lavan Deposition Exhibit No. 1. Do you know what that is,  
4 sir?"

5 A. Yes.

6 Q. What is it?

7 A. Its was an engineering proposal based on market  
8 requirements that I had put together, so this was a proposal  
9 from engineering to develop a RAID controller.

10 Q. Okay. You mentioned Brooklyn and Coronado, although  
11 Brooklyn is on this page, Coronado is not on this page. The  
12 product which ultimately became Coronado, is that mentioned?

13 A. Yes. There's a SCSI-to-SCSI Brooklyn, then there's a  
14 third bullet Fibre-to-SCSI discussion. The Fibre-to-SCSI  
15 eventually was code named Coronado."

16 Page 21, line 15. Question:

17 Q. "At this time, beginning of April 1996, how important was  
18 the Coronado product to Adaptec?"

19 A. It was extremely important" --

20 MR. ALBRIGHT: Your Honor, I have an objection. Can I  
21 show you?

22 THE COURT: Let me have you up here, Mr. Bahler.

23 (At the Bench, on the record.)

24 THE COURT: I take it this man is admitted as an  
25 expert. And the objection is that he is giving an opinion?