Crossroads Systems (Texas), Inc.

v.

Chaparral Network Storage, Inc.,
a Delaware Corporation

30(b)(6) Oral Deposition of Geoff Hoese

August 6, 2001

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COMPRESSED TRANSCRIPT

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Page 1

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1              IN THE UNITED STATES DISTRICT COURT
               FOR THE WESTERN DISTRICT OF TEXAS
2                       AUSTIN DIVISION
3
   CROSSROADS SYSTEMS            °
4  (TEXAS), INC.                 °
                                 °    Civil Action No.
5  V.                            °
                                 °    A-00CA-217-SS
6  CHAPARRAL NETWORK STORAGE,    °
   INC., A DELAWARE CORPORATION  °
7
8
   *  *  *  *  *  *  *  *  *  *  *  *  *  *  *  *  *
9
               30(b)(6) ORAL DEPOSITION OF
10
                      GEOFF HOESE
11
                    August 6, 2001
12
   *  *  *  *  *  *  *  *  *  *  *  *  *  *  *  *  *
13
14          ORAL DEPOSITION OF GEOFF HOESE, produced
15  as a witness at the instance of the Defendant and duly
16  sworn, was taken in the above styled and numbered cause
17  on the 6th day of August, 2001, from 1:38 p.m. to 4:15
18  p.m., before Sandra S. Givens, CSR, in and for the
19  State of Texas, reported by machine shorthand method,
20  at the offices of Fulbright & Jaworski, 600 Congress
21  Avenue, 1900 One American Center, Austin, Texas 78701,
22  pursuant to the Federal Rules of Civil Procedure.
23
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Page 2

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1              A P P E A R A N C E S
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   FOR THE PLAINTIFF:
4
       Alan D Albright
5      Gray, Cary, Ware & Freidenrich, LLP
       1221 S. MoPac Expressway
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       Austin, Texas  78746
7
8
   FOR THE DEFENDANT:
9
       David D. Bahler
10     Fulbright & Jaworski, LLP
       1900 One American Center
11     600 Congress Avenue
       Austin, Texas  78701
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Page 4

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1                    GEOFF HOESE,
2  having been first duly sworn, testified as follows:
3                    EXAMINATION
4        (Exhibit Nos. 22, 23, and 24 marked.)
5  BY MR. BAHLER:
6     Q    Good morning, Mr. Hoese.
7     A    Good morning.
8     Q    Let me hand you what's been marked as Hoese
9  Exhibit 22. Before I do that let me just ask you, are
10 you the Geoffrey Hoese that's named as an inventor on
11 the patent in this case?
12    A    Yes.
13    Q    And you're the same Geoffrey Hoese that's been
14 deposed before?
15    A    Yes.
16    Q    Do you still live in the same place?
17    A    Yes, I do.
18    Q    All right. Still the same age?
19    A    No.
20    Q    Okay. Probably older. You're over 18, you're
21 still over 18?
22    A    Still over 18.
23    Q    Take a look at Exhibit 22. That is a copy of
24 Chaparral's Third Notice of Deposition under Rule
25 30(b)(6) to Crossroads, the plaintiff in this case, and
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1 it's our understanding you have been designated to
2 speak on behalf of Crossroads about topics 5 and 6. Is
3 that your understanding?
4   A   Yeah.
5   MR. ALBRIGHT: These two. Yeah.
6   THE WITNESS: Yes. That is my
7 understanding.
8   Q   (By Mr. Bahler) Are you prepared to do so
9 today?
10   A   Yes, I am.
11   Q   What did you do to prepare for your
12 deposition?
13   A   Briefly met with my counsel before this
14 deposition. That's about it.
15   Q   Did you look at any documents?
16   A   I believe I looked at this one document. Yes.
17   Q   Which has been previously marked as
18 Exhibit 24?
19   A   No. Exhibit 22, paragraph 5.
20   Q   Oh, that notice. Okay. Exhibit 22.
21   A   I looked at Section 5 of 22.
22   Q   And 6?
23   A   Actually, no. I didn't look at 6 until now.
24   Q   But you're the 6 guy?
25   MR. ALBRIGHT: Yeah. He's the 6 guy.

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1   Q   (By Mr. Bahler) All right. I know,
2 Mr. Hoese, that when we last spoke you were employed by
3 Crossroads. Is that still the case?
4   A   I don't believe that was correct when we last
5 spoke.
6   Q   Are you employed by Crossroads today?
7   A   No. I'm not.
8   Q   When did you leave Crossroads?
9   A   In October of 2000.
10   Q   Okay. Do you have a job right now?
11   A   No. I do not.
12   Q   What do you do for a living?
13   A   I do some different consulting kind of
14 arrangements with different firms where I have an
15 advisory role in a couple different companies of a very
16 loose nature.
17   Q   Do you perform any consulting or advising for
18 Crossroads?
19   A   I've been involved with things relating to
20 this trial.
21   Q   Do you have a consultancy arrangement with
22 Crossroads for this trial?
23   A   No. Not specifically. No.
24   Q   Are you being compensated for your time here
25 today?

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1   A   I have not billed Crossroads for my time as of
2 this day.
3   Q   Do you have an agreement that you're going to
4 bill then?
5   A   Not specifically. No.
6   Q   Do you have a personal understanding that
7 you're going to be paid?
8   A   I've considered it and may well do so.
9   Q   Have you let them know that?
10   A   I've mentioned the possibility.
11   Q   And what was their response?
12   A   Her response?
13   Q   Well, her or their. What was its response?
14 How about that.
15   A   They seemed open to the possibility, and it
16 was just not a topic for further discussion.
17   Q   Okay. Do you have any sort of financial
18 arrangement between Crossroads and yourself regarding
19 your testimony here today?
20   A   Not specifically. No.
21   Q   Generally?
22   A   Recording my testimony here, no.
23   Q   Let's take a look at Exhibit 24. Can you tell
24 me what that is?
25   A   It's a document I wrote describing the

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1 characteristics of the 972 patent at the initial
2 conception.
3   Q   Is that your handwriting on the front?
4   A   On the fax cover page?
5   Q   Yes, sir.
6   A   Yes, it is.
7   MR. ALBRIGHT: And let me just put down
8 on the record it's my handwriting on the three pages
9 where it says "attorneys' eyes only," since we produced
10 it. I mean, I just --
11   MR. BAHLER: That's fine.
12   Q   (By Mr. Bahler) Okay. Why did you prepare
13 this document?
14   A   I prepared this document because I had a
15 concept and an invention that I felt was worth
16 pursuing, and so I prepared this document to initiate
17 the patent filing.
18   Q   Okay. And this document was prepared when?
19 Can you tell from looking at it?
20   A   Between March 22nd and May 15th, prior to May
21 15th, 1997.
22   Q   All right. And then this was sent to
23 Mr. Anthony Peterman on May 28th, 1997?
24   A   I believe so. Yes. That's what's indicated
25 by the cover sheet, and that makes sense.

2 (Pages 5 to 8)

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1     Q    Was this document communicated to anybody
2  prior to that date?
3     A    I don't specifically recall.
4     Q    All right. So as far as you recall, the first
5  time that this information included in Exhibit 24 was
6  communicated to anybody was May 28, 1997?
7     A    I believe it would be prior to that.
8     Q    Okay.
9     A    I would expect that I reviewed it with my
10 co-inventor on the patent, things of that sort.
11    Q    Other than Mr. Russell, anybody else?
12    A    I don't specifically recall. It's possible.
13 I may very possibly have shown it to Brian Smith.
14    Q    Okay.
15    A    I'm certain I did at some point prior to
16 actually faxing it.
17    Q    What I'm asking for is specific recollection
18 of any communication to anybody other than Mr. Peterman
19 before May 28th, 1997.
20    A    I don't specifically recall that. No.
21    Q    Now, on the last page at the bottom, the very
22 bottom line, it says "Concept by Geoff Hoese, March 22,
23 1997," and it continues "First draft, May 15th, 1997."
24 And then as we've already discussed, you faxed this to
25 Mr. Peterman on May 28th, 1997, right?
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1     A    That appears to be correct.
2     Q    Pardon me?
3     A    That appears to be correct.
4     Q    Okay. Now, I'd like to ask you some questions
5  about that. This says "First draft, May 15th, 1997."
6  What does that mean?
7     A    I would believe that's when I took my notes
8  and created this particular word document that this was
9  generated from. So this would be when I first started
10 putting this into word to create this specific
11 document.
12    Q    Okay. Do you have those notes?
13    A    I don't recall if I have them or not.
14    Q    If you had them, they would have been produced
15 in this case, correct?
16    A    Actually, that would clarify my answer of, I
17 most certainly don't have them. The attorneys may have
18 them in the files they might have collected. I don't
19 know if they were there or not.
20    Q    Okay. And if they weren't produced, they
21 don't any longer exist?
22    A    That would be my belief. Yeah.
23    Q    And then in that line also, as we've just
24 discussed, it talks about "Concept by Geoffrey Hoese,
25 March 22nd, 1997." What does that mean?
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1     A    That was the date that I documented that I had
2  the ideas that assembled to cover the material
3  presented here.
4     Q    Okay. You documented something on March 22nd,
5  1997?
6     A    I'm not sure what documented -- what do you
7  mean by "documented"?
8     Q    Well, in that answer you said "that's the date
9  that I documented," and then you mentioned something
10 that you documented.
11    A    I documented that date as the date that I had
12 the concept.
13    Q    How did you arrive at that date?
14    A    That was the day that the idea in whole as
15 presented occurred to me.
16    Q    Okay. How is it that you picked -- how is it
17 that on May 15th or perhaps as late as May 28th you
18 remembered specifically that May 22nd, 1997 was the
19 date of conception?
20    A    The date wasn't May 22nd as you just stated.
21 It was March 22nd.
22    Q    Well, May 15th -- well, you did the first
23 draft May 15th, and then I don't know when this May or
24 March 22nd of 1997 date was added, but it was added
25 certainly no later than May 28th, 1997. So the
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1  question is, what made you decide or what made you
2  recall either on May 15th, '97 or on May 28th, '97 that
3  March 22nd, '97 was the date of conception?
4            (At this time the proceedings were
5  interrupted by a telephone call.)
6            MR. ALBRIGHT: Can I take this real
7  quick?
8            MR. BAHLER: Sure.
9            (At this time the proceedings went
10 momentarily off the record.)
11           MR. BAHLER: Last question, please.
12           (The referenced portion was read back by
13 the court reporter.)
14           THE WITNESS: At the time the material
15 was very fresh in my mind. It was actively the
16 material I was working on. I suspect, although I don't
17 specifically recall, that I had documented it in notes
18 and draft drawings and documents that I had used, but I
19 don't specifically recall.
20    Q    (By Mr. Bahler) Okay. Do you -- what sort of
21 notes and drawings did you make?
22    A    I don't specifically recall.
23    Q    Okay. If those notes and drawings were not
24 produced to us in this case, then they no longer exist,
25 correct?
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3 (Pages 9 to 12)

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1 A   I would assume so. Yes.
2 Q   Okay. Did you communicate to anybody this
3 conception that you had of the invention on March
4 22nd, '97?
5 A   I don't recall.
6 Q   Okay. Between March 22nd '97 and May
7 28th, '97 did you communicate with anybody your ideas
8 other than Mr. Russell?
9 A   I most certainly -- I don't specifically
10 recall a conversation as such, but I most certainly
11 would have discussed it with Mr. Smith.
12 Q   Do you have any documentation of that
13 disclosure?
14 A   Not to my knowledge.
15 Q   Okay.
16 A   There may be document -- to further answer
17 that, the attorney, the approval to use the attorney
18 and spend the money associated with that was connected
19 to that. So there may be documentation. I don't know
20 that's -- but I don't specifically have knowledge
21 of it.
22 Q   Okay. Other than Mr. Peterman did you show
23 this document or this concept to anybody outside of
24 Crossroads?
25 A   I would believe Bill Hulsey.

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1 Q   Okay. He's also one of Crossroads' lawyers?
2 A   He was at the time an outside attorney for
3 patent work.
4 Q   When did you reveal the concept to Mr. Hulsey?
5 A   Sometime prior to the -- probably prior to May
6 15th.
7 Q   Okay. Do you have a specific recollection of
8 that fact?
9 A   I recall discussing the material of the
10 disclosure with him prior -- and the process of
11 determining what it is that I should create in terms of
12 there being a document of this sort and what material
13 I should incorporate. So I don't specifically recall,
14 you know, when that was.
15 Q   Okay. Did you have documents with you during
16 your discussions with Mr. Hulsey?
17 A   Don't specifically recall. Possibly.
18 Q   Okay. Let me ask you this. If you had such
19 documents, why did you create a new document, which is
20 Exhibit 24?
21   MR. ALBRIGHT: Objection. Assumes facts
22 not in evidence. You can answer.
23   THE WITNESS: Can you repeat the
24 question or --
25 Q   (By Mr. Bahler) If you had documents showing

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1 conception of your invention that you discussed with
2 Mr. Hulsey, then why did you create the document that
3 has been marked as Exhibit 24?
4 A   If I had existing documents, I probably
5 desired to increase the clarity and the focus.
6 Q   Okay. Do you specifically recall having such
7 documents?
8 A   I recall having some drawings that I'd done,
9 and sketches. I don't know if that fits what you're
10 calling documents or whatnot, but --
11 Q   Well, I'm just trying to figure out what
12 existed prior to this Exhibit 24, and specifically what
13 documents existed prior to the existence of Exhibit 24.
14 A   Relating, I presume, to the conception --
15 Q   Yes.
16 A   -- of the document?
17 Q   Exactly.
18 A   So, I'm sorry, is that a question as to what
19 document?
20 Q   Yes.
21 A   There were a body of documents relating to the
22 Verrazano project describing characteristics of storage
23 routers, et cetera. There almost certainly were
24 sketches on white board and things of that sort. That
25 was common practice. Specifically relating to the

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1 conception, I don't recall what documents there might
2 have been other than that.
3 Q   Okay. After you sent this fax to
4 Anthony Peterman on May 28th, 1997 what else did you do
5 with respect to the preparation of the patent
6 application for the 972 patent? What did you do next?
7 Put it that way.
8 A   In general, I worked with Mr. Peterman to
9 further describe the characteristics to him so that he
10 could prepare the patent. I don't really specifically
11 recall those events.
12 Q   Did you provide him additional documents?
13 A   Very likely.
14 Q   Which ones? What documents?
15 A   I don't recall.
16 Q   Okay. Did Mr. Peterman provide you with a
17 draft patent application?
18 A   Eventually, yes, he did.
19 Q   Do you know how long that took?
20 A   Not specifically.
21 Q   After you got the -- whenever it was when you
22 got it -- well, strike that. You do recall getting a
23 draft patent application, correct?
24 A   I believe so. Yes.
25 Q   Sometime before the thing was filed December

4 (Pages 13 to 16)

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1   31st '97, right?
2        A    I assume that was the date, but I did get a
3   draft.
4        Q    Did you get one draft or many drafts or what,
5   do you recall?
6        A    I don't specifically recall.
7        Q    Okay. Well, you got at least one, right?
8        A    Yes.
9        Q    Okay. What did you do with that draft?
10       A    I reviewed it as well as providing it to
11  Mr. Russell for review.
12       Q    Okay. Did anybody else within Crossroads
13  review it?
14       A    I don't recall.
15       Q    Okay. And after you reviewed it what did you
16  do?
17       A    Again, I don't specifically recall, but I do
18  recall that there was generally a draft review cycle
19  and submitting changes and communications with
20  Mr. Peterman on changes to it.
21       Q    Do you recall when that review took place?
22       A    No.
23       Q    Did you in any way document that review?
24       A    It's possible that, you know, that it might
25  have been noted in my notes. I don't specifically
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1   recall documenting it.
2        Q    Okay. Did you keep the draft?
3        A    I don't recall.
4        Q    If you had kept it, where would you have kept
5   it?
6        A    It would be in the files that were submitted
7   for the --
8        Q    Okay.
9        A    It would have been in my files.
10       Q    So if you kept that draft, your lawyers would
11  have given it to us?
12       A    I fully expect they would have.
13       Q    All right. Let's take a look at Exhibit 24.
14  This is 24?
15       A    (Nods head.)
16       Q    Let's go back to Exhibit 24. On the second
17  page of that exhibit -- there's only three pages,
18  correct?
19       A    Including cover, that's correct.
20       Q    The last paragraph in the section called
21  "Abstract" there's a sentence that says -- it's the
22  second sentence -- that says, "Access controls and
23  routing are implemented such that each workstation has
24  access to a specific subset of the data store, which
25  has the appearance and characteristics of local
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1   storage." See that?
2        A    Yes.
3        Q    Okay. Did you and Mr. Peterman discuss what
4   "access controls" meant?
5        A    I don't specifically recall that discussion.
6   It's probably reasonable to assume at some point we
7   did.
8        Q    Okay. Do you know when those discussions
9   occurred?
10       A    Not specifically. No.
11       Q    Were they documented?
12       A    I don't recall that they were or not.
13       Q    Then the next sentence says, "Methods are
14  provided that allow for configuration and modification
15  of the storage allocated to each workstation attached."
16  See that?
17       A    Uh-huh.
18       Q    Are those methods disclosed in this document,
19  Exhibit 24?
20       A    I'm not sure.
21       Q    Okay. Well, it's only two pages, right? Can
22  you find for me within this document any methods or any
23  disclosure of any methods that allow for configuration
24  and modification of the storage allotted to each
25  workstation attached?
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1        A    I would say that there are implicit methods in
2   that the storage is described as being segmented and
3   configured. The implementation methods are left open.
4        Q    Okay. Why were they left open?
5        A    I would say that there are a variety of
6   methods within the context mentioned that could be used
7   so that it was not pertinent to the invention itself.
8        Q    So once --
9        A    But that's, you know, that's -- I don't really
10  specifically recall.
11       Q    So, and you were referring a second ago to the
12  allocation of storage. I'm not sure if I used the
13  right word, but you were referring to drawing 3 on the
14  last page of Exhibit 24, correct?
15       A    Well, I was referring in toto to the
16  demonstration through the document that the storage, as
17  described in Figure 3, is configured and modified as a
18  contrast of Figures 1 and 2.
19       Q    Okay. You mentioned "configured," and by
20  configured with reference to Figure 3 in Exhibit 24,
21  you mean the drawing or the depiction of the storage
22  device on the right-hand side that shows global data,
23  and it shows a storage device on the right-hand side
24  that has partitioning for workstation 1, workstation 2,
25  workstation 3, workstation 4; and then you've got the
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5 (Pages 17 to 20)

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1 bottom storage device is dedicated to workstation 5.
2 That's what you mean by "configured," right?
3   A   I was generically alluding to the fact that
4 multiple configurations of data or multiple
5 configurations are demonstrated in that drawing.
6   Q   Okay. And that's what you meant by
7 "configuration"?
8   A   No. That's too generic. I wouldn't nail
9 it down that much. I'm just globally commenting that
10 in order to have a demonstrated configuration you'd
11 have to have -- it follows that there is a
12 configuration method. That's the only comment I was
13 really making.
14   Q   Okay. So back to the sentence that was on
15 the second page of Exhibit 24, it says, "Methods
16 are provided that allow for configuration and
17 modification." One such method for configuration, at
18 least, is illustrated in Figure 3, right?
19   A   One such method -- I'm sorry. I didn't follow
20 your question there.
21   Q   Let me back up and ask the fundamental
22 question again. This sentence on the second page, the
23 last sentence of the third paragraph on the second page
24 of Exhibit 24 says, "Methods are provided that allow
25 for configuration and modification of the storage

Page 22

1 allocated to each workstation attached." Okay?
2   A   Okay.
3   Q   My question to you is, first part, where is
4 the method in this document that is provided that
5 allows for a configuration of that storage?
6   A   I would suggest that the method is defined in
7 the storage router as drawn, but that's an open
8 question. It's -- it's implicit in the drawing and in
9 the text that there is such a method. The specific
10 method, whether that's, you know, some given
11 implementation, isn't described here that I can see.
12   Q   Why isn't it described?
13   A   I don't specifically recall any reason to
14 describe it or to not describe it when I produced the
15 document.
16   Q   Okay. Is the method of configuration
17 important to your invention?
18   A   You know, that's kind of a question that gets
19 into -- clearly, at the time I probably didn't think
20 that it was, and I would probably hold that opinion;
21 but that requires a level of analysis and thought that
22 I'm really not prepared to give right now.
23   Q   This sentence also says, "Methods are provided
24 that allow for modification of the storage allocation."
25 Where in this document is there disclosure of the

Page 23

1 method for modification of the storage allocated?
2   A   Again, I would say that that's implicit in the
3 storage router.
4   Q   Okay. Shown in Figure 3, right?
5   A   Yes.
6   Q   Okay. And how -- what in Figure 3 shows
7 modification of the allocated storage?
8   A   The statement that methods are provided that
9 allow for configuration and modification of the storage
10 allocated to each workstation attached.
11   Q   Okay. And in your mind that's all that's
12 necessary to show the ability to modify?
13   A   Yeah.
14   Q   Okay. Nothing more?
15   A   In the context, absolutely. Nothing more.
16   Q   Now, in Figure 3 there are shown five
17 workstations, correct?
18   A   Yes.
19   Q   And there are shown three storage devices,
20 correct?
21   A   Whether those are three storage devices or
22 what could be subject to question, but I'll allow that.
23   Q   Well, they're storage devices, correct?
24   A   There are three storage elements shown. One
25 is subdivided into four storage elements. Whether

Page 24

1 those are individual devices --
2   Q   Okay.
3   A   -- is a matter of the perspective, and that's,
4 you know, that kind of relates, I think, in part to the
5 characteristics of the invention as to what perspective
6 they're being looked at, but --
7   Q   All right. Where's the method for modifying
8 that storage in that view?
9   A   It's --
10   Q   Modifying the storage allocation in that
11 figure.
12   A   Reading the text, it's provided in the storage
13 router.
14   Q   Okay. Modification is provided in the storage
15 router?
16   A   The capability to modify and configure is
17 provided.
18   Q   Okay. Well, the only thing that's connected
19 that can modify in this figure are the workstations,
20 correct?
21   MR. ALBRIGHT: Could you read that back,
22 please?
23   (The referenced portion was read back by
24 the court reporter.)
25   THE WITNESS: The purpose of the drawing

6 (Pages 21 to 24)

Page 25

1 isn't to address the modification and configuration.
2 The purpose of the drawing, I think, is to show the
3 connectivity from that perspective. So we're showing
4 the workstations are connected that's described in the
5 caption.
6   Q   (By Mr. Bahler) Is modification of the
7 allocated storage, is that important for your
8 invention?
9   A   The ability to do so. Yes.
10   Q   And how would that be done with reference to
11 Figure 3?
12   A   It's -- I don't know that the Figure 3 shows
13 or describes how that is done.
14   Q   Okay. Is there any disclosure of how that
15 would be done within this Exhibit 24?
16   A   I don't know of one, but it could be done over
17 the interconnects shown. It could be done through
18 another interconnect.
19   Q   It could be done over the interconnects shown
20 to the workstations, correct?
21   A   Hypothetically possible. Yeah.
22   Q   So as conceived, your invention contemplated
23 that modification of the storage allocated could be by
24 the individual workstations, right?
25   MR. ALBRIGHT: Objection.

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1 Mischaracterizes his testimony.
2   THE WITNESS: Your question -- can you
3 read that back to me, please?
4   (The referenced portion was read back by
5 the court reporter.)
6   THE WITNESS: Yes. As conceived, that's
7 one of the methods that could be used for
8 configuration.
9   Q   (By Mr. Bahler) And in fact, referring to
10 Figure 3, it's the only method shown, correct?
11   A   I don't think that's a fair characterization,
12 as the text refers to multiple methods. Other
13 documents probably refer to other methods of
14 communicating with the storage router. So in the
15 context of all the -- of a storage router and the
16 definitions that are around that, I would agree with
17 that.
18   Q   All right. Let's take a look at Exhibit 23,
19 which is a copy of your patent, the 972 patent. And
20 Figure 1, which is -- actually, this is Figure 3 on the
21 very face. That's a drawing of your invention,
22 correct, conceptual drawing, block diagram of your
23 invention, right, Figure 3?
24   A   That is one such block diagram. That's
25 correct.

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1   Q   Okay.
2   A   And I'm confused, if I may interject.
3   Q   Sure.
4   A   My understanding, again referring back to
5 number 5 here, was that these were corporate
6 perspective of date of invention. Yet, you're
7 questioning me on elements of invention. This is all
8 prior material that we've covered in other depositions.
9   So I'm concerned that we're repeating
10 ground as well as, you know, going off on tangents that
11 we've already been through, and I really don't feel
12 real comfortable with that.
13   Q   Well, Mr. Hoese, when you were deposed before
14 we didn't have this Exhibit 24, and every question I've
15 asked you has been about Exhibit 24. All right?
16   THE WITNESS: Is that correct?
17   MR. ALBRIGHT: Every question he's asked
18 you I think has been about that document.
19   Q   (By Mr. Bahler) Now, take a look at
20 Exhibit 23 --
21   MR. ALBRIGHT: I'm sorry. But if
22 there's something you feel like you need to add to make
23 your answers complete that goes outside of that, then
24 you certainly need to add that in.
25   Q   (By Mr. Bahler) All right?

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1   A   Okay.
2   Q   Now, referring to Exhibit 23, which is a copy
3 of your patent, Figure 3, just to lay the predicate
4 again, that is a block diagram of one embodiment of
5 your invention, correct?
6   A   Correct.
7   Q   And shown in that figure are workstations,
8 right?
9   A   Correct.
10   Q   And shown are storage devices, correct?
11   A   Correct.
12   Q   And also storage routers are shown there,
13 right?
14   A   Correct.
15   Q   And all three of those things are also shown
16 in Figure 3 of Exhibit 24, right?
17   A   Correct.
18   Q   Okay. Also shown in Figure 3 of Exhibit 23,
19 which is your patent, is something called a "management
20 station." Do you see that?
21   A   Correct.
22   Q   Now, that's not shown in Figure 3 of
23 Exhibit 24, is it?
24   A   That's correct.
25   Q   When did you conceive of the management

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1 station?

2   A   I would say it was March 22nd, '97.

3   Q   Okay. Where is that? Show me specifically

4 where in Exhibit 24 there's a conception of the

5 management station.

6   A   Again, it's implicit with the storage router

7 concept.

8   Q   Okay. So once you have a drawing like Figure

9 3 which shows workstations and storage devices in a

10 storage router, implicit in that disclosure is an

11 independent management workstation, correct?

12   A   I would say that any contemporaneous documents

13 that refer to a storage router and the concept of a

14 storage router at that point did allow for and provide

15 interconnects for an external management station. Yes.

16   Q   What contemporaneous documents?

17   A   There's the Verrazano specification. Probably

18 other documents. I don't specifically recall all of

19 them.

20   Q   Okay.

21   A   Schematics were present at that point that

22 showed interconnects to those devices.

23   Q   Do any of those other documents talk about

24 modifying access control through that management

25 station?

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1   A   I would not believe that any did prior to this

2 document.

3   Q   Okay. And this document itself doesn't show

4 that either, right?

5   A   Doesn't show what either?

6   Q   Using an independent management station to

7 modify access control.

8   A   Implicit in the definition of a storage

9 router, that connectivity is implicit along with the

10 statement that methods are provided.

11   Q   Okay. The statement in Exhibit 24 that

12 methods are provided, is that a statement that that

13 portion of your invention is in software rather than in

14 hardware?

15   A   I wouldn't characterize it that way.

16   Q   Okay. So would using software have been a

17 natural choice in your mind?

18   A   It is neither exclusively a hardware or a

19 software characteristic. Software is an element, could

20 very well be considered a necessary element, and

21 hardware could very well be considered a necessary

22 element.

23   Q   Now, there's no disclosure in this document,

24 Exhibit 24, of any use of any sort of tables to keep

25 track of access control, is there?

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1   A   I don't recall that there is.

2   Q   Okay. Would tables have been an obvious way

3 to do it?

4   A   I don't know that I'd use the word "obvious."

5 They may have been -- I can conjecture they give it the

6 context of the state of the projects ongoing at that

7 point in time, the stated definitions. That may have

8 been a natural way to implement things or to design

9 things, but I don't specifically recall.

10   Q   Now, where in this document, Exhibit 24, does

11 it say that access controls are implemented in the

12 storage router? Oh, never mind. I've got it. I

13 withdraw that.

14   Okay. After you created this document,

15 Exhibit 24, Mr. Hoese, did you create any other

16 documents subsequent to this date of May 28th, '97 that

17 further and more completely described access control?

18   A   I don't know. I would say yes, that I created

19 documents that described specific elements of access

20 control or specific characteristics of certain types of

21 access control; but access control, as described in the

22 concept in the patent, I don't know that I can globally

23 say that, answer that question.

24   Q   You just mentioned that you do recall creating

25 some documents about access control.

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1   A   Patent filing, for example.

2   Q   When?

3   A   I don't specifically recall.

4   Q   Okay. The patent application is one, right?

5   A   I would say, yeah, that's fine.

6   Q   What other documents were there?

7   A   I really don't specifically recall.

8   Q   Okay. When did you create those other

9 documents?

10   A   Again, I don't recall what the document -- I

11 know that I did work on things that talked about

12 different elements and different types of access

13 control. Whether they specifically referred to the

14 types that might be out of the patent, I can't really

15 answer, and I just don't recall.

16   Q   Okay. Now, between this date, May 28th '97,

17 and the date that the patent application was filed,

18 which was December 31st, '97, was the patent

19 application the only thing that you were working on?

20   A   No.

21   Q   What else were you working on?

22   A   Oh, many, many things. I really don't recall

23 my projects that were ongoing at the time. I do recall

24 that I was very, very busy.

25   Q   Do you know how many other things you were

8 (Pages 29 to 32)

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1 working on?

2   A   No. I don't know the number.

3   Q   How often did you work on the patent

4 application during that period?

5   A   A number of times. I don't -- again, I don't

6 specifically recall.

7   Q   Do you recall how many times during those

8 months between May 28th, '97 and December 31st, '97

9 that you actually did work on the patent application?

10   A   No, I don't.

11   Q   Did you record any -- did you make any time

12 entries or anything to in any way record the time that

13 you spent working on the patent application?

14   A   No. I didn't record that kind of data.

15   Q   Did you create any documents that would be

16 able to indicate that you were working on the patent

17 application?

18   A   Not that I recall. It's possible that, you

19 know, I might have made notations or had other

20 documents, but I don't remember.

21   Q   Okay. So all we have to rely upon is your

22 testimony?

23   A   I don't know.

24   Q   Let me show what was marked at your previous

25 deposition as what I think are all of your notebooks.

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1 Focusing in now on topic 5, part B of the deposition

2 notice, let's take a look at what was previously marked

3 as Hoese Deposition Exhibit 6. Can you just reconfirm

4 for me that that is one of your notebooks that you made

5 while at Crossroads?

6   A   It certainly appears to be.

7   Q   That's your writing?

8   A   Yes, it is.

9   Q   Can you tell me what date that notebook spans?

10   A   There's a date of 12/15 on here. I don't know

11 what year.

12   Q   Is there any way at all for you to tell me

13 what date, what year that document covers, Hoese

14 Exhibit 6? And you can look within it for any sort of

15 refreshing events or whatever.

16   A   There may be. It's very difficult. I'm

17 seeing jumps and dates and gaps and things here that

18 indicate much later dates, but I'm also seeing some

19 things that indicate dates more contemporaneous with

20 the invention. So I'm very confused by this. It seems

21 very disordered.

22   Q   Okay. Could you -- well, could you just

23 confirm for us that the Bates numbers, which are the

24 production numbers applied, for example, these, are

25 there any gaps in those numbers?

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1   A   There are a very large number of pages. Do

2 you want me to look through them all and answer that?

3   Q   Well, I guess the point is, I don't think

4 there are any gaps in those Bates numbers, which means

5 that that is exactly how these documents came from your

6 records within Crossroads.

7   A   Oh, that's entirely possible.

8   Q   So I guess the -- so, all right, the

9 fundamental question is, can you tell me what is the

10 year of those notes?

11   A   It appears to me that a large number of these

12 notes are of loose-leaf paper out of legal pads that,

13 you know, may have been disconnected. They may have

14 been in connective pads. They may have been put into

15 files sorted by maybe topic or not sorted at all rather

16 than sorted by date. So I'm not getting any -- that's

17 not helping me in determining the date.

18   Some of the documents do have more

19 accurate -- more complete dates on them. Some of the

20 pages do, but again, I'm not seeing a consistency.

21   Q   With years?

22   A   Yeah. There's some stuff back here with

23 years.

24   Q   What year?

25   A   I've seen '97, I've seen '98. I'd have to

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1 look through and find things. Here's a 12/19/96 page.

2 This comes after material relating to EGIO stuff that

3 I'm fairly confident was significantly after that.

4   Q   So some of that was before December 31st '97,

5 at least some of it, right?

6   A   I'm sorry, what was the date I just read to

7 you?

8   Q   December '96.

9   A   So, yes, at least one page was prior to '97.

10 That's dated '96.

11   Q   Can you find within that Exhibit 6 any mention

12 of access controls?

13   MR. ALBRIGHT: If you're going to ask

14 him to do that, we're going to take a break.

15   MR. BAHLER: That's fine.

16   MR. ALBRIGHT: And he's going to go

17 through and he's going to read each page.

18   MR. BAHLER: That's fine. I've got

19 these too.

20   THE WITNESS: It's going to take me a

21 couple of days to do this. Do you really want me to do

22 this?

23   Q   (By Mr. Bahler) Well, yeah. We can continue

24 this. That's no problem.

25   MR. ALBRIGHT: This is an inappropriate

9 (Pages 33 to 36)

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1 way of doing this. I mean, it's not appropriate --
2   MR. BAHLER: I can't find it.
3   MR. ALBRIGHT: It's not an appropriate
4 way to hand a witness a couple hundred pages of his
5 logs at a deposition and ask him to try and find
6 something. That's not appropriate, and you know it.
7   If you want to go through and ask him
8 about anything that's on any of those pages, you're
9 free to do so; but he's not going to go through each
10 page and try and see what he can find. It's not his
11 obligation to do it.
12   Q   (By Mr. Bahler) Well, find me the page -- can
13 you find me any pages that you absolutely can tell me
14 that are dated May 28th '97 and December 31st, '97?
15   A   In that document?
16   MR. ALBRIGHT: He's not going to do it.
17   THE WITNESS: I don't know.
18   MR. ALBRIGHT: He's not here to go
19 through these journals page by page and find this
20 stuff. You have the documents, and you've had it for
21 months, years probably. You know, it's just not the
22 witness' role to do that.
23   MR. BAHLER: Well, it's his notebooks.
24   MR. ALBRIGHT: And you're free to go
25 through every page you want and ask him any questions

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1 on that, but he's not here to go through the documents
2 on a goose chase and try and find something, and he's
3 not going to do it.
4   MR. BAHLER: It's not a goose chase. I
5 want him to confirm it's not there.
6   MR. ALBRIGHT: He's not going to go
7 through each page and confirm that it's not there or go
8 through and confirm that it is. It's not his burden to
9 do that.
10   Q   (By Mr. Bahler) All right. Why don't we do
11 it this way. The first page is December 15th. Do you
12 know what year that is? Do you have any idea?
13   A   I'm not -- no.
14   Q   Can you tell where these set of notes end and
15 the next set -- you mentioned that this looks to you as
16 if it were a collection of individual notebooks or
17 individual notepads, I think is --
18   A   I'm not sure what your question is right now.
19   Q   Do you know where the notepad -- well,
20 assuming that you are correct in your understanding or
21 in your assessment that this is a collection, Exhibit 6
22 is a collection of individual notepads that were just
23 stuck together --
24   A   On my examination that I just went through of
25 it, it appears to be a collection of different

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1 notepads, note pages, perhaps, together. It could
2 be -- I'm not quite sure what the collection is. There
3 are different elements all bunched together in here.
4 Yes.
5   Q   Well, within -- you don't know -- okay. So
6 the first date, December 15th, you don't know what year
7 that is?
8   A   I don't.
9   Q   Okay. And within Exhibit 6 there's Bates
10 number 42305. It's dated November 5th, right?
11   A   That's correct.
12   Q   And do you know what year that is?
13   A   No, I don't.
14   Q   Any way to tell by looking at the contents?
15   A   I don't know.
16   Q   Okay. And we have the next page, November
17 9th. It runs for three pages. Do you know what year
18 that is?
19   A   No.
20   Q   Okay. Now, the next page within Exhibit 6
21 bears Bates number 42310, and it has what looks like a
22 folder that says "Intel" on it. See that?
23   A   Yes.
24   Q   Is that your handwriting?
25   A   Yes.

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1   Q   Can you tell me -- can you pick out of this
2 exhibit where that folder stops?
3   A   I don't know.
4   Q   Okay. Well, within -- or behind that sheet
5 there's a date beginning November 4th and continuing
6 through Bates number 42328. November 4th begins in
7 42312 and continues through 42318. Do you know what
8 date -- do you know what year those page pages were?
9   A   No.
10   Q   The next two pages are both dated June 10th.
11 Do you know what year those are?
12   A   No.
13   Q   All right, sir. The next two pages are dated
14 December 6th -- December, what was it?
15   A   12, 1996.
16   Q   1996. So that was created on or about
17 December 12, 1996, correct?
18   A   Yes.
19   Q   Is there anything on those two pages that
20 deal -- actually, I don't know whether this is part of
21 it too, but possibly it is.
22   A   I don't know.
23   Q   Is there anything on those sheets that deal
24 with access control?
25   A   The copies are too illegible for me to answer,

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1 but I don't see anything that does.
2   Q   Okay. The next dated document within
3 Exhibit 6 is dated 4/14, and that bears Bates number
4 42338. Do you know what year that document is?
5   A   No.
6   Q   The next document I'm going to talk about
7 within 6 bears production number 42356. Do you know
8 what that document is?
9   A   Page of notes in my handwriting.
10   Q   Do you know what it deals with?
11   A   Reference is made to a staff meeting.
12   Q   Does that document deal in any way with access
13 control?
14   A   I don't see anything regarding access control.
15   Q   And that's May, correct?
16   A   I'd have to look. It's 5/12/97.
17   Q   The next dated document within Exhibit 6 is
18 42371, Crossroads production number 42371. It's dated
19 October 15th. Do you know what year that is?
20   A   I don't recall.
21   Q   The next document I'd like to talk about
22 within Exhibit 6 is production number 42423 dated
23 December 13th. Do you know what year that is, sir?
24 Here's the second page of that document.
25   A   I don't know.

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1   Q   You don't know?
2   A   (Shakes head.)
3   Q   The next document is 42425. Is that
4 a -- first of all, is that your handwriting?
5   A   No.
6   Q   Do you know whose it is?
7   A   Yes.
8   Q   Whose is it?
9   A   It's ex-girlfriend's.
10   Q   An ex-girlfriend?
11   A   Uh-huh.
12   Q   Does it have anything to do with this case at
13 all?
14   A   I don't think so.
15   Q   Yeah. I don't think so.
16   A   Testimony to the completeness of you getting
17 my records.
18   MR. ALBRIGHT: Her name is Access
19 Control.
20   Q   (By Mr. Bahler) I have a series of three
21 documents, 42427, 28, and 29, both dated in December.
22 Do you know what year those documents were created?
23   A   I think these documents are December of '97,
24 although I'm not absolutely positive.
25   Q   In those three sheets is there any mention of

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1 access control?
2   A   I see no mention of access control.
3   Q   Do they deal in any way with the preparation
4 of the patent application?
5   A   I can see no reference to that.
6   Q   The next document in Exhibit 6 I'd like to
7 talk about is Crossroads 42453. There's dates in
8 October. Do you know what year those are, sir?
9   A   No. I do not.
10   Q   All right.
11   MR. ALBRIGHT: If you're ging to move to
12 the next stack, I'd like to take a break.
13   MR. BAHLER: Okay. Fine with me.
14   (At 2:45 p.m. the proceedings recessed,
15 continuing at 2:59 p.m.)
16   Q   (By Mr. Bahler) Let me show you what was
17 marked in your previous deposition as Hoese Exhibit 12.
18 Now, Mr. Hoese, in contrast with the previous
19 exhibit we just went through, Hoese 6, this appears to
20 be a bound notebook. Can you confirm that for me?
21   A   It does appear to be.
22   Q   And its first date in the document is February
23 16th, 1997, correct?
24   A   That is correct. I'm sorry. That does appear
25 to be February 10th.

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1   Q   Okay.
2   A   It might be 16th.
3   Q   And it continues through August 4th, is the
4 last day I can find on here. Do you know what year
5 that is?
6   A   It appears to be '97.
7   Q   So does this exhibit constitute your notes
8 that you were making while at Crossroads between
9 February 10th, '97 and August 4th, '97?
10   A   A subset of them certainly.
11   Q   Why do you say "a subset"?
12   A   It was my habit to not only use my bound
13 notebook, but to use loose-leaf pads and things of that
14 sort to maintain notes.
15   Q   All right. You mentioned with reference to
16 Exhibit 24, which was the document that we discussed at
17 length, that you had a concept of the invention on
18 March 22nd, '97, and I believe you testified that you
19 made some contemporaneous documents that you thought
20 were dated about that time.
21   On Bates 41189 within Exhibit 12 there's
22 a date at the top, March 10th, and the last date on
23 that is March 24th. Do you see that, sir?
24   A   Yes, I do.
25   Q   Okay. Is there anything on that page that

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1 deals with access control?
2   A   I don't see anything there.
3   Q   Okay. Continuing within Exhibit 12 and to
4 Bates number 41205. Okay?
5   A   I'm sorry, you're saying --
6   Q   412 --
7   A   Are you saying pages 41189 to 41205, or are
8 you saying that specific page?
9   Q   I'm saying 41205.
10   A   205?
11   Q   Yeah.
12   A   Okay.
13   Q   There's a reference on that page -- first of
14 all, that page is dated May 13th, '97, correct?
15   A   5/13/97. Correct.
16   Q   And there's a reference to a conversation with
17 Bill Hulsey; is that right?
18   A   Yes.
19   Q   He's the patent lawyer for Crossroads, right?
20   A   He was one of them. Yes.
21   Q   Is there anything on this page that deals with
22 access controls?
23   A   Not that I see.
24   Q   Okay. Between the page that we just talked
25 about, 41189, and this one, 41205, can you just look at

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1 those sheets and tell me whether there's anything in
2 any of those sheets that deal with access control?
3   A   41189 makes reference to addressing, which may
4 be in relation to access control. I don't specifically
5 recall.
6   Q   Okay. Now you're up to 41205?
7   A   Correct.
8   Q   We've already talked about that page, right?
9 There's nothing on 41205 that deals with access
10 controls, right?
11   A   There's a reference to Bill Hulsey that may
12 have been in relation to that. I don't know.
13   Q   Okay. But there's nothing written down here
14 that deals with that?
15   A   Not that I see.
16   Q   Okay. Please turn to 41210. Well, hang on.
17 I'm sorry. Back up just a second to 41206. I
18 apologize. In the middle of that page there's a
19 reference to Bill Hulsey again, correct?
20   A   Correct.
21   Q   And specifically it says, "Ask Bill Hulsey
22 about IP issues with HP," right?
23   A   Yes.
24   Q   That doesn't have anything to do with access
25 controls, correct?

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1   A   I don't believe so. I don't recall the
2 specific topic.
3   Q   Is there any reference on any of this page
4 41206 to access control?
5   A   I don't see anything.
6   Q   Okay. Please turn forward to 41210. This is
7 a page dated 5/19. That's 1997 again, right?
8   A   Correct.
9   Q   Okay. And there's a reference -- these are
10 notes with respect to a meeting or a telephone
11 conference or something with Bill Hulsey, correct?
12   A   I believe so.
13   Q   Is there any mention on this page about access
14 control?
15   A   I'm having a lot of trouble with the
16 handwriting here. I don't see any reference to access
17 control.
18   Q   Mr. Hoese, back up just briefly to page 41189.
19 That's the page that included entries starting at March
20 10th and ending in March 24th. Okay? Now, in the
21 middle of that page there's an entry, 3/15 to 3/21.
22 See that, sir? It says travel to Adic, Exabyte, and
23 Spectra Logic.
24   A   Yes. I see that.
25   Q   Okay. Now, according to the writing that's on

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1 Exhibit 24, you believe that you originally conceived
2 of your invention on March 27th, '97, correct?
3   A   No.
4   Q   Well --
5   A   Did you say March 27th?
6   Q   March 22nd.
7   A   That's correct.
8   Q   Okay. And that was just after you made the
9 trip to Adic, Exabyte, and Spectra Logic, correct?
10   A   I don't know that that refers directly to my
11 travel or if I made that trip -- maybe. I don't
12 recall.
13   Q   Is there anything about the trip to Adic,
14 Exabyte, or Spectra Logic that made you think of access
15 control?
16   A   I don't think so.
17   Q   Where were we? We got up through, I think,
18 41210. Okay? Could you take me through the rest of
19 that document and tell me, number one, if there's any
20 mention of access control or any entries that say
21 access control; or two, whether there's any entries
22 that deal with the patent application?
23   A   The rest of that document being 41210
24 through --
25   Q   Yeah. Exactly. Through the end.

12 (Pages 45 to 48)

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1   A   Through --
2   Q   41259. So with those two things in mind, one,
3   access control, and number two, patent application.
4   MR. ALBRIGHT: He's not going to do
5   that. He's not going to look through a group of
6   documents. You know, if you want to ask him about
7   pages on there, I've allowed you to go on and do that
8   for an hour, but he's not here to look through a
9   document like that. That's not proper.
10   MR. BAHLER: We can do it one at a time
11 then.
12   MR. ALBRIGHT: Do it one at a time.
13 Q   (By Mr. Bahler) All right. Starting on page
14 41211, is there any mention there of access control?
15 This is dated May 19th, '97, correct?
16 A   It's dated 5/19/97. Correct.
17 Q   Are there any entries on that page dealing
18 with access control?
19 A   To the degree I recall the topics discussed,
20 no.
21 Q   Or the patent application?
22 A   Same answer.
23 Q   Next page, 41212, at the top it says "B&B
24 continued." What does that mean?
25 A   I believe that's referring to Bob, B-O-B.

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1   invention.
2   A   Oh. I'm sorry. Could you repeat the last
3   question?
4   Q   On page 41213 is there any reference to access
5   control or your patent application?
6   A   I don't see any specific references to it.
7   Q   Next page, 41215, same question.
8   A   I don't see any direct references.
9   Q   All right. Next page, 41216, is there any
10 reference there to access control or the patent
11 application?
12 A   I don't see any.
13 Q   Next page, 41217, is there any reference on
14 that page to access control or your patent application?
15 A   Don't see any.
16 Q   41218 same question.
17 A   Same answer.
18 Q   41219.
19 A   Some of the pages are illegible. I don't see
20 any.
21 Q   Okay. Next page, 41220, is there any
22 reference there to either access control or the patent
23 application?
24 A   Page 41220?
25 Q   Yes, sir.

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1   Q   B-O-B. Okay. Is there any mention on that
2   page -- are there any entries on that page that deal
3   with either access control or the patent application?
4   A   There's a reference to work with Bob on fibre
5   channel to SCSI mapping that may have been related. I
6   don't specifically recall.
7   Q   Is mapping the same as access control?
8   A   No. It may be related.
9   Q   May not be related?
10 A   It may not be.
11 Q   Okay. Where is that entry?
12 A   The second to the last line of handwriting on
13 the page.
14 Q   This is on 41212?
15 A   That was the page number you were asking
16 about, was it not?
17 Q   Okay. All right. The next page, 41213, is
18 there any reference there to access control or patent
19 application?
20 A   Just for clarification, since you asked the
21 question, you're asking broadly "is there anything
22 related to." How narrow? You know, you're saying,
23 "well, it may or may not be," and that may or may not
24 be. How broadly or narrow do you want that answer?
25 Q   With respect to the conception of your

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1   A   I don't see any.
2   Q   Okay. Now, that page 41220 was dated May 2nd,
3   1997, correct?
4   A   5/2/97. Correct.
5   Q   Right. And the next page, 41221, is dated as
6   June 2nd. See that?
7   A   I see that.
8   Q   Is that '97?
9   A   I don't specifically recall. It seems a fair
10 assumption.
11 Q   Do you have any reason -- do you have any
12 explanation for the month gap between those two pages?
13 A   I could come up with a number of hypotheses.
14 Q   My specific question is, do you know why
15 there's a gap of a month in this notebook?
16 A   I would presume because I did not put notes in
17 this notebook during that month. I don't know why I
18 did not.
19 Q   Okay. That's good enough. Do you see
20 anything on 41221 that deals with either access control
21 or the patent application?
22 A   I do not.
23 Q   Same question for 41222.
24 A   I do not.
25 Q   41223?

13 (Pages 49 to 52)

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```
1     A    I don't.
2     Q    Okay.  41224?
3     A    Nope.
4     Q    All right.  Keep your finger on 41225 for a
5  second and move forward to 41232.
6     A    41232?
7     Q    Yes, sir.  And there's a reference that's
8  dated June 19th, correct?
9     A    It's dated 6/19.
10    Q    And that's 1997?
11    A    I don't see any reason to think that it's not.
12    Q    Okay.  And this is a discussion with Baker &
13 Botts?
14    A    I don't know.  It's in reference to -- the
15 head note is Baker & Botts.  I don't know --
16    Q    Does any of that entry have anything to do
17 with either access control or the patent application
18 for the 972 patent?
19    A    I don't recall.
20    Q    Can you tell by referring to those notes
21 whether --
22    A    There are elements of it that certainly do
23 not.  I don't think that it does.  It doesn't suggest
24 to me that it refers to the 972 patent.
25    Q    Okay.  Back to 41225, is there anything
```

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1  between 41225 and 41232, when you discussed something
2  with Baker & Botts, that deal with either access
3  control or the patent, the 972 patent application?
4     A    I don't have a page 41231.
5     Q    No, you don't.
6     A    There are a couple of illegible spots, but I
7  didn't see any references to it.
8     Q    Please turn to page 41234.  Is there any
9  reference on that page to either access control or the
10 972 patent application?
11    A    I don't see any.
12    Q    Please turn to page 41238.  Is there anything
13 on there that deals with either access control or the
14 patent application?
15    A    Just for the record, I also note that there's
16 no 41237.  I don't see any.
17    Q    Okay.  Please turn to page 41241 and also
18 41232.  Is there anything on either of those two pages
19 that deals with access control or the 972 patent
20 application?
21    A    I don't see anything specific that addresses
22 them.
23    Q    Please turn to page 41248.  It's dated July
24 17th, correct?
25    A    7/17.
```

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```
1     Q    That's '97?
2     A    I would presume so.
3     Q    Is there anything on this page, 41248, that
4  deals with either access control or the patent
5  application?
6     A    I don't see anything specifically.  No.
7     Q    Same question with respect to 41250.
8     A    And for the record, there's no 41249.  I don't
9  see any references.
10    Q    Okay.  On page -- turn to page 41256 and 57.
11 Those pages are all dated, have entries dated 8/4.  Is
12 that 1997?
13    A    Yes, if these are all in order, which I assume
14 they are.
15    Q    Is there anything on those two pages, 41256 or
16 57, that deals with either access control or the 972
17 patent application?
18    A    I don't see anything.
19    Q    Okay.  Please refer to what's marked in your
20 previous deposition as Hoese Deposition Exhibit 13.  Is
21 this another spiral-bound notebook of yours?
22    A    I don't believe that either of these are
23 spiral-bound notebooks.
24    Q    Is this a -- well, what is this?
25    A    I use bound notebooks.  They weren't
```

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```
1  spiral-bound.
2     Q    So this is another of your bound notebooks,
3  correct?
4     A    Borum & Pease.
5     Q    Pardon?
6     A    Borum & Pease.
7     Q    Borum & Pease.  Exactly.  And this is a
8  notebook that you created while at Crossroads, correct?
9     A    I assume so.
10    Q    The first date that I can see is 2/20, that's
11 on page 1; and the last date that I see on page 43,
12 which bears production number 41308, is 5/29.  See
13 that, sir?
14    A    Yes, I do.
15    Q    Do you know what year this notebook deals
16 with?
17    A    Not specifically.  No, I don't.
18    Q    Is there any way for you to tell what year
19 this notebook is?
20    A    I can only look for it and look for clues.  I
21 don't know.
22    Q    Well, I didn't see any years, but I was just
23 wondering whether you can tell from the context of the
24 entries what year this notebook covers.
25    A    Did we cover this notebook in the previous
```

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1 deposition?
2   Q   Not to this extent. No. Not as it deals with
3 the topic in the 30(b)(6) notice.
4   A   But specifically referring to the year, I seem
5 to recall that we had a notebook that I was unable to
6 determine the year. There's a phone number in this
7 notebook that I've been needing to find completely
8 unrelated to the task at hand.
9   Page 1 of the notebook makes reference
10 to a schedule, for what I'm not sure, but it refers to
11 advance datasheets on 5/22/96. I -- although I
12 don't --
13   Q   There's also a --
14   A   2 of '96 I don't believe I worked for
15 Crossroads, so that doesn't quite make sense. When did
16 I start? That's kind of an odd -- I may have just made
17 a mistake in writing it. I don't know. Okay. This
18 notebook appears to precede my employment with
19 Crossroads.
20   Q   Is this your handwriting?
21   A   Yes, it is. This notebook should not be in
22 evidence. This notebook is --
23   Q   Okay. So this notebook, Exhibit 13, has
24 nothing to do with any of the work that you did at
25 Crossroads?

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1   A   That's correct.
2   Q   That's fine with me. Okay. Finally, I refer
3 you to Hoese Exhibit 14 marked at your previous
4 deposition. Once again, is this a notebook that you
5 prepared while at Crossroads?
6   A   Let me look a little closer and make sure
7 about it.
8   Q   Okay.
9   A   Yes, it is.
10   Q   Okay. Can you tell me -- let's turn to the
11 first dated entry. I have October 31st. You see that,
12 sir?
13   A   Yes.
14   Q   On page -- well, it's an indexed page, but it
15 bears production number 41324. Do you see that?
16   A   Correct.
17   Q   And then do you know what -- well, and then
18 there's dated entries after that. Do you know what
19 year or years this notebook spans?
20   A   Flipping through it I see January '98 dates.
21   Q   Where are you?
22   A   On page 41340 there it bears the date 1/15/98.
23 Page 41335 bears the date 12/16/97.
24   Q   Okay. So the first entry -- well, was it your
25 practice to make entries in your notebooks such as this

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1 one, which is a bound notebook, in sequential order, on
2 a page-by-page basis?
3   A   Roughly.
4   Q   Okay. So is the first entry, October 31st, is
5 that October 31st, 1997 then?
6   A   I don't specifically know, but it seems like a
7 very reasonable assumption.
8   Q   Okay. Now, turn within the document to page
9 41337. That page bears a date of 1/5/98, correct?
10   A   Yes, it does.
11   Q   And the page just before that, 41336, it
12 doesn't have a year on it, but there's entries 12/19
13 and 12/23. Do you see that?
14   A   That is correct.
15   Q   Is that 1997?
16   A   That seems a fair presumption.
17   Q   Okay. So within this notebook just the first
18 nine pages -- well, it's not. It's more than that,
19 actually. You wrote on the index, didn't you?
20   A   Efficiency.
21   Q   Yeah. Exactly. The first -- well, within
22 this notebook, production number 41324 through 41336
23 are entries made by you in 1997, correct?
24   A   Yeah. Just for the record, there's a page
25 that bears no production number on it.

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1   Q   It's blank, right?
2   A   It does appear to be a page of the notebook.
3 Yeah. So I'm sorry, could you repeat your question?
4   Q   Within this notebook, Hoese Exhibit 14, the
5 entries made by you from pages 41324 through 41336 are
6 entries made by you in 1997, correct?
7   A   I believe that's the case.
8   Q   From the end of October to the end of
9 December, '97 specifically, correct?
10   A   That would appear to be the case.
11   Q   Now, the other notebook we had that we
12 discussed a bit ago, Exhibit 12, ended in August -- I'm
13 sorry, the last entry was August 4th, '97. Do you
14 recall that?
15   A   Not really.
16   Q   Okay. Here's Exhibit 12. The last entry in
17 that notebook was August 4th, and that's in 1997,
18 correct?
19   A   Sorry. I've looked at too many notebooks. I
20 don't recall how we got to that date on this. It's not
21 dated.
22   Q   Last page, last couple pages.
23   A   It's dated 8/4. I don't recall how we arrived
24 at a year or if we did arrive at a year.
25   Q   Well, I think you did testify that that's

15 (Pages 57 to 60)

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1 1997, August 4th, '97, but the record is what it is.
2   A   This is 12. Okay.
3   Q   Yes, sir.
4   A   I think we did just go through this.
5   Q   My question is, between August 4th, '97 and
6 October 31st, '97, which is the date of the first entry
7 in your notebook Exhibit 14, were you making entries in
8 other notebooks?
9   A   It's very possible. I definitely recall that
10 there was one notebook that I lost.
11   Q   So it's possible that if there were notes made
12 in that time frame, it's possible it was in a notebook
13 that you lost?
14   A   That is correct. And it's also possible that
15 I had notes in another notebook that's no longer here,
16 or it could be in loose-leaf pages or --
17   Q   Okay.
18   A   I don't know.
19   Q   Now, could you take a look at these 12 pages
20 in Exhibit 14 bearing production number 41324 through
21 41336 and tell me whether there's any entries in those
22 pages that deal with, number one, access control, or
23 number two, the patent application for the 972 patent?
24   A   There is discussion on page 41329 of the
25 conversation with Bill Hulsey apparently regarding

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1 departure of a staff person and discussion about
2 proprietary information.
3   Q   That's Hawkins --
4   A   Hawkins Yao, Y-A-O.
5   Q   All right. And did any of those discussions
6 deal with either access control or the 972 patent
7 application?
8   A   I do not specifically recall. They did
9 generically refer to proprietary information, and
10 there's direct reference to issues regarding patent
11 applications. So it may have been surrounding that,
12 but --
13   Q   Okay. But you don't see any specific
14 references in those entries to conception or -- to
15 conception of access controls or the completion of the
16 patent application for access controls?
17   A   No specific reference.
18   Q   Okay. Next page.
19   A   There's reference on page 41331 relating to a
20 conversation with Bill Hulsey referring to comments on
21 storage router back with A. Peterman, "follow up next
22 week," which I believe would specifically refer to the
23 patent application.
24   It also makes reference to several
25 other, three other -- oh, okay, two other patent

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1 applications that had been filed prior to this time.
2 Or not to this time. It makes reference to two other
3 patent applications in addition to the 972 patent.
4   Q   Okay. And that's item 2 dated November 25th?
5   A   I'm sorry -- oh, in the list on page 41331,
6 11 -- it appears to be 11/25. It's a little blurred.
7   Q   Yeah. And you provided comments back to Baker
8 & Botts or Anthony Peterman regarding the patent
9 application draft before this time?
10   A   That's what the note indicates.
11   Q   Okay. Can you tell when you provided comments
12 back?
13   A   Not specifically.
14   Q   Did you keep a draft of those comments?
15   A   I don't recall that I did or did not.
16   Q   Do you recall what those comments were?
17   A   No.
18   Q   All right. Take a look at the next page,
19 41332.
20   A   Additionally, on page 41331, to complete that
21 question, there is reference to a patent review
22 meeting, which --
23   Q   Where is that?
24   A   12/1, engineering staff, second item in the
25 middle of the page.

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1   Q   Okay.
2   A   And I know that at some point in time, and
3 obviously prior to this point in time, we had a number
4 of filings in progress and were establishing review
5 meetings to review various patent applications and
6 their status.
7   Q   Okay. At this time how many patent
8 applications does Crossroads have in the works?
9   A   There's evidence on this page that there are
10 three at least. There may have been more. I don't
11 know.
12   Q   And one of which was the 972 patent
13 application?
14   A   That's correct. I think there would be at
15 least four at that point.
16   Q   And it's November of '97?
17   A   That seems to be consistent with the notes.
18   Q   So Baker & Botts at the time was preparing not
19 one, but, in fact, four patent applications for
20 Crossroads at this time?
21   A   I see at least three referred to here.
22   Q   But in your previous answer you mentioned
23 four. Why do you recall four?
24   A   I seem to recall that in this period there was
25 one other application that's not on this list that

16 (Pages 61 to 64)

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1   comes to mind.
2   Q   Okay.
3   A   I'm not positive that it would fit in that
4   date, but I kind of think it would.
5   Q   Okay. Is there anything else on that page,
6   41331, that either deals with access controls or the
7   972 patent application?
8   A   You said that page, 413317
9   Q   Yes?
10   A   I don't see anything else.
11   MR. ALBRIGHT: We're going to take a
12 break.
13   (At 3:54 p.m. the proceedings recessed,
14 continuing at 4:06 p.m.)
15   Q   (By Mr. Bahler) Mr. Hoese, remaining just for
16 a second on 41331, item 2, you mentioned on the
17 November 25th entry it refers to comments that you had
18 given back to Baker -- Anthony Peterman regarding the
19 972 patent application, correct?
20   A   That is the apparent reference.
21   Q   How much before this date, November 25th, had
22 you returned those calls?
23   A   I have no specific recollection.
24   Q   Please turn to 41332. And just so we know
25 what the questions are, are there any entries on that

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1   page that deal with either access control or with the
2   972 patent application?
3   A   I don't see any.
4   Q   Same question with respect to the next page,
5   41333.
6   A   Don't see any.
7   Q   Same question with respect to the next page,
8   41334.
9   A   Don't see any.
10   Q   Okay. Next page, 41335, any entries on that
11 page that deal with either access controls or the 972
12 patent application?
13   A   There is a note referencing Bill Hulsey that
14 appears to be a reminder to call him regarding labeling
15 of patent pending for a product going to OEM something.
16 Can't quite read the rest.
17   Q   Did that have anything to do with the 972
18 patent application?
19   A   I suspect it was a general question. I don't
20 specifically recall it. It looks like it was a general
21 question.
22   Q   Okay. Going to the next page, 41336, any
23 references on that page to either access control or the
24 972 patent application?
25   A   I don't see any.

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1   Q   Okay. Now, we had confirmed earlier that
2   beginning on page 41337 that those entries are
3   starting -- well, the first entry is January 5th, 1998.
4   A   Yeah.
5   Q   Can you confirm for me that the entries after
6   that page from production number 41337 were all made
7   in '98 or later?
8   A   They appear to be consistent.
9   Q   So the answer is yes?
10   A   I can't confirm it for you. They appear to be
11 consistent.
12   Q   Okay. Considering the practice that you
13 mentioned earlier of making consecutive entries in your
14 notebooks, do you have any reason to believe that the
15 entries you made beginning on page 41337 which bears a
16 date January 5th '98 and continuing to the end of this
17 notebook, Hoese Exhibit 14, were -- do you have any
18 reason to believe other than those entries were made in
19 1998 or later?
20   A   I have no reason.
21   MR. BAHLER: No further questions.
22   MR. ALBRIGHT: I'll reserve mine.
23
24
25

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1   CHANGES AND SIGNATURE
2   PAGE   LINE   CHANGE   REASON
3   _____
4   _____
5   _____
6   _____
7   _____
8   _____
9   _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____
20 _____
21 _____
22 _____
23 _____
24 _____
25 _____

17 (Pages 65 to 68)

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1   I, _____, have read the
2 foregoing deposition and hereby affix my signature that
3 same is true and correct, except as noted on the
4 preceding page.
5
6
7   _____
                                      GEOFF HOESE
8
9 STATE OF TEXAS   )
)
10 COUNTY OF TRAVIS   )
11   Before me _____ (name
12 of officer) on this day personally appeared
13 _____, known to me (or proved to
14 me under oath or through _____ (description
15 of identity card or other document)) to be the person
16 whose name is subscribed to the foregoing instrument
17 and acknowledged to me that they executed the same for
18 the purposes and consideration therein expressed.
19   Given under my hand and seal of office on this _____
20 day of_____, A.D., _____.
21
22
23   _____
                                  Notary Public in and for
24   the State of Texas
25

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1
2   I further certify that I am neither counsel for,
3 related to, nor employed by any of the parties or
4 attorneys in the action in which this proceeding was
5 taken, and further, that I am not financially or
6 otherwise interested in the outcome of the action.
7   Certified to by me this 8th day of August, 2001.
8
9   GIVENS COURT REPORTING
                               8006 Red Willow Drive
                               Austin, Texas 78736
10   (512) 301-7088
11
12   _____
                               SANDRA S. GIVENS, CSR
                               Certification No. 5000
13   Certificate Expires 12/31/01
14 # sg-417
15
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17
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21
22
23
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25

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1   REPORTER'S CERTIFICATION
2   DEPOSITION OF GEOFF HOESE
3   August 6, 2001
4   I, Sandra S. Givens, Certified Shorthand Reporter
5 in and for the State of Texas, hereby certify to the
6 following:
7   That the witness, GEOFF HOESE, was duly sworn by
8 the officer and that the transcript of the oral
9 deposition is a true record of the testimony given by
10 the witness;
11   That the deposition transcript was submitted on
12 August 8, 2001 to the witness or to the attorney for
13 the witness for examination, signature, and return to
14 me by September 7, 2001;
15   That $465.75 is the deposition officer's charges
16 to the Defendant for preparing the original deposition
17 transcript and any copies of exhibits; that the amount
18 of time used by each party at the deposition is as
19 follows:
20   David D. Bahler - 2 hours, 11 minutes
21   That pursuant to information given to the
22 deposition officer at the time said testimony was
23 taken, the following includes counsel for all parties
24 of record:
25   David D. Bahler - Attorney for Defendant
       Alan D Albright - Attorney for Plaintiff

A

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