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1 The jury is excused for recess at this time.

2 COURT SECURITY OFFICER: All rise.

3 (Jury out.)

4 THE COURT: All right. The Court stands in recess.

5 (Recess.)

6 COURT SECURITY OFFICER: All rise.

7 THE COURT: Be seated, please.

8 Counsel, let me review with you a little bit of the
9 history of today's portion of the trial so that I can be clear
10 with everyone as to where we started this morning and where we
11 are now.

12 Previously this morning, after the inventor,
13 Mr. Martyn, testified, I met with counsel in chambers. And at
14 that time, I raised with counsel the possibility that there
15 might be an 02 Micro situation requiring additional
16 construction of disputed or potentially disputed terms by the
17 Court.

18 We discussed "unlaunched," and we discussed "reached
19 directly," both of them coming from Claim 1 of the '020 patent
20 and Claim 2 of the '476 patent.

21 The Plaintiff indicated to me in chambers that they
22 did not believe an 02 Micro situation existed. Defendants
23 indicated in chambers that they thought there might be an 02 --
24 02 Micro issue and that they thought as late as last week that
25 there possibly could be one in this trial, but they weren't

1 sure how to raise it.

2 Therefore, they did not bring it to the Court's
3 attention until the Court raised it this morning in chambers
4 after Mr. Martyn testified. The Defendants asked the Court to
5 revisit the issue after Dr. Zeger testified. And with the
6 agreement of the Plaintiff, the Court proceeded to let
7 Dr. Zeger testify. He has now given his direct testimony.

8 And the Court is persuaded that an 02 Micro situation
9 does, in fact, exist. There's no need to go through the
10 cross-examination of Dr. Zeger to reach that conclusion, and
11 that under 02 Micro and its progeny, the Court has an
12 obligation to provide further claim construction with regard to
13 these terms to the parties.

14 I intend to discharge that obligation. I'm going to
15 afford both sides an opportunity to offer very brief and
16 concise argument on these two terms. The time that we're
17 spending is going to be equally chargeable to the parties as a
18 part of the trial time.

19 I'm not -- I'm not casting fault with why this was
20 not raised earlier; I'm merely making it very clear on the
21 record it wasn't raised earlier, and it now must be disposed of
22 so that we can proceed with the trial.

23 I've reviewed the treatment of these terms in the
24 file history. I've reviewed any other materials available to
25 me.

1 If the Plaintiff would care to offer any argument on
2 the term "unlaunched" or the term "reached directly," I'd be
3 happy to hear it.

4 Does Plaintiff have any argument on these terms to
5 present to the Court?

6 MR. GIZA: Yes, Your Honor.

7 Would you like me to present some slides that show
8 some of the evidence of the file history or --

9 THE COURT: Counsel, I'll let you present your
10 argument. I'd ask that you do it from the podium.

11 MR. GIZA: Yes, Your Honor.

12 THE COURT: I want you to understand that the time
13 you use is going to be charged to your trial time, but I want
14 you to have an opportunity to present to the Court what you
15 think is the most compelling case for your view of these terms
16 and what is an appropriate construction for them.

17 So that -- so with that, Mr. Giza, let me hear from
18 you.

19 MR. GIZA: Thank you, Your Honor.

20 Mr. Wietholter, could you cue up Dr. Zeger's slides,
21 please?

22 Can we go to Slide 60, please?

23 Your Honor, the claim term "launched" and
24 "unlaunched" show up in two places in the patent in the claims.

25 First, in Element [1e]: Each function in the list

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