

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

1 HAKAN LANS, : CA No. 97-2523
 2 Plaintiff : December 8, 2004
 3 :
 4 v. : 10:00 a.m.
 5 :
 6 GATEWAY 2000, INC.; ADDUCI, :
 MASTRIANI & SCHAUMBERG :
 7 Defendants :
 :
 8 :

9 HAKAN LANS, : CA No. 97-2526
 Plaintiff :
 10 V. :
 11 DELL COMPUTER CORPORATION; :
 ADDUCI, MASTRIANI & SCHAUMBERG :
 12 Defendants :
 :
 13 :

14 UNIBOARD AKTIEBOLAG, : CA No. 99-3153
 Plaintiff :
 15 V. :
 16 DELL COMPUTER CORPORATION; :
 ADDUCI, MASTRIANI & SCHAUMBERG :
 17 Defendants :
 :
 18 :

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE JOHN GARRETT PENN
UNITED STATES DISTRICT JUDGE

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25 Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

P R O C E E D I N G S

1
2 COURTROOM DEPUTY: Civil Action 97-2523, Hakan Lans
3 versus Gateway 2000, Inc., Adduci, Mastriani & Schaumberg; Civil
4 Action 97-2526, Hakan Lans versus Dell Computer Corporation,
5 Adduci Mastriani & Schaumberg; Civil Action 99-3153, Uniboard
6 versus Dell Computer Corporation, Adduci, Mastriani &
7 Schaumberg.

8 Would counsel please stand and identify yourselves and
9 the parties that you represent?

10 MR. HAINLINE: Good morning, Your Honor. Forrest
11 Hainline and Pillsbury Winthrop for Hakan Lans and Uniboard.

12 MR. WALL: Christopher Wall, assisting Forrest Hainline
13 with Pillsbury Winthrop, representing Hakan Lans and Uniboard.

14 MR. HANDLEMAN: Good morning, Your Honor. Aaron
15 Handleman, and I'm joined by my colleague, Mike Freije,
16 representing the law firm of Adduci, Mastriani & Schaumberg.
17 And Mr. Mastriani is at the counsel table with me, Your Honor.
18 Thank you.

19 MR. PARTRIDGE: Good morning, Your Honor. Scott
20 Partridge representing Dell.

21 MR. GRAVES: Good morning, Your Honor. Jonathan Graves
22 from Cooley Godward for Gateway. With me is my colleague Lori
23 Ploeger.

24 THE COURT: All right. Counsel, are there any
25 preliminary matters before I hear the arguments?

1 MR. HAINLINE: Not from our side, Your Honor.

2 MR. HANDLEMAN: None here, Your Honor.

3 MR. PARTRIDGE: None here, Your Honor.

4 THE COURT: All right. Then I'll hear the argument.
5 Moving party?

6 MR. HAINLINE: Your Honor --

7 MR. HANDLEMAN: Your Honor, if I might, before he
8 starts I just want to interject something. It just occurred to
9 me that this may make it simpler.

10 Aaron Handleman on behalf of Adduci, Mastriani &
11 Schaumberg. The question of who goes next, as I see the
12 motions, I believe it was the computer companies that -- even
13 though we're sitting at the table, I would think that they would
14 go next since they're the movant, at least for a modification.
15 So I would submit that was a preliminary matter that I would
16 raise, the order of argument.

17 And I would submit that the appropriate way would be to
18 have Dell and Gateway, who are in some respects a proponent of
19 the motion as it relates to my clients, go second and third.
20 Thank you, Your Honor.

21 THE COURT: Any objection to that?

22 MR. PARTRIDGE: No objection, Your Honor.

23 THE COURT: All right. Is there some reason why the
24 computer companies are not at the counsel table? I mean, you
25 can sit wherever you wish, but as long as it's in the courtroom.

1 MR. PARTRIDGE: Your Honor -- well, I would love to
2 hear the argument before getting up and making my argument, Your
3 Honor, so we will stay in the courtroom.

4 THE COURT: I was just wondering why you're not at the
5 counsel table.

6 MR. PARTRIDGE: Your Honor, I think as this hearing
7 proceeds, it will be, I think, clear that the primary discussion
8 will end up being between Mr. Lans' counsel and counsel for the
9 Adduci firm. We'll have a little bit to say, and I think this
10 is true of Gateway's counsel as well, but it seemed to us that
11 they're probably going to have more to say on this subject than
12 we do.

13 THE COURT: All right.

14 MR. HAINLINE: Your Honor, before I begin, I would like
15 to note that Mr. Anders Ahnlid, who is the Swedish minister for
16 trade and economic affairs, is in the courtroom, and with him is
17 Dr. Anna Nilsson from the Swedish embassy.

18 THE COURT: We're happy to have them here. Is Mr. Lans
19 here?

20 MR. HAINLINE: He is not, Your Honor.

21 Your Honor, when you entered your order assessing
22 attorneys' fees against Mr. Lans and Uniboard only, and not
23 against the law firm that was representing them, that decision,
24 as I read Your Honor's opinions, was based, in the main, on a
25 declaration that Mr. Mastriani filed under penalty of perjury on

1 August 13, 1999, where he stated, "Inasmuch as I and other
2 counsel to Mr. Lans have been repeatedly informed by Mr. Lans
3 that no assignment had ever taken place with respect to the Lans
4 patent," and then "we are investigating."

5 That statement conveyed two things, we believe, to the
6 court --

7 THE COURT: Now, where was that statement?

8 MR. HAINLINE: That statement, Your Honor, is in the
9 declaration of Louis S. Mastriani in support of emergency motion
10 for extension of time to respond to motions by Gateway. It was
11 filed on August 13, 1999.

12 Let me set the scene for this declaration, if you would
13 allow me.

14 THE COURT: All right.

15 MR. HAINLINE: Gateway, in defending the action on the
16 '86 patent, had learned that there had been an assignment of
17 patent rights to IBM, and in investigating that assignment,
18 Gateway obtained the IBM -- the assignment to IBM, and also
19 contacted IBM and obtained from IBM an assignment by Dr. Lans to
20 his company, Uniboard, which was the company that had the
21 agreement with IBM.

22 We believe that Mr. Mastriani's declaration conveyed to
23 the court that there was no -- that Mr. Mastriani did not know
24 of any assignment whatsoever, either an assignment to IBM or any
25 assignment to Uniboard. The statement is very -- is absolute,

1 that he and other counsel had been repeatedly informed by
2 Mr. Lans that no assignment, no assignment, had ever taken place
3 with respect to the Lans patent.

4 When Your Honor issued your order assessing fees
5 against Dr. Lans and Uniboard and not against the law firm, you
6 expressed at page 10 your belief that Dr. Lans had kept from his
7 attorneys all information about any assignment, and at page 12,
8 in response to the computer companies' argument that lawyers, in
9 the normal course of their duties, should have been able to look
10 into the IBM assignment and find out everything that would have
11 allowed Uniboard to have the right to assign, you said, well,
12 Adduci argues, at the bottom of page 12 of your order, that it
13 was not Lans' licensing counsel in the deal with IBM.

14 And you concluded, we believe, based on your belief
15 that the lawyers knew nothing about the IBM assignment and knew
16 nothing about Uniboard, that Dr. Lans and Uniboard were solely
17 responsible.

18 Now, in Mr. Mastriani's latest declaration, which was
19 filed May 10, 2004, at page five, paragraph 13, he acknowledges
20 that he first became aware of Uniboard before September 1996,
21 and he acknowledges that at that time, well before the lawsuit
22 was ever filed, he was aware of the IBM agreement. Now, he
23 argues that when he looked at the IBM agreement, he concluded
24 that, well, there was no assignment of the patent, only an
25 assignment of a right to license.

1 But if you look at the IBM agreement itself, which is
2 Exhibit 17 to Mr. Mastriani's declaration, you have -- I'll wait
3 a second, Your Honor, so you're able to find it.

4 THE COURT: Yes, please.

5 MR. HAINLINE: Exhibit 17 to Mr. Mastriani's
6 declaration of -- it's the intervenor's memorandum of points and
7 authorities and all their exhibits. I think that the exhibit
8 actually is an exhibit to intervenor's memorandum of points and
9 authorities and opposition. If you can't put your hand on it
10 readily, Your Honor, I can hand you a copy.

11 THE COURT: Would you, please?

12 MR. HAINLINE: Yes, sir.

13 You'll see, Your Honor, that that is an agreement
14 between Uniboard and IBM, I think the date is 1985. But if
15 you'll look at paragraph 6.1, Your Honor, you will see that
16 Uniboard's right to payment from IBM was contingent upon
17 Uniboard providing documentary evidence of its right to assign
18 the '986 patent.

19 So looking at that document, no competent lawyer could
20 conclude that there was not a document that defined Uniboard's
21 rights, and that that document, as most documents are, would be
22 the best evidence of what those rights might be. And
23 Mr. Mastriani and his law firm had that document September 1996,
24 long before the lawsuit was filed.

25 Then, Your Honor, in February 1997 - and this is

1 Exhibit 9 to my declaration on our motion for reconsideration -
2 again, well before the lawsuit was filed, Dr. Lans sent
3 Mr. Mastriani an e-mail, and he said, "As you know, the licenses
4 has been signed with a company, Uniboard AB, and not with me as
5 an individual. The patent has been transferred to the company
6 for many years ago, and the agreement with IBM was made with
7 Uniboard AB."

8 So when Mr. Mastriani swore under penalty of perjury to
9 the court that neither he nor any of the other lawyers knew
10 anything about any assignment connected at all to the patent, he
11 wasn't telling you the truth.

12 Now, Mr. Mastriani says after he got this document, he
13 called Dr. Lans and Dr. Lans said, don't worry about the
14 document, there's no assignment. There's no documentary
15 evidence at all supporting Mr. Mastriani's statements about his
16 conversations with Dr. Lans, but we know at this point from
17 Mr. Mastriani's own mouth, for months now -- this is
18 February 19, 1997. For months now he's had the IBM agreement,
19 he knows about Uniboard, and he knows that there is a document
20 somewhere that IBM has, certainly, if no one else has, there's a
21 document that sets forth what the nature of Uniboard's patent
22 rights were.

23 Mr. Mastriani also says, gee, I looked into this, I
24 told my Swedish counterpart lawyers to call the widow of Hakan
25 Lans' lawyer and look into this. Well, the Swedish --

1 THE COURT: Now, that lawyer was Peter --

2 MR. HAINLINE: Utterstrum.

3 THE COURT: The next-door neighbor or something like
4 that?

5 MR. HAINLINE: Next-door neighbor to Dr. Lans.

6 THE COURT: Right. Yes.

7 MR. HAINLINE: And Mr. Utterstrum says in an e-mail to
8 Dr. Lans that he didn't look into the widow Berg until 1999.

9 But those points are not important, really. What's
10 important is Mr. Mastriani and his law firm had the IBM
11 agreement, they knew about Uniboard, they were told specifically
12 by Dr. Lans, "I made an assignment to Uniboard" well before the
13 lawsuit was filed, and when they swore to you that they didn't
14 know anything about any assignment, that was false.

15 Now, the second thing that you believed, that the court
16 believed, was that there was no reason -- I mean, you didn't
17 know that the law firm had the IBM agreement. But they also
18 represented to you that they were not licensing counsel, and
19 therefore had no -- were under no duty of inquiry and had no
20 reason to look into the IBM agreement.

21 But then we find that in 1997, before the lawsuit was
22 ever filed, the law firm of Adduci, Mastriani & Schaumberg were
23 writing letters to IBM on behalf of Uniboard negotiating the
24 extent of the license. On April 9, 1997 - and this is
25 Exhibit 12 to my declaration in support of the motion for

1 reconsideration - Mr. Schaumberg, a partner in Adduci,
2 Mastriani & Schaumberg, gives IBM a notice of dispute under
3 Section 11.2 of the agreement between IBM and Uniboard. And he
4 writes to IBM, "On behalf of Uniboard, we disagree with your
5 position, and by this letter we invoke the provisions of
6 Section 11.2 on behalf of Uniboard."

7 And then on April 18, 1997 - and this is Exhibit 13 to
8 my declaration - Mr. Schaumberg writes to IBM, again, on behalf
9 of Uniboard, he talks about the license granted to IBM by
10 Uniboard.

11 So the belief that the court had that Adduci,
12 Mastriani & Schaumberg were not licensing counsel and did not
13 have a connection with IBM and the IBM agreement so as to put
14 them on notice was not true. Certainly they had an -- they not
15 only knew about the agreement, they were engaged in an ongoing
16 dialogue with IBM, where it would have taken not seconds of
17 lawyer's reflection to ask for the underlying document if they
18 didn't have it, the document that showed that there had been an
19 assignment.

20 And then, while the lawsuit was under way, there were
21 interrogatories that were posed to Dr. Lans, and the answers to
22 these interrogatories were due on January 29, 1999. Adduci,
23 Mastriani & Schaumberg sent Dr. Lans draft answers late on the
24 evening of January 28, and because of the time difference, they
25 arrived in Sweden the morning that they were due, January 29.

1 And Dr. Lans, who is not a lawyer, not familiar --

2 THE COURT: But a very bright man.

3 MR. HAINLINE: He is a very bright man. He is a very
4 bright man, and I think there are a lot of bright people in this
5 room who would be as lost in his world as a scientist might be
6 in ours.

7 He said to Mr. Mastriani on January 29, 1999, "I've
8 studied the document, and it is correct. However, the response
9 to interrogatory 10 could maybe be changed from 'I am the sole
10 owner of the '986 patent' to 'the company Uniboard AB is the
11 owner of the '986 patent rights, but the patent is still
12 registrated (sic) in Mr. Hakan Lans' name; consequently,
13 Mr. Lans has the sole right to sign license agreements.' "

14 Whatever Dr. Lans' idea of the law or the effects of
15 different agreements might have been, there is no question but
16 that Adduci, Mastriani & Schaumberg knew about Uniboard, knew
17 about IBM, knew about an assignment of some sort before the
18 lawsuit was ever filed. And when they told --

19 THE COURT: So you're suggesting that they should have
20 known to file it in the name of Uniboard?

21 MR. HAINLINE: Well, according to the former
22 commissioner of patents, they could have done one of two things
23 very easily; they could have either filed in the name of
24 Uniboard, or, and this is something that's commonly done with
25 patent lawyers, if there's -- where there's a confusion about

1 who the ownership is, you do new assignments. You know, you
2 take any ambiguity out of play. They did neither.

3 Now, I've been trying to figure out, what's a motive
4 behind this? Dr. Lans had no motive one way or the other.

5 THE COURT: Well, let me ask you about that. It seems
6 to me, and I'm sure you can appreciate, that this case has taken
7 many documents, it's been to the court of appeals for the
8 federal circuit, it's been in this court many times. It seems
9 to me I saw a reference someplace, and I can't recall exactly
10 where it comes from, that suggested that Mr. Lans had a motive,
11 perhaps, for not putting it in his name, and that motive was a
12 tax matter, I guess, with Sweden. It was better to be in the
13 name of Uniboard. Is that correct?

14 MR. HAINLINE: Your Honor, I don't know that there's
15 anything correct about that. I know that it's inconsistent with
16 what Mr. Mastriani said at his latest declaration, where --
17 remember there was this lawsuit in Utah?

18 THE COURT: Oh, yes. That case settled. Right?

19 MR. HAINLINE: Right. But what Mr. Mastriani says is
20 Dr. Lans calls him up and says, can Uniboard be the defendant
21 and not me. The evidence we have doesn't show any reason for
22 Dr. Lans one way or the other, whether one person is the
23 plaintiff or another person is the plaintiff. As Mr. Utterstrum
24 said in his letter to Mr. Mastriani -- let me find it. I think
25 it's Exhibit 14 to my declaration. He says, "The starting" --

1 this is August 8, 1997.

2 THE COURT: Yes.

3 MR. HAINLINE: "The starting point is the fact that HL
4 did ask us, the two firms, to represent him/Uniboard," and he
5 goes on to talk about HL/Uniboard, HL/Uniboard, him/Uniboard.
6 He says it repeatedly. This is what a layperson does with a
7 lawyer. You come to the lawyer -- I mean, in 30 years of
8 practicing law, and you've seen this even longer than I have, I
9 don't know how many times clients have come to me and told me
10 that they really thought I should do one thing, and I tell them,
11 here's what you have to do whether you like it or not.

12 The point is, Dr. Lans gave Mastriani and Adduci and
13 Schaumberg the facts; they were lawyers and they were supposed
14 to deal with those facts.

15 But what's a motive for them to file in Hakan Lans'
16 name rather than Uniboard's? This was a patent that was near
17 the end of its life. The letters went out to infringers in
18 September of 1996. You have a lot of money at stake, but every
19 little increment of time is important here. And there was not
20 an investigation, there was not -- even though they had the IBM
21 agreement, even though they were negotiating with IBM, they
22 apparently didn't follow up. But now, if they filed on behalf
23 of Uniboard, they would have given up, let's say, six months of
24 royalties and exposed themselves to a malpractice case. I mean,
25 that's one possible motive. Without discovery and an

1 evidentiary hearing, you really can't do more than speculate
2 about their motives or Dr. Lans'. But it seems to me that he
3 has none and they have one.

4 But getting behind motive -- motive is interesting
5 because you ask yourself, why did these things happen. But the
6 undeniable facts are you were told something that was a
7 bald-faced untruth, and you based your opinion on it. And we
8 think that --

9 THE COURT: Well, just in fairness --

10 MR. HAINLINE: Yes, sir.

11 THE COURT: -- let me accept for the moment what you've
12 just said. Of course, the opinion was not just based upon that,
13 it was based upon all of the matters set forth in the record.

14 I can recall, for example, that at one point, and
15 you'll have to forgive me, I haven't read all the transcripts in
16 these cases, there was an issue about -- I don't know whether it
17 was about the ownership or some other event, when I couldn't get
18 an answer from Mr. Lans through counsel. And I think I said, in
19 effect, you know, by a certain date you tell me exactly what it
20 is because I'm tired of this not giving me a clear answer. I
21 don't know whether you have any reference to what I've referred
22 to --

23 MR. HAINLINE: I did. And let me put that in a little
24 context here. I mean, one of the things that you are sensitive
25 to in your opinion is a conflict between the Adduci firm and

1 their clients, because they're advocating Lans as an owner and
2 Uniboard as an owner at the same time.

3 THE COURT: I think we made reference to that.

4 MR. HAINLINE: You did. You did. One of the things
5 that because of the nature of the statements that were made to
6 you, I think the court was not sensitive to - and no one is
7 perfect - was that there was a conflict between the law firm and
8 their clients over the very heart of the case. Because the
9 clients, in order to avoid -- or the law firm, in order to avoid
10 any responsibility and any possibility of getting sanctioned,
11 had to represent that they knew nothing about any assignment
12 whatsoever.

13 All of the statements that were put forth by Dr. Lans
14 to the court, whether in interrogatory answers or anything else,
15 were drafted by the Adduci firm. We have -- if you looked -- if
16 you remember, their contingent fee agreement had a very unusual
17 clause, that they control everything in the litigation.

18 So your hearing --

19 THE COURT: Does that mean that they're in control of
20 the facts?

21 MR. HAINLINE: Well, they were saying to this person
22 who was not an American, and they put in something that I've
23 never seen --

24 THE COURT: Does Mr. Lans speak English?

25 MR. HAINLINE: Oh, he does. He does. He has no

1 familiarity with the American court system, and even an American
2 might sign such a contingent fee agreement that said the lawyers
3 had complete control, and might believe them if the lawyers told
4 them that they had complete control. And the fact is, that's
5 how the lawyers acted here, that they had complete control.
6 Because they had the facts, and they didn't use them as lawyers
7 should, and then they told you untruths about what they had.

8 There was an absolute conflict here from the beginning
9 of -- from the time that Mr. Mastriani first said to you, here
10 is my conversation with my client, and in all the conversations
11 I have never heard a word about any assignment, there was a
12 conflict that should have separate counsel for Dr. Lans and
13 Uniboard from that point.

14 But we have a situation where a person, a scientist,
15 owns a patent, he has different agreements that from a legal
16 perspective he really has no idea what they mean. But his
17 lawyers know what he has, and they know if they don't have every
18 single thing, they know how to get it. They know where it is,
19 and they have complete ability, like any other lawyer, to pick
20 up the phone and get what they need. And when they didn't do it
21 and things were falling apart and the case was exploding, they
22 abandoned their client and they looked you in the eye and they
23 told you a lie.

24 Now, you had many things to rely on in your opinion,
25 but the heart and soul of your opinion, it seems to me --

1 stepping out on a limb here to try to read your mind, but it
2 won't be the first time or the last, I think on page 10 of your
3 opinion, where you say, "When Lans' attorneys inquired as to
4 whether he had made an assignment of the patent, Lans should
5 have told them about the assignment to IBM," well, they knew
6 about it.

7 And then you also believed -- I think it was very
8 important to you that you believed that they were not
9 negotiating with IBM, and therefore didn't have any reason to
10 look into things, and given the record that you had and the
11 straightforward, unequivocal statement that the lawyers made to
12 you under penalty of perjury, I can understand your opinion.

13 But that statement -- and by the way, the first opinion
14 of Your Honor where you dismissed the case, you quoted from that
15 paragraph from Mr. Mastriani that I just quoted to you, and you
16 highlighted that as a very important factor.

17 And so the facts just aren't as they represented, Your
18 Honor. And what you had here is a straightforward situation of
19 an inventor who was a 100 percent owner of a company going to
20 his lawyers, as the Swedish lawyer said, Lans/Uniboard, what do
21 I do? You take care of me. From Dr. Lans' and Uniboard's point
22 of view, there was nothing exceptional about this case that
23 should have justified fees, given the true facts.

24 Just one final comment on Uniboard.

25 THE COURT: Yes.

1 MR. HAINLINE: Dr. Lans represented that he didn't
2 authorize and didn't know that the Uniboard case was going to be
3 filed. There's not a shred of documentary evidence, there's not
4 an e-mail, there's not a draft complaint, there's nothing in the
5 file that I've seen, and there's nothing in the record presented
6 to you, that shows that the Uniboard complaint was ever given to
7 Dr. Lans or Uniboard. That was the lawyer's decision.

8 So we ask that as for Dr. Lans and Uniboard, you change
9 your mind and rule that this is not an exceptional case as to
10 them. I've given you a record that you can do many things with
11 as far as the law firm is concerned, but we don't believe it's
12 an exceptional case for Dr. Lans or Uniboard.

13 THE COURT: At some point, Dr. Lans knew that the suit
14 was filed.

15 MR. HAINLINE: The Uniboard case?

16 THE COURT: Well, the Lans case.

17 MR. HAINLINE: Oh, absolutely he knew the Lans case was
18 filed.

19 THE COURT: And accepting what you say, he knew that
20 there was an outstanding assignment and that this should have
21 been filed -- well, maybe he didn't know it should have been
22 filed in the name of Uniboard.

23 MR. HAINLINE: He didn't know that. In fact --

24 THE COURT: But he knew that he wasn't the owner.

25 MR. HAINLINE: No, what he knew was, as he told --

1 here's what he knew: It's like I have a pain in my heart, I
2 have all these symptoms, and I go to my cardiologist and I say,
3 look, I'm having some numbness in my arm and I'm having pain in
4 my heart and I have this and I have this. You tell me what I
5 have. I'm a layperson. I may be the most brilliant
6 mathematician or lawyer or anybody else in the world, but I
7 don't know what that means.

8 Here's what Dr. Lans told him: "As you know, the
9 licenses has been signed with a company, Uniboard, and not with
10 me as an individual. The patent has been transferred to the
11 company for many years ago, and the agreement with IBM was made
12 with Uniboard AB."

13 And then he goes on to say, "The company has the same
14 address as my private address. In order to make this clear, I
15 have signed a paper for changing registration at the U.S. patent
16 office. Dr. Bertil Grennberg will send you this document. I
17 will not be in Sweden next week."

18 Well, Mr. Mastriani says we never got anything from
19 Bertil Grennberg, but the former commissioner of the patent
20 office says what you're supposed to do when you have a lack of
21 clarity about ownership is clarify it yourself and then bring a
22 lawsuit. I mean, Dr. Lans is telling him, here's the deal, here
23 are what the facts are. I mean, when he tries to explain the
24 facts, they're confusing, but they're not withholding anything.
25 He's giving you facts, and when he talks about his legal

1 conclusions from those facts, it sometimes makes no more sense
2 than if I were to talk to my doctor about my legal conclusions
3 about my symptoms. It's not my job, it's his job or her job.
4 It's the lawyer's job.

5 THE COURT: Do you know why Dr. Lans never appeared in
6 these cases? There was no requirement that he appear --

7 MR. HAINLINE: No, there was no requirement that he
8 appear.

9 THE COURT: But there was a lot involved here. And
10 correct me if I'm wrong, were there not two or three cases in
11 Houston?

12 MR. HAINLINE: There was a case in Utah that was
13 decided on motion.

14 THE COURT: Right. But were there not cases in
15 Houston?

16 MR. HAINLINE: I don't know about the cases in Houston.
17 I'm not sure about cases in Houston.

18 But Dr. Lans -- if you would set this for an
19 evidentiary hearing and allow some discovery, Dr. Lans would be
20 very pleased to come here and testify under oath in front of
21 you.

22 THE COURT: All right. Anything else at this point?

23 MR. HAINLINE: No, sir.

24 THE COURT: All right.

25 MR. PARTRIDGE: Your Honor, as counsel for Dell in

1 these matters, I find myself in the position of being in the
2 middle of a dispute between Mr. Lans and the Adduci law firm at
3 this point. It's an uncomfortable position to be in, and from
4 our perspective, we're not picking sides in this battle between
5 the two. And we recognize from the papers we've seen positions
6 stated now by Mr. Lans, and it's considerably more information
7 than we had when we considered the petition for fees some time
8 ago, and also more information from the Adduci firm about those
9 same issues.

10 When we originally moved for attorneys' fees before
11 Your Honor, even at that point we recognized that there appeared
12 to be some issue as between the two as to the ultimate
13 responsibility for those fees, and at that time we asked that
14 this court consider them jointly and severally liable.

15 And in the court's opinion, you discussed the standards
16 with respect to lawyers under 28 U.S.C. 1927, and I think
17 correctly concluded what those standards are by saying that the
18 conduct of the law firm needed to be vexatious and/or
19 unreasonable, or words to that effect. I may not have quoted it
20 precisely the way you stated it in your order, but I don't see
21 in any of the papers that have been filed anyone disagreeing
22 with that being the standard.

23 I do believe it is true, as counsel for Mr. Lans
24 articulated, that your ruling with respect to Mr. Lans'
25 responsibility vis-a-vis the Adduci firm's responsibility turned

1 on what you perceived to be Mr. Lans' failure to communicate
2 certain information to the law firm from which they could act,
3 but you nonetheless went through in the case of both the Lans
4 action as well as the Uniboard action the events that you
5 thought related to the Adduci firm, and after discussing each of
6 the points we had raised, found in the case of the Uniboard --
7 excuse me. Found in the Lans case that the conduct of the
8 Adduci firm was troubling, but you nonetheless found not
9 vexatious and unreasonable. And in case of the request for fees
10 in the Lans case, you found the conduct of the Adduci firm
11 disturbing, but concluded that it didn't rise to the level of
12 being vexatious and unreasonable.

13 And I've heard this morning and I've seen in the papers
14 a number of facts, key -- what are characterized as key or
15 critical facts, I can't remember exactly the word counsel used,
16 that pertained to the relationship between Mr. Lans and
17 Mr. Adduci, and I tend to agree that those appear to be key and
18 important facts and new facts that relate to our contention that
19 there ought to be joint and several liability here.

20 We don't disagree with the motion for reconsideration
21 insofar as it requests responsibility with respect to the Adduci
22 firm. We disagree with it insofar as it now attempts to excuse
23 Mr. Lans entirely, and of course the response of the Adduci firm
24 is that you had it right in the first place and Mr. Lans ought
25 to be responsible. And that's why we come back to they ought to

1 be jointly and severally liable with respect to the fees, and we
2 ought to get out of this whole mess at this point. We should be
3 able to go after one of them, collect our fees, and then let
4 them fight it out in the litigation that's pending between them.

5 The key facts identified by counsel in his discussion I
6 think are probably four. The first is, and I think we knew this
7 before, that the Adduci firm was aware of Uniboard before the
8 lawsuit was filed by virtue of its having the IBM license, and
9 we had discussed previously whether a competent lawyer could
10 conclude from that agreement that there was no assignment of the
11 rights from Mr. Lans.

12 And I think that the position articulated by Lans'
13 counsel is a good one. When you look at that license agreement
14 on its face, in order for the agreement to be valid, there had
15 to have been a transfer of ownership rights from Mr. Lans to
16 Uniboard. And it is clear that IBM was conditioning that
17 license on the existence of that transfer, which certainly one
18 would think would raise a duty to inquire that might have
19 precluded the filing of the first lawsuit, or some reassignment
20 of rights in order to fix the situation before any lawsuits were
21 filed.

22 But perhaps more troubling than that fact is the fact
23 with which counsel concluded, which is this e-mail that he
24 identified which is quoted on the second page of the memorandum
25 filed by Lans in their motion for reconsideration, and it's

1 quoted at the top of page two. And it does read, "As you
2 know" -- and this is an e-mail from Mr. Lans to someone in the
3 Adduci firm, I believe Mr. Mastriani, and it reads, "As you
4 know, the licenses" -- a mistake there. I think he meant
5 license, but perhaps there were several. "As you know, the
6 licenses has been assigned" -- "has been signed with a company,
7 Uniboard AB, and not with me as an individual (the patent has
8 been transferred to the company and for many years ago, and the
9 agreement with IBM was made with Uniboard AB)." Not perfect
10 English, but clear here that there is this license, and in
11 connection with that license, the patent was assigned to this
12 company called Uniboard. And this e-mail was months before the
13 original Lans lawsuit was filed. That's a fact we did not have
14 previously.

15 The third fact concerns the negotiation of the scope of
16 the license with IBM, and the notice of dispute that was filed
17 by the Adduci firm with IBM under the Uniboard license
18 agreement. It's hard to understand how one could represent
19 Uniboard in a dispute with IBM over that license agreement and
20 somehow not either infer or conclude from papers and other
21 evidence presented to it that there's an ownership issue with
22 respect to the Lans patent. You know, Uniboard must have some
23 rights pursuant to that agreement; otherwise, it could not have
24 entered into the agreement in the first place.

25 And the fourth fact concerns the interrogatory answers.

1 And some of this we knew previously, but we didn't have the
2 story that has now developed as a consequence of the exchange
3 between Mr. Lans and the Adduci firm. It concerns the
4 interrogatory answers, and the fact that the answers due on
5 January 29th, draft sent on January 28th, and the response from
6 Mr. Lans that at least signals by saying, Uniboard is the owner,
7 but explaining that not the registered owner or the assignment
8 recordation hadn't officially occurred.

9 And maybe he doesn't understand all the legal
10 mumbo-jumbo associated with that, but he's clearly communicating
11 in that communication, I think, that this company, Uniboard, has
12 some ownership rights, and what are those is something that
13 should have been inquired into at that time by the Adduci firm
14 before answering the interrogatories.

15 You know, if they had come to us and said, gee, we need
16 more time, I don't remember the time frame and whether something
17 was really pressing in the case, but nonetheless, had they asked
18 for more time at that time, I'm sure the defendants would have
19 agreed so they could have gotten the answer correct.

20 And as to whether or not the Adduci firm had some
21 interest in proceeding and all of that, I don't have any view
22 about that, Your Honor. I don't want to get into the middle of
23 the rationale for the various actions that were taken by the
24 parties, it just seems to me that from the facts that have been
25 raised by the parties in the recent motion practice that one can

1 fairly objectively conclude that there was considerable
2 information about an ownership issue that was in the hands of
3 the Adduci firm while proceeding with these two actions.

4 And so at this point there are a couple of things I
5 think the court could do with this. I think the evidence is
6 sufficient at this juncture, based on the presentations by these
7 parties, to conclude that the parties ought to be jointly and
8 severally liable. I think that standard of vexatious and
9 unreasonable conduct is met now based on that additional
10 evidence, and so I think you could already enter such an order.

11 If you feel the evidence is not so strong, and that
12 there needs to be some discovery between these parties in
13 connection with their litigation to come to that conclusion, you
14 obviously could do that as well, and at some later point in time
15 we could then resolve whether or not the vexatious and
16 unreasonable standard is met with respect to the Adduci firm,
17 and whether or not the evidence that's presented by Mr. Lans
18 somehow excuses him from responsibility.

19 I would be surprised at the end of the day that that
20 record would establish that one of these parties should be
21 released from responsibility. I think the conduct on the part
22 of both is sufficient to hold them jointly and severally
23 responsible as of now. We would like to then exercise our
24 options, once you have so ordered, to hopefully get out of this
25 thing by presenting you with our final fee claim and concluding

1 the matter insofar as Dell is concerned. I think Gateway may
2 want to be heard on this subject as well.

3 THE COURT: All right.

4 MS. PLOEGER: Good morning, Your Honor. My name is
5 Lori Ploeger. I'm here for Gateway. And we fully join in
6 Dell's argument, and I don't want to take the time repeating
7 Mr. Partridge's arguments here. Gateway, we believe, is
8 entitled to a prompt and full award of its fees and costs in
9 this case. As you know, Gateway and its co-defendants have been
10 defending these actions since 1997. The court has had this case
11 before it since that time. And because of the finger-pointing
12 that's happened between Lans and his former counsel, Gateway and
13 Dell have yet to see any compensation for this case.

14 So we think that the record, as Mr. Partridge said, is
15 clear, that the attorneys should be held jointly and severally
16 liable with Lans for the fee award, and that any relative
17 culpability should be sorted out between them. And that's all I
18 have, unless you have questions.

19 THE COURT: That is a short argument. All right.
20 Thank you.

21 MS. PLOEGER: Thank you.

22 MR. HANDLEMAN: Good morning, Your Honor. Aaron
23 Handleman on behalf of the Adduci law firm. And I'll be a bit
24 longer.

25 Your Honor, before we start, I would like to

1 acknowledge and introduce to Your Honor the principals of
2 Adduci, Mastriani & Schaumberg, who are here today, Mr. Adduci,
3 Mr. Schaumberg, and, of course, Mr. Mastriani is with me at
4 counsel table.

5 I can begin at a number of places, Your Honor, and I
6 would like if Your Honor would allow me to address the computer
7 companies' argument separately at the end, because I think the
8 heart and the soul of why we are here today is because of Lans'
9 motion for reconsideration. So I'll deal with that separately,
10 and it will probably be short because I'm covering it mostly in
11 my points.

12 When I sit here and listen to argument of counsel, the
13 first thing that came to mind was, where is -- you know, where
14 is Mr. Lans? Well, if Mr. Lans is prepared to testify under
15 oath, as counsel said, what I find surprising is, where is the
16 affidavit from Mr. Lans rebutting the affidavit of
17 Mr. Mastriani? That affidavit of Mr. Mastriani is significant,
18 it explains precisely what occurred in terms of really the only
19 documents, which are really one, that they stand before Your
20 Honor; that is, the February 23rd, '97 e-mail. We have no
21 rebuttal to that.

22 Mr. Lans put an affidavit in. Interestingly enough, he
23 said nothing to contradict anything that Mr. Mastriani said
24 about those key matters; that is, the allegations that he was
25 asked numerous times from day one, has this been assigned. All

1 of the so-called points, the red flags that should have been,
2 sitting here as a Monday morning quarterback as he tries to
3 escape responsibility, didn't rebut any of it. Didn't rebut
4 when Mr. Mastriani said what happened when he got the answers to
5 the Compaq interrogatories, didn't rebut the fact that it is
6 clear that Delphi, a well respected law firm in Sweden, was
7 Lans' counsel.

8 This was not just the Adduci law firm representing
9 Mr. Lans, who, as Your Honor knows from all the documents that
10 were presented, is a very, very, very sophisticated businessman,
11 understands English very well, has considerable respect and
12 power, so to speak, with the Swedish government. We're not
13 talking about somebody who doesn't understand, number one; and
14 number two, we're not talking about somebody who hasn't dealt
15 repeatedly with lawyers both in Sweden, the United States, and
16 in fact, I believe his name is Mr. Lindstrom (sic), who was the
17 neighbor -- I may be mispronouncing his name. I think I'm
18 pretty close. The neighbor of Mr. Lans who is a member of the
19 DC bar.

20 And that's how the connection was made with
21 Mr. Mastriani. And it wasn't my client's attempting to solicit
22 business from Lans, it was the other way around. It was a
23 contact through Mr. Lindstrom, a member of the DC bar who
24 practices in Sweden, who contacted my clients, and that's how it
25 all started.

1 So we have no affidavit, and I think that's a very,
2 very significant factor. Because it's one thing for counsel --
3 as the court always says to the juries, you know, ignore what
4 counsel says, it's argument; it's the facts that you hear, it's
5 the witnesses under oath, and it's the documents. Well, counsel
6 makes strong arguments, but it's in the context of not the whole
7 picture.

8 And so let me address -- as a first point, Your Honor,
9 I want to say this, just as a starting point out of context. I
10 heard counsel say that Mr. Lans didn't know anything about the
11 Uniboard lawsuit. That's just not correct. Exhibit 38 to the
12 pleadings that we filed and the brief we filed in opposition
13 after Your Honor granted intervention is a letter, a signed
14 agreement between Mr. Lans, signing a letter submitted by
15 Mr. Mastriani wherein he authorized the filing December 17, 1999
16 of -- as managing agent of Uniboard of the lawsuit to be filed
17 on behalf of Uniboard.

18 Why? Because at this point he had already lost in
19 terms of it being in the name of Lans. So this idea that
20 Mr. Lans was somehow taken advantage of, it's just wrong. It's
21 flat-out wrong. You look at that document, it's signed by Lans.
22 It's not signed by Uniboard, it's signed by Lans as the managing
23 agent of Uniboard authorizing the lawsuit to be filed.

24 Also, Your Honor, I would note, and then I do want to
25 get into the standards and investigation that was undertaken,

1 but let me start by saying one other point before I draw your
2 attention to what the real language is in the license agreement
3 with IBM.

4 It's interesting to note that in the motion for
5 reconsideration filed by Lans, and all the arguments, nobody
6 is -- Lans is not suggesting that you made an error in terms of
7 your assessment, in terms of your finding, as you said, that
8 Lans knew. He was the one that knew from the get-go that he
9 made an assignment of the patent, the ownership in the patent to
10 Uniboard. That was a fact that was really the premise of your
11 opinion. You certainly said many things about other things that
12 drew off of that, but the ultimate starting point was Mr. Lans
13 was responsible for everything that happened because he knew
14 that he signed an assignment assigning his rights. There's no
15 question about that.

16 And that's the underpinnings of the reason why you
17 found that this was an exceptional case, because he had the
18 ability to know that. And in fact, you were trying to get him
19 throughout to acknowledge the validity of the assignment to
20 Uniboard, and he never did. In fact, Your Honor, we have the
21 clarification contract that I'm sure Your Honor will recall;
22 that is, the document that was found and provided as my clients,
23 the counsel for Lans did, in terms of trying to oppose the
24 motion for attorneys' fees. Clarification agreement signed
25 eight days after Mr. Lans assigns the ownership to Uniboard, and

1 it's a document that he signs on his behalf and then he signs on
2 behalf of Uniboard that transfers it back to him, so that
3 actually eight days after -- we don't know this, of course,
4 because my clients weren't hired, but eight days after he
5 assigns the assignment of his rights to Uniboard, he turns
6 around and he executes a document assigning it back to him.

7 So in 1989, he, in effect, pursuant to this document,
8 is, in fact, the owner, and he hasn't assigned it. And he was
9 consistent throughout. He didn't remember things, but he was
10 consistent in everything he said to his client.

11 So what happened in this case, Your Honor, is very
12 simple. He's not attacking Your Honor's decision that it was
13 his own personal conduct that gave rise to the 285
14 determination; he's saying, that's right but it's not my fault,
15 it's the attorney's fault. The attorneys knew from the get-go,
16 and I didn't know anything. I'm not responsible. It's the
17 attorneys that are responsible. If he were here today, I
18 presume he would say the same thing. But he wouldn't say he
19 didn't sign the assignment, because he did.

20 And so what happened was, Your Honor, we could not
21 provide any of the documents that support the position until
22 Your Honor granted the intervention. And then we get to the
23 question of the license agreement. Well, if you look at the
24 license agreement, which is Exhibit 17, the document that
25 Mr. Hainline sent up to you, 6.1, page four where he talks about

1 somebody reading that would have told you -- you would have
2 known, any attorney would know that the ownership was
3 transferred, that's not what that says. It says, at the bottom
4 of the page, "documentary evidence of Uniboard's right to grant
5 the said licenses." It doesn't say, "owns the patent."

6 And if you recall the affidavit of Mr. Sam Miller, who
7 is with Burns & Doane, a very well respected patent law firm,
8 the expert affidavit that we put in -- there are actually two of
9 them. But he said, there's nothing in this document - he's
10 talking about the standard of care of lawyers - that would put
11 anybody on notice that there's been an assignment of ownership.
12 An assignment in the context means ownership.

13 What happened here, which is clear and it's consistent
14 with everything Lans said, is he didn't tell my clients in the
15 beginning that he had a deal with Uniboard, but shortly after,
16 when they read the license agreement, they saw. There's
17 Uniboard. So they inquired of Mr. Lans, who is Uniboard? And
18 he says, Uniboard is my wholly owned company. I'm the sole
19 stockholder, and what I did was, is I transferred my rights to
20 the royalties to do the licenses to Uniboard.

21 Now, counsel can say all they want that this is some
22 unusual, exceptional thing. Mr. Miller says, not at all. It
23 happens often. So it was transferred. So reading this document
24 alone doesn't raise any issues whatsoever, but it raised the
25 issue where Mr. Mastriani, in his affidavit, said when he read

1 this, he asked Mr. Lans, by the way, was there an assignment?
2 Tell me about this, your relationship with Uniboard. And Lans
3 said, I own the patent; I assigned only the rights to collect
4 the royalties. That simple.

5 And further, and much more significant than the IBM
6 license agreement, which is 1989, was my clients were
7 provided -- because Mr. Mastriani, consistent with what patent
8 lawyers and the standard of care require said, were there any
9 other license agreements? And he said, yeah, I had one with
10 Hitachi. Well, if you go to Exhibit 19, the Hitachi agreement,
11 that document is between Lans and Hitachi, not between Uniboard.
12 And in this particular one it states that Lans -- I think it's
13 9.2, the provision -- oh, yeah, 7.1, Your Honor, on page three,
14 Lans represents and warrants that he has the full right and
15 power to grant the licenses.

16 So when you get the Hitachi agreement, Your Honor,
17 that's six years after the IBM agreement, about seven or
18 eight months before my clients are hired, and it's with Lans
19 saying he has the ability -- again, it doesn't talk about the
20 ownership, it talks about collecting the royalties, a natural,
21 normal way these things are done.

22 That's not all they had. He said, is there anything
23 else? Because they made several trips, as the affidavit said,
24 to Sweden. And yes, there was some German court order, a decree
25 from a German court as it related to the foreign equivalent, as

1 I understand it, of the '986 patent. And it says in there, Lans
2 is the owner of the patent.

3 So we have a number of documents, documents that would
4 support a reasonable attorney at that point in time not doing --
5 not having any reason to disbelieve the client's assertion,
6 sophisticated client, that I am, in fact, the owner.

7 And, in fact, as the affidavit and Mr. Mastriani shows,
8 and as some of the correspondence and documents that we've put
9 in here, and there's been some 50 documents that were key
10 documents that support our position, we believe, they went and
11 they did their own investigation, and the investigation
12 consisted of doing a patent search, going through an assignment
13 database, and some other forms, as Mr. Miller said, which is
14 standard.

15 They went through it, found no assignment to Uniboard.
16 That's what the lawyers did prior to filing the lawsuit. That's
17 what you're supposed to do.

18 But it's more than that. They talked to Mr. Lindstrom
19 at Delphi, they went and met with Dr. Grennberg, they went and
20 met with -- or they had Delphi meet with the widow of Mr. Berg,
21 who was the attorney who in fact negotiated the IBM license.
22 They did all those things. Lawyers are not guarantors. If a
23 lawyer thinks the client is making things up, then that's when
24 the lawyer gets out of the case. But when the substantive
25 evidence that you check corroborates what your client tells you,

1 and your client is a sophisticated business person, then that's
2 sufficient. You don't go investigate your client, the way the
3 system works, because then you're an adversary.

4 So there is nothing at all about the IBM license
5 agreement that puts anyone on notice of anything other than what
6 the facts are as they understood it and as Lans represented it.

7 As to this February 23, 1997 e-mail that everyone
8 thinks is the answer, again, the context of that document is
9 significant and Mr. Mastriani's response is significant. The
10 context of that document is, there was a suit in Idaho, I was
11 just served -- that's where the suit was, in Idaho. I was just
12 served and I signed the papers, but, you know, can't it be
13 Uniboard, not me? Because Uniboard has the ownership, or
14 however the phraseology that Mr. Lans used, and that
15 Mr. Grennberg will send you something.

16 So what does Mastriani do? Of course he does what a
17 prudent attorney would do. He picks up the phone and he calls
18 him up and he says, wait a second, I've been representing you
19 for seven, eight months. What are you talking about?

20 THE COURT: Now, they did not represent him in the
21 Idaho case?

22 MR. HANDLEMAN: Yes, they were. They were representing
23 him. What the Idaho case was, was a declaratory judgment
24 action, as I understand it, by these companies coming in after
25 the Adduci law firm said -- as they were directed, they sent out

1 notice of infringement letters in Lans' name. And so what the
2 attorneys and this company were doing was taking a surprise
3 attack, filed a declaratory judgment action, they served papers
4 under the Hague Convention on Lans over there in Sweden; Lans
5 signs the papers, and then the first thing he says is, oh, my
6 god, I'm a defendant in this case. All right?

7 Well, what happened before this, the attorneys, my
8 clients, talked to him about -- because he didn't really want to
9 be personally involved. About the possibility -- again, that's
10 in the affidavit and unrebutted. Of making an assignment from
11 Lans to Uniboard in connection with proceeding in the United
12 States, so that it would be a corporation and Lans would sort of
13 have some protective device not being a defendant.

14 And repeatedly, as it says in that affidavit, there
15 were meetings and there were conference calls through other
16 people other than my client and Lans. He said, no, no, I, Lans,
17 am the owner of this patent. The only rights that Uniboard has
18 is in connection with the royalties and the collection. He
19 repeatedly said that. Well, when you repeatedly say that, the
20 assumption is, of course there's no assignment. Again, it's all
21 consistent.

22 But what happened was Mr. Mastriani calls him up and
23 talks to him, and he says, no, no, no, I am the owner of the
24 patent, but can't we get Uniboard to -- because they're dealing
25 with the royalties, to be the defendant? And Mr. Mastriani

1 says, no, that's not the way it is. You've got to be the
2 defendant. You're the owner. And he said fine.

3 And he then checks with Dr. Grennberg because he's
4 concerned. What concerns him not so much was this question
5 about the language saying Uniboard, as you know, has been the
6 owner; his concern was about this reference to something filed.
7 Because here are the attorneys in the United States, if
8 something has been filed changing anything, I need to know. And
9 he calls Grennberg, and Grennberg says there's no such thing
10 filed. There's nothing.

11 And then Lans confirms and never sends him the
12 document, and again, it's all consistent with he owns the
13 patent, he's got Uniboard collecting under the license
14 agreement. It is completely, completely consistent.

15 Now, here's the telltale. So I've dealt with the
16 e-mail, which I think of is no moment in the full context of
17 things. Again, as Your Honor said in your opinion, he knew
18 about the assignment, he knew about all these things; if he
19 didn't keep a copy, pretty serious not to keep a copy, but that
20 was his choice. But there's never been any indication that an
21 assignment was ever provided to my client, a copy of the
22 document.

23 Now, here's the key point. We now have -- let me just
24 address first the answers to interrogatories. There's this view
25 that's been presented as if my clients waited until the last

1 moment, sent something to him, and said, sign it, that my client
2 sitting here in the United States are, in fact, controlling the
3 facts. And everyone knows that's not the case, especially in
4 this case, because Delphi was the liaison counsel. Delphi was
5 Mr. Lans' counsel, and those drafts were sent to Delphi to go
6 over.

7 What happened was, when that particular document on
8 Compaq came in, what does again Mr. Mastriani do? He gets it,
9 it is somewhat confusing; he calls Lans up and he says, what are
10 you talking about? And again, that's in the affidavit; again,
11 although Lans put in an affidavit, he chose not to speak to the
12 key points like that. And he explained, no, it hasn't been --
13 nothing has changed. He said, the answer is, you own the
14 patent, not anyone else. Again, consistent with the story.

15 So now we get to the big picture of what happens, what
16 happens when they find out. Because I think that's next key.
17 What happens when they find out about this assignment? What's
18 the reaction? Well, the reaction was very clear.

19 Again, Mr. Mastriani gets this motion to dismiss, or
20 for summary judgement filed, I believe, by Gateway, with the
21 attachment, the assignment. He looks at it, he's stunned. Of
22 course he's stunned. And as the affidavit says, he contacts
23 Mr. Lans immediately, and Lans says, I don't know anything about
24 an assignment. We're talking about August, I think, 6th or 8th
25 of 1999, this litigation had been going on. It's been

1 litigated, and now they see an assignment.

2 And what happens? Lans says, I don't know anything
3 about it. Well, now, this time, my client has a copy of the
4 document in his hand and he faxes it to Mr. Lans, and Mr. Lans
5 looks at it and he goes, you know, I can't take issue with that.
6 It looks like it was in fact something that I signed. But it's
7 got to be wrong, got to be some problems. And he then says, I'm
8 going to search through files.

9 So that's when he calls Grennberg, he checks with his
10 accountant, he checks all around. And there's a series of
11 e-mails, Your Honor, that we have put in that I'll just tell
12 you, we're talking about Exhibits 33, 35, 41 and 42, where
13 what's happening is Lans says, yeah, I see there's an
14 assignment, but gentlemen, trust me, there wasn't an assignment.
15 Because I was told by my deceased lawyer, Berg, that you
16 couldn't really have an assignment, I was told by Grennberg you
17 can't assign your ownership interest, the accountants.

18 And he goes, and it's at that point -- and those
19 e-mails, I would submit to Your Honor, all confirm the position
20 that I own it, I own it, I own it, assignment invalid,
21 assignment not right, something is confusing, to the lawyers,
22 and meanwhile, of course, the lawyers have to respond to this
23 motion. And they tell him, this is a problem. This is a
24 serious problem. As we told you, it has to be in the ownership
25 name.

1 And what happens suddenly, not too much later than
2 that, about a week or so later, you get -- the document is the
3 clarification agreement, which comes from, I believe, the
4 accountant for Lans. And my client is told -- my client
5 contacts the accountant, and they arrange through Delphi --
6 because Delphi is in this picture. I mean, Delphi is in the
7 picture every step of the way, Mr. Lindstrom every single step
8 of the way, and they're concerned just as well, obviously.

9 So what happens is the document is ultimately sent, the
10 original, to my client to hold in the custody, because they know
11 this is going to create a very serious problem when it comes
12 before Your Honor, and we want to make sure we had the chain of
13 custody as an original document.

14 And they look at it, and Lans wants the original back,
15 and they say, no, here's a copy. And Lans explains, a-ha,
16 that's why I didn't think that there was an assignment, because
17 this document eight days later invalidated it because he
18 assigned it himself from Uniboard, signed per Mr. Lans to Lans
19 personally. So now he owns it. Obviously --

20 THE COURT: What were these assignments all about? Why
21 is Lans -- in your view, why is he assigning it to Uniboard and
22 then Uniboard to Lans?

23 MR. HANDLEMAN: Your Honor, obviously I wasn't involved
24 in the case until now, but I've read a lot of documents, not as
25 much as Your Honor, and I recall absolutely with certainty --

1 and I'll find it, if necessary. I'll go through every piece of
2 paper. But I don't make these representations lightly. I don't
3 think there was any question -- Your Honor hit it right on the
4 head, tax issues, tax considerations, tax credits that were
5 something that Lans got vis-a-vis the company.

6 And there's nothing wrong with that. There was
7 something about you get credits from Japanese companies under
8 the Japanese tax law. There was something along those lines.
9 Again, nothing nefarious, but certainly that's why -- he's got
10 accountants. The lawyers are just the lawyers, the patent
11 people, my clients; they're not dealing with that.

12 But there was also something else that we've discovered
13 which is part of the record now, of course, that we were allowed
14 to defend ourselves, given the accusations, and there was
15 something about he and his wife entered into some kind of -- I
16 don't want to call it a post-nuptial -- a separation agreement
17 in case something happened in terms of their marriage, that it
18 wouldn't be in his name, it would be in Uniboard, some thing.
19 So there's tax issues, there's marital issues, there's all kinds
20 of things that are going on that my clients aren't privy to.
21 That's the motive. I mean, you asked about a motive. There's a
22 motive, perhaps the tax issue.

23 But what's consistent and interesting here, Your Honor,
24 in this Exhibit 4 -- and maybe I overemphasize it, but I can't
25 help it. Our Exhibit 4, which was an October 2000 summary of

1 events which was actually transmitted to my clients I believe
2 November 6th, 2000, we're still in the case, we're still
3 representing Lans, you know, he has a recital document by
4 document, fact by fact. If you read that, you see that Lans has
5 not deviated one iota from what he said to the client in day
6 one, and that is that I own the patent. The only thing that
7 Uniboard ever had was a right to collection.

8 This is like long after -- I mean, they talk about this
9 February '97 e-mail. If that was true, that he assigned it and
10 told them, then why, I ask, why would somebody write a lengthy
11 memoranda, which he said he wrote it for the purposes of the
12 officials, presumably the Swedish officials, wanting my client
13 to file it with Your Honor, saying consistently that I owned it.

14 This is now in the face of the assignment, this is in
15 the face of the e-mail where I told you I didn't own it, this
16 defies -- it defies any logic. He consistently took that
17 position, and that memorandum is consistent with everything he
18 told my client.

19 So this concept of we should have known -- and let me
20 address one thing before I forget in the context of. This
21 business about, well, heck, my clients were representing
22 Uniboard dealing with IBM; why didn't they go ask IBM for all
23 these documents?

24 Well, wait a second. First of all, they were hired to
25 deal not with the issue of the licensing or how it came about.

1 The interpretation of the license agreement. That's a little
2 bit different than I'm hired to represent somebody to deal with
3 the -- you know, the interpretation, and I all of a sudden say,
4 by the way, how did this come about? Why is it that Uniboard
5 got into the relationship? That's not what anyone is hired to
6 do.

7 In fact, Your Honor, I want to refer you to what I
8 consider to be a very important document along these lines.
9 There is a letter -- I hope I can get my hands on it quickly.
10 There's a letter -- I will find it as we're speaking, Your
11 Honor. I'll tell you what the document is. There's the letter
12 from the IBM gentleman that they were talking about to Mastriani
13 that says, you know, we've got this question about whether or
14 not the joint venturer comes in under the IBM license agreement;
15 we would like to know whether or not we can send the attached
16 letter saying, it's okay, you're under the license agreement.
17 That's how it all starts.

18 And what's interesting about that document is that the
19 attached form letter, that beautiful letter says on it the Lans
20 patent. So when the IBM gentleman who wrote to Mr. Mastriani
21 said, you know, here we are, we're negotiating, the form letter
22 was the owner of the patent. It doesn't even mention Uniboard
23 in there. So that's exactly the point. I will find that
24 exhibit before I shut down, I'm sure.

25 All right. So, Your Honor, what nobody has sort of

1 addressed is how do you get from what Your Honor said to the
2 reconsideration and what are the standards. Because after all,
3 we work under some legal standard. You just can't come here and
4 say, I want to do this. I mean, the court has broad discretion.

5 Well, we know this: We know that the court was right
6 in the finding 285 against Lans, because nobody is challenging
7 this. All they're challenging is -- it says, make us pay the
8 285 fines, make us pay the attorneys' fees. Nobody is
9 challenging that.

10 So the question becomes, what is the standard to a
11 judge what my clients did? Well, under 1927, vexatious
12 litigation, the case law that we've cited talks about is this
13 reckless, is this bad faith. Simple negligence is not
14 sufficient. If somebody were to say negligence, that's not a
15 1927. We're not dealing with the English system here, we're
16 dealing with the system -- I got the answer, Your Honor. I knew
17 I would get it. Thank you, Mike.

18 It's Exhibit 26, the point I was telling Your Honor,
19 that we have a letter from somebody from IBM to Mr. Mastriani
20 that says, "Customer IBM has asked for a letter stating that
21 Micrus is licensed under the Lans patent." This is March 22,
22 1997, and they want a letter and I've attached a form letter.

23 Well, the attachment to Exhibit 26 that I made
24 reference to is a form letter that IBM themselves wrote. It
25 says, "IBM has a license under a patent from Mr. Lans." You

1 know, then it goes on to say, "I will send you the cited
2 sections of the IBM/Lans patent license agreement." There's
3 nothing about Uniboard in here.

4 So the idea that my clients would -- suddenly they're
5 hired to represent Uniboard to deal with the question of the
6 interpretation, would suddenly be asking an adversary, in
7 effect, IBM, tell me about how this came about, give me some of
8 these background documents, is not the way it functions. You're
9 not hired -- what are you going to do, charge your client for
10 that activity? You accept the presumption of the representation
11 and you move on from there.

12 So there's no notice, there's no whistles, there's
13 nothing to support any of those things that they say that the
14 license agreement and the letter would otherwise do.

15 Let me address the question of a conflict, and then I'm
16 just about finished with the points that I wanted to make, Your
17 Honor. And then I'll address briefly the computer companies.

18 The question about a conflict, well, there's case law,
19 as we cited, where if the position that you take is the same
20 position that your client takes, then it's not inconsistent.
21 It's not inconsistent to be arguing. Here you had a motion for
22 attorneys' fees; the client, Lans, was advised by my clients,
23 the Adduci law firm, by the way, they're seeking costs. You
24 know, this is what happened. This is what happened because of
25 this assignment.

1 In Exhibit 50, where they say, there's no such
2 document, there's a document where Mr. Mastriani, in
3 Exhibit 50 -- is that Exhibit 50? Yes, 50, Mr. Mastriani writes
4 to Mr. Lans copying to Mr. Lindstrom -- again, this is Delphi,
5 because Delphi is in every step of the way, which basically
6 confirms that you want us to represent you in this. So it's not
7 like he doesn't know what's going on.

8 So you have notice, knowledge of the client, and then
9 you have not inconsistent positions because you're dealing with
10 285 and you're dealing with 1927. But most significantly, Your
11 Honor, they don't take inconsistent positions, because my
12 client, believing what Mr. Lans has said repeatedly, takes the
13 position that there was no assignment. And my client is led to
14 believe there was no assignment. Lans repeatedly said there was
15 no assignment, so it would be consistent to file an opposition
16 that would reflect that fact and would say that, you know what,
17 he shouldn't be responsible because he didn't recall it. He
18 couldn't find the document. That's not inconsistent. It's not
19 inconsistent with the position they took. It's totally and
20 completely consistent.

21 And what's really significant here, Your Honor, is Your
22 Honor's decision was not based upon the arguments, as if the
23 Adduci law firm, through the case, filed a lousy document for
24 Lans and a great document for themselves. No, they filed the
25 same arguments for both, addressed both of the standards, and

1 Your Honor found against Lans because Your Honor found from his
2 personal conduct that he was the one that knew from the get-go
3 and could have avoided it. And that's why you made that
4 decision. No lawyer could have ever changed that unless the
5 lawyer would have gotten up and said, Your Honor, I did it,
6 falling on the sword. I did it, I lied, I did all the rest.

7 So obviously, when Mr. Mastriani files this affidavit
8 asking for an extension because he couldn't get an extension so
9 easily to reply to the motion for attorneys' fees, he says,
10 we've got to investigate this. Why? Because his client said
11 there was no assignment. There's nothing nefarious there. It's
12 consistent. To call that lying to the court is a bit much.

13 And let me say this, Your Honor, if I might. Because
14 the standard, as I said, is bad faith, it is recklessness, and I
15 would submit that all the documents that we've provided to
16 you -- forget my argument. The documents and the affidavit
17 support under no circumstances could this have been reckless
18 action on the part of the client, or bad faith.

19 In fact, the filing of the Uniboard suit, as I know
20 Your Honor referred to that in the opinion, that made sense too,
21 in the sense that even though it appeared to be lawyers taking
22 consistent positions, here you're faced with a deadline, the
23 lawyers, authorized by the client, and I referred you to the
24 document, recommended -- there's no question. They said, look,
25 the only way we can save this is you need to file -- because

1 there was an assignment and Uniboard owns it, you need to file
2 in the name of Uniboard. And that's what they did.

3 And the federal circuit said it's a close call. I
4 mean, now they wouldn't do it because we have case law on it,
5 but it was a new, novel issue. Lawyers do that all the time.
6 That's not bad faith, that's not recklessness. And to show that
7 it's not bad faith and not recklessness, when you asked for a
8 stay, which is what they asked for, is a stay, the Uniboard case
9 didn't go very far.

10 So the idea of these humongous costs that these
11 computer companies have as to Uniboard, that's -- you know, I
12 don't know what fees they're asking for on that, but they did
13 the prudent thing, what the standard of care required lawyers to
14 do, and that is to file -- it's almost like a protective
15 lawsuit.

16 Let me say this, Your Honor, before I conclude. The
17 other reason why this court should not exercise your discretion
18 and you should not, you should not change your opinion of
19 September 2001, because you were right, right on, on your
20 opinion, and you were right even before you got to see the
21 documents that we filed and I've referred to today. Those
22 documents then corroborate and show that you were right in your
23 decision that the Adduci law firm should not be held responsible
24 under Section 1927.

25 And furthermore, Your Honor, you shouldn't exercise

1 your discretion because the actions, in my judgment, of the
2 plaintiff in this case go outside the bounds of the normal way
3 litigation proceeds, at least in this country, as I've known it,
4 and I've been practicing for over 30 years.

5 We have first of all a situation where Mr. Lans has
6 attempted to use his position in Sweden, and Swedish officials -
7 I'm not saying anything that's not in the record and not in the
8 documents - to try to put pressure on the United States
9 government and on this court, because of the September 2001
10 decision, to try to get it reversed. There's record -- there's
11 letters to the U.S. Attorney General, to the State Department in
12 the record. That is something unprecedented. I would say that
13 is unacceptable.

14 Secondly, Your Honor, what Lans has done is he has
15 filed a bar complaint, as Your Honor knows, because they made it
16 part of the public record, against Mr. Mastriani, tried to
17 disbar him.

18 Now, the rules are very clear that you're not supposed
19 to file bar complaints to get a tactical advantage. And we were
20 able to stay it. That bar complaint is stayed pending a
21 resolution of all of this, as the way it should be.

22 The problem with what they did, Your Honor, was they
23 presumed -- the presumption from the bar complaint is that
24 there's a finding that what Mr. Mastriani did and the law firm
25 did was wrong, was untruthful to you, when in the face of an

1 affidavit, it goes unrebutted, the explanation. So that's been
2 stayed.

3 And the third matter that I find to be frankly the most
4 heinous actions that have been attempted was to try to get
5 Mr. Mastriani indicted, having a referral, and that's part of
6 the record, to the Justice Department -- there's a letter to
7 Attorney General Ashcroft, before he put in his resignation,
8 seeking to have a referral under the perjury statute,
9 Mr. Mastriani for perjury.

10 Now, no action, fortunately, has been taken. I think
11 they view that as it is, some kind of tactic in litigation. But
12 in my 30 years I've never seen anything like that. We're
13 talking serious allegations. And what, Your Honor? It's
14 premised totally and completely and absolutely on accepting what
15 Mr. Lans has said to be the truth. If Mr. Lans -- and it's also
16 doing that in the face of Your Honor's opinion of
17 September 2001. That's far out there.

18 So we say, Your Honor, you should not exercise your
19 discretion. The court now has before it all of the documents
20 that support why we did what we did, and for all the reasons, I
21 would submit that this court should not change its opinion,
22 should not hold my clients liable under 1927. Thank you, Your
23 Honor. I will address --

24 THE COURT: What was the date of the letter or whatever
25 it was to the attorney general?

1 MR. HANDLEMAN: Your Honor, it's certainly well after
2 the fact. It's recently. We're talking this year.

3 THE COURT: This year?

4 MR. HANDLEMAN: Yeah, this year. So what we have in
5 the record is we have documents that are from the Swedish
6 embassy to the State Department, and it's not just general
7 information. It says, we are disturbed about our fine citizen,
8 Mr. Lans, having this ruling against him, and you've got to do
9 something about this. That's the nature of the letters.

10 And that's, again, separate and apart from the perjury
11 reference, because that's in the record as well. In fact, those
12 are documents that are on file.

13 THE COURT: The other question I have is going back to
14 the interrogatory that everyone has referred to that was sent to
15 Mr. Lans, I believe, on January 28th, I forget the year.

16 MR. HANDLEMAN: Right. 1999.

17 THE COURT: All right. And as I understand it,
18 Mr. Lans is contending that it was sent to him, he had very
19 little time to react to it, and the firm, your client, went
20 ahead and filed the answer that he didn't want filed. They
21 wouldn't allow him to correct it.

22 MR. HANDLEMAN: Well, that's not exactly what it is. I
23 understand that's the argument they're making. I think what it
24 was, is he said, it's true what you say, that I'm the owner, but
25 you can write it a different way. It says, "I have studied the

1 documents" -- it's correct. "I have studied the document and it
2 is correct," that is, that he owns the patent, "however, the
3 response to interrogatory 10 could maybe be" -- okay. "It could
4 maybe be changed from," quotes, "I am the sole owner of the '986
5 patents," end of quotes, "to," in quotes, "the company,
6 Uniboard AOB is the owner of the '986 patent rights, but the
7 patent is still registered in Mr. Lans' name; consequently,
8 Mr. Lans has the sole right to sign license agreements," end of
9 quotes. Okay?

10 He said, you're right, but it could be this. And
11 that's why Mr. Mastriani picks up the phone and says, wait a
12 second, you know, what are you talking about? Did you make any
13 assignment? And he goes, no, it's the same thing that I did
14 before.

15 So if you accept the premise that Uniboard only had the
16 right to collect the royalties, then you wouldn't change that
17 answer, because the answer that they prepared based on the
18 information was consistent. And that's the only point that's
19 being made here.

20 And let me say this, Your Honor: Those interrogatories
21 were in the hands of Delphi a month before. I mean, there was a
22 long time period. And what was happening was they weren't
23 getting the response, and there was a due date - this was
24 heavily litigated - and so it was, look, when are we getting the
25 answers? When are we getting the response? So in 1999, this is

1 not inconsistent with everything that occurred before.

2 And let me say this, Your Honor. I was kind enough to
3 get a note. The letter that I was referring to, attorney
4 general, the business about the Swedish embassy putting pressure
5 on the United States, was attached to the referral to
6 U.S. Attorney's office. So those documents that are of record
7 that were actually forwarded to the U.S. Attorney's office
8 included the very document that I was addressing. That's part
9 of the record.

10 Your Honor, would you like me to address the computer
11 company in five minutes?

12 THE COURT: Yes. Let's make it two.

13 MR. HANDLEMAN: Two minutes. Okay. All right.

14 As to Dell, Your Honor, let me just say, Dell had it
15 right the first time when they came in and said attorneys' fees
16 only go against Mr. Lans, and they never asked for it under
17 1927, because Dell recognized there was no basis whatsoever.

18 They now come in bootstrapping on the backs of Lans and
19 say, yes, let them fight it out, let us get our money, but yet,
20 if you read their brief, their brief talks about how the
21 attorneys, the Adduci law firm, made the argument as to why you
22 shouldn't reconsider that the perpetrator of the fraud on the
23 court was Mr. Lans. So you have to buy Lans' arguments in order
24 for Dell, or Gateway, for that matter, to be able to get 1927
25 fees.

1 The same thing would appear as to Gateway. Gateway did
2 ask for attorneys' fees out from the beginning against the
3 lawyers under 1927; they have not demonstrated any new evidence,
4 they haven't demonstrated that you were wrong on the law, Your
5 Honor, and there's no documents at all that would support --
6 other than if you buy Lans' position. And they don't have any
7 expert testimony. They're relying on Mr. Lehrman. Well,
8 Mr. Lehrman was offering expert testimony on the standard of
9 care in terms of a negligence level.

10 We're talking about recklessness, we're talking about
11 bad faith. For all of the reasons that I've articulated to Your
12 Honor, for all of the documents that you allowed us to provide
13 to defend ourselves in the intervention, for those reasons and
14 those reasons alone, together with the Mastriani affidavit,
15 there is no justification for Gateway or Dell to have 1927 joint
16 and several liability against my client.

17 If, in fact, Your Honor denies the motion, as we
18 believe you should, it's denied as to the computer companies and
19 it's denied as to Lans, and then they can put up their proof on
20 what their -- you know, what they're entitled to, and Your Honor
21 decides how much they're entitled to, and then Mr. Lans, who has
22 made millions and millions of dollars on royalties, can pay the
23 attorneys' fees. Because that's why you found under 285 that he
24 and he alone was responsible for what happened.

25 Thank you, Your Honor.

1 THE COURT: All right. Mr. Hainline, I think you have
2 the last word.

3 MR. HAINLINE: Thank you. Let me start with the last
4 points that Mr. Handleman made about the ancillary matters.

5 THE COURT: Well, before you even go into that, why
6 did -- well, it appears that Mr. Lans' hands are not clean,
7 either, in this dispute, because it appears that he seems to be
8 going back and forth, at least in the documents and the
9 arguments made by the parties, as to who owns the patent.

10 MR. HAINLINE: You know, I don't think that's right. I
11 don't think that's right.

12 THE COURT: Well --

13 MR. HAINLINE: Here's --

14 THE COURT: Let me just tell you what troubles me.
15 Here is a man who is extremely bright. I don't know whether
16 he's had other litigation along this line, but he's no novice,
17 that's for sure. He sees a complaint filed, and he said, well,
18 he didn't get notice that they were going to file a complaint.
19 But notwithstanding, I assume that he knew at some point this
20 complaint or these complaints were filed.

21 MR. HAINLINE: No, only the Uniboard. You
22 misunderstood me.

23 THE COURT: All right.

24 MR. HAINLINE: He never said he did not know the Lans
25 complaint was filed. He's never said that. My point was the

1 Uniboard complaint he didn't know was filed, and he didn't see a
2 copy of it.

3 And if you look at the document that Mr. Handleman
4 referred to where he said that Mr. Lans, Dr. Lans, approved the
5 Uniboard complaint -- let me get this one out here. It's
6 Exhibit -- hold on. Sorry. I thought that I had -- here it is.
7 It's their Exhibit 38, December 17, 1999. And if this language
8 isn't deliberately vague, it's recklessly vague. It doesn't say
9 who will file a suit, or that we'll inform you that a suit will
10 be filed. It says, you give us permission to do whatever we
11 want to do in our own discretion.

12 "As you have been made aware by order and memorandum
13 dated November 23, 1999, Judge Penn of the United States
14 District Court for the District of Columbia dismissed your cases
15 for infringement. In his memorandum, Judge Penn stated, it is
16 clear that Hakan Lans in his individual capacity lacks the
17 requisite standing to bring the claim against defendant."

18 By the way, that decision is a final decision, and the
19 court of appeals has already affirmed it. There was some
20 suggestion that we're not -- we don't have authority to ask you
21 to reconsider that. I don't know if that was a suggestion, that
22 somehow we've acquiesced in it or like it.

23 But anyway, "It is uncontested that in 1989, Lans
24 assigned all title he had in the '86 patent to Uniboard. Per
25 our telephone conversation today, the purpose of this letter is

1 to confirm the following: One, you authorize the firm to appeal
2 Judge Penn's ruling; two, you are the exclusive stockholder and
3 the managing agent of Uniboard; three, you, as managing agent of
4 Uniboard, have authorized this firm to file an infringement
5 action with respect to the '986 patent against any parties we
6 deem appropriate, including those parties who are defendants in
7 the suits dismissed by Judge Penn."

8 It doesn't say "on behalf of Uniboard," it doesn't say
9 "the statute of limitations has run, you should know that," it
10 doesn't say any of the things that a lawyer should be advising
11 his clients. "Until otherwise agreed, this firm and those
12 working in cooperation with this firm shall represent you and
13 also Uniboard on the same terms as previously agreed."

14 Those terms, by the way, specifically carved out - and
15 this is our Exhibit 4 - the decision as to whether or not to
16 pursue litigation will be subject to the sole and exclusive
17 discretion of AMS. This is not Dr. Lans' decision and
18 participation, and, as he said, he never saw the Uniboard
19 complaint and we haven't seen it from their files.

20 But before -- and let me -- and the thing that troubles
21 you -- what I heard Mr. Handleman say is Dr. Lans was
22 consistent; he kept saying, well, I have an interest, I own the
23 patent, and Uniboard has an interest, and I really think I'm the
24 owner and Uniboard has an interest. And he was consistent in
25 that, and that's the gist of their entire argument.

1 And you know what? That's true. Dr. Lans kept telling
2 them over and over again, I have an interest, Uniboard has an
3 interest. There were lots of ways in which it permutated out.

4 But what they told you, Your Honor, was -- what they,
5 meaning Mr. Mastriani, told you was not that we knew about
6 Uniboard from day one and we knew Uniboard had an interest and
7 we knew Lans had an interest, and we thought it was this or we
8 thought it was that, and did we have a duty to look into this or
9 that. No. They said, inasmuch as I and other counsel to
10 Mr. Lans have been repeatedly informed by Mr. Lans that no
11 assignment had ever taken place with respect to the Lans patent,
12 we are investigating.

13 They knew about an IBM assignment, they knew about a
14 Hitachi assignment, they knew about an assignment of some sort
15 to Uniboard. If they had inquired, through Dr. Lans'
16 accountants and the other folks who were working with Dr. Lans
17 in Sweden, they would have found out about agreements going back
18 and forth, including clarification agreements. This was a
19 series of symptoms that Dr. Lans presented to the lawyers for
20 the lawyers to take care of, and they had the information.

21 Now, I would like to address the specific points, and
22 I'll do it fairly quickly, that Mr. Handleman did, but if you
23 would like, I would like if you would allow me just to hit the
24 end points that he made, that he complained about.

25 And that is, first, the interest and the documents from

1 the Swedish officials. This case has become well-known in
2 Sweden and of interest to the Swedish government. Nothing wrong
3 with that. The Swedish government has expressed its interest in
4 this case, including a cabinet level minister who is the
5 secretary of state for trade writing a letter to Attorney
6 General Ashcroft asking if he could do something to get the case
7 moving. That has nothing to do with me, it has to do with the
8 Swedish government making their position known that they're
9 interested in this case.

10 Now, something that does have to do with me, the bar
11 complaint. A bar complaint was made, and I made it, and I
12 didn't make it for any collateral advantage. I made it because
13 the bar rules of the District of Columbia, as other states of
14 which I'm a member, require, require that when I become aware of
15 conduct that is unethical, I have to let the bar know. I would
16 be violating the bar rules myself if I did not provide them with
17 a copy of my motion for reconsideration which pointed out a
18 statement made under penalty of perjury by a member of the bar
19 to advantage him and his firm, and disadvantage his client, when
20 the statement was false.

21 Third, the referral to the U.S. Attorney. I believe, I
22 believe that the statement that Mr. Mastriani made to Your
23 Honor, that he had no knowledge of any assignment at all
24 respecting the Lans patent, was false and perjured. And when
25 Mr. Mastriani filed his supplemental affidavit, it confirmed the

1 falsity of that statement, because that affidavit says, I had
2 lots of discussions about Uniboard, I knew about several
3 assignments, but Mr. Lans wasn't clear about what they meant.

4 Which leads me to whether there was anything wrong
5 about not answering Mr. Mastriani's last affidavit. The
6 affidavit did not contest any material fact in our motion; the
7 affidavit acknowledged that Mr. Mastriani indeed knew about the
8 IBM agreement as early as September 1996, the affidavit
9 acknowledged that Mr. Mastriani knew about Uniboard, the
10 affidavit acknowledged that Mr. Mastriani had a number of
11 conversations with Dr. Lans where Dr. Lans would talk about who
12 owned what between him and Uniboard. As Mr. Utterstrum said to
13 Mastriani, Lans came to us to have us represent him/Uniboard.

14 Mr. Handleman mentioned Delphi, the Swedish firm. I
15 reminded Your Honor that in the fee agreement, Mastriani's firm
16 said they had sole and exclusive rights as to the conduct of the
17 American litigation. But what else did -- what did
18 Mr. Utterstrum say?

19 He wrote a letter to Dr. Lans, or an e-mail to Dr. Lans
20 about the meeting that took place in Mr. Mastriani's office in
21 July 1997, and this is one of the exhibits to a short
22 supplemental declaration of Dr. Lans. And Mr. Utterstrum says
23 that, "the part of the discussion which I remember distinctly
24 focusing on you continuing as the owner, or whether a transfer
25 of title to the patent should be made to Uniboard," the very

1 things that the commissioner of patents says that the lawyer
2 should have done, given all the facts and uncertainties they
3 were faced with, "and a strategic issue as to whether you or
4 Uniboard would be the plaintiff, ultimately AMS decided against
5 a transfer of title."

6 All of this jumble of facts where Dr. Lans was
7 consistent - I own something, Uniboard owns something - the
8 lawyers were supposed to figure it out, and they had the
9 opportunity to figure out it.

10 Mr. Handleman says, well, we didn't have any
11 opportunity to figure it out. IBM wrote to us and they said,
12 we're talking about the Lans patent. And I believe that this
13 was -- let me get the date of this. This was a letter that IBM
14 sent January 22, 1997, and they refer to the Lans patent. Well,
15 that was January 1997.

16 In February 1997, Dr. Lans again reminds Mr. Mastriani
17 that both he and Uniboard had rights to this patent, and in
18 April 1997, having at least partially looked into the matter --
19 so here we have IBM saying, this is the Lans patent. April 18,
20 1997, Schaumberg writes back to IBM saying, we represent
21 Uniboard, and it's the agreement between IBM and Uniboard.

22 And paragraph 6.1 of that agreement that Mr. Handleman
23 kind of glossed over says, there's a document evidencing what
24 right, whatever it is, what right Uniboard had to assign some
25 rights in the '986 patent to IBM. Could they have asked IBM for

1 the document? Gateway did. Of course they could have. Should
2 they have looked into the matter or done a clarification
3 contract when they had a Hitachi agreement where Dr. Lans is
4 making an assignment? The Hitachi agreement is some years later
5 than the IBM agreement. Obviously they should have. They had
6 the facts.

7 Dr. Lans went to lawyers, like I go to a doctor, and
8 said, here are the symptoms, here are the hodgepodge of facts.
9 I'm not holding anything back. Look into them, make it right,
10 and do your job as a lawyer. And when it came time to decide
11 what would happen with this case, the lawyers abandoned their
12 clients and told you they didn't know about any assignment, any
13 assignment having anything to do with this Lans patent.

14 That was reckless, that was fraudulent, that met the
15 standard for the assessment of attorneys' fees, and more than
16 that, because it was absolutely false in this whole record here,
17 there's nothing exceptional about what Dr. Lans or Uniboard did.
18 Somehow between them, they owned a patent, and they went to
19 their lawyers and said --

20 THE COURT: That's why he couldn't say. Is that right?

21 MR. HAINLINE: I'm sorry?

22 THE COURT: That's why Dr. Lans couldn't say whether he
23 owned the patent or not?

24 MR. HAINLINE: Yeah. He owns it and he doesn't own it.
25 It's a hodgepodge. He doesn't know. He's not a lawyer, he

1 doesn't know. He gave his lawyers the facts; here's an IBM
2 agreement, here's a Hitachi agreement. I'm telling you,
3 I own this but I assigned it to Uniboard; maybe I have the
4 right to it, Uniboard has the right to money. He's telling them
5 what he knows as a brilliant but nevertheless lay person, not
6 even an American citizen with the knowledge of all the
7 intricacies of our patent law. It's up to the lawyers to do
8 their job.

9 And they knew that it was up to them to do the job,
10 because that's the only excuse for telling you in a sworn
11 statement that they knew absolutely nothing about any
12 assignment. To me, that's reprehensible. And it caused my bar
13 complaint and it caused my request that you refer this to the
14 U.S. Attorney, because I have an obligation to the bar and the
15 courtroom as a sacred space not to accept that kind of conduct.
16 Wholly apart from representing my client here, it's a duty to
17 the system.

18 Thank you.

19 THE COURT: Do you agree that -- I want to stay away
20 from the issue for a moment.

21 MR. HAINLINE: Yes.

22 THE COURT: Do you agree that a part of this was caused
23 by Dr. Lans?

24 MR. HAINLINE: Absolutely not. In Your Honor's
25 opinion, the part that I took real exception to, to be frank

1 with Your Honor, is when you said that it's Dr. Lans'
2 record-keeping at fault. I have never seen that, an
3 obligation of a party to a lawsuit, you know, an individual,
4 that somehow his record-keeping -- it's not a corporation in
5 America subject to the SEC, it's not somebody who has duties of
6 filing and record-keeping. He -- maybe his records were a
7 hodgepodge, but what we find out in truth is he had
8 records. He had records sufficient for any marginally competent
9 lawyer to find the facts. I don't believe it was his fault at
10 all.

11 In fact, he kept telling them, look -- he kept
12 reminding you, I want to remind you about this. One of the
13 interesting things, by the way, that Mr. Handleman admitted in
14 his argument, when Dr. Lans filed a sworn statement saying that
15 he forgot about the transfer, he swore to you in his
16 declaration, which was attached to our motion, that he had a
17 discussion with Mr. Mastriani, and Mr. Mastriani told him, if
18 you don't remember all the details, then you don't remember.
19 And he said he accepted that.

20 Mr. Handleman just acknowledged that that conversation
21 took place, and he said it was reasonable for Mr. Mastriani to
22 say that. I won't go there. I don't think it was reasonable
23 for Mr. Mastriani to say that, but I think it was reasonable in
24 the context for Dr. Lans to accept his lawyer's advice. He kept
25 telling his lawyer the facts. Here are the facts. I'm not

1 afraid of the facts. Deal with them. I don't believe it was
2 his fault.

3 THE COURT: Do you feel that the court can rule on this
4 issue without hearing from Dr. Lans? You've indicated Dr. Lans
5 is ready to come testify?

6 MR. HAINLINE: Yes, he is. Yes, he is. And if you --
7 I think that you can rule on this, but I think that if I were
8 sitting in your chair, I might want to hear from Mr. Mastriani
9 and Mister -- and Dr. Lans both under oath. And I might give
10 the lawyers out here a chance to have a little deposition
11 beforehand, each of us.

12 THE COURT: Tell me, what is Mr. Lans' schedule like?

13 MR. HAINLINE: You tell me the court's schedule and I
14 will --

15 THE COURT: No, you tell me what his schedule is.
16 We'll do our best to accommodate you, sir.

17 MR. HAINLINE: All right. Can I do that in a letter to
18 Your Honor --

19 THE COURT: Yes. Sure. Sure.

20 MR. HAINLINE: -- by Friday?

21 THE COURT: Of course. Of course. And I'm not saying
22 that it's necessary, but I want to explore it.

23 MR. HAINLINE: Could I also fit my schedule into that
24 as well?

25 THE COURT: Of course. Of course. And the same for

1 Mr. Mastriani.

2 MR. HAINLINE: Okay. I'll do that. Give me until
3 Monday, just in case he's on vacation or something. So I'll get
4 it to Your Honor.

5 THE COURT: That's not a problem. That's not a
6 problem.

7 MR. HAINLINE: Can I fax it to your office? Is that
8 acceptable?

9 THE COURT: That's fine, as long as you also send a
10 copy to the other persons involved.

11 MR. HAINLINE: Of course. Of course.

12 THE COURT: Anything else?

13 MR. HAINLINE: No, sir. When we finish here, I'll just
14 get your chambers fax number.

15 THE COURT: All right. My clerk will give it to you.
16 Anything else from either side?

17 MR. HANDLEMAN: Just to be clear, Your Honor, you want
18 counsel to find out from me my availability and Mr. Mastriani's
19 availability?

20 THE COURT: Yes.

21 MR. HANDLEMAN: That's fine, Your Honor. I think Your
22 Honor, as I suggested, based on the documents could certainly
23 make the ruling without taking evidence, but obviously we don't
24 have a problem with that.

25 THE COURT: That may well be, but...

1 MR. HANDLEMAN: Okay. So we'll just work out timing in
2 terms of --

3 THE COURT: And we're not talking about December. All
4 right?

5 MR. HANDLEMAN: Thank you, Your Honor. I appreciate
6 it.

7 THE COURT: Thank you, counsel. I will say this about
8 this series of cases -- oh, I do have one question before you
9 leave, just a point of interest. Was there not one or more
10 cases filed in Houston, or is that --

11 MR. HANDLEMAN: Your Honor, my client tells me that
12 there was a declaratory judgment action filed by Compaq in
13 Houston, so your recollection is totally correct.

14 THE COURT: And what happened there, do we know?

15 MR. HAINLINE: I don't.

16 THE COURT: I don't think it has any impact on this
17 motion, but ...

18 MR. HANDLEMAN: It was dismissed under the first to
19 file doctrine.

20 THE COURT: All right.

21 MR. HANDLEMAN: I had Idaho right, Your Honor.

22 THE COURT: Well, I remember the Idaho case.

23 MR. HAINLINE: I thought it was Utah. I'm getting my
24 midwestern states mixed up.

25 THE COURT: Well, I do remember the Idaho case, because

1 that was mentioned, as was the Houston case, during the time of
2 the principal litigation in this matter.

3 Thank you very much, counsel.

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5 (Proceedings adjourned 12:10 p.m.)

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CERTIFICATE OF OFFICIAL COURT REPORTER

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I, Rachel Rebecca King, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

SIGNATURE OF COURT REPORTER

DATE